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RETURNED TO

*W. Talmage Jones*

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

DECLARATION OF CONDOMINIUM

**RACINE CENTER CONDOMINIUM**

ARTICLE 1

SUBMISSION; DEFINITIONS

Section 1.1. Submission of Property. Racine Center, L.L.C., a North Carolina limited liability company, with an address of 203 Racine Drive, Suite 100, Wilmington, NC 28403 ("Declarant"), owner in fee simple of the real estate described on Exhibit "A," located within the City of Wilmington, County of New Hanover, and State of North Carolina, hereby submits such real estate, including all improvements, easements, rights and appurtenances thereunto belonging to the provisions of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act ("Condominium Act"), and hereby create with respect to said real estate a condominium to be known as "RACINE CENTER CONDOMINIUM."

Section 1.2. Definitions. As used in the Condominium Documents, the following words and phrases shall have the following meanings:

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

b. "Association" means "RACINE CENTER CONDOMINIUM ASSOCIATION, INC.", a non-profit corporation organized under Chapter 55A of the General Statutes of North Carolina. It is the Association of the Unit Owners pursuant to Section 47C-3-101 of the Condominium Act.

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

d. "Common Area(s)" or "Common Elements" means all portions of the Condominium other than the Units.

e. "Common Expenses" means the expenses or financial liabilities for the operation of the Condominium. These include:

- (i) expenses of administration, maintenance, repair or replacement of the Common Elements;
- (ii) expenses declared to be Common Expenses by the Condominium Documents or by the Condominium Act;
- (iii) expenses agreed upon as Common Expenses by the Association; and
- (iv) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

- f. "Condominium" means the real property described in Exhibit "A."
- g. "Condominium Documents" means this Declaration, the Plats and Plans recorded and filed pursuant to the provisions of the Condominium Act, the Bylaws, and the Rules and Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Condominium Document is a part of that Condominium Document.
- h. "Declarant" means Racine Center, L.L.C., or its successors as defined in Section 47C-1-103(9) of the Condominium Act.
- i. "Development Rights" means the rights, if any, reserved by the Declarant under Article 6 of this Declaration to create Units, Common Elements, and Limited Common Elements within the Condominium and to withdraw real estate from the Condominium.
- j. "Declarant Control Period" means the period prior to the earlier of:
- (i) the date one hundred twenty (120) days after conveyance of Units comprising over fifty percent of the total square footage of Phase I of the Condominium to Unit Owners other than Declarant;
  - (ii) the termination of all Special Declarant Rights.
- k. "Director" means a member of the Executive Board.
- l. "Eligible Mortgagee" means an institutional lender holding a first mortgage or first deed of trust ("First Mortgage") encumbering a Unit that has notified the Association in writing of its status, stating both its name and address and the Unit number or address of the Unit its First Mortgage encumbers, and has requested all rights under the Condominium Documents.
- m. "Executive Board" means the board of directors of the Association.
- n. "Improvements" means any construction, structure, fixture or facilities existing or to be constructed on the land included in the Condominium, including but not limited to, buildings, trees and shrubbery planted by the Declarant or the Association, paving, utility lines, pipes, and light poles.
- o. "Limited Common Elements" or "Limited Common Areas" means the portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration or by operation of Section 47C-2-102(2) and (4) of the Condominium Act. The Limited Common Elements in the Condominium are described in Article 3 of this Declaration.
- p. "Majority or Majority of Unit Owners" means the owners of more than fifty percent (50%) of the votes in the Association.
- q. "Manager" means a person, firm or corporation employed or engaged to perform management services for the Condominium and the Association.
- r. "Notice and Comment" means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 22.1 of this Declaration.
- s. "Notice and Hearing" means the right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 22.2 of this Declaration.
- t. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.



u. "Plats and Plans" means the Plats and Plans for Phase I of Racine Center Condominium recorded in Condominium Map Book 13, Page(s) 271 through 274, of the New Hanover County Registry, as the same may be amended or supplemented from time to time.

v. "Property" means the land, all Improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Condominium Act by this Declaration.

w. "Rules and Regulations" means Rules and Regulations for the use of Units and Common Elements and for the conduct of persons within the Condominium, adopted by the Executive Board pursuant to this Declaration.

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

y. "Special Declarant Rights" means the rights reserved for the benefit of a Declarant in Article 6 hereof, and shall include "Special Development Rights."

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

aa. "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.2 of this Declaration.

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

## ARTICLE 2

### MAXIMUM NUMBER OF UNITS; BOUNDARIES

Section 2.1. Maximum Number of Units. The Condominium at the time of its creation will contain seven (7) Units, which shall be known as Phase I of the Condominium. The Declarant reserves the right, but not the obligation to create up to four (4) additional Units in the Condominium, in the area shown on the Plats and Plans as "Future Development," which additional Units, if created, shall be known as Phase II of the Condominium.

