



FOR REGISTRATION REGISTER OF DEEDS  
Willie L. Covington  
DURHAM COUNTY, NC  
2006 JUN 30 01:02:53 PM  
BK:5268 PG:740-767 FEE:\$92.00

INSTRUMENT # 2006030218

**MASTER DECLARATION  
OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
MAIDA VALE**

Prepared by and return to: Alison R. Cayton of Manning, Fulton & Skinner, P. A.  
Post Office Box 20389, Raleigh, NC 27619-0389

THIS DECLARATION, made on the date hereinafter set forth by MAIDA VALE, LLC, a North Carolina limited liability company, with its principal office located at 2840 Plaza Place, Suite 100, Raleigh, North Carolina, Wake County, North Carolina, 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, commonly referred to as "Maida Vale", which is more particularly described on Exhibit "A" attached hereto;

WHEREAS, it is the desire and intention of Declarant (as defined herein) to impose on that property described in Exhibit "A" attached hereto restrictions, conditions, easements, covenants, charges, liens and agreements under a general plan or scheme of improvement for the benefit of all property herein described and the future owners thereof and to provide for the same to apply to such additions to the property as may hereafter be brought within the jurisdiction of the Association; and,

WHEREAS, the Property, shall be comprised of tracts for all uses as permitted herein; and

WHEREAS, Maida Vale is a development consisting of the Maida Vale Master Owners Association and other sub-associations which may include any group of Lots in the development of the Property by the Declarant from time to time; and

WHEREAS, this Declaration and the covenants, conditions, restrictions and easements, to the extent applicable, shall apply to the owners of all Lots herein;

NOW, THEREFORE, Declarant hereby declares that all of the Property described on Exhibit "A" shall be held, used, occupied, leased, mortgaged, sold and conveyed subject to the following easements, restrictions, charges, liens, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Articles" shall mean and refer to the Articles of Incorporation for the Maida Vale Master Owners Association, Inc. on file with the North Carolina Secretary of State

Section 2. "Association" shall mean and refer to Maida Vale Master Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns. The Association is the Master Association of Maida Vale development and those sub-associations which may include any group of Lots in the development of the Property by the Declarant from time to time.

Section 3. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 4. "Builder" shall mean the person or entity that constructs the initial improvements on any Lot.

Section 5: "Bylaws" shall mean and refer to the Bylaws adopted by the Maida Vale Master Owners Association, Inc.

Section 6. "City" shall mean City of Durham, North Carolina.

Section 7. "Common Elements" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of all the Owners. Common Elements include but are not limited to: private roads, all entry walls and walls bordering the Property, entryway gatehouse, walking paths, pedestrian access ways, sewer lines and water lines that serve more than one Lot and are located outside any public street or City water or sanitary sewer easement, and includes Open Space, Common Elements and common areas, as may be designated on any subdivision map of the Property or by the Association; Common Elements also include stormwater drainage and stormwater system improvements and easements located on the Property serving any or more than one Lot and are not maintained by any governmental authority. The Common Elements to be owned by the Association is all of that Property other than the Master Plan Lots and the Common Elements owned by any sub-association established by the Declarant.

Section 8. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its Members; and
- (b) Expenses for maintenance of the roads, streets, rights-of-way and any amenities and street islands as provided in this Declaration, including ice and snow removal and clearing of debris from storms or other events; and
- (c) Expenses of administration, maintenance, repair, or replacement of the Common Elements and Limited Common Elements; and
- (d) Expenses declared to be Common Expenses by the provisions of this Declaration or the Bylaws; and
- (e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase; and

(f) Ad valorem taxes and public assessment charges lawfully levied against Common Elements owned in fee by the Association; and

(g) The expense of the maintenance of private drainage and utility easements and facilities located therein which cross the Property, including the Common Elements and that serve both the Property and lands adjacent thereto and the expense of maintenance and repair of stormwater drainage and stormwater system improvements and easements; and

(h) The expense of maintenance of any roads, streets, street islands, easements, amenities, taxes or any other expense item associated with any Common Element not located on the Property but permitted to be used by the Members of this Association by any adjoining landowner, association or other entity pursuant to any cross-easement, cross-access or other agreement with the adjoining land owner; and

(i) Expenses for maintenance of security devices or personnel, including but not limited to a guard at the entryway gatehouse during such times as determined necessary by the Association, should the Association determine that it is in its best interest to obtain security devices or personnel; and

(j) The charges for utilities used in connection with maintenance and use of the Common Elements; and

(k) Expenses for maintenance of all lighting located along the streets and roads and within and along all Common Elements as determined to be necessary by the Association; and

(l) Any other expenses determined by the Board or approved by the Members to be common expenses of the Association.

Section 9. "Consumer-Occupant Lot Owner" referred to herein is a Lot Owner who purchases a Lot from the Declarant or a Builder and occupies the residence on the Lot.

