

EX600570407

PRESENTED
FOR
REGISTRATION

Drawn by & HOLD FOR:
PERRY, PATRICK, FARMER & MICHAUX, P.A.
(94-5268/PH)

000346

94 FEB 15 AM 9:34

STATE OF NORTH CAROLINA
COUNTY OF WAKE

KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY
ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into as of the 14TH day of February, 1994, by and among NICHOLAS OBAYUNAWA and wife, MARTHA N. MORRIS-OBAYUNAWA, YVONNE P. LITTLE (formerly YVONNE MARIE POWELL) and husband, AUSTREY L. LITTLE, JR., ROBERT BRYAN RENKEN and wife, JOANN E. RENKEN, and DAVID P. MILLER (unmarried), all of Wake County, North Carolina (hereinafter sometimes referred to individually as an "Owner" or collectively as the "Owners");

W I T N E S S E T H:

WHEREAS, NICHOLAS OBAYUNAWA and wife, MARTHA N. MORRIS-OBAYUNAWA are the owners of that certain parcel of land located in Leesville Township, Wake County, North Carolina, and being described as all of Lot 4 in STILLWATER LANDING Subdivision, Phase One, as shown on a plat recorded in Book of Maps 1981, Page 599, Wake County Registry;

WHEREAS, YVONNE P. LITTLE is the owner of that certain parcel of land located in Leesville Township, Wake County, North Carolina, and being described as all of Lot 5 in STILLWATER LANDING Subdivision, Phase One, as shown on a plat recorded in Book of Maps 1981, Page 599, Wake County Registry;

WHEREAS, ROBERT BRYAN RENKEN and wife, JOANN E. RENKEN are the owners of that certain parcel of land located in Leesville Township, Wake County, North Carolina, and being described as all of Lot 6 in STILLWATER LANDING Subdivision, Phase One, as shown on a plat recorded in Book of Maps 1981, Page 599, Wake County Registry;

WHEREAS, DAVID P. MILLER is the owner of that certain parcel of land located in Leesville Township, Wake County, North Carolina, and being described as all of Lot 7 in STILLWATER LANDING Subdivision, Phase One, as shown on a plat recorded in Book of Maps 1981, Page 599, Wake County Registry;

WHEREAS, The North Carolina Department Of Transportation ("NCDOT") is the owner of those parcels of land located in Leesville Township, Wake County, North Carolina, and being described as all of Lot 1, 2 and 3 in STILLWATER LANDING Subdivision, Phase One, as shown on a plat recorded in Book of Maps 1981, Page 539, Wake County Registry, and intends to use those properties as part of a public right-of-way which will not provide access to any of the parcels owned by the Owners;

WHEREAS, the only access to Lots 4, 5 and 6 and the primary access to Lot 7 (hereinafter the "Lots") is by Waterford Court, as shown on the aforementioned record plat;

WHEREAS, although it is intended that NCDOT accept Waterford Court for public maintenance, NCDOT has not yet done so;

WHEREAS, the Owners agree that it is in their mutual interest to enter into this Road Maintenance Agreement for the purpose of ensuring that Waterford Court is maintained until it is accepted for maintenance by NCDOT or other appropriate governmental entity;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties have mutually agreed that, so long as Waterford Court is not maintained by NCDOT or other appropriate governmental entity, the Owners will be jointly responsible for maintenance of Waterford Court under the terms and conditions set forth herein;

1. Waterford Court shall be a private street to be used solely by the Owners and their guests, invitees and licensees, to provide access to the Lots.

2. Waterford Court shall be maintained in its current condition by the Owners, with the Owner or Owners of each Lot being responsible for one-fourth of the cost of such maintenance unless otherwise provided herein.

