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PREPARED BY AND RETURN TO:
Poyner & Spruill (KPS)

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

000278

THIS DECLARATION, made on the date hereinafter set forth by BRANT CREEK DEVELOPERS, INC., a North Carolina corporation hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in or near the Town of Cary, County of Wake, State of North Carolina, which is more particularly described as follows:

As set forth on Exhibit A attached hereto and hereby incorporated by reference.

; and

FOR REGISTRATION
88 MAY -2 PM 2:54
KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

WHEREAS, by Declaration of Annexation recorded in Book 3741, Page 363, Wake County Registry said property has become a part of Silverton Subdivision, a planned unit development, wherein all of the property described above shall be held, sold, and conveyed subject to the provisions of that Declaration of Covenants, Conditions and Restrictions of Silverton Subdivision recorded in Book 3715, Page 203, Wake County Registry, as the same now is or is hereafter amended, which provisions are herein incorporated by reference; and

WHEREAS, Declarant desires to further subject said property to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of further

enhancing and protecting the value, desirability and attractiveness of the real property.

NOW THEREFORE, Declarant hereby declares that all of the properties 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 the real property and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Windbrooke Townhomes Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of "Blocks" and the Common Area.

Section 5. "Blocks" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties which are "Reserved For," or designated for "Lots".

Section 6. "Declarant" shall mean and refer to Brant Creek Developers, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

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

Section 8. "Common area(s)" shall mean and refer to all land within the Property owned by the Windbrooke Townhomes Association, Inc., for the common use and enjoyment of the owners, together with all water and sewer lines located on and serving properties which are located outside dedicated public easements and city rights-of-way, except water and sewer lines located on a lot which serves only that lot. Said Common Area shall be maintained by the Association. The Common Area to be owned by the Association is described as follows: (Description to be inserted upon recordation of the phase one plat).

Section 9. "Community Common Area" shall mean all real property within Silverton Subdivision owned by Silverton

Homeowners Association, Inc. along with facilities and improvements erected thereon, for the common use and enjoyment of all members of the Silverton Homeowners Association, Inc.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment ingress and egress in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility leased by the Association for use by the Members.

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of

members agreeing to such dedication or transfer has been recorded.

(d) the right of the Association to limit the number of guest of members;

(e) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(f) the right of the individual members to the exclusive use of parking spaces as provided in this Article;

(g) easements as provided in Article XI hereof.

(h) the right of the Declarant or the Association to exchange Common Area.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the common areas as shown upon the recorded map referred to in the premises of this Declaration, to the Windbrooke Townhomes Association, Inc., free and clear of all liens and encumbrances, at the time or prior to the conveyance of the first lot in each phase, except utility and

drainage easements and easements to governmental authorities. Similarly, the Declarant will convey to the Windbrooke Townhomes Association, Inc., upon the same conditions and for the same uses and purposes, common areas which are parts of any additional properties that are annexed by it in the future.

Section 4. Parking Rights. The owner or owners of each lot shall be entitled to one automobile parking space and to the use of at least one additional parking space (provided, the Association, in its discretion, may permit the use of more than one additional space), and the parking space shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking spaces. No boats, trailers, campers or recreational vehicles shall be parked within the Common Area, greenways or rights of way of any public or private street in or adjacent to the Property. All boats, trailers, campers or recreational vehicles shall be parked only in such areas designated for parking such vehicles and upon such terms and conditions as shall be established by Silverton Homeowners Association, Inc., its successors or assigns.

Section 5. TV Antennas and Cablevision. The Association may contract for the provision of a central television antenna for the convenience of the members, or, in the absence of the availability thereof, may supply cablevision and the cost of either of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television or radio antennas or dishes on individual lots.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of both the Silverton Homeowners Association, Inc. and 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 classes of voting membership:

Class A. Class A members shall be all 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. 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. No fractional vote shall be permitted.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time

stated in Sub-paragraph (6) below, such additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article VII, Section 2, below, or

(b) January 1, 1993.

