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- of Counsel -

DONALD F. DEMAYO

Dfdesq2000@aol.com

RECEIVED

MAR 29 2011

Town of Acton
Planning Department

March 28, 2011

Acton Planning Board
472 Main Street
Acton, MA 01720

Acton Conservation Commission
472 Main Street
Acton, MA 01720

Mr. Roland Bartl
Acton Planning Board
472 Main Street
Acton, MA 01720

Ms. June A. Peters
1474 Butterfield Court
Marco Island, FL 34145

Re: Proposed Development of Lot 17 (a/k/a 101 Nonset Path) on Plan entitled
"Record Plan of Land on Nonset Path, Great Rd. and Henley Rd., Acton, Mass.,
dated July 18, 1980, recorded as Plan No. 20 of 1981 in Book 14184, Page 114
Purported Current Owner: June A. Peters

To Whom It May Concern:

This office represents Michael A. Krol and Elizabeth S. Krol, who reside at 25 Henley Road, Acton, Massachusetts.

Their land adjoins Lot 17 and is benefitted by a restriction affecting Lot 17, which restriction was recorded on April 7, 1981 at the Middlesex South District Registry of Deeds in Book 14256, Page 558.

This restriction, recorded for the benefit of the Krol property and other properties, restricts any access from Henley Road to service said Lot 17. Furthermore, said restriction permits Lot 17 to be divided into no more than five (5) single-family residence house lots.

These restrictions have been brought forward for an additional twenty (20) years by Mr. and Mrs. Krol by a document recorded with the Middlesex South District Registry of Deeds in Book 56619, Page 192, a copy of which I am enclosing.

Please feel free to contact me if you have any further questions.

Very truly yours,

SCHEIER & KATIN, P.C.

Mark L. Scheier

MLS/mjb
Enclosure
cc: client

EXTENSION OF RESTRICTIONS

Reference is hereby made to an instrument entitled "Agreement, Restrictions and Easements Concerning Land in Acton, on and near Henley Road" dated July 30, 1970 with the Middlesex South Registry of Deeds in Book 11894, Page 614 ("Original Restriction") as modified by an instrument entitled "Amendment and Release" which include, inter alia, the imposition and creation of a new restriction specifically benefitting the Krol Property as hereinafter defined, recorded on April 7, 1981 and recorded with said Deeds in Book 14256, Page 558 ("New Restriction").

Whereas, the undersigned Michael A. Krol and Elizabeth S. Krol, both of 25 Henley Road, Acton, Massachusetts are the grantees of the title to said premises by way of a deed dated recorded with said Deeds in Book 30487, Page 125 ("Krol Property"), and

Whereas, the property presently known as Lot 17 on a plan entitled "Record Plan of Land on Nonset Path, Great Road and Henley Road, Acton, MA dated July 18, 1980, recorded with said Deeds as Plan No. 20 of 1981 in Book 14184, Page 114, which property was most recently conveyed to June A. Peters by deed recorded on January 10, 2011 with said Deeds in Book 56256, Page 410 is subject to and encumbered by the New Restriction, and

Whereas, the Krol Property is benefitted by the New Restriction, the undersigned through the execution hereof and in accordance with Massachusetts General Laws Chapter 184 section 27, hereby extend the New Restriction for a period of Twenty (20) years from the date hereof

Executed as a sealed instrument this 18th day of March, 2011.



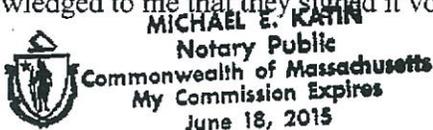
Michael A. Krol

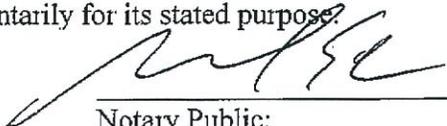

Elizabeth S. Krol

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 18th day of March, 2011, before me, the undersigned notary public, personally appeared Michael A. Krol and Elizabeth S. Krol and proved to me through satisfactory evidence of identification, which were driver's licenses, passports, employee ID cards, personally known to me, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.





