WAKE COUNTY, NC
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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Drawn by and HOLD FOR:
Moore & Alphin, PLLC (Box 155) (ap)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR WHITE OAK CREEK

NO OWNER SHALL DISPLAY, HANG, STORE OR EXHIBIT ANY SIGNS (INCUDING WITHOUT LIMITATION POLICICAL SIGN) OUTSIDE OF THE DWELLING ON ANY LOT OR IN ANY DWELLING SO AS TO BE VISIBLE FROM OUTSIDE THE LOT, OTHER THAN AS MAY BE PERMITTED BY THE RULES AND REGULATIONS, AS MORE PARTICULARYLY SET FORTH IN ARTICLE X, SECTION 8. THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA.

This Declaration is made as of the date on which it is recorded in the Registry (hereinafter defined) by **TOLL NC II, LP**, a North Carolina limited partnership ("Declarant").

PREAMBLE:

WHEREAS, Declarant is the owner of approximately 195 acres of land located in the Town of Apex, White Oak Township, Wake County, North Carolina, all or portions of which Declarant intends to develop into a residential planned community to be known as WHITE OAK CREEK (the "Community"); and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of certain Common Property (hereinafter defined) within the Community, to provide for maintenance of certain storm water drainage systems and facilities within the Community, and to provide for the

Submitted electronically by "Moore & Alphin, PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Wake County Register of Deeds.

enforcement of covenants and restrictions applicable to the Community, and, to that end, desires to subject the Properties (hereinafter defined) to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Properties and each Owner of any portion thereof; and

WHEREAS, Declarant has incorporated under North Carolina law, as a nonprofit corporation, the White Oak Creek Homeowners Association, Inc., to carry out the foregoing functions.

NOW, THEREFORE, Declarant hereby declares that the real property described in **EXHIBIT A** to this Declaration, and such additions thereto as may be hereafter made pursuant to the provisions of Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, each and all of which shall run with the real property and be binding on all Persons owning any right, title or interest therein or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of and be binding upon each Owner thereof.

ARTICLE I
DEFINITIONS

The following terms, when used in this Declaration, shall have the meaning set forth below. Capitalized terms not specifically defined in this Article I shall have the meaning of such term as set forth in the Act, the North Carolina Nonprofit Corporation Act (Chapter 55A of the North Carolina General Statutes), or in any other section of this Declaration.

Section 1. "Act" shall mean and refer to the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time.

Section 2. "Annexation Declaration" shall mean and refer to a document, by whatever name, that is recorded in the Registry for the purpose of subjecting Annexed Property to this Declaration and causing such Annexed Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration, and including any additional covenants, charges, conditions and restrictions contained in such Annexation Declaration.

Section 3. "Annexed Property" shall mean and refer to all real property subjected to this Declaration, by any of the methods set forth in Article II hereof, after the initial recording of this Declaration.

Section 4. "Association" shall mean and refer to the **White Oak Creek Homeowners Association, Inc.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 5. "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in Article V of the Bylaws, and is the "executive board" as defined in the Act.

Section 6. "Bylaws" shall mean and refer to the Bylaws of the Association, as they may now or hereafter exist, including all duly adopted amendments thereto.

Section 7. "Code" shall mean and refer to the Code of Ordinances, Town of Apex, North Carolina, as it exists from time to time, and includes all regulations, rules, directives and policies of the Town duly adopted pursuant to or in furtherance of the Code.

Section 8. "Common Area" shall mean and refer to the real property, together with any improvements situated thereon, intended for the common use and benefit of the Owners and occupants of the Properties, however such real property is described on a map or other document recorded in the Registry. Common Area may be owned by the Association or it may be owned by another Person with the Association having a right or easement therein or an obligation in connection therewith (for example, but without limitation, part or all of stormwater drainage and other easements located on either a Lot, a public right-of-way or real property that is not part of the Properties and that serves more than one (1) Lot in the Properties), a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the Town, and an obligation of the Association to maintain any such easements and improvements including, for example, medians in public streets, and public streets and other public improvements not yet accepted for maintenance by the applicable Governmental Entity. Common Area includes, without limitation, all of the following:

(a) all real property owned in fee by the Association, including, without limitation, all active and passive recreational amenities thereon;

(b) any private street and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);

(c) Stormwater Control Measures;

(d) any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any Town utility easement;

(e) any site or facility owned by the Association and designated a common area, open space, amenity area, or other similar designation on any recorded map of the Properties, including, without limitation, centralized mail boxes installed for use by the U.S. Postal Service and the Owners;

(f) any public road right-of-way dedicated to the public on maps of the Properties recorded in the Registry but not yet accepted for public maintenance by the appropriate Governmental Entity, provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to maintain such streets and roads prior to acceptance for public maintenance and to take such action as is necessary to cause them to be accepted for public maintenance. The Association has the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorneys' fees, incurred by the Association in connection with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and

(g) any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an

encroachment agreement with a Governmental Entity that is recorded in the Registry, and may include: signs, landscaping, irrigation facilities, drain pipes, decorative surfaces and brick pavers.

Common Area as to which the Association has only an easement right is referred to herein as a "Common Area Easement".

Common Area, if any, established by the Declarant or the Association for the benefit of some but fewer than all of the Owners and occupants of the Properties is "Limited Common Area" (which is a subcategory of Common Area), and such Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Limited Common Area exists are subject to the same provisions as those applicable to Common Area. All references herein or in any recorded map of the Properties to Common Area that is, in fact, Limited Common Area, are deemed corrected accordingly.

Common Area also includes all other property and improvements, if any, required to be included as such by the Code or other Legal Requirement, and all other property and improvements, if any, declared to be Common Area by this Declaration or by the Declarant or by the Members. (Note: The definition of Common Area in this Declaration is broader than the definition of "common elements" in the Act.) Except as otherwise provided in this Declaration or by separate written agreement between the Association and any other Person, Common Area shall be maintained by the Association unless it is maintained by the Person owning real property as to which the Association has only an easement or other right of use, or it is conveyed to or owned by another nonprofit entity formed for similar purposes, or dedicated to public use and accepted by a public agency, authority, or utility.

Section 9. "Common Expense" shall mean and refer to all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, this Declaration and other Governing Documents and including specifically, but without limitation, all of the following:

(i) all expenses of ownership, administration and maintenance of Common Area, including repair, restoration and replacement thereof, and expenses for acquisition, maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members, and including monies allocated to reserve funds for any of the same;

(ii) any fees or charges for utilities used in connection with the Common Area;

(iii) *ad valorem* taxes and public assessments, if any, levied against the Common Property owned in fee by the Association (but specifically excluding *ad valorem* taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained by the Association result in additional taxes on such real property that would not be assessed in the absence of such improvements, in which event such additional taxes shall be paid by the Association as a Common Expense);

(iv) any unpaid assessments following the foreclosure of a first mortgage or first deed of trust or an assessment lien;

(v) financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;

(vi) costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the Town or other Governmental Entity;

(vii) premiums for hazard, liability and other insurance insuring the Common Property or the Association, its officers, directors and employees;

(viii) fees and expenses of management agents, attorneys, accountants, and other Persons employed by the Association for Association business;

(ix) expenses declared to be or described as Common Expenses by the Act, the Code, or this Declaration;

(x) expenses determined by the Board of Directors or by the Members to be Common Expenses; and

(xi) all other expenses incurred by the Association in performing its functions, including operating, management and administrative expenses. (Common expenses for the maintenance of Limited Common Property are "Limited Common Expenses", which is a subcategory of Common Expense.)

Section 10. "Common Property" shall mean and refer to Common Area *and* all personal property owned, leased or used by the Association, or with respect to which the Association has a financial obligation, for the common use, enjoyment or benefit of the Members or the Properties, and any substitutions or replacements thereof.

