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JENNIFER H. MACNEISH  
NEW HANOVER COUNTY, NC  
2010 MAY 19 03:09:59 PM  
BK: 5486 PG: 2254-2284 FEE: \$101.00

INSTRUMENT # 2010013700

**DECLARATION OF CONDOMINIUM**  
**NORTH MARKET COMMERCIAL PARK,**  
**A CONDOMINIUM**  
 NEW HANOVER COUNTY  
 NORTH CAROLINA

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*Jean MacDonald*

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**DECLARATION OF CONDOMINIUM**  
**NORTH MARKET COMMERCIAL PARK**  
**A CONDOMINIUM**

NEW HANOVER COUNTY  
NORTH CAROLINA

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**THIS DECLARATION**, made on \_\_\_\_ day of May, 2010, by **NORTH MARKET STREET LLC**, a North Carolina limited liability company, hereinafter called "**Declarant**";

**WITNESSETH:**

**WHEREAS, Declarant** is the owner of that certain tract of land containing a building and other improvements, located in the City of Wilmington, New Hanover County, North Carolina, that the Declarant proposes to convert to condominium ownership, which land is more particularly described as follows:

BEING all of that certain tract or parcel of land, with improvements thereon, to be known as **NORTH MARKET COMMERCIAL PARK, A CONDOMINIUM**, and the common elements to be dedicated therewith, more particularly described upon Exhibit A hereto attached and incorporated by reference.

**WHEREAS**, In order to facilitate the operation and administration of the condominium the Declarant has formed or shall form, a non-profit corporation known or to be known as North Market Commercial Park POA, Inc., which shall have the general authority and responsibility for the operation and administration of the condominium pursuant to this Declaration, the bylaws and its articles of incorporation.

**NOW, THEREFORE, Declarant** hereby declares that the land described upon Exhibit A hereto attached, with all improvements thereon, shall be and the same is hereby dedicated to condominium ownership pursuant to Chapter 47C of the General Statutes of North Carolina as amended, and to that end does hereby publish and declare that all of the said property to be known as "**NORTH MARKET COMMERCIAL PARK, A CONDOMINIUM**", shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, uses and obligations which are for the purpose of protecting the value and desirability of and which shall run with the real property and be binding on all parties having any right, title or interest in the described parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1**  
**DEFINITIONS**

As used in the Condominium Documents the following words and phrases shall have the following meanings:

**Section 1.1 "Act"** shall mean the North Carolina Condominium Act that is codified as Chapter 47C of the North Carolina General Statutes, as the same may be amended from time to time.

**Section 1.2 "Allocated Interests"** means the undivided interest in the Common Elements and Common Expense liability, and votes in the Association, allocated to Units in the Condominium. The Allocated Interests are described in Article 7 of this Declaration and shown on Exhibit "C".

**Section 1.3 "Association"** means as "North Market Commercial Park POA, Inc.", a non-profit corporation organized or to be organized under Chapter 55A of the General

Statutes of North Carolina. It is the Association of the Unit Owners pursuant to Section 47C-3-101 of the Condominium Act.

**Section 1.4 "Board"** shall mean and refer to the Executive Board of the Association.

**Section 1.5 "Bylaws"** means the Bylaws of the Association, as they may be amended from time to time.

**Section 1.6 "Common Elements"** may be used interchangeably with **"Common Areas"**, to mean all portions of the Condominium other than the Units.

**Section 1.7 "Common Expenses"** means the financial liabilities for the operation of the Condominium, including, without limitation, the following:

- (a) All expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.
- (b) expenses whether annual or special, agreed upon as Common Expenses by the Association; and
- (c) such reasonable reserves as may be established by the Association for repair, replacement or addition to the Common Elements or for real or personal property acquired or held by the Association.

**Section 1.8 "Condominium"** means the condominium created by this Declaration and all additions thereto.

**Section 1.9 "Condominium Documents"** means this Declaration, the Plats and Plans recorded and filed pursuant to the provisions of the Condominium Act, the Bylaws, and the Rules and Regulations as they may be adopted and amended from time to time. Any exhibit, schedule, or certification accompanying a Condominium document is a part of that Condominium Document.

