

Craven NC - Document Stamp
Becky Thompson, Register of Deeds
Date 04/29/2003 Time 14:40:14 1 of 14 Pgs
No: 2003-00066309

Book **2029** Page **963**

Fee Amt : 53.00
Excise Tax: .00

NORTH CAROLINA

CRAVEN COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made and entered into this 28 day of April, 2003, by and between **CRAYTON BROS.**, a North Carolina general partnership duly organized and existing under and by virtue of the laws of the State of North Carolina with its principal office and place of business in New Bern, North Carolina (hereinafter "Crayton"); **BB&T COLLATERAL SERVICES CORPORATION**, a North Carolina corporation doing business in Craven County, North Carolina (hereinafter "Trustee"); **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation with an office and place of business in Craven County, North Carolina (hereinafter "Beneficiary"); and all **PROSPECTIVE PURCHASERS** (hereinafter "Purchasers") of Lots of land hereinafter enumerated and situate in **DERBY PARK SECTION IV-D**, according to the plan of record in the Office of the Register of Deeds of Craven County, North Carolina in Plat Cabinet G, Slide 164-C, the same depicting a subdivision in the City of New Bern, in Number Eight Township, Craven County, North Carolina;

BOOK FILED NO: 999-0141250

PREPARED BY
SUMRELL, SUGG, CARMICHAEL, HICKS & HART, P.A.
ATTORNEYS AT LAW
310 BROAD STREET
NEW BERN, NORTH CAROLINA 28560

WITNESSETH:

THAT WHEREAS, Crayton (hereinafter sometimes referred to as "Declarant") is the owner of numbered Lots 97, 98, 99, 100, 101, 102, 103 and 104 (hereinafter referred to as "Lots" or "Subdivision") in DERBY PARK SECTION IV-D as shown and designated on plans of same entitled "DERBY PARK SECTION IV-D" of record in the Office of the Register of Deeds of Craven County in Plat Cabinet G, Slide 164-C, and DECLARANT hereby makes this agreement for the purpose of restricting the aforesaid numbered Lots in accordance with the conditions hereinafter set out so as to promote the best interest of the PURCHASERS and to protect their investments, and to protect the best interest of the DECLARANT and to protect its investments; and,

WHEREAS, DECLARANT hereby agrees with the PURCHASERS to convey said Lots according to the plan hereinabove mentioned subject to the restrictive and protective covenants hereinafter set out, and these covenants shall be binding and in full force and effect upon each and every purchaser, whether or not the restrictive and protective covenants are mentioned in the deed, so that these said Lots shall constitute a desirable residential section.

The covenants and restrictions are as follows:

1. **LAND USE AND BUILDING TYPE:** No structure shall be erected, altered, placed, or permitted to remain on any Lot other than for use as a single family residential dwelling, with a private garage for not more than two automobiles. No outbuildings shall be erected upon any Lot except such as are incidental to residential use of said Lot. Provided, however, that one owner of two or more adjoining Lots, or one owner of one Lot and one-half of one Lot or both of the adjoining Lots, or the owner of one-half of one Lot the adjoining one-half of the adjoining Lot, may construct a residential dwelling thereon upon and across the dividing

line of such adjoining Lots, or Lot and adjoining one-half Lot, or two adjoining half Lots so owned by one owner, so long as such residential dwelling shall not be nearer than eight feet to such owner's side Lot line, and so long as any outbuilding shall not be nearer than eight feet from such owner's side Lot line or ten feet from rear Lot line, but thereafter, no additional residential dwelling may be built thereon.

2. **DWELLING SIZE:** Any dwelling erected upon any Lot shall contain not less than 800 square feet of total floor area, as determined by exterior dimensions, exclusive of open porches and garages.

3. **DWELLING QUALITY:** All dwellings and outbuildings erected upon any Lot shall be constructed of material of good grade, quality, and appearance, and all construction shall be performed in good workmanlike manner. No dwelling or outbuilding shall be constructed of exposed concrete block. Any outbuilding constructed on said Lot shall be of the same material, quality, and workmanship as the dwelling.

4. **SET BACK LINES:** No dwelling or other building shall be located on any Lot any nearer to the front, side or rear Lot lines than as shown on the recorded plat. In addition, no dwelling or other building shall be located other than as shown on the recorded map of the Subdivision. No dwelling or other building shall be located nearer to any side street line of any such Lot, if the same be a corner Lot, other than as shown on the recorded plat.

5. **EASEMENTS:** Easements, if any, shall be as shown on the recorded map of the Subdivision. Provided, however, that in the event any person, firm, or corporation acquires title to two or more Lots, or one-half of one Lot, or both of the adjoining Lots, or one-half of one Lot and the adjoining one-half of the adjoining Lot, said person, firm, or corporation shall be allowed to erect a residence or other allowable structure across the interior Lot lines and the said

easements for utilities and drainage that would be relative to such interior Lot lines shall be withdrawn and not constitute an encumbrance on such Lot and shall be reserved only along the perimeter boundary lines of the total Lots or portions thereof so owned by the one owner.

DECLARANT reserves the right to subject the real property in this subdivision to a contract with the City of New Bern or other service company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to the City of New Bern or other service company by the owner of each building.

6. **NUISANCES:** No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become a nuisance or any annoyance to the neighborhood. No truck or vehicle in excess of one ton load capacity shall be parked or permitted to remain on any Lot, and all such permissible vehicles shall bear a current inspection sticker pursuant to the laws of the State of North Carolina. No stripped, partially wrecked, junked, or inoperative motor vehicle or any part thereof shall be permitted to be parked or kept on any street or Lot.

7. **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. No "shell" home of any type shall be erected, constructed, or be permitted to remain on any Lot regardless of the cost. The term "shell" home as herein used shall be construed to mean the construction of outside walls, including doors and windows, roof, and foundation of a house or dwelling by a contractor or other party, with the inside areas of such house or dwelling not being completed or to be completed by the owner or some other person.

