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DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
AVOCET SUBDIVISION

GEORGIA  
GWINNETT COUNTY.

This Declaration of Covenants, Conditions and Restrictions, made and published this 27 day of May, 1993 by McRae & Stolz, Inc., Three Ravinia Dr. Ste. 1420 Atlanta, GA 30346 as Owner of certain property located in Gwinnett County, Georgia.

WITNESSETH THAT:

WHEREAS, McRae & Stolz, Inc., is the Owner and Developer (hereinafter referred to as Declarant) of a certain subdivision known as Avocet, in Land Lot 287 of the 6 District, Gwinnett County, Georgia; and

WHEREAS, these Covenants, Conditions and Restrictions shall apply to all of the lots shown on the plat of said Subdivision made by Cecil Kelly, Surveyor, on April 16, 1993, and recorded in Plat Book 58, Page 294, in the Office of the Clerk of the Superior Court of Gwinnett County, Georgia, reference to which plat is hereby made for a full and complete description of said property:

WHEREAS, it is the interest, benefit and advantage of McRae & Stolz, Inc., as Declarant, and to each and every party who shall hereafter purchase any lot in said Subdivision that certain Covenants, Conditions and Restrictions governing and regulating the use and occupancy of the same be established, set forth, and declared to be Covenants running with the land;

WHEREAS, Declarant also deems it appropriate to provide for the establishment of a property owner's association (hereinafter "Avocet POA or the Association") to maintain the common areas, entrance of the subdivision, amenity area, and preserve the aesthetic qualities of Avocet. The amenity area is hereby defined as the pool and tennis courts, and the common areas adjacent to these facilities plus any improvements to these areas that are made in the future.

NOW, THEREFORE, for and in consideration of the premises and of the benefits to be derived by McRae & Stolz, Inc., as Declarant, and each and every subsequent owner of the lots in said Subdivision, the said Declarant, does hereby set up, establish, promulgate and declare the following Covenants, Restrictions and Conditions to apply to all of said lots above referred to, and to all persons owning any of said lots, as follows:

1. Each lot shall be restricted to residential use only and no commercial business, enterprises, or home retail business (such as beauty parlors, antique shops, etc.) shall be operated or conducted thereon.
2. No dwelling shall be built or constructed on any lot in said Subdivision that does not comply with the building set back lines as shown on the final plat.
3. No further subdivision of a lot is allowed after said lot is sold by Developer, and only one dwelling shall be placed on each lot.
4. All driveways will be paved with concrete or asphalt wearing surface.
5. No residence shall be constructed on said lot having less than the following square footage of heated floor space, exclusive of garages, porches and terraces:
  - (a) For single story residences, two thousand (2,000) square feet;
  - (b) For a split-level residence or "story and a half" (not a full second level), two thousand (2,000) square feet; and

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- (c) For a two story residence, two thousand (2,000) square feet.
6. No mobile home, living trailer, modular home or pre-fabricated home shall be permitted on any of the lots of Subdivision.
  7. No dwelling shall be erected or placed on any lot in said Subdivision without complying with all of the Building Code Regulations of Gwinnett County.
  8. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat; or as hereafter reserved on any future recorded plat of the Subdivision or later development. In addition, as five (5) foot wide drainage easement is reserved down side lot lines as needed by Declarant in the future.
  9. No livestock, chickens or other fowl shall be raised, kept or otherwise maintained on any lot, with the exception of household pets, which must be kept under restraint and not allowed to wander about at will. No animals shall be raised for commercial use, including, but not limited to, selling for profit.
  10. All sewerage and/or domestic water drainage shall drain into a sanitary system approved by the Gwinnett County Water System, or other governmental regulatory authorities.
  11. No lot owner shall allow any unsightly garbage, trash, debris, dirt, wood, construction materials, or household waste on any lot, but shall sack, box or otherwise dispose of the same in a safe and sanitary manner. In the event that any owner of any property in the Subdivision shall fail or refuse to keep such premises free from refuse or garbage piles or other unsightly objects, then the Declarant or the designated official of Gwinnett County or Avocet POA (see paragraph 26 below), may enter upon such lands and remove the same at the expense of the owner, and such entry shall not be deemed a trespass, and in the event of such removal a lien shall arise and be created in favor of the Declarant or Avocet POA, and against such lot for the full amount chargeable to such lot, and such amount shall be due and payable within thirty (30) days after the owner is billed therefore.
  12. No lot owner shall allow junk cars or abandoned cars, boats, trailers, campers or trucks to be or remain on any lot. Each owner shall keep his or her lot and the structure thereon in good order and repair including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or such appropriate external care) of the structure all in a manner and with such frequency as is consistent with good property management.
  13. The term "vehicles," as use herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooter, go-carts, trucks, campers, vans, and automobiles.

