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BOOK 3776 PAGE 755

BYLAWS OF  
WESTGROVE TOWER ASSOCIATION

ARTICLE I

Plan of Unit Ownership

Section 1. Unit Ownership. The Property located at 4700 Westgrove Street, Raleigh, Wake County, North Carolina, (hereinafter called the "Property") is to be submitted to the provisions of the North Carolina Unit Ownership Act (the "Act") by the Declaration recorded in the office of the Register of Deeds of Wake County, North Carolina, and thereafter shall be known as Westgrove Tower (hereinafter called the "Condominium"). Terms defined in the Act and the Declaration shall have such defined meanings when used herein unless the context otherwise requires.

Section 2. Application. All present and future owners, mortgagees, lessees and occupants of units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to these Bylaws, the Declaration and the Rules and Regulations.

The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a unit shall constitute an agreement that these Bylaws, the Rules and Regulations and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified, and will be complied with.

Section 3. Office. The Association may have offices at such place or places as the Board of Directors may from time to time appoint or that the business of the Association may require or make available.

ARTICLE II  
DEFINITIONS

Section 1. "Association" shall mean and refer to The Westgrove Tower Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property described in the Amended Declaration of Condominium, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Declarant" shall mean Westgrove Tower, its successors or assigns and "Declaration" shall mean the Amended Declaration of Condominium for Westgrove Tower recorded in Book 3672, Page 100, Wake County Registry.

Section 4. "Common Area" shall mean and refer singularly or collectively as applicable, to all land, improvements and other properties heretofore or hereafter owned by or in the possession of the Association, subject to the Amended Declaration of Condominium for Westgrove Tower as amended from time to time, in both cases including specifically those areas so designated within properties that are hereafter annexed. The term shall include any limited common area, facilities, and private streets.

Section 5. "Westgrove Tower" shall mean and refer to all properties shown on those maps recorded in Map Book 1985, Page 1899, Office of the Register of Deeds, Wake County, North Carolina.

Section 6. "Unit" shall mean and refer to any structure or part of a structure designed and built for occupancy as a residence.

Section 7. "Property" shall mean the land, the buildings and all other improvements thereof (including the Units and appurtenances belonging thereto, including on-site parking areas, and all other property, personal or

affixed, intended for use in connection therewith, all of which are intended to be submitted to the provisions of the Act.

Section 8. "Member" shall mean and refer to an "Owner" subject to assessment as provided in the Declaration.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

### ARTICLE III BOARD OF DIRECTORS

Section 1. Numbers. The affairs of the Association shall be managed by a Board of not less than three (3) but not more than seven (7) persons. The Declarant has the authority to appoint and/or remove directors at will during the period that the Declarant maintains control of the Association pursuant to Section 9.01. Furthermore, the Declarant agrees that at all times while it maintains control over the Association pursuant to Section 9.01 that Landmark Savings Association, a Pennsylvania savings and loan association, being the lender under a commitment to provide permanent financing for each individual unit, will be guaranteed the right to elect at least one member on the Board of Directors. Upon the expiration of the Declarant's right to control the Association, the Declarant or any other member of the Association shall call a special meeting of the members for the purpose of electing a new Board of Directors which shall be elected by the members. All directors shall be Unit Owners (which shall include, without limitation, any shareholder, director, officer, partner in, trustee of any person, which either alone or with others, is a unit owner) or spouses of such owners; however, during the period in which the Declarant retains the right to control the Association, any designee of the Declarant, regardless of ownership or lack thereof, may be a director of the Association. After the end of the Declarant's control of the Association, any individual who would not be eligible to serve as a director were he not a shareholder, director, officer, partner or trustee as aforesaid shall be disqualified from continuing in office if he ceases to maintain such affiliation.

Section 2. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee and reported to members at the annual meeting. Nominations also may be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors at least sixty (60) days prior to each annual meeting of members and shall serve until their successors are duly appointed and qualified. Such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 3. Election. Election to the Board of Directors shall be by secret ballot. At such election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

The Board of Directors may adopt rules and regulations regarding the conduct of the election, including, but not limited to the form of the ballot; the nature and maintenance of the election records; the method of ascertaining the validity of proxies; the counting of ballots and tabulation of results; the inspection of records; challenges; and runoff elections.

Section 4. Term of Office. Except in the case of directors appointed by the Declarant under the provisions of Section I of this Article, directors shall be elected at the annual meeting of members for a term of one year and shall hold office until their respective successors shall have been elected by the members. Directors appointed by the Declarant shall serve at the pleasure of the Declarant and may be removed and replaced by the Declarant at any time.