8. **SIGNS**: No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

9. **LIVESTOCK AND POULTRY**: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

10. **GARBAGE AND REFUSE DISPOSAL**: No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers, and any sanitary containers shall be stored in such a manner that said containers are not easily seen from any public street or other right of way. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

11. **FENCES**: Any fence erected on any Lot must have the prior approval of the Property Control Committee as hereinafter specified in paragraph 13. No fence shall be erected along the front line of any Lot any closer to the street than the front of the house. However, a fence shall be allowed parallel to the sideline of a Lot fronting on a street but extending no closer to the street fronting the house than the front of the house. In the event that the Lot is a corner Lot or the side line of the Lot is adjacent to a street, no fence shall be erected outside of the building set back line along the side Lot line adjacent to the street. Any fences erected shall not be more than 6 feet high. Notwithstanding anything to the contrary herein contained, no chain link fences shall be erected or allowed to remain on any Lot within the subdivision. Furthermore, notwithstanding anything to the contrary herein contained, DECLARANT shall be allowed to erect a temporary wooden fence at any place on any Lot being used as a temporary model home;

however, at such time as said Lot ceases to be used for a model home, any fence erected by DECLARANT which does not conform to the requirements of this paragraph shall be removed.

12. **CLOTHES LINES:** No clothes line shall be erected or used in excess of a height of six feet from the ground. In addition, any clothes line so used shall be surrounded by a privacy fence to screen said line from view. Any such privacy fence shall be submitted to the property control committee pursuant to the provisions of paragraph 13 below.

13. **PROPERTY CONTROL COMMITTEE:**

A. All plans and specifications for any structure or improvement whatsoever to be erected on any Lot, including, but not by way of limitation, utility or accessory buildings and fences, type of exterior material and exterior color and the proposed location and orientation in relation to streets, the construction material, the roofs and exterior color schemes, any later changes or additions after initial approval thereof and any remodeling, reconstruction, alterations, or additions thereto on any Lot shall be subject to and shall require the approval in writing before any such work is commenced of the Property Control Committee (herein called "Committee"), as the same is from time to time composed.

B. The Committee shall be composed of two (2) members. Declarant shall have the right to appoint and remove for cause or without cause members of the Committee. The initial members of the committee are Paul W. Crayton, Jr., and Walter F. Crayton. Upon the resignation of all of the initial members of the Committee, the Board of Directors of the Derby Park Section IV-D Property Owners' Association, Inc. (hereinafter called "Association") shall have the right to appoint and remove members of the Committee, for cause or without cause. So long as any of the initial members of the Committee serve, upon the resignation of any of the initial members, the remaining initial members shall have the right to appoint the successor.

C. There shall be submitted to the Committee two (2) complete sets of the final plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any Lot unless and until the final plans, elevations, and specifications therefor have received written approval as herein provided. Such plans shall include plot plans showing the location on the Lot of the building, wall, fence or other structure proposed to be constructed, altered, placed or maintained, together with the proposed construction material, color schemes for roofs and exteriors thereof and proposed landscape planting.

D. The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. In the event that the Committee has failed to designate its approval or disapproval within thirty (30) days from the receipt of the plans, specifications and details, the same shall be deemed approved in their entirety. One (1) set of said plans, specifications and details with the approval or disapproval endorsed thereon shall be returned to the person submitting them and the other copy thereof shall be retained by the Committee for its permanent files.

E. The Committee shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these restrictions if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such Lot or with the adjacent buildings or structures; if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interests, welfare or rights of all or any part of the real property subject hereto, or the owners thereof. The decisions of the Committee shall be final and not subject to appeal or review.

F. Neither the Committee nor any agent thereof or of Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

G. The Committee or its agents shall have the right to inspect all construction to insure that the structure is in accordance with the approved plans, specifications and details. No structure or improvement shall be made unless it conforms substantially to the approved plans, specifications and details.

H. The design of all mail boxes, radio antennas and television satellite dishes shall be in conformity with the design as specified and approved by the Committee. The Committee reserves the right in its absolute discretion to prohibit satellite dishes or radio antennas from being located within the subdivision.

14. DERBY PARK SECTION IV-D PROPERTY OWNERS' ASSOCIATION, INC.: Every person, partnership, firm, or corporation, upon acquiring fee simple title to any Lot in the Subdivision shall become a member of "Derby Park Section IV-D Property Owners' Association, Inc.," a North Carolina non-profit corporation, herein referred to as "Association" (so long as the same is in existence), and as long as he is the owner of any such Lot, he must remain a member of the Association and abide by the bylaws, rules and regulations thereof. Provided, however, that there shall be only one (1) regular membership per Lot regardless of the manner or number of names in which title to same may be held. Such membership is not intended to apply to those persons who hold an interest in any Lot merely as security for the performance of an obligation to pay money, e.g., mortgages and deeds of trust. The Association may also charge any user or member fees for the use of any amenities or the maintenance of any

common area owned or operated by it, including charges for individual services or goods provided members through such facilities. Furthermore, the Association may also charge assessments or other fees to defray general administrative and other expenses incurred by the Association in performing its duties, including but not limited to the maintenance of any common area owned or operated by the Association.

Further, Declarant reserves the sole and unilateral right to develop additional land for single family Lots in close proximity to the Subdivision, and to add said developed Lots to the Derby Park Section IV-D Property Owners' Association, Inc.

15. **TRAILERS, ETC.:** No trailer or habitable motor vehicles of any nature shall be kept on or stored on any part of any Lot. No trucks of any nature except pickup trucks or small vans shall be parked overnight on any Lot except in an enclosed garage. A pleasure boat on its trailer may be parked or stored on that part of any Lot away from the street lying beyond the front line of the house.

16. **OCCUPANCY:** No dwelling house erected upon any Lot shall be occupied in any manner while in the course of construction nor at any time prior to its being fully completed. No temporary house, temporary dwelling, temporary garage, temporary outbuilding, trailer home or other temporary structure shall be placed or erected upon any Lot except for storage of materials and other use by the contractor erecting any such building, and all such shall be immediately removed after the construction of the dwelling and other outbuildings has been completed.