**Section 1.10 "Declarant"** means North Market Street, LLC, a North Carolina limited liability company, its successors and assigns as defined in Section 47C-1-103(9) of the Condominium Act.

**Section 1.11 "Development Rights"** means the rights reserved by the Declarant under Article 6 of this Declaration to create Units, Common Elements, and Limited Common Elements within this Condominium.

**Section 1.12 "Director"** means a member of the Executive Board.

**Section 1.13 "Eligible Mortgagee"** means an institutional lender holding a first mortgage or first deed of trust ("First Mortgage") encumbering a Unit that has notified the Association in writing of its status, stating both name and address and the Unit number or address of the Unit its First Mortgage encumbers, and has requested all rights under the Condominium Documents. For purposes of Article 16 only, when any right is to be given to an Eligible Mortgagee, such right shall also be given to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guarantying mortgages if the Association has notice of such participation.

**Section 1.14 "Executive Board"** means the Board of Directors of the Association.

**Section 1.15 "Improvements"** means any construction, structure, fixture or facilities existing or to be constructed on the land included in the Condominium, including, without limitation, buildings, trees and shrubbery planted by the Declarant or the Association, paving, utility lines, pipes and light poles.

**Section 1.16 "Limited Common Elements"** means the portion of Common elements, if any, allocated for the exclusive use of at least one but fewer than all of the Units by the Declaration or by operation of Section 47C-2-102(2) and (4) of the Condominium Act. The Limited Common Elements in the Condominium, if any, are described in Article 3 of this Declaration.

**Section 1.17 “Majority or Majority of Unit Owners”** means the owners of more than fifty-one per cent (51%) of the allocated interest in Common elements stated as votes in the Association, as established by and set forth in this Declaration of Condominium.

**Section 1.18 “Manager”** means a person, firm or corporation employed or engaged to perform management services for the Condominium and Association.

**Section 1.19 “North Market Commercial Park, a Condominium”** shall mean the development comprised of the Property as defined below and all additions thereto.

**Section 1.20 “Notice and Comment”** means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set for in Section 22.1 of this Declaration.

**Section 1.21 “Notice and Hearing”** means the right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 22.2 of this Declaration.

**Section 1.22 “Person”** means an individual, corporation, business, trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

**Section 1.23 “Plats and Plans”** means the Plats and Plans of the Condominium recorded or to be recorded in the Condominium Plat Book in the New Hanover County Registry, and constituting a part of this Declaration, as the same may be amended from time to time. At the time of recording of this Declaration Plats and Plans shall mean that Plat attached hereto as Exhibit B and made a part hereof.

**Section 1.24 “Property”** means the land, all improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Condominium Act by this Declaration and as described in Exhibit “A”, hereto attached and made a part hereof and all additions thereto.

**Section 1.25 “Public Offering Statement”** no public offering statement will be provided to the purchasers, as all units are restricted to non-residential use and purchasers will be deemed to waive the right to receive any public offering statement by the acceptance of a deed from the Declarant.

**Section 1.26 “Public Offering Waiver”** Inasmuch as all units are restricted to non-residential use, including, without limitation, office, retail, institutional and other uses permitted in the zoning district in which the Property is located, all purchasers, by the acceptance of a deed conveying an ownership interest in a unit subject to the condominium shall be deemed to have waived any right to any public offering statement as permitted under NCGS 47C-4-101(b), and acknowledge that a public offering statement will not be provided to them.

**Section 1.27 “Rules and Regulations:** means Rules and Regulations for the use of Units and common Elements and for the conduct of persons within the Condominium, that may be adopted by the Executive board pursuant to this Declaration, as amended from time to time.

