

COPPER CREEK  
DECLARATION OF RESTRICTIONS

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THIS DECLARATON, made as of the 15th day of March,  
1991, by PEPPERCORN, INC., a Kansas corporation;

SARAH L. UTHMAN  
REGISTER OF DEEDS

WITNESSETH:

BY \_\_\_\_\_ DEP.

WHEREAS, Peppercorn, Inc. has executed and filed with the  
Register of Deeds of Johnson County, Kansas, a plat of the  
subdivison known as "Copper Creek"; and

WHEREAS, such plat creates the subdivison of Copper Creek,  
composed of the following described lots and tracts, to-wit:

Lots 1 through 19, Block 1; Lots 1 through 11, Block 2;  
Lots 1 through 18, Block 4; Lots 1 through 4 and Lots 11 through  
15, Block 8, Copper Creek, 1st Plat, a subdivision in the City of  
Olathe, Johnson County, Kansas and

Lots 6 through 10, Block 8, Copper Creek, 3rd Plat, a  
subdivision in the City of Olathe, Johnson County, Kansas.

and Lot 5, Block 8, Copper Creek, 2nd Plat, a subdivision in the  
City of Olathe, Johnson County, Kansas.

WHEREAS, Peppercorn, Inc., as the present owner and  
developer of the above-described lots and tracts, desires to place  
certain restrictions on such lots to preserve and enhance the  
values, desirability and attractiveness of the development and  
improvements constructed thereon and to keep the use consistent  
with the intent of the developer, all of which restrictions  
shall be for the use and benefit of Peppercorn, Inc. and its  
future grantees, successors and assigns;

NOW, THEREFORE, in consideration of the premises,  
Peppercorn, Inc., for itself and for its succerssors and assigns,  
and for its future grantees, hereby agrees and declares that all  
of the above-mentioned lots shall be, and they hereby are,  
restricted as to their use and otherwise in the manner hereinafter  
set forth.

1. Definitions. For purposes of this Declaration, the  
following definitions shall apply:

(a) The term "Lot" shall mean any lot as shown as a  
separate lot on any recorded plat of all or part of the District;  
provided, however, that if an Owner, other than the Developer,  
owns all or part of one or more adjacent lots upon which only one  
residence has been, is being, or will be erected, then such  
adjacent property under common ownership shall be deemed to  
constitute only one "Lot."

(b) The term "District" shall mean all of the  
above-mentioned lots in Copper Creek, Common Areas, if any, and  
all additional property which hereafter may be made subject hereto  
in the manner provided herein.

This document is being re-recorded  
to correct an error in legal description.

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(c) The term "Developer" shall mean and refer to Peppercorn, Inc., a Kansas corporation, and its successors and assigns.

(d) The term "Owner" shall mean the record owner in fee simple of any Lot, including the Developer, and for purposes for all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invites.

(e) The term "Common Areas" shall mean (i) street right-of-ways, (ii) streets (iii) entrances, monuments, berms and other similar ornamental areas and related utilities, sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street, and any easements related thereto, and (iv) all other similar areas and places, together with all improvements thereon and thereto (including any swimming pool or similar recreational facilities, if any, that may be constructed or erected) the use, benefit or enjoyment thereof is intended for all of the Owners within the District, whether or not any "Common Area" is located on any Lot.

(f) The term "street" shall mean any public street, road, terrace, circle or boulevard shown on any recorded plat of all or part of the District.

(g) The term "Homes Association" shall mean the Kansas not-for-profit corporation to be formed by the Developer for the purpose of serving as the homes association for the District.

(h) The term "Exterior Structure" shall mean any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof, and shall include, without limitation, any deck, gazebo, greenhouse, doghouse or other animal shelter or run, outbuilding, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, basketball goal, trampoline, playhouse, treehouse or other recreational or play structure.

(i) The term "Certificate of Substantial Completion" shall mean a certificate executed, acknowledged and recorded by the Developer stating that all, or at the Developer's discretion substantially all, of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in its discretion at any time and for any limited purpose hereunder.

