

*******DRC WORKING DRAFT*******

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR WESTCHASE

DRC Proposed CCR Introduction (C Hargreaves):

~~The CC&Rs are the declaration of covenants conditions and restrictions of a community. They outline property use restrictions, maintenance obligations, rule enforcement mechanisms, dispute resolution methods, assessment obligations, insurance requirements, and lender protection. Many HOA covenants and restrictions impose architectural guidelines on homeowners. These guidelines might limit fence height or dictate the exterior paint colors homeowners can use. Apart from architectural standards, the HOA CC&R might also include use restrictions such as pet and rental restrictions.~~

~~While the CC&Rs may seem restrictive to some, they exist to aid every HOA's goal: to preserve or enhance the community's property values. This is because neighborhoods with a semi-uniform outward appearance are typically more pleasing to the eye. They attract more buyers, which in turn, raises home prices.~~

- **Attorney Comment:** We do not recommend inclusion of introductory language within this document. This document should contain only covenants, conditions and restrictions. If you want to explain the purpose of the Declaration, the Board can place an explanation on the governing documents page on the website. Also discussing what many HOA covenants do may be misleading. Any explanation of the covenants should not discuss other HOAs or possible areas for restriction. We also recommend that your governing documents avoid referencing or claiming that certain requirements are pleasing to the eye or left to the preference or aesthetic judgment of a governing body. If the DRC, Board and VMs feel an introduction is absolutely necessary within this document itself, we recommend something more straight forward such as:

This document contains covenants, conditions, and restrictions that govern all property within the Westchase Community, including provisions that establish property rights and limitations, maintenance obligations, assessment obligations, insurance requirements, and other governing provisions. Westchase Community Association, Inc. and all Owners, tenants, guests and invitees are obligated to comply with the provisions herein.

- **Attorney comment regarding voting thresholds:** Proposed amendments to voting thresholds have been made by the DRC throughout the CCR and Bylaws to establish more uniform voting thresholds and to reduce thresholds for amendment that are currently set at

75%.

- A 75% threshold for amendments is fairly high.
- F.S. 720.306(1)(b) sets the default threshold at two-thirds of the voting interests, unless otherwise provided by the governing documents or required by law.
- For condominiums, Chapter 718, provides that no declaration recorded after April 1, 1992 may require more than **four-fifths (80 %)** of the voting interests to approve an amendment. (Chapter 718 is not binding on HOAs but may be considered when determining what a reasonable threshold should be.)
- When clients have difficulty obtaining quorum or reaching voting thresholds for amendment, we generally recommend they consider making the threshold two-thirds of the members present at a duly noticed meeting at which quorum has been obtained. (However, Quorum is less of a problem for Westchase due to the VM format for voting.)
- While the decision on voting thresholds should be left to the Association, the goal should be to set the threshold high enough to ensure that a minority of members cannot amend the governing documents where the amendments may not be favored by the majority of members while simultaneously ensuring the threshold is low enough that the Association is able to make amendments when needed.

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Exhibit A Bylaws

Exhibit B Articles of Incorporation

Exhibit C Land submitted to Declaration

Exhibit D Land Subject to Annexation

- **Attorney Comment:** Order of exhibits can be changed, but identification of land subjected to declaration cannot be removed. You need a legal description so the CCR

continues to encumber the property and is enforceable against subsequent purchasers.

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II. PROPERTY RIGHTS

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15. Drainage and Septic Systems
16. Tree Removal and Landscaping
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20. Lighting
21. Artificial Vegetation, Exterior Sculptures, and Similar Items
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30. Laws and Ordinances

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[Attorney Comment: This section also addresses INSGs.](#)

XIII. GENERAL PROVISIONS

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GENERAL COMMENTS

- **DRC Comment:** Review the many variations of approval thresholds for consistency - 67%, 75% of votes, 75% of ownership interests, etc. ERIC TO CREATE COMP TABLE
 - **Attorney Response:** Done.
- **DRC Comment:** Delete all references to West Park Village and put the exceptions in a separate Document. TO BE DEFINED AND ADDRESSED
 - **Attorney Response:** You cannot subject all lots within WPV to a separate Declaration governing only WPV lots without 100% approval. You could move relevant language to a new article, section, or exhibit within the same document. However, we are unsure how this would resolve any concern.
- **DRC Comment: Should exhibits be included in the CCR, especially Exhibit A and B?**
 - **Attorney Response:** Exhibits are part of the Governing Documents (See FS 720.301(8)) and should be included with any amended and restated declaration. While technically you could record the Articles of Incorporation and Bylaws separately and not make them exhibits to the Declaration, the Bylaws and Articles must be recorded. See F.S. 720.303(1) which states “After October 1, 1995, ... the initial governing documents must be recorded in the official records of the county in which the community is located.”
 - Most developers make the Articles and Bylaws exhibits to the Declaration so they can be located easily and so that restrictions or covenants therein are preserved against expiration at the same time you preserve the Declaration. We do not recommend removing the exhibits although you could revise any language referencing the Exhibits which is confusing.
 - Right now you have 4 exhibits.
 - Exhibit A Land submitted to Declaration
 - Exhibit B Land Subject to Annexation
 - Exhibit C Articles of Incorporation
 - Exhibit D Bylaws
 - The Legal description in exhibit A is absolutely necessary in order to identify the land that is governed by the Declaration. Without a legal description, the Declaration would not be binding on the properties.

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR WESTCHASE

Article I.

Definitions

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, that by the terms of this Declaration or by contract or agreement with any Neighborhood become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public rights-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 2. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Westchase Community Association, Inc., attached hereto as Exhibit "CB" as filed with the Secretary of State of the State of Florida.

Section 3. "Association" shall mean and refer to Westchase Community Association, Inc., a Florida not-for-profit corporation, its successors or assigns. The use of the term "association" or "associations" in lowercase shall refer to any condominium association or other owners association having jurisdiction over any part of the Properties.

Section 4. "Board of Directors" or "Board" shall mean and refer to the elected body responsible for management and operation of the Association and having its normal meaning under Florida corporate law.

Section 5. "Bylaws" shall mean and refer to the Bylaws of Westchase Community Association, Inc., attached hereto as Exhibit "DA" and incorporated herein by reference, as they may be amended from time to time.

Section 6. "Capital Contribution" shall mean and refer to that payment made by purchaser of Unit paid at closing to the Association as a contribution to working capital of the Association, subject to exceptions described in the Declaration.

Section 7. "Common Area" shall be an inclusive term referring to all General Common Area and all Exclusive Common Area.

Section 8. "Common Assessment" shall mean and refer to any assessment levied against all Units in the Properties to fund Common Expenses.

Section 9. "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Unit Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association.

Section 10. "Community Development District" or "CDD" shall mean and refer to a local unit of special-purpose government that has been or may be created in accordance with Chapter 190 of the Florida Statutes to provide certain community services to the area in which the Properties are located.

Section 11. "Communitywide Restrictions" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such restrictions may be amplified by guidelines as provided in this Declaration.

Section 12. "Declarant" shall mean and refer to Westchase Associates, a Florida general partnership, its successors and assigns.

Section 13. "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Westchase, as amended hereafter from time to time.

Section 14. "Electric Utility Transmission Easement" shall mean and refer to that easement reserved to Tampa Electric Company and its successors and assigns as provided in this Declaration.

Section 15. "Exclusive Common Area" shall mean and refer to certain portions of the Common Area that are for the exclusive use and benefit of one or more, but less than all, Neighborhoods, as more particularly described in this Declaration.

Section 16. "General Common Area" shall mean all real and personal property that the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners.

Section 17. "Master Land Use Plan" shall mean and refer to the plan for the development of the ~~property described in Exhibit "A"~~, "Properties", defined below, prepared by Heidt & Associates and dated July 9, 1990, as it may be amended from time to time.

- **Attorney Comment:** Without revision, this section suggests exhibit A could be the Master Land Use Plan rather than the legal description of property that is subject to the Declaration. We suggest amendment to clarify.

Section 18. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 19. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

Section 20. "Neighborhood" shall mean and refer to each separately developed and denominated residential area comprised of one (1) or more housing types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have common interests other than those common to all Association Members, such as a common theme, entry feature, development name, and/or common areas and facilities that are not available for use by all Association Members. For example, and by way of illustration and not limitation, each condominium, townhome development, cluster home development, and single-family detached housing development may constitute a separate Neighborhood. In addition, each parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one (1) Neighborhood in accordance with this Declaration.

Where the context permits or requires, the term "Neighborhood" shall also refer to the Neighborhood Committee (established in accordance with the Bylaws) or Neighborhood Association having jurisdiction over the property within the Neighborhood. It shall not be

necessary for any Neighborhood to be governed by an additional owners' association except in the case of a condominium or otherwise as required by law. Neighborhoods may be divided or combined in accordance with this Declaration.

Section 21. "Neighborhood Assessments" shall mean assessments levied against the Units in one or more particular Neighborhoods to fund Neighborhood Expenses, as more particularly described in this Declaration.

Section 22. "Neighborhood Association" shall mean any condominium association or other owners association, other than Westchase Community Association, Inc., having jurisdiction over any part of the Properties.

Section 23. "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of Owners of Units within one (1) or more particular Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein.

Section 24. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Unit that is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

- **DRC inquiry:** What is our process to verify true ownership, if any? Let's place the responsibility on the owner to provide written notice that they are the new owner, including any change of address, etc.
- **Attorney Response** – Typically, a prospective purchaser or a bank that has, or is about to take title, will reach out to the Association's manager to obtain an estoppel certificate which will trigger the manager to follow up on the date of closing/foreclosure to determine who the new owner is and to update the records. If an owner obtains title without notifying the Association, the new owner is still bound by the Declaration, but notices may be sent to the wrong address. We recommend the governing documents make the owner responsible for providing an updated mailing address.
 - We do not recommend that the governing documents impose any requirement on the Association to investigate ownership or require proof of ownership before voting. While it is good practice for the manager to check the mailing address on the Property Appraiser's website before mailing a notice of late assessment or violation letter, this practice should not be mandated in the Declaration. We do not recommend imposing administrative burdens on the Association that are not legally required. Such practices can create defenses to enforcement. Further, there is case law (which we can pull and provide upon request) suggesting that an Association cannot require unit owner ID or impose other prerequisites to voting.
 - If the Association is very concerned that an unauthorized person will cast the vote for a corporate or entity owner or for a property owned by more than one person, you can amend the governing documents to require voting certificates. Such certificates are typically signed by all owners or authorized corporate representatives. They specify

who is entitled to vote until the certificate is revoked. However, if an association does not consistently enforce the requirement for voting certificates, an election where the certificates are suddenly required will be found invalid. We do not recommend imposing a requirement for voting certificates because this places an added administrative burden on the Association and in our experience, provides little, if any, benefit.

Section 25. "Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee, or any other legal entity with legal capacity to own real property under Florida law.

Section 26. "Properties" shall mean and refer to the real property described in Exhibit "AC" attached hereto, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration.

Section 27. "Special Assessment" shall mean and refer to any assessment levied in accordance with Article X Section 4 of this Declaration.

Section 28. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration that subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein or designated as specified in this Declaration. The term shall also refer to the instrument recorded by the Association pursuant to this Declaration to subject additional property to this Declaration.

Section 29. "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) condominium units, townhouse units, cluster homes, patio homes, ~~or~~ zero-lot-line homes, and single-family attached or detached houses on separately platted lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties. The term shall include all portions of the lot owned as well as any structure thereon.

In the case of an apartment building or other structure that contains multiple dwellings, each dwelling shall be deemed to be a separate Unit. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Land Use Plan until such time as a certificate of occupancy is issued on all or a portion thereof by the local governmental entity having jurisdiction. After issuance of a certificate of occupancy on any portion thereof, each dwelling in the portion designated in the certificate of occupancy shall constitute a separate Unit. And the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

- **DRC Comment:** Zero lot line homes? Add more specific definition.

- **Attorney Response:** The important part of this definition is that the unit is “intended for development, use, and occupancy as an attached or detached residence for a single family”. Cluster homes, patio homes and single-family homes are types of homes that would fall within the more encompassing phrase “single family attached or detached houses on separately platted lots.” Unless you are going to impose separate restrictions on cluster homes, patio homes or zero-lot line homes, I don’t see a need to define any of those terms further. If you nonetheless want to define zero-lot-line homes consider draft of Section 34, added below.

Section 30. "Voting Member" shall mean and refer to the representative ~~selected~~ chosen by the Members of each Neighborhood to ~~be responsible for casting all cast votes on behalf of the attributable to Units in the that Neighborhood, including, but not limited to, votes regarding~~ for election of directors, amending this Declaration or the Bylaws, and all other matters provided for in this Declaration and in the Bylaws. The process of choosing the Voting Member from each Neighborhood shall be determined as is provided herein. The term "Voting Member" shall, as the context requires, apply to an alternate Voting Member.

- **DRC Comment:** Proposed Section 30 Definition (C Hargreaves):
"Voting Member" refers to the representative chosen by the Members of each Neighborhood to cast votes on behalf of the Units in that Neighborhood. This includes votes for electing directors, making amendments to this Declaration or the Bylaws, and any other matters outlined in this Declaration and the Bylaws. The process for selecting the Voting Member from each Neighborhood is described here. Additionally, the term "Voting Member" may also apply to an alternate Voting Member when relevant.
- **Attorney Comment:** Done.

Section 31. "Westchase Country Golf Club" shall mean the properties adjacent to or within the Properties that are privately owned by Westchase Associates or any of their affiliates, their successors, successors-in-title, or assigns, which are operated as clubs with recreational facilities which may include a golf course, a clubhouse, pools, tennis courts and all related and supporting facilities and improvements.

- **DRC Comment:** Change language to Westchase Golf Club throughout entire document
- **Attorney Comment:** Done.

Section 32. "West Park Village" shall refer to that portion of the Properties so designated in the Supplemental Declarations for Arlington Park, Classic Townhomes at West Park Village, single-family homes at West Park Village, Townhomes at West Park Village, Traditional Townhomes at West Park Village, Village Green at West Park Village, Villas at West Park Village, ~~and~~ Worthington at West Park Village, Reserve at West Park Village, and Westchase Station Townhomes, subjecting ~~it~~ such property to the terms of this Declaration.

- **DRC Comment:** Remove Section 32 due to detachment of WPV from CCR/Bylaw language – stand alone references from now on

- **Attorney Response:** We do not recommend removing this definition. This declaration imposes additional requirements for approval of INSGs in West Park Village and among other things, contains exceptions for street parking, business uses, and leasing of garage units in West Park Village. The definition of West Park Village is necessary for clarity. You cannot remove all references to West Park Village from this Declaration in simply put those references, and exception to the Declaration in a different document (such as in the Guidelines). The Declaration would take priority. Moreover, we cannot tell the members of West Park Village to adopt their own declaration or other document governing the neighborhoods that are part of West Park Village because such document would require 100% approval of unit owners. If there is some reason you find it confusing to have exceptions or provisions specifically referencing West Park Village throughout this Declaration, we can add an Article addressing West Park Village exceptions and restrictions put all the exceptions and special restrictions there. However, we don't believe this will add much clarity and may require the West Park Village Article to be somewhat repetitious and contain references to various other Articles and Sections.

Section 33. "Westchase Master Residential Guidelines" or "Master Guidelines" shall mean and refer to Master Guidelines promulgated by the Voting Members to assist Owners or the Modifications Committee in the application of this Declaration. Master Guidelines are approved to cover all Units within Westchase, unless a guideline that is limited to the applicable Neighborhood or Section imposes a different requirement.

- **DRC Comment REVISE ALL "GUIDELINES" LANGUAGE TO "WESTCHASE MASTER RESIDENTIAL GUIDELINES"**

- **Attorney response:** The term "Westchase Residential Guidelines" or "Guidelines" was previously used to refer to both INSGs and guidelines approved to apply to all neighborhoods. The DRC requested separate terminology and separate documents in order to distinguish Master Guidelines from INSGs. However, we cannot simply add "Master" before each reference to "Guidelines" because that method would exclude INSGs from various provisions that were intended to apply to both "Master Guidelines" and INSGs. Consequently, we have reviewed all references to "Guidelines" and revised to reference both "Master Guidelines and INSGs" where appropriate.

Section 34. "Zero-Lot-Line Home" shall mean a residential property where one or more walls of the structure are positioned directly on or within three (3) feet of the property boundary.

Article II.

Property Rights

Section 1. General. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) this Declaration as it may be amended from time to time and any restrictions or limitations contained in any deed conveying such property to the Association;

(b) the right of the Association to limit the number of guests and to adopt rules regulating the use and enjoyment of the Common Area;

(c) the right of the Association to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent to the extent permitted by law, ~~and (ii) for any period during which the Unit or Owner remains in a period not to exceed ninety (90) days for a single violation or for a longer period in the case of any continuing violation of the Declaration, Bylaws, or rules of the Association; and (iii) for a reasonable period of time due to a single violation the Declaration, Bylaws, or rules of the Association, all~~ after notice and a hearing pursuant to the Bylaws;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area pursuant to this Declaration;

(e) the right of the Association to impose reasonable membership requirements, as determined by a majority of the Board of Directors of the Association, and charge reasonable admission or other fees, as determined by a majority of the Board of Directors of the Association, for the use of any recreational facility situated upon the Common Area;

- **DRC Comment: SLK INQUIRY “...impose reasonable membership requirements and charge reasonable admission...” Who defines reasonable? TOO LOOSE?**
- **Attorney Comment:** “Reasonable” is a standard imposed by the law in many instances and it may be difficult to further elaborate. The standard is typically what an ordinarily prudent person in similar circumstances would find to be reasonable. There is already a requirement in case law that rules adopted by the board be reasonable. We do not think you need to elaborate on the concept of reasonable in this document.

(f) the right of the Association to permit nonmember and nonresident member use of any recreational facility situated on the Common Area upon payment of use fees established by the Board;

(g) the right of the Association to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred subject to the approval requirements set forth in this Declaration; and

(h) the rights of certain Owners to the exclusive use of portions of the Common Areas, designated Exclusive Common Areas, as more particularly described in this Declaration.

Any Owner may delegate his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee.

Section 2. Exclusive Common Areas. Certain portions of the Common Areas may be designated as Exclusive Common Areas and reserved for the exclusive use of Owners and occupants of Units within one (1) or more particular Neighborhoods. All costs associated with maintenance, repair, replacement and insurance of Exclusive Common Areas shall be assessed against the Owners of Units in only those Neighborhoods that are benefited thereby as a Neighborhood Assessment, as defined herein. By way of illustration and not limitation, Exclusive Common Areas may include recreational facilities intended for the exclusive use of Owners within one (1) or more particular Neighborhoods and supported exclusively by Neighborhood Assessments.

Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed conveying the Common Area to the Association or on the plat of survey relating to such Common Area. A portion of the Common Area may be assigned as the Exclusive Common Area of one (1) or more particular Neighborhoods and Exclusive Common Areas may be reassigned upon the vote of a majority of the total Association vote and a majority of the votes within the Neighborhood(s) affected, including those to which the Exclusive Common Areas are assigned, if applicable, and those to which the Exclusive Common Areas are to be assigned.

- **DRC INQUIRY - Exclusive Common Areas.** This section is very confusing. DOES THIS EXIST – EXAMPLES?
- **Attorney Response** – The purpose of this section is to allow areas that are designated for use and maintenance by a subset of owners or by one or more Neighborhoods and allocate the costs only to the Owners or Neighborhoods who benefit. Because the Declaration allows Exclusive Common Areas to be identified in deeds and plats, we would need to review multiple extraneous documents to determine whether and where Exclusive Common Areas are currently located in Westchase. The only areas that come to mind readily are features in Glenclyff Neighborhood (perhaps an entryway area) for which the neighborhood created a separate budget with reserves. Glenclyff owners pay WCA a separate Neighborhood Assessment. We do not recommend removing this provision. It gives the Association flexibility to allocate costs of maintenance to specific Neighborhoods that benefit from certain areas and it provides a mechanism for reassigning those use rights and expenses, if for example, one Neighborhood wanted to share its amenities. This is much like a limited common element in a condominium where the Association maintains a balcony or parking space but only one unit has the right to use the space and the association's declaration allocates maintenance costs to the benefited owner.

Section 3. Westchase Country Golf Club. Access to the Westchase Country Golf Club is strictly subject to the terms, conditions, rules, and procedures established by the respective owner(s) of the Westchase Country Golf Club, as more particularly described in this Declaration. No Owner or occupant gains any right to enter or to use those facilities by virtue of ownership or occupancy of a Unit. The Association may but shall not be obligated to contract with the owner of the Westchase Country Golf Club for the right of all Owners to enter and use part or all of the facilities of such Westchase Country Golf Club and assess the cost thereof as a Common Expense.

- **SLK INQUIRY – CAN WE DELETE THIS SECTION 3 ALTOGETHER?** Westchase Country Club. Whatever this is, we should find a new name. We all know what a Country Club and there is nothing in Westchase that meets that definition. Or, the Westchase Golf Course could change it's name to the Westchase Country Club.
- **Attorney Response** - We understand the golf course (and any club buildings associated therewith) are privately owned. If the owner refers to the area as a Country Club, then we do not recommend changing this. Notwithstanding we revised to "Golf Club" per your request. We don't recommend deleting because this provision makes clear that Ownership in WCA does not mean residents are entitled to entry into the Golf Course. But, nonetheless, authorizes the WCA to enter into an agreement with the Golf Course, if it chooses to do so.

Article III.

Membership and Voting Rights

Section 1. Membership. Every Owner shall be deemed to have a membership in the Association. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit owned. In the event that the Owner of a Unit is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member, subject to the provisions of this Declaration and the Bylaws. ~~The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Association secretary, subject to the provisions of this Declaration and the Bylaws.~~ Single family Unit votes shall equal one (1.00) vote. Unless otherwise specified in this Declaration or the Bylaws, the vote for each Unit shall be exercised by the Voting Member representing the Neighborhood of which the Unit is a part.

- **DRC INQUIRY - Is this struck language or not?**
- **Attorney Response** - Yes, this was stricken in the August 2022 amendments. It will be deleted out of the final version but is left here in order to respond to DRC Inquiry.

(a) In the event that the Owner of a Unit is more than one (1) person, any person holding an ownership interest shall be deemed to have authority (1) to exercise membership rights, (2) to vote on behalf of the Unit for any matter requiring a membership vote or referendum, (3) to run for election to the Board of Directors, (4) to run for election to a Voting Member position, and (5) to execute ballots, proxies, waivers and consents. However, if more than one Owner attempts to execute ballots, proxies or consents on behalf of the same Unit and said Owners disagree on how to vote, the Association shall discard such ballots, proxies and consents for those owners as invalid.

(b) In the case of an Owner that is a corporation, partnership, limited liability company, trust, or other legal entity, the chair of the board, an officer, director, managing member or trustee shall be deemed ~~by the Owner entity~~ to have authority (1) to exercise the Owner entity's membership rights, (2) to vote on behalf of the Owner entity, (3) to run for election to the Board of Directors, (4) to run for election to a Voting Member position, and (5) to execute ballots proxies, waivers and consents, unless, before a vote is taken or a waiver or consent is acted upon, it appears ~~pursuant to the Bylaws of the Owner entity~~ or pursuant to a

resolution or other written document provided to the Association, that such authority does not exist or is vested in some other person. In the absence of such written documentation being provided to the Association, a person executing any ballots, proxies, waivers, or consents who affirms that he or she is an authorized agent of an Owner entity shall be deemed to be qualified, and fully authorized by the Owner entity. The Association shall not be required to investigate or verify such authority. However, if more than one person attempts to execute ballots, proxies or consents on behalf of the same Unit and the Association does not have written documentation of authority sufficient, in the sole discretion of the Association, to determine which person is the authorized agent of an Owner entity, the Association shall discard such ballots, proxies, and consents as invalid.

- **DRC Comment: SLK INQUIRY – IS THERE NO DUE DILIGENCE THAT CAN BE EXPECTED to ensure the buyer is the owner (i.e. guard against title fraud)?**
- **Attorney Response:** As noted above, we do not recommend you impose requirements on the Association to investigate or verify ownership and authority to vote. The onus should be placed on the owner to address any allegations of fraud, misrepresentation or lack of authority. Even if the Association were inclined to expend the resources necessary to investigate authorization for each voter, the Association may not have the tools, contact information, or resources available that would be necessary to identify or expose title fraud. Moreover, litigation may be necessary, at times, to resolve title disputes and the Association may not have standing to institute the necessary litigation.

(c) A grantor of a trust or a beneficiary of a trust shall be deemed a member of the Association and eligible to serve as a director of the Association, provided that said beneficiary occupies the unit.

Section 2. Neighborhoods. Every Unit shall be located within a Neighborhood. The Units within a particular Neighborhood may be subject to additional covenants, and/or the Unit Owners may all be members of another owners' association ("Neighborhood Association") in addition to the Association, but no such Neighborhood Association shall be required except in the case of a condominium or otherwise as required by law.

(a) Neighborhood Designations. The following Neighborhoods/Neighborhood Associations exist and shall be represented by a single Voting Member.

- 1) Abbotsford
- 2) Arlington Park
- 3) Bennington
- 4) Berkely Square
- 5) Brentford
- 6) Bridges (Baybridge, Sturbridge, and Wakebridge)
- 7) Castleford
- 8) Chelmsford
- 9) Classic Townhomes of West Park Village
- 10) Enclave
- 11) Glenclyff

- 12) Glenfield
- 13) Greens (Greencrest, Greenhedges, Greenmont, Greenpoint and Greenspring)
- 14) Harbor Links (Harbor Links and The Estates)
- 15) Keswick Forest
- 16) Kingsford
- 17) Radcliffe
- 18) Reserve at West Park Village
- 19) Saville Row
- 20) Shires (Ayshire, Cheshire, Derbyshire)
- 21) Stamford
- 22) Stockbridge
- 23) Stonebridge Villas
- 24) Townhomes of West Park Village
- 25) Traditional Townhomes
- 26) Village Green
- 27) Villas of West Park Village
- 28) Villas of Woodbridge
- 29) Vineyards
- 30) Single Family Homes of West Park Village
- ~~31) Woodbay~~ 31) Westchase Station Townhomes
- ~~32) Worthington~~ 32) Woodbay
- ~~33) Wyeliff~~ Worthington
- 34) Wyeliff

- **DRC Comment:** SEE SLK REVISIONS
- **Attorney Comment:** Updated.

