

Prepared by and return to:

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

KENNETH C. MARTIN
REGISTER OF DEEDS
WAKE COUNTY

DECLARATION
OF
PROTECTIVE COVENANTS
FOR
SILVERCREEK SUBDIVISION

THIS DECLARATION, made this 9 day of MARCH, 1995 by Silvercreek of Cary, L.L.C. with its principal office located at 3600 Glenwood Avenue, Suite 150, Raleigh, North Carolina 27612 called "Declarant";

WITNESSETH:

THAT WHEREAS, Declarant is the owner of real property described in Article I of this Declaration of Protective Covenants and is desirous of subjecting same to the Protective Covenants and Restrictions hereinafter set out for the benefit of each subsequent owner, such Protective Covenants and Restrictions to run with each and every lot and shall inure to the benefit of, and be binding upon, any owner and any successor in interest of any owner of any such lot;

NOW, THEREFORE, Declarant hereby declares that the real property described in Article I hereof is and shall be held, transferred, sold and conveyed subject to the Protective Covenants hereinafter set forth.

ARTICLE I

DESCRIPTION

The real property which is, and shall be held, transferred, sold and conveyed, subject to the Protective Covenants set forth in the following articles is located in Cary Township, Wake County, North Carolina, more particularly described on Exhibit A Attached, the terms of which are incorporated herein.

The real property described in this Article I is subject to the Protective Covenants and Restrictions hereby declared to insure the best use and the most appropriate development and improvement of each lot thereof; to protect the owners of lots against such improper use of surrounding lots as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures or structures built of improper or unsuitable materials; to prevent haphazard and inharmonious improvement on lots; to secure and maintain proper setbacks from streets and spaces between structures and in general to provide adequately for quality improvements on said property, and thereby to enhance the values of investments made by purchasers of lots therein.

ARTICLE II

ARCHITECTURAL CONTROL

No site preparation (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, bulkheads, screens, landscaping, plantings, equipment, mailboxes or other structures shall be commenced, erected, placed, altered or maintained upon any lot, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location and elevations of the proposed improvements, landscaping or plantings shall have been submitted to, and approved in writing by, as to harmony of external design and location in relation to surrounding structures and topography, an Architectural Committee composed of three (3) persons appointed by the Declarant. Members of the Architectural Committee shall be appointed by the Declarant until the conveyance of the last lot owned by the Declarant. At that time, control of the Architectural Committee shall be vested in the lot owners of the subdivision and who may appoint the members of the Architectural Committee. Provided however, that for any unimproved lot at the time control of the Architectural Committee passes to the lot owners, Declarant reserves the right to act as the Architectural Committee and to approve the plans and specifications for any dwelling to be placed on those lots. In the event the Architectural Committee fails to approve or disapprove such submission made by any lot owner 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.

Upon request the Declarant, on behalf of the Architectural Committee, shall provide any owner with a letter stating that any such work, plans and specifications, landscaping or plantings have been approved, and the letter may be relied upon by third parties.

Disapproval by the Architectural Committee of such plans, location or specifications may be based upon any grounds, including purely aesthetic and environmental, which in the sole discretion of the Committee, it shall deem sufficient. Neither the Declarant nor the Architectural Committee shall be responsible for any defects in the plans and specifications submitted to it or in any structure erected or improvements made according to such plans and specifications.

The Declarant and the Architectural Committee, or their appointed agents, shall have the right, at their election, but shall not be so required, to enter upon any of the lots 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 utilizing approved methods and good quality materials.

The Architectural Committee shall have the power to grant, and may allow, variances of, and adjustments of, the building restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein; provided, however, that variances or adjustments are done in conformity with the intent and purposes hereof; and, provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other lots in

the immediate neighborhood. Variances and adjustments may be of the height, size, and setback requirements, but shall not be limited thereto.

In the event of the grant of any variance in the building restrictions, the Declarant on behalf of the Architectural Committee shall execute a document attesting to such grant and the specific nature thereof in form suitable for recording, so that the lot owner may record the document in the Registry of the County in which the lot is located. Such document shall be prepared at the cost of the lot owner and shall be binding upon the Declarant, its successors and assigns, and other lot owners and may be relied upon by third parties to evidence the variance approval.

ARTICLE III

USE RESTRICTIONS

Section 1. Use of Property. No lot (except for a temporary office approved by the Declarant and building models approved by Declarant) shall be used for any purpose other than for single-family residential purposes and for purposes incidental or accessory thereto.

Section 2. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 3. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of any lot, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any lot shall be complied with, by and at the sole expense of the lot owner.

Section 4. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any lot, except that the Declarant or its agents may use any unsold lots for sales or display purposes.

Section 5. Signs. No lot owner shall display, or cause, or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any lot, except as allowed by local governmental authority; provided, however, that the Declarant and any lot owner, or their respective agents, may place "For Sale" or "For Rent" signs on any lots for sale or for rent; provided, however, that during the development of the lots and the initial marketing of lots, the Declarant or any person approved by Declarant, may maintain a sales office and may erect and display such signs as approved by the Declarant, provided that such signs do not violate any applicable laws. Such permitted signs shall be placed in the approximate center of a lot and six feet from the road curb. No sign shall be nailed to trees.

