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STATE OF NORTH CAROLINA

DECLARATION OF CONDOMINIUM

COUNTY OF NEW HANOVER

WRIGHTSVILLE BEND  
SHOPPING CENTER,  
A CONDOMINIUM

THIS DECLARATION, made this \_\_\_\_\_ day of December, 1988, by Maurice Jennings, t/d/t/a, Jennings Real Estate, a sole proprietorship, with its principal office in Burlington, North Carolina, hereinafter referred to as "Declarant".

## WITNESSETH:

WHEREAS, the Declarant is the owner of record of the fee simple title of certain properties in New Hanover County, North Carolina, which are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, which property Declarant desires to submit to condominium ownership.

NOW, THEREFORE, the Declarant hereby submits the property described in Exhibit "A" hereto attached 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 said property to be known as WRIGHTSVILLE BEND SHOPPING CENTER, a Condominium, is and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved, subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person acquiring or owning an interest in the property and improvements, their grantees, successors, heirs, personal representatives, executors, administrators, devisees and assigns.

## I.

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NAME AND ADDRESS

The name by which this condominium is to be identified is: WRIGHTSVILLE BEND SHOPPING CENTER, a Condominium.

The condominium's location and address is: 3115 Wrightsville Avenue, Wilmington, North Carolina 28403.

## II.

DEFINITIONS

The terms used herein and in the By-Laws shall have the meanings stated in the North Carolina Condominium Act, Chapter 47C, of the North Carolina General Statutes unless otherwise defined herein or in the By-Laws or unless the context otherwise requires.

A. Act means the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

B. Allocated Interests means the undivided interest in the Common Elements, the common expense liability, and in the Association allocated to each unit.

C. Assessment means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner by the Association.

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- D. **Association** means the non-profit Corporation to be known as **WRIGHTSVILLE BEND SHOPPING CENTER, INC.**, the entity responsible for the operation of the condominium pursuant to the Act, which entity includes all of the unit owners acting as a group in accordance with the By-Laws and Declaration.
- E. **Board of Directors** means the Board of Directors of the Association.
- F. **Building or Buildings** shall mean all structures and improvements now or hereafter erected upon the property.
- G. **By-Laws** means the By-Laws for the government of the condominium as they exist from time to time. A copy of the initial By-Laws are hereto attached as Exhibit "F" and made a part hereof by reference.
- H. **Condominium Documents** means this Declaration, the By-Laws, the Rules and Regulations, all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.
- I. **Common Elements** means all portions of the Condominium other than the units, being that portion owned in undivided interests by all of the owners as more specifically set forth herein in Article III, Paragraph D.
- J. **Common Expenses** means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- K. **Common Expense Liability** means the liability for common expenses allocated to each unit pursuant to the Act and this Declaration.
- L. **Condominium** means the real estate portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, all of which is submitted to condominium ownership by this Declaration.
- M. **Declaration** means this instrument as it may be from time to time amended or supplemented.
- N. **Developer and Declarant** shall be used interchangeably to mean **Maurice Jennings, t/d/b/a, Jennings Real Estate**, a sole proprietorship.
- O. **Development Rights** means those rights hereby reserved by the Declarant to add real estate to the Condominium, to create units, common elements or limited common elements within the Condominium.
- P. **Eligible Mortgage Holder or Eligible Holders** means the holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.
- Q. **Limited Common Elements** means those portions of the common elements which are allocated for the exclusive use of one or more units, as more specifically defined herein.
- R. **Mortgagee** means a beneficiary under a mortgage or Deed of Trust.
- S. **Property** means the real estate described in Exhibit "A", attached hereto and incorporated herein by reference, together with any buildings and improvements located thereon.
- T. **Shop or Unit** shall mean and refer to any of the spaces numbered A-J, inclusive, which are subject to individual ownership, as designated on the Exhibits attached to this Declaration and shown on the plat of Wrightsville Bend Shopping Center, a Condominium, recorded in the New Hanover County Registry, which spaces may be individually referred to as a "Shop", "Unit", or "Condominium Unit".
- U. **Singular, Plural, Gender**. Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

V. Unit Owner or Owner means a person or entity, or any combination thereof, who owns a unit.

III.

**IDENTIFICATION OF PROPERTY**

A. **LAND:** The description of the land on which the buildings and improvements are constructed, is set forth in Exhibit "A" attached to and hereby made a part of this Declaration.

