

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION CREATING UNIT OWNERSHIP OF
PROPERTY UNDER THE PROVISIONS OF
CHAPTER 47A OF THE GENERAL STATUTES OF
STATE OF NORTH CAROLINA
DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1

THIS DECLARATION, made this the 2nd day of October, 1984,
by GLENN W. HODGES and wife, ROBBIE B. HODGES, hereinafter
collectively referred to as "DECLARANT";

W I T N E S S E T H

That whereas, the Declarant are the owners of record of the fee simple title to certain real property in the City of Wilmington, County of New Hanover State of North Carolina, which is more particularly described in Exhibit "A" attached hereto and made a part hereof by reference; and

Whereas, the Declarant have constructed two multi-unit buildings and certain other improvements on the aforesaid property; and

Whereas, it is the desire and intention of the Declarant to market, sell and convey interests in the property and the improvements thereon as a condominium project pursuant to the provisions of Chapter 47A of the North Carolina General Statutes, entitled "Unit Ownership Act"; and

Whereas, it is the desire and intention of the Declarant in the recordation of this Declaration in the office of the Register of Deeds of New Hanover County, North Carolina, to submit said condominium project to the provisions of said Chapter 47A;

51 NOW, THEREFORE, THE DECLARANT DO HEREBY DECLARE THAT ALL OF THE REAL PROPERTY DESCRIBED IN EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, AS WELL AS ALL OF THE IMPROVEMENTS CONSTRUCTED THEREON, IS HELD AND SHALL BE HELD, CONVEYED, HYPOTHECATED, ENCUMBERED, USED, OCCUPIED, AND IMPROVED SUBJECT TO THE FOLLOWING COVENANTS, CONDITIONS, RESTRICTIONS, USES, LIMITATIONS AND OBLIGATIONS, ALL OF WHICH ARE DECLARED TO BE IN FURTHERANCE OF A PLAN FOR THE IMPROVEMENT OF SAID PROPERTY AND THE DIVISION THEREOF INTO CONDOMINIUM UNITS AND SHALL BE DEEMED TO RUN WITH THE LAND AND SHALL BE A BURDEN AND A BENEFIT TO THE DECLARANT, THEIR HEIRS AND ASSIGNS, AND ANY PERSON OR ENTITY ACQUIRING OR OWNING AN INTEREST IN THE REAL PROPERTY AND IMPROVEMENTS, OR ANY SUBDIVISION THEREOF, THEIR GRANTEEES, SUCCESSORS, HEIRS, EXECUTORS, ADMINISTRATORS, DEVISEES AND ASSIGNS.

1. Submission of Property. Pursuant to the provisions of Chapter 47A of the North Carolina General Statutes, Section 47A-2, the Declarant do hereby submit all of the real property described in Exhibit "A", attached hereto and made a part hereof by reference, together with all improvements thereon and described herein, to the provisions of the "Unit Ownership Act" of the State of North Carolina, which is codified as Chapter 47A of the General Statutes of the State of North Carolina.

2. Definitions. For the purposes of this Declaration and the By-Laws of the Associations, hereinafter defined, the following definitions for the terms used herein shall apply unless otherwise defined by the context thereof:

A. "Act" shall mean and refer to the Unit Ownership Act, Chapter 47A of the General Statutes of the State of North Carolina, as such may be supplemented or amended from time to time.

B. "Association" shall mean and refer to the DOWNEY BRANCH OFFICE CONDOMINIUMS OWNERS ASSOCIATION, INC., the mandatory association of all unit owners, as is more particularly described in paragraph 7 hereinbelow.

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C. "Assessment" shall mean and refer to a share of the funds required for the payment of the common expenses, hereinafter defined, of the Association which from time to time shall be levied or assessed against a unit owner by the Association, all as provided for hereinbelow.

D. "Buildings" shall mean and refer to the multi-unit buildings which the Declarant have constructed or will construct upon the real property described in Exhibit "A", to be used for business purposes, hereinafter provided. Attached hereto and made a part hereof by reference is Exhibit "C" which consists of a full and exact copy of the plans of the buildings as well as a survey of the real property, drawn by Robert M. Williams, P. E., showing the location of the buildings thereon. Said buildings are more particularly described in the plans of said buildings showing all particulars as required by law. In general, the buildings have two stories constructed on a concrete slab at ground level. There are no basements or garages. The buildings has approximately 6,000 square feet of heated area in each unit. The buildings have been subdivided into twelve units, hereinafter defined. The buildings have been constructed principally of wood, concrete, and brick veneer. The roofing is constructed of fiberglas shingles.