Section 5. Removal. After the Declarant releases control over the Association pursuant to Section 9.01 of the Declaration, any Director may be

removed from the Board, with or without cause, by a majority vote of the members of the Association. A recall election shall be conducted by the Board of Directors upon a resolution adopted by vote of three-fourths (3/4) of the Directors, or upon petition signed by members who together are entitled to cast two-thirds (2/3) of the votes of the Association. In the event of death, resignation, or removal of a Director, his successor shall be elected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. Any director may resign at any time and shall be deemed to have resigned upon cessation of Unit ownership as defined in Section 1 of this Article.

Section 6. Vacancies. Vacancies in the Board of Directors caused by any reason, other than the removal of a member by the Declarant shall be filled by vote of a majority of the remaining directors at a special meeting of the Board of Directors held specifically for that purpose. This special meeting shall be held as soon as possible after the occurrence of any such vacancy. This meeting and election will be valid and binding regardless of the fact that the members present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Board of Directors for the remainder of the term of his predecessor member or until a successor shall be elected at the next annual meeting of the members of the Association.

Section 7. Meetings. The first meeting of the Board of Directors following the annual meeting of the members shall be held within ten (10) days thereafter at such time and place as shall be fixed by a majority of the directors and no notice shall be necessary to the newly elected directors in order legally to hold such meeting, providing a majority of the Board of Directors shall attend the meeting.

- a) Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the members of the Board of Directors. Notice of regular meetings of the Board of Directors shall be given to each director, by mail or telegraph, at least three (3) business days prior to the day named for such meeting.
- b) Special Meetings. Special meetings of the Board of Directors may be called by the President on twenty-four (24) hours notice to each director, given by mail, telephone or telegraph, or hand delivered notice, which notice shall state the time, place and purpose of the meetings. On the written request of any director, special meetings of the Board of Directors shall be called by the President or Secretary in like manner and with like notice.
- c) Waiver of Notice. Any director may at any time waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
- d) Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the members thereof shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may vote to adjourn the meeting. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called, may be transacted without further notice.

Section 8. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things except as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Unit Owners. Such powers and duties of the Board of Directors shall include but shall not be limited to the following:

- a) Operation, care, upkeep and maintenance of the Common Areas and Facilities.
- b) Determination of the Common Expenses required for the affairs of the Association, including, without limitation, the operation and maintenance of the Property.
- c) Collection of the common charges and expenses from the unit owners.
- d) To suspend the voting rights and right to use of the Common Areas and amenities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights also may be suspended, after notice and subject to hearing, for a period not to exceed thirty (30) days for infraction of published rules and regulations, as provided in Article XI of these Bylaws.
- e) Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Areas and Facilities.
- f) Adoption and amendment of rules and regulations covering the details of the operation and use of the Property.
- g) Opening of bank accounts on behalf of the Association and designating the signatories required therefore.
- h) Imposing charges and establishing regulations for the use of Common Areas and Facilities such as parking areas, storage areas and laundry facilities.
- i) Obtaining adequate insurance for the Property, including the Units, pursuant to the provision of the Act, the Declaration and of Article VI hereof.
- j) Making of repairs, additions and improvements to, or alterations of the Property and making of repairs to, and restoration of the Property in accordance with the other provisions of these Bylaws after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- k) Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the Common Areas and Facilities, provided, however, (i) that the borrowing of any sum in excess of \$20,000.00 shall be approved by an affirmative vote of not less than seventy-five percent (75%) of the outstanding votes of the Association at a meeting duly called and held, and (ii) that no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Areas and Facilities without the consent of the Unit's Owner.

Notwithstanding anything to the contrary contained in these Bylaws, so long as the Declarant shall continue to own Units representing undivided ownership in the Common Areas and Facilities of ten percent (10%) or more, the Board of Directors may not, without the Declarant's prior written consent, (i) make any addition, alteration or improvement to the Common Areas and Facilities or to any Unit, (ii) assess any common charges for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund, (iii) enter into any service or maintenance contract for work covered by contracts in existence on the date the Declaration is recorded, or (iv) borrow money on behalf of the Association.

**Section 9. Managing Agent and Manager.** The Board of Directors may employ for the Condominium a managing agent and/or a manager at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize including, but not limited to, the duties listed in subdivisions (a), (c), (d), (g), (h) and (i) of Section 8 of this Article III. The Board of Directors may delegate to the manager or managing agent all of the powers granted to the Board of

Directors by these Bylaws other than the powers set forth in subdivisions (b) and (f) of Section 8 of this Article III.

ARTICLE III  
MEMBERS OF THE ASSOCIATION

Section 1. Members. Each owner of a Unit in the Condominium shall automatically be a member of the Association, which membership shall continue during the period of ownership by such Unit Owner.

Section 2. Annual Meetings. Within thirty (30) days after the closing of title to at least sixty (60) units, but not later than three years from the date hereof, the Declarant shall call the first meeting of the members. Thereafter, annual meetings of the members shall be held on the first day of December of each succeeding year, unless such date shall occur on a Sunday or legal holiday, in which event the meeting shall be held on the next succeeding Monday or business day, whichever shall first occur. Except during the period when the Declarant retains the right to appoint and remove directors at such meetings, the Board of Directors shall be elected by the members at the annual meeting. The members may transact such other business at such meetings as may properly come before them.

