

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR VALLEY CREST TOWNHOMES**

THIS DECLARATION, made on the date hereinafter set forth by WILLWOOD, LLC, a North Carolina Limited Liability Company, with its principal office located at 2600-C Carver Street, Durham, Durham County, North Carolina (hereinafter referred to as “Declarant.”)

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Durham, State of North Carolina, which is more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (hereinafter referred to as the “Property”); and,

WHEREAS, Declarant now desires to develop a townhouse development in accordance with the Declaration of Covenants, Conditions and Restrictions hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, title or interest in the described Property or any part thereof, 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. "Association" shall mean and refer to the Valley Crest Townhome Owners Association, Inc., a North Carolina non-profit corporation its successors and assigns.

Section 2. "Owner" or “Lot Owner” shall mean and refer to the record owner, whether one or more persons or entities, of title to any Lot which is a part of the Property, including the Declarant so long as any Lot as hereinafter defined is owned by the Declarant, which is a part of

the Property, including contract sellers, but excluding those having such interest merely as the security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may be hereafter brought within the jurisdiction of the Association.

Section 4. "Common Elements" or "Common Areas" are used interchangeably and shall mean any real estate owned or leased by the Association, other than a Lot.

Section 5. "Lot" shall mean and refer to any plot of land shown upon the Plat of the Property designated for separate ownership of occupancy by a Lot Owner.

Section 6. "Declarant" shall mean and refer to Willwood, LLC, its successors and assigns to whom the rights of the Declarant hereunder are expressly transferred, in whole or in part.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Living Unit" shall mean and refer to any Lot on which a dwelling unit has been fully constructed and made ready for occupancy as a residence, including, without limitation, completion of the final floor covering, interior paint and wallpaper and all appliances and for which a Certificate of Occupancy has been issued.

Section 9. "Limited Common Element" shall mean those portions of the Common Elements that serve only a single Lot or a limited number of Lots fewer than all the Lots, and which may include, but specifically is not limited to, driveways, walkways, parking areas or areas serving only specified Lots, and such other similar areas as may be designated by a plat map of the Property.

Section 10. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 11. "Building" shall mean and refer to a structure containing townhomes, constructed or erected on the Property.

Section 12. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 13. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses for maintenance of the townhomes as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair or replacement of the Common Elements and Limited Common Elements;

(d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;

(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;

(f) Ad valorem taxes and public assessments charges lawfully levied against Common Elements;

(g) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property and serve both the Property and lands adjacent thereto;

(h) Expenses agreed by the members to be Common Expenses of the Association; and

(i) All charges for utilities used in connection with the maintenance of the Common Elements.

Section 14. “Articles of Incorporation” or “Articles” shall mean the Articles of Incorporation of Valley Crest Townhome Owners Association, Inc., the original of which was filed in the office of the North Carolina Secretary of State on the 14th day of April, 2005, and any and all subsequent amendments thereto.

Section 15. “Bylaws” shall mean the Bylaws of Valley Crest Townhome Owners Association, Inc., which shall be recorded immediately following the recordation of this Declaration in office of the Durham County Register of Deeds, and any and all subsequent amendments thereto.

Section 16. “Plat” shall mean that certain Plat recorded in Book _____ Page _____, Durham County Registry.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Elements together with and including the right of access, ingress and egress, 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, in accordance with the purpose for which it is intended and without violating the lawful rights of the other Owners, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and the right of use of the recreational or other Common Element facilities (except rights of access to Lots), by an Owner 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, sell, lease or transfer all or any part of the Common Element, or any interest therein, to any public agency, authority, or utility, or to any other person for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless voted upon and approved by eighty percent (80%) of each class of members in the Association on a written instrument. On such instrument, the Secretary of the Association shall certify that eighty percent (80%) of each class or members have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes as specified herein may be made by the Association without the consent of the Members;
- (c) The right of the individual members to the use of parking spaces provided in this Article;
- (d) The right of the Association, in accordance with this Declaration and its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Element and facilities;
- (e) The right of the Association to limit the number of guests of members; and
- (f) The right of the Association, in accordance with this Declaration and 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:

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Element to the members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3. Parking Rights. Parking of any and all vehicles on the Property shall be subject to the Rules and Regulations of the Association, provided that the Owner(s) of each Lot shall have the right to the use, for at least one (1) automobile, of at least one (1) automobile parking space.

