

**AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
SILVERTON – UNIT ONE, A SUBDIVISION,
TO ADD
VILLAS AT SILVERTON – PHASE ONE**

THIS AMENDMENT is made this 27 day of August, 2003, by **THE MITCHELL COMPANY, INC.**, an Alabama corporation, hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant executed a Declaration of Covenants, Conditions and Restrictions for Silverton - Unit One ("Declaration") and recorded same in Official Records Book 4494 at page 0205 of the Public Records of Escambia County, Florida; and

WHEREAS, Declarant executed an amendment thereto titled First Amendment to the Declaration of Covenants, Conditions and Restrictions for Silverton-Unit One, A Subdivision recorded in OR Book 4546, page 0078 of the Public Records of Escambia County, Florida; and

WHEREAS, Declarant executed another amendment thereto titled Amendment to Declaration of Covenants, Conditions and Restrictions for Silverton Unit - One, a Subdivision to Add Silverton - Unit Two and recorded same in Official Records Book 4786, at page 391 of the public records of Escambia County, Florida; and

WHEREAS, the Declaration contemplated the addition of multiple units; and

WHEREAS, Declarant now desires to further amend the Declaration to add Villas at Silverton - Phase One, which is owned by Declarant and the legal description for which is as set forth on **Exhibit "A,"** incorporated herein by reference.

NOW THEREFORE, Declarant hereby declares that all of the Property described on **Exhibit "A"** shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions set forth in the Declaration as amended (except as otherwise specifically set forth herein) which is for the purpose of protecting the value and desirability of said Property and which shall run with the Property and be binding on all parties having any right, title or interest in the Property described on the attached **Exhibit "A,"** or any part thereof, and upon all persons deraining title through the Declarant, their respective heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

1. Terms contained in this Amendment shall have the same meaning as set forth in the Declaration, as amended, unless specified otherwise in this Amendment.

2. "This Amendment" shall mean this instrument entitled Amendment to the Declaration of Covenants, Conditions and Restrictions for Silverton – Unit One to Add Villas at Silverton – Phase One.

3. "Properties" or "Property" shall now include the property described on the attached **Exhibit "A."**

4. The definition of "Common Areas" shall be expanded to include Parcels A and B and the Drainage, Maintenance and Access Easements and the Screening and Non-Access Easements reflected on the plat of Villas at Silverton – Phase One.

5. The term "Plat" shall now include the plat of Villas at Silverton – Phase One recorded in the public records of Escambia County, Florida.

6. "Maintenance Easement" shall mean the 2.0, 4.0 and 10.0 foot Maintenance and Access Easements more accurately reflected on the plat of Villas at Silverton – Phase One.

7. "Type A Lots" shall mean and refer to all Lots in Villas at Silverton – Phase One, as reflected on the Plat of Villas at Silverton – Phase One.

ARTICLE II
PROPERTY RIGHTS

In addition to the provision for Property Rights set forth in the Declaration, as amended, the following shall apply to Villas at Silverton - Phase One.

Section 1. Common Area Easements. Every Owner of every Lot shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with title to every Lot (even if not referenced in the document of conveyance) for the following purposes:

- (a) Displaying and maintaining a sign identifying the subdivision on Parcels A and/or B as shown on the Plat of Villas at Silverton - Phase One.

- (b) Ingress and egress over the Maintenance and Access Easements as shown on the Plat of Villas at Silverton – Phase One.
- (c) Stormwater runoff over the Drainage Easements as shown on the Plat of Villas at Silverton – Phase One.
- (d) Such other rights and easements as the Association may determine to be suitable for the use and enjoyment of the Owners for purposes of maintenance as set forth in Article IV of this Amendment.

Section 2. Miscellaneous Easements. There is granted to each Owner of Type A Lots, the Association, and the Declarant a non-exclusive, perpetual easement over, across and/or under each other Type A Lot for the following purposes:

- (a) Storm water runoff from roofs or other structures.
- (b) Any eave or other overhanging structure providing such structure shall not exceed two (2) feet beyond the common dividing line between Owner's Lots.
- (c) Repairs and maintenance to any exterior wall, party or dividing wall, roof eave, column or the like as may reasonably require temporary use of such adjoining Owner's Lot.
- (d) Maintenance and repair of underground electrical, water, television cable, sewer lines and telephone lines serving each Owner's Lot.