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 Properties, 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, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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 of the Properties and in particular for the acquisition, improvement and maintenance of properties, including the maintenance, repair and reconstruction of any private streets on the Property or any storm water Impoundment Area situated on the Common Area required by the Town of Cary to comply with its erosion and sedimentation control ordinances, (such maintenance to include the cutting and removal of weeds and grass, the removal of trash and rubbish or any other maintenance necessary to keep the Impoundment Area in compliance with all applicable ordinances and statutes relative to said erosion and sedimentation control and which in the judgment of Windbrooke Creek Townhomes Association, Inc. is desirable to keep the Impoundment Area neat in appearance; provided, however, this covenant to maintain said area as an Impoundment Area shall terminate at such time as maintenance and preservation of the Impoundment Area as a water impoundment area is no longer required by applicable local ordinances or state statutes), services and facilities devoted to this purpose and related to the exterior maintenance of the residences situated upon the lots within the Properties or for the use and enjoyment of the Common Area and Water Impoundment Area, 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 Area, the procurement and maintenance of insurance in accordance with the By-Laws and this Declaration, the employment of attorneys to represent the Association when necessary, the payment on leases of recreational facilities for use by the Members, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Eight Hundred and Ten and NO/100 Dollars ($810.00) per Lot which assessment shall be payable monthly, quarterly, semi-annually or annually as determined by the Board.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of membership by up to ten per cent (10%) of the previous year's maximum annual assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 3(a) above by a vote of the members for the next succeeding five years and at the end of each such period of five years, for each succeeding period of five years, provided that any such charge shall have the assent of two-thirds (2/3) of the votes of each

class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an indicent to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under

Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) 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 (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Notwithstanding any provision in this Declaration, the Articles of Incorporation and By-laws to the contrary, no lot shall be subject to the assessment until the first day of the month following the issuance of a building permit for such lot by the Town of Cary, and the assessment for lots for which such permits have been issued but which are not under a completed roof, may be a lesser amount as fixed by the Board of Directors of the Association, but shall not be less than twenty-five percent (25%) of the regular assessment; provided, however, if building permits are issued for proposed lots prior to the date a map showing such lots is recorded in the Wake County Registry, such lots shall not be subject to the assessment until the first day of the month following the recording of the map.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots as provided in Section 6 above. The first annual assessment for each lot shall be adjusted 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 each annual assessment period. Written notice of the annual assessment shall be sent to every 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 specified Lot have been paid, which certification shall be binding on the Association.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 10 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against he property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for

herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to 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 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Responsibility for Maintenance of Private Streets and Driveways. The maintenance responsibility of any private streets and driveways as shown on the aforesaid recorded map shall rest with the Association pursuant to the provisions of the Cary Town Code, which section provides substantially in part that in no case shall the Town of Cary be responsible for failing to provide any emergency or regular fire, police, or other public service to the property and/or

occupants when the failure is due to inadequate design or construction, blocking of access routes, or any other factor within the control of the developer, the Association, or occupants.

Section 12. Working Capital. In order to insure that the Association will have sufficient monies available to meet operational needs during the initial months of its existence, the Association has established a Working Capital Fund. At the time of the closing of the first sale of each Lot upon which a dwelling is situated, the purchaser thereof shall pay into such Fund an amount equal to two-twelfths (2/12th) of the current annual assessment established by the Association. No such payment made into the Working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of this Declaration and the By-Laws.

ARTICLE V

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the dwelling upon the Properties and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls, 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 of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and 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 the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, 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 negligent or willful acts or omissions.

Section 4. The owner of any Lot may construct, reconstruct, repair, or extend a party wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent

or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to 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 successors in title.