**Section 1.28 “Security Interest”** means an interest in real estate or personal property, created by contract or conveyance which secures payment or performance of an obligation. The terms includes a lien created by a mortgage, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

**Section 1.29 “Special Declarant Rights”** means the rights reserved for the benefit of a Declarant to:

- (a) complete improvements indicated on the Plats and Plans filed with the Declaration;
- (b) Exercise any Development Rights;

- (c) Maintain sales offices, management offices signs advertising the condominium;
- (d) Use easements through the Common elements for the purpose of making improvements within the Condominium or within real estate that may be added to the Condominium and;
- (e) Grant such easements across Common Areas as Declarant deems necessary or convenient including, but not limited to any easement to comply with the Declaration; or to create a storm water storage pond.

**Section 1.30 "Structure"** shall mean and refer to any thing or device the placement of which upon or within the property might affect the physical appearance thereof including by way of illustration and not limitation, improvements, building, sheds, covered areas, vehicular and pedestrian bridges or driveways, parking areas, trees, shrubbery, paving, fill, curbing, landscaping fences or walls or signs.

**Section 1.31 "Trustee"** means the entity which may be designated by the Executive Board as the Trustee for the receipt, administration and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses and other like sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Board as it is constituted from time to time, acting by majority vote, as executed by the President and attested by the Secretary.

**Section 1.32 "Unit"** means a physical portion of the condominium designated for separate ownership or occupancy, whether or not contained solely or partially within a building, together with its percentage of allocated interest in the common elements as described in Exhibit C. Each Unit is designated and delineated on the Plans.

**Section 1.33 "Unit Owner"** means the Declarant or other Person who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Unit created by this Declaration.

**Section 1.34 "Use"** shall mean that the units within the condominium are restricted to the non residential uses permitted under Section 8.1

## **ARTICLE 2 DESCRIPTION OF UNITS**

**Section 2.1 Number of Units** Declarant hereby establishes two (2) Units to be designated as Unit 1 and Unit 2, which Units are hereby designated for separate ownership. The Declarant hereby reserves, for itself and its successors, including all unit owners the right to subdivide any unit into two (2) or more Units or combine two (2) or more Units into one (1) Unit, provided that such subdivision, rearrangement or combination is in compliance with the Act, and subject to compliance with all applicable zoning ordinances, building codes and regulations any approvals required by applicable governmental authorities. If either or both of the initial unit(s) are subdivided, the subdivided units shall be designated by a number indicating the initial unit followed alphabetically by a letter indicating the subdivided unit. Unit 1 would then be Unit 1A, 1B, 1C, etc., and subdivided units of Unit 2 would be Unit 2A, 2B, 2C, etc. Reference is hereby made to the Plat and Plans hereto attached as Exhibit B and made a part hereof for a separate description of the boundaries of each such Unit.

**Section 2.2 Boundaries**. Boundaries of the initial units created by this Declaration, being units that consist of buildings and unimproved real estate, are shown on Exhibit B as numbered units, each with its identifying number. No resubdivision, combination or recombination of any units shall be effective unless the same is reflected by an Amendment to the Declaration of Condominium together with a revised plat of Exhibit B, showing the revised unit structure in compliance with the Act, both duly recorded in the New Hanover County Registry

## **ARTICLE 3 LIMITED COMMON ELEMENTS (LIMITED COMMON AREAS)**

Except as otherwise specifically noted, all land areas located within the boundaries of Unit 1 or Unit 2 shall be deemed to be as "limited common elements" or "limited common areas" which shall be appurtenant to and for the exclusive use and

benefit of the units in which they are located. The gate opening device located in the Unit 1 area to service Unit 2 shall be deemed to be limited common area of Unit 2.

#### **ARTICLE 4 MAINTENANCE, REPAIR, AND REPLACEMENT**

**Section 4.1 Common Elements** The Association will maintain, repair, and replace all of the Common Elements, except the portions of the Limited Common Elements, if any, which are required by this Declaration to be maintained, repaired or replaced by the Unit Owners. If the Association fails to maintain, repair or replace Common Elements within a reasonable period, Owners may undertake such at their sole expense upon written notice to the Association. Such repairs/replacements shall be equal to or exceed the quality, appearance and workmanship of the original Common Elements.

