

WAKE COUNTY, NC 661  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
12/02/2015 16:25:34

BOOK:016228 PAGE:01044 - 01054

RETURN TO: Town of Fuquay-Varina  
Attn: Town Clerk  
401 Old Honeycutt Road  
Fuquay-Varina, NC 27526

STATE OF NORTH CAROLINA

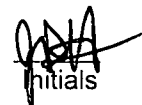
DECLARATION OF ANNEXATION  
AND AGREEMENT

COUNTY OF WAKE

This Declaration of Annexation and Agreement is made and entered into this the 2nd day of November, 2015 by and between Copper Pond Developers, LLC, a limited liability company also referenced as Coldstream Developers, LLC, a limited liability company (hereinafter referred to as "Owner") and the Town of Fuquay-Varina, a North Carolina municipal corporation (**hereinafter referred to as the "Town"**), both of Wake County, North Carolina.

WITNESSETH:

WHEREAS, Owner owns certain property or tracts of land (hereinafter referred to as the "Land") more particularly described in Deed Book 016137, Page 02488-02494 & Deed Book 016137, Page 02483-02487, Wake County Registry and more particularly described as Wake County PINs 0646822019 & 0646923454 and the Land is developed as residential and zoned for residential purposes; and,



WHEREAS, Owner desires (i) that the Land become part of the corporate limits of the Town, (ii) that the Town has provided water to the Land via a water line constructed by the Town, and (iii) that the Town have no obligation to provide sewer service to the Land; and,

WHEREAS, Owner has submitted to the Town a petition seeking annexation of the Land understanding fully that the Town will not provide sewer services to the Land; and,

WHEREAS, Owner desires to develop the Land such that all services currently provided by the Town, except sewer services, can be provided to the Land; and,

WHEREAS, Owner desires to create hereby an equitable servitude and covenant running with the Land so as to bind itself and all successors, heirs or assigns in title, including any owner of a lot subdivided from the Land. Therefore, the term "Owner" as used herein shall also include the Owner, its successors, heirs, grantees, assigns, and any owner or subsequent owner of any lot or parcel subdivided from the Land, and Owner's tenants, lessees and sub-lessees; and,

WHEREAS, Owner desires to be annexed and become part of the Town's corporate limits waiving any and all provision of sewer services.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

  
Initials

1. That the Land located and situated in Wake County, Middle Creek Township and described in Deed Book 016137, Page 02488-02494 & Deed Book 016137, Page 02483-02487, Wake County Registry, and more particularly described as Wake County PIN 0646822019 & 0646923454 shall be subject to the terms and conditions herein contained in perpetuity. Said Land being more particularly described as follows:

SEE ATTACHED EXHIBIT A  
ATTACHED HERETO AND INCORPORATED HEREIN

2. That upon the Town's Board of Commissioners' approval of Owner's annexation petition for the Land, the Town will provide the Land such municipal services it presently provides other lands within its corporate limits, except sewer services, (inasmuch as the Land is not within a reasonable proximity to the Town sewer lines and the drainage basin for the Land make the provision of sewer services financially impracticable).
3. Owner hereby waives and releases the Town from any and all obligation whatsoever to provide sewer services to the Land or to any lot subdivided therefrom.
4. Owner's waiver of sewer services is a complete and absolute waiver and is in no way limited to or qualified by the performance of any act by any party hereto.

5. Without affecting or nullifying Owner's waiver of sewer services, the Town may, when it becomes practicable to do so, and in the Town's sole and absolute discretion, construct certain public facilities as it deems appropriate such as, but not limited to, curb, gutter, storm water drainage, sewer and drainage systems (hereinafter referred to as "Other Infrastructure") as determined by the Town and assess the cost of the same against all Owners of the Land or lots subdivided therefrom. Said assessments shall be chargeable against the Land and any subdivided lots as a lien which shall be enforceable as a special assessment lien and may be enforced by judicial sale or tax lien proceedings. Said assessment shall be for all costs associated with providing said Other Infrastructure to the Land.
6. Owner hereby agrees to assert no claim and interpose no defense in any proceeding in law or equity that would require the Town to provide or pay for sewer services to the Land or any lot subdivided therefrom.
7. Owner further declares and agrees as follows:
  - a. Owner's Land will be annexed into the Town without the provision of sewer services when Owner's annexation petition is approved by the Town's Board of Commissioners;

- b. That the agreements and covenants herein contained are equitable servitudes and covenants running with the Land in perpetuity; and,
- c. All deeds, recorded maps, easements and leases or conveyances given by Owner conveying any interest or leasehold in the Land or subdivided lot shall incorporate by reference the declarations, agreements, covenants, servitudes and obligations herein contained. Failure to so incorporate shall not affect the validity of this Agreement or the binding affect on any subsequent owners or tenants of the Land or subdivided lot. This Agreement shall be recorded in the Wake County Register of Deeds office and a legend referencing this Declaration of Annexation and Agreement will be placed on any map used to convey the Land or lots subdivided therefrom.

