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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA T. CHRISTIAN  
NEW HANOVER COUNTY, NC  
2004 DEC 17 12:34:29 PM  
BK: 4608 PG: 702-757 FEE: \$176.00

INSTRUMENT # 2004066447

Prepared by and return to:  
Ellis & Winters LLP, Box 96 (DKB)

NORTH CAROLINA

**DECLARATION OF CONDOMINIUM  
FOR MAYFAIRE BG CONDOMINIUM**

NEW HANOVER COUNTY

MAYFAIRE SPE/A, LLC, a North Carolina limited liability corporation, hereinafter referred to as "Declarant," does hereby make, declare and establish this Declaration of Condominium as and for the plan of unit ownership of Mayfaire BG Condominium, being the property and improvements hereinafter described.

RECITALS:

Declarant is the owner of that certain real property situated in New Hanover County, North Carolina, and more particularly described on Exhibit A, attached hereto and incorporated herein by this reference, on which property there has been constructed two three-story buildings (the "BG Property"). Declarant hereby desires to submit the BG Property and the improvements constructed thereon to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina and this Declaration.

NOW, THEREFORE, Declarant hereby declares that the BG Property shall be held, sold, conveyed, encumbered, used, occupied, developed and improved subject to the following easements, restrictions, covenants, conditions, uses, limitations, and obligations, all of which are declared to be in furtherance of a plan for the development of the Property into a condominium, and which shall run with the land and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall all inure to the benefit of each owner of any interest therein.

RETURN TO *Fletcher Ray Satterfield*

## ARTICLE I.

### DEFINITIONS

As used herein, the following terms and phrases shall have the meanings set forth below, or, if a term used in this Declaration is not defined below, it shall have the meaning set forth in the Act.

Section 1. Act. The “Act” shall mean and refer to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

Section 2. Association. The “Association” shall mean and refer to Mayfaire BG Condominium Owners Association, Inc., its successors and assigns.

Section 3. Bylaws. The “Bylaws” shall mean and refer to the Bylaws of the Association.

Section 4. Commercial Lender. “Commercial Lender” shall mean and refer to any bank, savings and loan association, mortgage company, insurance company, or any other financial institution, firm or entity (i) holding a deed of trust or mortgage on any Unit or any subdivided portion of a Unit other than a Second Tier Condominium Unit that is a subdivided portion of a Residential Unit and is not owned by a declarant of the pertinent Second Tier Condominium Declaration, or (ii) in lieu of such deed of trust or mortgage, holding a valid security interest in one hundred percent (100%) of the equity interests of the Owner of any Unit or any subdivided portion of a Unit other than a Second Tier Condominium Unit that is a subdivided portion of a Residential Unit and is not owned by a declarant of the pertinent Second Tier Condominium Declaration. Declarant hereby acknowledges that Greenwich Capital Financial Products, Inc., its successors and assigns, pursuant to a secured loan to be closed proximate to the recording of this Declaration, between Greenwich Capital Financial Products, Inc. and Mayfaire Retail, LLC, shall be a “Commercial Lender.”

Section 5. Common Elements. The “Common Elements” shall mean and refer to all portions of the Condominium other than the Units.

Section 6. Common Element Maintenance Expenses. “Common Element Maintenance Expenses” shall mean and refer to all costs and expenses paid or incurred by the Association, or for which the Association is obligated, for operating, managing, equipping, protecting, cleaning, lighting, repairing, and maintaining the Common Elements. Common Element Maintenance Expenses shall also include any charges for which the Association is obligated to pay to the Master Association for the payment of any taxes levied against the Master Association Common Elements and for operating, managing, equipping, protecting, cleaning, lighting, repairing, insuring and maintaining

roads, sidewalks, trails, ponds, recreational areas, conservation areas and other portions of Mayfaire pursuant to the terms of the Master Declaration and the Condominium Instruments. Common Element Maintenance Expenses may include, without limitation, the costs and expenses for:

(a) gas, electricity, water, sanitary sewer, storm sewer, and other utility charges (including surcharges) of every type and nature for services provided to the Common Elements;

(b) illuminating and maintaining signs (including the main identification sign but excluding individual tenant signs), roadways and bus stops, used in connection with the Condominium, whether located on or off the Common Elements;