**Section 4.2 Units** Each Unit Owner shall maintain, repair, and replace, at his own expense, all portions of his or her Unit, except the portions thereof to be maintained, repaired or replaced by the Association.

**Section 4.3 Limited Common Elements** If either or both units are hereafter subdivided, any Common Expense associated with the maintenance, repair, or replacements of Limited Common Elements will be assessed against the Unit or Units to which the Limited Common Element(s) is/are assigned.

If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common element will be assessed equally among the Units to which it is assigned.

**Section 4.4 Access** Any person authorized by the Executive board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations, or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, wires, and equipment, provided that such requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

**Section 4.5 Repairs Resulting From Negligence.** Each Unit Owner will reimburse the Association for any damages to any other Unit, to the Common Elements, or to Limited Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit or Limited Common Elements appurtenant thereto. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair, or make replacements to the Common elements. If such expense is caused by misconduct, it will be assessed following Notice and Hearing. A Unit Owner may request a hearing before the board of Directors for the purpose of validating the assessment. Request for the hearing by the Unit Owner must be in writing and will be held at the next regularly scheduled board meeting.

#### **ARTICLE 5. SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS**

Those portions of Common Elements now or hereafter improved as parking spaces shall be allocated as Limited Common Elements in accordance with Subsection 6.1(c) and Article 10 of this Declaration, or may be assigned by Rules and Regulations of the Executive Board, or may be limited by Rules and Regulations.

#### **ARTICLE 6. DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS**

**Section 6.1 Reservation of Development Rights:** The Declarant reserves the following Development Rights:

(a) The right by amendment to develop, add, create or subdivide Units on the real estate that is shown as "Development Rights Reserved in this Area" or words of similar effect n, on any Plats and Plans and described in Section 1.23.

(b) The right to construct underground utility lines, pipes, wires, ducts, conduits, and storm water storage ponds, if required, and other facilities across the land anywhere in the Condominium for the purpose of furnishing utility and other services to buildings and Improvements constructed or to be constructed on the land designated as Development Rights Reserved in this Area" on the Plats and Plans. The Declarant also reserves the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Condominium for the above mentioned purposes.

(c) The right to subdivide any unit or combine two (2) or more units into one (1) unit, provided that such subdivision or combination is in compliance with the act.

(d) **Section 6.2 Limitations on Development Rights** The Development Rights reserved in Section 6.1 are limited as follows:

(a) The Development Rights may be exercised at any time but not more than ten(10) years after the recording of this initial Declaration.

(b) The quality of construction of any buildings and Improvements to be created on the Property shall be consistent with the quality of those constructed at the time of the initial recording of this Declaration.

(c) All Units and Common Elements created pursuant to the Development Rights will be restricted to office, institutional and retail use to the same extent as the Units created under this Declaration as initially recorded.

**Section 6.3 Phasing of Development rights (Deleted)**

**Section 6.4 Special Declarant Rights** The Declarant reserves those Special Declarant Rights set forth in Section 1.29 above, and the following Special Declarant Rights:

(a) To complete Improvements indicated on the Plats and Plans filed with the Declaration;

(b) To exercise any Development Right reserved in the Declaration;

(c) To use easements through the common elements for the purpose of making improvements within the Condominium and construction on, or other uses of adjoining properties whether or not such other use is related to or associated with the Condominium development, including the non-exclusive right to connect to any drainage or retention pond which the Declarant and unit owners may share with any other development.

**Section 6.5 Models, Sales Offices and Management Offices.** As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant as a sales office or management office.

