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R/D Book 1045 Page 56  
DATE 11-25-80

HICKORY DOWNS DECLARATION OF UNIT OWNERSHIP 73  
UNDER THE PROVISIONS OF CHAPTER 47A OF THE  
GENERAL STATUTES OF NORTH CAROLINA, AND OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date hereinafter set forth  
by FIVE OAKS DEVELOPMENT COMPANY, hereinafter referred to as "De-  
clarant", a North Carolina general partnership, by and between  
REAL ESTATE CONCEPTS, INC., a Georgia corporation and H & E INVEST-  
MENT COMPANY, a North Carolina corporation.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in  
Triangle Township, County of Durham, State of North Carolina, which  
is more particularly described as follows:

BEGINNING at a stake located in the eastern property  
line of Five Oaks Drive, the southwest corner of Parcel 3,  
as shown on the plat hereinafter referred to, and running  
thence South 75° 22' 00" East 219.03 feet to a stake;  
thence South 22° 08' 00" West 76 feet to a stake; thence  
South 37° 52' 00" East 46 feet to a stake; thence South  
02° 08' 29" West 37.50 feet to a stake; thence South 47°  
51' 31" East 74 feet to a stake; thence South 07° 08' 29"  
West 169 feet to a point; thence North 74° 36' 31" West  
217.10 feet to a point; thence North 66° 46' 39" West  
167.84 feet to a stake in the eastern property line of  
Five Oaks Drive; thence along and with the eastern pro-  
perty line of Five Oaks Drive North 26° 58' 21" East  
130.55 feet to a concrete monument; thence continuing  
along Five Oaks Drive in a northerly direction along a  
curve having a radius of 661.38 feet a distance of 187.36  
feet to a stake, the point and place of BEGINNING and  
being the greater portion of Parcel 1 of that plat and  
survey entitled "Property of Five Oaks Development Com-  
pany" by Precise Controls, Inc. dated January 10, 1979 and  
recorded in the office of the Register of Deeds of Durham  
County in Plat Book 95 at page 76, to which reference is  
hereby made for a more particular description of same.

WHEREAS, the Declarant is the owner of certain condominium  
type multi-unit buildings and other improvements heretofore con-  
structed or hereinafter to be constructed upon said property and  
it is the desire and intention of the Declarant to divide the pro-  
ject into condominium units, or "units" as those terms are defined  
under the provisions of the North Carolina Unit Ownership Act, and  
to sell and convey the same to various purchasers subject to the  
covenants, conditions and restrictions herein reserved to be kept  
and observed, and

74 WHEREAS, the Declarant desires and intends, by the filing of this Declaration, to submit the above described property and the multi-unit buildings located thereon and all other improvements constructed, together with all appurtenances thereto, to the provisions of the North Carolina Unit Ownership Act (Chapter 47A, North Carolina General Statutes);

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the property described above and as described in paragraph 2 below 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 and agreed 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 Declarant, its successors and assigns, and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Definitions. To the extent applicable to this Declaration and not inconsistent herewith, all definitions contained in the Unit Ownership Act, presently Chapter 47A of the General Statutes of North Carolina, as the same may be amended from time to time (herein referred to as "the Act") are incorporated herein by reference and shall have the same force and effect as if set forth herein verbatim and made a part hereof.

2. Description.

A. The description of the land on which the buildings and improvements are, or are to be, located is set forth on page 1.

B. The buildings constructed or to be constructed upon said lands are to be used for residential purposes only. Said residential buildings shall be two (2) in number and such buildings are two (2) stories in height, without basement, and the two (2) buildings contain in the aggregate fourteen (14) units. All units and buildings are woodframe construction. The buildings referred to hereinabove are more particularly described and portrayed in

the plans of said buildings, a copy of which is attached to the original of this Declaration and made a part hereof and designated as Exhibit A and filed with the Register of Deeds of Durham County, simultaneously herewith, showing all particulars of the buildings including the layout, location, lower elevations and floor-to-ceiling heights, unit numbers and dimensions of units, and locations of the common areas and facilities, affording access to each unit. Such plans bear the verified statement of a registered architect or licensed professional engineer, certifying that said plans are an accurate copy of the plans of said multi-unit buildings.