3. In the event that Lots 1, 2 or 3 are re-converted to residential use, or any of the property east of Waterford Court is developed for residential use, and the owner(s) thereof desire to use Waterford Court for access to such property, then such access

shall be permitted if and only if the owner(s) of such property execute and record a document agreeing to be bound by the terms and conditions of this Agreement, in which event the owner(s) of such property shall be deemed Owners for all purposes under this Agreement. In such event, the shares of the total maintenance responsibility shall be adjusted so that the Owner(s) of each dwelling unit served by Waterford Court shall pay a proportionate share based on the total number of dwelling units served by Waterford Court. It is the intent of the parties that the Owner of each dwelling unit pay an amount equal to that paid by all other Owners, and that each building be assessed based on the total number of units in that building, e.g., a duplex would be assessed as two units.

4. Performance of Maintenance; Right of Indemnification.

a. Maintenance of Waterford Court may be performed by any Owner after first giving written notice as provided herein to each Owner subject to assessment. Such notice shall state the work to be performed, shall contain at least two written, itemized estimates of the cost of such work, and shall have a place for the Owner(s) receiving the notice to sign and record his/her/their approval/disapproval of the work. A completed notice following the format shown on Exhibit A attached hereto shall be sufficient. For purposes of this Agreement, notice given to one Owner of a specific property shall be deemed to be notice given to all Owners of that property. The Owner or Owners of each dwelling unit shall be entitled to only one vote per dwelling unit; the vote of one co-Owner of a specific property shall be deemed to bind all co-Owners of that property.

The Owner(s) shall return the notice to the Owner giving notice, marked as "Approved" or "Disapproved" and signed by such Owner(s), within fifteen (15) days after receipt of such notice. If the Owner giving notice receives the unanimous approval of all Owners, such Owner may have the work performed and the other Owners shall pay their proportionate share as set forth herein.

If any Owner disapproves the work, the Owner giving notice shall schedule a meeting to discuss the work. The Owner giving notice shall attempt to schedule the meeting at a place and time mutually agreeable to all Owners. However, in order to limit the ability of an Owner to prevent the performance of work merely by failing to attend a meeting, the presence at a meeting of Owner(s) of three-fourths (3/4) of the dwelling units subject to assessment hereunder shall be deemed a quorum at such meeting, so long as the Owner or one of the co-Owners of each dwelling unit actually received notice of the meeting. The Owner scheduling such meeting shall have the burden of establishing to the satisfaction of the Owners present at such meeting that one or more Owners of each dwelling unit received notice of the meeting.

Provided that an Owner of each dwelling unit received notice of a meeting at which a quorum is present, the affirmative vote of the Owner(s) of two-thirds (2/3) of the dwelling units shall be sufficient to approve the performance of work and the cost of same. Upon approval, whether by unanimous consent or by the 2/3 vote provided for herein, all Owners shall be responsible for paying their respective pro-rata share of such work.

b. Each Owner hereby covenants and agrees to pay a pro-rata share of the actual cost of maintaining Waterford Court, and covenants and agrees to reimburse any other Owner upon demand for his pro-rata share of any such costs paid by such other Owner. Each Owner shall pay his respective portion of such maintenance costs within thirty (30) days after receipt of written demand for reimbursement from the Owner performing the maintenance, which demand may not be made until after the work has been approved as provided herein and which reimbursement shall be due within three (3) business days after the work has been completed as determined by a committee of not less than two Owners appointed by the Owners for that purpose.

If not paid within the later of 30 days after receipt of demand or 7 business days after the work has been completed, such pro-rata portion shall bear interest at the greater of six percent

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Provided that an Owner of each dwelling unit received notice of a meeting at which a quorum is present, the affirmative vote of the Owner(s) of two-thirds (2/3) of the dwelling units shall be sufficient to approve the performance of work and the cost of same. Upon approval, whether by unanimous consent or by the 2/3 vote provided for herein, all Owners shall be responsible for paying their respective pro-rata share of such work.

b. Each Owner hereby covenants and agrees to pay a pro-rata share of the actual cost of maintaining Waterford Court, and covenants and agrees to reimburse any other Owner upon demand for his pro-rata share of any such costs paid by such other Owner. Each Owner shall pay his respective portion of such maintenance costs within thirty (30) days after receipt of written demand for reimbursement from the Owner performing the maintenance, which demand may not be made until after the work has been approved as provided herein and which reimbursement shall be due within three (3) business days after the work has been completed as determined by a committee of not less than two Owners appointed by the Owners for that purpose.

