



FOR REGISTRATION REGISTER OF DEEDS
 Willie L. Covington
 DURHAM COUNTY, NC
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Prepared by:and return to: Homa J. Freeman, Jr., Attorney At Law
 PO Box 52396, Durham, NC 27717-2396

**DECLARATION
 OF COVENANTS, CONDITIONS AND RESTRICTIONS**

WELDON DOWNS

THIS DECLARATION, made and entered into this the 23 day of June, 2008, by **HOPE VALLEY TOWNHOMES, LLC**, a North Carolina corporation whose address is 3104 Surrey Road, Durham, North Carolina 27707, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in the City of Durham, County of Durham, State of North Carolina, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Declarant is developing a certain residential subdivision to be known as "Weldon Downs Townhomes" (hereinafter "Properties") which will comprise of residential townhome lots (hereinafter "Lots") when fully developed; that the real property upon which Weldon Downs Townhomes is to be located is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Declarant now desires to develop the Properties in accordance with the Declaration of Covenants, Conditions and Restrictions hereinafter set forth; and

WHEREAS, Declarant intends to construct townhome residential homes on each Lot and to convey each Lot subject to the Covenants, Conditions and Restrictions contained in this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the property in the development known as WELDON DOWNS TOWNHOMES shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions.

PREAMBLE

The purpose of this instrument is to protect the value, desirability and attractiveness of the aforesaid real property; to insure the best use and the most appropriate development and improvements of each Lot located therein; to protect the owner of each Lot against such improper use of surrounding Lots as will depreciate the value of said owner's property; to preserve as far as practicable, the natural beauty

of said property; to guard against the erection of poorly designed or proportioned structures and/or structures built of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said property; and to enhance, as far as is practical, the value of investments made by owners of Lots herein. To that end, Declarant herein creates a Homeowners' Association and vests it with certain powers and authority consistent with the intentions expressed in this Preamble. Lastly, said restrictions, covenants and conditions shall be appurtenant to and run with the land and shall be binding on all parties having any right, title or interest in the described real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

Section 1. "Association" shall mean and refer to Weldon Downs Townhome Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any of the Lots which is a part of the "Properties", including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property to be known as Weldon Downs Townhomes as more particularly described on attached Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Open Space" and "Stormwater Easements" shall mean and refer to all real property (including the improvements now or hereafter constructed, excluding Lots) owned in fee simple by the Association or for which the Association shall have been granted by Declarant easement rights of the common use and enjoyment of all the Owners of Lots in Weldon Downs Townhomes.

Section 5. "Wet Detention Pond" shall mean and refer to the permanent detention basin (hereinafter referred to as "Wet Detention Pond") constructed on Declarant's property described in Exhibit "A". That on the 26th day of April, 2007, Declarant entered into a Stormwater Facility Operation and Maintenance Agreement City Version 082203 with the City of Durham, which said Agreement contains the terms, provisions, ordinances, and regulations governing the operation and management of the Wet Detention Pond constructed on Declarant's property. That a complete copy of the Stormwater Facility Operation and Maintenance Agreement City Version 082203 shall be made a permanent part of the Association's records.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the "Properties" excluding the aforesaid Open Space and Stormwater Easement lands.

Section 7. "Declarant" shall mean and refer to Hope Valley Townhomes, LLC, its successors and assigns. In the event Hope Valley Townhomes, LLC, for any reason, should cease to exist, then Declarant shall mean any entity which purchases or otherwise acquires Hope Valley Townhomes, LLC's remaining interests in and to the development known as Weldon Downs Townhomes.

Section 8. "Declarant Control" shall mean and refer to that period of time during which Declarant is entitled to three (3) votes for each Unit. The period of Declarant Control shall begin as of the date hereof and shall continue until the happening of any of the following events, whichever occurs earlier:

- (a) Thirty (30) days after the last Unit has been conveyed to Unit purchasers; or
- (b) December 31, 2011; or
- (c) When, in its discretion, the Declarant so determines.

Section 9. "Member" shall mean and refer to any person or entity entitled to Membership in the Association as provided for herein. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to an assessment by the Association. The owner of a Lot shall become a member of the Association merely by virtue of being an Owner of a Lot. In the event of multiple ownership of any given Lot, each Owner shall be a member of the Association but only one (1) vote total shall be accorded to each Lot.

Section 10. "Unit" shall mean and refer to any Lot together with the dwelling constructed or to be constructed on the Lot and all other improvements constructed thereon., Each Unit is intended for use as a single-family residence and no portion of the Unit may be subdivided or partitioned or held in separate ownership from any other part of the Unit (this provision shall not prevent Units from being held in undivided interests). A Unit shall be deemed created when a certificate of occupancy for such dwelling is issued by the governmental authorities having jurisdiction thereof.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Each Owner of a Lot in Weldon Downs Townhomes shall have a right and easement of enjoyment in common with every other Lot Owner in Weldon Downs Townhomes in and to the Open Space Areas and Stormwater Easements lands, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights and right of access to and through the Open Spaces for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) The right of the Association to dedicate or transfer all or any part of the aforesaid Open Space areas, or the Stormwater Easements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members in the Association has been recorded.

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Open Space areas, and/or any or all of the Stormwater Easements in aid thereof to mortgage said property, and the rights of such mortgagees in such properties shall be subordinate to the rights of the homeowners hereunder. This right shall be deemed a "material change" within the context of Article Eleven, Section 3(b) hereof.

Section 2. Delegation of Use. Subject to this Declaration and Bylaws, a Lot Owner may delegate his right of enjoyment to the Open Space areas and facilities, and/or the Stormwater Easement area to his heirs and assigns, members of his family, invitees, agents, licensees, guests, tenants, or contract purchasers who reside on the property.

Section 3. Conveyance of Open Space, and Stormwater Easements. Declarant shall prior to the conveyance of the last lot in Weldon Downs, convey fee simple title to the Open Space Areas and the Stormwater Easements to the Homeowners' Association, subject to Declarant's reserved easement rights during construction as set forth herein but free and clear of all encumbrances except for street and road rights of way, sidewalks, parking areas and utility easements. The Homeowners' Association shall be bound by the terms and conditions of that certain Stormwater Facility Operation and Maintenance Permit Agreement City Version 082203 set forth in Exhibit "B" attached hereto. Subject to Declarant's reserved easement rights, the Association, from and after the sale and conveyance of three-quarters of the Lots in Weldon Downs, shall be solely responsible for maintaining and insuring those areas. So long as Declarant remains the record owner of an Lot within the Properties, Declarant expressly reserves the right to alter and restructure existing Lot lines provided Declarant shall not increase or decrease the number of existing buildable lots.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment 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. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members; the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership at the end of the period of Declarant Control.

ARTICLE IV

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) an Annual Assessment, and (2) a Special Assessment for capital improvements, such assessments to be established and collected as hereinafter provided. The Annual Assessment, and as applicable, the Special Assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. For each Lot owned by Declarant, whether vacant or in any stage of construction, but not yet conveyed, Declarant shall pay to the Association one-third (1/3) of the Annual Assessment on a monthly basis. Declarant shall not be liable for any Special Assessment.

Section 2. Purpose 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 Project and, in particular, for (i) the improvement and maintenance, including the exterior and structural maintenance of the Units, and (ii) services and facilities devoted to this purpose or for the use and enjoyment of the Common Area, including, but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the payment of public assessments levied against the Common Area, the procurement and maintenance of insurance in accordance with Article V of this Declaration, the employment of attorneys to represent the Association when necessary, reasonable reserves for all of the above and such other needs as may arise.

Section 3. Computation of Assessment. It shall be the duty of the Board, at least thirty

(30) days prior to the meeting at which the budget shall be presented to the Members, to prepare a budget covering the estimated costs of operating the Association during the coming year, including projected costs for all of the matters set forth in Section 2 above. The budget and assessments shall become effective unless disapproved at the meeting by a vote of the Members representing at least a majority of the votes of each class of Members. Assessments per Unit for the initial year of operation of the Association shall not exceed Two Hundred Dollars (\$200.00) per month. Thereafter, for the lesser of two (2) years or the period during which the Class B membership exists, assessments per Unit shall not increase by more than ten percent (10%) per year over the previous year's assessments. During the period when assessments are subject to the maximums provided herein, Declarant shall pay actual costs of operation of the Association in excess of the assessments provided for herein.

Section 4. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon Open Space or the Lots, including fixtures and personal property related thereto; provided, however, any Special Assessment must have the assent of two-thirds (2/3) of the votes of all the Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Special Assessments for Damages. In addition to the annual and special assessments described in Sections 3 and 4, in the event that the need for maintenance, repair or replacement of any Common Area or the exterior or structure of any Unit (or any other maintenance matters which are the responsibility of the Association) is caused through the willful or negligent act of an Owner, his family, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, and the costs of such maintenance, replacement or repairs is not covered by insurance maintained by the Association, then the Association may levy a special assessment against such Owner and his Unit for the purpose of defraying in whole or in part, the cost of any maintenance, repair or replacement. In addition, the Association may levy against an Owner and his Unit the amount of any increase in insurance premiums for insurance maintained by the Association, if such increase is attributable to the willful or negligent acts of such Owner, his family, guests or invitees. Any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3, 4 or Section 5 shall be sent to all Lot Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Lot Owners or of proxies entitled to cast thirty percent (30%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the

preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or annual basis as determined by the Board of Directors of the Association.