B. **BUILDINGS:** The building erected by the Declarant on the land described in Exhibit "A" is located as shown on the site plan attached hereto as Exhibit "B". The building is of masonry and metal frame construction and contains ten condominium units.

C. **UNIT DESIGNATIONS:** The ten condominium units shall be designated alphabetically by the letters "A" through "J". The unit designation of each condominium unit, its location, its dimensions, approximate area, and common elements to which it has immediate access, and other data concerning its proper identification are set forth on the diagrammatic floor plans of the buildings hereto attached as Exhibit "C". No unit bears the same identifying letter as does any other unit. Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings and floors, which are shown on said plans, subject to such encroachments as are contained in the building, whether the same now exist or may be caused or created by construction, settlement or movement of the building, or by permissible repairs, construction or alteration.

D. **COMMON ELEMENTS:**

(1) **Nature of Interest:** Each of the unit owners shall own an undivided interest in the common elements and said undivided interest, stated as percentages of such ownership in the said common elements, is set forth in Exhibit "D" which is annexed to this Declaration and made a part hereof.

The fee simple title to each condominium unit shall include both the unit and the respective undivided interest in the common elements and the said undivided interest in the common elements is to be deemed to be conveyed or encumbered with its respective unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the condominium unit. Any attempt to sever or separate the fee title to a condominium unit from the undivided interest in the common elements appurtenant to each unit shall be null and void.

(2) All areas of the described property not within any units shall be common elements and all portions of any building or other improvement not included within a unit shall be common elements. The common elements shall include all installations, items and equipment for utility service to more than one unit and shall also include tangible personal property required for the maintenance and operation of the condominium even though owned by the Association.

E. **LIMITED COMMON ELEMENTS.** The limited common elements appurtenant to each unit are as follows:

(1) Decks accessible only from a particular unit, outside stairways and outside entry at ground level.

(2) All non-load bearing walls located entirely within the unit.

(3) All materials, including but not limited to, studs, sheetrock, plywood, carpet, paint, paneling, tile, vinyl or brick, attached to, or on, the inside surfaces of perimeter walls, floors and ceilings of the unit.

(4) All doors, windows, screens, ventilation fans and vents located entirely within the unit or extending into the unit from the perimeter walls, floors or ceilings thereof.

(5) All air handling units, ducts and components and all water, power, telephone television and cable television, electricity, plumbing, gas and sewage lines located in the unit; provided, however, that the portion of said lines located in a common compartment for, or installation of, such lines shall be common elements as described above.

(6) The limited common elements which are appurtenant to any unit(s) shall not be separated therefrom and shall pass with title to any unit(s), whether or not separately described.

**F. AMENDMENT TO PLANS:**

(1) Individual unit owners, with the approval of the Declarant or its Designee, which approval shall not be unreasonably withheld, shall have the right to change the interior design and arrangement of individual units, and to alter the boundaries between the units; provided, however, that no such change shall be valid until an amendment to this Declaration shall be executed by the Declarant (or the Association, if all units are sold out by Declarant) and the owners of the units involved in such changes, and recorded in the office of the Register of Deed of New Hanover County. If more than one unit is involved, the Declarant, or its Designee shall apportion between the units the shares in the common elements which are appurtenant to the units concerned. No unit, at any time, may contain less than 500 square feet. No such change shall increase the number of units except as provided in Article VI below.

(2) An amendment of this Declaration reflecting such alteration of condominium unit plans by Declarant need be signed and acknowledged only by the Declarant and need not be approved by the Association, unit owners or lienors or mortgagees of units or of the condominium, whether or not elsewhere required for an amendment. Provided, however, if such change or alteration occurs after all units have been sold, the President and the Secretary on behalf of the Association shall perform the duties of the Designee referred to in the preceding paragraph

(3) Nothing herein shall be deemed to limit or alter Declarant's right, hereby reserved, to vary the internal layout or exterior configurations of any units hereafter constructed so long as Declarant substantially conforms with the provisions of this Article III.

(4) Every unit owner in **WRIGHTSVILLE BEND SHOPPING CENTER, a Condominium**, by accepting a deed to a unit therein, thereby agrees for himself and his heirs, successors and assigns, to any change in accordance with the provisions of this Article III and does hereby adopt, ratify and confirm the change in unit ownership resulting from any such change.

**IV.**

**AMENDMENT TO RATIOS**

As provided by this Declaration, the By-Laws and Rules and Regulations of **WRIGHTSVILLE BEND SHOPPING CENTER, INC.** (hereinafter called the "Association") and the terms of Chapter 47C of the General Statutes of North Carolina as the same may, from time to time be hereafter amended, the ratio of the undivided interest of each unit owner in the common elements as set forth on Exhibit "D" attached hereto may be altered by an amendment to this Declaration duly recorded.

