

NORTH CAROLINA  
WAKE COUNTY

DECLARATION OF CONDOMINIUM  
PURSUANT TO NORTH CAROLINA  
GENERAL STATUTES CHAPTER 47A  
FOR WESTPARK CONDOMINIUMS

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PRESENTED  
FOR  
REGISTRATION  
JUN 25 4 33 PM '85  
KENNETH C. WILKINS  
REGISTER OF DEEDS  
WAKE COUNTY

# XXX-0001-000000

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Curtis Westbrook and wife Kay W. Westbrook and William E. Stevens and wife Sue R. Stevens, hereinafter referred to as the "Declarant," do hereby make, declare and establish this Declaration of Condominium as and from the plan of ownership of Westpark Condominiums, being the property and improvements hereinafter described.

ARTICLE I.

Establishment of The Condominium

The Declarant is the owner of the fee simple title to that certain real property situated in Cary Township, Wake County, North Carolina, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and on which real property there is located nine (9) buildings containing thirty-six (36) residential Condominium Units on the first and second floors of said buildings, and their supporting improvements. The buildings are constructed as shown on Exhibit "B" attached hereto and incorporated herein by reference. The principal building materials are listed and the condominium common areas and facilities are designated in Exhibit "B". The Declarant does hereby submit the property described in Exhibit "A", and improvements thereon to condominium ownership under the provisions of Chapter 47A of the North Carolina General Statutes (Unit Ownership Act), and hereby declares the same to be known and identified as Westpark Condominiums hereinafter referred to as Westpark Condominiums and /or "The Condominium."

ARTICLE II.

Survey and Description of Improvements

Attached hereto as Exhibit "B" and incorporated herein by reference, is a survey of the land described in Exhibit "A", graphic "as built" descriptions and plans of the improvements constituting Westpark Condominiums identifying the Condominium Units, and Condominium Common Areas and Facilities, as said terms are hereinafter defined, and their respective locations and approximate dimensions. Each Condominium Unit is identified by a specific numerical designation on said Exhibit "B", and no Condominium Unit bears the same designation as any other Condominium Unit.

ARTICLE III.

Definitions

The terms used herein and in the Bylaws of the Condominium Association shall have the meanings stated in the Unit Ownership Act and as follows:

A. "Condominium" means the Condominium Units, the Condominium Common Areas and Facilities, all real property described in Exhibit "A" and all property herein submitted to the provisions of Chapter 47A, where the context so permits, as well as the meaning stated in the Unit Ownership Act.

Condominium Units as the term is used herein shall mean and consist of the thirty-six (36) separate numerically identified residential Units of Westpark Condominiums as

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designated in Exhibit "B," excluding, however, all spaces and improvements lying or being:

- (1) Beneath the subflooring covering (carpet, linoleum, etc.) of all floors;
- (2) Beneath or behind the interior surfacing material (plaster or sheetrock) of all perimeter walls, interior bearing walls and/or bearing partitions;
- (3) Above the interior surfacing material (plaster or suspended ceiling tiles) of the ceilings;

and further excluding all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services (including garbage incineration) to the Condominium Units and Condominium Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires, and conduits through the interior surfacing material of walls and ceilings and subflooring surfacing materials of floors. All pipes, ducts, wires, conduits and other such facilities shall become a part of the respective Condominium Units subsequent to their point of entry through interior surfacing materials.

B. Condominium Common Areas and Facilities, sometimes hereinafter referred to as the "Condominium Common Property" shall mean and comprise all of the property, herein submitted to the provisions of Chapter 47A except the Condominium Units and includes all personal property held and maintained for the use and enjoyment of all the Owners of the Condominium Units.

C. Condominium Association of Unit Owners, sometimes referred to as "Condominium Association," shall mean all of the Unit Owners acting as a group in accordance with the Articles of Incorporation and Bylaws of Westpark Condominium's Homeowners Association, Inc., and this Declaration.

D. The terms "Building," "Common Expenses," "Common Profit," "Declaration," "Majority" or "Majority of Unit Owners," "Person," "Property," "Recordation," "Unit" or "Condominium Unit," "Unit Designation," and "Unit Owner" unless otherwise plainly evident from the context of this Declaration that a different meaning is intended, shall, as used herein, have the meanings set out in Section 3 of Chapter 47A of the General Statutes of North Carolina, known as the Unit Ownership Act.

E. Mortgage Holder means a holder of a first deed of trust or mortgage on a Unit which has requested notice of certain matters from the Association in accordance with the last paragraph of XXIX.

F. Insurer or Guarantor means an insurer or governmental guarantor of a first deed of trust or mortgage on a Unit which has requested notice of certain matters from the Association in accordance with the last paragraph of XXIX.

G. "Limited common areas and facilities" means and includes those common areas and facilities which are agreed upon by all the unit owners to be reserved for the use of a certain number of units to the exclusion of the other units, such as special corridors, stairways and elevators, sanitary services common to the particular units, and the like.

ARTICLE IV.

Ownership of Condominium Units

And

Appurtenant Interest in Common Property

Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple Ownership, and the Owner of each Unit shall also own, as an appurtenance to the ownership of each said Condominium Unit an undivided interest in the Common Property. The undivided interest in the Common Property appurtenant to each Condominium Unit shall be in those proportions indicated for each Unit in Exhibit "C" attached hereto and incorporated herein by reference. The proportional interest in the Common Property that is appurtenant to each Unit has been determined by a ratio formulated upon the approximate relation that the fair market value of each Unit on the date of this Declaration bears to the then aggregate fair market value on the same date of all of the Units having an interest in the Common Property. The fair market value of each Unit and the aggregate fair market value of all the Units has been determined by the Declarant, and this determination shall be binding upon all Unit Owners. The percentage of undivided interest in the Common Property assigned to each Condominium Unit shall be as stated in Exhibit "C" unless changed by the unanimous consent of all the Owners of all the Condominium Units and with the consent of all of the Mortgage Holders of the Condominium Units.

ARTICLE V.

Restriction Against Further Subdividing of

Condominium Units: Separate Conveyance

of Appurtenant Common Property Prohibited

No Condominium Unit may be divided or subdivided into a smaller Unit or Units than as is shown on Exhibit "B" hereto, nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The undivided interest in the Condominium Common Property declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the undivided interest in Condominium Common Property appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or (included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, or encumbering) otherwise dealing with such Condominium Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a Condominium Unit shall be null, void and of no effect insofar as the same purports to affect any interest in a Condominium Unit and its appurtenant undivided interest in Condominium Common Property unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Condominium Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Condominium Unit which describes said Condominium Unit by the numerical designation assigned thereto in Exhibit "B" without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its

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appurtenant undivided interest in the Condominium Common Property. Nothing herein contained shall be construed as limiting or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Condominium Common Property by more than one person or entity as tenants in common, joint tenants or as tenants by the entirety.

