

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

DECLARATION CREATING  
UNIT OWNERSHIP OF  
NEW HOPE COURT OFFICE PARK

FOR REGISTRATION WILLIE L. GOVINGTON  
REGISTER OF DEEDS  
DURHAM COUNTY, NC  
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THIS DECLARATION, made this 29<sup>th</sup> day of December, 1999, by GAR, Inc., hereinafter to be referred to as "Declarant".

WITNESSETH:

Whereas, the Declarant is the owner of certain real property located in the County of Durham, State of North Carolina, which is more particularly described in Exhibit "A", attached hereto and incorporated by reference herein; and,

WHEREAS, the Declarant has constructed buildings and certain other improvements on the aforesaid property; and,

WHEREAS, it is the desire and intention of the Declarant to submit said property to unit ownership pursuant to the provisions of Chapter 47C of the General Statutes of the State of North Carolina and to market, sell and convey interests in said property and the improvements thereon pursuant to said Statute; and,

NOW THEREFORE, the Declarant does hereby declare that all of the real property described in Exhibit A, attached hereto and incorporated by reference herein, as well as all of the improvements constructed thereon, as shown on the recorded plats and/or maps designated C-1, C-2, C-3, or C-4, which are incorporated herein by reference, shall be held, conveyed, hypothecated, encumbered, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which shall run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any person or entity acquiring or owning any interest in the real property and the improvements or any subdivision thereof, their grantees, successors, heirs, executors, administrators; and assigns:

ARTICLE I  
SUBMISSION OF PROPERTY

The Declarant does hereby submit all of the real property described in Exhibit A, attached hereto and incorporated by reference herein, together with all improvements thereon to the provisions of the "North Carolina Condominium Act" as enacted by the State of North Carolina and codified in Chapter 47C of the General Statutes of the State of North Carolina.

Declarant's Right to Add Additional Real Estate. Declarant expressly reserves the right to add the additional real estate to the condominium declaration for a period of

ten (10) years after recording of this Declaration. Additional real estate may be added to the condominium at different times, but no assurances are made with regard to the order in which such portions may be added. Declarant shall have no duty or obligation of any kind to add any additional real estate. The method of adding the additional real estate to the condominium shall be pursuant to Sections of the Act.

Compatibility of Style, etc. Any buildings and units that may be erected upon the additional real estate or a portion thereof, will be compatible with the other buildings and units of the condominium in terms of architectural style, quality of construction, principal materials employed in construction and size.

Applicability of Restrictions, etc. All restrictions in this Declaration and the Bylaws affecting use, occupancy, and alienation of units will apply to any and all additional units that may be created within the additional real estate.

Other Improvements and Common Elements. In addition to the buildings and units that may be erected upon the additional real estate or a portion thereof, the other improvements and common elements that may be made or created upon or with the additional real estate or each portion thereof which may be added to the condominium will be generally similar in quality and quantity to the improvements and common elements located in the condominium.

Applicability of Assurances if Additional Real Estate not Added. The assurances made in this Article 1 will apply with respect to any additional real estate that is added to the condominium.

## ARTICLE II DEFINITIONS

For the purposes of this Declaration and the By-laws of the Association, the following definitions shall apply unless otherwise defined by the context thereof:

- a. "ACT" shall mean and refer to N.C.G.S. 47-C entitled "North Carolina Condominium Act" as the same may be supplemented or amended from time to time.
- b. "ASSOCIATION" shall mean and refer to New Hope Court Office Owner's Association, Inc., the association of all unit owners, as is more particularly described herein.
- c. "ASSESSMENT" shall mean the share of funds requires for payment of common expense, as hereinafter defined, of the Association which from time to time shall be levied or assessed against the Unit owner by the Association as provided below.

