WAKE COUNTY, NC 211
LAURA M RIDDICK
REGISTER OF DEEDS
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Prepared by & Return to: Shannon O'Donnell, 3700 Arco Corporate Dr, Ste 350, Charlotte, NC 28273

# MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIER CREEK VILLAGE CENTER

## WAKE COUNTY, NORTH CAROLINA

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIER CREEK VILLAGE CENTER (the "Declaration"), made this 29 day of September, 2005, by BRIER CREEK ASSOCIATES LIMITED PARTNERSHIP, a Delaware limited partnership, hereinafter called "Declarant" with reference to the following facts:

## RECITALS:

A. Declarant is the owner of certain real property in Wake County, North Carolina, known as Brier Creek Village Center, being all of Lots 1-23 as shown on that certain plat recorded in Book of Maps 2005, Pages 1918-1921 containing a total of 186.63 acres (the "Property" or "Brier Creek Village Center").

B. Declarant currently intends to develop, sell and convey the Property for development for residential, office and retail purposes and desires to provide for an owner's association to maintain title to, and responsibility for, the Master Association Open Space, to enforce Master Association Tree Conservation Area, Conservation Easement of Permanently Protected Undisturbed Open Space and any other easements established on or within the Property which are for the benefit of the Owners of the Brier Creek Village Center, and in order to further the objectives set forth herein, has deemed it desirable to create an organization which may, at Declarant's election and in its discretion, be delegated and assigned the power of maintaining, repairing, replacing, operating and administering the Master Association Open Space, Master Association Tree Conservation Area and any other fee simple or easement areas which are for the general benefit of all Owners of the Property.

C. Declarant has incorporated or will incorporate under North Carolina law, as a non-profit membership corporation to be named BRIER CREEK VILLAGE CENTER MASTER ASSOCIATION, INC. (or, if such name is unavailable at the time of incorporation, such other

name as Declarant shall elect) (the "Association") for the purpose of exercising and performing the aforesaid functions.

D. For this purpose Declarant intends to subject the Property to the covenants, conditions, reservations, restrictions, easements, liens, charges, and equitable servitudes as set forth in this Declaration for the benefit of the Property and the future owners thereof.

NOW, THEREFORE, Declarant hereby declares that the Property, being the real property described in Article 2 hereof is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, easements, liens, charges, and equitable servitudes (all hereinafter sometimes referred to as the "Covenants") hereinafter set forth all in accordance with North Carolina Planned Community Act, as set forth in Chapter 47F of the North Carolina General Statues (as the same may be amended from time to time).

## ARTICLE 1

## DEFINITIONS

The following words and terms, when used in this Declaration or any Supplemental Declaration (unless the context shall clearly indicate otherwise), shall have the following meanings:

(a) "Affiliate" shall mean, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such first Person. The term "control" means (i) the power to vote ten percent (10%) or more of the securities or other equity interests of a Person having ordinary voting power, or (ii) the possession, directly or indirectly, of any other power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

(b) "Appropriate Registry" shall mean and refer to the Office of the Register of Deeds in the County or Counties in which the Property affected by any instrument to be recorded is located. If an instrument to be recorded affects or potentially affects real property in more than one County, such as this Declaration and any amendments hereto, the Appropriate Registry for the recordation of such instrument would be the Office of the Register of Deeds in all such Counties. If an instrument to be recorded affects or potentially affects only real property located in one County, such as a Supplemental Declaration annexing real property located in only one County, the Appropriate Registry for the recordation of such instrument would be the Office of the Register of Deeds in the County in which such real property is located.

(c) "Association" shall mean and refer to the non-profit membership corporation to be named Brier Creek Village Center Master Association, Inc. (or, if such name is unavailable at the time of incorporation, such other name as Declarant shall elect), for the purposes of

exercising and performing the functions described in Paragraph B of the Recitals of this Declaration.

(d) "Declarant" shall mean and refer to Brier Creek Associates Limited Partnership, a Delaware limited partnership, and its successors and assigns, if Declarant shall make an express conveyance of its rights as Declarant hereunder to such successor or assign, all of which rights are assignable and may be apportioned.

(e) "Master Association Open Space" shall mean and refer to those portions of the Property that are to be devoted to and intended to remain open space acres for the common use and enjoyment of the Owners and are declared and established as such on Lots 12, 16, 20, 22 and 23 on one or more recorded plats or other instruments for the Property recorded in the Appropriate Registry.

(f) "Master Association Tree Conservation Area" shall mean and refer to those portions of the Property that are devoted to and intended to remain a tree preservation area for the common use and enjoyment of the Owners and are declared and shown to be Primary Tree Save Areas, Secondary Tree Save Areas and Resource Management Natural Protective Yards on one or more recorded plats for the Property recorded in the Appropriate Registry.