(j) The term "Approving Party" shall mean (i) prior to the recording of the Certificate of Substantial Completion, the Developer (or its designees) and (ii) subsequent to the recording of the Certificate of Substantial Completion, the Homes Association.

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(k) The term "Architectural Committee" for purposes of certain Exterior Structures as provided in Section 8 below, shall mean (i) prior to the recording of the Certificate of Substantial Completion the Developer (or its designees) and (ii) subsequent to the recording of the Certificate of Substantial Completion, a committee comprised of at least three members of the Homes Association who shall be appointed by the Board in an impartial manner from the Homes Association members who indicate a willingness to serve on the committee.

(1) The term "Board" shall mean the Board of Directors of the Homes Association.

2. Use of Land. None of the Lots may be improved, used or occupied for other than single-family, private residential purposes, and no duplex, flat or apartment house, although intended for residential purposes, may be erected thereon. No residential building which has previously been at another location shall be moved onto any Lot. No "earth" homes shall be permitted. No trailer or outbuilding erected on any Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any residence of a temporary character be erected on any of such Lots or used for human habitation; provided, however, that nothing herein shall prevent the Developer or others (including, without limitation, builders and real estate sales agencies) authorized by the Developer from erecting temporary buildings and using such temporary buildings or any residence for model, office, sales or storage purposes during the development of the District.

3. Building Material Requirements. Exterior walls of all residences and all appurtenances thereto shall be of stucco, stucco board, brick, stone, natural or man-made stone, wood shingles, wood siding, batt siding, wood paneling, plate glass, masonite, glass blocks or any combination thereof, or such other materials as may be deemed by the Developer in writing to be compatible therewith. All windows shall be constructed of glass, wood, metal clad and wood laminate, or any combination thereof; provided, however, that storm windows may be constructed of colored metal (other than silver). All exterior doors and louvers shall be constructed of wood, metal clad and wood laminate, colored metal (other than silver) and glass, or any combination thereof. All exterior doors shall be functional. Roofs with a pitch of three inches or more per foot shall be covered with wood shingles, wood shakes or slate. Flat roofs, or roofs with a pitch of less than three inches per foot, shall be covered with tin, built up asphalt, wood shingles, wood shakes, asbestos shingles or slate. Any building products that may be or come into general usage for dwelling construction of comparable quality and style in the area shall be acceptable if approved in writing by the Approving Party. All wood exteriors, except roofs and shake side walls, shall be covered with a workmanlike finish of two coats of high quality paint or stain. No building shall be permitted to stand with its exterior in any unfinished condition for longer than five months after commencement of construction. All exterior basement foundations and walls which are exposed in excess of 12 inches above final grade shall be painted the same color as the residence or covered with siding compatible with the structure.

4. Minimum Floor Area. No residence shall be constructed upon any Lot in the District unless it has a total finished floor

area of not less than 1,800 square feet. The Developer, in its discretion, may allow variances under the foregoing minimum square footage requirement, provided the total reduction for any residence may not exceed 10 percent of such minimum floor area requirement for such residence.

5. Approval of Plans and Post-Construction Changes.

(a) Notwithstanding compliance with the provisions of Section 3 and 4 above, no residence or Exterior Structure may be erected upon or moved onto any Lot unless and until the building plans, specifications, materials, location, elevations, lot grading plans, general landscaping plans, and exterior color scheme have been submitted to and approved in writing by the Developer, or in the case of Exterior Structures as provided in Section 8 below, the Architectural Committee. Nor shall any change or alteration in such building plans, specifications, materials, location, elevations, grading plans, landscaping plans or exterior color scheme thereof be made until such change or alteration has been submitted to and approved in writing by the Approving Party. All building plans and plot plans shall be designed to minimize the removal of existing trees, shall designate those trees to be removed and shall protect those trees that are to remain.

(b) Following the completion of construction of any residence or Exterior Structure, no exterior colors thereof shall be changed and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by the Developer or the Architectural Committee, as the case may be. All replacements of all or any portions of a structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same material as the original structure unless the changes have been submitted to and approved in writing by the Approving Party.

(c) All final grading of any Lot shall be in accordance with the master grading plan approved by the Developer. No changes in the final grading of any Lot shall be made without the written approval of the Approving Party.