Section 4. Title to the Common Elements. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Elements located on the recorded Plat for this development of the Property to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Living Unit on the recorded Plat for the development, except encumbrances of utility, storm drainage, service, access and other similar service or utility easements.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record 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 the Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. Class B members shall be the Declarant, and the Class B Members shall be entitled to four (4) votes for each Lot in which the Class B Member has an ownership interest provided that the Class B membership shall cease and be converted to Class A membership on the happening of the following events whichever shall first occur:

- (a) Ninety percent (90%) of the 38 Lots that have been proposed for development and which will be platted are deeded from Declarant to Lot Owners other than Declarant; provided, however, that the Class B membership shall be reinstated with all rights privileges and responsibilities, if prior to the termination date in subsection (b) hereafter, but after a conversion of the Class B membership to Class A membership as herein provided, it being hereby stipulated that the conversion and reconversion shall occur automatically as often as the foregoing facts shall occur; or
- (b) On December 31, 2015.

After termination of the Class B membership, if the Declarant still owns Lots, said Declarant shall for all purposes be deemed a Lot Owner and shall be entitled to the same rights and privileges of Class A Members.

Section 3. 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(a) 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 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, which must be collected either monthly, quarterly, or annually at the election of the Association, and (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase and reconstruction of townhomes as hereinafter defined. The annual 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 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 Lot at the time when the assessment became due. The personal obligation for the delinquent assessments shall not pass to a Lot Owner's successors in title unless expressly assumed by them.

Notwithstanding any provision herein to the contrary, the assessment for each Lot which is not a Living Unit shall be twenty-five percent of the assessment of a Living Unit.

The Association shall also have the authority, to establish, fix and levy a special assessment on any Lot or Living Unit to secure the liability of the Owner thereof, by way of a properly filed lien, 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 his Lot within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall be in default and become a lien upon said Owner's Lot as provided herein then such lien shall continue to be enforceable until fully paid.

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 in the Property, and in particular, but not limited to, for the acquisition, improvement and maintenance of Property, services and facilities, for the exterior maintenance of the Buildings 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 procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board; the employment of counsel, accountants and other professionals for the Association when necessary; and, such other needs as may arise.

Section 3. Reserve/Replacement Fund. Out of the annual 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.

The Declarant has entered into that certain Buffer Easement with Chowings Place Townhome Association, Inc., dated as of August 18, 2003 and recorded in Book 4104 Page 191-207 Durham County Registry. As per the terms of said Buffer Easement, the Association shall at

all times maintain in its reserve account three thousand dollars (\$3,000) for the purpose of fulfilling its obligations pursuant to the above referenced Buffer Agreement.

Section 4. Amount of Assessment.

(a) Initial Maximum Assessment. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, other than the Declarant, the maximum annual assessment shall not exceed One Thousand Five Hundred Dollars (\$1,500.00) per Lot. The Declarant shall pay no assessment for Lots developed and owned by it.

(b) Increase by Association. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment effective for any year may be increased by the Board of Directors, without a vote of the membership, by a percentage which may not exceed (10%) over the annual assessment for the prior year.

(c) Increase by Members. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum 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.

