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TAMMY THEUSCH BEASLEY

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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF MENDENHALL VENTURES CONDOMINIUM

**4 BEA LLC,
Developer and Declarant**

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THIS DECLARATION OF MENDENHALL VENTURES CONDOMINIUM (hereinafter referred to as the "Declaration"), is made as of the 18th 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.

Section 14.3 Liability for Damage. Establishment of liability for damage caused by the Owner of a Unit or the Association is subject to the provisions of N.C. Gen. Stat. § 47C-3-107(d).

**ARTICLE 15.
AUTHORITY TO PURCHASE INSURANCE**

All required or permitted insurance policies (other than title insurance and insurance on betterments and improvements to the Units and Limited Common Elements, if any) upon the Property (other than the personal property of the Owners) shall be purchased by the Association in the name of the Association, as Trustees for the Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or memoranda of insurance to the Association and to any Owner, mortgagee, or beneficiary of a deed of trust. Each Owner may obtain insurance, at his own expense, affording coverage upon his Unit, his personal property and betterments and for his personal liability as may be permitted or required by law, and such insurance shall, if available, contain a waiver of subrogation as to any claims against Owners, the Association and their respective servants, agents and guests.

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

Section 16.1 Insurance Coverages. The following insurance coverage shall be maintained in full force and effect by the Association:

(a) Casualty insurance covering the Common Elements, and to the extent reasonably available, the Units, including all buildings and all improvements upon the land and all personal property included within the Condominium, except such personal property as may be owned by the Owners, shall be procured in an amount equal to at least eighty percent (80%) of the maximum insurable replacement value thereof (exclusive of land, excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) loss or damage by flood; and, (c) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism and malicious mischief. Casualty insurance obtained for the buildings and improvements shall provide such coverage commonly known as "all-inclusive building" coverage and/or "completed Unit" coverage as such terms are used in the insurance industry, and shall include, but not be limited to, all components of the Units together with fixtures, cabinets, built in appliances and all other such improvements which were part of the original completed Units, except for betterments and improvements installed by the Owner.

(b) Public liability and property damage insurance in such reasonable amounts and covering all occurrences commonly insured against including, death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements, and in such forms as shall be required by the Association, including, but not limited to, legal liability, hired automobiles, non-owned automobile and off-premises employee coverage. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Owners as a group to an Owner.

Section 16.2 Premiums - Common Expenses. Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Owners of Units.

Section 16.3 Deductibles. The deductible, if any, on any insurance policies maintained by the Association shall be paid by the Association as a Common Expense. In the event that the cause of any damage or destruction of any portion of the Condominium originated in or through the Common Elements or an apparatus located within the Common Elements, the Association may assess (i) any deductible amount necessitated by either the intentional act or omission, negligence, abuse, misuse or neglect of an Owner, or his or her guest, tenant, invitee, or customer or the guest, invitee, or customer of said tenant, against such Owner; and (ii) a proportionate share of the deductible amount to any Owner whose Unit is repaired (or which Owner is compensated) by funds from the insurance policies maintained by the Association, based on the proportionate amount of insured loss incurred to the Unit relative to the total insured loss to the Common Elements and other Units. In the event that the cause of any damage or destruction to any portion of the Condominium originated in or through a Unit or any component thereof, then the Owner of said Unit shall pay the deductible under the Association's master casualty policy without regard to whether the Owner was negligent. If an Owner fails to pay the deductible assessed against his or her Unit and the Association pays the deductible cost owed by the Owner, then the deductible cost paid by the Association shall be charged to the Unit as an assessment for which the Association shall have a lien.

Section 16.4 Insurance Claim Adjustment. Any loss covered by the property insurance maintained by the Association shall be adjusted with the Association; provided, however, all insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their Mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association as Trustee. The Trustee shall hold such proceeds in trust for the benefit of the Owners and their respective Mortgagees as their interests may appear.

