

Return to:
William D. BERNARD
P.O. Box 1210
Chapel Hill, NC 27514

STATE OF NORTH CAROLINA
COUNTY OF CHATHAM

BOOK 477-39

DECLARATION OF RESTRICTIVE COVENANTS
AND ROAD MAINTENANCE AGREEMENT

THIS DECLARATION OF RESTRICTIVE COVENANTS AND ROAD MAINTENANCE AGREEMENT ("Declaration"), made this 10th day of December, 1984, by and between Joe M. Snipes and wife, Doris Snipes; M. B. Snipes (single); William D. Bernard and wife, Debra S. Bernard; Dutton G. Stoy and wife, Patricia T. Stoy; Keith Aldridge (single) and Karen Creasman (single).

W I T N E S S E T H:

WHEREAS, the parties hereto are owners of certain real property located on the west side of S.R. #1541 in Baldwin Township, Chatham County, North Carolina; and

WHEREAS, the parties hereto, by the execution of this Declaration, desire to protect themselves and all future owners of Lots as hereinafter described against any improper use of surrounding Lots and to preserve, as far as practical, the natural beauty of the Lots and other tracts or parcels of land subject to this Declaration; and

WHEREAS, the parties hereto have jointly financed the construction of a private road in order to provide a means of ingress and egress to and from their respective Lots and S.R. #1541; and

WHEREAS, "Section I" of said private road is shown on that certain plat of survey recorded in Plat Cabinet A, Slide 89, Chatham County Registry; and "Section II," "Section III" and "Section IV" of said private road are shown on that certain plat of survey recorded in Plat Cabinet A, Slide 167, Chatham County Registry; and

WHEREAS, the parties hereto contemplate that Joe M. Snipes and wife, Doris Snipes, and M. B. Snipes, or their heirs, successors or assigns, may hereafter extend said private road system to other lands presently owned by the Snipes, said lands being contiguous to the lands shown on the above-mentioned plats of surveys, and that any such extension(s) shall be subject to the provisions of this Declaration; and

WHEREAS, the parties hereto desire to mutually agree and fix their rights and obligations with respect to the maintenance, repair and improvement of said private road and all future extensions thereof; and do further desire to form a landowners' association for the purpose of administering

such agreements; and

WHEREAS, the parties hereto further desire to mutually agree and fix the rights, duties and obligations of all persons and other entities which may hereafter acquire any easement over or other right to use said private road or any future extensions thereof with respect to the maintenance, repair and improvement of same.

NOW, THEREFORE, for and in consideration of the mutual covenants and benefits conferred herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto mutually agree, covenant and bind themselves and their heirs, successors and assigns as follows:

ARTICLE I

DEFINITIONS

1.01 DEFINITIONS. As used herein, the following terms shall have the meanings set forth below:

(a) "Road, Section I" shall mean that certain private road running generally in a westerly direction from S.R. #1541 across the property of Joe M. Snipes and wife, Doris Snipes, and M. B. Snipes, to the north property line of William D. Bernard and wife, Debra S. Bernard, all as shown on that certain plat of survey entitled "Property of Joseph M. Snipes," by Van R. Finch, R.L.S., dated 13 September 1984 and recorded at Plat Cabinet A, Slide 89, Chatham County Registry.

(b) "Road, Section II," "Road, Section III," and "Road, Section IV" shall mean those respective extensions of the Road, Section I as shown on that certain plat of survey entitled "Survey for Joe M. Snipes," by Van R. Finch, R.L.S., dated 14 November 1984 and recorded in Plat Cabinet A, Slide 162, Chatham County Registry.

(c) "Road" shall mean the aggregate of the Road, Section I, the Road, Section II, the Road, Section III, the Road, Section IV, and any extension(s) thereof.

(d) "Lot" shall mean (1) any tract or parcel of land now owned, or which may be hereafter acquired, by any of the parties hereto or their heirs, successors or assigns, which now utilizes, or which may hereafter utilize, any existing section of the Road, or any future extension thereof,

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as its primary means of access to S.R. #1541, or (ii) any future part, parcel or subdivision of any such tract or parcel of land described above which may be hereafter sold, transferred or otherwise conveyed by any of the parties hereto, or by their heirs, successors or assigns, to any other person(s) or entity(ies).

