

R.M.

BOOK 0253 PAGE 708

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WANDA C. SCOTT
REGISTER OF DEEDS

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BY: *[Signature]*
DEPUTY
WATAUGA COUNTY, NC

88872

STATE OF NORTH CAROLINA
COUNTIES OF CALDWELL AND WATAUGA

ROAD MAINTENANCE AGREEMENT

THIS ROAD MAINTENANCE AGREEMENT is made this the 22nd day of JULY, 1993, by Donald Fabian Vincent and wife Barbara Sue Vincent, William D. Russell and wife Catherine S. Russell, John J. Hicks, Sr. and wife Viola Stine Hicks, ~~Gilbert L. Smith and wife Neva S. Smith~~, Janet P. Pegram, Wayne A. Hollar and wife Mable C. Hollar, Harry W. Wallick and wife Katherine Wallick, Leslie G. Ward and wife Doris J. Ward, Herbert H. Harmon and wife ~~Ruth W. Harmon~~, Alvin E. Harmon and wife Ruby J. Harmon, Bert A. Guthrie and wife Mary M. Guthrie, Blowing Rock, Inc., a North Carolina corporation, and Winterset, Ltd., a North Carolina corporation, hereafter referred to collectively as "Owners".

MARJOBIE J. HARMON

STATEMENT OF PURPOSE

Owners are the fee simple owners of certain parcels of real property located in Patterson Township, Caldwell County, and Blue Ridge Township, Watauga County, North Carolina, all of which parcels share a portion of a common road know as "The Old Cone Orchard Road".

Owners, for their use and benefit, and that of their heirs, successors and assigns, and of future property owners, including all successors in title to Owners and other users of Old Cone Orchard Road who wish to join in this Agreement in the future, desire to provide for the maintenance, repair, and improvement of Old Cone Orchard Road and for the establishment and collection of reasonable assessments for such maintenance. To this end Owners desire to subject the real property described herein to the following covenants, conditions, and obligations hereinafter set forth, all of which are for the benefit of said property and each owner thereof.

Owners further desire to provide for the creation of an organization of property owners using said roads to which will be delegated and assigned the powers of administrating and enforcing the covenants, conditions and obligations contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently maintain, repair, and improve, as well as preserve, the roads referred to herein.

FILED
LOIS GREENE

93 AUG 25 AB 24

By: *[Signature]*
REGISTER OF DEEDS
CALDWELL CO., N.C.

NOW, THEREFORE, Owners, for themselves, their heirs successors and assigns, and for their future grantees, their heirs, successors and assigns, hereby declare that their property as identified on the attached Schedule A, is and shall hereafter be held, used, transferred and sold and conveyed subject to this Agreement.

Section 1. ASSOCIATION. As part of this Agreement, the participants shall form the OLD CONE ORCHARD ROAD ASSOCIATION, a North Carolina non-profit corporation, hereinafter called the "Association", which shall administer this Agreement, including the right to establish, collect and disburse assessments, and the right to enforce assessments through liens on the property of any owner subject to this Agreement.

Section 2. MEMBERSHIP. Upon creation of the Association, every owner who is or becomes a party hereto, shall be a member of the Association. Membership of an owner shall be appurtenant to and may not be separated from the ownership of his or her property. If new tracts are created by legal division of present member tracts, the new tracts shall be subject to the provisions of this Agreement and will have membership and voting rights as did the parent tract.

Section 3. VOTING. All Owners shall be entitled to one (1) vote for each tract owned. When more than one person owns an interest (other than a leasehold or security interest) in any tract, all such persons shall be Members and the voting rights appurtenant to said tract may be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any tract. Proposed major expenditures for repair or improvement to the various road sections shall be voted upon by the Owners using the section(s) of road to be repaired or improved.