E. "Board" shall mean and refer to the Board of Directors of the Association, and "Director" shall mean and refer to a member of said board.

F. "By-Laws" shall mean and refer to those By-Laws of the Association providing for the government of the Association as they are duly adopted and amended from time to time by the Association. A copy of the initial By-Laws are attached hereto as Exhibit "D" and made a part hereof by reference.

H. "Common Areas and Facilities" generally shall mean and refer to all of the real property described on Exhibit "A" and all of the improvements and facilities thereon (including those portions which are defined hereinbelow as Limited Common Areas and Facilities) and which are not units, as defined hereinafter, and which are not items of personal property owned, held, and maintained by unit owners. Without in any way limiting the generality of the foregoing, the Common Areas and Facilities shall include, but not be limited to, the following:

- (1) All of the real property more particularly described in Exhibit "A" attached hereto, reference to which is hereby made for a more particular description thereof;
- (2) All foundations, columns, girders, beams, supports, roofs, ventilation fans and vents, load bearing walls, including all exterior walls and all interior walls (except non-load bearing interior walls wholly within a unit) of the Buildings.
- (3) All yard and garden areas, parking and drive areas, and sidewalks.
- (4) All installations and facilities, apparatus, conduits, and equipment for the provision of all utility services, including but limited to, all water and sewer service, electricity, heating, air conditioning, telephone, irrigation, trash disposal, if any, supplied for the common use and convenience of the Unit Owners, and which are not defined as part of the Units, hereinbelow;
- (5) All other portions of the real property and the improvements thereon which are not specifically part of

the units themselves, as hereinafter defined, or owned by Unit Owners as personal property, shall be Common Areas and Facilities intended for the common and necessary or convenient use, existence, maintenance or safety of the condominium project.

G. "Limited Common Areas and Facilities" are a part or parts of the Common Areas and Facilities which are reserved for use by less than all of the Units ("Units" being hereinafter defined), and shall mean the following portions of the Common Areas and Facilities:

(1) The ground or first floor entrance hall within the Buildings, as shown upon the plans of the Buildings attached hereto as Exhibit "C".

The Limited Common Areas and Facilities are shown in detail on Exhibit "C" attached hereto, and reference is hereby made to Exhibit "C" for a more detailed description of the Limited Common Areas and Facilities. The Limited Common Areas and Facilities, defined by Paragraph (1), above, shall be limited to use by the two Units located within the Section of the Buildings which such Limited Common Areas and Facilities serve. The two Units using each of said Limited Common Areas and Facilities defined in paragraph (1) above shall share equally in the same.

I. "Common Expenses" or "Common Expense" shall mean and refer to the total cost and expenses incurred by the Association (as hereinafter provided) for the administration, maintenance, operation, safety, repair, and replacement (including a capital reserve for repair, maintenance, and replacement) of the Common Areas and Facilities, (including those portions which are herein defined as Limited Common Areas and Facilities) as well as any other expense incurred by the Association pursuant to the fulfillment of its obligations and purposes as stated herein and labeled as Common Expenses. Common Expenses are additionally intended to mean and refer to any expense incurred by the Association as shall be hereinafter agreed upon by the Association of Unit Owners as common expenses of the Association.

J. "Common Surplus" shall mean and refer to the balance of all revenues of the Association remaining after the deduction of the Common Expenses. Any such Common Surplus shall be used to reduce the assessments for members for the following fiscal year of the Association, based upon the proposed budget of the Association for the following fiscal year, subject however, to the terms of paragraph 8, hereinafter set forth.

K. "Condominium" shall mean and refer to the entire proposed development consisting of all the real property and the Buildings, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for common use in connection therewith, which are intended to be submitted to the provisions of the Act by this Declaration, and the supplements and amendments hereto, as are provided hereinbelow.

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L. "Declarant" shall mean and refer to Glenn W. Hodges and wife, Robbie B. Hodges, their heirs and assigns.

M. "Declaration" or "Declaration of Condominium" shall mean and refer to this instrument as it may from time to time be lawfully amended or supplemented.

N. "Majority" or "Majority of Unit Owners" shall mean and refer to the owners of fifty-one (51%) per cent of the aggregate interest in the Common Areas and Facilities, as established by this Declaration, assembled at a duly called meeting of the Unit Owners.

O. "Person" shall mean and refer to an individual, corporation, partnership, association, trustee, or other legal entity.