**V.**

**NATURE OF INTEREST IN UNITS**

Every condominium unit, together with its undivided common interest in the common elements, shall for all purposes be, and it is hereby declared to be and to constitute, a separate parcel of real property and the unit owner thereof shall be entitled to the exclusive ownership and possession of his condominium unit subject only to the covenants, restrictions, easements, rules, regulations, resolutions, and decisions as may be contained or provided for herein and in the accompanying By-Laws and minutes of the Association and the Board of Directors.

### SUBDIVISION OF UNITS

The Declarant or any unit owner, with the approval of the Developer or its Designee, shall have the absolute right to subdivide any unit into no more than three (3) sub-units, with each portion of the subdivided unit being designated by the letter designating the unit followed by the number "1", "2", or "3" to designate the sub-unit. The Declarant shall apportion between the sub-units the share in the common elements which are appurtenant to the unit so subdivided, and the owner of each subdivided unit shall be entitled to a percentage of the total vote in the affairs of the Association equal to the percentage that such sub-unit bears to the total percentage of the vote for such unit that was attributable to such unit prior to its subdivision.

An amendment to the Declaration reflecting such subdivision of a unit need be signed and acknowledged only by the owner of the unit so involved and the Developer, or if the Developer no longer owns any units, the same shall be approved by the Association, which approval need be acknowledged only by the President and attested by the Secretary thereof. Such amendment shall not require the signatures of the entire Association, other unit owners or lienors or mortgagees of units in the condominium, whether or not elsewhere required for an amendment.

### VII.

#### SERVICE OF PROCESS

Maurice Jennings is hereby designated as the Registered Agent to receive Service of Process in any action which may be brought against or in relation to this condominium development and/or the Association. The address of said Registered Agent is Post Office Box 2600, Burlington, North Carolina 27216. The Board of Directors of the Association may revoke the appointment of any such agent and appoint a successor, all pursuant to the By-Laws.

### VIII.

#### EASEMENTS

The following easements are covenants running with the land of the condominium:

A. Each unit owner shall have an easement in common with the other owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the owners of all other units to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other units and located in such unit. The Board of Directors of the Association or their designee shall have the right of access to each unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the common facilities contained therein or elsewhere in the building.

B. The Association may hereafter grant easements, as approved by the Board of Directors, for utility purposes for the benefit of the property, including the right to install, lay, maintain, repair and replace water lines, gas lines, pipes, sewer lines, television cables, telephone wires and equipment and electrical conduits, and wires over, under, along and on any portion of the common areas; and each unit owner hereby grants the Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of each unit owner such instruments as may be necessary or desirable to effectuate the foregoing.

C. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the common elements; and for vehicular traffic over, through and across such portions of the common elements as from time to time may be paved and intended for such purposes.

D. Easements are reserved to the owners of units in **WRIGHTSVILLE BEND SHOPPING CENTER**, a Condominium, for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes, and for the construction and maintenance of water, sewer and other utilities.

E. Easements for encroachments, if any, shall exist as set forth in Section A of Article XXVI.

F. In case of emergency originating in or threatening any unit or the common elements, regardless whether the unit owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owners, and such right of entry shall be immediate.

G. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

#### IX.

##### PARTITIONING

The common elements shall not be divided nor shall any right to partition any thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a condominium unit by the entireties, jointly, or in common or in any other form by law permitted.

#### X.

##### PARKING SPACES

Parking spaces are available generally for owners, their tenants, guests, customers and invitees under such restrictions as may be prescribed by the Board of Directors of the Association.

#### XI.

##### LIENS

While the property remains subject to this Declaration and the provisions of the North Carolina Condominium Act, no liens of any nature shall arise or be created against the common elements except with the consent in writing of 80% of the condominium unit owners and the holders of first liens thereon except such liens as may arise or be created against the several units and their respective common interests under the provisions of the North Carolina Condominium Act. Every agreement for the performance of labor, or the furnishing of materials to the common elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and the right to file a mechanics lien or other similar lien by reason of labor performed or materials furnished is waived.

#### XII.

##### OPERATING ENTITY

The operation of the condominium shall be by an incorporated association organized pursuant to Chapter 55 of the General Statutes of North Carolina.