If not paid within the later of 30 days after receipt of demand or 7 business days after the work has been completed, such pro-rata portion shall bear interest at the greater of six percent

(6%) per annum or the actual rate of interest paid (if borrowed money is used to fund the non-paying Owner's share) or lost (if non-borrowed money is used to fund the non-paying Owner's share) by the Owner or Owner advancing such non-paying Owner's share from the date of demand, and such assessment, together with interest and the costs of collection, including reasonable attorney's fees, shall be a lien and charge against the property of the Owner upon whom demand is made and shall be a continuing lien upon such property until paid in full. Notwithstanding the foregoing, an Owner shall not be entitled to initiate legal action to collect an unpaid assessment until 120 days after receipt of demand by the non-paying Owner, and a non-paying Owner shall not be liable for any costs of collection incurred before the expiration of such 120-day period.

Each such pro-rata portion, together with interest and costs, shall also be the personal obligation of the Owner(s) owning such property at the time demand was made. The personal obligation of an Owner for his pro-rata share of maintenance costs shall not pass to his successors in title unless expressly assumed by them; however, such unpaid pro-rata share shall continue to be a lien upon the property against which such assessment was made.

5. Notices required or permitted to be given hereunder must be in writing and may be hand-delivered by the sender or may be sent by certified or registered mail, return receipt requested, and addressed as follows:

Nicholas Obayuwana or
Martha N. Morris-Obayuwana
10013 Waterford Court
Raleigh, NC 27613

Yvonne P. Little
10009 Waterford Court
Raleigh, NC 27613

Robert Bryan Renken or
Joann E. Renken
10005 Waterford Court
Raleigh, NC 27613

David P. Miller
10001 Waterford Court
Raleigh, NC 27613

to such other address as may be provided by any Owner to any other Owner for the purpose of such notice. Receipt of any notice by either husband or wife shall be deemed received by both husband and wife.

5. This Agreement and the terms and conditions thereof shall be appurtenant to and run with title to each of the Lots benefited and burdened hereby and shall be binding upon and inure to the benefit of each of the undersigned and his/her heirs, successors and assigns.

7. Notwithstanding any other provision hereof, this Agreement shall automatically expire upon acceptance of Waterford Court for maintenance by NCDOT or any other appropriate governmental entity.

8. Miscellaneous.

a. In this Agreement, any use of a gender-based term shall be deemed to include the other gender, any use of the plural shall be deemed to include the singular, and any use of the singular shall be deemed to include the plural.

b. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, each of the undersigned has hereunto set his/her hand and seal, as of the day and year first written.

Nicholas Obayuwana (SEAL)
NICHOLAS OBAYUWANA
Martha N. Morris-Obayuwana (SEAL)
MARTHA N. MORRIS-OBAYUWANA

Yvonne Powell Little (SEAL)
YVONNE P. LITTLE
(formerly Yvonne Marie Powell)
Autrey L. Little, Jr. (SEAL)
AUTREY L. LITTLE, JR.

Robert Bryan Renken (SEAL)
ROBERT BRYAN/RENKEN
Joann E. Renken (SEAL)
JOANN E. RENKEN

David P. Miller (SEAL)
DAVID P. MILLER

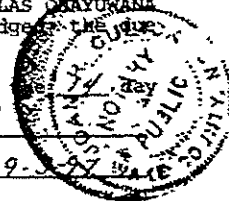
NORTH CAROLINA -- WAKE COUNTY:

I, Joan Y. Gulick, a Notary Public of the County and State aforesaid, do hereby certify that NICHOLAS OBAYUMANA personally appeared before this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 24 day of February, 1994.

