

Prepared by & mail to:
Durham West Investments LLC
PO Box 4011
Cary, NC 27519

FOR REGISTRATION WILLIE L. COVINGTON
REGISTER OF DEEDS
DURHAM COUNTY, NC
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DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE
LATTA WOODS COMMUNITY ASSOCIATION, INC.

THIS DECLARATION is made on the date hereinafter set forth by DURHAM WEST INVESTMENTS, LLC, a North Carolina Limited Liability Company.

WITNESSETH:

WHEREAS, Declarant has heretofore acquired certain real property located in the City of Durham, Durham County, North Carolina, more fully described in the deeds recorded in Book , Page , and in Book , Page , Durham County Registry, which Declarant is currently developing into a residential community known as LATTA WOODS (hereinafter referred to as the "Subdivision")

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area and to enforce the covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject all of the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the LATTA WOODS COMMUNITY ASSOCIATION, INC., for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant declares that the real property described in Article II of this Declaration is and shall be owned, held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the LATTA WOODS COMMUNITY ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or by easement, for the common use and enjoyment by the Owners of Lots within the Properties, and may include, without limitation, subdivision entrance signage and landscaping, Permanent wooded open space and common area, storm water drainage systems and devices in common area, fences installed by the Declarant or the Association, and any other property or improvements specifically identified in writing by the Association as Common Area. The Association or its successors in interest shall maintain the Common Area unless dedicated to public use as set forth herein.

Section 3. "Declarant" shall mean and refer to DURHAM WEST INVESTMENTS, LLC, and to any person, firm or corporation to whom or which Declarant shall assign or delegate the rights and obligations of Declarant by an Assignment Of Declarant's Rights recorded in the Wake County Registry.

Section 4. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties, with the exception of any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 5. "Member" shall mean and refer to every person or entity who or which holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation. Any reference to an Owner in the masculine gender shall be deemed to include the feminine gender, and any reference to an Owner in the singular shall be deemed to include the plural, and vice versa.

Section 7. "Properties" shall mean and refer to the property described in Article II of this Declaration.

Section 8. "Unit" or "Dwelling" shall mean and refer to any building or portion thereof within the Properties, which is designated and intended for use an occupancy as a residence by a single family.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE LATTA WOODS COMMUNITY ASSOCIATION, INC.

The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on Exhibit A attached hereto.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Members^{1/2}. Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of Lots with respect to voting rights:

(a) **Class A Lots.** Class A Lots shall be all Lots except Class B Lots (as the same are hereinafter defined). Ownership of a Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote.

When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant and which have not been converted to Class A Lots as provided in subparagraphs (1) or (2) below. Declarant and such builder(s) shall be entitled to ten (10) votes for each Class B Lot owned by them.

The Class B Lots shall cease to exist and shall be converted to Class A Lots upon the earlier of the following to occur:

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; or

(2) On December 31, 2007

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other Owners of Class A Lots; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Vacant/Leased Residences. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his/her own personal living quarters or if any Dwelling within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant and rental Units shall not be entitled to any weight greater than forty-nine (49) percent on any matter pending before the Association.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by the Rules and Regulations adopted by the Members and/or the Board of Directors of the Association, every Owner shall have a right and easement of enjoyment in, use of and access to, from and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) The right of the Association to charge reasonable admission and other fees for the use of any facilities hereafter situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his/her Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) The right of the Association to dedicate, sell or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least three-fourths (3/4) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Association, without the consent of

the Members, from granting easements upon, over, under and across the Common Area for the purpose of installing and maintaining sewage, utility (including CATV) and/or storm water drainage facilities, when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of the Properties. Subject to the provisions of subparagraph (e) below, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Durham or to another non-profit corporation organized for similar purposes.

(d) The right of the Association, with the assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) The right of the Association, with the consent of the City of Durham, Members entitled to at least three-fourths (3/4) of the votes appurtenant to each Class of Lots, and, if required, of the Federal Housing Administration and/or Veterans Administration, to exchange all or part of the Common Area for other property and consideration of like value and utility.

Section 2. Delegation of Use.

(a) **Family.** The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.

(b) **Tenants.** The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated by such Owner to his/her tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Wake County, North Carolina.

(c) **Guests.** The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association.

Declarant covenants, for itself, its successors and assigns, that it will convey title to the Common Area within each phase or section of the Subdivision to the Association prior to the conveyance of the first Lot within such phase or section to an Owner. Declarant reserves an easement over and across the Common Area so long as it owns any Lots within the Properties for the purpose of constructing such improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens, except utility and drainage easements of record or shown on the recorded plats of the Subdivision. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Regulation and Maintenance of Common Area.

Declarant will, prior to the conveyance of the first Lot to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of any Lot on which a Common Area easement lies. It is the intent of the Declarant that, unless otherwise approved by the Declarant or the Association as provided in Article VIII of this Declaration, the easement area shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner.