ARTICLE VI.

The Condominium Subject to Restrictions

The Condominium Units and Condominium Common Areas and Facilities shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units and Condominium Common Areas and Facilities and setting forth the obligations and responsibilities incident to Ownership of each Condominium Unit and its appurtenant undivided interest in the Condominium Common Property, and said Condominium Units and Condominium Common Areas and Facilities are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the land and improvements of the Condominium.

ARTICLE VII.

Perpetual Non-Exclusive Easement in  
Common Property

The Condominium Common Property shall be, and the same is hereby declared to be subject to a perpetual, non-exclusive easement in favor of all the Owners of the Condominium Units for their use or the use of their immediate families, guests, licensees, lessees and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of the Owners of the Condominium Units. Notwithstanding anything hereinabove provided in this Article VII, The Condominium Association of Unit Owners as hereinafter defined, shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his immediate family, guests, licensees, lessees and invitees may be entitled to use the Condominium Common Property.

The Condominium Association may grant any easements, licenses and permits reasonable and necessary, as approved by the Board of Directors, for utility purposes for the benefit of the property, including but not limited to the right to install, maintain, repair or replace water, waste water treatment lines, television cables, wires, or equipment, electrical conduit and wires, and telephone cables and wires, over, through, along or under any portion of the Condominium Common Areas; and each Unit Owner hereby grants to the Condominium Association an irrevocable power of attorney to execute, acknowledge, and record for and in the name of each Unit Owner such instruments as may be necessary or desirable to effectuate the foregoing. The easements granted herein are covenants running with the land.

ARTICLE VIII.

Easement for Unintentional and Non-  
Negligent Encroachments

In the event that any Condominium Unit shall encroach upon any Condominium Common Property or any other Condominium Unit or Units, for any reason not caused by the purposeful or negligent act of the Owner of the Condominium Unit, or agents of such Owner, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Condominium Common Property or upon a Condominium Unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the Condominium Common Property shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Condominium Common Property upon any Condominium Unit for so long as such encroachment shall naturally exist. If any Condominium Unit or Condominium Common Property shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such Unit and/or Condominium Common Property in accordance with Article XXII hereof, there exists encroachments of portions of the Condominium Common Property upon any Condominium Unit or of any Condominium Unit upon any other Condominium Unit or upon any portion of the Condominium Common Property then such encroachment shall be permitted and a valid easement for the maintenance thereof shall exist for so long as such encroachments shall naturally remain.

ARTICLE IX.

Restraint Upon Separation and a Partition  
Of Common Property

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Condominium Common Property in common with the Owners of all other Condominium Units, and that it is in the interest of all the Owners that the ownership of the Condominium Common Property be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Condominium Common Property appurtenant to each Condominium Unit shall remain undivided and no Unit Owner shall bring or have the right to bring any action or partition or division.

ARTICLE X.

Administration of the Condominium by  
Westpark Condominiums Homeowner's Association, Inc.

In order to efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina corporation known and designated as Westpark Condominiums Homeowner's Association, Inc., (herein "Condominium Association") has been organized, and said corporation shall hold title to all Common Areas as defined by Article III of this Declaration, administer the operation and management of the Condominium and shall undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of

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Incorporation and Bylaws. A true copy of said Articles of Incorporation and Bylaws are attached hereto as Exhibits "D" and "E," respectively, and are incorporated herein by reference. The Owner or Owners of each Condominium Unit shall automatically become members of the Condominium Association upon his or their acquisition of an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Condominium Common Property, and the membership of such Owner or Owners shall terminate automatically upon such Owner or Owners being divested of such Ownership interest in title to such Condominium Unit, regardless of the means by which such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Condominium Association will have and is hereby granted the authority and power to enforce the provisions of this Declaration of Condominium, to hold title to all Common Areas as defined by Article III of this Declaration, and to levy and collect assessments in the manner herein provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Condominium Common Property as the Board of Directors of said Association may deem to be in the best interest of the Association.

ARTICLE XI.

Use Restrictions

Applicable to Condominium Units

All Condominium Units of Westpark Condominiums are hereby restricted to residential use by the Owner thereof, his immediate family, guests, invitees, lessees and licensees. No Unit Owner may lease less than the entire Unit. Any lease agreement shall be in writing and must provide that it shall be subject to the provisions of this Declaration and that any failure by the lessee to comply with the terms hereof shall be a default under the lease. No Unit may be leased or rented for a period of less than 30 days. There is no other restriction on the right of any Unit Owner to lease his Unit.

ARTICLE XII.

Use of Common Property Subject

To Rules and Regulations of Condominium Association

The use of Condominium Common Property by the Owners of all the Condominium Units and all other parties authorized to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such use by the Condominium Association.

ARTICLE XIII.

The Condominium to be Used for Lawful Purposes:

Restriction Against Nuisances

No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit or of the Condominium



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Common Property, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction thereof shall be observed. No Owner of any Condominium Unit shall permit or suffer anything to be done or kept in his Condominium Unit, or on the Condominium Common Property, which will increase the rate of insurance on the Condominium, or which will obstruct or interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any owner undertake any use or practice which shall create and constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Condominium Common Property.

ARTICLE XIV.

Right of Entry into Condominium

Units in Emergencies

In case of any emergency originating in or threatening any Condominium Unit, regardless of whether the Owner is present at the time of such emergency, the Board of Directors of the Condominium Association, or any other person authorized by it, or the Managing Agent, if any, shall have the right to enter such Condominium Unit for the purposes of remedying or abating the cause of the emergency, and such right of entry shall be immediate.

ARTICLE XV.

Right of Entry for Maintenance

Of Common Property

Whenever it may be necessary to enter any Condominium Unit for the purpose of performing any maintenance, alteration or repair to any portion of the Condominium Common Property, the Owner of each Condominium Unit shall permit other Owners or their representatives, or the duly authorized Agent of the Condominium Association, to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

ARTICLE XVI.