Section 8. Date of Commencement of Annual Assessment; Due Dates. The Annual Assessments provided for herein shall commence as to any given Lot on the day of closing and conveyance of said Lot to a third party purchaser for residential occupancy pursuant to a duly issued Certificate of Occupancy. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of Annual Assessment against each Lot at least thirty (30) days in advance of the Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum, plus a one-time late payment penalty of Twenty-Five and No/100 Dollars (\$25.00). The Association may bring an action at law against the Owner personally obligated to pay the same or foreclosure the lien against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Open Space and Recreation Area or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer except that such an extinguished lien may be reallocated and assessed to all of the Lots as a common expense. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All Common Area and all property dedicated to, and accepted by, a local public authority shall be exempt from assessments.

ARTICLE V

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Units and Common Area. The Board, at its election, may insure the structure of each Unit from sheetrock and sub-flooring out, including plumbing and electrical. All such insurance shall be in such form as the Board deems appropriate. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of such improvements in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Area and insuring the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects bodily injury and property damage.

Premiums for all insurance required to be maintained by the Association shall be common expenses of the Association and shall be included in the annual assessment. Policies may contain reasonable deductibles, and, in the case of property insurance, the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the loss in the absence of insurance, and, in the event of multiple parties, shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board shall be written in the name of the Association or Trustee for the respective benefitted parties. Such insurance shall be governed by the provisions hereinafter set forth:

- a. All policies shall be written with a company licensed to do business in North Carolina which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.
- b. All policies on the Common Area shall be for the benefit of the Association. All policies on the Lots shall be for the benefit of the Owner and the Association.
- c. Exclusive authority to adjust losses under policies in force on the Property obtained by the Association shall be vested in the Board; provided, however, no mortgagee having an interest in such losses may be prohibited from participating

in the settlement negotiations, if any, related thereto.

- d. All property insurance policies shall have a guaranteed replacement cost provision.
- e. The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, and the Owners, as to their actions taken in representing the Association or the Project;
 - (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
 - (iii) that no policy may be cancelled, invalidated or suspended on account of any one or more individual Owners;
 - (iv) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee; and
 - (v) that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification or nonrenewal.
 - (vi) Directors and Officers liability insurance.

In addition, to the other insurance required by this Section, the Board may obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, management, agents and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors's best business judgment but may not be less than twelve (12) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or non-renewal.

Section 2. Individual Insurance.

Each Owner shall be responsible for obtaining an HO6 insurance policy, insuring his/her contents, improvements and betterments within the Unit and liability insurance for matters occurring within the Units, the Association having no responsibility for obtaining such insurance. Any renter of a Unit shall be required to obtain an HO4 Renter's Policy with a minimum Three Hundred Thousand Dollars (\$300,000.00) liability coverage limit.

Section 3. Disbursement of Proceeds. Proceeds of insurance shall be disbursed as follows: If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

Section 4. Damage and Destruction.

- (a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of any Owner of the Association, the Board, or its duly authorized agent, as appropriate, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed properties. Repair or reconstruction, as stated in this paragraph, means repairing or restoring the Property to substantially the same condition in which they existed prior to the fire or other casualty. Any repair or reconstruction carried out or ordered by an Owner shall be of a quality at least equal to the quality of the original materials and standards of construction for the Property.
- (b) Any damage or destruction of the Common Area or the Units shall be repaired or reconstructed unless the Members representing at least seventy-five percent (75%) of each class of Members shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the

Association within said period, then the period shall be extended until such information shall be made available. No mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

- (c) If such repair or reconstruction is to be carried out on the Units using proceeds from insurance policies obtained by one or more Owners, then the Association shall have the authority, in its sole discretion, to either approve the contractor(s) hired by said Owners(s) to complete such repair or reconstruction or contract directly with one or more contractors to carry out such repair or reconstruction and use the insurance proceeds from any applicable insurance policies to pay said contractors.
- (d) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Property shall be restored to its natural state and maintained by the Association in a neat and attractive condition.

ARTICLE VI

ARCHITECTURAL CONTROL

Declarant intends to create in Weldon Downs Townhomes a community which is both functional and aesthetically pleasing. To facilitate achieving this goal, Declarant will review all plans, specifications and site location drawings for all improvements to be constructed or located on any Lot in Weldon Downs Townhomes and landscaping of the Lot prior to any construction commencing thereon. Further, after initial construction is completed, Declarant will review any and all plans designed to alter, modify, add to or subtract from what was initially constructed. To that end, no building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot in Weldon Downs Townhomes or on the Open Space, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Declarant, or in the absence of Declarant owning at least one (1) Lot in Weldon Downs Townhomes, the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Declarant, or, as the case may be, the Board of Directors, or, as the case may be, a committee designated by the Board of Directors, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. All such requests shall be mailed to the Declarant, or

to the Board of Directors, or to the Architectural Control Committee, as the case may be, at the last known address of the party to whom the request is being sent.

As to all construction within Weldon Downs, the approval process will remain the sole responsibility of Declarant so long as Declarant owns one (1) or more Lots in Weldon Downs Townhomes, or until such time as Declarant, in writing, transfers this responsibility to the Board of Directors of the Association or any Architectural Control Committee established by the Board.

Architectural Guidelines may be established by Declarant and/or the Board in order to carry out the intent of this Article.

ARTICLE VII

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereto (including, without limitation, furnishings and equipment related thereto and common landscaped areas) and shall keep it in good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof.

Section 2. Exterior and Structural Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior and structural maintenance for each Unit which is subject to assessment hereunder, as follows: paint, repair, replacement and care of structural walls, foundations, utility lines (unless such lines are solely interior lines and such utilities are separately metered), party walls, roofs, gutters, downspouts, exterior building surfaces, trees shrubs, walks, and other exterior improvements. Such exterior and structural maintenance shall not include glass surfaces and screens nor plumbing and utility lines serving only one Unit. Further, each Owner is responsible for the maintenance of the heating and air conditioning unit(s), dryer vents, locks and chimneys within his/her Unit. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Unit at all reasonable times to perform maintenance as provided in this Article.

Section 3. In the event that the need for any such maintenance or repair as set out herein is caused through the willful or negligent act of the Owner, his family, guests or invitees or is caused by fire, lightening, windstorms, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles or smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VIII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Units and placed on the dividing line between the Units shall constitute a party wall. The Association shall maintain and repair party walls, except that the Unit Owners shall be responsible for painting and/or wallpapering and decorating the surface of the party wall which is part of their Unit. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

ARTICLE IX

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Open Space and Units.

Section 2. Use of Property. No portion of the Property (except for temporary office of the Declarant and/or a model home used by Declarant for sales purposes) shall be used except for residential purposes and related incidental purposes. No portion of the Property may be utilized for a licensed or unlicensed day care operation nor related facility. Specifically, no Lot may be stripped of its topsoil and trees or permitted to go to waste by being excavated, neglected or having trash or refuse thrown, dropped or dumped on it.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried out upon the Property, nor shall anything be done thereon which may be or may become a nuisance or annoyance to the neighborhood. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that this shall not be construed to prohibit temporary deposits of trash, rubbish, and other such items for pickup by governmental or other similar garbage/trash removal services.

Section 4. Signs. No signs of any kind except those advertising an individual lot "For Sale" or "For Rent" and except for those signs used by the Declarant in the advertising of the Property or erected by Declarant identifying portions of the Property such as "sight easement" or "common area" shall be displayed for public view in and about the premises.

Section 5. Items to be Approved by Association. Without the prior approval of the Board of Directors as to location, style, type, size and composition, no antennae, aerials, pole

towers, solar collectors or similar structures, no fuel tanks or any similar type of storage receptacle, no temporary structures such as sheds, mobile homes, trailers or tents may be placed on any Lot or the Open Space. Declarant, its successors or assigns, may place one or more construction trailers upon any Lot or the Open Space during construction provided the same are removed within a reasonable period of time after construction in that area has been completed. No travel trailers or recreational vehicles shall be at any time used as a residence either temporarily or permanently.

Section 6. Violation of any of these provisions shall subject the violating Lot owner to legal action, in law or in equity, filed against him by either the Board of Directors of the Association or any Lot owner in Weldon Downs. Such legal action, if successful, shall provide for the payment of reasonable attorney's fees in addition to remedies in law or in equity.

ARTICLE X

EASEMENTS

Section 1. All of the Properties, including Lots and Open Spaces, shall be subject to such easements for water lines, sanitary sewer lines, storm drainage facilities, gas lines, cable TV, telephone and electric power lines and other public utilities as shall be or shall have been granted by the Declarant or by its predecessors in title. Declarant, while it retains fee simple title to at least one (1) Lot in Weldon Downs Townhomes, or the Association's Board of Directors shall have the power and authority to grant and establish upon, over, under and across the Open Space as conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property as well as its proper maintenance or operation.

Section 2. Encroachments. Each Lot, Unit and the Common Area shall be burdened with an easement for the encroachment of footings, eaves, overhangs, walls, stone veneer and similar encroachments of integral parts of the Units or structures constructed on the Lots or the Common Area.

Section 3. Unintentional Encroachments. In the event that any structure erected principally on any Lot shall encroach upon any common Area or upon any other Lot for any reason not caused by the purposeful or negligent act of the Owner or agents of such Unit, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment shall naturally exist; and, in the event that any portion of the Common Area shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Area into any such Lot for so long as such encroachment shall naturally exist.