(g) "Owner" shall mean and refer to the Owner as shown by the real estate records in the Appropriate Registry, whether it be one (1) or more persons, firms, associations, corporations or other legal entities, of fee simple title to any portion of the Property but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the beneficiary or holder of a deed of trust, its successors or assigns, prior to foreclosure or the granting of a deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any Tenant of an Owner. An Owner may, prior to conveying legal ownership of any portion of such Owner's property within the Brier Creek Village Center, assign its duties, obligations and liabilities hereunder, including all rights to vote as a member of the Association, to a home owner's association established for such Owner's property. In such event, no individual member of that home owner's association shall be a member of the Association.

(h) "Period of Development" shall mean and refer to that period of time extending from the date this Declaration is recorded for a period of thirty (30) years.

(i) "Person" shall mean an individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

(j) "Property" or "Brier Creek Village Center" shall mean and refer to the Property described in Article 2 hereof, and additions thereto, as are subject to this Declaration.

(k) "Tenant" shall mean and refer to the lessee of any portion of the Property.

## ARTICLE 2

## PROPERTY

2.01 Property. The Property is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to these Covenants.

2.02 Additions. Declarant may, in its sole discretion and without obligation, by one or more supplemental filings, make additional land subject to this Declaration. The provisions of Article 2 hereof must be strictly complied with by Declarant in order to make all or any portion of additional land subject to this Declaration. No act or acts of Declarant, including the recordation of a map or plat, shall be taken to imply or be construed as subjecting additional land to this Declaration and shall not constitute a common plan and scheme of development until strict compliance with Article 2 has been effected by Declarant.

During the Period of Development, Declarant shall have the right to annex real property which is either contiguous to or across the street from the Property and thereby bring within the scheme of this Declaration additional land. Declarant is under no obligation to annex additional land, and may elect to develop additional land, with or without subjecting additional land to this Declaration, for any purpose.

Any annexation shall be made by recordation in the Appropriate Registry for the county wherein the property is located of a Supplemental Declaration covering the real property to be annexed. The Supplemental Declaration shall describe the real property to be annexed and state that annexation is being made pursuant to this Declaration for the purpose of extending the scope of this Declaration to cover the specifically described portion of additional land being annexed. The Supplemental Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the additional land being annexed and as are not inconsistent with the general scheme of this Declaration. Annexation shall be effective upon recordation in the Appropriate Registry of the Supplemental Declaration and thereupon the real property described therein shall be subject to all of the provisions of this Declaration, to the extent made applicable by the Supplemental Declaration.

## ARTICLE 3

## SUBMISSION AND TERM

3.01 Submission. The Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges and equitable servitudes set forth herein, all of which are declared to be (i) in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Property and (ii) for the purpose of

enhancing, maintaining and protecting the value, desirability and attractiveness of the Property. The limitations, covenants, conditions, restrictions, easements, liens, charges and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Property, shall be binding on and inure to the benefit of each and every Person having or acquiring any right, title or interest in the Property and shall be binding upon and inure to the benefit of the successors in interest of such Persons.

3.02 Incorporation of Declaration Into Instruments. Any deed or other instrument by which a portion of the Property is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, whether or not the deed makes reference hereto.

3.03 Term. This Declaration shall remain in force for the entire Period of Development, after which time it shall be automatically extended for successive periods of ten (10) years, unless terminated or modified after such initial thirty (30) year period by the affirmative vote of Owners owning seventy-five percent (75%) of the total acreage of the Property subject to this Declaration and by the written consent of Declarant should Declarant at such time own any portion of the Property. This Section 3.03 does not, and is not to be construed to, preclude amendment of this Declaration by Declarant without the joinder of any other Owners to the extent specifically provided for in any other provision of this Declaration, or other amendments as more particularly provided herein.

## ARTICLE 4

## COMPLIANCE WITH MANAGEMENT DOCUMENTS

4.01 Compliance with Declaration and Other Documents. Each Owner and or Tenant of any portion of the Property shall comply with the provisions of this Declaration to the extent applicable to the portion of the Property owned, leased, and/or occupied by such Person, all as may be amended from time to time, and failure to comply with any such provisions of this Declaration shall be grounds for an action to recover sums due for damages or for injunctive relief.

4.02 Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration. In the event that anything shown on a recorded subdivision map or plat for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail.