In addition to the above described characteristics, the buildings have outside parking area, landscaped areas, and other usual appurtenances and facilities. The buildings are to be constructed of wood siding, glass windows and asphalt shingle roofing. For a further description of the principal materials of which said multi-unit buildings are to be constructed, reference is made to the plans and specifications filed herewith as Exhibit A.

3. Unit Designations. The unit designation of each condominium unit, its location, its dimensions, approximate area, number of rooms and common areas and facilities to which it has immediate access, and other data concerning its proper identification are set forth on Exhibit A hereinabove referred to and made a part hereof. Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings and floors which are shown on said plans, subject to such encroachments as are contained in the building, whether the same now exist or may be caused or created by construction, settlement, or movement of the building, or by permissible repairs, construction or alteration.

4. Common Areas and Facilities. The common areas and facilities consist of all parts of the multi-unit buildings and other structures situated on the property described hereinabove, other than the individual dwelling units therein and described in

76 paragraph 3 above, including, without limitation, the following (except such portions of the following as may be included within an individual unit):

A. The land on which the building is erected and all lands surrounding the buildings as is more fully described on page 1 of this Declaration.

B. All foundations, columns, girders, beams, supports, and other structural members.

C. All exterior walls and interior walls except those partitioned walls wholly within a unit.

D. Roofs, parking lots, walks, drives, planters outside of units, planting areas, lawns, trees, grass and shrubs.

E. All central and appurtenant installations for services such as power, light, telephone, gas, water and all other mechanical equipment pertaining thereto existing for common use.

F. All water and sewer pipes.

G. All other parts of the property and all apparatus and installations existing in the buildings or upon the property for common use or necessary or convenient to the existence, maintenance or safety of the property.

H. Limited Common Areas. All porches, decks, patios and space immediately below an overhanging porch constructed by the Declarant as a part of or connected with a residence shall constitute a Limited Common Area the use of which shall be exclusively limited to the residence owner (and his family, invitees and tenant, tenant's family and invitees) of the residence to which it is a part or connected as aforesaid. Such residence owner shall be responsible to maintain and repair his Limited Common Area and keep the same in a not unsightly condition (except that where such Limited Common Area is grassed area under a porch such Limited Common Area shall be groundkept by the Association as part of its groundskeeping services).

I. The initial undivided interest of each unit owner in such common areas and facilities is set forth in Exhibit B and attached hereto and made a part hereof.

5. Amendment of Ratios. As provided by this Declaration, the Bylaws of Hickory Downs Owners Association, and the terms of Chapter 47A of the General Statutes of North Carolina, the ratio of the undivided interest of each unit owner in the common areas and facilities as set forth on Exhibit "B" attached hereto may be altered by an amendment to this Declaration duly recorded.

6. Use. The buildings and each of the units shall be used for residential purposes only. Any unit owner may delegate, in accordance with this Declaration and the Bylaws of the Hickory Downs Owners Association, his rights of possession, use and enjoyment of his unit and the common area facilities to the members of his family, guests and tenants.

7. Person to Receive Service of Process. Richard M. Hutson, II, is hereby designated to receive service of process in any action which may be brought against or in relation to this condominium. Said person's place of business is Mount, White, King, Hutson, Walker & Carden, P.A., 102 E. Main Street, Durham, N. C. 27701, which is within the City and County in which the buildings are located.

8. Easements. Each unit owner shall have an easement in common with the other owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities 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 facilities serving such other units. Each unit owner is hereby granted an easement upon the property hereunder for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to water, sewer, gas, telephones and electricity and a master television antenna system. Each unit owner is further granted the right and easement to use the common area for the location of a condenser unit for the heat pump and utility meters servicing his unit. The location of the condenser unit for the heat pump and utility meters shall be that as located by the Declarant at time of construction or such other location as approved by the Board of Directors.

78 The Board of Directors 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.

The Board of Directors may hereafter grant easements for utility purposes for the benefit of the property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone wires and equipment and electrical conduits, and wires over, under, along and on any portion of the common areas; and each unit owner hereby grants the Board of Directors an irrevocable power of attorney to execute, acknowledge and record for and in the name of each unit owner such instruments as may be necessary to effectuate the foregoing.

