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BOOK 3715 PAGE 203

NORTH CAROLINA  
WAKE COUNTY

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
SILVERTON

THIS DECLARATION, made on the date hereinafter set forth by SILVERTON, INC., a North Carolina corporation having its principal office in Cary, North Carolina, hereinafter referred to as "Declarant,"

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property located in Wake County, North Carolina, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

AND WHEREAS, Declarant desires to subject said properties to the protective covenants, conditions, restrictions, reservations, liens and charges contained herein, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property.

NOW, THEREFORE, Declarant hereby declares that said easements, restrictions, covenants and conditions shall be as hereinafter set forth. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof. However, none of the Property shall be subject to said covenants and conditions until an annexation document subjecting said Property to

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covenants and conditions herein has been recorded in the Wake County Registry.

ARTICLE I

STATEMENT OF PURPOSE AND INTENT

The purpose of this Declaration is to provide for the overall administration of Silverton. All Community Common Areas (including amenities), shall be owned by the Silverton Homeowners Association, Inc. Subdivision Common Area shall be owned by individual associations, or by owners of condominium units if applicable. The Association shall also be responsible for the maintenance of Common Areas, private streets, amenities, etc. which it owns. The Association shall have architectural control for the Development. It may also adopt rules and regulations for the Development.

ARTICLE II

DEFINITIONS

SECTION 1. "Association" shall mean and refer to the Silverton Homeowners Association, Inc., its successors and assigns.

SECTION 2. "Properties" shall mean and refer to that certain real property described in Exhibit "A" and any other real property that is hereafter made subject to this Declaration.

SECTION 3. "Community Common Area" shall mean all real property owned by the Association for the common use

and enjoyment of all members or designated classes of members of the Association, including recreational areas and private streets. This shall not include "Common Areas" which may be a part of a condominium or owned by a Subdivision Association.

SECTION 4. "Subdivision Common Area" shall mean all real property, including private streets, owned by Subdivision Associations or which are a part of a condominium.

SECTION 5. "Lot" shall mean and refer to any plot of land shown upon the last recorded subdivision map of the Properties on which such plot appears (provided said map has been approved by Declarant), any condominium unit that has been established pursuant to Chapter 47A of the North Carolina General Statutes, and any apartment unit shown on plans approved by the Town of Cary, provided said plot of land, condominium unit or land on which such apartment units are located has been annexed to the Properties and made subject to this Declaration. "Lot" shall not include "Common Areas".

SECTION 6. "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 has been made subject to this Declaration, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 7. "Declarant" shall mean and refer to Silverton, Inc., a North Carolina corporation, and those of its successors and assigns, if any, to whom the rights of Declarant hereunder are expressly transferred hereafter, in whole or in part, and such assigned rights shall be subject to such terms and conditions as the Declarant may impose.

SECTION 8. "Amenities" shall mean the recreational facilities constructed, erected, or installed on the Common Areas.

SECTION 9. "Subdivision" shall mean a portion of Silverton, all of the Lots and Common Area of which are subject to the same Restrictive Covenants other than this Declaration.

#### ARTICLE III

##### ANNEXATION OF ADDITIONAL PROPERTIES

SECTION 1. ANNEXATION BY ASSOCIATION. Except as provided in Section 2 of this Article, additional land may be added and annexed to the Properties only if two-thirds (2/3) of all the votes entitled to be cast by the members of the Association are cast in favor of annexation and if the owner of the property to be annexed consents in writing to the annexation. A meeting shall be duly called for this purpose, written notice of which shall be sent to all members of the Association, setting forth the time, place and purpose of the meeting not less than fifteen (15) nor more than thirty (30) days in advance of the meeting.

SECTION 2. ANNEXATION OF LAND WITHIN THAT AREA DESCRIBED IN EXHIBIT "A" OF THE DECLARATION. The Declarant may subject portions of the Properties to the Declaration in the following manner:

(a) If, within ten (10) years of the date of incorporation of the Association, the Declarant should develop lands within the boundaries of lands described in Exhibit "B" attached hereto and incorporated herein by reference, such lands may be annexed to said Properties without the assent of the Association.