Section 16.5 Mortgagee - Insurance Proceeds. In the event a mortgage endorsement has been issued for a Unit, the share of any insurance proceeds of the Owner shall be held for the Mortgagee and the Owner as their interests may appear, but nothing herein contained shall be construed so as to give any Mortgagee the right to determine or participate in the determination of reconstruction or repair.

Section 16.6 Use of Insurance Proceeds. Proceeds of insurance policies received by the Association shall be disbursed first for the repair, reconstruction, or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium is terminated except as specified in Article 17.

Section 16.7 Insurance Policy Requirements. Insurance policies carried pursuant to this Article 16 shall provide that:

- (a) Each Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;
- (b) The insurer waives its right to subrogation under the policy against any Owner, if applicable;
- (c) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;

(d) If, at the time of any loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and

(e) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each Mortgagee or beneficiary under a deed of trust to whom certificates or endorsements have been issued at their respective last known addresses.

Section 16.8 Insurance Coverage - Betterments. The Association shall not be required to maintain insurance coverage for any betterments or improvements to the Units and/or Limited Common Elements added by any Owner and an Owner may be required to maintain such liability coverage as is otherwise provided herein.

Section 16.9 Insurance Availability Notification. If the insurance described in this Article is not reasonably available, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

Section 16.10 Fidelity Insurance. If desired, the Association may maintain fidelity insurance.

ARTICLE 17. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

Section 17.1 Reconstruction-Costs. Any portion of the Condominium for which insurance is required pursuant to Article 16 which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of all Owners of Units not to be rebuilt or Owners of Units assigned to Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense. If the entire Condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (2) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated or to lienholders, as their interests may appear, and (3) the remainder of the proceeds shall be distributed to all of the Owners or lienholders, as their interests may appear, in proportion to their Common Element interest. If Owners vote not to rebuild any Unit, that Unit's allocated interests automatically shall be reallocated upon the vote as if the Unit had been condemned pursuant to N.C. Gen. Stat. § 47C-1-107(a), and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations. Unless otherwise prohibited, any such reconstruction or repair shall be substantially in accordance with the plans and specifications contained herein.

Section 17.2 Estimates of Replacement Costs. Immediately after the casualty causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems necessary or appropriate.

Section 17.3 Priority of Repair. When the damage is to Common Elements, Limited Common Elements and Units, the insurance proceeds will be applied first to the costs of repairing the Common Elements, secondly to the cost of repairing the Units, and thirdly to the cost of repairing the Limited Common Elements.

Section 17.4 Association Right to Insurance Adjustments. Each Owner shall be deemed to have delegated to the Association his right to adjust with insurance companies all losses under policies purchased by the Association.

ARTICLE 18.

ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES

Section 18.1 Register of Owners and Mortgagees. The Association shall at all times maintain a register setting forth the names of the Owners of all of the Units. In the event of the sale or transfer of any Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Unit. Further, the Owner of each Unit shall notify the Association of the names of the parties holding any mortgage or mortgages on any Unit, the amount of such mortgage or mortgages and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Unit and, upon receipt of such notice, the Association shall register in its records all pertinent information relating thereto.

Section 18.2 Mortgage Provisions. The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

(a) Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(i) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(ii) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of ninety (90) days, or any other violation of the Declaration or Bylaws relating to such Unit or the Owner or Occupant which is not cured within ninety (90) days; or

(iii) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

(b) No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

(c) Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

ARTICLE 19.
ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Units, costs and expenses which are part of the Common Expenses. To provide for the payment of the Common Expenses, the Association has heretofore been granted the right to make, levy and collect assessments against the Owners and their Units. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the Common Expenses of the Condominium, the provisions of this Article shall be operative and binding upon the Owners of all Units.

Section 19.1 Levy of Assessments. Except as specifically otherwise provided for in this Article or elsewhere in this Declaration, all assessments levied by the Association shall be levied equally against both Units, as same may be amended from time to time. Should the Association be the Owner of a Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned and assessment therefor levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate interests of the Common Expenses exclusive of the interests therein appurtenant to any Unit or Units owned by the Association.

