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NEW HANOVER COUNTY, NC

TAMMY THEUSCH BEASLEY

REGISTER OF DEEDS

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**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THE POINTE**

New Hanover County,
Wilmington, North Carolina

DRAWN BY AND MAIL TO: Troutman Sanders LLP (J. Goldberg)
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Return To Morgan & Carter

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**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THE POINTE**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE POINTE (this "**Declaration**") is made as of the 22nd day of February, 2016, by **BARCLAY COMMONS RETAIL, LLC**, a North Carolina limited liability company ("**Developer**").

BACKGROUND:

- A. Developer currently is the owner of fee simple title to all of the Shopping Center upon which it is developing a development known as "The Pointe".
- B. Developer intends ultimately to develop, or sell to be developed, the Shopping Center.
- C. Developer desires to establish and create certain covenants, conditions, easements, rights, obligations and restrictions to facilitate the mutually beneficial development and operation of the Shopping Center.

NOW THEREFORE, Developer, for itself, its successors and assigns, hereby declares that the Shopping Center shall be held, occupied, used, rented, enjoyed, transferred, conveyed, mortgaged or otherwise encumbered subject to the following covenants, conditions, easements, rights and restrictions:

**ARTICLE 1
DEFINITIONS**

In addition to any terms whose definitions are fixed and defined elsewhere in this Declaration, each of the following terms, when used herein with an initial capital letter, shall have the following meaning:

- 1.1 Affected Party. "**Affected Party**" is defined in Section 6.1 herein.
- 1.2 Appurtenant Access Areas. "**Appurtenant Access Areas**" is defined in Section 2.3 herein.
- 1.3 Building/Buildings. "**Building**" shall mean each building constructed from time to time within the Shopping Center.
- 1.4 Common Area. "**Common Area**" shall mean all areas and improvements (including Utility Lines) within the boundaries of or otherwise serving the Shopping Center which have been substantially completed from time to time, exclusive of Buildings and related canopies, footings, overhangs, supports, columns and outward extensions not for the benefit of all Occupants, truck docks and/or receiving or servicing areas, dumpster, compactor or transformer pads, any outside sales or storage areas, and any areas which are publicly dedicated and accepted by the appropriate governmental body, but specifically including, without limitation, the following areas within the exterior boundaries of or otherwise serving the Shopping Center which have been substantially completed from time to time: (i) all parking areas (except as expressly set forth in Section 3.1(e) herein), (ii) all roadways and driveways (and all related lighting improvements), (iii) all sidewalks and walkways, (iv) all landscaped and planted areas (including any fountains and water amenities) and retaining walls and structures, (v) all shared Utility

Lines serving the Shopping Center, and (vi) all freestanding signage, including the Shopping Center Signs and landscaping improvements and dedicated Utility Lines associated with or serving the Shopping Center Signs. Notwithstanding the foregoing (i) with respect to the Theatre Parcel, the Landscaping and Sidewalk Easement Areas shall not prevent, hinder or adversely affect the improvements (including parking spaces) to be constructed on the Theatre Parcel as shown on the Site Plan, and (ii) Developer shall be required to obtain the prior written consent, not to be unreasonably withheld, from the Owner of the Theatre Parcel prior to the installation of any landscaping and sidewalk areas within the Theatre Parcel.

1.5 Common Area Maintenance Costs. “**Common Area Maintenance Costs**” is defined in Section 4.3(a) herein.

1.6 Convenience Store. “**Convenience Store**” means an establishment of less than 5,000 square feet which sells gasoline and stocks a range of everyday household consumables such as groceries, snack foods, toiletries and soft drinks. The term “Convenience Store” specifically includes, without limitation, 7-Eleven, Circle K, and Kangaroo. The term “Convenience Store” specifically does not include any business which also has a pharmacy on the premises (e.g., CVS, Rite Aid and Walgreens).

1.7 Declaration. “**Declaration**” shall mean this Declaration of Easements, Covenants, Conditions and Restrictions for The Pointe, as the same may be amended from time to time.

1.8 Defaulting Owner. “**Defaulting Owner**” is defined in Section 6.1(a) herein.

1.9 Developer. “**Developer**” shall mean Barclay Commons Retail, LLC, a North Carolina limited liability company, and its successors and assigns specifically with respect to such capacity as Developer pursuant to Section 8.3 herein.

1.10 Drainage Facilities. “**Drainage Facilities**” is defined in Section 2.5 herein.

1.11 Easement Agreement. “**Easement Agreement**” means that certain Declaration of Stormwater Easements, Restrictions and Cost-Sharing Agreement entered into by and between Cameron Properties Land Company, LLC and Developer and placed of record in the New Hanover County Public Registry on or about the date hereof.