(c) the costs of operating, maintaining, repairing, replacing, lighting, cleaning, painting, snow and ice removal, striping, draining, heating, ventilating, air conditioning and landscaping the Common Elements and facilities located thereon (including, but not limited to, repairs to the roof of any building, restriping and repaving parking areas and sidewalks (including curb and gutter replacement), sprinkler system, walls, signs, and public areas of the Shopping Center);

(d) security control and fire protection (to the extent provided by the Association, in its sole discretion);

(e) the costs of service and maintenance contracts;

(f) management fees and personnel costs, including, but not limited to, salaries, wages, fringe benefits and other direct and indirect costs of engineers, superintendents, watchmen, porters, valets, and any other Association personnel;

(g) maintaining and replacing any equipment supplying music to the Common Elements;

(h) machinery and equipment owned by the Association and used in connection with the operation, maintenance and repair of the Common Elements, or the rental charges for such machinery and equipment;

(i) operating costs; and

(j) maintaining, repairing and replacing mechanical equipment including any automatic door openers, elevators, escalators, lighting fixtures, fire and landscape sprinkler systems, security alarm systems, and all other items of equipment within the Common Elements of the Condominium.

Section 7. Common Expenses. The “Common Expenses” shall mean and refer to the expenditures made by, or financial liabilities of, the Association in connection with the administration and operation of the Condominium and the maintenance, repair or replacement of the Common Elements, specifically including, without limitation, any assessments or charges imposed by the Master Association, and any expenses declared “Common Expenses” by the Condominium Instruments. The Common Element Maintenance Expenses, Insurance Expenses and General Expenses, collectively, shall constitute the “Common Expenses.”

Section 8. Condominium. The “Condominium” shall mean and refer to the Property, the improvements located thereon, and all easement rights appurtenant thereto, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the Owners of those portions.

Section 9. Condominium Buildings. The “Condominium Buildings” shall mean and refer to the two (2) three-story buildings presently constructed on the Property and identified on the Plan of Condominium as “Building B” (hereafter referred to as “Building B”) and “Building G” (hereafter referred to as “Building G”), as well as any additions to or extensions of such buildings or any new buildings constructed by Declarant and added to the Condominium pursuant to Declarant’s Development Rights herein reserved.

Section 10. Condominium Instruments. The “Condominium Instruments” shall mean and refer to this Declaration, the Articles of Incorporation and Bylaws of the Association, and the Rules and Regulations of the Association adopted pursuant to the terms of this Declaration, as the same may be from time to time amended or supplemented in accordance with their respective terms.

Section 11. Declarant. The “Declarant” shall mean and refer to Mayfaire SPE/A, LLC, a North Carolina limited liability corporation, as well as any successors or assigns of Declarant to whom or which Declarant expressly has transferred any or all of its rights as Declarant hereunder, all of which rights are assignable or may be apportioned on any reasonable basis, including, without limitation, on a Unit-by-Unit basis.

Section 12. Declaration. The “Declaration” shall mean and refer to this Declaration of Condominium.

Section 13. Executive Board. The “Executive Board” shall mean and refer to the governing body designated or selected in accordance with the terms of this Declaration and the Articles and Bylaws of the Association to act on behalf of the Association in all matters not expressly reserved to the Members of the Association by the Condominium Instruments or the Act.

Section 14. General Expenses. "General Expenses" shall mean and refer to all Common Expenses other than Common Element Maintenance Expenses and Insurance Expenses.

Section 15. Insurance Expenses. "Insurance Expenses" shall include all expenditures made by, or financial liabilities of, the Association in connection with the acquisition and maintenance of the insurance maintained by the Association in accordance with the Condominium Instruments.

Section 16. Master Association. The "Master Association" shall mean and refer to Mayfaire Community Association, Inc., the owners association formed for the purposes expressed in the Master Declaration.

Section 17. Master Association Common Area. The "Master Association Common Area" shall mean and refer to all real and personal property now or hereafter held or designated as "Common Area" pursuant to the Master Declaration.

Section 18. Master Declaration. The "Master Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions, Easements and Restrictions for Mayfaire recorded in Book 3772, Page 1, in the office of the Register of Deeds, New Hanover County, North Carolina, as the same may now or hereafter be amended and supplemented in accordance with its terms, including, without limitation, any Supplemental Declaration and/or Amendment now or hereafter recorded in the office of the Register of Deeds, New Hanover County, North Carolina, that establishes Mayfaire Town Center as a "Neighborhood," subject to "Neighborhood Assessments," as such terms are defined in the foregoing instruments.