ARTICLE 5

MASTER ASSOCIATION OPEN SPACE

5.01 Master Association Open Space. Prior to the first sale of the first lot of the applicable recorded phase of development of the Property, the Declarant shall convey to the Association in fee simple the Master Association Open Space free and clear of any lien or encumbrance except Master Association Tree Conservation Areas, Permanently Protected Undisturbed Open Space Conservation Easements, greenway drainage and utility easements. Any such conveyance shall be subject to the requirement that the Master Association Open Space be restricted to open space use and the requirements of this Article 5, with the maintenance and operation of the Master Association Open Space to be paid for from assessments against the members of the Association and their properties. The recorded boundaries and configuration of the Master Association Open Space shall be established by the recordation of one or more plats or other instruments, as required by the applicable governmental authority or in Declarant's discretion, which Declarant shall record in connection with the establishment of the Master Association Open Space. No modification, amendment or supplement to this Declaration shall be required to establish the Master Association Open Space or the boundaries or configuration thereof.

Declarant hereby grants, declares, establishes and reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, designees, grantees, any Owner and their agents, heirs, successors and assigns, tenants, employees, invitees, customers, guests and family members who occupy any portion of the Property, for the benefit of, and as an appurtenance to, all portions of the Property, a non-exclusive right of access and perpetual easement of use and enjoyment over the Master Association Open Space, but such easements shall not become effective until the Declarant establishes the configuration of the Master Association Open Space pursuant to the recordation of one or more plats or other instruments and such easements shall be subject to the rules and regulations established by the Association from time to time.

Preservation. Master Association Open Space shall be preserved for the perpetual benefit of the Owners within the Property, and shall be restricted against public or private ownership for any other purpose, except acquisition by condemnation or in lieu of condemnation and the granting of utility, drainage and greenway easements and tree conservation easements.

Exchange. Master Association Open Space shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the exchanging of Master Association Open Space for other real property when all of the following are met:

(1) written notice of the exchange is given to each member of the Association;

(2) after the notice is given, members representing eighty percent (80%) or more of the outstanding votes of the Association give written approval of the exchange;

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

(4) the acreage and configuration of the remaining Master Association Open Space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Raleigh City Code; and,

(5) the exchange is approved by the Planning Director of the City of Raleigh.

Dissolution. If the Association is dissolved, the Master Association Open Space shall first be offered to the City of Raleigh, and if accepted, deeded to the City.

Mortgaging of Open Space. Master Association Open Space may be subjected to a security interest with the written approval by the members representing eighty percent (80%) or more of the outstanding votes of the Association, and provided that the rights of the mortgagee are subordinate to the rights of the Owners and the Association

5.02. Conservation Easement. Declarant further grants, declares, establishes and reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, designees, grantees, any Owner and their agents, heirs, successors and assigns, tenants, employees, invitees, guests and family members who occupy any portion of the Property, for the benefit of, and as an appurtenance to, all portions of the Property, a non-exclusive, perpetual easement of use and enjoyment (the "Conservation Easement") over the Permanently Protected Undisturbed Open Space for preservation and protection of the conservation values of the Permanently Protected Undisturbed Open Space and for the right to have the nitrogen reduction credits generated by the Permanently Protected Undisturbed Open Space ratably proportioned over the Property as approved by the City of Raleigh, North Carolina, but such easements shall not become effective until the Declarant establishes the configuration of the Permanently Protected Undisturbed Open Space pursuant to the recordation of one or more plats or other instruments of the Property and such easements shall be subject to the rules and regulations established by the Association from time to time. The Conservation Easement shall be perpetual. The Conservation Easement is an easement in gross, runs with the land and is enforceable by the Association or the Owners, their successors and assigns, lessees, agents, contractors and licensees against the Association, the Declarant and any other Owner and their successors and assigns, lessees, agents, licensees and contractors.

5.03 Prohibited and Restricted Activities on Permanently Protected Undisturbed Open Space. Any activity on, or use of, the Permanently Protected Undisturbed Open Space inconsistent with the purpose of the Conservation Easement, except as provided in Section 5.04 below, is prohibited. The Permanently Protected Undisturbed Open Space shall be preserved in its natural condition and restricted from any development that would impair or interfere with the conservation values or nitrogen reduction resulting from the natural state of the Permanently

Protected Undisturbed Open Space. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

(a) Disturbance of Natural Features. Any change, disturbance, or alteration of the natural features of the Permanently Protected Undisturbed Open Space or any introduction of non-native plants and/or animal species is prohibited.

(b) Construction. There shall be no constructing or placing of any building, mobile home, impervious surfaces as defined in Part 10, Chapter 9 of the Raleigh City Code, pier, landing, dock or any other temporary or permanent structure or facility on or above the Permanently Protected Undisturbed Open Space.

(c) Industrial, Commercial and Residential Use. Industrial office, and/or commercial activities are prohibited on the Permanently Protected Undisturbed Open Space. Residential use of the Permanently Protected Undisturbed Open Space is prohibited.

(d) Agricultural, Grazing and Horticultural Use. Agricultural, grazing, and horticultural use of the Permanently Protected Undisturbed Open Space is prohibited.

