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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF _____ PAGE _____
PORTERS LANDING 1997 FEB 10 A 10:43

CHARLES D. ROSS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made effective the 3rd day of February, 1997, by NIBLOCK DEVELOPMENT CORP., a North Carolina corporation (hereinafter sometimes referred to as "Declarant"), and GAILLARD MERVIN, INC., a North Carolina corporation ("Mervin"), said parties hereinafter sometimes referred to collectively as "Declarant/Mervin".

STATEMENT OF PURPOSE

Mervin is the owner (together with Niblock, as to certain lots) of certain real property located in Number 1 Township, Cabarrus County, North Carolina, known as PORTERS LANDING PHASE 1 (Map Book 30, Page 67), reference to said Map being hereby specifically made for a more complete description of said real property by metes and bounds. Declarant/Mervin desire to create thereon an exclusive residential community of single-family residences to be named PORTERS LANDING.

Declarant/Mervin desire to insure the attractiveness of Porters Landing and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within Porters Landing and to provide for the maintenance and upkeep of all open, and/or active recreation, areas [sometimes hereinafter interchangeably referred to as "Open Area(s)"] therein. To this end, Declarant/Mervin desire to subject the real property described herein, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant/Mervin further desire to create an organization to which will be delegated and assigned the powers of owning, maintaining, and administering the open areas in Porters Landing, administering and enforcing the covenants and restrictions and charges hereinafter created in order to efficiently preserve, protect and enhance the values and amenities in Porters Landing, to insure the residents' enjoyment of the specific rights, privileges and easements in the open area, and to provide for the maintenance and upkeep of same.

To that end, Declarant has or will cause to be incorporated, under North Carolina law, PORTERS LANDING PROPERTY OWNERS' ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the property described herein, and such additions thereto as may be hereafter made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof, and Mervin, by its execution hereof, expresses its consent hereto.

ARTICLE I

DEFINITIONS

SECTION 1. "Association" shall mean and refer to PORTERS LANDING PROPERTY OWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

SECTION 2. "Open Area" shall mean all real property (including the improvements thereto) owned by the Association and labeled as "Open Area", or "Active Recreation Area" on the Maps.

SECTION 3. "Declarant" shall mean and refer to Niblock Development Corp. ("NDC").

SECTION 4. "Development" shall mean and refer to Porters Landing, a single-family residential subdivision proposed to be developed on the Properties by Declarant/Mervin.

SECTION 5. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, designated as such, and appearing on the Maps.

SECTION 6. "Map" shall mean and refer to the map of the Existing Property which is recorded in the Cabarrus County Public Registry, and the map(s) of any additions to the Existing Property which may be recorded hereafter by Declarant, and/or Mervin, in the Cabarrus County Registry.

SECTION 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

SECTION 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including Declarant, and/or Mervin, to the extent of their ownership with regard to a Lot, or Lots, and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 9. "Properties" shall mean and refer to the "Existing Property" described in Article II, Section 1 hereof, and such additions thereto as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF PORTERS LANDING PROPERTY OWNERS' ASSOCIATION, INC.

SECTION 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and is, or shall be, within the jurisdiction of the Association, is located in Cabarrus County, North Carolina, and is more particularly described on the Map (Map Book 30, Page 67, Cabarrus County Registry).

SECTION 2. Additions to Existing Property.

(a) Additional land (or easements or rights-of-way to such land) may be brought within the scheme of this Declaration and the jurisdiction of the Association by the Declarant/Mervin, in future stages of development, without the consent of the Association or its Members.

(b) The additions authorized under subsection (a) above shall be made by filing Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional properties in the Cabarrus County, North Carolina, Public Registry which shall extend the scheme of this Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined.

ARTICLE III

PROPERTY RIGHTS

Section 1. Ownership of Open Areas. After the conveyance of seventy-five percent (75%) of the Lots by Declarant (or such lesser percentage of Lots as shall be determined by Declarant in its sole discretion) to other Owners, Declarant shall convey the Open Areas to the Association. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Open Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

Section 2. Owners' Rights to Use and Enjoy Open Areas. The right to use and enjoy the Open Area shall be appurtenant to and shall pass with the title to the Lot of each Owner, subject to the following:

(a) the right of the Association to promulgate and enforce reasonable regulations governing the use of the Open Area to insure the safety and rights of all Owners;

(b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Open Area;

(c) the right of the Association to suspend the Owner's voting rights in the Association and right to use the Open Areas for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

(d) the right of Declarant, Mervin, and/or the Association, to grant utility, drainage and other easements of the type and for the purposes set forth in Article VIII across the Open Areas.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the Open Area and facilities to the members of his family, his guests, his tenants, or contract purchasers who reside on his Lot.

ARTICLE IV

MEMBERSHIP, VOTING RIGHTS AND CONTROL
OF THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Classes of Lots. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two (2) classes of Lots with respect to voting rights:

(a) **Class A Lots.** Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant, and/or Mervin. Each Class B Lot shall entitled the Owner(s) of said Lot to three (3) votes.