No vehicle may be left upon any portion of the Community, except in a garage, parking pad, or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the community. No towed vehicle, boat, recreational vehicle, bus, motor home, or mobile home shall be temporarily kept or stored in the Community for any period in excess of twenty-four (24) hours unless kept in a garage or other area designated by the Board. Vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of these trucks or trucks with a load capacity in excess of one (1) ton shall be parked, kept or stored within the Community, and, if so parked, kept or stored shall be considered a nuisance and may be removed from the Community. However, buses, moving vans, service or delivery vehicles may be parked in the Community for such period of time as is reasonably necessary to provide service.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

14. When any lot owner shall commence construction of a dwelling, or improvement to an existing dwelling, the outside of the dwelling shall and will be finished within six (6) months after the date construction is first started.
15. No obnoxious or offensive trade activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
16. No garage shall be constructed except as an integral part of the residence it is intended to serve, unless it is of similar design and construction as the residence.

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17. No shed, tool storage area, workshop, garage, outbuilding for storage of yard implements, shall be placed upon the property unless concealed by hedged, lattice work or screening (which screening may be the residence itself) unless acceptable to the Declarant or his designated official.
18. No concrete blocks shall be left exposed on any home, building, or on any area of the property.
19. No trucks or commercial vehicles shall be stored or parked on any lot except while engaged in transporting to or from a residence in the Subdivision.
20. After home construction and yard preparation is completed by the designated builder (hereinafter referred to as Ryland Homes) or any other builder, the elevation of a lot shall not be changed so as to materially affect the surface elevation or grade or drainage of the surrounding lots. No rocks, gravel or clay shall be excavated or removed from any property except in connection with building the dwelling on said lot and/or landscaping same, except as approved by the Declarant or Avocet POA or both.
21. No signs or other advertising shall be displayed on any lot except for the purpose of the sale of the lot or dwelling thereon, unless first approved in writing by the Declarant or his designated official. Declarant's designated builder ("Ryland Homes") is exempt from this provision.
22. Any conveyance of property is made subject to taxes and other assessments, if any, levied or assessed against the property in the year in which it is conveyed, subject to all restrictions and limitations imposed by governmental authorities and these covenants.
23. All claims for damages, if any, arising out of the construction, maintenance and repair of utilities or due to temporary or other inconveniences caused by the Declarant, or any utility company or municipality, or any of its agents or servants are hereby waived by the owners of such lots.
24. The Declarant does hereby reserve the right to change, lay out a new, or discontinue any easement shown on the plan of development not necessary for ingress or egress to and from an owner's premises, subject to the approval of proper governmental authorities, if required.
25. Should the owner fail, neglect, or refuse to satisfy and discharge any lien arising hereunder or to cure any violation of these covenants after written notice thereof, within thirty days; the Developer, its successors and assigns, shall have the right to interest on such liens at a rate of 12% per annum and shall be entitled to receive all costs of collection, litigation or other such claim including a reasonable attorney's fee.
26. (a) For the purpose of further insuring the development of land so platted as an area of high standards within Avocet, Declarant reserves the power to review all plans and specifications of any proposed dwelling upon the property to insure that it complies with the terms and provisions of these Covenants, Conditions and Restrictions. Further, by acceptance of title to this property, an owner covenants and agrees that no building, wall or other structure shall be placed upon any lot unless and until the plans and specifications for the construction of any improvements on a lot (including a detailed front elevation, specifying exterior materials and floor elevation relative to natural ground elevation) have been submitted for review and approval in writing by the Declarant, or his designated official. Lots having rear property lines adjoining the right of way of Lou Ivey Road shall have a 30 foot undisturbed natural buffer (except for removal of debris, fencing or additional landscaping) along Lou Ivey Road. In reserving the right of the Declarant in this manner, the Declarant does not assume any risk nor responsibility for the construction or design of any particular improvements on the property, but simply the right of approval or rejection of the plans and specifications based upon any ground, including purely aesthetic grounds which, in the sole and uncontrolled discretion of the Declarant shall seem sufficient. No material alteration to the exterior appearance of the buildings or structures shall be made without like approval. The Declarant shall not be liable for damages to any lot owner, property owner, or user of said subdivision because of the provisions in this paragraph or any other paragraph wherein the Declarant has some discretion concerning a particular provision. When seventy five percent (75%) or more of the lots in Avocet have been sold by the Declarant, he may at his discretion, relinquish the control and the rights to plan approval stipulated in this paragraph to the Avocet POA, or to Ryland Homes.
26. (b) Mailbox posts shall be simple and unobtrusive, either matching the residence, or being either a 4x4 or a 6x6 wooden post, brick, or wrought iron, unless otherwise approved by Declarant of Avocet POA. No haphazard or unprofessional fences or other stone work or wooden appurtenances shall be erected without prior approval.
27. All homes must be landscaped within one (1) month of completion of the dwelling house.
28. A property owners association (Avocet POA or the Association) will be formed as lots are being sold within Avocet subdivision. This shall be a non-profit association of the persons living within said