Section 6. Parking. No boats, trailers, campers, motorhomes, trucks or tractors shall be parked on any lot, or on any right of way of any roads or streets within the subdivision by any lot owner, its family members, tenants or contract purchasers, except inside an enclosed garage located on a lot or area screened from view of the street and adjoining lots, or as approved by Declarant or Architectural Committee, or in a specified

storage area established by the Declarant, if any such is provided. Temporary parking of delivery and maintenance vehicles are permitted.

Section 7. Trailers, etc. With the exception of a sales trailer approved by Declarant, to be used for the sole purpose of marketing the sale of lots in the subdivision, no trailer, tent, mobile home, modular home or structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters or storage units used by a contractor during the construction of a dwelling, garage or accessory building, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or accessory buildings or storage areas or permitted to remain on any lot after completion of construction.

Section 8. Fuel Tanks. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within an accessory building or within a screened area, or buried underground.

Section 9. Guest Facility. A guest apartment or guest facility may be included as part of a main detached single family dwelling or accessory building.

Section 10. Subdividing. No lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period that Declarant owns any of the property subject to this Declaration. However, the Declarant hereby expressly reserves unto itself, its successors and assigns, the right to replat any two (2) or more lots in order to create one or more modified lots, to further subdivide Tracts shown on any such subdivision plat into two or more lots, to recombine one or more lots to create a larger lot, to eliminate from this Declaration lots that are not otherwise buildable or are needed for access or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such replatted lots suitable and fit as building sites or access area or roadway, said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted lots.

Section 11. Mineral Extraction. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, nor oil, gas or mineral exploratory activity, shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon, or in, or under, any lot. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot; nor shall sand, clay, or other materials be mined or removed from any lot for use elsewhere.

Section 12. Delivery Receptacle. No mail box, paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected or located on any lot unless and until the size, location, design and type of material for the receptacle shall have been approved by the Architectural Committee.

Section 13. Antennae. Exterior radio and television antennae, aerials, disks and dishes for reception of commercial broadcasts shall not be permitted on any lot and no other aerials, disks and dishes (for example, without limitation, amateur short wave or ship to shore) shall be permitted on any lot without permission of the Architectural Committee as to design, appearance and location.

Section 14. Construction Limitations. During construction, all vehicles involved, including those delivering supplies, must enter the lot on a driveway only as approved by the Architectural Committee so as not to damage unnecessarily trees, street paving and curbs. During construction, builders must keep the homes, garages, and building sites clean and free of debris. All building debris, stumps, trees, etc., must be removed from each lot by builder as often as necessary to keep the house and lot attractive. Such debris will not be dumped on any other lot.

Section 15. Grass. All grass area of yards must be seeded or sodded.

Section 16. Firearms; Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion; and no hunting of any type shall be carried on or conducted on any lot.

Section 17. Drying Areas. Clotheslines or drying yards shall not be located upon any lot without the prior written consent of the Architectural Committee, which consent may be conditioned or withheld in the sole discretion of the Committee.

Section 18. Irrigation Systems. No individual water supply system shall be permitted on any lot except a non-potable lawn irrigation system not connected to any building. A shallow well may be permitted for such water supply, but drilling or construction for such shallow well must have prior written approval by the Board. The pump, pressure tank, and pump house, if any, shall be considered structures requiring prior architectural approval.

Section 19. Unsightly Growth. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain thereon, including vacant parcels.

Section 20. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

ARTICLE IV

BUILDING RESTRICTIONS

Section 1. Square Footage. Any dwelling erected on a detached single-family residential lot shall contain a minimum enclosed dwelling area of 1400 square feet. In addition thereto, and unless a variance is granted therefor as provided herein. The term "enclosed dwelling area" as used in this Section 1 shall mean the total enclosed area within a dwelling subject to heating and cooling; provided, that the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating and cooling.

Section 2. Setback Lines. No dwelling erected on a detached single-family residential lot (including garage) shall be constructed nearer to the lot lines than permitted by the Ordinances of the Town of Cary.

Section 3. Height and Accessory Building. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any detached single-family residential lot other than a detached single family dwelling not to exceed two (2) stories in height, unless the Architectural Committee approves in writing a variance permitting a structure of more than two stories, and a garage and small accessory building (which may include a pool house, servants' quarters, or guest facilities); provided, the use of such dwelling or accessory building does not in the opinion of the Architectural Committee overcrowd the site. Such accessory building may not be constructed prior to the construction of the primary dwelling. All garages must be attached to the main dwelling, unless the Architectural Committee approves in writing a variance permitting a detached garage.

Section 4. Multi-Family Use Prohibited. No multiplex residence or apartment house shall be erected or placed on, or allowed to occupy, any lot, and no dwelling once approved and constructed shall be altered or converted into a multiplex residence or apartment house.

Section 5. Trash Receptacles. Each lot owner shall provide receptacles for garbage in a screened area not generally visible from the road, or provide underground receptacles or similar facilities.

Section 6. Parking Spaces. Each lot owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said lot.