(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.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment 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 Element, any extraordinary maintenance, and in connection with exterior maintenance, including fixtures and personal property and any property for which the Association is responsible, provided that any such assessment shall be approved by the assent of two-thirds (2/3) of the votes of each class of members which 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 Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast ten percent (10%) 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, and such quorum requirement shall continue to decrease at each subsequent meeting until a quorum is present. 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 Living Units with the exception of assessments levied on limited common elements that only benefit certain lots and may be collected on a monthly basis or annual basis, but in no event shall it be collected less frequently than annually, as determined by the Board of Directors of the Association; provided, however, that the Declarant shall pay no assessment for Lots or Living Units developed and owned by it. Further, if any common expense is caused by the negligence or misconduct of any Lot Owner or occupant, the Association may assess that expense exclusively against that Lot Owner or occupant's lot.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided herein shall commence as to all Lots identified on a duly recorded Plat on the first day of the month following the conveyance of the Common Elements identified on any such plat to the Association. The first annual assessment shall be prorated according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the 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 Lot 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 specific 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 be delinquent, in default and shall bear interest at the highest rate then permitted by North Carolina Law. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorney's fees, and/or proceed with any other permissible legal remedy then available to the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot.

Any assessment levied against a Lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that Lot when a claim of lien is filed of record in the office of the clerk of superior court of Durham County, North Carolina. The claim of lien shall state the description of the Lot encumbered thereby, the name of the record owner at the time the lien is filed, the name and address of the Association, and the amount due and date when due. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, fees, charges, late charges, fines, interest and other charges imposed pursuant to North Carolina General Statutes Sections 47F-3-103, 47F-3-107, 47F-3-107.1 and 47F-3-115, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association.

Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage or tax 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Foreclosure of Liens for Unpaid Common Expenses. In an action brought by the Board of Directors to foreclose on a Lot because of unpaid Common Expenses, the Board, acting on behalf of all Lot Owners, or on behalf of any one or more individual Lot Owners, if so interested, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage convey or otherwise deal with the same, subject, however to applicable restrictions of record. A suit to recover a money judgment for unpaid Common Expenses may be maintainable without foreclosing or waiving the lien securing the same.

Section 12. Working Capital Fund. At the time of closing of the sale of each Lot, a sum equal to two (2) months assessment for each Lot shall be collected from the purchaser and transferred to the Association to be held as a working capital fund. The purpose of said fund is to ensure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments and are in addition to regular assessments.

ARTICLE V

ARCHITECTURAL CONTROL

No site preparation or initial construction, erection or installation of any improvements including, but not limited to, building, fences, signage, walls, screens, plantings or other structure shall be commenced, erected or maintained upon the Property, or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration thereto be made by any Lot Owner other than the Declarant, so long as Declarant is Class B Member, 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 the harmony of external design and location in relation to surrounding structures and topography by the reasonable discretion of the Board of Directors of the Association, or by the reasonable discretion of the architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, 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, provided that plans and specifications that contain

inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing.

The Association shall have the right, at its election, but not required, to enter upon any of the Property during site preparation or construction, erection or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workman-like manner, utilizing approved methods and good quality materials.

ARTICLE VI

INSURANCE

Section 1. Insurance to be Maintained by the Association. (a) Commencing not later than the time of the first conveyance of a lot to a person other than a Declarant, the Association shall maintain, to the extent reasonably available:

- (1) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies, and
- (2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

(b) If the insurance described in subsection (a) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners. The Declaration may require the Association to carry any other insurance, and the Association in any event may carry any other insurance it deems appropriate to protect the Association or the Lot Owners.

(c) Insurance policies carried pursuant to subsection (a) of this section shall provide that:

- (1) Each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest,
- (2) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;
- (3) No act or omission by any Lot Owner, unless acting within the scope of the owner's authority on behalf of the Association, will preclude recovery under the policy; and
- (4) If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(d) Any loss covered by the property policy under subdivision (a)(1) of this section shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lienholders as their interests may appear. Subject to the provisions of subsection (h) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

(e) An insurance policy issued to the Association does not prevent a Lot Owner from obtaining insurance for the Lot Owner's own benefit.