Section 3. Amendment of Bylaws, etc. Notwithstanding the provisions of Section 2 above, so long as there shall be any Class B Lot in the Development and unless the Declarant surrenders the rights provided it as set forth in this Section 3 by an express amendment to this Declaration executed and recorded by Declarant, (a) the Bylaws of the Association may not be amended without the written consent of the Declarant and (b) the Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association.

Section 4. Board of Directors. The Association shall be governed by a Board of Directors (the "Board") in accordance with the Bylaws.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Declarant, and/or Mervin, for each Lot owned within the Properties, hereby covenant, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so-expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges and special assessments for capital improvements established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used as follows:

- (a) To maintain all roads constructed within the Development to the standard of maintenance which would be required by the County of Cabarrus, and/or N.C. Department of Transportation, and/or the appropriate governmental authority before it will accept such roads for maintenance;
- (b) To maintain all lighting of Open Areas, with the exception of lighting provided by a governmental agency or body, if any;
- (c) To maintain any and/or all pathways in the Open Areas in an easily passable condition, free from fallen trees, undergrowth, and other obstructions; and to keep all dead, diseased or decaying trees, shrubs and bushes removed from such areas and to replace such items with new trees, shrubs and bushes;
- (d) To maintain any swimming pool(s) and club house(s) and related facilities located in the Open Areas in accordance with the highest standards for private swimming pools and related facilities;

- (e) To keep any parks and/or picnic areas in the Open Areas clean and free from debris and to maintain all picnic tables and other amenities in a clean and orderly condition, and to maintain the landscaping therein, including any necessary removal and replacement of landscaping;
- (f) To maintain all parking areas (for automobiles or otherwise) located in the Open Areas free from debris and in good repair;
- (g) To comply with all agreements with (whether of the Declarant or the Association), or statutes, ordinances, rules or regulations of, Cabarrus County (or any agency thereof) or the State of North Carolina (or any agency thereof), respecting the use of any Open Areas;
- (h) To provide such security as may be deemed reasonably necessary for the protection of the Open Areas from theft, vandalism, fire and damage from animals;
- (i) To maintain the entrance area to the Development in a clean and orderly condition and to maintain the landscaping thereon (including signage, groundcover, shrubs and flowers) to the standard established at completion of the entrance area;
- (j) To maintain all other landscaping in the Open Areas to the standard established at completion of such landscaping;
- (k) To pay all ad valorem taxes levied against the Open Areas and any property owned by the Association;
- (l) To pay the premiums on all hazard insurance carried by the Association on the Open Areas and all public liability insurance carried by the Association pursuant to the Bylaws;
- (m) To pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws; and
- (n) To maintain a contingency reserve equal to five percent (5%) of the sum of the amounts described in preceding subsections of this Section 2 in order to fund unanticipated expenses of the Association.

Section 3. Maximum Annual Assessment. Beginning January 1, 1998, the maximum annual assessment shall be \$300.00 for each Class A Lot in the Development and \$100.00 for each Class B Lot in the Development.

- (a) The maximum annual assessment for Class A and Class B Lots established above may be increased, effective January 1 of each calendar year following the conveyance of the first Lot by the Declarant to another Owner, without a vote of the membership, provided that the percentage of any such increase does not exceed 10%.
- (b) From and after January 1, 1998, said maximum annual assessment for Class A and Class B Lots may be increased

without limitation if such increase is approved by Members entitled to no less than two-thirds (2/3) of all of the votes. Such voting may be represented in person or by proxy at a meeting duly called for this purpose.

- (c) The Board of Directors may fix the annual assessments at amounts 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 Open Area, including fixtures and personal property related thereto, and the roadways serving the Properties, provided that any such assessment requires the same assent of the Members as provided in Section 3(b) of this Article.

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 such meeting the presence of Members or of proxies entitled to cast fifty percent (50%) 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 if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the previous meeting.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to any Lot on the date of conveyance of the Lot by Declarant to the Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year inclusive of the closing month and will be due at closing. After the first year, the annual assessment shall be payable annually (or semi-annually at the election of the Owner), on the fifteenth day of each January (or if the Owner has elected semi-annual payments, on the fifteenth day of each January and July) or on such other payment dates as shall be established by the Board of Directors. The Board of Directors shall fix the amount of the annual assessment against each Lot at least fifteen (15) days in advance of each calendar year. Written notice of the annual assessment shall be sent to every Owner. 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 7. 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. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Association to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner or foreclose the lien that the failure to pay assessments shall hereby be considered to create against the Lot, and interest, late payment charge, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Open Area or abandoning his Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot or any mortgage or deed of trust to the Declarant. Sale or transfer of any Lot shall not affect the assessment lien. However, the 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; provided, however, that the Board of Directors may, in its sole discretion, determine such unpaid assessments to be an annual or a special assessment, as applicable, collectable pro rata from all Owners including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the annual assessment to be in excess of the maximum permitted under Section 3 of this Article. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. Architectural Committee. For purposes of this Article VI, the Declarant shall function as the Architectural Committee (the "Committee") so long as Declarant is a Class B Member of the Association. After the termination of the Declarant's Class B Membership, the Board of Directors of the Association shall appoint the members of the Committee to carry out the functions set forth in this Article.