Section 7. 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 property owner has a right of contribution as provided in this Article V, request of the adjoining property owner or property owners a certificate that no contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request without charge, which certification shall be binding on the owner giving same; provided, however, that where the adjoining property owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. In the event of any dispute arising concerning party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE VI

ARCHITECTURAL CONTROL

No building, fence, signs, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Boards of Directors of the Association and the Silverton Homeowners Association, Inc., or by their Architectural Committees. The architectural committee of the Windbrooke Townhomes Association, Inc. shall be composed of three (3) or more representatives appointed by the Board. In the event said Boards, or their designated committees, fail to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to them, approval will not be required and this Article will be deemed to have been fully complied with; provided, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain certain erroneous data or fail to present accurate information upon which the Boards or their committees can arrive at a decision.

The said Boards or their committees shall have the right, at their election, to enter upon any lot during construction, erection, or installation of improvements or alterations

ARTICLE VI

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No building, fence, signs, wall or other structure shall be commenced, erected or maintained upon the Properties and Lots, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Boards of Directors of the Association and the Silverton Homeowners Association, Inc., or by their Architectural Committees. The architectural committee of the Windbrooke Townhomes Association, Inc. shall be composed of three (3) or more representatives appointed by the Board. In the event said Boards, or their designated committees, fail to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to them, approval will not be required and this Article will be deemed to have been fully complied with; provided, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain certain erroneous data or fail to present accurate information upon which the Boards or their committees can arrive at a decision.

The said Boards or their committees shall have the right, at their election, to enter upon any lot during construction, erection, or installation of improvements or alterations

to inspect the work being undertaken in order 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 VII

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property except as provided in Section 2 of this Article VII shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. If within five years of the date of incorporation of this Association, the Declarant should develop additional land within the boundaries shown on the general plan of Windbrooke Townhomes heretofore submitted to the Federal Housing Administration (FHA), the Veteran Administration (VA), FNMA and the Town of Cary, or subsequently submitted and approved for addition to the general plan such land may be annexed by the Declarant without the consent of members provided that the FHA or VA, FNMA, and the Town of Cary determine that the annexation is in accord with the general plan heretofore approved by them.

Section 3. The Property herein described, and any properties hereafter annexed in conformity with the provisions of this Declaration, is a part of the Silverton Subdivision, a planned unit development, as described in the Declaration of Covenants, Conditions and Restrictions for Silverton Subdivision, recorded in Book 3715, Page 203, Wake County Registry, as the same now is or hereafter amended, and as shown upon plans for Silverton Subdivision heretofore filed with the Town of Cary, North Carolina.

Every owner of a lot within the Property shall be a member of the Silverton Homeowners Association, Inc. and shall be subject to the provisions of said Declaration for Silverton and to the Bylaws, rules, and regulations of said Homeowners Association.

ARTICLE VIII

EXTERIOR MAINTENANCE

Section 1. In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes fences installed by Declarant or the Association, exterior post lights (excluding electricity therefor), and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens, awnings, and if permitted, approved additions to dwellings made after completion of the initial dwelling (unless maintaining of such addition is affirmatively assumed by the Association). 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 by the owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. Any owner who fences in his rear yard, if permitted, shall be required to maintain such area. No such maintenance by a lot owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association any such owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the owner's maintenance rights for a period not to exceed one year. The Owner shall not plant any vegetation in the front yard except

with the prior written approval of the Association. The Association hereby reserves an easement unto itself, its agents, and employees for access over the Common Area and lots for the purpose of performing the maintenance and repairs provided for in this Declaration.

(As a matter of information to future members of this Association, the developers wish to make it known that it is a part of the original plan of development to construct a variety of dwellings with a variety of exteriors for the good of the entire subdivision. Some dwellings may require far more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of this subdivision as originally planned, are in accord with Declarant's belief that all members of the Association will be benefited by the variety of exteriors and, therefore, the Association should provide exterior maintenance and make a uniform rate of charge without regard to the actual cost of maintenance of each dwelling.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, or employees, or subcontractors, the cost of such maintenance and repair will be added to the assessment to which such lot is subject.