P. "Unit Owner" or "Unit Owners" shall mean and refer to the Persons who own a Condominium Unit.

Q. "Real Property" shall mean and refer to all of the real property described in Exhibit "A" attached hereto.

R. "Unit" or "Condominium Unit" shall mean and refer to any one those twelve subdivisions of enclosed space within the Buildings, together with any additional areas, spaces and equipment accompanying the same as defined below, and which are intended to or will be sold as twelve units pursuant to the Act and this Declaration. The deed for any particular Unit should convey such Unit by its unit designation and the same shall be deemed to include all that is defined as a part of that Unit in this Declaration, as well as the privileges and appurtenances accompanying any such Unit. Such conveyance shall be deemed subject to the covenants, conditions, and restrictions and obligations applicable to Unit Owners as set forth in this Declaration.

The twelve units of the Buildings are and will be identified by their unit designations, which are Units 1 through 12, inclusive. These Units and their designations are shown upon the plans of the Buildings attached hereto as Exhibit "C", which also shows graphically all particulars of the Buildings and their twelve units, including but not limited to, the layout, location, ceilings, and floor elevations, dimensions of the Units, and the area and location of the Common Areas and Facilities, and those portions of the Common Areas and Facilities which are herein defined as Limited Common Areas and Facilities. Reference is hereby made to said plans and specifications for the purpose of identifying and locating each Unit within the buildings, as well as identifying its dimensions, approximate areas, and number of rooms. No Unit bears the same designation as any other. Any conflict between said plans and this definition shall be resolved by reference to the said plans, which shall control.

All Units, including any accessory spaces and areas, are bounded both as to horizontal and vertical boundaries by the interior finished surface of the Unit's perimeter walls, ceilings, and floors, all of which are shown on said plans, subject to the easement reserved hereinbelow for such encroachments as are contained in the Buildings, whether the same now exist or may be caused or created by existing construction, settlement, or movement of the Buildings, or by permissible repairs, construction, or alteration.

All Units shall be substantially the same in design, construction, and material. Each of the twelve units is wholly contained within the Buildings.

Each Unit is identical in size and contains approximately 1,000 square feet of heated space.

Each Unit is hereby defined also to include:

1. All non-load bearing partition walls located entirely within the Unit.
2. All materials, including but not limited to, carpet, paint, wall paper, and vinyl attached to, or on, the interior finished surfaces of the perimeter walls, floors, and ceilings of the Unit; and all doors, windows, window frames, window panes, window screens. Each ground or first floor Unit includes the door opening from the Unit into the ground or first floor entrance hall, including both surfaces and the locks, knobs and fastenings of the door. However, such Unit includes only the finished interior surface within the Unit of the door frame and wall surrounding such door, and the remainder of the door frame and the fire wall in which it is situated are Common Areas and Facilities.
3. All air and heat handling and compressor units, ducts, and components, and all water, power, telephone, television and cable television, electricity, plumbing, gas or sewage lines, if any, located within the Unit; provided, however, that the portion of said lines located within a common compartment for, or installation of, such lines shall be Common Areas and Facilities.
4. The accessory area for each Unit located on the outside of the Buildings, measuring three feet by three feet as shown on the plans of the Buildings attached as Exhibit "C", and the heating and cooling compressors and equipment located thereon, and the cables, wires, conduits, and ducts connecting such equipment to each Unit.
5. Each Unit which is located on a second or upstairs floor of a Building includes the stairs and stairwell leading from the ground floor to the second floor, and the landing or upper entrance hall located on the second floor at the top of said stairs.
6. Each Unit which is located on a second or upstairs floor of a Building includes the attic access doorway shown on the plans of the Buildings attached hereto as Exhibit "C", the heating and cooling equipment and ductwork, the cables, wiring, and conduits associated with said equipment, located in such attic, and the interior space in the attic. No roof trusses, the nor any other portion of the Building located above the finished interior surface of the second floor ceiling shall be part of such Unit.

Each Unit is hereby defined to exclude all pipes, ducts, wires, conduits, and other facilities for the furnishing of utility services and other services to the Units up to and including the point of entry of such pipes, ducts, wires, conduits and other facilities through the floors, walls and

ceilings of the Units (except for the heating and cooling equipment and ductwork located in the attics, and the exterior heating and cooling equipment, located on the exterior accessory area for each Unit, and the connecting pipes, cables, tubing, wiring and ductwork for such equipment, as set forth above). All such pipes, ducts, wires, conduits, and other such facilities are defined as part of the Unit at and from their point of entry into the Unit.

