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DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
EARLYSVILLE FOREST  
SECTION ONE

THIS DECLARATION, made on the date hereinafter set forth by GEORGE HARRISON GILLIAM, Trustee of the Earlysville Forest Land Trust under Trust Agreement dated April 30, 1981, hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Albemarle, State of Virginia, which is more particularly described as:

All that certain tract or parcel of land with improvements thereon and appurtenances thereto, near State Route 743 in Earlysville, Virginia, containing 84.881 acres, more or less, as shown and described on a subdivision plat of Gloeckner, Lincoln & Osborne, Inc., of Section One, Earlysville Forest, dated March 16, 1981, as revised to May 13, 1981, attached hereto as a part of this declaration, less and except Parcel C (containing 3.769 acres) shown on said plat, being a portion of the land conveyed to the Declarant, by deed of Mary H. Lupton and Thomas G. Lupton, dated May 1, 1981, of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia prior hereto.

AND WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

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, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to The Earlysville Forest Homeowners Association, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property herein before described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Declarant or the Association for the common use and enjoyment of the members of the Association and shown on said subdivision plat as "Common Area" or as "Common Open Space."

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded

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subdivision map of the Properties with the exception of the Common Area.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "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 7. "Declarant" shall mean and refer to George Harrison Gilliam, Trustee as aforesaid, his successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Private Road" shall mean and refer to each and every road within the Properties designated upon any recorded subdivision plat as a "private road."

## ARTICLE II

### ANNEXATION OF ADDITIONAL PROPERTIES

The restrictions contained herein as well as all of the rules, regulations and controls herein provided shall be applied to such future land as may be platted by the Declarant, or his assigns, so long as said land is either a portion of the remaining properties originally conveyed to the Declarant by deed-of Mary H. Lupton and Thomas G. Lupton dated May 1, 1981, of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in Deed Book \_\_\_page\_\_\_ or is adjoining any of said property conveyed to Declarant, by the aforesaid deed, and the application of these restrictions to said adjoining land shall commence upon the platting of said adjoining lands as a part of this subdivision.

## ARTICLE III

### MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

## ARTICLE IV

### VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Article III with the

exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such 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. The Class B member(s) shall be entitled to two (2) votes for each Lot in which it holds the interest required for membership by Article III, provided that the Class B membership shall cease and be converted to Class A membership on a section by section basis at such time that more than seventy-five percent (75%) of the Lots in that section have been sold by the Declarant to individual purchasers, provided that the Declarant shall retain its Class B membership as to other sections where less than seventy-five percent (75%) of the Lots have been sold to individual purchasers.

## ARTICLE V

### COMMON AREA PROPERTY RIGHTS

Section 1. Member's Easements of Enjoyment. Every Member and his or her guests shall have the right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of Members;
- (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (c) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property and the improvements thereto, and the rights of such mortgagee in said properties shall be subordinate to the rights of the Members hereunder;
- (d) the right of the Association to suspend the voting rights and right to use of the recreational facilities by a Member for any period during which any assessment against his Lot remains unpaid;
- (e) 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 Members entitled to cast three quarters (3/4) of the votes of the Class A membership and three quarters (3/4) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than 10 days nor more than 60 days in advance. However, notwithstanding the foregoing, the Association may by action of its board of directors, and without the necessity for action by its members, grant and convey utility easements; and
- (f) the right of the Association to grant to Members and to the owner or owners of Parcel C shown on the aforementioned subdivision plat, or any division or redivision of said Parcel C, the right to drill, maintain and operate wells and septic fields within the Common Areas, permission for which shall be freely given by the Association so long as the proposed wells and septic fields are

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placed in reasonable proximity to the lots to be served thereby and the use, maintenance and operation thereof will not unreasonably interfere with the use and enjoyment of the Common Areas by the other Members; provided, however, that in the event water from a public or central well water system is available, each owner shall, whether it uses such public or central well water system or not, pay the minimum usage charges and hookup charges of the supplier of water and such charges shall be deemed "assessments" as that term is used in Article VII hereof, and shall be enforceable as therein provided. Water and hookup charges shall not be subject to the limitations set forth in Article VII, Section 3.