Limitation Upon Right of Owners to Alter and Modify

Condominium Units: No Right to Alter Common Property

No Owner of a Condominium Unit shall permit any structural modification or alteration to be made to such Condominium Unit without first obtaining the written consent of the Condominium Association, which consent may be withheld in the event that a majority of the Board of Directors of the Condominium Association shall determine, in their sole discretion, that such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety. No Owner shall cause any improvements or changes to be made on the exterior of the Condominium (including painting or other decoration, or the installation of electric wiring, television or radio antenna or other objects, awnings, air-conditioning units or machines which may protrude through the walls or roof of the Condominium) or in any manner alter the appearance of the exterior portion of the building without the written consent

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of the Condominium Association first had and obtained. No Unit Owner shall cause any object to be fixed to the Condominium Common Property or in any manner change the appearance of the Condominium Common Property without the written consent of the Condominium Association being first had and obtained.

#### ARTICLE XVII.

##### Right of The Association to Alter and Improve Common Property and Assessment Therefor

The Condominium Association shall have the right to maintain and to make or cause to be made such alterations or improvements to the Condominium Common Property which do not prejudice the rights of the Owner of any Condominium Unit. The maintaining and making of such alterations and improvements to the Condominium Common Property shall be common expenses to be assessed and collected from all of the Owners of the Condominium Units. However, where any alterations and improvements are exclusively or substantially for the benefit of the Owner or Owners requesting the same, then the cost shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Condominium Association.

While the property remains subject to this Declaration and the provisions of the North Carolina Unit Ownership Act, no liens of any nature shall rise or be created against the Condominium Common Areas and Facilities except with unanimous consent in writing of all of the Condominium Unit Owners except such liens as may arise or be created against the several Units and their respective common interests under the provisions of the North Carolina Unit Ownership Act. Every agreement for the performance of labor, or the furnishing of materials to the Condominium Common Areas and Facilities, whether oral or in writing, must provide that it is subject to the provisions of the Declaration and the right to file a mechanics lien or other similar lien by reason of labor performed or materials furnished is waived.

#### ARTICLE XVIII

##### Maintenance and Repair by Owners Of Condominium Units

Every Owner shall perform promptly all maintenance and repair work within his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, each and every owner being expressly responsible for the damages and liability which his failure to so repair may engender. The owner of each Condominium Unit shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air and heating equipment, disposal units, dishwashers, stoves, ovens, hoods, refrigerators, freezers, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light power, heat, telephone, television cable, sewage and sanitary service to his Condominium Unit. Such owner shall be further responsible and liable for the maintenance, repair and replacement of the interior surfaces of any and all walls, ceilings, floor coverings, and their surfaces within

his Unit including painting, decorating and furnishings, and all other accessories which such owner of a Condominium Unit is obligated to maintain in his Condominium Unit. Whenever loss or damage occurs to property which is the Owner's obligation to maintain and is occasioned by loss or damage which may be covered by any insurance maintained by the Condominium Association, the proceeds of the insurance received by the Condominium Association shall be used for the purpose of effecting such maintenance, repair or replacement, except that the owner of the Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair or replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. All maintenance and repair of the exterior of any Unit shall be done by the Association at the Board of Director's discretion. Any cost for maintenance or repair necessitated by the fault of the Owner, which loss or damage occurs to property which is the owner's, shall be reimbursed to the Association by the Owner. Any Owner of any Unit who has failed or refused to reimburse the Association within a reasonable time after written notice of the cost of said maintenance or repair delivered or mailed by the Board to said Owner, shall be subject to a levy of a special assessment against such Owner for reimbursement of the costs of said maintenance or repair.

Any maintenance and repairs to any Unit, ordinary or extraordinary (other than maintenance of and repairs to any Common Areas and Facilities contained therein and not necessitated by the negligence, misuse, or neglect of the Owner of such Unit) shall be made by the Owner of such Unit. Each Unit Owner shall be responsible for all damages to any other Unit and/or to the Common Areas and Facilities that his failure so to do may endanger.

#### ARTICLE XIX.

##### Maintenance and Repair of Common Property

##### By the Condominium Association

The Condominium Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Property, including those portions thereof which contribute to the support of the building, and all conduits, ducts, plumbing, wiring, trash shoots, condenser units on roof for other facilities located in or on the Condominium Common Property for the furnishing of utilities, recreation and other services to the Condominium Units and the Condominium Common Property and should any incidental damage be done or caused to be done to any Condominium Unit by the Condominium Association in the maintenance, repair or replacement of any Condominium Common Property, the Condominium Association is obligated to repair or replace at its own expense any such damage. Whenever the maintenance, repair and replacement of any item for which the Condominium Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Condominium Unit Owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Condominium Association, the proceeds of the insurance received by the Condominium Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or by his family, guests or invitees) shall be required to pay

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such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. Any other provision of this Declaration notwithstanding, the Association shall have the right to maintain existing improvements regardless of any present or future encroachments of the Condominium Common Areas and Facilities upon another Unit.

The Condominium Association, at its expense, shall be responsible for the exterior decoration and painting and maintenance, repair and replacement of the exterior of doors and windows, awnings, fire escapes and of all other Condominium Common Property which the Owner or Owners is/are not required to so maintain and repair.

ARTICLE XX.

Authority to Purchase Insurance

Insurance policies upon the Condominium Common Property and the Condominium Units (other than title insurance) shall be purchased by the Condominium Association in the name of the Board of Directors of the Condominium Association, as Trustees for the Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages or deeds of trust on the Condominium Units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its right of subrogation as to any claims against Unit Owners, the Condominium Association and their respective servants, agents and guests. It is the responsibility of such Unit Owner to insure, at his own expense, his personal property and for his personal liability pursuant to Article XXI, subparagraph F and as may be permitted or required by law. All such insurance obtained by the Unit Owner shall contain the same waiver of subrogation as that referred to above if the same is available.

ARTICLE XXI.

Insurance Coverage to be Maintained:

Use and Distribution of Insurance Proceeds

A. The following insurance coverage shall be maintained at all times in full force and effect by the Condominium Association covering the operation and management of the Condominium Units and The Condominium Common Property:

(1) Casualty insurance covering the buildings' Units and upon the land and all personal property included within the property described in Exhibit "A" hereto, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to 100% of current replacement cost (exclusive of excavations and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against:

(a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement;

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(b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to vandalism and malicious mischief, and all perils normally covered by the standard "all risk" endorsement.

(2) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Condominium Association, including but not limited to legal liability, hired automobile, non-owned automobile and off-premises employee coverages.