(f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Lot Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Lot Owner, and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

(g) Any portion of the Property for which insurance is required under subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Association is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Lot Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners assigned to the limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If any portion of the Property is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the planned community, (ii) the insurance proceeds attributable to limited Common Elements which are not rebuilt shall be distributed to the owners of the lots to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the Lot Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the lots. Notwithstanding the provisions of this subsection, G.S. 47F-2-118 (termination of the planned community) governs the distribution of insurance proceeds if the planned community is terminated.

Section 2. Insurance to be maintained by the Lot Owner. The Association shall not provide nor purchase insurance for the repair or replacement of any Building. It shall be, and hereby is, the responsibility of each Lot Owner to procure and obtain the following types of insurance coverage:

- (3) Property insurance on the Lot Owner's individual Lot insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than

- eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies, and
- (4) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Lot.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between Lots and all reconstruction or extensions of such walls shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below ground construction and or liability for property damaged due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair or Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof proportionate to such use without prejudice, subject, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act or omission causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right of Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

Section 6. Certification by Adjoining Property Owner that No Contribution is Due. If any Owner desires to sell his Property, he may, in order to assure a prospective purchaser that no adjoining Owner has right of contribution as provided in this Article, request of the adjoining Owner a certificate that no contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request without charge; provided, however, that where the adjoining Lot Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled at binding arbitration as follows: each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision shall be by majority of all the arbitrators. The rules established by the American Arbitration Association shall govern any arbitration pursuant to this Section 7.

ARTICLE VIII

EXTERIOR MAINTENANCE

Section 1. Maintenance of Townhouse Lots. In addition to maintenance upon the Common Element, the Association shall provide exterior maintenance upon each Lot and Living Unit which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior Building surfaces (except for exterior window and door repair and replacement), trees, shrubs, grass, walks, those certain fences installed by Declarant or the Association and other exterior improvements made by the Declarant or the Association prior to the transfer of title to the Owner, (and further specifically excluding any maintenance on the Heating, Ventilation, and/or Cooling systems (“HVAC”) regardless of where such HVAC equipment is located on the Property). It shall be the sole and exclusive responsibility of each Lot Owner to maintain and repair the HVAC system that services the Lot Owner’s Lot. Such exterior maintenance shall not include glass surfaces, areas fenced for patio purposes, awnings, or other exterior appurtenances added by an Owner. Further, the Owner of any Lot may at his election plant trees, shrubs, flowers and grass in his rear yard and may also maintain portions or all of his rear yard provided that such maintenance does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. The Association shall perform no lawn maintenance to the rear yard of any Lot except grass cutting. A Lot Owner may elect to erect a privacy fence, with the approval of the Architectural Control as set forth in Article V of this Declaration. The installation of such a fence at the rear yard of any Lot shall relieve the Association from its responsibility to maintain the rear yard of that Lot. If no such fence is installed by the Lot Owner then the Association will cut the grass in the rear yard of the Lot. No such maintenance by a Lot Owner or his agents, nor the construction of a fence in the rear yard by a Lot Owner, shall reduce the assessment payable by a Lot Owner to the Association. If, in the opinion of the Association, any such Lot Owner fails to maintain his rear yard in a neat and orderly manner, the Association may undertake any required maintenance and add the cost thereof to the assessment against such Owner’s Lot. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

Section 2. In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act or omission of the Owner, his family, guests, invitees, tenants, agents or contractors, or is caused by fire, lightning, windstorms, hail, ice storms, 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, repair or replacement shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, the responsibility of which is the Association’s hereunder. If an owner installs a fence or otherwise prevents access for maintenance of his or her Lot(s), the Association shall have no obligation to maintain such Lot.

Section 3. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association, its agents, employees or contractors, the right to unobstructed access over and upon each Lot at all reasonable times for inspection and to perform maintenance as provided in this Article.

ARTICLE IX

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of all exterior yard space of each Lot and the Common Elements. Such rules and regulations may provide for the imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants or conditions contained in this Declaration, following a hearing held pursuant to Section 47F-3-107.1 of the North Carolina General Statutes by the Association Board, and fine not to exceed the statutory limits then in effect (currently) \$150 may be imposed for each violation.