- d. "BUILDINGS" shall mean and refer to the buildings which the Declarant has constructed or will construct upon the real property described in Exhibit A to be used for business purposes as hereinafter provided. Said buildings are more particularly described in said plans and reference is hereby made to the plans for all the particulars required by law. In general Buildings 100, 200, and 300 have one floor. They are constructed primarily of brick and frame. There are no basements or garages. Building 100 contains 5,558 heated square feet, Building 200 contains 3,270 heated square feet, and Building 300 contains 3,270 heated square feet.
- e. "BOARD" shall refer to the Board of Directors of the Association. The term shall also be deemed "Executive Board" as referred to in G.S. 47C-3-103.
- f. "BY-LAWS" shall refer to the By-Laws of the Association providing for the government of the Association as duly adopted and amended from time to time by the Association. A copy of the initial By-Laws are attached hereto as Exhibit C and incorporated by reference herein.
- g. "COMMON ELEMENTS" shall mean and refer to all the real property described in the plans of "NEW HOPE COURT OFFICE CONDOMINIUMS" recorded in Condominium Plat Book 5 at Page 182 - 188 if the Durham County Registry and all of the improvements and facilities thereon and which are not units as hereinafter defined and which are not items of personal property owned held or 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 and incorporated by reference herein;
  2. All foundations, columns, girders, beams, supports, roof, ventilation fans and vents, load bearing walls, including all exterior walls and all interior wall of the building as shown on the recorded plats designated as Plat C-1, C-2, C-3 and C-4 which are incorporated herein by reference .
  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 not limited to, all water and sewer service, electricity, heating, air conditioning, telephone, irrigation and trash disposal, if any, supplied for the common used and convenience of the Unit Owners, and which are not defined as part of the units below.
  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 and intended for the common and convenient use, existence, maintenance and safety of the condominium project.

- h. "LIMITED COMMON AREAS AND FACILITIES" if any, shall be deemed a part or parts of the common areas and facilities which are reserved for use by less than all the Unit Owners and shall be areas designated as limited common areas and facilities in plats and/or plans recorded in Condominium Plat Book 5 at Page ~~82-188~~ of the Durham County Registry. The Limited Common areas and Facilities shall be limited to use solely by the occupants of the unit or units to which they are connected and no other occupants.
- i. "COMMON EXPENSES" shall mean and refer to the total cost and expense incurred by the Association for the administration, maintenance, operations, safety, repair and replacement (including a capital reserve for repair, maintenance, 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 purposed as stated herein and labeled as Common Expenses. Common Expenses are additionally intended to mean and refer to any expense incurred by the Association which shall be hereafter agreed upon by the Association or unit owners as common expenses of the Association.
- j. "COMMON EXPENSE LIABILITY" shall mean and refer to the liability for common expenses allocated to each unit as hereafter set forth.
- k. "COMMON SURPLUS" shall 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 to the following fiscal year of the Association, based upon a proposed budget of the association for the following fiscal year.
- l. "CONDOMINIUM" shall refer to the entire proposed development consisting of all the real property and the buildings, improvements, and structures thereon and all easements, rights and appurtenances belonging thereto and all of the articles of personal property intended for the common use in connection therewith, which are intended to be submitted to the provisions of this Act by this Declaration, and the supplements and amendments hereto, as are provided herein below.
- m. "DECLARANT" shall refer to GAR, Inc., their heirs, administrators, successors, or assigns.
- n. "DECLARATION" or "DECLARATION OF CONDOMINIUM" shall refer to this instrument as it may be from time to time be amended or supplemented.
- o. "DIRECTOR" shall refer to a member of the Board of Directors of the Association.

- p. "MAJORITY OF UNIT OWNERS" shall refer to the owners of 51% 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.
- q. "PERSON" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.
- r. "UNIT OWNER" shall refer to the Person(s) or Entities owning a condominium unit.
- s. "REAL PROPERTY" shall refer to all of the real property described in Exhibit A, attached hereto and incorporated by reference herein.
- t. "UNIT OR CONDOMINIUM UNIT" shall refer to any area of enclosed air space designated in a unit or condominium unit, including unit attic space, shown on the plats and/or plans designated as C-1, C-2, C-3 or C-4 which are recorded in Condominium Plat Book 5 at Page 182-188 of the Durham County Registry of Deeds, together with additional areas, spaces and equipment accompanying the same as defined below and which are intended to or will be sold as a condominium unit pursuant to the Act and this Declaration. The boundaries of each unit, both as to vertical and horizontal planes, as shown on the floor plans or plats, include the decoration on all such interior and topmost surfaces, including, without limitation, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof. It also includes all spaces, interior partitions and other fixtures and improvements within such boundaries as delineated and shown in the recorded plats and/or maps referred to herein and incorporated by reference.

The deed for any particular unit shall convey such unit by its unit's designation and 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. Any such conveyance shall be subject to the covenants, conditions, restrictions and obligations set forth in this Declaration and any amendments thereto, without regard to whether the same are stated therein and shall convey the interest in the common area set forth above without regard to whether such interest is expressly conveyed.

The Unit designation of the units are as follows

Building 100 consists of Suites 101, 102, and 103

Building 200 consists of Suites 201 and 202

Building 300 consists of Suites 301 and 302

Each Unit designation is as shown on the plan of the building which is the plats and/or plans recorded in Condominium Plat Book 5 at page 182-188 of the Durham County Registry of Deeds and incorporated by reference herein, for the

particulars of the building and the unit including, but not limited to, the layout, located, ceilings, and floor elevations, dimensions or the units, and the area and location of the common areas and facilities and those portions of the common areas and facilities which are designated as Limited Common Areas and Facilities. No unit bears the same designation as any other unit. Any conflict between said plans and this definition shall be resolved by reference to said plans which shall control.