ARTICLE XI

EASEMENTS FOR CONSTRUCTION PURPOSES

The Declarant, or its duly authorized agents, shall have full rights of ingress and egress to and through, over and about the Open Space and Stormwater Easements during such period of time as the Declarant is engaged in any construction or improvement work on or within the Property described herein or any additional property which may, subject to the provisions of this Declaration, be annexed to the Property. Declarant shall further have an easement for the purposes of storage of materials, vehicles, tools, equipment and so forth which are being utilized in such development or construction. No Lot Owner, his guest, licensees, clients, or invitees shall in any way interfere or hamper Declarant, its employees, successors, agents or assigns in its construction work.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect. In the event of any contradiction, real or apparent, between the Articles of Incorporation and the Bylaws, the Bylaws shall control and in the event of any contradiction real or apparent, between the Bylaws and this Declaration, then the terms and conditions of this Declaration shall control.

Section 3. Amendment. Prior to the sale of the first Unit, Declarant may amend this Declaration. During the period of Declarant control after the sale of the first Unit, the Declarant may amend this Declaration so long as it still owns part of the Property and so long as the amendment has no adverse effect upon any right of any Owner; thereafter and otherwise, this thereof, of Members representing seventy-five percent (75%) of each class of Members and of the total votes of the Association, including seventy-five percent (75%) of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the public records of Durham County, North Carolina.

No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right of privilege.

Any amendment to this Declaration must be in compliance with existing Federal National Mortgage Association Guidelines.

Section 4. Term. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing, signed by a majority of the then Owners and each member of the Board has been recorded within the year preceding the beginning of such successive period of ten (10) years, agreeing to change said covenants, and restrictions, in whole or in part, or to terminate the same.

Section 5. Mortgagee's Rights. A first mortgagee, or the insurer or guarantor of a first mortgage shall be entitled, upon written request, to receive copies of this Declaration, the Bylaws, Rules and Regulations, and Articles of Incorporation of Weldon DownsTownhome Association, Inc.; entitled to inspect the books and records of the Association during normal business hours or under other reasonable circumstances; entitled to receive at no additional cost the annual audited financial statement within ninety (90) days following the end of the fiscal year; entitled to receive written notices of meetings of the Association and to designate a representative to attend all such meetings; entitled to receive timely notice of any substantial damage to or destruction of any part of the Open Space, and Stormwater Easements and facilities; entitled to receive notice if any part of the Open Space and Stormwater Easements and facilities are subjected to a condemnation or eminent domain proceeding or are otherwise sought to be acquired by a condemning authority; entitled to receive notice of any sixty (60) days delinquency in the payment of assessments or charges of any Owner of any Lot upon which that mortgagee, insurer or guarantor holds a mortgage; entitled to receive notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and entitled to receive notice of any proposed action which requires the consent of a specified percentage of mortgage holders.

Section 6. Working Capital or Additional Reserve Account. Upon the sale and conveyance of a Lot, the third party purchaser thereof shall transfer to the Association a sum of money equal to two (2) monthly assessments to create or be added to the Association's working capital or reserve account. Such funds shall not be deemed an advanced payment of the regular Annual Assessment.

Section 7. Reserved Rights of Lot Owners. No Lot Owner shall be subject to a restraint imposed by the Association upon his right to sell, transfer or otherwise convey his Lot. No Lot Owner shall be subject to any restraint imposed by the Association upon his right to mortgage his Lot with whomever or whatever institution and upon those terms and conditions the Lot Owner is willing to accept. Each Lot Owner is entitled to likewise inspect the books and records and other related documents of the Association during normal business hours or under other reasonable circumstances.

Section 8. Annexation.

Additional residential property, Open Space and Recreation Areas may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

ARTICLE XIII

DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Durham County, North Carolina.

Notwithstanding any provisions contained in the Declaration to the contrary, during the period of Declarant control, the Declarant shall have the right to grant to public agencies, authorities or utility service providers easement necessary or desirable for service to the Project or any portion thereof.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant and any builder approved by Declarant to maintain and to carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Unit, including, any builder approved by Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by the Declarant and the Common Area owned by the Association as models and sales offices.

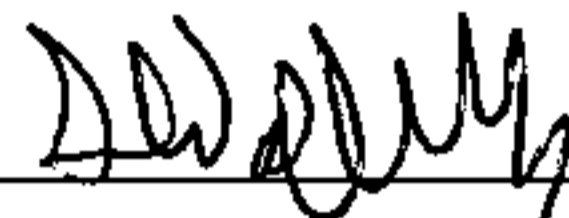
So long as Declarant continues to have rights under this section, no person or entity shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any portion of the Property without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the end of the period of Declarant control.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused

this instrument to be signed in its name, its corporate seal to be affixed hereto and attested by its Secretary, all by authority of its Board of Directors duly given this the 23 day of June, 2008.

HOPE VALLEY TOWNHOMES, LLC

By 
S. Walker Harris, Member/Manager

NORTH CAROLINA

DURHAM COUNTY

I, a Notary Public of the County and State aforesaid, certify that S. WALKER HARRIS, Member/Manager of HOPE VALLEY TOWNHOMES, LLC personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this, the 23 day of June, 2008.

Betty D. Powell
Notary Public

My commission expires:

7-23-2011

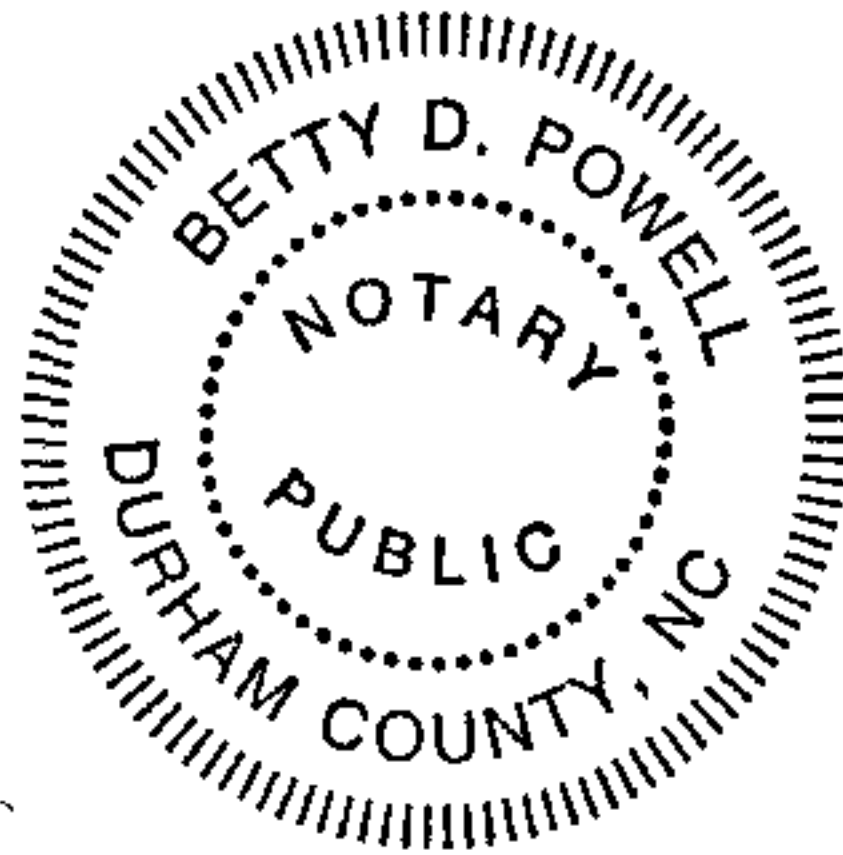
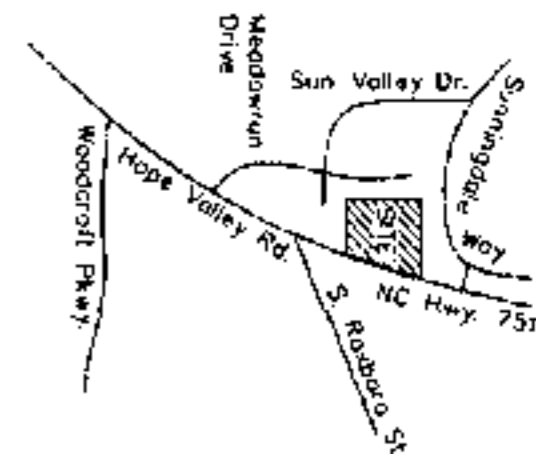


EXHIBIT "A"



LOCALITY MAP n.l.s.

I, James H. Holland, Jr., do hereby certify that this survey is a true and correct copy of the original survey as shown on the accompanying plan, a true and correct copy of the original survey as shown on the accompanying plan, or other document in the possession of the Surveyor.

Professional Seal Surveyor
James H. Holland, Jr.
L-2680

Notes:
1) The driving and parking areas shown on this drawing are not to be construed as "Private Access and Common Areas" as defined in the City of Durham Street Standards. The features within this area are private and will never be eligible for public maintenance.
2) All Open Space, Tree Coverage Areas, and Common Areas hereby dedicated to the Weldon Downs Homeowners Association.

I, James H. Holland, Jr., do hereby certify that this plot was drawn under my supervision using references shown herein, that the boundaries not surveyed are shown as broken lines plotted from information shown herein, that the ratio of precision as calculated by latitudes and departures is 1:10,000 +; that this plot was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, license number, and seal this 17th day of July, A.D., 2007.