In addition to the foregoing easement, each Owner, the Association and Declarant are granted a perpetual, non-exclusive easement for ingress and egress over the Maintenance and Access Easements to conduct such maintenance as is required herein.

Use and exercise of the foregoing easements for any of the purposes stated above shall not result in costs and/or expenses to the Owner over whose property the easement is being exercised unless for some reason the exercise directly benefits such Owner. Additionally, in exercising said easement, only such portion of the subject property that is required to accomplish one or more of the above-stated purposes shall be encumbered and subjected to the easement created herein and such shall not affect the location of a Type A structure constructed on such Lot nor any subsequent improvements as may be added by an Owner.

Notwithstanding anything contained in these restrictions either expressed or implied to the contrary, the use of any easement herein granted or reserved shall be subject to reasonable rules and regulations which shall be promulgated from time to time by the

Association, but such shall not diminish nor impair the intent of the easement rights created herein.

Section 3. Party Walls. The following special covenants, restrictions and easements shall apply to all Type A Lots:

(a) Dividing walls of adjoining dwellings on Type A Lots erected on the premises described herein shall be common walls or party walls, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of maintaining each party wall shall be borne equally by the Owners on either side of said wall. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

(c) In the event of damage or destruction of said wall from any cause, other than the negligence of either party thereto, the then-Owners shall, at joint and equal expense, repair or rebuild said wall, and each party, his successors and assigns, shall have the right to the full use of said wall so repaired or rebuilt. If either party's negligence shall cause damage to or destruction of said wall, such negligent party shall bear the entire cost of repair or reconstruction.

(d) Neither party shall alter or change said party walls in any manner, interior decoration excepted, and said party walls shall always remain in the same location as when erected, and each party to said common or division wall shall have a perpetual easement in that part of the premises of the other on which said party wall is located for party wall purposes.

(e) Each party shall permit the quiet enjoyment of the adjoining party in the party walls and will permit or commit no damage or destruction of the said party walls or of the foundation supporting the same and at all times shall give and grant to each adjoining party the right of full lateral support to the adjoining party's individually demised premises.

(f) Neither party to said party wall shall have the right of entry through the party wall into the premises of the adjoining party, either directly or indirectly.

(g) This party wall covenant and agreement shall inure to the benefit of and apply to any existing or subsequent mortgage holder on the premises described herein.

(h) The rights and obligations set forth herein for the Owners of common walls or party walls shall also apply to any roofs, foundations or other portions of the structure that shall be necessarily used or enjoyed by the Owners of adjacent dwellings.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS**

It is the intention of the Declarant, by this Amendment, to annex the Property described on the attached **Exhibit "A"** as Villas at Silverton – Phase One and bring same under the jurisdiction of the Association as contemplated by provisions of Article VIII, Section 6 of the Declaration, as amended.

ARTICLE IV **COVENANT FOR SUBDIVISION MAINTENANCE ASSESSMENTS**

1. The provisions of Article IV, Covenant for Maintenance and Assessments contained in the Declaration, as amended, shall apply to all Lots in Villas at Silverton – Phase One. For purposes of Silverton Units One and Two, and the Villas at Silverton - Phase One, each Owner shall be responsible for a fractional share of the total annual assessment and any special assessment for each Lot owned according to the formula set forth in Article IV, Section 6 of the Declaration until future phases are annexed. The initial annual assessment shall be \$180.00.