1.12 Entrance Sign. “**Entrance Sign**” is defined in Section 2.1 herein.

1.13 Fast Food Restaurant. “**Fast Food Restaurant**” means an establishment whose principal business is the sale of pre-cooked or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off-premises. The term “Fast Food Restaurants” specifically includes, without limitation, Arby’s, Bojangles’, Burger King, Chick-fil-A, Hardee’s, KFC, McDonald’s, Sonic, Taco Bell and Wendy’s. Notwithstanding the foregoing, the term Fast Food Restaurants specifically does not include (i) any restaurants with wait staff, (ii) any restaurants which sell deli sandwiches as a substantial portion of its business so long as such restaurant is prohibited from having a drive-thru service, (iii) any restaurants which sell coffee as a substantial portion of its business, and (iv) any so-called “fast-casual” restaurants. For purposes of illustration only, the following are expressly not Fast Food Restaurants: (a) Panera, (b) Moe’s, (c) Qdoba, (d) Chipotle, (e) Five Guys, (f) Zoe’s Kitchen, (g) McAlister’s, (h) Subway, (i) Starbucks, (j) Dunkin Donuts, (k) Krispy Kreme, (l) Which Wich, (m) Smashburger, and (n) Zaxby’s.

1.14 Landscaping and Sidewalk Easement Areas. “**Landscaping and Sidewalk Easement Areas**” shall mean the strips of land to be used for landscaping and sidewalk areas developed along the interior drive aisles of the Shopping Center from time to time.

1.15 Maintenance Assessment. “**Maintenance Assessment**” is defined in Section 4.3(a) herein.

1.16 Maintenance Costs Commencement Date. “**Maintenance Costs Commencement Date**” is defined in Section 4.3(b) herein.

1.17 Master Declaration. “**Master Declaration**” shall mean that Master Declaration for Barclay, contemplated to be recorded in the New Hanover County Public Registry following the date hereof.

1.18 Occupant. “**Occupant**” shall mean any Person, including any Owner, from time to time entitled to the use and occupancy of any portion of a Building on the Shopping Center by virtue of ownership thereof or under any lease, sublease, license, concession agreement, or other similar agreement.

1.19 Office. “**Office**” means general office uses whose principal purpose is not serving customers in-person within such office. A health or medical clinic or rehabilitative facility shall also be deemed an Office use.

1.20 Owner/Owners. “**Owner**” shall mean, as of any time, the fee simple owner of any Parcel at such time, including, without limitation, Developer.

1.21 Parcel. “**Parcel**” shall have the meaning ascribed to such term in Section 2.3 herein.

1.22 Parking and Common Area Improvements. “**Parking and Common Area Improvements**” shall mean all areas in the Shopping Center as shown on the attached Site Plan which are set apart for use from time to time for the passage and parking of motor vehicles and for pedestrian traffic incidental thereto, including, without limitation, access drives, traffic lanes, aisles and roadways, vehicle parking stalls, walkways, curbs, gutters, landscaping within or adjacent to any such areas, grade separations, including berms and retaining walls within or adjacent to said areas, lighting standards, traffic and directional signs, traffic striping and markings, concrete sidewalks, plaza areas and all other improvements which, if any, are erected on such areas.

1.23 Permittee. “**Permittee**” shall mean any Occupant and any officer, director, employee, agent, contractor, vendor, supplier, visitor, guest, invitee, licensee, tenant, subtenant, or concessionaire of any Occupant and any other person who has business with any Occupant on the Shopping Center.

1.24 Person. “**Person**” shall mean any individual, partnership, firm, association, corporation, trust, or any other form of business or governmental entity.

1.25 Phase I. “**Phase I**” shall mean Phase I as shown on the Site Plan.

1.26 Plans. “**Plans**” is defined in Section 3.3(a) herein.

1.27 Proportionate Share. “**Proportionate Share**” shall mean a fraction, the numerator of which is the total acreage of the applicable Parcel and the denominator of which is the total acreage of the entire Shopping Center.

1.28 Sewer Facilities. “**Sewer Facilities**” is defined in Section 2.6 herein.

1.29 Signage Easement Areas. “**Signage Easement Areas**” shall mean the “Signage Easement Areas” depicted on the Site Plan and shown on the Plat.

1.30 Shopping Center. “**Shopping Center**” shall mean that certain approximately 34.993 acre tract of real property currently owned by Developer and located in New Hanover County, North Carolina, which Shopping Center is more particularly described on Exhibit A attached hereto and incorporated herein by reference. Developer may add other land to the Shopping Center by executing and recording a supplement to this Declaration (for such limited purpose) in the public real estate records in New Hanover County, North Carolina; and, notwithstanding any term or provision herein to the contrary, Developer shall be entitled, without the joinder of any other party (including other Owners) to unilaterally execute and record in the public real estate records in New Hanover County, North Carolina, one or more supplements to this Declaration for the limited purpose of adding other property to the Shopping Center. If any such land is added to the Shopping Center, all such added land must be subject to the use restrictions set forth in Section 5.1 herein.