Section 10. "Declarant" shall mean and refer to Maida Vale, LLC, a North Carolina limited liability company, its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred, in writing in whole or in part, and subject to such terms and conditions as Declarant may impose, or any owner of the Property or Lots or remainder of those resulting from the sale of the Property, Lots or the remainder thereof at foreclosure when held by Declarant or the successor to the rights of Declarant or resulting from the transfer in lieu of foreclosure.

Section 11. "Declarant Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Durham County, North Carolina, and continuing until the later of (i) such time as Declarant shall no longer have the right to annex any additional property pursuant to the provisions of Article V, Section 2 hereof; or (ii) such time as Declarant shall no longer own any portion of the Property for the purpose of Development or sale.

Section 12. "Limited Common Elements" shall mean those portions of the Common Elements that serve only a single Lot or a limited number of Lots, and which may include, but specifically is not limited to, driveways, walkways, parking areas or areas serving only specified Lots, brick retaining walls located on or adjacent to any part of a Lot, and such other similar areas as may be designated by a subdivision map of the Property or by the Association.

Section 13. "Lot" shall mean and refer to any separately numbered portion of the Property shown on any now or subsequently recorded subdivision plat of the Property intended for use or used

as a site for any single-family attached or detached dwelling, patio (zero lot line) home, townhome or condominium unit and shall include any improvements constructed thereon, and "Lots" shall refer to all such lots collectively. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an affiliate of Declarant, as the case may be, and to thereby create additional Lots, eliminate existing Lots or Common Elements or create additional Common Elements; provided, however, in no event shall the Property contain a greater number of Lots than the number from time to time permitted by the appropriate local governmental authority. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

**Section 14.** "Master Plan" shall mean and refer to the plan(s) for the Property and any additional property now or hereafter approved by the appropriate local governmental authority and

**Section 15.** "Master Plan Lot" shall mean and refer to any separately numbered portion of the Property shown from time to time on the Master Plan intended for use or used as a site for any single-family attached or detached dwelling, patio (zero lot line) home, townhome or condominium unit and shall include any improvements constructed thereon and "Master Plan Lots" shall refer to all such lots collectively.

**Section 16.** "Member" shall mean and refer to every person or entity who holds membership in the Association.

**Section 17.** "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 18.** "Person" shall mean and refer to any individual, corporation, limited liability company, partnership, association, trustee or other legal entity.

**Section 19.** "Property" shall mean and refer to that certain real property hereinbefore described on Exhibit "A" hereto attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE II

### PROPERTY RIGHTS

**Section 1. Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of use and enjoyment in and to the Common Elements together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Common Elements, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational or other similar facility situated upon the Common Elements;

(b) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Element facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of Members entitled to cast at least eighty percent (80%) of the votes of each class of Members of the Association, to dedicate or transfer fee title to all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;

On any instrument of dedication, sale, transfer, easement, lease right of way or other disposition of real or personal property, the Secretary of the Association shall certify that eighty percent (80%) of the votes of each class of members have approved the action evidenced by the instrument, and that certificate shall be conclusive that the execution and delivery of such instrument was properly authorized by the Association and its members and shall be relied upon and binding as to any third party or as to any grantee, its successor and assigns; provided, however, conveyances for general service utility purposes as specified in the Declaration may be made without consent of the members, and the Association may execute an instrument of conveyance therefore without such certification;

(d) the right of the Association to limit the number of guests of Members;

(e) the right of the Association, with the assent of the Members entitled to cast two-thirds (2/3) of the votes of each class of Members to borrow money for the purpose of improving the Common Elements and facilities and in aid thereof to mortgage the Common Elements, provided that the rights of such mortgagee in the Common Elements shall be subordinate to the rights of the Members and the Association hereunder;

(f) the right of the Association, to participate in an equal exchange of land, as permitted by local government ordinances. The vote of the association shall be eighty percent (80%) of the votes of each class of Members;

(g) the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Common Elements and to create Limited Common Elements.

(h) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of use and enjoyment and rights of ingress, egress and access, as specified above, to the initial Common Elements and Common Elements established on all lands included in subsequent phases.

(i) the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall interfere with or obstruct drainage rights in favor of, utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances and no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded.

Section 2.     Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of use and enjoyment to the Common Elements and facilities to the Members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3.     Title to the Common Elements. While reserving the right to build and own facilities on the Common Elements and to charge reasonable fees for use of said facilities, the Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Elements located within the Property to the Association, free and clear of all encumbrances and liens, except for encumbrances of utility, service, access, storm drainage and other similar service or utility easements. The Association shall be deemed to accept such Common Elements for ownership and maintenance as necessary.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1.     Every record Owner of a Lot which is subject to assessment shall be a Class A Member of the Association. Class A 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 classes of voting membership:

Class A.       Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any Affiliate, prior to the conversion of Class B membership to Class A membership. The foregoing is not intended to include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation. Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment by the Association. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. Class A Members 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.

