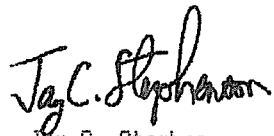


Prepared by and, upon recording, please return to:
David A. Herrigel, Esq.
HYATT & STUBBLEFIELD, P.C.
Peachtree Center South Tower
225 Peachtree Street, N.E., Suite 1200
Atlanta, Georgia 30303


Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

WESTPARK

RR
83
174

HYATT & STUBBLEFIELD, P.C.
Attorneys and Counselors
Peachtree Center South Tower
225 Peachtree Street, N.E., Suite 1200
Atlanta, Georgia 30303

TABLE OF CONTENTS

	<u>PAGE</u>
PART ONE: INTRODUCTION TO THE COMMUNITY.....	1
Article I Creation of the Community	1
1.1. Purpose and Intent.....	1
1.2. Binding Effect.....	1
1.3. Governing Documents.....	2
Article II Concepts and Definition	3
2.1. Defined Terms.....	3
2.2. Interpretation of Certain References.....	6
PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS	7
Article III Use and Conduct	7
3.1. Framework for Regulation.....	7
3.2. Rule Making Authority.....	7
3.3. Owners' Acknowledgment and Notice to Purchasers.....	8
3.4. Protection of Owners and Others.....	8
Article IV Architecture and Landscaping	10
4.1. General.....	10
4.2. Architectural Review.....	10
4.3. Guidelines and Procedures.....	11
4.4. No Waiver of Future Approvals.....	13
4.5. Variances.....	14
4.6. Limitation of Liability.....	14
4.7. Certificate of Compliance.....	14
4.8. Enforcement.....	15
Article V Maintenance and Repair	15
5.1. Maintenance of Units.....	15
5.2. Responsibility for Repair and Replacement.....	16
PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION.....	16
Article VI The Association and its Members.....	16
6.1. Function of Association.....	16
6.2. Membership.....	16
6.3. Voting.....	17
Article VII Association Powers and Responsibilities	17
7.1. Acceptance and Control of Association Property.....	17
7.2. Maintenance of Area of Common Responsibility.....	18

7.3.	Insurance.....	19
7.4.	Compliance and Enforcement.....	21
7.5.	Implied Rights; Board Authority.....	24
7.6.	Indemnification of Officers, Directors, and Others.....	24
7.7.	Provision of Services.....	24
7.8.	Relationships with Other Properties.....	25
7.9.	Bulk Rate Service Agreements.....	25
Article VIII Association Finances.....		26
8.1.	Budgeting and Allocating Common Expenses.....	26
8.2.	Budgeting for Reserves.....	27
8.3.	Declarant's Subsidy Option.....	27
8.4.	Special Assessments.....	27
8.5.	Specific Assessments.....	28
8.6.	Authority to Assess Owners; Time of Payment.....	28
8.7.	Obligation for Assessments.....	29
8.8.	Exempt Property.....	30
8.9.	Use and Consumption Fees.....	30
8.10.	Transfer Fee.....	30
PART FOUR: COMMUNITY DEVELOPMENT.....		31
Article IX Expansion of the Community.....		32
9.1.	Annexation by Declarant.....	32
9.2.	Annexation by the Association.....	32
9.3.	Additional Covenants and Easements.....	32
9.4.	Effect of Supplemental Declaration or Recorded Plat.....	33
Article X Additional Rights Reserved to Declarant.....		33
10.1.	Withdrawal of Property.....	33
10.2.	Marketing and Sales Activities.....	33
10.3.	Right to Develop.....	33
10.4.	Right to Approve Changes in Standards.....	34
10.5.	Right to Transfer or Assign Declarant Rights.....	34
10.6.	Exclusive Rights to Use Name of Development.....	34
10.7.	Right to Use Common Area for Special Events.....	34
10.8.	Termination of Rights.....	35
PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY.....		35
Article XI Easements.....		35
11.1.	Easements in Common Area.....	35
11.2.	Easements of Encroachment.....	36
11.3.	Easements for Utilities and Other Infrastructure.....	36
11.4.	Easements to Serve Additional Property.....	37
11.5.	Easements for Maintenance, Emergency, and Enforcement.....	37
11.6.	Sign and Landscape Easements.....	38

Article XII	Limited Common Areas	38
12.1.	Purpose.....	38
12.2.	Designation.	38
Article XIII	Party Walls and Other Shared Structures	39
13.1.	General Rules of Law to Apply.	39
13.2.	Maintenance; Damage and Destruction.	39
PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY		40
Article XIV	Dispute Resolution and Limitation on Litigation	40
14.1.	Hearing Requirement.	40
14.2.	Initiation of Litigation by Association.	40
Article XV	Disclosures and Disclaimers.....	41
15.1.	Builder Performance.	41
15.2.	Excavation and Other Construction Activities.	41
15.3.	Health, Safety, and Welfare.	42
15.4.	Safety and Security.	42
15.5.	Limitation of Liability - Use of Recreational Facilities.	42
15.6.	Wetlands, Creeks, and Streams – Use and Maintenance.	43
15.7.	Changes in the Master Plan.....	43
15.8.	Notice and Disclaimer as to Community Systems.	44
15.9.	View Impairment.	44
15.10.	Adjacent Lake; Buffer.....	44
Article XVI	Mortgagee Provisions	45
16.1.	Notices of Action.	45
16.2.	No Priority.....	45
16.3.	Notice to Association.	45
16.4.	Failure of Mortgagee to Respond.....	45
PART SEVEN: CHANGES IN THE COMMUNITY		46
Article XVII	Changes in Ownership of Units	46
Article XVIII	Changes in Common Area	46
18.1.	Condemnation.	46
18.2.	Partition.....	47
18.3.	Transfer or Dedication of Common Area.	47
Article XIX	Amendment of Declaration	47
19.1.	By Declarant.....	47
19.2.	By Members.	48
19.3.	Validity and Effective Date.....	48
19.4.	Exhibits.	48

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Subject Matter</u>
"A"	Land Initially Submitted
"B"	Land Subject to Annexation
"C"	Initial Use Restrictions
"D"	By-Laws of WestPark Homeowners Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
WESTPARK

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 10th day of February, 2006, by CL WestPark LLC, a Georgia limited liability company.

PART ONE: INTRODUCTION TO THE COMMUNITY

This Declaration provides a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of WestPark as a residential master planned community.

Article I Creation of the Community

1.1. Purpose and Intent.

CL WestPark LLC, as the owner of the real property described in Exhibit "A" (or, if not the owner, with the owner's consent), is recording this Declaration to establish a general plan of development for WestPark, a planned community. This Declaration provides for WestPark's overall development, administration, maintenance, and preservation and provides a flexible and reasonable procedure for WestPark's future expansion. An integral part of the development plan is the WestPark Homeowners Association, Inc., an association comprised of all WestPark property owners, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.

This document does not and is not intended to create a condominium within the meaning of O.C.G.A. § 44-3-70, *et seq.*

1.2. Binding Effect.

This Declaration governs the property described in Exhibit "A," and any other property submitted to this Declaration in the future in accordance with Article IX. This Declaration shall run with the title to such property and shall bind anyone having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns.

