

Prepared by and return to:

R. Chappell Phillips, PO Box 1250, Durham, NC 27702-1250

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

**DECLARATION OF RESTRICTIVE
AND PROTECTIVE COVENANTS
AND CONDITIONS**

THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS AND CONDITIONS, made and entered into this the 10th day of February, 1998, by and between Crescent Coleman Ventures, L.L.C., (hereinafter as "Declarants"); and PROSPECTIVE PURCHASERS of any Lot as shown and delineated on a plats entitled "Final Plat for Woodcreek, Phase I;" "Final Plat for Woodcreek, Phase II;" and "Final Plat for Woodcreek, Phase III;" said Lots comprising a residential subdivision located in Triangle Township, Durham County, North Carolina (hereinafter "Subdivision");

WITNESSETH:

WHEREAS, Declarants have heretofore acquired title to a certain tract or parcel of land which has been subdivided into Lots numbered 1 through 38, inclusive, according to a certain map or plat entitled "Final Plat for Woodcreek, Phase I," which said map appears of record in the office of the Register of Deeds of Durham County, in Plat Book 138 at Pages 106-109; and

WHEREAS, Declarants have heretofore acquired title to a certain tract or parcel of land which has been subdivided into Lots numbered 1 through 13, inclusive, according to a certain map or plat entitled "Final Plat for Woodcreek, Phase II," which said map appears of record in the office of the Register of Deeds of Durham County, in Plat Book 139 at Pages 59-60; and

WHEREAS, Declarants have heretofore acquired title to a certain tract or parcel of land which has been subdivided into Lots numbered 1 through 5, inclusive, according to a certain map or plat entitled "Final Plat for Woodcreek, Phase III," which said map appears of record in the office of the Register of Deeds of Durham County, in Plat Book 140 at Page 11; and

WHEREAS, Declarants intend to convey said numbered Lots as the same are shown and delineated on the above-mentioned maps, by deeds, trusts, mortgages, and other instruments to various persons, firms and/or corporations, subject to certain restrictive and protective covenants and conditions which are deemed to make the Subdivision more desirable and to be for the benefit of all those who acquire title to any one or more of said numbered Lots to the end that the restrictive and protective covenants and conditions herein set out shall inure to the benefit of each person, firm or corporation which may acquire title to any or all of said numbered Lots and which shall be binding upon each person, firm or corporation to whom or to which Declarants may hereafter convey any of said numbered Lots by deed, deed of trust, mortgage or other instrument.

NOW, THEREFORE, in consideration of the premises, Declarants hereby covenant and agree with said Prospective Purchasers that each of the aforementioned numbered Lots shall be held, sold, encumbered and conveyed subject to the restrictive and protective covenants and conditions hereinafter set forth and said restrictive and protective covenants and conditions shall become part of each instrument conveying any of said numbered Lots as fully and to the same extent as if set forth therein. As a condition of the sale or conveyance of any of said numbered Lots, the purchasers agree and covenant to abide by and conform with said restrictive and protective covenants and conditions.

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THE RESTRICTIVE AND PROTECTIVE COVENANTS
AND CONDITIONS ARE AS FOLLOWS:

1. Land Use and Building Type. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single-family residential dwelling and only one (1) single-family residential dwelling shall be erected or permitted to remain upon any Lot. It is provided, however, that Declarants or its assigns, during the development stage, may maintain a dwelling for use as a model home to aid sales in the subdivision. After development has been completed, no such model home may be maintained in the Subdivision.

2. Review Committee. No dwelling, house, fence, driveway, flagpole, exterior lighting, or other structure of any kind shall be erected, placed or altered on any building Lot until the building plans and specifications have been submitted to and approved in writing by Review Committee appointed by Woodcreek Homeowners' Association, Inc., (hereinafter "Association"). Said plans shall show all significant aspects of construction.

In approving plans and specifications, the Review Committee shall consider:

- (a) the quality of materials, workmanship and design;
- (b) that the building design and size minimizes, as far as practicable, the disruption of the natural condition of the Lot; and
- (c) the conformity and harmony of the exterior design and colors with existing structures in the area; and

The Review Committee shall respond to plans properly submitted under this item within thirty (30) days by approving or disapproving in writing, such responses to be delivered by personal delivery or mailing by certified mail to the person who submitted the plans. If plans are disapproved, no work shall begin on the Lot until a resubmission shall have been considered in the same time period and approved, unless the Review Committee approves the partial beginning of work in writing. The Review Committee shall not unreasonably withhold its approval.