9. Partitioning. The common areas and facilities shall not be divided nor shall any right to partition any thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a unit by the entireties, jointly, or in common or in any other form by law permitted.

10. Liens. While the property remains subject to this Declaration and the provisions of the North Carolina Unit Ownership Act, no liens of any nature shall arise or be created against the common areas and facilities except with the unanimous consent in writing of all of the unit owners and the holders of first liens thereon except such liens as may arise or be created against the several units and their respective common interests under the provisions of the North Carolina Unit Ownership Act. Every agreement for the performance of labor, or the furnishing of materials to the common areas and facilities, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and the right to file a mechanics' lien or other similar lien by reason of labor performed or materials furnished is waived.

11. Nature of Interest in Units. Every unit, together with its undivided common interest in the common areas and facilities, shall for all purposes be, and it is hereby declared to be and to constitute a separate parcel of real property and the

unit owner thereof shall be entitled to the exclusive ownership 79  
and possession of his unit subject only to the covenants, re-  
strictions and easements as may be contained herein and in the  
Bylaws of Hickory Downs Owners Association and the rules and  
regulations adopted pursuant hereto and the resolutions and de-  
cisions of the Board of Directors.

12. Insurance. Insurance coverage on the property shall  
be governed by the following provisions:

A. Ownership of Policies. All insurance policies upon  
the condominium property shall be purchased by the Board of Directors  
for the benefit of the Board and the unit owners and their mort-  
gagees as their interests may appear, and provisions shall be made  
for the issuance of certificates of mortgagee endorsements to the  
mortgagees of unit owners. Unit owners may, at their option,  
obtain insurance coverage at their own expense upon their own per-  
sonal property and for their personal liability and living expense  
and such other coverage as they may desire.

B. Coverage. All buildings and improvements upon the  
land and all personal property included in the common areas and  
facilities shall be insured in an amount equal to the maximum  
insurable replacement value as determined annually by the Board  
of Directors with the assistance of the insurance company providing  
such coverage. Such coverage shall provide protection against:

1. Loss or damage by fire and other hazards  
covered by a standard extended coverage endorse-  
ment, and

2. Such other risks as from time to time shall  
be customarily covered with respect to buildings  
similar in construction, location and use.

Public liability insurance shall be secured by the Board of Directors  
in such amount and with such coverage as shall be deemed necessary  
by the Board of Directors, including, but not limited to, an  
endorsement to cover liability of the unit owners as a group to  
a single unit owner. There shall also be obtained such other in-

80 insurance coverage as the Board of Directors shall determine from time to time to be desirable and necessary.

C. Premiums. Premiums for insurance policies purchased by the Board of Directors shall be paid by the Board of Directors as a common expense.

D. Proceeds. All insurance policies purchased by the Board of Directors shall be for the benefit of the Board of Directors and the unit owners and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors as insurance trustees under this Declaration. The sole duty of the Board of Directors as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the Bylaws and for the benefit of the unit owners and their mortgagees in the following shares:

1. Proceeds on account of damage to common areas and facilities - an undivided share for each unit owner, such share being the same as each unit owner's undivided interest in the common areas and facilities (as set forth in Exhibit "B" attached hereto).

2. Proceeds on account of damage to units shall be held in the following undivided shares:

- (a) When the building is to be restored - for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Board of Directors.

- (b) When the building is not to be restored - an undivided share for each unit owner, such share being the same as each unit owner's undivided interest in the common areas and facilities (as set forth in Exhibit "B" attached hereto).

3. In the event a mortgagee endorsement has been issued as to a unit, the share of the unit



owner shall be held in trust for the mortgagee and 81  
the unit owner as their interests may appear.

13. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Board of Directors as insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

A. Expense of the Trust. All expenses of the insurance trustee shall be first paid or provision made therefor.

B. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as provided by paragraph 14 hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners.

C. Failure to Reconstruct or Repair. If it is determined, as provided in paragraph 14 hereof, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners thereof.