(b) The Declarant ~~may annex to the lands~~ described in Subsection (a) of this Section 2 by recording in the Wake County Registry a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions therein. The land shall be deemed to be subject to this Declaration on the date of recordation of the Declaration of Annexation, and no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation.

(c) Subsequent to recordation of the Declaration of Annexation by the Declarant, the Declarant shall deliver to the Association, one or more deeds conveying any Community Common Area within the lands annexed as such Common Area is developed.

## ARTICLE IV

## MEMBERSHIP

SECTION 1. MEMBERS. The Declarant, for so long as it shall be an Owner, and every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership, and no Owner shall have more than one membership, except as expressly provided hereinafter. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this subdivision.

## ARTICLE V

## VOTING RIGHTS

SECTION 1. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article IV with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article IV. When more than one person holds such interest in any Lot, all such persons shall be members.

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, and no fractional vote may be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds a fee or undivided fee interest, provided that 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 memberships equal the total votes outstanding in Class B membership; provided, that the Class B membership shall be reinstated with all rights, privileges, and responsibilities if, after conversion of the Class B membership to Class A membership hereunder, additional lands are annexed to the Properties without the assent of Class A members because of the annexation of such additional lands by the Declarant, all within the times and as provided for in Article III, Section 2 above; or

(b) on January 1, 1995.

SECTION 2. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations.

ARTICLE VI

PROPERTY RIGHTS: AMENITIES

SECTION 1. MEMBERS' EASEMENT OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to each of the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage the Common Area, or any portion thereof, provided the rights of such mortgage in said Properties shall be subordinate to the rights of the owners hereunder; provided, however, that if any Common Area is mortgaged while the Class B membership is in existence, the execution of such mortgage shall require the same approval of the membership which is required herein for Special Assessments for Capital Improvements.

(b) The right of the Association to suspend the rights to use the amenities by a Member or any person to whom he has delegated his right or enjoyment for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days, for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Community Common Area for

such purposes and subject to such conditions as may be agreed to by the members of the Board of Directors.

(d) The right of the Association to dedicate or transfer all or any part of the Community Common Area for utility, drainage, pedestrian walkway and cablevision easements.

(e) The right of the Association, acting through its Board, to exchange Common Area, as set forth in Section 8, Article XIII of this Declaration.

(f) The right of the Association to formulate, publish and enforce rules and regulations as provided in Article VIII.

The instrument effecting such dedication, transfer, conveyance or mortgage shall be sufficient if it is executed by appropriate officers of the Association and contains a recital of the above provisions, and that they have been complied with.

SECTION 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Community Common Area facilities and amenities to the members of his family, his tenants, or contract purchasers who reside on the property.

SECTION 3. TITLE TO THE COMMUNITY COMMON AREA. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Community Common Area to the Association free and clear of all encumbrances and liens, except utility, antenna and

drainage and sedimentation easements, sanitary sewer easements, and easements of governmental authorities.

SECTION 4. PROHIBITION OF SATELLITE DISCS AND CLOTHESLINES. Satellite discs and outdoor clotheslines shall be prohibited on the Properties.

ARTICLE VII

ASSESSMENTS

SECTION 1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments on Lots, together with such interest thereon and costs of collection thereof, as hereinafter provided, including, without limitation, reasonable attorney's fees, shall be the personal obligation of the person who was the Owner of such property for the period of such person's ownership. The personal obligation shall not pass to his successors in title unless expressly assumed by them. All assessments relating to Community Common Area shall be shared equally by the Owners of each Lot.

The assessment for each Lot owned by Declarant shall be 25% of the assessment which is applicable for a Lot titled in a name other than that of Declarant.

If any person shall purchase a Lot and shall apply to the secretary of the Association, or such person who has been designated by the Association for the maintenance of payment records, for information as to whether assessments applicable to the Lot being purchased is subject to any past due assessments, it shall be the duty of the secretary or other person in charge of assessment records to immediately issue a written statement as to whether the Lot being purchased is subject to past due assessments. If such issued statement indicates the status of past due assessments, the purchaser of the Lot shall be entitled to rely upon the accuracy of such statement and shall purchase free of any lien for past due assessments not shown on such statement.