A. **NAME:** The name of the Association shall be **WRIGHTSVILLE BEND SHOPPING CENTER, INC.**

B. **POWERS:** The Association shall have all of the powers and duties set forth in the Act, except as limited by this Declaration and the By-Laws, and all of the powers and duties reasonably necessary to operate the condominium as set forth in this Declaration and the By-Laws and as they may be amended from time to time.

The Association's powers of maintenance, operation, administration, management and care of the condominium property may be delegated to a Manager as provided for in Article XIV herein. All other affairs of the Association shall be conducted by a Board of Directors who shall be designated in the manner provided in the By-Laws of the Association.

**C. MEMBERS:**

(1) **Qualifications:** The members of the Association shall consist of all of the record owners of units.

(2) **Change of Membership:** Change of membership in the Association shall be established by recording in the public records of New Hanover County, North Carolina, a deed or other instrument establishing a record title to a unit or units in the condominium and the delivery to the Association of a certified copy of such instrument, the owner designated by such instrument thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated.

(3) **Voting Rights:** There shall be one person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners. Such person shall be known and hereafter referred to as a "voting member". Such voting member may be the owner of one of a group composed of all of the owners of a unit ownership, or may be some other person designated by such owner or owners to act as proxy on his or their behalf and who need not be an owner. Such designation shall be made in writing to the Board of Directors and shall be revocable at any time by actual notice to the Board of Directors of the death or judicially declared incompetence of any designator, or by written notice to the Board of Directors by the owner or owners. The total number of votes of all voting members shall be one hundred (100), and each owner or group of owners (including the Board of Directors, if said Board or its designee shall then hold title to one or more units) shall be entitled to the number of votes equal to the total of the percentage of ownership in the common elements applicable to his or their unit ownership as set forth in Exhibit "D" of this Declaration. The unit owner may vote on any matter by secret ballot upon motion duly made and seconded by any voting member.

(4) **Approval or Disapproval of Matters:** Whenever the decision of a unit owner is required upon any matter, whether or not the subject to an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.

(5) **Restraint Upon Assignment of Shares in Assets:** The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.

Any assessment for reserve or sinking funds for capital improvements or repairs shall be held by the Board of Directors for the purposes so designated and for no other. In the event such purpose or contingency does not occur, said allocated funds shall be expended only for the general operation of the property and any excess assessments in any year shall be used to reduce the following year's assessments.

**D. INDEMNIFICATION OF DIRECTORS:** Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a director or officer at the time of the acts in question or such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

**E. BY-LAWS:** The By-Laws of the Association shall be in the form attached hereto as Exhibit "F" as amended from time to time.

**F. PROPERTY IN TRUST:** All funds and the titles of all properties acquired by the Association and the proceeds thereof shall be held in trust for the members in accordance with the provisions of this Declaration and the By-Laws.

## XIII.

COMMON EXPENSE

The common expenses and surpluses of the property shall be shared by the unit owners in the ratios specified in Exhibit "D" as amended from time to time.

## XIV.

MANAGEMENT AND MAINTENANCE

A. MANAGER: The Association may enter into a contract with a Management Company or Manager for the purposes of providing all elements of the operation, care, supervision, maintenance and management of the property. All the powers and duties of the Association necessary or convenient for such maintenance and management may be delegated to and vested in the Manager by the Board of Directors, except such as are specifically required by this Declaration, the By-Laws, or the Act, to have the approval of the Board of Directors or the Association. The Manager is hereby further authorized to recommend the annual budget, and, upon approval thereof by the Board of Directors, make assessments for common expenses, and collect such assessments as provided in this Declaration and the By-Laws, subject always to the supervision and right of approval of the Board of Directors.

B. OWNER'S MAINTENANCE:

(1) Each unit owner agrees as follows:

(a) To maintain a good condition and repair his unit and all interior surfaces within his unit (such as walls, ceilings and floors) which are not common elements or exterior surfaces, the maintenance of which shall be the responsibility of the Association and assessable to all the unit owners as a common expense.

(b) Not to make or cause to be made any structural addition to the common elements without the prior written consent of the Association.

(c) To make no alteration, repair, replacement or change of the common elements, or to any outside or exterior portion of the building, whether within a unit or part of the common elements.

(d) To permit the Board of Directors or the Manager, or the agents or employees of the Association, to enter with notice at any reasonable hour of the day, for the purpose of maintenance, inspection, repair, replacement or improvements within the units or the common elements, or to determine in the case of emergency, the circumstances threatening any unit(s) or the common elements, or to determine compliance with the provisions of this Declaration, the By-Laws, or the Rules and Regulations promulgated thereunder.