Section 2. Use of Property. No portion of the Property (except for temporary offices of the Declarant and/or any model used by the Declarant) shall be used except for single family residential purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance on the Property.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept and maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance or danger to other Owners. All persons owning pets are required to keep all Lots and Common Elements clear of waste from their pets at all times. Any person walking a pet within the Property shall be responsible for the immediate removal of their pet's waste material.

Section 5. Subdivision Specifications. Minimum square footage requirements for dwellings and/or Lots shall be set by Declarant. No lot shall be resubdivided in such a manner that will result in there being more than the number of Lots shown on the applicable recorded plat.

Section 6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding, shall be used on any Lot at any time as a residence, or otherwise, either temporarily or permanently.

Section 7. Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance, for the Property or the contents thereof. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his townhome or on the Common Elements which will result in the cancellation of insurance on any portion of the Property or the contents thereof, or which will be in violation of any law,

ordinance or regulation. No waste shall be committed on any portion of the Common Elements. Any increase in insurance premium attributed to a Lot Owner shall be charged to that Lot Owner.

Section 8. Offensive Behavior. No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, order, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with.

Section 9. Parking. No boats, trailers, campers, motor homes, commercial trucks or tractors shall be parked on the Property or on any right of way of any street adjoining the Property by any Lot Owner, its family members, tenants or contract purchasers, except as may be permitted by the Rules and Regulations to be parked in a closed garage.

Section 10. Signs. No Owner shall display, or cause to allow to be displayed, to public view and sign, placard, poster, billboard or identifying name or number upon any Building, or any portion of the Common Elements, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority, provided, however that the Declarant and any mortgagee who may become the Owner of any Lot, or their respective agents may place "For Sale" or "For Rent" signs on any unsold or unoccupied townhome. Provided however, that the Declarant may maintain a sales office and may erect such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate and applicable law.

Section 11. Alterations. No person shall undertake, cause or allow any alteration of structures in or upon any portion of the Common Elements except at the directions or with the express written consent of the Association.

Section 12. Common Elements Use. The Common Elements shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the townhomes, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

Section 13. Satellite Dishes or Antennas. No television reception antennas shall be erected on a Building, or any Lot, other than eighteen-inch digital satellite dishes. In no event shall freestanding transmission or receiving towers or dishes in excess of eighteen inches be permitted on any Building, or any Lot. The Association may supply cablevision and piped-in music, and the cost of these may be included in the annual or special assessments.

ARTICLE X

EASEMENTS

Section 1. Utility Easement. All of the Property, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Elements conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the membership.

Section 2. Adjoining Areas. Each Owner is hereby declared to have an easement, and the same is hereby granted by the Declarant, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of buildings or any other cause. There shall be valid easements for the maintenance of said encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor on an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 3. Unintentional Encroachment. In the event that any Building on a Lot shall encroach upon any Common Elements or upon any other Lot for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance and maintenance of such encroachment upon the Common Elements or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Lot, then an easement shall exist for the continuation and maintenance of such encroachment of the Common Elements onto any such Lot for so long as such encroachment shall naturally exist.

Section 4. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Elements, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

Section 5. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any Building or as a result of any permissible repair, construction, reconstruction or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading or drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 6. Emergencies. Every Lot and townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any townhome and that endangers any Building or portion of the Common Elements.

ARTICLE XI

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, covenants, conditions, 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 anyone 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.

Section 3. Amendment. 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 these declarations shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided that (1) prior to the sale of the first Lot, this Declaration may be amended by the Declarant without consent of the Members; and (2) the Board may amend this Declaration without the consent of the Members to correct any obvious error or inconsistency in drafting, typing or reproduction, to allow for the annexation of additional property, for the addition of further special Declarant rights, or for other reasons listed in Section 4 below. All amendments shall specify the provisions herein under which it is amended and shall certify the compliance with the amendment provision herein. No amendment shall be effective until recorded in the Office of the Register of Deeds for Durham County, North Carolina.