2. Additional Annual Assessments for Type A Lots only.

(a) Purpose: In addition to the annual and any special assessment for Lots in Villas at Silverton – Phase One, Type A Lots shall be subject to additional, annual assessments ("Additional Maintenance Assessments") for the purposes of funding the expense of painting the exterior of all dwellings constructed on the Type A Lots (excluding doors, windows, shutters and railings) roof maintenance, repair and/or replacement as specified herein and for pruning bushes, weeding and mowing grass for all Type A Lots upon which a dwelling is constructed. Notwithstanding anything in the Declaration to the contrary, the Association shall have the obligation to paint the exterior of all dwellings on the Type A Lots (excluding doors, windows, shutters and railings), to prune bushes installed by the Developer (or any replacements thereof), weed landscaped areas on Type A Lots and mow the grass for all Type A Lots upon which a dwelling has been constructed and perform such other maintenance as specified elsewhere herein. The additional duties of the Association created by this paragraph are hereinafter called the "Additional Maintenance Obligations." The supervision of the additional Maintenance Obligations may be delegated to a committee appointed by the Board of Directors of the Association which committee shall be composed of only Type A Lot owners ("Type A Lot Owners

Committee"). The initial Additional Maintenance Assessment for Type A Lots shall be Three Hundred Seventy Two and no/100 (\$372.00) Dollars, payable in semi-annual installments of One Hundred Eighty Six and no/100 (\$186.00) Dollars, in advance on January 1 and July 1 of each year per year, which shall constitute a lien on a Lot in the same manner as the Annual Assessment and be enforced in this same manner. Priorities of the lien, effect of nonpayment, and remedies of the Association for nonpayment shall all be the same as provided for annual and special assessments in Article IV of this Declaration.

(b) The Owner of a Type A Lot shall be responsible for maintenance and repair of any and all improvements located within the Lot or dwelling which are not to be performed by the Association as specified above. The Owner of a Type A Lot shall be responsible for painting, replacing and caring for all windows, shutters, exterior doors and railings. Painting shall be done with the same color as originally supplied by the Declarant unless specified otherwise by the Architectural Control Committee. Any replacements or repairs to the shutters, windows or railings shall be identical to those installed by the Declarant unless approved otherwise by the Architectural Control Committee. The Owner of a Type A Lot shall be responsible for watering, fertilizing and replacing any landscaping installed on the Owner's Type A Lot and such replacements shall maintain the original landscape plan unless otherwise approved by the Architectural Control Committee.

(c) Each owner of a Type A Lot shall be responsible for removing any items of personal property from the rear yard in advance of any scheduled maintenance to be performed by the Association to allow such maintenance to be efficiently and timely performed. Failure to cooperate shall excuse the Association from such maintenance obligations.

(d) The Association may impose a special assessment for capital improvements for such improvements as would be applicable to Type A Lots only ("Additional Special Assessments"). Such Additional Special Assessments constitute a lien on Lots in the same manner as a special assessment referred in the Declaration. Priorities of the lien, effect of nonpayment, and remedies of the Association for nonpayment shall all be the same as provided for annual and special assessments in Article IV of this Declaration. The Association may delegate the duty of determining the need for, and the amount of, any Additional Special Assessment to the Type A Lot Committee.

(e) The Association shall annually establish a separate budget for the Additional Maintenance Assessment created by this section. The duty of creating such budget may be delegated to the Type A Lot Owners Committee. The separate budget for the Additional Maintenance Assessment shall be approved in the same manner as provided in the Declaration for annual assessments and a vote of two-thirds of each class of Type A Lot Owners shall be required if this Additional Maintenance Assessment is to be

increased in excess of 10 percent of the prior year's Additional Maintenance Assessment, all as provided in the Declaration for regular assessments. The funds collected as Additional Maintenance Assessments or Additional Special Assessments for Type A Lots shall be kept in a separate account maintained for the above stated purposes. The funds shall not be co-mingled with the annual or special assessments for Silverton Unit One, Two, or future phases.

(f) A vote of two-thirds of the Type A Lot Owners shall be required to amend this paragraph 2, except that so long as Declarant still holds one Type A Lot for sale, no amendment shall be effective without Declarant's approval.

(g) The Type A Lot Owners Committee may call meetings of the Type A Lot Owners for purposes of determining Additional Maintenance Assessments and/or Additional Special Assessments or such other matters as are specific only to Type A Lots. Such meetings shall be held according to the same requirements for notice, quorum and voting as applicable to the Association with quorum and voting requirements being relative to the total number of Lots in Villas at Silverton – Phase One only.

ARTICLE V ARCHITECTURAL CONTROL

The provisions of Article V, Architectural Control contained in the Declaration, as amended, shall apply to all lots in Villas at Silverton – Phase One.