The square footage and allocated interest in common areas and expenses of each unit is as follows:

Suite 101	2,272 sq. ft.	18.8%
Suite 102	1,014 sq. ft.	8.4%
Suite 103	2,272 sq. ft.	18.8%
Suite 201	1,635 sq. ft.	13.5%
Suite 202	1,635 sq. ft.	13.5%
Suite 301	1,635 sq. ft.	13.5%
Suite 302	1,635 sq. ft.	13.5%
Total:	12,098 sq. ft.	100.0%

### ARTICLE III NATURE AND INCIDENCE OF UNIT OWNERSHIP

- a. Units shall be conveyed and treated as individual real property capable of independent use and fee simple ownership and each unit owner shall also be conveyed, appurtenant to the ownership in each unit, an undivided interest in the common areas and facilities of New Hope Court Office Park. The undivided interest in the common areas and facilities of New Hope Court Office Park shall be as set forth in the recorded plat and/or maps. The undivided interest in the common area is the ratio that the fair market value or the unit bears to the aggregate fair market value of all units on the date of this Declaration.
- b. A unit may be divided or subdivided into two or more units upon application of a unit owner to subdivide a unit. Upon such application the association shall prepare, execute and record an amendment to this Declaration, including the plats and plans subdividing that unit. All costs of preparation, execution, and recording shall be paid by the unit owner requesting the subdivision. The amendment to the Declaration must be executed by the owner of the unit to be subdivided, must assign an identifying number to each unit created said identifying number to be different from any other identifying number used in the condominium, and must reallocate the interests formerly allocated to the subdivided unit to the new unit in any reasonable manner prescribed by the owner of the subdivided unit.

units involved, state the re-allocations and describes the re-allocations by reference to the plat and describes the re-allocations by reference to the plat referred to above showing altered boundaries between adjoining units, their dimensions and identifying numbers and is executed by those unit owners and the Association and contain words of conveyance.

- d. The undivided interest in the common areas shall not be conveyed, devised, encumbered or otherwise dealt with separately from any unit and the undivided interest in the 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.
- e. The common areas and facilities shall be, and the same are hereby declared to be subject to a perpetual, non-exclusive easement in favor of all unit owners for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended, the use of said unit owner. Notwithstanding anything provided herein, the Association shall have the exclusive right to establish the rules and regulations pursuant to which any unit owner, tenants, guests and invitees may be entitled to use of the common areas and facilities, including the right to make permanent and temporary assignment of parking spaces, and to establish regulations regarding the use thereof, provided, however, said rights shall not be used in such a fashion so as to prohibit reasonable access to and from any unit to a public vehicular area.
- f. No unit owner shall have the right to bring any action for partition or division of the common areas and facilities.

#### ARTICLE IV USE RESTRICTIONS

- a. No portion of any unit shall be used except for office or business purposes and for purposes incidental or necessary thereto. No residential use may be made of any unit.
- 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 over the unit shall be observed.
- c. No owner of any unit shall permit or suffer anything to be done or kept in said 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 rights of other occupants of other units or shall cause unreasonable noises or constitute a nuisance to any other unit owner or which interferes with the peaceful possession and property use of any other unit or of the common areas and facilities.

- d. The use of the common areas and facilities, by any unit owner, and any other party authorized to use the same, shall at all times be subject to such reasonable rules and regulations as may be established by the Association.
- e. Subject to the provisions of Article III b and c above, no unit owner shall permit any structural modification or alteration to be made to a unit without first having the written consent of the Board of Directors of the Association. No owner shall cause any improvements or changes to be made on the exterior of the condominium or in any manner alter the appearance of the exterior portion of the buildings, without the written consent of the Board of Directors of the Association. No unit owner shall cause any object to be affixed to the common areas and facilities or in any manner change the appearance of the common area and facilities without the written consent of the Association having been obtained.
- f. All exterior signs or signage which are visible from exterior of the building shall be approved by the Declarant or Board of Directors of the Association or such agent as said Board of Directors designates. All such signs must be in keeping with general plan and design of the condominium.
- g. For so long as Declarant shall retain ownership in any units, including additional phases which may be submitted to this Declaration, the Declarant may utilize any such units or units for sales offices, models or other usage for the purpose of selling units in the condominium. The Declarant may assign this limited usage right to such person as they may choose.
- h. 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.
- i. The association is hereby authorized to establish reasonable rules and regulations regarding the units, buildings, common areas and facilities, as they may deem necessary from time to time.
- j. The Association is hereby authorized to enforce the terms and provisions of the Declaration and By-Laws. The Association may bring an action to enforce the terms and provisions, including injunctive relief, against any unit owner who violates the Declaration or By-Laws. Any unit owner who violates the terms or provisions of the Declaration or By-Laws, including any amendment thereto, shall be responsible for any and all costs, including attorney fees and court costs, to enforce this provision, and these costs shall be a lien on their unit until paid or collected as outlined herein.