6. Set Backs. No building, exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys and other similar projections, shall be located closer to any street than the building setback lines, if any, shown on the plat; provided, however, that the Developer, in its discretion, may waive or alter any such building setback lines to the extent they are greater than the minimum setbacks required by the City of Olathe, Kansas.

7. Commencement and Completion of Construction. Unless the following time periods are expressly extended by the Developer in writing, construction of the residential building on a Lot shall be commenced within six months following the date of delivery of deed from the Developer to the purchaser of such Lot and shall be completed within six months after such commencement. In the event such construction is not commenced within such six month period (or extension thereof), the Developer shall have, prior to commencement of construction, the right to repurchase

such Lot from such purchaser at its original sale price. No Owner of a Lot in violation of this construction commencement provision shall be entitled to reimbursement for taxes, interest or other expenses paid or incurred by or for such Owner.

#### 8. Exterior Structures.

(a) No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot except (i) with and pursuant to the advance written approval of the Architectural Committee, and (ii) in compliance with the additional specific restrictions set forth in subsection (b) below; provided, however, that the approval of the Architectural Committee shall not be required for any Exterior Structure erected by or at the request of the Developer or any Exterior Structure that has been specifically approved by the Developer prior to the issuance of a temporary or permanent certificate of occupancy as part of the residential construction plans approved by the Developer and has been built in accordance with such approved plans.

(b) (i) All residential fences and privacy screens shall be consistent with the standard designs, heights and materials to be selected by the Developer or the Architectural Committee. All fences and privacy screens shall be constructed with the finished side out. No metal (other than wrought iron or other ornamental), chain link or similar fence or privacy screen shall be permitted. No fence or privacy screen shall extend toward the front of the residence beyond the rear corners of the residence.

(ii) All basketball goals shall be free standing and not attached to the residence unless the Architectural Committee determines that there are compelling reasons for the basketball goal to be attached to the residence. All basketball goals shall be consistent with the Architectural Committee. All backboards shall be clear or painted white and all poles shall be a neutral color. There shall be only one basketball goal per Lot. The Architectural Committee shall have the right to establish reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots.

(iii) All recreational or play structures (other than basketball goals) shall be located behind the back building line of the residence.

(iv) No swimming pools of any kind may be constructed or installed without approval in writing by the developer or the Architectural Committee. All approved pools shall be fenced or otherwise adequately screened. All approved pools and hot tubs shall be kept clean and maintained in operable condition.

(v) All outside doghouses and other animal shelters or runs shall be located in the back yard, no larger than 5' X 5', shall be up against or within two feet of the residence, shall be painted (where appropriate) the same color as the residence and shall have roofs (where appropriate) that are compatible with the residence.

(vi) No Exterior Structure that is prohibited under Section 9 below shall be permitted under this Section 8.

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9. Buildings or Uses Other Than for Residential Purposes;  
Noxious Activities; Miscellaneous.

(a) Except as otherwise provided in Section 2 above, no residence or Exterior Structure shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his residence in accordance with the applicable ordinances of the City of Olathe, Kansas.

(b) No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or Common Area, if any, nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood. Each Owner shall properly maintain his Lot in a neat, clean and orderly fashion. All residences and Exterior Structures shall be kept and maintained in good condition and repair at all times.

(c) No vehicle, trailer, bus, van, camper, boat or similar apparatus shall be parked, left or stored in any yard. No trailer, bus, camper, boat or similar apparatus shall be parked, left or stored in any driveway or street for more than a 24-hour period. It is the intent of the parties hereto that all automobiles, pickups and vans shall be kept in an enclosed garage whenever possible. Motorized vehicles shall not be operated on any Lot or Common Area, if any, other than in the street.

(d) No television, radio, citizens' band, short wave or other antenna, satellite dish, solar panel, clothes line or pole, or other unsightly projection shall be attached to the exterior of any residence or erected in any yard. Should any part or all of the restriction set forth in the preceding sentence be held by a court of competent jurisdiction to be unenforceable because it violates the First Amendment or any other provision of the United States Constitution, the Architectural Committee shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the neighborhood and any such rules and regulations shall be binding upon all of the Lots. No lights or other illumination shall be higher than the residence.

