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Three Colonies Covenants

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NORTH CAROLINA  
CUMBERLAND COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made the 11th day of January, 1974, by AMERICAN CLASSIC INDUSTRIES, INC., a North Carolina corporation, hereinafter referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of certain property near the City of Fayetteville, in Seventy First Township, County of Cumberland, State of North Carolina, which is more particularly described as:

Beginning at the point of intersection of the eastern right-of-way margin of the Aberdeen and Rockfish Railroad and the southern right-of-way margin of an unnamed sixty (60) foot street leading to Cliffdale Road as shown on a plat recorded in Plat Book 35, page 32, Cumberland County Registry, running thence with said southern right-of-way margin, South 89 degrees 59 minutes East, 371.43 feet to a point; at hence continuing, North 00 degrees 01 minutes East, 415.00 feet to a point of curvature; thence with a curve to the right on a radius of 38.30 feet, an arc distance of 60.19 feet to a point of tangency in the southern right-of-way margin of the Cliffdale Road; thence with the southern right-of-way margin of the Cliffdale Road, the following courses and distances: South 89 degrees 57 minutes East, 417.35 feet to a point; South 88 degrees 39 minutes East, 49-92 feet to a point; South 89 degrees 03 minutes East, 49Â·94 feet to a point; South 87 degrees 58 minutes East, 34-51 feet to a point; thence leaving Cliffdale Road, a new line, South 00 degrees 01 minutes west, 767.44 feet to a point; thence South 52 degrees 46 minutes west, 65.00 feet to a point; thence South 35 degrees 13 minutes East, 240.00 feet. to a point; thence South 52 degrees 46 minutes West, 350.00 feet to a point; thence North 37 degrees 13 minutes West, 240.00 feet to a point; thence South 52 degrees 46 minutes West, 164.24 feet to a point in the eastern right-of-way margin of the Aberdeen and Rockfish Railroad; thence with said eastern right-of-way margin, North 37 degrees 13 minutes West, 826.71 feet to the point of beginning, and containing 16.97 acres more or less.

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, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I DEFINITIONS**

Section 1. "Association" shall mean and refer to Three Colonies Homeowners Association, Inc., its successors and assigns.

Section 2. "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 3. "Properties" shall mean and refer to that certain real property Herein before described, and such additions thereto as hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows: All of that area defined as "Common Area" on that certain map of Three Colonies Townhouses which is recorded in Map Book 41, page 9, in the Office of the Register of Deeds of Cumberland County, North Carolina.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to American Classic Industries, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**ARTICLE II PROPERTY RIGHTS**

Section 1. Owners' Easements 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) It is the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to limit the number of guests of members;

(c) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an 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;

(d) 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 abdication 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.

(e) the right of individual Owners to the exclusive use of parking spaces

as provided in this article.

(f) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Section 2. Delegation of Use. Any Owner 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. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign one (1) vehicle parking space for each dwelling.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot Which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from membership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of-voting membership: Class A. Class A members 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 (1) vote be cast with respect to any Lot.

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Class B. The Class B member(s) 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 events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equals the total votes outstanding in the Class B membership, or

(b) on August 1, 1978.

### ARTICLE IV COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. 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 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;

(3) to the appropriate governmental taxing authority, a pro rata share of ad valorem taxes levied against the Common Area if the Association shall default in the payment therefor for a period of six (6) months, all 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 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 in title unless expressly assumed by them.

**Section 2. 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 improvements and maintenance of the Common Area, and of the homes situated upon the Properties.

**Section 3. Maximum Annual Assessment.** Until January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Sixty (\$360.00) Dollars per Lot.

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(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

**Section 4. Special Assessments for Capital J Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to a year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 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.

**Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum and 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.

**Section 6. 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. With respect to all future sections annexed subsequent to Section 1 (as more

particularly described by metes and bounds in the preambles of this declaration) the amount of the annual assessment for Lots owned by Class "B" members shall not be in excess of fifty (50%) percent of the amount of the annual assessments on Lots Owned by Class "A" members.

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**Section 7, Date of Commencement of Annual Assessments: 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. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro-rata monthly installments. The Association shall, upon demand, and for a reasonable charge, shall furnish a certificate signed by an officer of the Association setting forth whether the assessments on specified Lot. have been paid.

**Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty days (30) after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. 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 Area or abandonment of his Lot.

**Section 9. Effect of Default J Payment of Ad Valorem Taxes or Assessments for Public Improvements by Association.** Upon default by the Homeowner's Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Living Units in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the owner.

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**Section 10. 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 or from the lien thereof.

#### ARTICLE V ARCHITECTURAL CONTROL

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 kind, shape, height, materials, and location of the same shall have been submitted to and approved in 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. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty(30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

#### ARTICLE VI PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repairs and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3, Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall

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may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such owner successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a

party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

#### ARTICLE VII EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In the event that the need for maintenance, repair, or replacement is caused through the willful, or negligent act of the Owner, his family, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such Lot is subject.

#### ARTICLE VIII USE RESTRICTIONS

Section 1. Land Use and Building. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted

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to remain on any Lot other than one single family townhouse shall not exceed two and one-half stories in height. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of the Article V of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 4. Recreational Vehicles. No boat, motor boat, camper, trailer, motor or mobile home, or similar type vehicle, shall be permitted to remain on any portion of the Properties, unless by consent of the Association in which event such vehicles shall be placed in the area or areas designated by the Association.

Section 5. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are at all times properly leashed or confined in an approved fenced area.

Section 6. Outside Antennas. No outside radio or television antennas shall

be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

**Section 7. Window Coverings.** All drapes, curtains or other similar materials hung at windows, or in any manner so as to be visible from the outside of any building erected upon any lot shall be of a white or neutral background or material.