Notary Public:
My commission expires:

25 Henley Road, Acton, MA

RECEIVED

MAR 28 2011

Town of Acton
Planning Department

March 24, 2011

Mr. Thomas Tidman
Conservation Department
Town of Acton
472 Main Street
Acton, MA

Dear Mr. Tidman;

I would like to bring to your attention an issue concerning the proposed driveway extension and housing development planned at 101 Nonset Path (Lot 17). On March 18th, 2011 an extension on the land restriction for the use on Lot 17 was filed with the Massachusetts Registry of Deeds (see attached). This land restriction prohibits the use of Henley Road to access the proposed site and limits the number of housing units to five (5) single family residences. Mr. Kirk Ware has proposed developing this site and constructing a thirty (30) unit housing complex which is in clear violation of the land agreement.

We find it very troublesome that there have been absolutely no geotechnical studies or subsurface investigations conducted prior to the developer seeking the necessary permits to begin construction. The impact this development would have on the surrounding residences of Nagog Woods and Henley Road (including surface runoff, private wells, and private septic systems) could have negative long-term consequences. We are very surprised that the Town of Acton has not required any such study to ensure and protect its own residents from any negative impact. The seemingly swift approval process without testing by the Town of Acton is most troubling, especially when several residents have expressed these concerns. We already see the water problems at the other end of Henley Road, where this same developer (Kirk Ware) is building several new homes. Standing water has remained on site for over two weeks indicating a lack of proper drainage and a shallow groundwater table.

The proposed site (Lot 17) is located in close proximity to designated wetlands and the properties and homes in this area experience constant flooding throughout the spring, summer, and fall months. In addition, we have a tremendous mosquito problem that will undoubtedly

be worsened and has the potential to lead to serious health risks (i.e. Triple E, West Nile virus). Finally, the clear cutting of the forest and wooded area in order to construct a 30 unit housing complex goes against the rustic beauty and nature that Acton is desperately trying to stand for and preserve, particularly as outlined in recent town wide visioning activities.

We respectfully request the Town of Acton notify of us of any and all future public meetings involving Mr. Ware and the Town regarding this proposed development. We are also requesting that the Town of Acton notify us when Mr. Ware applies for a building permit.

I have attached a copy of the land agreement and the restrictions along with the extension that was filed concerning Lot 17. If you have any questions I can be contacted at 978-263-8645 or via email: mkrol@bridgew.edu.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael A. Krol'.

Michael A. Krol, Ph.D.

Enclosures (3)

cc: Conservation Commission

Planning Department

Planning Board

Building Commissioner

Board of Health

Engineering Department



Bk: 56619 Pg: 192

EXTENSION OF RESTRICTIONS

Reference is hereby made to an instrument entitled "Agreement, Restrictions and Easements Concerning Land in Acton, on and near Henley Road" dated July 30, 1970 with the Middlesex South Registry of Deeds in Book 11894, Page 614 ("Original Restriction") as modified by an instrument entitled "Amendment and Release" which include, inter alia, the imposition and creation of a new restriction specifically benefitting the Krol Property as hereinafter defined, recorded on April 7, 1981 and recorded with said Deeds in Book 14256, Page 558 ("New Restriction").

25 Henley Road, Acton, MA

Whereas, the undersigned Michael A. Krol and Elizabeth S. Krol, both of 25 Henley Road, Acton, Massachusetts are the grantees of the title to said premises by way of a deed dated recorded with said Deeds in Book 30487, Page 125 ("Krol Property"), and

Whereas, the property presently known as Lot 17 on a plan entitled "Record Plan of Land on Nonset Path, Great Road and Henley Road, Acton, MA dated July 18, 1980, recorded with said Deeds as Plan No. 20 of 1981 in Book 14184, Page 114, which property was most recently conveyed to June A. Peters by deed recorded on January 10, 2011 with said Deeds in Book 56256, Page 410 is subject to and encumbered by the New Restriction, and

Whereas, the Krol Property is benefitted by the New Restriction, the undersigned through the execution hereof and in accordance with Massachusetts General Laws Chapter 184 section 27, hereby extend the New Restriction for a period of Twenty (20) years from the date hereof

Executed as a sealed instrument this 18th day of March, 2011.

