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Attest: ROBERT W. WILSON, JR.
P. O. BOX 10096
RALEIGH, N. C. 27602-0096

Prepared By: Foyner, Garaghty,
Hartsheld & Townsend, Attys.

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Westminster Company, a North Carolina corporation, hereinafter referred to as "Declarant".

WHEREAS, Westminster Company is the owner of certain property in the Town of Cary, County of Wake, State of North Carolina, which is more particularly described on Exhibit "A" attached hereto, and by this reference, made a part hereof.

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 Colonial Townes Association of Cary, 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 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 hereinabove 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, together with all improvements thereon, 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 on Exhibit "B" attached hereto, and by this reference, made a part hereof.

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

Section 6. "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 7. "Declarant" shall mean and refer to Westminster Company, 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 8. "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 of enjoyment 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 permit the use of and 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 the use of the recreational facility 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 to by the Members. No such dedication or transfer shall be effective unless an instrument signed by at least 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 impose regulations for the use and enjoyment of the Common Area and

improvements thereon, which regulations may further restrict the use of the Common Area, and limit the number of guests of the members.

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

Section 3. Parking Rights. Ownership of each Lot in Colonial Townes, shall entitle the Owner or Owners thereof to the use of those parking spaces provided by the Association. The Association may regulate the parking of boats, trailers and other such items on the Common Area.

Section 4. Title to the Common Area. Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area and facilities to the Association, free and clear of all liens and encumbrances, prior to the conveyance of the first lot, except utility easements and storm drainage easements.

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 for ownership of any Lot.

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. Class A Members 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. 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 from each recorded section of the property subject to the jurisdiction of the Association 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 vote outstanding in the Class A membership for a recorded section of said property

equal the total votes outstanding in the Class B membership, or

(b) upon ten (10) years after the date of the recording of this Declaration.

With the recording of new sections of Colonial Townes and the annexation of additional lands subject to the jurisdiction of the Association, new Class A and Class B memberships shall be created.

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 therefore, 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, costs 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 assessment 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, improvements and maintenance of properties, services and facilities devoted to this purpose and related to the exterior maintenance of the dwellings situated upon the lots or for the use and enjoyment of the Common Area, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the payment of charges for common television antenna service to the Lots, the employment of attorneys to represent the Association when necessary, 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 Four Hundred Twenty (\$420.00) per Lot.

(a) The maximum annual assessment for the calendar year immediately following the conveyance of the first Lot to an Owner and for each calendar year thereafter shall be established by the Board of Directors and may be increased by the Board of Directors without approval of the membership by an amount not to exceed five percent (5%) of the maximum annual assessment of the previous year.

(b) The maximum annual assessment for the calendar year immediately following the conveyance of the first Lot to an Owner and for each calendar year thereafter may be increased without limit by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or part, the costs of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, 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. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all Members not less than fifteen (15) 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 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 (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. Rate of Annual Assessments. Both annual and special assessments must be fixed at a uniform rate for all Lots within the same class and may be collected on a monthly basis; provided, however, each Lot owned by the Declarant shall be assessed for both annual and/or special assessments at one-fourth (1/4) or twenty-five percent (25%) assessment for lots owned by Class A members, but such twenty-five (25%) percent ratio for a particular Lot owned by the Declarant shall terminate immediately upon the transfer of said Lot from the Declarant to a Class A member; and thereafter, the full one hundred percent (100%) assessment for such Lot shall apply.

Section 7. Date and Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall be collected on a monthly basis and shall commence as to all Lots on the first day of the month following the conveyance of the Common Area of the recorded plat in which such lot is located. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment against each lot. 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 the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. 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. Subordination of the Lien to Mortgage. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deeds of trust and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment as to the payment thereof which becomes due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

ARTICLE V.

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 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. Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties previously approved by the FHA.

ARTICLE VI.

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 placed on the dividing line between Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and 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 therefore 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 other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Reconstruction. 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 the 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 VI, 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; 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 VII.

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 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.

(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 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, or employees, or subcontractors, the cost of such maintenance or repairs shall be added to and become a part of 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 VIII.