Section 11. "Declarant" shall mean and refer to **TOLL NC II, LP**, a North Carolina limited partnership. It shall also mean and refer to any Person to whom or which Declarant might assign or delegate all or any of the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Registry.

Section 12. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors and officers of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

(a) December 31, 2030;

(b) the date on which Declarant no longer owns any property subject to this Declaration; or

(c) Relinquishment or transfer by Declarant of all Special Declarant Rights as provided in §47F-3-104 of the Act.

Notwithstanding any other provision of this Declaration, Declarant, in its sole discretion, and any time and from time to time and by written instrument signed by Declarant, may relinquish part, but not all, of its rights and/or obligations as Declarant under this Declaration, but such partial relinquishment shall result in relinquishment of only the rights and obligations specifically set forth in such instrument and shall not be construed as a release of any rights or obligations not specifically set forth therein.

Section 13. "Declaration" shall mean and refer to this "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for White Oak Creek", and all amendments thereto and supplements thereof.

Section 14. "Development Parcel" shall mean and refer to any portion of the Properties which is intended to be developed as part of the Properties, but which has not yet been converted into Lots as provided herein.

Section 15. "Dwelling" shall mean and refer to any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or lessees of the Owner, and specifically including detached dwellings located on separate Lots and attached dwellings located on separate Lots (for example, townhomes, in which more than one Dwelling may be located in a single building, but each Dwelling is on a separate Lot). A detached or attached Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

Section 16. "Exempt Property" shall mean and refer to all portions of the Properties included within any of the following categories: (i) Common Area; (ii) property owned by, or dedicated to and accepted by the Town or a public utility, including property within the right-of-way of publicly-dedicated streets and roads; and (iii) property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, provided, however, that any property containing a Dwelling used as a residence shall not be Exempt Property.

Exempt Property shall not be subject to the assessments provided for herein, and the Owner of such Exempt Property shall have no voting rights in the Association based on ownership of such Exempt Property. Furthermore, unless and until such time, if any, as it loses its Exempt status, all Exempt Property owned by the Town or a utility provider, and all Exempt Property within publicly-dedicated street rights-of-way, shall be exempt from all of the provisions of this Declaration, except for any easements over such Exempt Property reserved in this Declaration by or for the Declarant, the Association, the Town or any other Person.

Exempt Property that loses its status as Exempt shall be reclassified as a Lot or Development Parcel, as appropriate, and shall be subject to all of the terms and provisions of this Declaration in the same manner and to the same extent as other Lots and Development Parcels.

Section 17. "Governing Documents" shall mean and refer to all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association; Annexation Declarations, and other declarations of restrictive or protective covenants applicable to the Properties, as the same may be amended, restated or supplemented from time to time.

Section 18. "Governmental Entity" shall mean and refer to the Town of Apex, the County of Wake, the State of North Carolina, the United States of America and all other Governmental Entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments and agencies of any of them.

Section 19. "Legal Requirements" shall mean and refer to any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the County of Wake, the Town, or any other Governmental Entity or quasi-governmental entity or agency having jurisdiction over the Properties, including any branch, department, division or agency of any of the foregoing governmental and quasi-governmental entities.

Section 20. "Lot" shall mean and refer to any portion of the Properties with delineated boundary lines, as shown on a map or plat recorded in the Registry or as identified by metes and bounds description, that is intended for construction of a Dwelling thereon, or on which a Dwelling has been constructed. A Lot shall become a "Lot" upon recording in the Registry of a map creating such Lot.

In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the recording of a new map or plat, the newly-platted lot thereafter shall constitute a Lot.

Section 21. "Member" shall mean and refer to every Person who or which holds membership in the Association.

Section 22. "Mortgagee" shall mean and refer to the beneficiary or payee under any mortgage or deed of trust, and the terms mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

Section 23. "Neighborhood" shall mean and refer to each separately-developed residential area within the Properties which has been subjected to this Declaration at the time of recording or by future Supplementary Declaration as provided in Article II of this Declaration. There are currently two Neighborhoods within the community which are "Regency at White Oak Creek" and "Enclave at White Oak Creek," as further described on the attached Exhibit A.

Section 24. "Neighborhood Assessments" shall mean assessments levied in accordance with Article V.

Section 25. "Neighborhood Expenses" shall mean the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include reasonable reserves for capital repairs and replacements and reasonable administrative charges, as may be authorized pursuant to this Declaration or in any future recorded Supplementary Declarations.

Section 26. "Operating Deficit" shall mean and refer to the negative difference, if any, between the total amount of the assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements.

Section 27. "Owner" shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Lot, and shall include Declarant as to any Lot or Development

Parcel owned by Declarant. The term "Owner" shall not include any Person who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

Section 28. "Person" shall mean and refer to a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity (including the Town), or other entity.

Section 29. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any Annexed Property annexed pursuant to said Article II.

Section 30. "Registry" shall mean and refer to the office of the Register of Deeds for Wake County, North Carolina (or any successor office under applicable law in which deeds, maps, plats, easements, mortgages and deeds of trust for the Properties are recorded). All references herein to recording or to any requirement to record a document, map or plat refer to recording in the Registry.

Section 31. "Special Declarant Rights" shall mean and refer to all rights granted to, or reserved by, or established for the benefit of, Declarant in the Act, this Declaration, the Articles of Incorporation and Bylaws of the Association (whether or not such rights are referred to as Special Declarant Rights in such documents). Declarant may assign Special Declarant Rights, in whole or in part, temporarily or permanently, at any time and from time to time, subject to such terms and conditions as Declarant specifies in the assignment document. Except as specifically provided herein, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, and the assignment becomes effective upon the recording of the document in the Registry or on any later date specified therein.

Section 32. "Stormwater Agreement" shall mean and refer to any agreement recorded in the Registry among the Declarant, the Association, and the Town, or between the Declarant and the Town, or between the Association and the Town, relating to Stormwater Control Measures for the Properties or any part thereof, and includes all amendments and supplements to such agreements.

Section 33. "Stormwater Control Measures" or "Stormwater Control Facilities" (such terms being used interchangeably herein) shall mean and refer to one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a map, plat or document recorded in the Registry) that serve the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Properties, and which are located outside public street rights-of-way and Town drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on a recorded map or plat or in a recorded document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. All Stormwater Control Measures are Common Area or Limited Common Area, as applicable.

Section 34. "Town" shall mean and refer to the Town of Apex, a North Carolina municipality.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION; ADDITION OF PROPERTY; WITHDRAWAL OF PROPERTY;

Section 1. Existing Property. The real property which, at the time of recording of this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto.

Section 2. Additions to Existing Property.

(a) By Declarant. At any time during the Declarant Control Period, Declarant may subject Annexed Property to this Declaration, without approval of any Person other than the Town (if required by Legal Requirements), by recording an Annexation Declaration extending the operation and effect of this Declaration to such Annexed Property. Except to the extent required by the Legal Requirements, nothing in this Declaration shall be deemed to require the Declarant to subject any property to this Declaration.

(b) By the Members. If a Person other than the Declarant desires at any time to subject Annexed Property to this Declaration, such Annexed Property may be annexed only by the affirmative vote of at least sixty-seven percent (67%) of the votes cast by the Members present at a duly-called meeting of the Association for which the notice of meeting includes notice of the proposal to annex such Annexed Property and the recording in the Registry of a Annexation Declaration signed by the owner of such Annexed Property and by the appropriate officer(s) of the Association certifying the required meeting and vote. In addition to the foregoing, during the Declarant Control Period, such annexation may be valid only with the consent of Declarant, as evidenced by Declarant's execution of the Annexation Declaration.

(c) Approval by Governmental Entities. If required by the Code, subjection of to this Declaration must be approved by the Town.

(d) Annexation Declaration. Each Annexation Declaration shall be effective to subject Annexed Property to this Declaration only upon obtaining all required approvals and upon its recording in the Registry, and the effective date of such annexation shall be the date of recording of the Annexation Declaration. Each Annexation Declaration shall describe the Annexed Property and indicate that the Annexed Property is being subjected or annexed to this Declaration. An Annexation Declaration need not be in any specific form and need not be titled Annexation Declaration (for example, the required subjecting language may be contained in a deed from the Declarant conveying the Annexed Property), but it shall indicate clearly the intention to subject or annex such Annexed Property. Any Annexation Declaration may contain such use restrictions and such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens applicable to such Annexed Property, not in conflict with this Declaration, as the Person subjecting such Annexed Property to this Declaration may determine, but this Declaration shall control over any provision of any Annexation Declaration that conflicts or is inconsistent with this Declaration.

(e) Votes Allocated to Annexed Property. The votes of the Members in the Annexed Property shall be allocated in the same manner that votes are allocated in portions of the Properties already subject to this Declaration. The addition of Annexed Property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Conveyance of Common Area in Annexed Property. Common Area, if any, located within any Annexed Property, or the applicable phase or portion thereof, shall be conveyed to the Association pursuant to the requirements of Section 3 of Article IV of this Declaration.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Declarant and every Owner of a Lot or Development Parcel which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two (2) classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Lots owned by Class A Members are "Class A Lots".

(b) Class B Member. The Class B Member shall be the Declarant. A Lot or Development Parcel owned by the Declarant shall be a "Class B Lot". Subject to the provisions of this subsection, Declarant shall be entitled to ninety-nine (99) votes for each Lot and ninety-nine (99) votes for each acre of each Development Parcel that it owns. Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot and Development Parcel that it owns; however, such Declarant-owned Lots and Development Parcels shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, Declarant will exercise its right to appoint and remove all of the Directors and officers of the Association until the earlier of the expiration of the Declarant Control Period or Declarant surrenders such right by written instrument filed with the Secretary of the Association. *See* §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. As stated in Section 14 of Article X hereof, Declarant desires that all Dwellings within the Community be occupied by the Owner thereof. Notwithstanding the foregoing, in no event shall the votes of Owners of Dwellings which are vacant or are otherwise not occupied by the Owner of the Lot be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association and the votes of such Owners shall automatically be fractionally reduced for such purpose. This Section applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant.

ARTICLE IV
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV, other provisions of this Declaration, any Annexation Declaration, or Legal Requirement, or by rules and regulations adopted by the Members and/or the Board of Directors, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) The right of the Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) The right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however, that the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or other Governmental Entity or to another nonprofit entity organized for purposes similar to those of the Association.

(d) The right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the Association, to mortgage, pledge, deed in trust, or

otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) The right of the Association to exchange all or part of the Common Area for other property and consideration provided that:

(i) written notice of the exchange is given to each Member of the Association;

(ii) after the notice is given, the Association approves the exchange in accordance with the minimum percentage of votes required by N.C.G.S. § 47F-3-112(a);

(iii) the exchanged properties and other considerations are of like value and utility;

(iv) the acreage and configuration of the remaining Common Area (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and

(v) the exchange is approved by the Town, if required by the Code.

(f) The right of the Association to sell, lease, convey or dispose of any personal property owned by the Association.

Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy such Owner's Unit, or a portion thereof, as their principal residence in Wake County, North Carolina.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Common Area to the Association. Declarant covenants, for itself, its successors and assigns, that it will convey to the Association title to those portions of the Common Area to be owned in fee by the Association, and the Association agrees to accept each such conveyance. Declarant hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself and its successors and assigns, an easement over, under, across and through the Common Area so long as it owns any Lot or Development Parcel within the Properties, for the purpose of constructing any improvements on the Common Area and/or the Lots as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by the Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Community, utility, drainage, greenway,

conservation, and other easements of record or shown on the recorded maps of the Properties, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the Town or other Governmental Entity, or a public or private utility company. Title to the Common Area in each phase or section of the Properties shall be conveyed to the Association not later than the time required by applicable Legal Requirements.

Section 4. Regulation and Maintenance of Common Area and Common Area Easements. It is the intent of Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Community. To that end, the Declarant, by recording any plat or map of any phase or section of the Properties, grants to the Association an easement over and across any portion of any Lot within such phase or section on which a Common Area Easement lies for the purpose of enabling the Association to take any action permitted by subsections (b) and (c) of this Section 4 or by Article VI hereof.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other Person shall, without the prior written consent of the Association: (i) remove any trees or vegetation from any Common Area; (ii) erect gates, fences, buildings or other structures on any Common Area; (iii) place any garbage receptacles on any Common Area; (iv) fill or excavate any Common Area or portion thereof; or (v) plant vegetation on or otherwise restrict or interfere with the use, maintenance and preservation of the Common Area.

It is the intent of the Declarant that a Common Area Easement be maintained in the same condition as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner for the costs of such maintenance, which costs, including a 15% administrative fee, if not paid within thirty (30) days after demand for payment is made by the Association, shall be deemed an individual special assessment against such Owner's Lot and shall be collected and shall incur the late charges, interest and costs of collection as set forth in Section 9 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in the Code and other Legal Requirements and this Declaration and the rules and regulations adopted by the Association as provided herein and in the Bylaws; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damages suffered by any Person, including the Owner of the Lot upon which a Common Area Easement lies, resulting

from use of the Common Area; and (iii) pay all property taxes and other assessments levied against the Common Area owned in fee by the Association.

(c) Association's Right of Entry. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent reasonably necessary to gain access to and maintain the Common Area Easement and any improvements therein, including maintenance to be done by the Owner as provided in subsection (a) above, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot or Development Parcel, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (or to any Person who or which may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration including, without limitation, (i) annual assessments, (ii) working capital fund payments required by Section 11 of this Article V, (iii) special assessments, (iv) individual special assessments, including, without limitation, fines for violations of this Declaration or other Governing Documents and assessments levied against Owners for misuse and damage to the Common Property by an Owner or his family members, tenants, agents, contractors and guests; (v) late payment charges, interest on unpaid assessments and costs of collection (including, without limitation, fees on dishonored checks, court costs, and attorneys' fees) to be established and collected by the Association as provided herein. All assessments which are unpaid when due, together with interest and late charges set forth in Section 9 of this Article V and all costs of collection, including, without limitation, reasonable attorneys' fees, shall be a charge on the Lot of such Owner, and, as provided in §47F-3-116 of the Act, shall be a continuing lien against the Lot against which such assessment is made. As provided in §47F-3-116 of the Act, such lien shall attach to the Lot only if an assessment against the Lot remains unpaid for at least thirty (30) days and a claim of lien is filed by the Association as provided in the Act. Each such assessment or charge, together with interest and costs of collection, shall also be the personal or corporate obligation of the Person owning such Lot at the time when the assessment fell due, but such personal or corporate obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them; however, such assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents and occupants of the Community and, in particular, for (i) acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon including, without limitation, Stormwater Control Facilities thereon, and including, without limitation, the cost of inspection thereof and repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes

and public assessments levied against Common Property owned in fee by the Association; (iv) procurement of insurance; (v) employment of attorneys, accountants, engineers, management agents and other Persons for Association business; (vi) payment of principal and interest on funds borrowed by the Association; (vii) reserve funds; and (viii) such other needs as may arise.

Section 3. Annual Assessments. Until December 31, 2015, the annual assessment for each Class A Lot in the Regency at White Oak Creek Neighborhood shall be Two Thousand, One Hundred and No/100 Dollars ($2,100.00) and the annual assessment for each Class A Lot in the Enclave at White Oak Creek Neighborhood shall be Nine-Hundred and No/100 Dollars ($900.00). The annual assessment for all Class B Lots and Development Parcels owned by the Class B Member shall be *zero*, provided, however, that any Lot which contains a Dwelling occupied as a residence shall be assessed at the Class A rate.

Beginning on January 1, 2016, and thereafter, the annual assessments shall be based on a budget approved under the provisions set forth in Section 4 below.

The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the annual assessments incident to a merger or consolidation as provided in §47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Ratification of Budgets; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give the Members written notice of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than thirty (30) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless, at that meeting, Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the proposed budget provides for annual assessments not more than ten percent (10%) greater than the annual assessment for the immediately preceding calendar year, such budget shall be deemed ratified unless Members having at least sixty-seven percent (67%) of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Except as otherwise provided in this Declaration, an Annexation Declaration, or any Legal Requirements (e.g., additional or different stormwater assessments or different assessments pertaining to Limited Common Area), annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannual, quarterly or monthly basis, as determined by the Board.

The Association shall, upon demand and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or the management company employed by the Association, setting forth whether the assessments for a specific Lot

have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 5. Additional Assessments for Limited Common Area. Declarant reserves the right, by Annexation Declaration or any other declaration applicable only to certain phases or Neighborhoods within the Properties, to subject portions of the Properties to provisions requiring the Owners thereof to pay additional annual assessments and special assessments to the Association for the maintenance of Limited Common Area, including, without limitation, related Stormwater Control Facilities and private streets, private rights-of-way, private alleys, and private alley easements on such Limited Common Area.

All of the provisions of this Declaration relating to special assessments shall apply to the additional special assessments for Limited Common Property, with the following exceptions: (i) the additional assessments with respect to any particular Limited Common Property are assessed only against the Owners of the portion of the Properties associated with such Limited Common Property; (ii) the initial additional maximum annual assessment and additional annual assessment for each Lot associated with such Limited Common Property shall be established in the Annexation Declaration that creates or establishes that Limited Common Property or the obligations associated therewith; (iii) the actual additional annual and special assessments may vary from phase to phase, section to section, or Neighborhood to Neighborhood; and (iv) the additional annual and special assessments for portions of the Properties in any particular phase, section or Neighborhood within the Properties shall be used exclusively in connection with the Limited Common Property associated with that phase, section or Neighborhood.

Section 6. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring cost, *provided that* any such assessment shall have been approved by the Declarant and a majority of the votes attributable to Lots owned by Persons other than the Declarant, and further provided that the special assessment for Class B Lots and Class B Development Parcels shall always be zero. The Declarant and, after the end of the Declarant Control Period, the Association, may not assess a special assessment against any Development Parcel unless the special assessment benefits such Parcel, or against the Lots unless the special assessment benefits the Lots. Except as otherwise provided in this Declaration, an Annexation Declaration, or the Legal Requirements, special assessments shall be fixed at a uniform rate for all Lots within each Class and maybe collected on a yearly, semiannually, quarterly or monthly basis, as determined by the Board of Directors. Special assessments shall be collected in the same manner and shall constitute a lien to the same extent as other assessments against the Lot or Development Parcel.

Section 7. Individual Special Assessments. The Board of Directors may, without vote of the Members, levy an individual special assessment against any Lot or Development Parcel applicable only to that Lot or Development Parcel, for expenses incurred by the Association with regard to such Lot including, without limitation, expenses incurred under Article VI hereof. Any fine imposed against an Owner pursuant to Section 15 of this Article V shall also constitute an individual special assessment against such Owner's Lot. Individual

special assessments shall be collected in the same manner and shall constitute a lien to the same extent as other assessments against the Lot. Notwithstanding the foregoing, the Association may not levy an individual special assessment against Declarant without the prior written consent of Declarant.

Section 8. Notice of Quorum for any Action Authorized Under Section 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 6 shall be sent to all Members not less than ten (10) nor more than sixty (60) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting maybe called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 9. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, subject to the limitations of Section 47F-3-102(11) of the Act, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than fifteen percent (15%) per annum or the maximum rate allowable by law, whichever is less. All assessments remaining unpaid after thirty days (30) days from the date on which they were due, together with late charges, interest, and the costs of collection thereof, including attorneys' fees, shall be a charge on the Owner's Lot as provided in §47F-3-116 of the Act and, upon filing of a claim of lien in the office of the Clerk of the Superior Court for Wake County in the manner provided in §47F-3-116(g) of the Act, shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due, and shall have the right and power to take such action as is necessary to conduct such foreclosure and convey the Lot to the purchaser at the foreclosure sale, including, without limitation, the right to appoint a trustee or to request appointment of a commissioner to conduct the foreclosure. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The liens provided herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or first deed of trust shall extinguish the lien of any assessments which become due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

Section 11. Working Capital Fund. The Association shall collect from each initial purchaser of a Lot, at settlement of such Lot, a non-refundable working capital contribution in an amount as may be determined by the Board from time to time. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet its operating expenses or to acquire additional equipment or services deemed by the Board to Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular or special assessment.

Section 12. Declarant's Obligation to Fund Operating Deficits; Assessment Credit. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by Declarant thereafter for Lots and Development Parcels owned by Declarant, in an amount equal to the aggregate of the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the Declarant for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full.

Section 13. Neighborhood Assessments. Subject to the provisions of this Section 13 and notwithstanding any other provision of this Declaration, the Association shall have the power to levy, in addition to all other assessments that may be levied as provided herein, assessments against the Lots in a particular Neighborhood to fund Common Expenses incurred by the Association for the primary benefit of the Lots within such Neighborhood including, without limitation, maintenance required to be performed by the Association with respect to property within that Neighborhood. Such Neighborhood Assessments shall be collected in the same manner as and shall constitute a lien to the same extent as other assessments against the Lot.

Section 14. Reserve Account. The Association shall establish a separate reserve account to fund major repairs to and replacements of Common Area including, without limitation, major repair or replacement of Stormwater Control Measures. Each annual budget shall show the amount to be placed in reserve for each category for which reserves are to be held.

Section 15. Fines. Subject to the provisions of this Declaration, the Bylaws of the Association, and Section 47F-3-107.1 of the Act, the Board of Directors shall have the right and

authority to levy fines or suspend privileges or services provided by the Association for reasonable periods for the violation of any provision of this Declaration and other rules and regulations promulgated by the Board of Directors pursuant thereto, provided, however that the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations. Any monetary fine shall be deemed an individual special assessment against the Lot of the Owner against whom such fine is assessed.

ARTICLE VI
MAINTENANCE OF LOTS AND COMMON AREA

Section 1. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements which the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot and/or the exterior of any Dwelling or other structure erected thereon, and the cost of such maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 2 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VI.

Section 2. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in this Article VI or as provided in Section 4 of Article IV hereof, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be assessed against the Lot upon which such maintenance is done and shall be added to and become an individual special assessment against such Lot.

Section 3. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners; (ii) pay all property taxes and other assessments levied against all Common Property owned in fee by the Association; and (iii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any Person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area. Notwithstanding anything to the contrary contained herein, during the Declarant Control Period, the Declarant reserves the right to include the insurance obligations of the Association within a master insurance program controlled by the Declarant and upon doing so, the insurance obligations provided for under this Declaration shall be deemed satisfied. By virtue of taking title to a Lot within the Community,

each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or any Dwelling or other property located thereon.

Section 4. Additional Maintenance for Regency at White Oak Creek Neighborhood.

(a) Landscape Maintenance. The Association shall maintain the lawns and landscaping located on the Lots within the Regency at White Oak Creek Neighborhood (hereinafter "Regency Lots" or "Regency Lot") pursuant to the terms of this Section 4(a). The Association shall provide maintenance for the basic lawn and landscaping package provided by the Declarant for each Regency Lot. The Association shall determine, in its sole discretion, the level of maintenance, if any, for plantings in excess of the basic landscaping package provided for each Regency Lot and the Association shall have the option but not the obligation to provide maintenance for plantings in excess of the basic landscaping package for a Regency Lot. The Owner of a Regency Lot shall be responsible at its sole cost and expense for additional lawn and landscaping maintenance in excess of that maintenance provided by the Association. The costs of this landscape maintenance provided by the Association shall be paid from the Regency at White Oak Creek Neighborhood assessments. The Association may discontinue the landscaping maintenance obligations described in this Section 4 only upon the written consent of Owners within the Regency at White Oak Creek Neighborhood holding ninety percent (90%) of the votes entitled to be cast and, during the Declarant Control Period, the written consent of Declarant.

(b) Landscape Maintenance Easements. Declarant hereby reserves, for the benefit of itself, its successors and assigns, grants to the Association, its successors and assigns, employees, agents and subcontractors, a nonexclusive perpetual easement at all times over the Regency Lots for the purpose of maintaining the lawn and landscaping located on those Lots. The easement described in this Section expressly permits access within fenced areas of the Regency Lots. Further, any fences within these Lots must provide for an unlocked rear yard gate to permit the landscaping services provided in Section 4(a) of Article VI. Failure of the Association or its contractors or agents to provide the services described in Section 4(a) of Article VI due to denial of access within a fenced area of a Regency Lot, for example, if the gate is locked or if there is a dog in the fenced area, shall not be a breach of the responsibilities of the Association as required herein. No Regency Lot Owner may waive or otherwise escape liability for the Association Assessments by denying access to any portion of a Lot or the contractors or agents of the Association for the purposes described in this Section.

ARTICLE VII
RIGHTS OF LENDERS

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the

Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

(b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

(d) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of first deeds of trust who have requested notice as provided in Section 2 above have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(e) of said Article IV hereof, shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Property for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners of the Association.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The Person(s) making such payments shall be owed immediate reimbursement therefor by the Association.

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under this Declaration.

ARTICLE VIII
EASEMENTS

In addition to all other easements granted or reserved elsewhere in this Declaration, Declarant hereby grants and/or reserves the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water lines, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded maps of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot by the recording of appropriate instruments in the Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten foot (10') right-of-way over, under and along the front and rear line of each Lot for the installation and maintenance of poles, lines, conduits, meters, sewer clean-outs, pipes, and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities. Declarant also reserves an easement in and right at any time in the future to grant a five-foot (5') right-of-way over, under and along the side lines of each Lot for the aforementioned purposes.

An easement is also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of Properties shown and designated as "sign easement", "landscape easement", or "drainage easement", or any similar designation, and any combination of the foregoing on any recorded map or plat of any portion of the Properties for the purpose of installing, operating, repairing and maintaining, as appropriate, landscaping, irrigation system, entrance signage, fencing and Stormwater Control Measures in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing, or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article IX of this Declaration and, if required, by the Town.

Declarant grants to and reserves for the Declarant, the Association, the Town and their respective successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Except in recorded Tree Conservation Areas and in recorded Permanently Undisturbed Opens Space Areas, such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the Person taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but

shall not be required to replace any trees, bushes or shrubbery necessarily removed. The Person taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement for Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 3. Easement over Common Area. A perpetual, nonexclusive easement over, under and through the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to, from and over the Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area is subject to the easements granted herein.

Section 4. Association's Easement upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Community, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 5. Easements for Private Contractors. The Association shall have the right to assign its rights and delegate its duties to any Person. In the event that the Association employs or engages any Person to provide security within the Properties, perform inspections of improvements, collect garbage, or perform any other function, an easement is established over the Common Area and every Lot for the benefit of such contractors for such purposes.

Section 6. Easements for Development. For so long as Declarant owns any real property within the Properties, Declarant reserves an easement over the Properties for the purpose of allowing Declarant, its successors and assigns, to develop the Properties and construct improvements thereon.

Section 7. Easement for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and

drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

ARTICLE IX
ARCHITECTURAL CONTROL

After occupancy of the Dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs), wall or other structure (including, without limitation, play equipment, patios, decks, tree houses, parking pads, and sidewalks) shall be commenced, constructed, erected or maintained upon a Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or re-landscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, the plans and specifications shall be deemed disapproved.

Declarant shall have the right to charge a reasonable fee, not to exceed $250.00, for receiving and processing each application and the right (but not the obligation), at the expense of the Owner seeking approval of the Improvements, to employ an engineer or other professional to review the plans for the Improvements.

Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color finish, roofing material, siding material, driveway material, landscape design and construction technique. In the event of a conflict between the Architectural Guidelines and the provisions of this Declaration, the provisions of the Architectural Guidelines shall control. Declarant shall not approve any Improvements which it determines, in its sole discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Community.

Declarant may, at any time, delegate, in part or in full, the review and approval authority contained in this Article IX to the Board of Directors of the Association, which, in turn, may delegate such authority to an Architectural Committee composed of three or more persons appointed by the Board. Declarant shall delegate its rights and obligations hereunder as to then-existing structures no later than the end of the Declarant Control Period, but, unless specifically assigned by written instrument recorded in the Registry, Declarant shall have and shall exercise the rights set forth herein as to a Lot at all times *prior to* issuance of a certificate of occupancy or other certificate issued by the Town or appropriate governmental entity for the Dwelling constructed on a Lot. In no event shall any plans submitted to Declarant for approval be deemed approved until Declarant has actually approved the same in writing.

Any use of the term "Declarant" in this Article IX shall be deemed to apply to Declarant, to any Person to whom or which Declarant delegates, in writing, authority for architectural

approval and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by the Declarant.

ARTICLE X
USE RESTRICTIONS

Section 1. Land Use and Building Type. Except as specifically provided herein, Lots shall be used for residential purposes only. Except as permitted by the Town, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, Owners, real estate brokers and their agents may show Lots and homes for sale or lease. Notwithstanding the foregoing, the Declarant shall have the right to and may, in writing, permit another Person to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and other uses consistent with the development of the Community and the sale and construction of homes therein; (ii) maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; and (iii) conduct any other activities on Lots to benefit development, sales and construction efforts.

Section 2. Building Setbacks; House Location. No Dwelling shall be erected or maintained on any Lot outside of the building envelope required by the Code or other Governing Documents. For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the Dwelling only to the extent that the same are deemed to be part of the Dwelling under the Code, as it exists as of the date of issuance of a certificate of occupancy for such Dwelling. Any Dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a Dwelling may be erected so as to face either street or the intersection of the two streets on which the Lot abuts.

Section 3. Fences. Any fence or wall installed within the Community must meet all requirements of the Code and must be approved as provided in Article IX of this Declaration. Chain-link fences will not be permitted. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots or to any fence installed by the Declarant at any entrance to or along any street within the Community.

Section 4. Temporary Structures. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

Section 5. Parking; Driveways and Parking Pads; Abandoned Vehicles. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall be approved as provided in Article IX hereof.

No mobile house trailer (whether on or off wheels), recreational vehicle, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), truck (unless licensed as a passenger vehicle and less than three-quarter ton capacity) or commercial vehicle of any kind shall be parked on any street or any Lot within the Community. No boat, boat trailer, or any other trailer shall be parked on any street within the Community. A boat, boat trailer, or other trailer may be parked or kept on a Lot if it is parked or kept in the garage or approved out-building (and the door of the garage or out-building can close completely) or otherwise in such a manner that the boat and trailer are screened from the street, the Common Area, and other Lots. Screening may include an approved fence and plantings, but, in any case, the screening must comply with the Zoning Ordinance and be approved pursuant to Article IX of this Declaration. Notwithstanding the foregoing, commercial vehicles (whether or not registered as a commercial vehicle with the State Department of Transportation) used in conjunction with repairs, maintenance or construction work on a Lot shall be permitted on a day-to-day basis.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Community or the Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot. Vehicles without current registration and inspection stickers are considered abandoned or inoperative.

Section 6. Animals. No animals, livestock or poultry of any kind shall be kept on any Lot, except that a reasonable number of cats, dogs, and other ordinary household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to the Owners and occupants of the Properties. The Board shall have the right, in its sole and absolute discretion, to determine whether or not a particular animal is a nuisance and to require removal. No Person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot, street right of way, or the Common Area.

Section 7. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

Section 8. Signs. Except as otherwise required by the Town, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, not more than one (1) sign of not more than six (6) square feet advertising the property for sale or rent, and not more than two signs of not more than six (6) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. No sign of any kind shall be displayed

on the Common Area without the prior written consent of the Declarant or, after the end of the Declarant Control Period, by the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot or Development Parcel which it owns and on the Common Area in connection with the development and sale of the Properties.

Section 9. Antennas; Satellite Dishes. No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon unless approved in accordance with Article IX hereof, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, §1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); (iii) is integrated with the Dwelling and surrounding landscape; and (iv) is approved pursuant to Article IX of this Declaration.

Section 10. Swimming Pools. No above-ground swimming pools are permitted in the Community, except that small, inflatable wading pools shall be permitted in the back yard of a Dwelling.

Section 11. Mailboxes. Pursuant to the requirements of the U.S. Postal Service ("USPS"), Declarant will construct within the Community one or more centralized mailbox structures, and the USPS will deliver mail only to such centralized mailboxes. Each such mailbox shall be placed within an easement which shall be maintained by the Association.

Section 12. Maintenance of Lot and Improvements; Construction. As more fully provided in this Declaration, each Owner shall keep his Lot, including, but not limited to, plantings, landscaping and lawns, in a neat and attractive condition and shall keep the improvements thereon in a suitable state of repair. If an Owner fails to comply with this provision, the Declarant or the Association may remedy such non-compliance and the Owner of such Lot shall be responsible for all costs of bringing the Lot into compliance with this provision. Any such costs shall be deemed a special assessment against the Lot.

In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the improvement within nine (9) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape the area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The Owner of each Lot shall at all times keep public streets free abutting his Lot from any dirt, mud, garbage, trash or other debris resulting from construction on his Lot.

Section 13. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored behind the principal building in such a manner as not to be visible from the street upon which the principal building fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to an approved enclosure the night of the scheduled pickup. Trash containers used by the Declarant or, with the approval of the Declarant, by a Builder, during construction are exempt from this provision.

Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable legal requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Community.

Section 14. Restrictions on Rental of Dwellings. It is the intent of the Declarant that all Dwellings within the Community are intended for use and occupancy by the Owner of the Dwelling. Accordingly, and notwithstanding anything to the contrary herein, the term "residential" as used in Section 1 of this Article specifically *excludes* the leasing of Dwellings in any one or more of the following instances:

(a) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and has no future intent to do so; or

(b) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and who enters into a lease with a tenant that gives the tenant the option to purchase the Dwelling during, or at the end of, the term of the lease; or

(c) by an Owner where the primary purpose of the ownership of the Dwelling is for commercial purposes in that the Dwelling is intended primarily for lease to tenants and not for occupancy by the Owner as the Owner's primary residence.

(d) Additional Exemptions:

(i) Hardship Exemption. In order to avoid undue hardship to an Owner, the Board shall allow leasing of a Dwelling not otherwise exempt under this Section 14(d)

for such period of time as the Board reasonably determines necessary to prevent such undue hardship, in a situation in which:

A. The Owner of the Dwelling must relocate his/her primary place of residence more than 30 miles from the Community and has been unable, within three months from the date that the Dwelling was placed on the market, to sell the Dwelling for a price not greater than the current appraised market value, after having made reasonable efforts to do so; or

B. The Owner of the Dwelling dies and the Dwelling is being administered by his/her estate; or

C. The Owner of the Dwelling loses his/her job and has been unable, within three months from the date that the Dwelling was placed on the market, to sell the Dwelling for a price not greater than the current appraised market value, after having made reasonable efforts to do so.

In addition to the foregoing, the Board may (but shall not be obligated to) allow leasing of a Dwelling not otherwise exempt under this Section 14(d) if the Board, in its sole discretion and on a case-by-case basis, deems it appropriate to avoid undue hardship to the Owner of such Dwelling.

(ii) Exemptions for Models. Notwithstanding the foregoing restrictions on leasing of Dwellings, any model home may be leased to or by Declarant, provided that such model home is not used as a residence.

(iii) Exemption for Institutional Mortgagees. A Mortgagee who acquires title to a Lot by foreclosure of its first priority deed of trust on the Lot or by a deed in lieu of such a foreclosure may lease the Dwelling so long as it is owned by such Mortgagee; however, this subsection (d)(iii) shall not permit leasing by any Owner, other than such Mortgagee, who purchases the Lot at a foreclosure sale or acquires title to the Lot from the Mortgagee subsequent to the foreclosure of a deed of trust or granting of a deed in lieu of foreclosure.

(e) Procedures. Prior to entering into any lease, the Owner of the Dwelling to be leased shall deliver to the Association written notice of intent to lease, together with a copy of the proposed lease, the name of the lessee and all other people occupying the Dwelling, and such additional information as the Board may require. Within fifteen (15) business days after receipt of the Owner's notice of intent to lease *and* all information requested by the Board to be provided in connection therewith, the Board shall notify the Owner in writing of the Board's approval (together with any conditions imposed by the Board upon such approval including, without limitation, any changes in the duration of the lease as determined by the Board) or disapproval of the lease. The Board may reject the proposed lease if it or its designee determines that the Dwelling is not eligible to be leased under this Section 14 or the proposed lease is not in an acceptable form. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee. If the Board does not approve or reject the proposed lease by written notice to the Owner within such 15-day period, the lease shall be deemed approved.

The notice of any lease shall also be accompanied by a fee ("Administrative Lease Fee") in such reasonable amount as the Board may establish from time to time, to help fund anticipated costs of processing lease applications, updating resident records, issuing

identification cards to the occupants of leased Dwellings, and other administrative burdens associated with leasing. The Board may also require payment of a deposit for each identification card, key or other form of pass issued to the occupants of the leased Dwelling to permit access to common areas, which deposit shall be refunded if the item is returned in usable condition upon termination of the lease.

Upon the Board's approval of such application (whether actual or deemed), the Owner may lease the Dwelling for the time period set forth in the Board's notice or, if the Board fails to respond within the 15-day period, as set forth in the lease submitted by the Owner to the Board for approval. Upon expiration of such authorized period, any lease of the Dwelling shall terminate unless the Owner has applied for and been granted an extension of the hardship exception, which may be granted or withheld in the Board's sole discretion.

(f) Rules Governing Leases; Lease Provisions. To the extent that leasing of a Dwelling is permitted under this Section 14, the lease shall be subject to the following:

(i) All leases shall be in writing and shall be in a form specified or approved in advance by the Board. All leases shall have a term for the period of the exemption, which terms shall be reasonably determined by the Board for hardships.

(ii) Dwellings may be leased only in their entirety; no fraction, portion, or rooms constituting less than the entire Dwelling may be leased.

(iii) There shall be no subleasing of Dwellings or assignment of leases without prior written approval of the Board.

(iv) No signs advertising the Dwelling for rent or lease or otherwise indicating that the Dwelling is available for rent or lease shall be permitted within the Community or on public rights-of-way adjacent to the Community.

(v) The Owner of a leased Dwelling shall provide to the lessee copies of this Declaration and all Governing Documents prior to the lessee entering into any agreement to lease a Dwelling.

(vi) In the event the Association proceeds to evict a lessee pursuant to the provisions of subsection (x) below, any costs, including attorneys' fees and court costs, associated with the eviction shall be an assessment against the Lot, secured by the Association's lien under Article V of this Declaration.

(vii) The Owner of a leased Dwelling shall be responsible for any violations of the Governing Documents by the lessee or other occupants and their guests and invitees, notwithstanding that the lessee and occupants are fully liable and may be sanctioned for their violations. In the event that the Association imposes a fine for violation of the Governing Documents by the lessee or occupants and their guests and invitees, the Association shall give notice to the Owner and the lessee and the Owner shall be responsible for payment if the lessee fails to pay the fine. Unpaid fines shall constitute a lien against the Lot as permitted by the Act and Section 15 of Article V of this Declaration.

(viii) When an Owner who is leasing his/her Dwelling is more than 30 days delinquent in paying any assessment or other charge due to the Association, then the delinquent Owner shall be deemed to have assigned to the Association the right, at the Association's option, to collect any rents due from the lessee during the period of such delinquency, and, upon the Board's written request to the lessee, the lessee shall pay to the

Association all rents otherwise payable under the lease up to the amount of such delinquency. The lessee need not make such payments to the Association in excess of, or prior to the due dates for, periodic rental payments unpaid at the time of the Board's request. Notwithstanding anything to the contrary in the lease, all such payments made by the lessee shall reduce, by the same amount, the lessee's obligation to make monthly rental payments to the lessor. The Association may, but shall have no duty to, exercise its rights under this subparagraph (viii) or take legal action to collect rents from any lessee pursuant to this subparagraph, and nothing in this subparagraph shall be construed to release the Owner from any obligation, including the obligation for assessments, for which he/she is otherwise responsible.

(ix) The leasing of multiple Dwellings by a single Owner, or the leasing of multiple Dwellings by two or more Owners related by blood, adoption, or marriage, or by Owners with a common ownership interest, or by a group of Owners under the control or direction of a single Owner, shall be prohibited, except that this prohibition shall not apply to restrict:

A. Leasing of Dwellings to Declarant for use as model homes or sales offices, or to the continued leasing of such Dwellings by the same Owner after expiration of any such lease if Declarant does not offer to renew or extend the lease on substantially similar terms; or

B. The leasing of Dwellings by Mortgagees following foreclosure of any Lots.

(x) An Owner leasing a Dwelling pursuant to this Section 14 shall include the following provisions in any lease of his Dwelling; however, every lease of a Dwelling shall be deemed to contain the following provisions, whether or not expressly stated therein:

A. Contingency for Board Verification. The lessee acknowledges that, notwithstanding the effective date or lease term set forth in this lease, the lease shall not take effect unless and until submitted to the Association and approved by the Board of Directors of the Association for verification of the lessor's eligibility to lease the Dwelling and that the lease is in an acceptable form.

B. Compliance with Governing Documents. The lessee acknowledges receipt of a copy of the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for White Oak Creek and the other governing documents referenced therein ("Governing Documents") and agrees to comply with the Governing Documents and to control the conduct of all occupants and guests of the leased Dwelling in order to ensure their compliance. Any violation of the Governing Documents by the lessee, any person residing in the Dwelling, or any guest of the lessee or other members of the lessee's household shall constitute a default under the terms of the lease and shall authorize the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law. The Owner hereby delegates and assigns to the Association acting through its Board of Directors, the power and authority, as attorney-in-fact on behalf and for the benefit of the Owner, to enforce this provision against the lessee including the power and authority to evict the lessee in accordance with the terms hereof.

Section 15. Waiver of Violations. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article IX of this

Declaration, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that, no waiver may be granted for a violation in excess of 25% of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Code or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Registry.

Section 16. Street Lighting. Declarant reserves the right to subject the Community to a contract with a public utility or entity providing for installation and operation of street lighting, which requires a continuing monthly payment to that utility or entity by each residential customer or by the Association.

Section 17. Impervious Surface. Lots in the Community may be subject to restrictions on the amount of total square footage of the Lot that may be covered by impervious surfaces, as established by the Town and more specifically shown on the plats of the Community recorded in the Registry. Such impervious requirement may limit an Owner from constructing new or expanding existing Dwellings, porches, patios and decks, parking pads and garages, and/or outbuildings.

Section 18. Wetlands. Portions of the Properties may have been determined to meet the requirements for designation as a regulatory wetland or riparian area. Notwithstanding anything to the contrary that may appear herein or in any amendment hereto, Annexation Declaration or Supplementary Declaration, any subsequent fill or alteration of any portion of the Properties that has been determined to be a regulatory wetland or riparian area under applicable laws of the United States or the State of North Carolina shall conform to the requirements of applicable wetland or riparian area rules adopted by the United States or the State of North Carolina and in force at the time of the proposed alteration. The intent of this paragraph is to prevent additional wetland or riparian area fill or degradation as defined by the U.S. Army Corps of Engineers or other applicable governmental authority.

ARTICLE XI
GENERAL PROVISIONS

Section 1. Enforcement. The Association and each Owner (including the Declarant) shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Section 2. Term; Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a vote of at least eighty percent (80%) of the Members.

This Declaration may be amended only in strict compliance with this Section and the Act, including, without limitation, §47F-2-117, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant. This Declaration may also be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots and, during the Declarant Control Period, by the Declarant; provided, however, that in no event may Declarant's rights hereunder may be amended or altered without Declarant's prior written consent. For the purpose of this section, additions to existing property as provided in Section 2 of Article II hereof shall not constitute an "amendment".

Notwithstanding the foregoing, Declarant, without the consent or joinder of the Owners or other Persons, may amend this Declaration during the Declarant Control Period, provided such amendment is not expressly prohibited by the Act, and further provided that such amendment does not adversely affect the title to any Lot, nor materially alter or change any Owner's right to the use and enjoyment of his Lot or the Common Property.

An amendment to this Declaration is valid from the later of the time of recording in the Registry or such later date specified in such amendment.

Section 3. Subdivision of Lots. No Lot within the Community may be subdivided by sale or otherwise so as to increase the total number of Lots in the Community, except with the consent of the Declarant during the Declarant Control Period, and thereafter of the Association, and, if required, by the Town.

Section 4. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Property and Lots and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or other restrictions applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall be deemed a special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Property; provided, however, that the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an

Owner to use any Common Property if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

The Association shall have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the Architectural Guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed a trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 5. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon is taken by power of eminent domain or is damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Property in lieu of a destroyed club house.

Section 6. Association Contracts and Leases during Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable without penalty by the Association upon no more than ninety (90) days written notice; and (iii) be commercially reasonable.

Section 7. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF THE WHITE OAK CREEK HOMEOWNERS ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the White Oak Creek Homeowners Association, Inc., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of ____ votes were cast. _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [describe the action approved] was approved by at least _____% of the Members as required by this Declaration and Bylaws of the Association.

_____
[President/Secretary]

Section 8. Number and Gender. Whenever the context requires, the singular shall include the plural, and vice versa, and one gender shall include all.

Section 9. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

Section 10. Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of this Declaration and shall not be deemed to nullify or affect any other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Declaration is in conflict with any applicable federal, state or local law, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 11. Conflicts.

(a) The Properties are subject to the provisions of the Act, and the provisions of the Act control over any inconsistent provisions of this Declaration, any Annexation Declaration, any other Governing Documents, and the Code.

(b) The provisions of the Code control over any inconsistent provisions of this Declaration, any Annexation Declaration, and any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration and all other Governing Documents are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof. Notwithstanding the foregoing, any provision of this Declaration, any Annexation Declaration or any Supplementary Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration, an Annexation Declaration or Supplementary Declaration that is greater than that required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

(c) In the event of a conflict between this Declaration and the Articles of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control.

(d) Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (Chapter 55A of the North Carolina General Statutes), or the Code shall in all cases control any construction inconsistent therewith.

Section 12. Rule against Perpetuities. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of this Declaration, Bylaws, or rules and regulations adopted pursuant to §47F-3-102(1) of the Act.

Section 13. Declarant. Nothing contained in this Declaration shall be construed to permit interference with the development of the Properties by Declarant and construction of homes thereon so long as such development and construction follow the general plan of development previously approved by the Town. The restrictions contained herein shall not be deemed to apply to any sales office, signs, landscaping construction trailer, model home, or other temporary or permanent improvement installed by or with the approval of Declarant.

Section 14. Non-Discrimination. Neither the Association, the Board, any committee of the Board, any officer of the Association, nor any member of the Board or committee, in exercising its/his/her rights and obligations under this Declaration or the Articles of Incorporation or Bylaws or Articles of Incorporation, shall discriminate against any person on the basis of the race, color, religion, national origin or handicap of such person.

Section 15. Security Measures. Neither the Association nor the Board shall have any responsibility for establishing or maintaining any security measures within the Property, such measures being the sole responsibility of each Owner, as to his Lot and property, and to the appropriate public officials including, without limitation, the Apex Police Department.

Section 16. Hazardous Substances. Declarant hereby informs all Owners and other Persons who may from time to time deal with or come in contact with the Properties, that as stormwater drains from the Properties or other properties into any of the Stormwater Control Measures for the Properties, it is possible that substances or materials that may be classified or regulated as "hazardous substances" or "toxic substances" or other regulated substances or materials under Legal Requirements relating to the environment, may flow through and/or accumulate in such Stormwater Control Measures. Accordingly, each Owner and other Person assumes the risk that such flowing through and/or accumulation may occur. In addition, each Owner further acknowledges that if it becomes necessary (as determined by Legal Requirements or by the Board) for such substances to be removed from the Stormwater Control Measures or otherwise handled in accordance with Legal Requirements, and for such Stormwater Control Measures to be cleaned-up following such removal or other handling, that the costs associated with such removal, handling and/or clean-up are Common Expenses, and that an additional stormwater assessment may be required to pay for such removal and/or resultant clean-up of the Stormwater Control Measures.

Section 17. Properties are Subject to the Code. The Properties, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the Town, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only to certain portions of the Properties (for example, provisions of the Code relating to private streets apply only to those portions of the Properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to

comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant or its authorized agent, the Board, any committee of the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

Section 18. Dissolution or Insolvency of the Association. The Association shall be dissolved upon the termination of this Declaration, or upon the written assent given in writing and signed by Members entitled to at least eighty percent (80%) of the votes of the Association, or upon such more restrictive or additional conditions and in such manner as otherwise provided by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association or upon loss of ownership of the Common Area (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by this Declaration or by reason of merger and/or consolidation with any other association as allowed by this Declaration), any portion of the Common Area not under the jurisdiction and being maintained by the Association, shall be offered to the Town of Apex, North Carolina, or to some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted by the Association. If the Town of Apex or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Area and assets shall be conveyed by the Association to the Town or to such other appropriate governmental entity or public agency, subject to the superior right of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which such Lot is located, and subject to all other applicable rights of way and easements and subject to ad valorem property taxes subsequent to the date of such conveyance.

In the event that the Town or such other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Area was required to be devoted by this Declaration, such conveyance to be made subject to the rights of Owners and other matters set forth in the immediately preceding paragraph.

Section 19. Recreational Amenities. Declarant currently intends to construct within the Properties certain recreational amenities which may include, among other things, a clubhouse, swimming pool, tennis courts, and a system of trails and walkways. Such amenities, along with appropriate parking and landscaping associated therewith, will be constructed on Common Area and deeded to the Association.

ARTICLE XII
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

Section 1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) The Association, the Declarant, all Owners and all Persons subject to this

Declaration (and any Person not otherwise subject to this Declaration who agrees to submit to this Article) (collectively, "Bound Parties" and each a "Bound Party"), agree to attempt to resolve disputes against the Declarant and/or the Association without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit against the Association and/or the Declarant in any court with respect to a Claim described in subsection (b), unless and until he has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 2 of Article XII in a good faith effort to resolve the Claim. The provisions of this Article XII shall not apply to the Association's and/or the Declarant's enforcement of the Governing Documents and/or any rules and regulations or Architectural Guidelines, nor shall the provisions of this Article XII apply to any efforts of the Association to collect assessments or other amounts owed to the Association.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) The interpretation, application, or enforcement of this Declaration, any other Governing Documents and/or any rules and regulations or Architectural Guidelines;

(ii) The rights, obligations, and duties of any Bound Party under this Declaration, any other Governing Documents and/or rules and regulations or Architectural Guidelines;

(iii) The design or construction of Improvements within the Properties, including, without limitation, any Improvements located on Common Area or Limited Common Area; and/or

(iv) Any actions taken or untaken by the Board of Directors, Officers and/or Managing Agent of the Association and/or by the Declarant.

(c) The foregoing notwithstanding, the following shall not be considered Claims unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 2 of Article XII:

(i) Any action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the ability to enforce the provisions of this Declaration;

(ii) Any suit that does not include Declarant and/or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iii) Any suit as to which the applicable statute of limitations would expire within ninety (90) days of giving the Notice required by Section 2(a) of Article XII, unless the party or parties against whom the Claim is made agree in writing to toll, or extend, the Claim's statute of limitations to comply with this Article.

Section 2. Dispute Resolution Procedure.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") to each Respondent and Declarant stating plainly and concisely:

(i) The nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) The legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) The Claimant's proposed resolution or remedy; and

(iv) The Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by Declarant if Declarant is not a party to the Claim or, if Declarant is a party to the Claim, to an independent agency providing dispute resolution services in Wake County, North Carolina. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the claim, and the Respondent shall be relieved of any and all liability to the claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within thirty (30) days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs hereunder, including attorneys' fees, and each Party shall pay an equal share of the representative's and/or mediator's fees.

d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this section. In such event, the party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized signatory, as of the date set forth in the notary acknowledgment below.

TOLL NC II, LP,
a North Carolina Limited Partnership

By: TOLL NC GP CORP.,
a North Carolina corporation,
General Partner

By: _____
David E. Kelly, Division President

STATE OF NORTH CAROLINA -- WAKE COUNTY:

I, the undersigned, a Notary Public of Wake County, North Carolina, certify that David E. Kelly, personally appeared before me this day and acknowledged that he is Division President of TOLL NC GP CORP., a North Carolina corporation, a General Partner of TOLL NC II, LP, a North Carolina Limited Partnership, and that he, as Division President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 1 day of February, 2016.

(Seal) CATHLEEN M LUCIDO
NOTARY PUBLIC,
WAKE COUNTY, NC

_____
Notary Public
My Commission Expires: 6-16-2018

EXHIBIT A

Lying and being in the Town of Apex, White Oak Township, Wake County, North Carolina, and being more particularly described as follows:

Regency at White Oak Creek:

All of that certain parcel of land shown as "New Tract 2, 124.27 AC." on the map entitled, "Recombination and Easement Abandonment Plat for Regency and Enclave at White Oak Creek" recorded in Book of Maps 2015, Pages 1517-1519, Wake County Registry.

Enclave at White Oak Creek:

All of that certain parcel of land shown as "New Tract 1, 67.60 AC." on the map entitled, "Recombination and Easement Abandonment Plat for Regency and Enclave at White Oak Creek" recorded in Book of Maps 2015, Pages 1517-1519, Wake County Registry.