The definition stated above for a "Unit" is complete and all other aspects of the Condominium not hereinabove defined as a part of the Units is hereby defined as a part of the Common Area and Facilities.

The specifics, such as style, construction, materials, and finishes of the Building and the Units are best described in the plans of the Building which are attached as, and referred to in, Exhibit "C", attached hereto and made a part hereof. If there is a conflict between the plans and specifications attached as, and referred to in, Exhibit "C" and the written descriptions contained in this Declaration, the plans and specifications attached as, and referred to in, Exhibit "C" shall control.

3. Plan of Development and Scope of Declaration. The name by which the Condominium shall be henceforth know is DOWNEY BRANCH OFFICE CONDOMINIUMS. The Declarant have caused the Buildings to be constructed upon the Real Property, as well as the Common Areas and Facilities. The Units, together with their privileges and appurtenances, shall be offered for sale by the Declarant as Condominium Units, pursuant to the provisions of Chapter 47A of the North Carolina General Statutes, subject to the covenants, conditions, restrictions, and obligations of this Declaration, the articles of

incorporation of the Association, and the duly adopted By-Laws of the Association, and the rules and regulations duly adopted by the Association.

The Declarant, by this Declaration, submit only the real property described on Exhibit "A", attached hereto, together with the improvements thereon, to the Act, and hereafter this submission shall be referred to as DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1. Nevertheless, the Declarant hereby reserve to themselves the exclusive right and option, but not the obligation, to add to or expand the property subject to this Declaration by the addition of all or any portion or portions of the real property described on Exhibit "B", attached hereto and made a part hereof by reference, in one or more additional phases of DOWNEY BRANCH OFFICE CONDOMINIUMS upon the following terms and in the following manner:

A. Any addition of real property subject to this Declaration, if any, shall occur only by the registration in the office of the Register of Deeds of New Hanover County, North Carolina, of one or more supplements to this Declaration, which shall be executed only by the Declarant. The addition to or expansion of the real property subject to this Declaration shall be at the sole discretion of the Declarant, without consultation with or consent of any Unit Owner. Every Unit Owner in DOWNEY BRANCH OFFICE CONDOMINIUMS, all phases, by accepting a deed for a Unit therein, shall be deemed to have agreed for himself, his heirs, devisees, successors, and assigns to such addition or expansion of the property subject to this Declaration in accordance with the provisions of this paragraph 3; and

B. The right and option as hereinabove described shall terminate on the 1st day of January, 1989; and

C. In the event the Declarant adds to the real property subject to this Declaration all of the real property described in Exhibit "B" attached hereto, the Declarant covenants and agrees that no more than twelve Units will be added to the twelve Units in DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1, for a total of twenty four Units; and

D. The Declarant covenant and agree that all Buildings containing Units built upon the real property which may be subjected to this Declaration under this paragraph 3 shall be not more than two stories in height above ground level and shall be constructed with materials like or substantially similar to those used in DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1; and

E. It is understood and declared that the undivided fractional or percentage interest owned by each Unit Owner in DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1, in the Common Areas and Facilities of DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1, is as stated in paragraph 4 hereunder. However, it is further declared that in the event the Declarant, pursuant to the provisions of this paragraph 3, add to or expand the property, and therefore the number of Units, Unit Owners, and Common Areas and Facilities subject to this Declaration and the jurisdiction of the Association, then consequently the fractional or percentage interest owned by each Unit Owner of Units in DOWNEY BRANCH OFFICE CONDOMINIUMS, all phases, in the expanded Common Areas and Facilities of DOWNEY BRANCH OFFICE CONDOMINIUMS, all phases, shall necessarily have to change from that as established in paragraph 4 hereunder. It is further understood that the Act provides that the fractional or percentage undivided interest of each Unit Owner in the Common Areas and Facilities as expressed in any Declaration shall have a permanent character and shall not be altered except with the unanimous consent of all Unit Owners expressed in an amended declaration duly recorded. Therefore, in the event the Declarant add to or expand the property subject to this Declaration, pursuant to this paragraph 3, every Unit Owner