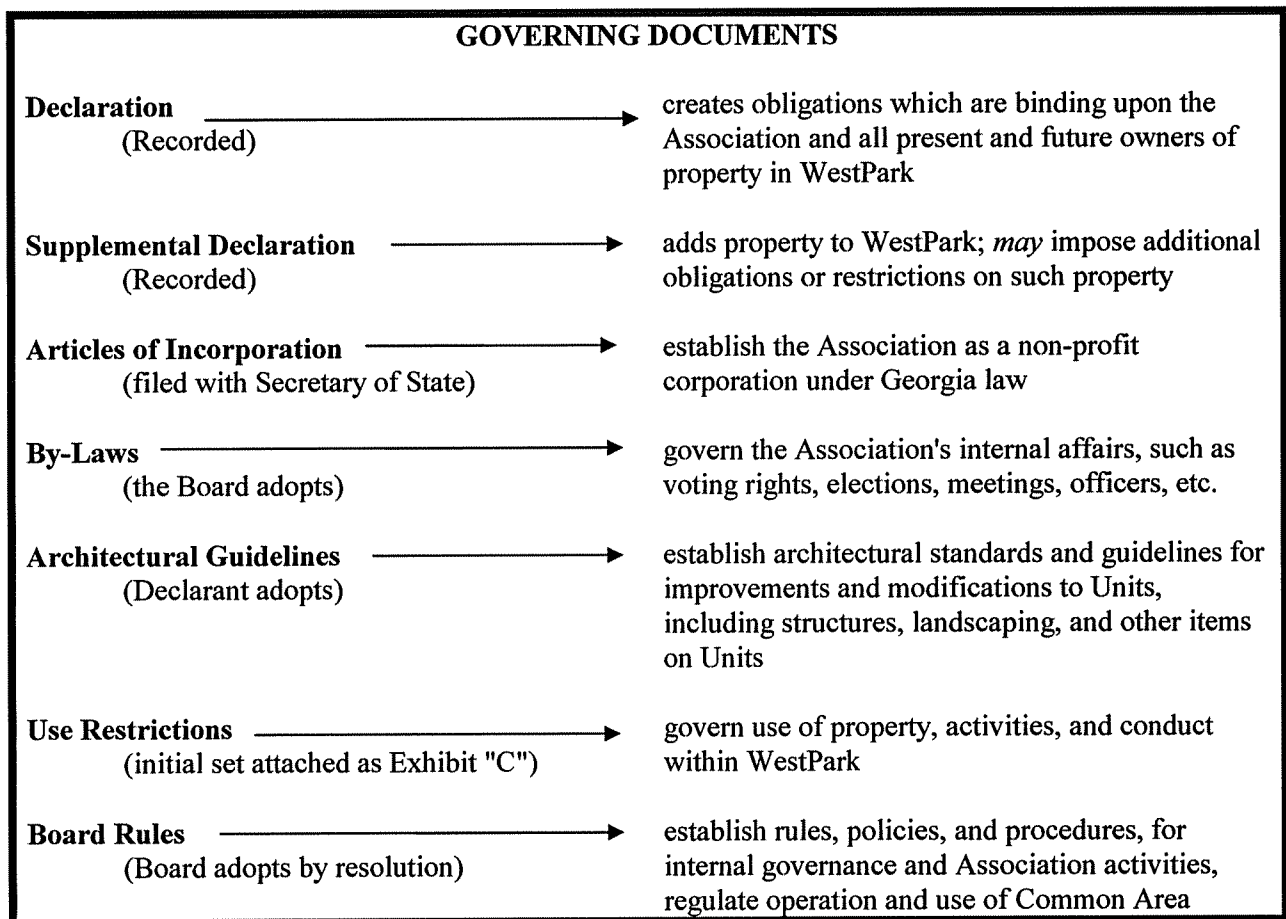
Declarant, the Association, any aggrieved Owner, and their respective legal representatives, heirs, successors, and assigns may enforce this Declaration. This Declaration, as it may be amended, is intended to remain in effect in perpetuity. However, so long as Georgia law limits the period during which covenants may run with the land, this Declaration shall run with and bind WestPark so long as permitted. After such time, this Declaration shall

be extended automatically for successive 20-year periods, unless terminated in accordance with O.C.G.A. §44-5-60, as it may be amended.

If any provision of this Declaration would be unlawful, void, or voidable by reason of any Georgia law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

The following diagram identifies and summarizes the "Governing Documents," each as may be amended from time to time:



Additional restrictions or provisions which are more restrictive than the provisions of this Declaration may be imposed on any portion of WestPark, in which case, the more restrictive provisions will be controlling. However, during the Development and Sale Period, no Person shall record any additional covenants, conditions, and restrictions, whether contained in a declaration or any other instrument, affecting any portion of WestPark without Declarant's

written consent. Thereafter, the Association must consent. Any instrument recorded without the required consent is void and of no force and effect.

If there are conflicts among Georgia law, the Articles, the Declaration, and the By-Laws, then Georgia law, the Declaration, the Articles, and the By-Laws (in that order) shall control.

The Governing Documents apply to all Owners and occupants of property within WestPark, as well as to their respective tenants, guests, and invitees. Any lease on a Unit shall provide that the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents.

If any court should determine that any provision of this Declaration or any other of the Governing Documents is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Article II Concepts and Definition

2.1. Defined Terms.

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. The following terms, when capitalized, shall be defined as set forth below.

"Affiliate": Any Person which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, agent, co-venturer, subsidiary, personal representative, or attorney of any of the foregoing. For the purposes of this definition, the term "control" means the direct or indirect power to direct or cause the direction of an entity's management or policies with respect to the development of WestPark or otherwise, whether through the ownership of voting securities, by contract, or otherwise.

"Architectural Guidelines": WestPark's architectural, design, and construction guidelines and review procedures adopted pursuant to Article IV, as they may be amended.

"Architectural Review Committee" or "ARC": The committee appointed by the Board to administer architectural controls within WestPark, as provided in Article IV.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles": The Articles of Incorporation of WestPark Homeowners Association Inc., filed with the Georgia Secretary of State, as they may be amended.

"Association": WestPark Homeowners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

"Base Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units.

"Board": The Association's board of directors, selected as provided in the By-Laws.

"Builder": Any Person who purchases one or more Units for the purpose of constructing homes for later sale to consumers, or who purchases land within WestPark for further subdivision, development, and/or resale in the ordinary course of its business.

"By-Laws": The By-Laws of WestPark Homeowners Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "D."

"Class "A" Member": Each Owner except, during the period of Class "B" membership, Declarant and any Affiliate of Declarant.

"Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of Board members. The Class "B" Control Period shall terminate on the first to occur of the following:

- (a) when 100% of the total number of Units permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders;
- (b) December 31, 2025; or
- (c) when, in its discretion, the Class "B" Member so determines.

"Class "B" Member": Collectively, and until termination of the Class "B" Membership, Declarant and any of Declarant's Affiliates which own a Unit.

"Common Area": All real and personal property which the Association owns, leases, or otherwise holds possessory or use rights in for the Owners' common use and enjoyment. The term shall include the Limited Common Area, as defined below.

"Common Expenses": The actual and estimated expenses the Association incurs, or expects to incur, for the Owners' general benefit, including any reasonable reserve the Board may find necessary and appropriate.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout WestPark or established pursuant to the Architectural Guidelines, Use Restrictions, or Board resolutions, whichever is the highest standard. Declarant

shall establish the initial standard. The Community-Wide Standard may contain objective elements, such as specific lawn or house maintenance requirements, and subjective elements subject to the Board's or the ARC's discretion. The Community-Wide Standard may evolve as development progresses and as the needs and desires within WestPark change.

"Declarant": CL WestPark LLC, a Georgia limited liability company, or any successor or assign who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale and who is designated as Declarant in a recorded instrument the immediately preceding Declarant executes.

"Development and Sale Period": The period during which Declarant owns real property within WestPark or has an unexpired option unilaterally to annex property into WestPark.

"Limited Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Units, as more particularly described in Article XII.

"Master Plan": The master land use plan for the development of WestPark, as it may be amended, which includes all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described in Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article IX.

"Member": Each Unit Owner, subject to Section 6.2.

"Mortgage": A mortgage, deed of trust, deed to secure debt, or any other form of security instrument affecting title to any Unit. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Owner": One or more Persons who hold title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation (*e.g.*, a Mortgagee). If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"Person": An individual, corporation, partnership, trustee, or any other legal entity.

"Special Assessment": Assessments levied against all Owners, in accordance with Section 8.5.

"Specific Assessment": Assessments levied against a particular Owner or Owners in accordance with Section 8.6.

"Supplemental Declaration": A recorded instrument which subjects additional property to this Declaration, identifies Common Area or Limited Common Area, and/or imposes additional restrictions and obligations on the land described in such instrument.

"Unit": A portion of WestPark, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The boundaries of each Unit shall be as delineated on a recorded plat.

Prior to recording a subdivision plat delineating Units within a parcel, such parcel shall be deemed to be a single Unit. Thereafter, the portion encompassed on such plat shall contain the number of Units determined as set forth in the preceding paragraph. Any portion not encompassed on such plat shall continue to be treated as a single unit.

"Use Restrictions": The restrictions and rules set forth in Exhibit "C," as they may be supplemented, modified, and repealed pursuant to Article III.

"WestPark": The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article IX.

2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to "recordation" or the "recording" of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument in the Office of the Clerk of the Superior Court of Cobb County, Georgia, as applicable, or such other place designated as the official location for filing documents affecting title to real estate in such counties in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise its discretion or make a determination may do so without consent or approval of others, and without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

(d) Notice. All references in the Governing Documents to "notice" or "notify" or any derivative of such terms shall be deemed to refer to written notice by personal delivery, United States mail, private carrier, or, if the intended recipient has given its prior written authorization to use such method of delivery, facsimile or electronic mail with written confirmation of transmission.

Notices shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance, and architecture at WestPark are what give the community its identity and make it a place that people want to call "home." This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for the community standards to evolve as WestPark changes and grows.

Article III Use and Conduct

3.1. Framework for Regulation.

The Governing Documents establish a framework of affirmative and negative covenants, easements, and restrictions which govern WestPark. Within that framework, the Board and the Members must be able to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. This Article establishes procedures for creating, modifying, and expanding Use Restrictions.

Unless otherwise specifically provided, this Article shall not apply to administrative and operating policies that the Board may adopt ("Board Rules") relating to the Common Areas, such as hours of operation of a recreational facility, regulating the use of private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Use Restrictions. The Board may adopt Board Rules by resolution or otherwise pursuant to its general authority, without Member approval.

3.2. Rule Making Authority.

(a) Board Authority. Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt new Use Restrictions or modify or rescind existing Use Restrictions by a majority vote of the directors at any Board meeting.

(b) Membership Authority. Subject to the notice requirements in subsection (c), the Members representing a majority of the Class "A" votes in the Association may also adopt new Use Restrictions and modify or rescind existing Use Restrictions at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Use Restriction was adopted. However, during the Development and Sale Period, any such action shall also be subject to Declarant's approval.