Section 19.2 Assessments - Limited Common Elements. Any Common Expense associated with the maintenance, repair or the replacement of a Limited Common Element be assessed equally against the Units to which that Limited Common Element is assigned. Any Common Expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited in such proportions as determined by the Board.

Section 19.3 Payment of Assessments. Assessments provided for herein may be payable in installments as directed by the Board of Directors of the Association. Such assessments shall commence upon closing of the sale of the first Unit.

Section 19.4 Association Budget. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the fiscal year set forth in the Bylaws). Such Budget shall project all expenses for the forthcoming fiscal year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with Section 19.5 hereof, items relating to operation and maintenance from items relating to capital improvements. Within thirty (30) days after adoption of such Annual Budget by the Board of Directors of the Association, copies of said Annual Budget or summaries thereof shall be delivered to each Owner of a Unit. Within thirty (30) days after adoption of any proposed Budget, the Board of Directors shall set a date for a meeting of the Owners to consider ratification of the Annual Budget which date shall be not less than fourteen (14) nor more than thirty (30) days after the mailing of copies of such Annual Budget or summary thereof to the Owners. There

shall be no requirement that a quorum be present at the meeting. The Annual Budget is ratified unless at that meeting a majority of all the Owners reject the Annual Budget.

In the event the proposed Annual Budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify (i.e. fail to reject by a majority of all Owners) a subsequent budget proposed by the Board of Directors. Should the Board of Directors at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessment or assessments it may deem to be necessary.

Section 19.5 Capital Improvement Fund. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Elements, which capital improvement and replacement fund (Capital Improvement Fund) shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements, as well as the replacement of personal property which may constitute a portion of the Common Elements held for the joint use and benefit of the Owners of Units. The amount to be allocated to the Capital Improvement Fund may be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance.

Section 19.6 Assessments - Association Property. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, and the Bylaws of the Association. As monies for any assessment are paid into the Association by any Owner of a Unit, the same may be commingled with monies paid to the Association by other Owners of Units. Although all funds and Common Surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Unit. When the Owner of a Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Condominium.

Section 19.7 Delinquent Assessments. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association. All monies owing to the Association shall be due and payable at the office of the

Association. In any case where an assessment is payable in installments, upon a default by an Owner in the timely payment of any such installment, the maturity of the remaining total of the unpaid installments of such assessment may be accelerated, at the option of the Board, and the entire outstanding balance of the Assessment, including such delinquent installment, may be declared due and payable in full immediately by written notice to such effect upon the defaulting Owner.

Section 19.8 Liability for Assessments. The Owner or Owners of each Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Unit while such party or parties are Owner or Owners of a Unit. In the event that any Owner or Owners are in default in payment of any assessment or installment thereof owed to the Association, such Owner or Owners personally shall be liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorneys' fee, whether suit be brought or not.

No Owner of a Unit may exempt himself from liability for any assessment levied against him or his Unit by waiver of the use of enjoyment of any of the Common Elements, or by abandonment of the Unit or in any other way.

Section 19.9 Lien for Assessments. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in benefit to all of the Owners of Units, and that the payment of such Common Expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Owner, the Association is hereby granted the right to place a lien upon each Unit, and any Limited Common Elements assigned to such Unit, and its appurtenant undivided interest in the Common Elements for nonpayment of any assessment levied against a Unit remaining unpaid for thirty (30) days or longer, which lien also shall secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien also shall secure all costs and expenses, including reasonable attorneys' fees, which may be incurred by the Association in enforcing the lien provided for herein. Subject to N.C. Gen. Stat. § 47C-3-116, as amended, the lien granted to the Association may be foreclosed in the same manner as real estate mortgages and deeds of trust may be foreclosed under power of sale in the State of North Carolina. The Association shall be entitled to bid at any foreclosure sale and may apply as cash credit against its bid all sums due as provided herein. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less, on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit, or who may be given or may acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Unit expressly subject to such lien rights.