Section 2. Maintenance by Owner. In cases where maintenance or repair is required in this Declaration to be done or made by an Owner, and such maintenance or repair has not commenced within sixty (60) days, or if commenced, is not completed within a reasonable time thereafter, the Association may, upon thirty (30) days written notice to such owner, make or complete such maintenance or repairs, and the cost thereof shall be an additional assessment applicable only to such lot and Owner, and shall be payable as determined by the Board of Directors.

ARTICLE IX

INSURANCE AND RECONSTRUCTION

Section 1. Insurance. The insurance which shall be carried upon the Townhomes shall be governed by the following provisions:

(i) The Association may procure and maintain casualty and hazard insurance on the townhome dwellings situation on the townhome lots in an amount equal to the full insurable value thereof, exclusive of excavation and foundation and shall procure and maintain such insurance coverage on all property owned by the Association. Such coverage, shall afford protection against the following:

(a) loss or damage by fire and other hazards covered by standard extended coverage endorsement; and

(b) such other risks as from time to time customarily shall be covered with respect to buildings similar to the

Buildings in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, subject to such deductible amounts not in excess of $1,000.00 as the Board shall determine. The policy or policies providing such coverage (hereinafter called "Casualty Insurance") shall provide that the coverage thereof shall not be terminated for non-payment of premiums without at least ten (10) days' written notice to each Unit or Lot mortgagee. All Casualty Insurance policies shall be purchased by the Association for the benefit of the Grantor, the Association, the Unit or Lot Owners and their respective mortgagees, as their interests may appear, and shall provide (a) for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the Units or Lots, if any, and (b) that the insurer waives its rights of subrogation against Unit or Lot Owners, Occupants and the Association. All Casualty Insurance policies shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association, as trustee.

(ii) The Association shall insure itself, the members of the Board, the Unit or Lot Owners and the Occupants against Liability for personal injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Areas including

without limitation water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverage, such insurance to be in such amounts as is determined necessary and adequate from time to time by the Board. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit or Lot Owners as a group or to a Unit or Lot Owner. In the event the insurance effected by the Association on behalf of the Unit or Lot Owners and Occupants against liability for personal injury or property damage arising from or relating to the Common Areas shall, for any reason, not fully cover any such liability, the amount of any deficit shall be assessed at a uniform rate against all Unit or Lot owners without requirement of an affirmative rate of the members.

(iii) Premiums upon insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies and shall be a part of the Annual Assessment.

(iv) Each Unit or Lot Owner may, at his own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of his Unit and Casualty Insurance affording coverage upon his Unit and property inasmuch as the same will not be insured by the Association, but such Casualty Insurance shall provide that it shall be without contribution as against the Casualty Insurance purchased by the Association or shall be written by the carrier of such Casualty

Insurance and shall contain the same waiver of subrogation as that, referred to in subparagraph (i) above.

Section 2. Responsibility for Reconstruction or Repair. If any portion of the Common Areas or Units or Lots shall be damaged by perils covered by the Casualty Insurance, the Association shall cause such damaged portion to be promptly reconstructed or repaired to the extent of the funds made available to the Insurance Trustee, as hereinafter provided, and any such reconstruction or repair shall be substantially in accordance with the original plans of the Unit or Lot damaged or destroyed.

Section 3. Procedure for Reconstruction or Repair.

(i) Immediately after a casualty causing damage to any portion of the Common Areas or Units or Lots, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

(ii) If the proceeds of the Casualty Insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any) one or more special assessments shall be made (without requirement of an affirmative vote of the Members) against all Unit or Lot Owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such

special assessments shall be deposited with the Insurance Trustee.

(iii) The proceeds of the Casualty Insurance referred to in Subsection (i), Section 1 of this Article IX and the sums deposited with the Insurance Trustee from collections of special assessments against Unit or Lot Owners as account of such casualty, shall constitute a construction fund which shall be disbursed to the Insurance Trustee and be applied by the Insurance Trustee to the payment of the cost of reconstruction and repair of the Common Areas, Units or Lots from time to time as the work progresses. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair from which the fund is established, such balance shall be disbursed to the Association.