SECTION 2. PURPOSES OF ASSESSMENTS. The assessments levied by the Association shall be used for the purpose of promoting the beautification of the Properties, the recreation, health, safety, and welfare of the residents in the Properties, the enforcement of these Covenants and the rules of the Association, paying ad valorem taxes, public assessments or liens levied on Common Areas, paying liability insurance premiums for Common Area, and, in particular, for the improvement and maintenance of the Properties and amenities located therein and providing the

services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area. Nothing herein shall mean that assessments may not be used for the beautification of areas within the subdivision but which are not part of the Common Areas.

SECTION 3. BASIC AND MAXIMUM ANNUAL ASSESSMENTS.

To and including December 31, 1986, the basic (and maximum) annual assessment shall be \$ 150.00 per Lot, except as otherwise provided herein, the exact amount of which shall be determined from time to time as provided in subsection (c) of this Section 3.

(a) From and after December 31, 1986, the basic annual assessment may be increased by the Board of Directors of the Association effective January 1 of each year, without a vote of the membership, by a percentage which may not exceed the greater of five (5%) percent per year 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 percent changes from selected dates (published by the U. S. Bureau of Labor Statistics, Washington, D.C.), or such Index as may replace said Consumer Price Index, for the twelve-month period ending the immediately preceding July 1; such increased assessment shall be the maximum annual assessment.

(b) After December 31, 1986, the basic annual assessments may be increased by an affirmative vote of

two-thirds (2/3) of the members or proxies who are entitled to vote at a meeting called for such purpose, and the increased basic annual assessments shall be the basic annual assessment and be thereafter adjusted pursuant to subparagraph (a) of this Section 3. Written notice of such meeting shall be given by the Board of Directors to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the date, time, place, and purpose of the meeting. The provisions of this subsection shall not apply to nor be a limitation upon any change in the basic and maximum assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of the current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessments at an amount not in excess of the maximums as determined in subsection (a) of this Section 3.

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 new construction, reconstruction of described capital improvements or unexpected repair or replacement of described capital improvements upon the Community Common

Area, including the necessary fixtures and personal property related thereto; provided that any such assessments shall be adopted by a two-thirds (2/3) affirmative vote of each class of members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the time, place and purpose of the meeting.

SECTION 5. UNIFORM RATE OF ASSESSMENT. The annual assessment must be fixed at a uniform rate for all Lots, on a per Lot basis, and may be collected on a monthly basis or less frequently.

SECTION 6. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the annexation of said Lot into the Properties, unless postponed by the Declarant. The first annual assessments shall be adjusted according to the number of months remaining in the fiscal year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. If the Board of Directors of the Association shall determine that it would be inequitable to require the payment of the full amount of annual assessment as might be the case if only a portion of the amenities are available for the use of

members the Board may waive payment of any portion of the assessment. The due dates and appropriate penalties for late payment shall be established by the Board of Directors.

SECTION 7. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessments which are not paid when due shall be delinquent. If the assessments are not paid within thirty (30) days after the due date, assessments shall bear interest from the date of delinquency at the lesser of the highest lawful rate or twelve (12%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

SECTION 8. SUBORDINATION OF LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. A sale or any transfer of any Lot shall not affect the assessment liens; provided, however, that the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu of foreclosure 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 the liability for any assessment thereafter becoming due or from the lien thereof.

ARTICLE VIII

USE RESTRICTIONS

SECTION 1. RULES AND REGULATIONS OF COMMON AREAS.

The Board of Directors of the Association shall have the power to formulate, publish, amend and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area.

SECTION 2. QUIET ENJOYMENT. No obnoxious or offensive activity shall be carried on upon the Properties which may be or may become a nuisance or annoyance to the neighborhood.

SECTION 3. RULES AND REGULATIONS FOR PARKING OF VEHICLES. The Board of Directors of the Association shall have the power to formulate, publish, amend and enforce reasonable rules and regulations concerning the parking of any type of vehicle on the Properties, including Community Common Areas. Said rules may provide, without limitation, the following:

(a) A definition of a "recreational vehicle" and regulations covering the parking of recreational vehicles on private or public streets.

(b) That campers, planes, boats, trailers, trucks and commercial vehicles of any kind that the Board designates cannot be parked on a public or private street, in any Common Area or on any Lot, except in areas designated for that purpose, if any.