The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the office of the Clerk of Superior Court of New Hanover County, North Carolina, which claim shall state the description of the Unit encumbered thereby, the name of the record owner, the amount due, the date when due and shall comply with any other requirements under N.C. Gen. Stat. § 47C-3-116, as amended. The claim of lien shall be

recordable at any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid, but shall be extinguished unless a proceeding to enforce the lien is instituted within three (3) years after the docketing thereof. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided and all fees, charges, late charges, fines and interest as set forth in N.C. Gen. Stat. § 47C-3-116, as amended. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

The lien provided for herein shall be prior to all liens and encumbrances on a Unit except (1) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (2) liens for real estate taxes and other governmental assessments or charges against the Unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

If the holder of a first mortgage or first deed of trust of record, or other purchaser of the Unit, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all of the Owners including such purchaser, and its heirs, successors and assigns although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

Section 19.10 Statement of Assessment Status. Whenever any Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association for such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

Section 19.11 Election of Collection Remedies. Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association.

ARTICLE 20. COMPLIANCE AND ENFORCEMENT

Section 20.1 General Remedies. Every Owner and any occupant of any Unit shall comply with the Association Documents and the Act. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity or under the Act.

Section 20.2 Enforcement/Sanctions. The Board or such other Association agent with the Board's approval, may impose sanctions for violations of Association Documents after notice and a hearing in accordance with the procedures set forth in the Act and Section 20.3 of this Declaration. Such sanctions may include, without limitation:

- (a) Imposing reasonable monetary fines which shall constitute a lien upon the Unit of the violator;
- (b) Suspending an Owner's right to vote;
- (c) Suspending any Person's right to use any facilities within the Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Unit; and
- (d) Suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association.

Section 20.3 Hearing Procedures and Sanctions. Except as may be otherwise specifically authorized by the Association Documents, and permitted by the Association Documents, the Board shall not (i) impose a fine or penalty, (ii) undertake permitted remedial action, or (iii) suspend voting or infringe upon other rights of a Member or other occupant of a Lot or Unit for violations of the Association Documents, or for assessments or other amounts due and owing to the Association remaining unpaid for a period of thirty (30) days, or longer, unless and until the hearing procedure set forth in N.C. Gen. Stat. § 47C-3-107.1 is followed. Pursuant to the provisions of this Section and the Act, a fine may be imposed by the Association in an amount not exceeding One Hundred and No/100 Dollars (\$100.00) (or any greater amount as may be provided otherwise by law or the Act) per violation of the Association Documents and without further hearing, for each day more than five (5) days after the decision to impose such fine that the violation occurs. Any such fine shall be an assessment as set forth in this Declaration and the Act. If it is decided pursuant to the provisions of this Section that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

Section 20.4 Self Help Remedies. In addition to other rights set forth in the Association Documents and the Act, upon violation or breach of any provision of the Association Documents, the Board shall have the right: (i) to enter a Unit or Limited Common Element appurtenant thereto, on which or as to which such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the Association Documents, and the Board shall not thereby be deemed guilty in any manner of trespassing, (ii) to use self-help to remove or cure any violation of the Association Documents (including, without limitation, the towing of vehicles); or (iii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction or improvements may be altered or demolished, except in emergencies, judicial proceedings shall be instituted by the Association against such defaulting Owner or its tenant.

Section 20.5 Cumulative Remedies/Attorneys' Fees. The Association shall have all powers and remedies under the Act and the Association Documents which shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the

Association Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 20.6 Association's Right Not to Take Action. The Association shall not be obligated to pursue enforcement action in any particular case, such decisions to be within the discretion of the Board, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (a) the Association's position is not strong enough to justify taking any or further action; or (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or justify expending Association funds; or, (d) it is not in the best interest of the Association, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such covenant, restriction, rule or provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, rule or provision, nor shall it preclude any Owner from taking action at law or in equity to enforce the Association Documents.