(2) In the event a unit owner fails to maintain the unit as required herein or makes any structural addition or alteration to the common areas without the required written consent of the Board of Directors, or fails to permit entrance to the Board of Directors or Association, or the Board on its behalf, shall have the right to proceed either at law or in equity for whatever appropriate remedy the circumstances require. In lieu thereof and/or in addition to this remedy, the Association, through the Board of Directors, shall have the right and power to levy an assessment against the owner of the unit and the unit itself for such necessary sums to remove any unauthorized structure or alteration and to restore the property to its former condition. The Association and/or the Board of Directors on its behalf, shall have the further right and power to have its employees or agents, or any subcontractor appointed by it, enter the unit at any and all reasonable times, to do such work as is deemed necessary by the Board to enforce compliance with the provisions hereof.

C. LIMITATION OF LIABILITY: Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to unit owners for injury or damage caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

## XV.

ASSESSMENTS

A. **REGULAR ASSESSMENTS:** The common expenses shall be assessed against each unit owner as provided for in Article XIII above, except that water and sewer assessments may be prorated according to the amount of plumbing installations required to service each unit. Any unit which by the nature of the business operated therein requires more than the normal water usage, shall be required to have a meter installed at the owner's expense to monitor such usage and shall be charged accordingly. Assessments which are unpaid for over thirty (30) days after due date shall bear the maximum interest allowed by law, but not to exceed the monthly rate of one and one-half (1 1/2%) from the due date until such unpaid assessment is paid in full.

B. **WORKING CAPITAL ASSESSMENT:** At the time title is conveyed to an owner, each owner shall contribute to the Association as a working capital reserve an amount equal to a two months' estimated common area assessment. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies and the common elements, furnishings and equipments, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

C. **COMMENCEMENT OF ASSESSMENT:** Unit owners shall be subject to assessment by the Board of Directors upon acquiring title to their unit. The Developer shall not be liable for assessments for unsold units contemplated by this Declaration until such time as said units are occupied by a business of the Developer or a tenant of the Developer.

D. **LIEN OF ASSESSMENT:** Any sum assessed remaining unpaid for more than thirty (30) days shall constitute a lien upon the delinquent unit or units when filed of record in the Office of the Clerk of Superior Court of New Hanover County in the manner provided for by Article 8 of Chapter 44 of the General Statutes of North Carolina as amended. The lien for unpaid assessments shall also secure reasonable attorney's fees incurred by the Manager or the Board of Directors incident to the collection of such assessment or the enforcement of such lien. In any foreclosure of a lien for assessments, the owner of the unit subject to the lien shall be required to pay a reasonable rental for the unit, and the Manager and Board of Directors shall be entitled to the appointment of a receiver to collect the same.

## XVI.

INSURANCE

A. **OWNERSHIP OF POLICIES:** All insurance policies upon the condominium property shall be purchased by the Association or Manager for the benefit of the Association, the unit owners, and their mortgagees as their interest may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of unit owners. Any excess premium chargeable with respect to a particular unit or shop because of the type of business engaged in by such unit owner or its tenant shall be paid by the owner of such unit. Unit owners may, at their option, obtain additional insurance coverage at their own expense upon their own personal property, for their personal liability, business interruption and such other coverage as they may desire.

B. **COVERAGE:** All buildings and improvements upon the land and all personal property included in the common elements shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, or by ninety (90%) per cent co-insurance blanket coverage or by such other form of policy as the Board of Directors annually determines will most reasonably provide the funds necessary to repair or reconstruct the insured improvements. Such coverage shall afford protection against (1) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and (2) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land, including, but not limited to, vandalism and malicious mischief.

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C. **PUBLIC LIABILITY INSURANCE:** Public liability insurance shall be secured by the Association or Manager in such amount and with such coverage as shall be deemed necessary by the Board of Directors, including, but not limited to, an endorsement to cover liability of the unit owners as a group or to a single unit owner. There shall also be obtained such other insurance coverage as the Board of Directors or Manager shall determine from time to time to be desirable or necessary.

D. **PREMIUMS:** Premiums upon insurance policies purchased by the Association or Manager shall be paid by the Association and chargeable to the Association as a common expense.