License Number
L-2680

State of North Carolina
County of Durham

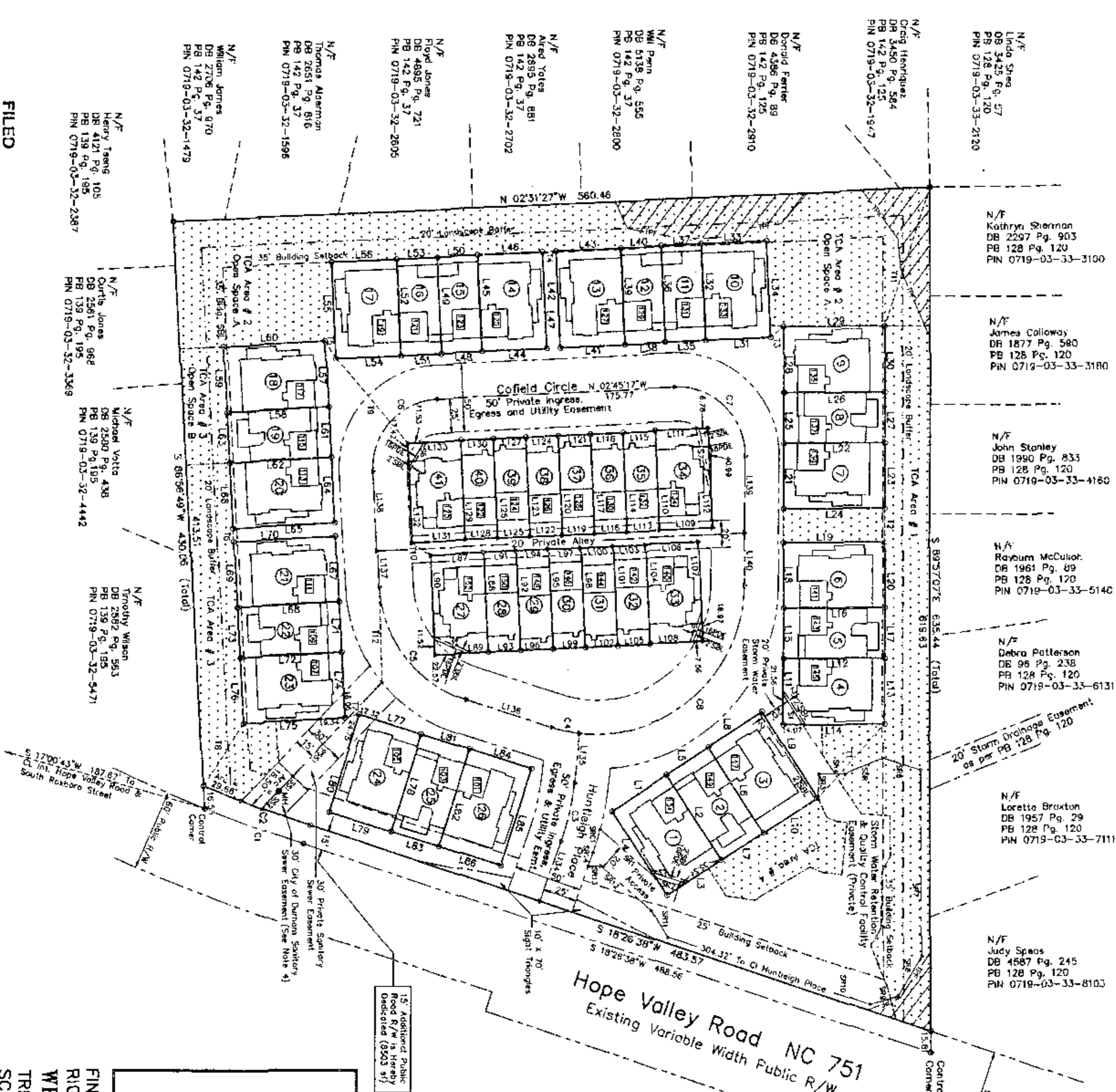
I, Stacy F. Welford, Review Officer of Durham County, certify that the map or plot to which this certification is affixed meets all statutory requirements for recording for which the Review Officer has responsibility as provided by law.

Reviewed by Stacy F. Welford Date 1-18-08

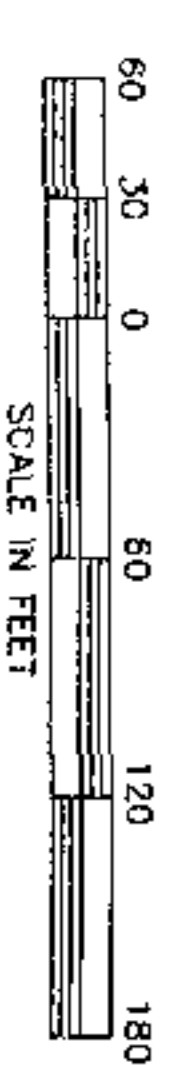
LEGEND:

- Iron Pipe Set (Unless Otherwise Designated)
- Existing Iron Pipe or Stake
- ▲ Computed Corner (Molding Set)
- Concrete Monument Set
- Existing Concrete Monument
- ⊠ Lot Address
- ▨ 18" Pipe 16' Private Drainage Easement
- ▩ Devotee Tree Protection Area
- ▧ Devotee Tree Coverage Area

Tax Parcel: PIN 0719-03-32-5747
Zoning: RS-M(D)



FILED
Date 1-14-08 Page 338
WELLS & COMPANY
REGISTERED SURVEYORS
DURHAM COUNTY, NC



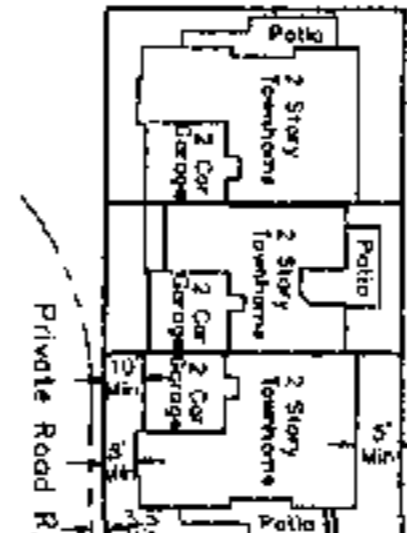
- References:
- DB 5189 Pg. 566
 - DB 5188 Pg. 565
 - DB 5189 Pg. 554
 - PB 128 Pg. 120
 - PB 178 Pg. 193
- Owners:
- Hope Valley Townhomes, LLC
 - Site 80
 - 500 Ridgely Drive
 - Raleigh, NC 27609

Summary of Tree Coverage:

TCA Area #1	21,673 sf
TCA Area #2	33,830 sf
TCA Area #3	11,622 sf
TCA Area #4	4,030 sf
Total Provided	71,155 sf
Required (225%)	70,773 sf

Summary of Open Space:

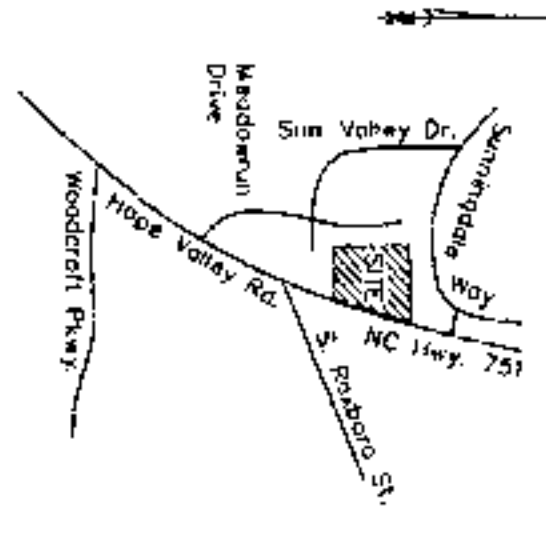
Open Space A	33,830 sf
Open Space B	2,748 sf
Total Provided	36,578 sf
Required (125%)	35,284 sf



THIS PLAN HAS BEEN CERTIFIED FOR RECOGNITION BY THE DURHAM COUNTY PLANNING DEPARTMENT
DATE: 1-11-2008
APPROVAL VOID 60 DAYS FROM SAID DATE
180

FINAL PLAT SUBDIVISION AND RIGHT-OF-WAY DEDICATION
WELDON DOWNS TOWNHOMES
TRIANGLE TWP., DURHAM CO., NC
SCALE: 1" = 60'
DATE: JULY 17, 2007

HOLLAND Land Surveying
506 Mt. Airy Blvd., Chapel Hill, NC 27514
(919) 942-2030
FAX: (919) 942-2030
JHH@HOLLANDSURVEYING.COM
WELD-PLDWG



James H. Holland
Surveyor
License Number
1-2680

I, James H. Holland, Jr., do hereby certify that this survey was made under my supervision using references shown hereon; that the boundaries not surveyed are shown as broken lines plotted from information shown hereon; that the ratio of precision as calculated by latitudes and departures is 1:10,000; that this plot was prepared in accordance with G.S. 47-30 as amended; Witness my original signature, license number, and seal this 17th day of July, A.D., 2007.