(c) Limitations on the period of time and extent to which a motor vehicle may be repaired on the premises, and that all motor vehicles parked on public or private streets or in Common Areas are to have valid license plates.

ARTICLE IX  
EASEMENTS

All of the Properties, 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, cablevision lines and other public utilities as shall be established by the Declarant or by his successors in title, prior to the conveyance of Lots to subsequent owners or the conveyance of Common Area to the Association; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

All common areas shall be subject to an easement in favor of all Lots and shall be deemed appurtenant to all Lots, whereby the owner of each Lot shall be entitled to use them for access, ingress and egress to parking areas, walkways and streets.

An easement is hereby established over the Common Areas and facilities for the benefit of applicable governmental agencies, public utility companies and public

service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Declarant reserves the right to subject the above described Properties to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the Owner of each Lot within said Properties.

#### ARTICLE X

##### RIGHTS OF FIRST MORTGAGEES AND INSURERS OF FIRST MORTGAGES

Any institutional holder of a first mortgage on a Lot will, upon request in writing to the Association, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the lot securing its mortgage, (e) receive written notice of any sixty (60) days delinquency in the

payment of assessments or charges owed by the Owner of any Lot on which it holds a mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with copies of insurance policies owned by the Association. The Association may require the payment of expenses incurred in preparing copies and mailing of documents furnished to first mortgage holders pursuant to this Article.

#### ARTICLE XI

##### INSURANCE

SECTION 1. INSURANCE COVERAGE. Insurance coverage on the Property shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies covering the Community Common Area shall be purchased by the Association for the benefit of the Association and the Owners and their mortgagees as their interests may appear.

(b) Coverage. All buildings and improvements upon the Community Common Area and all personal property included in the Community Common Area shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association

with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement,

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, and

(iii) Such policies shall contain clauses providing for waiver of subrogation.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(d) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to the Owners as a part of the annual assessment according to the provisions above.

SECTION 2. DISTRIBUTION OF INSURANCE PROCEEDS.

Proceeds of hazard insurance policies received by the Association shall be used to defray the cost of repairs to improvements located on the Community Common Area.

SECTION 3. FIDELITY INSURANCE OR BOND. All persons responsible for or authorized to expend funds or

otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

SECTION 4. OFFICERS AND DIRECTORS INSURANCE. The Board may secure Officers and Directors insurance in such amounts as the Board deems appropriate. Premiums shall be paid from the annual assessment.

ARTICLE XII

ARCHITECTURAL CONTROL AND INSPECTION

Except for initial improvements by Declarant, no construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings, fences, walls, screens (whether by plants or structures) and other structures, shall be undertaken upon the Properties unless the plans and specifications therefor, showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to the Declarant or its agent and expressly approved in writing. No subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements may be undertaken on any of the Properties without prior review and express written approval of the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board of the Association.

In general, no exterior alterations or additions to buildings or garages shall be considered for approval unless such alterations or additions are in harmony with existing structures, as to style, shape, color and size. However, this section shall not be construed to mean that the Architectural Committee or Board shall have to approve a proposed alteration or addition that meets the above criteria.

In general, the construction or planting of fences, walls, screens, and other structures will not be permitted if in the opinion of the Declarant, Board, or Architectural Committee, as applicable, such construction or planting constitutes an unreasonable obstruction of the view of another owner.

Generally, approval or disapproval should be issued in thirty (30) days. In the event that the Declarant or the Association, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within sixty (60) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Association if they contain erroneous data or fail to present adequate information upon which the Declarant or the Association, as the case may be, can arrive at a decision.

The Declarant and/or the Association (as applicable) shall have the right, at its election, but shall not be required, to enter upon any of the Properties 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 workmanlike manner, utilizing approved methods and good quality materials.

#### ARTICLE XIII

##### GENERAL PROVISIONS

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

SECTION 2. SEVERABILITY. Invalidation of any 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, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot

subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for an unlimited number of successive periods of ten (10) years each. The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by the Owners of not less than sixty-six and two-thirds (66-2/3%) percent of the Lots that have been made subject to this Declaration.