Section 4. BOARD OF DIRECTORS. The Association shall be governed by a Board of Directors in accordance with such Bylaws as it shall adopt. Among the powers and duties the Board of Directors shall have is the right and discretion, but not the obligation, to approve a petition to submit any of the Old Cone Orchard Road, or other roads made subject to this agreement, for maintenance or other control or ownership and/or supervision of the State of North Carolina. The Board of Directors shall also have the right, duty, and authority to require any Owner to provide a bond, in an amount deemed sufficient by the Board of Directors, in their discretion, to cover the estimated cost of maintenance, repair, and/or replacement of any road made subject to this Agreement due to

construction work to be commenced on any Owner's tract. Prior to commencement of any such construction, Owner shall notify the Association with a full and complete statement of all construction work planned or expected, a copy of any construction contract and plans, if any, and a complete estimate of the cost of such construction work. Upon receipt, the Association, through its Board of Directors, shall have thirty (30) days in which to review said materials and contact the Owner with the specifics of the bond requirements. The By-Laws of the Association may provide further specifications on this subject.

Section 5. PROVISION OF SERVICES. Unless or until the roads or any part thereof are taken over by the State of North Carolina, as referred to in Section 4 above, the Association shall be responsible for providing the services set forth in Section 6 below and for establishing, assessing, billing, collecting, and enforcing the assessments set forth in Agreement, including the power and authority to place liens, hereinafter set forth.

Section 6. SERVICES AND PURPOSE OF ASSESSMENTS. The assessments levied hereunder by the Board of Directors of the Association shall be used to maintain, repair, and replace all roads which are now or hereafter made the subject of this Agreement, as further described below, in an all-weather condition. The roads, banks, and ditches adjacent to such roads shall be maintained, repaired and preserved to a reasonable standard and in a manner consistent with the overall appearance of the neighborhood; additional services shall include mowing of the banks along the right-of-way, and snow removal. A portion of the assessments may also be allocated by the Board of Directors and set aside as a fund for replacement to cover the cost of major capital renovation or replacements (such as repaving, guard rails, retaining walls, etc.) which may occur in one year and not another. Such portion, collected as a part of the regular assessments, provides a continuous way of setting aside monies for such major matters so that large special assessments may not be incurred in any one year and so that all Owners, present and future, share in the cost (and not just the Owners at the time of the major expense).

Section 7. DEFINITION OF ROAD SECTIONS AND PARTICIPANTS. It is the intention of this agreement to appropriately allocate responsibility and maintenance cost for these subject roads to the owners of property who use the roads. The following descriptions briefly designate physical sec-

tions of the roads and the Owners who presently have use of these road sections, for purposes of this Agreement, and are further defined in attached Schedule A.

FIRST ROAD SECTION. That section of the Old Cone Orchard Road leading from U.S. Hwy. 321 to the Winterset Ltd. property line, which is used by all Owners and which will be maintained by all Owners.

SECOND ROAD SECTION. That section of the Old Cone Orchard Road through the Winterset Ltd. tract to the property line with Green, which is used by Winterset, Ltd., Blowing Rock, Inc., Green, and Guthrie, and which will be maintained by Winterset, Ltd.

THIRD ROAD SECTION. That section of the Old Cone Orchard Road from the corner with Winterset Ltd. and Green (at the old apple barn) continuing on into the Blowing Rock, Inc. (Old Lindau Orchard tract), which is used by Winterset, Ltd., Blowing Rock, Inc., and Green, which will be maintained by Winterset Ltd. and Blowing Rock, Inc.

FOURTH ROAD SECTION. The Green Road, which passes through the Green property to Guthrie, which will be maintained by Guthrie.

Section 8. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. Each Owner, hereby covenants for each property owned and made subject to this Agreement, and for their heirs, successors and assigns as future owners or grantees, which future owners and grantees of any said property by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay the regular assessments in such amounts necessary to pay for the services set forth in Section 6 of this Agreement. Any such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the property against which each assessment charge is made. Each such assessment or charge, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property 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, but any lien for assessments shall nevertheless follow the property regardless of who owns it thereafter.

Section 9. ASSESSMENT RATE. Assessments shall be based on actual costs, whether bid or billed, whether accurately projected or actually incurred. The amount of aggregate regular assessments for each year shall be the amount necessary to fund the expenses described in Section 6 of this Agreement, including the establishment, maintenance, and growth of the fund for replacements.