- (b) Neighborhood Meetings. Except as otherwise provided herein, for any Neighborhood that does not have a Neighborhood Association, a quorum of the Owners of Units in the Neighborhood shall be required in order to conduct business at any Neighborhood meeting. For purposes of this section a quorum is defined as thirty percent (30%) of the Owners of Units in the Neighborhood, represented in person or by proxy. If a quorum is not reached, the meeting may be rescheduled.
- (c) Additional Services. Each Neighborhood, upon the affirmative vote, written consent, or a combination thereof, of a majority of Owners within the Neighborhood, may request that the Association provide a higher level of service or special services for the benefit of Units in that Neighborhood. Upon the approval of such request by the Board of Directors, the Association shall provide such services and the cost of such services shall be assessed against the Units in that Neighborhood as a Neighborhood Assessment pursuant to this Declaration.

- **DRC Comment:** IS (C) EVEN RELEVANT – CAN IT BE REMOVED? EXAMPLES?
- **Attorney Response:** We do not recommend removal. This provision allows Neighborhoods without Neighborhood Associations the flexibility to request extra services. As noted above, Glencliff Neighborhood utilizes this section to request special services and adopt its

own budget. Also, this was raised in a recent VM meeting where counsel advised the Chelmsford VM that additional services of a security guard or off-duty police officer could be requested by the Neighborhood to deter crime if the Neighborhood votes and agrees to pay for this expense.

- (d) Subdividing/Combining Neighborhoods. Upon a petition signed by a majority of the Unit Owners in the Neighborhood, the Neighborhood may apply to divide the property of the Neighborhood into two (2) or more Neighborhoods. Upon a petition signed by a majority of the Unit Owners in each of two (2) or more Neighborhoods, the affected Neighborhoods may apply to combine two (2) or more Neighborhoods into one (1) Neighborhood. Any such application shall be in writing and shall include a plat or survey of the entire parcel that indicates the boundaries of the proposed Neighborhood or Neighborhoods or otherwise identifies the Units within the proposed Neighborhood or Neighborhoods. A Neighborhood consolidation or division shall be subject to approval by the affirmative vote ~~or written consent, or any combination thereof,~~ of Voting Members representing sixty-six percent (606%) of the votes of the Association. The Voting Members may deny an application upon any reasonable grounds, which may include, a determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect. If the Voting Members approve any petition to divide or combine Neighborhood(s), this Declaration shall be amended, without a referendum to the Members, and the Board of Directors may sign and record a certificate of amendment to reflect the new Neighborhood(s) without further vote of the Owners or Voting Members.

Section 3. Voting.

(a) A Neighborhood's Voting Member shall cast all votes attributable to Units in the Neighborhood on all Association matters requiring membership vote, unless otherwise specified in this Declaration or the Bylaws. In the absence of the Voting Member, the Neighborhood's alternate Voting Member may cast all votes attributable to Units in the Neighborhood on all Association matters requiring membership vote. ~~Votes cast by a written consent, when permitted, may not be changed without the consent of the Voting Member who submitted the written consent.~~ The Voting Member may cast all such votes as he or she, in his or her discretion, deems appropriate, except as set forth in Article III, Section 3(b), below.

~~(b), provided, however, that~~ p~~Prior~~ to any vote on the imposition of a Special Assessment, ~~in accordance with this Declaration, against all members under Article X, Section 4(a) or on an amendment to this Declaration or the Bylaws that requires approval by the Voting Members on behalf of the Members, the Association shall cause to be delivered to all Members of the Association a referendum upon which they may indicate their vote on these matters. All such referenda must be returned to the Association before the scheduled vote. Voting Members shall cast the votes as directed by the referendum. The votes of those Members not responding to the referendum shall be cast by the Voting Member at his or her sole discretion.~~ In the absence of the

Voting Member and alternate Voting Member for a Neighborhood, all votes actually cast by Owners of units in that Neighborhood shall be cast by the President of the Association.

~~(c) Notwithstanding the foregoing, Each Voting Member shall cast only one (1) equal vote for the election or removal of directors from the Board of Directors. Notwithstanding the foregoing, in the absence of the Voting Member and alternate Voting Member for a Neighborhood, all votes actually cast by Owners of units in that Neighborhood shall be cast by the President of the Association.~~

- **DRC INQUIRY** - How do we revise to avoid a Board member voting for their own election or removal? CAN WE REQUIRE THAT A BOARD MEMBER RECUSE FOR ANY SELF/CONFLICT OF INTEREST SCENARIO?
- **Attorney Response:**
 - We do not recommend you prohibit a Board Member (who is also a VM) from participating in a vote for their own election or removal and we do not recommend discounting any vote that person might cast when calculating the majority. Under FS 720.303(10) removing a director requires approval of a majority of the total voting interest. The director subject to removal is not prevented from voting or removed from the total voting interest for purposes of determining a majority. We see no reason to prevent the director from voting (assuming he or she is also a VM) in Westchase. Requiring recusal or discounting such person's vote when calculating a majority would essentially disenfranchise the Members in that person's Neighborhood.
 - There are statutory procedures for addressing conflicts of interest in other scenarios (See FS 720.3033), but those conflict procedures do not apply to elections or recalls.
 - We also do not recommend requiring a referendum to the membership for special assessments as this could create an impediment in a situation where the Association needs a quick influx of funds. However, if you are going to require it, we recommend it be limited to assessments against the entire membership. Article X, Section 4(b) also allows assessments against a single member or neighborhood to cover abatement costs.
- **DRC:** This should be broken up into 3 parts
 - Voting Member shall cast all votes...
 - Voting for special assessment...
 - Voting for election or removal of directors.
- **Attorney Response:** We revised per your request.

Section 4. Selecting/Electing Voting Members. Voting Members shall be selected or elected to represent the interests of Owners of Units in such Neighborhood as follows:

- (a) Eligibility. The Voting Member for a Neighborhood and any alternate Voting Members shall be Owners or the spouses of Owners of a lot within the Neighborhood. In the case of an Owner that is a corporation, limited liability company, partnership, or other legal entity, or in the case of a unit held in trust, the person eligible to serve as Voting Member shall be as set forth in Article III, Section 1 above.

(b) Selecting Voting Member in Neighborhood Associations. In Neighborhoods with Neighborhood Associations, the Board of Directors for the Neighborhood Association shall designate the Voting Member for such Neighborhood and may also designate one or more alternate Voting Members. The Voting Member and alternate(s) designated by the board of directors for a Neighborhood Association shall serve at the pleasure of the board of directors for that Neighborhood Association and may be recalled by the board of directors for that Neighborhood Association at any time. In selecting the Voting Member and one or more alternate Voting Members, the Neighborhood Association must submit to the Association a copy of the meeting minutes at which the vote to appoint the Voting Member and/or alternate Voting Member(s) was made or a copy of the resolution appointing the Voting Member and/or alternate Voting Member(s) prior to the Voting Member meeting at which such Voting Member or alternate Voting Member will be seated.

- What documentation is required to make such designation(s) official - meeting minutes? CREATE AN OFFICIAL FORM OR REQUIRE A COPY OF THE SUB ASSOCIATION MINUTES IN ORDER TO AFFIRM THEIR VM DESIGNATION.
- **Attorney Response** – Formal documentation is not required. However, meeting minutes or a signed resolution are typically sufficient evidence of association action. You can add the requirement for proof but it is not legally required and we don't think you need it to be in your CCRs.

(c) Electing Voting Members in Neighborhoods without Neighborhood Associations. Any Neighborhood that does not have a Neighborhood Association shall hold an election to determine their Voting Member once every two years, within the three-month period beginning on December 1 and ending on February 28.

- 1) ~~Not less~~ No later than sixty (60) days prior to the election, the Association shall publish notice in the World of Westchase Magazine and on the Association's website of the date of the Voting Member election. Such notice shall invite eligible Owners to submit their intent to be a candidate ~~not less~~ no later than forty-five (45) days prior to the Voting Member election.

- **DRC Comment:** Change "not less" to "no later" ON ALL INSTANCES
- **Attorney Response** - Done

- 2) ~~Not less~~ No later than ~~fourteen (14)~~ thirty (30) days prior to the election, the Association shall deliver notice of the Voting Member election to all Owners in the Neighborhood. Such notice shall include instructions to either vote electronically if the Board has instituted electronic voting or to vote by paper ballot or proxy using the form provided by the Association. Ballots and proxies shall include the name of all eligible candidates who timely submitted their intent to be a candidate. Ballots or proxies may allow owners to write in the name of any candidate they wish to nominate. Secret ballots are not required.

- **DRC Comment:** CHANGE (14) DAYS PRIOR TO (30) days prior to election so resident have enough time to vote. Requested despite attorney recommendation.
 - **Attorney Response:** We recommend you leave it at 14 days to give the Association more time for the mailing. The Association must process the election for several Neighborhoods during the same time period and giving the owner more time to return their vote means the Association has less time to mail the second notice and proxy or ballot. You can still instruct the manager to provide the notice 30 days in advance. This way, the Association has leeway in the event the notice does not go out a full 30 days in advance. Notwithstanding, if you prefer to change this, we can do so.
- 3) The ballot or proxy may be mailed, delivered, or electronically transmitted to the Association by the person who is entitled to vote for the Unit at any time prior to the election.
 - 4) The election shall be held at an Association facility located within Westchase, unless it would create an unreasonable burden to do so, or, if determined by the Board of Directors to be in the best interest of the Association, such meeting shall be held via real time electronic format in accordance with the Bylaws.
 - 5) Half of the Neighborhoods without Neighborhood Associations will hold an election each year.
 - 6) If there is no quorum for the election of a Neighborhood's Voting Member, the Association shall not be required to schedule another election; the existing Voting Member shall retain his or her seat or, if there is no existing Voting Member, the vacancy shall be filled as set forth in Section 5, below, which addresses "Removal of Voting Members and Filling Vacancies".
- **CORRECT WORDING ...SECTION 5, "ABOVE"**
 - **Attorney Response** "above" would refer to Section 4(c)5. which requires half the Neighborhood elections each year. "below" is correct. It refers to the section dealing with vacancies. However, we revised to clarify.
- 7) The candidate who receives the most votes at that Neighborhood's election shall serve as that Neighborhood's Voting Member and the candidate(s) who receive the next highest number of votes, arranged in descending order, shall serve as alternate Voting Member(s), in that order. Notwithstanding the foregoing, if the person who receives the most votes chooses not to be the Voting Member, he or she shall be the last alternate and the person with the next highest number of votes who agrees to be the Voting Member shall be declared the Voting Member. If a Voting Member resigns as a Voting Member, he or she shall become the last alternate for that Neighborhood until either the replacement Voting Member resigns or is removed or the next Neighborhood Voting Member election is held. If a Neighborhood has no alternate Voting Member, the Association shall publish notice of the vacancy in WOW or mail notice to Owners within the Neighborhood and allow interested candidates to submit their intent to serve as a Voting Member or Voting Member alternate to the Association. Thereafter, an alternate may be

appointed by a favorable vote of majority of the Voting Members present at a meeting, with each Voting Member casting one (1) vote. Such alternate shall serve until the next Neighborhood election. ~~All candidates for the alternate Voting Member position must be an Owner or spouse of an Owner in the respective Neighborhood.~~

- **DRC Comment:** How do we avoid disenfranchising the neighborhood for open alternate VM appointments (vs. VM's simply choosing at their sole discretion)? Right now, it's really just the 1st person to volunteer themselves. require some notice and allow for volunteer submissions? OPEN POSITIONS REQUIRE NOTICE VIA WOW/FB/NOTIFICATIONS BEFORE VM'S VOTE ON NOMINATION.
- **Attorney Response:** You could enhance or change the procedure for filling a VM vacancy by requiring the Association to hold another Neighborhood election, by requiring notice be mailed or posted in WOW and allowing for submissions by candidates in advance, or by allowing the prior VM to select his or her replacement. But keep in mind that if there were sufficient candidates at the last Neighborhood Election, the candidate with the next highest number of votes would be the VM so the neighborhood residents are not exactly disenfranchised. The power to appoint an alternate only switches to the VMs in limited situations. Also, if you require a Neighborhood election, publication in the WOW, or mailing to the Neighborhood, it will inevitably take longer to appoint a replacement. Per your request, we drafted language to require the advance notice so interested members in the Neighborhood know of the vacancy. However, you could leave the provision as is.
- **DRC Comment:** Delete the last sentence, it is redundant.
- **Attorney Response:** Done.

- 8) Elected Voting Members shall serve a term of two (2) years or until their successors are elected. The elected Voting Member together with the alternate Voting Members, up to a total of three (3) members shall serve on the Neighborhood Committee, as described in the Bylaws, to represent the interests of Owners of Units in Neighborhoods without Neighborhood Associations.

Section 5. Removal of Voting Members and Filling Vacancies. A Voting Member may be removed and replaced in accordance with any of the following provisions:

(a) Any Voting Member from a Neighborhood may be removed, with or without cause, by a vote at a duly noticed Neighborhood Meeting by the Owners holding a majority of the votes entitled to be cast for the election of that Voting Member of Units in that Neighborhood pursuant to the provisions of Article III, Section 5, of the Bylaws, which is made applicable to Neighborhood operations by Article V, Section 3, of the Bylaws, provided, however, when applying said sections of the Bylaws to Neighborhood operations, the term "Voting Member" shall refer to the Owners of Units within the Neighborhood and the term "director" shall refer to the Voting Member from a Neighborhood;

- **DRC Comment:** Insert own language here rather than making the situation "pursuant" to other sections that must be referenced/replaced - too confusing
- **Attorney Response:** Done

(b) The Voting Member of any Neighborhood that is not represented by such Voting Member or any alternate Voting Member for three (3) consecutive meetings of the Voting Members or any six (6) meetings of the Voting Members in any twelve (12) month period shall be removed as a Voting Member upon the affirmative vote ~~or written consent, or a combination thereof, of a majority~~ seventy-five percent (75%) of the Voting Members who are present at such meeting in person or represented by an alternate, with each Voting Member casting one (1) vote, regardless of whether the absent Voting Member informed the Association of the intended absence in advance of the meetings. If an alternate is present at a meeting on behalf of a Voting Member, ~~or if a Voting Member submits a written consent with respect to the matters to be voted on at any such meeting,~~ the Voting Member shall not be considered "absent" for the purposes of this Section; or

- **DRC Comment:** clarify this - people think that notifying the PM of absence doesn't count as missing the mtg. Seems it does.
- **Attorney Response:** In the past, we have advised that it is questionable whether this provision is enforceable because typically only the members that elect a representative can remove the representative. However, if you want to keep this automatic removal, we can add language advising that notice of an intended absence is not an excuse.
- **DRC Comment:** Strike out "written consent" here and all other areas as not applicable - conflicts with "no proxy" allowed language
- **Attorney Response:** We don't necessarily see the need to remove all references to voting by written consent, but we have removed the same per your request. 720.306 says "Unless otherwise provided in this chapter or in the articles of incorporation or bylaws, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained." FS 617.0701(4) sets forth a procedure for action by written consent if permitted in the Articles or Bylaws: "Unless otherwise provided in the articles of incorporation, action required or permitted by this chapter to be taken at an annual or special meeting of members may be taken without a meeting, without prior notice, and without a vote if the action is taken by the members entitled to vote on such action and having not less than the minimum number of votes necessary to authorize such action at a meeting at which all members entitled to vote on such action were present and voted. ... Written consent to take the corporate action referred to in the consent is not effective unless the consent is signed by members having the requisite number of votes necessary to authorize the action within 90 days after the date of the earliest dated consent and is delivered in the manner required by this section.
- Article II, Section 3 of Bylaws prohibits use of written consent by VMs at annual meeting. However, you can authorize written consent for other matters and the ability to vote by Written consent is addressed in multiple other places in the CCRs. Also Art. 3 Section 18 of the Bylaws allows written consent for Approval for a loan exceeding a certain threshold and Art. 6, Section 6 allows written consent when amending the Bylaws.

(c) Notwithstanding any other provision in this Declaration or the Articles or Bylaws of the Association, any Voting Member may be removed, with or without cause, by the affirmative vote ~~or written consent, or a combination thereof,~~ of seventy-five percent (75%) of the Voting

Members who are present at such meeting in person or represented by an alternate, with each Voting Member casting one (1) vote. Any Voting Member so removed shall not be eligible to serve as a Voting Member for one (1) year from the date of removal.

(d) If a Voting Member vacancy arises in any Neighborhood because a candidate was not determined at the Neighborhood's election; a resignation transpired in progress of a term; a Voting Member was removed, pursuant to paragraph (b) of this section, or other extenuating circumstances prevented a Voting Member from fulfilling his or her responsibilities, and the Neighborhood in which the Voting Member vacancy exists does not have an alternate Neighborhood Voting Member, the Association shall publish notice of the vacancy in WOW or mail notice to Owners within the Neighborhood and allow interested candidates to submit their intent to serve as a Voting Member to the Association. Thereafter, the Voting Member vacancy may be filled by a favorable vote of majority of the Voting Members present at a meeting, with each Voting Member casting one (1) vote. ~~All candidates for the Voting Member vacancy must be an Owner in the respective Neighborhood.~~

- **DRC Comment:** How do we do this without disenfranchising the residents of a neighborhood - require some notice and allow for volunteer submissions? SAME AS ABOVE – REQUIRE NOTICE
- **Attorney Response:** See response above and draft language herein. This language is not required.

(e) Any Voting Member removed in accordance with the provisions hereof shall be replaced by the next most senior alternate Voting Member from his or her Neighborhood.

Article IV.

Maintenance

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements, including all private streets, situated upon the Common Areas, landscaped medians, and other landscaped areas within public rights-of-way throughout the Properties, and such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration or by a contract or agreement for maintenance thereof by the Association.

The Area of Common Responsibility shall also include all lakes, ponds, streams, wetlands, preservation areas, conservation areas, bike paths and streets located within the Properties, provided that if any such property is dedicated to any CDD or to any governmental or quasi-governmental entity or any Neighborhood Association, the Association shall be required to maintain such property only if it has the right by easement or otherwise to so maintain and such maintenance is necessary to maintain the Communitywide Restrictions. The Association shall

maintain such property in accordance with this Declaration and all permits, laws, rules and regulations, or other official requirements of any governmental entity having appropriate jurisdiction, including the Florida Department of Environmental Regulation and the Environmental Protection Commission of Hillsborough County, Florida. Hereby reserved to the Association are easements over the Properties and all authority as necessary to enable the Association to fulfill its responsibilities hereunder.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of any portion of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Common Assessment, ~~and~~ Notwithstanding the foregoing, that the Association may be entitled to reimbursement from the owner or owners of certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner or owners thereof. All costs associated with maintenance, repair, and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood or Neighborhoods to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

- **DRC Comment:** Clarification needed starting with "notwithstanding...or owners thereof"?
- **Attorney response:** This language means the Association maintains or repairs the Area of Common Responsibility as a common expense, but it can still seek reimbursement from an individual owner if the owner damaged the area or from a Neighborhood if it was responsible for the maintenance or from other parties if other agreements are in place. We revised slightly to clarify. Let us know if you still have questions.

The Association shall also be responsible for maintenance, repair, and replacement of property within any Neighborhood to the extent designated in any Supplemental Declaration affecting the Neighborhood. The Association may also assume maintenance responsibilities with respect to any Neighborhood in addition to those that may be designated by any Supplemental Declaration. This assumption of responsibility may take place either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Communitywide Restrictions to which the Properties are subject. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment against only those Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property that it does not own, including but not limited to property dedicated to the CDD, if any, or to the public if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Communitywide Restrictions.

The Association shall also be responsible for all continuing maintenance and other obligations imposed by any development order or other mandate of any planning, development, or zoning commission or other governmental entity with appropriate jurisdiction for items within or serving the Properties, including preparation of environmental monitoring reports required by

the Florida Department of Environmental Regulation and the Environmental Protection Commission of Hillsborough County, Florida.

~~Furthermore, the Association shall maintain and keep in good workable condition, whether or not owned by the Association, the structures and fixtures comprising the lighting of all streets within the Properties and pay the electric bill and other costs associated with providing such streets with proper lighting until such time that such obligations are assumed by a utility company, Hillsborough County, Florida or any other governmental or quasi-governmental entity.~~

- **DRC Comment:** Association shall maintain ...lighting fixtures for streets...until obligations are assumed by Hillsborough county. How will this impact the annexation of the new community? DO WE NEED THIS ANYMORE?
- **Attorney Response:** If the Association does not currently pay for the street lighting, we believe you can remove this.

~~In performing its maintenance responsibilities hereunder, the Association shall comply with the terms and provisions of the Declaration of Easements and Covenant to Share Costs, if any, attached hereto as Exhibit "D" and incorporated herein by this reference.~~

- **DRC Comment:** Add the definition for Covenant to share costs & Declaration of Easements.
- **Attorney Response:** We do not believe this document was ever attached to the Declaration, so we recommend deleting. The provision may have been inserted as a place holder in case the developer entered into a Declaration of Easements and Covenant to Share Costs. That is just a recorded contract that gives access to land but requires the parties to share expenses for maintenance or utilities serving the land.
- **DRC Response:** Recommend accept deletion.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas and other improvements comprising the Unit. Owners of Units that are adjacent to any portion of the Common Area on which walls, other than walls that form part of a building, have been constructed shall irrigate the portion of the Common Area that lies between such wall and the Unit boundary. Owners of Units adjacent to any roadway within the Properties shall maintain driveways serving their respective Units, whether or not lying within the Unit boundaries, and shall irrigate landscaping on that portion of the Common Area, if any, or right-of-way between the Unit boundary and the back-of-curb of the adjacent street. For purposes of this Section, the term "driveway" shall not include any alleyway in West Park Village. Except for property maintained by the CDD, owners of Units abutting the water's edge of any lake or pond within the Properties or abutting a portion of the Common Area so situated shall irrigate all landscaping between the Unit boundary and the water's edge, and they shall have no right to remove trees, shrubs, or other vegetation from this area without prior approval pursuant to this Declaration.

All maintenance required by this Section shall be performed in a manner consistent with the Communitywide Restrictions and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to a Neighborhood pursuant to any additional declaration of covenants applicable to a particular Unit. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance

responsibility, the Association may perform it and assess all costs incurred by the Association against the Unit and the Owner thereof in accordance with this Declaration; however, unless entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

Section 3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, costs of maintenance of certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood, that may include, without being limited to, the costs of maintenance of any right-of-way and green space between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association, provided, however, that all Neighborhoods that are similarly situated shall be treated the same.

Any Neighborhood Association whose common property is adjacent to any portion of the Common Area upon which a wall that is not part of a building is constructed shall maintain and irrigate that portion of the Common Area between the wall and the Neighborhood Association's property line. Any Neighborhood Association whose common property fronts on any roadway within the Properties shall maintain and irrigate the landscaping on that portion of the Common Area or right-of-way between the property line and the nearest curb of such roadway. Any Neighborhood Association whose common property abuts the water's edge of any lake or pond within the Properties or abuts a portion of the common property so situated shall maintain and irrigate all landscaping between the boundary of its common property and the water's edge, and it shall have no right to remove trees, shrubs, or other vegetation from this area without prior approval pursuant to Article XI hereof.

Any Neighborhood having responsibility for maintenance of all or a portion of the property within a particular Neighborhood pursuant to additional covenants affecting the Neighborhood shall perform such maintenance responsibility in a manner consistent with the Communitywide Restrictions. If any Neighborhood fails to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Units within that Neighborhood as provided in this Declaration.

- **DRC Comment:** WHY DO WE EVEN NEED ANY OF SECTION 3? CAN WE REMOVE?
- **Attorney Response:** You could remove, but we don't recommend it. This section preserves the ability of the Association to shift the cost of maintenance for certain areas to Owners of Units within Neighborhoods. It also allows the Master Association to step in and perform maintenance that a Neighborhood Association is supposed to perform if the Neighborhood fails to do so and then assess the Units within the Neighborhood for the cost. This provision could be important if a Neighborhood Association accidentally allows its governing documents to expire or becomes administratively dissolved due to lack of volunteers to run the Neighborhood Association. This probably won't happen in Westchase, but having the protection in this section 3 doesn't hurt so we recommend leaving it in place.
- **DRC Comment:** accept recommendation to leave in place

Section 4. Party Shared Walls and Party Shared Fences.

(a) General Rules of Law to Apply. A “shared wall” or “shared fence” shall mean ~~and refer to each~~ Each wall or fence built as a part of the original construction on the Units that serves to separate any two (2) adjoining Units. ~~shall constitute a party wall or fence, to~~ To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The Owners served by a shared wall or fence shall share the cost of reasonable repair and maintenance of ~~a party the shared~~ wall or fence shall be ~~shared~~ in equal proportions ~~by the Owners served by the wall or fence.~~

(c) Damage and Destruction. If a ~~party shared~~ wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner served by the wall or fence may restore it. If the other Owner or Owners thereafter make any alteration to the wall or fence, or otherwise damage the wall or fence, they shall contribute to the cost of restoration thereof in equal proportions; ~~without prejudice, however, any Owner shall have to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding that would place liability for negligent or willful acts or omissions on the other Owners.~~

- **DRC Comment:** Party Walls and Party Fences. CHANGE TO “SHARED” WALL and add to definitions.
- **Attorney response:** “Party wall” is a term of art used in most case law addressing the same. However, if you prefer to change to “shared wall” the definition should note that this means a party wall.
- **DRC Comment:** Second sentence is very confusing. PROVIDE MORE UNDERSTANDABLE LANGUAGE
- **Attorney Response:** If you are referring to the second sentence in (a), the language may be difficult to modify. There is a whole body of case law that deals with who pays for what when a wall or fence is a shared party wall or fence and it is damaged by various causes. We don’t think you need to summarize those laws in your Declaration. Notwithstanding, we have attempted to make this more clear. Let us know if you think further revisions are necessary.
- **DRC Response:** accept recommendation

(d) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party wall or fence or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

Article V.

Insurance and Casualty Losses

Section 1. **Insurance.** The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain Special Form, all-risk, property insurance, if reasonably available, for all insurable improvements on the Common Area. As used herein, "Special Form" insurance shall mean an all-risk policy that covers all causes of physical loss or damage to property, except those named exclusions which are typical or standard in a homeowners' association policy. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

In addition to insurance on the Common Area, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration affecting the Neighborhood, obtain and continue in effect adequate Special Form, all-risk, property insurance, if reasonably available, on properties within the Neighborhood. Such coverage may be in such form as the Board of Directors deems appropriate and the face amount of the policy shall be sufficient to cover the full replacement cost of all structures to be insured. The costs thereof shall be charged to the Owners of Units within the benefited Neighborhood as a Neighborhood Assessment, as defined in this Declaration.