Such amendment shall be executed in the name of the Association by the President (or Vice-President) and by the Secretary (or Assistant Secretary) of the Association and recorded in the Office of the Register of Deeds of Wake County.

SECTION 4. PROCEDURE FOR CERTIFICATION AND RECORDATION OF AMENDMENT. Any instrument amending these covenants, conditions, and restrictions shall be delivered following execution by the Owners, to the Board of Directors of the Association. Thereupon, the Board of Directors shall, within thirty (30) days after delivery do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots as provided in Section 3 of this Article. (For this purpose, the Board may rely on its roster of members and

shall not be required to cause any title to any Lot to be examined);

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS  
CONDITIONS AND RESTRICTIONS OF SILVERTON

By authority of its Board of Directors, Silverton Homeowners Association, Inc., hereby certifies that the foregoing instrument has been duly executed by the Owners of \_\_\_\_\_ percent of the Lots of Silverton and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Silverton.

This the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .

SILVERTON HOMEOWNERS  
ASSOCIATION, INC.

By

President

ATTEST:

Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of this Association. When any

instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all Lots in Silverton.

SECTION 5. FEA/VA APPROVAL. Notwithstanding any provision in this instrument to the contrary, until December 31, 1996, the following actions shall require the approval of the Federal Housing Administration or Veterans Administration if the Declarant desires to qualify sections of the Properties for ~~the Federal Housing Administration or~~ Veterans Administration approval: (1) annexation of additional properties and dedication of additional Common Areas not covered by Section 2 of Article III of this Declaration; (2) amendment of this Declaration of Covenants, Conditions and Restrictions; (3) mergers and consolidations; (4) mortgaging of Common Area; (5) dissolution; and (6) exchange of Common Areas.

SECTION 6. DISSOLUTION OR INSOLVENCY. Upon dissolution or insolvency of the Association or upon loss of ownership of the Common Area by the Association for any cause whatsoever, any portion of the Common Area not maintained by a non-profit corporation, as hereinabove provided, shall be offered to the City of Cary to be dedicated for public use for purposes similar to those to which they were required to be devoted by the Association. If the City of Cary accepts the offer of dedication, such

portion of the Common Area shall be conveyed by the Association to the City of Cary, subject to the superior right of the Owner of each Lot to an easement for reasonable ingress and egress between his Lot and the public street.

In the event that the City of Cary refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Area to any non-profit corporation, association, trust or other organization which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Area was required to be devoted by the Association.

SECTION 7. LIMITATION OF CITY'S LIABILITY. In no case shall the governmental entity or municipality which provides emergency or regular fire, police or other public service for the Properties be responsible for failing to provide any such service to the Properties or any of its 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, the Association, or occupants.

SECTION 8. EXCHANGE OF COMMON AREA. The Association, acting through its Board, from time to time may exchange with Declarant or any owner a portion of the Common Area for a portion of the real property owned by such owner within Silverton, provided that the real property acquired by the Association in the Exchange: (a) is free and clear of all encumbrances except the Declarations, and easements for

drainage, utilities, and sewers; (b) is contiguous to other portions of the Common Area; and (c) has approximately the same area and utility as the portion of the Common Area exchanged. The real property so acquired by the Association shall be a part of the Common Area, and, without further act of the Association or membership, shall be released from any provisions of the Declaration except those applicable to the Common Area. The portion of the Common Area so acquired by Declarant or an Owner, without further act of the Association or membership, shall cease to be Common Area and shall be subject to those provisions of the Declaration that were applicable to the real property conveyed to the Association by the owner.

SECTION 9. LIMITATION ON ASSOCIATION ENTERING INTO LONG-TERM CONTRACT. The Association shall not enter into contracts or leases (including management agreements) either directly or indirectly unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time upon not more than 30 days notice to the other party thereto.

IN WITNESS WHEREOF, the corporate Declarant on authority of its Board of Directors has caused this

instrument to be executed in its corporate name, and its corporate seal attached hereto, on this the 5th day of May, 1986.

SILVERTON, INC.