**Section 8. Exterior Lights.** All light bulbs or other lights installed in any fixture located on the exterior of any building or any lot shall be clear, white, or non-frost lights or bulbs.

## ARTICLE IX EASEMENTS

**Section 1. Easements for installation and maintenance of utilities and**

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drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of drainage, or which may obstruct or retard the flow of water.

**Section 2.** The Association, acting through its officers, agents, servants and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for in Article VII of this declaration.

**Section 3.** Easements are also reserved over those portions of the Common Area that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the Common Area on the air and light space above such Common Area.

## ARTICLE X ANNEXATION OF ADDITIONAL PROPERTIES

**Section 1.** Annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members. and two-thirds (2/3) of the Class B members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting.

**Section 2.** If within eight years of the date of incorporation of this Association, the Declarant shall decide to develop the following described lands such additional lands may be annexed to said Properties without the assent of the Class A members:  
Beginning at the northwest corner of a 20.19 acre tract conveyed by Evans to American Classic Industries as recorded in Deed Book 2307 page 33, Cumberland County, North Carolina, Registry, said point also being in the southern right-of-way margin of the Cliffdale Road, and running South 05 degrees 02 minutes West, 200.00 feet to an iron pipe; thence South 05 degrees 58 minutes East, 190.00 feet to an iron pipe; thence South 25 degrees 28 minutes East, 403.00 feet to an iron pipe; thence South 01 degrees 02 minutes West, 1+28.00 feet to an iron pipe; the southwest corner of the above mentioned 20.10 acre



tract; thence a new line, South 01 degrees 02 minutes West, 312.55 feet to a point; thence North 37 degrees 14 minutes West, 894.83 feet to a point in the southern line of Three Colonies, Section One; thence with said southern line, North 52 degrees 46 minutes East, 65.00 feet to a point; thence with the eastern line of Three Colonies, Section One, North 00 degrees 01 minutes East, 767.44 feet to a point in the southern right-of-way margin of the Cliffdale Road; thence with said southern right-of-way the following courses and distances: South 87 degrees 58 minutes East, 15.75 feet to a point; South 86 degrees 22 minutes East 50.00 feet to a point; South 86 degrees 11 minutes East, 50.00 feet to a point; South 85 degrees 15 minutes East 50.00 feet to a point; South 84 degrees 47 minutes East, 50.00 feet to a point; South 84 degrees 34 minutes East 50.00 feet to a point; South 84 degrees 13 minutes East, 50.00 feet to a point; South 84 degrees 12 minutes East, 50.00 feet to a point; South 84 degrees 12 minutes East, 12.73 feet to the beginning. Containing 11.31 acres.

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Beginning at a point North 37 degrees 14 minutes West, 20.00 feet from the southwest corner of a 16.41 acre tract conveyed by Evans to American Classic Industries as recorded in Deed Book 2307, page 33, Cumberland County North Carolina Registry, said point also being in the eastern right-of-way margin of the Aberdeen and Rockfish Railroad and also being the southwest corner of Section One of Three Colonies and running thence with the southern line of Section One of Three Colonies, North 52 degrees 46 minutes East, 164.24 feet to a point; thence South 37 degrees 14 minutes East, 240.00 feet to a point; thence North 52 degrees 46 minutes East 350.00 feet to a point; thence South 37 degrees 14 minutes East, 654.83 feet to a point; thence South 01 degrees 02 minutes West, 223.10 feet to a point; thence South 52 degrees 46 minutes West 376.08 feet to a point in the eastern right-of-way margin of the Aberdeen and Rockfish Railroad; thence with said right-of-way, North 37 degrees 14 minutes West, 1070.00 feet to the beginning. Containing 10.42 acres.

Provided however, the development of the additional lands described in this section shall be in accordance with a general plan submitted to the Federal Housing Administration and the Veterans Administration with the processing papers for the first section. Detailed plans for the development of additional lands must be submitted to the Federal Housing Administration and the Veterans Administration prior to such development. If either the Federal Housing Administration or the Veterans Administration determines that such detailed plans are not in accordance with the general plan on file and either agency so advises the Association and the Declarant, the development of the additional lands must have the assent of two-thirds (2/3) of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. At this meeting, the presence of members or of proxies entitled to cast sixty percent (60%) of all of the votes of the Class A membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quota at any such 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.

**ARTICLE XI 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.

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**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, 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 (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by any instrument signed by not less than ninety (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded.

**Section 4. FHA/VA Approval.** As long as there is a Class B membership, the following actions will require with 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 of Covenants, Conditions and Restrictions.

**IN WITNESS WHEREOF,** American Classic Industries, Inc., the Declarant herein, has caused this Declaration to be signed in its corporate name by its President and attested by its Secretary and sealed with its corporate seal, all on the day and year first above written.

**AMERICAN CLASSIC INDUSTRIES, INC.**

/ President

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**NORTH CAROLINA CUMBERLAND COUNTY**

I, \_\_\_\_\_ a Notary Public of the State and County aforesaid, certify that R. HUNTER CHAIMICK, JR. personally appeared before me this day and acknowledged that he is Secretary of AMERICAN CLASSIC INDUSTRIES, INC., a North

Carolina corporation with its principal office in the City of Fayetteville, North Carolina, 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 the Corporate Seal, and attested by him as its Secretary.

WITNESS my hand and Notaries Seal, this the 11th day of January, 1971. .

Notary Public

My commission expires: 11/27/76

NORTH CAROLINA, CUMBERLAND COUNTY