No approval shall be required to rebuild a destroyed building on the same location if rebuilt strictly pursuant to the original plans.

3. Permitted Uses. No Lot shall be used for other than residential purposes. No shop, store, factory, or business house of any kind shall exist on the property above described nor any hospital, asylum or institution of like nature.

4. Common Area Maintenance. Common Area is all real property described by said plat map excluding all Lots and public streets. Every Lot Owner has a right and easement of enjoyment to all Common Area (said easement to be appurtenant to the title of each Lot). Unless otherwise provided herein, the Association shall be responsible for the maintenance of the Common Area, including but not limited to the maintenance of grass, shrubs, trees, and irrigation systems. Each owner of a Lot (hereinafter "Lot Owner") shall pay in a timely manner its pro rata portion of the costs of Common Area maintenance to the Association vis a vis dues which the Association shall assess from time to time. All sums levied by the Association that remain unpaid shall become a lien, but the lien of any such assessment shall be subordinate to the lien of any first mortgage. Mortgagees are not required to collect such assessments, and the failure to pay assessments does not constitute a default under an insured mortgage.

5. Removal of Vegetation from Common Area. Unless otherwise permitted herein, no Lot Owner, other than Declarants, shall injure, cut or remove, or suffer or cause to be injured, cut or removed, any trees, shrubs, flowers, grass or other vegetation from any Common Area.

6. Insurance and Taxes. The Association shall be responsible for maintaining a general liability policy covering all Common Area, and the Association shall be responsible for the payment of all local taxes that pertain to the Common Area.

7. Lot Maintenance and Use. A Lot Owner shall take such action, as may be reasonably required; (i) to control, inhibit, or prevent land erosion; (ii) to keep in a neat and sightly condition free from trash and debris; (iii) to cut, water and maintain the grass; and (iv) to water and maintain all trees, shrubs and flowers; and to maintain in good condition the driveway that is within the Lot Owner's Lot. A Lot Owner shall have exclusive use of and the responsibility to maintain in good condition the Lot Owner's Lot; provided, however, that Declarants, for itself and its successors and assigns, and the Association, hereby reserve a perpetual easement, privilege, and right, including the right of entry, for utility, community or cable television antenna systems, drainage purposes, and maintenance of Common Area (including irrigation of grass, trees and shrubs).

8. Parking. No vehicle, boat or trailer may be parked on any street in the Subdivision overnight.

9. Temporary Structure. No structure of a temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be used on any Lot (or Common Area) at any time without the prior written consent of the Review Committee.

10. Signs. No signs of any kind shall be displayed to the public view on any Lot. However, one sign of not more than five (5) square feet advertising the property for sale or rent and signs used by a builder to advertise the property during construction and sales period are permissible.

11. Garbage and Refuse Disposal. No Lot shall be used or maintained in an unsightly manner or as a dumping ground for rubbish, trash or debris. Rubbish, trash, debris, garbage and other waste shall be collected only in sanitary receptacles. All containers or other equipment for the storage or disposal of such waste materials shall be kept in a clean and sanitary condition.

12. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot. Dogs, cats or other household pets may be kept providing there are no more than two (2) household pets and they are not kept, bred or maintained for commercial purposes.

13. Nuisances. No noxious or offensive trade or activity shall be carried on or upon any Lot nor shall anything be done thereon which may be or become a nuisance or annoyance to the neighborhood. No inoperative vehicles shall be parked or permitted to remain in the Subdivision, and they shall be removed within thirty (30) days of becoming inoperative. No wrecked or junked motor vehicle or vehicle without a current license plate and registration shall be permitted to remain in the Subdivision.

14. Resubdivision. There shall be no further subdivision of the Lots as shown and delineated on said plat maps.

15. Amendment. These covenants and restrictions may be amended by an instrument signed by not less than two-thirds (2/3) of the Lot Owners; provided that prior to the conveyance by Declarants of one-third (1/3) of the Lots of the Subdivision, these covenants and restrictions may be amended solely by Declarants.