Joan Y. Gulick
Notary Public

My Commission Expires: 9-3-97



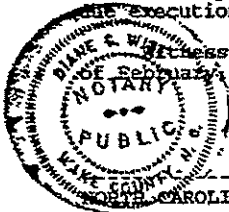
NORTH CAROLINA -- WAKE COUNTY:

I, Martha N. Morris-Obayumana, a Notary Public of the County and State aforesaid, do hereby certify that MARTHA N. MORRIS-OBAYUMANA personally appeared before this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 14 day of February, 1994.

Martha N. Morris-Obayumana
Notary Public

My Commission Expires: 4/3/97



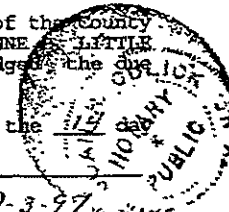
NORTH CAROLINA -- WAKE COUNTY:

I, Joan Y. Gulick, a Notary Public of the County and State aforesaid, do hereby certify that YVONNE LITTLE personally appeared before this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 14 day of February, 1994.

Joan Y. Gulick
Notary Public

My Commission Expires: 9-3-97



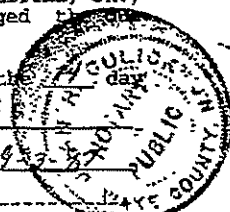
NORTH CAROLINA -- WAKE COUNTY:

I, Joan Y. Gulick, a Notary Public of the County and State aforesaid, do hereby certify that AUTREY L. LITTLE, JR., personally appeared before this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 14 day of February, 1994.

Joan Y. Gulick
Notary Public

My Commission Expires: 9-3-97



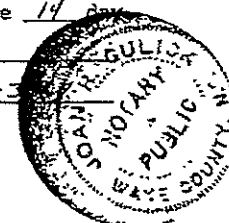
NORTH CAROLINA -- WAKE COUNTY:

I, Joan Y. Gulick, a Notary Public of the County and State aforesaid, do hereby certify that ROBERT BRYAN RENKEN and JOANN E. RENKEN personally appeared before this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 14 day of February, 1994.

Joan Y. Gulick
Notary Public

My Commission Expires: 9-3-97



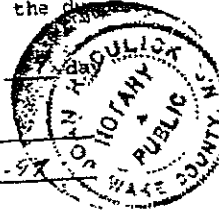
EX6005760415

NORTH CAROLINA -- WAKE COUNTY:

I, John L. Gulick, a Notary Public of the County and State aforesaid, do hereby certify that DAVID P. MILLER personally appeared before this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 9th day of February, 1994.

Notary Public
My Commission Expires: 9-3-97



NORTH CAROLINA -- WAKE COUNTY:

The foregoing certificate of

Deane P. Wise, John L. Gulick

(not) 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.

RECORDED BY C. WILKINS, Register of Deeds

By

John L. Gulick
Notary Public

600570416

EXHIBIT A

NOTICE OF WORK TO BE PERFORMED ON WATERFORD COURT

To: _____ (Name)
_____ (Address)

From: _____ (Name)
_____ (Address)

Date: _____

This is to notify you that I propose to have the following work done on Waterford Court:

1. _____
2. _____
3. _____
4. _____
5. _____

Attached are _____ itemized estimates for the proposed work.

Please initial and sign below to signify your approval or disapproval of the proposed work and return the signed form to me not later than _____
(10th day after delivery of notice)

Signed: _____

I/we acknowledge that I/we received this Notice on _____, 199____.

Signature

Signature

I/we respond to the proposed work as follows:

I/we APPROVE the proposed work and agree to pay my/our share of the cost of same.

Initials

Initials

I/we DISAPPROVE the proposed work and agree to attend a meeting to be scheduled by you to discuss the proposed work.

Initials

Initials

Date

Signature

Date

Signature