Section 2.2. Boundaries. Boundaries of each Unit created by this Declaration are shown on the Plats and Plans and are described as follows:

a. Upper Boundaries: The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing structure surfaces, beams, and rafters and the unfinished inner surfaces at sky lights, extended to an intersection with the vertical perimeter boundaries.

b. Lower Boundary: The horizontal plane or planes of the undecorated or unfinished upper surfaces of the floors extended to an intersection with the vertical perimeter boundaries and open, horizontal, unfinished surfaces of trim, sills and structural components.

c. Vertical Perimeter Boundary: The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of the masonry walls; the unfinished surfaces of the interior trim and thresholds along perimeter walls and floors; the unfinished inner surfaces of closed windows and closed perimeter doors; and the innermost unfinished planes of all

interior bearing studs and framing of bearing walls, columns, bearing partitions, and partition walls between separate Units.

d. Inclusions: Each Unit will include the spaces and Improvements lying within the boundaries described in Subsections 2.2 a, b, and c, above, and will also include the spaces and Improvements within such spaces containing any space heating, water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, and electrical receptacles and light fixtures and boxes serving that Unit exclusively, the surface of the foregoing being the boundaries of such Unit, whether or not such spaces are contiguous.

e. Exclusions: Except when specifically included by other provisions of Section 2.2, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in Subsections 2.2 a, b, and c, above; and all chutes, pipes, flues, ducts, wires, conduits, and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both.

f. Non-Contiguous Portions: Certain Units may include special portions, pieces or equipment such as air conditioning compressors, meter boxes, utility connection structures that are detached or semidetached from the building containing the principal occupied portion of the Units. Such special equipment and storage portions are a part of the Unit notwithstanding their non-contiguity.

g. Inconsistency with Plats and Plans: If this definition is inconsistent with the Plats and Plans, then this definition will control.

h. The Units in Phase I of the Condominium are designated by Unit numbers 1, 2, 3, 4, 5, 6, & 7 as shown on the Plats and Plans recorded in Condominium Map Book 13, Page(s) 271 through 274 of the New Hanover County Registry.

i. The Declarant reserves the right to alter the boundaries between Units and thereby increase the number of Units, so long as the Declarant owns the Units so altered at the time of the alteration. Any such change shall be reflected by an amendment to the Declaration which may be executed by the Declarant alone. Notwithstanding this procedure, no such change shall increase the authorized number of Units in Phase I beyond ten (10) nor alter the boundaries of the Common Elements without amendment of this Declaration in the manner described in Article 13, except as provided in Article V. The interior design and arrangement of any Unit may be changed without amending this Declaration. Limited Common Elements allocated to the Units so altered, may be shared by such altered Units, and exterior Common Area may be converted into Limited Common Elements allocated to the Units so altered, as may be necessary to provide mechanical systems thereto.

j. Annexed hereto and made a part hereof as Exhibit B is a list of all Units in Phase I of Racine Center Condominium. The Unit designation, location, area, Common Elements and Limited Common Elements are shown on the floor plans of the building recorded simultaneously herewith which have been certified to be true and correct by COTHRAN S. HARRIS, NC REGISTRATION NO. 4290, an architect, duly licensed by the State of North Carolina. The percentage of interest of each Unit in the Common Elements has been determined on the basis of the proportion which the square footage of each Unit bears to the total square footage of all Units. In the event that Declarant shall alter the boundaries between Units, the percentage of interest of such altered Units shall be allocated among the altered Units on the basis of the proportion which the square footage of each Unit bears to the total square footage of all altered Units.



### ARTICLE 3

#### LIMITED COMMON ELEMENTS

The following portions of the Common Elements are Limited Common Elements assigned or allocated to the Units as stated:

- a. If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, skylight or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit, and any portion thereof serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.
- b. Any shutters, awnings, doorsteps, porches, terraces, and each exterior door and window or other fixture designed to serve a single Unit that is located outside of the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.
- c. Stoops and steps at the entrances to a building, which provide access to less than all Units, the use of which is limited to the Units to which they provide access.
- d. Utility areas, the use of which is limited to the Unit or Units as shown on the Plats and Plans, if any.
- e. Storm windows and storm doors, if any, will be Limited Common Elements of the Unit which they serve.
- f. Exterior doors and windows will be Limited Common Elements allocated to the Units sheltered.
- g. Mailboxes, nameplates, and exterior lighting affixed to the building will be Limited Common Elements allocated to the Unit served.
- h. Areas designated as "Limited Common Area(s)" or "Limited Common Element(s)" on the Plat.

### ARTICLE 4

#### MAINTENANCE, REPAIR AND REPLACEMENT

Section 4.1. Common Elements. The Association will maintain, repair and replace all of the Common Elements, except the portions of the Limited Common Elements which are required by this Declaration to be maintained, repaired or replaced by the Unit Owners.

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

Section 4.3. Limited Common Elements. Any Common Expense associated with the maintenance, repair or replacement of a heat exchanger, heat outlet, enclosures and mechanical attachments will be assessed against the Unit or Units which the Limited Common Element is allocated or serves.

Common Expenses associated with the maintenance, repair or replacement of components and elements attached to, planted on or a part of exterior doors, windows and skylights, will be assessed against the Unit or Units to which the Limited Common Element is assigned. No additional component or element may be attached without consent of the Executive Board.

If any such Limited Common Element serves more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed among the Units which it serves in proportion to the square footage of the Units which it serves.

Common Expenses associated with the cleaning, maintenance, repair or replacement of all other Limited Common Elements will be assessed against all Units in accordance with Section 7.2.b.

Each Unit Owner shall be responsible for removing all snow, leaves and debris from all doorsteps or stoops which are Limited Common Elements appurtenant to his Unit.

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

Section 4.5. Repairs Resulting from Negligence. Each Unit Owner will reimburse the Association for any damages to any other Unit, to the Common Elements or to the Limited Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such expense is caused by misconduct, it will be assessed following Notice and Hearing.

## ARTICLE 5

### SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS

Those portions of the Common Elements now or hereafter improved as parking spaces may be subsequently allocated as Limited Common Elements in accordance with Article 6 and Article 10 of this Declaration. Parking spaces may be assigned to Units by the Rules and Regulations or may be limited by Rules and Regulations to visitors only, handicapped or other appropriate category. The assignment of parking spaces in the Rules and Regulations shall not prohibit a subsequent allocation of parking spaces as Limited Common Elements. Common Elements may be subsequently allocated as Limited Common Elements for HVAC Units for Units in Phase II, if Declarant exercises the right to add Phase II as provided in Article 6.1(a). Common Elements may be subsequently allocated as Limited Common Elements by the Association pursuant to Article 10 hereof.