of Units in DOWNEY BRANCH OFFICE CONDOMINIUMS, any phase, by the acceptance of the deed for his Unit shall be deemed to specifically have agreed for himself, his heirs, devisees, successors, and/or assigns that the Declarant shall have the right and power, as attorney-in-fact for every Unit Owner, to establish the undivided fractional or percentage interest of each such Unit Owner in the expanded Common Areas and Facilities of DOWNEY BRANCH OFFICE CONDOMINIUMS, all phases, as well as the right and power to establish undivided fractional or percentage interests in the expanded Common Areas and Facilities of DOWNEY BRANCH OFFICE CONDOMINIUMS, all phases, to be appurtenant to additional Units of DOWNEY BRANCH OFFICE CONDOMINIUMS, and therefore, (1) the liability of each Unit Owner for Common Expenses, not specifically assessed, (2) the interest of each Unit Owner in any Common Surplus, and (3) the voting rights in the Association of each Unit Owner, which such undivided fractional or percentage interests shall be stated in any supplement to this Declaration required to be executed and recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in order to expand or add to the property subject to this Declaration as is provided for hereinabove. It is hereby declared and agreed that the Declarant shall establish said undivided interests without prior consultation with or consent of any Unit Owner of any Unit in DOWNEY BRANCH OFFICE CONDOMINIUMS, any phase; and, that the Declarant covenant and agree to establish such undivided fractional or percentage interests for all Units at such times as may be necessary pursuant to this paragraph 3 in the proportions that the then fair market value of each Unit, new and existing, as shall be determined solely by the Declarant, bears to the then aggregate fair market value of all Units on the date of the supplemental declaration or declarations. In determining such fair market value for any additional Unit added to or made subject to this Declaration, Declarant may use the offering or purchase price of such Unit or the fair market value as established by an independent appraiser. In determining the fair market value of Units previously subjected to this Declaration, the Declarant may use the value as then established for ad valorem tax purposes by the appropriate authorities or the value established by an independent appraiser.

F. Nothing herein shall be deemed to limit or alter the Declarants' right, hereby reserved, to vary the internal layout, size, or configurations of any Units hereafter constructed, so long as the Declarant substantially conforms with the provisions of this paragraph 3.

4. Nature and Incidents of Unit Ownership.

A. Each Unit shall be conveyed and treated as an individual real property capable of independent use and fee simple ownership, and each Unit Owner shall also own, as an appurtenance to the ownership of each said Unit, an undivided interest in the Common Areas and Facilities of DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1, and future phases, if any. The undivided interest in the Common Areas and Facilities of DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1, appurtenant to each of the twelve Units is hereby established as eight and one-third (8 1/3%) per cent each.

The proportional interest in the Common Areas and Facilities that is appurtenant to each Unit has been determined in a manner consistent with the Act.

B. No Unit may be divided or subdivided into a smaller unit or units than as shown on Exhibit "C" hereto, nor shall any Unit or portion thereof be added to or incorporated into any other Unit unless written approval is first obtained from the Board of Directors of the Association as provided in paragraph 5 hereof. The undivided interest in the Common Areas and Facilities

declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said Unit, and the undivided interest in Common Areas and Facilities appurtenant to each Unit shall be deemed conveyed, devised, encumbered, or otherwise included with the Unit, even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Unit. Any conveyance, mortgage, or other instrument which purports to grant any right, interest, or lien in, to or upon a Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit and its appurtenant undivided interest in Common Areas and Facilities, unless the same purports to convey, devise, encumber, or otherwise trade or deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the letter/numerical designation assigned thereto in Exhibit "C", without limitation or exception, shall be deemed and construed to affect the entire Unit and its appurtenant undivided interest in the Common Areas and Facilities. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its appurtenant undivided interest in the Common Areas and Facilities by more than one Person as tenants in common, joint tenants, tenancy for life or for years, or as tenants by the entirety.

C. The Common Areas and Facilities shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement in favor of all the Unit Owners of DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the use of said Unit Owners. Notwithstanding anything above provided in this paragraph 4, the Association shall have the exclusive right to establish the rules and regulations pursuant to which any Unit Owner, his tenants, guests, and invitees, may be entitled to use the Common Areas and Facilities, including the right to make permanent and temporary assignment of parking spaces, and to establish regulations concerning the use thereof.

D. Recognizing that the proper use of a Unit by an Owner or Owners is dependent upon the use of the Common Areas and Facilities in common with the Owners of all other Units, and that it is in the interest of all Owners that the ownership of the Common Areas and Facilities be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Areas and Facilities appurtenant to each Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division of the Common Areas and Facilities.

