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BY: ANDREA CRESWELL
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NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

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DECLARATION OF CONDOMINIUM
FOR
SHIPYARD COMMONS CONDOMINIUM

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NORTH CAROLINA

**DECLARATION OF CONDOMINIUM
FOR**

NEW HANOVER COUNTY

SHIPYARD COMMONS CONDOMINIUM

SHIPYARD COMMONS, LLC, a North Carolina limited liability company (“**Declarant**”) does hereby make, declare and establish this Declaration of Condominium as the plan of ownership of **SHIPYARD COMMONS CONDOMINIUM** pursuant to the provisions of Chapter 47C of the North Carolina General Statutes (entitled the “**North Carolina Condominium Act**”).

BACKGROUND STATEMENT

A. Declarant is the owner of the certain real property located on Converse Drive in the City of Wilmington, New Hanover County, North Carolina, and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the “**Land**”).

B. There has been constructed on the Land (i) one (1) building (the “**Building**”) containing a total of five (5) units, and (ii) certain Common Elements (as defined below) such as parking areas and sidewalks.

C. Declarant intends by this Declaration to subject the Land, Building and Common Elements and all other improvements on the Land (collectively, the “**Condominium Property**”) to the Act (Section 47C-1-101 et seq. of the North Carolina General Statutes), and to establish a plan for the individual ownership, subject to certain protective covenants, conditions, restrictions, limitations, reservations, grants of easement, rights-of-way, liens, charges and equitable servitudes as set forth in this Declaration, of condominium units located on the Land and the co-ownership by the individual owners of the condominium units, as tenants in common, of the Common Elements of the condominium established hereby.

D. In addition, Declarant has deemed it desirable to create a nonprofit, incorporated owners’ association which will be delegated and assigned powers of maintaining and administering the common areas and facilities on the Land, of administering and enforcing the covenants and restrictions created in this Declaration, and of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of condominium units within the Condominium Property and to promote the recreation, health, safety and welfare of the unit owners. In order to accomplish the foregoing, Declarant is entering into this Declaration.

STATEMENT OF DECLARATION

NOW, THEREFORE, pursuant to the provisions of the Act (as defined below), Declarant hereby declares that the Condominium Property shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved subject to this Declaration and to the following covenants, conditions, restrictions, limitations, reservations, easements, rights-of-way, liens, charges and equitable servitudes (collectively, the

“Covenants”), all of which are hereby declared, established, expressed, and agreed (i) to be for the benefit and protection of the Condominium Property, its desirability, value and attractiveness; (ii) to be for the benefit of the Condominium Property and Owners (as defined below) of Units (as defined below) in the Condominium Property; (iii) to run with the land and be binding upon all parties having or acquiring any right, title or interest in the Condominium Property or any portion thereof whether as sole owners, joint owners, lessees, tenants, occupants or otherwise; (iv) to inure, but only in the manner herein specified, to the benefit of every portion of the Condominium Property and any interest therein; and (v) to inure to the benefit of and be binding upon each successor and assignee in interest of each Owner and of Declarant. Any conveyance, transfer, sale, assignment, lease or sublease of a Unit in the Condominium Property will be and hereby is deemed to incorporate by reference and will be subject to the provisions of this Declaration and the Covenants herein contained. The provisions of this Declaration will be enforceable by Declarant, any Owner of a Unit (including Declarant) or such Owner’s successor in interest, by the Association (as defined below), any person, firm, corporation or other association duly authorized by the Association to enforce all or any one or more of the provisions hereof, and to the extent that Mortgagees (as defined below) are expressly granted rights hereunder, by any Mortgagee.

ARTICLE 1

DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Declaration:

Section 1.1 Act. “Act” shall mean and refer to Chapter 47C of the North Carolina General Statutes.

Section 1.2 Intentionally Omitted.

Section 1.3 Allocated Interest. “Allocated Interest” shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth on Exhibit B attached hereto. The Allocated Interest shall be used to determine each Unit’s share of Common Expenses in the Association and, except as otherwise provided, each Unit’s relative voting rights, and to allocate the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings.

Section 1.4 Assessments. “Assessments” shall mean the Common Assessment, Special Assessment, and Individual Unit Assessment.

