FPAMrR-ck

RB 87 PG 0340

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

SURRY COUNTY

THIS CONSERVATION EASEMENT DEED, made this 9th day of April, 2002, by and between Wayne L. Draughn and Kay V. Draughn, Trustees under to Wayne L. Draughn Revocable Trust, (1/2 undivided interest)*, "Grantor", and the **Surry Soil and Water Conservation District**, whose mailing address is P. O. Box 218, Dobson, NC 27017, "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.

*Patty S. Thomas and husband, Mac Thomas (1/2 undivided interest)

WITNESSETH:

WHEREAS, Grantor owns in fee simple certain real property situate, lying, and being in Surry County, North Carolina (the "Protected Property"), hereinafter more particularly described; See Exhibit "A"

WHEREAS, The Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code of 1986, as amended, and accepts the responsibility of enforcing the terms of this Deed and upholding its conservation purposes forever; and

WHEREAS, the Property possesses natural values (collectively, "conservation values") of great importance to Grantors, the people of Surry County and the people of the State of North Carolina;

WHEREAS, in particular, the primary conservation value is Water Quality, which will be maintained and /or enhanced by reducing non-point source pollution through the establishment of vegetative riparian buffer zones and by stabilizing stream banks through stream restoration. (*describe property. State whether it is significantly classified, be sure to state NC statute which enables the designation. Or state the potential water quality benefits if protected. Example...This easement will protect the water quality of a significant tributary of the Mitchell River, which has been designated as an Outstanding Resource Water under the General Procedures of Surface Water and Wetland Standards 15 A NCAC 02B .0101 (e))*

WHEREAS, the specific conservation values of the Property, its current use and state of improvement, are described in an *Easement Documentation Report* prepared by Grantee with the cooperation of the Grantor, and acknowledged by both to be complete and accurate as of the date of this Deed. Both the Grantor and the Grantee have copies of this report. It will be used by the Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, this report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

WHEREAS, the conservation purposes of this Deed are recognized by, and the grant of this Deed will serve, the following clearly delineated governmental conservation policies:

–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

--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

--the North Carolina Conservation and Historic Preservation Agreements Act, N.C. Gen. Stat. ' 121-34 et seq., which permit the creation of conservation easements;

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--The establishment of the Clean Water Management Trust Fund N.C. Gen. Stat. ' 113-145.1 et seq. Which recognizes the importance of protecting riparian buffers in protecting and conserving surface water.

--the North Carolina Conservation Tax Credit Program, North Carolina General Statutes ' 105-130.34 and 105-151.12 et seq., which provides for state income tax credits for donation of land that is useful for fish and wildlife conservation and other similar land conservation purposes;

--this document is intended to be consistent with the IRS 170 (h) and IRS 2031(C) which deals with the estate tax exclusion

--the special use ad valorem provisions of the state property tax regime for wetlands set forth in North Carolina General Statues ' 105-277.3 et seq.; and

WHEREAS, Grantor is willing to grant a Conservation Easement on the Protected Property, thereby restricting and limiting the use of the Protected Property on 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, the 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 the Protected Property for the benefit of the people of North Carolina, said Protected Property lying within Surry County, North Carolina, and being in Bryan Township, and being more particularly described as follows:

SEE EXHIBIT "A"

The purposes of this Conservation Easement are to maintain, restore, enhance, which will create a wetland and/or riparian resource on the Protected Property that contributes to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Protected Property in its natural condition, consistent with these purposes; and to prevent any use of the Protected Property 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, its personal representatives, heirs, successors, and assigns, lessees, agents, and licensees.