## ARTICLE 6

### SPECIAL DECLARANT RIGHTS

Section 6.1. Reservation of Declarant's Special Development Rights. The Declarant reserves the following Special Development Rights:

a. To expand the Condominium by adding Phase II that will contain not more than four (4) Units on that tract identified on the recorded Map of the Condominium as "Future Development." In addition, the Declarant for itself, its successors and assigns reserves the right to alter the boundaries of existing Units in the condominium owned by the Declarant at the time of the alteration, to create up to three (3) additional Units in Phase I. Provided, however, that such expansion rights must be exercised, if at all, on or before April 1, 2011, by recording amendments to the Declaration adding subsequent Phases together with Plats and Plans depicting the additional Units. The percentage of interest of each Unit in the common elements for all phases will be redetermined on the basis of the proportion which the square footage of each Unit in all phases bears



to the total square footage of all Units. Phase II need not be built. The total number of Units in Phases I and II combined shall not exceed fourteen (14).

b. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the land anywhere in the Condominium for the purpose of furnishing utilities and other services to any Improvements. The Declarant also reserves the right to grant easements to public utility companies and to convey Improvements within those easements for the above-mentioned purposes. The Declarant also reserves the right to designate and allocate Common Elements as Limited Common Elements, for HVAC equipment for Units in Phase II, if Declarant exercises the right to add Phase II as provided in Article 6.1(a), or for additional Units in Phase I created by alternation of boundaries of existing Units in Phase I.

c. To complete Improvements indicated on all Plats and Plans filed with the Declaration and its amendments and in connection therewith, to maintain on premises during the construction period construction equipment, building materials, maintenance building and a construction office;

d. To use easements through the Common Elements in accordance with N.C.G.S. 47C-2-116 for the purpose of discharging the Declarant's obligations and Special Declarant Rights, including the making of Improvements within the Condominium and the right to convey utility and drainage easements to public utilities, municipalities, the State of North Carolina, riparian owners or upland owners to fulfill the plan of development;

e. To maintain sales offices, management offices, signs advertising the Condominium, and models;

f. To appoint or remove an officer of the Association or an Executive Board member during the Declarant Control Period subject to the provisions of Section 6.2 of this Declaration.

Section 6.2. Declarant Control of the Association. Notwithstanding any provision of this Declaration or the Bylaws to the contrary:

a. Subject to Subsection 6.2b, during the Declarant Control Period, a Declarant or persons designated by the Declarant may appoint and remove the officers and members of the Executive Board. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

b. Until the earlier of: (i) termination of all Special Declarant Rights, or (ii) the sale of seventy-five percent (75%) of the Units by the Declarant, the Executive Board shall consist of four (4) members. Until conveyance of Units comprising over fifty percent (50%) of the allocated Interests to Unit Owners other than a Declarant, Declarant shall appoint all members of the Executive Board. Upon conveyance of Units comprising over fifty percent (50%) of the allocated Interests to Unit Owners other than a Declarant, at least two (2) members and not less than fifty percent (50%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. From the date of the conveyance of Units comprising over fifty percent (50%) of the allocated Interests to Unit Owners other than a Declarant, and until the earlier of: (i) termination of all Special Declarant Rights, or (ii) the sale of seventy-five percent (75%) of the Units by the Declarant, the Declarant shall appoint two (2) members and not less than fifty percent (50%) of the Executive Board. Upon the earlier of: (i) termination of all Special Declarant Rights, or (ii) the sale of seventy-five percent (75%) of the Units by the Declarant, Declarant's rights regarding appointment or election of members of the Executive Board shall terminate and Declarant's rights with regard to election of members of the Executive Board shall be the same as those of any other Unit Owner.

c. Within sixty (60) days after the earlier of : (i) termination of all Special Declarant Rights, or (ii) the sale of seventy-five percent (75%) of the Units by the Declarant, the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Unit Owners.

d. The Executive Board shall elect the officers.

e. The Executive Board members and officers shall take office upon election.

f. Following notice under Section 47C-3-108 of the Condominium Act, the Unit Owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 6.3. Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to the Declaration executed by the Declarant, and except as provided in Section 6.2 hereof, any Special Declarant Right may be exercised by the Declarant until the earlier of the following:

- (i) so long as the Declarant owns any Unit; or
- (ii) seven (7) years after recording this Declaration.

Section 6.4. Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant

Section 6.5. Easement. Declarant reserves to itself, its successors and assigns, a perpetual easement, to connect to and use all water lines, water wells, stormwater lines, drainage ditches, and sanitary sewer lines within the Condominium.

Section 6.6. Bylaws. In the event of any conflict between any provisions of the Bylaws of the Association and the provisions of Article 6 of this Declaration, the provisions of Article 6 of this Declaration shall control.

## ARTICLE 7

### ALLOCATED INTERESTS

Section 7.1. Allocation of Interests. The table showing Unit numbers and their Allocated Interests is attached as Exhibit "B". These interests have been allocated in accordance with the formulas set out in this Article 7.