Section 2. Definitions. For purposes of this Article VI, the following terms shall have the following meanings unless the context clearly requires a different meaning:

- (a) "accessory building" means every detached garage, carport, tool shed, storage or utility building, wellhouse, guest quarters, cabana or other similar building constructed on a Lot which is not a dwelling;
- (b) "buildings" mean accessory buildings and dwellings;
- (c) "dwelling" means a building constructed for single-family residential use but not excluding guest quarters or other similar quarters; and
- (d) "improvements" or "structures" mean buildings and all walls, fences, decks, patios, planters, terraces, swimming pools, tennis courts or anything else constructed or placed on a Lot.

Section 3. General Guidelines. Listed hereinafter are guidelines which are not intended to be absolute and complete guidelines, but address certain critical areas which will be carefully considered by the Committee in the approval or disapproval of an Owner's plans and specifications:

- (a) Every dwelling constructed on a Lot shall contain at least 1,800 square feet of heated floor area exclusive of roofed or unroofed porches, decks, patios, terraces, attached garages and accessory buildings.
- (b) No structures (except fences or walls approved by the Committee) may be erected above grade except within those setbacks as more particularly reflected on the recorded Maps.
- (c) The Committee has the right to decide in its sole and absolute discretion the precise site and location of any structure placed upon any Lot; provided, however, that the

Owner shall be given the opportunity to recommend a specific site for such structure.

- (d) Home design shall be traditional, or moderate transitional, with particular emphasis on adherence to the historic design detail of a particular style home.
- (e) All structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot.
- (f) All structures approved by the Committee must be completed within one (1) year after the receipt of such approval; provided, however, the Committee may waive this requirement if construction delays have been caused by strikes, war, fire, acts of God, material shortages or other events which render the completion of construction within such time impossible.
- (g) All driveways, and turning, and parking, areas shall be asphalt or concrete surfaced, or shall be surfaced with such other materials as may be approved by the Committee; such surfacing must be completed prior to the occupancy of any dwelling on a Lot.
- (h) No fence or wall of any nature (other than fences or walls for landscaping purposes approved by the Committee) shall be maintained or permitted on any Lot from the front and side street lines on each Lot to the residential structure thereon. Fences constructed from the residential structure to the rear line of the Lot shall be constructed of wood, wrought iron, or brick, and shall not exceed a height of 60 inches (no chain link, concrete block, or exposed wire fences of any nature shall be allowed within the Development), but must, in any event, be approved by the Committee.
- (i) Minimum landscaping for each structure shall include seeding of all lawn areas and/or maintained natural areas and appropriate foundation plantings.

Section 4. Approval of Plans, Specifications, and Construction. In addition to the requirements imposed by all applicable governmental agencies governing the issuance of building permits and certificates of occupancy, no structure shall be erected on any Lot without the approval of the Committee as provided in this section.

- (a) Prior to commencing any construction on a Lot and, in any event, no later than one (1) year after the date of purchase of the Lot, the Owner thereof shall submit to the Committee all building plans and specifications (the "Plans") covering such construction. The Plans shall contain the following: (i) foundation plans, (ii) floor plans of all floors, (iii) elevation drawings of all exterior walls, (iv) roof plan, (v) plot plan showing location and orientation of all structures (including accessory buildings) proposed to be built on the Lot with the setback lines set forth in Section 3 above drawn in, (vi) the square footage of the proposed structures, (vii) the location of and materials for any driveway, and, where the driveway is to cross a drainage ditch adjacent to any

roadway, (viii) samples or appropriate description of materials and exterior colors.

- (b) At the time of the submission of the Plans, the Owner shall submit the name of the proposed builder who shall be first approved by the Committee prior to use by the Owner. The Owner shall also submit samples of all proposed building materials as may be requested by the Committee.
- (c) The Committee shall have the absolute and exclusive right to refuse to approve the proposed Plans or make recommendations for modifications in the Plans. In passing upon such Plans and samples, the Committee may take into consideration the suitability and desirability of the proposed construction and the proposed materials to the Lot involved, the quality of the proposed workmanship and materials, and the harmony of the external design with the natural features and the existing structures of the surrounding neighborhood and the appearance of such proposed improvements as viewed from neighboring Lots. If the Committee approves the construction of such improvements, it shall issue a certificate evidencing such approval.
- (d) Upon completion of approved construction, the Committee shall inspect the construction to insure that the approved Plans and samples were complied with by the Owner. No structure may be occupied or used until the issuance by the Committee of a certificate of compliance. The certificate of compliance shall be issued by the Committee without fee; provided, however, that in the event that the Committee's first inspection of the construction reveals deviations or deficiencies from the approved Plans and samples, the Committee may charge a fee of \$50.00 for every subsequent inspection which is necessary to insure compliance with the approved Plans and samples. Any such fee must be paid before the issuance of the compliance certificate.