(3) All liability insurance shall contain cross-liability endorsements to cover cross-liabilities of the Condominium Unit Owners as a group to each individual Condominium Unit Owner. Evidence of insurance shall be issued to each Unit Owner and Mortgage Holder upon request.

B. Premiums upon insurance policies purchased by the Condominium Association shall be paid by the Condominium Association as common expenses to be assessed and collected from all of the owners of the Condominium Units.

C. All insurance policies purchased by the Condominium Association shall be for the benefit of the Condominium Association and the Condominium Unit Owners and their Mortgage Holders, as their interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Condominium Association. The Condominium Association or any Insurance Trustee shall hold such proceeds in Trust for the benefit of the Condominium Association, the Condominium Unit Owners and their respective mortgagees in the following shares:

(1) Proceeds on account of damage to Condominium Common Property: In undivided shares for each Condominium Unit Owner and his Mortgage Holder, if any, which shares are to be proportioned according to the ratios contained in Exhibit "C" hereto.

(2) Proceeds on account of damages to Condominium Units shall be held in undivided shares for disbursement in the following eventualities:

(a) Where a Condominium building is only partially destroyed and is to be restored, the shares are to be held for the Unit Owners of damaged Condominium Units in proportion to the costs of repairing the damage suffered by each damaged Condominium Unit.

(b) Where either of the Condominium buildings are totally destroyed or, for whatever reasons, not to be restored, the shares are to be held for all Condominium Unit Owners of said building, the proportionate share of each to be as set forth in Exhibit "C" hereto.

D. In the event a mortgagee endorsement has been issued as to a Condominium Unit, the share of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in any determination of reconstruction or repair.

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E. Proceeds of insurance policies received by the Condominium Association shall be distributed to or for the benefit of the beneficial Condominium Unit Owners in the following manner:

1. If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Condominium Unit Owners, all remittances to Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by him.
2. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Condominium Unit Owners, remittances to the Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by him.

F. Each Unit Owner, at his expense, shall keep in force comprehensive personal liability covering liability for damages to person or property of others located within such owner's Unit, or another Unit, or upon the Condominium Common Areas and Facilities in such amounts as the Board of Directors of the Condominium Association shall, from time to time, determine, but in no case less than \$100,000 for each occurrence.

G. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Condominium Association, the Condominium Association's authorized representative, including any trustee with whom such Condominium Association may enter into any Insurance Trust Agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

H. Each Unit Owner and Mortgage Holder hereunder shall be deemed to have given to the Condominium Association or any Insurance Trustee or substitute Insurance Trustee designated by the Condominium Association an irrevocable power of attorney, coupled with an interest, to effectuate the purchase and maintenance of the insurance coverage described above and specifically for: collecting and appropriately depositing the proceeds thereof, negotiating losses and executing releases of liability, executing all documents, and performing all other necessary acts to accomplish such purchase and maintenance.

ARTICLE XXII.

Reconstruction or Repair of Casualty Damage:

Damage to Common Property; Damage to Condominium Units;

Total or Partial Destruction

A. If any part of the Condominium Common Property shall be damaged by casualty, the determination of whether or not to reconstruct or repair the same shall be made as follows:

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(1) Partial destruction shall be deemed to mean destruction which renders less than two-thirds (2/3) of the Condominium Units untenable. In the event of partial destruction, the Condominium Common Property shall be reconstructed or repaired unless this Declaration is terminated by the unanimous vote of all of the Condominium Unit Owners at a meeting of the members of the Condominium Association called and held prior to commencement of such reconstruction or repair.

(2) Total destruction shall be deemed to mean destruction which renders two-thirds (2/3) or more of the Condominium Units untenable. In the event of total destruction, the Condominium Common Property shall not be reconstructed or repaired if, at a meeting called within thirty (30) days after such adjustment, Condominium Units Owners who in the aggregate own three-fourths (3/4) or more of the Units vote against reconstruction or repair.

(3) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications contained herein.

B. If the damage is only to those parts of one or more Condominium Units for which the responsibility for destruction which renders two-thirds (2/3) or more of maintenance and repair is that of the Condominium Unit Owner, then the Condominium Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair shall be that of the Condominium Association as follows:

(1) Immediately after the casualty causing damage to property, the Condominium Association shall obtain reliable and detailed estimates of the costs to place the damaged property in condition as good as that before the casualty. Such may include professional fees and premiums for such bonds as the Board of Directors deem necessary or appropriate.

(2) When the damage is to both Condominium Common Property and one or more Condominium Units, the insurance proceeds shall be applied first to the costs of repairing the Condominium Common Property and the balance, if any, to the Condominium Units.

C. Each Condominium Unit Owner shall be deemed to have delegated to the Board of Directors of the Condominium Association his right to adjust with insurance companies all losses under policies purchased by the Association, except in any case where the damage is restricted to one Condominium Unit.

D. The Condominium Association shall represent the Unit Owners in any condemnation proceedings or negotiations, settlements and agreements with the condemning authority for acquisition of the Condominium Common Areas or part thereof, and for such purposes each Unit Owner and each Mortgage Holder shall be deemed to have given the Condominium Association an irrevocable power of attorney, coupled with an interest. In the event of a taking or acquisition of part or all of the Condominium Common Areas by a condemning authority, the award of proceeds of settlement shall be payable to the Condominium Association for the use and benefit of the Unit Owners and the Mortgage Holders as their interests may appear.

ARTICLE XXIII.

Transfer of Units

A. Register of Owners: The Condominium Association shall at all times maintain a Register containing the names and addresses of all the Condominium Unit Owners. The Owners of each Condominium Unit shall notify the Condominium Association of the names of the parties holding any mortgage or mortgages on their unit.

ARTICLE XXIV.

Assessments: Liability, Lien and Enforcement

The Condominium Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interests of the Owners of all the Condominium Units. To properly administer the operation and management of the Condominium, the Condominium Association will incur for the mutual benefit of all of the Unit Owners, costs and expenses which are sometimes herein referred to as "common expense." In order to provide the funds necessary for such proper operation, management and capital improvement, the Condominium Association has heretofore been granted the right to make, levy and collect assessments from the Unit Owners and against the Condominium Units. In furtherance of this grant of authority, the following provisions shall be operative and binding upon the owners of all the Condominium Units.