ARTICLE V  
EASEMENTS

In addition to any easements provided herein, the following easements and rights are hereby established as covenants and burdens running with the real property and the improvements thereon:

- a. **Encroachments.** In the event that, by reason of construction, reconstruction, rehabilitation, alteration or improvement of the buildings or improvements comprising a part of the property, any part of the common elements now or hereafter encroaches upon any part of any unit, or any part of any unit now or hereafter encroaches upon any part of the common elements, upon any part of another unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the common elements or units so encroached upon.
- b. **Easements through Walls.** Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the units, whether or not such walls lie in whole or in part within the boundaries of any unit.
- c. **Easements to Repair, Maintain, Restore and Reconstruct.** Wherever in, and whenever by this Declaration, the Bylaws or the Act, a unit owner, the Association, the Board or any other person, is authorized to enter upon a unit or the common elements, limited or otherwise, to repair, maintain, restore or reconstruct all or any part of a unit or the common elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted.
- d. **Declarant's Easement.** Declarant hereby reserves such easements through the common elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant's Rights, and completing the development and construction of the condominium, which easements shall exist as long as reasonably necessary for such purposes.
- e. **Easements to Run With Land.** All easements and rights described in this Article V are appurtenant easements running with the land, and except as otherwise expressly provided in this Article V shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, unit owners, occupants, security holders and any other person having any interest in the condominium or any part thereof. The condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article.

ARTICLE VI  
THE ASSOCIATION

The Association shall administer the operation and management of New Hope Court Office Park and shall undertake and perform all acts and duties incidental thereto in accordance with the terms of its Articles of Incorporation and its duly adopted By-Laws.

- a. MEMBERSHIP. Membership and voting rights in the Association shall be as provided in the Articles of Incorporation referred to above. Membership is mandatory for all unit owners in all phases of New Hope Court Office Park
- b. POWERS. The Association shall have all powers granted to it in the Articles of Incorporation.

ARTICLE VII  
COMMON EXPENSES

The common expenses of the Association shall be shared by the unit owners in the same proportion that the undivided interest in the common areas and facilities bears to the total of all undivided interests in the common areas and facilities appurtenant to all units and shall be assessed and collected as hereinafter provided.

ARTICLE VIII  
MANAGEMENT AND MAINTENANCE

The Association, as a common expense shall provide for the maintenance, repair and replacement of all the common areas and facilities, including those portions designated as limited common areas and facilities including support structures conduits ducts, plumbing, wiring and other facilities as well as furnishing of utility and other services to the units and to the common areas and facilities. In the event maintenance repair and replacements of any item for which the Association is obligated to maintain, replace or repair pursuant to this Declaration is occasioned by any act of a unit owner, said owner's guest, invitees or tenants and such lost or damage is or 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 provided, however, any unit owner who is responsible for the act causing the damage, whether the same is done by the owner, the owner's 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.

The Association shall have the right to make or cause to be made such alterations or improvements to the common areas and facilities with the approval of the Board of Directors, provided such alterations and improvements do not prejudice the rights of the owners of any unit in the use of said unit and the cost of such alterations or improvements shall be deemed common expenses to be assessed and collected from all owners of the units.

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 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 of 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.

Each unit owner shall promptly perform all maintenance and repair work in said owners unit, which, if omitted would affect the condominium, either in its entirety or in any part belonging to other owners and each owner is expressly responsible conditioning and heating equipment, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their telephone connections required to provide water, lights, power, telephone, sewage and sanitary service to said owner's unit. Each owner shall further be responsible for the maintenance, repair and replacement of any interior surfaces of all walls, ceilings and floors within a unit, including painting, decorating and furnishing, and all other accessories which such owner may desire to place or maintain in the condominium unit. Whenever the maintenance, repair or replacement of any item for which the owner is obligated to maintenance, replace or repair is occasioned by any loss or damage which may be covered by an insurance maintained and 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 required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility insurance proceeds applicable to such maintenance, repair or replacement. Each unit owner shall pay all costs to repair and replace all portions of the common elements that may become damaged or destroyed by reason of his intentional acts or the intentional acts of any occupant of his unit. Such payment shall be made upon demand by the Association.