(e) All garage doors shall remain closed at all times except when necessary for entry or exit.

(f) No speaker, horn, whistle, siren, bell or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any residence or in any yard.

(g) All residential service utilities shall be underground.

(h) In the event of vandalism, fire, windstorm or other damage, no buildings shall be permitted to remain in damaged condition for longer than three months.

(i) No shed, barn, detached garage or other storage facility shall be erected upon, moved onto or maintained upon any yard. Storage shall be permitted under a deck provided such area is fenced or otherwise screened.

(j) No fuel storage tanks of any kind shall be permitted.

(k) No driveway shall be constructed in a manner as to permit access to a street across a rear lot line.

10. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes and do not constitute a nuisance to the neighbors or neighborhood. Subject to any more restrictive law or ordinance, in no event shall more than three dogs or cats, or combination thereof, be raised, kept or maintained on any Lot.

11. Landscaping and Lawns. Prior to occupancy, and in all events within five months after commencement of construction, all lawns, including all areas between each residential building and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter; provided, however, that the Owner of a Lot may leave a portion of the Lot as a natural area with the express written permission of the Developer. No lawn shall be planted with zoysia grass. Prior to occupancy, and in all events within five months following commencement of construction of the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the District and in accordance with the plans approved by the Developer. All vegetable gardens shall be located in the back yard. The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four inches and shall properly maintain and replace all trees and landscaping.

12. Easements for Public Utilities; Drainage; Maintenance. The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way shown on the recorded plat of the District. All utility easements and rights-of-way shall inure to the benefit of all utility companies for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners in the District and the Homes Association as a cross easement for utility line or service maintenance.

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The Developer shall have and does hereby reserve for itself, its successors and assigns and the Homes Association and its successors and assigns an easement over and through all unimproved portions of each Lot in the District for the purpose of performing the duties of the Homes Association and maintaining any Common Area, if any.

No water from any roof, downspout, basement or garage drain or surface drainage shall be placed in or connected to any sanitary sewer line.

13. Common Areas.

(a) The Developer and its successors, assigns, and grantees, as Owners of Lots in the District, shall have the right and easement of enjoyment in and to all of the Common Areas, if any, but only for the intended use. Such right and easement shall be appurtenant to, and shall automatically pass with, the title to each Lot and shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto.

(b) The ownership by the Homes Association of any Common Area, if any, and the right and easement of enjoyment of the Owners in the District as to any Common Area, if any, shall be subject to the right of the Developer to convey sewage, water, drainage, maintenance and utility easements over, under, upon and through such Common Area, if any, as provided in Section 12 above.

(c) No owner shall improve, destroy or otherwise alter any Common Area, if any, without the express consent of the Approving Party.

(d) The Developer and the Homes Association shall have the right to make additional rules, regulations and restrictions pertaining to the use of any Common Area, if any.

14. Architectural Committee.

(a) If possible, no more than two Architectural Committee members shall be from any one particular plat located within the subdivision of Copper Creek and no more than two members of the Board shall serve on the Architectural Committee at any time. The positions on the Architectural Committee shall be divided into two classes with staggered two-year terms. No committee member shall serve for more than two consecutive terms (a full term being defined as 18 or more months). The provisions of this subsection (a) shall not apply until after the recording of the Certificate of Substantial Completion. Until such date, the Developer shall serve as the Architectural Committee.

(b) The Architectural Committee shall meet at least once each calendar month to consider applications with respect to any Exterior Structures that require the approval of the Architectural Committee as provided in Section 8 above. Any application that is not acted upon by the Architectural Committee within 45 days of the date on which it is filed shall be deemed to have been approved. A majority of the members of the Architectural Committee shall constitute a quorum for the transaction of



business at a meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Architectural Committee.