(e) Vegetation. There shall be no Tree Disturbing Activity, as defined in the Raleigh City Code on the Permanently Protected Undisturbed Open Space except in instances, where an arborist, certified by the International Society of Arboriculture, or a forester, registered by the State of North Carolina, or a landscaped architect, licensed by the State of North Carolina, first certifies in writing to the City of Raleigh Public Works Director that the tree is either unsafe or is unhealthy as set forth in Raleigh City Code.

(f) Roads and Trails. There shall be no construction of roads, trails or walkways on the Permanently Protected Undisturbed Open Space except for trails within the City of Raleigh greenway easements or foot trails. This activity may only be provided if authorized by the Association.

(g) Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Permanently Protected Undisturbed Open Space is prohibited.

(h) Excavation, Dredging or Mineral Use. There shall be no grading, filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Permanently Protected Undisturbed Open Space, except to restore natural topography or drainage patterns.

(i) Water Quality and Drainage Pattern. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or natural drainage patterns. In addition, removal of wetlands or the application of pesticide or biocides is prohibited.

(j) Vehicles. The operation or permanent or temporary parking of mechanized vehicles, including, but not limited to, motorcycles, dirt-bikes, all-terrain vehicles, cars and trucks on Permanently Protected Undisturbed Open Space is prohibited.

(k) Other Prohibitions. Any other use of, or activity on, the Permanently Protected Undisturbed Open Space which is or may become inconsistent with the purposes of this grant, the preservation of the Permanently Protected Undisturbed Open Space substantially in its natural condition, or the protection of its environmental systems, is prohibited.

5.04 Declarant's Reserved Rights. Declarant's Reserved Rights. The Declarant expressly grants, declares, establishes and reserves for itself and its successors and assigns, the Association, and the Owners and their successors-in-title, the right to continue the use of the Master Association Open Space for all purposes not inconsistent with the easements granted in this Article 5, including, but not limited to, the right to quiet enjoyment of the Master Association Open Space and the rights of ingress and egress on the Master Association Open Space. In addition, Declarant expressly grants, declares, establishes and reserves for itself and its successors and assigns and for the Association the right to sell, transfer, encumber with utility, drainage or greenway easements, gift or otherwise convey (but not mortgage) the Master Association Open Space, in whole or in part, provided such sale, transfer, encumbrance of utility, drainage or greenway easement or gift conveyance is (i) subject to the terms of, and shall specifically reference, the easements granted in this Article 5; (ii) authorized by the Raleigh City Code and approved by the Public Works Director of the City of Raleigh, North Carolina, which approval shall be evidenced in writing, presented to the Association and supported by the requisite permits from the applicable governmental authorities; and (iii) approved in writing by the Association (the "Reserved Rights"). The easement rights granted herein do not include public access rights.

5.05 Allocation of Nitrogen Credits. The 12.12 acres of Permanently Protected Undisturbed Open Space lots hereby created shall be allocated among the 23 lots within the Property as follows:

| | |
|---|---|
| Lot 1 | 0.19 acre |
| Lot 2 | 0.23 acre |
| Lot 3 | 0.35 acre |
| Lot 4 | 0.21 acre |
| Lot 5 | 0.35 acre |
| Lot 6 | 0.27 acre |

| | |
|---|---|
| Lot 7 | 0.29 acre |
| Lot 8 | 0.30 acre |
| Lot 9 | 1.94 acre |
| Lot 10 | 1.04 acre |
| Lot 11 | 0.93 acre |
| Lot 12 | 0 acre |
| Lot 13 | 0.37 acre |
| Lot 14 | 0.58 acre |
| Lot 15 | 0.69 acre |
| Lot 16 | 0 acre |
| Lot 17 | 0.48 acre |
| Lot 18 | 0.65 acre |
| Lot 19 | 1.78 acre |
| Lot 20 | 0 acre |
| Lot 21 | 1.48 acre |
| Lot 22 | 0 acre |
| Lot 23 | 0 acre |
| Total | 12.12 acres |

Owners of multiple Lots within the Property may, without the consent of the Association or any other Owner, but only with the written consent of the City of Raleigh, reallocate the acreage of Permanently Protected Undisturbed Open Space among the Lots owned by such Owner.

5.06. Maintenance Easements. Declarant hereby grants, declares, establishes and reserves for itself and the Association, their successors and assigns, a non-exclusive right and easement over those portions of the Property necessary to properly access and maintain the designated Master Association Open Space for the purpose of maintaining, repairing, replacing, operating and administering the Master Association Open Space, including, without limitation, the right of ingress and egress for their employees, agents and subcontractors over any portion of the Property for the purpose of accessing the Master Association Open Space and for the further purpose of performing such maintenance as it expressly undertakes within the Master Association Open Space.

During the period of time that Declarant controls the Association, Declarant shall have the right to maintain the Master Association Open Space or shall be entitled, but have no obligation, to cause the Association to maintain the Master Association Open Space.