14. Damage and Destruction. Except as hereinafter provided, damage to or destruction of the building shall be promptly repaired and restored by the Board of Directors using the proceeds of insurance on the building for that purpose and unit owners shall be liable for assessment of any deficiency; provided, however, if the entire group of buildings be more than two-thirds destroyed by fire or other casualty and the owners of three-fourths of all the units in the multi-unit buildings located on the subject property resolve not to proceed with reconstruction or restoration then in that event the property shall either be (a) sold or otherwise transferred as hereinafter provided, or (b) deemed to be owned as tenants in common by the unit owners and subject to the provisions of North Carolina General Statutes 47A-25 as the same exists at the date hereof or as amended hereafter. The determination of whether to sell the property or to make the property subject to the provisions of North Carolina General Statutes 47A-25 shall be by affirmative vote of three-fourths of the unit owners of the buildings.

32 Any reconstruction or repair shall be in accordance with the plans and specifications of the original building, portions of which are attached hereto as exhibits; and if not, then according to plans and specifications approved by the Board of Directors.

15. Subordination. Nothing contained in this Declaration shall impair or defeat the lien of any mortgage or deed of trust made in good faith and for value, but the title to any unit or any interest therein is subject to this Declaration.

16. Use Restrictions.

A. Each unit shall be used for residential purposes only. No unit shall be divided or subdivided into a smaller unit nor shall any part thereof be sold or otherwise transferred.

B. The common areas shall be used only for the purposes for which they are intended.

C. No nuisances shall be allowed on the property nor any use or practice that is the source of annoyance to residents or that interferes with the peaceful possession and proper use of the property by residents. All parts of the property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No owner shall use or permit a use of his unit or of the common elements that will increase the cost of insurance on the property.

D. No immoral, offensive or unlawful use shall be made of the property or any part of it. All valid laws, ordinances and regulations of governmental authorities having jurisdiction shall be complied with.

E. A unit may be rented under a one (1) year lease. No transient tenants shall be accommodated.

F. Uniform reasonable rules and regulations concerning the use of the property may be adopted, amended and rescinded from time to time by the Board of Directors. Copies of the current regulations shall be furnished by the Association to all owners and residents of the condominium on request. The regulations shall not conflict with the Declaration or Bylaws.

G. Each owner shall pay for all utility services that are separately metered to his unit.

H. It shall be the responsibility of each unit owner and the Board of Directors to prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such property, which shall tend to decrease the beauty of the neighborhood as a whole or the specific area.

I. No noxious or offensive activity shall be carried on in or upon any unit, nor shall anything be done therein tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood or to other unit owners. There shall not be maintained in or upon any unit any poultry or animals, other than household pets as hereinafter specified and allowed, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the other unit owners thereof.

J. Household pets may be maintained in or upon any unit in accordance with the Rules and Regulations as adopted by the Hickory Downs Owners Association.

K. No commercial signs (including "for rent", "for sale", and other similar signs) or property identification signs shall be erected or maintained on any unit, except with the written permission of the Board of Directors, or except as may be required by legal proceedings.

L. Garbage and trash shall be disposed of only in areas specifically designated therefor.

M. No structure of a temporary character shall be placed upon the property at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of the multi-unit buildings, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the building plot after completion of construction.

84 N. No tent, barn, storage shed, garage, tree house or other similar outbuilding or structure shall be placed on the property at any time, either temporarily or permanently unless written approval for the same is given by the Board of Directors.

O. No trailer, camper, boat or mobile home shall be placed on the property at any time, either temporarily or permanently. Conventional passenger automobiles shall be privileged to use the parking areas located and situate upon the project, and two designated parking spaces shall be assigned to the owner of each unit and shall be reserved to the exclusive use of the unit owner. Motorcycles, motor bikes and motor scooters, if equipped with proper muffler, shall only be parked in the parking areas. No motorcycle, motor bike or motor scooter may be parked in any other portion of the common area or the Limited Common Area.

P. No unit shall be used for any commercial or professional purpose, and no professional person shall maintain a public office in any unit; provided, however, that this restriction shall not prevent the use of any unit by a professional person for his own private office not connected with visits from patients, clients or members of the public.

Q. No television antenna or other antenna shall be permitted on the roof or exterior of any unit or building; however, this restriction shall not include interior antennas or any master antenna or cable system available through the Declarant or the Hickory Downs Owners Association.