Section 3. Place of Meetings. Meetings of the members shall be held at any location designated by the Board of Directors as convenient to the Unit Owners.

Section 4. Special Meetings. It shall be the duty of the President to call a special meeting of the members : (i) if so directed by resolution of the Board of Directors, (ii) within thirty (30) days following the expiration of the Declarant's right to control the Association, or (iii) upon a petition delivered to the Secretary of the Association, signed by members whose votes together constitute at least twenty-five percent (25%) of total votes of the Association. The notice of any special meeting shall state the time and place of such meeting and purpose thereof.

Section 5. Notice of Meetings. It shall be the duty of the Secretary to mail a notice to each member of record of each annual or regularly scheduled meeting of the members at least twenty-one (21) days in advance of such meeting and in the case of special meetings notice shall be given at least seven (7) days in advance of such meetings. Each notice of meeting shall state the purpose thereof as well as the time and place where it is to be held. If the purpose of any meeting shall be to act upon a proposed amendment to the Declaration or to these Bylaws, the notice of meeting shall be mailed at least thirty (30) days prior to such meeting. All notices of meetings shall be delivered personally or sent by United States mail, postage prepaid, to all Unit Owners of record at such address or addresses as any of them may have designated to the Secretary, or, if no other address has been so designated, at the address of their respective Units.

Section 6. Adjournment of Meeting. If any meeting of members cannot be held because a quorum has not attended, a majority in voting interest of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Title to Units. Title to Units may be taken in the name of an individual or in the names of two or more persons as tenants in common or tenants by the entirety, or in the name of a corporation or partnership, or in the name of a fiduciary.

Section 8. Voting. The owner or owners of each Unit, or some person designated by such owner or owners to act as proxy on his or their behalf and who need not be an owner, shall be entitled to cast votes appurtenant to such Unit at all meetings of members.

Section 9. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of members who together hold at least ten percent (10%) of the total authorized votes of all Unit Owners shall constitute a quorum at all meetings of the members.

Section 10. Presiding Officer. The President, or in his absence the Vice-President, shall serve as chairman of every meeting of members unless some other person is elected to serve as chairman by a majority of the votes represented at any such meeting. The presiding officer shall appoint such other persons as he deems required to assist with the conduct of the meeting.

#### ARTICLE IV

Section 1. Designation. The principal officers of the Association shall be the President, one or more Vice Presidents, the Secretary, and the Treasurer, all of whom shall be elected by the Board of Directors.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Unit Owners and the Board of Directors. He shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors or by the President, and shall, in general, perform all the duties incident to the office of Vice President of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Unit Owners and of the Board of Directors and shall keep the minute book wherein the resolutions shall be recorded; shall have charge of such books and papers as the Board of Directors may direct; and shall, in general, perform all the duties incident to the office of Secretary of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 7. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and financial data. He shall be responsible for the deposit of all moneys and other valuable effects in the name of the Board of Directors, or the managing agent, in such depositories as may from time to time be designated by the Board of Directors, and he shall, in general, perform all the duties incident to the office of Treasurer of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 8. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such. This provision will not be construed to prohibit the reimbursement of any officer for his actual expenses incurred in the performance of his or her duties.

#### ARTICLE V

##### OPERATION OF THE PROPERTY

Section 1. Determination of Common Expenses and Assessments Against Unit Owners.

a) Fiscal Year. The fiscal year of the Association shall be the

calendar year unless otherwise determined by the Board of Directors.

b) Preparation and Approval of Budget.

(i) Prior to the commencement of each fiscal year (except for the initial fiscal year), the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Areas and Facilities and those parts of the Units as to which it is the responsibility of the Board of Directors to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Act, the Declaration, these Bylaws or a resolution of the members of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the Unit Owners of all related services. In the initial fiscal year, the Board of Directors shall adopt a budget and impose assessments at such time on such basis as the Board shall determine in its sole discretion.

(ii) Such budget shall also include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. The Board of Directors shall send to each Unit Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any budgeted special assessment payable by each Unit Owner. Such budget shall constitute the basis for determining each Unit Owner's assessment for the Common Expenses of the Association for such fiscal year.

c) Assessment and Payment of Common Expenses.