(e) "Resident Owner" shall mean any person or entity that (i) has acquired by gift, devise, intestate succession, or by any other means of conveyance, any easement over or other right to use, for any purpose whatsoever, any portion of the Road, and (ii) has constructed or placed upon a Lot, or has commenced to construct or place upon a Lot, any permanent or temporary residential dwelling or commercial structure (including trailers and mobile homes).

(f) "Non-Resident Owner" shall mean any person or entity that (i) has acquired by gift, devise, intestate succession, or by any other means of conveyance, any easement over or other right to use, for any purpose whatsoever, any portion of the Road, and (ii) has not constructed or placed upon a Lot, or commenced to construct or place upon a Lot, any permanent or temporary residential dwelling or commercial structure.

(g) "Excessive Use" shall mean any damage whatsoever to any portion of the Road, including, but not limited to, potholes, tire ruts, displacement of gravel, disturbance of drainage ditches and pipes and erosion, caused or occasioned by any non-highway vehicle such as agricultural and construction equipment and machinery, or by any highway vehicles such as trucks, trailers, materialmen's and contractor's vehicles and the like.

(h) "Association" shall mean and refer to the Collins Mountain Landowners' Association, Inc. which shall be organized and incorporated, pursuant to the laws of the State of North Carolina, as a not-for-profit corporation. The purpose of the Association shall be to oversee the repair, maintenance and improvement of the Road and to enforce the Restrictive Covenants and Agreements set forth herein.

1.02 CONSTRUCTION. All other words and terms shall be construed in accordance with their ordinary and accepted meanings, or trade usages, if appropriate, unless the context otherwise requires.

ARTICLE II

RESTRICTIVE COVENANTS

2.01 SUBDIVISION OF LOTS. Except as provided below, no Lot or other tract or parcel of land which shall utilize the Road for access to and from S.R. #1541 or to any other public Road, shall hereafter be subdivided into any Lot or parcel of less than five (5) acres. This restriction shall not, however, prohibit (a) Joe M. Snipes and wife, Doris Snipes, and H. B. Snipes, or any of them, from selling, transferring or otherwise conveying to any other person or entity a Lot having less than five (5) acres, or (b) any adjoining property owners from exchanging small portions of their Lots (less than five (5) acres) to provide for better building sites or for any other purpose. Furthermore, in the event that Mark E. Perry and wife, Susan E. Perry, shall purchase that certain 13.626 acre Lot from the Snipes as shown on that certain plat of survey entitled "Survey for Mark E. Perry and Susan E. Perry," by Van R. Finch, R.L.S., dated 6 November 1984 and revised 16 November 1984, said Lot shall be exempted from this restriction until such time as the Perrys shall agree, by written instrument which shall be recorded, that this restriction shall apply to said Lot. Provided further, however, that until such instrument is placed of record in the Chatham County Registry, Mark E. Perry and Susan E. Perry shall not have any right to enforce the restrictions contained in this Section against any other Resident Owner or Non-Resident Owner.

2.02 RESIDENTIAL PURPOSES ONLY. Except as provided below, no Lot or other tract or parcel of land which shall hereafter utilize the Road for access to S.R. #1541 or to any other public road shall be used for any commercial business or enterprise whatsoever. This restriction shall not, however, prohibit any Resident Owner or Non-Resident Owner from engaging in (a) any agricultural and/or farming activity, whether or not for profit, including the breeding and boarding of horses and the providing of horse riding lessons and other related activities, (b) any craft, hobby or artistic endeavor, whether or not for profit, or (c) any other small business that may be permitted by the Association. The raising of poultry, except in a limited number which shall not become a nuisance to any adjoining property owner, shall be prohibited.

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2.03 SINGLE FAMILY DWELLINGS ONLY. Residential dwellings on any Lot or other tract or parcel of land which shall hereafter utilize the Road for access to S.R. #1541 or to any other public road shall be limited to permanent single family dwellings. Trailers, mobile homes, duplexes and all other forms of temporary and multi-family structures are prohibited except that a single mobile home may be placed upon any Lot or other tract or parcel of land for a period not to exceed sixty (60) months.