17. **TIME:** These covenants shall run with the land and shall be binding on all persons acquiring title to any of the aforementioned Lots, and shall be binding on said parties and/or persons claiming under them up to and including the 1st day of April, 2023, at which time

said covenants shall be automatically extended for successive periods of ten years, unless by written instrument executed by a majority of the then owners of said Lots, duly recorded in the Office of the Register of Deeds of Craven County, it is agreed to change said covenants in whole or in part.

18. **ENFORCEMENT**: Enforcement shall be by proceedings at law in equity any person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages.


19. **SEVERABILITY**: Invalidation of any one of these covenants by judgment or Court Order shall in no way affect any of the other restrictions which shall remain in full force and effect.

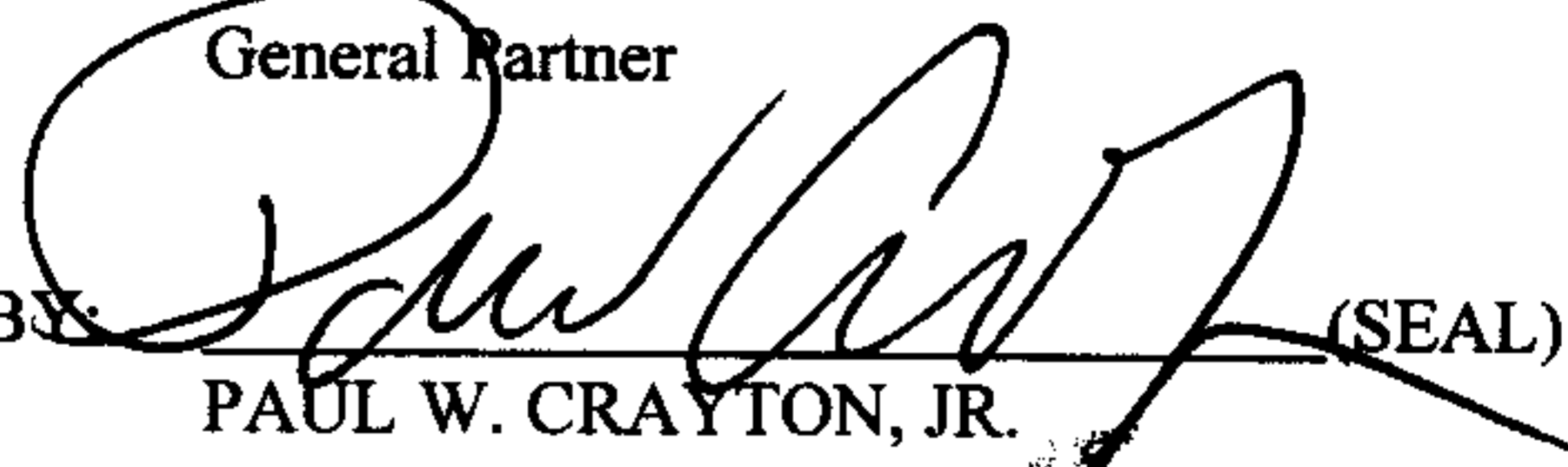
20. **COMPLIANCE WITH GOVERNMENTAL REGULATIONS**: Notwithstanding anything to the contrary contained in these restrictive and protective covenants, any improvement upon any Lot shall comply with the provisions of the applicable regulations of any governmental or regulatory body having jurisdiction thereof, including, but not limited to, the New Bern City Code in force at the time of the issuance of any building permit therefor.

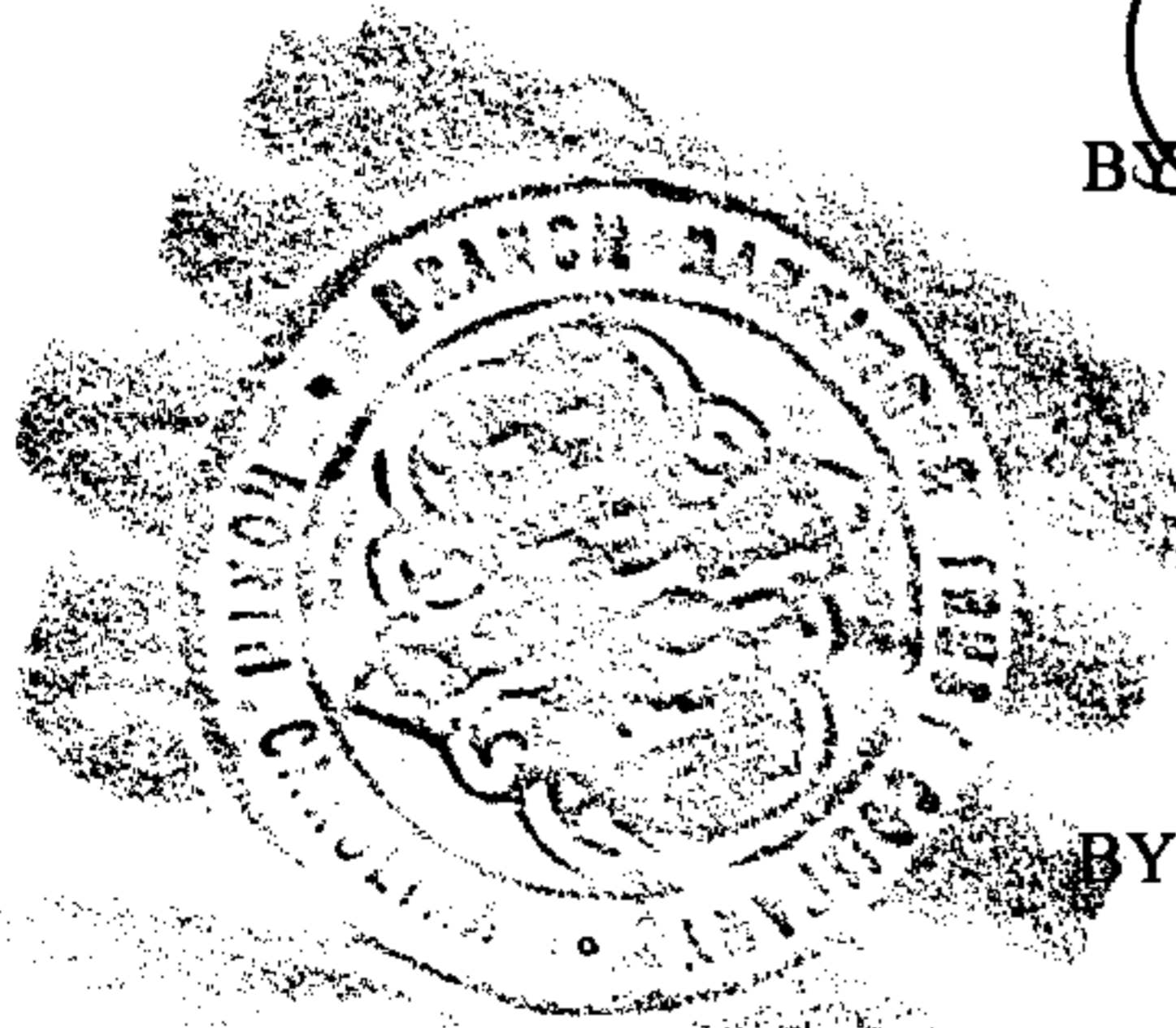
21. **AMENDMENTS TO COVENANTS**: Declarant shall have the sole and unilateral right to amend this Declaration of Covenants, Conditions and Restrictions for the Subdivision, as well as to amend any subsequent amendments thereto, in order to alter the shape, size and location of any unsold Lots and any unopened streets, to correct any surveying or other errors affecting any Lots to which Declarant has legal title or to establish the exact location of streets, easements and other common areas, or to bring this declaration into compliance with any governmental rules or regulations.