(i) The total amount of the estimated funds required for the operation of the Property set forth in the budget adopted by the Board of Directors (other than amounts of budgeted special assessments) shall be assessed against each Unit Owner in proportion to his allocable share of liabilities for Common Expenses as provided in the Declaration, and together with the amount of any budgeted special assessments applicable to any Unit, shall be a lien against each Unit Owner's Unit. On or before the first day of each fiscal year (except for the initial fiscal year), and the first day of each month in such fiscal year, each Unit Owner shall be obligated to pay to the Board of Directors or the Managing Agent (as determined by the Board of Directors), one-twelfth of the total of such assessments, including budgeted special assessments. Within sixty (60) days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, if the Board of Directors deems it advisable, be either distributed to the Unit Owners according to each Unit Owner's share of liability for Common Expenses or credited according to each owner's share of liability for Common Expenses to the next monthly installments due from unit owners under the current fiscal year's budget, until exhausted. Any net shortage shall be assessed promptly against the Unit Owners in accordance with their share of liability for Common Expenses and shall be payable in full with payment of the next monthly assessment due. Notwithstanding anything herein to the contrary, any surplus or deficit with respect to a special assessment shall be distributed, credited or assessed to or against the Unit Owner against whom the special assessment was made.

- (ii) In the event the Association incurs expenses not included in the budget but which may be specifically assessed under the Declaration, the Board of Directors may specially assess and collect such expenses at any time during the fiscal year. If possible, the Board of Directors will cause such unbudgeted special assessments to be paid in equal installments over a period of not more than twelve (12) months, but nothing herein shall prevent the Board from requiring payment in a lump sum if the interests of the Association so require.
- d) Reserves. The Board of Directors shall build up and maintain reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget but which may become necessary during the year, shall be charged first against such reserves unless the same are subject to special assessment. If the reserves are inadequate for any reason, including nonpayment of any Unit Owner's Assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Unit Owners according to their respective allocable shares of liability for Common Expenses. The Board of Directors shall serve notice of any such further assessment on all Unit Owners by a statement in writing stating the assessment and giving reasons therefore, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due more than ten (10) days after the delivery of such notice of further assessment. All Unit Owners shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable in installments, the amount of such assessment. Such assessment shall be a lien as of the effective date.
- e) Initial Assessments.
- (i) After the Board of Directors named in the Articles of Incorporation takes office, it shall determine the budget, as defined in this Section, for the period commencing as of the date the Condominium was created by filing of the Declaration and ending on the last day of the fiscal year in which such election occurs. Assessments shall be levied at the direction of the Board and shall become a lien against the Unit Owners during such periods as provided in paragraph (c) of this Section.
- (ii) The Declarant, as the agent of the Board of Directors, will collect from each initial purchaser at the time of settlement on his Unit an "initial assessment" equivalent to at least two-twelfths (2/12) of the annual assessment applicable to the Unit. The Declarant will deliver the funds so collected to the Board of Directors to provide an initial general operating fund for the Association. Such initial assessment shall not constitute any portion of the annual assessment of Unit Owners for the fiscal year which shall be assessed and collected as provided herein and in paragraph (c) of this Section.
- f) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as herein provided whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until notice of the monthly payment which is due more than ten (10) days after such new annual or adjusted budget shall have been delivered.
- (g) Accounts. All sums collected by the Board of Directors with respect to assessments against the Unit Owners or from any other source may be commingled into a single fund.



Section 2. Payment of Common Expenses. Each Unit Owner shall pay the Common Expenses assessed by the Board of Directors pursuant to the provisions of Section 1 of this Article V. No Unit Owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by abandonment of his Unit. Prior to or at the time of any conveyance of a unit, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Unit Owner amounts paid by the purchaser therefore; provided, however, that any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Unit owner within five (5) days following a written request therefore to the Board of Directors or Managing Agent and such purchaser shall not be liable for, nor shall the Unit conveyed be subject to lien for, any unpaid assessments in excess of the amount therein set forth; and provided further, that each mortgagee who comes into possession of a unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments or charges against such Unit which accrue prior to the time such mortgage comes into possession thereof, but such mortgagee shall be responsible for and shall pay all assessments from the time such mortgagee comes into possession of a Unit, by foreclosure or by deed or assignment in lieu thereof, until the time such mortgagee conveys the title to such Unit.

Section 3. Collection of Assessments. The Board of Directors or the Managing Agent at the request of the Board of Directors, shall take prompt action to collect any assessments for Common Expenses due from any Unit Owner which remain unpaid for more than thirty (30) days from the due date for payment thereof. Any assessment, or installment thereof, not paid within ten (10) days after the due date shall (a) subject the delinquent Unit Owner to the imposition of a late charge in an amount not in excess of the greater of Ten Dollars (\$10.00) or ten percent (10%) of each assessment or installment thereof not paid when due, (b) with any late charge relating thereto, bear interest from the date the same was first due and payable at the maximum rate of interest allowed by law, (c) entitle the Association to collect from the delinquent Unit Owner all costs of collection including Court costs, expenses of sale, expenses required for the protection and preservation of the delinquent owner's unit and reasonable attorney's fees actually incurred, and (d) entitle the Association to collect from the delinquent Unit Owner the fair rental value of his Unit from the time of the institution of suit until the sale of the Unit at foreclosure or until the judgment rendered in such suit is otherwise satisfied.