2.04 LIMITATION ON NUMBER OF DWELLINGS. Each Lot shall be limited to one (1) single family dwelling per five (5) acres of Lot size, provided, however, that in the case of any Lot containing less than five (5) acres, one (1) single family dwelling shall be permitted on such Lot.

2.05 MINIMUM SETBACK. The minimum setback of residential dwellings and commercial structures from the Road shall be thirty (30) feet. The minimum setback of any residential dwelling or commercial structure from any property line shall be thirty (30) feet.

2.06 UNLICENSED AUTOMOBILES. No junk vehicle or unlicensed automobile shall be abandoned on any Lot or on the Road.

ARTICLE III

ASSOCIATION MEMBERSHIP & VOTING

3.01 MEMBERSHIP. Each Resident Owner and Non-Resident Owner of a fee or undivided interest in any Lot shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest in any such Lot merely as security for the performance of an obligation.

3.02 VOTING.

(a) Resident Owners. Each Resident Owner shall be allocated two (2) voting shares in the Association for each Lot entitling him/her to Resident Owner status, provided, however, that if there be more than one (1) Resident Owner of any such Lot, said shares shall be voted by all such Resident Owners together so that there shall be no more than two (2) voting shares per Lot.

(b) Non-Resident Owners. Each Non-Resident Owner shall have one (1) voting share for each Lot entitling him/her to Non-Resident Owner status, provided, however, that if there be more than one (1) Non-Resident Owner of

any such Lot, said share shall be voted by all such Non-Resident Owners together so that there shall be no more than one (1) voting share per Lot.

(c) Snipes Allocation. Notwithstanding any provision in this Section to the contrary, all Lots and other tracts or parcels of land owned by Joe M. Snipes and wife, Doris Snipes, and M. B. Snipes, or by any of them, shall, for purposes of allocating voting shares pursuant to this Section, be considered together as one (1) Lot entitling the Snipes to Non-Resident Owner status unless any portion of such property is improved (see Section 1.01(e)), in which case Resident Owner status shall be conferred upon the Snipes.

ARTICLE IV

ASSESSMENTS

4.01 ANNUAL ASSESSMENTS.

(a) Amount. Subject to Section 4.01(b) hereof, each Resident and Non-Resident Owner shall be subject to an annual assessment by the Association, its successors or assigns, in the amount of Fifty Dollars (\$50.00) per voting share per year, provided, however, that any Resident Owner who by lease or by otherwise permits the use of any Lot by more than one (1) family unit or commercial enterprise shall have his/her annual assessment increased by a multiple equal to the total number of family units and commercial enterprises located on such Lot.

(b) Adjustments. The annual assessment provided for above shall be increased annually by reference to the Consumer Price Index (or such index as may succeed the Consumer Price Index) prepared by the U.S. Department of Labor (or its successors). The Consumer Price Index for "all items" for the year 1984 shall be used as the base rating. The maximum annual assessment shall increase at the same annual rate as the Consumer Price Index unless the Association, by the affirmative vote of a majority of all shares actually voting, shall provide to the contrary.

(c) Notice and Payment. The due date of the annual assessment described above shall be the first day of March of each year. The Association shall affix the amount of the annual assessment against each Resident Owner and Non-Resident Owner at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall

be sent to each Resident Owner and Non-Resident Owner at his/her last known address. The Association, its successors or assigns, shall, upon demand of any Resident Owner or Non-Resident Owner, furnish a certificate in writing, signed by an officer of the Association, setting forth whether the assessments on any specified Lot have been paid and the amount of any delinquent assessments. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(d) General Fund. Annual assessments shall be placed in a general fund which shall be used from time to time by the Association exclusively for the repair, maintenance and improvement of the Road, and for administrative expenses of the Association. Unless otherwise provided in the Association's Bylaws, any disbursement from this general fund shall be made only after such disbursement has been approved by a majority of all shares actually voting on the question.