- **DRC Comment:** Add definition of Special Form all risk property insurance
- **Attorney Response:** We don't believe you need to add a requirement for Special form, all-risk property insurance. Moreover, we were unable to locate a clear definition for Special Form all risk insurance as its merely a type of insurance policy offering insurance against a broad type of perils, with various possible named exclusions. However, we included a possible definition for your consideration.
- **DRC Response:** accept recommendation

The Association shall have no insurance responsibility for any part of the Westchase Country Golf Club property except, if any part of such property is or becomes part of the Area of Common Responsibility, such property shall be insured to the extent required of any property in the Area of Common Responsibility, as provided below.

- **DRC Comment:** Delete or rephrase Westchase Country Club
- **Attorney Response:** Done

Insurance obtained on the properties within any Neighborhood, whether obtained by such Neighborhood or the Association, shall comply with the minimum requirements for insurance on the Common Area set forth in this Section 1. All such insurance shall be in a face amount sufficient to cover the full replacement cost of all insured structures. All such policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association, and to any Neighborhood Association.

The Board shall also obtain a public liability policy covering the Area of Common Responsibility, insuring the Association and its Members for all damage or injury caused by the

negligence of the Association, any of its Members or agents or any other person who has a right to occupy a unit. The public liability policy shall have a single-person limit for bodily injury and property damage of at least one-million dollars (\$1,000,000); a limit per occurrence of three million dollars (\$3,000,000) if reasonably available, and a property damage limit of at least five hundred thousand dollars (\$500,000).

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses of the Association and shall be included in the Common Assessment, as defined in Article I and as more particularly described in this Declaration, provided that in the discretion of the Board of Directors, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood or Neighborhoods benefited thereby, unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance meets the coverage requirements set forth in this Declaration. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and, in the event of multiple parties, shall be allocated in proportion to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties, as further identified in Subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written by a company authorized to do business in Florida that holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or if not available, the most nearly equivalent rating that is available.

(b) All policies on the Common Area shall be for the benefit of the Association and its Members; all policies secured at the request of a Neighborhood shall be for the benefit of the Neighborhood Association, if any; the Owners of Units within the Neighborhood; and their mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Properties shall be vested in the Association's Board of Directors.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(e) The Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer within respect to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) a statement that no policy may be cancelled, invalidated, suspended, or subject to nonrenewal on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled, invalidated, suspended, or subject to nonrenewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without 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, its manager, any Owner, or any mortgagee;

(v) a statement that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or nonrenewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law; directors' and officers' liability coverage, if reasonably available; a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available; may not be less than one-sixth (1/6) of the annual Common Assessments on all Units, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or nonrenewal.

Section 2. Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry sufficient property insurance to cover the full replacement cost of any repair or reconstruction of all improvements on the Lot in the event of damage or destruction from any insured hazard, unless either the Neighborhood in which the Unit is located or the Association carries such insurance. Owners will, upon request, submit proof of insurance to the Association. Each Owner further covenants and agrees that in the event of a loss, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any costs of repair or reconstruction that are not covered by insurance proceeds. Permits for reconstruction shall be requested from Hillsborough County within sixty (60) days after the Owner is lawfully permitted to begin reconstruction. In the event of a total loss, the lot must be cleared, leveled and maintained according to the governing documents until reconstruction begins. Reconstruction shall be completed not later than one (1) year after the Hillsborough County building permit is obtained or such later date as may be approved in writing by the Board of Directors. A Neighborhood may have more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within the Neighborhood. In the event of a natural disaster, the Board of Directors may waive all or any portion of this Section. For purposes of

this Section, a "natural disaster" shall include, but not be limited to a hurricane, tornado, flood, tropical storm or sinkhole that causes damage to property within the Community.

Section 3. Damage and Destruction.

(a) Immediately after damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent 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 Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the Common Area or to the common property of any Neighborhood shall be repaired or reconstructed unless the Voting Members representing at least ~~seventy-five~~ sixty percent (~~75~~60%) of the total votes of the Association, if Common Area, or the Unit Owners representing at least seventy-five percent (75%) of the total votes of the Neighborhood Association whose common property is damaged, if common property of a Neighborhood Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available, provided, however, that such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area or common property of a Neighborhood shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the Properties shall be cleared of all debris and ruins and maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive condition consistent with the Communitywide Restrictions.

Section 4. Disbursement of Proceeds. If the damage or destruction is to be repaired or reconstructed, the proceeds of insurance policies held by the Association, or such portion thereof as may be required for that purpose, shall be disbursed in payment of those repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying those costs of repair or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event that no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Area or to the common property of a Neighborhood Association for which insurance proceeds are paid is to be repaired or reconstructed and those proceeds are not sufficient to defray the cost thereof the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a Special Assessment against those Owners responsible for the premiums for the applicable insurance coverage under this Article. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Article VI.

No Partition

Except as is permitted in the Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration.

- **DRC Comment:** What is a judicial partition? Add to definition?
- **Attorney response:** A judicial partition is a court-ordered division or sale of jointly owned real estate or property when the co-owners cannot agree on how to divide or manage it. The partition can physically divide the property (giving each owner a portion) or order the property to be sold and divide the proceeds. We do not believe you need a definition of this as it is a legal term that rarely comes into play.
- **DRC Response:** accept recommendation

Article VII.

Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation) by the Board acting on the written direction of Voting Members representing at least ~~sixty-six~~ percent (~~66~~%) of the total votes of the Association by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking Voting Members representing at least ~~seventy-five~~ sixty percent (~~75~~60%) of the total votes of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent that lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the provisions in Article V hereof regarding the disbursement of funds with respect to casualty damage or destruction that is to be repaired shall apply.

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

Article VIII.

Annexation of Additional Property

Section 1. Annexation with Approval of the Membership. Subject to the consent of the owner thereof, the Association may annex real property described in Exhibit "BD" to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote ~~or written consent, or any combination thereof,~~ of Voting Members representing at least ~~seventy-five percent (75%)~~ a majority of the total votes of the Association.

Annexation shall be accomplished by filing in the public records of Hillsborough County, Florida, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the Bylaws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section and to ascertain the presence of a quorum at such meeting.

Section 2. Condominium Conversions. Rental apartment buildings may be built and operated on certain property adjacent to the Properties and included in the properties described in Exhibit "BD." Such rental apartment buildings may subsequently be converted to the condominium form of ownership. In that event, the property subjected to the condominium form of ownership shall be subjected to the terms and conditions of this Declaration and to the jurisdiction of the Association. The owner of the property subjected to the condominium form of ownership shall, at the time the declaration of condominium is filed, withdraw such property from any other restrictive covenants on such property and cause an amendment to this Declaration to be executed and recorded in Hillsborough County, Florida, subjecting such property to this Declaration. Such amendment shall require the affirmative vote ~~or written consent, or any combination thereof,~~ of the Voting Members representing at ~~seventy-five~~ sixty percent (~~75~~60%) of the total votes of the Association.

Article IX.

Rights and Obligations of the Association

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including but not limited to furnishings and equipment related thereto and common landscaped areas) and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Communitywide Restrictions.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Area. The Board shall have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association.

The Association, through the Board, by contract or other agreement, shall have the right, but not the obligation, to enforce County ordinances and the right to permit Hillsborough County, Florida to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, as well as every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Governmental Facilities. Each Owner understands and agrees that an Owner's Unit may be adjacent to or near a fire or police station, water or sewer facilities, public schools and parks, and other public facilities and that such location may result in nuisances to persons and property on the Unit as a result of noise and other activity associated with the normal operation and use of such facilities. Each Owner covenants for himself or herself and his or her heirs, successors, successors-in-title, and assigns that he or she shall assume all risks associated with such location.

Section 6. Powers of the Association with Respect to Neighborhoods. The Association shall have the power to veto any action taken or ~~contemplated~~ approved to be taken by any Neighborhood Association or Neighborhood Committee that the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Communitywide Restrictions. The Association shall also have the power to require specific action to be taken by any Neighborhood Association or Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Neighborhood Committee, may require that a proposed budget include certain items and that expenditures be made therefor, and may veto or cancel any contract providing for maintenance, repair, or replacement of the property governed by such Neighborhood Association or Neighborhood Committee.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood Committee shall be taken within the time frame set by the Association in such written notice, which time frame shall be reasonable. If the Neighborhood Association or Neighborhood Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in this Declaration. Such assessments may be collected as a Special Assessment hereunder and shall be subject to all lien rights provided for herein.

- **DRC Comment:** “The Association shall have the power to veto any action taken or contemplated to be taken...” How can you veto a group thought? This makes no sense. REMOVE THAT LANGUAGE
- **Attorney Response:** This language does not refer to vetoing a group thought but rather veto an action that has been approved by the Neighborhood Association but not yet carried out. As a result, we do not recommend omitting. But we can change “contemplated” to “approved”
- **DRC Response:** accept recommendation

Article X.

Assessments

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time be specifically authorized by the Board of Directors, to be commenced at the time and in the manner set forth in this Article. There shall be three (3) types of assessments: (a) Common Assessments to fund Common Expenses for the benefit of all Members of the Association; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Units within one (1) or more particular Neighborhoods; and (c) Special Assessments as described below. Each Owner by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

Common Assessments shall be levied as follows:

Each single-family Unit shall be levied for an equal share of the Common Assessments.

Notwithstanding any provision of this Declaration, Neighborhood Assessments shall be levied equally against all Units in the Neighborhood benefiting from the services supported thereby, provided that in the event of assessments for exterior maintenance of structures, insurance on structures, or replacement reserves that pertain to particular structures, such assessments for the use and benefit of particular Units shall be levied on each of the benefited Units in proportion to the benefit received, if so directed by the Neighborhood in writing to the Board of Directors. Subject to the provisions of this paragraph, Special Assessments shall be levied as provided below.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer, director, authorized representative, or employee of a management company authorized by of the Association setting forth whether such assessment has been paid for that Owner's Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee for the issuance of such certificate and such additional fees as may be permitted by law.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Unless the Board otherwise provides, the Common Assessment and any Neighborhood Assessment shall be paid in one annual installment. Each Owner, by acceptance of a deed to his or her Unit, acknowledges that all Common Assessments and Neighborhood Assessments levied hereunder are annual assessments due and payable in advance on the first day of the fiscal year; however the Board may permit any assessment to be paid in installments. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may revoke the privilege of paying in installments and require assessments to be paid in full immediately.

Any assessment or installment thereof not paid within thirty (30) days after the date on which it is due shall be assessed a late charge in an amount determined by the Board of Directors that shall not be in excess of the highest amount permitted by applicable law. In addition, the Association shall be entitled to suspend any services provided by the Association to a Unit in the event that the Owner of such Unit is more than forty (40) days delinquent in paying any assessment due to the Association. If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the Association, the Association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use Common Areas and facilities until the fee, fine, or other monetary obligation is paid in full. The Association ~~and~~ may suspend the voting rights of an Owner for the non-payment of ~~the annual assessment~~ any fee, fine, or other monetary obligation due to the Association that is delinquent in excess of ninety (90) days. Moreover, if any assessment, or any installment thereof, is not paid within forty (40) days after the date on which it is due, the Association may bring action at law against the Owner and against the Owner's property. The Association shall be entitled to collect all fees and costs of collection, including attorney's fees, and every Owner by acceptance of a deed to a Unit in the Properties, whether so expressed in the deed or not, covenants and agrees to pay those fees and costs.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustration and not limitation, nonuse of Common Areas or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws.

- **DRC Comment: Attorney recommended revisions.**

Section 2. Computation of Common Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared as provided in this Article.

The Common Assessment to be levied against each Unit for the coming year shall be set at a level that is reasonably expected to produce total income to the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 7 hereof on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall cause a copy of the Common Expense budget and notice of the amount of the Common Assessment to be levied against each Unit for the following year to be delivered to each Voting Member at least thirty (30) days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by a majority vote of the Voting Members, ~~by vote or written consent, or any combination thereof, representing at least sixty-seven of the total votes in the Association.~~ There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for special meetings in Article II, Section 5, of the Bylaws, which petition must be presented to the Board within ten (10) days of delivery of the notice of assessments.

Notwithstanding the foregoing, ~~however~~, in the event ~~that~~ the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

Section 3. Computation of Neighborhood Assessments. Each Neighborhood requesting special services or a higher level of service from the Association shall, at least ninety (90) days before the beginning of the Association's fiscal year, submit to the Board for its approval a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association. To the extent that this Declaration or the Bylaws specifically authorize the Board to assess certain costs, such as the cost of maintaining Exclusive Common Areas, as a Neighborhood Assessment, the Board shall have the right to add to any such budget these estimated Neighborhood Expenses or to prepare, at least sixty (60) days before the beginning of each fiscal year, a separate budget covering such estimated Neighborhood Expenses for each Neighborhood on whose behalf such costs are expected to be incurred during the coming year. Any such budget may also include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood benefited thereby and levied as a Neighborhood Assessment.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Unit in the Neighborhood for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least thirty (30) days prior to the

beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by a majority of the Owners of Units in the Neighborhood to which the Neighborhood Assessment applies; however, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Units in such Neighborhood and provided, further, that the right to disapprove shall apply only to those line items in the Neighborhood budget that are attributable to services requested by the Neighborhood.

In the event that the proposed budget for any Neighborhood is disapproved or the Board or Neighborhood requesting special services or a higher level of service fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year and the Neighborhood shall receive only those services or level of service as the budget for the immediately preceding year allows.

Section 4. Special Assessments.

(a) Entire Membership.

The Association may levy Special Assessments from time to time, provided that such assessment receives the affirmative vote ~~or written consent, or any combination thereof,~~ of Voting Members representing ~~seventy-five~~ sixty percent (~~75~~60%) of the total votes of the Association. The percentage amount of the Special Assessment levied against single-family Units shall be determined in the same manner as for Common Assessments. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) Less than All Members.

The Association may levy a Special Assessment against any Member individually and against such Member's Unit to reimburse the Association for costs incurred in bringing a Member and his or her Unit into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, or the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing. The Association may also levy a Special Assessment against the Units in any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the senior officer of the Neighborhood and an opportunity for a hearing.

Section 5. Lien for Assessments. All assessments, together with interest at the rate of eighteen percent (18%) computed from the date on which payment thereof becomes delinquent, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made until paid. Interest shall begin to accrue on the date the payment becomes delinquent but shall not be added to an account

or payable by the Unit Owner until the account is thirty (30) days delinquent. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. The lien is effective from and shall relate back to the date on which the Association's original Declaration was recorded. The Association's lien for unpaid assessments shall be prior and superior to all other liens, except taxes, bonds, assessments, and other levies that by law would be superior thereto. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure, (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it, and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

- **DRC Comment:** an 18% interest rate is excessive. Something along the lines of 10% shall be levied.
- **Attorney Response:** We recommend leaving at 18%. This is the amount set forth in Chapter 720 and it is standard among condominiums and associations to charge 18%.
- **DRC Response:** Accept recommendation.

Section 6. Reserve Budget. The Board of Directors shall annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

Section 7. Date of Commencement of Assessments. The obligation to pay the assessments provided for herein shall commence for each Unit when the Unit is conveyed to an Owner. Any Owner purchasing a Unit for the purpose of constructing a dwelling thereon for resale shall be required to pay fifty percent (50%) of the assessment obligation for the Unit until the earlier of the following:

(a) the month in which the first certificate of occupancy is issued on such Unit by the Building Department of Hillsborough County, Florida; or

(b) actual occupancy of such Unit. All other Owners shall be obligated for one hundred percent (100%) of the assessments provided for herein upon taking title to the Unit.

Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments on the Unit commence.

Section 8. Liability for Assessments upon transfer of title. The sale or transfer of any Unit shall not affect the Association's assessment lien. No sale or transfer shall relieve a Unit

from lien rights for any assessments thereafter becoming due. In the event of a transfer of title, the transferee shall be jointly and severally liable for all assessments, interest, late fees, attorney's fees, costs and any other monetary obligations owed to the Association at the time of conveyance. Where the mortgagee holding a first mortgage of record obtains title pursuant to the remedies provided in a first mortgage, including judicial or nonjudicial foreclosure of the mortgage, or by a deed in lieu of foreclosure, it shall be liable for the share of the Common Expenses or assessments, and all interest, late fees, attorney's fees, costs and any other monetary obligation chargeable to that Unit which became due prior to such acquisition of title, and for which payment in full has not been received by the Association, to the greatest extent allowable under applicable law. In the event such a first mortgagee is deemed not to be liable for all or any portion of such unpaid Common Expenses or assessments, such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer and its successors and assigns.

Section 9. Capitalization of the Association. The Board shall set a Capital Contribution upon approval of the annual budget, with said Capital Contribution to be effective for the term of the approved budget. Upon acquisition of record title to a Unit after the recording of this amendment, the Owner shall make a contribution to the working capital of the Association in an amount equal to the Capital Contribution for that year as determined by the Board, regardless of whether the Owner intends to use the Unit as a primary residence. This amount shall be in addition to, not in lieu of, the annual Common Assessment levied on the Unit and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association at the closing of the purchase of such Unit by such purchaser, for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws and may be used by the Association in the same manner as any other Assessment authorized by this Article. Conveyance between spouses; conveyance to a trust in which the grantor is the trustee or a partnership, corporation or other entity so long as such entity is and remains wholly owned by the Owner or by such Owner and the Owner's spouse and/or children or is created for their benefit; conveyance of a Unit by an Owner or such Owner's estate to the Owner's spouse and/or children; and conveyance by the estate of an Owner to a family member shall be exempt from payment of the Capital Contribution. Subsequent to July 1, 2006, any Owner of a Unit who has paid a Capital Contribution who sells that Unit and purchases another Unit within Westchase for use as their primary residence within six (6) months of the date of sale, as evidenced by the public records of Hillsborough County, Florida, shall receive a credit in the amount of the original Capital Contribution toward the Capital Contribution that would be due and payable upon the subsequent purchase of a Unit in Westchase. There shall be no refund of any Capital Contribution in any case.

- **DRC Comment:** CLARIFY THAT PURCHASING NON-PRIMARY RESIDENCE REQUIRES THE CAP CONTRIBUTION. Intent on this one is that new purchase only credited if the primary residence...no credit for investment properties.
- **Attorney Response:** We understand DRC wants to give a credit against the capital contribution only to Owners who will use the property as a primary residence. We do not recommend this change. Capital contributions arguably constitute assessments. As a result, changing who is required to pay the assessment could arguably constitute a change in the assessment scheme. Section 720.306(1)(c) provides that “[u]nless otherwise provided in the

governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not . . . increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment.”.

- Furthermore, we do not see a reason to give a credit to a purchaser who intends to use the home as a primary residence but not give a credit to an investor.

Section 10. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Common Assessments, Neighborhood Assessments, and Special Assessments:

- (a) all Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including but not limited to public schools, public streets, and public parks, if any.

Article XI.

Architectural Standards

Section 1. Exterior Alterations and Modifications. No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work; no exterior alteration or modification of existing improvements; no exterior painting; and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements set forth herein have been fully met and until the approval of the appropriate committee has been obtained pursuant to this Declaration. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application. All dwellings constructed on any portion of the Properties shall be designed and built in accordance with the requirements of the Hillsborough County Building Department. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in this Article XI.

(a) Modifications Committee.

The Board of Directors shall establish a Modifications Committee to consist of at least three (3) and no more than seven (7) persons, all of whom shall be appointed by, and shall serve at the discretion of, and may be removed with or without cause by, the Board of Directors. Except as otherwise provided herein, the Modifications Committee shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures containing Units and the open space, if any, appurtenant thereto; however, the Modifications Committee may delegate this authority to the appropriate board or committee of any Neighborhood Association subsequently created or subsequently subjected to this Declaration so long as the Modifications Committee has determined that such board or committee has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the Modifications Committee. The Board or the Modifications

Committee shall have the right to delegate and to withdraw that delegation of responsibility to the property manager for the Westchase Community Association, Inc., for review and approval of a specified list of minor modifications. Such delegations may be revoked and jurisdiction reassumed at any time by written notice. Notwithstanding the foregoing, the Variance Committee established in Subsection (b) shall have the right to veto any action taken by the Modifications Committee or property manager for Westchase Community Association, Inc., as the Variance Committee determines, in its sole discretion, pursuant to this Declaration.

The Board shall promulgate procedures governing the areas of responsibility and practice of the Modifications Committee, consistent with this Declaration. Procedures promulgated by the Board shall be published in writing. In addition thereto, the following shall apply. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations shall be submitted to the Modifications Committee for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. The Modifications Committee shall have sole discretion and authority to approve or disapprove such plans and specifications. The Modifications Committee may consult with an architect, engineer, or similar professional, who shall be compensated for any professional services rendered, regarding the approval of any plans and specifications. The Owner shall be responsible for the cost of any professional services rendered. Amounts incurred by the Association in consulting any professional will be treated as a special assessment against less than all members as set forth in Article X, Section 4(b) of the Declaration, and such assessment may become a lien against the Unit. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Unit or to paint the interior of the Unit any color desired; however, modifications or alterations to the interior of screened porches, patios, and similar portions of a Unit visible from outside the Unit shall be subject to approval hereunder. In the event that the Modifications Committee fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after receipt, the plans shall be deemed denied.

(b) Variance Committee.

The Variance Committee may authorize variances from compliance with any of the Master Guidelines, INSGs, and procedures when unique circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations promulgated by the Voting Members. Variances may be granted only when unique circumstances dictate. No variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the financial condition of the Owner shall not be considered a hardship warranting a variance. No variance shall be approved by the Committee absent the approval of a majority of the members of the Committee. No application for a variance may be considered that is received more than ~~ten~~ thirty (~~10~~30) calendar days after the Modifications Committee's denial of the Owner's request for the same item. The Variance Committee shall be established pursuant to the Bylaws of the Association.

- **DRC Comment:** recommend approve attorney revisions

Section 2. No Waiver of Future Approvals. ~~The a~~Approval of by the Modifications Committee of any proposals, ~~or~~ plans, and specifications, or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of such Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

- **DRC Question -** Does this conflict with new FL statute of equitable dealings OR IS THIS RELATED TO APPROVALS IN ERROR? CAN MORE CLEAR LANGUAGE/DIRECTION BE PROVIDED HERE TO AVOID THE PERCEPTION OF SUBJECTIVITY?
- **Attorney Response:** We don't believe this conflicts with current law because there may be legitimate reasons for the Mod Committee to reject a modification when another lot has something similar; for example: 1) the modifications may look similar but one could be constructed of prohibited materials; 2) a modification could have been installed before Guidelines changed; 3) a modification could have been approved in error and the Association could have sent a "Chattel Shipping" letter to inform owners that they should not rely on the prior approval because moving forward such modifications will not be approved; 4) a modification could have been installed without approval but the Association did not notice the violation within the statute of limitations.
- We do not recommend substantial changes to this provision. This provision simply warns Owners that they should not assume the Modifications committee will approve a modification just because the Owner can point to a similar modification somewhere else in the community.
- **DRC Response:** Accept recommendation.

~~Section 3.~~ Section 3. Intentionally left blank. ~~Compliance with Guidelines.~~ Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Guidelines and procedures promulgated by the Modifications Committee may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in the Bylaws.

- **DRC Question –** IS THIS EVEN ENFORCEABLE?
- **Attorney Response:** The Association has the right to suspend a guest or invitee's use of the Common Areas and recreational facilities for a reasonable period of time if such person violates the governing documents and rules. However, the suspension cannot be indefinite and the Association does not have the right to suspend ingress and egress. Moreover, it is somewhat unreasonable to expect the contractor to comply with the Guidelines. The onus should be on the Owner. Consequently, we recommend deleting.
- **DRC Response:** Accept recommendation.

Section 4. Compliance with State Requirements. It shall be the responsibility of each Owner at the time of construction of a building, residence, or structure to comply with the construction plans and requirements for the surface water management system ~~approval and~~ on file with the Southwest Florida Water Management District (SWFWMD). An Owner and/or its successor(s) shall remove any modification or improvement, at his/her/its/their expense, if SWFWMD or the Association determines, at any time, that the modification or improvement adversely affects the surface water management system and/or creates non-compliance with any SWFWMD permit or any rule, regulation, or ordinance relating or pertaining to the surface water management system. Prior approval by the Association or by the Modifications Committee for such modification or improvement shall not entitle the Owner to retain such modification or improvement or prevent the Association from demanding its removal.

No Owner may construct or maintain any building, residence, or structure or undertake or perform any activity in the wetlands, buffer areas, and upland conservation areas described in the approved permit and recorded plat of the Properties unless prior approval has been received from the SWFWMD.

No Owner shall remove native vegetation (including cattails) that become established in any wet detention ponds within the Properties. Removal includes dredging, the application of herbicide, and cutting. Owners should address any question regarding authorized activities within any wet detention pond to SWFWMD, Tampa Permitting Department.

- **DRC Comment: Attorney recommended revisions**

Section 5. Completion of Work. All work approved by the Modifications Committee shall be completed within the time stated for completion by the Modifications Committee, if any. If no time for completion of the work is stated within the Modifications Committee approval, all such work shall be completed within ~~sixty (60)~~ ninety (90) days of approval by the Modifications Committee. Any work that cannot be completed within ~~sixty (60)~~ ninety (90) days of the date of approval by the Modifications Committee or by a later date as specified by the Modifications Committee, shall require additional approval by the Modifications Committee.

- **REVISE TO 90 days as default window**
- **Attorney Response: Done.** Forms for Modifications committee should be double checked for any necessary revisions if this amendment is approved.

Section 6. No Liability. Review and approval of any application pursuant to this Article is made on the basis of the provisions of this Declaration, the Master Guidelines, INSGs and any rules and regulations that may be promulgated from time to time by the Association, and neither any committee nor the Association shall bear any responsibility for ensuring the structural integrity, desirability, safety, or soundness of approved construction or modifications or for ensuring compliance with building codes and other governmental requirements or restrictions or requirements of any Neighborhood or Supplemental Declaration, or for ensuring that modifications or alterations affect or do not affect water retention on Lots. Neither the Association nor the Board of Directors nor any committee or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of

approved construction on or modifications to any Unit. The Owner and/or its successor(s) are solely responsible for any injury, damages, or loss arising out of the modification for as long as the modification exists.

- **DRC Comment:** Attorney recommended revisions

Article XII.