Section 4. Statement of Common Expenses. Upon the written request of any Unit Owner, contract purchaser or mortgagee, the Board of Directors shall promptly provide the requesting party with a written statement of all unpaid assessments for Common Expenses due from such Unit Owner, as set forth in Section 2 of this Article.

Section 5. Maintenance, Repair, Replacement and Other Common Expenses.

- a) By the Board of Directors. The Board of Directors shall be responsible for the maintenance in good working order and condition, repair and replacement of all of the Common Areas and Facilities defined herein or in the Declaration, whether located inside or outside of the Units, the cost of which shall be charged to Unit Owners as a Common Expense in accordance with the provisions of this Article V, provided, however, that each Unit Owner shall perform normal maintenance on any portion of the remaining Common Areas and Facilities which the Board of Directors, pursuant to the Rules and Regulations, has given him permission to utilize, including without limitation, the items enumerated in subsection (b) hereof. Notwithstanding anything herein to the contrary, the Association, with the approval of Unit Owners, who together hold seventy-five percent (75%) or more of the votes of the Association, may alter or modify the form or use of any portion

of the Common Areas and Facilities or elect not to repair or replace the same.

b) By the Unit Owner.

(i) Each Unit Owner shall keep his Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance condition of his Unit. In addition, each Unit Owner shall be responsible for all damage to any other Units or to the Common Areas and Facilities resulting from his failure to make any of the repairs required by this Section. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Board of Directors or the Managing Agent any defect or need for repairs for which the Board of Directors is responsible.

(ii) Any Unit Owner permitted by the Board of Directors to use a specific portion of the Common Areas and Facilities for storage or other purposes is responsible for the maintenance and care of such portion and shall use such portion in a safe and sanitary manner.

Section 6. Additions, Alterations or Improvements by Board of Directors  
Whenever in the judgment of the Board of Directors the Common Areas and Facilities shall require additions, alterations or improvements costing in excess of Ten Thousand Dollars (\$10,000.00) during any period of twelve (12) consecutive months, and the making of such additions, alterations or improvements shall have been approved by a majority of the voting interests of the members of the Association, the Board of Directors shall proceed with such additions, alterations or improvements and shall assess all Unit Owners for the cost thereof as a Common Expense. Any additions, alterations or improvements costing Ten Thousand Dollars (\$10,000.00) or less during any period of twelve (12) consecutive months may be made by the Board of Directors without approval of the Unit Owners and the cost thereof shall constitute a Common Expense.

Section 7. Additions, Alterations or Improvements by Unit Owners.  
No Unit Owner shall make a structural addition, alteration or improvement in or to his Unit without the prior written consent of the Board of Directors or the committee thereof in charge of architectural control. No Unit Owner shall paint or alter the exterior of his Unit, including the doors and windows, nor shall any Unit Owner paint or alter the exterior of the building, without the prior written consent of the Board of Directors. The Board of Directors shall be obligated to answer any written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement (by painting or otherwise) in such Unit Owner's unit within forty-five (45) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board of Directors to the proposed structural addition, alteration or improvement. If any application to any governmental authority for a permit to make any such structural addition, alterations or improvement in or to any Unit requires execution by the Association, and provided consent has been given by the Board of Directors, then the application shall be executed on behalf of the Association by the Board of Directors only, however, without incurring any liability on the part of the Board of Directors or any director to any contractor, subcontractor, or materialman on account of such addition, alteration or improvement, or to any person having claim for injury to person or damage to property arising therefrom. Subject to the provisions of the Declaration and the approval of any mortgagee of such affected Units, the Board of Directors and any Unit Owner affected, any Unit may be altered so as to relocate the boundaries between such Unit and adjoining Units. The Secretary shall record any necessary amendment to the Declaration to effect such action. The provisions of this Section 7 shall not apply to Units owned by the Declarant until deeds of conveyance of such Units shall have been recorded; provided, however, that Declarant's construction or alterations shall be architecturally compatible with the existing Units. The Declarant shall have the right to make such alterations without

the consent of the Board of Directors and the Board of Directors shall execute any such application required.

Section 8. Use of Units and Common Areas and Facilities.