5. Use Restrictions.

A. No portion of any Unit shall be used except for office purposes and for purposes incidental or accessory thereto.

B. No immoral, improper, offensive, or unlawful use shall be made of any Unit or of the Common Areas and Facilities, nor any part thereof, and all laws, zoning ordinances, and regulations of all governmental authorities having jurisdiction of the Unit shall be observed. No owner of any Unit shall permit or suffer anything to be done or kept in his Unit, or on the Common Areas and Facilities, which will increase the rate of insurance on the Unit, or Common Areas and Facilities, or which will obstruct or interfere with the rights of other occupants of the other Units or annoy them by unreasonable noises, nor shall any Owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Unit, or which interferes with the peaceful possession and proper use of any other Unit or the Common Areas and Facilities.

C. The use of the Common Areas and Facilities, by any Unit Owner, and any other party authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use, or which may be hereafter prescribed and established by the Association.

D. No Unit Owner shall permit any structural modification or alteration to be made to his Unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion, that such structural modifications or alterations would adversely affect or in any manner endanger a Building in part or in its entirety. No owner shall cause any improvements or changes to be made on the exterior of the Condominium or to the exterior surface of the door leading from a ground or first floor Unit to the ground or first floor entrance hall (including but not limited to painting or other decoration, or the installation of electrical wiring, television, or radio antennas or any other objects, machines, or air conditioning units which may protrude through the walls or roof of the Buildings) or in any manner alter the appearance of the exterior portion of the Buildings without the written consent of the Association being first had and obtained. No Unit Owner shall cause any object to be fixed to the Common Areas and Facilities (including but not limited to the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner change the appearance of the Common Areas and Facilities or Limited Common Areas and Facilities without the written consent of the Association being first had and obtained.

E. No signs of whatever nature and no window displays of whatever kind may be visible from the exterior of the Buildings, or in any ground or first floor hallways or entranceways, except as may be specifically approved in writing by the Association. The Association, with the approval of a majority of the Owners, may erect a common sign or signs, and may allow or permit the maintenance of signs on the exterior of the Condominium, upon conditions approved or established by it.

F. So long as the Declarant shall retain ownership of any Units, they may utilize any such Unit or Units for sales offices, models or other usage for the purpose of selling Units in the Condominium (including selling Units in additional phases of the Condominium). The Declarant may assign this limited usage right to any other Person as they may choose; provided, however, that when all Units have been sold, this right of usage by the Declarant and their assignees shall immediately cease.

G. No animals, domesticated or otherwise, shall be kept or housed in any Unit or in the Common Areas and Facilities, without the prior written consent of the Association.

H. No Unit Owner of a second floor Unit shall place any barrier, obstruction, or doorway visible from the first floor entrance hall, in the stairway leading from the first floor to the second floor, which stairway is a part of his Unit.

I. The use of the Units, Buildings, Common Areas and Facilities, and of the Condominium may be further restricted under the By-Laws and Rules and Regulations of the Association, as adopted and amended from time to time.

6. EASEMENTS. In addition to easements and rights established and/or reserved elsewhere in this Declaration, the following easements and rights are hereby established as covenants and burdens running with the Real Property and the improvements thereon:

A. In case of any emergency originating in or threatening any Unit, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by it, or the managing agent, if any, shall have the right to enter such Unit for the purpose of

remedying or abating the cause of such emergency, and such right of entry shall be immediate.

B. Each Unit Owner shall have an easement in common with the other Owners of all Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Areas and Facilities located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Areas and Facilities located in such Unit and serving other Units. The Board of Directors of the Association or their designee shall have the right of access to each Unit to inspect the same, to remove violations therefrom, and to maintain, repair, or replace the common facilities contained therein or elsewhere in the Buildings.

C. The initial and subsequent Boards of Directors of the Association may grant or assume easements, leases, or licenses for utility purposes for the benefit of the Condominium, including the right to install, lay, maintain, repair, and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits and wires over, under, along and on any portion of the Units and/or Common Areas and Facilities; and, each Unit Owner hereby grants to the Board of Directors of the Association, or its designee, the irrevocable power of attorney to execute, acknowledge, and record for or in the name of the Association or each Unit Owner such instruments as may be necessary to effectuate the foregoing.

D. Ingress and egress is reserved for pedestrian traffic over, through and across the sidewalks, paths, walks, and lanes as the same from time to time may exist upon the Common Areas and Facilities; and, for vehicular traffic over, through, and across such portions of the Common Areas and Facilities as from time to time may be paved and intended for such purposes, for all Unit Owners in all phases of DOWNEY BRANCH OFFICE CONDOMINIUMS, their guests, invitees, lessees, the Association, and the Declarant.