(a) Costs and assessments will be allocated proportionately per road section, then divided by the number of Members using that road section, or by using such other method of computation as is found reasonable by the Membership.

Section 10. DATE OF COMMENCEMENT OF ASSESSMENTS; DUE DATES. Liability for assessments provided for herein shall commence with the completed execution of this Agreement. Written notice of the assessment shall be sent to every Owner after determination of the amount of the assessment under Section 9 of this Agreement. The due date shall be established in such written notice.

Section 11. 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 a rate to be determined by the Board of Directors. In addition to such interest charge, the delinquent tract owner shall also pay such late charge as may have been theretofore established by Owners, or the Board of Directors of the Association, to defray the costs arising because of late payment. Owners, or the Association, may bring an action at law against the delinquent tract owner or foreclose the lien against the tract owned by such owner. All interest, late payment charges, costs, and reasonable attorney's fees of such actions or foreclosures shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by abandoning his or her tract.

Section 12. 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 any tract. Sale or transfer of any tract shall not affect the assessment lien. However, the sale or transfer of any tract pursuant to mortgage or deed of trust 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 Owners, or the Board of Directors of the Association, may in their discretion, determine such unpaid assessments to be a regular

or a special assessment, as applicable, collectable pro rata from all tract 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 assessment to be in excess of the maximum permitted under Section 9 of this Agreement. No sale or transfer shall relieve the purchaser of such tract 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.

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

EXHIBIT A

Winterset, Ltd., DB 664, Page 437, Caldwell County.

Blowing Rock, Inc., DB 1012, Page 607, Caldwell County.

Donald Fabian Vincent and wife Barbara Sue Vincent, DB 703, Page 978, Caldwell County.

William D. Russell and wife Catherine S. Russell, DB 551, Page 124, Caldwell County.

John J. Hicks, Sr. and wife Viola Stine Hicks, DB 470, Page 103 and DB 581, Page 411, Caldwell County.

Gilbert L. Smith and wife Neva S. Smith, DB 467, Page 61, Caldwell County.

Janet P. Pegram, DB 977, Page 814, Caldwell County.

Wayne A. Hollar and wife Mable C. Hollar, DB 747, Page 843, DB 904, Page 140, and DB 1038, Page 1097, Caldwell County.

Harry W. Wallick and wife Katherine Wallick, DB 528, Page 221, Caldwell County.

Leslie G. Ward and wife Doris J. Ward, DB 777, Page 345, Caldwell County.

Herbert H. Harmon and wife Ruth W. Harmon, DB 485, Page 501, DB 846, Page 180, and DB 871, Page 322, Caldwell County.

Alvin E. Harmon and wife Ruby J. Harmon, DB 846, Page 833, Caldwell County.

Bert A. Guthrie and wife Mary M. Guthrie, DB 211, Page 780, and DB 81, Page 339, Watauga County.



Blowing Rock, Inc.

BY: Susan Glenn
President

Check
Secretary

Winterset, Ltd.

BY: Susan Glenn
President

ATTEST:



Donna Check
Secretary

Donald Fabian Vincent (SEAL)

Barbara Sue Vincent (SEAL)

William D. Russell (SEAL)

Catherine S. Russell (SEAL)

John J. Hicks, Sr. (SEAL)

Viola Stine Hicks (SEAL)

x _____
Gilbert L. Smith (SEAL)

Neva S. Smith
Neva S. Smith (WIDOW) (SEAL)

Janet P. Pegram (SEAL)

Wayne A. Hollar (SEAL)

Mable C. Hollar (SEAL)

Harry W. Wallick (SEAL)

Katherine Wallick (SEAL)

Leslie G. Ward (SEAL)

Doris J. Ward (SEAL)

Herbert H. Harmon
Herbert H. Harmon (SEAL)

Marjorie J. Harmon
Marjorie J. Harmon (SEAL)

Alvin E. Harmon
Alvin E. Harmon (SEAL)

Ruby D. Harmon
R.D. Ruby D. Harmon (SEAL)

Bert A. Guthrie
Bert A. Guthrie (SEAL)

Mary W. Guthrie
Mary W. Guthrie (SEAL)

Blowing Rock, Inc.

