Return to Allen H. W ons, Attorney at Law

STATE OF NORTH CAROLINA

COUNTY OF JOHNSTON

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT DEED, made this 6th day of February, 2002, by and between **THE TRUSTEES OF JOHNSTON COMMUNITY COLLEGE, GRANTOR**, and the **STATE OF NORTH CAROLINA, GRANTEE**, whose mailing address is State of North Carolina State Property Office, 116 West Jones Street, Raleigh, NC 27603-8003. The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Wetlands Restoration Program (as defined in N.C. Gen Stat. § 143-214.8) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, and creating wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, the Wetlands Restoration Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina has been granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh. North Carolina, on the 8th day of February 2000; and

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8, two of the components of the Wetlands Restoration Program are (1) restoration and perpetual maintenance of wetlands, riparian areas, and surface waters and (2) land ownership and management; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Bentonville Township, Johnston County, North Carolina (the "Protected Property"), and being a part of that certain parcel of land known as Howell Woods and being conveyed to the Grantor by deed recorded in **Deed Book 1487 at Page 160 and in Deed Book 1419 at Page 43, and in Deed Book 1856 at Page 60** of the Johnston County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement on the Protected Property, thereby restricting and limiting the use of the Protected Property to the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such easement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over a portion of the Protected Property, referred to hereafter as the Easement Area, for the benefit of the people of North Carolina, and being more particularly described as follows:

The following described conservation easement lies within that certain parcel of land on the east side of State Road 1009, Bentonville Township, Johnston County, North Carolina, belonging to The Trustees of Johnston Community College, as duly recorded in Deed Book 1856, page 60, in the Johnston County, North Carolina Registry, being more fully described as follows:

BEGINNING at an existing iron stake at the southeast corner of an existing wetlands conservation easement duly recorded in Deed Book 1966, Page 431 of the Johnston County, North Carolina Register of Deeds having North Carolina Grid Coordinates (NAD 83) N=594098.4262,

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E=2214653.5693 and being N 06° 26' 37" W 20,848.38 feet; thence N 65° 41' 37" E 9,124.38 feet; thence S 56° 54' 04" E 66.23 feet; thence S 69° 26' 42" E 117.84 feet from NCGS monument "FLOWERS" having (NAD 83) Coordinates N=572545.787, E=2214819.159, thence along the eastern lines of the foresaid mentioned wetlands conservation easement N 08° 38' 51" E 38.12 feet to a point; thence N 20° 23' 16" E 90.48 feet to a point; thence N 20° 12' 23" E 145.12 feet to a point; thence N 37° 57' 24" E 218.29 feet to a point; thence N 28° 05' 31" E 206.72 feet to a point; thence N 22° 40' 32" E 210.40 feet to a point; thence N 21° 45' 10" E 148.02 feet to a point; thence N 29° 32' 27" E 165.71 feet to a point; thence N 20° 12' 40" E 93.97 feet to a point; thence N 36° 49' 07" W 36.20 feet to a point; thence N 38° 17' 27" W 153.44 feet to a point; thence N 45° 12' 16" W 166.48 feet to a point; thence N 32° 39' 17" W 411.12 feet to a point; thence N 25° 09' 47" W 216.34 feet to a point; thence N 33° 03' 50" W 317.51 feet to a point; thence N 29° 47' 57" W 168.24 feet to a point; thence N 42° 45' 31" W 279.96 feet to a point; thence N 44° 09' 55" W 232.74 feet to a point; thence N 56° 27' 49" W 287.28 feet to a point; thence N 51° 41' 15" W 196.57 feet to a point; thence N 50° 49' 28" W 47.78 feet to a point; thence N 44° 19' 38" W 121.16 feet to a point; thence N 45° 18' 34" W 196.71 feet to a point; thence N 42° 02' 06" W 265.65 feet to a point; thence N 31° 48' 34" W 325.24 feet to a point; thence N 31° 57' 36" W 127.98 feet to a point; thence N 35° 02' 51" W 266.11 feet to a point; thence N 46° 54' 7" W 142.37 feet to a point; thence N 53° 43' 50" W 146.77 feet to a point; thence N 07° 21' 57" W 46.41 feet to a point; thence N 13° 06' 05" W 158.50 feet to an existing iron state on the northeast corner of the existing easement; thence with the following new lines: N 12° 47' 56" W 760.61 feet to an iron stake set; thence S 59° 00' 32" E 924.65 feet to an iron stake set; thence S 57° 11' 56" E 272.94 feet to an iron stake set; thence S 34° 05' 04" E 303.97 feet to an iron stake set; thence S 33° 17' 25" E 507.65 feet to an iron stake set; thence S 46° 04' 44" E 481.20 feet to an iron stake set; thence S 57° 17' 49" E 419.24 feet to an iron stake set; thence S 43° 14' 50" E 619.97 feet to an iron stake set; thence S 32° 29' 41" E 1,332.67 feet to an iron stake set; thence S 36° 56' 34" E 600.92 feet to an iron stake set; thence S 08° 51' 46" W 790.32 feet to an iron stake set; thence S 28° 54' 29" W 600.08 feet to an iron stake set; thence S 32° 47' 28" W 352.61 feet to an iron stake set; thence N 69° 15' 45" W 849.93 feet to the place of beginning and containing 111.84 acres.