Communitywide Restrictions

The Properties shall be used solely for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Association and related purposes) as may more particularly be set forth in this Declaration and amendments hereto. Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

The Association, acting through its Board of Directors, shall have the authority to make and to enforce rules, standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding on all Owners, occupants, invitees, and licensees, if any, until and unless overruled, canceled, or modified in a regular or special meeting of the Association by the vote ~~or written consent, or any combination thereof,~~ of a majority of the Voting Members present at a duly noticed Voting Member meeting at which a quorum is obtained.

- **DRC Comment:** No stated threshold for VM votes on this - define as "majority" required

Section 1. Signs. ~~Except security system signs installed consistent with applicable law, landscaping pesticide treatment signs, and permit boxes posted during construction no~~ No sign of any kind shall be erected within the Properties or on any lot or Unit, except for the following:

- Security system signs installed consistent with applicable law are permitted.
- Landscaping pesticide treatment signs are permitted for fourteen (14) days following treatment.
- Permit boxes may be posted during construction.
- ~~without the written consent of the Board of Directors.~~ One "For Sale" or "For Rent" sign is allowed on the property on a lot or Unit (but not on the area between the sidewalk and the street).
- One sign recognizing or celebrating a graduation, anniversary, or birthday may be displayed on a lot or Unit (but not on the area between a sidewalk and the street) for a maximum of fourteen (14) days.
- The Board of Directors may, in its sole discretion, authorize signs to address traffic or safety concerns or to notice Association meetings or events.
- ~~If permission is granted to any Person to erect a sign within the Properties, the~~ The Board reserves the right to restrict the size, color, lettering and placement of signs.

~~such sign. The Board of Directors shall have the right to erect signs as it, in its sole discretion, deems appropriate.~~

- **DRC Comment:** DEFINE “PROPERTY” VS. UNITS IN THIS SECTION. WHEN SHOULD THE BOD HAVE THE ABILITY TO OFFER EXCEPTIONS FOR HOMEOWNER REQUESTS?
- **Attorney Response:** Properties is a defined term and refers to all the land subject to the Declaration as identified in Exhibit A (now C). The unit is the individually owned portion of the Properties. We added “lot” for clarification.
- We believe prior boards wanted the right to grant exceptions and to allow birthday and graduation or other celebratory signs. We don’t recommend distinguishing types of celebratory signs or otherwise granting exceptions to no signage rules. However, as this seems to be largely favored by prior boards and VMs, we drafted alternate language.

Section 2. Parking and Prohibited Vehicles.

(a) Parking. ~~Between the hours of 10:00 PM and 7:00 AM, vehicles shall be parked only in the garages or on the driveways, if any, serving the Units or in appropriate spaces designated by the Board of Directors, in which parking may or may not be assigned, and then subject to such reasonable rules and regulations as the Board of Directors, or any Neighborhood Association, if any, having concurrent jurisdiction over parking areas within the Neighborhood, may adopt.~~ No portion of any vehicle may be parked on any grass, sod, or lawn or sidewalk. The Association may designate certain on-street parking areas for visitors or guests, subject to reasonable rules and regulations. No garage shall be converted to dwelling space or enclosed, or otherwise modified, or otherwise used so as to reduce its capacity for parking vehicles below that originally approved. Garage doors visible from any street within the Properties shall remain closed except during ingress or egress or when the garage is actively being used by the Owner or occupant. No vehicle may be parked in a location that impedes ingress or egress.

- **DRC Comment:** No Garage ,, so as to be reduce its capacity for parking vehicles below that originally approved. So garages cannot be used for storage? CCR. XII.2 Garage doors have to be closed except when in use? STRIKE LANGUAGE REQUIRING CAPACITY FOR PARKING BELOW ORIGINALLY APPROVED. SEE SLK REVISIONS

(b) Prohibited Vehicles. Commercial motor vehicles, as defined in Section 320.01(25), Florida Statutes, shall not be permitted on the Properties, except within enclosed garages or other locations that are not visible from a parcel’s frontage or an adjacent parcel, an adjacent Common Area, or a community golf course, ~~vehicles with commercial writing on or visible from the exterior indicating a trade or occupation or tools or equipment visible from the exterior indicating a trade or occupation, vehicles equipped with a ladder rack or other rack or storage system used or designed for commercial purposes, vehicles primarily used or designed for commercial purposes, as well as~~ Vehicles that are not personal vehicles, including tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, conversion vans, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board or by the Neighborhood Association, if any, having jurisdiction over parking areas within a particular Neighborhood. As used herein

“Conversion van” shall refer to a self-propelled motor vehicle converted to provide temporary living quarters. However, conversion vans modified only and exclusively for the transportation of a disabled or handicapped person, and whose size precludes parking in the resident’s garage, may park in the resident’s driveway. The owner of such a van must possess a current state issued handicap hang tag or license plate. ~~With respect to vehicles on which there is commercial writing or which have tools or equipment visible from the exterior indicating a trade or occupation, such vehicles shall be parked only in enclosed garages or areas, if any, designated by the Board or the Neighborhood Association regardless of whether the owner or operator attempts, in any manner or through any means, including the use of magnetic panels or labels, tarpaulins, canvas, plastic sheeting, or tape, to temporarily conceal such writing, tools, or equipment while the vehicle is parked on the Properties. For purposes of this Subsection, official fire department vehicles, code enforcement vehicles or vehicles owned by the County and any vehicle owned by a law enforcement agency or assigned to a law enforcement officer shall not be considered a commercial vehicle. Stored vehicles, and vehicles that are either obviously inoperable or do not display current license plates, vehicles that are rusted, that have chipped paint, broken glass, missing or dismantled parts, or that are otherwise damaged and unsightly shall not be permitted on the Properties except within enclosed garages. For purposes of this Section, "inoperable" means unable to operate on its own power or to be driven lawfully on the highways of the State of Florida. Also for purposes of this Subsection, a vehicle shall be considered stored if it is put up on blocks, or covered with a tarpaulin and remains on blocks or so covered for any part of each of fourteen (14) consecutive days without the prior approval of the Board. Use of a protective cover for less than fourteen (14) days is allowed as long as the cover is maintained in good condition with no stains, holes, tears, or fading and as long as a valid, unexpired license plate is visible.~~ Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours and then only for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or Common Area. Any vehicle parked in violation of this Subsection or parking rules promulgated by the Board may be towed in accordance with the Bylaws.

- **DRC Comment:** SECTION IS TOO RESTRICTIVE – REVISE. "do not display current license plates" is too restrictive? REMOVE 14 DAY LIMITATION. Is “covered with tarpaulin” and “unexpired license plate is visible” too restrictive?
- **DRC Comment –** Per counsel, Not likely that the association has legal authority to "tow" vehicles from public streets.
- **Attorney Response:** We generally recommend that homeowners associations only tow from land that the Association owns. However, towing, even from property owned by the Association may lead to liability if the towing statutes are not strictly followed. Notwithstanding, the Association may want to leave the towing language and simply not enforce towing from public streets or other areas not owned by the Association.
- **SEE Attorney REVISIONS**

(c) Special Provisions for West Park Village. Notwithstanding the foregoing, on-street parking of vehicles shall be permitted within West Park Village except as otherwise specifically prohibited by the terms of any Supplemental Declaration applicable to West Park Village and except that vehicles otherwise prohibited pursuant to Section (b) of this Article shall not be parked on residential streets within West Park Village. A residential street shall be any

street or block fronted on both sides solely by property subject to this Declaration.

Section 3. Occupants Bound. All provisions of the Declaration, the Bylaws, and any rules and regulations or use restrictions promulgated pursuant thereto that govern the conduct of Owners or provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, the Bylaws, and the rules and regulations adopted pursuant thereto and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be subject to sanctions for any violation of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto.

Section 4. Animals and Pets. No animal, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets not to exceed a total of four (4), may be permitted in a Unit. However, any pet that is permitted to roam free or, in the sole discretion of the Board, produces objectionable noise or odor or endangers the health of or constitutes a nuisance or inconvenience to the Owners of other Units or the owner of any portion of the Properties shall be removed upon request of the Board; if the Owner fails to honor such request in a timely manner, the Board may require removal of the pet ~~may be removed by the Board~~. No pets shall be kept, bred, or maintained for any commercial purpose. ~~Dogs and cats~~ All pets shall be confined on a leash held by a responsible person at all times when they are outside a Unit on the Properties ~~be confined on a leash held by a responsible person~~. Any feces deposited by ~~a dog or a cat~~ any pet on any Common Area or on the private property of others must be immediately removed by the person who has custody or control of the animal.

- **DRC Question: - Legal for association to "remove" pets?**
- **Attorney Response:** It is legal for the Association to require removal of a pet if authorized by the Governing Documents. The Association would not send an agent to physically remove the pet but it could send a demand letter to the Owner and if necessary, seek injunctive relief from a court.
- **DRC Comment: SEE ATTORNEY REVISIONS**

Section 5. Quiet Enjoyment. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plant or animal or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature that may diminish or destroy the enjoyment of the Properties. No outdoor burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

Section 6. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit or any improvement thereon, including but not limited to, the following:

- (a) roofs, gutters, and downspouts;
- (b) lawns, shrubs, trees, and landscaping (each Owner is required to sod his or her property, as appropriate);
- (c) walks, sidewalks, leadwalks, driveways, mailboxes, lighting fixtures, and fencing (including the side of a fence or wall for the Common Area which is located on the Owner's property);
- (d) windows, doors, and trim;
- (e) any other exterior improvements and attachments from time to time situated on an Owner's property; and
- (f) any of the above that may be located in the area between the Unit boundary and an adjacent street (measured from the back-of-curb) or in the area between the Unit boundary and the water's edge of any lake or pond and the boundary of any wetland or conservation area.

Each Owner's duty of maintenance includes any and all easements upon such Owner's property, except for any limitations provided in this Declaration. No Owner may permit any deterioration to the exterior portions of such Owner's property.

Each Owner must make all repairs, maintenance, and replacements necessary to exterior improvements and attachments, and appurtenant driveways, if any, in a safe, sanitary, and reasonable attractive condition. If the Owner fails to perform his or her responsibility as required herein, the Association may, in addition to any other enforcement rights available to the Association, perform it and assess all costs incurred by the Association against the Unit and the Owner thereof in accordance with this Declaration. Amounts incurred by the Association in performing an Owner's maintenance responsibilities will be treated as a special assessment against less than all members as set forth in Article X, Section 4(b) of the Declaration, and such assessment may become a lien against the Unit. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, that causes disorderly, unsightly, annoying, or unkempt conditions may not be pursued or undertaken on any part of the Properties.

Notwithstanding the foregoing, if a Unit is located in a Neighborhood governed by a Neighborhood Association, and the Neighborhood Association is responsible for maintaining any exterior improvement or attachment situated on the Unit or any portion of the Properties located within such Neighborhood, said Neighborhood Association shall comply with the provisions of this Section 6 with respect to those portions of the Unit or Properties for which it is responsible. If a Neighborhood Association fails to perform its responsibility as required herein, the Association may, in addition to any other enforcement rights available to the Association, perform it and assess all costs incurred by the Association against the Neighborhood Association as a Neighborhood Expense, in accordance with this Declaration.

Section 7. Antennas and Satellite Dishes. To promote a high quality of life and to protect the individual values of the residents and property owners of the Westchase community while preserving Owners' and residents' ability to receive acceptable over-the-air television signals, the following restrictions shall apply to all Owners and residents. The term "antenna" shall include antennas, aerials, and satellite dishes that are designed and used to receive direct broadcast satellite (DBS) service, including direct-to-home satellite services; video programming services via multipoint distribution services, including multichannel multipoint distribution (MMDS); and television broadcast signals (TVBS).

(a) One Meter or Less. Satellite dishes one meter (39 inches) or less in diameter shall be (i) mounted, installed, attached, or placed in the rear of the Property or Unit unless this requirement unreasonably impairs the viewer's ability to receive reception of an acceptable quality, in which case this requirement shall be diminished only to the extent absolutely necessary to allow reception of an acceptable quality, avoid any increase in cost of installation, or avoid any delay in installation; (ii) mounted, installed, attached, or placed no higher than absolutely necessary to obtain reception of acceptable quality or does not increase the cost of installation or delay the installation; (iii) located so that it is not visible from the street or the adjoining property unless this requirement unreasonably impairs the viewer's ability to receive reception of an acceptable quality, ~~increases the cost of installation,~~ or delays the installation, in which case this requirement shall be diminished only to the extent absolutely necessary to allow a reasonable cost and acceptable quality; and (iv) screened with landscaping (except for antennas that are attached to the home at or above the first-story eaves) unless this requirement unreasonably impairs the viewer's ability to receive reception of an acceptable quality, increases the cost of installation or delays the installation, in which case this requirement shall be diminished only to the extent absolutely necessary to allow the viewer to receive a signal of acceptable quality and does not increase the cost of installation or delay the installation. This use restriction is subject to Section 207 of the Telecommunications Act of 1996 and shall comply with any future amendments thereto.

- **DRC Comment: REMOVE INCREASED COST AS AN ALLOWABLE EXCEPTION**
- **Attorney Response: Done.**

(b) Greater than One Meter. Satellite dishes designed to receive direct broadcast satellite services or multipoint distribution services that are greater than one meter (39 inches) in diameter are prohibited.

(c) Installed by Association. Anything herein to the contrary notwithstanding, the requirements set forth in the immediately preceding Subsections (a) and (b) of this Section shall not apply to antennas installed by the Association for the benefit of all or a portion of the Properties.

(d) Prohibited Devices. No antenna, dish, or other device used for the transmission or broadcast of any radio, television, microwave or other signal other than common remote control devices shall be mounted, installed, attached, or placed on the exterior portions of the Properties, except as permitted in this Section 7. All other antennas and broadcast reception devices except those expressly permitted herein shall be deemed to be prohibited. Nothing contained in this provision shall be construed to prohibit the use of such devices within the interior of any Unit.

(e) Compliance with Applicable Law. No provision in this Section should be construed in any manner as permitting, consenting to, or authorizing an Owner, the Association, or any other person to violate any federal, state, or local government law, statute, ordinance, or rule applicable to any antenna or broadcast reception device permitted herein, and any provision of this Section that could arguably be construed as authorizing a violation of any such law, statute, ordinance, or rule shall be interpreted in a manner which permits compliance and will be deemed to permit such compliance.

Section 8. Garbage Cans, Tanks and Equipment.

(a) All garbage cans, above ground storage tanks, mechanical equipment, and other similar items on Units shall be located or screened so as to be concealed from view of neighboring Units, streets, and property located adjacent to the Unit. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pickup by garbage and trash removal service, if in a container and placed curbside no earlier than 6:00 p.m. the day before the date scheduled for pickup of such trash, rubbish, or other debris. All containers placed curbside shall be removed the same day as pickup and stored in a manner or location so as not to be visible from any public street, Common Area, or neighboring Unit.

(b) All rubbish, trash, and garbage shall be stored in appropriate containers approved pursuant to this Declaration and shall be regularly removed from the Properties and shall not be allowed to accumulate thereon.

Section 9. Sports Equipment. Except as otherwise provided herein, the erection or installation on any part of any Unit of any sports equipment that is not portable is prohibited. The term "sports equipment" shall include, but not be limited to, basketball hoops, backboards, bicycle ramps, soccer or hockey nets, and any other item used in connection with sports, recreation, exercise, or fitness activities. Portable sports equipment may be used within any Unit and must be stored out of view from any road or right-of-way between sundown and sunrise, subject to the provisions of this Declaration, ~~or~~ the Master Guidelines, or INSGs. In addition to the above, portable sports equipment shall not be stored in the side yard of a Unit at any time.

Section 10. Subdivision of Unit and Time-Sharing. No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association.

No Unit shall be made subject to any type of time-sharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 11. Firearms, Weapons and Projectile Devices. The use or discharge of explosives, firearms, weapons and projectile devices within the Properties is prohibited. The terms "firearms" "weapons" and "projectile devices" shall include, but not be limited to, bows and arrows, daggers, swords, spears, BB guns, pellet guns, paintball guns and other firearms of all types, regardless of size. The term "explosives" shall include, but not be limited to, fireworks that explode, move or make noise. However, the use of fireworks shall be allowed within the Association on New Year's Day, January 1; Independence Day, July 4; and New Year's Eve,

December 31. Owners remain responsible for any damage cause to any person or property as a result of any fireworks used by the Owner, their tenants, guest, or invitees. Notwithstanding anything to the contrary contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.

- **DRC Comment:** Except as allowed under F.S. (we understand fireworks are not allowed on certain days such as July 4th)?
- **Attorney Response.** Chapter 791 regulates fireworks but FS 791.08 has an exemption for use during designated holidays: New Year's Day, January 1; Independence Day, July 4; and New Year's Eve, December 31. The statute says "The Legislature does not intend for the application of this section to supersede any prohibition against the use of fireworks contained within a legally executed and properly recorded declaration of covenants or covenant running with the land of any homeowners' association pursuant to chapter 720. However, a homeowners' association, through a board of directors, may not promulgate rules that attempt to abrogate a homeowner's right to use fireworks during a designated holiday or under general law." Hence you can continue to prohibit fireworks even on designated holidays. However, if you want to allow an exception for designated holidays, we can draft an exception. If you remove the prohibition from the Declaration, the Board would not have the right to adopt rules preventing use of fireworks on designated holidays.
- **DRC Response:** recommend consistency with FL law in allowing fireworks on specified days.

Section 12. Pools and Spas. Swimming pools are to be in-ground only with prior Modifications Committee approval for materials, location, size and screening from neighbor's or adjacent Unit's view. No aboveground swimming pool shall be erected, constructed or installed on any Unit. As used herein, the term "aboveground swimming pool" shall mean a swimming pool capable of holding a minimum of three (3) inches of water above grade and does not apply to any hot tub or spa, whether freestanding or incorporated into or adjacent to a swimming pool.

All swimming pools are to adhere to setback requirements outlined in applicable laws or in the Master Guidelines, or INSGs promulgated by the Voting Members. Swimming pool accessories, such as ladders, slides, and waterfalls, must not be over six (6) feet in height. All spas and mechanical equipment shall be shielded completely from neighbors' or adjacent Unit's view by approved fencing or vegetation from the time of installation.

- **DRC Comment:** CHANGE TO "PUBLIC VIEW" (AND DEFINE) (NO LONGER NEIGHBOR VIEW)
- **Attorney Notes:** We understand that this change is no longer requested but that "or adjacent" is now requested.

Section 13. Irrigation. No sprinkler or irrigation systems of any type that draw water from any creek, stream, river, lake, pond, wetland, canal or other groundwaters or surface waters within the Properties shall be installed, constructed, or operated within the Properties. Private irrigation wells are prohibited.

Section 14. Tents, Trailers, and Temporary Structures. Except as may be permitted by the Association during construction within the Properties or by federal, state or local authorities

subsequent to a natural disaster, no tent, utility shed, shack, trailer, or other structure of a temporary nature shall be placed upon a Unit or any part of the Properties. Notwithstanding, PODS or similar storage containers may be placed on driveways unless the driveway won't accommodate such containers in which case they may be in the street. Such containers must be removed within 14 days of drop off unless an extension is approved by Association's management staff or by the Board. Dumpsters used during renovations or construction within a Unit shall be placed on the driveway only and must be removed within 14 days of drop off unless an extension is approved by Association's management staff or by the Board. The foregoing shall not apply to any tent, trailer, or temporary structure erected or maintained by the Association for any Association-sponsored or Association-approved function or event, or to FEMA temporary housing supplied and utilized for a period not to exceed eighteen (18) months subsequent to a natural disaster.

Section 15. Drainage and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than the Association may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. The Association hereby reserves for itself a perpetual easement across the Properties for the purpose of altering drainage and water flow. Notwithstanding anything to the contrary herein, the Association shall not be required to take any action to affect or alter drainage and water flow on or within Units. Septic tanks and drain fields are prohibited on the Properties.

Section 16. Tree Removal and Landscaping. No trees shall be removed from an Owner's property, except for diseased or dead trees, trees with significant damage, trees needing to be removed to promote the growth of landscape elements other than grass, trees that have outgrown their placement on the Unit, trees that are causing structural damage or trees that pose a safety hazard, unless approved by the Modifications Committee in accordance with this Declaration and applicable Master Guidelines or INSGs. In the event of an intentional or unintentional violation of this Section, the violator may be required, by the Board or the committee having jurisdiction, to replace the removed tree with one (1) or more comparable trees of such size and number and in such locations as such Board or committee, in its sole discretion, may determine necessary to mitigate the damage. All landscaping on the Properties shall be strictly in compliance with the landscaping requirements in the ~~Westchase~~ Master Residential Guidelines, INSGs, and this Declaration. No substantial alteration to the landscaping on a Unit or Lot, including but not limited to paving, excavating, or placing gravel or stones thereon, shall be permitted without prior written approval by the Modifications Committee. However, approval by the Modifications Committee is not required for any alteration to the landscaping made by the Association on any Common Area.

- **DRC Comment:** Need to clarify handling of an owner's tree vs. the protocol for street trees?
- **Attorney Response:** Article XII, Section 6 of the Declaration makes Owners responsible for trees located in the area between the Unit Boundary and the adjacent street. If an owner wants to remove a tree in this area, the tree removal provisions in this Article XII, Section 16 would still apply. We don't believe this requires a modification or alternate procedure.

Section 17. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or

shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 18. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and electric utility transmission facilities and other high-voltage lines if required by law or for safety purposes.

Section 19. Air-Conditioning Units. No window-mounted or wall-mounted air-conditioning unit may be installed in any Unit. Any freestanding air-conditioning unit must be completely shielded from neighbor's or ~~public~~ adjacent Unit's view and from public view by approved fencing or vegetation from the time of installation.

- DRC Comment: Remove "neighbor's" view and make this "public view" only?
- DRC Comment: revise recommendation – keep neighbor's or adjacent there.

Section 20. Lighting. Seasonal decorative lights may be displayed on Units in accordance with the Master Guidelines. All other exterior lighting must be approved by the Modifications Committee in accordance with the applicable Master Guidelines or INSGs.

Section 21. Artificial Vegetation, Sculpture, and Similar Items. No artificial vegetation, Exterior sculpture or similar item shall be permitted on the exterior of any portion of any Unit or visible from any street, right-of-way, or any other Unit, except as permitted in the Master Guidelines.

Section 22. Energy Conservation Equipment. No solar energy collector panel or attendant hardware or other energy conservation equipment shall be constructed or installed on any Unit unless it complies with the restrictions set forth in the ~~Westchase Master Residential~~ Master Residential Guidelines and INSGs and is approved by the Modifications Committee.

Section 23. Wetlands, Lakes and Water Bodies. All wetlands, lakes, ponds, and streams within the Properties, if any, shall be aesthetic amenities only, and no other use thereof, including but not limited to fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted without the prior approval of the Board of Directors. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Properties. No dock, pier, or other structure shall be constructed on or over any body of water within the Properties except as maybe erected as part of the original subdivision infrastructure or subsequently erected by the Association.

Section 24. Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 25. Fences. No living fence, wall, or fence of any kind shall be permitted on any Unit except as approved by the Modifications Committee in accordance with this

Declaration, ~~and the~~ Master Guidelines and INSGs. The Committee, in its sole discretion, may prohibit any such structures from any Unit, including but not limited to those Units adjacent to or abutting Westchase Golf Country Club property or Common Area.

Section 26. Business Use. Except as may otherwise be permitted in Special Use Areas so designated by Declarant in any Supplemental Declaration relating to West Park Village:

No garage sale, moving sale, rummage sale, estate sale or similar activity shall be permitted without prior written approval of the Board of Directors. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties; (d) the business activity does not involve door-to-door solicitation of residents of the Properties; and (e) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance or a hazardous or offensive use or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade" as used in this provision shall be construed to have their ordinary, generally accepted meanings and shall include, but shall not be limited to, any occupation, work, or activity undertaken on an ongoing basis that involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full-time or part-time, is intended to or does generate a profit, or requires a license for its practice. Notwithstanding the foregoing, the leasing of a Unit for residential use shall not be considered a trade or business within the meaning of this section, unless the lease involves short term rentals prohibited under Article XII, Section 29 of this Declaration. Additionally, pet sitting shall not be considered a trade or business within the meaning of this section as long as the number of pets maintained in a residence does not exceed the household pet limits set forth in Article XII, Section 4 of this Declaration.

An occupant residing in the primary dwelling on a Unit may conduct permitted activities from the primary dwelling or a garage apartment on the Unit, and an occupant residing in a garage apartment may conduct such activities from the garage apartment, but no garage apartment shall be leased or otherwise used for any business, trade, or similar activity except by a person residing in the primary dwelling or the garage apartment on the Unit ~~and provided that the garage retains the ability to shelter the number of vehicles it was originally designed to hold.~~

- **DRC Comment:** Clarify the last sentence "~~..provided that the garage retains...designed to hold~~" **SCRATCH THIS REQMNT**
- **Attorney Response:** Done.

Section 27. On-Site Fuel Storage. Without prior written approval of the Board of Directors, no on-site storage of gasoline, heating, oil, or other fuels shall be permitted on any part of the Properties except that up to five (5) gallons of fuel may be stored in each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators,

and similar equipment.

Section 28. Occupancy. Except as provided in this paragraph, no more than a single family shall occupy each Unit. For purposes of this paragraph, a "single family" shall mean one (1) or more persons related by blood, adoption, or marriage. If persons occupying a Unit are not all related by blood, adoption, or marriage, then occupancy of such Unit shall be limited to a maximum of two (2) persons and their respective children. Individuals related "by blood" are defined as children, grandchildren, grandparents, brothers, sisters, parents, wives, and husbands, and no other kin. The foregoing restrictions on occupancy shall apply separately to the primary dwelling and any garage apartment comprising a Unit in West Park Village that has been approved as a garage apartment in accordance with the architectural review procedures set forth in Article XI. Notwithstanding anything contained herein, in no event shall the occupancy of any Unit be greater than two (2) persons per bedroom, unless written permission is granted by the Board of Directors to accommodate hardship or to allow more than two (2) minor children to occupy a room. "Occupancy" shall be deemed to mean staying overnight in a Unit for a total of more than thirty (30) days, either consecutively or nonconsecutively, in any twelve (12) month period.

- **DRC Comment:** Attorney recommended revisions

Section 29. Leasing of Units.

- **DRC Comment:** See attorney guidance & Workgroup Guidance
- **Attorney Response:** We provided a lengthy opinion addressing possible amendments with respect to leasing. Ultimately, we did not recommend most suggested changes to leasing restrictions. Due to Florid law, most recommended changes would not be enforceable against all owners and would create administrative burden with little benefit.