1.31 Shopping Center Signs. “**Shopping Center Signs**” shall mean the signs which Developer may construct or install on any portion of the Shopping Center or the Signage Easement Areas from time to time for the purpose of advertising the Shopping Center and/or any Occupants.

1.32 Site Plan. “**Site Plan**” shall mean that site plan for the Shopping Center, a copy of which is attached hereto as Exhibit C. The Site Plan depicts only the current contemplated development of the Shopping Center and may be subject to change by Developer, subject to the terms set forth herein.

1.33 Theater Anchor. “**Theater Anchor**” shall mean Stone Wilmington, LLC, and its successors and assigns as Owner of the Theatre Parcel.

1.34 Theatre Parcel. “**Theatre Parcel**” shall mean that portion of the Shopping Center defined on Exhibit B attached hereto which was acquired by the Theater Anchor from Developer on or about the date of this Declaration.

1.35 Utility Line/Utility Lines. “**Utility Line**” and “**Utility Lines**” shall mean underground and above-ground lines, equipment and facilities for the delivery of utility services, which shall include, but not be limited to, Drainage Facilities, Sewer Facilities, Water Facilities, irrigation, gas, electrical, telephone and communications lines.

1.36 Water Facilities. “**Water Facilities**” is defined in Section 2.6 herein.

ARTICLE 2 EASEMENTS BENEFITING SHOPPING CENTER

2.1 Signage Easements for Developer. Developer hereby establishes and creates for the benefit of Developer (as Developer hereunder) a non-exclusive perpetual easement for the construction, maintenance, repair and replacement of the Shopping Center Signs, together with related underground electric lines and other appurtenances in the Signage Easement Areas. Furthermore, Developer hereby establishes and creates for the benefit of the Occupants that are permitted by Developer from time to time to maintain a sign panel on the Shopping Center Signs (or any of them) non-exclusive perpetual easements for the construction, maintenance, repair and replacement of their respective individual sign panels located on such sign(s). The Theater Anchor is hereby granted the top panel and largest surface area of the multi-tenant sign located at the intersection of Barclay Pointe Boulevard and Independence

Boulevard serving the Shopping Center (the “**Entrance Sign**”), provided the Theater Anchor shall have no rights with respect to any other Shopping Center Signs. The design for the Entrance Sign is attached hereto as Exhibit E; any changes thereto which affect the Theater Anchor’s signage thereon shall be subject to the prior consent of Theater Anchor.

2.2 Landscaping and Sidewalk Easements for Developer and Shopping Center. Developer hereby establishes and creates, for the benefit of Developer (as Developer hereunder), a non-exclusive perpetual easement for the construction, installation, maintenance, repair and replacement of landscaping and sidewalk improvements in the Landscaping and Sidewalk Easement Areas. With respect to any sidewalk improvements that are constructed by Developer within the Landscaping and Sidewalk Easement Areas from time to time, Developer hereby establishes and creates for the benefit of, and as an appurtenance to, the Shopping Center, with respect to, and as a burden upon, the Landscaping and Sidewalk Easement Areas (or the relevant portion thereof where sidewalk improvements are constructed from time to time), perpetual non-exclusive rights, privileges and easements for the passage of pedestrians over and across such sidewalk improvements that exist therein from time to time. Furthermore, Developer hereby reserves the right to dedicate to the public the sidewalk improvements that are constructed by Developer within the Landscaping and Sidewalk Easement Areas from time to time and/or to grant public easements in and to such Landscaping and Sidewalk Easement Areas for purposes of the passage of pedestrians over and across the sidewalk improvements that are constructed by Developer within the Landscaping and Sidewalk Easement Areas from time to time. If Developer desires to so dedicate or grant public easements relative to all or any portion of the Landscaping and Sidewalk Easement Areas, the relevant Owners shall reasonably cooperate and assist Developer and shall join in and consent to such dedication or public easement grant, if requested, at no cost to any such parties.

2.3 Access Easement and Parking Easement Encumbering Parcels for Benefit of Parcels. With respect to each distinct, separately owned parcel within the Shopping Center (each, a “**Parcel**”; collectively, “**Parcels**”), Developer hereby establishes and creates for the benefit of, and as an appurtenance to, the other Parcels from time to time and their respective Permittees, perpetual non-exclusive rights, privileges and easements for the passage of vehicles and for the passage and accommodation of pedestrians over, across and through the roadways, driveways, curb cuts, aisles and walkways located within each Parcel (collectively, the “**Appurtenant Access Areas**”), as the same may from time to time be constructed and maintained for such uses. Additionally, subject to Section 3.1(e) herein, Developer hereby establishes and creates for the benefit of, and as an appurtenance to, each Parcel and for the benefit of the Owners of such Parcels from time to time and their respective Permittees, perpetual non-exclusive rights, privileges and easements for the parking of automobiles and other vehicles over and upon each other Parcel. Developer shall initially construct at least nine hundred (900) non-exclusive parking spaces within the area designated as Phase I on the Site Plan (the “**Parking Requirement**”). The number of parking spaces within Phase I shall at no time be reduced below the Parking Requirement except as a result of a condemnation. Such easement rights set forth in this Section 2.3 shall be subject to the following provisions as well as the other applicable provisions contained in this Declaration:

(a) Except as specifically provided in this Section 2.3 or elsewhere in this Declaration, no fence or other barrier or structure (whether temporary or permanent) shall be erected or permitted within or across the Appurtenant Access Areas; provided, however, the foregoing provision shall not prohibit (i) the installation of landscaping improvements, lighting standards, monument and handicapped parking signs, fire lane signs, sidewalks, medians, bumper guards, curbing, stop signs and other forms of traffic controls to the extent shown on the Site Plan or, if not shown on the Site Plan, required by applicable governmental codes, ordinances, rules and regulations and/or consistent with the Plans therefor approved by Developer under this Declaration from time to time and not unreasonably interfering with pedestrian or vehicular ingress or egress; or (ii) the erection of cart corrals and cart stands on the parking lot in front

of any Building(s) within the area designated as "Future Retail" on the Site Plan (subject to the prior written approval of Developer), and the installation of benches, trash receptacles, urns, and planters, and such other non-merchandise items as the Developer (or, as to the Theater Anchor, the Theatre Parcel) determines from time to time, provided that same is tasteful in appearance.

(b) The respective Owners of the Parcels shall have the right to close off the portion of the Appurtenant Access Areas located on their respective Parcels at such intervals and for such minimum period of time as may be legally necessary, in the reasonable opinion of such Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, prior to closing off any portion of the Appurtenant Access Areas as herein provided, such Owner shall give written notice to Developer and to the other Parcel Owners of its intention to do so and shall attempt to coordinate such closing with Developer and other Parcel Owners so that no unreasonable interference with the passage of pedestrians or vehicles shall occur. Any such closing shall be done so as to interfere as little as reasonably possible with the normal business of the Shopping Center.

(c) Each Parcel Owner shall use reasonable efforts to assure that construction traffic to and from its respective Parcel shall not interfere with the use, occupancy and enjoyment of the Shopping Center (or any part thereof). Additionally, each Parcel Owner shall diligently and promptly clean up and remove any mud, dirt, rock or debris that is deposited on other portions of the Shopping Center (including, without limitation, on roadways, parking lots, driveways, and landscaped areas) as a result of traffic, including construction traffic, traveling to and from such Owner's Parcel.

(d) On all Parcels other than the Theatre Parcel, Developer shall have the right, but not the obligation, to erect stop signs, speed bumps and/or other traffic calming and/or controlling devices, and to establish reasonable non-discriminatory rules and regulations with respect to the Appurtenant Access Areas, including, without limitation, speed limits.

2.4 Reserved Utility Easements Encumbering Parcels for Benefit of Parcels. With respect to each Parcel, Developer hereby establishes, creates and reserves for the benefit of, and as an appurtenance to, the other Parcels, perpetual non-exclusive rights, privileges and easements in, to, over, under, along and across strips of land which are located contiguous to and within the front, side and rear boundary lines of each Parcel for the purpose of (i) installing, operating, using, maintaining, repairing, replacing, relocating and removing Utility Lines and (ii) connecting and tying into Utility Lines which are installed from time to time within said strips of land, said strips of land to be twenty (20) feet in width except with regard to any side Parcel boundary line that is common with the side boundary line of another Parcel, in which case the side boundary line utility easement shall be ten (10) feet in width (within each Parcel) along such common side Parcel boundary lines. No utility easement created under this Declaration shall encroach on or under any planned or future Building areas as depicted on the Site Plan.

Any Parcel Owner installing and/or connecting to Utility Lines within the boundaries of another Parcel pursuant to this Section 2.4 shall (i) pay all costs and expenses with respect to such work; (ii) cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first-class materials and in a good and workmanlike manner as quickly as possible and in a manner so as to minimize interference with the use of the affected portion of such other Parcel; (iii) not interrupt, diminish or otherwise interfere with or increase the cost of, the utility services to the other parties served by such Utility Lines; (iv) comply in all respects with all applicable governmental laws, regulations and requirements; (v) maintain customer and delivery access during such work; (vi) promptly, at its sole cost and expense, clean the area and restore the affected portion of the Parcel and improvements and facilities therein (including, without limitation, any disturbed landscaping and irrigation facilities) to a condition equal to or better than the condition which existed prior to the commencement of such work; and (vii) cause all Utility Lines to be underground except for ground

mounted electrical transformers and fire hydrants or as may be otherwise required by governmental authorities or the applicable utility service provider.