Section 2. Delegation of Use. Any Member 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.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot.

Section 4. Miscellaneous. The Declarant hereby grants to S. R. Wood and M. E. Wood, their children and members of their immediate family residing in their household, and to their social guests, the license and right to ride horses over and upon the Common Area and over and upon the unplatted and unsubdivided areas of the adjacent lands of the Declarant. The said license shall be irrevocable so long as S. R. Wood and M. E. Wood or their children continue to reside at the property (presently designated as T. M. 31-P 31A) adjacent to the lands of the Declarant near Earlysville, Virginia, but this license shall expire and be of no further effect upon and after such time as the said S. R. Wood and M. E. Wood or their children no longer reside at said property.

## ARTICLE VI

### PRIVATE ROAD MAINTENANCE

Section 1. Dedication. The Private Roads are hereby dedicated for, and intended for, public use, but have not been and are not intended to be accepted for maintenance by the Virginia Department of Highways (the "Department"), the County of Albemarle, or any agency or subdivision thereof.

Section 2. Standards. The Private Roads shall be constructed by the Declarant at its sole expense to the applicable standards of the Department and of the County of Albemarle.

Section 3. Private Roads to be Maintained by Certain Owners.

- (a) No part of the cost of construction, maintenance, repair, upkeep or replacement (herein called the "Maintenance Costs") of the Private Roads shall be borne by the County of Albemarle, the Commonwealth of Virginia, or any other public agency.
- (b) The Maintenance Costs of the Private Roads shall be paid, as herein provided, by the Owners of each of the Lots served by such Private Road. All such costs shall be borne equally by the owners of each of the Lots on such Private Road. For example, there are twenty-six (26) Lots served by the Private Road designated on the attached plat as

"Stillwater Lane." All Maintenance Costs of "Stillwater Lane" (and other Private Roads in Section One) shall be equally divided among the Owners of Lots 1 through 26, inclusive, Section One, Earlysville Forest, the Owner of each such Lot being responsible and liable for one-twenty-sixth (1/26) of the total of such costs.

(c) In addition to its other duties, the Association shall see to the maintenance, repair, upkeep and replacement of the Private Roads, and shall enter into such contract or contracts for such purpose as may be reasonably necessary. The Association shall charge and assess, no more frequently than monthly, the respective Owners for their proportionate share of the Maintenance Costs, computed and allocated as herein above set forth. Such charges shall be and remain a lien against the Lot of each Owner so billed until such time as such bill is paid. The lien for such costs shall be enforceable in the same manner as other assessments made by the Association and the provisions of Article VII hereof are incorporated here by reference.

## ARTICLE VII

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or any conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided, and (3) where applicable, Maintenance Costs referred to in Article VI hereof. The annual and special assessments, and Maintenance Costs, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made in the manner as hereinafter provided, and subject to prior liens upon the property as hereinafter provided. Each such assessment, together with such 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 shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments.

(a) The assessments levied by the Association shall be used exclusively for the purposes set forth in Articles V and VI hereof, and for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Common Areas, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas.

(b) In the event that any such need for maintenance or repair is caused by the willful or negligent act of an owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which the Lot owned by such Owner is subject.

(c) The Association shall maintain all open and common areas.

(d) The Association may operate such recreational facilities as it deems fit and proper and make such extra user charges as it deems proper for the use of these recreational

facilities.

( e ) The Association shall further be in charge of the general policing and control of the entire subdivision.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment (except for water usage and hookup charges as provided by Article V and Maintenance Costs as provided by Article VI) shall be ONE DOLLAR (\$1.00) per month per improved lot (improved by completed structure) and shall be a maximum of ONE DOLLAR (\$1.00) per month per unimproved lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment (except for water usage and hookup charges as provided by Article V and Maintenance Costs as provided in Article VI) may be increased by the Board of Directors up to ten percent (10%) per year effective January 1 of each year without a vote of the total membership, Class A and B members, with Class B members casting three (3) votes per Lot and Class A members casting one ( 1 ) vote per lot, and for this purpose a quorum shall be constituted by a majority of the total votes authorized.