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 owner will promptly comply with any insurance underwriting requirements for the common areas and facilities when so requested in writing by the Board or its designated agent. In the event any owner fails to repair, maintain or replace any portions of the units or common areas as required herein, the Board of Directors, or its designated agent, may, upon written notice to the owner of the nature of the required repair, maintenance or replacement, repair or replace said necessary items and may charge the cost and expense of said maintenance, repair and replacement to the unit owner, to be collected by special assessments as provided herein and in the By-laws.

ARTICLE IX  
INSURANCE

- a. ACQUISITION. To the extent available, property insurance on the buildings and all improvements upon the land and all personal property included in the common elements, except such personal property as may be owned by the condominium owner insuring against all risks of direct physical loss, commonly insured against including fire and extended coverage perils as well as vandalism and malicious mischief. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. Liability insurance in reasonable amounts, shall also be obtained covering all occurrences commonly insured against including death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements, including an endorsement to cover liability of the unit owners as a group or a single unit owner. All insurance acquired pursuant to this paragraph must provide that:
1. Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the Association;
  2. The insurer waives its right of subrogation under the policy with respect to liability arising out of his interest in the common elements or membership in the Association;
  3. No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy; and,
  4. If, at the time of a loss under the policy, there is other insurance in the name of the unit owner covering the same risk covered by the policy, the Association's policy provides primary coverage. In addition, the Association may carry such other insurance as it deems necessary or beneficial to the protection and well being of the Association.
- b. PAYMENT OF INSURANCE PROCEEDS. Any loss covered by the proceeds of any insurance acquired by the Association shall be adjusted with the Association but shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for the unit owners and lienholders as their interests may appear. The proceeds shall be disbursed first for repair or restoration of the damaged property and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been repaired or restored, or the condominium has been terminated.

- c. FIDELITY COVERAGE. The Association shall carry 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 may deem prudent or desirable.
- d. PREMIUMS. Premiums for insurance policies purchased pursuant to these provisions shall be paid by the Association and shall be charged as a common expense.

ARTICLE X  
DAMAGE AND DESTRUCTION

- a. DETERMINATION OF RECONSTRUCTION OR REPAIR. If any part of the units, common areas and facilities, or limited common areas shall be damaged by a casualty or other cause, reconstruction or repair shall be made unless:
  - 1. The condominium is terminated in accordance with Section 47C-2- 118 of the General Statutes of the State of North Carolina, as the same may be amended from time to time; or
  - 2. Repair or replacement would be illegal under any State or local health or safety statute or ordinance; or,
  - 3. The unit owners decide not to rebuild by an eighty percent (80%) vote including one hundred percent (100%) approval of the owners of units not to be rebuilt or owners assigned to limited common elements not to be rebuilt.

If the entire condominium is not repaired or replaced;

- 1. The insurance proceeds attributed to the damaged common elements to a condition compatible with the remainder of the condominium,
- 2. The insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of those units to which the limited common elements were allocated or to lienholders, as their interest may appear, and,
- 3. The remainder of the proceeds shall be distributed to all unit owners or lienholders, as their interest may appear, in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under General Statute 47C-1-107(a), and the Association shall prepare, execute, and record an amendment to this Declaration reflecting the reallocations, provided, however, these provisions shall not be applicable if the condominium is terminated as provided herein.

- b. PLANS AND SPECIFICATIONS. Any reconstruction or repair shall be substantially in accordance with the plans and specifications of the original unit or units, or if not in accordance with said plans and specifications, in accordance with plans and specifications approved by the Board of Directors of the Association and by the owners of any damaged or destroyed unit.
- c. RESPONSIBILITY. If damage is to part or parts of one or more condominium units, then the condominium unit owner shall be responsible for the reconstruction and repair to said unit after casualty. In all other instances, the responsibility reconstruction and repair after casualty shall be that of the Association.
- d. ESTIMATE OF COST. Immediately after the determination to rebuild or repair damage to property for which the Association has a responsibility for reconstruction and repair, the Association shall obtain reliable and detailed estimates to rebuild or repair.
- e. ASSESSMENTS. If the proceeds of insurance are not sufficient to defray the cost of reconstruction and repair by the Association, assessments shall be made against the unit owners in the case of damage to common areas and facilities, in sufficient amounts to provide funds for the payment of such costs. Such assessments on account of damage to common areas and facilities shall be in proportion to the unit owners shares in the common areas and facilities and shall be deemed common expense.