Class B.       The Class B Member shall be the Declarant and shall be entitled to six (6) votes for each Master Plan Lot that is owned by Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in Class A membership equal or exceed the total votes outstanding in Class B membership; but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (b) below, the Master Plan is amended to add additional Master Plan Lots sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to six (6) votes for each Master Plan Lot that is owned by Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase) greater than those of the Class A membership, or
- (b) ten (10) years from the date of recordation of this Declaration

**Section 3.** Prior to conversion of the Class B membership to Class A membership, Declarant shall have the right to designate and select all of the Members of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any members or members of the Board of Directors so removed for the remainder of the unexpired term of any member or members of the Board of Directors so removed. Any Board of Directors member designated and selected by Declarant need not be a resident of the Property. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board of Directors which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

**Section 4.** The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section 1(b) herein.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1.** **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Property, 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) annual assessments or charges which are Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase, construction or reconstruction of improvements. The annual, individual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, late payment charges, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors to establish, fix and levy an individual assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

**Section 2.** **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the paying of Common Expenses to promote the recreation, health, safety, and welfare of the Owners of Lots; and, in particular, but not limited to, for the acquisition, improvement and maintenance of the Common Elements, services, amenities and facilities, street islands, and for the use and enjoyment of the Common Elements, 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 and public assessments assessed against the Common Elements, the providing for security to the Property, the procurement and maintenance of insurance in accordance with the Declaration and Bylaws or as deemed appropriate by the Board, the payment of cable service, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

**Section 3. Amount of Assessment.**

(a) **Initial Maximum Assessment.** To and including December 31, 2006, the maximum annual assessment shall not exceed \$3,900.00 per Lot.

(b) **Increase by Association.** From and after January 1, 2007, the annual assessment effective for any year, initially \$3,900.00, per year (including 2006) may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of twelve (12%) percent or the percentage increase reflected in the U. S. City Average, Consumer Price Index -United States and selected areas for urban wage earners and clerical workers, all items, most recent index and percentage changes from selected dates, (published by the U.S. Bureau of Labor Statistics, United States Department of Labor, Washington, D.C.), or such other Index as may succeed the Consumer Price Index, for that twelve-month period ending the immediately preceding October 1. The percentage increase shall be based on the maximum annual assessment for the prior year, or if the Association has not chosen to implement an increase for one or more years, the increase provided in this Section 3 (b) may, at the option of the Association, be based on the annual assessment that would be effective had the increase been implemented each year prior to the year of the actual increase. Any budget providing for an increase not requiring a vote pursuant to subsection (c) below, is ratified unless ninety percent (90%) of the total vote of each class of Members vote to reject the budget at a duly called meeting. The Board of Directors, at its option may declare that a special "Refurbishment Assessment" be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Refurbishment Assessment shall be in an amount not to exceed \$2,000.00) per Lot and may be levied no more than once every five (5) years from the date of the recording of this Declaration. The Refurbishment Assessment shall be used to pay for the cost of enhancing, refurbishing or repairing portions of the Common Elements.

(c) **Increase by Members.** From and after January 1, 2007, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) **Criteria for Establishing Annual Assessment.** In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the amounts provided in Subsection (b) of this Section 3 without the consent of Members required by Subsection (c) of this Section 3.

(e) **Board Authority.** The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(f) Declarant Expenses. Until such time as Declarant shall no longer control the Board, in its sole discretion Declarant may either make a loan to the Association for funds to cover the expenses not otherwise covered by the assessment hereunder, or it may pay any Association expenses not otherwise covered by the assessment hereunder.

(g) Attorney's Fees. There shall be an approval by the majority of the votes of the members prior to making a special assessment for attorney's fees or prior to incorporating attorneys fees (other than those typically incurred in the normal management of the Subdivision) into the annual budget on which the annual assessment is based.

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, restoration, repair or replacement of a capital improvement upon the Common Elements, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, and the cost to purchase Lots and dwellings at foreclosure sales of Association liens, provided that 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. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied in emergency situations only, no more than once every five (5) years from the date of the recording of this Declaration. The Special Capital Assessment shall be used to defray the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvements upon the Common Elements. This assessment may not be used for any other purposes including litigation involving the Association.

Section 5. Replacement Reserve. Out of the Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and any Limited Common Elements which the Association may be obligated to maintain.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast forty percent (40%) of all the 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 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 other periodic basis established by the Board.

Section 8. Date of Commencement of Annual Assessments; Due Dates; Initial Working Capital. The Annual Assessments provided for herein shall commence as to any Lot on the first day following the sale of that Lot from the Declarant or Builder to a Consumer-Occupant Lot Owner, or the date of rental of a Lot from a Builder to a Consumer-Occupant Lot Owner. All Lots in subsequently annexed properties, similarly, shall be subject to assessment. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The