Section 5. Landscaping. Each Owner shall have completed lawnseeding and foundation plantings in and around the structure within two (2) months of issuance of the completion certificate for the structure as provided in Section 4(d) of this Article; provided, however, the Committee may waive this requirement if delays have been caused by reason of any of the events described in Section 3(f) of this Article.

Section 6. Approval of Changes in Structure. After completion of approved construction and issuance of a compliance certificate as provided in Section 4(d) of this Article, no material change shall be made to any structure on a Lot without the approval of the Committee. Prior to making any material changes to any structure on a Lot [such changes to include without limitation any addition to the existing structure, any construction or addition of an accessory building or any change (including changes in color) in the exterior wall covering], the Owner shall submit to the Committee all plans and specifications covering such proposed change. The Committee shall have the absolute and exclusive right to refuse to approve the proposed plans and shall notify the Owner of its approval or disapproval within thirty (30) days of receipt of the plans from the Owner.

Section 7. Certain Non-Exclusive Remedies in the Event of Non-Compliance.

- (a) In the event the Owner has not submitted Plans to the Committee within the time period prescribed in Section 4(a) of this Article or in the event the Committee (acting reasonably and in good faith) fails to issue the approval required by Section 4(c) of this Article, Declarant, and/or Mervin, shall have the right, but shall not be obligated, to repurchase the Owner's Lot at the original price paid for the Lot by the Owner. The closing of any such repurchase by Declarant, and/or Mervin, shall occur within thirty (30) days of the mailing of written notification to the Owner advising the Owner of the event hereunder giving rise to such right of repurchase. The Owner shall tender all such instruments (including a general warranty deed) as may be necessary to close such repurchase and shall otherwise cooperate with Declarant, and/or Mervin, in effecting such repurchase.
- (b) In the event the Owner has not completed construction of any structure within the time period prescribed in Section 3(f) of this Article or in the event the Owner has not completed the landscaping in and around the structure within the time period prescribed in Section 5 of this Article, Declarant, and/or Mervin, shall have the right, but shall not be obligated, to cause such construction or landscaping to be completed on behalf of the Owner in accordance with the Plans and all costs and expenses of Declarant, and/or Mervin, or the agents, employees or contractors of such, in so completing the construction or landscaping shall constitute a lien on the Owner's Lot until paid or discharged with the written consent of Declarant, and/or Mervin, whichever the case may be. If any such costs or expenses associated with completion of a structure on the Owner's Lot are not paid to the proper party, i.e., Declarant, and/or Mervin, by the Owner within thirty (30) days after completion of the structure, Declarant, and/or Mervin, shall have the right, but shall not be obligated, to foreclose on the lien created hereby and cause the Owner's Lot together with any improvements thereon to be sold and to receive first from the net proceeds of sale (net of all direct costs of selling the Lot) its costs and expenses in completing any structure on the Owner's Lot.

ARTICLE VII

USE RESTRICTIONS

Section 1. Land Use. All Lots shall be used for residential purposes only, and common recreational purposes auxiliary thereto, and for no other purpose. Only one family may occupy a Lot as a principal residence at any one time. Declarant may maintain a sales office, models and a construction office on any Lot until all Lots have been sold.

Section 2. Nuisance. No noxious or offensive activity shall be carried on in or upon any Lot or the Open Area nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Development or unreasonably interferes with the quiet enjoyment of occupants of Lots.

No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance on any other residence or any part of the Open Area or which would be in violation of any law.

Section 3. Pets.

- (a) No animals shall be raised, bred or kept on any Lot or the Open Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Properties.
- (b) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Open Area and that animals be restricted to designated areas within the Open Area and that Owners are responsible for cleaning up any mess that a pet creates within the Open Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing on the Properties at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in Section 3(a) above.

Section 4. Temporary Structures. Except as may be otherwise provided in this Declaration, no building of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, shack, tent, barn, detached garage, or any other building of a similar nature shall be used as a dwelling on any Lot, either temporarily or permanently.

Section 5. Above Ground Pools. No above ground pools shall be erected or installed on a Lot.

Section 6. Access to Lots. The Association, its agents or employees, shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Open Area, or facilities situated upon such Lot which serve another Owner's Lot. The Association or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Open Area or another Lot.

Section 7. Clothes Drying. No drying or airing of any clothing or bedding shall be permitted outdoors on any Lot or in any other unenclosed area (including porches and patios) within the Properties.

Section 8. Signs. One sign of not more than five (5) square feet, advertising a Lot for sale or rent, may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot. The prohibitions herein shall not apply to Declarant, and/or Mervin, or their agents, who may erect such signs as they deem desirable to promote the sale of Lots.