ATTEST:

BY: _____
President

Secretary

Winterset, Ltd.

ATTEST:

BY: _____
President

Secretary

Donald Fabian Vincent (SEAL)

Barbara Sue Vincent (SEAL)

William D. Russell (SEAL)

Catherine S. Russell (SEAL)

John J. Hicks, Sr. (SEAL)

Viola Stine Hicks (SEAL)

Gilbert L. Smith (SEAL)

Neva S. Smith (SEAL)

Janet P. Pegram (SEAL)

Wayne A. Hollar (SEAL)

Mable C. Hollar (SEAL)

Harry W. Wallick

Harry W. Wallick (SEAL)

Katherine Wallick

Katherine Wallick (SEAL)

Leslie G. Ward

Leslie G. Ward (SEAL)

Doris J. Ward

Doris J. Ward (SEAL)

Herbert H. Harmon (SEAL)

Ruth W. Harmon (SEAL)

Alvin E. Harmon (SEAL)

Ruby J. Harmon (SEAL)

Bert A. Guthrie (SEAL)

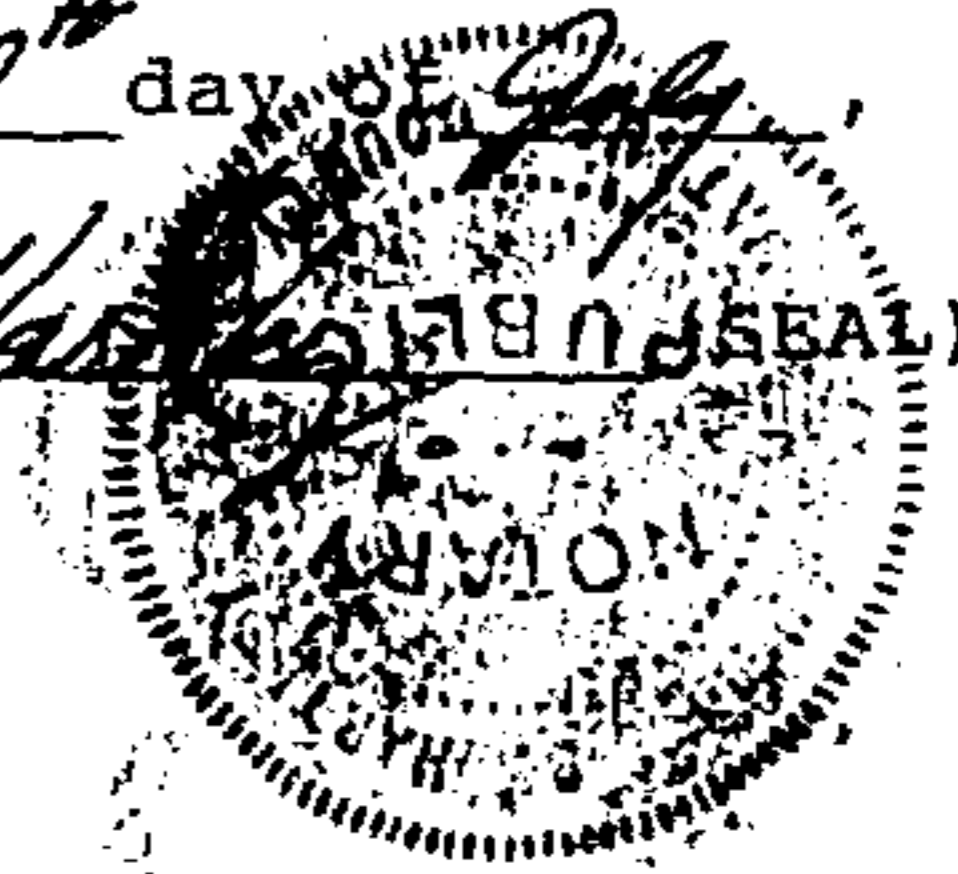
Mary M. Guthrie (SEAL)

STATE OF North Carolina
COUNTY OF Watauga

I, Helen B. Hartley, a notary public, do hereby certify that DONNA CHECK personally came before me this day and acknowledged that she is ASST Secretary of Blowing Rock, Inc., 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 himself as its ASST Secretary.