Michael A. Krol

Elizabeth S. Krol

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 18th day of March, 2011, before me, the undersigned notary public, personally appeared Michael A. Krol and Elizabeth S. Krol and proved to me through satisfactory evidence of identification, which were driver's licenses, passports, employee ID cards, personally known to me, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

MICHAEL S. KATIN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
June 18, 2015

Notary Public:
My commission expires:

f:\vml\agreement\krol-extension of restrictions-3-18-2011

BR 11894 93614

BR 11894 93614

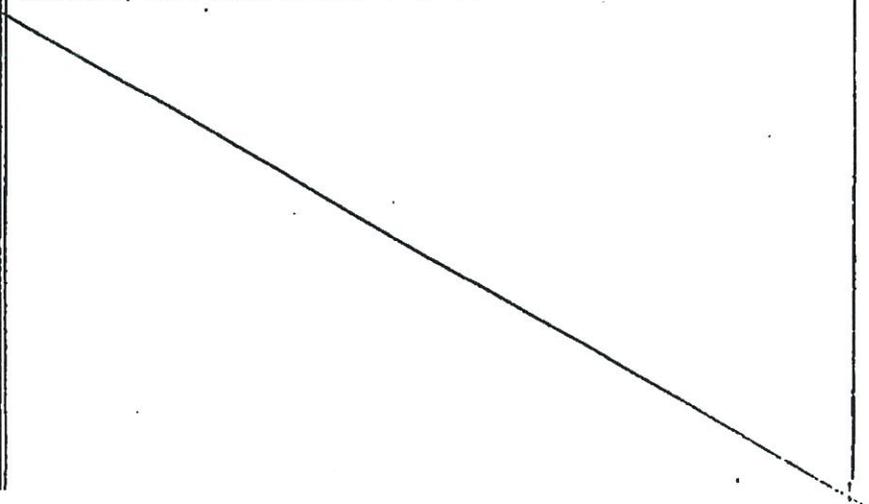
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AGREEMENT, RESTRICTIONS AND EASEMENTS CONCERNING LAND
IN ACTON, ON AND NEAR HENLEY ROAD

AGREEMENT made this 30th day of July , 1970, by and among
ARTHUR P. CHARBONNEAU and MARY LOUISE CHARBONNEAU, as they are TRUSTEES of the
PJMN REALTY TRUST under written Declaration of Trust dated January 25, 1969,
and recorded in Middlesex South District Deeds in Book 11636, Page 73; (herein-
after referred to as "CHARBONNEAU") and A. WALLACE EVEREST and CLAUDIA N.
EVEREST (owners of record of Lot 66 shown on a plan entitled, "Plan of
'Henley Acres' a subdivision of Land in Acton, Mass. owned by Clarence P.
Henley" dated July, 1953, by Snelling and Hilton, Registered Land Surveyors,
recorded in Middlesex South District Deeds in Book 8121, Page End (hereinafter
called "Plan of Henley Acres"); DAVID A. WELLS and CATHERINE S. WELLS (owner
of record of Lot 51 shown on "Plan of Henley Acres"); GEORGE E. WAITT and
PEARL^m WAITT (owners of record of Lot 8 shown on "Plan of Henley Acres");
RAYMOND J. TANNUZZO and BARBARA TANNUZZO (owners of record of Lot 11 shown on
"Plan of Henley Acres"); NELSON F. PAGE and LILLIAN PAGE (owners of record of
Lot 5 shown on "Plan of Henley Acres"); DAVID WEINER and JUDITH B. WEINER
(owners of record of Lot 38 shown on "Plan of Henley Acres") (hereinafter
jointly referred to as "ABUTTORS")

WHEREAS, CHARBONNEAU and the ABUTTORS are owners of land on or
near Henley Road, Acton, Massachusetts,



NOW, THEREFORE, in consideration of the mutual promises contained in a prior written agreement between the parties dated March 8, 1970, and for other good and valuable considerations, the parties hereto mutually agree as follows:

1. A plan entitled, "Plan of Land in Acton, Mass." dated January 15, 1970, by Acton Survey & Engineering Inc., recorded in Book 11833 Page 8nd is hereinafter referred to as "plan dated January 15, 1970".