Any Parcel Owner shall have the right to relocate a Utility Line within the boundaries of its Parcel upon thirty (30) days' prior written notice to the Owner of any Parcel serviced by such Utility Line provided that such relocation (i) shall not interfere with or diminish the utility service to such benefitted Parcel Owner during the benefitted Parcel Owner's business hours; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects, (ii) shall not reduce or unreasonably impair the usefulness of function of such Utility Line, (iii) shall be performed without cost or expense to the other Parcel Owner(s); and (iv) shall have been approved by the provider of such utility service and the applicable governmental authorities. Documentation of the relocated Utility Line, including the furnishing of an "as built" survey to all Parcel Owner(s) benefitted by such Utility Line, shall be at the expense of the Parcel Owner re-locating such Utility Line and shall be completed as soon as reasonably possible following such relocation.

2.5 Storm Water Drainage Easements Encumbering Parcels for Benefit of Parcels. With respect to each Parcel, Developer hereby establishes, creates and reserves for the benefit of, and as an appurtenance to, the other Parcels, perpetual non-exclusive rights, privileges and easements to drain storm water run-off from each Parcel, as the same hereafter may be improved, onto and across the other Parcels and into and through certain storm water drainage lines and facilities (the "**Drainage Facilities**") now or hereafter located within any Parcel and intended to and built so as to serve the other Parcels so long as such drainage shall not cause any damage to such Parcel across which such storm water is being drained or any improvements thereon. Notwithstanding the foregoing, the storm water drainage plans for any Parcel shall be subject in all respects to the provisions of Section 3.3 herein.

2.6 Sanitary Sewer and Water Utility Easements Encumbering Parcels for Benefit of Parcels. Developer hereby establishes, creates and reserves for the benefit of, and as an appurtenance to, the other Parcels (i) a perpetual non-exclusive right, privilege and easement for the purposes of using certain sewer lines and related equipment and facilities (the "**Sewer Facilities**"), now or hereafter located within any Parcel and intended to and built so as to serve the other Parcels, for sewage flow from the Parcels, and to tie into the Sewer Facilities located on such Parcels, for such flow over the other Parcel(s) where such Sewer Facilities are located, or are to be located; and (ii) a perpetual non-exclusive right, privilege and easement for the purposes of using certain water lines and related equipment and facilities (the "**Water Facilities**"), now or hereafter located within any Parcel and intended to and built so as to serve the other Parcels, for domestic water flow to and from the Parcels, and to tie into the Water Facilities on such Parcels, for such flow over the other Parcel(s) where such Water Facilities are located, or are to be located.

2.7 Construction Easements. Developer hereby establishes, creates and reserves for the benefit of, and as an appurtenance to, the Theatre Parcel, a temporary right, privilege and easement to use a gravel construction access drive to the Theatre Parcel from South 17th Street to provide access for construction vehicles and equipment from South 17th Street to the Theatre Parcel while improvements are constructed thereon.

The Theatre Owner hereby grants to Developer, its successors, assigns, employees, contractors and subcontractors, such temporary easements and licenses as are necessary to go onto the Theatre Parcel in order to perform the Post-Closing Work (as defined in that Site Development Agreement between Theatre Owner and Developer and dated on or about the date hereof).

The temporary easements granted hereby shall terminate on the date which is the earlier to occur of (i) the completion of the work as provided herein, or (ii) eighteen (18) months following the date hereof, subject to extension for events outside of the reasonable control of the delayed party.

ARTICLE 3 IMPROVEMENTS

3.1 General Requirements and Limitations for Buildings and Related Improvements.

(a) No parking decks or structured parking shall be erected within the Shopping Center. At all times there shall be sufficient surface parking spaces within Phase I of the Shopping Center, as shown on the Site Plan, to meet the Parking Requirement, except as a result of a condemnation.

(b) Other than the Owner of the Theatre Parcel, no Owner shall be permitted to subdivide its respective portion of the Shopping Center into separate parcels without the prior written consent of Developer; provided, however, nothing in this Section 3.1(b) shall be construed as prohibiting any such Owner from dividing, separating or partitioning the space within any Building located upon its respective portion of the Shopping Center.

(c) Other than the Theatre Anchor with respect to the Theatre Parcel, no Owner shall rezone its respective portion of the Shopping Center or obtain any zoning variance or waiver which would be inconsistent with the use of such portion of the Shopping Center as contemplated in this Declaration without the prior written consent of Developer.