E. The Declarant hereby reserve unto themselves the right to grant easements over any of the Common Areas and Facilities of this phase of DOWNEY BRANCH OFFICE CONDOMINIUMS, to be used by, for, or in connection with any other phases of DOWNEY BRANCH OFFICE CONDOMINIUMS, which may be hereafter erected on the real property described in Exhibit "B", pursuant to this Declaration, as may become necessary for the purpose of the Declarant, their grantees, lessees, heirs, devisees, and assigns servicing such adjacent phases with utility services, drainage, and easements for ingress, egress, and regress.

F. In the event any Unit shall encroach upon any of the Common Areas and Facilities, or any other Unit or Units, for any reason not caused by the purposeful or negligent act of the Unit Owner, or agents of such Owner, then an easement appurtenant to such Unit shall exist for the continuance of such encroachment upon the Common Areas and Facilities or upon a Unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Areas and Facilities shall encroach upon any Unit, then an easement shall exist for the continuance of such encroachment of the Common Areas and Facilities upon any Unit for so long as such encroachment shall naturally exist. If any Unit or Common Areas and Facilities shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such Unit and/or Common Areas and Facilities in accordance with this Declaration, there exist encroachments of portions of the Common Areas and Facilities upon any Unit, or of any Unit upon any other Units, or of any Unit upon any portion of the Common Areas and Facilities,

then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

7. The Association. To efficiently and effectively provide for the administration and maintenance of DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1, and future phases, if any, by the Unit Owners, the Association has been organized as a nonprofit North Carolina corporation, and its articles of incorporation, a copy of which articles are attached hereto as Exhibit "E", and are incorporated herein by reference. The Association shall administer the operation and management of DOWNEY BRANCH OFFICE CONDOMINIUMS, PHASE 1, as well as future phases, if any, and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its articles of incorporation and its duly adopted By-Laws. A true copy of the original By-Laws are attached hereto as Exhibit "D" and expressly made a part hereof by reference.

A. Declarant Control. Until the first annual meeting of the members of the Association, the Board of Directors of the Association shall consist of those three (3) individuals named as the initial Board of Directors of the Association in its articles of incorporation, or their successors or replacements, as provided in the By-Laws. The Declarant have reserved the right to select a majority of the Directors to be elected, at the first annual meeting of the members of the Association, and at subsequent annual meetings, as set forth in paragraph 12 of this Declaration and in the By-Laws attached hereto as Exhibit "D".

B. Membership and Voting Rights. Membership and voting rights in the Association shall be as provided in article VI of its articles of incorporation, referred to above. Membership in the Association is mandatory for all Unit Owners in all phases of DOWNEY BRANCH OFFICE CONDOMINIUMS.

C. Powers. The Association shall have all powers granted to it as stated in article V of its said articles of incorporation.

D. Common Expenses. The Common Expenses of the Association shall be shared by the Unit Owners in the same proportions that the undivided interest in the Common Areas and Facilities appurtenant to each Unit bears to the total of all undivided interests in the Common Areas and Facilities appurtenant to all Units, and as an assessment against the Unit Owners and their Units as provided for hereinbelow.

E. Management and Maintenance.

(1) The Association, as a Common Expense, shall be responsible for the maintenance, repair, and replacement of all the Common Areas and Facilities, including those portions designated as Limited Common Areas and Facilities, including those portions which contribute to the support of the Buildings, and all conduits, ducts, plumbing, wiring, and other facilities located in the Common Areas and Facilities for the furnishing of utility and other services to the Units and said Common Areas and Facilities, and should any incidental damage be caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any Common Areas and Facilities, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair, and replacement of any item for which the Association is obligated to maintain, replace, or repair at its expense is occasioned by any act of a Unit Owner, his guests, invitees, or tenants, and such loss or damage may be covered by insurance maintained in force by the Association,

the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair, or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or by his guests, invitees, or tenants) shall be required to pay such portion of the cost of such maintenance, repair, or replacement as shall exceed the amount of any insurance proceeds applicable to such maintenance, repair, or replacement.