Section 7. Trees and Shrubs. The planting of flowering shrubs and trees is encouraged; however, no trees, bushes, shrubs, grasses or other vegetation whatever, may be removed, planted or installed from or on any lot without prior written approval of the Architectural Committee, based upon a site plan, landscaping plan or planting plan submitted to the Architectural Committee.

Section 8. Driveways. All driveways from the street to each house shall be hard-surfaced (brick, concrete, asphalt or other material approved in writing by the Architectural Committee). This approval may be waived by the Architectural Committee under unusual circumstances.

Section 9. Variances. The Architectural Committee shall be empowered with the right to grant, in writing, variances to the requirements imposed in Sections 1, 2 and 3 of this Article IV where unintentional errors occur or topographical conditions exist that would result in a minor violation of such restriction. Violations not in excess of twenty percent (20%) of the minimum requirements shall be deemed minor.

ARTICLE V

EASEMENTS

Section 1. Utility Easements. Some or all of the lots shall be subject to such easements for water lines, sanitary sewers, storm drainage, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the lots to this Declaration.

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Section 2. Service Line Easements . There is hereby reserved an easement ~~TEN~~ (10 ') feet in width along the side property lines and an easement ~~TEN~~ (10 ') feet in width along the rear property line of each lot for the purpose of installation, repair, maintenance, erection, construction and inspection of water lines, sewer lines, gas lines, electric lines, telephone lines, cablevision lines or other such utility or service lines and for drainage cuts and storm sewer lines; provided, that if both sanitary sewer and storm sewer lines are located within the same easement, the easement reserved herein shall be ~~FIFTEEN~~ (15 ') feet in width.

There are hereby reserved easements as shown on the recorded map or maps of the subdivision. In the event of a conflict in the width of any easement reserved herein or on the recorded map, the wider easement shall prevail. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

These reservations of easements expressly include the right to cut any trees, bushes, shrubs or growth, the grading, cutting or ditching of the soil and any other action necessary to complete installation.

Section 3. 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, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

Section 4. Underground Cables. Declarant reserves the right to subject the real property in this subdivision to a contract with Carolina Power & Light Company for the installation of underground electric cables which may require an initial contribution and/or the installation of street lighting, which will require a continuing monthly payment to Carolina Power & Light Company by the owner of each building.

Section 5. Easement for Benefit of Utility Company. An easement is hereby established for the benefit of any utility company for the setting, removing and reading of all utility meters as well as maintaining and replacing same.

ARTICLE VI

QUIET ENJOYMENT

No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

ARTICLE VII

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 or 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 to other owners.

ARTICLE VIII

TERM

These Protective Covenants are to run with the land and shall be binding upon all parties and all persons claiming under them until January 1, 2014, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the then owners of the lots in Silvercreek Subdivision (exclusive of any mortgage holder or trustee under a deed of trust), it is agreed to modify these Protective Covenants in whole or in part, or to terminate them. Such modification or termination shall not be effective until the recording of a document of modification or termination in the Office of the Register of Deeds of Wake County properly executed and acknowledged by the majority so agreeing.

ARTICLE IX

ENFORCEMENT

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

ARTICLE X

SEVERABILITY

Invalidation of any one of these covenants or any part thereof by judgment or court order in no wise affects any of the other provisions which shall remain in full force and effect, and the failure of any person or persons to take action to enforce the violation of any of these covenants and restrictions shall not be construed as a waiver of any enforcement rights and shall not prevent the enforcement of such covenant or covenants in the future.

IN TESTIMONY WHEREOF, the Declarant has caused this instrument to be executed in its corporate name by its President, attested by its Secretary, and its corporate seal to be hereunto affixed, by order of its Board of Directors duly given, all as of the day and year first above written.

SILVERCREEK OF CARY, L.L.C., a North
Carolina Limited Liability Company (SEAL)

By: Thomas L. Fonville (SEAL)
Thomas L. Fonville, Signatory Member

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STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

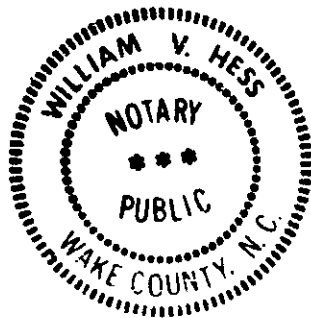
I, the undersigned Notary Public of the County and State aforesaid, certify that Thomas L. Fonville personally came before me this day and acknowledged that he is a signatory member of Silvercreek of Cary, L.L.C., a North Carolina Limited Liability Company, and that said writing was signed by him in behalf of said limited liability company as his act and deed and as the act and deed of said limited liability company.

Witness my hand and official stamp or seal, this 9 day of MARCH, 1995.

W. V. Hess

Notary Public

My Commission Expires: 1-6-96



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate ___ of

William V. Hess

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 P. Anne Redd
Asst./Deputy Register of Deeds

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EXHIBIT A

BEING all of that _____ acre parcel of land shown on that map entitled "Lots 1-19 & 70-82, Phase I Silvercreek Subdivision" dated January 18, 1995 by Withers & Ravenel Engineering and Surveying, Inc. recored in Book of Maps 1995, page 206 Wake County Registry.