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 or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment must be approved by a three quarter (3/4) vote of the total membership, Class A and B members, with Class B members casting two (2) votes per Lot and Class A members casting one (1) vote per lot, and for this purpose a quorum shall be constituted by a majority of the total votes authorized. Said vote is to be taken in person or by proxy at a meeting duly called for this purpose, pursuant to the normal notice required for meetings as provided under the By-Laws of the Association or under Virginia state law, if none is so provided.

Section 5. Uniform Rate of Assessment. Both annual and special assessments (except for Maintenance Costs, as provided. by Article VI) must be fixed at a uniform rate for all improved Lots as a class and all unimproved Lots as a class, and may be collected on a monthly basis.

Section 6. Date of Commencement of Annual Assessment: 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. Unless otherwise established by the Board of Directors, the annual assessments shall be due in twelve (12) equal installments on the first day of each month, unless other due dates are established by the Board of Directors, and the annual assessment shall be prorated where sale is made between the annual January 1 assessment dates. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments of a specified Lot have been paid. A reasonable charge

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may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Effect of Nonpayment of Assessment: Remedies of the Association. Any assessments (including assessments for Maintenance Costs) which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum interest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Section 8. Lien for Payment of Assessments and Subordination of Lien to First and Second

Mortgages. There shall be a continuing lien upon each of the individual Lots herein, in order to secure the payment of any of the assessments provided under this Declaration, but such lien shall be at all times subject and subordinate to any first or second mortgages or deeds of trust placed on the property at any time, except as hereinafter provided.

However, at such time as the Association places to record a notice of delinquency as to any particular Lot on a form prescribed by the Board of Directors, then, from time of recordation of said notice the lien of such delinquent assessments in the amount stated in such notice shall from that time become a lien prior to any mortgages or deeds of trust Placed of record subsequent to the date of said notice in the same manner as the lien of a docketed judgment in the State of Virginia. The lien of the assessments provided for herein, whether or not notice has been placed of record as above provided, may be foreclosed by a Bill in Equity in the same manner as provided for the foreclosure of mortgages, vendor's liens, deeds of trust, mechanic's lien or liens of similar nature. A statement from the Association showing the balance due on any assessment be prima facie evidence of the current assessment balance and delinquency, if any, due on a particular Lot.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a public authority; (b) the Common Area; and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE VIII

### ARCHITECTURAL CONTROL

Section 1. Plans and Specifications Generally.

(a) 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, color, size, kind, shape, height, materials, and location of the same shall have been submitted to and approved in

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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 (the "Committee"). In addition to the items hereinafter required to be shown on the said plans and specifications, and such items and details as may be required by the Board or the Committee, all attachments to a dwelling (including storm windows and doors) shall be shown and described. In the event said Board, or the Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such plans and specifications shall be deemed to have been approved.

(b) Every building, fence, wall or other structure, including additions or alterations thereto, constructed by Craig Builders, Charlottesville, Virginia, shall be exempt from the provisions of Section 1, Article VIII hereof.

Section 2. Fences. No fence may be erected upon any Lot except behind a line describing the front margin of a dwelling unit, unless this restriction shall be waived by the Committee. The "front" shall be that side of a dwelling facing, or most nearly facing, a platted street, road or cul-de-sac.

Section 3. Trash Containers. Trash cans, barrels and containers must be maintained within screened bins. No plans and specifications will be approved without such screened bins.

Section 4. Antennas. No exterior or roof antennas of any kind or description may be erected or maintained on any Lot or dwelling house or other structure thereon.

Section 5. Maintenance of Trees. No living tree with a diameter greater than three inches upon any Lot or Common Area may be cut down without the prior express written permission of the Board or Committee. A landscape plan shall be submitted with the plans and specifications referred to above, such plan to show existing trees and shrubs and to clearly indicate those to be removed.

Section 6. Clothes Lines. The location of all clothes lines must be shown upon the plans and specifications submitted to the Board. No plans and specifications shall be approved which show the location of any clothes line other than in the rear of a dwelling house.