Curve Table:

Curve No.	Radius	Delta	Chord	Chord Bearing	Chord
C1	1335.71'	0.320708°	38.89'	S 207°08'48" W	77.76'
C2	83.84'	1320.71'	41.94'	S 207°51'14" W	83.83'
C3	44.50'	200.00'	22.39'	S 177°04'37" W	44.51'
C4	20.88'	105.44'	10.45'	S 159°27'25" W	20.82'
C5	12.16'	69.28'25"	6.14'	S 127°10'31" W	12.16'
C6	78.82'	50.00'	50.26'	N 47°55'01" W	70.91'
C7	81.27'	50.00'	52.80'	N 43°46'24" E	72.61'
C8	183.79'	109.50'	121.97'	S 41°33'05" E	182.96'
C9	183.79'	95.10'12"	121.97'	N 73°00'53" W	182.77'

Special Conditions

Line	Bearing	Distance
1	N 88°58'49" E	37.00'
2	S 88°58'49" W	37.00'
3	N 88°58'49" E	37.00'
4	S 88°58'49" W	37.00'
5	N 88°58'49" E	37.00'
6	S 88°58'49" W	37.00'
7	N 88°58'49" E	37.00'
8	S 88°58'49" W	37.00'
9	N 88°58'49" E	37.00'
10	S 88°58'49" W	37.00'
11	N 88°58'49" E	37.00'
12	S 88°58'49" W	37.00'
13	N 88°58'49" E	37.00'
14	S 88°58'49" W	37.00'
15	N 88°58'49" E	37.00'
16	S 88°58'49" W	37.00'
17	N 88°58'49" E	37.00'
18	S 88°58'49" W	37.00'
19	N 88°58'49" E	37.00'
20	S 88°58'49" W	37.00'

Line Table:

Line	Bearing	Distance	Line	Bearing	Distance
1	N 230°41'09" W	48.00'	171	N 88°58'49" E	37.00'
2	S 30°35'41" E	78.00'	172	S 88°58'49" W	37.00'
3	S 34°51'49" E	78.00'	173	N 88°58'49" E	37.00'
4	S 33°02'19" W	78.00'	174	S 88°58'49" W	37.00'
5	N 56°55'41" E	78.00'	175	N 88°58'49" E	37.00'
6	S 33°02'19" W	78.00'	176	S 88°58'49" W	37.00'
7	N 33°02'19" E	78.00'	177	N 88°58'49" E	37.00'
8	S 33°02'19" W	78.00'	178	S 88°58'49" W	37.00'
9	N 33°02'19" E	78.00'	179	N 88°58'49" E	37.00'
10	S 33°02'19" W	78.00'	180	S 88°58'49" W	37.00'
11	N 33°02'19" E	78.00'	181	N 88°58'49" E	37.00'
12	S 33°02'19" W	78.00'	182	S 88°58'49" W	37.00'
13	N 33°02'19" E	78.00'	183	N 88°58'49" E	37.00'
14	S 33°02'19" W	78.00'	184	S 88°58'49" W	37.00'
15	N 33°02'19" E	78.00'	185	N 88°58'49" E	37.00'
16	S 33°02'19" W	78.00'	186	S 88°58'49" W	37.00'
17	N 33°02'19" E	78.00'	187	N 88°58'49" E	37.00'
18	S 33°02'19" W	78.00'	188	S 88°58'49" W	37.00'
19	N 33°02'19" E	78.00'	189	N 88°58'49" E	37.00'
20	S 33°02'19" W	78.00'	190	S 88°58'49" W	37.00'
21	N 33°02'19" E	78.00'	191	N 88°58'49" E	37.00'
22	S 33°02'19" W	78.00'	192	S 88°58'49" W	37.00'
23	N 33°02'19" E	78.00'	193	N 88°58'49" E	37.00'
24	S 33°02'19" W	78.00'	194	S 88°58'49" W	37.00'
25	N 33°02'19" E	78.00'	195	N 88°58'49" E	37.00'
26	S 33°02'19" W	78.00'	196	S 88°58'49" W	37.00'
27	N 33°02'19" E	78.00'	197	N 88°58'49" E	37.00'
28	S 33°02'19" W	78.00'	198	S 88°58'49" W	37.00'
29	N 33°02'19" E	78.00'	199	N 88°58'49" E	37.00'
30	S 33°02'19" W	78.00'	200	S 88°58'49" W	37.00'
31	N 33°02'19" E	78.00'	201	N 88°58'49" E	37.00'
32	S 33°02'19" W	78.00'	202	S 88°58'49" W	37.00'
33	N 33°02'19" E	78.00'	203	N 88°58'49" E	37.00'
34	S 33°02'19" W	78.00'	204	S 88°58'49" W	37.00'
35	N 33°02'19" E	78.00'	205	N 88°58'49" E	37.00'
36	S 33°02'19" W	78.00'	206	S 88°58'49" W	37.00'
37	N 33°02'19" E	78.00'	207	N 88°58'49" E	37.00'
38	S 33°02'19" W	78.00'	208	S 88°58'49" W	37.00'
39	N 33°02'19" E	78.00'	209	N 88°58'49" E	37.00'
40	S 33°02'19" W	78.00'	210	S 88°58'49" W	37.00'
41	N 33°02'19" E	78.00'	211	N 88°58'49" E	37.00'
42	S 33°02'19" W	78.00'	212	S 88°58'49" W	37.00'
43	N 33°02'19" E	78.00'	213	N 88°58'49" E	37.00'
44	S 33°02'19" W	78.00'	214	S 88°58'49" W	37.00'
45	N 33°02'19" E	78.00'	215	N 88°58'49" E	37.00'
46	S 33°02'19" W	78.00'	216	S 88°58'49" W	37.00'
47	N 33°02'19" E	78.00'	217	N 88°58'49" E	37.00'
48	S 33°02'19" W	78.00'	218	S 88°58'49" W	37.00'
49	N 33°02'19" E	78.00'	219	N 88°58'49" E	37.00'
50	S 33°02'19" W	78.00'	220	S 88°58'49" W	37.00'

Table of Distances:

Line	Bearing	Distance
1	N 88°58'49" E	78.00'
2	S 88°58'49" W	78.00'
3	N 88°58'49" E	78.00'
4	S 88°58'49" W	78.00'
5	N 88°58'49" E	78.00'
6	S 88°58'49" W	78.00'
7	N 88°58'49" E	78.00'
8	S 88°58'49" W	78.00'
9	N 88°58'49" E	78.00'
10	S 88°58'49" W	78.00'
11	N 88°58'49" E	78.00'
12	S 88°58'49" W	78.00'
13	N 88°58'49" E	78.00'
14	S 88°58'49" W	78.00'
15	N 88°58'49" E	78.00'
16	S 88°58'49" W	78.00'
17	N 88°58'49" E	78.00'
18	S 88°58'49" W	78.00'
19	N 88°58'49" E	78.00'
20	S 88°58'49" W	78.00'
21	N 88°58'49" E	78.00'
22	S 88°58'49" W	78.00'
23	N 88°58'49" E	78.00'
24	S 88°58'49" W	78.00'
25	N 88°58'49" E	78.00'
26	S 88°58'49" W	78.00'
27	N 88°58'49" E	78.00'
28	S 88°58'49" W	78.00'
29	N 88°58'49" E	78.00'
30	S 88°58'49" W	78.00'
31	N 88°58'49" E	78.00'
32	S 88°58'49" W	78.00'
33	N 88°58'49" E	78.00'
34	S 88°58'49" W	78.00'
35	N 88°58'49" E	78.00'
36	S 88°58'49" W	78.00'
37	N 88°58'49" E	78.00'
38	S 88°58'49" W	78.00'
39	N 88°58'49" E	78.00'
40	S 88°58'49" W	78.00'
41	N 88°58'49" E	78.00'
42	S 88°58'49" W	78.00'
43	N 88°58'49" E	78.00'
44	S 88°58'49" W	78.00'
45	N 88°58'49" E	78.00'
46	S 88°58'49" W	78.00'
47	N 88°58'49" E	78.00'
48	S 88°58'49" W	78.00'
49	N 88°58'49" E	78.00'
50	S 88°58'49" W	78.00'

Calc. Along Storm Sewer Easements:

Line	Bearing	Distance
1	N 88°58'49" E	78.00'
2	S 88°58'49" W	78.00'
3	N 88°58'49" E	78.00'
4	S 88°58'49" W	78.00'
5	N 88°58'49" E	78.00'
6	S 88°58'49" W	78.00'
7	N 88°58'49" E	78.00'
8	S 88°58'49" W	78.00'
9	N 88°58'49" E	78.00'
10	S 88°58'49" W	78.00'
11	N 88°58'49" E	78.00'
12	S 88°58'49" W	78.00'
13	N 88°58'49" E	78.00'
14	S 88°58'49" W	78.00'
15	N 88°58'49" E	78.00'
16	S 88°58'49" W	78.00'
17	N 88°58'49" E	78.00'
18	S 88°58'49" W	78.00'
19	N 88°58'49" E	78.00'
20	S 88°58'49" W	78.00'
21	N 88°58'49" E	78.00'
22	S 88°58'49" W	78.00'
23	N 88°58'49" E	78.00'
24	S 88°58'49" W	78.00'
25	N 88°58'49" E	78.00'
26	S 88°58'49" W	78.00'
27	N 88°58'49" E	78.00'
28	S 88°58'49" W	78.00'
29	N 88°58'49" E	78.00'
30	S 88°58'49" W	78.00'
31	N 88°58'49" E	78.00'
32	S 88°58'49" W	78.00'
33	N 88°58'49" E	78.00'
34	S 88°58'49" W	78.00'
35	N 88°58'49" E	78.00'
36	S 88°58'49" W	78.00'
37	N 88°58'49" E	78.00'
38	S 88°58'49" W	78.00'
39	N 88°58'49" E	78.00'
40	S 88°58'49" W	78.00'
41	N 88°58'49" E	78.00'
42	S 88°58'49" W	78.00'
43	N 88°58'49" E	78.00'
44	S 88°58'49" W	78.00'
45	N 88°58'49" E	78.00'
46	S 88°58'49" W	78.00'
47	N 88°58'49" E	78.00'
48	S 88°58'49" W	78.00'
49	N 88°58'49" E	78.00'
50	S 88°58'49" W	78.00'