5.07. Subsequent Transfers. The Declarant agrees to incorporate the terms of the Conservation Easement and other easements granted in this Article 5 in any deed or other legal instrument that transfers any interest in all or a portion of the Master Association Open Space. The Declarant agrees to provide written notice of such transfer to the City of Raleigh at least thirty (30) days prior to the date of the transfer. The Declarant and the Owners agree that the terms of the Conservation Easement shall survive any merger of the fee and easement interests in

the Master Association Open Space or any portion thereof and shall not be amended, modified or terminated without the prior written consent and approval of the City Attorney of Raleigh, North Carolina or his deputy.

## ARTICLE 6

## TREE CONSERVATION AREA

6.01 Master Association Tree Conservation Area. Declarant hereby grants, declares, establishes and reserves for itself and the Association and their successors, assigns, licensees, grantees, for the benefit of, and as an appurtenance to, all portions of the Property, a non-exclusive, perpetual easement over the Master Association Tree Conservation Area for active tree preservation and protection measures and to plant and replace replacement trees, but such easements shall not become effective until the Declarant establishes the configuration of the Master Association Tree Conservation Area pursuant to the recordation of one or more plats or other instruments of the Property, and such easements shall be subject to the rules and regulations established by the Association from time to time.

Each Owner of any portion of the Property shall convey to the Association (and convey such other rights as the appropriate governmental authority may require) Master Association Tree Conservation Area, upon purchasing any portion of the Property or at such time as requested by Declarant. Any such conveyance shall be subject to the requirement that the Master Association Tree Conservation Area be restricted to tree preservation and protection.

The boundaries and configuration of the Master Association Tree Conservation Area shall be established by the recordation of one or more plats or other instruments, as required by the applicable governmental authority or in Declarant's discretion, which Declarant shall record in connection with the establishment of the Master Association Tree Conservation Area. No modification, amendment or supplement to this Declaration shall be required to establish the Master Association Tree Conservation Area or the boundaries or configuration thereof.

6.02. Maintenance Easements. Declarant hereby grants, declares, establishes and reserves for itself and the Association, their successors and assigns, a non-exclusive right and easement over those portions of the Property necessary to properly access and maintain the designated Master Association Tree Conservation Area for the purpose of maintaining, protecting, planting and replanting the Master Association Tree Conservation Area, including, without limitation, the right of ingress and egress for their employees, agents and subcontractors over any portion of the Property for the purpose of accessing the Master Association Tree Conservation Area and for the further purpose of performing such maintenance, planting, replanting and protection as it expressly undertakes within the Master Association Tree Conservation Area, with the maintenance and operation of the Master Association Tree Conservation Area to be paid for from assessments against the members of the Association and their properties.

No "tree disturbing activity" as defined in Part 10, Chapter 2 of the Raleigh City Code shall be permitted in Master Association Tree Conservation Areas in violation of the Raleigh City Code. Any "tree disturbing activity" undertaken in Master Association Tree Conservation Areas shown on recorded plats of the Property without a permit from the City of Raleigh is a violation of the Raleigh City Code and may result in significant financial consequences to Owner and to the person responsible for such unlawful "tree disturbing activity". Owners and their agents may, however, with the consent of the City and Association, enter Master Association Tree Conservation Areas to perform active tree preservation measures (as defined in Part 10, Chapter 2 of the Raleigh City Code) to plant trees, to remove dead or diseased trees and to plant replacement trees; provided however, that Association consent shall not be required if the Master Association Tree Conservation Area in which the Owner desires to perform "active tree preservation" measures; to plant trees, to remove dead or diseased trees or to plant replacement trees is located on that Owner's real property.

During the period of time that Declarant controls the Association, Declarant shall have the right to maintain, plant and replant the Master Association Tree Conservation Area, but have no obligation to maintain, plant or replant the Master Association Tree Conservation Area.

## ARTICLE 7

## ASSOCIATION; ASSESSMENTS

7.01 The Association. The Declarant and every Owner of any and all portions of the Property from time to time shall be a member of the Association which shall be appurtenant to and may not be separated from ownership of any portion of the Property. Upon termination of ownership, an Owner's membership with respect to the transfer of real property shall automatically terminate and automatically transferred to the new Owner of the real property.

7.02 Formation of the Association. Prior to the conveyance or transfer of any portion of the Property, the Association shall be formed as a North Carolina non-profit membership corporation. The Association shall be governed by Chapter 47F of the North Carolina General Statutes. Property owners' associations established under any Declaration of Condominium or under any declaration of covenants pursuant to Chapter 47F of the North Carolina General Statutes – The North Carolina Planned Community Act - for the residential tracts within the Property shall be a member of the Association and in such event the individual Owners of the condominium units or homes within such development shall not be members of the Association.