Section 19. Mayfaire. "Mayfaire" shall mean the planned community known as "Mayfaire" established pursuant to the Master Declaration.

Section 20. Member. "Member" shall mean and refer to every person or entity that holds membership in the Association.

Section 21. Officer. "Officer" means any person holding an office in the Association pursuant to the Bylaws, but shall not mean an Executive Board member, unless such officer is also a member of the Executive Board of the Association.

Section 22. Owner or Unit Owner. "Owner" or "Unit Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit or subdivided portion thereof, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 23. Plan of Condominium. The "Plan of Condominium" shall mean and refer to the Plan of the Condominium for Mayfaire BG Condominium recorded in Condominium Map Book 14, Page 56, Sheets \_\_\_\_\_ - \_\_\_\_\_ in the New Hanover

County Register of Deeds, as the same may be supplemented and amended from time to time pursuant to the terms of this Declaration or the Act.

Section 24. Property. The "Property" shall mean and refer to all of the real property described on Exhibit A, attached hereto and incorporated herein by this reference, together with any additional real property added to the Condominium pursuant to the terms of this Declaration, including specifically any real property added to the Condominium by Declarant pursuant to Declarant's Development Rights herein reserved, and shall include all improvements now or hereafter constructed thereon.

Section 25. Residential Units. The "Residential Units" shall mean and refer to Residential Unit B-2 and Residential Unit G-2, and any other Unit of the Condominium created by Declarant pursuant to the development rights reserved in Article V hereof and designated a Residential Unit by Declarant in accordance with such provisions.

Section 26. Retail Units. The "Retail Units" shall mean and refer to Retail Unit B-1 and Retail Unit G-1, and any other Unit of the Condominium created by Declarant pursuant to the development rights reserved in Article V hereof and designated a Retail Unit by Declarant in accordance with such provisions.

Section 27. Rules and Regulations. "Rules and Regulations" shall mean and refer to the initial rules and regulations of the Association governing the use, enjoyment and maintenance of the Common Elements, together with any additional reasonable rules and regulations promulgated for such purpose in accordance with the provisions of Article VIII, Section 1 of this Declaration, as the same from time-to-time may be modified or amended pursuant to said provisions.

Section 28. Second Tier Condominium Association. "Second Tier Condominium Association" shall mean and refer to any condominium association formed pursuant to Second Tier Condominium Association Instruments imposed on any Unit.

Section 29. Second Tier Condominium Common Elements. "Second Tier Condominium Common Elements" shall mean and refer to any portion of a Unit identified as common elements by any Second Tier Condominium Instruments.

Section 30. Second Tier Condominium Instruments. "Second Tier Condominium Instruments" shall mean and refer to any Condominium Declaration recorded in the Office of the Register of Deeds, New Hanover County, North Carolina, imposing pursuant to the Act and the terms of this Declaration a separate condominium regime on any one or more of the Units, thereby further dividing the Unit(s) into Second Tier Condominium Units and Second Tier Condominium Common Elements.

Section 31. Second Tier Condominium Units. "Second Tier Condominium Units" shall mean and refer to any units formed pursuant to Second Tier Condominium Instruments.

Section 32. Unit. "Unit" shall mean and refer to each physical portion of the Condominium designated for separate ownership or occupancy pursuant to this Declaration and the Plan of Condominium or any amendments or supplements thereto recorded in accordance with the terms hereof, together with its percentage of undivided interest in the Common Elements as set forth in Exhibit B attached hereto and incorporated herein by reference. At the time of the initial recording of this Declaration, Units are as follows:

"Unit B-2," or "Residential Unit B-2" shall mean and refer to those portions of the first, second and third floor of Building B of the Condominium identified as Unit B-2 on the Plan of Condominium, containing approximately 58,915 square feet of floor area intended to be used for residential and related purposes.

"Unit G-2," or "Residential Unit G-2" shall mean and refer to those portions of the first, second and third floor of Building G of the Condominium identified as Unit G-2 on the Plan of Condominium, containing approximately 48,475 square feet of floor area intended to be used for residential and related purposes.

"Unit B-1," or the "Retail Unit B-1" shall mean and refer to those portions of the first floor of Building B of the Condominium identified as Unit B-1 on the Plan of Condominium, containing approximately 30,503 square feet of floor area intended to be used for non-residential purposes.