Section 20.7 Enforcement by Owner. Nothing set forth in this Article 20 shall prevent any aggrieved Owner from instituting any available remedy in law or in equity for a violation of the Association Documents.

ARTICLE 21. COMMON SURPLUS

"Common Surplus," meaning all funds and other assets of the Association remaining after the payment of or the provision for Common Expenses, including reserves, shall be owned by the Owners of all Units in the same proportion as their Common Expense liabilities. Except for distribution of any insurance indemnity herein provided, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners of Units in accordance with their percentage interest in Common Surplus as declared herein. All Common Surplus remaining after payment of or provision for Common Expenses, including prepayment of reserves, must be paid to the Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense liabilities.

ARTICLE 22. TERMINATION

The Condominium may be terminated only in strict compliance with N.C. Gen. Stat. § 47C-2-118.

ARTICLE 23. AMENDMENT OF DECLARATION OF CONDOMINIUM

An amendment or amendments to this Declaration may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Units, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to this Declaration being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence

of the President, who shall thereupon call a Special Meeting of the members of the Association for a date not later than sixty (60) days from receipt by him of the proposed amendment or amendments. It shall be the duty of the Secretary to give to each member written or printed notice of such Special Meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than fourteen (14) days nor more than thirty (30) days before the date set for such Special Meeting. At the meeting, the amendment or amendments proposed must be approved by an affirmative vote of at least one-hundred percent (100%) of the votes in the Association which are allocated to Owners in the Condominium in order for such amendment or amendments of this Declaration to be adopted. Any such amendment or amendments as adopted shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such amendment or amendments, so certified and executed with the same formalities as a deed, shall be recorded in the Register of Deeds, such amendment or amendments to specifically refer to the recording data identifying this Declaration. Thereafter, a copy of said amendment or amendments in the form in which the same were placed of record by the officers of the Association shall be delivered to the Owners of all Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented there at by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting.

As an alternative to holding a meeting of the members to consider an amendment of this Declaration, a written agreement may be circulated among the members. To be effective, the written agreement must be executed by Owners of Units to which at least one hundred percent (100%) of the votes of the Association are allocated. Once approved, the amendment or amendments shall be transcribed, certified, executed, recorded and a copy sent to all Owners as specified above.

**ARTICLE 24.
CONFLICT WITH CONDOMINIUM ACT; SEVERABILITY**

Should any of the terms, conditions, provisions, paragraphs or clauses of this Declaration conflict with any provisions of the Condominium Act, the provisions of the Condominium Act shall control unless the Condominium Act permits the Declaration to override the Condominium Act, in which event the Declaration shall control. In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

**ARTICLE 25.
LIBERAL CONSTRUCTION**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership. Throughout this Declaration wherever appropriate the singular shall include the plural and the masculine gender shall include the feminine or neuter. The Article headings are for convenience of reference only and shall not be considered terms of this Declaration.

**ARTICLE 26.
DECLARATION BINDING ON ASSIGNS AND SUBSEQUENT OWNERS**

The restrictions and burdens imposed by the covenants of this Declaration are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit and its appurtenant undivided interest in the Common Elements, and this Declaration shall be binding upon Declarant, its successors and assigns, and upon all parties who subsequently may become Owners of Units in the Condominium, and their respective heirs, legal representatives, successors and assigns.

**ARTICLE 27.
ASSOCIATION RECORDS/INSPECTION**

The Association shall keep and maintain as permanent records those designated in N.C. Gen. Stat. § 55A-16-01 and N.C. Gen. Stat. § 47C-3-118. Those records shall be available for inspection and copying by Members of the Association pursuant to the provisions of N.C. Gen. Stat. § 55A-16-02.

**ARTICLE 28.
CONDEMNATION**

In the event of a taking by eminent domain, or by a conveyance in lieu thereof: of all or any part of the Property, the same shall be repaired or restored, and/or the awards paid on account thereof shall be used and applied in accordance with N.C. Gen. Stat. §47C-1-107.