7.03 Purposes, Powers and Functions of the Association. The powers and functions of the Association shall be limited to the maintenance, upkeep, operation, repair and replacement of those portions of the Master Association Open Space not maintained by any governmental authority (or, if maintained by a governmental authority, not maintained to the standard desired by the Association) and protection of Master Association Tree Conservation Area and conservation easement over Permanently Protected Undisturbed Open Space or any other area within the Property over which a non-exclusive easement has been granted for the benefit of the

Owners or the general public, which shall be maintained by the Association. The Association shall have the power and authority to contract for the performance of such functions and to levy assessments to pay for such performance. Such assessments shall be limited to the actual cost of such maintenance, upkeep, operation, repair and replacement, plus any directly related expenses, such as taxes on land owned in fee simple by the Association and the cost of maintaining insurance on such fee simple land, plus a reasonable management and administrative fee.

7.04 Governance of Association. The governance and operation of the Association shall be in accordance with the Bylaws promulgated by the initial Board of Directors. The Association shall be governed by a Board of Directors to be comprised of no less than three (3) and no more than seven (7) members, to be elected by the Association membership in accordance with the Bylaws of the Association.

Each member shall have the right to exercise that percentage of the total votes of the Association equal to the percentage of such member's acreage owned within the Property as a percentage of the total acreage at that time within the Property owned by all members of the Association and the Declarant. Notwithstanding the foregoing, the vote to be exercised by the Owners of a residential tract, subject to any Declaration of Condominium or owners association under Chapter 47F of the North Carolina General Statutes may be exercised only by the owners' association formed pursuant to such residential tract, if applicable, and not by the individual Owners of any portions of that portion of the Property. The voting strength of each such condominium or owners' association shall equal the percentage of acreage of the members of the condominium or owners' association to the total acreage of the Property.

7.05 Liability for Assessments. Assessments levied pursuant to the terms hereof shall be allocated among the members based on the percentage of each member's acreage within the Property as compared to the total acreage within the Property owned by all members of the Association.

Assessments levied against the Property may, but is not required to, be allocated by Declarant in its deeds of portions of the Property, or in Supplemental Declarations executed by Declarant in connection with such conveyances; and such assessments may be furthermore allocated by subgroups of Owners of portions of the Property among themselves.

7.06 Creation of Lien and Personal Obligation of Assessments. Each Owner of any portion of the Property shall, by acceptance of a conveyance therefor, whether or not it shall be so expressed in any instrument of conveyance, be deemed to promise to pay to the Association assessments and charges, such as are established and to be collected from time to time as herein provided. The assessments and charges, together with such interest thereon and costs of collection therefor as are hereinafter provided, shall be a charge and continuing lien upon the portion of the Property against which such assessment is made as of the effective date of each assessment. Each such assessment, together with such interest thereon and costs of collection therefor as are hereinafter provided, shall also be the personal obligation of the person or entity who was Owner of such portion of the Property at the time when the assessment became due. In

the case of co-ownership of a portion of the Property, all of such co-Owners shall be jointly and severally liable for the entire amount of the assessment.

7.07 Purpose of Assessments. The assessments levied by the Association shall be used for the purposes set forth in Section 7.03 above, and also for the payment of insurance, the payment of taxes on any property owned by the Association in fee simple, the payment of utility charges related thereto (including water for any irrigation or sprinkler systems), the payment of license, permit and inspection fees, and the costs of labor, equipment, materials, management and supervision thereof. In addition, the Association may use annual assessments for the purpose of doing any other things necessary or desirable, in the discretion of the Association, to provide for the health, welfare and safety of the Owners and occupants of the Property. By its acceptance of any deed or other instrument of conveyance of any portion of the Property, each Owner acknowledges that the improvements and facilities to be maintained by the Association cannot be specifically defined and determined until the sale of the last portion of the Property. Notwithstanding the lack of specificity relating to the improvements and facilities to be maintained by the Association, each Owner acknowledges that he or it is a knowledgeable business person or entity familiar with developments such as the one established under this Declaration and hereby agrees to accept and pay assessments levied by the Association pursuant to this Declaration.

7.08 Special Assessments. The Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected planting, repair or replacement of the Master Association Open Space and Master Association Tree Conservation Area or restoration of the Permanently Protected Undisturbed Open Space Areas.

7.09 Commencement. Assessments shall commence on the date fixed by the Association. Assessments on any portion of the Property that first become subject to assessments during a calendar year shall be prorated on a calendar year basis for the remainder of such calendar year.

7.10 Due Date and Limitation of Assessment Frequency. Unless otherwise provided in the Bylaws to be promulgated by the initial Board of Directors of the Association, assessments shall be due and payable in full within thirty (30) days after billed to an Owner by the Association. The Association shall impose assessments upon every Owner at least once each calendar year and no more than four (4) times each calendar year.

