

(D)

Willows

BK 1051 PG 842

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF
THE WILLOWS AND
THE WILLOWS TOWNHOME OWNERS ASSOCIATION, INC.

THIS DECLARATION AND BY-LAWS, made on the date hereinafter set forth by DRAMSTAD DEVELOPMENT, INC., hereinafter referred to as "Declarant," and THE WILLOWS TOWNHOME OWNERS ASSOCIATION, INC.;

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property known as 'THE WILLOWS' located in the City of Washington, Beaufort County, North Carolina, and more particularly described as follows (herein "Property"):

BEGINNING at a point located in the intersection of the Southern right-of-way line of West Third Street and the Western right-of-way line of Hackney Avenue; and running thence with the sideline of Hackney Avenue, South 28° 21' 25" West 476.94 feet to a point, a corner; thence cornering and running North 61° 51' 17" West 290.30 feet to a point; thence North 28° 08' 43" East 54.67 feet to a point; thence South 61° 53' 54" East 16.31 feet to a point; then on a curve having a delta course of 89° 57' 24" and a chord bearing of North 73° 07' 24" East, a radius of 5 feet, a length of 7.85 and a chord of 7.07 to a point; thence North 28° 08' 42" East 104.64 feet to a point; thence South 61° 47' 15" East 71.29 feet to a point; thence North 28° 38' 28" East 125.19 feet to a point; thence North 61° 35' 49" West 49.57 feet to a point; thence North 27° 24' 55" East 184.11 feet to a point in the Southern sideline of Third Street; thence with Third Street, South 62° 35' 05" East 250.32 feet to a point where the Southern sideline of Third Street intersects the Western sideline of Hackney Avenue, the point and place of beginning; and being the same as shown on that certain survey of Jarvis Associates, P. A., dated March 28, 1996, and entitled, "The Willows - Dramstad Development, Inc.," said map being recorded in the Beaufort County Registry in Plat Cabinet E, Slide 83-10. Reference is herein made to said map and the same is incorporated herein for a more complete and adequate description.

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

PROPERTY DESCRIPTION - DRAMSTAD DEVELOPMENT, INC.

Lying and being in the City of Washington, Beaufort County, North Carolina, more particularly described as follows:

BEGINNING at a point located at the intersection of the Western right-of-way line of Hackney Avenue and the Southern right-of-way line of West Third Street; and running thence from said beginning point with the right-of-way of Hackney Avenue, South 28° 21' 25" West 476.94 feet to a rebar and concrete monument that is a common corner of Washington Harbor Subdivision; running thence with the line of the Washington Harbor Subdivision property, North 61° 51' 17" West 571.21 feet to a point in the line of the property of Pamlico Chemical Company, Inc.; running thence with the line of Pamlico Chemical Company, Inc., North 33° 42' 35" East 376.93 feet to an iron pipe; running thence with a curve to the right, having a chord direction of South 81° 17' 55" East and a chord distance of 295.91 feet, and a radius of 461.15 feet in an Eastwardly direction along the arc of said curve to an iron pipe in West Third Street marking the Eastern end of said chord; running thence with the right-of-way of Third Street, South 62° 35' 05" East 257.41 feet to the point of beginning, and containing 5.7858 acres, more or less. Said property is the same as conveyed to Hackney & Sons, Inc. by Deed recorded in Book 930, Page 507 of the Beaufort County Registry. Said property is also the same as shown on a survey by Ralph S. Jarvis, Registered Land Surveyor, dated February 15, 1996, a copy of which is recorded in Plat Cabinet E, Slide 84-6 of the Beaufort County Registry.



North Carolina
Beaufort County

The foregoing Certificate of Coltricia A. Toler

Notary Public/Notaries Public is/are certified to be correct

This 10 day of July, 1996 at 9:54 o'clock A.M.

Kirk W. Mizelle
Register of Deeds

By Barbara Taylor
Deputy Register of Deeds

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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 **THE WILLOWS TOWNHOME OWNERS ASSOCIATION, INC.**, its successors and/or 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:

That certain tract or parcel of land lying and being in the City of Washington, Beaufort County, North Carolina, more particularly described as follows:

BEGINNING at a point located in the intersection of the Southern right-of-way line of West Third Street and the Western right-of-way line of Hackney Avenue; and running thence with the sideline of Hackney Avenue, South 28° 21' 25" West 476.94 feet to a point, a corner; thence cornering and running North 61° 51' 17" West 290.30 feet to a point; thence North 28° 08' 43" East 54.67 feet to a point; thence South 61° 53' 54" East 16.31 feet to a point; then on a curve having a delta course of 89° 57' 24" and a chord bearing of North 73° 07' 24" East, a radius of 5 feet, a length of 7.85 and a chord of 7.07 to a point; thence North 28° 08' 42" East 104.64 feet to a point; thence South 61° 47' 15" East 71.29 feet to a

point; thence North 28° 38' 28" East 125.19 feet to a point; thence North 61° 35' 49" West 49.57 feet to a point; thence North 27° 24' 55" East 184.11 feet to a point in the Southern sideline of Third Street; thence with Third Street, South 62° 35' 05" East 250.32 feet to a point where the Southern sideline of Third Street intersects the Western sideline of Hackney Avenue, the point and place of beginning; and being the same as shown on that certain survey of Jarvis Associates, P. A., dated March 28, 1996, and entitled, "The Willows - Dramstad Development, Inc.," said map being recorded in the Beaufort County Registry in Plat Cabinet E, Slide 83-10. Reference is herein made to said map and the same is incorporated herein for a more complete and adequate description.

SAVING AND EXCEPTING, HOWEVER, THEREFROM, all those portions of said property clearly defined as and being contained in Blocks A, B and C as shown on said survey referred to above.

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 DRAMSTAD DEVELOPMENT, INC., its successors and assigns, if such successors and assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

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 charge reasonable administrative admission and/or other fees for the use of any recreational facility situated upon the Common Area.

b. The right of the Association to suspend: (1) the voting rights; and (2) the right to use the recreational facilities by an

owner for any period during which any assessment against his Lot remains unpaid, said 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 to 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.

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.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment 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. The Class B member(s) shall be the Declarant and shall be entitled to Three (3) votes for each lot owned, notwithstanding any other provision herein, shall be assessed for each lot owned at a rate of not more than Twenty-Five Percent (25%) of the Class A membership rate 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 the Class B membership, or
- b. Upon Five (5) years after the date of this Declaration.

ARTICLE IV

COVENANTS 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: (a) annual assessments or charges, and (b) 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 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 delinquent assessments shall not pass to the successors in title unless expressly assumed by them, but the lien on the property shall continue and be enforceable against the subject matter property.

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: (1) acquisition, improvement and maintenance of Properties; (2) services and facilities devoted to this purpose; (3) the exterior maintenance of the homes situated upon the Properties; (4) the use and enjoyment of the Common Area, including but not limited to, the costs of repairs, replacements and additions; (5) the costs of labor, equipment, materials, management and supervision; (6) the payment of taxes assessed against the Common Area; (7) the procurement and maintenance of insurance in accordance with the By-Laws; and (8) the payment of charges for all utilities furnished and sewer services rendered to the Properties, 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 One Thousand, Two Hundred and no/100 Dollars (\$1,200.00) per Lot, payable quarterly.

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

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for each succeeding year may be increased above that established by the Consumer Price Index Formula by a vote of the members, and for each succeeding one-year period thereafter, provided that any such change 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.

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, 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 purposes.

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 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 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 and the subsequent meeting shall be One-Half ($\frac{1}{2}$) of the required quorum at the preceding meeting.

Section 6. Except as provided for Class B members in Article III, Section 2 herein, both annual and special assessments must be fixed at a uniform rate for all lots and shall be collected on a quarterly basis, in advance.

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 calendar 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

the Board of Directors shall have the authority to require the assessments to be paid in prorata 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. 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 Ten Percent (10%) 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. The lien of the assessments provided for herein shall be subordinate to the lien of any first or second mortgage. Sale or transfer of any Lot pursuant to mortgage 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 assessments thereafter becoming due or from the lien thereof.

ARTICLE V

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 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 the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rule of law regarding party walls and of liability for property damages due to negligence or willful acts of 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 by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners

thereafter made 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 rules of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against such elements.

Section 5. 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 6. 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. Types of Maintenance. In addition to the maintenance upon the Common Area and the improvements located thereon, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: exterior paint, repair, replacement and care of roofs, decks, steps,

gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access and exterior inspection over and upon such Lot at all reasonable times to perform maintenance as provided in this Article.

Section 2. Costs Subject to Assessments. In the event that the need for maintenance, repair, or replacement is caused through the willful or negligent act of the Owner, his family, guests, or invitees, or tenants, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement or repairs, shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VIII

USE RESTRICTION

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 stories, plus an attic, 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. Nuisances. No noxious or offensive activity shall be carried on 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 in any dwelling, except for house pets such as dogs or cats which may be kept or maintained, provided they are not kept or maintained for commercial purposes, and provided they do not become a nuisance.