Section 7.2. Formulas for the Allocation of Interests. The interests allocated to each Unit have been calculated on the following formulas:

a. Undivided Interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is based on the relative floor area of each Unit as compared to the floor area of all of the Units in the Condominium. For the purpose of this calculation, the floor areas of attics, if any, are not to be counted. The percentage of the undivided interest in the common elements allocated to each Unit is subject to be amended by the Declarant pursuant to the exercise of the Declarant's Special Development Rights under Article 6.

b. Liability for the Common Expenses. Each Unit in the Condominium shall pay its share of the Common Expenses of the Condominium so that the percentage of liability for the Common Expenses allocated to each Unit shall be equal to the percentage of the undivided interest in the Common Elements allocated to that Unit. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article 17 of this Declaration.



c. Votes. Each Unit in the Condominium shall have one vote that will be “weighted” so that it shall be equal to the percentage of the undivided interest in the Common Elements allocated to that Unit. Any specified percentage portion or fraction of Unit Owners, unless otherwise stated in the Condominium Documents, means the specified percentage, portion, or fraction of all the votes as allocated in Exhibit "B".

## ARTICLE 8

### RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

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

a. Each Unit is restricted to the commercial use approved in advance and in writing by the Racine Center Condominium Association, Inc., provided such requested use is permitted under applicable zoning ordinances requiring a minimum 2 hour firewall. Uses requiring a higher degree of separation may be permitted, but only if the Unit Owner is willing to make the necessary improvements for a higher firewall rating at his own expense. In addition:

- (i) Designated parking areas may not be used for any purpose other than vehicular parking. No outside storage of any property shall be permitted on the Common Areas (including parking areas) or Limited Common Areas except property may be stored in the storage shed which is a Limited Common area appurtenant to Unit 1, and except that operative and licensed vehicles used in a trade or business conducted in a Unit may be parked overnight on any designated parking areas which have not been allocated to a particular Unit; and
- (ii) The business of adult bookstores, video stores, or other “adult” type entertainment stores are strictly prohibited, and
- (iii) Units may not be used for residential use.

b. The use of Units and Common Elements is subject to the Bylaws and the Rules and Regulations of the Association.

Section 8.2. Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing plan.

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

## ARTICLE 9

### EASEMENTS AND LICENSES

All easements, reservations, restrictions, agreements, or licenses to which the Condominium is presently subject are recited in Exhibit “A” to this Declaration or shown on the official recorded Map of Condominium. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article 6 of this Declaration.

## ARTICLE 10

### ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to provisions of Article 2, Section 2.2 (i) and (j), and Articles 5 and 6 of the Declaration. The allocations will be made by amendments to the Declaration, specifying to which Unit or Units the Limited Common Element is allocated.

The Declarant has reserved the right, under Article 5 of this Declaration, to allocate parking spaces to each Unit as Limited Common Elements. If any such parking spaces are so allocated, they shall be assigned to particular Units by amendment to this Declaration. Any parking spaces which are not allocated as Limited Common Elements at the termination of the Development Rights period may be so allocated by the Association by amendment to this Declaration. All amendments shall specify to which Unit or Units the Limited Common Element is allocated.

No Limited Common Element depicted on the Plats and Plans may be reallocated by an amendment to this Declaration pursuant to this Article 10 except as part of a relocation of boundaries of Units pursuant to Article 12 of this Declaration. Such amendment shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon. The Person executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the Condominium Act, shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Condominium. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

## ARTICLE 11

### ADDITIONS, ALTERATIONS AND IMPROVEMENTS

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

a. No Unit Owner will make any structural addition, structural alteration, or structural Improvement in or to the Condominium without the prior written consent thereto of the Executive Board in accordance with Subsection 11.1c.

b. Subject to Subsection 11.1a, a Unit Owner:

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

(ii) may not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Condominium, without permission of the Association; and

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

c. A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under Subsection 11.1a or 11.1b(ii). The Executive Board shall answer any written request for such approval, after Notice and hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the



Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its Rules and Regulations.

d. Any applications to any department or to any governmental authority for a permit to make any addition, alteration or Improvement in or to any Unit shall be executed by the Association only. Such execution will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor or materialman on account of such addition, alteration or Improvement or to any person having any claim for injury to persons or damage to property arising therefrom.

e. All additions, alterations and Improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premium of any insurance policies carried by the Association or by the Owners of any Units other than those affected by such change.

The provisions of this Section shall not apply to Declarant in the exercise of any Special Declarant Right.

Section 11.2. Additions, Alterations and Improvements by Executive Board. Subject to any limitations contained in this Declaration, the Executive Board may make any additions, alterations or Improvements to the Common Elements which, in its judgment, it deems necessary.

## ARTICLE 12

### RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS

Section 12.1. Application and Amendment. Subject to approval of any structural changes and required permits pursuant to Article 11, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the Owners of the Units, the boundaries of which are affected by the relocation. If the Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application shall state the proposed reallocations. Unless the Executive Board determines, within thirty (30) days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by those Unit Owners and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected units shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

Section 12.2. Recording Amendments. The Association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers.

The applicants will pay for the costs of preparation of the amendment and its recording, and the reasonable consultant fees of the Association if it is deemed necessary to employ a consultant by the Executive Board.

## ARTICLE 13

### AMENDMENTS TO DECLARATION

Section 13.1. General. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article 10 of this Declaration and Section 47C-1-107 of the Condominium Act, or by certain Unit Owners under Article 10 and Section 12.1 of this Declaration and Section 47C-2-118 of the Condominium Act, and except as limited by Section 12.1 and Article 16 of this Declaration, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 13.2. Limitation of Actions. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

Section 13.3. Recordation of Amendments. Each amendment to the Declaration must be recorded in the county in which the Condominium is located and the amendment is effective only upon recording. An amendment, except an amendment pursuant to Article 12 of this Declaration, must be indexed in the grantee's index in the name of the Condominium and the Association and in the grantor's index in the name of the parties executing the amendment.

Section 13.4. Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of this Declaration or the Condominium Act, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, the Allocated Interests of a Unit, or the uses to which a Unit is restricted, in the absence of the unanimous consent of the Unit Owners.