4.02 EXCESSIVE USE ASSESSMENTS. Each Resident Owner and Non-Resident Owner shall be responsible for and shall bear all the expense of any and all repairs to the Road as may be necessitated by that Resident Owner's or Non-Resident Owner's Excessive Use, or by the Excessive Use of any agent, contractor, sub-contractor, guest or invitee of such Resident Owner or Non-Resident Owner.

Such Excessive Use shall be repaired or paid for by the responsible Resident Owner or Non-Resident Owner as soon after such Excessive Use as is reasonable, but in no event later than fifteen (15) days after written demand therefore by the Association. In the event that such Excessive Use is not repaired or paid for by the responsible Resident Owner or Non-Resident Owner within fifteen (15) days after demand therefore, the Association may cause said repairs to be completed and shall assess the responsible Resident Owner or Non-Resident Owner for such cost. Any such assessment shall be due and payable within ten (10) days.

4.03 OTHER ASSESSMENTS.

(a) Allocation. Any and all expenses of maintenance, repairs and/or improvements to any section of the Road, other than Excessive Use repairs and repairs and/or improvements paid for out of the General Fund, shall be apportioned only among those Resident Owners and Non-Resident Owners who

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own one (i) or more Lots which (i) have a driveway connection to the particular section of the Road sought to be repaired, maintained and/or improved, or (ii) utilize the particular section of the Road sought to be repaired, maintained and/or improved for access to S.R. #1541 by the shortest possible route over the Road, as follows:

(i) Fifty percent (50%) of any such expense shall be paid by all affected Resident Owners on the basis of one equal share for each voting share held by each such Resident Owner, provided, however, that in the event that any such Resident Owner shall own a Lot other than, and in addition to, a Lot described above, the voting shares attributable to any such other Lot shall not be counted in determining said Resident Owner's share of any such expense.

(ii) The remaining fifty percent (50%) of any such expense shall be paid by all affected Resident Owners and Non-Resident Owners on the basis of one share for each Lot owned by each such Resident Owner and Non-Resident Owner, provided, however, that in the event that any such Resident Owner or Non-Resident Owner shall own a Lot other than, and in addition to, a Lot described above, any such other Lot shall not be counted in determining said Resident Owner's or Non-Resident Owner's share of any such expense.

(iii) In the event that there are no affected Resident Owners at the time that any such expense is incurred, all affected Non-Resident Owners shall share in any such expense on the basis of one share for each voting share held by each such Non-Resident Owner, provided, however, that in the event that any such Non-Resident shall own a Lot other than, and in addition to, a Lot described above, the voting share(s) attributable to any such other Lot shall not be counted in determining said Non-Resident Owner's share of any such expense.

(iv) Notwithstanding any other provision of this Section, the Association shall assess any such expenses of maintenance, repairs and/or improvements only against those particular Resident Owners and Non-Resident Owners who have a driveway connection to the particular section of the Road sought to be repaired, maintained and/or improved, or who regularly pass over said section(s) from their Lot(s) in travelling to S.R. #1541 by the

shortest route over the Road.

(b) Determination of Need. Unless otherwise provided by the Association, the approval of a majority of all voting shares held by those affected Resident Owners and Non-Resident Owners described in Section 4.02(a)(iv) hereof shall be required before any repair, maintenance and/or improvement shall be undertaken or assessment levied pursuant to this Section, provided, however, that in the event that any such Resident Owner or Non-Resident Owner shall own a Lot other than, and in addition to, a Lot described in Section 4.02(a), the voting share(s) attributable to any such other Lot shall not be counted in determining the number of votes which may be cast by any such Resident Owner or Non-Resident Owner pursuant to this Section.

(c) Notice and Payment. Written notice of any assessment levied by the Association pursuant to this Section shall be sent to each affected Resident Owner and Non-Resident Owner at his/her last known address. Payment of any assessment levied pursuant to this Section is due within thirty (30) days after such written notice is sent by the Association.

4.04 VOLUNTARY PAYMENTS. Any sum voluntarily paid by a Resident Owner or Non-Resident Owner for any reasonable repair, maintenance and/or improvement to the Road may, in the discretion of the Association, be credited against any future Annual Assessment or Other Assessment that may thereafter be charged to such Resident Owner or Non-Resident Owner.