Calc. Along Sanitary Sewer Outfall:

Line	Bearing	Distance
1	N 88°58'49" E	78.00'
2	S 88°58'49" W	78.00'
3	N 88°58'49" E	78.00'
4	S 88°58'49" W	78.00'
5	N 88°58'49" E	78.00'
6	S 88°58'49" W	78.00'
7	N 88°58'49" E	78.00'
8	S 88°58'49" W	78.00'
9	N 88°58'49" E	78.00'
10	S 88°58'49" W	78.00'
11	N 88°58'49" E	78.00'
12	S 88°58'49" W	78.00'
13	N 88°58'49" E	78.00'
14	S 88°58'49" W	78.00'
15	N 88°58'49" E	78.00'
16	S 88°58'49" W	78.00'
17	N 88°58'49" E	78.00'
18	S 88°58'49" W	78.00'
19	N 88°58'49" E	78.00'
20	S 88°58'49" W	78.00'
21	N 88°58'49" E	78.00'
22	S 88°58'49" W	78.00'
23	N 88°58'49" E	78.00'
24	S 88°58'49" W	78.00'
25	N 88°58'49" E	78.00'
26	S 88°58'49" W	78.00'
27	N 88°58'49" E	78.00'
28	S 88°58'49" W	78.00'
29	N 88°58'49" E	78.00'
30	S 88°58'49" W	78.00'
31	N 88°58'49" E	78.00'
32	S 88°58'49" W	78.00'
33	N 88°58'49" E	78.00'
34	S 88°58'49" W	78.00'
35	N 88°58'49" E	78.00'
36	S 88°58'49" W	78.00'
37	N 88°58'49" E	78.00'
38	S 88°58'49" W	78.00'
39		



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2007 JUN 05 04:46:54 PM
BK:5632 PG:597-605 FEE:\$35.00

INSTRUMENT # 2007025196

*Prepared by City of Durham Department of Public Works, 101 City Hall Plaza, Durham, NC 27701
Return to Department of Public Works - Storm Water Services Division, 101 City Hall Plaza, 3rd Floor,
Durham, NC 27701*

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

STORMWATER FACILITY AGREEMENT
AND COVENANT VERSION 082203

THIS AGREEMENT, made and entered into this 26th day of April, 2007, by and between **Hope Valley Townhomes, LLC** ("Permittee") and the City of Durham, a North Carolina municipal corporation ("City").

1. Background

a. This Agreement concerns the perpetual maintenance of a stormwater facility ("the Facility") on property owned by the Permittee, and related requirements regarding the Facility. The City has adopted, and from time to time will adopt, stormwater management regulations applicable to certain real property in which Permittee holds an interest. That property is generally located **northwest of the intersection of Hope Valley Road and South Roxboro Street, and is commonly known as Hope Valley Meadows** and is described in the deeds recorded with the Durham County Register of Deeds at the following book and page numbers: **Deed Book 5189, Page 560/565**. This development hereafter is referred to as "the Property". Within the Property may be a particular tract or group of tracts owned by the Permittee upon which the Facility is located. That property is found at **Plat Book 48, Page 116** and is referred to in this Agreement as "the Site". Within the Site is the Facility which is a **Wet Pond (Water Quality Facility #1) designed to have a water quality surface area of 12,707 square feet. It is located on the northeast side of the Property. The Site and the Property may be the same (see definition of Site in c. below).**

b. The City's ordinances require that stormwater facilities be created and maintained on some properties. The ordinances further require that, before an occupancy permit may be issued for any structure constructed within a property which includes a stormwater facility, the owner must enter into an Agreement with the City to provide for the operation and maintenance of the Facility. This Agreement is intended to comply with that requirement.

c. Definitions. The terms defined above are supplemented by the following terms, which, as used in this Agreement, are defined as follows:

"Director of Public Works" means the City's Director of Public Works or his or her designee.

"City Manager" means the Durham City Manager or an Assistant City Manager.

"Facility" means the privately-owned stormwater control facility that is the subject of this Agreement, and that satisfies the requirements of the City's ordinances and regulations for such facilities.

"Permittee" means the party executing this Agreement with the City and successor owners of the Site.

"Person" includes natural persons, business trusts, joint ventures, governments, governmental subdivisions, governmental agencies, firms, corporations, associations, partnerships, and other legal entities.

"Property" means the larger development that, when developed, requires a stormwater Facility to serve it.

"Site" means the one or more lots or tracts within the Property, one of which contains the stormwater Facility. In a residential development, such lots will be those that are intended to be owned by all residents, through a homeowners' association. In nonresidential developments and apartments, the Site will generally be the same as the Property.

"Transfer" includes sell, convey, assign or alienate all or a portion of an interest in the Site or Property. Transfers do not include acquisitions of mortgages or similar encumbrances.

2. Fees: Title Opinion: Construction Inspections and Maintenance.

The Permittee shall cause the following to be done:

a. At the time of delivering this Agreement executed by the Permittee to the City, pay the stormwater permit fee in the amount determined by the Director of Public Works:

b. Provide to the City an opinion of title of the Property or the Site, as directed by the City, by an attorney licensed to practice law in North Carolina and update that opinion to the time of recording this Agreement. The opinion(s) shall show that the party or parties executing this Agreement have title, in fee, to the Property, or to the Site. The Director of Public Works shall indicate whether the opinion shall pertain to the Property or the Site, if such are different. The opinion shall indicate no liens or encumbrances that the Director of Public Works deems to interfere with the City's having adequate security in accordance with Section 6.

c. Construct the Facility in accordance with the plans approved by the Director of Public Works before applying for a certificate of compliance for any structure on the Property, it being agreed that no building on the Property is eligible for a certificate of compliance until the Facility has been so constructed;

d. Inspect the Facility, perform routine maintenance on the Facility, and make all necessary repairs to the Facility, all as directed by the Director of Public Works. This shall include the following work:

i. Grass and Vegetative Cover.

A. Design, install and maintain landscaping around the Facility so that it will not reduce the capacity or hinder the operation and maintenance of the Facility.

B. Maintain the vegetative cover of the Facility to prevent erosion.

C. Except as provided in 2 (d) (i) (D) below, mow the area as needed to prevent the grass and other plants (other than maintained shrubs and trees) from exceeding a height of fifteen (15) inches.

D. Keep open channels free of undesirable growth and maintained to the design cross-section and area as shown on the Plans, and keep the height of the vegetation on the slopes and bottom from exceeding eight (8) inches.

- E. Replace landscape materials that fail to live and prosper, as required by the Director of Public Works.
- ii. Embankments, Slopes, and Dams. Inspect and repair embankments, slopes, and dams for damage from erosion, sloughing, animal burrows, and woody vegetation.
- iii. Removal and Disposal of Trash, Debris, and Sediment.
 - A. Keep the Facility's outlet structure cleared of all blockages.
 - B. Clean the channels and pipes as necessary to provide for the free conveyance of stormwater as designed.
 - C. Remove debris and sediment as needed to maintain the primary outlet capacity and Facility storage volume when the depth of the Facility has been reduced by more than one (1) foot from the design depth, or when the Facility's storage volume has been reduced by twenty percent (20%) from the design volume.
 - D. Remove all sediment from sediment forebays, traps, and basins.
- iv. Insects, Odors, and Algae.
 - A. Maintain the Facility in a manner to control odors and algae to the extent that the Director of Public Works determines to be necessary.
 - B. Apply, when and as directed by the Director of Public Works, a larvicide approved by the Durham County Health Department for insect control, and take other measures to control insects as directed by the Director of Public Works.
- v. Fencing. Nothing in this Agreement is intended to prevent the Permittee from placing fencing and other security measures near or around the Facility, provided that the Permittee shall first submit information on the proposed construction to the Director of Public Works and obtain her consent. The Director of Public Works shall grant permission if she finds that the fencing and other measures will not interfere with the Facility. Nothing in this Agreement is intended to affect the Permittee's obligation, if any, to exercise care with respect to persons who may enter the Site.
- e. Cause the Facility to be inspected, by a registered professional engineer or a registered landscape architect, on an annual basis beginning one year after the facility is accepted by the Director of Public Works and, after each inspection, without specific request by the City, provide the Director of Public Works with two copies of such report. The Facility is accepted upon the Director of Public Works acceptance of the as-built plans of the Facility.
- f. If the Director of Public Works reasonably determines that the Facility is in need of maintenance or repair or other work, she shall so notify the Permittee, who shall promptly take necessary actions to maintain or repair the Facility, including doing any work specified by the Director of Public Works.
- 3. Transfer of the Property. If the Permittee proposes to Transfer any interest in the Site, the Permittee shall, prior to transfer:
 - a. Notify the intended Transferee that it is required to execute an Agreement, in a form approved by the Director of Public Works, and deliver the appropriately executed Agreement to the City, along with title opinions regarding the ownership by the Transferee; and
 - b. If the intended Transferee is an owners' association, unit owner's association, or homeowners'

association, provide the Director of Public Works a copy of the recorded association's declaration. In addition, Permittee must ensure that the declaration provides:

- i. That the Facility is a part of the common elements and shall be subject to the Agreement;
- ii. That the requirements of this Agreement shall receive the highest priority for expenditures by the association except for City and County assessments, ad valorem property taxes, and insurance, and any other expenditures which are required by law to have a higher priority;
- iii. That a separate fund shall be maintained by the association for the reconstruction and repair of the Facility, separate from the fund(s) for routine maintenance of the Facility and from all other funds;
- iv. That the reconstruction and repair fund shall contain at all times the dollar amount reasonably *determined from time to time by the Director of Public Works to be adequate to pay for the probable reconstruction and repair cost for a three-year period*; that the fund shall be listed as a separate line in the association's budget; and it shall be kept in an account insured by the FDIC or by another entity acceptable to the Director of Public Works;
- v. Upon the vote of 2/3 of the members of the association, special assessments shall be charged to each member of the association, to pay for the obligations under this Agreement;
- vi. That, to the extent permitted by law, the association shall not enter into voluntary dissolution unless the Facility is transferred to a Person who has executed an Agreement.