IN TESTIMONY WHEREOF, CRAYTON BROS., has executed this document in such form as to be binding and to subject its respective Lots to the provisions of this instrument; and **BB&T COLLATERAL SERVICES CORPORATION** and **BRANCH BANKING AND TRUST COMPANY** have executed this instrument solely for the purpose of indicating their consent as lienholders under those certain Deeds of Trust recorded in Book 1899, Page 6 and Book 1899, Page 11 in the Office of the Register of Deeds of Craven County, North Carolina, all this the day and year first above written.

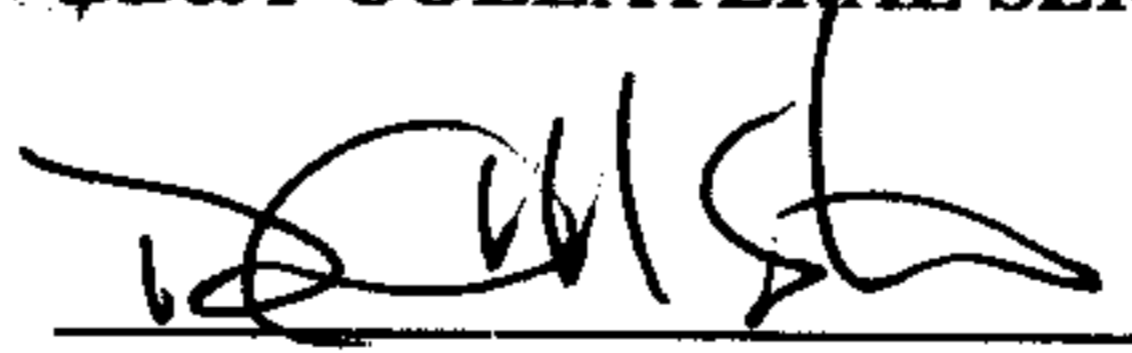
CRAYTON BROS.

BY:  (SEAL)
WALTER F. CRAYTON
General Partner

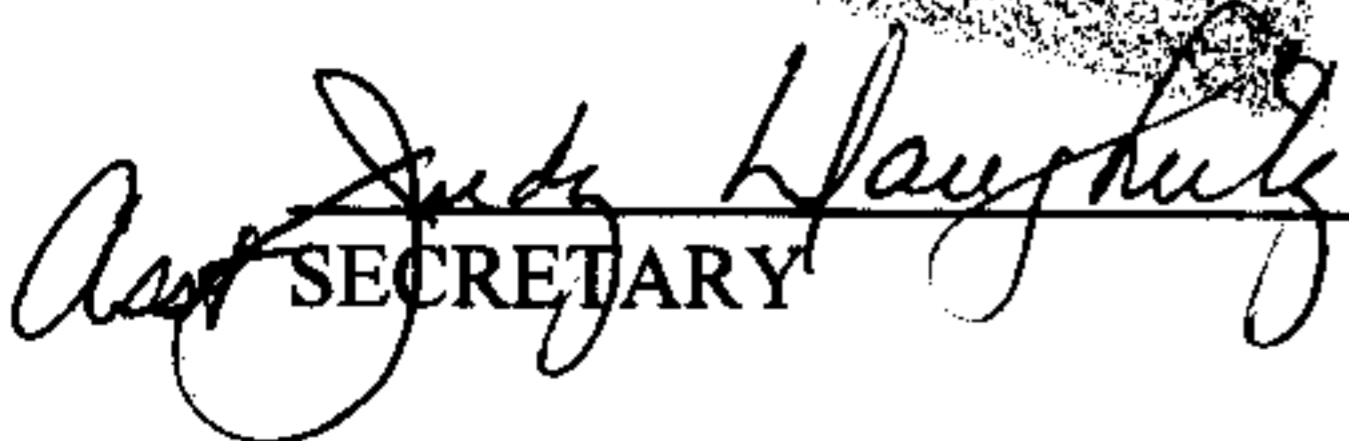
BY:  (SEAL)
PAUL W. CRAYTON, JR.
General Partner