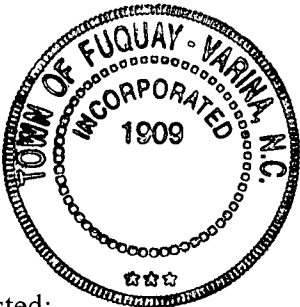
8. This Agreement and the terms, conditions, covenants and servitudes herein contained shall be binding upon the Owner, its grantees, successors, heirs, assigns, tenants, lessees, sublessees, and subsequent owners of the Land or any lot or parcel subdivided from the Land.

9. Should it be necessary for the Town to engage legal counsel to enforce or defend any term, condition or agreement contained herein, then Owner agrees to pay the Town's reasonable attorney's fees together with all court costs and expenses.
10. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.
11. This Agreement contains the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party.
12. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship between the parties. Any correspondence or other references to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the parties as to a new, specifically defined legal relationship.

13. This Agreement shall be interpreted and construed in accordance with the laws of the State of North Carolina.
14. The parties agree that any action brought in a court of law pertaining to this Agreement or the obligations set forth herein shall be brought in Wake County, North Carolina.
15. This Agreement may be executed in one or more counterparts.
16. The parties hereto have sought and received the advice of their respective legal counsel in drafting, preparing and executing this Agreement. This Agreement was mutually drafted by counsel for both parties. There shall be no presumption or legal burden placed against either party hereto as the drafter of this Agreement, or any provision hereof, including any exhibits and agreements annexed hereto.
17. If any provision herein is deemed void or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement and the remaining provisions shall be valid, enforceable and binding between the parties.

In the event that a court of competent jurisdiction declares this Agreement or any provision hereof to be void, voidable, unenforceable or *ultra vires*, then the Town may terminate any and all municipal services to the Land without liability for any type of damages whatsoever.

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.



Attested:

Rose H. Rich  
By: Rose Rich  
Title: Town Clerk

Town of Fuquay, Varina  
John W. Byrne  
By: John W. Byrne  
Title: Mayor

John D. Hornaday Jr., Manager  
By: John D. Hornaday Jr.



STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that John W. Byrne personally came before me this day and acknowledged that he is the Mayor of the Town of Fuquay-Varina, a municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by Rose Rich as its Town Clerk.

WITNESS my hand and official stamp or seal, this 2<sup>nd</sup> day of NOV, 2015.

My Commission Expires: 3/5/16 Teresa C Wilder Notary Public

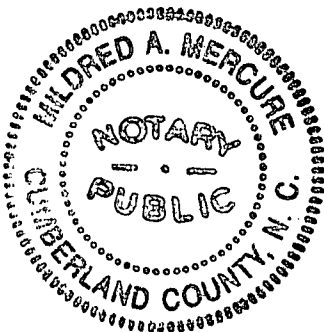


STATE OF NORTH CAROLINA

COUNTY OF ~~WAKE~~ Cumberland

I, a notary public of the County and State aforesaid, certify that John D. Hornaday Jr. personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 30<sup>th</sup> day of September, 2015.

My Commission Expires: 8/16/2020 Milched A. Mercure Notary Public



JDA  
Initials

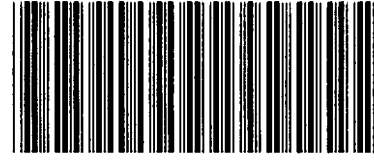
**Exhibit A to the  
Declaration of Annexation  
and Agreement**

**EXHIBIT A**

**LEGAL DESCRIPTION FOR A REZONING OF A 46.607 ACRE  
TRACT LOCATED IN THE MIDDLE CREEK TOWNSHIP OF  
WAKE COUNTY, NORTH CAROLINA**