R. All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them for a period of thirty (30) years from June 1, 1979, after which time said covenants shall be extended automatically for successive periods of ten (10) years unless an instrument signed by the unit owners owning at least 66-2/3% in common interest of the units affected by such covenants has been recorded agreeing to revise or amend or rescind said covenants in whole or in part.

S. In the event of a violation or breach of any of these restrictions contained in this paragraph 16 or of any other restrictions or covenants of this Declaration by any property owner or guest, invitee, or agent of such owner, the owners of units, or any of them, jointly or severally, shall have the right to proceed at law or in equity to complete a compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing and in the event there shall have been any violation of these restrictions, Declarant shall have the right at any time until six (6) months from and after the date and time as of which all of the units shall have been sold by Declarant to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the offending owner, if after ten (10) days' written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior thereto or subsequent thereto, and shall not bar or affect its enforcement.

17. The Five Oaks Recreational Association, Inc. The property described on page 1 upon which the buildings and improvements are, or are to be, located has been subjected, by instrument recorded in Book 996, pages 700 et seq., Durham County Registry, to that portion of the Declaration of Covenants, Conditions and Restrictions for the Five Oaks Project, ("Five Oaks Declaration") dated December 9, 1975, recorded in Deed Book 432, pages 306 et seq. that extends to owners and occupants of the units herein membership, together with all rights, privileges and obligations appertaining thereto, in The Five Oaks Recreational Association, Inc. Each owner of any unit subject to this Declaration, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to The Five Oaks Recreational Association, Inc.: (1) annual assessments or charges,

and (2) special assessments for capital improvements, such annual  
86 and special assessments to be established, collected, and enforced  
as provided under Article X of the Five Oaks Declaration recorded  
in Deed Book 432, pages 306 et seq., Durham County Registry, the  
provisions of which Article are incorporated herein by reference.  
All such annual and special assessments, together with interest,  
costs, and reasonable attorneys' fees for the collection thereof  
shall be a charge and lien upon the unit of the respective owners  
thereof, and the same shall be a continuing lien upon the unit  
against which each such assessment is made. Each such assessment,  
together with interest, costs, and reasonable attorneys' fees for  
the collection thereof, shall also be a personal financial obliga-  
tion of the person, or persons who was, or were, the owner, or  
owners, of such unit at the time when the assessment became due.  
The personal financial obligation for delinquent assessments shall  
not pass to successors in title to any such unit unless expressly  
assumed by such purchasers; provided however, the same shall be  
and remain a charge and lien upon any such unit until paid or  
otherwise satisfied except as otherwise provided under the Five  
Oaks Declaration. Owners of the units subjected to this Declara-  
tion, other than the Declarant, shall be deemed to be Class A mem-  
bers of The Five Oaks Recreational Association, Inc. as provided  
under Article X of the Five Oaks Declaration recorded in Deed Book  
432, pages 306 et seq., Durham County Registry. No owner may waive  
or otherwise escape liability for the assessments or charges pro-  
vided for herein by non-use of the recreational facilities of The  
Five Oaks Recreational Association, Inc. or abandonment of his unit.

18. Units Subject to Declaration, Bylaws, Rules and  
Regulations. All present and future owners, tenants and occupants  
of units shall be subject to and shall comply with the provisions  
of this Declaration, the Bylaws and any Rules and Regulations that  
may be adopted in accordance with the Bylaws, as said Declaration,  
Bylaws, Rules and Regulations may be amended from time to time.  
The acceptance of a deed of conveyance, or the entering into of a  
lease, or the entering into occupancy of any unit shall constitute

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an agreement that the provisions of this Declaration, Bylaws, and any rules and regulations which may be adopted are accepted and ratified by such owner, tenant or occupant and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were made a part of each and every deed or conveyance or lease.

19. Amendment of Declaration.

A.. This Declaration may be amended by the affirmative vote of unit owners owning at least seventy-five percent (75%) of the aggregate interest in the common areas and facilities, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. No such amendment shall be effective until an instrument signed by the consenting unit owners (and the holders of first mortgage liens thereon) is recorded in the office of the Register of Deeds of Durham County.