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- subdivision, who shall establish annual maintenance fees (beginning at \$360.00 per year per lot) to be used by the Association to maintain the entrance, amenity area, and common areas of the subdivision, rights of way, and to landscape or otherwise prune shrubbery, plants or other foliage within the subdivision to maintain the aesthetic beauty of Avocet. All owners of any lots are authoritative members of the Association and shall be subject to payments of dues or other assessments established by the Association, except that Declarant shall maintain control of the Association in its initial stages, and shall not be subject to annual maintenance fees. Ryland Homes or any other designated builder shall also be exempt from the annual maintenance fee. Declarant will be responsible for any shortfall or deficit in the operating budget of the Association until at least fifty percent (50%) of the lots within Avocet have been sold. Said Association shall have the right to place a lien on any lot for the non-payment of dues. Lot owners shall automatically become dues-paying members of the Association.
29. The Declarant reserves the right to change, alter or amend drainage structure or drainage easements on property line, or access the read of any lot, as may be necessary, at Declarant's expense to drain or remove water from any lot.
  30. For any violation of breach of any of these restrictions and reservations by any person, firm or corporation claiming by, through or under the Declarant, or by virtue of any judicial proceedings, the Declarant, and the lot owners, or any of them severally or the Avocet POA, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the Declarant (or Avocet POA, or Ryland Homes, if architectural control has been relinquished as provided for in paragraph 26 above) shall have the right, whenever there shall have been built on any lot any structure which is in violation of these restrictions, to enter upon the property where such violation of these reservations and restrictions exist and summarily abate or remove the same at the expense of the owner, and any such entry and abatement or removal shall not be deemed as trespass.
  31. Owners' Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:
    - (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities (if any were ever constructed by the Associations) situated upon the common area;
    - (b) the right of the Association to suspend the voting rights and right to use the recreational facilities (if any were ever constructed by the Association) to any owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
    - (c) the right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.
  32. Delegation of Use. Any owner may delegate his or her right of enjoyment to the common area and facilities to the members of his or her family, tenants, or contract purchasers who reside on the property.
  33. Membership and Voting Rights. Every owner of a lot which is subject to assessments shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The Association shall have two classes of voting membership known as Class "A" and Class "B" memberships. Class "A" membership shall be all owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. The Class "B" member shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class "B" membership shall cease and be converted to Class "A" membership on the happening of either of the following event, whichever occurs earlier:
    - (a) when the total votes outstanding in the Class "A" membership equal the total votes outstanding in the Class "B" membership; or
    - (b) on February 10, 1998.
  34. Covenant for Maintenance Assessments.