**Section 6.6 Construction: Declarant's Easements.** The Declarant reserves the right to perform repairs and construction work, and to store materials in secure areas, in Units and Common elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board or any Unit Owner. The Declarant reserves an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations and for exercising Special Declarant Rights, whether arising under the Condominium Act or reserved in the Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State of North Carolina, adjoining property owners, riparian owners or upland owners to fulfill the plan of development. Additionally, Declarant hereby reserves unto itself, its successors and assigns an alienable easement for utilities, drainage, access, ingress, and regress over, across, and under the Property for a storm water storage pond, if any, which said Easement or Easements shall continue to exist and shall be maintained for the benefit of Declarant, its successors and assigns

and for the benefit of unit owners within the Condominium. In the event that any governmental authority shall hereafter require that a stormwater storage pond easement be used to accommodate drainage from Unit 1 of the Condominium, the Declarant, its successors and assigns shall have the right of ingress, egress and regress over and Property for access to the stormwater storage pond for maintenance, repair and upkeep of said stormwater storage pond. In such event the owner or owners of Unit 2 shall have the right to determine the location of any stormwater storage pond access easement so that it will not interfere with their use and development of the Unit 2 property.

**Section 6.7 Signs and Marketing** The Declarant reserves for itself and its successors and assigns, the right to post signs and displays in the area located in the southeast corner of Unit 1 and designated as "Sign Easement In Favor of Unit 2." Declarant also reserves the right to post signs and displays in the Limited Common elements of Unit 1 to promote sales of Unit 2 or any subdivision thereof and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of the Unit Owners. At such time as a unit may become available for sale or resale, only one sign, not to exceed 3 x 3 may be placed within each building of the Unit that is for sale.

**Section 6.8 Declarant's Personal Property** The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Condominium that has not been represented as Property of the Association. The Declarant reserves the right to remove from the Property, and all goods and Improvements used in development, marketing, and construction, whether or not they have become fixtures.

**Section 6.9 Declarant Control of the Association**

(a) (Deleted).

(b) Not later than thirty (30) days after conveyance of Unit 1 by Declarant, the Unit Owners shall elect an Executive Board of two (2) members who shall be Unit Owners. The Board Members shall serve an initial term of two years. All subsequent directors shall serve a term of two years from the date of their election. The Executive Board shall elect the officers. The Executive board members and officers shall take office upon election.

(c) (Deleted).

(d) Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 47C-3-108 of the Condominium Act, the Unit Owners, representing a fifty-one percent (51%) voting interest of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive board with or without cause.

**Section 6.10 Limitations on Special Declarant Rights** Unless sooner terminated by an amendment to the Declaration executed by the Declarant, any Special Declarant right may be exercised by the Declarant until the earlier of the following:

(a) so long as the Declarant holds a Development Right to create additional Units or Common Elements or to withdraw real estate from the Condominium or

(b) so long as Declarant owns any Unit or

(c) ten (10) years after recording this Declaration.

**Section 6.11 Interference with Special Declarant Rights.** Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any special Declarant Right without the prior written consent of Declarant.

**ARTICLE 7  
ALLOCATED INTERESTS**

**Section 7.1 Allocation of Interests.** The common elements of the Condominium shall be deemed to be owned 50% by the owner or owners of Unit 1, and 50% by the owner or owners of Unit 2. If Unit 1 or Unit 2 shall be subdivided into more than one unit,

then and in that event the allocated interests in the common elements shall be determined as follows:

(a) **Undivided Interest in the Common elements.** The percentage of the undivided interest in the Common Elements allocated to each subdivided unit, shall be based on the relative square footage of each subdivided unit as compared to the square footage of the original Unit 1 or 2 as the case may be, bearing in mind that the total allocated interest of each original unit shall be 50% of the total allocated interest in the Condominium.

(b) **Liability for the Common Expenses.** Each Unit in the Condominium shall share in the Common Expenses of the Condominium in the same percentage of liability as their respective percentage of ownership in the Common elements as established herein. Nothing contained in this Subsection shall prohibit certain Common Expenses attributed to limited common elements from being apportioned to particular Units under Article 17 of this Declaration.

(c) **Votes** As long as the units remain unsubdivided, the owner(s) of each unit shall have (1) one vote in the affairs of the Association and the total number of votes shall be (2) two. If either unit is subdivided, the vote attributable to each subdivided unit shall be stated as a percentage which shall be the same as the allocated percentage ownership interest of such subdivided unit in the Common Elements to be set forth in a revised Exhibit "B." .