(a) Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including but not limited to a fee, service, gratuity, or emolument.

(b) General. Units may be rented only in their entirety. A garage apartment that is separate from the primary dwelling on a Unit in West Park Village may be leased, and a dwelling and a garage apartment on a given Unit may be separately leased to different tenants. No single rooms or other fraction or portion of a Unit constituting less than the entire dwelling or garage apartment may be leased, nor shall any Unit or portion thereof be used for operation of a boarding house or similar accommodation for transient tenants. There shall be no subleasing of Units or assignment of leases unless prior written approval has been obtained from the Board of Directors.

Except for leases of garage apartments or as may otherwise be permitted for any applicable Supplemental Declaration, all leases shall be for an initial term of no less than six (6) months, except with the prior written consent of the Board of Directors. Leases of garage apartments on Units in West Park Village shall be for an initial term of no less than three

months, and no garage apartment or Unit shall be leased to more than two separate tenants in any twelve (12) month period. Except as otherwise permitted by Section 26 of this Article, as amended, no garage apartment shall be leased or used for any purpose other than residential use, except that the occupant of the primary dwelling on a Unit may use the garage apartment for other uses consistent with the Declaration and this Article.

All leases shall be in writing. Notice of any lease or ~~lease-renewal~~ lease-renewal, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within ten (10) days of execution of the lease or within ten (10) days of renewal of an existing lease agreement. The Owner must make available to the lessee copies of the Declaration, the Bylaws, and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing. Owners may not list their Unit on websites such as Airbnb, VRBO, FlipKey, HomeAway, Roomorama, or similar websites that assist or facilitate short term or vacation rentals, unless the listing specifically states that rental of the Unit shall be for a period of not less than six months, or not less than three months for garage apartments on Units in West Park Village.

For the purposes of this section, renewals include hold-over tenants occupying the property on a month-to-month or other periodic basis. As to these renewals, the Owner must provide notice of the lease-renewal and proof of residency to the Association at least once every three (3) months.

- **DRC Comment: Spelling..."lease-renewal". Incorporate attorney revisions.**
- **Attorney Response: Done.**

(c) Lease Provisions. Any lease of a Unit in the Properties shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that if such language is not expressly contained therein, then such language shall be deemed incorporated into the lease by existence of this covenant and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee agrees to abide and comply with all provisions of the Declaration, the Bylaws, and the rules and regulations adopted pursuant thereto. The Owner agrees to cause all occupants of his or her Unit to comply with the Declaration, the Bylaws, and the rules and regulations adopted pursuant thereto, ~~and~~ The Owner is responsible for all violations thereof and resulting losses or damages caused by such occupants, notwithstanding the fact that such occupants of the Unit are also fully liable and may be subject to a penalty for any violation of the Declaration, the Bylaws, and the rules and regulations adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, the Bylaws, or a rule or regulation for which a fine is imposed, the Owner shall be responsible for paying such fine. The Association may, but is not required to, pursue the tenant for collection of any fine and said tenant shall be jointly responsible for the payment thereof. ~~shall be assessed against the lessee; however, if the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine.~~ Unpaid fines shall constitute a lien against the Unit. Any lessee charged with a violation of the

Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other penalty.

Any violation of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Florida law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, the Bylaws, and the rules and regulations adopted pursuant thereto, including but not limited to the power and authority to evict the lessee on behalf of and for the benefit of the Owner, in accordance with the terms of this Declaration. In the event that the Association proceeds to evict the lessee, any costs associated with the eviction, including attorney's fees and court costs, shall be specially assessed against the Unit and the Owner thereof, such being deemed an expense that benefits the leased Unit and the Owner thereof.

(ii) Use of Common Area. Except for leases of garage apartments in West Park Village that have been approved as garage apartments in accordance with the architectural review procedures set forth in Article XI, the Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Area, including but not limited to the use of any and all common facilities and amenities.

Section 30. Laws and Ordinances. Every Owner and occupant of any Unit, and all guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties, and any violation thereof may be considered a violation of this Declaration; however, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances, and rules.

Section 31. Insect Control Misting Systems. Misting systems for insect control are prohibited throughout the Properties.

Section 32. Awnings. No fixed awnings of any type are permitted on any Unit. However, awnings which are original to a Unit are allowed to be replaced or updated with like kind structure and/or style when necessary. Original and/or grandfathered awnings will be accepted as originally approved. Retractable awnings are allowed subject to the applicable Master Guidelines and INSGs.

Section 33. Weather Vanes. No weather vanes of any type are permitted on any Unit.

Section 34. Clotheslines. No clotheslines shall be erected or installed on the exterior portion of any Unit. Notwithstanding any provision herein, a clothesline may be temporarily put up and used in the backyard of a Unit but must be removed when not in use and in any event before sundown of the same day. To the extent possible, clotheslines must not be visible from any street or adjacent property while in use.

Section 35. Westchase Master Residential Guidelines and Individual Neighborhood

Section Guidelines. The Voting Members shall promulgate Guidelines to be known as the Westchase Master Residential Guidelines (also referred to as a "Master Guidelines" ~~or as the "Guidelines"~~), to assist Owners or the Modification Committee, Variance Committee and Covenants Committee in the application of this Declaration. ~~A Guideline may be Master Guidelines~~ are approved to cover all Units within Westchase, unless a guideline that is limited to a particular Neighborhood or Section imposes a different requirement. or less than all Units within Westchase. ~~"Individual Neighborhood Section Guidelines" or "INSGs" do A Guideline which does not apply to all Units within Westchase and shall specify the Neighborhood(s) or section(s) delineated on a plat to which the INSG Guideline applies; such Guidelines shall be referred to as "Individual Neighborhood Section Guidelines" or "INSGs". A Guideline INSGs may also be limited by its terms to a Neighborhood or section within West Park Village. If an INSG conflicts with a provision of the Master Guidelines, the INSG shall be interpreted as an exception and shall prevail over the conflicting provision in these Master Guidelines.~~ In the event a proposed structure or improvement, or any other proposed modification, addition, or alteration, is not specifically addressed or permitted in this Declaration, ~~or the Master Guidelines or INSGs~~, then such proposed structure, improvement, modification, addition, or alteration shall be deemed prohibited ~~by this Declaration and the Guidelines~~ and shall not be made, erected, constructed, or installed on any Unit.

(a) ~~Master Guidelines applicable to all Units within Westchase.~~ Master Guidelines covering all Units within Westchase may be approved or amended only by the affirmative vote ~~or written consent, or any combination thereof,~~ of Voting Members representing sixty-six percent (606%) of the votes of the Association at a meeting of the Voting Members called for that purpose.

(b) Individual Neighborhood Section Guidelines. New INSGs or amendments to existing INSGs may be proposed, drafted and approved according to the following procedures.

(i) New or amended INSGs may be proposed by:

1. The Neighborhood Committee(s) governing the Neighborhood(s) or section(s) to which the new or amended INSG will apply; or
2. A committee of residents, chaired by a Neighborhood's Voting Member, formed to propose updates or amendments to the Neighborhood's INSG; or
3. The Board of Directors for the Neighborhood Association(s) governing the Neighborhood(s) to which the new or amended INSG will apply; or
4. A petition signed by twenty percent (20%) of the residents who will be subject to the new or amended INSG.

(ii) Once proposed, a new or amended INSG will be sent to the Association's legal counsel for review. The exact language of the new or amended INSG will be drafted by counsel and delivered to the Association's manager.

(iii) New or amended INSGs may be approved upon obtaining Neighborhood Approval and then Voting Member Approval as set forth below:

1. Neighborhood Approval may be obtained as set forth in a, b, or c below:

- a. ~~The affirmative vote or written consent, or any combination thereof, of fifty-one percent (51%) of the Owners in any Neighborhood or section who will be subject to the new or amended INSG, present in person or by proxy at a meeting of the Neighborhood at which a quorum is obtained;~~ or
- b. The written consent of fifty-one percent (51%) of the Owners in any Neighborhood or section who will be subject to the new or amended INSG; or

- **DRC Comment: CHANGE “OR” TO “AND” Eliminate written consent**
- **Attorney Response:** This should be “or”. Neighborhood approval can be obtained by majority vote of the Owners or the Board if there is an association.
- **Attorney Response:** DRC requested that we remove references to written consent throughout. However, most Neighborhoods that do not have a Neighborhood Association seek approval for INSG amendments through a neighborhood petition (i.e. written consent). Consequently, we recommend allowing written consent for Neighborhood approval of INSGs so that the Association does not need to call and Notice a Neighborhood meeting.

- c. The affirmative vote or written consent, or any combination thereof, of a majority of the directors of the Neighborhood Association, if any, of any Neighborhood that will be subject to the new or amended INSG; ~~and~~

2. Voting Member Approval requires:

- a. ~~The affirmative vote or written consent, or any combination thereof, of two-thirds (2/3) sixty (60%) of the Voting Members at a meeting of the Voting Members at which the new or amended Guideline INSG is considered, with each Voting Member casting one (1) vote; and~~
- b. If the INSG will apply to a Neighborhood or Section within West Park Village, then approval also requires the affirmative vote ~~or written consent, or any combination thereof, of two-thirds (2/3) sixty(60%)~~ of the West Park Village Voting Members at a meeting of the Voting Members, with each Voting Member casting one (1) vote.

(iv) By way of illustration, if an INSG applies to several Neighborhoods or sections that do not have Neighborhood Associations and the amendment will remove one (1) Neighborhood or section from the INSG, the amendment may be proposed by the Neighborhood Committee or by a petition signed by 20% of the Owners of Units who will no longer be subject to the INSG. After counsel drafts the necessary language, the

Amendment must be approved by fifty-one percent (51%) of the Owners in the Neighborhood who will no longer be subject to the INSG and by ~~two-thirds (2/3)~~ sixty (60%) of the Voting Members present in person ~~or through written consent~~ at a meeting at which the amendment is considered. If an INSG applies to several Neighborhoods or sections that do not have Neighborhood Associations and the amendment will change the ~~Guideline-INSG~~ applicable to only two (2) Neighborhoods or sections, the amendment may be proposed by the Neighborhood Committees for the two (2) sections or by 20% of the Owners of Units in each Neighborhood or Section that will be subject to the change. It will only be effective in the two Neighborhoods or sections if fifty-one percent (51%) of the Owners in each of the two Neighborhoods or sections independently approves the amendment and the amendment is approved ~~two-thirds (2/3)~~ sixty (60%) of the Voting Members present in person ~~or through written consent~~ at the meeting at which the amendment is considered. If fifty-one percent (51%) of the Owners in one of the two Neighborhoods or sections fails to approve the proposed amendment, the amendment will not be effective as to that Neighborhood or section.

Owner approval for proposed or amended INSGs may be obtained by written consent or by vote at a meeting, called by the Voting Member for the Neighborhood or section identified in the proposed or amended INSG. Notice of any meeting at which any proposed or amended INSG is to be considered by the Owners must be mailed, delivered, or electronically transmitted to the Owners affected by the proposed or amended INSG and posted conspicuously on the property ~~not less~~ no later than fourteen (14) days in advance of the meeting.

Voting Members may ~~but are not required to~~ consider proposed or amended ~~Guidelines~~ INSGs until after the requisite number of votes or written consents are obtained from Owners of the applicable Neighborhood or Section or the Board of the applicable Neighborhood Association. Notice of any meeting of the Voting Members at which any new Master Guideline or INSG, or any amendment to an existing Master Guideline or INSG is to be considered must be mailed, delivered, or electronically transmitted to all Owners and posted conspicuously on the property ~~not less~~ no later than fourteen (14) days in advance of the meeting. The notice must include the language of the proposed Master Guideline or INSG amendment(s) and the time and place of the meeting at which the proposed ~~Guideline~~ amendment(s) will be presented for approval by the Voting Members. Notice may be delivered to any member who resides in Westchase through the Association's newsletter.

- **DRC Comment:** Require resident approval before the time/effort of VM approvals? I.e. not a preemptive or presumptive vote by the VM's. "Voting Members may (add "not")..consider...."
- **Attorney Response:** We made the change per your request. However, the initial language allows more flexibility.

Article XIII.

General Provisions

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the

Association or the Owner of any property subject to this Declaration and the respective legal representatives, heirs, successors, and assigns thereof, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 2. Amendment. This Declaration may be amended only by the affirmative vote ~~or written consent, or any combination thereof,~~ of Voting Members representing ~~seventy-five~~ sixty percent (~~75~~60%) of the total votes of the Association. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment, to be effective, must be recorded in the public records of Hillsborough County, Florida.

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

Prior to any vote on an amendment to this Declaration or the Bylaws that requires approval by the Voting Members on behalf of the Members, the Association shall cause to be delivered to all Members of the Association a referendum upon which they may indicate their vote on these matters, in accordance with Article III, Section 3 of this Declaration.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed on such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or any former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment,

between each Unit and such portions of the Common Area as are adjacent thereto and between adjacent Units or any Unit and any Westchase ~~Golf Country~~ Club Property due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet measured from any point on the common boundary between each Unit and the adjacent portion of the Common Area or between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of or with the knowledge and consent of an Owner, and occupant, or the Association.

Section 5. Easements for Utilities, Etc. There is hereby reserved unto the Association or its designees (which may include, without limitation, Hillsborough County, Florida, a community development district, or a utility) blanket easements upon, across, over, and under all of the Properties for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including but not limited to water, sewers, meter boxes, telephones, gas, and electricity; however, the exercise of this easement shall not unreasonably interfere with the use of any Unit, and except in an emergency, entry onto any Unit shall not include entry into a dwelling and shall be made only after reasonable notice to the Owner or occupant thereof. The foregoing shall not be construed to prohibit the Association from making reasonable entry during daylight hours onto any Unit when reasonably necessary or required to confirm compliance with this Declaration.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Units and the Common Areas for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board, with the approval of Voting Members representing at least ~~seventy-five~~ sixty percent (~~75~~60%) of the total votes of the Association, shall have the power to mortgage, pledge, or hypothecate all or any portion of the Common Area as security for money borrowed or debts incurred and to dedicate portions of the Common Area, including, but not limited to, park sites, lakes, ponds, wetlands, conservation areas, and preservation areas to the CDD, if any; any public utility; Hillsborough County, Florida; or any other local, state, or federal governmental or quasi-governmental entity, subject to such approval requirements as may be contained in this Declaration.

Section 6. Electric Utility Transmission Easement. There is hereby reserved unto Tampa Electric Company and its successors and assigns an easement upon, across, over, and

under all of the Properties exclusively for the maintenance, repair, operation, removal, and replacement of electric utility transmission facilities, including but not limited to lines, wires, cables, and any and all attendant structures serving the Properties, provided that (a) the exercise of this easement does not unreasonably interfere with the use of any Unit; (b) except in an emergency, entry onto a Unit shall be made only after reasonable notice to the Owner or occupant and shall not include entry into a dwelling; and (c) except in an emergency, entry onto the Common Areas shall be made only after reasonable notice to the Association.

No construction or use of any Unit or other portions of the Properties by an Owner, occupant, or invitees shall be inconsistent with this easement. The Association shall in its sole discretion determine whether construction on or use of any portion of the Properties is inconsistent with this easement and whether any exercise of this easement unreasonably interferes with the use of any Unit.

Notwithstanding the foregoing, no construction, including staking, clearing, excavating or other site work, or installation of additional electric utility transmission facilities, including additional transmission lines and poles, shall be permitted without the written consent of the Board. Furthermore, the Board may impose additional restrictions and requirements on the construction and use of any portion of the Properties as the Board deems necessary to protect this easement as currently exercisable and as may be exercisable in the future, if additional transmission facilities serving the Properties are added.

Section 7. Easements for Lake Maintenance and Floodwater. Declarant has reserved for the Association for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds or streams, wetlands, preservation areas, and conservation areas located within the Area of Common Responsibility (a) to install, keep, maintain, and replace pumps thereon in order to provide water therefrom for the irrigation of any of the Area of Common Responsibility and the Westchase Golf Country Club; (b) to construct, maintain, and repair any wall, dam, or other structure retaining water therein; and (c) to remove trash and other debris therefrom and fulfill its maintenance responsibility as provided in this Declaration.

The Association shall have an easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, or streams for the purpose of allowing the Association to exercise its rights and responsibilities as herein and otherwise set forth, provided that the Association use reasonable care in the exercise of such easement and shall repair any damage caused in the exercise of such easement.

There is further reserved herein and hereby, for the benefit of the Association, a perpetual, nonexclusive right and easement of encroachment over every portion of the Properties in order (a) to flood and back water upon and maintain water over the Properties; (b) to fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes ponds, streams, wetlands, preservation areas, and conservation areas within the Area of Common Responsibility and to maintain and landscape the slopes and banks pertaining thereto; and (c) to enter upon and across any portion of the Properties for the purpose of exercising its rights under this Section.

Section 8. Easement for Golf Balls. All Units and the Common Area and the

common property of all Neighborhoods are encumbered with an easement permitting golf balls unintentionally to come upon the Common Area, Units, or common property immediately adjacent to the golf course and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or exterior portions of a Unit to retrieve errant golf balls, provided, however, that if any Unit is fenced or walled, the golfer will seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall the Association be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement.

Section 9. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 10. Right of Entry. The Association shall have the right, but not the obligation, to enter onto any Unit in an emergency, to perform its maintenance responsibilities hereunder, and to inspect for the purpose of ensuring compliance with this Declaration, the Bylaws, and the Association rules, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. The right of entry shall include the right of the Association to enter onto a Unit, but not into a dwelling, to cure any condition that may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 11. Litigation. No judicial or administrative proceeding involving amounts in controversy in excess of \$100,000, shall be commenced or prosecuted by the Association unless approved by a ~~vote of seventy-five percent (75%)~~ a majority of the Voting Members who are present in person or represented by an alternate at a meeting of the Voting Members at which quorum has been attained, with each Voting member casting one vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including but not limited to the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes and pursuant to the same procedures as are necessary to institute proceedings as provided above.

- **DRC Question:** This section shall not be amended unless such amendment is approved by the percentage of votes and pursuant to the same procedures as are necessary to institute proceedings as provided above. Isn't this true for every section of the CCRs? CAN WE REMOVE THIS LAST SENTENCE, THEN?
- **Attorney Response:** This sentence ensures that if the amendment provision is a lower threshold than the litigation provision, the higher threshold nonetheless applies. The reason for such language is so that a lower threshold of Owners who may want to proceed with a litigation cannot amend the provision and essentially force the litigation

to pass without the requisite vote. Consequently, you can lower the approval threshold and remove the last sentence, if approved by 75% of the Voting Members. (The normal amendment procedures, requiring referendum to the Owners will also need to be met.)

- Also, despite plan for uniform percentages, we recommend this threshold be no higher than a majority for this issue. F.S. 720.303(1) says “Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of \$100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained.” Let us know if you nonetheless want this threshold to be 60%.
- **DRC Response:** Accept recommendation - let's make it a majority of voting interest to align with statute

Section 12. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall, be cumulative with those of any Neighborhood, and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions and provisions of any Articles of Incorporation and Bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

Section 13. Use of the ~~Word~~ "Westchase" Logo. No person shall use the ~~word~~ "Westchase" or the Westchase logo, being that certain trademarked stylized "W" design, or any derivative of either, in any printed or promotional material without the prior written consent of the Association. ~~However, Owners may use the term "Westchase" in printed or promotional matter where the term is used solely to specify that particular property is located within Westchase, and the Association and the Westchase Country Club shall be entitled to use the word "Westchase" in their names. "Westchase, FL 33626" may be used in the postal address for Properties and all Units located therein.~~

- **REMOVE REFERENCE TO THE WORD “WESTCHASE” AND only focus on the W logo trademark at this point?**
- **Attorney Response:** That’s up to the committee. This provision has been relied upon over the years to send cease and desist letters where various business owners used “Westchase” in promotional materials suggesting community support. However, we revised per your request.

Section 14. Compliance. Every Owner and occupant of any Unit shall comply with all lawful provisions of this Declaration, the Bylaws, and the rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity maintainable by the Association or, in a proper case, by any aggrieved Unit Owner or Owners.

Section 15. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION NOR ANY SUCCESSOR SHALL IN

ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, HOWEVER, AND NEITHER THE ASSOCIATION NOR ANY SUCCESSOR SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AS WELL AS THE TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT NEITHER THE ASSOCIATION NOR ITS BOARD OF DIRECTORS OR ANY SUCCESSOR NOR THE MODIFICATIONS COMMITTEE REPRESENT OR WARRANTS THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO MASTER GUIDELINES OR INSGS ESTABLISHED IN COMPLIANCE WITH THIS DECLARATION CANNOT BE COMPROMISED OR CIRCUMVENTED; THAT ANY SUCH SYSTEM WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLDUP, OR IN ANY OTHER WAY; OR THAT ANY SUCH SYSTEM WILL PROVIDE THE DETECTION OR PROTECTION FOR WHICH IT WAS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY UNIT, AND EACH TENANT, GUEST, AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, AND ANY SUCCESSORS ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST, AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, AND ANY SUCCESSORS HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST, OR INVITEE RELIED ON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY ~~OR~~ OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

- **DRC Comment:** Typo..."OF" is "OR"?
- **Attorney Response:** Yes. That was a typo.

Section 16. Notice of Sale, ~~or~~ Transfer of Title, or Change of Mailing Address. In the event that any Owner sells or otherwise transfers title to his or her Unit, the new Owner shall, within thirty (30) days of transfer of title, give the ~~Board of Directors~~ Association a copy of the recorded warranty deed, quitclaim deed, certificate of title or any other document evidencing transfer of title as well as the new owner's mailing address and any other information the Board of Directors may reasonably require. Nothing in this section shall be construed to relieve an Owner from liability for assessments that accrue or come due while he/she owns the Unit. The Owner shall be responsible for providing notice, in writing, to the Association of any change in the address designated by the Owner for receipt of notices. All notices and other communications shall be deemed delivered if sent to the address on record with the Association.

- **DRC Comment:** Notice of sale or transfer of title. Language not clear for fraud SLK – PLEASE CONFIRM IF WE HAVE A PROTOCOL TO HELP ADDRESS THIS?

- **Attorney Response:** As noted above, we do not recommend adding language to the Declaration to impose any additional obligation on the Association to investigate ownership. However, we do recommend requiring Owners to provide the Association with updated mailing address.

Section 17. Cooperation with the Community Development District. The Association shall have the power, and is hereby authorized, to contract with and cooperate with the Community Development District to ensure that their respective responsibilities are discharged. The Association is further authorized to act on behalf of its Members to ensure that the level of services provided by any such CDD is consistent with the Communitywide Restrictions.

Each Owner, by acceptance of his or her deed or recorded contract or sale, is deemed to covenant and consent to the creation of such a CDD and to executing a separate document so consenting to the creation of the CDD if requested to do so by Association.

- **DRC Comment:** Can we remove this consenting document for CDD creation?
- **Attorney Response:** You can, but we don't see how removal benefits the Association in any way. If there were ever a legal challenge to the authority of the CDD or need to create a new CDD, this provision could be helpful.
- **DRC Response:** Okay, let's keep this section intact as is

Article XIV.

Mortgagee Provisions

The following provisions are for the benefit of holders of first mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage who provides a written request to the Association (stating the name and address of such holder, insurer, or guarantor and the Unit number, therefor becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or casualty loss that affects a material portion of the Properties or affects any Unit on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; however, notwithstanding this provision, any eligible holder of a first mortgage is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under this Declaration or the Bylaws of the Association that is not cured within sixty (60) days;

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

(d) any proposed action that would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first mortgagees or Voting Members representing at least sixty-seven percent (67%) of the votes entitled to be cast thereon consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, convey, or transfer all or any portion of the real property comprising the Common Area that the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this Subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may become or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. Other Provisions for First Lien Holders. To the extent possible under Florida law:

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by such eligible holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by such eligible holders are allocated.

Section 4. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to this Article or to the addition of land in accordance with this Declaration.

(a) To terminate the Association, the consent of Voting Members representing at least seventy-five percent (75%) of the total votes of the Association ~~east~~ and the approval of the eligible holders of first mortgages on Units to which at least seventy-five percent (75%) of the total votes of Units the Association subject to a mortgage appertain shall be required.

(b) The consent of Voting Members representing at least ~~seventy-five~~ sixty percent (75~~60~~%) of the total votes of the Association ~~east~~ shall be required to materially amend any provisions of the Declaration, Bylaws, or Articles of Incorporation of the Association or to add any material provisions thereto that establish, provide for, govern, or regulate any of the following:

- (i) Voting rights attributable to a unit;
- (ii) Assessment shares and subordination of assessment liens;

ATTORNEY COMMENT: This cannot be changed. See Section 720.306(1)(c) (noting that amendments altering the proportionate voting interest of a parcel or the assessment scheme may only be made with 100% approval of all owners and record lien holders or as set forth in the Governing Documents *as originally recorded*).

Section 5. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 6. Notice to the Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Unit.

Section 7. Amendment by the Board. Should Fannie Mae or Freddie Mac subsequently delete any of the respective requirements that necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 8. Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws, or Florida law for any of the acts set out in this Article.

Section 9. Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the date of the Association's request, provided that such request is delivered to the mortgagee by certified or registered mail with return receipt requested.

- **Attorney Comment:** If approved, the order of this Exhibit shall be revised in the re-recorded certificate of amendment.

Exhibit AC to Declaration

Land Initially Submitted:

Westchase Unit #110 as per plat recorded in Plat Book 70, page 7 of Public Records, Hillsborough County, Florida.

Recorded in OR Book 6406, page 216.

Land Subsequently Submitted:

Westchase Unit 201 as per plat recorded in Plat Book 71, Page 24 of the Public Records of Hillsborough County, Florida.

Recorded at OR Book 6587, page 1916

Westchase Unit 221 as per plat recorded in Plat Book 70, Page 55 of the Public Records of Hillsborough County, Florida.

Recorded at OR Book 6623, page 049

Westchase Unit 203 as per plat recorded in Plat Book 70, Page 44 of the Public Records of Hillsborough County, Florida.

Recorded at OR Book 6697, page 1212

Westchase Section 115 as per plat recorded in Plat Book 71, Page 71 of the Public Records of Hillsborough County, Florida.

Recorded at OR Book 6787, page 279

Westchase Section 223 as per plat recorded in Plat Book 71, Page 73 of the Public Records of Hillsborough County, Florida.