USE RESTRICTIONS

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family townhouse dwelling not to exceed two and one-half stories in height. Any building erected, altered, placed or permitted to remain on any Lot shall be subject to the Provisions of Article V of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. Nuisance. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or 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 4. Outside Antennas. No outside radio or television antennas shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

ARTICLE IX.

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 his 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, subject further easements as are requisite for the convenient use and enjoyment of the Properties.

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 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 X.
GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or inequity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the 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 the covenants or restrictions by judgment or court order shall in no wise 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. Any amendment must be properly recorded.

Section 4. Annexation.

(a) Except and otherwise provided in subparagraph (b) of this Section 4, annexation of additional property shall require the consent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B. members, 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. 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 each 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 sixty (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.

(b) If within ten (10) years of the date of incorporation of this Association, the Declarant shall develop additional lands such additional lands may be annexed to said Properties without the assent of the Class A members provided, however, the development of the additional lands described in this section shall be in accordance with a general plan submitted to the Federal Housing Administration and the Veterans Administration with the processing papers for the first section, or as said general plan may subsequently have been amended with the consent of the Federal Housing Administration and the Veterans Administration. The Declarant shall have the authority to determine the number of acres to be annexed, the size and number of lots, types and sizes of dwellings erected thereon and other matters incident to the development of such additional land; provided, however, detailed plans for the development of additional lands must be submitted to the Federal Housing Administration and the Veterans Administration prior to such development. If either the Federal Housing Administration or the Veterans Administration determines that the detailed plans are not in accordance with the general plan on file and either agency so advises the Association and the Declarant, the development of the additional lands must have the assent of two-thirds (2/3) of the Class A 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. At this meeting, the presence of members or of proxies entitled to cast sixty percent (60%) of all of the votes of the Class A 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 any such 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 5. FHA/VA APPROVAL. As long as there is a Class B membership, the following actions will require the prior

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approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment to this Declaration of Covenants, Conditions and Restrictions.

ARTICLE XI
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.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, this the 22 day of August, 1984.

WESTMINSTER COMPANY

ATTEST:

Rosemary Gray By E. B. Harby
Asst. Secretary Vice-President

NORTH CAROLINA

WAKE COUNTY

I, the undersigned Notary Public, do hereby certify that Rosemary Gray personally came before me this day and acknowledged that she is Assistant Secretary of WESTMINSTER COMPANY, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by himself as its Assit. Secretary.

Witness my hand and notarial seal, this 22nd day of August, 1984.

My Commission expires

8/5/85Geraldine J. Kelly
Notary Public

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NORTH CAROLINA - WAKE COUNTY

The foregoing certificate

Geraldine J. Kelly

Notary Public is

(are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

KENNETH C. WILLIAMS, Register of Deeds

By Ken W. Williams
Asst. Deputy Register of Deeds

EXHIBIT A

Being all of the property containing 2.905 acres including Building Blocks, the right of way of Assembly Ct., and that portion of the right of way of Colonial Townes Ct. located within the property, all as shown on Map entitled "Phase One, Colonial Townes Westminster Co., owner, Cary, N.C." dated December 8, 1983, prepared by John Y. Phelps, Jr. - Registered Land Surveyor and recorded in Book of Maps 1983, Page 1559, Wake County Registry; Together with the right of ingress and egress along Colonial Townes Ct. from Cary Parkway to Assembly Ct.

EXHIBIT B

Being all of the property including the right of way of Assembly Ct., and that portion of the right of way of Colonial Townes Ct. located within the property, excluding the areas designated as "Building A, Lots 1-8; Building B, Lots 9-16; Building C, Lots 17-24; and Building D, Lots 25-28" as shown on Map entitled "Phase One, Colonial Townes Westminster Co., Owner Cary, N.C." dated December 8, 1983, prepared by John Y. Phelps, Jr. - Registered Land Surveyor and recorded in Book of Maps 1983, Page 1559, Wake County Registry; together with the right of ingress and egress along Colonial Townes Ct. from Cary Parkway to Assembly Ct.