2. CHARBONNEAU, for themselves, their successors and assigns agree not to construct any above-ground structures, as defined by the Acton Building Code, between the "Tree and Building Setback Line" and Henley Road, as shown on the plan dated January 15, 1970.

3. CHARBONNEAU, for themselves, their successors and assigns agree not to disturb the natural foliage in the area between the "Tree and Building Setback Line" and Henley Road, as shown on the plan dated January 15, 1970, except insofar as may be necessary for the use of the easement heretofore reserved by CHARBONNEAU in certain deeds from CHARBONNEAU to some of the parties hereto, to be recorded herewith, for the installation, construction, maintenance, and repair of underground drainage and sewage transfer lines or utilities. When it is necessary to use such easement, CHARBONNEAU will restore the land to a natural-appearing state.

4. The owners of Parcels B,C,E,F,G,H,I,J,K,L,M,N,O,P, Q and R shown on the plan dated January 15, 1970, hereby grant an easement for the purpose of an access path across their respective parcels in a manner that provides a continuous and convenient path for passing and repassing on foot

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or otherwise to and for the benefit of residents of Henley Road, starting from a point on Parcel B on Henley Road and terminating at the westerly end of Parcel R. The easement shall be not less than ten feet wide and shall not be obstructed by other than the natural environment. It is understood and agreed by the parties hereto that persons using the easements granted or reserved herein do so at their own risk and the owners of individual parcels through which said easements pass shall not be liable to persons using said easements. An owner may restrict the use of machined vehicles from his parcel. The easement granted hereby is for the exclusive use of the residents of Henley Road, their guests and pets, or other persons required to exercise the utility and drainage line easements belonging to CHARBONNEAU. Any other similar easements shall be provided only to residents of Henley Road.

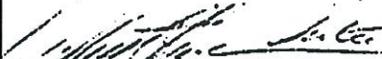
5. CHARBONNEAU, for themselves, their successors and assigns agree to use the land within 400 feet of the parcels of land owned by ABUTTORS shown on the plan dated January 15, 1970, only for multi-family or single-family structures.

6. CHARBONNEAU, for themselves, their successors and assigns hereby grant to the residents of Henley Road, their guests and pets, a perpetual easement to travel over and across land of CHARBONNEAU from the northerly end of Henley Road through Parcel L to land of Joseph N. Britt. Initial location of this easement is shown on the plan dated January 15, 1970 as "Approximate Location of Temporary Access Path". Final location and width of this perpetual easement shall be established coincidentally with the approval of a future road that is reasonably accessible to the north end of Henley Road, and shall be adequate to allow connection of said Henley Road to said future road. Such a possible extension of Henley Road would be only for the safety and/or convenience of Henley Road residents, would be approved by the Acton Planning Board and other cognizant municipal bodies, and must be petitioned by a majority of residents living at 10, 11, 16, 21, 22, and 25 Henley Road. CHARBONNEAU reserves unto himself, his successors and assigns the right to change the location of said easement prior to the establishment of said future road.

7. CHARBONNEAU, for himself, his successors and assigns agrees that there will be no motor vehicle access from his land onto Henley Road, except in the event that (1) a reasonable access permit(s) from Route 2A is denied by the Commonwealth of Massachusetts; or (2) in the event that CHARBONNEAU, his successors and assigns are unable to take title free and clear of encumbrances to land of Kelluher (Lot 63) as shown on the aforesaid plan. In either or both events, CHARBONNEAU, his successors or assigns and the Henley Road ABUTTORS will work together and determine suitable access from the first 500 feet of Henley Road (or other feasible road) that will minimize the vehicular traffic and associated hazards on Henley Road without unreasonable economic impact to the parties involved. No access to Henley Road shall be provided to the general public from Parcels A through M or from abutting lots owned by CHARBONNEAU.

8. The restrictions contained in the above paragraphs may be waived in writing by at least two-thirds of the owners of record of Lots 66, 51, 8, 11, 5, and 38, as shown on "Plan of Henley Acres".

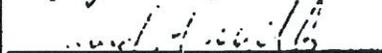
EXECUTED as a sealed instrument on the day and year first above written.