A. All assessments levied against the Unit Owners and their Units shall be uniform and, unless specifically otherwise provided for in this Declaration, all assessments made by the Condominium Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium Unit shall bear the same ratio to the total assessment made against all Unit owners and their Condominium Units as the undivided interest in the Condominium Common Property appurtenant to each Condominium Unit bears to the total undivided interest in the Common Property appurtenant to all Condominium Units. Should the Condominium Association be the Owner of a Condominium Unit or Units, the assessment which would otherwise be due and payable on account of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Condominium Association, shall be apportioned and assessment therefor levied ratably among the Owners of all Units which are not owned by the Condominium Association, based upon their proportionate interests in the Condominium Common Property exclusive of the interests therein appurtenant to any Unit or Units owned by the Condominium Association.

B. Assessments provided for herein shall be payable in monthly installments, or in such other installments and at such other times as may be determined by the Board of Directors of the Condominium Association. Such assessments shall commence for each Unit upon the recording in the Wake County Public Registry of the deed from the Declarant conveying the first Unit in Westpark Condominium. Units not conveyed by the Declarant which remain unoccupied shall be assessed at a rate equal to 25% of the rate of Units conveyed for the first 120 days from the commencement of assessments. Thereafter all Units shall be fully assessed.



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C. The Board of Directors of the Condominium Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such Budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such Budget to take into account projected anticipated income which is to be as an assessment each year. The Board of Directors shall keep separate, in accordance with Paragraph "D" hereof, items relating to operation and maintenance from items relating to capital improvements.

D. The Board of Directors of the Condominium Association, in establishing the Annual Budget, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Property, which Capital Improvement and Replacement Fund (Capital Improvement Fund) shall be for the purpose of enabling the Condominium Association to replace structural elements and mechanical equipment constituting a part of the Condominium Common Property, as well as the replacement of personal property which may constitute a portion of the Condominium Common Property held for the joint use and benefit of the Unit Owners. The amount to be allocated to the Capital Improvement Fund may be established by the Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Condominium Common Property. The amount collected for the Capital Improvement Fund shall be kept in a separate account by the Condominium Association and such monies shall be used only to make capital improvements to the Common Property. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors, be expended for current operation and maintenance. Each Unit Owner shall be deemed to own a portion of the Capital Improvement Fund equal to his proportionate interest in the Common Property as set out in Exhibit "C," and the Condominium Association shall annually notify each Unit Owner of the amount of his balance in the Capital Improvement Fund account. However, such balance shall not be subject to withdrawal by a Unit Owner. A Working Capital Fund may be established and the initial assessment therefore shall be in an amount equal to at least two months' estimated common area charge for each Unit. Each Unit's share of the Working Capital Fund shall be maintained in a segregated account for the use and benefit of the Condominium Association. Amounts paid to this fund shall not be considered as advance payment of regular assessments and are collectable according to the method herein set forth for regular assessments.

E. All monies collected by the Condominium Association shall be treated as the separate property of the Condominium Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid into the Condominium Association by any owner of a Condominium Unit, the same may be commingled with monies paid to the Condominium Association by the other owners of Condominium Units. Although all funds and common surplus, including other assets of the Condominium Association, and any

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increments thereto or profits derived therefrom or from the leasing or use of the Condominium Common Property, shall be held for the benefit of the members of the Condominium Association, no member of the Condominium Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Unit. When the owner of a Condominium Unit shall cease to be a member of the Condominium Association by reason of his divestment of ownership of such Condominium Unit, by whatever means, the Condominium Association shall not be required to account to such owner for any share of the fund or assets of the Condominium Association, or which have been paid to the Condominium Association by such owner, as all monies which any owner has paid to the Condominium Association shall be and constitute an asset of the Condominium Association.

F. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Condominium Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or installment thereof due to the Condominium Association shall bear interest from the due date at the highest rate allowed by law until such delinquent assessment or installment and all interest due thereon has been paid in full to the Condominium Association.

G. The Unit Owner or Owners shall be personally liable, jointly and severally, to the Condominium Association for the payment of all assessments, regular or special, which may be levied by the Condominium Association against such Condominium Unit while such party or parties are the owner or owners of a Condominium Unit. In the event that any Unit Owner or Owners are in default of payment of any assessment or installment thereof, such owner or owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment and interest thereon, including a reasonable attorney's fee, whether suit be brought or not.

H. No Unit Owner may exempt himself from liability for any assessment levied against him or his Unit by waiver of the use or enjoyment of any of the Condominium Common Property, or by abandonment of the Condominium Unit or in any other way.

I. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in benefit to all of the Unit Owners, and the the payment of such common expenses represented by the assessments levied and collected by the Condominium Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted a lien upon each Condominium Unit and its appurtenant undivided interest in the Condominium Common Property, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against each owner and his Unit, which lien shall also secure and does secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Condominium Association in enforcing this lien upon said Condominium Unit and its appurtenant undivided interest in the Condominium Common Property. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien,

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the Condominium Association shall be entitled to a reasonable rental from the owner of any Condominium Unit from the date on which the payment of any assessment of installment thereof became delinquent, and shall be entitled to the appointment of a Receiver for said Condominium Unit. The lien granted to the Condominium Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens and encumbrances which may be required to be advanced by the Condominium Association in order to preserve and protect its lien, and the Condominium Association shall further be entitled to interest at the highest rate allowed by law on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Condominium Unit or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights of the Condominium Association.

J. The lien herein granted to the Condominium Association shall be enforceable from and after the time of recording a claim of lien in the Clerk of Superior Court of Wake County, North Carolina, which claim shall state the description of the Condominium Unit encumbered thereby, the name and address of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided have been paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest at the highest rate allowed by law, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claim of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

The lien provided for herein shall be subordinated to the lien of any mortgage or deed or trust. Any person, firm or corporation acquiring title to any Condominium Unit and its appurtenant undivided interest in the Condominium Common Property by virtue of any foreclosure, deed in lieu of foreclosure or judicial sale, shall be liable and obligated only for assessments as shall accrue and become due and payable subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments where in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Condominium Unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by the owners of all the Condominium Units as a part of the common expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

K. Whenever any Condominium Unit may be leased, sold or mortgaged by the owner thereof, the Condominium Association, upon written request of the Unit Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Condominium Association by such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or

mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Condominium Association shall be bound by such statement.

In the event that a Condominium Unit is to be leased, sold or mortgaged at the time when payment of any assessment against the owner of said Condominium Unit due to the Condominium Association shall be in default (whether or not a claim of lien has been recorded by the Condominium Association), then the rent or the proceeds of such purchase or mortgage transaction shall be applied by the lessee, purchaser or mortgagee first to the payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase or mortgage proceeds to the owner of any Condominium Unit who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Condominium Unit, the purchaser thereof shall be jointly and severally liable with seller for all unpaid assessments against seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from seller the amounts paid by the purchaser therefor.