Section 13.5. Execution of Amendments. An amendment to the Declaration required by the Condominium Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Condominium Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose, or in the absence of designation, by the president of the Association.

Section 13.6. Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 13.7. Consent of Holder of Security Interests. Amendments are subject to the consent requirements of Article 16 of this Declaration.

Section 13.8. Amendments to Create Units or Withdraw Real Estate. To exercise any Special Development Rights reserved under Section 6.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record either new Plats and Plans necessary to conform to the requirements of Section 47C-2-109(a), (b), and (c) of the Condominium Act or new certifications of the Plats and Plans previously recorded if those Plats and Plans otherwise conform to the requirements of those Sections.

The amendment to the Declaration shall describe any Common Elements and any Limited Common Elements created or reallocated thereby and shall designate the Unit(s) to which each Limited Common Element is allocated to the extent required by Section 47C-2-108 of the Condominium Act.

## ARTICLE 14

### AMENDMENTS TO BYLAWS

The Bylaws may be amended only by a vote of two-thirds (2/3) of the members of the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purpose.

## ARTICLE 15

### TERMINATION

Termination of the Condominium may be accomplished only in accordance with Section 47C-2-118 of the Condominium Act.



## ARTICLE 16

### MORTGAGEE PROTECTION

Section 16.1. Introduction. This Article establishes certain standards and covenants which are for the benefit of Eligible Mortgagees. This Article is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the case of conflict, this Article shall control.

Section 16.2. Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of eligible mortgagees holding First Mortgages in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to First Mortgages held by Eligible Mortgagees.

Section 16.3. Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee of:

- a. Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgagee, as applicable;
- b. Any delinquency in the payment of Common Expense assessments owed by an Owner whose Unit is subject to a First Mortgage held, insured, or guaranteed, by such Eligible Mortgagee, which remains uncured for a period of sixty (60) days;
- c. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4; and
- e. Any judgment rendered against the Association.

#### Section 16.4 Consent Required.

a. Changes in the Condominium Documents. Notwithstanding any lower requirement permitted by this Declaration or the Condominium Act, no amendment of any material provision of the Condominium Documents by the Association or Unit Owners described in this Subsection 16.4a may be effective without the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Condominium Act) and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. "Material" includes, but is not limited to, any provision affecting:

- (i) assessments, assessment liens or subordination of assessments liens;
- (ii) voting rights;
- (iii) reserves for maintenance, repair and replacement of Common Elements;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Units Owners and only the Eligible Mortgagees holding First Mortgages in such Units must approve such action;

- (vi) rights to use Common Elements and Limited Common Elements;
- (vii) boundaries of Units except that when boundaries of only adjoining Units are involved, then only those Unit Owners and the Eligible Mortgagees holding First Mortgages in such Unit or Units must approve such action;
- (viii) convertibility of Units into Common Elements or Common Elements into Units;
- (ix) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (x) insurance or fidelity bonds;
- (xi) leasing of Units;
- (xii) imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (xiii) establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
- (xiv) restoration or repair of the Condominium after a hazard damage or partial condemnation in a manner other than that specified in the Condominium Documents;
- (xv) termination of the Condominium after occurrence of substantial destruction or condemnation; and
- (xvi) the benefits of Eligible Mortgagees.

b. Actions. Notwithstanding any lower requirement permitted by the Declaration or the Condominium Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees:

- (i) convey or encumber the Common Elements or any portion thereof (as to which an eighty percent (80%) Eligible Mortgagee approval is required). (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium will not be deemed a transfer within the meaning of this clause);
- (ii) the establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
- (iii) the restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (iv) the termination of the Condominium for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required;
- (v) the alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;



- (vi) the merger of this Condominium with any other condominium;
- (vii) the granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Condominium and excluding any lease, licenses or concessions for no more than one year);
- (viii) the assignment of the future income of the Association, including its rights to receive Common Expense assessments;
- (ix) any action taken not to repair or replace the Property.

c. The Association may not change the period for collection of regularly budgeted Common Expense assessments without the consent of all Eligible Mortgagees.

d. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for approval of a non-material addition or amendment to the Condominium Documents shall constitute an implied approval of the addition or amendment.

Section 16.5. Special Development Rights. No Special Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Special Development Rights consent to the exercise, abandonment, or termination.

Section 16.6. Inspection of Books. The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

Section 16.7. Financial Statements. The Association shall provide any Eligible Mortgagee which submits a written request, with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee requests it and pays the cost of such audit.

Section 16.8. Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 16.9. Attendance at Meetings. Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

Section 16.10. Appointment of Trustee. In the event of damage or destruction under Article 20 or 21 or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Subsection 1.2a.a. Proceeds will thereafter be distributed pursuant to Article 21 or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote, through the president, may act as Trustee.

## ARTICLE 17

### ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 17.1. Apportionment of Common Expenses. Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their liability for the Common Expenses as described in Section 7.2(b) of this Declaration.

Section 17.2. Common Expenses Attributable to Fewer Than All Units.

a. Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which the Limited Common

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

b. Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from the service.

c. Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against the Unit.

d. An assessment to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense liabilities.

e. If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against his Unit(s).

f. Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Condominium Documents and the Condominium Act are enforceable as Common Expense assessments.