By: HB [Signature]  
President

ATTEST  
SEAL  
SILVERTON, INC.  
CORPORATE SEAL  
NORTH CAROLINA  
WAKE COUNTY  
Odell Thompson  
Secretary

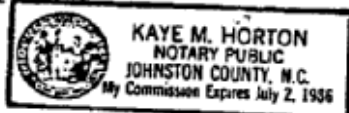
I, the undersigned, a Notary Public in and for said State and County do hereby certify that Odell Thompson personally appeared before me this day and acknowledged that he is Secretary of SILVERTON, INC., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by self as its Secretary.

WITNESS my and and notarial seal this the 5th day of May, 1986.

Kaye M. Horton  
Notary Public

My Commission Expires:  
July 2, 1986

bkp/drd5



NORTH CAROLINA - WAKE COUNTY

The foregoing certificate of Kaye M. Horton

Notary Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof

KENNETH C. WILKINS, Register of Deeds  
By Regina R. Cooke  
Deputy Register of Deeds

EXHIBIT "A"

TRACT 1:

Being all of Lots 1 through 22, inclusive, and Lots 87 through 94, inclusive, as shown on that certain survey map entitled "Silvercliff Subdivision, Phase One", dated April 4, 1986, and recorded in Book of Maps 1986, Page 605, Wake County Registry.

Tract 2:

Being all of Lots 53 through 86, inclusive, as shown on that certain survey map entitled "Silvercrest, Phase 1", dated November 20, 1985, and recorded in Book of Maps 1986, Page 608, Wake County Registry.

## EXHIBIT B

TRACT ONE:

BEGINNING at a point in the centerline of the proposed Evans Road, said point being located 1,537.75 feet in a northwesterly direction along the centerline of Evans Road from the centerline intersection of Evans Road and State Road 1796; runs thence forming a new line with property now or formerly owned by H. Brantley Powell, Ronald W. Collins and Odell Thompson, South 32° 11' 49" West 430.00 feet to a point, North 88° 48' 11" West 1250.00 feet to a point, North 22° 18' 11" West 251.26 feet to a point in the centerline of the proposed Cary Parkway; and along the centerline of the proposed Cary Parkway South 62° 11' 18" West 1240.81 feet to a point; thence leaving said Parkway runs with the eastern line of property now or formerly belonging to E. N. Richards South 2° 14' 17" West 643.04 feet to a point; runs thence with the eastern lines of property now or formerly belonging to J. Clemons and M. A. Williams South 2° 30' 18" West 265.59 feet; runs thence with the eastern line of property now or formerly belonging to Buck Alston South 2° 38' 36" West 228.22 feet to a point; runs thence with the northern line of properties now or formerly belonging to G. L. McKinney and L. M. Hackney South 85° 27' 55" East 349.36 feet to a point; runs thence with the northern line of property now or formerly belonging to Annie Wilson South 85° 43' 20" East 1013.30 feet to a point; runs thence with the northern line of property now or formerly belonging to Tar Heel Wood Treating Company South 88° 24' 44" East 726.11 feet to a point; runs thence South 87° 01' 23" East 100.92 feet to an existing iron pipe on the south bank of a branch; runs thence with the thread of said branch in a northwesterly direction, which branch follows a reference line which runs the following courses and distances to an existing axle on the south bank of said creek: ~~North 55° 18' 14" East 219.17 feet, North 53° 01' 06" East 122.78 feet; North 34° 51' 25" East 148.56 feet; and South 83° 14' 21" East 157.79 feet;~~ runs thence with the western line of property now or formerly belonging to Lucy Rochelle North 1° 54' 00" East 322.83 feet to a point; runs thence with the line of property now or formerly belonging to Robert Rochelle North 89° 10' 01" West 353.13 feet to a point, North 01° 51' 41" East 736.47 feet to a point, and South 89° 02' 36" East 351.76 feet to a point; runs thence with the line of property now or formerly belonging to Samuel Farrar North 0° 38' 37" East 152.18 feet and South 89° 00' 43" East 971.52 feet to a point in the centerline of Thorpe Drive; runs thence along and with the centerline of said Thorpe Drive North 22° 01' 27" East 131.23 feet to a point, North 16° 12' 20" East 280.46 feet to a point along a curve to the right having a radius of 414.87 feet, an arc distance of 196.26 feet to a point, and North 43° 18' 51" East 443.10 feet; runs thence with the line of property now or formerly belonging to H. B. Powell North 89° 18' 11" West 1481.72 feet to a point and North 0° 37' 06" East 660.39 feet to a point; runs thence with the western line of property now or formerly belonging to E. N. Richards North 0° 53' 07" East 164.64 feet to a point in the proposed centerline of the Cary Parkway; runs thence with the proposed centerline of the Cary Parkway South 39° 36' 28" West 550.08 feet and along a curve to the right having a radius of 2750.00 feet an arc distance of 478.00 feet; runs thence leaving the proposed centerline of the Cary Parkway and running along the centerline of Evans Drive South 40° 16' 01" East 125.22 feet, along a curve to the left having a radius of 1231.518 feet an arc distance of 507.16 feet to a point, and South 64° 11' 45" East 149.21 feet to the beginning, and containing 123.24 acres according to a map drawn by Alternate Solutions dated June 16, 1985, and being the southern portion of property acquired by H. Brantley Powell, Ronald W. Collins, and Odell Thompson by deed recorded in Book 3205, Page 452, Wake County Registry.