If the Permittee Transfers, or permits the Transfer of, an interest without complying with this Section 3, that failure to comply shall not invalidate the Transfer, but Transferee shall remain obligated under this Agreement. In addition, the City may in its discretion require the surety referred to in Section 4 to pay the City some or all of the Face Amount (defined in Section 4).

4. Bond/Security. In order to secure the Permittee's obligations under this Agreement, the Permittee shall immediately deliver to the City one or more bonds, sureties, or similar instruments which are acceptable to the City in substance, form, and guarantor, in the amount of **sixteen thousand, six hundred and eighty-four dollars (\$16,684.00)** ("the Face Amount"), which is twenty (20) times the average annual maintenance cost estimated by the Director of Public Works. The bond or other instrument shall remain in effect permanently unless the City of Durham (by its City Manager) and the Permittee execute an Agreement, under the official seal of the City of Durham, stating that "the Permittee's obligation under Section 4 of the Stormwater Facility Agreement and Covenant made on [date] between the City of Durham and [name of Permittee] to provide a bond or other instrument has been changed as follows [stating the new requirement or that it has been eliminated]." If the Director of Public Works notifies the Permittee that an instrument, surety, or other guarantor is unacceptable to the Director of Public Works, the Permittee shall, within thirty (30) days substitute an acceptable instrument, surety, or other guarantor or pay the City the Face Amount.

5. Right of Entry on Site. The Permittee hereby grants to the City the right of ingress, egress, and regress over and across the Property and the Site for the purpose of inspecting the Facility and for the purpose of correcting, repairing, replacing, and maintaining the Facility and exercising the other rights of the City that are provided for by this Agreement.

6. Remedies for Violations; Lien on Property; Future Obligations Secured.

a. If the Permittee fails to perform its obligations under this Agreement, the City may send notice to the Permittee to demand that it so perform. If the Permittee fails to comply with such demand within thirty (30) days

from the date of mailing thereof, the City may enter the Property and the Site and perform some or all of the work that the Permittee was required to do in carrying out its obligations under this Agreement, and the City may do any of such work as the Director of Public Works deems appropriate to place the Facility in proper working condition. The Permittee shall pay the City for the cost incurred by the City to do that work, including reasonable amounts, calculated under procedures established by the Director of Public Works, for the City's overhead and use of City employees, equipment, and property. Interest shall accrue on those monetary obligations of the Permittee at the rate of one and one-half percent (1 - ½%) per month until paid. Without limiting other remedies available to the City, including recourse to the bond or other instrument referred to in Section 4, it is agreed that those monetary obligations shall be a lien on the Site and may be collected as unpaid taxes in accordance with N.C.G.S. 160A-193. If the City collects on the bond, letter of credit, or other instrument furnished pursuant to this Agreement the proceeds shall be applied to the amounts due under this paragraph and the Permittee shall replace the bond/security to the full face amount in Section 4.

b. This Agreement may be enforced by any remedy available in law or in equity, including but not limited to injunctive relief. The remedies provided by this Section 6 are cumulative, and are in addition to any other remedies available to the City.

c. The Permittee shall pay an attorney's fee of fifteen percent (15%) of the outstanding balance of the amount owed to the City under Section 6(a) of this Agreement if the balance is collected by or through an attorney at law. The liability of a surety or other Person guaranteeing the Permittee's obligations under this Agreement shall include said attorney's fees.

d. The City may withhold any or all permits or other approvals necessary to complete the development of the Property if the Permittee has failed to perform its obligations under this Agreement.

7. Release of Lien by Certificate.

a. Duty to Furnish a Certificate -- On the request of any of the Persons prescribed in subdivision (a) (i) below, and upon the condition prescribed by subsection (a) (ii) below, the Director of Public Works shall furnish a written certificate stating the amount of any monetary liabilities owed by the Permittee to the City pursuant to this Agreement (together with any interest and costs accrued thereon) that are a lien on the Property or the Site.

- i. Who May Make Request -- Any of the following Persons shall be entitled to request the certificate:
- A. An owner of the Property;
 - B. An occupant of the Property;
 - C. A Person having a lien on the Property;
 - D. A Person having a legal interest or estate in the Property;
 - E. A Person having a contract to purchase or lease the Property or a Person having contracted to make a loan secured by the Property;
 - F. The authorized agent or attorney of any Person described in subdivisions (a) (i) (A) through (E) above.

ii. Duty of Person Making Request -- The Director of Public Works shall not be required to furnish a certificate unless the Person making the request specifies the name of the Permittee, specifies the Book and Page in the office of Register of Deeds where this Agreement or a memorandum thereof is recorded, and provides a copy of the first page of this Agreement.

b. Reliance on the Certificate -- When a certificate has been issued as provided in Section 7(a) above, all monetary liabilities owed pursuant to this Agreement that have accrued against the Site or the Property for the period covered by the certificate shall cease to be a lien against the Property, except to the extent of monetary liabilities stated to be due in the certificate, as to all Persons obtaining such a certificate and their successors in interest who rely on the certificate:

- i. By paying the amount of monetary liabilities stated therein to be a lien on the Property;
- ii. By purchasing or leasing the Property; or
- iii. By lending money secured by the Property.

c. Without limiting the effect of this Section 7, it is agreed that no oral statement made by any City employee as to the amount of monetary liabilities that are a lien on the Property pursuant to this Agreement shall bind the City.

8. Warranty. The Permittee covenants with the City, that Permittee is seized of the Property and the Site in fee simple, has the right to convey the same in fee simple, that title is free and clear of all encumbrances, and that Permittee will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions stated in the attorney's opinion of title provided in accordance with Section 2 (b) above.

9. Notice. When a notice is required or permitted by this agreement, it shall be given in writing to the City delivered to the Director of Public Works, 101 City Hall Plaza, Durham, NC 27701, or upon the Permittee, at **Hope Valley Townhomes, LLC, 3104 Surrey Road, Durham, NC 27707; Attention: Walker Harris (919-933-3990)**. If mailed, the notice shall be by certified mail, return receipt requested. These addresses may be changed by sending a notice of the new address attached to a copy of this agreement.

10. No Waiver of Breach. If the City waives any breach of any obligation or covenant in this Agreement, that waiver shall not constitute a waiver of any other or future breach of the same or any other obligation or covenant. The City's failure to exercise any right under this Agreement shall not constitute a waiver of that right.

11a. Agreement Binding until City Waives Agreement. This Agreement and all the covenants in it shall bind Permittee until the City releases Permittee in writing, signed by the Director of Public Works, from the obligations of this Agreement. The City shall release Permittee from the obligations of this Agreement when a responsible and financially capable successor has signed an Agreement with the City. The responsibility and financial capacity of any successor shall be determined solely by the City in its reasonable discretion.

11b. Covenants Herein to Run with the Land. The obligations of this Agreement run with the Property and with the Site and shall bind all owners of any interest in the Property and the Site. However, where the City has, by written release described in 11a above, accepted an owner of the Site as being responsible and financially capable, and such successor owner owns the Site, but not the Property, then this Agreement shall thereafter run solely with the Site and not with the Property. By way of example and not limitation, all owners of any interest in the Site shall be jointly and severally liable to fulfill the Permittee's obligations under this Agreement as if each of them were the Permittee. Unless the context otherwise requires, the term "Permittee" in this Agreement includes all such owners.

12. Benefit of this Agreement.

a. The approval by the City or any employee of the City of any plans or of any work referred to in this Agreement shall not create any liability in the City or its officers, officials, or employees for the plans or the work; but nothing herein is intended to release any other Person for any liability for those plans or work.

b. The performance by the City or any employee of the City of any work referred to in this Agreement shall not create any liability in the City or its officers, officials, or employees for the work; but nothing herein is intended to release any other Person for any liability for that work.

c. Except to the extent otherwise explicitly provided in this Agreement, this Agreement is not intended to be for the benefit of any Person other than the parties hereto and their heirs, successors, and assigns.

13. Interpretation of this Agreement. Unless the context requires otherwise, the singular includes the plural, the plural includes the singular, and the neuter includes the masculine and feminine. The captions and titles are for convenience only, and are not to be used to interpret the Agreement. The words "include" and "including" mean, respectively, "include but not limited to", and "including but not limited to".