Section 9. Plumbing; Central Water and Sewer. All plumbing, dishwashers, toilets and sewage disposal systems shall be connected to a sewage system approved by the appropriate governmental authority. The applicable governmental authority must certify that such system may be used prior to the use and occupancy of any dwelling on the Lot.

Section 10. Removal of Trees. No living trees measuring six (6) inches or more in diameter at ground level may be removed without the written approval of the Committee unless such trees are located within ten (10) feet of the dwelling or any accessory building. No trees shall be removed from any Lot without the consent of the Committee until the Owner is ready to commence construction.

Section 11. Fuel Tanks and Garbage Containers. All fuel storage tanks shall be buried below the surface of the Lot or screened by fencing or shrubbery as approved by the Committee. All outdoor receptacles for ashes, trash, rubbish or garbage shall either be installed in the ground or screened or placed so as not to be visible from any street, other Lot, or Open Area.

Section 12. Maintenance. All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, undergrowth, dead, diseased or decaying trees, weeds, trash, rubbish and debris and shall keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean, neat, and orderly condition and in a good state of maintenance and repair.

Section 13. Vehicles and Parking. Each Owner shall provide space for parking (2) automobiles on his Lot prior to occupancy of any dwelling constructed on such Lot in accordance with reasonable standards established by the Committee. No boat, motor home, travel trailer or other recreational vehicle may be stored overnight on any Lot unless the same be within an enclosed garage or area not visible from the streets or from adjoining dwellings. This restriction shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant, and/or Mervin, and their agents and contractors, in the conduct of their business prior to completion of sales. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway or in any garage within the Development, except in the case of emergency. No unlicensed vehicles may be kept, or stored, on a Lot.

Section 14. Antennas. No radio or television aerial or antenna, or T.V. satellite dish (except those which do not exceed 24 inches in diameter and are not visible from the street fronting the particular Lot), or any other external electronic equipment or devices, may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size and design has been approved by the Committee.

Section 15. Exercise and Recreational Equipment. All swing sets, tree houses, play houses, basketball goals and similar equipment must be located within building setback lines, and must otherwise meet with the approval of the Committee as to design, construction, materials, etc. Skateboard ramps are specifically not permitted.

Section 16. Reconstruction. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building, with reasonable promptness; provided, however, that any such reconstruction must be commenced within six (6) months from the date of such destruction or if no reconstruction is to occur, then all such debris must

be removed and the Lot restored to its prior condition within six (6) months of such destruction.

Section 17. Subdivision. No Lot shall be subdivided or its boundary lines changed without the written consent of the Declarant, provided, however, that the Declarant hereby expressly reserves to itself, its successors and assigns, the right to replat any two (2) or more Lots shown on the Maps of the Properties, and to otherwise change boundary lines as it may deem necessary.

Section 18. Interval Ownership. No Owner may deed, sell, convey, or otherwise transfer his Lot under any time-sharing or interval ownership arrangement.

Section 19. Hazardous Activities. Nothing shall be done or kept on any Lot or in the Open Area which will increase the rate of insurance of the Open Area or any other Lot without the prior written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Open Area which would result in the cancellation of insurance on any part of the Open Area, or which would be in violation of any law.

Section 20. Regulations. Reasonable regulations governing the use of the Open Area and external appearance of all structures erected on the Lots may be made and amended from time to time by the Board of Directors of the Association; provided, however, that all such regulations and amendments thereto shall be approved by a majority vote of the Members before the same shall become effective. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request.

Section 21. Compliance. In the event that the Owner of any Lot fails to comply with any of the restrictions set forth in this Article or such rules and regulations as may be subsequently promulgated by the Board of Directors, the Association, Declarant, Mervin, or other Owners shall have the right (among other remedies which may be available), but not the obligation, to enter any Lot and undertake any necessary action in order to cure such Owner's default. All expense and cost incurred by the Association in curing such default shall be charged to the defaulting Owner, shall be payable by such Owner to the Association immediately upon demand and shall constitute a lien on the applicable Lot until paid.

ARTICLE VIII

EASEMENTS

Declarant, and/or Mervin, reserve easements for the installation and maintenance of driveways, walkways, parking areas, water lines, telephone and electric power lines, cable television lines, sanitary sewer and storm drainage facilities, pumping and lift stations, silt fences, drainage ditches and for other utility installations over the Properties as provided in Article III, Section 2(d) of this Declaration. Each Owner, by his acceptance of a deed to a Lot, and the Association by its acceptance of a deed to the Open Areas, acknowledges such reservation and the right to Declarant, and/or Mervin, to transfer such easements to the Association or to such utility companies as Declarant, and/or Mervin, may choose. The easements reserved by Declarant, and/or Mervin, include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development.

Certain of the easements referred to herein and reserved by Declarant, and/or Mervin, may, but need not, be shown on the Maps. Declarant, and/or Mervin, further reserve the right to locate wells, pumping stations, lift stations and tanks within any Open Areas or any residential Lot designated for such use on any Map or upon any Lot adjacent to such designated Lot with the permission of the Owner of such adjacent Lot.

Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition, Declarant, and/or Mervin, and/or the Association shall have the continuing right and easement to maintain all water lines located on the Lots, including the right to go into dwellings and disturb the structure and floors thereof in order to maintain those lines located within or under said dwelling.

ARTICLE IX

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 and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land until January 1, 2021, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration (except as set forth to the contrary in Article IV, Section 3) may be amended by an instrument signed by the Owners of not less than sixty-six and two-thirds percent (66 2/3%) of the Lots.

IN WITNESS WHEREOF, Declarant and Mervin have caused this instrument to be signed in their corporate names by their duly authorized officers and their seals to be hereunto affixed by authority of their Boards of Directors, the day and year first above written.

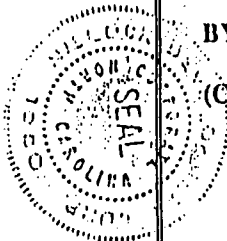
DECLARANT:

NIBLOCK DEVELOPMENT CORP.

BY: William T. Niblock
William T. Niblock, Vice President

ATTEST:

BY: Paula Z. Gray
Paula Z. Gray, Assistant Secretary
(Corporate Seal)

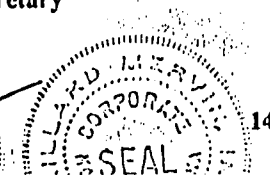


GAILLARD MERVIN, INC.

BY: Gaillard A. Mervin
President

ATTEST:

BY: Elaine S. Mervin
Secretary
(Corporate Seal)



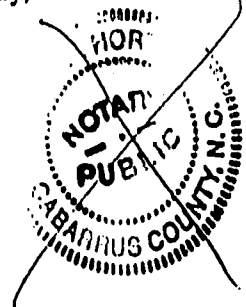
NORTH CAROLINA
CABARRUS COUNTY

I, Lorri H. Horton, a Notary Public in and for said County and State, do hereby certify that Paula Z. Gray, personally appeared before me this day and acknowledged that she is the Assistant Secretary of NIBLOCK DEVELOPMENT CORP., a corporation, 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 herself as its Assistant Secretary.

Witness my hand and notarial seal, this the 6th day of February, 1997.



Lorri H. Horton
Notary Public



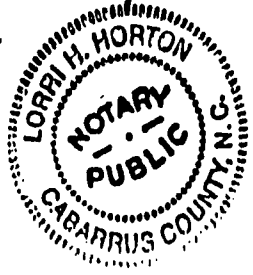
NORTH CAROLINA
CABARRUS COUNTY

I, Lorri H. Horton, a Notary Public in and for said County and State, do hereby certify that Elaine S. Mervin personally appeared before me this day and acknowledged that she is the _____ Secretary of GAILLARD MERVIN, INC., a corporation, and that 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 herself as its _____ Secretary.

Witness my hand and notarial seal, this the 10th day of February, 1997.

Lorri H. Horton
Notary Public

My Commission Expires: 5/20/97



NORTH CAROLINA
CABARRUS COUNTY

The foregoing (or annexed) certificate(s) of Lorri H. Horton, a notary public, is/ (are) certified to be correct. This the 10th day of February, 1997.

CHARLES B. ROSS, REGISTER OF DEEDS

By: Cynthia E. Zapp
Assn/Deputy

re\porters.cov

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PORTERS LANDING

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PORTERS LANDING, is made effective the 1st day of March, 1997, by NIBLOCK DEVELOPMENT CORP., a North Carolina corporation (hereinafter sometimes referred to as "Declarant"), and GAILLARD MERVIN, INC., a North Carolina corporation (hereinafter sometimes referred to as "Mervin").

W I T N E S S E T H: That --

WHEREAS, Declarant and Mervin have heretofore caused to be recorded in Book 1806, Page 240, of the Cabarrus County Registry, a Declaration of Covenants, Conditions and Restrictions of Porters Landing (hereinafter sometimes referred to as the "Declaration"), dated February 3, 1997; and

WHEREAS, the Declaration provides in Article IX, Section 3 ("Amendment") thereof that "...This Declaration...may be amended by an instrument signed by the Owners of not less than sixty-six and two-thirds percent (66-2/3%) of the Lots."; and

WHEREAS, Declarant and Mervin constitute the Owners of all Lots at this point in time; and

WHEREAS, Declarant and Mervin desire to make an amendment to the Declaration as more particularly set forth hereinafter.

NOW, THEREFORE, the Declarant and Mervin, by this Amendment to Declaration of Covenants, Conditions and Restrictions of Porters Landing, do hereby amend same as follows:

1. Article VII, Section 13 ("Vehicles and Parking"). By deleting the words "on any driveway or in any garage within the Development, except in the case of emergency" on lines 9 and 10 thereof, and replacing such words with the following:

...on any Lot within the Development, except within a garage or other enclosed area not visible from the streets or from adjoining dwellings. Furthermore, no such repairs or maintenance work shall be done in any event as a business or commercial enterprise.