Recorded at OR Book 6787, page 285

Westchase Section 221 (Revised), A Replat of Westchase Section 221, as per plat recorded in Plat Book 71, Page 72 of the Public Records of Hillsborough County, Florida.

Recorded at OR Book 6807, page 0880

Westchase Section 117 as per plat recorded in Plat Book 73, Page 13 of the Public Records of Hillsborough County, Florida.

Recorded at OR Book 7253, page 1485

All Lots, Tracts and Parcels within the Plat of Westchase Section "104" as recorded in Plat Book 74, Pages 10-1 through 10-3, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 7471, page 297

All Lots, Tracts and Parcels within the Plat of Westchase Section "225", "227" and "229" as recorded in Plat Book 74, Pages 14-1 through 14-12, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 7471, page 299

All Lots, Tracts and Parcels within the Plat of Westchase Section "370" as recorded in Plat Book 75, Pages 71-1 through 71-6, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 7818, page 1188

All Lots, Tracts and Parcels within the Plat of Westchase Section "371" as recorded in Plat Book 75, Pages 72-1 through 72-5, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 7818, page 1190

All Lots, Tracts and Parcels within the Plat of Westchase Section "373" and "411" as recorded in Plat Book 77, Pages 14-1 through 14-7, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 8051, page 1952

All Lots, Tracts and Parcels within the Plat of Westchase Section "372" as recorded in Plat Book 77, Pages 15-1 through 15-6, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 8051, page 1954

All of Lots 3, 4, 5 and 6, according to the plat of WESTCHASE SECTION "412", as recorded in Plat Book 77, Page 38, Public Records of Hillsborough County, Florida.

Recorded at OR Book 8109, page 1993

All of Parcels, "B", "F" and "G", according to the plat of WESTCHASE SECTION "412", as recorded in Plat Book 77, Page 38, Public Records of Hillsborough County, Florida.

Recorded at OR Book 8109, page 1993

A parcel of land lying in Section 17, Township 28 South, Range 17 East, Hillsborough County, Florida, being more particularly described as follows:

From the Northwest corner of the Northeast 1/4 of said Section 17, run thence along the North boundary of said Northeast 1/4 of Section 17, S.89°45'50"E., 7.47 feet to a point on the West boundary of LINEBAUGH AVENUE WEST 2ND EXTENSION, according to the plat thereof as recorded in Plat Book 71, Page 8, Public Records of Hillsborough County, Florida, thence along said Westerly boundary, S.09°06'08"W., 98.52 feet to a point on a curve, said point also being the POINT OF BEGINNING, thence continue along said Westerly boundary, Southeasterly, 55.31 feet along the arc of a curve to the right having a radius of 35.00 feet and a central angle of 90°32'18" (chord bearing S.35°37'43"E., 49.73 feet) to a point of tangency, said point also being the Northwest corner of COUNTRYWAY BOULEVARD 2ND EXTENSION, according to the plat thereof as recorded in Plat Book 71, Page 7 Public Records of Hillsborough County, Florida, thence along the Westerly boundary of said COUNTRYWAY BOULEVARD 2ND EXTENSION, the following seven (7) courses, 1) S.09°38'26"W., 137.68 feet, 2) S.09°10'20"W., 179.15 feet 3) S19°21'41"W., 99.31 feet to a point on a curve, 4) Westerly, 40.49 feet along the arc of a curve to the right having a radius of 25.00 feet and a central angle of 92°48'27" (Chord bearing S.68°02'31" W., 36.21 feet), 5) S24°26'44"W., 70.00 feet to a point on a curve, 6) Southerly, 40.49 feet along the arc of a curve to the right having a radius of 25.00 feet and a central angle of 92°48'27" (chord bearing S.19°09'03"E., 36.21 feet), 7) S.27°57'09"W., 30.53 feet, thence N.61°20'52"W., 20.19 feet to a point on a curve, thence Westerly, 21.84 feet along the arc of a curve to the left having a radius of 15.00 feet and a central angle of 83°24'51" (chord bearing S.84°13'31"W., 19.96 feet) to a point of reverse curvature, thence Westerly, 216.82 feet along the arc of a curve to the right having a radius of 155.00 feet and a central angle of 80°08'55" (chord bearing S.82°35'33"W., 199.57 feet) to a point of tangency, thence N.57°20'00"W., 283.03 feet, thence N.86°30'04"W., 51.56 feet, thence N.11°59'45"E., 144.74 feet, thence N.11°20'33"E., 65.74 feet, thence N.11°09'18"E., 124.53 feet, thence N.11°36'39"E., 107.59 feet, thence N.11°57'26"E., 97.23 feet, thence S.83°44'33"E., 199.25 feet, thence S.78°42'27"E., 180.13 feet to a point on a curve, thence Easterly, 163.98 feet along the arc of a curve to the right having a radius of 8924.00 feet and a central angle of 01°03'10" (chord bearing S.81°25'27"E., 163.98 feet) to the POINT OF BEGINNING. Containing 8.039 acres, more or less.

Recorded OR Book 8145, page 0246

All of Lots 7, 8, 26, 27, 65 and 66, according to the Plat of WESTCHASE SECTION "412", as recorded in Plat Book 77, Page 38, Public Records of Hillsborough County Florida.

Recorded OR Book 8157, page 1117

Westchase Section " 375", as per plat recorded in Plat Book 77, Page 61 of the public records of Hillsborough County, Florida.

Recorded at OR Book 8147, Page 441

All of Lots 25, 28, 39, 40, 41 and 42, according to the plat of WESTCHASE SECTION "412", AS RECORDED IN Plat Book 77, page 38, Public Records of Hillsborough County, Florida.

Recorded at OR Book 8200, page 1788

Berkeley Square, as per plat recorded in Plat Book 78, Page 55 of the public records of Hillsborough County, Florida.

Recorded at OR Book 8239, Page 161

All Lots, Tracts and Parcels within the Plat of Westchase Section "374" as recorded in Plat Book 78, Pages 51-1 through 51-4, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 8258, page 0622

All of Lots 9, 10, 17, 18, 61 and 62, according to the plat of WESTCHASE SECTION "412", as recorded in Plat Book 77, Page 38, Public Records of Hillsborough County, Florida.

Recorded at OR Book 8265, page 0704

All of Lots, 11, 12, 23, 24, 51, 52, 53, 54, 57, 58, 59, 60, 63 and 64, according to the plat of WESTCHASE SECTION "412", as recorded in Plat Book 77, Page 38, Public Records of Hillsborough County, Florida.

Recorded at OR Book 8285, page 1445

All of Lots 37, 38, 47, 48, 55 and 56, according to the plat of WESTCHASE SECTION "412", as recorded in Plat Book 77, page 38, Public Records of Hillsborough County, Florida.

Recorded at OR Book 8324, page 1322

All of Lots 43, 44, 49, and 50, according to the plat of WESTCHASE SECTION "412", as recorded in Plat Book 77, Page 38, Public Records of Hillsborough County, Florida.

Recorded at OR Book 8347, page 0862

All of Lots 15, 16, 19, and 20, according to the plat of WESTCHASE SECTION "412", as recorded in Plat Book 77, Page 38, Public Records of Hillsborough County, Florida.

Recorded at OR Book 8379, page 0426

All of Lots 13, 14, 31 and 32, according to the plat of Westchase Section "412", as recorded in Plat Book 77, Page 38 of the public records of Hillsborough County, Florida.

Recorded at OR Book 8427, Page 726

Westchase Section "414", as per plat recorded in Plat Book 81, Page 47 of the public records of Hillsborough County, Florida.

Recorded at OR Book 8444, Page 812

A parcel of land lying in the Southwest 1/4 of Section 15, Township 28 South, Range 17 East, Hillsborough County, Florida, and being more particularly described as follows:

From the Northeast corner of the Northeast 1/4 of said Southwest 1/4 of Section 15, run thence along the North boundary of said Northeast 1/4 of the Southwest 1/4 of Section 15, N.89°07'44"W., 225.00 feet to the Northeast corner of WESTCHASE SECTION "412", according to the plat thereof as recorded in Plat Book 77, Page, 38, Public Records of Hillsborough County, Florida; thence along the East boundary of said WESTCHASE SECTION "412", S.01°09'09"W., 343.00 feet to the Southeast corner of said WESTCHASE SECTION "412"; thence along the South boundary of said WESTCHASE SECTION "412", N.89°07'44"W., 796.02 feet of the POINT OF BEGINNING; thence S.00°52'16"W., 780.66 feet to the point on a curve; thence Westerly, 234.31 feet along the arc of a curve to the right having a radius of 430.00 feet and a central angle of 31°13'15" (chord bearing N.85°59'22"W., 231.42 feet) to a point of compound curvature; thence Northwesterly, 111.80 feet along the arc of a curve to the right having a radius of 330.00 feet and a central angle of 19°24'42" (chord bearing N.60°40'23"W., 111.27 feet); thence S.01°16'58"W., 69.25 feet; thence S.01°08'02"W., 179.92 feet; thence S.01°06'14"W., 150.53; thence S.01°50'49"W., 23.68 feet to a point on a curve on the Northerly right-of-way line of LINEBAUGH AVENUE WEST 1ST., EXTENSION, according to the plat thereof as recorded in Plat Book 70, Page 53. Public Records of Hillsborough County, Florida; thence along said Northerly right-of-way line the following five (5) courses: 1) Westerly, 67.57 feet along the arc of a curve to the right having a radius of 2236.00 feet and a central angle of 01°43'53" (chord bearing N.71°24'53"W., 67.57 feet) to a point of tangency; 2) N.70°32'56"W., 40.81 feet; 3) N.67°06'33"W., 200.01 feet; 4) N.70°32'56"W., 221.45 feet to a point of curvature; 5) Northwesterly, 39.27 feet along the arc of a curve to the right having a radius of 25.00 feet and a central angle of 90°00'00" (chord bearing N.25°32'56"W., 35.36 feet) to a point of tangency, said point also being the Southeast corner of MONTAGUE STREET, according to the plat of WESTCHASE SECTION "373" and "411", as recorded in Plat Book 77, Page 14, Public Records of Hillsborough County, Florida; thence along the Easterly right-of-way line of said MONTAGUE STREET the following four (4) courses: 1) N.19°27'04"E., 187.77 feet; 2) N.13°49'01"E., 101.61 feet to a point of curvature; 3) Northerly, 402.07 feet along the arc of a curve to the left having a radius of 1030.00 feet and a central angle of 22°21'57" (chord bearing N.02°38'03"E., 399.52 feet) to a point of reverse curvature; 4) Northerly, 376.91 feet along the arc of a curve to the right having a radius of 770.00 feet and a central angle of 28°02'45" (chord bearing N.05°28'26"E., 373.16 feet) to the Southwest corner of the aforesaid WESTCHASE SECTION "412"; thence along the South boundary of said WESTCHASE SECTION "412", the following two (2) courses: 1) S.70°30'11"E., 378.02 feet; 2) S.89°07'44"E., 362.30 feet to the POINT OF BEGINNING.

Recorded at OR Book 8444, page 0815-A

All of Lots 21, 22, 45, and 46, according to the plat of WESTCHASE SECTION "412", as recorded in Plat Book 77, Page 38, Public Records of Hillsborough County, Florida.

Recorded at OR Book 8457, page 1554

All of Lots 1, 2, 29, 30, 33, 34, 35 and 36, according to the plat of WESTCHASE SECTION "412", as recorded in Plat Book 77, Page 38, Public Records of Hillsborough County, Florida.

Recorded at OR Book 8502, page 1805

All Lots, Tracts and Parcels within the Plat of West Section 376 as recorded in Plat Book 80, Pages 5-1

through 5-5, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 8611, page 0548

All Lots, Tracts and Parcels within the Plat of Westchase Section 378 as recorded in Plat Book 79, Pages 78-1 through 78-4, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 8611, page 0550

All Lots, Tracts and Parcels within the Plat of Westchase Section "377" as recorded in Plat Book 81, Pages 10-1 through 10-7, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 8640, page 1502

All Lots, Tracts and Parcels within the Plat of Westchase Section 205 as recorded in Plat Book 80, Pages 56-1 through 56-5, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 8640, page 1503

Westchase Section "211", as per plat recorded in Plat Book 83, Page 55 of the public records of Hillsborough County, Florida.

Recorded at OR Book 8816 Page 1793

A parcel of land lying in Section 17, Township 28 South, Range 17 East, Hillsborough County, Florida, being more particularly described as follows:

BEGINNING at the Northeast corner of COUNTRYWAY BOULEVARD 2ND EXTENSION, according to the plat thereof as recorded in Plat Book 71, Page 7, Public Records of Hillsborough County, Florida, also be a point of curvature on the Southerly boundary of LINEBAUGH AVENUE WEST 2ND EXTENSION, according to the plat thereof as recorded in Plat Book 71, Page 8 Public Records of Hillsborough County, Florida; run thence along said Southerly boundary of LINEBAUGH AVENUE WEST 2ND EXTENSION, the following six (6) courses: 1) Northeasterly, 54.98 feet along the arc of a curve to the right having a radius of 35.00 feet and a central angle of 90°00'00" (chord bearing N.54°38'28"E., 49.50 feet) to a point of tangency; 2) S.80°21'34"E., 168.56 feet to a point of curvature; 3) Easterly, 101.32 feet along the arc of a curve to the right having a radius of 1224.00 feet and a central angle of 04°44'34" (chord bearing S.77°59'17"E., 101.29 feet) to a point of tangency; 4) S.75°37'00"E., 171.81 feet to a point on a curve; 5) Southeasterly, 452.88 feet along the arc of a curve to the right having a radius of 1236.00 feet and a central angle of 20°59'36" (chord bearing S.57°07'48"E., 450.35 feet) to a point of tangency; 6) S.46°37'58"E., 138.84 feet; thence S.43°22'02"W., 120.00 feet; thence SOUTH, 37.82 feet; thence N.88°28'40"W., 65.73 feet; thence S.58°51'59"W., 209.17 feet; thence N.63°27'51"W., 251.18 feet; thence S.79°22'13"W., 157.78 feet; thence S.10°29'30"W., 201.74 feet; thence N.60°00'00"W., 111.65 feet; thence N.89°32'49"W., 368.07 feet to a point on a curve on the Easterly boundary of the aforesaid COUNTRYWAY BOULEVARD 2ND EXTENSION; thence along said Easterly boundary, the following three (3) courses: 1) Northeasterly, 407.32 feet along the arc of a curve to the left having a radius of 1350.00 feet and a central angle of 17°17'14" (chord bearing N.25°55'54"E., 405.78 feet) to a point of tangency; 2) N.17°17'19"E., 180.39 feet; 3) N.09°38'26"E., 158.13 feet to the POINT OF BEGINNING. Containing 12.019 acres, more or less.

Recorded at OR Book 8816, page 1797

All Lots, Tracts and Parcels within the Plat of Westchase Section 305 and 306A as recorded in Plat Book 83, Pages 64-1 through 64-8, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 9188, page 1765

Westchase Section "303", as per plat recorded in Plat Book 83, Page 77 of the public records of Hillsborough County, Florida.

Recorded at OR Book 9230, Page 1468

All Lots, Tracts and Parcels within the Plat of Westchase Section 302 and 304 as recorded in Plat Book 79, Pages 10-1 through 10-11, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book ~~93868447~~, page ~~014215~~

All Lots, Tracts and Parcels within the Plat of Westchase Section 322 as recorded in Plat Book 83, Pages 97-1 through 97-6, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 9386, page 0142

Westchase Section "323", as per plat thereof recorded in Plat Book 84, Page 62 of the public records of Hillsborough County, Florida.

Recorded at OR Book 9555, Page 549

All Lots, Tracts and Parcels within the Plat of Westchase Section 307 as recorded in Plat Book 85, Pages 37-1 through 37-13, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 9648, page 1476

Lots 50, 51, 52, 53, 54, 55A, 55B, 56, 57, 58, 59, 60A and 60B of the Plat of Westchase Section 322 revised as recorded in Plat Book 84, Pages 64-1 through 64-2, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 9658, page 1759

All Lots, Tracts and Parcels within the Plat of Westchase Section 306B as recorded in Plat Book 85, Pages 36-1 through 36-6, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 9690, page 1456

Westchase Section "323" Revised, as per plat recorded in Plat Book 85, Page 74 of the public records of Hillsborough County, Florida.

Recorded at OR Book 9787, Page 319

All of Lots 1, 2, 3, 4, 5 and 6, Block 2 within the plat of WESTCHASE SECTION 325A as recorded in Plat Book 85, Page 77-1 through 77-6, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 9799, page 0424

All Lots, Tracts and Parcels within the Plat of Westchase Section 214 as recorded in Plat Book 85, Page 60-1 through 60-4, in the Public Records of Hillsborough County, Florida.

Recorded at OR Book 9857, page 0411

All Lots, Tracts and Parcels within Westchase Section 214 Replat as recorded in Plat Book 90, at Page 97, in the public records of Hillsborough County, Florida.

Recorded at OR Book 9857, Page 0410.

Lots 1, 2, 3, 4, 5 and 6, Block 1; Lots 1, 2, 3, 4, 5 and 6, Block 3; Lots 1, 2, 3 and 4, Block 4; Lots 1, 2, 3, 4 and 5, Block 5; Lots 1, 2, 3, 4 and 5, Block 6; Lots 1, 2, 3, 4, 5 and 6, Block 7; Lots 1, 2, 3, 4, 5 and 6, Block 8; and Lots 1, 2, 3, 4, 5 and 6, Block 9 of Westchase Section "325A", according to the map or plat thereof as recorded in Plat Book 85, at Page 77 of the Public Records of Hillsborough County, Florida.

Recorded at OR Book 9867, page 0975

Westchase Section "430A", as per plat recorded in Plat Book 85, Page 42 of the public records of Hillsborough County, Florida.

Recorded at OR Book 9870, Page 74

Westchase Section "430B", as per plat recorded in Plat Book 88, Page 38 of the public records of Hillsborough County, Florida.

Recorded at OR Book 9870, Page 74

Lots 1 through 16, inclusive, Block 1; 1 through 7, inclusive, Block 2; Lots 1 through 7, inclusive, Block 3; Lots 1 through 5, inclusive, Block 4; Lots 1 through 8, inclusive, Block 5; Lots 1 through 6, inclusive, Block 6; Lots 1 through 10, inclusive, Block 7; Lots 1 through 6, inclusive, Block 8; Lots 1 through 25, inclusive, Block 9; Lots 1 through 10, inclusive, Block 10; Lots 1 through 8, inclusive, Block 11; and Lots 1 through 6, inclusive, Block 12, within the plat of Westchase Section 324 as filed in Plat Book 87, Pages 77-1 through 77-12, of the Public Records of Hillsborough County, Florida.

Recorded at OR Book 10256, page 1868

Lots 1 through 12, inclusive, Block 2; Lots 1 through 12, inclusive, Block 3; Lots 1 through 10, inclusive, Block 4; Lots 1 through 10, inclusive, Block 5; Lots 1 through 8, inclusive, Block 6; Lots 1 through 7, inclusive, Block 7; Lots 1 through 6, inclusive, Block 8, and Lots 1 through 4, inclusive, Block 9 of Westchase Section "326", as per plat recorded in Plat Book 90, Page 31 of the public records of Hillsborough County, Florida and the supplement Recorded at OR Book 10845, Page 725

Westchase Section 326 Partial Replat, as per plat recorded in Plat Book 91, Page 91 of the public records of Hillsborough County, Florida and supplement recorded at OR Book 10845, Page 725.

Westchase Section 326 Tract D-3 – Partial Replat, as per plat recorded in Plat Book 128, Page 260 of the public records of Hillsborough County, Florida.

Recorded at OR Book 24780, Page 1981.

Worthington at West Park Village Condominium, as per Condominium Plat Book 19, Pages 126, 177, 145, 64, 98, 104, 120, 92, 86 and 74, and Condominium Plat Book 22, Page 222, all of the public records of Hillsborough County, Florida.

Recorded at OR Book 12208, Page 1241

Arlington Park Condominium, as per Declaration recorded in Official Records Book 14544, Page 100 of the public records of Hillsborough County, Florida.

Recorded at OR Book 14544 Page 52

All of Tract C-4 of WESTCHASE SECTION 324, according to the plat thereof as recorded in Plat Book 87, Page 77, Public Records of Hillsborough County, Florida.

Recorded at OR Book 14544, page 53

All Lots, Parcels and Tracts of WESTCHASE SECTION "324" TRACT "C-5", according to the map or plat thereof as recorded in Plat Book 93, Page 2, of the Public Records of Hillsborough County, Florida.

Recorded at OR Book 15305 PG 849 and 11805 PG 1697

Each Recorded in Public Records of Hillsborough County, Florida

A parcel of land lying in the Northeast ¼ of Section 21, Township 28 South, Range 17 East, Hillsborough County, Florida, and being more particularly described as follows:

From the Northeast corner of said Section 21, run thence S.01°05'14''W., 334.82 feet along the East boundary of the Northeast 1/4 of said Section 21 to the POINT OF BEGINNING; thence continue long said East boundary, S.01°05'14''W., 125.06 feet to the Northerly boundary of a 100 foot wide Railroad right-of-way line for CSX Transportation, Inc.; thence S.89°14'03''W., 96.14 feet along said Northerly boundary; thence N.00°45'57''W., 125.00 feet to the South boundary of Tate Lane (now Montague Street) as shown on the plat of WESTCHASE SECTION "325A", according to the map or plat thereof as recorded in Plat Book 85, Page 77, Public Records of Hillsborough County, Florida; thence N.89°14'03''E., 100.19 feet along said South boundary to the POINT OF BEGINNING.

AND

A parcel of land lying in the Northwest ¼ of Section 22, Township 28 South, Range 17 East, Hillsborough County, Florida, and being more particularly described as follows:

From the Northwest corner of said Section 22, run thence S.01°05'14''W., 334.82 feet along the West boundary of the Northwest 1/4 of said Section 22 to the POINT OF BEGINNING; thence N.89°14'03''E., 707.37 feet along the South boundary of Tate Lane and Montague Street as shown on the plat of WESTCHASE SECTION "325A", according to the map or plat thereof as recorded in Plat Book 85, Page 77, Public records of Hillsborough County, Florida, to the Southeast corner thereof; thence along the Southerly boundary of Montague Street as shown on the plat of WESTCHASE SECTION "324", according to the map or plat thereof as recorded in Plat Book 87, Page 77, Public Records of Hillsborough County, Florida, the following three (3) courses: 1) continue, N.89°14'03''E., 157.04 feet to the point of curvature; 2) Southeasterly, 117.81 feet along the arc of a curve to the right having a radius of 75.00 feet and a central angel of 90°00'00'' (chord bearing S.45°45'57''E., 106.07 feet) to a point of tangency; 3) S.00°45'57''E., 50.00 feet to the Northerly boundary of 100 foot wife Railroad right-of-way line o the CSX Transportation, Inc.; thence S.89°14'04''W., 943.46 feet along said Northerly boundary to the West boundary of the Northwest 1/4 of said Section 22; thence N.01°05'14''E., 125.06 feet along said West boundary to the POINT OF BEGINNING.

- **ATTORNEY COMMENT:** This is the legal description for Westchase Station.

- **Attorney Comment:** If approved, the order of this Exhibit shall be revised in the re-recorded certificate of amendment.

EXHIBIT "B"

Land Subject to Annexation

OFF. REC. 6406 PG 217

All that property located in Hillsborough County, Florida contiguous to, and within two (2) miles of, the property described as follows:

WESTCRANK

DESCRIPTION: A parcel of land lying in Sections 8, 15, 16, 17, 19, 20 & 21, Township 28 South, Range 17 East, Hillsborough County, Florida being more particularly described as follows:

BEGINNING at the Southwest corner of said Section 17, run thence along the Easterly boundary of TWIN BRANCH ACRES UNIT TWO according to the map or plat thereof as recorded in Plat Book 50, Page 67 of the Public Records of Hillsborough County, Florida, the Easterly boundary of TWIN BRANCH ACRES UNIT THREE according to the map or plat thereof as recorded in Plat Book 52, Page 21 of the Public Records of Hillsborough County, Florida, and the Easterly boundary of TWIN BRANCH ACRES UNIT FOUR, according to the map or plat thereof as recorded in Plat Book 53, Page 49 of the Public Records of Hillsborough County, Florida, said Easterly boundaries also being the West boundary of the said Section 17, N.00°41'44"E., 3957.56 feet; thence continue along said West boundary of Section 17, said West boundary also being the Easterly boundary of TWIN BRANCH ACRES UNIT FIVE, according to the map or plat thereof as recorded in Plat Book 55, Page 20 of the Public Records of Hillsborough County, Florida, N.00°43'45"E., 1373.07 feet to the Northwest corner of said Section 17; thence along the North boundary of the West 1/2 of said Section 17, S.88°50'00"E., 1309.20 feet; thence along the West boundary of the Southeast 1/4 of the Southwest 1/4 of the aforesaid Section 8, N.01°26'18"E., 1329.44 feet; thence along the North boundary of said Southeast 1/4 of the Southwest 1/4 of Section 8, S.88°48'06"E., 1312.36 feet to a point on the West boundary of the Southeast 1/4 of said Section 8, thence along said West boundary, N.01°34'30"E., 1328.84 feet; thence along the North boundary of said Southeast 1/4 of Section 8, S.89°29'25"E., 2694.72 feet; thence along the East boundary of said Southeast 1/4 of Section 8, S.01°02'58"W., 2644.28 feet to the Southeast corner of said Section 8, also being the Northwest corner of the aforesaid Section 16; thence along the North boundary of said Section 16 the following two (2) courses: 1) S.88°30'45"E., 2667.38 feet; 2) S.89°35'59"E., 2644.04 feet to the Northeast corner of said Section 16, also being the Northwest corner of the aforesaid Section 15; thence along the North boundary of the West 1/2 of the Northwest 1/4 of said Section 15, S.88°48'52"E., 1322.20 feet; thence along the East boundary of said West 1/2 of the Northwest 1/4 of Section 15, S.00°46'39"W., 2650.02 feet to a point on the North boundary of the Southwest 1/4 of said Section 15; thence along said North boundary, S.89°07'44"E., 1105.25 feet; thence along the West boundary of the East 225.00 feet of the East 1/2 of the Northeast 1/4 of said Southwest 1/4 of Section 15, S.01°09'09"W., 1321.32 feet; thence along the South boundary of said East 225.00 feet of the East 1/2 of the Northeast 1/4 of Southwest 1/4 of Section 15, S.89°04'44"E., 225.00 feet, thence along the East boundary of said Northeast 1/4 of the Southwest 1/4 of Section 15, N.01°09'09"E., 1321.51 feet; thence along the North boundary of the Southeast 1/4 of said Section 15, S.89°03'57"E., 1651.50 feet; thence along the East boundary of the West 1/4 of the Northeast 1/4 of said Southeast 1/4 of Section 15, S.00°54'49"W., 928.94 feet; thence along the North boundary of the South 3/10 of the East 1/2 of the West 1/2 of the Northeast 1/4 of said Southeast 1/4 of Section 15, S.88°55'30"E., 331.88 feet; thence along the West boundary of the East 1/2 of said Northeast 1/4 of the Southeast 1/4 of Section 15, N.00°51'58"E., 929.72 feet to a point on the aforesaid North boundary of Southeast 1/4 of Section 15; thence along said North boundary, S.89°03'57"E., 620.61 feet to a point on the West right-of-way line of Sheldon Road, lying 40.00 feet West of and parallel with the East boundary of said Section 15; thence along said West right-of-way line, S.00°46'16"W., 2160.50 feet; thence along the North boundary of the South 500.00 feet of the East 1085.00 feet of said Section 15, N.88°40'58"W., 1045.05 feet; thence along the West boundary of said South 500.00 feet of the East 1085.00 feet of said Section 15, S.00°46'16"W., 500.04 feet to a point on the South boundary of said Section 15; thence along said South boundary of Section 15, the following two (2) courses: 1) N.88°40'58"W., 1575.86 feet; 2) N.89°02'14"W., 2651.07 feet to the Southwest corner of said Section 15; also being the Northeast corner of the aforesaid Section 21; thence along the East boundary of said Section 21, S.01°05'14"W., 459.89 feet to a point on the North boundary of a 100.00 foot wide right-of-way for C.B.X. Transportation Inc.; thence along said North boundary, S.89°14'03"W., 11217.47 feet to a point on the Easterly boundary of the aforesaid TWIN BRANCH ACRES UNIT TWO; thence along said Easterly boundary the following two (2) courses: 1) N.00°00'02"E., 716.63 feet to a point on the North boundary of the aforesaid Section 19; 2) along the North boundary of said Section 19, S.89°10'54"E., 600.00 feet to the POINT OF BEGINNING.