### Section 17.3. Lien.

a. The association has a lien on a Unit for an assessment levied against the Unit which remains unpaid for a period of thirty (30) days or longer from the time it is filed of record in the Office of the Clerk of Superior Court of New Hanover County, North Carolina. Fees, charges, late charges, fines and interest charged pursuant to the Condominium Act and the Condominium Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first installment thereof remains unpaid in such manner, and the full amount of the assessment shall constitute a lien from the time of such filing.

b. A lien under this section is prior to all other liens and encumbrances on a Unit except;

(i) liens and encumbrances (including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court; and

(ii) liens for real estate taxes and other governmental assessments or charges against the Unit. This Subsection does not affect the priority of mechanics' or materialmen's liens.

c. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing thereof in the Office of the Clerk of Superior Court.

d. This section does not prohibit an action to recover sums for which Subsection 17.3(a) of this section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

e. A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

f. The Association's lien may be foreclosed as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina.

g. If a holder of a first mortgage or first deed of trust of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchasers, and its heirs, successors and assigns, shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser. Such unpaid



assessments shall be deemed to be Common Expenses collectible from all the Unit Owners including such purchaser, and its heirs, successors and assigns.

h. Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

Section 17.4. Budget Adoption and Ratification. Within thirty (30) days after adoption of a proposed budget for the Condominium, the Executive Board shall provide a summary of the Budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. The proposed budget may not increase in any one year by more than 10% from the previous year without the affirmative vote of 67% in interest of the unit owners. Otherwise, the proposed budget need only be approved by 51% in interest of the unit owners. If the proposed budget is not approved, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.5. Ratification of Non-Budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.2 of this Declaration, in an amount greater than fifteen (15) percent of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 17.4.

Section 17.6. Certificate of Payment of Common Expense Assessments. The Association upon written request shall furnish to a Unit Owner a statement setting out the amount of unpaid assessments against the Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and each Unit Owner.

Section 17.7. Monthly Payment of Common Expenses. All Common Expenses assessed under Sections 17.1 and 17.2 shall be due and payable monthly.

Section 17.8. Acceleration of Common Expenses Assessments. In the event of default for a period of thirty (30) days by any Unit Owner in the payment of any Common Expense assessment levied against his or her Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 17.9. Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs or on such earlier date as the Executive Board determines.

Section 17.10. No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use of enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 17.11. Personal Liability of Unit Owners. The Owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

## ARTICLE 18

### RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose, and the Eligible Mortgagee consent described in Article 16.

## ARTICLE 19

### PERSONS AND UNITS SUBJECT TO THE CONDOMINIUM DOCUMENTS

Section 19.1. Compliance with Condominium Documents. All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Condominium Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Condominium Documents are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions recorded in the Office of the Register of Deeds of New Hanover County, North Carolina are covenants running with the land and shall bind any persons having at any time any interest or estate in such Unit.

Section 19.2. Adoption of Rules and Regulations. The Executive Board may adopt Rules and Regulations regarding the use and occupancy of Units affecting the Common Elements, Limited Common Elements and the activities of occupants, subject to Notice and Consent.

## ARTICLE 20

### INSURANCE

Section 20.1. Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit owners and Eligible Mortgagees at their respective last known addresses.

#### Section 20.2. Property Insurance

##### a. Property insurance covering:

(i) the project facilities (which term means all buildings on the Property, including the Units and all fixtures, equipment and any Improvements and betterments whether part of a Unit or a Common Element, and such personal property of Unit Owners as is normally insured under building coverage), but excluding land, excavations, portions of foundations below the under surface of the lowest floors, underground pilings, pipes, flues and drains and other items normally excluded from property policies; and

(ii) all personal property owned by the Association.

b. Amounts. Such insurance shall insure the project facilities for an amount (after application of any deductions) equal to one hundred percent (100%) of their actual cash value at the time the insurance is purchased and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value.

The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement costs of the project facilities and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

The maximum deductible for insurance policies shall be \$10,000 or one percent (1%) of the policy face amount.

The difference between the policy deductible and \$250 shall be paid by the Association as a Common Expense. The deductible portion of \$250 shall be paid by each of the Unit Owner(s) suffering a loss.



c. **Risks Insured Against.** The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.

d. **Other Provisions.** Insurance policies required by this Section shall provide that:

- (i) the insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner.
- (ii) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.
- (iii) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.
- (iv) loss must be adjusted with the Association.
- (v) Insurance proceeds shall be paid to an insurance trustee designated in the policy for that purpose, and in the absence of such designation to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's Mortgagee.
- (vi) the insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association as well as each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.
- (vii) the name of the insured shall be substantially as follows: "Trustees for RACINE CENTER CONDOMINIUM ASSOCIATION, INC., for the use and benefit of the individual owners and lien holders as their interest may appear. Unless otherwise required by the Insurer or applicable law, the Executive Board, acting by majority vote, through the President, shall serve as Trustee for the purpose of administering and disbursing proceeds of insurance in a manner consistent with this Declaration and the Act.

Section 20.3. **Liability Insurance.** Liability insurance , including medical payments insurance, in an amount determined by the Executive Board but in no event less than \$1,000,000 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the activities of the Association.

a. **Other Provisions.** Insurance policies carried pursuant to this section shall provide that:

- (i) each Unit Owner is an insured person under the policy with respect to liability arising out of the interest of the Unit Owner in the Common Elements or membership in the Association.
- (ii) the insurer waives the right to subrogation under the policy against a Unit Owner or members of the household of a Unit Owner.
- (iii) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.
- (iv) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(v) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 20.4. Fidelity Bonds. A blanket fidelity bond may be provided for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services.

Section 20.5. Unit Owner Policies. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit.

Section 20.6. Worker's Compensation Insurance. The Executive Board shall, if covered, obtain and maintain worker's compensation insurance to meet the requirements of the laws of the State of North Carolina.

Section 20.7. Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

Section 20.8. Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 20.9. Premiums. Insurance premiums shall be a Common Expense.