B. In the event that the Declarant shall seek to obtain approval of this Declaration and units constructed thereon will be eligible for loans approved or guaranteed by the Veterans Administration (herein called "VA") or the Department of Housing and Urban Development (herein called "HUD"), or other governmental agency, it is likely that such agency or agencies will require changes in this Declaration in order to make the units eligible for such loans. In such event, the Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration, and the amendment shall become effective upon recordation of the amendment, along with attached evidence of approval by the appropriate governmental agency, in the Durham County Registry. A letter from an official of the VA, HUD, or other appropriate governmental agency, requesting or suggesting an amendment, shall be sufficient evidence of the approval of VA, HUD and/or such other agency.

C. The Declarant shall have the right to amend this Declaration in accordance with paragraph 20.

20. Additional Phases. Anything contained in this Declaration to the contrary notwithstanding, it is the Declarant's

intention that the development of Hickory Downs include not only  
38 the property described on page 1 and the fourteen (14) units and  
common areas therein included as a fully completed first phase,  
but also that Hickory Downs may, in the future and in additional  
phases be completed, include twenty-eight (28) additional units  
to be located in other buildings. Declarant shall have the absolute  
right in its discretion to construct the additional units, and if  
any of such units are so constructed on the land contiguous to the  
land now covered by this Declaration (or contiguous by way of an  
easement), and if such additional units are substantially equivalent  
in unit value and construction to the units now covered under this  
Declaration, then, for the purpose of amending this Declaration and  
the Bylaws, each owner (and such owner's successors) of a unit  
under this Declaration (and the mortgagees of each owner of a unit  
hereunder), shall be deemed to have consented to an amendment or  
amendments to this Declaration and the Bylaws for the purpose of  
including such additional units hereunder. Each unit owner (and  
such owner's successors) does hereby and upon and by acceptance  
of a deed for a unit hereunder: (i) consent to the option by the  
Declarant to expand and to amend the Declaration as contemplated  
herein and agrees to execute such further papers and instruments,  
if any, as may be necessary from time to time to accomplish such  
amendments; (ii) consents to a redetermination of each unit owner's  
percentage interest in the common areas and facilities shown on  
Exhibit "B" attached hereto; and (iii) appoints the Declarant as  
attorney-in-fact to amend this Declaration and execute such fur-  
ther papers and instruments necessary to accomplish any amendments.  
The power of attorney granted herein is coupled with an interest  
and irrevocable.

From time to time as additional common areas are added,  
each then owner, and each person or entity thereafter becoming an  
owner, and their successors in title, shall upon the addition of  
additional common areas automatically be vested with his appropriate  
undivided percentage interest in such additional common areas.  
The conveyance of a unit shall carry this future interest whether  
or not specific reference is made thereto.



The additional property which may be, but is not required to be added from which future phases may be, but are not required to be constructed, is contiguous and shown as 3.75 acres, Plat Book 95, page 96, Durham County Registry. Said additional property before being added, is not subject to this Declaration nor to any charge or encumbrance by reason of this Declaration (there being no such charge or encumbrance, express or implied), and may be (instead of being added) conveyed, pledged, and transferred by the Declarant (or by any owner of said additional property) totally free of this Declaration.

As the Declaration is amended as permitted herein to include additional completed units or additional units under construction by the Declarant an owner's undivided percentage interest shall be deemed changed and reduced and the amount of such reduction shall revert to the Declarant so that appropriate undivided percentage interests in the common areas may be conveyed to those who become owners in subsequent phases.

21. Easement for Construction Purposes. The Declarant shall have full rights of ingress and egress to and through, over and about the common areas during such period of time as the Declarant is engaged in any construction or improvement work on or within the property described or additional property and, shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc., which are being utilized in such development or construction. No owner, his guests or invitees shall in any way interfere or hamper Declarant, his employees, successors or assigns in connection with such construction.

22. Retained Rights of Declarant.

A. Declarant may transact any business necessary to consummate sales of units including, but not limited to, erection and maintenance of unit models and a sales office, use of a unit as a model and a sales office, erection and maintenance of signs and advertising for the sale of units, and the right to bring prospective purchasers through all common areas. Sales office furnishings, furniture and furnishings in the model units, signs and other items pertaining to sales remain the property of Declarant.

