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Lee County 12-08-2004
NORTH CAROLINA
Real Estate
Excise Tax $15.00

BK:00948 PG:0339

EXCISE TAX: $15.00

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

COUNTY OF LEE

Prepared by and return to:
William P. Aycock II, Esquire
P. O. Box 21847
Greensboro, North Carolina 27401

THIS CONSERVATION EASEMENT DEED, made this 6th day of December, 2004, by and between **DAVID THOMAS PATTERSON**, Grantor, and **RESTORATION SYSTEMS, LLC,** a North Carolina limited liability company with its principal place of business located at 1101 Haynes Street, Suite 107, Raleigh, North Carolina, 27605, Grantee. 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 Ecosystem Enhancement Program within the Department of Environment and Natural Resources for the purposes of funding, 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 Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District have entered into a Memorandum of Agreement, (MOA) duly executed by all parties on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land and natural resources of the State by restoring, enhancing and preserving ecosystem functions;

and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in East Sanford Township, Lee County, North Carolina (the "Protected Property"), and being more particularly described as a portion of the parcel of land described in a deed recorded in Deed Book 250, at Page 412 of the Lee County Registry, North Carolina; and

WHEREAS, the restoration, enhancement, creation, and preservation of the Protected Property is a condition of the funding provided by the N.C. Ecosystem Enhancement Program. Grantor and Grantee agree that third-party rights of access, monitoring, enforcement and completion of any project encumbered by this conservation easement shall be held by the N.C. Ecosystem Enhancement Program (to include any successor State agencies), and that these rights are in addition to, and do not limit, the rights of enforcement under this conservation easement; and

WHEREAS, Grantor is willing to grant a Conservation Easement on a portion of the Protected Property, thereby restricting and limiting the use of a portion 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 all of the tract of land as identified as Tract "D" as shown on a plat of survey entitled "Wallace & Lick Creek Site" dated 10/21/04, certified by K2M Design Group, and recorded in Plat Cabinet 10, Slide 56B, Lee County Registry and being more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

The purposes of this Conservation Easement are to preserve, 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 biócides 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 Grantee and the Ecosystem Enhancement 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 Ecosystem Enhancement 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.

David Thomas Patterson (SEAL)
David Thomas Patterson

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Charlotte Robinson, a Notary Public, do hereby certify that DAVID THOMAS PATTERSON personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this the 6th day of December, 2004.

Charlotte Robinson
Notary Public

My commission expires:

May 17, 2009

CHARLOTTE ROBINSON
Notary Public, North Carolina
Wake County
My Commission Expires
5/17/09

NORTH CAROLINA - LEE COUNTY
The foregoing certificate(~~s~~) of
CHARLOTTE ROBINSON

Notary Public is (~~are~~) certified to be correct.
Duly registered this date and hour shown
on the first page hereof.
MOLLIE A. MCINNIS
Register of Deeds

By Jenny L. Medrow
~~Assistant~~ / Deputy

EXHIBIT "A"

Attached to and made a part of that certain Conservation Easement dated December 6, **2004, by and between DAVID THOMAS PATTERSON (Grantor) and RESTORATION SYSTEMS, LLC (Grantee).**

All of Parcel "D" containing 0.50± acres as shown on a Survey for Restoration Systems, LLC (Wallace & Lick Creek Site) recorded in Plat Cabinet 10, Slide 56B, Office of the Register of Deeds of Lee County, North Carolina.