- Attorney Comment: If approved, the order of this Exhibit shall be revised in the re-recorded certificate of

amendment.

Exhibit ~~CB~~ to Declaration

ARTICLES OF INCORPORATION

FOR

WESTCHASE COMMUNITY ASSOCIATION, INC.

(A Florida Corporation Not-for-Profit)

The undersigned, by these Articles associate themselves for the purpose of forming a corporation not-for-profit under Chapters 617 and 720, Florida statutes, and certify as follows:

Article 1. Name. The name of the Corporation is Westchase Community Association, Inc. For convenience, the Corporation shall be referred to in this instrument as the "Association".

Article 2. Duration. The Association shall have perpetual duration.

Article 3. Purposes and Powers.

A. The Association does not contemplate pecuniary gain or benefit, direct or indirect, to its members. In way of explanation and not of limitation, the purposes for which it is formed are:

(i) to be and constitute the Association to which reference is made in the Declaration of Covenants, Conditions and Restrictions for Westchase, recorded in the official records of Hillsborough County, Florida, as amended from time to time, (hereinafter the "Declaration"), to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the By-Laws, and as provided by law; and

(ii) to provide an entity for the furtherance of the interests of the owners of property subject to the Declaration.

B. The Association is created pursuant to the Declaration and these Articles of Incorporation and is not intended to be, nor shall it be deemed to be, a condominium association within the meaning of Florida Statutes, Chapter 718.

C. In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Declaration or By-Laws, may be exercised by the Board of Directors:

(i) all of the powers conferred upon a corporation not-for-profit by common law and the statutes of the State of Florida in effect from time to time;

(ii) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the By-Laws, or the Declaration, including, without limitation, the following:

(a) to fix and to collect assessments or other charges to be levied against the property subject to the Declaration;

(b) to manage, control, operate, maintain, repair, and improve the common areas and facilities, and any property subsequently acquired by the Association, or any property owned by another, for which the Association, by rule, regulation, declaration, or contract, has a right or duty to provide such services;

(c) to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or By-Laws;

(d) to engage in activities which will actively foster, promote, and advance the common interests of all owners of property subject to the Declaration;

(e) to buy or otherwise acquire, sell, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;

(f) to borrow money for any purpose subject to such limitations as may be contained in the By-Laws;

(g) to enter into, make, perform, and enforce contracts of every kind and description, including any contract between the Association and the owner of any recreational facility for the use of any part or all of such facility by all the members of the Association;

(h) to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(i) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals;

(j) to adopt, alter, and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such By-Laws may not be inconsistent with or contrary to any provisions of the Declaration; and

(k) to provide any and all supplemental municipal services as may be necessary or proper.

D. The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article 3 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provision of this Article 3.

Article 4. Membership.

A. The Association shall be a membership corporation without certificates or shares of stock.

B. Membership is appurtenant to and inseparable from ownership of a unit subject to the Declaration. All unit owners, by virtue of their ownership of such units, are members of the Association and shall be entitled to vote in accordance with the provisions set forth in the Declaration, except there shall be no vote for any unit owned by the Association. The manner of exercising voting rights shall be determined by the By-Laws of the Association.

C. Change of membership in the Association shall be established by recording in the official records of Hillsborough County, Florida, a deed or other instrument establishing record title to property subject to the Declaration. The owner designated by such instrument shall automatically become a member of the Association and the membership of the prior owner shall thereby be terminated.

D. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance of his/her unit.

Article 5. Board of Directors.

A. The business and affairs of the Association shall be conducted, managed, and controlled by a Board of Directors. The number of Directors in the Association may be any odd number not less than seven (7) or more than eleven (11) as set forth in the By-Laws.

B. The method of election and removal of directors and filling of vacancies, and the term of office of directors shall be as set forth in the By-Laws. The Board may delegate such operating authority to such companies, individuals, or committees as it, in its discretion, may determine, except as limited in the By-Laws.

Article 6. Officers. The affairs of the Association shall be administered by the officers designated by the By-Laws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the Association, and they shall serve at the pleasure of the Board of Directors.

Article 7. By-Laws. The By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided by the By-Laws.

Article 8. Indemnification. To the fullest extent permitted by Florida law, the Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and

the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled.

Article 9. Dissolution of Association. The Association may be dissolved in the manner provided by Chapter 617, Florida Statutes; provided, however, the Association shall dispose of any real property contained within the common area of the Association only to an entity organized for the purpose of owning and maintaining such common areas. In the event of dissolution of the Association, control and responsibility for maintenance, together with all easements related thereto, shall be transferred to a governmental agency or another corporation not-for-profit or a similar organization.

Article 10. Amendments. These Articles may be amended as provided in Chapter 720, Florida Statutes, provided that no amendment shall be in conflict with the Declaration, and provided further that no amendment shall be effective to impair or dilute any rights of members that are governed by such Declaration.

Article 11. Registered Agent and Office. The initial registered office of the Association was 1509 Swann Avenue, Suite 230, Tampa, Florida 33606, and the initial registered agent at such address was William L. Bishop. The current registered agent of the Association is identified in the records of the Florida, Department of State, Division of Corporations, as ~~Jonathan Ellis, Esq.~~ and may be changed from time to time by a majority vote of the Board of Directors. ~~The address for the current registered agent is 101 East Kennedy Blvd. Suite 2800, Tampa, Florida 33602.~~ The current principal address of the Association is 10049 Parley Drive Tampa, Florida 33626 and the current mailing address for the Association is 4131 Gunn Highway, Tampa, Florida 33618.

Article 12. Incorporators. The name and address of the original incorporator (of the Association) was:

William L. Bishop
1509 Swann Avenue, Suite 230
Tampa, Florida 33606

...

- **Attorney Comment:** If approved, the order of this Exhibit shall be revised in the re-recorded certificate of amendment.

Exhibit ~~D~~A to Declaration

BYLAWS

OF

WESTCHASE COMMUNITY ASSOCIATION, INC.

Add Intro Language (C Hargreaves):

~~The CC&Rs are the declaration of covenants conditions and restrictions of a community. They outline property use restrictions, maintenance obligations, rule enforcement mechanisms, dispute resolution methods, assessment obligations, insurance requirements, and lender protection. Many HOA covenants and restrictions impose architectural guidelines on homeowners. These guidelines might limit fence height or dictate the exterior paint colors homeowners can use. Apart from architectural standards, the HOA CC&R might also include use restrictions such as pet and rental restrictions. While the CC&Rs may seem restrictive to some, they exist to aid every HOA's goal: to preserve or enhance the community's property values. This is because neighborhoods with a semi-uniform outward appearance are typically more pleasing to the eye. They attract more buyers, which in turn, raises home prices.~~

Attorney Response: We do not recommend the inclusion of introductory language. It rarely assists and can create additional problems for the Association. Notwithstanding, if the DRC and VMs insist on an introduction here, it should not reference or explain the CCRs. Rather it should explain that the Bylaws generally set forth the procedures for operation of the corporation.

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BYLAWS
OF
WESTCHASE COMMUNITY ASSOCIATION, INC.

Article I - Name, Principal Office, and Definitions

Section 1. Name. The name of the Association shall be Westchase Community Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association shall be located in Hillsborough County, State of Florida.

Section 3. Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Westchase (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless defined differently in a specific context.

Article II - Association: Membership, Meetings, Quorum, Voting Proxies

Section 1. Membership. Every Owner shall be deemed to be a Member of the Association.

Section 2. Place of Meetings. Meetings of the Association, including meetings of the Voting Members, the Board of Directors and any Committee, shall be held at a suitable place convenient to the Members as may be designated by the Board of Directors or, to the extent permitted by law, and subject to rules, guidelines and procedures as the Board may adopt, meetings of the Association may be held by means of remote communication, online video conferencing or other real-time electronic format (referred to hereafter as "Remote Communication"). Use of Remote Communication for meetings may be in addition to or in lieu of a physical location, as determined by the Board. At any meeting held by means of Remote Communication, Members and Voting Members who are not physically present shall be deemed present in person if:

- (a) Reasonable means are used to verify that each person deemed present and authorized to vote by means of Remote Communication is a Member or Voting Member; and
- (b) Members and Voting Members are provided with a reasonable opportunity to read or hear the proceedings of the meeting substantially concurrent with the proceedings, to participate in the meeting, to speak with reference to all items opened for discussion or included on the agenda and to vote on matters submitted to the Members or Voting Members, as applicable.

Section 3. Annual Meetings. Annual meetings shall be of the Voting Members, who may appear in person or by an alternate. Voting Members shall not be entitled to exercise their votes or take any action by written consent at Annual meetings. Annual meetings shall be set by

the Board so as to occur at least ninety (90) but not more than one hundred twenty (120) days before the close of the Association's fiscal year on a date and at a time set by the Board of Directors.

Section 4. Regular Voting Member Meetings. The President may call meetings of the Voting Members at his or her discretion.

- **DRC Comment:** Remove references to "Regular" or "Special" - no actual difference between the two

~~Section 5. Special Meetings. The President of the Board of Directors may call special meetings of the Voting Members at his or her discretion.~~ In addition, it shall be the duty of the President to call a special meeting of the Voting Members if so directed by a written petition, provided physically or electronically to the President of the Board of Directors, signed by at least three (3) members of the Board of Directors or in response to a petition signed by at least eight (8) Voting Members or by Voting Members representing at least twenty percent (20%) of the total votes of the Association. The notice of any special-Voting Member meeting shall state the date, time, place, and the purpose agenda for the meeting hereof, and if applicable The notice shall also state the place and/or, if applicable, instructions for attending via Remote Communication. No business shall be transacted at a special meeting except as stated in the notice.

The President shall preside over all Voting Member meetings, and the Secretary or designee of the Secretary, shall keep the minutes of the meeting. The Voting Members may, by majority vote of the Voting Members present at a meeting, adopt an agenda for any Voting Member meeting and promulgate meeting rules and procedures for all Voting Members meetings. In the absence of a majority vote by the Voting Members, the agenda for any regular meeting shall be determined by the President, who may, but is not required to accept requests from the Voting Members regarding agenda items. The President may add additional agenda items after the Voting Members adopt an agenda. Meeting minutes shall be made and kept as part of the official records of the Association.

- **DRC Comment:** Remove references to "Special" - no distinguishment
- **DRC Comment:** ADD LANGUAGE TO ENSURE EMAIL PETITIONS FROM VM'S ARE ACCEPTABLE TO CALL MEETINGS
- **Attorney Response:** We recommend keeping the distinction because these types of meetings are treated differently under Chapter 720. Special meetings require the notice to state the purpose of the meeting while regular meetings do not. Further, meetings called upon receipt of a membership petition are considered special meetings.
- Notwithstanding, based on our understanding, the DRC desired the following: HOA president can call meeting of VM, VMs can call meeting of voting members upon sufficient petition, and email petitions for meetings are sufficient. If VMs choose not to vote on agenda, it will defer to president. Also President can add things to agenda even if VMs voted on it as long as he does so 14 days in advance.

Section ~~65~~. Notice of Voting Member Meetings. Written or printed notice stating the date, time, place and/or instructions for attending via Remote Communication, shall be delivered, either personally or by electronic mail (e-mail) to the extent permitted by law, to each Voting Member entitled to vote at such meeting, not less than ~~fourteen~~ ten (~~14~~) or more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. Such notice is not required to be delivered to any Member of the Association who is not a Voting Member but shall be posted at Association notification sites at least forty-eight (48) hours prior to the meeting. To the extent any meeting will be held via Remote Communication, the notice shall provide instruction for any Member to attend via Remote Communication.

~~In the case of a special meeting or when~~ When required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. ~~No business shall be transacted at a special meeting except as stated in the notice.~~

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his or her address as it appears in the records of the Association, with postage thereon prepaid.

Section ~~76~~. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member or alternate shall be deemed a waiver of notice by that Voting Member unless that Voting Member specifically raises an objection to the lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, for which proper notice was not given, is raised before the business is put to a vote.

Section ~~87~~. Adjournment of Meetings. If any meeting of the Voting Members cannot be held because a quorum is not present, a majority of the Voting Members who are present at such meeting in person or represented by an alternate may adjourn the meeting to a time and date no ~~not~~ less than seventy-two (72) hours or more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

The Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, provided that Voting Members or their alternates representing at least twenty-five percent (25%) of the total votes of the Association remain in attendance.

- **DRC Comment: SIMPLIFY LANGUAGE – NO QUORUM, NO MEETING. NEW MEETING NEEDS TO BE CALLED PER PROTOCOL. KEEP 2ND PARAGRAPH.**

- **Attorney response:** We do not recommend this change as it would require additional notice for the adjourned meeting. The way it's written now, an adjourned meeting would not require separate notice if the correct procedure is followed. If you want to remove the ability to adjourn to a later date, we can do that, but we don't see what benefit it would provide.
- **DRC Response:** Accept recommendation on Adjournment, but "no less" belongs with 72hrs.

Section 98. Voting. The voting rights of the Members shall be as set forth in the Declaration, and those voting rights provisions are specifically incorporated herein.

Section 109. Proxies. Voting Members may not vote by proxy but only in person or through their designated alternates.

- **DRC Comment:** Remove references to "written consent"
- **Attorney Response:** See Comment on Page 18 addressing written consent.

Section 110. Majority. As used in these Bylaws, the term "majority" as it relates to Voting Members shall mean a total number of Voting Members, present in person or electronically if permitted by law, exceeding fifty percent (50%) of the number of Voting Members. Majority shall not be based on the percentage of Owners represented.

- **DRC Comment:** Clarify 50% of the number of VM's present (BOTH IN-PERSON & ELECTRONIC) be clear that this is defined by the number of VM's present vs. % of owners represented.

Section 121. Quorum. Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by alternate of the Voting Members representing a majority of the total vote of the Association shall constitute a quorum at all meetings of the Association.

~~Section 13. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary, shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting. The Voting Members may, by majority vote, adopt an agenda for any regular meeting. In the absence of a majority vote by the Voting Members, the agenda for any regular meeting shall be determined by the President, who may, but is not required to accept requests from the Voting Members regarding agenda items.~~

- **DRC Comment:** Revise title to clarify this applies specifically to..."Membership Meetings" (not BOD or Committee meetings)
- **Attorney Response:** Title will be removed because DRC requested this be consolidated with sections 4 and 5.
- **DRC Comment:** Remove references to "regular"
- **DRC Comment:** Add that the VM's may, by majority vote, promulgate meeting rules and procedures for VM meetings and adopt agenda for any "Voting Member" meeting
- **Attorney Response:** We added this.

- **DRC Comment:** Add that the President may add agenda items to any scheduled VM meeting at his/her discretion
- **Attorney response:** Note that this will not remove the obligation to publish the agenda with the meeting notice (meaning President will need to add items timely).
- **DRC Comment:** Given FL statute - combine Sec 4,5 and 13 language/procedure.
- **DRC Comment:** The secretary shall keep the minutes of the meeting? Or delegate it the managing company. REVISE TO SIMPLY ...MEETING MINUTES SHALL BE RECORDED , AS DELEGATED AND MADE ACCESSIBLE PER STATUTE, ETC
- **Attorney response:** we revised to clarify that secretary can designate someone else to take minutes. But not sure what you mean by record. Also, I would rather not insert statutory requirements for retention of minutes or for publication on website in this section. If you disagree, please let me know exactly what you want to include.
- **SEE SLK REVISIONS**

Article III - Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, with each Director having one (1) vote. The Directors shall be Members or spouses of Members; however, no person and his or her spouse may serve on the Board at the same time. In the case of an Owner that is a corporation, partnership, limited liability company, trust, or other legal entity the person authorized under Article III, Section 1 of the Declaration shall be eligible to serve as a Director.

Section 2. Number of Directors. The number of Directors in the Association may be any odd number not less than seven (7) or more than eleven (11). The exact number of Directors ~~at any time shall be set by resolution of the Board of Directors~~ may be increased or decreased by a majority vote of the Voting Members, with each Voting Member casting one vote. Any vacancy created by an increase in the number of directors may only be filled ~~immediately~~ by a vote of the Voting Members with each Voting Member casting one (1) vote with respect to the vacancy. ~~Directors shall be elected by a plurality of the Voting Members present~~ Board of Directors. ~~There shall be no cumulative voting. No vacancy shall be filled until notice of the vacancy is posted on the property and on the Association's website at least fourteen (14) days in advance.~~ Any decrease in the number of Directors shall not have the effect of reducing the term of any Director and shall not become effective until the next annual meeting of the Voting Members.

- **Propose VM's make decisions regarding numbers and filling of any vacancies – NOTE REGARDING NOTICE TO COMMUNITY, ETC.**
- **Attorney Response:** We are not entirely sure what you are mean. We can change to allow VMs to change number of directors and fill vacancies, but that would be atypical. We caution that removing powers of board may make board less effectual. They are elected representatives and if they fail to follow direction from VMs, VM power lies in

the right to recall.

Section 3. Nomination of Directors. A Nominating Committee shall make nominations to the Board of Directors. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors who is not then seeking reelection, and two (2) or more Members of the Association. The Nominating Committee members shall be appointed by the Board of Directors ~~not less~~ no later than sixty ninety (6090) days prior to each annual meeting of the Voting Members to serve a term of one (1) year or until their successors are appointed, ~~and such appointment shall be announced at each annual meeting.~~ Members of the Nominating Committee shall serve at the discretion of the Board and may be removed with or without cause by the Board of Directors. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled. All candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Members and to solicit votes. The Nominating Committee shall have the authority to promulgate rules and procedures for the election of directors ~~at the annual meeting of the Voting Members called for such purpose~~, which rules and procedures shall be subject to approval by the Voting Members, with each Voting Member casting one (1) vote. The Voting Members shall vote to approve or disapprove the Nominating Committee rules and procedures no later than sixty (60) days prior to the annual meeting. Members of the Board of Directors running for election cannot serve on the Nominating Committee and members of the Nominating Committee cannot run for election to the Board of Directors.

- Appointments no later than 90 days before annual meeting
- VM's shall approve Nom Committee rules no less than 60 days prior to annual meeting
- Remove "announced at each annual meeting" - makes no sense timing wise
- BOD MEMBERS UP FOR RE-ELECTION CANNOT SERVE, AND SERVING MEMBERS MAY NOT BE CANDIDATES
- Attorney Response: We incorporated your changes.

Section 4. Election and Term of Office. Notwithstanding any other provision contained herein:

(a) Each Director shall serve for a term of two (2) years. The terms of the Directors shall be staggered so that approximately one-half (1/2) of the Directors shall be elected each year.

(b) New Directors shall be elected by Voting Members present at the annual meeting and take office at the end of the annual meeting. Each Voting Member shall be entitled to cast one (1) vote with respect to each vacancy to be filled. There shall be no cumulative voting. Directors shall be elected by a plurality of those Voting Members present at the annual meeting of the Association.

(c) Directors may be elected to serve any number of consecutive terms.

(d) The Directors shall hold office until their respective successors have taken office.

(e) In the event the Voting Members fail to elect a sufficient number of Directors to fill all vacancies on the Board of Directors at the annual meeting, the Board shall call a special meeting of the Voting Members, to be held not more than thirty (30) days after the annual meeting, for the purpose of electing Directors to fill any such vacancies. If any such vacancies remain following such a meeting, the Board may continue to call special meetings of the Voting Members for the purpose of electing Directors to fill any vacancies, with each such special meeting being held not more than thirty (30) days after the most recent such special meeting called for such purpose, until all vacancies are filled.

(f) Any Member desiring to be a candidate for election to the Board of Directors may declare their intent to run to the Association in advance of the election by a date specified by the Association or by the date set forth in rules promulgated by the Nominating Committee (“Declared Candidates”). All eligible Declared Candidates shall be included on the ballot for election without further need for nomination by the Nominating Committee. If the number of Declared Candidate meets or exceeds the number of available Board of Director seats to be filled, nominations from the floor shall not be accepted. However, if the number of Declared Candidates is less than the number of available Board of Director seats, additional candidates may be nominated from the floor at the Annual Meeting. The Association may, but is not required to, publish the Declared Candidates’ names and any supporting information provided in the World of Westchase Magazine.

- **Attorney Comment:** we recommend removing any requirement that Declared Candidates be nominated by the Nominating Committee. This creates an added procedural step that may be overlooked. Rather Declared Candidates, if eligible should be automatically included on the ballot.

Section 5. Removal of Directors and Filling of Vacancies. Any Director may be removed, with or without cause, by a majority vote of the Voting Members ~~holding a majority of the votes entitled to be cast for the election of that Director~~ who are present at such meeting in person or represented by an alternate, one vote per Voting Member. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. The agenda for such meeting must include a vote on the removal. ~~Upon removal of a Director, a successor shall then and there be elected by the Voting Members to fill the vacancy for the remainder of the term of that Director.~~

Any Director who is delinquent in the payment of any assessment or other charge due the Association for more than ninety (90) shall be deemed to have abandoned his or her seat on the board, and a successor may be appointed by the ~~Board~~ Voting Members to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a Director, a vacancy may be declared by the Board, and the Voting Members ~~it~~ may appoint a successor to fill the vacancy for the remainder of the term of that Director.

Any vacancy created by removal of a director may only be filled by a vote of the Voting Members with each Voting Member casting one (1) vote with respect to the vacancy. Directors shall be elected by a plurality of the Voting Members present. There shall be no cumulative voting. No vacancy shall be filled until notice of the vacancy is posted on the property and on the Association’s website at least fourteen (14) days in advance.

- **Propose VM's making these decisions to appoint or newly elect**
- **Attorney Response:** We can change to allow VMs to fill the vacancy, but that would be atypical. We caution that removing powers of board may make board less effectual. They are elected representatives and if they fail to follow direction from VMs, VM power lies in the right to recall. Moreover, the Board may need to fill the vacancy faster than the VMs can notice and hold a meeting. Let us know if you nonetheless want draft language shifting power to fill vacancies to VMs. To the extent you want VMs to fill the vacancy you need to consider whether they will be required to follow procedures for annual election which may require notice to all members, nominations etc.
- **DRC Comment:** vote to remove is **REQUIRED TO BE ON THE AGENDA**. Clean up the atypical language regarding majority vote of VM's required for removal.
- **DRC Comment:** VMs cannot be required to fill the vacancy on the spot and give 14 days' notice of the vacancy. Propose we do not require vacancy to be filled on the spot but rather, follow new procedure of notice and then "election" at a future VM meeting (See Art. III, Section 2.)
- **Attorney Response:** You can vote on removing a director and filling the vacancy at the same meeting if the notice for the initial meeting addresses both issues. Example: "Vote on potential removal of Director _____ and vote to fill any vacancy resulting from removal." Notwithstanding, we agree that the Bylaws should not require the vacancy to be filled at the same meeting. Rather, this should be left to the discretion of the VMs. Notwithstanding, we warn you that if the VMs remove a majority of the Board, they should fill the vacancy at the same meeting or the Board will be unable to operate.
 - Under statutory recall procedures, the ballot for a recall vote must include replacement directors if a majority of the board are subject to the recall.

B. Meetings.

Section 6. Organizational Meeting. The first meeting of the Board of Directors following each annual meeting of the Voting Members shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 7. 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 Directors, but at least four (4) such meetings shall be held during each fiscal year, at least one (1) per calendar quarter. Notice of the time and place of the meeting shall be communicated to all Directors ~~not less~~ no later than four (4) days prior to the meeting; however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting and need not be given to any Member who is not a Director.

Section 8. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President of the Association or by any three (3) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods:

- (a) by personal delivery;

- (b) written notice by first-class mail, with postage prepaid;
- (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or
- (d) by electronic mail to the extent permitted by law;

all such notices shall be delivered by any one of the following means: to the Director's telephone number, the Director's address as shown on the records of the Association or sent to the Director's electronic mail address as shown in the records of the Association to the extent permitted by law. Notices sent by first-class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, electronic mail or telephone shall be delivered or telephoned at least seventy-two (72) hours before the time set for the meeting.

Section 9. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as those occurring at a meeting duly called and noticed ~~held after regular call and notice~~ if (a) a quorum is present and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting the lack of adequate notice before the meeting is called to order.

- **DRC Comment:** grammar...probably should be careful that it clarifies a majority of the full Board membership.
- **Attorney response:** We recommend leaving “quorum” but added minor change to clarify meaning of this provision. Also, we have not researched, but we do not recommend relying on this provision to avoid property notice. Even if board waives notice a member could challenge action taken at a meeting that is not properly noticed.