ARTICLE XI  
REGISTER OF OWNERS AND MORTGAGEES

The Association shall maintain a register setting forth the names of all the owners of the condominium units. In the event of a sale or transfer of any condominium unit to a third party, the transferee shall notify the Association in writing of his interest in such condominium unit, together with recording information necessary to identify the instrument by which the transferee has acquired the interest. The owner of each condominium unit shall also notify the Association of the parties holding any mortgage or deed of trust on any condominium unit, the amount of such mortgage and the recording information necessary to identify the mortgagee or deed of trust. The holder of any mortgage or deed of trust may notify the Association of existence of any mortgage or deed of trust and the Association shall register in its records all pertinent information relating thereto.

ARTICLE XII  
ASSESSMENTS

The Association is given the authority to administer the operation and management of the condominium in furtherance of the best interest of all unit owners. To properly administer the operation and management of the condominium unit, the Association will incur for the mutual benefit of all the owners of condominium units, costs and expenses, hereinafter referred to as common expenses. To provide the funds necessary for such proper operation, management and capital improvement, the

Association is granted the right to make, levy and collect assessments against the unit owners and their condominium units. In furtherance thereof, the following provisions shall be operative and binding upon the owners of all condominium units:

- a. All assessments levied against the unit owners and their units shall be uniform and, unless specifically otherwise provided for herein, shall bear the same percentage of the total assessment made against all the unit owners and the condominium units as the undivided interest in the common areas and facilities appurtenant to each condominium unit bears to the total undivided interest of the common areas and facilities appurtenant to all condominium units.
- b. Assessments shall be payable in monthly, quarterly or annual installments as determined by the Board of Directors.
- c. Until the Association makes common expense assessments, the Declarant shall pay all common expenses.
- d. The Board of Directors shall establish an annual budget in advance for each fiscal year (which shall correspond with the calendar year) except that in the initial year of operation of the condominium, the fiscal year shall commence with the closing of the sale of the first condominium unit. Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall separate those items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such annual budget by the Board of Directors of the Association, copies shall be delivered to each unit owner and the assessment for such year shall be established based upon such budget, although the non-delivery of a copy of the budget to each unit owner shall not affect the liability of any owner for such assessment. A majority of the owners must approve an increase in the yearly assessment if the increase exceeds the previous year's assessment by more than 10%.
- e. The Board of Directors shall designate a sum to be collected and maintained as reserve fund for replacement of and capital improvements to the common areas and facilities which shall be for the purpose of enabling the Association to replace a part of the common areas and facilities and to replace personal property located on or maintained as a portion of the common areas and facilities for the joint use and benefit of the unit owners. The amount collected for said capital improvements to common areas facilities.
- f. In the event any assessment or installment thereof is not paid within 30 days of its due date, the same shall be deemed in default and shall bear interest at the rate of 12% per annum from the date of delinquency. In addition, any delinquent assessment shall be increased by the cost of collection including court costs and reasonable attorney's fees not to exceed 15%.

- g. The unit owners shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such condominium unit while such party or parties are owner or owners of a condominium unit. In the event that any unit owner or owners are in default in the payment of any assessment or installment owed to the Association, such unit owner or owners shall be personally liable, jointly and severally, for interest on such delinquent assessments or installment thereof as above provided, and for all costs of collecting such assessment or installment and interest thereon, including attorney's fees and court costs.
- h. No owner of a condominium unit shall be exempt from liability for any assessment levied pursuant to this Declaration by waiver of the use of enjoyment of any common area and facilities, by abandonment of the condominium unit or by any other means.
- i. Any assessment levied against a unit remaining unpaid for a period of 30 days or longer, together with interest, court costs, late charges and attorney's fees, shall constitute a lien on that unit when filed of record in the Office of the Clerk of Court of Durham County in a manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes. The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes.
- j. The lien described above shall be prior to all other liens and encumbrances on a unit except (1) liens and encumbrances (specifically including but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the Clerk of Superior Court, and (2) liens for real estate taxes and other governmental assessments or charges against the unit.
- k. When the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or judicial sale pursuant to a deed of trust or mortgage, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.
- l. The Association shall provide, upon written request by any unit owner, a statement verifying the status of payment of any assessment which shall be due and payable to the Association in regard to any unit. Such statement shall be executed by an officer of the Association and any person receiving such statement may rely on the accuracy and validity of said statement.