**BEGINNING** at an PK Nail Found at the southeasterly corner of the Frances Ashlet Barefoot, et al Property (D.B. 13758, Pg. 1120), said point also being in the centerline of Piney Grove-Wilbon Road and having Grid Coordinates N: 661854.45 E: 2047933.78;  
**Thence** N42°18'30"E a distance of 237.26 feet, to a point;  
**Thence** N00°14'53"W a distance of 406.73 feet, to an Iron Pin on the easterly boundary of the Bernard F. Mcleod property (D.B. 14549, Pg. 416);  
**Thence** N42°16'04"E a distance of 687.90 feet, to an Iron Pin on the westerly boundary of Charles Parker, et als property (D.B. 2892, Pg. 486);  
**Thence** N04 16'36"E a distance of 288.74 feet, to an Iron Pin, said point being the southwest corner of the Cozart Farm, LLC property (D.B. 15269, Pg. 27);  
**Thence** the following reference lines along a branch (Note that property actually follows centerline of branch), N84 03'15"E a distance of 218.31 feet; to an Iron Pin;  
**Thence** S50 32'04"E a distance of 241.20 feet, to an Iron Pin;  
**Thence** S50 44'09"E a distance of 209.71 feet, to a point;  
**Thence** S89 00'23"E a distance of 313.01 feet, to a point;  
**Thence** N59 31'02"E a distance of 215.23 feet, to a point;  
**Thence** S85 03'58"E a distance of 149.64 feet, to an Iron Pin on the westerly boundary of Lot 64 of the Fleming Fields Subdivision (BM 2014, Pg 834);  
**Thence** S00 57'54"E a distance of 167.38 feet, to a point;  
**Thence** S54 48'33"E a distance of 206.72 feet, to an Iron Pin;  
**Thence** S67 53'05"E a distance of 104.51 feet, to an Iron Pin;  
**Thence** S54 59'45"E a distance of 10.74 feet, to a point, said point also being the northwest corner of the Eleanor A. Howard property (DB 6912, PG. 295);  
**Thence** S03 40'02"W a distance of 719.55 feet, to an Iron Pin, said point being on the northerly boundary of the Horace J. & Brenda Sue Tart property (D.B. 4328, Pg. 328);  
**Thence** N86°17'43"W a distance of 1246.26 feet, to a point;  
**Thence** N07°50'15"E a distance of 12.01 feet to an Iron Pin, said point being the northeast corner of the Ross M. & Nancy M. Olive property (D.B. 2492, Pg. 372);  
**Thence** N88°50'11"W a distance of 136.08 feet, to an Iron Pin;  
**Thence** N88°49'02"W, a distance of 136.77 feet to an Iron Pin;  
**Thence** S03°24'25"W a distance of 353.22 feet, to an Iron Pin; said iron pin being the southwest corner of said Olive property;  
**Thence** S03°38'42"W a distance of 299.61 feet, to a PK Nail, said PK Nail being the southwest corner of Horace J. & Brenda Sue Tart property (D.B. 4328, Pg. 328) and the centerline of Piney Grove-Wilbon Road;  
**Thence** with the centerline of Piney Grove-Wilbon Road the following courses:  
 N39°09'45"W a distance of 105.79 feet, to a PK Nail;  
 N42°23'26"W a distance of 69.02 feet, to a PK Nail;  
 N45°03'29"W a distance of 101.75 feet, to a PK Nail;  
 N47°00'39"W a distance of 95.96 feet, to a PK Nail;  
 N47°57'15"W a distance of 253.71 feet, to a PK Nail;  
 N47°22'12"W a distance of 70.43 feet, to the POINT of BEGINNING; Containing or 46.607 Acres of Land, More or Less.

**The Property described hereon is subject to all rights-of-way, easements and restrictions of record. The purpose of this Legal Description is to provide a Metes and Bounds Description for Property Rezoning in the Town of Fuquay-Varina, North Carolina.**



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**Please retain yellow trailer page**

**It is part of the recorded document and must be submitted with the original for re-recording.**

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**Laura M. Riddick  
Register of Deeds**

**Wake County Justice Center  
300 South Salisbury Street, Suite 1700  
Raleigh, NC 27601**

New Time Stamp

\$25 Non-Standard Fee

Additional Document Fee

Additional Reference Fee

**This Customer Group**

\_\_\_\_\_ # of Excessive Entities

\_\_\_\_\_ # of Time Stamps Needed

**This Document**

\_\_\_\_\_ 11 # of Pages <sup>5</sup>