ARTICLE VI BUILDING SETBACK LINES, CONSTRUCTION RESTRICTIONS AND CONSTRUCTION REQUIREMENTS

Section 1. Building Setback Lines and Construction Restriction and Construction Requirements. All of the provisions of Article VI, Building Setback Lines, Construction Restrictions and Construction Requirements contained in the Declaration, as amended, shall apply, as appropriate, to the Lots in Villas at Silverton – Phase One, subject to the following amendments for Type A Lots:

(a) Duty to Rebuild or Repair and Insurance Coverage.

(1) Each Lot Owner shall at his expense provide casualty insurance in an amount equal to the maximum insurable replacement value (excluding foundation and excavation costs) of all improvements located on his Lot, such coverage to afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be

customarily covered with respect to buildings similar in construction, location and use as the building on each Owner's Lots, including but not limited to, vandalism and malicious mischief. Additionally, each Owner shall provide public liability in such amounts and with such coverages as shall be required by the Association Board of Directors with cross-liability endorsements to cover liabilities of the Owners as a group to an individual Owner, and such other insurance as the Association Board of Directors may from time to time determine to be desirable. Each Owner covenants to keep on file with the Association copies of the required policy(ies). If an Owner shall fail to produce the copies of policy(ies) or other evidence of coverage satisfactory to the Association, then the Association may purchase the required coverages and the related premiums shall be considered a special assessment upon the premises of such Owner.

(2) In the event of damage to or destruction of any improvements located within the Lots from fire, windstorm, water or any other cause whatsoever, the Owner shall, within a reasonable time, cause said improvements to be repaired or rebuilt so as to place the same in as good and tenantable condition as existed before the event causing such damage or destruction; failure to do so shall constitute a breach of these covenants. All insurance proceeds for loss or damage to any unit or any other improvement upon any Lot shall be used to assure the repair or rebuilding of any such improvements.

(3) The Association shall have a lien on all such insurance proceeds, regardless of whether it is named in any insurance policy, to enforce the intent of the foregoing provision with such lien being subordinate to the rights of any mortgagee.

(4) Roof Replacement or Repair. The maintenance and/or replacement of the roof of any dwelling located in Villas at Silverton – Phase One shall be performed by the Association periodically as necessary to maintain such in a water-tight condition.

(b) Minimum Square Footage for Type A Lots. Dwellings constructed on Type A Lots shall have a minimum square footage of 800 square feet of heated and cooled area which shall not include open porches, decks, or patios, nor shall it include garage areas if such are constructed.

ARTICLE VII **GENERAL RESTRICTIONS**

The provisions for Article VII, General Restrictions contained in the Declaration, as amended, shall apply, as appropriate, to all Lots in Villas at Silverton – Phase One. Additionally, the following General Restrictions shall apply to all Type A Lots:

Section 1. Regulation of Household Pets. The allowance of household pets to remain on any Lot shall be strictly subject to the provisions of any rules or regulations reasonably adopted by the Association and such regulations, at a minimum, shall require that the excrement of all dogs be immediately removed by the Owner of such dog through the use of a "pooper scooper" or similar device. Notwithstanding anything to the contrary contained herein, no pet shall be allowed to remain on any Lot if such pet is determined by the Association to be a nuisance to other Lot Owners or to the Subdivision. The Association shall have the sole and exclusive right to make such a determination and such a determination by the Association shall be final and the Lot Owner who owns such pet shall be required to remove said pet from the Subdivision within five (5) days after such determination is made.

Section 2. Access for Maintenance. To accommodate the need for unrestricted access through the Maintenance Easement areas as defined in this Amendment, such Maintenance Easement areas shall not be enclosed within fencing constructed by Lot Owners. In the event any fencing is placed by a Lot Owner along the boundary of the Maintenance Easement, such fencing shall contain at least one (1) gate which shall remain unlocked to afford access by the Association and its employees and contractors to accomplish the additional Maintenance Obligations of the Association set forth herein. If such gate is locked, the Association shall provide notice to the Lot Owner and shall be excused from any additional Maintenance Obligations for the portion of the dwelling that is inaccessible until such time as access is provided. All rear yards of every Lot shall be sodded. The Association will mow the rear yard.