"Unit G-1," or the "Retail Unit G-1" shall mean and refer to those portions of the first floor of Building G of the Condominium identified as Unit G-1 on the Plan of Condominium, containing approximately 22,189 square feet of floor area intended to be used for non-residential purposes.

The boundaries of each of the Units are further defined to exclude all spaces and improvements lying:

1. Beneath the flooring material of all demising or load-bearing floors;
2. Beneath or behind the interior surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions;

3. Above the interior surfacing material of the demising or load-bearing ceilings;

and further excluding all Utility Facilities for the furnishing of utilities and other services to the Common Elements and/or the Units; provided, however, any such Utility Facilities, servicing only one Unit and located within the Unit served shall be a part of the Unit to which such Utility Facilities furnish utility service. All heating, ventilation and air conditioning equipment ("HVAC Equipment") and related facilities serving a single Unit, wherever located, shall be a part of the Unit served by such equipment. As used herein, "demising floors" and "demising ceilings" shall mean and refer to those floors and ceilings of the Condominium that serve as a Unit boundary line as shown on the Plan of Condominium.

Section 33. Utility Facilities. "Utility Facilities" shall mean and refer to any sanitary sewer, water, power, gas, data, telephone, communication, drainage or other utility service line, cable, pipe, main, meter, conduit, connection or system.

Section 34. Written Consent. "Written Consent" shall mean and refer to the power of all, or if applicable, some specific portion, of the Members to vote on any consent or action of the Association or its Members, except as may be herein specifically prohibited, by ballots mailed or otherwise delivered to the Members and returned to the Association, after written notice of the proposed consent or action is provided to all, or the applicable portion, of the Members.

## ARTICLE II.

### ESTABLISHMENT OF CONDOMINIUM

Declarant does hereby submit the Property and all improvements now or hereafter constructed thereon to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act), and hereby declares the same to be a condominium to be known and identified as "Mayfaire BG Condominium," sometimes hereinafter referred to as the "Condominium." The Plan of Condominium, recorded contemporaneously herewith and expressly made a part hereof, includes a survey of the land and graphic descriptions of the Units and Common Elements, as said terms are herein defined. Each Unit has been assigned an Identifying Number on the Plan of Condominium and no Unit bears the same Identifying Number as any other Unit.

## ARTICLE III.

### OWNERSHIP OF UNITS; ALLOCATED INTEREST IN COMMON ELEMENTS

Section 1. Ownership of Units. Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Unit Owners of each Unit shall also own, as an appurtenance to the ownership of each said Unit, an Allocated Interest in the Common Elements.

Section 2. Allocated Interest in the Common Elements. The Allocated Interest appurtenant to each Unit as of the date of this Declaration is as set forth in Exhibit B, attached hereto and made a part hereof. Recognizing that the Retail Units have a paramount interest in the appearance and maintenance of the exterior of the Buildings, the Retail Units will share sixty-seven percent (67%) of the Allocated Interests in the Common Elements based on the number of square feet of floor area contained in each Retail Unit relative to the total number of square feet of floor area contained in all Retail Units and the Residential Units will share the remaining thirty-three percent (33%) of the Allocated Interests in the Common Elements based on the number of square feet of floor area contained in each Residential Unit relative to the total number of square feet of floor area contained in all Residential Units. The square footage of each Unit, as reported on Exhibit B, absent gross error, shall be deemed for the purpose of this Declaration to be the actual number of square feet of floor area contained in each Unit.

Section 3. Allocation of Common Expense Liability. Except as otherwise expressly provided herein all Common Expense Liability shall be apportioned among the Units in accordance with Article XXIII hereof.

Section 4. Allocation of Votes in the Association. On all matters which the membership of the Association shall be entitled to vote, the Unit Owner(s) of each Unit shall have a vote equal to the Allocated Interest appurtenant to such Unit, to be cast or exercised by the Unit Owner(s) of each Unit in such manner as may be provided in the Bylaws of the Association. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in said corporation or to any of the rights or privileges of such membership except as may be otherwise expressly provided herein.

Section 5. Separate Conveyance of Common Element Interest Prohibited. Except as otherwise provided in this Declaration, the Allocated Interest in the Common Elements declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Unit, and the Allocated Interest in the Common Elements appurtenant to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such Allocated Interest is

not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit.