(c) Notice. The Board shall send notice to all Owners concerning any proposed Use Restriction change at least five business days prior to the meeting of the Board or the meeting of the Members at which such action is to be considered. At any such meeting, Members shall have a reasonable opportunity to be heard before the proposed action is put to a vote. This notice requirement shall not apply to the adoption of Board Rules.

(d) Effective Date. A Use Restrictions change adopted under this section shall take effect 30 days after the date on which written notice of the Use Restrictions change is given to the Owners.

(e) Conflicts. No action taken under this Article shall have the effect of modifying, repealing, or expanding the Architectural Guidelines or any provision of this Declaration other than the initial Use Restrictions set forth in Exhibit "C." In the event of a conflict between the Architectural Guidelines and the Use Restrictions, the Architectural Guidelines shall control. In the event of a conflict between the Board Rules and the Use Restrictions, the Use Restrictions shall control.

3.3. Owners' Acknowledgment and Notice to Purchasers.

Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit may be affected by the Use Restrictions, that the Use Restrictions may change from time to time as provided under Section 3.2, and that such changes may not be set out in a recorded instrument. All purchasers of Units are on notice that the Association may have adopted changes to the Use Restrictions. Copies of the current Use Restrictions may be obtained from the Association.

3.4. Protection of Owners and Others.

Except as set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in Exhibit "C," all Use Restrictions (and all Board Rules) shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly; however, the Use Restrictions and Board Rules may vary by housing type or location within WestPark, if reasonable.

(b) Displays. The Association shall not abridge Owners' rights to display religious and holiday signs, symbols, and decorations on their Units of the kinds normally displayed in

residential neighborhoods; provided, the Association may adopt time, place, and manner restrictions with respect to any displays visible from outside any structure on the Unit.

The Association shall not regulate the content of political signs; however, it may regulate the time, place, and manner of posting such signs (including design criteria).

(c) Household Composition. The Association shall not interfere with any Owner's freedom to determine his or her household's composition, except the Association may limit the total number of occupants permitted in each dwelling based upon the dwelling's size and its fair use of the Common Area.

(d) Activities Within Dwellings. The Association shall not interfere with the activities carried on within dwellings, except it may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that are an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. The Association shall not reallocate financial burdens among the various Units or change Common Area use rights to any Owner's detriment over that Owner's written objection. This shall not prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase assessments as provided in Article VIII.

(f) Alienation. The Association shall not prohibit the leasing or transfer of any Unit, or require the Association's consent for leasing or transferring any Unit; provided, the Association may require a minimum lease term of up to 12 months and may require that Owners use lease forms the Association approves.

(g) Abridging Existing Rights. The Association shall not require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property complied with all rules previously in force. This exemption shall apply only to property and not to conduct and shall apply only during the period such personal property is continuously in or on a Unit or the period of such Owner's ownership of the Unit, whichever is shorter. It shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(h) Reasonable Rights to Develop. The Association may not unreasonably impede Declarant's right to develop WestPark.

The limitations in Subsections (a) through (g) shall not apply to amendments to this Declaration adopted in accordance with Article XIX.

Article IV Architecture and Landscaping

4.1. General.

No structure or thing shall be placed, erected, or installed upon any Unit and no improvement or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removing landscaping) shall take place within WestPark, unless permitted or approved under this Article and the Architectural Guidelines.

Approval is not required to repaint the exterior of a structure in accordance with its most recently approved color scheme or to remodel, paint, or redecorate the interior of a structure. However, interior modifications which are visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of WestPark shall be designed and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its discretion.

This Article shall not apply to Declarant's or its Affiliate's activities during the Development and Sale Period, or to the Association's activities during the Class "B" Control Period.

4.2. Architectural Review.

(a) Declarant's Authority. Until 100% of the Units permitted under the Master Plan have been issued certificates of occupancy and conveyed to Class "A" Members other than Builders, Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for new construction and landscaping, and modifications to existing improvements within WestPark. There shall be no surrender or delegation of this authority prior to that time except in a recordable instrument which Declarant executes. Declarant may, in its discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder. In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the Architectural Review Committee. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Review Committee. Upon the expiration, surrender, or delegation of all or any of Declarant's authority, the Board shall appoint the Architectural Review Committee, the members of which shall thereafter serve and may be removed in the Board's discretion. The ARC shall have no rights or authority until Declarant's authority under this Article expires, or is delegated. Any delegation of authority is subject to the conditions set forth above.

(c) Fees; Assistance. Declarant or, upon formation of the ARC, the Board, may establish and charge reasonable fees for reviewing applications and may require such fees to be paid in full prior to review. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other Persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget as a Common Expense.

(d) Reviewer. For purposes of this Article, the entity having jurisdiction in a particular case, whether Declarant or its assigns or the ARC, shall be referred to as the "Reviewer."

4.3. Guidelines and Procedures.

(a) Architectural Guidelines. Declarant shall prepare the initial Architectural Guidelines, which may contain general provisions applicable to all of WestPark as well as specific provisions which vary for different areas within WestPark. The Architectural Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer. The Architectural Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Architectural Guidelines until the expiration of its authority under Section 4.2, notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates the power to amend. Upon termination or delegation of Declarant's right to amend, the Board may amend the Architectural Guidelines.

Amendments to the Architectural Guidelines shall be prospective only. They shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall make the Architectural Guidelines available to Owners and Builders who seek to engage in development or construction within WestPark. In Declarant's discretion, the Architectural Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

(b) Procedures. Unless the Architectural Guidelines otherwise specifically provide, no activity described in Section 4.1 shall commence on any portion of WestPark until an application for approval has been submitted to and approved by the Reviewer. An application for approval must be in writing and must include such plans and specifications as the Architectural Guidelines or the Reviewer requires. For example, plans and specifications may be required to show site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the Owner to submit any information reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. The Reviewer may base decisions on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to the procedures in Article XIV or to judicial review so long as made in good faith and in accordance with the required procedures.

The Reviewer shall make a determination on each application within 45 days after receipt of a completed application and other information it requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

As long as Declarant has rights under this Article (regardless of its delegation or assignment of authority), the ARC shall notify Declarant in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it intends to take under this Article. A copy of the application and any additional information that Declarant may require shall accompany the notice. During such time, Declarant shall have the right, in its discretion, to veto any ARC action; provided, Declarant's right to veto must be exercised within 10 business days after it receives notice of the ARC's action. The party submitting the plans for approval shall not be notified of the ARC's action until after Declarant's right to veto has been exercised or has expired.

The Reviewer shall notify the applicant in writing of a final determination on any application within five days after such determination is made or, with respect to any ARC determination subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond to the applicant in a timely manner, approval shall be deemed to have been given, subject to Declarant's veto right pursuant to Section 4.2. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a written variance has been granted pursuant to Section 4.5.

(c) Construction. The initial construction of a dwelling on a Unit shall commence in accordance with approved plans within three years from the date the Unit initially is conveyed to a Class "A" Member other than a Builder, notwithstanding any subsequent conveyances of such Unit. The initial construction of a dwelling on a Unit shall be completed within four years from the date the Unit initially is conveyed to a Class "A" Member other than a Builder.

In addition, as part of any approval of other improvements or of modifications to existing improvements, the Reviewer may require that construction commence in accordance with approved plans within a reasonable time period. If construction does not commence within the required time period, the approval shall expire and the Owner must reapply for approval before commencing any activities. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do.

Once commenced, construction of or on any improvement must be diligently pursued to completion. If approved work is not commenced or completed within the required time, or is not diligently pursued to completion, it shall be in violation of this Article and shall be subject to enforcement action (including fines) by the Association, Declarant, or any aggrieved Owner. Fines the Association levies shall be a lien against the Unit in the same manner as other assessments levied in accordance with Article VIII.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require that objectionable features be changed. This shall not impact the Reviewer's right to disapprove similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed a waiver of the right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance; provided, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain any governmental agency's approval, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. During the Development and Sale Period, no variance shall be effective without the approval of Declarant.

4.6. Limitation of Liability.

The standards and procedures established pursuant to this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of WestPark; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, or size, of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners.

Declarant, Declarant's Affiliates, the Association, the Board, the ARC, any Association committee, or any officer, director, or member of any of the foregoing shall not be held liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans reviewed or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not approved or featured as a Builder in WestPark; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify the Board, the ARC, other Association committees, and the members of each as provided in Section 7.6.

4.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Architectural Guidelines. The Association shall respond to such request within 30 days after receiving a written request and may charge a reasonable administrative fee for issuing such a certificate. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

4.8. Enforcement.

Any construction, alteration, installation, work performed, or other action in violation of this Article or the Architectural Guidelines shall be subject to enforcement action. Upon written request from Declarant or the Board, Owners shall, at their own cost and expense and within a reasonable time frame identified in the request, cure such nonconforming condition or remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to cure or remove and restore as required, Declarant, the Association, or the designees of either may enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

In addition, the Association and Declarant shall have the authority and standing to pursue all available legal and equitable remedies to enforce the provisions of this Article and the Reviewer's decisions and the Association may levy other sanctions (including fines) as provided in Article VII. If the Association or Declarant prevails, it may recover all costs including, without limitation, attorneys fees and court costs incurred in such enforcement action.