- a) Each Unit and the Common Areas and Facilities shall be occupied and used as follows:
- (1) Units designated for residential use shall not be used for any other purposes except housing and the related common purpose for which the Property was designated.
  - (2) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance for the Property or any part thereof applicable for residential use without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which will result in the cancellation of insurance on the Property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste will be committed in the Common Areas and Facilities.
  - (3) No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof which relate to any portion of the Property shall be complied with, by and at the sole expense of the Unit Owner or the Board of Directors, whichever shall have the obligation to maintain or repair such portion of the Property, and, if the latter, then cost of such compliance shall be a Common Expense.
  - (4) Nothing shall be altered or constructed in or removed from the Common Areas and Facilities except upon the prior written consent of the Board of Directors.
  - (5) The Common Areas and Facilities shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Units.
  - (6) No trailers, campers or boats may be parked on the Property unless the Board of Directors shall designate an area within the parking areas exclusively for such purposes. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the Common Areas and Facilities.
  - (7) Each Unit Owner shall pay for utilities consumed or used in his Unit which are billed directly to such Unit through separate meters. The cost of utilities serving the Common Areas and Facilities and of utilities serving Units through meter systems other than separate meters for each Unit shall be Common Expenses.
  - (8) No Unit Owner shall place or cause or permit to be placed on or in the public halls, elevators, stairways or other Common Areas and Facilities (other than in the areas designated as storage areas) any furniture, packages or objects of any kind. The halls, elevators and stairways shall be used for no purpose other than for normal transfer.
  - (9) Ad valorem taxes on the Units and the Unit Owners' undivided interest in the Common Areas and Facilities shall be assessed and paid by the individual Unit Owners.
- b) Each Unit and the Common Areas and Facilities shall be

occupied and used in compliance with the Rules and Regulations, as they may be promulgated and amended by the Board of Directors from time to time. Copies of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner. Amendments to the Rules and Regulations shall be conspicuously posted prior to the time when the same shall become effective and copies thereof shall be furnished to each Unit Owner upon request.

Section 9. Right of Access. A Unit Owner shall grant a right of access to his Unit to the manager and/or the managing agent and/or any other person authorized by the Board of Directors, the manager or the managing agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his Unit which threatens another Unit or the Common Areas and Facilities, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Areas and Facilities, or to correct any condition which violates the provisions of any mortgage covering another Unit, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner and further provided that such right shall be exercised in such a manner as will not unreasonably interfere with the use of the Units for residential purposes. In case of an emergency, such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

#### ARTICLE VI INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association shall obtain and maintain at all times (i) insurance for all of the insurable improvements on the Property (with the exception of improvements and betterments made by the respective unit owners or occupants) against loss or damage by fire or other hazards, including extended coverage for vandalism and malicious mischief in an amount sufficient to cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard, (ii) fidelity coverage against dishonest acts on the part of the directors, officers, managers, employees or other persons handling funds belonging to or administered by the Association naming the Association as the insured and in an amount not less than one and one-half (1½) times the Association's estimated annual operating expenses and reserves, and (iii) a comprehensive public liability policy covering all Common Areas and Facilities in the Condominium and all damage or injury caused by the negligence of the Association, its officers, directors, agents, employees, all unit owners and other persons entitled to occupy any Unit or other portion of the Condominium, with cross liability endorsement to cover liability of the Unit Owners as a group to a Unit Owner and a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of other Unit Owners or the Association, which public liability policy shall be in amounts authorized from time to time by the Board of Directors not less than Five Hundred Thousand Dollars (\$500,000.00) for injury, including death, to one individual, One Million Dollars (\$1,000,000.00) for injury or injuries, including death, arising out of a single occurrence, and Fifty Thousand Dollars (\$50,000.00) property damage, including water damage liability, liability for non-owned and hired automobile, and liability for property of others. The Association shall also obtain and maintain such other insurance as may be required by applicable law or as the Board of Directors may determine to be in the best interests of the Association and the Unit Owners. Premiums for all such insurance shall be Common Expenses not specially assessed. All such insurance coverage obtained by the Association shall be written in the name of the Association as trustee for each of the Unit Owners in their respective percentage of undivided interest in and to the Common Areas and Facilities. Such insurance shall be governed by the provisions hereinafter set forth:

- a) All policies shall be written with a reputable company or companies licensed to do business in the State of North Carolina.
- b) All policies shall be for the benefit of the Association, the owners and their mortgagees as their interests may appear, and the Association shall be the named insured.
- c) Provision shall be made for the issuance of a certificate of

insurance to each Unit Owner and his mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular Unit Owner's interest in the Property.

- d) Exclusive authority to adjust losses under policies hereafter in force on the Property shall be vested in the Association; provided, however, that no mortgagee may be prohibited from participating in the settlement negotiations, if any, related thereto, and the proceeds of the insurance shall be paid to the Association for the use and benefit of the mortgagees as their interest may appear.
- e) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Unit Owners or their mortgagees.
- f) It shall be the individual responsibility of each Unit Owner at his own expense to provide, as he sees fit, title insurance on his individual unit, public liability insurance, theft and other insurance covering improvements, betterments and personal property damage and loss.
- g) Any Unit Owner who obtains an individual insurance policy shall file a copy of each such individual policy with the Association within thirty (30) days after purchase of such insurance.
- h) The Association shall conduct an annual insurance review to determine that the insurance maintained by the Association is adequate to meet the requirements of the Declaration.
- i) The Association shall make reasonable effort to secure insurance policies that will provide for the following:
  - (1) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Unit Owners and their employees, agents, tenants and invitees and of any defenses based on co-insurance or invalidity arising from the acts of the insured;
  - (2) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;
  - (3) that the policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any officer, director, agent or employee of the Association without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Unit Owner or mortgagee;
  - (4) that any "other insurance" clause in the policy exclude individual Unit Owner's policies from consideration;
  - (5) that coverage may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to any and all insureds including the institutions servicing mortgages on behalf of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and
  - (6) that coverage will not be prejudiced by either act or neglect of the owners of the Units when said act or neglect is not within the control of the Association, nor by any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control.