Section 4. Other Amendment of Declaration Without Approval of Owners. The Declarant, so long as it shall retain control of the Association, without the consent or approval of any other Owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale in such Lots and improvements or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standard, aesthetics and matters affecting the public health, safety and general

welfare. A letter from an official of any such corporation or agency, including, without limitations, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation of the Federal National Mortgage Association or Durham City or County, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. No amendment shall be effective until recorded in the Office of the Register of Deeds for Durham County, North Carolina.

Section 5. Amendment to Achieve Tax-Exempt Status. The Declarant, for so long as it shall retain control of the Association, and thereafter, the Board of Directors may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner to qualify the Association or the Property, or any portion thereof, for tax exempt status. Such amendment shall be effective when recorded in the Office of the Register of Deeds for Durham County, North Carolina.

Section 6. Management and Contract Rights of Association. Declarant may enter into a contract with a Management company manager for the purposes of providing all elements of the operation, care, supervision, maintenance and management of the Property. However, no such contract shall be binding upon the Association except through express adoption or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer of management by Declarant to the Association.

Section 7. Emergency Access. In no case shall the City of Durham or the County of Durham be responsible for failing to provide any emergency or regular fire, police or other public service to such development for their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, Association or Lot Owners and their occupants.

{The remainder of this page is intentionally left blank. Signature page to follow.}

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR VALLEYCREST TOWNHOMES
SIGNATURE PAGE**

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be signed in its name, its company seal to be affixed hereto duly given, effective as of the 14th of April, 2005.

Willwood, LLC, a North Carolina Limited Liability Company

By: _____
Richard D. Williams, Member

By: Seekers 3, Inc., Member

By: _____
John K. Woody, Jr., its President

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, do hereby certify that Richard D. Williams, Member of Willwood, LLC, a North Carolina Limited Liability Company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp, this ____ day of _____, 2005.

My Commission Expires: _____
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that John K. Woody, Jr. personally came before me this day and acknowledged that he is President of Seekers 3, Inc., and acknowledged, on behalf of Seekers 3, Inc., Member of Willwood, LLC, a North Carolina Limited Liability Company, the due execution of the forgoing instrument on behalf of the company.

Witness my hand and official stamp, this ____ day of _____, 2005.

My Commission Expires: _____
Notary Public

EXHIBIT A

BEGINNING at an existing iron pin in the southern property line of South Roxboro Street at the Northwest corner of the property of Chownings Place Townhome Association, Plat Book 136 at Page 215, and running thence from said point of BEGINNING South 38E 40 minutes 52 seconds East 460.58' to an existing monument; thence South 29E 45 minutes 28 seconds West 118.19' to an existing monument in the property line of DNP Realty; thence along and with the property line of DNP Realty South 84E 24 minutes 15 seconds West 459.88' to an existing iron pin at the Northeast corner of the property of Spring Harbor; thence along with the northern property line of Spring Harbor, Plat Book 116 at Page 113; thence North 60E 03 minutes 51 seconds West 427.77' to an existing iron pin in the southern property line of South Roxboro Street, which said pin has North Carolina grid coordinates N (Y) = 792,025.23; E (X) = 2,013,581.73 and running thence along with the southern property line of South Roxboro Street along a curve having a radius of 1,098.16', a chord bearing of north 60E 13 minutes 07 seconds East, a distance of 474.04' to an iron pin set; and continuing along and with the southern property line of South Roxboro Street north 72E 35 minutes 06 seconds east 200.12' to the point and place of BEGINNING and containing 6.2595 acres as shown on that plat entitled "_____ " dated _____ by Robert W. Young, PLS recorded in Plat Book _____ at Page _____ of the Durham County Registry to which reference is hereby made for more particular description of same.