Witness my hand and official seal, this the 30th day of July, 1993.

Helen B. Hartley
Notary Public



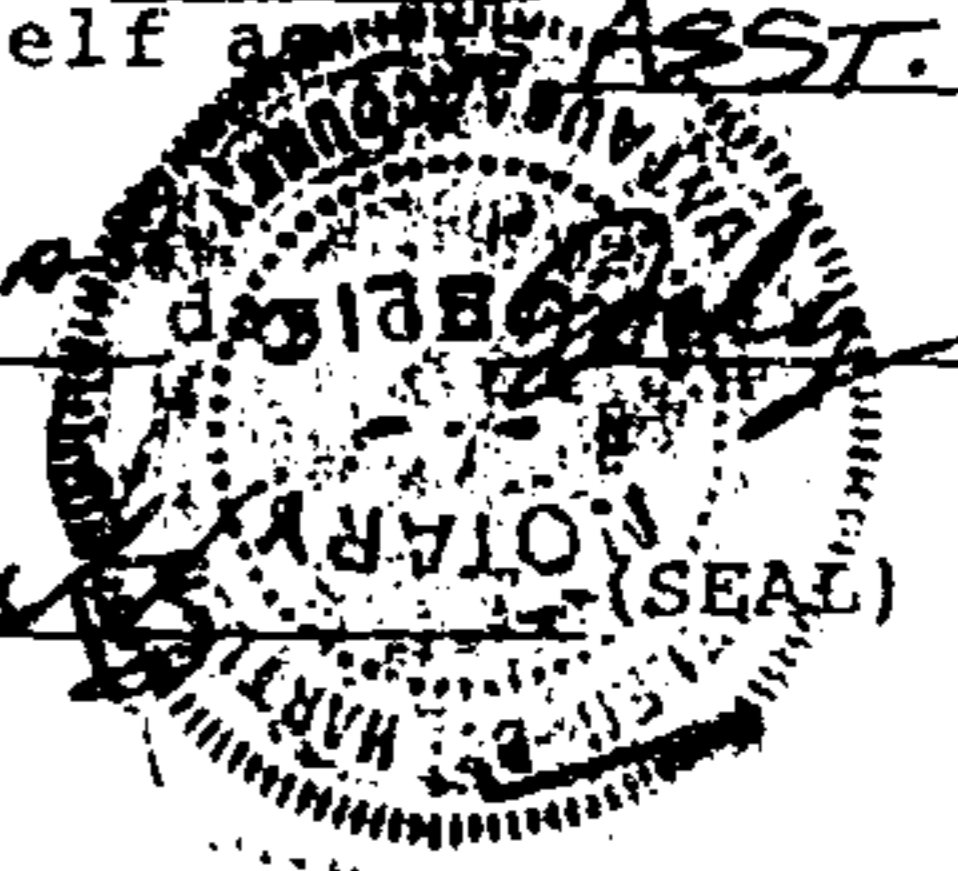
My commission expires: 3/6/94

STATE OF North Carolina
COUNTY OF Watauga

I, Helen B. Hartley, a notary public, do hereby certify that DONNA CHECK personally came before me this day and acknowledged that she is ASST Secretary of Winterset, Ltd., and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its ASST President, sealed with its corporate seal, and attested by himself as ASST Secretary.

Witness my hand and official seal this the 30th day of July, 1993.

Helen B. Hartley
Notary Public



My commission expires: 3/6/94

STATE OF _____
COUNTY OF _____

I, _____, Notary Public do hereby certify that Donald Fabian Vincent & wife, Barbara Sue Vincent, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the _____ day of _____, 1993.

Notary Public (SEAL)

My commission expires: _____

STATE OF _____

COUNTY OF _____

I, _____, Notary Public do hereby certify that William D. Russell and wife, Catherine S. Russell, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the _____ day of _____, 1993.