Section 1.5 Association. “Association” shall mean and refer to Shipyard Commons Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with this Declaration and the Act.

Section 1.6 Building. “Building” shall mean and refer to the building located within the Land containing the Units and the Common Elements.

Section 1.7 Bylaws. “Bylaws” shall mean and refer to the bylaws of the Association and all amendments to such bylaws which may from time to time be adopted.

Section 1.8 Common Assessment. “Common Assessment” shall have the meaning set forth in Section 15.4.

Section 1.9 Common Elements. “Common Elements” shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plans, and as more particularly described in Article 4 of this Declaration.

Section 1.10 Common Expenses. “Common Expenses” shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with the Condominium Documents and Section 47C-1-103(5) of the Act.

Section 1.11 Common Surplus. “Common Surplus” shall mean and refer to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses.

Section 1.12 Condominium. “Condominium” shall mean and refer to the Shipyard Commons Condominium, as established by the submission of the Condominium Property to the terms of the Act by this Declaration.

Section 1.13 Condominium Documents. “Condominium Documents” shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the Rules and Regulations governing the use of the Condominium Property, as amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.14 Condominium Property. “Condominium Property” shall mean and refer to the Land, the Units, the Building and Common Elements subjected to this Declaration.

Section 1.15 Declarant. “Declarant” shall mean and refer to Shipyard Commons, LLC, a North Carolina limited liability company, its successors, or any party to which it assigns its rights as the Declarant under this Declaration.

Section 1.16 Intentionally Omitted.

Section 1.17 Declaration. “Declaration” shall mean and refer to this Declaration of Condominium, as it may be amended in the future.

Section 1.18 Intentionally Omitted.

Section 1.19 Executive Board. “Executive Board” shall mean and refer to the governing body from time to time of the Association, as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the Act.

Section 1.20 Individual Unit Assessment. “Individual Unit Assessment” shall have the meaning set forth in Section 15.7 of this Declaration.

Section 1.21 Land. “Land” shall mean and refer to the real property described in Exhibit A attached hereto.

Section 1.22 Limited Common Elements. “Limited Common Elements” shall mean and refer to those portions of the Common Elements allocated by this Declaration, or by the terms of Sections 47C-2-102(2) or (4) of the Act, for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of any other Units, as more fully described in Article 4 of this Declaration, and as depicted on the Plans.

Section 1.23 Mortgage. “Mortgage” shall mean and refer to a mortgage or deed of trust constituting a lien on a Unit.

Section 1.24 Mortgage Vote. “Mortgage Vote” shall have the meaning set forth in Section 19.1.

Section 1.25 Mortgagee. “Mortgagee” shall mean and refer to the owner and holder of the indebtedness secured by a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in Article 19.

Section 1.26 Permittees. “Permittees” shall mean and refer to a Unit Owner’s family members, guests, invitees, licensees and tenants.

Section 1.27 Plans. “Plans” shall mean and refer to the plat, plans and specifications for the Building and Condominium Property, including any amendments thereto, recorded under the name of the Condominium in the Public Records, including the plan of condominium recorded in Condominium Plat Book _____, Page _____, of the Public Records.

Section 1.28 Public Records. “Public Records” shall mean and refer to the Office of the Register of Deeds of New Hanover County, North Carolina.

Section 1.29 Repair Work. “Repair Work” shall mean all maintenance, repair, and rebuilding or replacement work, including costs of plans and specifications, supervision and other related costs, and including capital and non-capital repairs and replacements.

Section 1.30 Rules and Regulations. “Rules and Regulations” shall mean all rules and regulations adopted by the Executive Board in accordance with the terms of this Declaration and the Bylaws.

Section 1.31 Special Assessment. “Special Assessment” shall have the meaning set forth in Section 15.6 of this Declaration.

Section 1.32 Intentionally Omitted.

Section 1.33 Intentionally Omitted.

Section 1.34 Intentionally Omitted.

Section 1.35 Units. “Units” shall mean the five (5) units constructed upon the Land as are more particularly described in Article 3 below and such Units as may hereafter be created by the exercise of Development Rights or otherwise as provided in this Declaration.

Section 1.36 Unit Owner or Owner. “Unit Owner” or “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit, but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

Section 1.37 Utility Facilities. “Utility Facilities” shall mean and refer to any sanitary sewer, water, power, gas, data, telephone, communication, drainage or other utility service line, cable, pipe, main, meter, conduit, connection or system.