#### ARTICLE IV.

##### SUBDIVISION OF UNITS; SECOND TIER CONDOMINIUM DOCUMENTATION

Section 1. Subdivision of Units. No Unit may be subdivided except with the approval of the Members entitled to cast at least one hundred percent (100%) of the votes of the Association or by the imposition of Second Tier Condominium Instruments in accordance with the terms of this Article IV.

Section 2. Second Tier Condominium Instruments Permitted. The Owner(s) of a Unit may at any time hereafter subject such Unit to Second Tier Condominium Instruments and thereby subdivide the Unit into two or more Second Tier Condominium Units and Second Tier Condominium Common Elements, so long as all of the following conditions are met:

(a) The Second Tier Condominium Instruments must be imposed on the entire Unit, subdividing the entire Unit into Second Tier Condominium Units and Second Tier Condominium Common Elements;

(b) The Second Tier Condominium Instruments shall expressly provide for the assignment and assumption of membership rights described in Section 2 of this Article, and the collection and remittance of assessments described in Section 3 of this Article; and

(c) The Second Tier Condominium Instruments shall expressly state that it is subject and subordinate to the provisions of the Condominium Instruments, that in the event of a conflict between the provisions of the Second Tier Condominium Instruments and the Condominium Instruments, the Condominium Instruments shall control; provided, however, nothing herein shall be construed to prevent the enforcement of additional covenants, conditions, restrictions and easements therein contained that do not contravene the provisions of the Condominium Instruments.

Section 3. Second Tier Association to Assume Certain Membership Rights. Contemporaneously with the imposition of Second Tier Condominium Instruments on a Unit, the Owner(s) of the Unit shall be deemed to have irrevocably assigned to the Second Tier Condominium Association, and the Second Tier Condominium Association shall be deemed to have irrevocably assumed, for so long as the Second Tier Condominium Instruments remains in effect, the following rights of membership in the Association:

- (a) The right to attend member meetings of the Association;
- (b) The right to vote and the right to give or withhold any consent, both as a Member of the Association or as an Owner, provided for herein.

Pursuant to the foregoing assignment, the Member meetings of the Association may be attended on behalf of the Owners of the Unit subjected to the Second Tier Condominium Instruments only by up to three (3) executive board members of the Second Tier Condominium Association. In addition, the Second Tier Condominium Association shall be required to vote and/or give and withhold any consent on behalf of the Owners of the Unit subjected to Second Tier Condominium Instruments in strict accordance with the vote or written consent of the members of the Second Tier Condominium Association. For example, if a matter were presented for a vote by the Members of the Association, any Second Tier Condominium Association would be required to first present the matter for a vote or written consent by its members. If votes by the members of the Second Tier Condominium Association were cast, or if written consents of the members of the Second Tier Condominium Association were obtained, as follows: 25% in favor, 50% opposed and 25% abstained; then the Second Tier Condominium Association would be required to cast the Association votes it is entitled to direct in same proportions.

Section 4. Second Tier Associations to Collect and Remit Assessments. Any Second Tier Condominium Instruments shall provide that the Second Tier Association formed pursuant thereto will collect and remit to the Association all assessments levied by the Association pursuant to this Declaration against the Unit comprising the Second Tier Condominium. In addition, such Second Tier Condominium Instruments shall specify the method of apportioning such Assessments among all Second Tier Condominium Units subjected thereto and shall create a lien against each such Second Tier Condominium Association Unit. Should any Second Tier Condominium Instrument fail to so specify a method of apportionment, assessments shall be apportioned equally among all Second Tier Condominium Units created pursuant to such Second Tier Condominium Instruments. Any Second Tier Declaration imposed on any one or more of the Residential Units also shall provide for the maintenance of a reserve fund as specified in the budget for the Association in order to avoid undue hardship on individual residential owners when the Association incurs major repair obligations or capital expenditures for the repair or replacement of or capital improvements to the Common Elements.

Section 5. Lien Rights Preserved. The imposition of Second Tier Condominium Instruments shall in no way limit, abridge, allocate or otherwise affect the assessment and lien rights of the Association with respect to the Units provided for in Article XXIII hereof.

Section 6. Restrictions on Amendments to Second Tier Declaration. No amendment to any Second Tier Declaration that modifies, amends or deletes any provision required by this Declaration or otherwise contravenes the provisions of this Declaration will be effective without the Written Consent of all of the Unit Owners.

## ARTICLE V.

### DEVELOPMENT RIGHTS

Section 1. Addition of Real Estate to Condominium; Creation of Additional Units, Common Elements and Limited Common Elements. Declarant hereby reserves the right (BUT NOT THE OBLIGATION) for forty (40) years from the date of recording of this Declaration to add additional real estate to the Condominium, and to create upon such additional real estate additional Units, Common Elements and Limited Common Elements, all without the consent of any Unit Owner or mortgagee. In addition, Declarant hereby reserves the right for forty (40) years from the date of recording of this Declaration to create additional Units, Common Elements and Limited Common Elements by completing any contemplated improvements shown on any plat or plan of the Condominium now or hereafter recorded and labeled either "MUST BE BUILT" or "NEED NOT BE BUILT." In the event Declarant elects to create additional Units either by adding additional real estate to the Condominium or by completing such contemplated improvements, such expansion could result in the addition of up to twenty-six (26) additional Units. The total number of Units in the Condominium shall not exceed thirty (30). Additional real estate, if added to the Condominium, will be located within the land described in Exhibit C attached hereto and incorporated herein by reference. Declarant shall have no obligation of any kind to add any or all of the additional real estate described herein to the Condominium. Any and all of the Development Rights reserved under this Article V may be exercised as to any, all or none of the real estate described in the Plan of Condominium and Exhibit C of this Declaration, at different times and from time to time, and in any sequence, all in the sole discretion of the Declarant.

Section 2. Amendment to Declaration. In the event Declarant exercises any of its development rights under Section 1 of this Article, Declarant shall prepare, execute with the same formalities as a deed, and record an amendment to this Declaration in the New Hanover County Registry, such amendment to refer specifically to the recording data identifying this Declaration. The amendment shall assign an identifying number to any new Unit created thereby and designate any new Unit as either a Residential Unit or a Retail Unit, describe any new Unit, Common Elements and/or Limited Common Elements created thereby and, in the case of the latter, designate the Unit(s) to which such Limited Common Elements are reserved. If appropriate, the amendment shall reallocate the Allocated Interest in the Common Elements among all Units then located in the Condominium in accordance with Section 4 below.

Section 3. Amendment to Plan of Condominium. In addition to the execution and recordation of the amendment to the Declaration described above, Declarant shall record in the New Hanover County Registry, either new plats and plans of the Condominium evidencing the changes affected by Declarant's exercise of its development rights, or new certifications of the plats and plans previously recorded if the Condominium continues to conform to those plats and plans. Upon recordation in the New Hanover County Registry Unit Ownership File for the Condominium, any such plats and plans shall become a part of the Plan of Condominium as herein defined.

Section 4. Reallocation of Allocated Interest, Common Expense Liability and Votes in the Association. In the event Declarant elects to add additional real estate to the Condominium or completes any contemplated improvements shown on any plat or plan of the Condominium now or hereafter recorded and labeled either "MUST BE BUILT" or "NEED NOT BE BUILT," and thereby creates additional Units, then the Allocated Interest in the Common Elements appurtenant to each Unit may change. If Declarant elects to create any additional Residential Unit(s), the Allocated Interest in the Common Elements appurtenant to each Residential Unit will be determined by multiplying one-third ( $1/3^{\text{rd}}$ ) times the ratio produced by dividing the estimated number of square feet of floor area contained in that Residential Unit as set forth in the Plan of Condominium (which number, absent gross error, conclusively shall be deemed the actual number of square feet of floor area contained in such Unit) by the aggregate number of square feet of floor area contained in all Residential Units then a part of the Condominium. If Declarant elects to create any additional Retail Unit(s), the Allocated Interest in the Common Elements appurtenant to each Retail Unit will be determined by multiplying two-third ( $2/3^{\text{rd}}$ ) times the ratio produced by dividing the estimated number of square feet of floor area contained in that Retail Unit as set forth in the Plan of Condominium (which number, absent gross error, conclusively shall be deemed the actual number of square feet of floor area contained in such Unit) by the aggregate number of square feet of floor area contained in all Retail Units then a part of the Condominium.

Section 5. No Representations Regarding any Additional Property, Units or Common Elements added to the Condominium. The types of buildings and the architectural style, size and construction quality of any Units added to the Condominium pursuant to this Article V, Section A may differ from the existing Condominium Buildings and Units.

Section 6. Right to Attach and Connect Additional Building Improvements to Existing Improvements. Declarant specifically reserves the right (BUT NOT THE OBLIGATION) for forty (40) years from the date of recording of this Declaration to connect and attach to the existing Condominium Buildings any additional building improvements constructed by Declarant and added to the Condominium pursuant to the rights reserved in Section 1 of this Article, and to use the structural elements of each existing Condominium Building for support of any addition, and to otherwise alter,

modify and/or improve each such Building as deemed necessary by Declarant to allow for such addition and its incorporation into the Condominium, including, without limitation, the creation of one or more means of access to and from the interior of any existing Condominium Building and the interior of the additional building improvements. In the event Declarant connects or attaches additional building improvements to any existing Condominium Building, Declarant shall prepare, execute with the same formalities as a deed, and record an amendment to this Declaration in the New Hanover County Registry, such amendment to refer specifically to the recording data identifying this Declaration. The amendment shall include a revised Plan of Condominium for all effected portions of the Condominium and may create and identify new Common Elements and Limited Common Elements.

Section 7. Right to Connect Skywalk. Declarant specifically reserves the right (BUT NOT THE OBLIGATION) for forty (40) years from the date of recording of this Declaration to connect and attach to the second or third level of any Condominium Building any skywalk extending from parking facilities serving the Residential Units, and to use the structural elements of each existing Condominium Building for support of any such skywalks, and to otherwise alter, modify and/or improve each such Building as deemed necessary by Declarant to allow for use of any such skywalk by the Owners and occupants of the Residential Units. In the event Declarant connects or attaches any skywalk to any existing Condominium Building, Declarant shall prepare, execute with the same formalities as a deed, and record an amendment to this Declaration in the New Hanover County Registry, such amendment to refer specifically to the recording data identifying this Declaration. The amendment shall include a revised Plan of Condominium for all effected portions of the Condominium and may create and identify new Common Elements and Limited Common Elements.

Section 8. Right to Construct Decking. Declarant specifically reserves the right (BUT NOT THE OBLIGATION) for forty (40) years from the date of recording of this Declaration to construct one or more decks (the "Decks") as shown on the Plan of Condominium and labeled "NEED NOT BE BUILT," which Decks collectively may cover up 7,187 square feet, together with related structural components and elements of support and attachment. In the event Declarant constructs either or both of the Decks, Declarant shall prepare, execute with the same formalities as a deed, and record an amendment to this Declaration in the New Hanover County Registry, such amendment to refer specifically to the recording data identifying this Declaration. The amendment shall include a revised Plan of Condominium for all effected portions of the Condominium and shall identify the Decks as a Limited Common Element appurtenant to the Residential Unit to which it is attached.

ARTICLE VI.

THE CONDOMINIUM SUBJECT TO MATTERS OF RECORD

The Units, Common Elements and Limited Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use thereof and setting forth the obligations and responsibilities incident to ownership of each Unit and its Allocated Interest in the Common Elements, and said Units, Common Elements and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the land and improvements of the Condominium. Listed on Exhibit D, attached hereto and incorporated herein by this reference, is the recording data for all restrictions, easements and licenses which have been recorded prior to this Declaration and which now affect the Condominium.

ARTICLE VII.

PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON ELEMENTS;  
CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS;  
RESTRAINT ON SEPARATION AND PARTITION OF COMMON ELEMENTS

The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Unit Owners for their use and the use of their tenants and other residents or occupants of the Condominium, their employees, invitees and guests, for all proper and normal purposes, and for the furnishing of services and facilities for which the Common Elements are reasonably intended. Notwithstanding anything above provided in this Article, the Association shall have the exclusive right to establish the rules and regulations pursuant to which Unit Owners, their tenants and other residents and occupants of the Condominium, their employees, invitees and guests, may be entitled to use the Common Elements.

Portions of the Common Elements may be conveyed or subjected to a security interest, only in accordance with the provisions of the Act; provided, however, no such conveyance or encumbrance shall interfere with or obstruct ingress, egress and regress to, or from, the Units, drainage or erosion control facilities serving the Condominium or utility service to the Units. Notwithstanding the foregoing, however, the Association shall have the authority and power to grant such non-exclusive easements, leases, licenses, and concessions through or over the Common Elements as the Executive Board of the Association may deem in the best interest of the Unit Owners and the Association without a vote or the consent of the Unit Owners or the holders of first mortgage or deed of trust liens.