16. Term. These covenants and restrictions shall run with the land and shall be binding on all persons acquiring title to any of the aforementioned Lots up to and including the 4th day of July, 2015, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless

by a written instrument executed by two-thirds (2/3) of the then-owners of the said Lots, and duly recorded in the Office of the Register of Deeds of Durham County within three (3) months of any anniversary date of any such automatic renewal, it is agreed to change said covenants in whole or in part.

17. Enforcement. If any Lot Owner shall violate or attempt to violate any of these covenants and conditions, then Declarants, the Association, or any Lot Owner may bring any appropriate proceeding at law or in equity against the person or persons violating or attempting to violate these covenants and conditions, either to prevent the violation thereof, or to recover damages resulting from such violation.

18. Severability. Invalidation of any one of these covenants or restrictions by judgment or order of any court shall in no way affect any of the other provisions which shall remain in full force and effect.

19. Rights Exclusive. All rights herein created for, held by, or reserved by Declarants shall belong exclusively to Declarants and to such persons, firms or corporations to whom they are expressly assigned by Declarants, including the Association, and none of them shall be deemed transferred to the purchaser of any portion of the Subdivision, unless the instrument effecting such transfer expressly recites the assignment of such rights.

20. Encumbering and Conveying Common Area. The Common Area cannot be mortgaged or conveyed without the prior consent of at least two-thirds (2/3) of the Lot Owners (excluding Declarants). If ingress or egress to any Lot is through any Common Area, any conveyance or encumbrance of such Common Area is subject to the Lot Owner's easement.

21. Association Membership. Every Lot Owner shall be a voting member of the Penrith Village Homeowners' Association, Inc. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The Association shall have two (2) classes of voting membership:

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

(b) Class B. Class B member shall be the Declarants (as defined in the Declaration), 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 on the happening of either of the following events, whichever occurs earlier:

- (i) when seventy-five percent (75%) or more of the units are deeded to homeowners, or
- (ii) on December 31, 2000.

22. HUD/VA Approval. As long as there is Class B membership in the Association, annexation of additional properties by the Association, dedication of Common Area, and amendment of the Declaration of Restrictive and Protective Covenants and Conditions require the prior approval of the U.S. Department of Housing and Urban Development and the Veterans Administration.

23. House Placement on Lot. Notwithstanding anything in this Declaration of Restrictive and Protective Covenants and Conditions, or any amendment thereto, no house shall be erected outside of the Lot boundaries described on any recorded plat of the Subdivision; provided, however, that chimneys, decks, eaves, patios, porches, sidewalks, siding, steps, and stoops shall not be considered a part of the house for the purposes of interpreting this paragraph of this Declaration. An error in the placement of structures in an amount not more than one and one-half (1.5) feet of the Lot boundary in question (even if

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Covenants and Conditions
Woodcreek, Phases I, II and III

such error in placement results in an encroachment upon any easement, utility easement or Common Area) is not a violation of this Declaration or of the provisions of any recorded plat of the Subdivision.

IN TESTIMONY WHEREOF, DECLARANTS have caused this instrument to be executed in its name, and its seal to be hereto affixed, this the day and year first above written.

Crescent Coleman Ventures, L.L.C. (SEAL)

By: Donald E. Phillips (SEAL)
Donald E. Phillips, Manager

By: Ellis Y. Coleman (SEAL)
Ellis Y. Coleman, Manager

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, LISA F. TILLEY, a Notary Public of said State and County, do hereby certify that Donald E. Phillips and Ellis Y. Coleman personally appeared before me this day and acknowledged that they are managers of Crescent Coleman Ventures, L.L.C., a North Carolina limited liability company, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed and sealed by them as an act of, and for and on behalf of, said limited liability company.

Witness my hand and notarial seal, this the 10th day of February, 1998.

Lisa F. Tilley
Notary Public

My commission expires: 11-19-2001

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WILLIE L. COVINGTON
REGISTER OF DEEDS
DURHAM COUNTY, N.C.

State of North Carolina - Durham County
The foregoing or annexed certificate(s) of
Lisa F. Tilley
A Notary(Notaries) Public for the Designated Governmental
units is(are) certified to be correct

This the 20 day of Feb AD. 19 98
WILLIE L. COVINGTON Willie L. Covington
Deputy Register of Deeds