In addition, the definitions set forth in Section 47C-1-103 of the Act are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents, unless those terms are expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

ARTICLE 2

OWNERSHIP OF UNITS AND ALLOCATED INTEREST IN COMMON ELEMENTS

Each Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Unit Owner of each Unit shall also own, as an appurtenance to the ownership of each said Unit, an Allocated Interest in the Common Elements. The Allocated Interest appurtenant to each Unit as of the date of this Declaration is as set out in Exhibit B attached hereto and made a part hereof. The Allocated Interest in the Common Elements appurtenant to each Unit has been determined by dividing the area of each Unit as shown on the Plans (the “Unit Area”) by the aggregate Unit Area of all Units. The Allocated Interest in Common Elements appurtenant to each Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from such Unit, and the Allocated Interest in the Common Elements appurtenant to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such Allocated Interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, encumbrance, judicial sale or other voluntary or involuntary transaction which purports to grant any right, interest or lien in, to or upon a Unit shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit and its Allocated Interest in

Common Elements, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the Identifying Number assigned thereto in Exhibit B without limitation or exception, shall be deemed and construed to affect the entire Unit and its Allocated Interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its Allocated Interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety.

ARTICLE 3

DESCRIPTION OF CONDOMINIUM

Section 3.1 General. The Land on which the Building and other improvements are located is located entirely in New Hanover County, North Carolina, contains approximately 2.425 acres, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Land and the remainder of the Condominium Property are subjected to the terms of the Act by this Declaration. The name of the Condominium is Shipyard Commons Condominium.

Section 3.2 Building. The Building located on the Land is concrete framed with a brick and masonry exterior. The Building consists of two (2) levels and five (5) Units. The Building is more particularly described in the Plans.

Section 3.3 Units. The location of Units within the Building, their dimensions, and their floor and ceiling elevations, are shown on the Plans. The maximum number of Units which may be created by the Declarant hereunder shall be five (5).

Section 3.4 Unit Boundaries. The boundaries of each Unit are as follows:

(a) Upper Boundary: The horizontal plane of the top surface of the wallboard in the ceilings within each Unit (as applicable). In addition, in certain Units, as depicted on the Plans, the ceilings within different portions of the Unit may be at different elevations; in such cases, the upper boundary of the Unit shall not be a single plane, but shall vary with the differing finished ceiling elevations within different portions of the Unit.

(b) Lower Boundary: The horizontal plane of the top surface of the subflooring within each Unit. In certain Units, as depicted on the Plans, the floors within different portions of the Unit may be at different elevations; in such cases the lower boundary of a Unit shall not be a single plane, but shall vary with the differing finished floor elevations within different portions of the Unit.

(c) Vertical Boundaries: The vertical planes which include the interior surface of the wallboard of all walls bounding the Unit, extended to intersections with each other, and with the upper and lower boundaries.

(d) As provided in Section 47C-2-102(1) of the Act, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings are part of the Unit. As provided in Section 47C-2-102(2) of the Act, if any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

Section 3.5 Utility Easements. Declarant hereby declares that each Unit shall be held, sold and conveyed subject to a perpetual non-exclusive easement on, under and across all portions of the Unit on which are located Utility Facilities serving one or more of the other Units or the Common Elements for the purpose of maintaining, repairing and replacing the Utilities Facilities now or hereafter located in such areas.

ARTICLE 4

COMMON ELEMENTS

Section 4.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

- (a) The Land.
- (b) All improvements located within the Land outside of the Units, including without limitation the Limited Common Elements described in Section 4.2 below, as well as the interior stairwells and interior corridors within the Building.
- (c) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Building.
- (d) Any public connections and facilities for utility services serving the Building and located within the Land that are not owned by the public utility or municipal agency providing such services, until owned or maintained by the public utility or municipal agency providing such service.
- (e) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.
- (f) The elevator.

Section 4.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

(a) Those portions of any chute, flue, duct, wire, pipe for water or sewer, conduit, exterior or interior walls, bearing walls, bearing column, or any fixture lying partially within and partially outside the designated boundaries of a Unit, but serving exclusively fewer than all of the Units, which shall be Limited Common Elements allocated exclusively to the Unit(s) served.