The purposes of this Conservation Easement are to maintain, restore, enhance, and create wetland and/or riparian resources in the Easement Area that contributes to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, their personal representatives, heirs, successors, and assigns, lessees, agents, and licensees.

II. RESERVED USES AND RESTRICTED ACTIVITES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

A. **Recreational Uses.** Grantor expressly reserves the right to undeveloped recreational uses, including hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited.

B. **Educational Uses.** The Grantor reserves the right to undeveloped educational uses and the right of access to the Easement Area for such purposes including organized educational activities such as site visits, studies, and observations.
C. **Vegetative Cutting.** Cutting, removal, mowing, harming, or destruction of any vegetation in the Easement Area is prohibited.
D. **Industrial Use.** Industrial activities in the Easement Area are prohibited.
E. **Residential Use.** Residential use of the Easement Area is prohibited.
F. **Commercial Use.** Commercial activities in the Easement Area are prohibited.
G. **Agricultural Use.** Agricultural use of the Easement Area including use for cropland, waste lagoons, or pastureland is prohibited.
H. **New Construction.** There shall be no building, facility, mobile home, or other structure constructed or placed in the Easement Area.
I. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Protected Property and the holder of the Conservation Easement, and signs giving directions or proscribing rules and regulations for the use of the Easement Area.
J. **Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material in the Easement Area is prohibited.
K. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.
L. **Water Quality and Drainage Patterns.** 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 created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.
M. **Subdivision.** Subdivision, partitioning, or dividing the Easement Area is prohibited.
N. **Development Rights.** No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Protected Property, at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area. These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow. In addition, the Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Protected Property, at all reasonable times for the purpose of inspecting said property to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The easement rights granted herein do not include public access rights.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the Wetlands Restoration Program, whose mailing address is 1619 Mail Services Center, Raleigh, NC 27699-1619.

III. ENFORCEMENT AND REMEDIES

A. In the event that the Grantee determines that the Grantor has violated or is threatening to violate any of these terms, conditions, or restrictions, the Grantee may institute a suit to enjoin such violation and if necessary, to require the restoration of the Easement Area to its prior condition at the expense of the Grantor.

B. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

IV. MISCELLANEOUS

A. This Conservation Easement shall be construed to promote the purposes of N.C. Gen Stat. § 143-214.8 et seq., the Wetlands Restoration Program.

B. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.

D. Grantor shall notify Grantee in writing of the name and address and any party to whom the Protected Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Protected Property is conveyed subject to the Conservation Easement herein created.

V. QUIET ENJOYMENT

Grantor reserves all rights accruing from ownership of the Protected Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

TO HAVE AND TO HOLD the said rights and easements perpetually unto Grantee for the aforesaid purposes.

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent easement herein granted; that the same are free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.

THE TRUSTEES OF JOHNSTON
COMMUNITY COLLEGE

Lynn T. Austin Lynn T. Austin

By Invell C. Reinhard
President

ATTEST:

By Donald L. Reichard
Secretary

(CORPORATE SEAL)

NORTH CAROLINA

COUNTY OF JOHNSTON

I, Martha Wallace Yates, a Notary Pubic in and for the aforesaid County and State do hereby certify that Donald L. Reichard, personally came before me this day and acknowledged that he/she is Secretary to the Board of Trustees of THE TRUSTEES OF JOHNSTON COMMUNITY COLLEGE, and that by authority duly given and as an act of THE TRUSTEES OF JOHNSTON COMMUNITY COLLEGE, the foregoing instrument was signed by Donald L. Reichard, its President and Lyn T. Austin, Chairman of the Board of Trustees, and attested by himself/herself as Secretary.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the 06 day of FEB, 2002.

MARTHA WALLACE YATES NOTARY PUBLIC JOHNSTON COUNTY, N.C.

Martha Wallace Yates
Notary Public

My Commission Expires:

My Commission Expires-05-21-2002

State of North Carolina-Johnston County
The foregoing Certificate(s) of Martha Wallace Yates
Notary (Notaries) Public is (are) certified to be correct.
This instrument was prepared for registration and recorded in Book 2184 Page 214
This Feb 8, 2002 at 2:40 PM
Cecil M. Massengill
Register of Deeds

Sandra P Sullivan
~~Deputy~~ Register of Deeds
Asst

RECORDED VERIFIED
& INDEXED _____