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B. Declarant may change the location of easements for ingress and egress from the property described in this Declaration to public roads so long as the easement conforms to the requirements of all governmental authorities having jurisdiction.

C. No action shall be taken by a unit owner that would be detrimental to the sales of units by Declarant while Declarant holds units for sale in the ordinary course of business.

23. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity or enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision never had been included herein.

24. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

25. Captions. The captions herein are inserted only as a matter of convenience and for reference and such shall not be construed to define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

26. Law Controlling. This Declaration and the Bylaws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 9th day of August, 1979.

FIVE OAKS DEVELOPMENT COMPANY

Partner

H & E INVESTMENT COMPANY

BY

President

ATTEST:

L. H. Mount  
Secretary

Partner:

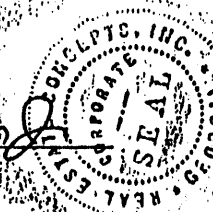
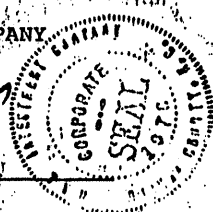
REAL ESTATE CONCEPTS, INC.

BY

President

ATTEST:

David T. Blinn  
Assistant Secretary



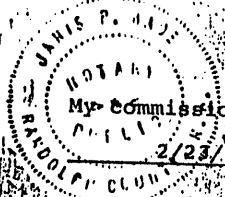
NORTH CAROLINA

91

DURHAM COUNTY

I, Janis P. Wade, a Notary Public of Randolph County, certify that L. H. Mount personally appeared before me this day and acknowledged that he is Secretary of H & E INVESTMENT COMPANY, a corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and notarial seal, this 9th day of August, 1979.



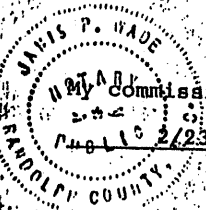
Janis P. Wade  
Notary Public

NORTH CAROLINA

DURHAM COUNTY

I, Janis P. Wade, a Notary Public of Randolph County, certify that Jim T. Hines personally appeared before me this day and acknowledged that he is Assistant Secretary of REAL ESTATE CONCEPTS, INC., a corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Assistant Secretary.

Witness my hand and notarial seal, this 9th day of August, 1979.



Janis P. Wade  
Notary Public

APPROVED BY THE SUBDIVISION		
REVIEW BOARD OF THE CITY OF DURHAM, N. C. BY A		
RESOLUTION ADOPTED BY DATED <u>Aug. 17, 1979</u>		
<u>John D. Parker</u>		
Chairman	Subdivision	Review Board
<b>APPROVAL VOID</b>		
IF NOT RECORDED WITHIN		
60 DAYS OR BY <u>Oct. 17, 1979</u>		

HICKORY DOWNS  
DURHAM, NORTH CAROLINA

## EXHIBIT "B"

PERCENTAGE OF INTEREST IN THE  
COMMON AREAS AND FACILITIES  
AND OF THE COMMON EXPENSES

APPROXIMATE AREA  
IN SQUARE FEET

NUMBER OF  
ROOMS

## UNIT

## Building A:

Unit 1	1665	7 (3 bedrooms)	7.717%
Unit 2	1376	6 (2 bedrooms)	6.377%
Unit 3	1665	7 (3 bedrooms)	7.717%
Unit 4	1376	6 (2 bedrooms)	6.377%
Unit 5	1665	7 (3 bedrooms)	7.717%
Unit 6	1376	6 (2 bedrooms)	6.377%
Unit 7	1665	7 (3 bedrooms)	7.717%

## Building B:

Unit 8	1665	7 (3 bedrooms)	7.717%
Unit 9	1376	6 (2 bedrooms)	6.377%
Unit 10	1665	7 (3 bedrooms)	7.717%
Unit 11	1376	6 (2 bedrooms)	6.377%
Unit 12	1665	7 (3 bedrooms)	7.717%
Unit 13	1376	6 (2 bedrooms)	6.377%
Unit 14	1665	7 (3 bedrooms)	7.717%