2. Except as amended herein, all other provisions of the Declaration shall remain unchanged and are hereby ratified and reaffirmed.

IN WITNESS WHEREOF, the Declarant and Mervin have caused this instrument to be signed in their corporate names by their duly authorized officers and their seals to be hereunto affixed by authority of their Boards of Directors, effective the day and year first above written.

DECLARANT:

NIBLOCK DEVELOPMENT CORP.

By:

[Signature]
President

WITNESSES:

[Signature]
Asst. Secretary
(Corporate Seal)

FILED

OK PAGE

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CHARLES B. ROSS
REGISTER OF DEEDS
CABARRUS CO., NC

10. *[Handwritten signature]*

GAILLARD MERVIN, INC.



ATTEST: Jane Eaves
Jane Eaves
Secretary
(Corporate Seal)

By: Gaillard A. Mervin, Jr.
President
Gaillard A. Mervin, Jr.

NORTH CAROLINA
CABARRUS COUNTY

I, Frances Helms, a Notary Public in and for said County and State, do hereby certify that Sheila M. Starnes personally appeared before me this day and acknowledged that she is the Asst. Secretary of Niblock Development Corporation, a corporation, 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 her self as its Asst. Secretary.
Witness my hand and notarial seal, this the 3rd day of April, 1997.

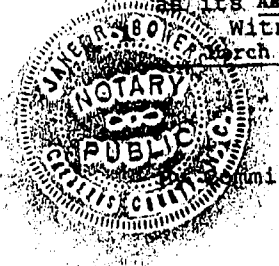
Frances Helms
Notary Public

My Commission Expires: 7/7/2001

FRANCES HELMS
NOTARY PUBLIC
CABARRUS COUNTY, NC

NORTH CAROLINA
CABARRUS COUNTY

I, Jane R. Bowens, a Notary Public in and for said County and State, do hereby certify that Jane C. Eaves personally appeared before me this day and acknowledged that she is the Assistant Secretary of Gaillard Mervin, Inc., a corporation, and that 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 her self as its Assistant Secretary.
Witness my hand and notarial seal, this the 31st day of March, 1997.



Jane R. Bowens
Notary Public

My Commission Expires: 6-30-97

NORTH CAROLINA
CABARRUS COUNTY

NORTH CAROLINA - CABARRUS COUNTY

The foregoing (or annexed) certificate(s) of Frances Helms and Jane R. Bowens, a notary public, is (are) certified to be correct. This the 7th day of April, 1997

CHARLES B. ROSS, REGISTER OF DEEDS

by Andrew M. Miller Asst./Deputy

**SECOND AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
PORTERS LANDING**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PORTERS LANDING is made effective the 13th day of August, 1997, by NIBLOCK DEVELOPMENT CORP., a North Carolina corporation (hereinafter sometimes referred to as "Declarant"), and GAILLARD MERVIN, INC., a North Carolina corporation (hereinafter sometimes referred to as "Mervin").

W I T N E S S E T H: That --

WHEREAS, Declarant and Mervin have heretofore caused to be recorded in Book 1806, Page 240, of the Cabarrus County Registry, a Declaration of Covenants, Conditions and Restrictions of Porters Landing (hereinafter sometimes referred to as the "Declaration"), dated February 3, 1997, said Declaration having been amended by instrument dated March 1, 1997, and recorded in Book 1844, Page 306, Cabarrus County Registry; and

WHEREAS, the Declaration provides in Article IX, Section 3 ("Amendment") thereof that "...This Declaration...may be amended by an instrument signed by the Owners of not less than sixty-six and two-thirds percent (66-2/3%) of the Lots."; and

WHEREAS, Declarant and Mervin constitute the Owners of not less than sixty-six and two-thirds percent (66-2/3%) of the Lots at this point in time; and

WHEREAS, Declarant and Mervin desire to further amend the Declaration as more particularly set forth hereinafter.

NOW, THEREFORE, the Declarant and Mervin, by this Second Amendment to Declaration of Covenants, Conditions and Restrictions of Porters Landing, do hereby amend same as follows:

1. Article IX ("General Provisions"). By adding a Section 4 thereto, as follows:

Section 4. VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Department of Veterans Affairs: Annexation of additional properties, dedication of Open (Common) Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

2. Except as amended herein, and by that amendment document dated March 1, 1997, all other provisions of the Declaration shall remain unchanged and are hereby ratified and reaffirmed.

IN WITNESS WHEREOF, the Declarant and Mervin have caused this instrument to be signed in their corporate names by their duly authorized officers and their seals to be hereunto affixed by authority of their Boards of Directors, effective the day and year first above written.

DECLARANT:

NIBLOCK DEVELOPMENT CORP.

By: 
President

ATTEST:


Secretary
(Corporate Seal)

GAILLARD MERVIN, INC.