ARTICLE XIII  
COMMON SURPLUS

All common surplus shall be owned by the owners of all condominium units in the same proportion that the undivided interest of the common areas and facilities appurtenant to each unit bears to the total of all undivided interest in the common areas and facilities appurtenant to all condominium units; provided, however, that said common surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds as provided herein or upon termination of the condominium, any attribution or distribution of common surplus which may be made from time to time shall be made to the then owners of owners units in accordance with their percentage interest in the common properties declared therein.

ARTICLE XIV  
TERMINATION

Any termination of the condominium unit shall be in accordance with Chapter 46C-2-118 of the General Statutes of North Carolina as the same may amended from time to time.

ARTICLE XV  
AMENDMENT OF DECLARATION BY UNIT OWNERS

This Declaration may be amended only by affirmative vote of by at least 67% of those present and attending at a specially called meeting at which a quorum is present. Each member of the Association shall be given written notice of said special meeting, stating the time and place thereof and reciting the approved amendment, which notice shall be mailed no less than 10 days nor more than 30 days before the date set for such special meeting. Such notice shall be deemed to be properly given when deposited in the United States mail addressed to the member at the address provided on the records of the Association, with postage prepaid. In lieu of said vote, said Declaration may be amended by written agreement signed by more than 67% of the votes in the Association. Upon amendment of the Declaration as provided in this paragraph, the amendment shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted and the original or an executed copy of such amendment shall be recorded in the Office of the Register of Deeds of Durham County within 10 days from the date on which the same became effective.

In addition to Amendment as provided above, this Declaration may be amended by the Declarant during the period of Declarant control set forth in Paragraph 20a below, provided however, any amendment by the Declarant pursuant tot his subparagraph shall not alter the percentage of undivided interest in the common areas for units already conveyed by the Declarant nor shall they alter the perimeter boundaries of any unit theretofore conveyed. Any such amendment shall be in writing, signed by the Declarant, and recorded in the office of the Register of Deeds of Durham County.

ARTICLE XVI  
RIGHTS RESERVED UNDER HOLDERS OF MORTGAGES AND DEEDS OF TRUST

So long as any holder of a mortgage or deeds of trust shall hold any mortgage or deed of trust upon any condominium unit or units or shall be the owner of any condominium unit or units, such holder shall have the following rights:

- a. To examine, upon request and at reasonable times and upon reasonable notice, the books and records of the Association and, upon request, to be furnished a copy of the annual financial statement and report of the Association.
- b. To be given written notice by the Association of the call of any meeting of the membership, which notice shall state the purpose of such meeting; and to designate a representative to attend.
- c. To be given written notice of default by any owner owning the condominium unit encumbered by the mortgage or deed of trust held by any such party. Such notice shall be sent to an address which the holder may designate in writing.
- d. To be given written notice of any loss to or taking of the common areas and facilities of the condominium if such loss or taking exceeds \$5,000.00 or of

damage to a condominium unit on which said lender holds a deed of trust which is in excess of \$1,000.00.

- e. To receive written notice of any condemnation or eminent domain proceeding or proposed acquisition by a condemning authority.

Whenever any holder of a mortgage or deed of trust desires the provisions of this Article to be applicable to, it shall serve written notice of such fact upon the Association by registered mail or certified mail, addressed to the Association and sent to its address stated herein, identifying the condominium units upon which any such party holds any mortgage or deed of trust or identifying any condominium unit owned by it, together with sufficient facts to identify such mortgage or deed of trust and which mortgage shall designate the party to which notices are to be given by the Association to such party.

#### ARTICLE XVII DECLARANT CONTROL PERIOD

Subject to the provisions of subparagraph b below, Declarant shall have the right to appoint and remove the officers of the Association and the members of the Board of Directors, provided, however, this period of Declarant control shall terminate no later than the earlier of : (1) 120 days after the conveyance of 75% of the units to unit owners other than Declarant or (2) two years after all Declarant have cease to offer units for sale in the ordinary course of business. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of that period, but at Declarant's discretion, Declarant may require that specified actions of the Association or Board of Directors be approved by the Declarant before they become effective. All such reservations shall be in writing, executed by the Declarant and recorded in the Office of the Register of Deeds of Durham County.

Not later than 60 days after the conveyance of 25% of the units to unit owners other than Declarant, at least one member and not less than 25% of the members of the executive board shall be elected by unit owners other than Declarant. Not later than 60 days after the conveyance of 50% of the units to unit owners other than Declarant, not less than 33% of the directors shall be elected by unit owners other than the Declarant.

Not later than the termination of any period of Declarant control, the unit owners shall elect a Board of Directors of not less than five (5) members, at least a majority of whom must be unit owners. The Board of Directors shall elect officers, and board members and officers shall take office upon election.