4.05 DELINQUENT ASSESSMENTS. Any assessment levied pursuant to this Article which is not paid when due shall be delinquent. Any delinquent assessment shall bear interest from the due date through the date of payment at the rate of fifteen percent (15%) per annum, and the Association, or any member of the Association, may bring an action at law against the Resident Owner or Non-Resident Owner obligated to pay same. In the event that the Association, or any individual member, is compelled to resort to such legal action to collect any delinquent assessment, the defaulting Resident Owner or Non-Resident Owner shall be responsible, in addition to the amount of the delinquent assessment, for accrued interest, costs and reasonable attorney's fees incurred in the collection of such delinquent assessment.

4.06 ASSESSMENT LIEN. Any assessment levied pursuant to this Article, together with such interest thereon and costs of collection thereof as provided above, including reasonable attorney's fees, shall be a charge and a continuous lien upon the Lot or Lots giving rise to such assessment. Provided, further, that any such assessment, together with any interest, costs and attorney's fees shall be the personal obligation of any Resident Owner or Non-Resident Owner of such Lot(s) at the time such assessment came due and shall not pass to his/her successors in title as a personal obligation unless expressly assumed by such successors in title, regardless of the fact that it is a lien on the Lot purchased.

The lien of any assessment provided for herein shall be subordinate to the liens of any mortgage, mortgagees, or deeds of trust. The sale or transfer of any Lot shall not affect any such assessment lien. However, the sale or transfer of any Lot that is subject to mortgage or deed of trust, or in any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall release such Lot from liability for any assessment thereafter becoming due or from the lien thereof. Provided, however, that nothing in this Section shall relieve any Resident Owner or Non-Resident Owner of his/her personal obligation to pay any assessment provided for in this Article.

ARTICLE V

BIDS

5.01 BIDS. The Association shall endeavor to contract for the best work at the best price for any and all repairs, maintenance and improvements to the Road, and for any such repairs, maintenance and improvements the Association shall solicit at least two (2) bids before entering into a contract therefore.

ARTICLE VI

STANDARDS

6.01 STANDARDS. The Standard for repair and maintenance of the Road shall be that necessary to maintain the Road in a condition that meets the Chatham County Subdivision Ordinance standard for private gravel roads in effect this date, provided, however, that this Section shall not be regarded

as (a) requiring that any portion of the Road be substantially improved over its original condition or be widened or have its course altered, or (b) a warranty or representation by any party to this Agreement to any other party or future Resident Owner or Non-Resident Owner that the Road will be or is planned to be maintained by a public agency. The parties hereto further agree that the Road is a PRIVATE road and further agree to cite this Agreement as may be necessary to comply with N.C.G.S. §136-102.6.

ARTICLE VII

ASSOCIATION BYLAWS

7.01 BYLAWS. On or before March 1, 1985, the parties hereto, along with any Resident Owners and Non-Resident Owners who may then be subject to this Declaration, shall do and complete any and all acts necessary to establish and incorporate the Association as a not-for-profit corporation pursuant to the laws of the State of North Carolina, including the drafting and adoption of Association Bylaws. Such Bylaws shall be adopted by a majority vote of all shares entitled to vote at the time and, upon adoption, shall have the same force and effect as if originally set forth herein in their entirety. Any out-of-pocket expense that may hereafter be incurred by any party hereto in setting up or incorporating the Association shall be credited against that party's annual assessment for 1985.

ARTICLE VIII

MISCELLANEOUS

8.01 DURATION. The Restrictive Covenants and Agreements set forth herein shall run with the land for the benefit of, and shall be binding upon, any and all persons and entities, and their heirs, successors or assigns, who may now own, or who may hereafter acquire, any Lot, or any part, parcel or subdivision of any Lot, or any other tract or parcel of land described herein, until January 1, 2005, at which time said Restrictive Covenants and Agreements shall be automatically extended for two (2) successive periods of ten (10) years each unless (a) by a vote of not less than two-thirds (2/3) of all voting shares of the Association, or as otherwise provided herein, the Association agrees to change said Restrictive Covenants and Agreements in whole or in part, and (b) a properly acknowledged document accomplishing any such change is recorded in

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the Chatham County Registry.