(c) At each meeting, the Architectural Committee shall consider and act upon applications that have been submitted to it for approval with respect to Exterior Structures. In making its decisions, the Architectural Committee may consider any and all aspects and factors that the committee members, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Copper Creek neighborhood, including, without limitation, the plans, specifications, exterior colors, materials, location, elevation, landscaping and use of the proposed Exterior Structure. All decisions of the Architectural Committee shall be in writing and delivered to the applicant, who shall be responsible for keeping the same. The Architectural Committee may establish in advance and change from time to time certain guidelines and conditions that it intends to follow in making its decisions.

(d) After the recording of the Certificate of Substantial Completion, any applicant who is dissatisfied with the decision of the Architectural Committee shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within 15 days of the date the Architectural Committee renders its decision. Any decision rendered by the Board on appeal shall be final and conclusively binding on the applicant.

15. No Liability for Approval or Disapproval. Neither the Developer, nor the Homes Association, nor any member of the Architectural Committee or the Board shall be personally liable to any person for any discretionary approval, disapproval or failure to approve any matter submitted for approval, for the adoption of any rules, regulations or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration.

16. Covenants Running with Land; Enforcement. The agreements, restrictions and reservations herein set forth are, and shall be, covenants running with the land into whosoever hands any of the property in the District shall come. The Developer and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions and reservations; provided, however, that no person shall be obligated to enforce any such agreements, restrictions and reservations. No agreement, restriction or reservations herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during its or his seizin of title to such Lots; provided, however, that the immediate grantee from the builder of breaches committed during such builder's ownership of such Lot.

The Developer, its successors and assigns, and all other Owners of any of the Lots and the Homes Association, shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or

to enforce the observance of the agreements, restrictions and reservations herein set forth, in addition to any action at law for damages. The failure to enforce any of the agreements, restrictions or reservations herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

17. Assignment of Developer's Rights. The Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey, transfer and set over to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for all purposes be the Developer hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities hereunder.

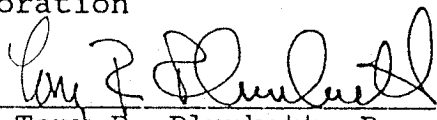
18. Release or Modification of Restrictions. The provisions of this Declaration shall remain in full force and effect until December 31, 2018, and shall automatically be continued thereafter for successive periods of five years each; provided, however, that the then Owners of a majority of the Lots may release the District, or any part thereof, from all or part of such provisions as of December 31, 2018, or at the expiration of any extension period, by executing (in one or more counterparts), acknowledging and recording an appropriate agreement in writing for such purpose, at least one year prior to the original expiration date or to a subsequent expiration date, whichever is applicable. The provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by the owners of not less than 51% of the Lots hereby restricted, including Lots owned by Peppercorn, Inc. and filing of same for record in said office of Register of Deeds, Johnson County, Kansas.

19. Extension of District. The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent (without reference to the streets) lands as it may now own or hereafter acquire by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in good faith.

20. Severability. Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions, or any part thereof, but they shall remain in full force and effect.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first written above.

PEPPERCORN, INC, a Kansas corporation

  
By: Tony R. Plunkett, President

STATE OF KANSAS }  
COUNTY OF JOHNSON } SS  
FILED FOR RECORD

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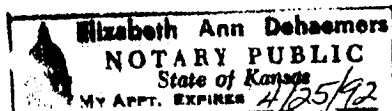
26<sup>00</sup> SARA FULLMANN  
REGISTER OF DEEDS

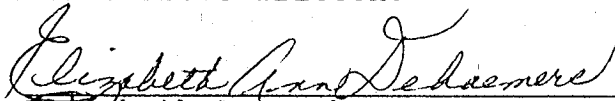
STATE OF KANSAS )  
COUNTY OF JOHNSON ) SS.

BY \_\_\_\_\_ DEP.

BE IT REMEMBERED, that on this 15th day of March, 1991, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Tony R. Plunkett, President of Peppercorn, Inc., a Corporation duly organized, incorporated and existing under and by virtue of the Laws of Kansas, who is personally known to me to be the person who executed as such officer, the within instrument on behalf of said corporation and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal, the day and year last above written.



  
Elizabeth Ann Dehaemers  
Notary Public

My commission expires: April 25, 1992

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