(a) **Rights and Responsibilities of the Lot Owners.** Each Owner of a Lot upon which

a Common Area easement lies shall pay all property taxes and other assessments levied against his/her Lot, including that portion of such tax or assessment as is attributable to the Common Area easement. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation within the Common Area; (2) erect gates, fences, or other structures on the Common Area; (3) place any garbage receptacles on or in the Common Area; (4) fill or excavate the Common Area or any part thereof; or (5) plant vegetation or otherwise restrict or interfere with the use, maintenance, and preservation of the Common Area.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners within the Subdivision and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners within the Subdivision; (ii) procure and maintain adequate liability insurance, in an amount not less than \$1,000,000.00, covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Common Area easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot that it owns within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together interest and late charges set forth in Section 8 of this Article V and all costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorney's fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) repair and reconstruction of improvements on the Common Area, including but not limited to, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) maintenance, replacement, repair and reconstruction of such portions of the Lots and the improvements and landscaping installed thereon as the Association may deem proper in case Owner of such lot fails to perform required repairs in time allotted by Association at which time Association may perform repairs and record a lien of unpaid assessment in County records against the lot in question; (v) procurement and maintenance of insurance; (vi) employment of attorneys, accountants and other persons or firms to represent the Association when Necessary; (vii) payment of principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1 2002, , the maximum annual assessment shall be \$660.00 per Class A Lot (\$55.00 per month) and, subject to the provisions of Sections 3(c) and 3(d), below, \$165.00 per Class B Lot (\$13.75 per month).

(a) From and after January 1, 12002, the Maximum Annual Assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the maximum assessment for the previous year unless such increase is approved as set forth in Section 3 (b), below.

(b) The Maximum Annual Assessment may be increased without limitation if such increase is approved by the Class B Member and not less than two-thirds (2/3) of the votes cast by the Class A Members, in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the maximum (including zero) provided, however, that, except as otherwise provided in this Declaration, the assessment established for each Class B Lot shall always be one-fourth (1/4) of the assessment for a Class A Lot.

A Class B Lot shall be assessed at the Class B rate until the Dwelling constructed thereon is occupied as a residence; thereafter it shall be assessed at the Class A rate. It is the intent of the foregoing that a Lot containing a Dwelling used as a model or sales center, and not as a residence, shall be assessed at the Class B rate, but that such Lot shall be assessed at the Class A rate even though owned by the Declarant if it is occupied as a residence. A Lot owned by the Declarant and assessed as a Class A Lot shall remain a Class B Lot for all other purposes as long as it is owned by the Declarant.

When a Class B Lot is converted to Class A, the assessment with respect to such Lot shall be prorated and charged according to its class as of the date of such conversion.

(d) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by the Board.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of any improvement for which the Association is responsible, including, if appropriate, fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the assent of the Class B Member and not less than two-thirds (2/3) of the votes cast by the Class A Members, in person or by proxy, at a meeting duly called for this purpose, and shall be in the ratios provided in Section 3(c) of this Article.

Section 5. Assessment Rate; Collection Period. Except as provided in Article IX of this Declaration, annual and special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semi-annual, quarterly or monthly basis, as determined by the Board of Directors of the Association.

Section 6. Notice of Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article V shall be sent to all members not less than ten (10) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of members or of proxies entitled to cast fifty percent (50%) of the votes appurtenant to each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the same is

called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Amount of Initial and Subsequent Annual Assessments; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after which a certificate of occupancy is issued by the appropriate governmental agency for the Dwelling constructed on such Lot. Unless a lower amount is set by the Board of Directors, the first annual assessment shall be the "maximum annual assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year.

At least twenty-five (25) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least fifteen (15) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 8. Effect of Nonpayment of Assessments; Remedies. Any assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at the rate of twelve percent (12%) per annum or the highest rate allowed by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his/her Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of a Lot pursuant to such a foreclosure of a mortgage or deed of trust shall extinguish the lien of such assessments as to the payment thereof which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All property dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Working Capital Fund. At the time of closing of the initial sale of each Dwelling constructed on each Lot, a sum equal to one-sixth (1/6) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such Dwelling and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to pursuant to this Section shall not be considered as an advance payment of any regular assessment.

ARTICLE VI

RIGHTS OF LENDERS

Section 1. Books and Records. Any owner or holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, By-laws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Association, the owner or holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan;

(b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and/or

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

Section 3. Approval of Owners and Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the owners and holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee or by easement, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Durham or to another non-profit corporation for the aforementioned purposes. Nothing herein shall be deemed to prohibit the Association, with the consent of the City of Durham, from exchanging Common Area for other property as provided in Section 1(e) of Article IV of this Declaration, or to require the approval of such exchange by the holders of first deeds of trust on the Lots.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

Section 4. Payment of Taxes and Insurance Premiums. The owners or holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed