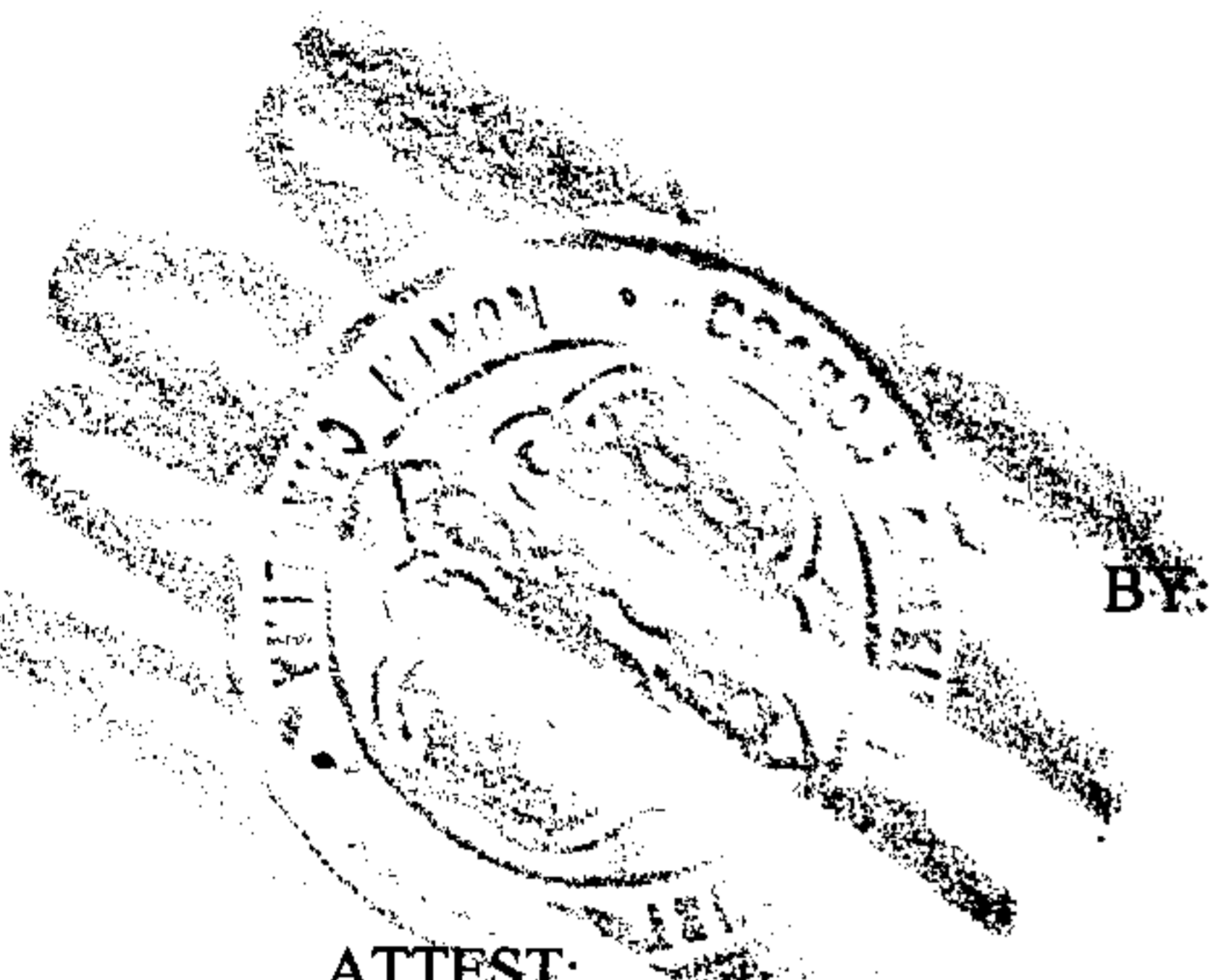


BB&T COLLATERAL SERVICES CORPORATION

BY:  (SEAL)
Vice PRESIDENT

ATTEST:


SECRETARY



BRANCH BANKING AND TRUST COMPANY

BY: [Signature] (SEAL)
VICE PRESIDENT

ATTEST:

[Signature]
SECRETARY

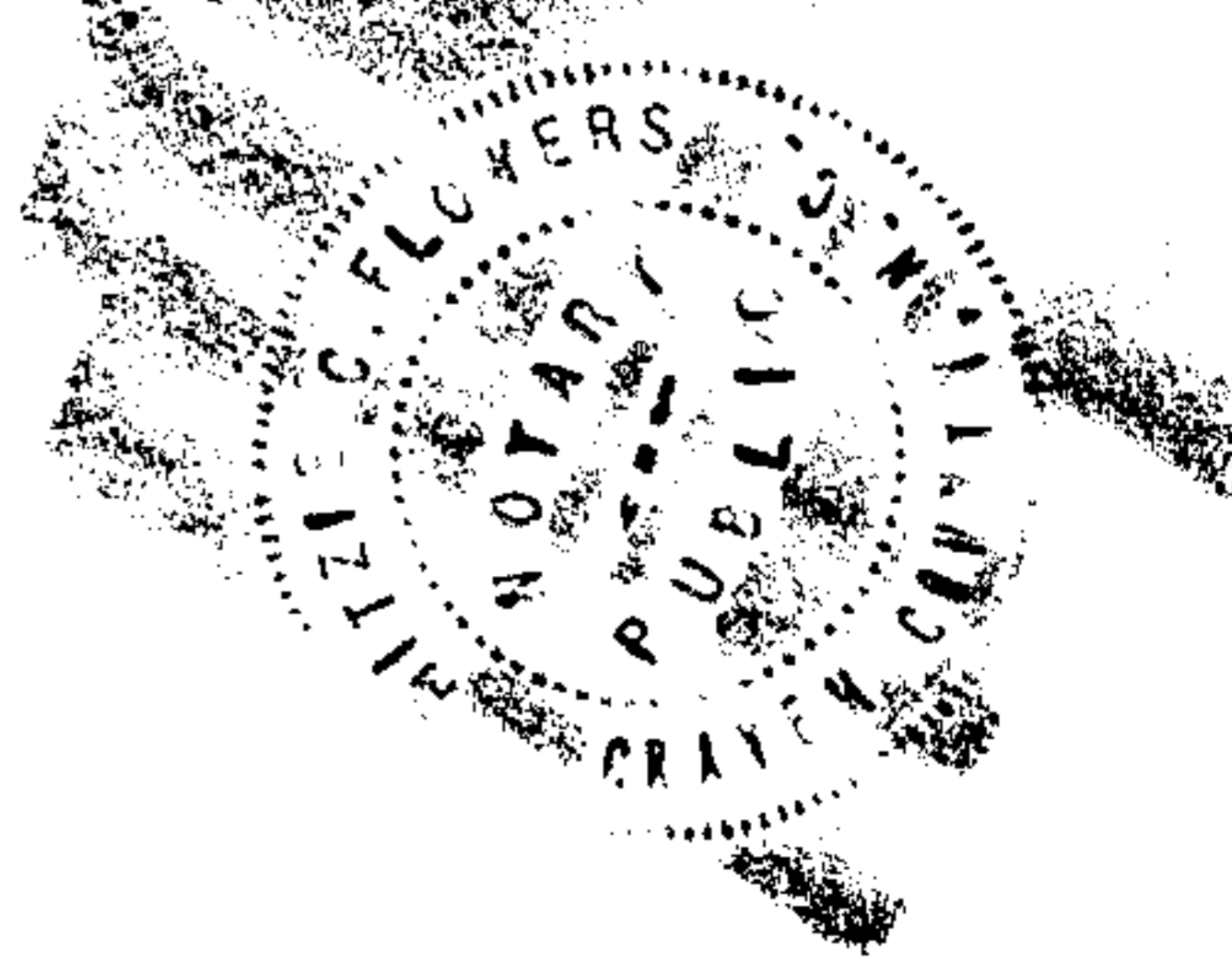
NORTH CAROLINA
CRAVEN COUNTY

I, Mitzie C. Flowers, a Notary Public of Craven County,
do hereby certify that WALTER F. CRAYTON, being a general partner of CRAYTON BROS., a
General Partnership, personally appeared before me this day and acknowledged the due
execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 28th day of April, 2003.

[Signature]
NOTARY PUBLIC

My Commission Expires: MAY 1, 2005



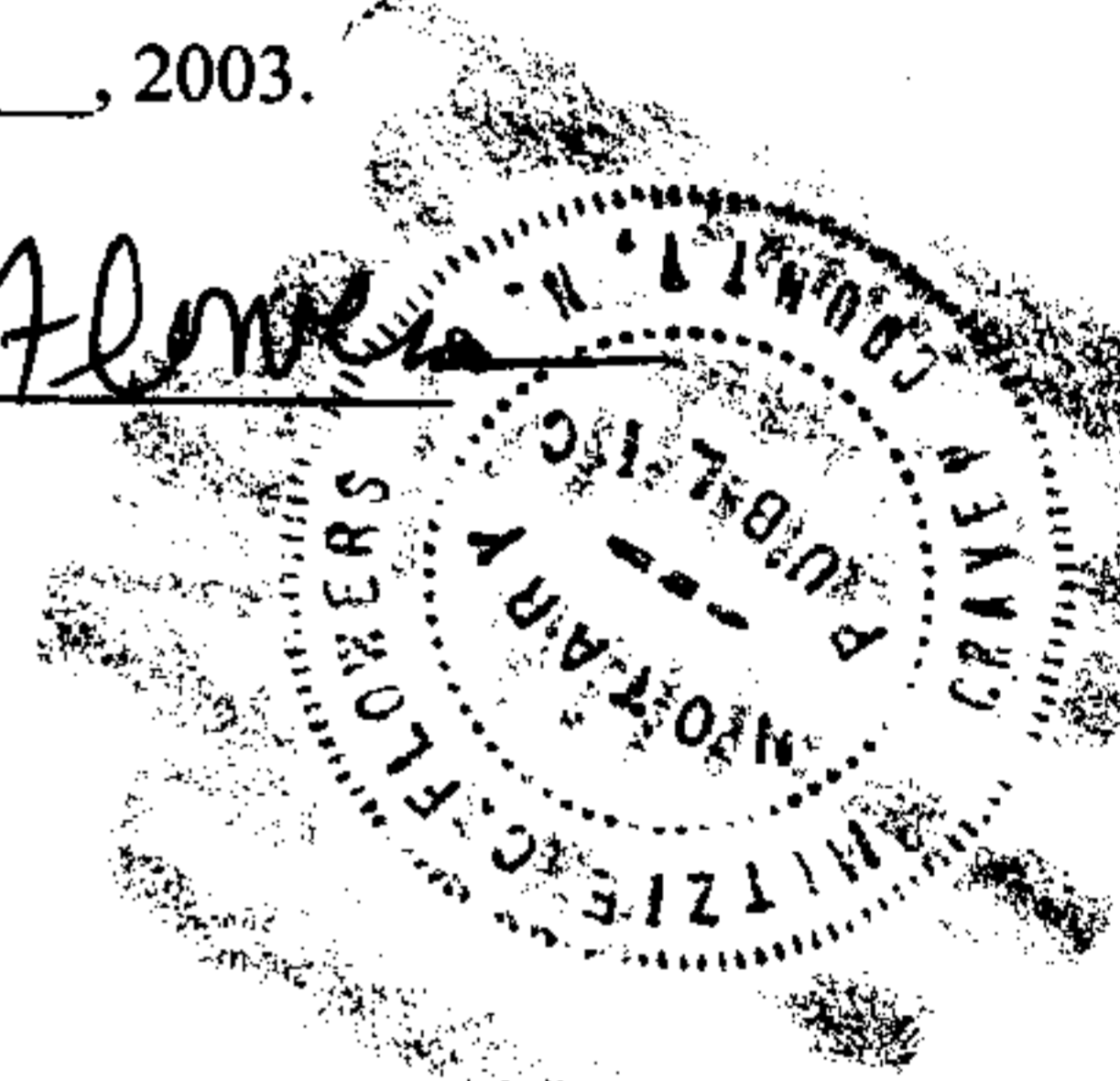
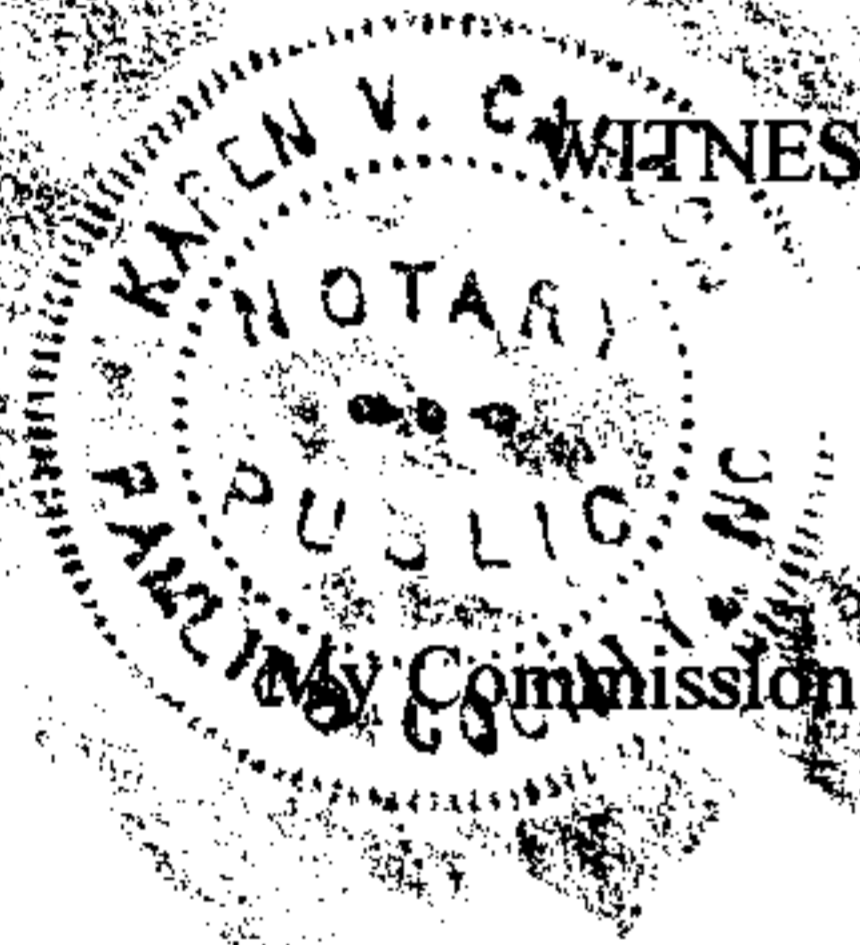
NORTH CAROLINA
CRAVEN COUNTY