## ARTICLE 21

### DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 21.1. Duty to Restore. A portion of the Condominium for which insurance is required under Section 47C-3-113 of the Condominium Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- a. the Condominium is terminated;
- b. repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or
- c. eighty percent (80%) of the Unit Owners, including each owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 21.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 21.3. Plans. The Property must be repaired and restored in accordance with either the original plans and specification or other plans and specifications which have been approved by the Executive Board, a majority of Unit Owners and fifty-one percent (51%) of Eligible Mortgagees.

Section 21.4. Replacement of Less than Entire Property.

- a. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium.
- b. Except to the extent that other persons will be distributees:
  - (i) the insurance proceeds attributable to a Unit and Limited Common Elements that is not rebuilt must be distributed to the owner of the Unit and



the owner of the Unit to which the Limited Common Elements were allocated, or to lienholders, as their interests may appear; and

(ii) the remainder of the proceeds must be distributed to each Unit Owner or lienholder, as their interests may appear, in proportion to the Common Element interests of all the Units.

c. If the Unit Owners vote not to rebuild a Unit, the allocated interests of the Unit are reallocated upon the vote as if the Unit had been condemned under Section 47C-1-107(a) of the Condominium Act, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

Section 21.5. Insurance Proceeds. The Executive Board of the Association, as Trustee acting by the President, or such other Trustee as may be required by the Insurer or by applicable law, shall hold any insurance proceeds in trust for the Association, Unit Owners and lienholders as their interests may appear. Subject to the provisions of Subsection 21.1a through Subsection 21.1c, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Condominium is terminated.

Section 21.6. Certificates by the Executive Board. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

- a. whether or not damaged or destroyed property is to be repaired or restored;
- b. the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

## ARTICLE 22

### RIGHTS TO NOTICE AND COMMENT; NOTICE AND HEARING

Section 22.1. Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules and Regulations, whenever the Condominium Documents require that an action be taken after "Notice and Comment", and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which may be routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 22.2. Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after "Notice and Hearing", the following procedures shall be observed: the party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to insure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the manner in which notice of the meeting was given.

Section 22.3. Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

## ARTICLE 23

### EXECUTIVE BOARD

Section 23.1. Minutes of Executive Board Meetings. The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

Section 23.2. Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws or the Condominium Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Condominium Act, the powers and duties necessary for the administration of the affairs of the Association and of the Condominium which shall include, but not be limited to, the following:

- a. adopt and amend Bylaws, Rules and Regulations;
- b. adopt and amend budgets for revenues, expenditures and reserves;
- c. collect assessments for Common Expenses from Unit Owners;
- d. hire and discharge managing agents;
- e. hire and discharge employees and agents, other than managing agents, and independent contractors;
- f. institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Unit owners on matters affecting the Condominium;
- g. make contracts and incur liabilities;
- h. regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- i. cause additional Improvements to be made as a part of the Common Elements;
- j. acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common elements may be conveyed or subjected to a Security Interest only pursuant to Section 47C-3-112 of the Condominium Act;
- k. grant easements for any period of time including permanent easements, and leases, licenses and concessions for no more than one year, through or over the Common Elements;
- l. impose and receive a payment, fee or charge for use, rental or operation of the Common Elements, other than Limited Common Elements described in Section 47C-2-102(2) and (4) of the Condominium Act, and for services provided to Unit Owners;
- m. impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, Bylaws, and the Rules and Regulations of the Association;



n. impose a reasonable charge for the preparation and recordation of amendments to this Declaration, and resale certificates required by Section 47C-4-109 of the Condominium Act or a statement of unpaid assessments;

o. provide for the indemnification of the Association's officers and the Executive Board and maintain director's and officer's liability insurance;

p. assign the Association's right to future income, including the right to receive Common Expense assessments;

q. exercise any other powers conferred by this Declaration or the Bylaws;

r. exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

s. exercise any other power necessary and proper for the governance and operation of the Association; and

t. by resolution, establish committees of Directors, permanent and standing, to perform any of the above functions designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 23.3. Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Condominium or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any terms.

## ARTICLE 24

### CONDEMNATION

If part or all of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47C-1-107 of the Condominium Act.

## ARTICLE 25

### MISCELLANEOUS

Section 25.1. Captions. The captions contained in the Condominium Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Condominium Documents nor the intent of any provision thereof.

Section 25.2. Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Condominium Documents so require.

Section 25.3. Waiver. No provision contained in the Condominium Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 25.4. Invalidity. The invalidity of any provision of the Condominium Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Condominium Documents shall continue in full force and effect.

Section 25.5. Conflict. The Condominium Documents are intended to comply with the requirements of the Condominium Act. In the event of any conflict between the Condominium Documents and the provisions of the Condominium Act, the provisions of the Condominium Act shall control. In the event of any conflict between this Declaration and any other Condominium Document, this Declaration shall control.

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ARTICLE 26

JOINDER AND CONSENT

BRANCH BANKING AND TRUST COMPANY, a North Carolina state banking corporation, the beneficiary under deed of trust recorded in Book 3206, Pages 85 through 90, of the New Hanover County Registry joins in the execution of this Declaration of Condominium for the limited purpose to evidence its consent thereto.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 17 day of MARCH, 2004.