7.11 Records of Assessments. The Association shall cause to be maintained in the office of the Association a record of assessments applicable to each portion of the Property which shall be open to inspection by any Owner.

The Association shall, within ten (10) business days after receipt, upon written demand and payment of a reasonable charge, furnish to any Owner a certificate in writing signed by an officer of the Association stating whether the assessments against the Owner's portion of the

Property have been paid and, if not, the amount due and owing. Such certificates shall be conclusive as evidence for third parties as to the status of assessments against such portion of the Property.

7.12 Effect of Non-Payment of Assessment; Remedies. If any assessment is not paid on the date when due, then such assessment shall be delinquent and shall accrue interest thereon at the rate of 18% per annum, unless a lesser rate is required under applicable law, in which event the lesser rate shall be applicable. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Master Association Open Space or Owner' s lot, or abandonment or leasing of a lot, or unavailability of the use or enjoyment of the Master Association Open Space.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interests, and the costs of collection thereof, including attorneys' fees, shall be charge on the Owner' s lot as provided in G.S.47F-3-116 of the Act and, upon filing of a claim of lien in the office of the Clerk of Superior Court of the county in which the lot is located in the manner provided in G.S.47F-3-116(g), shall be a continuing lien upon the lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchase of a lot obtains title to the lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such lot which became due prior to the acquisition of title to such lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorneys' fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. 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. An Owner' s personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

7.13 Budgets; Amount of Assessments. The Association is at all times empowered to levy assessments against the lots and the Owners of lots within the Property for the payment of common expenses.

The Association' s Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board shall send a copy of the proposed budget to the members and shall give written notice to the members 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 sixty (60) 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 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, provided, however, if the budget provides for annual assessments not in excess of the Maximum Annual Assessment (as defined below) in effect for that assessment year, such budget shall be deemed ratified unless members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the members shall be continued until such time as the members ratify a subsequent budget proposed by the Board.

After the Association's first full Fiscal Year, The "Maximum Annual Assessment" for each subsequent Fiscal Year (as defined below) is the amount of the actual assessment for the immediately preceding year plus five percent (5%). The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the Maximum Annual Assessment incident to a merger of consolidation as provided in §47F-2-121 of the Act.

7.14 Voting Rights. Each member of the Association shall have those voting rights established in this Declaration. If a lot is owned by multiple Owners, the votes allocated to that lot shall be cast only in accordance the agreement of a majority in interest of the multiple Owners unless otherwise provided in the governing documents. A majority agreement is conclusively presumed if only one of the multiple Owners casts the votes allocated to that lot, unless any of the other Owners of the lot protest such co-Owner's vote promptly to the Person presiding at the meeting.

7.15 Proxies. Voting may be cast in person or by proxy. All proxies must be dated, duly executed by the Owner and delivered to the Secretary of the Association, or to the property management company authorized by the Executive Board to receive proxies, prior to the opening of the meeting for which it is first intended to be used. No proxy shall exceed a term of eleven (11) months from its date unless it specifies shorter term.

7.16 Quorum. Except as otherwise provided in the governing documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the governing documents, the quorum requirements at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

7.17 Insurance. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall procure and maintain (i) hazard insurance for any building located on the Master Association Open Space insuring against all

risk of loss commonly insured against, including fire and extended coverage of peril, and (ii) liability insurance, in an amount of not less than one million dollars ($1,000,000.00), covering all occurrences of commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use ownership or maintenance of Master Association Open Space. The Association shall obtain and maintain such other insurance as required in this Declaration or such other forms of insurance, and in such coverage amounts, as determined by the Board to be required or beneficial for the protection or preservation of the Master Association Open Space and other property of the Association or otherwise is in the best interests of the Association. The premiums for such insurance shall be a common expense paid from the annual assessments as established pursuant to this Declaration.

## ARTICLE 8

## MISCELLANEOUS PROVISIONS

8.01 Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provisions of this Declaration, and the remaining provisions shall remain in full force and effect.

8.02 Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

8.03 Enforcement. The failure of any Owner to comply with the provisions of this Declaration shall entitle the Declarant, any Owner, the Association, or any of them, to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

Notwithstanding the foregoing, the Declarant and the Owners reserve the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of the Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from the Conservation Easement. No failure on the part of Declarant or any Owners to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect any right to enforce the same in the event of a subsequent breach or default. Nothing contained herein shall be construed to entitle the Owners to bring any action against the Declarant for any injury or change resulting from causes beyond its control, including, without limitation, fire, flood, storm, war, acts of God or third parties, except Declarant's lessees, agents,

contractors or invitees; or from any prudent action taken in good faith by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to life, damage or harm resulting from such causes.