- (a) Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owner within the properties, hereby covenants, 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors title unless expressly assumed by them.
  - (b) Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the common area, and of the homes situated upon the properties.
  - (c) Annual Assessments. Until January 1, 1995, the annual assessment shall be three hundred and sixty dollars (\$360.00) per lot. From and after January 1, 1995, the annual assessment shall be established by the board of directors of the Association. The board of directors of the Association shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessments period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the board of directors. 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.
  - (d) 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, repair or replacement of a road or other capital improvement upon the common area or roadway, including fixtures and personal property related thereon, provided that any such assessment shall have the assent of the two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.
  - (e) Notice and Quorum for Any Action Authorized Under Section 34(c) and 34(d). Written notice of any meeting called for the purpose of taking any action authorized under Section 34(c) or Section 34(d) shall be sent tot all members not less than 30 days and not more than 60 days in advance of the meeting. At that first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.
  - (f) Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.
  - (g) Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the dues date shall bear interest from the due date at a maximum rate of interest per annum allowed by law. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas or abandonment of his lot.
  - (h) Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. 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. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due of from the lien thereof.
35. Duration and Amendment. The covenants and restrictions of the Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of not less than

two-thirds (2/3) of the lot owners (and the written consent of the Declarant so long as the Declarant owns property subject to the covenants). However, Declarant may amend this Declaration without the consent of any other lot owners until December 31, 1998.

36. Annexation. Declarant may add additional residential property (providing properties are contiguous) and common area to Avocet without the consent of any other member.
37. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of common area, and amendment of this Declaration.

These restrictions shall be construed as covenants running with the land for the mutual benefit of all lot owners in said tract and shall have such force and effect as allowed by the laws of Georgia, and any violation of these restrictions may be abated or corrected by any lot owner, by injunction or other legal equitable means.

Invalidation of any one of these covenants by judgement or court order shall in no way effect any of the other provisions which shall remain in full force and effect. The failure to promptly enforce any of these reservations and restrictions shall not bar their enforcement.

The consideration of and for these restrictions shall be the benefits flowing to any lot owner, and the taking and recording of a deed of conveyance evidences an agreement hereto.

IN WITNESS WHEREOF, the said McRae & Stolz, Inc. Owner has caused its duly authorized officers to execute this instrument the day and year first above written.

DECLARANT:

McRae & Stolz, INC.

BY: [signature]

W. Alan McRae, President

BY: [signature]

Irwin W. Stolz III, CEO

Signed, sealed and delivered in the presence of:

[signature]

Witness

[signature]

Notary Public

AMENDMENT

Pursuant to Paragraph 35 of the Declaration of Covenants, Conditions, and Restrictions for Avocet Subdivision dated May 27, 1993 and recorded in Deed Book 8814, Page 145-157 in the Office of the Clerk of Superior Court of Gwinnett County, Georgia the aforesaid document is hereby amended as follows:

1. Paragraph 18 is deleted in its entirety and will now read:  
No exterior clotheslines of any type shall be permitted upon any lot. No above ground swimming pool will be allowed. No concrete blocks shall be allowed on any home, building, or on any area of the property.
2. Paragraph 21 is deleted in its entirety and will now read:  
21. (a) No signs or other advertising shall be displayed on any lot except for the purpose of the sale of the lot or dwelling thereon, unless first approved in writing by the Declarant or his designated official. Declarant's designated builder "Ryland Homes" is exempt from this provision.  
  