Notary Public (SEAL)

My commission expires:

STATE OF _____

COUNTY OF _____

I, _____, Notary Public do hereby certify that John J. Hicks, Sr. and wife, Viola Stine Hicks, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the _____ day of _____, 1993.

Notary Public (SEAL)

My commission expires:

STATE OF North Carolina

COUNTY OF Watauga

I, John B. Hartley, Notary Public do hereby certify that ~~Gilbert B. Smith and wife~~ ^{WIDOW} Neva S. Smith, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the 27 day of July, 1993.

John B. Hartley
Notary Public 

My commission expires:
3/6/94

STATE OF _____

COUNTY OF _____

I, _____, Notary Public do hereby certify that Janet P. Pegram personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the _____ day of _____, 1993.

Notary Public (SEAL)

My commission expires:

STATE OF _____

COUNTY OF _____

I, _____, Notary Public do hereby certify that Wayne A. Hollar and wife, Mable C. Hollar, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the _____ day of _____, 1993.

Notary Public (SEAL)

My commission expires:

STATE OF _____

COUNTY OF _____

I, _____, Notary Public do hereby certify that Harry W. Wallick and wife, Katherine Wallick, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the _____ day of _____, 1993.

Notary Public (SEAL)

My commission expires:

STATE OF _____

COUNTY OF _____

I, _____, Notary Public do hereby certify that Leslie G. Ward and wife, Doris J. Ward, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the _____ day of _____, 1993.

Notary Public (SEAL)

My commission expires:

STATE OF North Carolina

COUNTY OF Watauga

I, Allen L. Terry, Notary Public do hereby certify that Herbert H. Harmon and wife, Marjorie Harmon, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the 24th day of July, 1993.

Allen L. Terry
Notary Public



My commission expires:

July 28, 1997

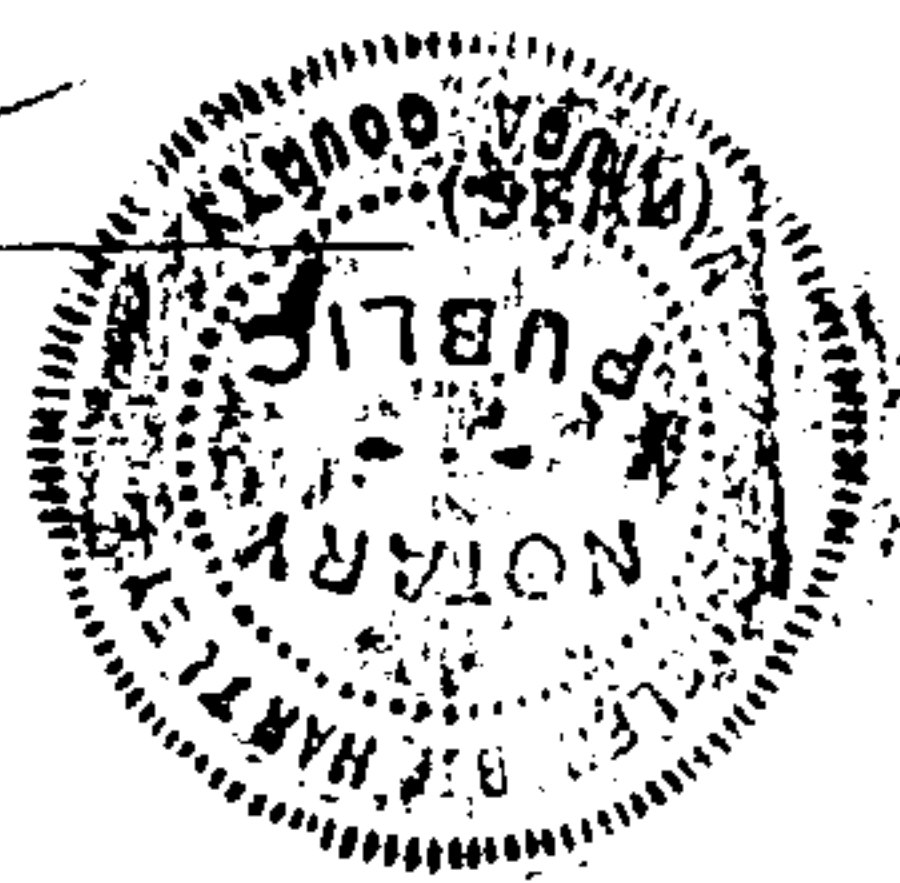
STATE OF North Carolina

COUNTY OF Watauga

I, Helen B. Hartley, Notary Public do hereby certify that Alvin E. Harmon and wife Ruby J. Harmon, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the 27th day of July, 1993.

