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2016006655
GUILFORD COUNTY, NC
JEFF L. THIGPEN
REGISTER OF DEEDS

NC FEE $26.00

Prepared by and
Return to:
Robert H. Merritt, Jr.
Bailey & Dixon, LLP
P. O. Box 1351
Raleigh, NC 27602

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

CONSERVATION EASEMENT OVERLAY AGREEMENT

THIS CONSERVATION EASEMENT OVERLAY AGREEMENT ("Agreement") made this 8th day of JANUARY, 2016 by and among **Michael Baker Engineering, Inc.**, a ~~Delaware~~ New York DGH corporation with offices at 8000 Regency Parkway, Suite 600, Cary, North Carolina 27518 ("Baker"), **Renee M. Matthews** of 8109 Broad Ridge Court, Browns Summit, North Carolina 27214 ("Matthews"), **Arnold Irving and spouse, Latricia Irving** of 8111 Broad Ridge Court, Browns Summit, North Carolina 27214 ("Irving"), **James E. Marshall and spouse Erma L. Marshall** of 8113 Broad Ridge Court, Browns Summit, North Carolina 27214 ("Marshall"), the **Broad Ridge Homeowners' Association**, a North Carolina non-profit corporation, with its principal office located at 1842 Banking Street, Greensboro, North Carolina 27408 (the "Association") and the **County of Guilford, North Carolina**, a body politic and

corporate, by and through its County Manager, whose offices are located at 301 W. Market Street, Greensboro, North Carolina 27402 (the "County").

WITNESSETH:

WHEREAS, Baker is in the business of providing stream and wetland mitigation credits to, among others, the State of North Carolina (the "State") pursuant to Full Delivery Mitigation Contracts; and

WHEREAS, in order to provide the mitigation credits to the State, Baker, on behalf of the State, acquires, by purchase, perpetual conservation easements along streams or waterways pursuant to options to purchase conservation easements; and

WHEREAS, Baker, on behalf of the State, has entered into options to purchase conservation easements with Matthews, Irving and Marshall, whose property is a part of a subdivision located in Browns Summit, North Carolina, known as the Broad Ridge Subdivision, a plat of which is recorded at Plat Book 170, Page 27, Guilford County Registry ("Final Plat"); and

WHEREAS, the conservation easement proposed by Baker for the benefit of the Browns Summit Creek will follow the channel of the Browns Summit Creek as it passes through the property of Matthews (Lot 4), Irving (Lot 5) and Marshall (Lot 6) and shall further overlay the area referenced in the Final Plat as a 110' drainage and stream buffer easement for the benefit of the Browns Summit Creek; and

WHEREAS, due to the fact that the proposed conservation easement will overlay the existing 110' drainage and stream buffer easement (the "Buffer Easement"), the parties have determined it appropriate and prudent to reach agreement as to the rights and

obligations of the various parties as they relate to the future existence, use and maintenance of the conservation easement and the Buffer Easement and the relationship of the conservation easement to the other property rights and uses involved;

NOW, THEREFORE, the parties hereto for themselves and for their heirs, representatives, successors and assigns, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

1. **Determination of Concurrent and Consistent Purposes**. The parties hereto agree that the uses and purposes of the Buffer Easement and the uses and purposes of the proposed conservation easement are consistent and that both can concurrently exist without conflict, subject to the terms and conditions set forth herein.
2. **Conservation Easement Overlay**. The parties hereto agree that Baker may acquire for the State, the proposed conservation easement and record evidence of the same by and through conservation easement deeds and/or recorded plats with the landowners, or both, which conservation easement(s) shall be perpetual in nature and shall over lay and be dominant with respect to the existing Buffer Easement shown on the Final Plat. The uses and purposes as well as the limitations on use set forth in the conservation easement deeds to the State shall control the usage of the property within the boundaries of the conservation easement including the Buffer Easement, subject to the terms and conditions of this Agreement.
3. **Restrictions on use of Conservation Easement Area**. Pursuant to the provisions of the Conservation Easement Deed, the area within the Conservation

Easement will be restricted, in perpetuity, as to its use. Such restrictions include, but are not limited to, restrictions as to motorized vehicle use, agriculture, cutting, mowing, harming or destruction of trees or vegetation, industrial or commercial uses, building of structures, towers, antenna, utilities, use as pasture, dumping, removal of fill or soil, mining, drilling, excavation, dyking, draining, channeling, leveling, diverting, construction of roads or trails or other uses specifically prohibited under said Conservation Easement Deeds. Under and by virtue of the terms of this Agreement, the parties hereto agree to abide by the use restrictions set forth in the Conservation Easement Deeds and to promptly notify the State, as set forth in the Conservation Deeds, in the event said party should become aware of the conduct of any prohibited activity in the Conservation Easement Area.

4. **Maintenance of Conservation Easement Area**. In connection with Baker's responsibilities to the State under its full delivery conservation easement project, Baker has responsibilities for monitoring and maintenance of the natural habitat within the Conservation Easement Area for a period of seven (7) years. Thereafter, the Conservation Easement Area is to be monitored and maintained by representatives or agents of the State. The parties agree that Baker and its agents or assigns and/or the State and its agents and assigns, shall have the right and responsibility for monitoring, protecting, and maintaining the stream, wetland and other riparian resources within the Conservation Easement Area and may undertake activities to carry out those duties in accordance with any long term management plan proposed or developed for the Conservation Easement Area. In connection therewith, the parties hereto hereby agree that Baker and its agents

and/or the State and its agents or representatives shall be granted a perpetual right of access to and throughout the Conservation Easement Area for the purpose of constructing, restoring, monitoring, managing, maintaining, protecting and enhancing the Conservation Easement and the habitat, soils, environment, plants, streams, waterflow, hydrology and general stream, wetland and environment resources within the Conservation Easement Area, in perpetuity.

In the event that a landowner, the Association, the County or any other party to this Agreement, including such party's successor or assigns, shall determine a need to conduct maintenance or other activities within the Conservation Easement Area, said party, person or entity shall notify and obtain the approval for such activity from the State, which approval shall not be unreasonably denied provided such activity is consistent with the purposes of the Conservation Easement and its maintenance. The notice and approval set forth in this paragraph shall be directed to or obtained from the State at Division of Mitigation Services, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321.

5. **Construction of Conservation Easement Area**. The parties recognize that Baker shall be required to enter into construction activities in order to provide mitigation credits to be derived by the State from the conservation easement. Accordingly, the parties recognize that Baker shall receive an easement and right of access over the lands of Matthews, Irving and Marshall and over the 110' drainage area buffer easement to the extent necessary and reasonable to complete construction and preparation of the Conservation Easement Area, all of which

shall be further set forth in the conservation easement deeds, the conservation easement Plat and any other related closing documents.

6. **Recordation**. The parties agree that this document shall be recorded at the office of the Register of Deeds for Guilford County, North Carolina in order that notice of the respective rights and obligations of the parties as set forth and established herein will be properly given and available in the public records.

7. **County Removal of 110' Drainage and Buffer Easement**. Notwithstanding the foregoing, the County, in its sole and absolute discretion and at any time after recordation of the Conservation Easement Deed establishing the perpetual conservation easement referred to herein, may remove the Buffer Easement in any area covered by or adjacent to the perpetual conservation easement, thereby leaving the perpetual conservation easement as the only conservation easement for such area.

8. **Final Agreement; Amendments**. This Agreement, together with any exhibits attached hereto, each of which are incorporated herein in reference and made a part hereof, contains the entire understanding of the parties hereto with respect to the subject matter contained herein. No amendment, modification, or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the parties hereto.

9. **Severance**. Any provision of this Agreement that shall be found to be contrary to applicable law or otherwise unenforceable shall not affect the remaining terms of this Agreement, which shall be construed as if the unenforceable provision or clause were absent from this Agreement.

10. **Heirs, Successors and Assigns**. This Agreement shall run with the lands affected by this Agreement and shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns.

11. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without application of its conflicts of laws provision.

12. **No Waiver**. No act or failure to act by either party shall be deemed a waiver of its rights hereunder, and no waiver in any one circumstance or of any one provision shall be deemed a waiver in other circumstances or of other provisions.

IN WITNESS WHEREOF, the parties set forth their hands and seals as of the date and year first set forth above.

MICHAEL BAKER ENGINEERING, INC., a ~~Delaware~~ NEW YORK corporation

By: _____

_____ (SEAL)
Renee M. Matthews

_____ (SEAL)
Arnold Irving

_____ (SEAL)
Latricia Irving

_____ (SEAL)
James E. Marshall

_____ (SEAL)
Erma L. Marshall

BROAD RIDGE HOMEOWNERS' ASSOCIATION, a North Carolina non-profit corporation

By its Executive Board Members:

James E. Marshall

Kelly Hower

Nicole Ciliberti

GUILFORD COUNTY BOARD OF COMMISSIONERS

By: Jeff Phillips, Chairman

ATTEST:

Clerk to Board

COUNTY OF GUILFORD NORTH CAROLINA

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

I, Katredia W. Martin, the undersigned Notary Public, do hereby certify that Robin Keller personally came before me this day and acknowledged that (s)he is the — Clerk to the Board of County Commissioners of Guilford County, a body politic and corporate and that, by authority duly given and as the act of the said county, the foregoing instrument was signed by its Chairman, and attested by her as the — Clerk to said Board and that the instrument is the act and deed of Guilford County.

Witness my hand and official seal, this the 8 day of January, 2016

Katredia W. Martin
Notary Public

Katredia W. Martin
Typed or Printed Name of Notary

My Commission Expires: 12-18-16

KATREDIA W. MARTIN
NOTARY
My Comm. Expires
12-18-6
PUBLIC
GUILFORD COUNTY, NC

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Robert H. Merritt, Jr., the undersigned Notary Public of the County and State aforesaid, certify that **James E. Marshall** personally appeared before me this day, acknowledging to me that he is a member of the Executive Board of **Broad Ridge Homeowners' Association**, a North Carolina non-profit corporation and that he acknowledged to me that he voluntarily signed the foregoing document for the purposes therein expressed and in the representative capacity so stated.

Witness my hand and Notarial stamp or seal, this 14th day of JANUARY, 2016

Robert H. Merritt
Notary Public

Robert H. Merritt, Jr
Typed or Printed Name of Notary

My Commission Expires: 5-1-2017

ROBERT H. MERRITT, JR.
NOTARY
PUBLIC
WAKE COUNTY, NC

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Robert H. Merritt, Jr., the undersigned Notary Public of the County and State aforesaid, certify that **Kelly Hower** personally appeared before me this day, acknowledging to me that (s)he is a member of the Executive Board of **Broad Ridge Homeowners' Association**, a North Carolina non-profit corporation and that (s)he acknowledged to me that (s)he voluntarily signed the foregoing document for the purposes therein expressed and in the representative capacity so stated.

Witness my hand and Notarial stamp or seal, this 14th day of January, 2016.

Robert H. Merritt Jr.
Notary Public

Robert H. Merritt, Jr.
Typed or Printed Name of Notary

ROBERT H. MERRITT JR. NOTARY PUBLIC WAKE COUNTY, NC

My Commission Expires: 5-1-2017

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Robert H. Merritt, Jr., the undersigned Notary Public of the County and State aforesaid, certify that **Nicole Ciliberti** personally appeared before me this day, acknowledging to me that she is a member of the Executive Board of **Broad Ridge Homeowners' Association**, a North Carolina non-profit corporation and that she acknowledged to me that she voluntarily signed the foregoing document for the purposes therein expressed and in the representative capacity so stated.

Witness my hand and Notarial stamp or seal, this 14th day of January, 2016.

Robert H. Merritt Jr.
Notary Public

Robert H. Merritt, Jr.
Typed or Printed Name of Notary

ROBERT H. MERRITT JR. NOTARY PUBLIC WAKE COUNTY, NC

My Commission Expires: 5-1-2017

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Robert H. Merritt, Jr., the undersigned Notary Public of the County and State aforesaid, certify that Dwain Hathaway personally appeared before me this day, acknowledging to me that he is Associate Vice-President of **Michael Baker Engineering, Inc.**, a ~~Delaware~~ New York corporation and that he acknowledged to me that he voluntarily signed the foregoing document for the purposes therein expressed and in the representative capacity so stated.

Witness my hand and Notarial stamp or seal, this 27 day of January, ~~2015.~~ 2016.

ROBERT H. MERRITT, JR. NOTARY PUBLIC WAKE COUNTY, NC

Notary Public

Robert H. Merritt, Jr.

Typed or Printed Name of Notary

My Commission Expires: 5-1-2017

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Robert H. Merritt, Jr., the undersigned Notary Public, certify that **Renee Matthews**, unmarried, personally appeared before me this day, and acknowledged to me that she voluntarily signed the foregoing document.

Witness my hand and Notarial stamp or seal this the 14 day of January, 2016.

Notary Public

Robert H. Merritt, Jr.

Typed or Printed Name of Notary

ROBERT H. MERRITT, JR. NOTARY PUBLIC WAKE COUNTY, NC

My Commission Expires: 5-1-2017

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Robert H. Merritt, Jr., the undersigned Notary Public, certify that **Arnold Irving and spouse, Latricia Irving** personally appeared before me this day, and acknowledged to me that they voluntarily signed the foregoing document.

Witness my hand and Notarial stamp or seal this the 15th day of January, 2016.

Notary Public

Robert H. Merritt, Jr.

Typed or Printed Name of Notary

ROBERT H. MERRITT, JR. NOTARY PUBLIC WAKE COUNTY, NC

My Commission Expires: 5-1-2017

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Robert H. Merritt, Jr., the undersigned Notary Public, certify that **James E. Marshall and spouse, Erma L. Marshall** personally appeared before me this day, and acknowledged to me that they voluntarily signed the foregoing document.

Witness my hand and Notarial stamp or seal this the 14th day of January, 2016.

Notary Public

Robert H. Merritt, Jr.

Typed or Printed Name of Notary

ROBERT H. MERRITT, JR. NOTARY PUBLIC WAKE COUNTY, NC

My Commission Expires: 5-1-2017

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