(iv) Each Unit or Lot Owner shall be deemed to have delegated to the Board his right to adjust with insurance companies all losses under the Casualty Insurance policies referred to in Subsection (i), Section 1 of this Article IX.

Section 4. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed; provided however, the Board of Directors shall have

satisfied this provisions, and shall not be liable to the members for failure to maintain sufficient coverage, if the amount of coverage maintained equals or exceeds the cost of replacement of all improvements as reflected on an annual appraisal made by an M.A.I. appraiser or by the insurance carrier, as selected by the board.

ARTICLE X

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each lot and the Common Areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for temporary office of the Declarant and/or model townhouses used by Declarant) shall be used except for residential purposes and for purposes incidental or accessory thereto.

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

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 or maintained provided that they are not kept or maintained for commercial purposes, or constitute a public nuisance. No animal shall be permitted upon the common area unless the same is under leash.

Section 5. Signs. Except for unit identification numbers required by the Cary Town Code, no sign shall be erected or permitted to remain on any lot or the common area, or on the rights-of-way of private or public streets within or adjacent to Windbrooke Townhomes except that a "For Sale" sign meeting the size requirements of the Cary Town Code may be placed directly in front of the unit being sold within eight (8) feet of the front face of the unit.

ARTICLE XI

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 and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Windbrooke Townhomes Association, Inc. shall have the power and authority to grant and establish upon, over, under and across

the Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties and Silverton Subdivision.

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.

All lots and common areas shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts, driveways and walls.

An easement is hereby reserved over every lot for the benefit of the Association to perform maintenance in accordance with Article VIII Sections (1) and (2) above.

ARTICLE XII

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 provi-

sions 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 one of these covenants or restrictions by judgment or court order shall in no way 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 they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners.

No amendment which would change or delete any provision herein required by the Town of Cary shall become effective until submitted to and approved by the Town; provided, however, if the Town fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with. Any amendment must be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 4. FHA/VA/FNMA Approval. As long as there is a Class B membership, the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration, the FNMA, and the Town of Cary: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 5. Duty to Maintain. It shall be the duty and responsibility of the Association to maintain the lots, yards, townhomes and common area to at least the same standard of maintenance as that of the Community Common Areas and facilities of Silverton Subdivision by Silverton Homeowners Association, Inc. and in conformity with the general plan of development and maintenance for Silverton Subdivision.

There is hereby created an easement for entry, which shall run with the land, in favor of the Silverton Homeowners Association, Inc. and its successors upon any lot, yard, townhome, and common area within Windbrooke Townhomes, or other areas annexed hereto to perform reasonable inspections pursuant to the requirements set forth in the Declaration of Covenants, Conditions and Restrictions for Silverton Subdivisions as heretofore referenced.

ARTICLE XIII

ELECTRICAL SERVICE

Declarant reserves the right to subject the above described property 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 property.

ARTICLE XIV

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. The prior written approval of each institutional holder of a first deed of trust on units in the property will be required for the following:

(a) The abandonment or termination of the townhome property except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) Any material amendment to the Declaration or to the Bylaws of the Association.

(c) The effectuation of any decision by the Association to terminate professional management and assume self management of the property.

Section 2. No unit may be partitioned or subdivided without the prior written approval of the first lien holder of the unit.

Section 3. Upon written request, any institutional holder of a first lien on a unit will be entitled to:

(a) inspect the books and records of the Association during normal business hours;

(b) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year; and

(c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

Section 4. Each institutional holder of a first mortgage on a lot shall be entitled to timely written notice of:

(a) Any event of substantial damage to or destruction of any unit or any part of the Common Area.

(b) If any unit or portion thereof or the common area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

(c) Of any default by the Lot mortgagor's obligation hereunder not cured within thirty (30) days of said default.

(d) A lapse, cancellation or material modification of any insurance policy or fidelity bond.

(e) Any proposed action that requires the consent of a specified percentage of mortgage holders.