(d) Without the prior written consent of Theater Anchor and Developer, (i) in no event shall the "View Corridor Area", "Permissible Building Areas" or "Critical Drives" depicted on the Site Plan be modified unless such modifications are required due to governmental requirements beyond the requesting party's control and in no event shall Buildings be located in those portions of the Site Plan designated as "View Corridor Area" or the "Critical Drives", (ii) no Buildings may be constructed on the Shopping Center outside of the "Permissible Building Areas" as depicted on the Site Plan, (iii) in no event shall improvements greater than one (1) story in height be erected in the "One Story Only Zone" as depicted on the Site Plan,. Further, (x) in no event shall the Developer use any portions of the Shopping Center depicted as "No Staging Area" on the Site Plan for staging for the portions of the Shopping Center outside of the Theatre Parcel and in no event shall Theatre Anchor use any portions outside of the Theatre Parcel for staging for the Theatre Anchor's building improvements in the Theatre Parcel, (y) the parcel labeled "Future Retail" on the Site Plan shall have sufficient on-site parking spaces to self-park in compliance with applicable zoning ordinances, however, there shall be no barricades of the drive aisles or entryways between the "Future Retail" tract and the rest of the Shopping Center, and (z) the aggregate Floor Area of retail space within the Shopping Center shall not exceed the total aggregate gross square footage of building pad space as shown on the Site Plan.

(e) Notwithstanding anything herein to the contrary, there shall be no easement for cross parking of automobiles or other vehicles between the "No Cross-Parking Tract" (as depicted on the Site Plan) and the balance of the Shopping Center. The No Cross-Parking Tract and the balance of the Shopping Center shall contain an adequate number of parking spaces to comply with all applicable zoning ordinances and other governmental laws, ordinances and regulations relative to such Parcel without any variance. Notwithstanding the foregoing to the contrary, however, in the event the size or configuration of a Parcel (other than the No Cross-Parking Tract) prevents the relevant Parcel Owner from locating on its respective Parcel an adequate number of parking spaces to comply with such applicable zoning ordinances or other governmental laws, to the extent permitted by applicable legal requirements such

Owner may rely on parking spaces outside of such Parcel (outside of the No Cross-Parking Tract) to satisfy such requirement.

(f) Unless otherwise approved by Developer, all Utility Lines and storm drainage lines and facilities installed on the Shopping Center shall be located and installed underground. Provided, however, this provision shall not prohibit above-ground light standards, poles and fixtures and meter boxes and other similar above-ground appurtenances that typically are a part of underground utility facilities and systems.

(g) Decorative screening and/or landscaping screening (the location and style of which shall be included in the Plans to be submitted to Developer for review and approval as provided in this Declaration) shall be installed and maintained on each Parcel so as to obscure from public view all trash receptacles, trash compactors, and service areas, mechanical and electrical equipment, or other unsightly Building appurtenances. In addition, appropriate screening (the location and style of which shall be included in the Plans to be submitted to Developer for review and approval as provided in this Declaration) on each Parcel shall be provided and maintained to obscure all roof-mounted equipment and appurtenances from public view.

(h) Any restaurants located in Buildings 2 and 3 (as shown on the Site Plan) shall have water service and drainage inlets within the grease trap areas serving such restaurants.

3.2 Signage. Subject to any more stringent limitations and requirements that may be imposed by New Hanover County or any other governmental authority having jurisdiction with respect to the Shopping Center, the following restrictions and requirements shall apply with regard to signage that may be installed and maintained on the Shopping Center; provided, however, the following shall not apply to the Theatre Parcel so long as (i) a theater is operated on the Theatre Parcel, (ii) the signage installed on the Theatre Parcel is consistent with the signage installed at the majority of Theatre Owner's other locations and (iii) the signage initially installed on the Theatre Parcel conforms to that certain exterior signage package titled "The Pointe 14" dated February 15, 2016 prepared by Tyson Sign Company.

(a) All signage installed on any portion of the Shopping Center must be approved, in advance, by Developer in writing and must comply with all approved Plans therefor and with all applicable governmental requirements. The Shopping Center Signs shall be used to identify the Shopping Center name and, subject to the approval of all governmental authorities having jurisdiction, may, at Developer's option, include individual sign panels to identify certain successor Occupants of Buildings located on the Shopping Center, as selected by Developer. Each Occupant that is specifically allowed by Developer to have an individual sign panel on a Shopping Center Sign shall be responsible for the construction, installation, maintenance, repair and replacement of its identification panel. Except for the Theater Anchor (which, subject to governmental requirements and rules, shall be entitled to install its individual identification panel on the Entrance Sign in the top position and in an area that is larger than the individual identification panel of any other tenant or occupant in the Shopping Center, so long as the Theatre Parcel is being operated as a movie theater), no other Owner shall have a vested right to have an individual sign panel on the Shopping Center Signs.