Article V Maintenance and Repair

5.1. Maintenance of Units.

Each Owner shall maintain his or her Unit, including the dwelling and all landscaping and other improvements comprising the Unit, in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, unless such maintenance responsibility is assumed by or assigned to (and accepted by) the Association under this Declaration, any Supplemental Declaration, or by law. Owners shall not permit any structures, equipment, or other items on the exterior portions of a Unit to become rusty, dilapidated, or to otherwise fall into disrepair.

Each Owner also shall maintain and irrigate the landscaping within any adjacent Common Area which lies between the Unit boundary and any Common Area wall, fence, or curb located within 10 feet of the Unit boundary; provided, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article IV.

Notwithstanding the above, prior to commencement of construction of a dwelling on a Unit owned by a Class "A" Member other than a Builder, the Association shall maintain such Unit in a manner consistent with the Community Wide Standard. All costs the Association incurs in connection with such maintenance shall be assessed against the benefited Unit and its Owner as a Specific Assessment.

5.2. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

In the event of damage to or destruction of a structure on a Unit, the Owner shall promptly repair or reconstruct the structure in a manner consistent with the original construction or such other plans and specifications approved in accordance with Article IV. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

The Association is the mechanism by which each Owner is able to participate in WestPark's governance and administration. While the Board has responsibility for day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership -- the Unit Owners.

Article VI The Association and its Members

6.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also has primary responsibility for enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Georgia law.

6.2. Membership.

Every Owner is a Member of the Association, provided, there is only one membership per Unit. If more than one Person owns a Unit, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners are jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not an individual (*e.g.*, a corporation or a partnership) may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary or its designee.

The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

(b) Class "B". The Class "B" Member shall be, collectively, Declarant and any Affiliate of Declarant which owns a Unit. The Class "B" membership shall terminate upon the earlier to occur of: (i) the conveyance of 100% of the Units permitted under the Master Plan to Class "A" Members other than Builders; or (ii) when, in its discretion, Declarant so determines and declares in a recorded instrument.

6.3. Voting.

(a) Class "A" Members. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.9. Owners of Units for which assessments have not yet commenced under Section 8.7 shall be entitled to cast a vote for such Units. All Class "A" votes shall be cast as provided in Section 6.3(c).

(b) Class "B" Member. The Class "B" Member shall not vote but may appoint a majority of the Board members during the Class "B" Control Period as specified in the By-Laws and may exercise the additional rights specified throughout the Governing Documents. Unless Declarant delegates such authority, Declarant shall act as, and on behalf of, the Class "B" Member on all matters. Upon termination of the Class "B" membership, Declarant and Affiliates of Declarant shall be Class "A" Members entitled to one Class "A" vote for each Unit they own.

(c) Exercise of Voting Rights. The Class "A" Members owning Units shall be entitled personally or by proxy to cast the votes attributable to their respective Units on any issue requiring a membership vote under the Governing Documents. If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Unit to be determined among themselves. Any co-Owner may cast the vote for the Unit and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of majority agreement, the Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently.

Elections may be held either by written ballot cast by mail or at a meeting of the Class "A" Members, as the Board determines. The Owners shall cast the votes attributable to their respective Units.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association may acquire, hold, mortgage or otherwise encumber, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions

of the Common Area, for consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by others.

(b) Declarant and its designees may convey to the Association, and the Association shall accept, personal property and/or fee title, leasehold, or other property interests in any improved or unimproved real property described in Exhibit "A" or "B." Upon Declarant's written request, the Association shall reconvey to Declarant any property originally conveyed to the Association for no consideration, to the extent Declarant conveyed such property in error or to the extent necessary for Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2. Maintenance of Area of Common Responsibility.

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(a) the Common Area, including, without limitation, entry features, recreational amenities, gathering parks and areas, natural areas, sidewalks, and private roadways, if any, within WestPark;

(b) landscaping and sidewalks within public rights-of-way within or abutting WestPark;

(c) "Easement Areas," as described in Section 11.7;

(d) such portions of any additional property which may be dictated by Declarant, this Declaration, any Supplemental Declaration, or any contract, covenant, or agreement the Association enters into (or which Declarant enters into on the Association's behalf); and

(e) any property and facilities that Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Declarant shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

Without limiting the generality of the foregoing, upon assignment from Declarant, the Association shall assume all of Declarant's (and Declarant's Affiliates') responsibilities with respect to the maintenance and operation of the Common Area and shall indemnify and hold Declarant and its Affiliates harmless with respect to such assumed responsibilities.

The Association shall maintain the facilities within the Area of Common Responsibility (other than Limited Common Areas) in continuous operation, unless Owners representing at least 67% of the Class "A" votes in the Association agree in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall require the Board's approval and the approval of Owners representing at least 67% of the Units to which such Limited Common Area is assigned (or such higher percentage as a Supplemental Declaration may require).

Notwithstanding the above, during the Development and Sale Period, the Association may not discontinue operation of any facilities within the Area of Common Responsibility, and the Area of Common Responsibility shall not be reduced, except with Declarant's prior written approval. In addition, as provided for in Section 10.8, during the Development and Sale Period, Declarant may, without the approval of the Association or the Owners, remove facilities from the Area of Common Responsibility and convert them to private use.

The approval requirements for discontinuing operation of facilities shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, or to preclude temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs.

Generally, the costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense. However, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or other agreements with such owner(s). The maintenance, repair, and replacement of Limited Common Areas may be assessed as a Specific Assessment against the benefited Units.

7.3. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following insurance, if reasonably available or, if not, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall

have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least two million dollars (\$2,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost, in the judgment of a reasonably prudent person, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage; and

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment, but not less than an amount equal to one-quarter of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Board, in its business judgment, may obtain additional insurance coverage and higher limits. Premiums for all insurance on the Area of Common Responsibility shall be a Common Expense.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Cobb County area. The Association shall make certificates of insurance available within WestPark for inspection and copying by each Member.

The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed

estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged improvements within the Area of Common Responsibility (other than Limited Common Area improvements) for which it has insurance responsibility, unless Owners representing at least 67% of the total votes in the Association decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, any decision not to restore the damaged improvements shall require the approval of the Board and of Owners representing at least 67% of the Units to which the Limited Common Area is assigned. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information is available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.

Notwithstanding the above, during the Development and Sale Period, damaged or destroyed improvements within the Area of Common Responsibility *shall* be repaired or reconstructed unless Declarant consents to the contrary.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain for the benefit of all Members any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate. The Association shall place such proceeds in a capital improvements account. This is a covenant for Mortgagees' benefit that the Mortgagee of any affected Unit may enforce.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

7.4. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for Governing Document violations, which sanctions include those listed below and any others described elsewhere in the Governing Documents. The Board may establish a range of penalties for different violations, with unsafe conduct and harassment or intentionally malicious conduct treated more severely than other violations. The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit (fines may be imposed within a graduated range). (In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may first be assessed against the violator; provided, if the violator does not pay the fine within the time period the Board sets, the Owner shall pay the fine upon notice from the Board);

(ii) suspending an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any Base Assessment);

(iii) suspending any Person's right to use Common Area amenities (except that no notice or hearing is required if the Owner is more than 30 days delinquent in paying any assessment or other charge owed the Association); provided, the Board may not limit ingress or egress to or from a Unit;

(iv) suspending any services the Association provides (except that no notice or hearing is required if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Unit in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) requiring an Owner, at his or her own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition; upon an Owner's failure to do so, the Board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Architectural Guidelines from continuing or performing any further activities in WestPark; and

(viii) levying Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Governing Documents.

(b) The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercising self-help or taking action to abate any violation on a Unit in any emergency situation. An emergency situation shall include any situation where the passage of time or the requirement of process would render enforcement ineffective (*e.g.*, towing vehicles that are in violation of parking rules and regulations);

(ii) exercising self-help or taking action to abate a violation on the Common Area under any circumstances; or

(iii) bringing suit at law or in equity to enjoin any violation, to recover monetary damages, or both.

In addition to any other enforcement rights, if an Owner fails to perform his or her maintenance responsibility properly, the Association may, without opportunity for a hearing under the By-Laws, record a notice of violation or perform such maintenance responsibilities and assess all costs the Association incurs against the Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents are in addition to any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(c) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Any decision not to enforce shall not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce county ordinances, if applicable, and Cobb County may enforce its ordinances within WestPark.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by, or reasonably implied from, the Governing Documents or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, the Board may exercise all of the Association's rights and powers without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the Association's rights and powers, making decisions on the Association's behalf, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

7.6. Indemnification of Officers, Directors, and Others.

The Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if the then Board approves) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited as provided under Section 14-3-851 of the Georgia Nonprofit Corporation Code and to those actions for which liability is limited under this Section.

The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The Association's officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7. Provision of Services.