Institution of an action at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Condominium Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining due, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Condominium Association.

#### ARTICLE XXV.

##### Common Surplus

"Common Surplus," meaning all funds and other assets of the Condominium Association (including excess of receipts of the Condominium Association, including but not limited to assessments, rents, profits and reserves from whatever source over the amount of the common expense), shall be owned by the members of the Condominium Association in the same proportion that the undivided interest in the Condominium Common Property appurtenant to each owner's Condominium Unit bears to the total of all undivided interest in the Condominium Common Property appurtenant to all Condominium Units; provided, however, that said common surplus shall be held by the Condominium Association in the manner, and subject to the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance indemnity as herein provided, or upon termination of the Condominium, any attribution or distribution of common surplus which may be made from time to time shall be made to the then owners of Condominium Units in accordance with their percentage interest in common surplus as declared herein.

#### ARTICLE XXVI.

##### Termination

The Condominium shall be terminated, if at all, in the following manner:

- A. The termination of the Condominium may be effected

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only by the unanimous agreement of all Condominium Unit Owners expressed in an instrument to that effect duly recorded; and, provided that the holders of all liens affecting any of the Condominium Units consent thereunto, or agree, in either case by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the Condominium Unit Owner in the Property as provided in subparagraph "C" below. The termination shall become effective when such agreement has been recorded in the public records of Wake County, North Carolina.

B. If it is determined in the manner elsewhere provided that the Condominium shall not be reconstructed after casualty, the Condominium plan of ownership shall be terminated and this Declaration of Condominium revoked. The determination not to reconstruct after casualty shall be evidenced by a Certificate of the Condominium Association certifying as to the facts effecting the termination, which Certificate shall become effective upon being recorded in the public records of Wake County, North Carolina.

C. After termination of the Condominium, the Condominium Unit Owners shall own the Property as tenants-in-common in undivided shares and the holders of mortgages and liens against the Condominium Unit or Units formerly owned by such Condominium Unit Owners shall have mortgages and liens upon the respective undivided shares of the Condominium Unit Owners. The undivided share or interest owned as tenants-in-common shall be the percentage of the undivided interest in the Condominium Common Property previously owned by each Unit Owner. All funds held by the Condominium Association in connection with the termination shall be a common expense.

D. Following termination, the property may be partitioned and sold upon the application of any Condominium Unit Owner. Following termination, if the Board of Directors determines by not less than a three-fourths (3/4) vote to accept an offer for the sale of the Property, each Condominium Unit Owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such form as the Board of Directors directs. In such event, any action or partition or other division of the property shall be held in abeyance pending such sale, and upon consummation thereof shall be discontinued by all parties thereto.

E. The members of the Board of Directors, acting collectively as agent for all Condominium Unit Owners, shall continue to have such powers as in this Article are granted, notwithstanding the fact that the Condominium Association itself may be dissolved by a termination.

ARTICLE XXVII.

Amendment of Declaration of Condominium

This Declaration of Condominium may be amended in the following manner:

A. An amendment or amendments to this Declaration may be filed by the Declarant for the purpose of recording a verified statement of registered architect or licensed professional engineer certifying that the plans theretofore filed or being filed simultaneously with such amendment fully depict the layout, ceiling and floor elevations, unit numbers and dimensions of the units as built.

B. An amendment or amendments to this Declaration may be proposed by the Board of Directors of the Condominium Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units, whether meeting as members or by an instrument in writing signed by them. Upon any amendment or amendments to this Declaration being proposed, the amendment or amendments shall be transmitted to the President of the Condominium Association, or other officer of the Condominium Association in the absence of the President, who shall thereupon call a Special Meeting of the members of the Condominium Association as provided in the Bylaws. In addition to the other requirements set forth in the Bylaws, notice of the meeting shall recite the proposed amendment or amendments in reasonable detail. At the meeting, the amendment or amendments proposed must be approved by an affirmative vote of 75% of the voting membership in order to become effective. Thereupon such amendment or amendments of this Declaration of Condominium shall be transcribed and certified by the President and the Secretary of the Condominium Association as having been duly adopted. The original or an executed copy of such amendment or amendments, so certified and executed with the same formalities as a deed, shall be recorded in the public records of Wake County, North Carolina, within ten (10) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording date identifying this Declaration of Condominium. Thereafter, a copy of said amendment or amendments in the form in which the same were placed of record by the officers of the Condominium Association shall be delivered to the owners of all the Condominium Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. Upon compliance herewith all amendments shall be binding upon all Unit Owners, their heirs, assigns and successors.

C. No amendment shall be made to any provision of this Declaration which establishes, provides for, governs or regulates any of the following: voting; assessments, assessment liens, or subordination of such liens; reserves for maintenance, repair, and replacement of Common Areas or Units; Insurance or Fidelity Bonds; rights to use the Common Areas; responsibility for maintenance and repair of the several portions of the Condominium; expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium; boundaries of any Unit; the interests in the general or limited Common Areas; convertibility of Units into Common Areas or of Common Areas into Units; leasing of Units; imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit; any provisions which are for the express benefit of holders of mortgages or deeds of trust or Insurers of Guarantors; any decision to establish self management when professional management has been previously required by any Mortgage Holder, Insurer or Guarantor; without the consent of 75% of the voting membership and of Mortgage Holders holding mortgages or deeds of trust on 51% of the Units. Any Mortgage Holder that receives a written request for consent to additions or amendments that does not deliver or pose to the requesting party a negative response within 30 days shall be deemed to have approved such request. In addition, no action will be taken on the following items without the consent of Mortgage Holders holding mortgages or deeds of trust on 51% of the Units, or 51% of the remaining Units, as the case may be:

- (1) Approval of restoration or repair of the Condominium after a partial condemnation or damage due

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to an insurable hazard which will not be in substantial accordance with the Declaration and original plans and specifications; and

(2) Approval of the reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Condominium.

D. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of the Declarant shall be made without the written consent of said Declarant being first had and obtained.