(b) Except as otherwise provided in Section 3.2(a) herein, Developer shall be responsible for the maintenance, repair, replacement and illumination of the Shopping Center Signs. Furthermore, as set forth in Section 3.2(a) herein, to the extent any individual Shopping Center Sign panel for an Occupant requires repair or replacement in order to remain in first-class condition and in accordance with all governmental requirements, the Occupant represented on such Shopping Center Sign panel shall, at its sole cost and expense, repair such panel.

(c) Each Owner shall be responsible for obtaining all necessary governmental permits and approvals for signage to be installed on such Owner's portion of the Shopping Center, and approval by Developer pursuant to Section 3.3 of the Plans for such signage shall not be deemed or construed as a representation or warranty by Developer that such signage complies with applicable governmental requirements and rules. Signage to be installed by an Owner on such Owner's portion of the Shopping Center shall be fabricated in a professional manner, installed, operated and maintained by such Owner at such Owner's sole cost and expense; and such signage shall be maintained in good working order with all letters and logos steadily illuminated and all boxing and covers in good repair. Each such sign shall contain only the name of the business conducted on the relevant portion of the Shopping Center and shall not include other information or advertising (e.g., "Open 24 Hours," "Low Prices," etc.).

(d) In addition to the foregoing, no exterior identification signs attached to Buildings within the Shopping Center (and no interior signs that are located within twelve (12) inches of any windows or doors) shall be of the type or possess any of the characteristics set forth below:

- (1) painted on the surface of any Building;
- (2) flashing, moving, rotating or audible signs or markers of any type, or signs advertising businesses other than those carried on within the Shopping Center;
- (3) signs employing exposed raceways, exposed neon fixtures or tubing, exposed ballast boxes, or exposed transformers that do not conform with the exterior color or appearance of the applicable Building; or
- (4) cloth, paper or cardboard signs, balloons and other inflated signs and displays, moveable signs (e.g., mounted on a trailer), stickers or decals; provided, however, the foregoing shall not prohibit the placement on the door of each Occupant's or Owner's space of a sticker or decal indicating hours of business, emergency telephone numbers, credit cards accepted, union information, etc., and containing the name and/or any logo of such Occupant or Owner.

(e) Except as provided in Section 3.2(d) herein, no Occupant or Owner may display or affix to or maintain on the glass panes, supports of the windows or doors, the exterior light poles and fixtures, or upon the exterior walls of, any Buildings or other improvements constructed within the Shopping Center, any advertising placards, banners, flyers, flags, pennants, names, insignia, trademarks or other comparable descriptive materials without the prior written consent of Developer.

(f) If an Occupant fails to maintain its signage as described herein, then, upon ten (10) days' advance written notice to such Occupant, Developer may, but is not obligated to, perform such maintenance and/or other obligations on such Occupant's behalf, and each such Occupant (including each Owner) hereby grants to Developer and any contractors or agents of Developer a temporary, non-exclusive access and maintenance easement over such Occupant's portion of the Shopping Center for performing such signage maintenance and related obligations. Upon completion of any such maintenance performed pursuant to this Section 3.2(f), Developer shall submit to such Occupant an invoice for such work and, within fifteen (15) days after receiving such invoice, the Occupant receiving such invoice shall pay to Developer the full amount shown on such invoice. Any amounts payable under this Section 3.2(f) shall be an obligation running with the land and shall comprise a lien on the applicable portion of the Shopping Center until paid.

3.3 Developer's Approval Rights.

(a) Architectural Compatibility/Content of Plans/Procedure. It is the intention of Developer that all Buildings and other improvements within the Shopping Center be constructed, installed, erected, operated and maintained so that the Shopping Center shall be aesthetically and architecturally harmonious with similar materials and colors. Accordingly, except as otherwise provided herein, all Buildings and related improvements within those portions of the Shopping Center other than the Theatre Parcel (with the Theatre Parcel being exempted from these requirements other than the obligation to develop the theatre on the Theatre Parcel in accordance with the architectural theme of Buyer's Indian Trail, North Carolina location as of the date hereof, with any subsequent modifications being consistent with the then-existing architectural theme of the Shopping Center), including the initial construction and any alterations, additions, exterior remodeling or reconstruction of any Buildings or other improvements following the initial construction thereof, shall be performed only in accordance with Plans approved by Developer for such work as provided herein. Prior to the commencement of the construction and installation of any Building(s) and other improvements by an Owner or Occupant, such Owner or Occupant shall deliver to Developer, in triplicate, detailed plans and specifications for such proposed Building(s) and other improvements (collectively, the "**Plans**"), including and encompassing (at a minimum) the following:

- (1) scaled elevations, exterior design concepts and specifications, material selections and specifications (including samples) and color (including samples) for the exterior surfaces of the proposed Building(s) and other improvements;
- (2) a complete site plan and specifications (a) showing the location and size of the proposed Building(s) and all other improvements to be constructed including, without limitation, trash receptacles, trash compactors, service areas, mechanical and electrical equipment, fencing, structural screening, landscaping screening and other Building appurtenances, loading areas, walks, walkways, sidewalks, roadways, driveways, curbs, gutters and other improvements and (b) providing details as to the location, size and type of all pipes, lines, conduits, and appurtenant equipment and facilities for the provision of sanitary sewage, storm water, water, electricity, gas, telephone, steam and other utility services to serve such Parcel;
- (3) a signage plan and specifications showing the scaled elevations, design concepts, lighting fixture type (if applicable), lighting method (if applicable), material selections (including samples), color (including samples), configuration, location, height, size and verbiage for all signage to be located on such Parcel (including, without limitation, any temporary or seasonal promotional signs);
- (4) a landscaping plan and specifications showing the proposed landscaping, including detailed information regarding the species, type, height and spacing of all trees, shrubs and other landscaping, reflecting the locations of all berms and including plans and specifications for any landscaping irrigation facilities to be installed;
- (5) a lighting plan, a photometric plan and related specifications for all exterior lighting fixtures, poles and facilities, which plans and specifications shall be in accordance with uniform specifications for exterior lighting prepared by Developer for the Shopping Center;
- (6) a detailed grading and drainage plan and specifications for the relevant portion of the Shopping Center, providing, without limitation, all relevant data and calculations with regard to the quantity and direction of storm water runoff from the Parcel and the size,

location and material types for all pipes, catch basins, headwalls, ditches, swales, and other drainage structures and improvements; and

- (7) relevant information and documentation with respect to the finished grade elevation and topography of the Parcel.

Developer may disapprove the Plans in its sole discretion, including for purely aesthetic reasons. Developer shall either approve or disapprove the Plans within thirty (30) days of the receipt thereof, although Developer's approval of the Plans may in some cases be contingent upon the approval of such Plans by one or more third parties, including other Owners and tenants of the Shopping Center. If Developer disapproves the Plans, one (1) complete set of the Plans shall be marked "Disapproved" and signed by Developer and returned to the submitting party, accompanied by a reasonably detailed statement of items in the Plans found by Developer not to be acceptable. If Developer approves such Plans, any modification or change in the approved Plans must be submitted to Developer for review and approval in accordance with the procedure specified herein. If Developer disapproves such Plans, upon the resubmission to Developer of the Plans (with revisions), Developer shall either approve or disapprove the resubmitted Plans within twenty (20) days of the receipt thereof. Upon the completion of the initial construction and installation of any such Building(s) and other improvements on any portion of the Shopping Center in accordance with the approved Plans, the same shall not thereafter be changed or altered without the prior written approval of Developer (although Developer's approval of such changes or alterations may in some cases be contingent upon the approval of such changes or alterations by one or more third parties, including other Owners and tenants of the Shopping Center or portions thereof) if such changes or alterations would materially modify the exterior appearance of such Building(s) and other improvements, which approval shall be sought pursuant to the terms and procedures set forth herein for an initial submission of the Plans and shall not be unreasonably withheld, conditioned or delayed by Developer (in accordance with the criteria set forth herein, and the "sole discretion" standard of approval referenced in the first sentence in this grammatical paragraph shall not be applicable in such case). Nothing herein shall require that Developer's approval be obtained with respect to the interior designs or interior floor plans of the Buildings.

(b) Non-Conforming or Unapproved Improvements. In addition to any remedies contemplated or permitted pursuant to other provisions in this Declaration, Developer may require any Owner to restore, at such Owner's sole cost and expense, such Owner's Parcel to the condition that existed prior to the installation or construction of Building(s) and/or other improvements thereon ("restoration," for purposes of this Section 3.3(b), to include, without limitation, the demolition and removal of any unapproved Building(s) and/or other improvements) if such Building(s) and/or other improvements were commenced or constructed in violation of Section 3.3(a) herein. In addition, Developer may, but is not obligated to, cause such restoration to be performed and shall be entitled to all of the rights and remedies provided in Article 6 herein with respect to the recovery of the costs of such restoration from the responsible Owner.

(c) Limitation of Liability. Neither Developer nor the partners, managers, members, officers, directors, employees and/or agents of Developer shall be liable in damages or otherwise to any Owner or Occupant by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with any submittal or resubmittal of Plans for review and approval under this Declaration. Without the prior written consent of Developer, no Owner, Occupant or other party who submits or resubmits Plans on behalf of an Owner or Occupant may bring an action or suit against Developer or Developer's partners, officers, directors, employees and/or agents to recover any such damages, and such parties hereby release, remise and quitclaim all claims, demands and causes of action for damages arising out of or in connection with any mistake of judgment, negligence or nonfeasance of Developer or Developer's partners, officers, directors, employees and/or agents relating to the review and approval, disapproval or