E. **PROCEEDS:** All insurance policies purchased by the Association or Manager shall be for the benefit of the Association and the unit owners and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The Board of Directors of the Association is hereby irrevocably appointed Agent for each unit owner and his mortgagee as their interests may appear for the purpose of compromising and settling claims arising under insurance policies purchased by the Manager or Board of Directors for the benefit of the Association and the unit owners; said Board of Directors or its designee is hereby further empowered to execute and deliver releases to the insurance carrier upon the payment of claims. The Board of Directors' duty or its designee's duty upon receipt of such proceeds shall be to hold the same in trust for the purposes elsewhere stated herein or in the By-Laws for the benefit of the Association and the unit owners and their mortgagees, as their interests may appear.

F. **IN THE EVENT A MORTGAGE ENDORSEMENT HAS BEEN ISSUED AS TO A UNIT:** The share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interest may appear.

G. **ADDITIONAL COVERAGE:** Each individual unit owner shall be responsible for purchasing, at his own expense, including, but not limited to, liability insurance to cover accidents occurring within his own unit, coverage upon his own personal property, business interruption, fire and other hazard, mortgage insurance, and such other insurance as the unit owner deems necessary or desirable.

## XVII.

### DISTRIBUTION OF INSURANCE PROCEEDS

Proceeds of insurance policies shall be payable to **WRIGHTSVILLE BEND SHOPPING CENTER, INC.**, or its designee, as insurance trustee and shall be distributed to or for the benefit of the beneficial owners in the following manner:

A. **EXPENSE OF THE TRUST:** All expenses of the insurance trustee shall be first paid or provision made therefor.

B. **RECONSTRUCTION OR REPAIR:** If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as determined in Article 16 hereof. Any proceeds remaining after defraying such cost shall be distributed as surpluses to the beneficial owners of the damaged units pursuant to Article XIII hereof.

C. **FAILURE TO RECONSTRUCT OR REPAIR:** If it is determined, as provided in Article XVIII hereof, that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed as surpluses to the beneficial owners of the damaged units thereof pursuant to Article XIII hereof.

D. **MORTGAGEES:** In the event a mortgagee endorsement has been issued as to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interest may appear; provided, however, that no mortgagee shall have the right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired.

## XVIII.

### DAMAGE AND DESTRUCTION

A. **DETERMINATION TO RECONSTRUCT OR REPAIR:** If any part of the condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired, shall be determined in the following manner:

(1) **Common Element:** If the damaged improvement is a common element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the condominium shall be terminated.

(2) **Condominium Units:**

(a) **Partial Destruction:** If the damaged improvement is a condominium unit, and if termination as provided in Subparagraph (b) below does not take place, the damaged property shall be reconstructed or repaired unless within sixty (60) days after the casualty it is determined by agreement in the manner elsewhere provided that the condominium shall be terminated.

(b) **Total Destruction:** If more than two-thirds (2/3) of the condominium units are destroyed and the owners of three-fourths (3/4) of the units in the entire condominium should determine not to proceed with repair or restoration, then the procedure set forth in Section 47C of the North Carolina Statutes, and any amendments thereto, shall take place.

B. **PLANS AND SPECIFICATIONS:** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached hereto as exhibits; or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is a condominium unit, by the owners of all damaged units therein which approvals shall not be unreasonably withheld.

C. **RESPONSIBILITY:** If the damage is only to those parts of one unit for which the responsibility of maintenance and repair is that of the unit owner, then the unit owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

D. **ESTIMATE OF COSTS:** Immediately after a determination to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. **ASSESSMENTS:** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the unit owners who own the damaged units, and against all unit owners in the case of damage to common elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against unit owners for damage to units shall be in proportion to the cost of reconstruction and repair of their respective units. Such assessments on account of damage to common elements shall be in proportion to the unit owner's share in the common elements.

## XIX.

### USE AND OCCUPANCY

A. **USE:** Until such time as all of the units are sold, the Declarant shall control the different types of uses which shall be permitted in the Shopping Center. The permitted uses shall include no more than one (1) of each of the following:

(1) Book store, drug store, food or convenient store, gift store, hardware store, hobby store, toy and game shop, real estate office, arts and crafts store, auto store, camera store, photography store, florist shop, sporting goods store, bicycle shop, barber shop, beauty shop, drycleaner/laundry store, laundromat, shoe repair, deli restaurant, pizza parlor, full service restaurant, specialty fast food restaurants serving chicken, hamburgers or cheeseburgers; ice cream, steaks, mexican food, diet food and Chinese or Italian food. Provided, however, that the Developer retains the absolute right in its discretion to alter or amend the above list without the vote of the Association for so long as Developer has at least one unit in any phase of the Development.