14. Nondiscrimination Policy. The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts.

15. Severability. Invalidation of any term or provision in this Agreement by a court of competent jurisdiction shall not invalidate the remaining terms and provisions.

IN WITNESS WHEREOF, the parties hereto have respectively set their hands and seals, or if corporate, have executed this under seal by their proper officers, the date first above written.

Hope Valley Townhomes, LLC

Manager: S Walker Harris Jr

Printed Name: S Walker Harris Jr

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Julian Culton, a notary public for said County and State, certify that Walker Harris personally appeared before me this day, (1) stated that he or she is a manager of Hope Valley Townhomes, LLC, a limited liability company organized and existing under the laws of North Carolina, (2) acknowledged that the foregoing instrument carries on in the usual way the business of the LLC and (3) acknowledged execution of the foregoing contract/deed under seal with the City of Durham on behalf of said company.

This the 1st day of May, 2007

Julian Culton
Notary Public

My commission expires:
11-18-07

ATTEST:

By: D Ann Gray
City Clerk
[Affix Municipal Seal]

[Signature]
CITY OF DURHAM
5/15/07 City Manager

STATE OF NORTH CAROLINA

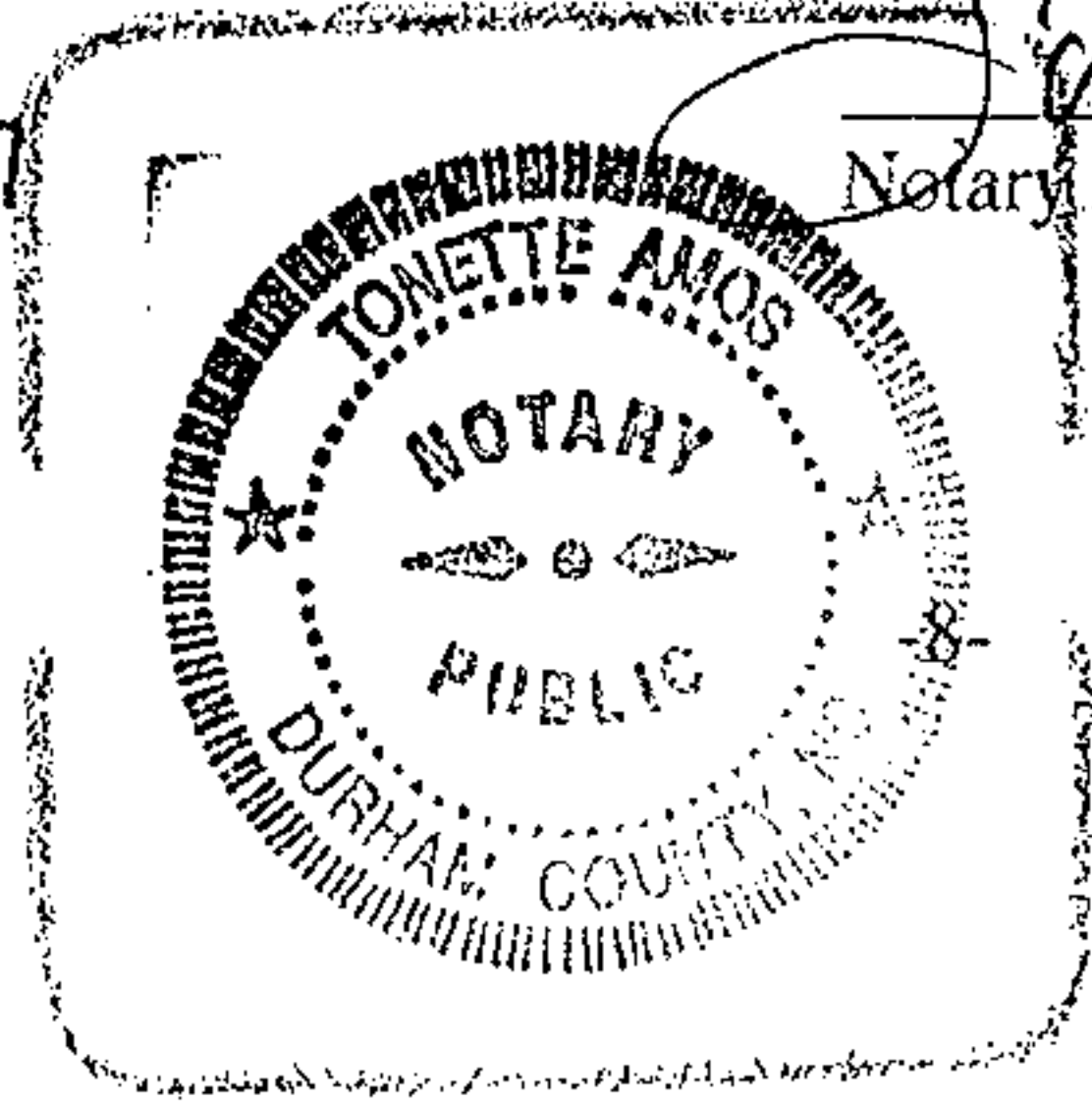
COUNTY OF DURHAM

I, Tonette Amos, a notary public in and for the County of Durham, North Carolina certify that D Ann Gray personally appeared before me this day and acknowledged that he/she is City Clerk of the CITY OF DURHAM, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its name by its City Manager, sealed with its corporate seal, and attested by himself/herself as its said City Clerk or Deputy City Clerk.

Witness my hand and notarial seal, the 16th day of May, 2007

My commission expires:
07-17-07

Tonette Amos
Notary Public





WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

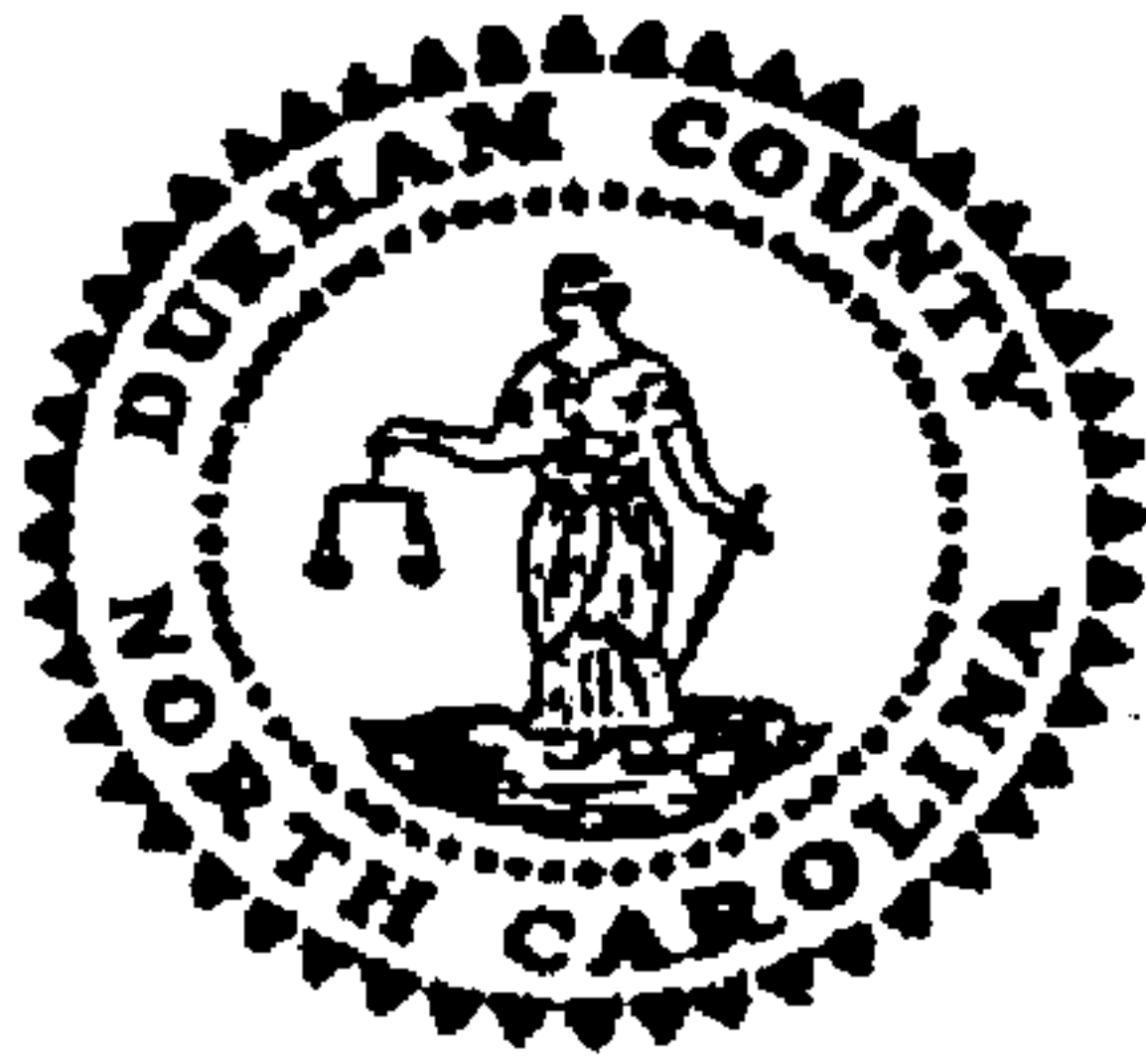
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WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

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