TRACT TWO:

BEGINNING at an existing iron pipe located North  $23^{\circ} 13' 16''$  East 1612.54 feet from the intersection of the centerlines of State Road 1653 and State Road 1796, which iron pipe marks a northeast corner of property now or formerly belonging to Ronald W. Collins, Odell Thompson and H. Brantley Powell and described in deed recorded in Book 3205, Page 452, Wake County Registry, and the northwest corner of property now or formerly belonging to Royal Oaks Ltd. and described in deed recorded in Book 2898, Page 611, Wake County Registry; runs thence with the aforesaid property now or formerly belonging to Collins, Thompson and Powell North  $89^{\circ} 18' 11''$  West 1483.72 feet to an existing iron pipe located at N.C. Grid Coordinates X=2,059,900.22 and Y=751,861.29; runs thence with the aforesaid property now or formerly belonging to Collins, Thompson and Powell North  $0^{\circ} 57' 06''$  East 660.39 feet to an existing iron pipe; runs thence with a southern line of property now or formerly belonging to E. N. Richards South  $89^{\circ} 26' 00''$  East 1698.57 feet to an existing iron pipe with White Oak pointers on the east side of an old road; runs thence North  $00^{\circ} 22' 07''$  West 372.65 feet to an existing iron pipe, the southwest corner of property now or formerly belonging to R. H. Watkins; runs thence with the line of said Watkins property South  $86^{\circ} 59' 54''$  East 210.74 feet and North  $00^{\circ} 05' 57''$  West 219.18 feet to an iron pipe; runs thence with the southern line of property now or formerly belonging to E. N. Richards South  $89^{\circ} 07' 02''$  East 1714.28 feet to an existing iron pipe; runs thence with the western line of property now or formerly belonging to Alma H. Sorrell South  $04^{\circ} 54' 54''$  West 498.61 feet to an existing iron pipe with Beech pointers; runs thence with the western line of the subdivision of Loyd V. Sorrell property shown on map recorded in Book of Maps 1981, Page 419, South  $01^{\circ} 15' 37''$  West 490.76 feet to an existing iron pipe; runs thence with the western line of Section Three of Homestead Subdivision as shown on map recorded in Book of Maps 1979, Page 703, Wake County Registry, South  $02^{\circ} 24' 50''$  West 817.10 feet to an existing iron pipe; runs thence with the northern line of property now or formerly belonging to Royal Oaks Ltd., the following courses and distances: North  $85^{\circ} 29' 42''$  West 547.35 feet to an existing iron pipe, North  $03^{\circ} 15' 25''$  West 327.86 feet to an existing iron pipe, North  $84^{\circ} 22' 07''$  West 131.72 feet to an existing iron pipe, North  $02^{\circ} 31' 19''$  West 192.48 feet to an existing iron pipe in a rockpile with pointers, and North  $89^{\circ} 27' 46''$  West 1356.19 feet to the Beginning, containing 86.358 Acres according to survey map entitled "Survey for H. Brantley Powell" drawn by Thompson and Associates, dated February 22, 1984.