The Association may provide, or provide for, services and facilities for the Owners and their Units, and may enter into and terminate contracts or agreements with other entities,

including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at an Owner's option, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control, cable television, monitoring, access control, caretaking, transportation, fire protection, utilities, trash collection, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided, and each Owner acknowledges that services such as those described above are not typically provided to detached, single family homes. In addition, the Board may cancel services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

In any contracts or agreements with third parties for the provision of services within WestPark, the Association may assign to the service provider the right to bill Owners directly and to pursue all legal or equitable remedies otherwise available to the Association in the collection of such bills.

To ensure consistency in scheduling and compliance with the Community-Wide Standard, the Board, in its discretion, may designate particular service providers (*e.g.*, trash collection, recycling, etc.) to be used by all Owners. In such case, the relationship between the service provider and the Owner may be direct and the expense of such service may be borne by the Unit Owner (*i.e.*, it would not be assessed through the Association).

7.8. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with neighboring properties to provide for and to contribute funds for, among other things (a) maintenance and operation of mutually beneficial properties or facilities, and (b) provision of mutually beneficial services. In addition, and without limiting the foregoing, during the Development and Sale Period, Declarant may subject WestPark to a covenant to share costs with non-residential properties adjacent to WestPark under which the Association is obligated to contribute to the cost of maintaining and operating mutually beneficial properties or facilities and/or is obligated to maintain such facilities for the benefit of WestPark and such adjacent properties.

7.9. Bulk Rate Service Agreements.

The Association may enter into contracts, including bulk rate service agreements, with providers of central telecommunication receiving and distribution services and systems (*e.g.*, cable television, high speed data/Internet/intranet services, and security monitoring), and their components ("Community Systems"), with other utilities, and with other Persons for the

maintenance, management, administration, upgrading, modification, and operation of such Community Systems and utilities. The Association's expenses in connection with any such contracts shall be a Common Expense to be included in the Base Assessment. However, if particular or additional services or benefits are provided to particular Units, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the costs as a Specific Assessment.

The terms of any Association contract for Community Systems or other utilities may obligate individual Owners or occupants to execute subscription agreements or other contracts directly with the Persons providing components or services prior to gaining access to the Community System or utility, or in the alternative, the Association may execute a subscription agreement or contract on behalf of all Owners. Such subscription agreements or other contracts may contain terms and conditions relating to use and access to the Community System or utility which, if violated by the Owner or occupant of a Unit, may result in services to such Owner or occupant's Unit being terminated by the provider or by the Association. The termination of service for such a violation shall not relieve the Owner of the continuing obligation to pay that portion of assessments or other Association charges pertaining to the Community Systems or common utilities.

The Association shall have no obligation to utilize any particular provider; however, except for cause (as defined under a written agreement with the provider), the Association may not, without Declarant's consent, terminate, or refuse to renew any contract entered into during the Class "B" Control Period.

Article VIII Association Finances

8.1. Budgeting and Allocating Common Expenses.

Each year, the Board shall prepare a budget of the estimated Common Expenses for the coming fiscal year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units.

The Association is authorized to levy Base Assessments equally against all Units subject to assessment to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income it expects to generate from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the budget's effective date. Prior to termination of the Class "B" Control Period, the budget shall not be subject to Owner approval. After termination of the Class "B" Control Period, the budget shall automatically become effective unless disapproved at a meeting by Owners

representing at least 67% of the total Class "A" votes in the Association. The Board shall be under no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the Owners' right to disapprove the revised budget as set forth above.

8.2. Budgeting for Reserves.

The Board may include in the Common Expense budget adopted pursuant to Section 8.1 a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period. Reserve budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. So long as the Board exercises business judgment in determining the amount of the reserve fund, the amount shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. These policies may differ for general Association purposes. During the Development and Sale Period, neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

8.3. Declarant's Subsidy Option.

During the Development and Sale Period, Declarant may, but shall not be obligated to, reduce the Base Assessment or fund any budget deficit for any fiscal year by payment of a subsidy which may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

8.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the

affirmative vote or written consent of Owners representing at least a majority of the total votes allocated to Units which will be subject to such Special Assessment. Any Special Assessment also requires the affirmative vote or written consent of the Class "B" Member during the period of Class "B" membership. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5. Specific Assessments.

The Association may levy Specific Assessments against one or more particular Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner (which might include the items identified in Section 7.7) or which the Association otherwise provides to less than all Owners in accordance with this Declaration (*e.g.*, Unit maintenance as provided in Section 5.1) or any Supplemental Declaration. Specific Assessments for special services may be levied prior to the requested service being provided; and

(b) to cover costs incurred in bringing a Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection.

8.6. Authority to Assess Owners; Time of Payment.

The obligation to pay assessments shall commence as to each Unit on the earlier of:
 (a) the closing of the conveyance of the Unit to a Class "A" Member other than a Builder; or
 (b) 15 months following the conveyance of the Unit from Declarant or any Affiliate of Declarant to a Builder; provided, no assessment shall be due prior to the month in which the Board first determines a budget and levies assessments pursuant to this Article. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

Owners shall pay assessments in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Owners may pay assessments in monthly or quarterly installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.7. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of WestPark, covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 12% per annum or such higher rate as the Board may establish, subject to the limitations of Georgia law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be each Owner's personal obligation and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as all interest, late charges, and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be recorded and enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While the Association owns a Unit following foreclosure (i) the Association shall not exercise a vote on its behalf; (ii) the Association shall not levy an assessment on it; and (iii) the Association shall charge each other Unit, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such acquired Unit

had the Association not foreclosed on it. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgage's foreclosure. The purchaser of a foreclosed Unit shall not personally be liable for assessments on such Unit due prior to the date title is transferred pursuant to such foreclosure. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment, including such acquirer, its successors and assigns.

8.8. Exempt Property.

In addition to those Units for which assessments have not commenced pursuant to Section 8.6, the following real property shall be exempt from payment of Base Assessments and Special Assessments: (a) all Common Area; and (b) any real property dedicated to and accepted by any governmental authority or public utility.

8.9. Use and Consumption Fees.

The Association may offer services or facilities for which it does not recover its costs through assessments under this Article. The Board may charge use and consumption fees to any Person who chooses to use or participate in such services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

8.10. Transfer Fee.

(a) Authority. The Board shall have the authority, on behalf of the Association, to establish and collect a "Transfer Fee" in an amount not to exceed one-half of the annual Base Assessment per Unit upon each transfer of title to a Unit. Subject to such limitation, the Board shall have the sole authority to establish and change the amount of the Transfer Fee. The Transfer Fee shall be payable to the Association by the purchaser at the closing of the transfer and shall be secured by the Association's lien for assessments under Section 8.7. An Owner shall notify the Association's Secretary of a pending title transfer at least seven days prior to the transfer. Such notice shall include the name of the purchaser, the date of title transfer, and other information the Board may require.

(b) Purpose. All Transfer Fees which the Association collects shall be deposited into a segregated account and used for such purposes as the Board deems beneficial to WestPark community (which may include purposes also benefiting or relating to the surrounding community). By way of example and not limitation, such Transfer Fees might be used for general operating purposes, reserves, or to assist the Association or one or more tax-exempt entities in funding:

(i) programs and activities which serve to promote a sense of community within and surrounding WestPark, such as local public or private educational systems or programs, recreational leagues, cultural programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs;

(ii) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation and preservation of the natural environment at WestPark; and

(iii) social services, community outreach programs, and other charitable causes.

(c) Exempt Transfers. Notwithstanding the above, no Transfer Fee shall be levied upon transfer of title to a Unit:

(i) to Declarant or any Affiliate of Declarant;

(ii) to a Builder solely for purposes of development and resale;

(iii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;

(iv) to the Owner's estate, surviving spouse, or child upon the death of the Owner;

(v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Transfer Fee shall become due; or

(vi) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of WestPark and to accommodate changes in the master plan which inevitably occur as a community the size of WestPark grows and matures.

Article IX Expansion of the Community

9.1. Annexation by Declarant.

Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by recording a plat or a Supplemental Declaration describing the additional property being annexed and specifying that such property is being made subject to the Declaration. Annexation pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to annex property pursuant to this Section shall expire when all property described in Exhibit "B" has been subjected to this Declaration or 15 years after this Declaration is recorded, whichever is earlier. Until then, Declarant may transfer or assign this right to an Affiliate or any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be memorialized in a recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

9.2. Annexation by the Association.

The Association may also subject additional property to the provisions of this Declaration by recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Owners representing more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, during the Development and Sale Period, Declarant's consent also is required. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

By Supplemental Declaration, Declarant may subject any portion of WestPark to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through assessments levied against only such benefited Units and Owners. If someone other than Declarant owns the property, then such owner(s)' consent shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Supplemental Declaration or Recorded Plat.

A Supplemental Declaration or plat shall be effective upon recording unless otherwise specified in such instrument. The Units subjected to this Declaration shall be assigned equal voting rights in the Association and equal *pro rata* liability for Base Assessments as all other Units.

Article X Additional Rights Reserved to Declarant

10.1. Withdrawal of Property.

Declarant reserves the right to amend this Declaration during the Development and Sale Period to withdraw any portion of WestPark, provided such withdrawal does not reduce the total number of Units then subject to the Declaration by more than 10 percent. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Marketing and Sales Activities.