Section 2. Distribution of Insurance Proceeds.

Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

- a) Reconstruction or repair, as provided above,
- b) Expense of loss settlement incurred by the Trustee,
- c) Any proceeds remaining after defraying such cost shall be retained by the Association.

Section 3. Damage and Destruction.

- a) Immediately after any damage or destruction by fire or other casualty to Property covered by insurance written in the name of the Association, the Association shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before.
- b) Immediately after substantial damage or destruction by fire or other casualty to any part of the Property, the Association shall provide written notice of same to each mortgagee having an interest therein whose name and address have theretofore been furnished to the Association together with a written request for such notice.
- c) Any damage or destruction shall be repaired or reconstructed unless
  - (1) the Condominium is terminated pursuant to the provisions of the Act,
  - (2) the damaged or destroyed portion of the property is withdrawn from the Condominium pursuant to the provisions of the Act, or
  - (3) the Unit Owners of the damaged or destroyed Units, if any, together with the Unit Owners of other Units to which three-fourths (3/4) of the votes in the Association appertain, exclusive of the votes appertaining to any damaged or destroyed Units, agree not to repair or reconstruct such damage or destruction. Any such determination shall be conclusively made within a period of time which shall in no event exceed ninety (90) days after the casualty.

Should a determination be made to terminate the Condominium, or withdraw from the Condominium the damaged portion of the property or not to repair or reconstruct the damage or destruction as provided above, then such damaged or destroyed Unit shall not be repaired or reconstructed and the entire undivided interest in the Common Areas and Facilities appertaining to that Unit shall thenceforth appertain to the remaining Units, being allocated to them in proportion to their undivided interest in the Common Areas and Facilities immediately prior to such allocation; and any remaining portion of such damaged or destroyed Unit, including the land which was subjacent thereto (if originally included within the boundaries of the Unit), shall thenceforth be a part of the Common Areas and Facilities.

Votes in the Association and liability for assessments shall thereupon appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the Association and liability for assessments immediately prior to such allocation. If any damaged Common Areas and Facilities shall not be repaired or restored, then the net insurance proceeds appertaining thereto shall

be divided among the Unit Owners in accordance with their percent interest in the Common Areas and Facilities. If any damaged Unit shall not be repaired or restored, then after deducting therefrom a reasonable amount to be paid to the Association to cover the expenses of cleaning up and landscaping the area where the damaged Unit was located, the net insurance proceeds appertaining thereto shall be paid to the owner and such mortgagee jointly, who shall use such proceeds as they alone may determine.

Section 5. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, then the net proceeds shall be disbursed to defray the cost of such repairs or reconstruction as provided in Section 2 of this Article. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Association shall levy a special assessment in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Notwithstanding anything herein to the contrary, the obligation of the Association to repair or restore any damaged or destroyed property shall be limited to repairing or restoring the property to the same condition as existed immediately prior to the casualty or destruction.

## ARTICLE VII

### MORTGAGES

Section 1. Notice to Board of Directors. A Unit Owner who mortgages his Unit shall notify the Board of Directors of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the Board of Directors.

Section 2. Notice of Unpaid Common Charges or Other Default. Whenever requested in writing by a mortgagee of a Unit, the Board of Directors shall promptly report to the mortgagee any then unpaid common charges due from, or other default by, the owner of the mortgaged Unit.

## ARTICLE VIII

### RECORDS AND REPORTS

Section 1. Books and Records. The Board of Directors or the managing agent shall keep detailed records of the actions of the Board of Directors and the managing agent, minutes of the meetings of the Board of Directors, minutes of the meetings of the Unit Owners, and financial records and books of account of the Association, including a chronological listing of receipts and expenditures, as well as a separate account for each Unit which, among other things, shall contain the amount of each assessment of common charges against such Unit, the date when due, the amounts paid thereon, and the balance remaining unpaid.

Section 2. Information Available. The Association shall have available for inspection by Unit Owners and mortgagees during normal business hours (or under other reasonable circumstances) at its principal place of business, current copies of this Declaration, the Bylaws, other rules and regulations concerning the Condominium and the books, records and financial statements of the Association.