E. At any time within ten (10) years following the date of incorporation of the Association the Declarant, without the consent of class A members, (as set forth in the Bylaws), may annex additional properties and improvements to the Property herein described in the form of additional Condominium Units and Common Areas. Declarant shall have the absolute right in his sole discretion to construct additional dwelling units in and to determine that the dwelling units should be made condominium units subject to the provisions of this Declaration; and if such additional units are substantially equivalent in unit value to the units now covered under the Declaration and if such units are substantially completed, then, for the purpose of amending this Declaration and the Bylaws, each Unit Owner, and the holders of all mortgages and deeds of trust of each Unit Owner hereunder, shall be deemed to have consented to an amendment or amendments to this Declaration and the Bylaws for the purpose of including such additional units hereunder and shall be deemed to have given to the Declarant an irrevocable power of attorney, coupled with an interest, to effectuate such amendment, and agrees to execute such further papers and instruments, if any, as may be necessary or desirable from time to time to accomplish such amendments. Voting rights for each additional Unit shall commence when the amendment subjecting additional Units to the provisions of this Declaration is recorded. Assessments for each such additional Unit shall commence upon the recording of the Deed from the Declarant conveying the first such additional Unit. Units not conveyed by the Declarant which remain unoccupied shall be assessed at a rate equal to 25% of the rate of Units conveyed for the first 120 days from the commencement of assessments. Thereafter all Units shall be fully assessed. It is understood that such amendments shall, in addition to enlarging the number of units to be subject to this Declaration, automatically result in an adjustment of each Unit Owners percentage interest in the Condominium Common Property pursuant to the calculation shown in Exhibit "C."

XXVIII.

Remedies in the Event of Default

The owner or owners of each Condominium Unit shall be governed by and shall comply with the provisions of this Declaration of Condominium, the Articles of Incorporation of the Westpark Condominiums Homeowner's Association, Inc. and the Bylaws of the Condominium Association, as any of the same are now constituted or as they may be amended from time to time. A default by the owner of any Condominium Unit shall entitle the Association, the Declarant, or the owner of any other Condominium Unit to the following relief:

A. Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Articles of Incorporation or Bylaws of the Condominium

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Association, or which may be adopted pursuant thereto, shall be grounds for relief including, without limitation, an action to recover sums due for damage, injunctive relief, foreclosure of lien, or any combination thereof. Such relief may be sought by the Declarant, the Condominium Association or, if appropriate, by an aggrieved Unit Owner.

B. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents, invitees or lessors, but only to the extent that such expenses not met by the proceeds of insurance carried by the Condominium Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Condominium Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of right of subrogation.

C. In any proceeding arising because of an alleged default by a Unit Owner, the Condominium Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the Court, but in no event shall any Unit Owner be entitled to such attorney's fees.

D. The failure of the Condominium Association, the Declarant, or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration of Condominium or the other above-mentioned documents shall not constitute a waiver of the right of the Condominium Association, the Declarant or of the Unit Owner to enforce such right, provision, covenant or condition in the future.

E. All rights, remedies and privileges granted to the Condominium Association or the owner or owners of the Condominium Units pursuant to any term, provisions, covenants or conditions of this Declaration of Condominium or the other above-mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available in law or in equity.

#### ARTICLE XXIX.

##### Rights Reserved Unto Mortgage Holders,

##### Insurers and Guarantors

Mortgage Holders, Insurers and Guarantors shall have the following rights:

A. To examine, at reasonable times and upon reasonable notice, the books and records of the Condominium Association and upon written request to be furnished at least one copy free of charge of the Annual Financial Statement and Report of Public Accountant designated by the Condominium Association, such Financial Statement and Report to be furnished within a reasonable time of such request.

B. To be given notice by the Condominium Association of the call of any meeting of the membership of the Condominium Association to be held for the purpose of considering any proposed amendment or amendments to this



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Declaration of the Articles of Incorporation or Bylaws of the Condominium Association which would require the consent of a specified percentage of Mortgage Holders, Insurers and Guarantors as stated in Article XXVII C.

C. To be given notice of a default not cured within 60 days by any Owner owning a Condominium Unit encumbered by a mortgage held by or insured or guaranteed by the Mortgage Holder, Insurer or Guarantor.

D. To be given notice by the Condominium Association of any condemnation loss or any casualty loss which affects amaterial portion of the Condominium or any Unit on which there is a first mortgage or deed of trust held, insured, or guaranteed by such Mortgage Holder or Insurer or Guarantor, as applicable.

E. To be given notice by the Association of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Condominium Association.

Whenever any holder, insurer or guarantor of a first mortgage of deed of trust desires the provisions of this Article to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Condominium Association by Registered Mail or Certified Mail addressed to the Condominium Association and sent to its address stated herein, identifying the Unit upon which any such holder, insurer or guarantor of a first mortgage or deed of trust holds, insures or guarantees any mortgage or deed of trust, or identifying the Unit owned by it, and which notice shall designate the address to which notices are to be sent by the Condominium Association to such holder, insurer, or guarantor of a first mortgage or deed of trust.

ARTICLE XXX.

Right of Declarant to Representation

On Board of Directors of The Association

The Declarant shall have the right to designate and select a majority of the persons who shall serve as members of the Board of Directors of the Condominium Association until the happening of the earlier of the following events: 120 days after 75% of all original 36 Units of Westpark Condominiums have been conveyed to Unit Owners provided that if an amendment or amendments to this Declaration add additional units to the Condominium prior to the sale of 75% of the original 36 Units then 120 days after 75% of all Units covered by the Declaration have been conveyed to Unit Owners, or five years from the conveyance of the first Unit to a Unit Owner.

Whenever the Declarant shall be entitled to designate and select any person or persons to serve on the Board of Directors of the Condominium Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or the Bylaws of the Association, and the Declarant shall have the right to remove any person or persons selected by him to act and serve on said Board of Directors and to replace such person or persons with another person or persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by the Declarant need not be a resident in the Condominium. However, the Declarant shall be responsible for the payment

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Declaration of Condominium - Westpark Condominiums  
Page 24.

of any assessments which may be levied by the Association against any Condominium Unit or Units owned by the Declarant, pursuant to Article XXIV, B., and for complying with the remaining terms and provisions hereof in the same manner as any other owner of a Condominium Unit.

The Condominium Association shall not be bound directly or indirectly to contracts or leases (including a management contract) entered into prior to the Declarant's termination of control of the Board of Directors unless there is a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after termination of control upon no more than 90 days written notice to the other party; provided, however, the Condominium Association shall not be able to change, alter, or terminate any provision of this Declaration, or of the Bylaws or Articles of Incorporation except by the amendment procedures provided for in such documents.

ARTICLE XXXI.

Severability

In the event that any of the terms, provisions or covenants of this Declaration of Condominium are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or covenants held to be partially invalid or unenforceable.