8.04 Equal Opportunity Housing. All residential components of the Property shall provide equal opportunity housing. Each portion of the Property sold shall be sold without regard to the race, creed, color, national origin, ancestry, religion, marital status, age or sex of the purchaser.

8.05 Amendments.

A. This Declaration may be amended at any time by the affirmative written consent of Owners owning at least sixty-seven (67%) of the Property, and of the Declarant should Declarant at such time own any portion of the Property.

B. Notwithstanding anything herein to the contrary no amendment may remove, revoke or modify any right or privilege of Declarant without the express written consent of the Declarant or the assignee of such right or privilege of Declarant.

C. To be effective, any amendment must be recorded in the Appropriate Registry. If an Owner consents to any amendment of this Declaration it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision of any mortgage, deed of trust or contract between the Owner and a third party will affect the validity of such amendment.

D. Any instrument amending this Declaration during the Period of Development must contain a certification by the Declarant that the amendment has been correctly adopted in accordance with the provisions of this Declaration and be recorded in the Appropriate Registry. Any such amendment shall be effective upon the date of recordation.

E. Notwithstanding anything herein to the contrary, no amendment, including termination of the Declaration, shall become effective without the prior written approval of the City of Raleigh which shall be evidenced by the signature of the Raleigh City Attorney or his/her Deputy on the recorded original copy of the amendment.

IN WITNESS WHEREOF, Declarant has executed and sealed this Declaration as its act and deed this 21 day of September, 2005.

**BRIER CREEK ASSOCIATES LIMITED PARTNERSHIP**

By: RTP Assemblage Associates, LLC, sole General Partner

By: AAC Triton Limited Partnership, Member/Manager

By: AAC Triton GP Limited Partnership, its sole General Partner

By: AAC Triton, Inc., its sole General Partner

By: _____
Paul L. Herndon, Vice President

STATE OF NORTH CAROLINA

COUNTY OF CATAWBA

I, Michelle T. Bernard, a Notary Public do hereby certify that Paul L. Herndon, Vice President of AAC Triton, Inc., sole general partner of AAC Triton GP limited partnership, the sole general partner of AAC Triton Limited Partnership, the manager of RTP Assemblage Associates, LLC, the sole general partner of Brier Creek Associates Limited Partnership, personally appeared before me this day and acknowledged the execution, with proper authorization, the foregoing instrument, all in accordance with limited partnership instruments, and that the instrument is the act and deed of the limited partnership.

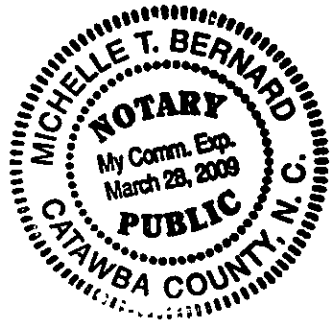
Witness my hand and official seal, this 21ST day of September, 2005.

_____
Notary Public

My commission expires: March 28, 2009

[NOTARY SEAL]

My Commission Expires: March 28, 2009



## CONSENT AND SUBORDINATION OF LENDER

The undersigned holds a first and prior lien on the Property and hereby (i) consents to the execution and delivery hereof by Declarant and (ii) subordinates its lien to this Declaration, but not to any assessment or liens established in this Declaration.

BANK OF AMERICA, N.A.

By: _____
Name: Ghi S. Gavin
Title: Sr. Vice President

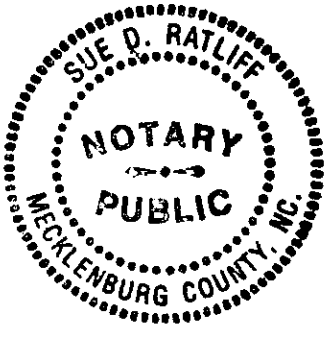
STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Sue D Ratliff, a Notary Public of _____ County, North Carolina, do certify that Ghi S. Gavin personally appeared before me and acknowledged that he is a Sr. Vice President of Bank of America, N.A., a national banking association, and that by authority duly given and as of the act of the national banking association, the foregoing instrument was signed and sealed in its name by him as its Sr. Vice President.

Witness my hand and official seal, this 22nd day of September 2005.

[NOTARY SEAL]




_____
Sue D. Ratliff
Notary Public

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**Yellow probate sheet is a vital part of your recorded document.**
**Please retain with original document and submit for rerecording.**

WAKE COUNTY
NORTH CAROLINA

**Wake County Register of Deeds**
**Laura M. Riddick**
**Register of Deeds**

**North Carolina – Wake County**

The foregoing certificate___ of Michelle T Bernard

Sue B Ratliff

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

Laura M. Riddick, Register of Deeds

By: Janet Morgan

Assistant/Deputy Register of Deeds

**This Customer Group**

_____ # of Time Stamps Needed

**This Document**

_____ New Time Stamp

21 # of Pages

22.004–7/11/03