(b) Any windows, floor coverings, shutters, awnings, window boxes, non-structural components of balconies and terraces, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.

(c) Any portions of the heating, ventilating, and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, but serving less than all of the Units in the Building, which shall be Limited Common Elements allocated exclusively to the Unit(s) that they serve.

(d) Those areas indicated as Limited Common Elements on the Plans.

Section 4.3 Undivided Interests of Unit Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Allocated Interest for that Unit as set forth on Exhibit B attached hereto. The Allocated Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Unit Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized by the Act or elsewhere in this Declaration.

Section 4.4 Reallocation of Limited Common Elements. Limited Common Elements may be reallocated by two or more Unit Owners by an amendment to the Declaration executed by all Unit Owners between or among whose Units the reallocation is made. The Association, at the expense of such Unit Owners, shall prepare and record the executed amendment in the names of the Unit Owners executing same, in the same manner as a deed, in the Public Records.

Section 4.5 Easement in Common Elements. The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Unit Owners and their Permittees for the use of the Common Elements for the purposes for which such Common Elements are intended, including, without limitation, ingress to and egress from each Unit, and for the furnishing of services and facilities for which the same are reasonably intended. Notwithstanding the foregoing or anything provided herein to the contrary, the Association shall have the exclusive right to establish Rules and Regulations pursuant to which Unit Owners and their Permittees may be entitled to use the Common Elements, including, without limitation, the right to make permanent and temporary assignments of parking spaces, and the right to restrict or prohibit the parking of recreational and/or commercial vehicles in the Common Elements.

Section 4.6 Conveyance of Common Elements. Except in accordance with the provisions of Section 47C-3-112 of the Act and with the consent of the Unit Owners to which are

allocated at least eighty percent (80%) of the Allocated Interests in the Common Elements (including the Unit Owners to which are allocated at least eighty percent (80%) of the Allocated Interest in the Common Elements not allocated to Declarant and one hundred percent (100%) of the Allocated Interests in Limited Common Elements to be conveyed or encumbered) and the consent of at least two-thirds (2/3rds) of the Mortgage Votes, no portion of the Common Elements may be abandoned, partitioned, subdivided, encumbered, sold, conveyed or otherwise transferred. No conveyance or encumbrance of the Common Elements pursuant to Section 47C-3-112, however, shall deprive any Unit of its rights of access or support. Notwithstanding anything herein to the contrary, the Association shall have the authority and power to grant easements, leases, licenses and concessions through, over or with respect to the Common Elements for public utilities or other public purposes consistent with the intended use of the Common Elements by Unit Owners and reasonably necessary to the ongoing development and operation of the Condominium, without a vote or the consent of the Unit Owners or Mortgagees; provided, however, no such grant shall unreasonably interfere with or obstruct the Owners' right of ingress to and egress from the Units.

Section 4.7 Partition. Recognizing that the proper use of a Unit by its Unit Owner(s) is dependent upon the use and enjoyment of the Common Elements in common with the Unit Owners of all other Units, and that it is in the interest of all Unit Owners that the ownership of the Common Elements be retained in common by the Unit Owners, it is hereby declared that the Allocated Interest in the Common Elements appurtenant to each Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division.

Section 4.8 Encroachments. To the extent any Unit or Common Element encroaches on any other Unit or Common Element as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment shall exist for so long as the encroachment exists.

ARTICLE 5

INTENTIONALLY OMITTED

ARTICLE 6

SUBDIVISION; RELOCATION OF BOUNDARIES; LEASES, SALES AND CHANGES IN USE

Section 6.1 Subdivision. No Unit may be divided, subdivided or partitioned without the approval of the Association pursuant to N.C.G.S. 47C-2-112, and the consent of all holders of mortgage or deed of trust liens on the Unit(s) to be divided, subdivided or partitioned. If any Unit is subdivided in accordance with the foregoing provisions, the Association shall cause to be filed an amendment to this Declaration reallocating the Allocated Interest appurtenant to the original Unit between or among the new Units created by the subdivision of the Unit in proportion to the Unit Area contained in each new Unit. Notwithstanding anything set forth herein, the minimum size for any Unit shall be 969 square feet.