8.02 REMEDIES. The Association and any person who may now own, or may hereafter acquire, any Lot, or any part, parcel or subdivision of any Lot, or any other property described herein, shall have the right to enforce the Restrictive Covenants and Agreements set forth herein through any proceeding, at law or equity, against any person or persons violating or threatening to violate such Restrictive Covenants and Agreements, and to recover any damages suffered from any violation thereof or to restrain any violation thereof.

8.03 INVALIDATION. Invalidation of any one or any portion of these Restrictive Covenants and Agreements by judgment or court order shall in no wise affect any of the other Restrictive Covenants and Agreements which shall remain in full force and effect, and the failure of the Association or of any Resident Owner or Non-Resident Owner to take action to enforce any violation of any Restrictive Covenant or Agreement set forth herein shall not be construed as a waiver of any future enforcement thereof.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the day and year first above written.

Joe M. Snipes (SEAL)
Joe M. Snipes

Doris Snipes (SEAL)
Doris Snipes

M. B. Snipes (Single) (SEAL)
M. B. Snipes (Single)

William D. Bernard (SEAL)
William D. Bernard

Debra S. Bernard (SEAL)
Debra S. Bernard

Dutton G. Stoy (SEAL)
Dutton G. Stoy

Patricia T. Stoy (SEAL)
Patricia T. Stoy

Keith Aldridge (SEAL)
Keith Aldridge (Single)

Karen Creasman (SEAL)
Karen Creasman (Single)

SEAL-STAMP

NORTH CAROLINA, Chatham County.

I, a Notary Public of the County and State aforesaid, certify that Joe M. Snipes and wife, Doris Snipes, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 17th day of December, 1984.



Donna S. Poe
NOTARY PUBLIC

My commission expires: 7-27-88

NORTH CAROLINA, Chatham County.

I, a Notary Public of the County and State aforesaid, certify that M.B. Snipes (single), personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 17th day of December, 1984.



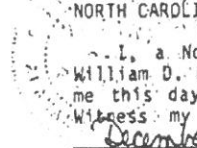
Shama S. Wall
NOTARY PUBLIC

My commission expires: April 23, 1988

SEAL-STAMP

NORTH CAROLINA, Chatham County.

I, a Notary Public of the County and State aforesaid, certify that William D. Bernard and wife, Debra S. Bernard, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 17th day of December, 1984.



Cynthia B. Best
NOTARY PUBLIC

My commission expires: 1/3/87

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SEAL-STAMP

VIRGINIA, Fairfax County.

I, a Notary Public of the County and State aforesaid, certify that Dutton G. Stoy and wife, Patricia T. Stoy, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 10th day of December, 1984.

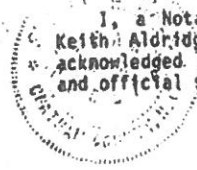
Mary E. Dunleavy
NOTARY PUBLIC

My commission expires: 9/13/87

SEAL-STAMP

NORTH CAROLINA, Chatham County.

I, a Notary Public of the County and State aforesaid, certify that Keith Aldridge (single), personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 17th day of August, 1984.



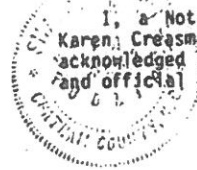
Sharon L. Wall
NOTARY PUBLIC

My commission expires: April 23, 1984

SEAL-STAMP

NORTH CAROLINA, Chatham County.

I, a Notary Public of the County and State aforesaid, certify that Karen Creasman (single), personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 17th day of December, 1984.



Sharon L. Wall
NOTARY PUBLIC

My commission expires: April 23, 1984

NORTH CAROLINA, CHATHAM COUNTY

The foregoing certificate(s) of Donna S. Poe, Sharon L. Wall & Cynthia B. Foust and

Mary E. Dunleavy, Notaries is (are) certified

to be correct. This instrument was presented for registration at 11:25 o'clock A.M., on December 18

19 84, and recorded in Book 477, Page 39.

FLEET BARBER REDDISH
Register of Deeds
JAN 1 1985

By: Margaret C. Baker
Assistant