## ARTICLE IX

### USE RESTRICTIONS

Section 1. Limitation on Use of Lots and Common Area. The Lots and Common Area shall be occupied and used as follows:

(a) No Owner shall occupy or use his Lot, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner and the Owner's family or the Owner's Lessees or guests.

(b) There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Association.

(c) Nothing shall be done or kept in any Lot or in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Association. No owner shall permit anything to be done or kept in his Lot or in the Common Area which will result in the cancellation of insurance on any Lot or any part of



the Common Area, or which would be in violation of any law. No waste will be permitted in the Common Area.

(d) No sign of any kind (except "For Sale" signs of no more- than six square feet an each face) shall be displayed to the public view on or from any Lot or the Common Area, without the prior consent of the Association.

(e) No animals, livestock or poultry of any kind shall be raised, bred, or kept in any Lot or in the Common Area, except that dogs, cats or other domesticated household pets may be kept on Lots, subject to rules and regulations adapted by the Association. No household pet shall be permitted off the Lot occupied by such pets' Owner except on a leash.

(f) No noxious or offensive activity shall be carried on in any Lot or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to any other Owner.

(g) Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Association.

(h) There shall be no violation of rules for the use of the Common Area adopted by the Association.

(i) No unlicensed vehicles of any kind or description (including boats, automobiles, trucks, recreational vehicles, etc.) shall be kept or maintained or stored on any platted street or cul-de-sac or on any Lot or in the Common Areas. The maximum number of vehicles which may be maintained or stored on any Lot (excluding those stored in garages) shall be three (3). No boat or recreational vehicles shall be kept, maintained or stored in such manner as to be visible from any platted street or cul-de-sac, any other Lot, or the Common Area.

(j) All toys, bicycles, yard and garden implements, tools and the like shall be kept and stored out of sight from platted streets and cul-de-sacs from sunset to sunrise each day.

(k) No trucks larger than 3/4 ton pickup trucks shall be principally garaged or kept on any street within Earlysville Forest, or upon any Lot or within any Common Area.

(l) All woodpiles shall be either uncovered or covered with tarpaulins of dark (green or black) color, and shall be properly secured. .

Section 2. Entry for Repairs. The Association or its agents may enter any Lot when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association out of the common expense fund.

Section 3. Charges and Liens for Compliance Herewith. In the event that any Owner shall violate any one or more of the Use Restrictions set forth in Section 1 of this Article IX, and in the event such Owner shall have been notified by the Association or its agents, employees, or attorneys (in writing sent by registered or certified mail to the Owner's residence address) of such violation, and in the event such violation is not stopped, halted or corrected (as set forth in such written notification) and continues, then, without further notice, the Association may cause such violation to be stopped, halted or corrected, without liability for so doing, and may cause any and all costs incurred (including attorneys' fees) in connection therewith to be charged as an additional assessment to such Owner. Such assessments may be collected in any of the manners specified in Article VI hereof, including suit at law or in equity or by filing a notice of assessment lien as herein

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provided. The remedy herein provided shall be in addition to any other provided or allowed by law or in equity and shall not be deemed an exclusive remedy. Election of one remedy (whether herein specified or allowed or otherwise) shall not act as a bar to the subsequent or concurrent use of other available remedies.

## 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 anyone of these covenants or restrictions by judgment or court order shall in no way 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, 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 legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods often (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty-five (25) Year period by an instrument signed by not less than two-thirds (2/3) of the Lot Owners, and thereafter by an instrument signed by not less than two-thirds (2/3) of the Lot Owners. Any amendment must be properly recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 18th day of May, 1981.

EARLYSVILLE FOREST LAND TRUST

(signed) George Harrison Gilliam

Trustee

STATE OF VIRGINIA COUNTY OF ALBEMARLE, to-wit:

I, (signed) Elizabeth G. Helms, a Notary Public in and for the County and state aforesaid, do hereby certify that George Harrison Gilliam, As Trustee of Earlysville Forest Land Trust, whose name is signed to the foregoing instrument bearing date on the 18th day of May, 1981, has acknowledged the same before me in my County aforesaid. Given under my hand this 18th day of May, 1981.

My commission expires: October 3, 1983

(signed) Elizabeth G. Helms

Notary Public