Declarant and its designees, and Builders authorized by Declarant, may construct and maintain upon portions of the Common Area and other property they own, such facilities, activities, and things as, in Declarant's opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units. Such permitted facilities, activities, and things shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant, its designees, and Builders may park vehicles in areas other than garages or driveways, including on streets. Builders' rights under this Section are subject to Declarant's approval.

Declarant, and its designees or assignees (which may include Builders), shall have easements for access to and use of Association facilities under this section at no charge.

10.3. Right to Develop.

During the Development and Sale Period, Declarant and its employees, agents, designees, successors, and assigns shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Exhibit "B" property, the Common Area, and the Units as Declarant deems appropriate in its discretion.

10.4. Right to Approve Changes in Standards.

No amendment to or modification of any Use Restrictions or Architectural Guidelines shall be effective without prior notice to and the written approval of Declarant during the Development and Sale Period.

10.5. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument Declarant signs. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety; in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.6. Exclusive Rights to Use Name of Development.

No Person shall use the name "WestPark" or any derivative of such name in a logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "WestPark" in printed or promotional matter where such term is used solely to specify that particular property is located within WestPark, and the Association shall be entitled to use the words "WestPark" in its name.

10.7. Right to Use Common Area for Special Events.

During the Development and Sale Period, Declarant and its Affiliates may use the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions:

- (a) the availability of the facilities at the time requested;
- (b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and
- (c) Declarant shall return the facilities and personal property used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

Declarant shall have the right to assign its rights to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

10.8. Termination of Rights.

Except for the protection afforded under Section 10.6, which shall be perpetual unless terminated by Declarant, the rights contained in this Article shall terminate upon the earlier of (a) the termination of the Development and Sale Period, or (b) Declarant's recording of a statement that all sales activity has ceased. This Article shall not be amended without Declarant's written consent.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the community.

Article XI Easements

11.1. Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association or in any lease granting the Association use rights in such property; and
- (c) the Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules prohibiting use of certain portions of the Common Area (*e.g.*, open space preserves, maintenance facilities, etc.) or limiting the number of guests who may use the Common Area;
 - (ii) suspend an Owner's right to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Unit remains more than 30 days delinquent without the necessity of notice and a hearing, and (B) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
 - (iv) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests, which use may be conditioned upon payment of use or membership fees established by the Board, and to designate other areas

and facilities within the Area of Common Responsibility as open for the public's use and enjoyment; and

(v) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit in its entirety shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities and Other Infrastructure.

(a) Installation and Maintenance. Declarant reserves for itself, during the Development and Sale Period, and grants to the Association and all utility providers, for perpetual duration, non-exclusive easements throughout WestPark (but not through a structure) to the extent reasonably necessary to:

(i) install utilities and infrastructure, including cable and other systems for sending and receiving data and/or other electronic signals, other Community Systems, security and similar systems, and drainage systems to serve WestPark;

(ii) install walkways, pathways and trails, street lights, and signage on property the Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in its sole discretion, in connection with the orderly development of any property described in Exhibits "A" and "B." Declarant shall give advance written notice to the Owner of any property to be burdened by any easement granted pursuant to this subsection (b). The location of the easement shall be subject to the written approval of the burdened property's Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, and assigns, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," regardless of whether such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant or its successor or assign shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such property.

11.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over WestPark as necessary to enable the Association to fulfill its maintenance responsibilities under this Declaration. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by any member of the Board, by the Board's duly authorized agents and assignees, and by emergency

personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6. Sign and Landscape Easements.

Certain Units within WestPark may contain a "Sign and Landscape Easement" or similarly denominated easement area within which community signage, landscaping, or other entry features are permitted ("Easement Area(s)"). Each Easement Area shall be shown on a recorded plat. Declarant grants to the Association a perpetual, non-exclusive easement on, over, under, through, and across such Easement Areas for the maintenance, repair, and replacement of any community landscaping, signage, and entry features installed thereon by Declarant or the Association. The Association shall maintain the Easement Area as a Common Expense in accordance with the Community-Wide Standard.

All work associated with the exercise of the easement rights described above shall be performed in such manner as to minimize interference with the use and enjoyment of those portions of a Unit lying outside of the Easement Area. The Association shall use reasonable efforts to confine all work associated with such easement rights to the Easement Areas; provided, to the extent reasonably necessary to perform such work, access over other portions of a Unit shall be permitted. Upon completion of any work, the Association shall restore any disturbed portion of the Unit, to the extent reasonably possible, to its condition prior to the commencement of the work.

No Person shall place or construct any improvement or thing within the Easement Areas without the Association's prior written consent, which consent may be withheld in the Association's discretion, nor shall any Person take any action which otherwise interferes with the Association's exercise of its easement rights under this Section.

Article XII Limited Common Areas

12.1. Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of particular Units. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians, cul-de-sacs, and other neighborhood areas or facilities. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be allocated among the Owners to which the Limited Common Areas are assigned as a Specific Assessment.

12.2. Designation.

Initially, Limited Common Area shall be designated as such in the deed conveying such area to the Association, on the subdivision plat encompassing such Common Area, or in a

Supplemental Declaration. During the Development and Sale Period, Declarant may assign the same Limited Common Area to additional Units.

In addition, the Board may assign or reassign Limited Common Area upon the vote of Owners representing a majority of the total Class "A" votes in the Association. During the Development and Sale Period, any such assignment or reassignment shall also require Declarant's written consent.

Article XIII Party Walls and Other Shared Structures

13.1. General Rules of Law to Apply.

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

13.2. Maintenance; Damage and Destruction.

Unless otherwise specifically provided in additional covenants relating to such Units, the cost of necessary or appropriate party structure repairs and maintenance shall be shared equally by the Owners sharing the party structure.

If fire or other casualty damages or destroys a party structure, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner whose Unit borders the structure may restore it and seek contribution in equal proportions from the other Owners sharing the structure. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

Any Owner's right to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of WestPark as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and its neighbors, and protection of the rights of others who have an interest in the community.

Article XIV Dispute Resolution and Limitation on Litigation

14.1. Hearing Requirement.

Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, an Owner must request and attend a hearing with the Board. Any such request shall be in writing and shall be delivered to any member of the Board or the property manager, if any, of the Association. The Owner shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall schedule and provide notice of a reasonable date, time, and place for the hearing.

14.2. Initiation of Litigation by Association.

The Association shall not initiate any judicial or administrative proceeding unless Owners entitled to cast 75% of the total Class "A" votes in the Association first approve, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Article XV Disclosures and Disclaimers**15.1. Builder Performance.**

Neither Declarant nor any Affiliate of Declarant is a co-venturer, partner, agent, employer, stockholder, or affiliate of any kind of or with any Builder, nor is any Builder an agent of Declarant or an Affiliate of Declarant. Therefore, Declarant and Affiliate of Declarant shall not be responsible for, or guarantors of, performance by any Builder of all or any of its obligations to any Owner pursuant to any contracts for the sale of a Unit or the construction of a structure on a Unit or otherwise. Neither Declarant nor any Affiliate of Declarant has made, or have made, any warranty or representation with respect to performance by any Builder under any contract or otherwise.

Each Owner acknowledges and agrees that neither Declarant nor any Affiliate of Declarant share any liability or obligation to Owner, related to or arising out of any contract with a Builder or otherwise, by reason of any failure by a Builder fully and adequately to perform its obligations to Owner. Each Owner further acknowledges and agrees that he or she has not, in entering into any contract with a Builder, relied upon any representations, oral or written, of Declarant or any Affiliate, agent, or employee of Declarant.

15.2. Excavation and Other Construction Activities.

All Owners are hereby placed on notice that Declarant, any Affiliate of Declarant, and/or its agents, contractors, subcontractors, licensees and other designees, successors, or assignees, may be, from time to time, conducting excavation, construction, and other activities within or in proximity to WestPark. By the acceptance of a deed or other conveyance or Mortgage, leasehold, license, easement, or other interest, and by using any portion of WestPark, each Owner automatically acknowledges, stipulates, and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of WestPark where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant, any Affiliate of Declarant, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; and (d) that any purchase or use of any portion of WestPark has been and will be made with full knowledge of the foregoing.

15.3. Health, Safety, and Welfare.

No provision of the Declaration, the By-Laws, or the Articles of Incorporation shall be interpreted as a representation or duty of Declarant, any Affiliate of Declarant, or the Association to provide for, protect, or further the Owner's health, safety, and welfare.

15.4. Safety and Security.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in WestPark. The Association may, but shall not be obligated to, maintain or support certain activities within WestPark designed to enhance the level of safety or security which each Person provides for himself and his property. The Association, Declarant, or any Affiliate of Declarant shall not in any way be considered insurers or guarantors of safety or security within WestPark, and such entities shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to any portion of WestPark, cannot be compromised or circumvented, or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board and committees, and Declarant and Affiliates of Declarant are not insurers or guarantors of security or safety and that each Person within WestPark assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

15.5. Limitation of Liability - Use of Recreational Facilities.

The use and enjoyment of any recreational facility involves risk of personal injury or damage to property. Each Owner acknowledges and understands, and covenants to inform its tenants and all occupants of its Unit, that the Association, its Board and committees, and Declarant are not insurers of personal safety and that all such Persons assume all risks of personal injury and loss or damage to property resulting from the use and enjoyment of any recreational facility the Association operates or maintains. Each Owner agrees that the Association, the Board and any committees, and Declarant or any Affiliate of Declarant shall not be liable to any Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the use of any recreational facility, including, without limitation, any claim arising in whole or in part from the negligence of the Association, Declarant, or any Affiliate of Declarant.