ATTEST:

Elaine S. Mervin
Secretary
(Corporate Seal)

By: Gaillard A Mervin
President

NORTH CAROLINA
CABARRUS COUNTY

I, Regina G. Caviness, a Notary Public in and for said County and State, do hereby certify that Marc C. Niblock personally appeared before me this day and acknowledged that he is the _____ Secretary of Niblock Development Corporation, a corporation, and that 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 him self as its _____ Secretary.

Witness my hand and notarial seal, this the 14th day of August, 1997.

Regina B. Caviness
Notary Public

My Commission Expires: 9-19-99

NORTH CAROLINA
CABARRUS COUNTY

I, Regina G. Caviness, a Notary Public in and for said County and State, do hereby certify that Elaine S. Mervin personally appeared before me this day and acknowledged that she is the _____ Secretary of Gaillard Mervin, Inc., a corporation, and that 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 her self as its _____ Secretary.

Witness my hand and notarial seal, this the 20th day of August, 1997.

Regina B. Caviness
Notary Public

My Commission Expires: 9-19-99

NORTH CAROLINA
CABARRUS COUNTY

The foregoing (or annexed) certificate(s) of _____, a notary public, is (are) certified to be correct. This the _____ day of August, 1997.

CHARLES B. ROSS, REGISTER OF DEEDS

By: _____
Asst./Deputy

**SECOND AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
PORTERS LANDING**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PORTERS LANDING is made effective the 13th day of August, 1997, by NIBLOCK DEVELOPMENT CORP., a North Carolina corporation (hereinafter sometimes referred to as "Declarant"), and GAILLARD MERVIN, INC., a North Carolina corporation (hereinafter sometimes referred to as "Mervin").

W I T N E S S E T H: That --

WHEREAS, Declarant and Mervin have heretofore caused to be recorded in Book 1806, Page 240, of the Cabarrus County Registry, a Declaration of Covenants, Conditions and Restrictions of Porters Landing (hereinafter sometimes referred to as the "Declaration"), dated February 3, 1997, said Declaration having been amended by instrument dated March 1, 1997, and recorded in Book 1844, Page 306, Cabarrus County Registry; and

WHEREAS, the Declaration provides in Article IX, Section 3 ("Amendment") thereof that "...This Declaration...may be amended by an instrument signed by the Owners of not less than sixty-six and two-thirds percent (66-2/3%) of the Lots."; and

WHEREAS, Declarant and Mervin constitute the Owners of not less than sixty-six and two-thirds percent (66-2/3%) of the Lots at this point in time; and

WHEREAS, Declarant and Mervin desire to further amend the Declaration as more particularly set forth hereinafter.

NOW, THEREFORE, the Declarant and Mervin, by this Second Amendment to Declaration of Covenants, Conditions and Restrictions of Porters Landing, do hereby amend same as follows:

1. Article IX ("General Provisions"). By adding a Section 4 thereto, as follows:

Section 4. VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Department of Veterans Affairs: Annexation of additional properties, dedication of Open (Common) Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

2. Except as amended herein, and by that amendment document dated March 1, 1997, all other provisions of the Declaration shall remain unchanged and are hereby ratified and reaffirmed.

IN WITNESS WHEREOF, the Declarant and Mervin have caused this instrument to be signed in their corporate names by their duly authorized officers and their seals to be hereunto affixed by authority of their Boards of Directors, effective the day and year first above written.

DECLARANT:

NIBLOCK DEVELOPMENT CORP.

By: 
President

ATTEST:


Secretary
(Corporate Seal)

GAILLARD MERVIN, INC.

ATTEST:

Elaine S. Mervin
Secretary
(Corporate Seal)

By: Gaillard A Mervin
President

NORTH CAROLINA
CABARRUS COUNTY

I, Regina G. Caviness, a Notary Public in and for said County and State, do hereby certify that Marc C. Niblock personally appeared before me this day and acknowledged that he is the _____ Secretary of Niblock Development Corporation, a corporation, and that 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 him self as its _____ Secretary.

Witness my hand and notarial seal, this the 14th day of August, 1997.

Regina B. Caviness
Notary Public

My Commission Expires: 9-19-99

NORTH CAROLINA
CABARRUS COUNTY

I, Regina G. Caviness, a Notary Public in and for said County and State, do hereby certify that Elaine S. Mervin personally appeared before me this day and acknowledged that she is the _____ Secretary of Gaillard Mervin, Inc., a corporation, and that 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 her self as its _____ Secretary.

Witness my hand and notarial seal, this the 20th day of August, 1997.

Regina B. Caviness
Notary Public

My Commission Expires: 9-19-99

NORTH CAROLINA
CABARRUS COUNTY

The foregoing (or annexed) certificate(s) of _____, a notary public, is (are) certified to be correct. This the _____ day of August, 1997.

CHARLES B. ROSS, REGISTER OF DEEDS

By: _____
Asst./Deputy