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IN WITNESS WHEREOF, the undersigned being the Declar-

ant herein, has executed this Declaration this 28th day of March, 1988.

ATTEST:

BRANT CREEK DEVELOPERS, INC.

By _____ President

NORTH CAROLINA

WAKE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Daniel W. Nourse personally came before me this day and acknowledged that he is ____ Secretary of Brant Creek Developers, Inc., a North Carolina 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 him as its _____ Secretary. Witness my hand and official stamp or seal this 28th day of March, 1988.

Deborah S. Cameron
Notary Public

My Commission Expires:

3-18-89

DEBORAH S. CAMERON NOTARY PUBLIC WAKE COUNTY, N.C.

243-031788-8

BK4251PG0767

CONSENT OF MORTGAGEE

KNOW ALL MEN BY THESE PRESENTS: THAT

WHEREAS, the undersigned, NCNB NATIONAL BANK OF NORTH CAROLINA (HOLDER), is the owner and holder of the following described Deed of Trust which covers the property described in the annexed Declaration of even date herewith of which this is a part.

Deed of trust executed by Brant Creek Developers, Inc. dated July 17, 1987 recorded in Book 4066, Page 302, Wake County Registry, securing Promissory Note payable to Holder in the face amount of $2,600,000.00 and in which J. T. LINDLEY is named as Trustee;

WHEREAS, the undersigned Holder and Trustee, desire by the execution of this instrument to subordinate said Deed of Trust to the foregoing Declaration.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Holder and Trustee hereby consent to the execution and delivery of the foregoing "Declaration of Covenants, Conditions and Restrictions" for Windbrooke Townhomes and to the filing thereof in the Office of the Register of Deeds of Wake County, North Carolina, and that they do hereby further subject and subordinate said Deed of Trust to the foregoing instrument.

This 26 day of April, 1988.

NCNB NATIONAL BANK OF NORTH CAROLINA

ATTEST: Secretary

By Susan B Killian
Vice President

J. T. LINDLEY, Trustee (SEAL)

STATE OF NORTH CAROLINA

COUNTY OF Wake

Before me, the undersigned a Notary Public within and for the County and State aforesaid, personally appeared this day Susan B Killian and Lucia H Baker who, being by me first duly sworn, say that they are the Vice President and Asst Secretary, respectively, of NCNB National Bank of North Carolina, a corporation, that the seal affixed to the foregoing instrument in writing is the corporate seal of the corporation, and that said writing was signed and sealed by them in behalf of said corporation by its authority duly given. And the Vice President and Asst Secretary acknowledged the writing to be the act and deed of the corporation.

WITNESS my hand and notarial seal, this 26 day of April, 1988.

Patricia K Abrams
Notary Public

My Commission Expires:

PATRICIA K. ABRAMS NOTARY PUBLIC WAKE COUNTY, N.C.

243-031788-8

BK4251PG0769

NORTH CAROLINA
Wake COUNTY

I, Patricia K Abrams a Notary Public in and for the County and State aforesaid, do hereby certify that J. T. Lindley, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 21 day of April, 1988.

Patricia K Abrams
Notary Public

My Commission Expires:

PATRICIA K. ABRAMS NOTARY PUBLIC WAKE COUNTY, N.C. 91

NORTH CAROLINA -- WAKE COUNTY

The foregoing certificate S of Deborah S. Cameron 1 E 1
Patricia K. Abrams

Notar(y)(ies) 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 Sandra C. Smith
Asst./Deputy Register of Deeds

EXHIBIT A

BEING all of Phase One, Section One, WINDBROOKE, inclusive of that certain 0.0986 acre parcel identified as "Common Area (ADD)" but exclusive of that certain 0.0986 acre parcel identified as "Open Space (DELETE)," all according to plat entitled "Record Plat, Windbrooke, Phase One, Section One, Cary, Wake Co., N.C.," dated 12-27-87, prepared by Bass, Nixon and Kennedy, Inc., Consulting Engineers and recorded in Book of Maps 1988, Page 495, Wake County Registry, North Carolina