ARTICLE XXXII.

Liberal Construction

The provisions of this Declaration of Condominium shall be liberally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. Throughout this Declaration whenever appropriate the singular shall include the plural and the masculine gender the feminine or neuter. The Article headings are for convenient reference only and shall not be considered terms of this Declaration.

ARTICLE XXXIII.

Declaration of Condominium Binding

On Assigns and Subsequent Owners

The restrictions and burdens imposed by the covenants of this Declaration of Condominium are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Condominium Unit and its appurtenant undivided interest in the Common Property. The Declarant may at any time transfer or assign in whole or part its rights and interest hereunder by recording a written assignment or deed, or both in the office of the Register of Deeds of Wake County. This Declaration of Condominium shall be binding upon the Declarant, its successors and assigns, and upon all parties who may subsequently become owners of Condominium Units in the Westpark Condominium, and their respective heirs, legal representatives, successors and assigns.

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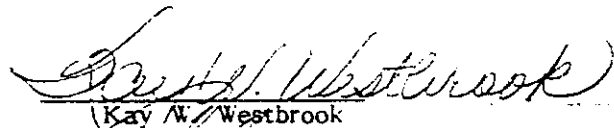
ARTICLE XXXIV

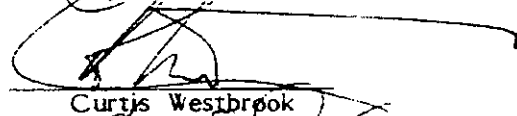
Agent for Service of Process

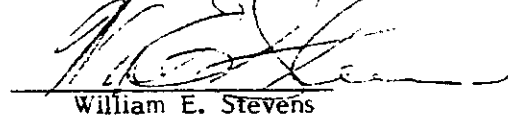
The following named individual is designated as the person to receive service of process for the Association:

Kay W. Westbrook  
919 Kildaire Farm Road  
Cary, N. C. 27511

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed in their respective names this 31st day of May, 1985.

  
Kay W. Westbrook

  
Curtis Westbrook

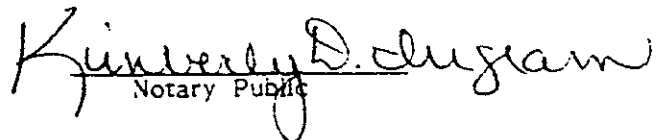
  
William E. Stevens

  
Sue R. Stevens

NORTH CAROLINA  
WAKE COUNTY

I, Kimberly D. Ingram, a Notary Public of said state and county certify that Kay W. Westbrook, Curtis Westbrook, William E. Stevens and Sue R. Stevens personally appeared before me this day and acknowledged the execution of the foregoing Declaration of Condominium. Witness my hand and official stamp or seal this 31st day of May, 1985.



  
Notary Public

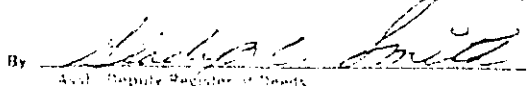
My Commission Expires: 4/11/90

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate \_\_\_\_\_ of Kimberly D. Ingram

\_\_\_\_\_, Notary Public is  
(are) certified to be correct. This instrument and this certificate are duly registered at the date and time  
and in the book and page shown on the first page hereof

KENNETH C. WILKINS Register of Deeds

By   
Act. Deputy Register of Deeds

BOOK 5501 PAGE 1141  
EXHIBIT " A "

All that certain lot or parcel of land situated in Cary Township, Wake County, North Carolina and more particularly described as follows:

Being all of that 3.2438 acre tract according to survey and map of Westbrook-Stevens Property as prepared by Runa A. Cooper, Land Surveyors, bearing date of 2/21/84 as recorded in Book of Maps ~~1984~~, Page 1141, Wake County Registry, and being more fully described as follows:

Beginning at a point, the intersection of the north right of way line of Dry Avenue with the east right of way line of West Street, thence with the east right of way line of West Street North 04 degrees 13 minutes 20 seconds East 538.50 feet to a point, southwest corner of the property of James L. Finrock; thence with Finrock's line South 65 degrees 03 minutes 25 seconds East 95.61 feet to a point, common corner between the lands of said Fenrock and J. G. Hobby; thence with the Hobby line South 48 degrees 40 minutes 46 seconds East 104.61 feet to a point, common corner between said Hobby land and the lands of C. W. Satterwhite; thence with said Satterwhite line South 78 degrees 37 minutes 00 seconds East 62.30 feet and North 77 degrees 48 minutes 05 seconds East 44.58 feet to a point, common corner with the lands of said Satterwhite and the lands of Jewel M. Sopko; thence with the Sopko line North 82 degrees 49 minutes 17 seconds East 143.31 feet to a point, common corner between the lands of said Sopko and Wayne H. Moore; thence with the westerly lines of Carl A. Mills, Jr., of Ruth K. Cooper and of the Methodist Church South 04 degrees 00 minutes 54 seconds West 271.53 feet to a point in the line of Thomas S. Secrest, Sr.; thence with the northerly lines of said Secrest and of Everett C. Sanderford North 84 degrees 44 minutes 48 seconds West 269.56 feet to a point, northwest corner of said Sanderford; thence with Sanderford's west line South 04 degrees 55 minutes 30 seconds West 207.53 feet to a point in the northerly right of way line of Dry Avenue, Sanderford's southwest corner; thence with the north right of way line of Dry Avenue North 85 degrees 59 minutes 30 seconds West 146.83 feet to the point and place of Beginning.  
(Note: All adjacent landowners named are present or former owners.)

101-0501-128

Exhibit "B"

See Condominium File # 86, Wake County  
Registry, North Carolina.

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Exhibit "C"

Ownership Interest in Common Areas

Per Unit

<u>Unit Designation</u>	<u>Ownership Interest in Common Areas per Unit for Original 36 Units</u>
327	.031746
239	.0238095
331	.031746
333	.0238095
319	.0238095
321	.031746
323	.0238095
325	.031746
110	.0238095
112	.031746
114	.0238095
116	.031746
102	.031746
104	.0238095
106	.031746
108	.0238095
118	.031746
120	.0238095
122	.031746
124	.0238095
126	.031746
128	.0238095
130	.031746
132	.0238095
134	.0238095
136	.031746
138	.0238095
140	.031746
142	.031746
144	.0238095
146	.031746
148	.0238095
150	.0238095
152	.031746
154	.0238095
156	.031746