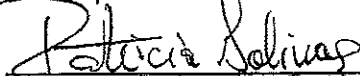
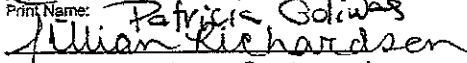
Section 3. Parking. Parking for Owners of Type A Lots shall be confined to paved areas on each lot constructed for such purposes.

ARTICLE VIII GENERAL PROVISIONS

The provisions for Article VIII, General Provisions contained in the Declaration, as amended, shall apply to all Lots in Villas at Silverton – Phase One.

IN WITNESS WHEREOF, the Declarant has executed this Amendment to the Declaration of Covenants, Conditions and Restrictions for Silverton Unit One, a Subdivision to Add Villas at Silverton – Phase One, this 27th day of August, 2003.

Signed, sealed and delivered
in the presence of:


Print Name: Patricia Solinas

Print Name: Jillian Richardson

DECLARANT:

THE MITCHELL COMPANY, INC., an
Alabama corporation

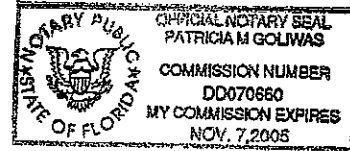
By: 
Ronald G. Tuttle, Its Sr. Vice-President

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 27th day of August, 2003, by Ronald G. Tuttle, Senior Vice-President of THE MITCHELL COMPANY, INC., an Alabama corporation, who is personally known to me or produced _____ as identification.

Patricia M. Goliwas
NOTARY PUBLIC

This instrument prepared by:
John W. Monroe, Jr.
EMMANUEL, SHEPPARD & CONDON
30 South Spring Street
Post Office Drawer 1271
Pensacola, Florida 32591-1271
File No. M530-



U:\PMG\Mitchell.Silverton\Amendment to DOC_081803.doc

EXHIBIT "A" TO ARTICLES OF INCORPORATION
OF SILVERTON OF PENSACOLA HOMEOWNERS ASSOCIATION, INC.

LAND DESCRIPTION:

A PARCEL OF PROPERTY LOCATED IN SECTION 20, TOWNSHIP 1 SOUTH, RANGE 30 WEST ESCAMBIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE POINT OF INTERSECTION OF THE WEST LINE OF LOT 4, ACCORDING TO PLAT RECORDED IN DEED BOOK "P", AT PAGE 375 OF THE PUBLIC RECORDS OF SAID COUNTY, AND THE CENTERLINE OF THE 20 FOOT WIDE PAVING IN OLIVE ROAD (S.R. NO. 290, 66' R/W), SAID POINT ALSO BEING ON THE CENTERLINE OF THE 66' RIGHT-OF-WAY OF OLIVE ROAD; THENCE SOUTH 89 DEGREES 38 MINUTES 00 SECONDS EAST ALONG SAID CENTERLINE FOR 639.40 FEET; THENCE SOUTH 06 DEGREES 40 MINUTES 06 SECONDS WEST FOR 33.20' TO THE SOUTH R/W LINE OF OLIVE ROAD AND THE POINT OF BEGINNING; THENCE SOUTH 06 DEGREES 40 MINUTES 06 SECONDS WEST FOR 706.28 FEET; THENCE SOUTH 83 DEGREES 19 MINUTES 54 SECONDS EAST FOR 165.08 FEET; THENCE NORTH 06 DEGREES 40 MINUTES 06 SECONDS EAST FOR 12.61 FEET; THENCE SOUTH 83 DEGREES 19 MINUTES 54 SECONDS EAST FOR 220.00 FEET; THENCE NORTH 06 DEGREES 40 MINUTES 06 SECONDS EAST FOR 736.18 FEET TO THE SOUTH R/W LINE OF OLIVE ROAD; THENCE NORTH 89 DEGREES 38 MINUTES 00 SECONDS WEST ALONG THE SOUTH R/W LINE OF OLIVE ROAD (66' R/W) FOR 387.42 FEET TO THE POINT OF BEGINNING, CONTAINING 8.37 ACRES MORE OR LESS.