 ARTHUR P. CHARBONNEAU, TRUSTEE


 A. WALLACE EVEREST


 MARY LOUISE CHARBONNEAU, TRUSTEE


 CLAUDIA N. EVEREST


 DAVID A. WELLS

Continued page 5

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R16. 35

AMENDMENT and RELEASE

This Amendment and Release applies only to the real property interests of the Henley Road abutters and to the real property interests of Robert A. Peters, Trustee of Blackstone Middlesex Realty Trust, specifically being described and shown as Lots One (1) through Twenty-nine (29) on a plan entitled "Record Plan of Land on Nonset Path, Great Road and Henley Road, Acton, Mass.", dated July 18, 1980, by Nolan Engineering Service, recorded January 7, 1981 with said Deeds as Plan No. 20 of 1981 and neither party shall be deemed to have released to any third parties not named herein any covenants, restrictions or interests in the above described real property.

The undersigned, being at least two-third of the owners of record of Lot 66, 51, 8, 11, 5 and 38, as shown on a plan entitled, "Plan of Henley Acres, a subdivision of land in Acton, Mass., owned by Clarence P. Henley" dated July, 1953, by Snelling and Hilton, Registered Land Surveyors, recorded in Middlesex South District Deeds, in Book 8121, Page End (hereinafter called "Plan of Henley Acres") and Robert A. Peters, Trustee of Blackstone Middlesex Realty Trust, a successor in interest to Arthur P. Charbonneau and Mary Louise Charbonneau, Trustees of the P.M.L. Realty Trust do hereby amend that certain instrument entitled, "Agreement, Restrictions and Easements Concerning Land in Acton, on and near Henley Road", dated July 30, 1970, recorded September 24, 1970, with said Deeds in Book 11894, Page 614 (hereinafter called "Agreement of July 30, 1970") as follows:

I. Item One (1) of "Agreement of July 30, 1970" is hereby modified and the following is added as it applied to land owned by

11894
614
JU
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Blackstone Middlesex Realty Trust: A plan entitled "Record Plan of Land on Nonsot Path, Groat Road and Honley Road, Acton, Mass.," dated July 18, 1980, by Nolan Engineering Service, recorded ~~January 7, 1981~~ ^{January 7, 1981}, with said Doods as Plan No. 20 of 1980 (hereinafter referred to as "Record Plan dated July 18, 1980 as signed by the Acton Planning Board August 12, 1980").

II. Item Two (2) of "Agreement of July 30, 1970" is hereby modified and the following is added as it applies to land owned by Blackstone Middlesex Realty Trust: Blackstone, for themselves, their successors and assigns agree not to construct any above ground structures as defined by the Acton Building Code between the "Tree and Building Set-back Line" Honley Road as shown on "Record plan of land dated July 18, 1980 and dated and signed by the Acton Planning Board on August 12, 1980".

III. Item Three (3) of "Agreement of July 30, 1970" is hereby modified and the following is added as it applies to land owned by Blackstone Middlesex Realty Trust: Blackstone, for themselves, their successors and assigns agree not to disturb the natural foliage in the area between the "Tree and Building Setback Line" and Honley Road, as shown on "Record Plan of Land dated July 18, 1980 and dated and signed by the Acton Planning Board August 12, 1980".

IV. Item Four (4) of "Agreement of July 30, 1970" is hereby deleted.

V. Item Seven (7) of "Agreement of July 30, 1970" is hereby amended by adding the following language:

7. Lots 2, 3 and 4 as shown on "Record Plan of Land dated July 18, 1980 and dated and signed by the Acton Planning Board August 12, 1980" shall have access and ingress and

Handwritten notes and signatures:
REK
WE
VAW
D
P
C

gress to Henley Road for use as single family residence use only.

