

WAKE COUNTY  
OCT 13 4 22 PM '83

KENNETH C. WILKINS WATERFORD PLACE TOWNHOUSES  
REGISTER OF DEEDS DECLARATION OF  
WAKE CO COVENANTS, CONDITIONS & RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by CARY PROPERTIES I and CARY PROPERTIES II, limited partnerships organized under the laws of North Carolina, hereinafter collectively referred to as "Declarant";

W I T N E S E T H :

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

BEING all of Lots 16, 17, 18, 19, 42, 43, 55 and 56 according to map entitled "Part A, Section Two, Strathmore at Cary", recorded in Book of Maps 1982, page 97, Wake County Registry.

BEING all of Lots 15, 20, 21, 22, 23, 24 and 57 according to map entitled "Part A, Section Two, Strathmore at Cary" recorded in Book of Maps 1982, page 97, Wake County Registry.

BEING all of Lot 44 according to map entitled "Part B, Section Two, Strathmore at Cary" recorded in Book of Maps 1983, page \_\_\_\_\_, Wake County Registry.

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 be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Waterford Place Townhouse Homeowners 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. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All of the lands designated "Common Area" as shown on the plat of Waterford Place, Section One, recorded in Book of Maps 1983, page 1224, Wake County Registry.

Subject to easements for utilities and dedicated rights of way for ingress and egress.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Cary Properties I and Cary Properties II, limited partnerships, their successors and assigns, if such successors and assigns should acquire more than one (1) 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.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement to enjoyment in and to the Common Area which shall be appurtenance 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 situated upon the Common Area;

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

(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. Upon dedication of any such areas, the Association shall give notice to the Planning Department of the Town of Cary.

(d) the right of the Association to limit the number of guests or 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.

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 the Common Area. The Declarant hereby covenants for itself, its successors or assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, except utility easements, and other dedicated easements.

Section 4. Parking Rights. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces, which 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 areas. The Association shall permanently assign one vehicular parking space for each dwelling, such space to be as near the dwelling to which it is assigned as is reasonably possible. The Association may regulate the parking of boats, trailers and other such items on the Common Area. No boats or trailers shall be parked within the right of way of any public street in or adjacent to Country Estates Townhouses.

Section 5. TV Antennas and Pipe-In Music. The Association may provide one or more central television antennas for the convenience of the members and may supply piped-in music and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas on individual lots.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The Association shall have two 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.

Class B. 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 subparagraph (b) 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) on January 1, 1988.

#### 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 attorneys' 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, costs, and reasonable attorneys' 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, services and facilities devoted to this purpose and related to the exterior maintenance of the residences situated upon the properties or for the use and enjoyment of the Common 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 improvements assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association, when necessary, and such other needs as may arise. All funds budgeted as capital fund expenditures shall be set aside as a reserve fund for future capital improvements. These reserve funds shall be utilized solely for capital improvements.

Section 3. Maximum Annual Assessment. Until July 1st of the fiscal year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be Four Hundred Forty Four Dollars (\$444.) per lot.

(a) From and after July 1st of the fiscal year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased effective July 1st of each year without a vote of membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D. C.), for the preceding month of January.

(b) From and after July 1st of the fiscal year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above that established by the Consumer Price Index (or such Index as may succeed the Consumer Price Index) formula 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 thirty (30) days nor more than sixty (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 incident to a merger or consolidation 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, including fixtures and personal property related thereto or exterior maintenance of the residences situated upon the properties, 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 thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (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.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors and said annual assessment shall be payable monthly. 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.

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 nine per cent (9%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the 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 assessment 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 non-profit organization are exempt from assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the properties and places 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 or extend a party wall in any direction (subject to and within the limitations or 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 and without charge; 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 a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

#### ARTICLE VI

##### ARCHITECTURAL CONTROL

No building, fence, 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 Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

#### ARTICLE VII

##### ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property 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 thirty (30) days nor more than sixty (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 per cent (60%) of the votes of each class of membership shall constitute a quorum. In the event that a quorum is present and adopts an annexation resolution, but said resolution fails to receive the two-thirds (2/3) vote required, then additional members not present may give their written assent to the action taken thereat. In such event,



the two-thirds (2/3) requirement may consist of those who voted favorably at the meeting in person and by proxy and of those members who give written assent to the annexation resolution thereafter.

Section 2. If within five (5) years of the date of incorporation of this Association, the Declarant should develop additional land within the boundaries shown on the master plan of Country Estates Townhouses heretofore submitted to the Town of Cary Planning Department, such land may be annexed by the Declarant without the consent of members, provided that the Town of Cary Planning Department approves said plans and determines that the annexation is in accord with the general plan heretofore approved by them.

#### ARTICLE VIII

##### EXTERIOR MAINTENANCE

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, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. 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. 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.

(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 exterior for the good of the entire subdivision. Some dwellings will 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 in their 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, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

#### ARTICLE IX

##### 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.

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.

Section 5. Dwelling Specifications. No dwelling shall be constructed or permitted to remain on any lot having an area of the main structure, exclusive of open porches and decks, of less than one thousand one hundred (1100) square feet for a one-story dwelling nor less than one thousand one hundred fifty (1150) square feet for a dwelling of more than one story.

#### ARTICLE X

##### 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 line and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the properties to this Declaration; and the Association 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.

All lots 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 and walls.

#### ARTICLE XI

##### GENERAL PROVISIONS

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

Section 2. Severability. Invalidation of any 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 per cent (90%) of the lot owners, and thereafter by an instrument signed by not less than seventy-five per cent (75%) of the lot owners. No amendment shall become effective without having been submitted to the Planning Department of the Town of Cary and approved by said Department. If said Department fails to act thereon within thirty (30) days, then such amendment shall become effective at the expiration of such time. Any amendment must be recorded in the Office of the Register of Deeds of Wake County.

Section 4. FHA/VA Approval. As long as there is a Class B membership in the Association, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, Dedication of Common Areas, and Amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 5. In accordance with the provisions of the Town Code of the Town of Cary, the Association shall have authority to restrict parking of motor

vehicles within property affected by these covenants and shall also have authority to repair the streets within said property.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed by their General Partners, all on this 2<sup>nd</sup> day of March, 1983.

CARY PROPERTIES I

By: [Signature] (SEAL)  
General Partner

CARY PROPERTIES II

By: [Signature] (SEAL)  
General Partner

NORTH CAROLINA  
WAKE COUNTY

I, the undersigned Notary Public, in and for the aforesaid County and State, certify that E. H. Bridger personally appeared before me this day and acknowledged that he is the General Partner of Cary Properties I and Cary Properties II, limited partnerships, and that he signed the foregoing Declaration on behalf of each of said partnerships.

Witness my hand and official seal, this 2<sup>nd</sup> day of March, 1983.

[Signature]  
Notary Public

My Commission expires: 5/1/86



NORTH CAROLINA - WAKE COUNTY  
The foregoing certificate \_\_\_\_\_ of \_\_\_\_\_

[Signature: Mary Moss Baker]

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: [Signature: Kenneth C. Wilkins]  
Asst./Deputy Register of Deeds