- (2) The Association shall have the right to make or cause to be made such alterations or improvements to the Common Areas and Facilities which do not prejudice the rights of the Owner of any Unit in the use of his Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association, and the cost of such alterations or improvements shall be Common Expenses to be assessed and collected from all of the Owners of Units. However, where any alterations or improvements are exclusively or substantially for the benefit of the Owner or Owners of a certain Unit or Units requesting the same, then the cost of such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.
- (3) Management Contracts. The Association may enter into a contract with a management company or manager for the purpose of providing all or part of the elements of the operation, care supervision, maintenance, and management of the Condominium. All of the powers and duties of the Association necessary or convenient for such maintenance and management may be delegated to and vested in the manager by the Board of Directors except such as are specifically required by this Declaration, the By-Laws, or the Act to have the approval of the Board of Directors or the Association. The manager is hereby further authorized to recommend the annual budget, and upon approval thereof by the Board of Directors, make assessments for Common Expenses, and collect such assessments as provided in this Declaration and the By-Laws, subject always to the supervision and right of approval of the Board of Directors.
- (4) Unit Owners Maintenance. Every Unit Owner shall perform promptly all maintenance and repair work within his Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, every Owner being expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Unit shall be liable and responsible for the maintenance, repair, and replacement as the case may be, of all air conditioning and heating equipment, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, lights, power, telephone, sewage and sanitary service to his Unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of the interior surfaces of all walls, ceilings and floors within his Unit, including painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his Condominium Unit. Whenever the maintenance, repair and replacement of any item for which the Owner is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair

or replacement except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The Owner or Owners Condominium Units which have the use of any Limited Common Areas and Facilities shall maintain and repair such at his own expense. If more than one Unit has the right to use such Limited Common Areas and Facilities, the Owners of such Units shall bear the cost of such maintenance and repair in proportion to their right to share such Limited Common Areas and Facilities.

All parts of a Unit shall be kept in good condition and repair by and at the expense of the Owner. The Unit shall be maintained by the Owner in a clean and safe condition, free of nuisance. Each Unit Owner will promptly comply with any requirements of the insurance underwriters of the insurance for the Common Areas and Facilities when so requested in writing by the Board or its designated agent. Any failure of an Owner to repair, maintain, or replace as be required pursuant to this Declaration, or a determination by the Board of Directors or its designated agent that such failure will endanger or impair the value of the Common Areas and Facilities or any Unit may be, upon written notice to the Owner of the nature of the required repair, maintenance, or replacement, repaired or replaced by the Association at the expense of the Unit Owner, to be collected by special assessment as provided herein and in the By-Laws. Such assessment may include the cost to the Association incurred in the abatement of any nuisance maintained by the Unit Owner therein.

F. Insurance.

- (1) Acquisition. Insurance policies upon the Condominium (except title insurance) shall be purchased by the Board of Directors of the Association in their name as Trustee for the Condominium Unit Owners, for the benefit of the Condominium Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages or deeds of trust on the Condominium Units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents, guests and lessees. Each Unit Owner may obtain insurance, at his own expense, affording coverage upon his Condominium Unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation referred to above if available.
- (2) Coverage. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Condominium Units and Common Property:

Casualty insurance covering the buildings and all improvements upon the land and all personal property included in the Common Areas and Facilities, and any additions added by amendment, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation,

foundations, streets and parking facilities) as determined annually by the insurance company to afford such coverage. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief.

- (3) Public Liability Insurance. Public liability and property damage insurance in such amounts and in such forms as shall be required or desired by the Association, including, but not limited to, an endorsement to cover liability of the Unit Owners as a group or a single Unit Owner.
- (4) Fidelity Coverage. Such fidelity coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association, as the Board of Directors of the Association may deem prudent or desirable.
- (5) Premiums. Premiums upon insurance policies purchased by the Association shall be paid by said Association and charged as a Common Expense.
- (6) Insurance Beneficiaries and Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. The Board of Directors of the Association is hereby irrevocably appointed agent for each Unit Owner and his mortgagee as their interests may appear for the purpose of compromising and settling claims arising under insurance policies purchased by the Board of Directors of the Association for the benefit of the Condominium, or any part thereof. The Board of Directors of the Association is further empowered to execute and deliver releases to the insurance carrier upon payment of claims.
- (7) Distribution of Insurance Proceeds. Proceeds of insurance policies shall be payable to the Board of Directors of the Association, as trustees for the benefit of the Unit Owners, and the Association, as follows:
 - a. Proceeds on account of damage to Common Property: in undivided shares for each Condominium Unit Owner and his mortgagee, if any, which is set forth as the Condominium Unit Owner's share as it then exists under paragraph 4, above.
 - b. Proceeds on account of damages to Condominium Units shall be held in the following undivided shares:
 - i. Partial destruction when the Condominium is to be restored: for the Owners of damaged Condominium Units in proportion to the costs of repairing the damage suffered by each damaged Condominium Unit;
 - ii. Total destruction of the Condominium or where the Condominium is not to be restored; for all Condominium Unit Owners and their mortgagees,