VI. The following items are hereby added to said "Agreement of July 30, 1970":

9. There will be no access from Henley Road to the road which will be built to service Lot 17 as shown on "Record plan dated July 18, 1980 and dated and signed by the Acton Planning Board on August 12, 1980," except at the election of Henley Road residents who already have an easement as stated in Item Six (6) of said "Agreement of July 30, 1970". Lot 17 will not be divided into more than five (5) single residence house lots.
10. Lots 2 through 16, Lots 18 through 23 and Lots 25 through 28, as shown on the "Record Plan dated July 18, 1980 and dated and signed by the Acton Planning Board on August 12, 1980" or any revisions thereof will be single family residence house lots only.
11. Notwithstanding Item Five (5) of the "Agreement of July 30, 1970", the 400 foot restriction contained in said item 5 is removed as to Lot 24 and 29 on the "Record Plan dated July 18, 1980 and dated and signed by the Acton Planning Board on August 12, 1980" and there

Handwritten notes:
REK
WZ
D
C

Handwritten mark:
S

shall be no buildings constructed within the utility easement line and Nonsot Path, referred to as "Utility Easement Area" located on said Lots 24 and 29 other than single or multi-family residences. This shall in addition allow only an access road or driveway through the utility easement areas to those parts of Lots 24 and 29 outside the utility easement area.

12. Notwithstanding Item Five (5) of the "Agreement of July 30, 1970", the 400 foot restrictions contained in said Item 5 is to be dropped as it abuts Lot 5. The intontion of said change is to allow Lot 1 as shown on the "Record Plan dated July 18, 1980, and dated and signed by the Acton Planning Board August 12, 1980," to be used for business use. Lot 1 shall have no access to Honley Road.

Handwritten notes and signatures:
J.W.
R.E.K.
W.E.
D.C.
P.D.
M.C.
C.W.

13. One purpose of this Amendment and Release is that Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13A, 13B and 14 as shown on the "Record Plan dated July 18, 1980 and dated and signed by the Acton Planning Board August 12, 1980", (being fourteen (14) lots total) may not be further subdivided to create any additional lots beyond the current fourteen (14) total number of lots. Blackstone Middlesex Realty Trust, its assigns and successors, may make such property line changes that are in compliance with any local zoning and building regulations, where such regulations must be met before construction of a dwelling is allowed to proceed to completion. The perimeter lot lines of Lot Number One (1) shall not be changed in any event without the permission of the parties as required in the "July 30, 1970 Agreement", as affected by this "Amendment and Release", except that Lot Number One (1) may be further subdivided as long as any subdivision is in compliance with any local zoning and building regulations. The Tree and Building Setback Line and any other restrictive setbacks referred to in the "July 30, 1970 Agreement", as affected by this "Amendment and Release" are not to be classified

Handwritten signatures and initials:
J. C. K.
R. E. K.
W. J.
J. C. K.

as property lines. Any utility easements running in favor of the signatories to the "July 30, 1970 Agreement", as affected by this "Amendment and Release" are not to be changed without their consent.

WE
Paul
view
AP
CSW
REC
CRF
R

Executed as a sealed instrument on this 13 day of Feb., 1981.

Robert A. Peters
Robert A. Peters, Trustee of
Blackstone Middlesex Realty Trust

A. Wallace Everest
A. Wallace Everest

David A. Wells
David A. Wells

Claudia N. Everest
Claudia N. Everest

David Weiner
David Weiner

Catherine E. Wells
Catherine E. Wells

Richard E. Kodzis
Richard E. Kodzis

Judith Weiner
Judith Weiner

Judith L. Kodzis
Judith L. Kodzis
Middlesex, ss

COMMONWEALTH OF MASSACHUSETTS

February 13, 1981

Personally appeared the above named A. WALLACE EVEREST, CLAUDIA N. EVEREST, DAVID A. WELLS, CATHERINE E. WELLS, DAVID WEINER, JUDITH WEINER, RICHARD E. KODZIS and JUDITH L. KODZIS

and acknowledged the foregoing to be their free act and deed, before me,

Arthur S. Hill
Notary Public - Arthur S. Hill

My commission expires *July 7, 1983* (July 7, 1983)
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

February 13, 1981

Then personally appeared the above named ROBERT A. PETERS, TRUSTEE and acknowledged the foregoing to be his free act and deed, before me,

Stanley L. Gordon
Notary Public

My commission expires *Dec 27, 1986*
6. STANLEY L. GORDON
Notary Public
My Commission Expires Dec. 27 1986