(d) **Deadlock.** Any deadlock in voting shall be resolved by submitting the matter to arbitration in accordance with the Uniform Arbitration Act as set forth in the North Carolina General Statutes, Section 1-567.1 et seq.

**Section 7.2 Assignment of Allocated Interest Upon Creation of Units Pursuant to Exercise of Development Rights** The effective date for assigning Allocated Interests to Units created pursuant to Section 6.1 of this Declaration shall be the date on which the amendment creating the Units is recorded in the Office of the Register of Deeds of New Hanover County, North Carolina.

## **ARTICLE 8.** **RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY**

**Section 8.1 Use and Occupancy Restrictions** Subject to the Special Declarant Rights reserved under Article 6, the following use restrictions apply to all Units and to the Common Elements.

(a) Each Unit is restricted to general retail, institutional, and commercial uses, and other uses permitted in the zoning district in which the Property is located, including without limitation, restaurants, self-storage, office and professional use, including, but not limited to medical, dental, legal and other professional office uses, banking or mortgage services and other institutional uses and their directly related uses along with such other related and harmonious uses as the Declarant or the Association through its board of Directors may permit provided that as long as there is a Dollar General store operating in Unit 1, no building or subdivided unit within the original Unit 2 shall be used for the purpose of conducting business as a Dollar General store, Family Dollar Store, Fred's, Dollar Tree, Variety Wholesale, Ninety-Nine Cents Only, Deals or Dollar Bills.

(b) The use of Units and of the Common Elements is subject to this Declaration, the Articles of Incorporation and Bylaws of the Association, and such Rules and Regulations as may from time to time be promulgated by the Association.

(c) Owners of Units shall have the right to affix letter signage of a size and shape approved by the Board, to the exterior door of the building(s) serving each respective Unit.

(d) Each Unit shall share a common mobile trash receptacle. However, periodic garbage service shall be by contract between the Association and the service provider. The cost of such service shall be a Common Expense.

(e) Additional signage, displays, etc. shall not be placed inside or outside the unit's windows except as noted in Section 6.7 of the Document. Any displays or signage determined by Declarant or Executive Board to be in violation of this Declaration or the

Bylaws or Rules and Regulations of the Association shall be removed within 48 hours of notice.

**Section 8.2 Restrictions on Alienation** All leases and rental agreements shall be in writing and subject to the requirements of the Condominium Documents and Rules and Regulations of the Association.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Condominium Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

## **ARTICLE 9.** **EASEMENTS AND LICENSES**

Declarant does hereby establish, declare, and grant, for the benefit of each and every portion of the Property, as an appurtenance thereto, and to and for the benefit of Declarant, the Condominium Association and the Owners, the following easements:

**Section 9.1 Ingress/Egress.** Perpetual, non-exclusive rights, privileges and easements for the passage of vehicles and for the passage and accommodation of pedestrians, over, across and through all roadways, driveways, curb cuts, aisles, walkways and sidewalks located within or to be located within the Property, specifically including the right and easement of ingress and egress over, across, and through the entrances into the Property, as shown on Exhibit B hereto attached and made a part hereof. The Declarant also reserves, for itself, its successors and assigns, non-exclusive and alienable easements over all common elements in Unit 1 for access to areas located in "Unit 2" as shown upon Exhibit B.

**Section 9.2 Parking.** Perpetual, non-exclusive rights, privileges and easements to Owners, their lessees, invitees and licensees and the invitees and customers of such lessees, invitees and licensees for vehicular parking within the surface vehicular parking spaces located on the Property, provided, however, the Association shall, in the rules and regulations, establish and change from time to time, rules regarding towing and parking violations and the designation of certain parking areas for use by Owners, their employees, tenants, licensees and business visitors, and provided further, that parking in the parking area of Unit 1 shall be reserved for the tenants and customers of Unit 1.