Section 10. Quorum and Votes of Board of Directors. Notwithstanding any other provision contained herein:

- (a) A quorum for the transaction of business at all meetings of the Board of Directors shall require the attendance of a majority of the Directors.
- (b) A decision of the Board of Directors at a meeting at which a quorum is present shall require the vote of a majority of the Directors who are present at the meeting.

Section 11. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by a majority of the Voting Members who are present at such meeting in person or represented by an alternate ~~representing a majority of the vote of the Association at a regular or special meeting of the Voting Members~~; however, a Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors present at a duly-noticed meeting of the Board of Directors.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary or designee of the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings. The agenda for any regular meeting shall be determined by the President, or by a majority vote of the Board of Directors. Meeting minutes shall be made and kept as part of the official records of the Association.

- **DRC Comment:** REFER TO PREVIOUS NOTES REGARDING MINUTES NEEDED, BUT NOT ANY SPECIFIC DESIGNATION
- **Attorney Response:** We drafted changes. Let us know if this reflects your intent.

Section 13. Open Meetings. Subject to the provisions of Section 14 of this Article, all meetings of the Board shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested by such Member in accordance with any rules or regulations governing the frequency, duration, or manner of Member statements. The President may limit the time any Member may speak. Notwithstanding the foregoing, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Members, to discuss matters of a sensitive nature, such as pending or threatened litigation or personnel matters.

Section 14. Action Without a Formal Meeting. In the event that action by the Board of Directors is required to prevent imminent damage to property or alleviate imminent financial or safety risks, said action ~~Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors~~ may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote. The action shall be added to the agenda for the next Board of Directors meeting and entered into the minutes.

- **DRC Comment:** Conflicts with new FL Statute – REMOVE EMAIL VOTING OPTION.
- **Attorney Response:** This is not necessarily the same as voting via email, which is prohibited. See FS 617.0821 which says:
- **617.0821 Action by directors without a meeting.—**
 - (1) Unless the articles of incorporation or the bylaws provide otherwise, action required or permitted by this act to be taken at a board of directors' meeting or committee meeting may be taken without a meeting if the action is taken by all members of the board or of the committee. The action must be evidenced by one or more written consents describing the action taken and signed by each director or committee member.
 - (2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.
 - (3) A consent signed under this section has the effect of a meeting vote and may be describe
- Typically, we recommend using this procedure only in exigent circumstances and if used, ratify the written consent at the next duly noticed meeting. We added limitations to ensure this is not used to address ordinary issues. However, we do not recommend removing as this provision as it can be useful in emergency situations.

C. Powers and Duties.

Section 15. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do or cause to be done all acts and things as are not by the Declaration, the Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the Voting Members or the membership generally.

The Board of Directors ~~shall~~ may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, that might arise between meetings of the Board of Directors.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, the following, in way of explanation, but not limitation:

(a) preparation and adoption, in accordance with Article X of the Declaration, of annual budgets in which there shall be established the contribution of each Owner to the Common Expenses and Neighborhood Expenses;

- **DRC Comment.** REMOVE “PREPERATION” FROM (A) ABOVE – AVOID CONTRADICTION WITH SECTION 16 BELOW
- **Attorney Response:** We do not recommend removing the language that makes the Board responsible for performing or causing to be performed... preparation of the Budget. That is one of the primary responsibilities of a board. This doesn't prevent the board from asking the manager or a committee to create a first draft. We do recommend revising 16 below to make sure manager is not prevented from creating first draft of budget.
- We Also recommend changing shall to may as the Board should not be compelled to delegate its authority.
- **DRC Response:** Ok if we remove (a) from 16, then conflict.

(b) making assessments to defray the Common Expenses and Neighborhood Expenses and establishing the means and methods of collecting such assessments; assessments shall be paid annually, with payment due on January 1st.

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository that it shall approve, and using the proceeds to operate the Association; provided, any reserve

funds may, in the Directors' best business judgment, be deposited in depositories other than banks;

- (f) making and amending rules and regulations;
- (g) opening the bank accounts of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these Bylaws after damage, fire, or other casualty;
- (i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it and bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Association;
- (j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the costs of any premium thereof;
- (k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;
- (l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;
- (m) maintaining a membership register reflecting the names, unit addresses and mailing addresses of all Members;
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the properties; and
- (o) or any other matters affecting the Association or its properties that are not specifically assigned to other jurisdiction in the Declaration, the Articles of Incorporation, or these Bylaws.

Section 16. Management. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these Bylaws, other than the powers set forth in subparagraphs ~~(a)~~, (b), (f), (g), and (i) of Section 15 of this Article.

Section 17. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; ~~any thing~~ anything of value received shall benefit the Association;

(e) any financial or other interest that the managing agent may have in any ~~firm~~ form providing goods or services to the Association shall be disclosed immediately to the Board of Directors;

- firm should be form (typo)
- **Attorney Response:** changed

(f) financial reports shall be prepared for the Association at least monthly and shall contain:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments that remain delinquent; and

(g) an annual report consisting of at least the following shall be made available to all Members: (1) a balance sheet, (2) an operating (income) statement, and (3) a statement of changes in financial position for the fiscal year. This annual report shall be prepared on an audited or reviewed basis as determined by the Board or as required by law.

Section 18. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Area of Common Responsibility, or for any other purpose necessary for the administration of the Association's affairs. In the event the proposed borrowing equals or is less than or would equal or be less than five percent (5%) of the budgeted expenses of the Association for that fiscal year, the Board of Directors shall have the power to borrow such money without the approval of the Voting

Members of the Association. In the event the proposed borrowing exceeds or would exceed five percent (5%) of the budgeted expenses of the Association for that fiscal year, the Board of Directors shall obtain Voting Member approval, which shall be obtained upon the affirmative vote ~~or written consent, or any combination thereof~~, of Voting Members representing sixty-six percent (60~~6~~%) of the total votes of the Association. Notwithstanding the foregoing, if the borrowing will lead to one or more special assessments, then the Board of Directors must obtain approval of the Voting Members pursuant to the procedures set forth in the Declaration for approval of special assessments.

Section 19. Rights of the Association. With respect to the Area of Common Responsibility and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhoods and other owners or residents associations, both within and without the Properties. Such agreements shall require the consent of ~~two-thirds (2/3)~~ a majority of all Directors of the Association. Property management contracts shall require approval by a majority of the Board of Directors present at a duly noticed Board meeting and a majority of Voting Members present at a duly noticed Voting Members meeting.

- **DRC Comment:** Propose requiring the consent of the "majority" of VM's for PM contracts
- **Attorney response:** We recommended changing the board vote to a majority as this is the standard threshold for Board decisions and consistency decreases the likelihood of mistakes. We did not recommend requiring VM approval for Management Contracts. The board should retain the right to negotiate and enter all contracts, including management contracts. The board has more flexibility to act quickly when necessary. Moreover, negotiating a contract often requires advice of counsel that should not be discussed at an open VM meeting during contract review. Requiring VM approval for management contracts could delay the process and require disclosure or explanations of matters best kept privileged. If you nonetheless want to recommend this change, draft language follows: "Property management contracts shall require approval by a majority of the Board of Directors present at a duly noticed Board meeting and a majority of Voting Members present at a duly noticed Voting Members meeting."
- **DRC Response:** accept the language. DRC recommends.

Section 20. Enforcement. The Board has the power to impose reasonable fines in an amount not greater than \$100 per day per violation for a continuing violation, not to exceed \$2,000, against any Owner, tenant, occupant of a Unit, guest or invitee of an Owner or guest or invitee of a tenant, and to suspend any alleged violator's right to use the Common Area for violation of any duty, covenant, or restriction imposed under the Declaration, these Bylaws, or any duly adopted rules and regulations. For violations other than continuing violations, fines may be imposed in an amount not greater than \$100 per day. Nothing herein shall authorize the Association or the Board of Directors to limit ingress to or egress from a Unit. In the event that any tenant, occupant of a Unit, guest, or invitee of an Owner or guest or invitee of a tenant violates the Declaration, Bylaws, or a rule or regulation, and a fine is imposed, the Owner shall

be jointly and severally liable for the fine and shall receive the same notice and opportunity for hearing that is given to the tenant, occupant of a Unit, guest or invitee before imposition of the fine. If an Owner fails to pay a fine ~~within the time period set by the Board when due~~, the fine shall automatically be treated as a special assessment against less than all Members levied by the Board in accordance with Article X, Section 4(b), of the Declaration. Such assessment may become a lien against the property in accordance with Article X. To the extent that an Owner receives notice and an opportunity for hearing as set forth in this Section, the Owner shall not be entitled to additional notice and hearing before the fine is treated as a special assessment against less than all Members under Article X, Section 4(b) of the Declaration. The failure of the Association to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Association to do so thereafter. The notice, hearing, and appeal rights set forth in this Section shall not apply to the imposition of a fine or sanction or the suspension of the rights of an Owner by the Association due to the Owner's failure to pay assessments or other charges due to the Association.

(a) Notice of Violation. Prior to the imposition of any fine, suspension or sanction that relates or pertains to the condition of a lot, unit or improvement or to the unauthorized modification of a lot, unit or improvement, the Association or its agent shall serve the alleged violator with written notice describing the nature of the alleged violation and requesting that the violation be remedied within a specific time period. Notwithstanding the foregoing, the Association shall not be required to send an initial notice of violation or provide an opportunity to remedy any violation that relates or pertains to the behavior of any person.

(b) Board of Directors Vote. If the violation is not remedied within the time period specified in the first letter, or if the violation relates or pertains to the behavior of any person, the Board of Directors may vote to levy a fine or other sanction, subject to imposition by the Covenants Committee as set forth below.

(c) Notice of Covenants Committee Hearing. If the Board votes to levy a fine or other sanction, the Association or its delegate shall serve the alleged violator with a written notice, notifying the alleged violator of a hearing before the Covenants Committee. Such notice must include a description of the alleged violation, the specific action required to cure the violation, if applicable, and the hearing date, location, and the telephone number or other access information if held by telephone or other electronic means. The Covenants Committee may hold the hearing via telephone or other electronic means and the Owner has the right to attend any such hearing by telephone or other electronic means. an opportunity to be heard at a meeting of the Covenants Committee prior to the imposition of the fine or sanction, in accordance with applicable law. The alleged violator may request an opportunity to be heard at a meeting of the Covenants Committee by submitting a written request to the Manager within ten (10) days of the date the Notice of Covenants Committee Hearing is sent. The meeting of the Covenants Committee at which the alleged violator may be heard shall not occur less than fourteen (14) days or more than ninety (90) days from the date the Association sends the Notice of Covenants Committee Hearing.

(d) Covenants Committee Hearing. A quorum of the Covenants Committee must be present at the hearing of the Covenants Committee. Presentation of a copy of each written notice,

together with a statement of the date and manner of delivery of each, by the officer, Director, or agent who delivered the notice, and the entry of the same in the minutes of the meeting of the Covenants Committee, shall be deemed sufficient proof of notice of the hearing. The notice requirement shall be deemed satisfied if the alleged violator appears at the hearing. Moreover, the mailing of a notice via First Class mail postage paid to the Owner at the address reflected in the official records of the Association shall create a rebuttable presumption of receipt of such notice regardless of whether this address is correct. The minutes of the meeting shall include a statement of the results of the hearing and whether the Covenants Committee confirmed or rejected the proposed fine or other sanction. If the Covenants Committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the Covenants Committee is limited to determining whether to confirm or reject the fine or suspension levied by the Board. Within seven (7) days after the hearing, the Covenants Committee or its delegate shall provide written notice to the Owner at his or her designated mailing or e-mail address in the Association's official records and, if applicable, to any occupant, licensee, or invitee of the Owner. The notice must set forth the Covenant Committee's findings related to the violation, including any applicable sanctions that the Committee approved or rejected, how the violation may be cured, if applicable, and the date by which any fine must be paid. The deadline for payment must not be less than thirty (30) days after delivery of the written notice of the Covenants Committee's decision. If the violation has been cured before the hearing in the manner specified in the written notice, a fine or suspension shall not be imposed. If the proposed fine or other sanction is not approved by a majority of the members of the Covenants Committee, the Board shall not impose it. If a proposed fine or other sanction is approved by a majority of the members of the Covenants Committee, the Association or its delegate shall serve the alleged violator, by mail or hand delivery, with written notice of the fine or other sanction.

(e) Appeal to Board. Following a hearing before the Covenants Committee and the imposition of a fine or other sanction, the alleged violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within ten (10) days after the date of the hearing before the Covenants Committee. The failure of an alleged violator to timely appeal or challenge the decision of the Board shall be deemed a waiver of any and all basis for challenging the violation or any fine or sanction imposed, including but not limited to, any claim that the violation has or had been cured, any claim that the violation did not exist, and any claim that enforcement actions taken by the Association are improper, unreasonable, or arbitrary.

(f) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these Bylaws, or the rules and regulations of the Association by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages, or both, without the necessity of compliance with the procedure set forth in this Section. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Notwithstanding the procedures set forth in paragraphs (a), (b), (c) and (d) of this Section, the Association or its duly authorized agent shall have the power to enter a Unit or any

portion of the Common Area to abate or remove, using such force as may reasonably be necessary, any structure, thing, or condition that violates this Declaration, the Bylaws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Unit Owner as a Special Assessment.

(g) Fees and Costs. Notwithstanding anything to the contrary herein contained, the Association is entitled to recover all fees and costs incurred in enforcing the Declaration, these Bylaws, or the rules and regulations of the Association, regardless of whether suit is filed, except that attorney fees and costs incurred in imposing any fine or suspension or collecting any fine may not begin to accrue until the date noticed for payment of the fine, if applicable, and the time for appeal has expired. Such fees and costs may include, without exclusion, mailing charge and any attorney's fees, paralegal charges, and costs directly related to the violation, including, without exclusion, demand letters, presuit mediation letters, and attendance at any meeting, mediation or other proceeding related to the violation. Such charges are due within thirty days of the date of any demand.

- **SEE SLK REVISIONS**
- **Attorney Comment:** counsel recommended changes to comply with statutory procedures.

Article IV - Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, said officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies of Officers. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Voting Members as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

- **DRC Comment:** Propose VM's elect to fill vacancies – requires notice to community, VM's elect at meeting, handled by Nominating Committee?
- **Attorney Response:** we do not recommend that the right to determine which director will hold officer positions be shifted to the VMs. The VMs determine who will serve as a director but the directors should have the ability to decide among themselves how they will operate and who will fill the officer positions. If you decide you want to amend to allow VMs to fill vacancies in director positions, you should still allow the directors to fill vacancies in officer positions. These are 2 separate issues.
- **DRC Response:** We mistook this for filling a Board vacancy rather than officer. Accept recommendation for no change

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

- **DRC Comment.** Budget delegation to management conflicts with exclusions listed in Article III, Sec 16 – FIX IN ARTICLE III, SEC 15 (a)
- **Attorney Response.** We revised above. No conflict.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, and Other Instruments. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

- (a) Any contract for property management services shall not exceed an initial term of two (2) years or a renewal term of one (1) year. A renewal term shall include any successive contractual term with the same management company, whether under the same contract or a new contract.
 - (b) The Association shall engage in a competitive bid review or request for proposal process to evaluate its contract for management services no less than once every five (5) years. Said process shall, at a minimum, provide technical requirements for management services and require a proposal from eligible management companies to meet said requirements.
 - (c) The Association's management contract shall be placed on the agenda for review by the Voting Members at a Voting Members meeting not less than ninety (90) days before conclusion of any contract term or renewal term.
 - (d) The Board of Directors shall not enter or renew a contract for management services until the Voting Members approve contracting with the management company by a vote of not less than a majority of Voting Members, with each Voting Member casting one vote.
 - (e) The Board of Directors shall, in its sole discretion, determine the content and terms of the management contract.
- **DRC Comment:** Propose PM contracts be no less than 1, nor more than 3, years in length (only one short term extension allowed under certain circumstances not to exceed 1 year)

- Propose that the BOD **shall** conduct a competitive RFP process for each new contract and solicit no less than 3 bids from companies capable of meeting all technical requirements.
- Propose requiring the consent of the "majority" of VM's for PM contracts at a duly noticed meeting no less than 90 days before the effective date of the contract.
- Exception for termination of contracts or other unique circumstance.
- **Attorney response:** We drafted per request, but we do not recommend.
 - Bylaws should give basic format for running association but should not bind the Board to unnecessary procedures.
 - There is no reason to place limitations on the management contract in your bylaws. Putting term limits and approval requirements in your Bylaws removes flexibility. There may be situations where the Board wants to renew a contract for 11 months in order to have the expiration coincide with an RFP. There may also be situations where the board wants to negotiate for a three-year initial term with the ability to cancel without cause (and without penalty) upon 30 or 60 days' notice. The board may be able to achieve other concessions during negotiation if they agree to a longer initial term, and, as long as the contract is terminable without cause, a longer term should not be detrimental to the Association.
 - Similarly, we do not recommend putting a requirement for an RFP in your Bylaws. VMs can still tell board they want an RFP process and vote to remove directors if directors refuse, but putting the requirements in your Bylaws removes flexibility.
 - We also do not recommend requiring VM approval for the management contract. As a practical matter, you may not want to publish the fact that the VMs will consider approving a new contract 90 days in advance. This may lead to diminished service standards from current management company.
 - Notwithstanding, none of the changes proposed violate Florida law and communities have the right to self-regulate by imposing restrictions that are more cumbersome than applicable statutes.
- **DRC Response:** Include language that requires consent of the VM's but change language to contracts (agreements) may not be for a period longer than one year at a time. WE DO INDEED WANT THE RFP REQUIREMENT TO BE IN THE GOVERNING DOCS. PLEASE INCLUDE. HOWEVER WE WISH TO REVISE TO AN RFP TAKING PLACE NO LESS THAN EVERY 5 YEARS (NOT 3). Pls include language that requires consent of the VM's, including "at least" 90 days in advance of the effective date of any contract. We need both parties to know if any transition will occur - aligned with contract language.
- We want to retract exceptions to 5-year RFP - no exceptions to an RFP process taking place "no less than every five years".

Article V - Committees

Section 1. General. The Board of Directors or the Voting Members may, by a resolution adopted by a majority of the Directors or Voting Members present at a meeting at which a quorum is present, create committees to perform such tasks and to serve for such periods as may be designated by the Board of Directors. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors or the Voting Members creating or designating the committee ~~or~~ and with rules adopted by the Board of Directors. Unless otherwise specified in the Governing Documents, a resolution creating a committee shall

describe what duties, responsibilities and powers the committee will have or not have, the number of members who will serve on the committee, and the length of time the committee will serve. If the resolution fails to specify the length of time the committee will serve, the committee will default to a term of two (2) years. No committee will be authorized to bind the Association to any contract or agreement. Except as otherwise provided herein or in the Declaration, committee members shall be appointed by ~~Board of Directors~~ the body that created the committee and ~~serve for a term of two (2) years; provided, however,~~ each committee member shall serve at the discretion of and may be removed with or without cause by the ~~Board of Directors~~ body that created the committee, ~~except for the~~ However, members of the ~~Variance Document Review~~ Document Review Committee, ~~who~~ shall serve at the discretion of and may be removed with or without cause by the Voting Members. Only a Member of the Association in good standing (current in all financial obligations to the Association) may be appointed to a committee. The body that created the committee may call the first meeting of the committee or select a facilitator to call the first meeting of the committee, at which time the members of the committee ~~members of each committee~~ shall select the chairperson of the committee. Notwithstanding the foregoing, the Board may appoint a permanent chair of the Government Affairs Committee. The ~~Board of Directors~~ body that created the committee shall appoint two alternates to ~~any~~ the committee if requested in writing by the chairperson of said committee or by a majority of members of the committee. ~~All permanent committees have the right to two alternate members upon written request to the nominating authority by the committee chairperson.~~ Prior to the appointment of any committee member, notice of the position shall be posted on the property and on the Association's website at least fourteen (14) days in advance.

- **DRC Comment:** Provide right of the VM's to create committees per Motions
 - VM's now begin to formally manage Document Review Committee resolution & membership
 - Return control of Variance Committee to BOD
 - Clarify resolution requirements (and community notice) for all committees
- **Attorney Response:** We made requested changes, but typically, the right to create a committees rests with the Board because matters delegated are within powers of the board. The Board should dictate what powers the committee will have or not have and the length of time committees will serve. See FS 617.0825. We also recommend that Board keep the right to create and determine the scope of a document review committee. Document reviews generate an added cost (attorney's fees and mailings) that the Board should be able to plan for in the budget.
- **DRC Response:** We want VM's to have ability to fully manage, appoint members, etc. for any committees they choose to create by majority vote...need to either create separate section, or ensure that VM created committees are not required to have Board oversight or management control.
- **Attorney Response:** We recommend Board oversight/control committee if Committee will be reaching out to members, companies, vendors etc. on behalf of Association. We also recommend Board have ability to disband committee if the committee exceeds authorities granted or interferes with Association business. We do not recommend imposing a requirement that notice be published 14 days in advance. The Board or VMs may choose to do this but putting the notice requirement in the Bylaws removes flexibility.

Section 2. Covenants Committee. In addition to any other committees that may be established by the Board pursuant to Section 1 of this Article, the Board of Directors shall appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these Bylaws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article III, Section 20, of these Bylaws. A quorum of the Covenants Committee shall be a majority of the members of the Covenants Committee.

- **DRC Comment:** See attorney revisions.

Section 3. Neighborhood Committees. Except as otherwise provided in this paragraph, the members of each Neighborhood Committee shall be elected by the vote of Owners of Units within that Neighborhood at an annual meeting of such Owners. Any director elected to the Board of Directors from a Neighborhood shall be an ex officio member of the committee. It shall be the responsibility of the Neighborhood Committee to determine the nature and extent of services, if any, to be provided to the Neighborhood by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Neighborhood Committee may advise the Board on any other issue but shall not have the authority to bind the Board of Directors.

In the conduct of its duties and responsibilities, each Neighborhood Committee shall abide by the procedures and requirements applicable to the Board of Directors set forth in Article III. The Voting Member selected by a Neighborhood shall serve as chairperson for the Neighborhood Committee and shall preside at its meetings and be responsible for transmitting any and all communications to the Board of Directors.

Section 4. Variance Committee. In addition to any other committees that may be appointed by ~~the~~ a majority of the Board of Directors, there shall be a Variance Committee ~~elected by the Voting Members~~, consisting of five (5) persons, appointed by a majority of the Board of Directors present at a duly-noticed meeting, at least one of whom ~~At least one member of the Variance committee~~ shall be a licensed architect. The Variance Committee shall have jurisdiction over matters identified in Article XI of the Declaration. Members of the Variance Committee shall be elected for a two (2)-year term. Any vacancy occurring during the term of a member of the Variance Committee may be filled by a majority vote of the ~~Voting Members~~ Board of Directors for the balance of that term.

- **DRC Comment:** What is threshold for election to Variance (i.e. Majority)? EITHER MAJORITY OF VM'S OR MOOT IF TURNED OVER TO THE BOD TO MANAGE. Why is Variance a VM thing vs. fully the BOD's purview? RECOMMEND MOVING TO BOD Purview
- **Attorney response:** We incorporated changes. See prior comments. Consider whether you want to keep requirement for architect. While an architect is helpful, this requirement could be difficult to fulfill. Committee has ability to consult with architects or other professionals if necessary.

The members of the Variance Committee shall be Members of the Association in good standing (current in all financial obligations to the Association) with no prior finding by the Covenants Committee of a violation of the deed restrictions, ~~or the Master Guidelines or the INSGs~~ guidelines. Notwithstanding the foregoing, the licensed architect need not be a Member of the Association. No person who is serving on the Covenants Committee or the Modifications Committee shall be allowed to serve simultaneously on the Variance Committee. Members of the Variance Committee may be removed from the committee with or without cause by a majority of the Board of Directors ~~vote of seventy-five percent (75%) of the Voting Members, with each Voting Member casting one (1) vote.~~ The Variance Committee shall meet as needed.

- Why is the threshold for removal higher than the removal of a Board member?
ADDRESS WITH OTHER THRESHOLDS IN SCHEDULE
- **Attorney Response:** Agreed. That threshold did not make sense. We revised.

The ~~Voting Members~~ Board of Directors may establish other procedural and substantive guidelines for the operation of the Variance Committee that are consistent with the Declaration and these Bylaws.

Section 5. Swim & Tennis Committee. In addition to any other committee that may be appointed by the Board of Directors, there may be a Swim & Tennis Committee, which shall consist of not less than five (5) or more than nine (9) members, each of whom shall be a Member of the Association. The committee shall evaluate the use of the community's pools and tennis and recreational facilities and advise the Board of Directors on issues relating to these facilities.

Section 6. Modifications Committee. In addition to any other committee that may be appointed by the Board of Directors, the Board of Directors shall establish a Modifications Committee, which shall be established pursuant to the Declaration.

Section 7. Notice of Committee Meetings. Notice and the agenda of committee meetings must be conspicuously posted on the property not less than forty-eight (48) hours in advance of the meeting. In addition to the notice required by this sub-section, meetings of the Covenants Committee shall also be noticed as set forth in Article six (6), Section one (21) of these Bylaws.

Article VI - Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, the current edition of *Robert's Rules of Order* shall govern the conduct of Association proceedings when not in conflict with Florida law, the Articles of Incorporation, the Declaration, or these Bylaws.

Section 3. Conflicts. If there are conflicts between the provisions of Florida law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of Florida law, the Declaration, the Articles of Incorporation, and the Bylaws, in that order, shall prevail.

Section 4. Books and Records.

(a) Written Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) written notice of inspection to be given to the Association manager;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(b) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, and other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, with first-class postage prepaid, or by electronic mail to the extent permitted by law:

(a) if to a Member or Voting Member, at the address that the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of that Member or Voting Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. These Bylaws may be amended only by the affirmative vote ~~or written consent, or any combination thereof,~~ of Voting Members representing sixty-six percent (60~~6~~%) of the total votes in the Association. In addition, the approval requirements set forth in Article XIV of the Declaration shall be met, if applicable. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Hillsborough County, Florida.

Prior to any vote on an amendment to the Declaration or these Bylaws that requires approval by the Voting Members on behalf of the Members, the Association shall cause to be delivered to all Members of the Association a referendum upon which they may indicate their vote on these matters, in accordance with Article III, Section 3 of the Declaration.