Section 3. Annual Report. Promptly after the end of each fiscal year an annual report of the receipts and expenditures of the Association shall be rendered by the Board of Directors to all Unit Owners and to all mortgagees of Units who have requested the same. The cost of such report shall be paid by the Association and charged as a Common Expense.

ARTICLE IX  
MISCELLANEOUS

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Section 1. Notices. All notices hereunder shall be sent to the Board of Directors c/o the managing agent or if there is no managing agent, to the office of the Board of Directors or to such other address as the Board of Directors may hereinafter designate from time to time by notice in writing to all Unit Owners. All notices to any Unit Owner shall be sent to the address of his Unit or to such other address as may have been designated by him, in writing, to the Secretary of the Association. All notices to mortgagees of Units shall be sent to their respective addresses, as designated by them, in writing, to the Board of Directors. All notices shall be deemed to have been given when mailed, except notices of change of address which shall be deemed to have been given when received.

Section 2. Invalidity. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of the Bylaws.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provisions thereof.

Section 4. Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

ARTICLE X  
AMENDMENTS TO BYLAWS

Amendments to these Bylaws shall be proposed and adopted in the following manner:

Section 1. Amendments to these Bylaws may be proposed by the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by a meeting or petition of members of the Association who together hold a majority of the votes in the Association.

Section 2. Upon any amendment to these Bylaws being proposed by said Board of Directors or members, such proposed amendment shall be transmitted to the President of the Association, or, in the absence of the President, any other officer of the Association, who shall thereupon call a Special Joint Meeting of the Board of Directors of the Association and the membership of the Association to be held not sooner than twenty (20) days or later than sixty (60) days from receipt by such officer of the proposed amendment and it shall be the duty of the Secretary to give to each member written notice of such meeting in the same form and in the same manner as required for notice of a special meeting of the members as set forth herein.

Section 3. In order for such amendment to become effective, it must be approved by an affirmative vote of a majority of the entire membership of the Board of Directors and by an affirmative vote of the members who together hold at least two-thirds (2/3) of the votes of the Association. Thereupon, such amendment or amendments to these Bylaws shall be transcribed, set forth in an Amended Declaration, certified by the Secretary of the Association, and a copy thereof shall be recorded in the Wake County Public Registry, North Carolina, within twenty (20) days from the date on which any amendment has been approved by the Directors and members. No amendment shall become effective until it is duly recorded.

Section 4. Upon the approval and proper recording of any amendment, it shall become binding upon all Unit Owners.

Section 5. At any meeting held to consider any amendment to the Bylaws, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.



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Section 6. Notwithstanding the foregoing provisions of this Article X, no amendment to these Bylaws which shall abridge, amend or alter the right of the Developer to designate and select members of each Board of Directors of the Association, as provided in Article III hereof and in Section 9.01 of the Declaration, may be adopted or become effective without the prior written consent of the Developer. In addition, no amendment shall be made without the written consent of the Declarant so long as the Declarant is the owner of Units which together constitute more than ten percent (10%) of the votes of the Association.

Section 7. Notwithstanding anything to the contrary herein contained, no provision of these Bylaws relating to the use of the Units may be amended without the consent of every Unit Owner affected by such amendment.

ARTICLE IX  
CONFLICTS

These Bylaws are set forth to comply with the requirements of the Act and the Declaration. In case any of these Bylaws conflict with the provisions of the Act or of the Declaration, the provisions of the Act or of the Declaration, as the case may be, shall control.

The foregoing were adopted as Bylaws of Westgrove Towers Association at the first meeting of the Board of Directors on the 6<sup>th</sup> day of March, 1986.

WESTGROVE TOWER ASSOCIATION

By: Jennifer L. Ward  
VICE-President

ATTEST:

Alfred P. Carlton Jr.  
Asst. Secretary



NORTH CAROLINA  
COUNTY OF WAKE

I, Janice P. Keziah, a Notary Public for said County and State certify that Alfred P. Carlton, Jr., personally came before me this day, and being by me duly sworn, acknowledged that he is Assistant Secretary of Westgrove Tower Association, Inc., and that by authority duly given and as the act of corporation, the foregoing instrument was signed in its name by its Assistant Secretary, sealed with its corporate seal, and attested by himself as its Assistant Secretary.

Witness my hand and official seal, this the 6<sup>th</sup> day of March, 1986.

(Official Seal) JANICE P. KEZIAH  
NOTARY PUBLIC  
WAKE COUNTY, N. C.  
My Commission Expires 12-4-89

Janice P. Keziah  
Notary Public

My Commission Expires: 12/4/89

NORTH CAROLINA - WAKE COUNTY

The foregoing certificate \_\_\_\_\_ of \_\_\_\_\_  
Janice P. Keziah  
\_\_\_\_\_  
Notary(y)(ies) 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: Joseph B. Johnson  
Deputy Register of Deeds