**Section 9.3 Utility Easements.** Reciprocal non-exclusive easements over the entire Property for the furnishing of water, electricity, storm and sanitary sewerage, gas, telephone, television, communications, security systems, other utilities and services and heating, air-conditioning and ventilation by means of pipes, wires, duets, cables, conduits, equipment panels, mechanical equipment, heating, air conditioning and ventilation equipment and machinery, fire stairwell and other apparatus and facilities (collectively referred to as "Utility Lines") and as may hereafter be consented to in writing from time to time, by the Declarant. Unless such utilities and mechanical facilities are separate and distinct for each Unit and serve only that Unit, such utility and mechanical facilities shall be construed, maintained, repaired and replaced by the Association.

**Section 9.4 Encroachments.** Reciprocal non-exclusive easements over the entire Property for minor encroachments which will not substantially interfere with the property encroached upon created by the construction, reconstruction, renovation, settling, shifting or other causes of movement and for overhangs. This easement shall be appurtenant to each Unit for the benefit of Owners thereof.

**Section 9.5 Easements Shown on Map.** The Condominium and the Common Elements are presently subject to the Easements and licenses shown upon Exhibit B of the Plats and Plans as defined in Article 1.23 of this Declaration or described in this Declaration. The condominium may be subjected to other easements or licenses granted by the Declarant pursuant to its powers under Article 6 of this Declaration.

Any easement areas shown on Exhibit "B", together with any improvements thereon, shall be maintained, repaired, and as necessary, replaced by the Association, except the area designated as "Sign Easement in Favor of Unit 2" which shall be maintained, repaired and replaced, as necessary by the owner or owners of Unit 2, unless the owners of Unit 1 and Unit 2 shall otherwise agree in writing.

**Section 9.6 Construction Easement.** Declarant shall have a reasonable construction easement across the Common Elements for the purpose of constructing improvements in the Units. Declarant also shall have such easements through the Common Elements as may be reasonable necessary for the purpose of exercising Special Declarant Rights as provided herein or discharging Declarant's obligations under this Declaration.

**Section 9.7 Right of Entry.** The Association and its representative shall have a right of entry upon the Units and any Common Elements, including Limited Common Elements, to effect emergency repairs and a reasonable right of entry upon the Units to effect other repairs, improvements, replacements or maintenance as necessary.

**Section 9.8 Signage Easement.** The sign easement located adjacent to Market Street in Unit 1 in favor of Unit 2 is limited to temporary signage subject to rules regulations and ordinances of applicable governmental authority.

## **ARTICLE 10 ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS**

A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to provisions of Article 5 of the Declaration. The allocations will be made by amendments to the Declaration, specifying to which Unit or Units the Limited Common Elements is allocated.

## **ARTICLE 11 ADDITIONS, ALTERATIONS AND IMPROVEMENTS**

### **Section 11.1 Additions, Alterations and Improvements by Unit Owners.**

(a) No Unit Owner shall make any structural addition, structural alteration, or structural Improvement in or to the common elements except with the prior written consent thereto of the Executive Board in accordance with Subsection 11.1(c). No Unit Owner shall make any structural addition, structural alteration, or structural Improvement in or to a Unit without the written consent of the majority in interest of the owners of that Unit.

(b) Subject to Subsection 11.1(a), a Unit Owner:

(i) may make any other Improvements or alterations to the interior of his Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium.

(ii) may change the appearance of the Common Elements, or the exterior appearance of a Unit, without permission of the Association;

(iii) after acquiring an adjoining Unit or an adjoining part of an adjoining Unit, may remove or alter any intervening portion or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this Subsection is not an alteration of boundaries.

(c) A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under Subsection 11.1(a) or 11.1(b)(ii). The Executive Board shall answer any written request for such approval, after Notice and Hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its Rules and Regulations.

(d) Any applications to any department or to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit may be executed by the Association or by the Unit Owner. Such execution will not, however, create any liability on the part of the Association or any of its members to the applying Unit Owner nor to any contractor, subcontractor or materialman on account of such addition, alteration or improvement or to any person having any claim for injury to persons or