I, Mitzie C. Flowers, a Notary Public of Craven County, do hereby certify that PAUL W. CRATYON, JR., being a general partner of CRAYTON BROS., a General Partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 28th day of April, 2003.

Mitzie C. Flowers
NOTARY PUBLIC

My Commission Expires: May 1, 2005



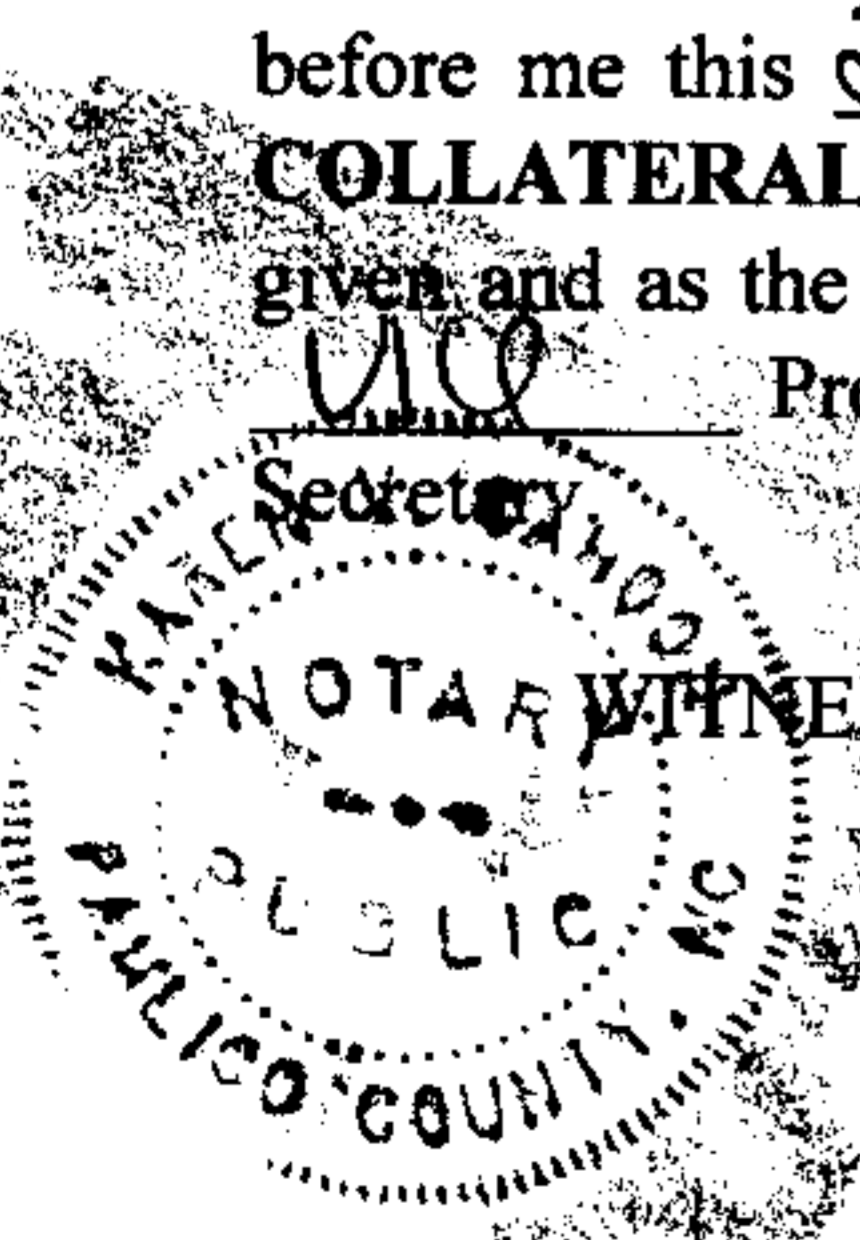
NORTH CAROLINA
CRAVEN COUNTY

I, Karen V. Cahoon, a Notary Public of Craven County, North Carolina do hereby certify that Judy Daugherty personally appeared before me this 28 day and acknowledged that she is the ASST Secretary of **BB&T COLLATERAL SERVICES CORPORATION**, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its US President, sealed with its corporate seal, and attested by her self as its ASST

WITNESS my hand and notarial seal, this 28 day of April, 2003.

Karen V. Cahoon
NOTARY PUBLIC

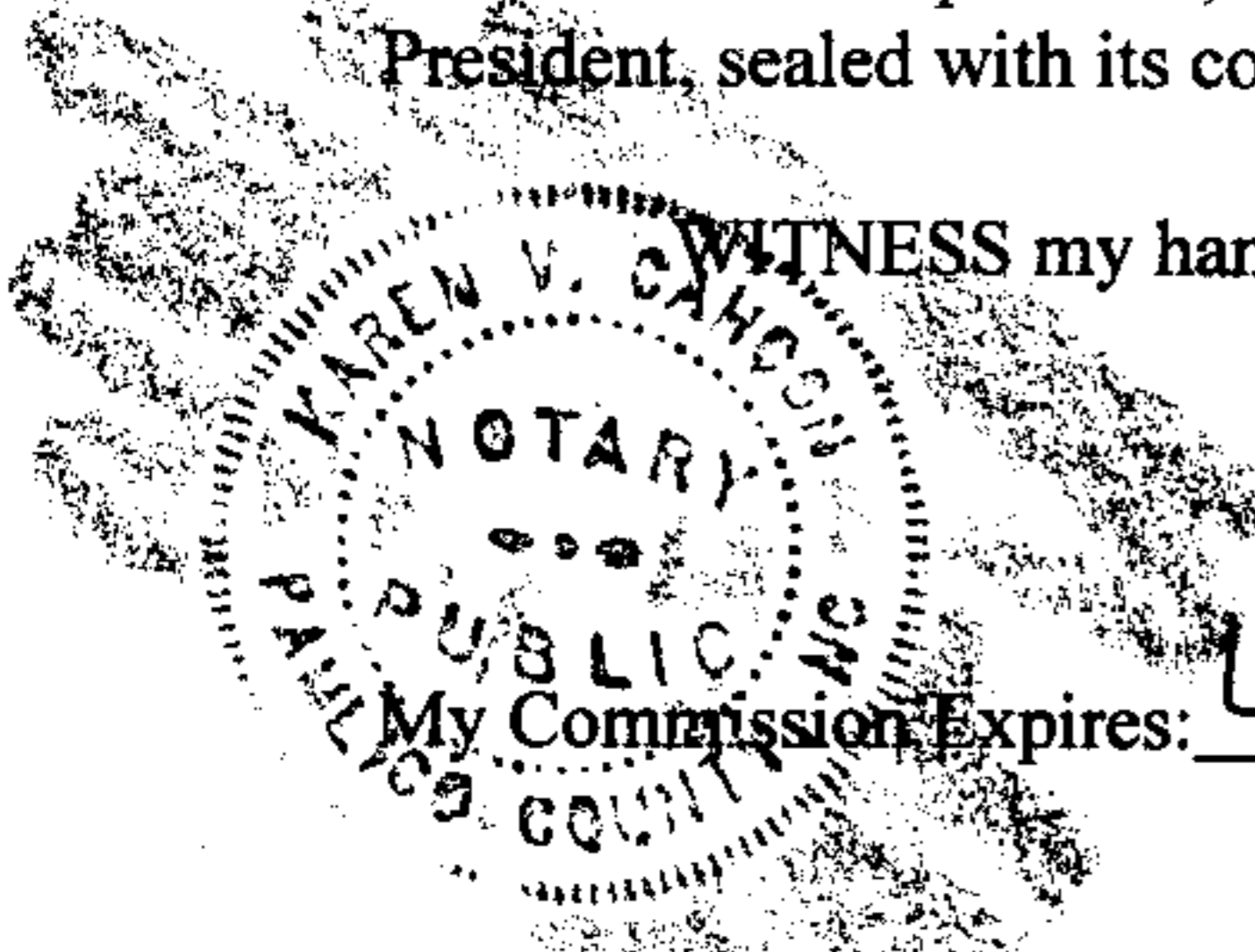
My Commission Expires: 4-9, 2005



NORTH CAROLINA
CRAVEN COUNTY

I, Karen V. Cahoon, a Notary Public of Craven County, North Carolina do hereby certify that Judy F. Daugherty personally appeared before me this 28 day and acknowledged that s he is the ASST Secretary of BRANCH BANKING AND TRUST COMPANY, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by h self as its Asst Secretary.

WITNESS my hand and notarial seal, this 28 day of April, 2003.



Karen V. Cahoon
NOTARY PUBLIC

My Commission Expires: 4-9-2005

NORTH CAROLINA
CRAVEN COUNTY

The foregoing certificates of Notaries Public are certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the Office of the Register of Deeds of Craven County, North Carolina, in Book 2029, at Page 976

This 28 day of April, A.D., 2003, at 14:40 o'clock P.M.

Betsy Thompson
REGISTER OF DEEDS

BY: [Signature]
DEPUTY REGISTER OF DEED