Section 4. Outside Antennas. No outside radio or television antennas or dishes shall be erected on any Townhouse unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

COASTAL RIVERS
ARTICLE IX
EASEMENTS
REALTY

Easements for installation and maintenance of utilities (utilities shall include but are not limited to water, sewer, electrical, drainage, cable TV, telephone, etc.) are reserved as shown on the recorded plat. Said easements may be granted by the Owner of the Common Area either prior to or after the same as been conveyed to the Association, for the City of Washington. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the lands, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective heirs, successors and assigns, for a term of Twenty (20) years from the date of this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of Ten (10) years. The covenants and restrictions of 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, provided that no amendment shall alter any obligation to pay Ad Valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded.

Section 4. The Association, acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for in Article VII of this Declaration.

ARTICLE XI

PARKING

Parking Rights. Ownership of each described Lot in the Plat entitled "The Willows - Dramstad Development, Inc.," as recorded in Plat Cabinet E, Slide 83-10, shall entitle the Owner or Owners

and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

All Lots and Common Areas 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, stoops, chimneys, bay windows, gutters and downspouts, misaligned common walls, foundation footings and walls. Declarant shall have a reasonable construction easement across the Common Area for the purpose of constructing improvements on the Lots.

ARTICLE X

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 wise affect any other provisions which shall remain in full force or effect.

thereof to the exclusive use of not more than two automobile parking spaces, which shall be as near and convenient to the Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign two vehicle parking spaces for each dwelling.

IN WITNESS WHEREOF, **DRAMSTAD DEVELOPMENT, INC.** has caused this instrument to be executed in its name by its duly authorized officers; and **THE WILLOWS TOWNHOME OWNERS ASSOCIATION, INC.** has caused this instrument to be executed in its name by its duly authorized officers, both this the 10th day of July, 1996.

(corporate seal)

DRAMSTAD DEVELOPMENT, INC.

By: Ralph Dramstad
President

ATTEST:

Jeanne Dramstad
Secretary

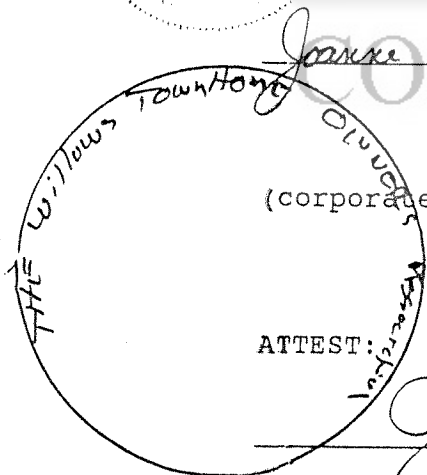
(corporate seal)

THE WILLOWS TOWNHOME OWNERS ASSOCIATION, INC.

By: Ralph Dramstad
President

ATTEST:

Jean K. Nam
Secretary

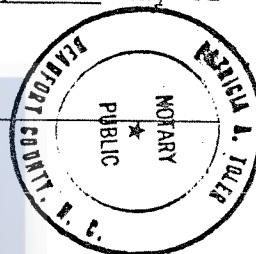


STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, PATRICIA A. TOLER, a Notary Public of the State and County aforesaid, certify that JOANNE DRAMSTAD personally appeared before me this day and acknowledged that he/she is Secretary of DRAMSTAD DEVELOPMENT, INC., a North Carolina corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by ~~himself~~/herself as its Secretary.

WITNESS my hand and official seal, this the 10th day of July, 1996.

Patricia A. Toler
NOTARY PUBLIC



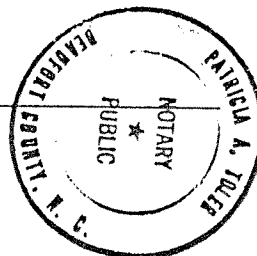
My Commission expires: 11-22-96.

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, PATRICIA A. TOLER, a Notary Public of the State and County aforesaid, certify that JAMES K. NANCE personally appeared before me this day and acknowledged that he/~~she~~ is Secretary of THE WILLOWS TOWNHOME OWNERS ASSOCIATION, INC., a North Carolina corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself/~~herself~~ as its Secretary.

WITNESS my hand and official seal, this the 10th day of July, 1996.

Patricia A. Toler
NOTARY PUBLIC



My Commission expires: 11-22-96.

NORTH CAROLINA: BEAUFORT COUNTY

The foregoing certificate of Patricia A. Toler
Notary Public/Notaries Public is/are certified to be correct.

This 10th day of July, 1996 at 9:55 o'clock A.M.
Kirk W. Mizelle, Register of Deeds By Ann J. Montgomery
Deputy Register of Deeds.

Handwritten mark