(2) After all units are sold, the uses permitted shall be determined by the Rules and Regulations established by the Board of Directors. Provided, however, that should an owner submit a request to the Board of Directors for a particular use, and the Board does not accept or reject such use within ten (10) days, such use shall be automatically approved so long as the use is one which is permitted in the zoning district in which the mall is located.

B. **NUISANCE:** The unit owner shall not permit or suffer anything to be done or kept in or about his unit which will increase the rate of insurance on the building, or which will obstruct or interfere with the rights of other unit owners or annoy them by unreasonable noises, odors, or otherwise. No unit owner shall commit nor permit any nuisance, immoral or illegal act in or about the building.

C. **EXTERIOR:** It shall be the responsibility of each unit owner and the Board of Directors to prevent the development of any unclean, unsightly, or unkept condition of the property which shall tend to decrease the beauty of the condominium either as a whole or the specific area.

The unit owner shall not cause anything to be hung, displayed or placed on the exterior walls, doors, windows, or any other exterior part of the building without the prior written consent of the Board of Directors. No person may place or cause to be placed any communications aerial, television aerial, or similar device on any portion of the condominium property without the written consent of the Board.

D. **SIGNS:** No signs (including "for rent", "for sale" and other similar signs) or property identification signs shall be erected or maintained on any unit except with written permission of the Board of Directors, except as may be required by legal proceedings.

E. **STRUCTURES, OUTBUILDINGS AND TRAILERS:** No structure of a temporary character shall be placed upon the property at any time. No mobile home of any kind, trailer, tent, barn, storage shed, garage, treehouse, or other similar outbuilding or structure, regardless of purpose or function, shall be placed on the property at any time, either temporarily or permanently.

F. **RULES AND REGULATIONS:** No person shall use the common elements, or any part thereof, or a condominium unit, or the condominium property, or any part thereof, or any other property, the use of which has been acquired for the benefit of the Association, or the unit owners, in any manner contrary to or not in accordance with the Rules and Regulations pertaining thereto, as from time to time may be promulgated by the Board of Directors or the Association, nor in violation of any state, federal or local laws.

G. **BREACH OF RESTRICTIONS:** In the event of a violation or breach of any of the restrictions contained in this Declaration or of any other covenants contained in this Declaration, the By-Laws or Rules and Regulations of the Association by any unit owner, tenant or agent of such owner, or any of them, jointly or severally, the Association shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of this Declaration, the By-Laws or Rules and Regulations of the Association. In addition to the foregoing, the Board of Directors shall have the right whenever there shall have been any violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the unit owner, if after thirty (30) days' written notice of such violation it shall not have been corrected by the unit owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce anyright, reservation or conditions in this Declaration, the By-Laws, or Rules and Regulations however long continued, shall not be deemed a waiver of the right to do so thereafter, as to the same breach or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. The invalidation by any Court of any restrictions in this Declaration, the By-Laws or Rules and Regulations shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

XX.

#### UNITS SUBJECT TO DECLARATION

All present and future owners, tenants and occupants of units shall be subject to, and shall comply with the provisions of this Declaration, the By-Laws and any Rules and Regulations of **WRIGHTSVILLE BEND SHOPPING CENTER, INC.** as said

Declaration, By-Laws, Rules and Regulations may be amended from time to time. The acceptance of a deed, or the entering into of a lease, or the entering into occupancy of any unit shall constitute an agreement that the provisions of this Declaration, By-Laws and any Rules and Regulations which may be adopted are accepted and ratified by such owner, tenant or occupant and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were made a part of each and every deed or conveyance or lease.

**XXI.****AMENDMENT OF DECLARATION**

This Declaration may be amended by the vote of at least sixty (60%) per cent of the undivided interest of all unit owners in the common elements as set forth in Exhibit "D", cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws. No such amendment shall be effective until recorded in the Office of the Register of Deeds of New Hanover County.

**XXII.****WAIVER**

No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**XXIII.****CAPTIONS**

The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

**XXIV.****LIMITATION OF LIABILITY**

A. **LIMITATION UPON LIABILITY OF ASSOCIATION:** Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or by the elements or other owners or persons.

B. **PROPERTY IN TRUST:** All funds and the titles of all properties acquired by the Association and the net proceeds thereof shall be held in trust for the members in accordance with the provisions of this Declaration and the By-Laws of the Association.