Helen B. Hartley
Notary Public



My commission expires:

3/6/94

STATE OF North Carolina

COUNTY OF Watauga

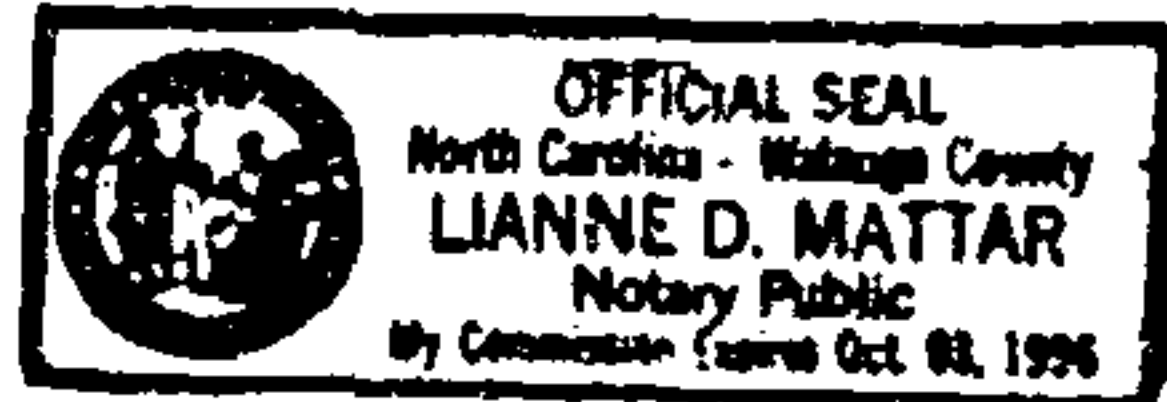
I, Lianne D. Mattar, Notary Public do hereby certify that Bert A. Guthrie and wife, Mary M. Guthrie, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the 2nd day of August, 1993.

Lianne D. Mattar (SEAL)
Notary Public

My commission expires:

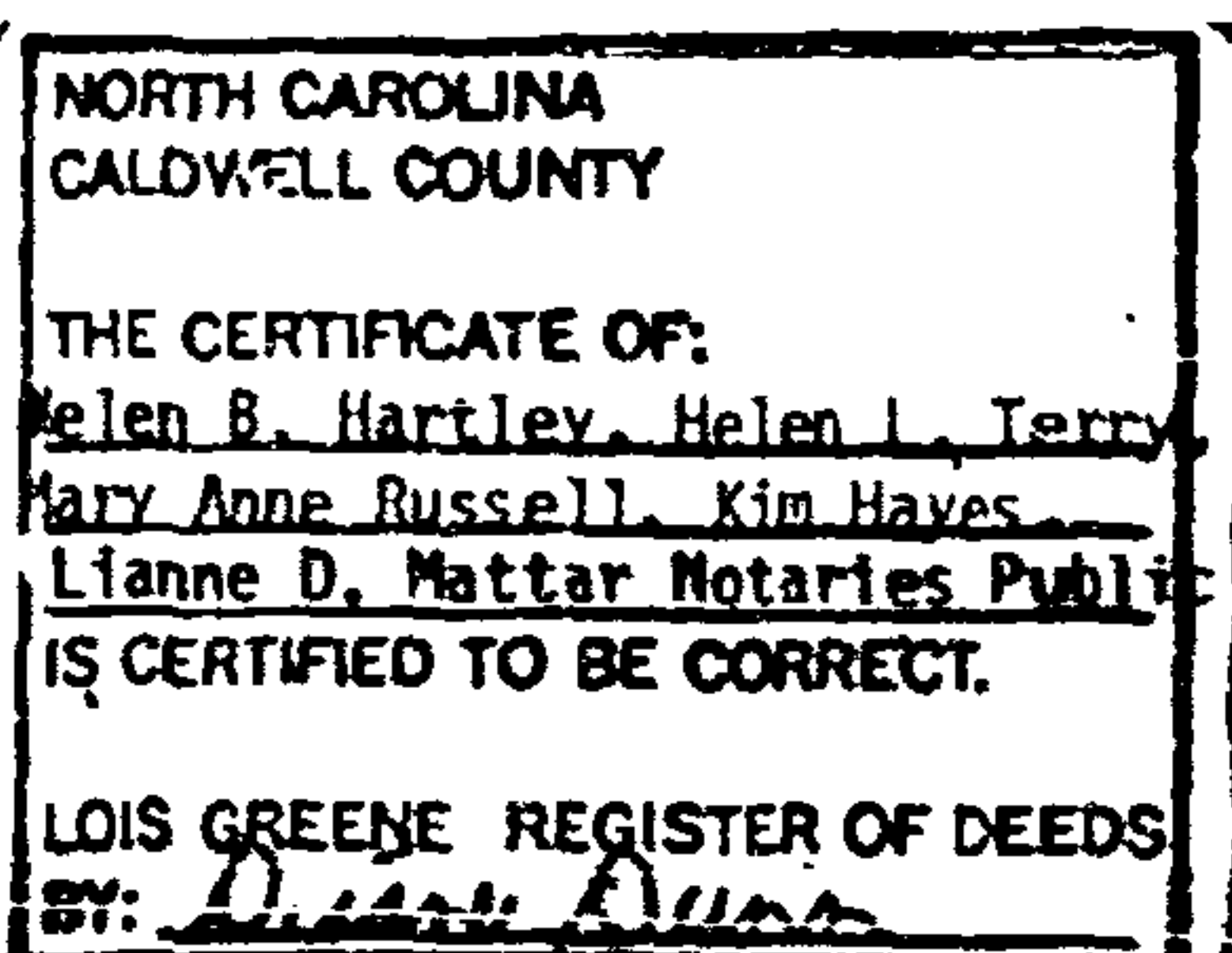
10/03/98



NORTH CAROLINA
WATAUGA COUNTY

The foregoing and annexed certificates of Helen B. Hartley, Watauga County, N.C.; Helen L. Terry, Watauga County, N.C.; Mary Anne Russell, State of Florida; Kim Hayes, Watauga County, N.C.; Lianne D. Mattar, Watauga County, N.C., Notaries Public, are certified to be correct.
This the 2nd day of August 1993.

Wanda C. Scott-Register of Deeds
by Lita Dew
Deputy



STATE OF _____

COUNTY OF _____

I, _____, Notary Public do hereby certify that Wayne A. Hollar and wife, Mable C. Hollar, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the _____ day of _____, 1993.

Notary Public (SEAL)

My commission expires:

STATE OF Florida

COUNTY OF Leon

I, Mary Anne Russell, Notary Public do hereby certify that Harry W. Wallick and wife, Katherine Wallick, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the 23 day of July, 1993.

Mary Anne Russell (SEAL)
Notary Public Mary Anne Russell

*Harry W. Wallick and Katherine H. Wallick produced identification this 23rd day of July 1993.*****

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: MAR. 1, 1994.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

STATE OF North Carolina

COUNTY OF Watauga

I, Kim Hayes, Notary Public do hereby certify that Leslie G. Ward and wife, Doris J. Ward, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the 31st day of July, 1993.

Kim Hayes
Notary Public

My commission expires:

March 31, 1998

STATE OF _____

COUNTY OF _____

I, _____, Notary Public do hereby certify that Herbert H. Harmon and wife, Ruth W. Harmon, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and notarial seal, this the _____ day of _____, 1993.

Notary Public (SEAL)

My commission expires: