

**BK: RB 6275**  
**PG: 2336 - 2366**

2020000666

NC FEE \$90.00

RECORDED:

01/08/2020

09:13:13 AM

BY: ANGELA ENGLISH  
DEPUTY

**NEW HANOVER COUNTY,**

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

EXTX \$0.00

ELECTRONICALLY RECORDED

Prepared by and Return to:

Fuss Law Firm, PC  
1904 Eastwood Road  
Suite 315  
Wilmington NC 28403

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**DECLARATION OF MENDENHALL VENTURES CONDOMINIUM**

**4 BEA LLC,  
Developer and Declarant**

## TABLE OF CONTENTS

|   |          |
|---|----------|
| <b>ARTICLE 1. ESTABLISHMENT OF CONDOMINIUM.....</b>   | <b>1</b> |
| <b>ARTICLE 2. SURVEY PLATS AND PLANS .....</b>  | <b>2</b> |
| <b>ARTICLE 3. DEFINITIONS.....</b>  | <b>2</b> |
| SECTION 3.1 ACT.....  | 2        |
| SECTION 3.2 ARTICLES OF INCORPORATION. ....   | 2        |
| SECTION 3.3 ASSOCIATION. ....   | 2        |
| SECTION 3.4 ASSOCIATION DOCUMENTS.....  | 2        |
| SECTION 3.5 BOARD OF DIRECTORS OR BOARD. ....   | 2        |
| SECTION 3.6 BYLAWS. ....  | 2        |
| SECTION 3.7 COMMON ELEMENTS. ....   | 2        |
| SECTION 3.8 COMMON EXPENSES. ....   | 3        |
| SECTION 3.9 CONDOMINIUM.....  | 3        |
| SECTION 3.10 CONDOMINIUM UNITS.....   | 3        |
| SECTION 3.11 DECLARANT. ....  | 3        |
| SECTION 3.12 DECLARATION. ....  | 3        |
| SECTION 3.13 DIRECTOR.....  | 3        |
| SECTION 3.14 LIMITED COMMON ELEMENTS.....   | 3        |
| SECTION 3.15 MEMBER.....  | 3        |
| SECTION 3.16 MORTGAGE. ....   | 3        |
| SECTION 3.17 MORTGAGEE.....   | 3        |
| SECTION 3.18 PERSON. ....   | 3        |
| SECTION 3.19 PROPERTY. ....   | 4        |
| SECTION 3.20 REGISTER OF DEEDS.....   | 4        |
| SECTION 3.21 UNIT OWNER.....  | 4        |
| SECTION 3.22 UPKEEP.....  | 4        |
| SECTION 3.23 USE RESTRICTIONS. ....   | 4        |
| SECTION 3.24 UTILITY COMPANY.....   | 4        |
| <b>ARTICLE 4. ALLOCATION OF COMMON ELEMENT INTERESTS, COMMON EXPENSE LIABILITIES AND VOTES.....</b> | <b>4</b> |
| SECTION 4.1 COMMON ELEMENTS ALLOCATION.....   | 4        |
| SECTION 4.2 COMMON EXPENSE ALLOCATION.....  | 4        |
| SECTION 4.3 VOTING ALLOCATION.....  | 4        |
| <b>ARTICLE 5. PLAN OF DEVELOPMENT, USE RESTRICTIONS AND ENCUMBRANCES .....</b>                      | <b>5</b> |
| SECTION 5.1 PLAN OF DEVELOPMENT; APPLICABILITY; EFFECT. ....  | 5        |
| SECTION 5.2 AUTHORITY TO PROMULGATE RULES .....   | 5        |
| SECTION 5.3 OWNERS' ACKNOWLEDGMENT.....   | 5        |
| SECTION 5.4 USE RESTRICTIONS.....   | 5        |
| SECTION 5.5 EXCLUSIVE USE RESTRICTION. ....   | 6        |
| SECTION 5.6 RESTRAINT ON TRANSFER OF UNITS AS TIMESHARES.....                                       | 7        |
| <b>ARTICLE 6. EASEMENTS.....</b>  | <b>7</b> |
| SECTION 6.1 EASEMENTS-COMMON AREAS .....  | 7        |

SECTION 6.2 EASEMENTS-UNITS ..... 7

**ARTICLE 7. EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS..... 7**

SECTION 7.1 EXISTING ENCROACHMENTS .....7

SECTION 7.2 RECONSTRUCTION.....7

**ARTICLE 8. ADMINISTRATION OF THE CONDOMINIUM BY MENDENHALL VENTURES CONDOMINIUM ASSOCIATION..... 8**

SECTION 8.1 CREATION/ORGANIZATION .....8

SECTION 8.2 MEMBERS.....8

SECTION 8.3 ADMINISTRATION BY ASSOCIATION.....8

**ARTICLE 9. ASSOCIATION RIGHTS, OBLIGATIONS AND SERVICES. .... 8**

SECTION 9.1 IMPLIED RIGHTS; BOARD AUTHORITY.....8

SECTION 9.2 DEDICATION OF COMMON ELEMENTS.....8

SECTION 9.3 DISCLAIMER OF LIABILITY.....8

**ARTICLE 10. RIGHT OF ENTRY IN EMERGENCIES..... 9**

**ARTICLE 11. RIGHT OF ENTRY FOR MAINTENANCE OF COMMON ELEMENTS OR OTHER UNITS..... 9**

**ARTICLE 12. LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY UNITS; NO RIGHT TO ALTER COMMON ELEMENTS..... 9**

SECTION 12.1 ALTERATION OF UNITS.....9

SECTION 12.2 COMMON ELEMENTS APPURTENANT TO UNITS.....9

SECTION 12.3 CONSENT TO MODIFICATION OF UNITS.....10

SECTION 12.4 INDEMNIFICATION-UNIT MODIFICATION.....10

**ARTICLE 13. MAINTENANCE AND REPAIR BY OWNERS OF UNITS..... 10**

SECTION 13.1 OWNER UPKEEP OF UNITS.....10

SECTION 13.2 MAINTENANCE-INSURANCE PROCEEDS.....11

SECTION 13.3 LIMITED COMMON ELEMENTS.....11

**ARTICLE 14. MAINTENANCE AND REPAIR OF COMMON ELEMENTS BY THE ASSOCIATION..... 11**

SECTION 14.1 ASSOCIATION UPKEEP OF COMMON ELEMENTS .....11

SECTION 14.2 DAMAGE CAUSED BY OWNER.....11

SECTION 14.3 LIABILITY FOR DAMAGE.....12

**ARTICLE 15. AUTHORITY TO PURCHASE INSURANCE ..... 12**

**ARTICLE 16. INSURANCE COVERAGE TO BE MAINTAINED; USE AND DISTRIBUTION OF INSURANCE PROCEEDS .. 12**

SECTION 16.1 INSURANCE COVERAGES.....12

SECTION 16.2 PREMIUMS - COMMON EXPENSES.....12

SECTION 16.3 DEDUCTIBLES.....13

SECTION 16.4 INSURANCE CLAIM ADJUSTMENT.....13

SECTION 16.5 MORTGAGEE-INSURANCE PROCEEDS.....13

SECTION 16.6 USE OF INSURANCE PROCEEDS.....13

SECTION 16.7 INSURANCE POLICY REQUIREMENTS.....13

SECTION 16.8 INSURANCE COVERAGE-BETTERMENTS.....14

SECTION 16.9 INSURANCE AVAILABILITY NOTIFICATION.....14

SECTION 16.10 FIDELITY INSURANCE.....14

**ARTICLE 17. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE ..... 14**

SECTION 17.1 RECONSTRUCTION-COSTS.....14

SECTION 17.2 ESTIMATES OF REPLACEMENT COSTS .....14  
 SECTION 17.3 PRIORITY OF REPAIR.....15  
 SECTION 17.4 ASSOCIATION RIGHT TO INSURANCE ADJUSTMENTS.....15  
**ARTICLE 18. ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES ..... 15**  
 SECTION 18.1 REGISTER OF OWNERS AND MORTGAGEES. ....15  
 SECTION 18.2 MORTGAGE PROVISIONS.....15  
**ARTICLE 19. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT ..... 16**  
 SECTION 19.1 LEVY OF ASSESSMENTS. ....16  
 SECTION 19.2 ASSESSMENTS - LIMITED COMMON ELEMENTS. ....16  
 SECTION 19.3 PAYMENT OF ASSESSMENTS. ....16  
 SECTION 19.4 ASSOCIATION BUDGET. ....16  
 SECTION 19.5 CAPITAL IMPROVEMENT FUND.....17  
 SECTION 19.6 ASSESSMENTS-ASSOCIATION PROPERTY. ....17  
 SECTION 19.7 DELINQUENT ASSESSMENTS. ....17  
 SECTION 19.8 LIABILITY FOR ASSESSMENTS.....18  
 SECTION 19.9 LIEN FOR ASSESSMENTS. ....18  
 SECTION 19.10 STATEMENT OF ASSESSMENT STATUS. ....19  
 SECTION 19.11 ELECTION OF COLLECTION REMEDIES. ....19  
**ARTICLE 20. COMPLIANCE AND ENFORCEMENT ..... 19**  
 SECTION 20.1 GENERAL REMEDIES. ....19  
 SECTION 20.2 ENFORCEMENT/SANCTIONS. ....20  
 SECTION 20.3 HEARING PROCEDURES AND SANCTIONS .....20  
 SECTION 20.4 SELF HELP REMEDIES .....20  
 SECTION 20.5 CUMULATIVE REMEDIES/ATTORNEYS' FEES.....20  
 SECTION 20.6 ASSOCIATION'S RIGHT NOT TO TAKE ACTION.....21  
 SECTION 20.7.....21  
**ARTICLE 21. COMMON SURPLUS..... 21**  
**ARTICLE 22. TERMINATION ..... 21**  
**ARTICLE 23. AMENDMENT OF DECLARATION OF CONDOMINIUM ..... 21**  
**ARTICLE 24. CONFLICT WITH CONDOMINIUM ACT; SEVERABILITY ..... 22**  
**ARTICLE 25. LIBERAL CONSTRUCTION..... 22**  
**ARTICLE 26. DECLARATION BINDING ON ASSIGNS AND SUBSEQUENT OWNERS ..... 23**  
**ARTICLE 27. ASSOCIATION RECORDS/INSPECTION ..... 23**  
**ARTICLE 28. CONDEMNATION ..... 23**  
**ARTICLE 29. TAXES ..... 23**  
**ARTICLE 30. LITIGATION ..... 23**

THIS DECLARATION OF MENDENHALL VENTURES CONDOMINIUM (hereinafter referred to as the "Declaration"), is made as of the 18<sup>th</sup> day of December, 2019, by 4 Bea, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant"), pursuant to the provisions of Chapter 47C of the General Statutes of the State of North Carolina (sometimes hereinafter referred to as the "Condominium Act" or the "Act") to All Prospective Purchasers or Owners of property described herein;

**WITNESSETH:**

WHEREAS, Declarant is the owner in fee simple of certain real estate located in New Hanover County, North Carolina, said real estate being more particularly described on Exhibit A attached hereto and incorporated herein by reference; and,

WHEREAS, Declarant has constructed on the property described on Exhibit A one (1) building, containing two (2) condominium units, and appurtenant facilities; and,

WHEREAS, it is the desire of the Declarant to submit the property described on Exhibit A, together with the improvements thereon constructed and easements appurtenant thereto, to the provisions of the Act to provide for the condominium form of ownership; and,

WHEREAS, Declarant hereby establishes by this Declaration a plan for the individual ownership of condominium units and the co-ownership by individual and separate owners thereof, as tenants in common, of all of the remaining property in the condominium (all portions of the Condominium except the condominium units hereinafter being referred to as "Common Elements").

NOW, THEREFORE, Declarant does hereby declare that the property described on Exhibit A attached hereto and incorporated herein by reference shall be held, conveyed, encumbered, used, occupied, improved, sold, mortgaged, and otherwise conveyed subject to the rules, regulations, restrictions, covenants, conditions, uses and obligations set forth in this Declaration. All such rules, regulations, restrictions, covenants, conditions, uses and obligations are declared and agreed to be in furtherance of a plan for the creation of the Condominium and the use, enjoyment and rental of condominium units and shall be deemed to run with the land and be a burden on and a benefit to the Declarant, its successors and assigns, and on and to any Person acquiring or owning any interest in the real property in the Condominium and any improvements thereto, and such parties' grantees, successors, heirs, assigns, executors, administrators and devisees. Individual Owners, their employees, guests, tenants and all persons using or possessing any property within the Condominium are subject to the provisions of this Declaration.

**ARTICLE 1.  
ESTABLISHMENT OF CONDOMINIUM**

On that property described on Exhibit A, attached hereto and incorporated herein by reference, there exists a building containing two (2) Units, and other appurtenant improvements. Declarant does hereby submit the real property, and the improvements lying within the land area described on Exhibit A to condominium ownership under the provisions of the Act, and hereby declares the same to be a condominium to be known and identified as "Mendenhall Ventures Condominium." The maximum number of Units which the Declarant reserves the right to create is two (2). No

additional real estate will be allocated subsequently as Limited Common Elements. The Condominium is located in New Hanover County, North Carolina.

## **ARTICLE 2. SURVEY PLATS AND PLANS**

A survey of the land and plat and plans of the improvements constituting the Condominium identifying the Units, the Common Elements and the Limited Common Elements, as said terms are herein defined, and containing the information required by N.C. Gen. Stat. § 47C-2-109(b) and (c) is recorded in the office of the Register of Deeds of New Hanover County in the map book identified in Exhibit "B", said survey and plat and plans being incorporated herein by reference. Said survey and plat and plans are sometimes collectively referred to herein as Exhibit "B". Each Unit is identified by a specific number on Exhibit "B", and no Unit bears the same number as any other Unit. The Units are numbered 1-2 as shown on Exhibit "B".

## **ARTICLE 3. DEFINITIONS**

As used in this Declaration and the exhibits attached hereto, the Bylaws, the Articles of Incorporation, and all amendments thereof, unless the context requires otherwise, the following definitions shall prevail:

**Section 3.1 Act.** "Act" means Chapter 47C of the General Statutes of North Carolina designated as the North Carolina Condominium Act.

**Section 3.2 Articles of Incorporation.** "Articles of Incorporation" means the Articles of Incorporation for Mendenhall Ventures Condominium Association filed in the office of the Secretary of State of North Carolina.

**Section 3.3 Association.** "Association" means the Owners association organized pursuant to the Act and incorporated under Chapter 55A of the General Statutes of North Carolina, and shall be known as Mendenhall Ventures Condominium Association and its successor.

**Section 3.4 Association Documents.** "Association Documents" means collectively the Articles of Incorporation, the Bylaws, this Declaration, the Rules and Regulations adopted by the Association, and resolutions of the Board of Directors, all as may be amended, restated and revised from time to time. Any exhibit, schedule, or amendment to an Association Document shall be considered a part of that document.

**Section 3.5 Board of Directors or Board.** "Board of Directors" or "Board" means the body responsible for administration of the Association selected as provided in the Bylaws.

**Section 3.6 Bylaws.** "Bylaws" means the Bylaws of the Association as they may be amended from time to time.

**Section 3.7 Common Elements.** "Common Elements" means and comprise (i) all of the real property, improvements and facilities of the Condominium excluding however the Units as herein defined, (ii) all personal property and equipment held and maintained for the joint use and enjoyment of all the Owners of Units, and (iii) all permits for construction, maintenance and operation of the Condominium held by the Association.

Notwithstanding this definition, to the extent that the provisions of the Act apply to "Common Elements," including, without limitation, the provisions of Section 47C-3-112, those provisions shall apply only to the "Common Elements" as defined in the Act.

**Section 3.8 Common Expenses.** "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

**Section 3.9 Condominium.** "Condominium" means the Property described on Exhibit A, easements appurtenant to the Property, all buildings and improvements existing thereon or hereinafter constructed thereon, and any portions of the Development Property, and buildings and improvements thereon, which may be submitted to this Declaration and added to the Condominium.

**Section 3.10 Condominium Units.** "Condominium Units" or "Units," as such terms are used herein, means a physical portion of the Condominium designated for separate ownership, the boundaries of which are hereinafter defined and shown on Exhibit B. The walls, floors, and ceilings of the Units hereby are designated as the boundaries of each respective Unit. Except as otherwise modified herein, the provisions of N.C. Gen. Stat. § 47C-2-102(1), (2), (3), and (4) are incorporated herein by reference.

**Section 3.11 Declarant.** "Declarant" means 4 BEA, LLC, its successors and assigns.

**Section 3.12 Declaration.** "Declaration" means this instrument and any amendments thereto.

**Section 3.13 Director.** "Director" means a member of the Board of the Association.

**Section 3.14 Limited Common Elements.** "Limited Common Elements" means those portions of the Common Elements allocated by operation of N.C. Gen. Stat. § 47C-2-102 for the exclusive use of one or more but fewer than all of the Units, including, without limitation, those portions of the Common Elements described in this Declaration as Limited Common Elements and those portions of the Common Elements designated as Limited Common Elements on Exhibit B. More specifically, all parking spaces shall be designated as Limited Common Elements as recorded in the New Hanover County Register of Deeds Condo Book 19 Page 111-113, along with any updated plats that shall be recorded with the New Hanover County Register of Deeds.

Supplementing the provisions of N.C. Gen. Stat. § 47C-2-102(4), all exterior doors and door frames, exterior windows and window frames, and all related components of the exterior doors and exterior windows including glass, panes and screens, shall be Limited Common Elements, and are specifically allocated to the Units in which they are installed.

**Section 3.15 Member.** "Member" means a Person having membership in the Association consistent with Article 8 of this Declaration.

**Section 3.16 Mortgage.** "Mortgage" means a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

**Section 3.17 Mortgagee.** "Mortgagee" means a beneficiary or holder of a Mortgage.

**Section 3.18 Person.** "Person" means a natural person, limited liability company, corporation, business trust, estate, trust, partnership, association, joint venture, government,

governmental subdivision or agency, or other legal or commercial entity or any combination thereof.

**Section 3.19 Property.** "Property" means the real estate described on Exhibit A, together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

**Section 3.20 Register of Deeds.** "Register of Deeds" means the office of the Register of Deeds of New Hanover County, North Carolina.

**Section 3.21 Unit Owner.** "Unit Owner" or "Owner" means any Person owning one or more Units, but shall not include a Mortgagee unless such Mortgagee has acquired title pursuant to foreclosure or some other process in lieu of foreclosure.

**Section 3.22 Upkeep.** "Upkeep" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

**Section 3.23 Use Restrictions.** "Use Restrictions" means the rules and use restrictions more fully defined as set forth in Section 5.4.

**Section 3.24 Utility Company.** "Utility Company" means a public or private company or entity duly licensed and authorized by the North Carolina Utilities Commission to provide utility services within a specified franchise area and any entity providing utility services on behalf of a body politic, municipality or other governmental body or entity.

Any word not defined herein, unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meaning set out in N.C. Gen. Stat. § 47C-1-103.

#### **ARTICLE 4. ALLOCATION OF COMMON ELEMENT INTERESTS, COMMON EXPENSE LIABILITIES AND VOTES**

**Section 4.1 Common Elements Allocation.** Each Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit also shall own, as an appurtenance to the ownership of said Unit, an undivided interest in the Common Elements. The proportional interest in the Common Elements allocated to each of the Units which presently exists, subject to amendment as provided herein, shall be equal for each Unit.

**Section 4.2 Common Expense Allocation.** The portion of the Common Expenses of the Association is allocated equally to each Unit.

**Section 4.3 Voting Allocation.** The vote in the Association allocated to each Unit shall be equal and shall be one (1) vote per Unit. The allocations in the Article are set forth on Exhibit C, attached hereto. The process for resolving any deadlocks shall be governed by the By-laws of the Association.

**ARTICLE 5.  
PLAN OF DEVELOPMENT, USE RESTRICTIONS AND ENCUMBRANCES**

**Section 5.1 Plan of Development; Applicability; Effect.** Declarant has established a general plan of development and occupancy for the Property under this Declaration in order to protect all Owners' collective interests subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the community. This Declaration and the rules and resolutions adopted by the Board or the Members establish affirmative and negative covenants, easements, and restrictions on the Property.

All provisions of the Association Documents shall apply to all Owners, their occupants, tenants, guests and invitees.

**Section 5.2 Authority to Promulgate Rules**

(a) Subject to the terms of this Article and in accordance with its duty of care and undivided loyalty to the Association and its Members, the Board may adopt additional rules not inconsistent with the Use Restrictions set forth in this Declaration, and other such rules and regulations permitted by, and not inconsistent with, the Act.

(b) The Board shall send a copy of the rule to each Owner specifying the effective date of such rule within a reasonable period of time, as determined by the Board, prior to the effective date of the rule. The Association shall provide, without cost, a copy of the rules then in effect to any requesting Member or Mortgagee.

(c) Nothing in this Article shall authorize the Board to modify, repeal or expand the Association Documents except as such documents may be amended as provided therein.

**Section 5.3 Owners' Acknowledgment.** All Owners are subject to the Use Restrictions and are given notice that (a) their ability to use their privately-owned property is limited thereby, and (b) the Board may adopt, delete, modify, create exceptions to, or amend the rules.

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

**Section 5.4 Use Restrictions.** The following restrictions shall apply to all of the Property until such time as they are amended, modified, repealed or limited pursuant to the Declaration:

(a) **Use.** All Units are restricted to non-residential use and may only be used for medical, dental, or professional offices.

(b) **Restricted Activities.** The following activities are prohibited within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

- (i) Any activity which violates local, state or federal laws or regulations;
- (ii) Outdoor storage of goods, materials, or equipment;

- (iii) Any activity which would constitute a public or private nuisance; and
  - (iv) Any activities which materially disturb or destroy the vegetation, or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution.
- (c) Prohibited Uses. The following uses of Units are prohibited:
- (i) Tattoo parlor;
  - (ii) Adult book or adult video store (which are defined as stores in which any portion of the inventory is not available for sale or rental to children under 18 years old because such inventory explicitly deals with or depicts human sexuality);
  - (iii) Sale or display of (i) paraphernalia designed for the use of illegal drugs or (ii) pornographic material (applying local community standards as provided by law);
  - (iv) Gun range or gun shop;
  - (v) Vaping parlor or hookah bar;
  - (vi) Any use that would be considered inconsistent with medical, dental, or professional office use;
  - (vii) Any use which is inconsistent with applicable zoning or is prohibited or restricted by other recorded covenants, conditions, restrictions or easements.
- (d) Prohibited Conditions. Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair shall not be permitted on the Property.

In addition to the restrictions set forth above, the Units and Common Elements are declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the land and improvements of the Condominium including those set forth in the Deed recorded in Book 5933, Page 2698-2702 in the office of the Register of Deeds of New Hanover County.

#### **Section 5.5 Exclusive Use Restriction.**

(a) The Owner of Unit A shall be permitted to operate a pediatric dental practice in Unit A; and so long as the Owner of Unit A operates Unit A as a pediatric dental practice, no other Unit in Mendenhall Ventures Condominium may be used for the purpose of a pediatric dental practice, whether the pediatric dental practice constitutes all or only a portion of the use, without the Owner of Unit A's written consent which consent may be withheld in the Owner of Unit A's sole discretion.

(b) The Owner of Unit B shall be permitted to operate a general dental practice in Unit B; and so long as the Owner of Unit B operates Unit B as a general dental practice, no other Unit in Mendenhall Ventures Condominium may be used for the purpose of a general dental practice,

whether the general dental practice constitutes all or only a portion of the use, without the Owner of Unit B's written consent which consent may be withheld in the Owner of Unit B's sole discretion.

**Section 5.6 Restraint on Transfer of Units as Timeshares.** No Owner shall transfer any portion of or all of his interest in a Unit for a timesharing, fractional interest sharing or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years.

## **ARTICLE 6. EASEMENTS**

**Section 6.1 Easements - Common Areas.** Subject to the provisions of N.C. Gen. Stat. § 47C-3-112, all of the Common Elements, except the Limited 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 Owners of Units in the Condominium for their use and the use of their tenants, guests, invitees and customers, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended for the use and enjoyment of the Units.

**Section 6.2 Easements - Units.** Each Owner hereby is granted a perpetual easement to locate heating and air conditioning systems and related equipment and other utilities upon the Common Elements. When so located, such heating and air conditioning systems, utilities, related pipes, ducts, conduits, wires and related facilities and equipment shall become and be deemed to be a part of the respective Unit to which they are affixed or serve. Prior to installing any heating and air conditioning systems, utilities or any facilities and equipment in the Common Elements, the Owner shall obtain the consent of the Association as provided in Article 12 herein. This provision shall not apply to the heating and air conditioning systems and facilities and underground propane tanks which are presently located in the Common Elements and any replacements thereto or any heating and air conditioning systems and facilities and underground propane tanks.

## **ARTICLE 7. EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS**

**Section 7.1 Existing Encroachments.** In the event that any Unit shall encroach upon any Common Elements for any reason not caused by the purposeful or negligent act of the Owner, or agents of such Owner, then an easement appurtenant to such Unit shall exist for the continuance of such encroachment upon the Common Elements for so long as such encroachment naturally shall exist. In the event that any portion of the Common Elements shall encroach upon any Unit, then an easement shall exist for the continuance of such encroachment of the Common Elements upon any Unit for so long as such encroachment naturally shall exist.

**Section 7.2 Reconstruction.** If any Unit or Common Elements shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such Unit and/or Common Elements in accordance with Article 17 hereof, there exist encroachments of portions of the Common Elements upon any Unit, or of any Unit upon any portion of the Common Elements, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments naturally shall remain.

**ARTICLE 8.  
ADMINISTRATION OF THE CONDOMINIUM BY MENDENHALL VENTURES  
CONDOMINIUM ASSOCIATION**

**Section 8.1 Creation/Organization.** To efficiently and effectively provide for the administration of the Condominium by the Owners of the Units, an association of all Owners has been incorporated pursuant to Chapter 55A of the General Statutes of North Carolina known and designated as Mendenhall Ventures Condominium Association.

**Section 8.2 Members.** The Owner or Owners of each Unit automatically shall become members of said Association upon his, their or its acquisition of an ownership interest in title to any Unit and its appurtenant undivided interest in Common Elements, and the membership of such Owners or Owner shall terminate automatically upon such Owner or Owners being divested of such ownership interest in the title to such Unit, regardless of the means by which such ownership may be divested. No Person 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 Association or to any of the rights or privileges of such membership.

**Section 8.3 Administration by Association.** The Association shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms the Association Documents and the Act. Subject to the provisions of the Act, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, to adopt, promulgate and enforce such rules and regulations governing the use of the Common Elements as the Board of Directors of said Association may deem to be in the best interests of the Association and to exercise such other powers as set forth in N.C. Gen. Stat. § 47C-3-102, including the right to assign future assessments, assessment rights and income of the Association.

**ARTICLE 9.  
ASSOCIATION RIGHTS, OBLIGATIONS AND SERVICES.**

**Section 9.1 Implied Rights; Board Authority.** The Association may exercise any right or privilege given to it expressly by the Association Documents and the Act or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in the Association Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

**Section 9.2 Dedication of Common Elements.** The Association may dedicate or grant easements over portions of the Common Elements, including the grant of easements to any local, state, or federal governmental entity or any Utility Company.

**Section 9.3 Disclaimer of Liability.** Notwithstanding anything contained herein or in the Association Documents or the Act, neither the Association nor the Board shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner of any Lot or any tenant, guest, invitee, or customer of any Owner or for any property of any such Persons. Each Owner of a Unit and each tenant, guest, invitee, and customer of any Owner shall assume all risks associated with the use and enjoyment of the Property.

**ARTICLE 10.  
RIGHT OF ENTRY IN EMERGENCIES**

In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner or other Person in occupancy is present at the time of such emergency, the Board of Directors, or any other Person authorized by it, or the managing agent, shall have the right to enter such Unit, and such Common Elements for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

**ARTICLE 11.  
RIGHT OF ENTRY FOR MAINTENANCE OF COMMON ELEMENTS OR OTHER UNITS**

Whenever it may be necessary to enter any Unit for the purpose of performing any maintenance, alteration or repair to any portion of the Common Elements or adjacent Units, the Owner of each Unit shall permit other Owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice. The Association, its agents, or contractors, may enter a Unit pursuant to this Section for the purpose of inspecting the Unit for vermin, insects, or other pests and for taking reasonable measures to control or exterminate such pests.

**ARTICLE 12.  
LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY UNITS; NO RIGHT TO  
ALTER COMMON ELEMENTS**

**Section 12.1 Alteration of Units.** Subject to the provisions of N.C. Gen. Stat. § 47C-2-111, and to the limitations contained in this Declaration, Units may be altered and Common Elements may be allocated as Limited Common Elements. Units may not be subdivided, but boundaries between adjoining Units may be relocated subject to the provisions of N.C. Gen. Stat. § 47C-2-112.

**Section 12.2 Common Elements Appurtenant to Units.**

(a) The undivided 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 undivided interest in Common Elements appurtenant to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the number designation assigned thereto by the map recorded as aforesaid without limitation or exception, shall be deemed and construed to affect the entire Unit and its appurtenant undivided interest in the Common Elements. Subject to the Timesharing Prohibition included in the Use Restrictions, nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its appurtenant undivided interest in the Common Elements by more than one Person as tenants in common, joint tenants or as tenants by the entirety.

(b) Recognizing that the proper use of a Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Elements in common with the Owners of all other Units, and that it is in the interest of all Owners that the ownership of the Common Elements be retained in common by the Owners, it is hereby declared that the proportional undivided interest

in the Common Elements appurtenant to each Unit shall remain undivided and no Owner shall bring or have any right to bring any action for partition or division of the Common Elements.

**Section 12.3 Consent to Modification of Units.** No Owner of a Unit shall permit any modification or alteration to be made to a Unit, or any alteration, betterment or improvement to the Limited Common Elements appurtenant to a Unit, without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in its sole discretion, that such modifications, alterations, betterments or improvements would adversely affect or in any manner endanger the Condominium, in partial or in its entirety, or any other Unit. No Owner shall cause any improvements or changes to be made to any Unit or building (other than interior painting or other interior decoration) including the installation of electrical wiring, television or radio antennae or any other objects, machines or equipment which may protrude through the walls or roof of any Unit or building, or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. Such consent shall not be unreasonably withheld. No Owner shall cause any object to be affixed to the Common Elements or in any manner change the appearance of the Common Elements without the written consent of the Association being first obtained.

In the event the Association shall grant its consent for such improvements or changes to be made, such improvements, including but not limited to all antennae and other objects, machines or equipment which may protrude through the walls or roof shall become and be deemed to be a part of the Unit to which they are affixed. As a condition to the granting of written consent of the Association to an Owner for the installation of any improvements within the Limited Common Elements assigned to such Owner's Unit, the obligation of Upkeep of such Limited Common Elements, and any improvements and betterments installed therein, shall be deemed to be the obligation of such Owner at the cost and expense of such Owner, and the Association shall have no further obligation to provide such Upkeep or bear the cost thereof as otherwise set forth in this Declaration.

**Section 12.4 Indemnification - Unit Modification.** The Board of Directors of the Association, in its sole discretion, may require an Owner desiring to add betterments or improvements to his Unit or the Limited Common Elements appurtenant to his Unit to indemnify the other Owners and the Association against any and all loss, cost and expense that may be occasioned by the addition of such betterments or improvements and further may require such Owner to obtain liability insurance naming the other Owners and the Association as additional insureds in such amounts and upon such terms as the Board of Directors shall determine.

### **ARTICLE 13. MAINTENANCE AND REPAIR BY OWNERS OF UNITS**

**Section 13.1 Owner Upkeep of Units.** Every Owner shall perform promptly all Upkeep within his Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, or adversely impair the ability to rent such Owner's Unit or any other Unit, and every Owner shall be expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Unit shall be liable and responsible for the Upkeep of all air conditioning and heating equipment, fans or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service solely to his Unit. Such Owner further shall be responsible and liable

for the Upkeep of the surfaces of any and all walls, ceilings and floors in the interior of his Unit including painting, decorating and furnishings, and all other accessories in his Unit.

**Section 13.2 Maintenance - Insurance Proceeds.** Whenever the Upkeep of any item for which the Owner of a Unit is obligated to perform at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of performing such Upkeep, except that the Owner of such Unit shall be, in said instance, required to pay such portion of the costs of such Upkeep as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such Upkeep.

**Section 13.3 Limited Common Elements.** Except as otherwise stated herein, all betterments and improvements added to the Limited Common Elements by the Owners are a part of the respective Units and shall be maintained by the respective Owners. The cost of Upkeep of the Limited Common Elements shall be paid by the Owners to whom the exclusive right to use the Limited Common Elements are allocated. Notwithstanding this Section, the Board may, in its reasonable discretion, designate the cost of Upkeep of Limited Common Elements as a Common Expense when said Upkeep is required pursuant to a common plan for the overall Upkeep of the Common Elements.

#### ARTICLE 14.

#### MAINTENANCE AND REPAIR OF COMMON ELEMENTS BY THE ASSOCIATION

**Section 14.1 Association Upkeep of Common Elements.** Other than the Upkeep of Limited Common Elements required by the Owner, the Association shall be responsible for the Upkeep of the Common Elements, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements or in a Unit for the furnishing of utility and/or other services to the Common Elements or other Units. If any incidental damage is caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the Upkeep of any Common Elements, the Association shall, at its expense, repair such incidental damage.

#### Section 14.2 Damage Caused by Owner.

(a) Whenever the Upkeep of any item for which the Association is obligated to perform at its expense is occasioned by any act of an Owner, his tenants, guests, invitees, or customers and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of such Upkeep, except that the Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guest, invitees, or customers) shall be required to pay such portion of the cost of such Upkeep as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such Upkeep.

(b) Whenever the Upkeep of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by an act of an Owner, his tenants, guests or invitees, and such loss or damage is not covered by any insurance maintained in force by the Association, the Owner who is responsible for the act causing the damage (whether done by himself or his tenants, guests or invitees) shall be required to pay the cost of such Upkeep.