21. (b) No antennae, satellite dish or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on the exterior of any structure or lot without the prior written approval of the Declarant or Avocet Property Owners Association. In no event shall free standing transmission or receiving towers be permitted.
3. The last sentence of Paragraph 26.(b) shall be deleted and instead will read as follows:  
No fences, post or other fencing materials shall be constructed in the front of any structure. All such proposed fencing must start at the rear of the structure or at least halfway down the side of the structure, unless otherwise approved by Declarant or Avocet Property Owners Association, with a height not to exceed 6 feet. Any proposed fence must have the approval of the Declarant or the Avocet Property Owners Association.
4. In order to protect the aesthetic quality of the Avocet entrance no fencing of any type will be allowed on Lot 1 Block A or Lot 2 Block C without the prior approval of Declarant or the Avocet Property Owners Association. This provision is intended to serve as notice that the standard for approval applied to these lots will be much more restrictive than for the balance of Avocet, and that the Declarant or Avocet Property Owners Association may not allow a fence of any type on these lots.

DECLARANT:

McRae & Stolz, INC.

BY: [signature]  
W. Alan McRae, President

BY: [signature]  
Irwin W. Stolz III, CEO

[signature]  
Witness

[signature]  
Notary Public

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AMENDMENT TO DECLARATION OF COVENANTS, COVENANTS, AND RESTRICTIONS FOR  
AVOCET SUBDIVISION

THIS AMENDMENT is made this 21<sup>st</sup> day of March, 1996, by MCRAE & STOLZ, INC., a Georgia corporation (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

On June 1, 1993, Declarant recorded that certain Declaration of Covenants, Conditions, and Restrictions for Avocet Subdivision in Deed Book 8814, Page 145 et seq., Gwinnett County, Georgia records (hereinafter as supplemented and/or amended from time to time, the "Declaration"). Pursuant to Paragraph 35 thereof, the Declarant has the unilateral right to amend the Declaration until December 31, 1998. Declarant desires to amend the Declaration and has obtained the VA's approval of this Amendment.

NOW THEREFORE, pursuant to the powers retained by Declarant under Paragraph 35 of the Declaration, Declarant hereby amends the Declaration as follows:

1.

Paragraph 28 of the Declaration is hereby amended by deleting the second sentence thereof, which reads as follows:

This shall be a non-profit association of the persons living within said subdivision, who shall establish annual maintenance fees (beginning at \$360.00 per year per lot) to be user by the Association to maintain the entrance, amenity area, and common areas of the subdivision, right of way, and to landscape or otherwise prune shrubbery, plants or other foliage within the subdivision to maintain the aesthetic beauty of Avocet.

in its entirety and substituting in its place the following sentences:

This shall be a non-profit associations of the persons living within said subdivision. Notwithstanding anything provided herein to the contrary, the Association shall maintain and keep in good repair (a) the entrance to the subdivision, (b) the amenity area(s) within the subdivision, (c) the common areas of the subdivision; (d) landscaping originally installed by Declarant whether or not such landscaping is on a public right-of-way or on a lot or any common area in the subdivision, and (e) all drainage and detention areas within the subdivision, including any such areas located on lots, to the extent such areas are not maintained on an ongoing basis by a local governmental entity. In addition , the Association shall have the right , but not the obligation, to maintain other property not owned by the Association where the Association, acting through its board of directors, has determined that such maintenance would benefit all owners in the subdivision. The Association shall establish annual maintenance fees (beginning at \$360.00 per year per lot) to be user by the Association to pay the common expenses of the Association and for the general purposes of promoting the common benefit and enjoyment of the owners in the subdivision, all as may be more specifically authorized from time to time by the board of directors of the Association.

IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed under seal the day and year first above written.

McRae & Stolz, INC., a Georgia corporation

BY: [signature]  
W. Alan McRae, President

Signed, sealed and delivered in the presence of:

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[signature]  
Witness

[signature]  
Notary Public