RACINE CENTER, L.L.C.  
a North Carolina limited liability company

By: [Signature]  
MICHAEL GOLONKA, Member/Manager

BRANCH BANKING AND TRUST COMPANY

BY: [Signature]  
S. U. C. President

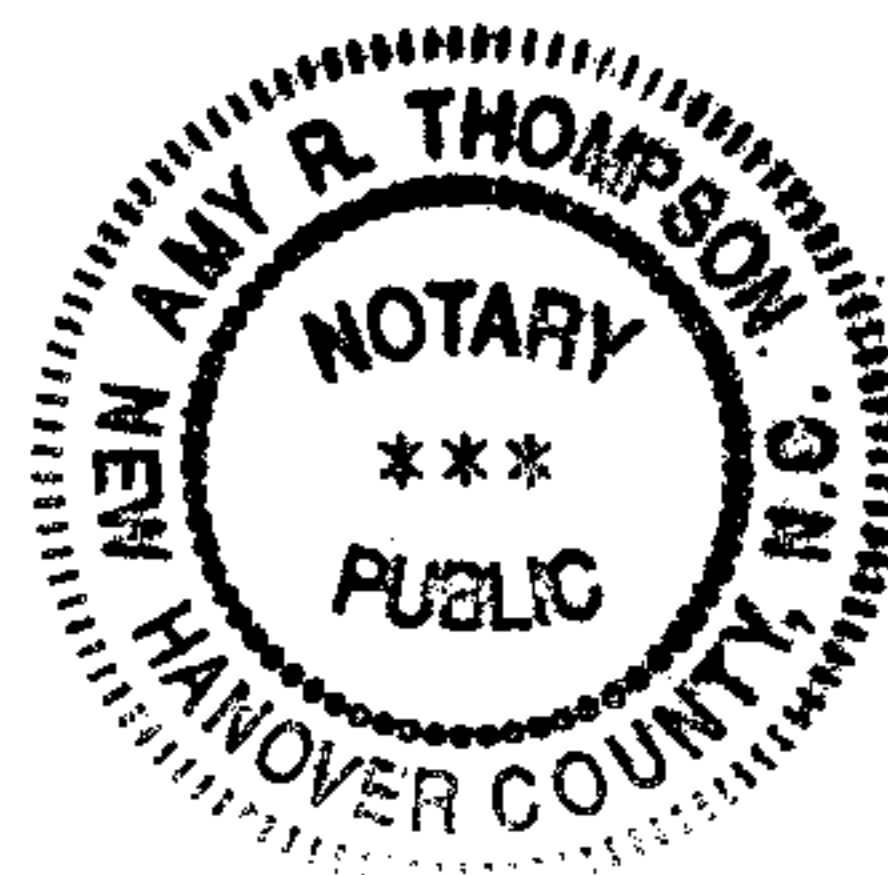
STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Amy R. Thompson, a Notary Public of the State and County aforesaid, do hereby certify that MICHAEL GOLONKA, personally came before me this day and acknowledged that he is the Member/Manager of RACINE CENTER, L.L.C., a North Carolina limited liability company, and hereby executed the foregoing instrument on behalf of the company

WITNESS my hand and official seal this the 17<sup>th</sup> day of March, 2004.

Amy R. Thompson  
Notary Public

My commission expires: 1-15-2008  
(SEAL)



STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Camela Stumpf, a Notary Public of the State and County aforesaid, do hereby certify that Robert Boggs personally came before me this day and acknowledged that he/she is SR. Vice President of BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, and that he/she, as SR. Vice President being authorized to do so, executed the foregoing instrument on behalf of the corporation.

WITNESS my hand and official stamp or seal this 18 day of March, 2004.

My commission expires: 3-4-2007  
(SEAL)



Camela Stumpf  
Notary Public

**EXHIBIT "A"**

**METES AND BOUNDS DESCRIPTION**  
**PREPARED FOR**  
**RACINE CENTER CONDOMINIUM**  
**1.71 ACRES +/-**  
**RACINE DRIVE, WILMINGTON, NORTH CAROLINA**  
**NEW HANOVER COUNTY**

Commence at an existing concrete monument located in the centerline of Racine Drive (60' public right of way) at its intersection with the centerline of Market Place Drive (60' public right of way); thence North 66 degrees 20 minutes 33 seconds East a distance of 100.52 feet to an iron pipe located in the southeast right of way of Racine Drive, said iron pipe being the Point of BEGINNING; thence South 39 degrees 35 minutes 38 seconds East a distance of 428.10 feet to an iron pipe; thence South 38 degrees 45 minutes 57 seconds West a distance of 115.00 feet to an iron pipe; thence North 54 degrees 07 minutes 37 seconds West a distance of 443.48 feet to an iron pipe in the southeast right of way of Racine Drive; thence along and with the southeast right of way of Racine Drive along a curve to the right (radius=900.27 feet, arc=225.59 feet) a chord which bears North 44 degrees 47 minutes 33 seconds East a chord distance of 225.00 feet to the Point of BEGINNING; containing 1.71 acres, more or less.

Subject to utility easements of record, all applicable zoning and land use ordinances, statutes and regulations. This description creates a subdivision of land within an area of a county that has an ordinance that regulates parcels of land.



EXHIBIT B

<u>Unit</u>	<u>Square Footage</u>	<u>Votes</u>	<u>Allocated Interest in Common Elements</u>
1	2,570	13.90	13.90%
2	8,404	45.48	45.48%
3	1,000	5.42	5.42%
4	2,813	15.22	15.22%
5	1,593	8.62	8.62%
6	650	3.52	3.52%
7	1,449	7.84	7.84%
Total:	<u>18,479</u>	<u>100</u>	<u>100.00%</u>



REBECCA T. CHRISTIAN  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

Filed For Registration: 03/19/2004 02:32:41 PM  
Book: RE 4239 Page: 742-769  
Document No.: 2004013646  
DECL 28 PGS \$92.00

Recorder: MARVIS ANN STORER

\*\*\*\*\*

State of North Carolina, County of New Hanover

The foregoing certificate of AMY R THOMPSON , PAMELA STUMP Notaries are certified to be correct. This  
19TH of March 2004

REBECCA T. CHRISTIAN , REGISTER OF DEEDS

By: Marvis Ann Storer  
Deputy/Assistant Register of Deeds

\*\*\*\*\*

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.  
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

**\*2004013646\***

2004013646