Declarant or the Association may, but shall not be obligated to, implement or maintain certain safety measures designed to decrease the chance of injury resulting from use of any recreational facility; provided, neither the Association nor Declarant shall in any way be considered insurers or guarantors of the safety of any Person using such facilities. In addition, the Association, the Declarant, or any Affiliate of Declarant shall not be held liable for any loss or damage by reason of failure to provide adequate safety measures or ineffectiveness of safety measures undertaken. No representation or warranty is made that any safety measures undertaken will be undertaken, or if undertaken, will be effective, or that any such measures will in all cases prevent any personal injury or loss or damage to property that the measure is designed or intended to prevent.

15.6. Wetlands, Creeks, and Streams – Use and Maintenance.

Creeks and streams within WestPark are not intended or provided for recreational use. Owners acknowledge that the existence of a creek or stream on a Unit may constitute an attractive nuisance. Each Owner and occupant of a Unit, and each user of the Common Area, is responsible for their own personal safety with respect to the use and enjoyment of such creeks and streams and all such Persons assume the risk of personal injury relating to such use. The Association, Declarant, or any Affiliate of Declarant shall not in any way be a guardian or insurer of safety with respect to the presence or use of such creeks and streams, and the Association, Declarant, or any Affiliate of Declarant shall not be held liable for personal injury, loss, or other damage to any Person relating to the presence of or use of such creeks and streams.

Certain Units may be affected by wetlands, streams, and associated buffers, as shown on the recorded plat applicable to a Unit, which wetlands and stream buffers are governed by applicable regulations. Owners of such Units shall be solely responsible for the maintenance of the shoreline of any creek within the boundaries of his or her Unit, which, to the extent required, shall be performed in accordance with all applicable environmental regulations and permits, together with any other regulations pertaining to the creek, including but not limited to regulations and permits relating to endangered species.

15.7. Changes in the Master Plan.

Each Owner acknowledges that WestPark is a master planned community, the development of which is likely to extend over many years, and agrees that the Association shall not engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses or density of property within WestPark; or (b) changes in the Master Plan as it relates to property outside WestPark, without Declarant's prior written consent.

Each Owner acknowledges and agrees that the present plans and themes for WestPark' development may change and that he or she has not relied upon any representation, warranty, or assurance made by any Person (a) that any Units, or other property or facilities will be added, modified, or eliminated within WestPark; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that he or she is not entitled to rely upon

and has not received or relied upon any representations, warranties, or guarantees whatsoever as to the number, types, sizes, prices, or designs of any residential or non-residential structures or improvements built or to be built within or adjacent to WestPark.

15.8. Notice and Disclaimer as to Community Systems.

Each Owner acknowledges that interruptions in cable television and other Community Systems and services may occur from time to time. Declarant, Declarant's Affiliates, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

15.9. View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across the Units or any open space or other area within or adjacent to WestPark will be preserved without impairment. Declarant, Declarant's Affiliates, and the Association shall (a) have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement; and (b) have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

15.10. Adjacent Lake; Buffer.

Portions of WestPark border on a lake, which is not a part of WestPark. Access to and use of the lake is strictly prohibited. No Person gains any right to enter or to use the lake by virtue of membership in the Association or ownership or occupancy of a Unit and the entering on to or use of the lake may be deemed a trespass. The Association may, but has no obligation to, enforce of such prohibition. The lake owner has the right to erect a fence around the perimeter of the lake or enforce the prohibition on use and access by bringing an action for trespass or by other means. **The Association, Declarant, or any Affiliate of Declarant shall not in any way be a guardian or insurer of safety with respect to such neighboring lake or other bodies of water inside or outside of WestPark and shall not be responsible for any loss, damage, or injury to any person or property arising out of the use of any such areas.**

Units bordering on the above-described lake are subject to a 50-foot buffer extending from the edge of the lake into the Unit. Buffer areas shall remain intact and undisturbed and the construction or erection of improvements within area is prohibited.

Article XVI Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in WestPark. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

16.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder") will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of WestPark or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant of the Unit which is not cured within 60 days;

(c) any lapse, cancellation, or material modification of any insurance policy the Association maintains; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders.

16.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

16.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a

written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

PART SEVEN: CHANGES IN THE COMMUNITY

Communities such as WestPark are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change; as the residents age and change over time; and as the surrounding community changes. WestPark and its Governing Documents must be able to adapt to these changes while protecting the things that make WestPark unique.

Article XVII Changes in Ownership of Units

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Article XVIII Changes in Common Area

18.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Owners representing at least 67% of the total Class "A" votes in the Association and of Declarant, during the Development and Sale Period, by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, during the Development and Sale Period, and Owners representing at least 67% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

18.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property which may or may not be subject to this Declaration.

18.3. Transfer or Dedication of Common Area.

During the Development and Sale Period, (a) Declarant may dedicate roadways within WestPark to Cobb County or the State of Georgia, as applicable, and (b) the Association, upon Declarant's request and without a vote of the membership, shall dedicate roadways within WestPark to Cobb County or the State of Georgia, as applicable. In addition, the Association may dedicate portions of the Common Area to Cobb County, the State of Georgia, or to any other local, state, or federal governmental or quasi-governmental entity; may subject Common Area to a security interest; or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the approval of Owners representing at least a majority of the total votes in the Association, and the approval of Declarant during the Development and Sale Period; or

(b) if Limited Common Area, upon written approval of Owners of at least 75% of the Units to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

Article XIX Amendment of Declaration

19.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant unilaterally may amend this Declaration for any purpose.

Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure,

or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, after termination of the Class "B" Control Period, and until the Development and Sale Period expires, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 5% of the Owners.

19.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing at least 67% of the total Class "A" votes in the Association. In addition, Declarant's consent is required for any amendment during the Development and Sale Period.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

19.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

19.4. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference, and amendment of such exhibits shall be governed by this Article. Exhibit "C" is incorporated by reference and may be amended pursuant to Section 19.1 and 19.2 or as provided in Article III. Exhibit "D" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

DECLARANT: CL WESTPARK LLC, a Georgia limited liability company

By: CL Realty, LLC, a Delaware limited liability company, its managing member

By: Cousins Real Estate Corporation, a Georgia corporation, its managing member

By: [Signature]

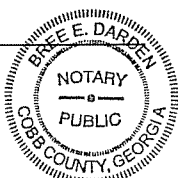
Name: Michael J. Quinley
Its: Senior Vice President and General Manager

Attest: [Signature]
Name: Chuck Olderman
Its: Vice President and Associate General Counsel

Signed, sealed and delivered this 10th day of February, 2006, in the presence of:

[Signature]
WITNESS

[Signature]
NOTARY PUBLIC



4916/CADocs/CCRS/WestPark/121605

My Commission Expires Oct. 3, 2008

EXHIBIT "A"
LAND INITIALLY SUBMITTED

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 184 OF THE 20TH DISTRICT, 2ND SECTION, COBB COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1 ½" CRIMP TOP PIPE FOUND AT THE SOUTHWESTERLY CORNER OF LAND LOT 184;
THENCE FOLLOWING THE SOUTHERLY LINE OF LAND LOT 184 SOUTH 88 DEGREES 37 MINUTES 37 SECONDS EAST, 598.68 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING. THENCE LEAVING SAID LAND LOT LINE NORTH 01 DEGREE 22 MINUTES 23 SECONDS EAST, 50.49 FEET TO A #4 REBAR FOUND; THENCE NORTH 48 DEGREES 35 MINUTES 06 SECONDS EAST, 574.12 FEET TO A #4 REBAR FOUND; THENCE SOUTH 81 DEGREES 16 MINUTES 23 SECONDS EAST, 123.03 FEET TO A #4 REBAR FOUND; THENCE NORTH 75 DEGREES 36 MINUTES 45 SECONDS EAST, 111.70 FEET TO A #4 REBAR FOUND; THENCE NORTH 41 DEGREES 38 MINUTES 07 SECONDS EAST, 105.88 FEET TO A #4 REBAR FOUND; THENCE NORTH 05 DEGREES 57 MINUTES 22 SECONDS EAST, 159.70 FEET TO A #4 REBAR FOUND; THENCE NORTH 47 DEGREES 20 MINUTES 49 SECONDS EAST, 85.70 FEET TO A #4 REBAR FOUND; THENCE NORTH 68 DEGREES 11 MINUTES 01 SECONDS EAST, 107.37 FEET TO A #4 REBAR FOUND; THENCE NORTH 20 DEGREES 16 MINUTES 54 SECONDS EAST, 123.16 FEET TO A #4 REBAR FOUND; THENCE NORTH 48 DEGREES 35 MINUTES 06 SECONDS EAST, 98.16 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF OLD STILESBORO ROAD (VARIABLE R/W); THENCE FOLLOWING SAID SOUTHERLY RIGHT OF WAY ALONG A CURVE TO THE LEFT, AN ARC DISTANCE OF 150.54 FEET, SAID CURVE HAVING A RADIUS OF 341.08 FEET AND BEING SUBTENDED BY A CHORD OF 149.32 FEET, AT SOUTH 60 DEGREES 38 MINUTES 47 SECONDS EAST, TO A POINT; THENCE SOUTH 73 DEGREES 17 MINUTES 26 SECONDS EAST, 82.91 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT, AN ARC DISTANCE OF 163.73 FEET, SAID CURVE HAVING A RADIUS OF 469.50 FEET AND BEING SUBTENDED BY A CHORD OF 162.90 FEET, AT SOUTH 83 DEGREES 16 MINUTES 52 SECONDS EAST, TO A POINT; THENCE NORTH 86 DEGREES 43 MINUTES 42 SECONDS EAST, 53.92 FEET TO A POINT; THENCE ALONG A CURVE TO THE RIGHT, AN ARC DISTANCE OF 146.90 FEET, SAID CURVE HAVING A RADIUS OF 600.19 FEET AND BEING SUBTENDED BY A CHORD OF 146.53 FEET, AT SOUTH 86 DEGREES 15 MINUTES 37 SECONDS EAST, TO A POINT AT THE MITERED INTERSECTION OF SAID SOUTHERLY RIGHT OF WAY AND THE WESTERLY RIGHT OF WAY OF ACWORTH DUE WEST ROAD (VARIABLE R/W); THENCE LEAVING SAID SOUTHERLY RIGHT OF WAY AND FOLLOWING SAID MITER SOUTH 32 DEGREES 00 MINUTES 00 SECONDS EAST, 27.56 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF ACWORTH DUE WEST ROAD (VARIABLE R/W); THENCE LEAVING SAID MITERED RIGHT OF WAY AND FOLLOWING SAID WESTERLY RIGHT OF WAY ALONG A CURVE TO THE LEFT, AN ARC DISTANCE OF 185.71 FEET, SAID CURVE HAVING A RADIUS OF 1414.36 FEET AND BEING SUBTENDED BY A CHORD OF 185.57 FEET, AT SOUTH 13 DEGREES 04 MINUTES 52 SECONDS WEST, TO A POINT; THENCE SOUTH 09 DEGREES 19 MINUTES 10 SECONDS WEST, 75.25 FEET TO A POINT; THENCE ALONG A CURVE TO THE LEFT, AN ARC DISTANCE OF 359.85 FEET, SAID CURVE HAVING A RADIUS OF 771.72 FEET AND BEING SUBTENDED BY A CHORD OF 356.60 FEET, AT SOUTH 04 DEGREES 02 MINUTES 19 SECONDS EAST, TO A POINT; THENCE ALONG A CURVE TO THE LEFT, AN ARC DISTANCE OF 255.36 FEET, SAID CURVE HAVING A RADIUS OF 2416.49 FEET AND BEING SUBTENDED BY A CHORD OF 255.24 FEET, AT SOUTH 20 DEGREES 25 MINUTES 27 SECONDS EAST, TO A POINT AT THE INTERSECTION OF SAID WESTERLY RIGHT OF WAY AND THE SOUTHERLY LINE OF LAND LOT 184; THENCE LEAVING SAID WESTERLY RIGHT OF WAY AND FOLLOWING SAID SOUTHERLY LAND LOT LINE NORTH 88 DEGREES 37 MINUTES 37 SECONDS WEST, 1673.98 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING.

SAID TRACT I CONTAINS 22.48 ACRES AS SHOWN ON THAT CERTAIN RELEASE PLAT FOR COUSINS PREPARED BY GASKINS SURVEYING & ENGINEERING COMPANY DATED OCTOBER 11, 2005.

EXHIBIT "B"

Land Subject to Annexation

Any and all real property lying and being within a five-mile radius of any boundary of any of the land described in Exhibit "A."

EXHIBIT "C"

Initial Use Restrictions

The purpose of Architectural Guidelines and Use Restrictions is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities which fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article IV, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it estop the Board from taking enforcement action in any appropriate circumstances.

Subject to the above, the following restrictions shall apply to all of WestPark until such time as they are amended, modified, repealed, or limited pursuant to Article III or Section 19.1 of the Declaration.

1. General. WestPark shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker Declarant, its Affiliates, or their designees retain to assist in the sale of property within WestPark; offices for any property manager the Association retains or business offices for Declarant, its Affiliates, and their designees; or the Association) consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities. The following activities are prohibited within WestPark unless the Board expressly authorizes them, and, if authorized, shall be subject to such conditions as the Board may impose:

(a) parking any vehicles on public or private streets or thoroughfares, parking vehicles on any secondary driveway (*i.e.*, a driveway which does not provide direct access to the main garage serving the dwelling on the Unit) for any period other than that required to perform a particular task, and parking commercial vehicles (*i.e.*, vehicles used for commercial purposes, including vehicles with commercial lettering or logos) or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, and stored or inoperable vehicles in places other than enclosed garages; provided, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or other portions of WestPark;

(b) raising, breeding, or keeping animals, livestock, or poultry of any kind, except that the Board shall permit a reasonable number of dogs, cats, or other usual and common household pets in a Unit. Pets shall be kept on a leash or otherwise confined in a manner the Board requires whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as

required by law. The keeping of pets within WestPark is subject to applicable Cobb County ordinances;

(c) activities which emit foul or obnoxious odors outside the Unit or create noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) activities which violate local, state, or federal laws or regulations; provided, the Board shall be under no obligation to take enforcement action in the event of a violation;

(e) pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition outside of enclosed structures on the Unit;

(f) noxious or offensive activities which in the Board's judgment tend to cause embarrassment, discomfort, annoyance, or nuisance to others;

(g) outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be an unreasonable annoyance to others, as determined in the Board's discretion, except alarm devices used exclusively for security purposes;

(i) use and discharge of firecrackers and other fireworks;

(j) dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within WestPark, except that fertilizers may be applied to landscaping on Units, provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks removed from a building site on such building site;

(k) accumulation of rubbish, trash, or garbage except between regular garbage pick-ups, and then only in approved containers; such containers shall be screened from view from outside the Unit except during regular pick-up periods;

(l) obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(m) subdivision of a Unit into two or more Units or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and recorded except that, during the Development and Sale Period, Declarant may subdivide or replat Units it owns, or it may permit the subdivision or replatting of Units owned by its Affiliates, Builders, or any other Person, in its discretion;

(n) use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years except that Declarant and its assigns may operate such a program;

(o) discharge of firearms; provided, the Board shall be under no obligation to take action to prevent or stop such discharge;

(p) on-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article IV;

(q) any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for WestPark; (iii) the business activity does not involve door-to-door solicitation of residents of WestPark; (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in WestPark which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of WestPark and does not constitute a nuisance, a hazardous or offensive use, or a threat to the security or safety of others, as the Board determines in its discretion.

The foregoing limitations shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities, provided that such activities may not be held on any one Unit more than once in any three-month period and, when held, may not exceed three consecutive days in duration.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of up to two Units at the same time by the same Owner shall not be considered a business or trade within the meaning of this subsection; provided, the leasing of more than two Units at the same time (i) by a single Owner; (ii) by a group of Owners acting in concert or with a common ownership interest; or (iii) by a group of Owners who are affiliated with or otherwise under the control or direction of a single Person, shall be a prohibited business activity. This

paragraph shall not apply to prohibit any activity that Declarant or a Builder approved by Declarant conducts with respect to the development and sale of WestPark or its use of any Units they own within WestPark or to the leasing of Units by an institutional lender following foreclosure on any Unit(s);

(r) capturing, trapping, or killing wildlife within WestPark, except in circumstances posing an imminent threat to the safety of persons using WestPark;

(s) activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within WestPark or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(t) conversion of any garage to finished space for use as an apartment, an integral part of the Unit's living area, or for purposes other than parking vehicles and ancillary storage, without prior approval pursuant to Article IV. Garage doors shall be kept closed at all times except when entering, exiting, or otherwise actively using the garage;

(u) any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the Architectural Guidelines and with approval pursuant to Article IV of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets, and similar sports and play equipment; garbage cans; woodpiles; and hedges, walls, animal pens, or fences of any kind.

3. Prohibited Conditions. The following shall be prohibited at WestPark:

(a) plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may materially diminish or destroy the enjoyment of WestPark;

(b) structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair;

(c) sprinkler or irrigation systems or wells of any type which draw upon water from creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within WestPark, except that Declarant and the Association shall have the right to draw water from such sources; and

(d) satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of WestPark; and (i) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) antennas or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennas or satellite dishes

designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices") shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Unit at which an acceptable quality signal can be received and is screened from view in a manner consistent with the Community-Wide Standard and the Architectural Guidelines.

4. Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term. The Owner shall give the Board notice of any lease, together with such additional information as the Board may require, within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Governing Documents.