ARTICLE XIII  
MISCELLANEOUS


In the event any of the terms, provisions, or covenants of this Declaration are held to be invalid or unenforceable, such holding shall not in any way modify, alter, or impair the remaining terms, provisions, and covenants contained herein which are not specifically held invalid or unenforceable.

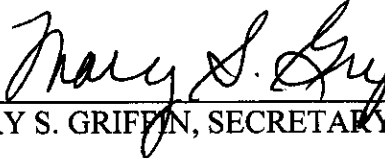
Restrictions and burdens imposed by this Declaration shall be deemed a covenant running with the land and shall be binding upon the Declarant, its heirs and assigns, and upon all parties who may subsequently become unit owners and their respective heirs, successors and assigns.

The following named individual is designated as the person to receive service of process for the Association: W. Kimball Griffin, Jr., at Griffin Associates, 1816 Front Street, Suite 240, Durham, North Carolina 27705.

IN WITNESS WHEREOF, the Declarant have caused this instrument to be executed the day and year first above mentioned.

G.A.R., Inc.

By:  (SEAL)  
W.K. GRIFFIN, JR., PRESIDENT

  
MARY S. GRIFFIN, SECRETARY

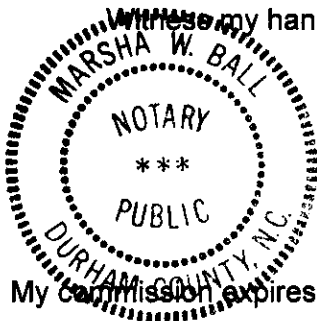


NORTH CAROLINA

DURHAM COUNTY

I, a Notary Public of the County and State aforesaid, certify that MARY S. GRIFFIN personally appeared before me this day and acknowledged that she is Secretary of G.A.R., INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary.

Witness my hand and official seal, this 29<sup>th</sup> day of December, 1999.



Marsha W. Ball  
Notary Public

My commission expires 4-28-01

The foregoing certificate of \_\_\_\_\_ is certified to be correct.  
This instrument and this certificate are duly registered at the date and time and in the Book and page shown on the first page hereof.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

WILLIE L. COVINGTON, REGISTER OF DEEDS FOR DURHAM COUNTY

By: \_\_\_\_\_

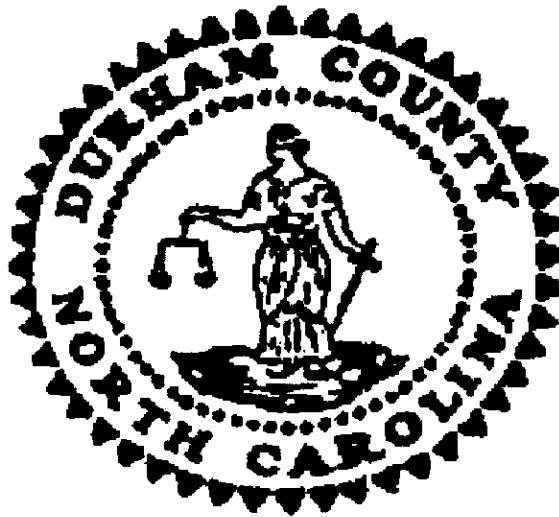
EXHIBIT A

TRACT I:

BEING all of Lots 33 and 34 of HOPE VALLEY HEIGHTS as per plat and survey thereof by Hunter Jones, C.E., dated November, 1953, now on file in the Office of the Register of Deeds of Durham County in Plat Book 28, page 1, to which reference is hereby made for a more particular description of same.

TRACT II:

BEING all of Lots 35 and 36 of HOPE VALLEY HEIGHTS as per plat and survey now on file in the Office of the Register of Deeds of Durham County in Plat Book 18, page 1, to which reference is hereby made for a more particular description of same.  
See Deed Book 360, page 398, Durham County Registry.



WILLIE L. COVINGTON  
REGISTER OF DEEDS , DURHAM COUNTY  
DURHAM COUNTY COURTHOUSE  
200 E. MAIN STREET  
DURHAM, NC 27701

\*\*\*\*\*  
Filed For Registration: 01/05/2000 10:44:11 AM  
Book: RE 2763 Page: 717-739  
Document No.: 200000295  
DECL 23 PGS \$50.00

Recorder: SHARON DAVIS

\*\*\*\*\*  
State of North Carolina, County of Durham

The foregoing certificate of MARSHA W BALL Notary is certified to be correct This 5TH of January 2000

WILLIE L. COVINGTON , REGISTER OF DEEDS By: \_\_\_\_\_

*Sharon Davis*  
Deputy/Assistant Register of Deeds



200000295