**ARTICLE 29.
TAXES**

Pursuant to the provisions of N.C. Gen. Stat. § 47C-1-105, each Unit and its appurtenant undivided interest in the Common Elements shall be deemed to be a parcel and shall be separately assessed and taxed by each assessing unit and special district for all types of taxes authorized by law, including but not limited to special ad valorem levies and special assessments. Each Owner shall be liable solely for the amount of taxes against his individual Unit and shall not be affected by the consequences resulting from the tax delinquency of other Owners. Neither any building, the Property nor any of the Common Elements shall be deemed to be a parcel.


**ARTICLE 30.
LITIGATION**

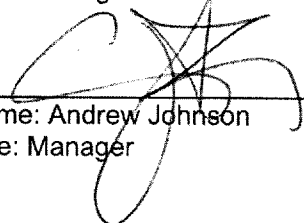
Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of one hundred percent (100%) of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Association Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 19; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

IN TESTIMONY WHEREOF, Declarant has caused this instrument to be executed under seal and in such form as to be binding, all by authority duly given, this the day and year first above written.

DECLARANT:

4 BEA, LLC


By:  [SEAL]
Name: Halley White
Title: Manager

By:  [SEAL]
Name: Andrew Johnson
Title: Manager

State of North Carolina
County of New Hanover

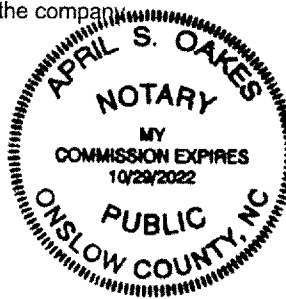
The undersigned Notary Public of said County and State do hereby certify that **Andrew Johnson** personally came before me this day and acknowledged that he is a Manager of 4 BEA, LLC, a North Carolina Limited Liability Company, and that he as a Manager being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal this 19th day of December, 2019


Notary Public

Name: April S. Oakes

My commission expires: 10/29/2022




(Official Seal)

State of North Carolina
County of New Hanover

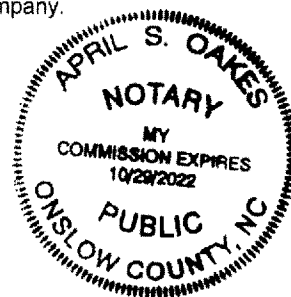
The undersigned Notary Public of said County and State do hereby certify that **Halley White** personally came before me this day and acknowledged that she is a Manager of 4 BEA, LLC, a North Carolina Limited Liability Company, and that she as a Manager being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal this 19th day of December, 2019


Notary Public

Name: April S. Oakes

My commission expires: 10/29/2022



(Official Seal)

EXHIBIT A
Legal Description

All of those certain tracts referred to as Tract 2 and Tract 3 located in New Hanover County depicted on that certain Map entitled "Minor Subdivision for B S Management, Inc. – Mendenhall" prepared by Hanover Design Services, P.A. dated October 27, 2006, and recorded in Map Book 50, at Page 225, in the Office of the Register of Deeds of New Hanover County, and as conveyed by B S Management, Inc. to 4 BEA, LLC in Book 5933, Page 2698 in the Office of the Register of Deeds of New Hanover County.

Legal Description	(0.61 ACRES) TRACT 2 MENDENHALL SUBDIVISION
Tax District	FD
Subdivision Code	050225

EXHIBIT "B"
Survey and Plat

For survey and plat and plans see Condo Book 19, Page 111 through 113 in the New Hanover County Register of Deeds.

EXHIBIT "C"
Allocations

Unit #	Undivided Interest in Common Elements Appurtenant to Unit	Portion of Common Expenses Allocated to Unit*	Vote Allocated to Unit
A	50%	50%	1
B	50%	50%	1
Total:	100%	100%	2

*Refer to Plat and Survey for allocation of Limited Common Elements (ie. Parking Spaces)