**XXV.****EMINENT DOMAIN**

In the event of a taking by eminent domain (or condemnation or a conveyance in lieu of condemnation) of part or all of the common elements, the award for such taking shall be payable to the Association, which shall represent the owners named in the proceedings. Said award shall be utilized to the extent possible for the repair, restoration, replacement or improvement of the remaining common elements, if only part are taken. If all or more than two-thirds (2/3) of all of the general common elements are taken, it shall be deemed a destruction of more than two-thirds (2/3) of all of the general common elements and the condominium regime shall be terminated as hereinbefore provided. Any funds not utilized (in the case of a partial taking) shall be applied in payment of common expenses otherwise assessable. In the event of a taking of all or part of a unit, the award shall be made payable to the owner of such unit and his mortgagee, if any, as their interests may appear.

## XXVI.

MISCELLANEOUS

A. **ENCROACHMENTS:** The owners of the respective condominium units agree that if any portion of a condominium unit or common element encroaches upon another, a valid easement for the encroachment and maintenance of same, so long as it stands, shall and does exist. In the event the building is partially or totally destroyed and then rebuilt, the owners of the condominium units agree that encroachments on parts of the common elements or limited common elements or condominium units, as described herein, due to construction, shall be permitted, and that a valid easement for said encroachments and the maintenance thereof shall exist.

B. **EXEMPTION FROM LIABILITY:** No owner of a condominium unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use and enjoyment of any of the common elements, or by the abandonment of his condominium unit.

C. **MERGER OF UNITS:** Nothing hereinabove set forth in this Declaration shall be construed as prohibiting the Board of Directors of the Association from removing or authorizing the removal of any party wall between any condominium units in order that the said units might be used together as one condominium unit. In such event, all assessments, voting rights, the share of common elements shall be calculated as if such units were originally designated on the Exhibits attached to this Declaration, notwithstanding the fact that several units are used as one, to the intent and purpose that the unit owner of such combined units shall be treated as the unit owner of as many units as have been so combined. No unit at any time may contain less than 500 square feet.

D. **CONSTRUCTION:** Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, and plural shall include the singular. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of condominium property.

E. **WARRANTIES AND REPRESENTATIONS:** The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the property or the condominium documents, except as specifically set forth therein, and no person shall rely upon any warranty or representation not so specifically made therein. Any estimates of common expenses, taxes or other charges are deemed accurate, but no warranty or guaranty is made or intended, nor may one be relied upon.

F. **CONTROLLING:** This Declaration and Exhibits attached hereto and Amendments hereof, shall be construed and controlled by and under the laws of the State of North Carolina.

G. **COVENANTS:** All provisions of this Declaration and Exhibits attached hereto and amendments hereof, shall be construed to be covenants running with the land, and of every part thereof and interest therein, including, but not limited to, every unit and the appurtenances thereto, including the common elements and every unit owner and claimant of the property or any part thereof, or of any interest therein, and his heirs, executors, administrators, tenants, successors, and assigns shall be bound by all of the provisions of said Declaration and Exhibits annexed hereto and Amendments thereof.

H. **INVALIDATION:** If any provision of this Declaration, By-Laws, and the Exhibits attached hereto, the Amendments hereof, or of the North Carolina Condominium Act, Chapter 47C of the General Statutes, or any section, sentence, clause, phrase or work, or the application thereof, in any circumstances is held invalid, the validity of the remainder of this Declaration, By-Laws, the Exhibits attached hereto, the Amendments hereof, or the North Carolina Condominium Ownership Act, shall not be affected thereby.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed, all the day and year first above written.

Declarant:

MAURICE JENNINGS, *1/d/b/a*,  
JENNINGS REAL ESTATE

By: *[Signature]* (SEAL)  
Sole Proprietor

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

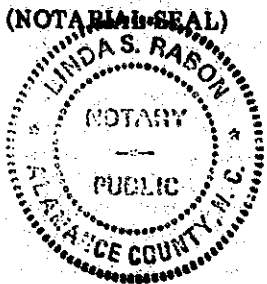
I, *Linda S. Rabon*, a Notary Public in and for the aforesaid County and State do hereby certify that MAURICE JENNINGS, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the sole proprietorship.

WITNESS my hand and notarial seal this the *21* day of December, 1988.

*Linda S. Rabon*  
Notary Public

My Commission Expires:

*5-12-92*



STATE OF NORTH CAROLINA  
New Hanover County  
The Foregoing Certificate of *Linda S. Rabon, a*  
*Notary Public*  
is certified to be correct.  
This the *22* day of *DEC.* 19 *88*

Rebecca P. Tucker, Register of Deeds  
By: *Linda S. Rabon*  
Deputy