II. RESERVED USES AND RESTRICTED ACTIVITES

The Protected Property 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 on, or use of, the Protected Property 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. Specific uses prohibited, restricted, or reserved include as indicated but are not necessarily limited to the following:

A. **Trespass.** The Grantor retains the right to exclude any member of the public from trespassing on the Protected Property and the right to sell or otherwise transfer the Protected property to anyone the owner chooses.
B. **Recreational Uses.** Grantor expressly reserves the right to undeveloped recreational uses, including hunting and fishing, and access to the Protected Property for the purposes thereof. Usage of motorized vehicles on the Protected Property is prohibited.
C. **Educational Uses.** The Grantor reserves the right to undeveloped educational uses and the right of access to the Protected Property for such purposes including organized educational activities such as site visits, studies, and observations.
D. **Vegetative Cutting.** Cutting, removal, mowing, harming, or destruction of any vegetation within the wooded buffer (25 ft from the top of the streambank) is prohibited. Possible exceptions include, project maintenance, control of non-native species, etc.
E. **Industrial Use.** Industrial activities are prohibited on the Protected Property.
F. **Residential Use.** Residential use of the Protected Property is prohibited.
G. **Commercial Use.** Commercial activities are prohibited on the Protected Property.

H. **Agricultural, Grazing, and Horticultural Use.** Agricultural use of the Protected Property including use for waste application or pastureland is prohibited within the 25 ft wooded buffer. Agricultural Best Management Practices will apply on remainder of the buffer.

I. **Signs.** No signs shall be permitted on the Protected Property except: interpretive signs describing restoration activities and the conservation values of the Protected Property, 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 Protected Property.

J. **Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material on the Protected Property 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. **Subdivision.** Subdividing or partitioning the Protected Property is prohibited. Divisions of the property must be approved by the Grantee

M. **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.

N. **New Construction.** There shall be no building, facility, mobile home, or other structure constructed or placed on the Protected Property.

O. **Stream Crossings.** Stream crossings for livestock and access to adjacent/adjoining property can be constructed where approved by the Grantee, with the future understanding that any crossing must not impede flow of water or aquatic life. Existing farm roads within the protected property can be maintained as long as they are not enlarged. Motorized vehicles will be allowed on existing farm roads.

P. **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. Minimal water withdrawal for irrigating gardens is permitted, as long as withdrawal does not effect base flow, and/or impede fish or macroinvertebrate habitat.

Q. **Wetlands and Water Quality.** Within the Protected Property there shall be no pollution or alteration of water bodies and no activities that would be detrimental to water quality or that would alter natural water levels, or cause soil degradation or erosion, except activities to restore natural hydrology or wetlands enhancement as permitted by the State and any other appropriate authorities.

R. **Stream Restoration** work in conjunction with grantee is an exception to above items. If any restoration or alterations are necessary, any changes required maintaining or restoring Water Quality must be in compliance with current BMP's with oversight and management of Surry Soil and Water Conservation District.

The Grantee, and authorized representatives of the Grantee, with advance permission of Grantor shall have the right to enter 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 Protected Property. 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 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

In the event that Grantee determines that 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 Protected Property to its prior condition at the Grantor's expense.

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 to Grantee to enforce the same in the event of a subsequent breach or default.

IV. MISCELLANEOUS

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

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.

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.

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.

Transfer of Easement: The Grantee shall have the right to transfer this easement to Piedmont Land Conservancy, a "qualified conservation organization" under Section 170(h) of the US Internal Revenue Code, and under (including, without limitation, the Conservation Trust of North Carolina) and only (1) if the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this Deed and (2) said transfer is approved by the State of North Carolina (acting through the Clean Water Management Trust Fund). If the Grantee ever ceases to exist or no longer qualifies under Section 170 (h) or applicable state law, a court with jurisdiction shall transfer this easement to the State of North Carolina (acting through Clean Water Management Trust Fund) or another qualified organization having similar purposes that agrees to assume the responsibility.

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 Protected Property 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, Grantor expressly reserves to Grantor, and Grantor's invitees and licensees, the right of access to the Protected Property, and the right of quiet enjoyment of the Protected Property.

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

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

THE ROSE GROUP

ENGINEERS
PLANNERS
SURVEYORS

EXHIBIT "A"

NORTH CAROLINA -- SURRY COUNTY -- DOBSON TOWNSHIP

Property of

Wayne L. Draughn Revocable Trust Agreement

The following described easement lies within that certain parcel of land on the northern and southern side of Beaver Creek and is more fully described by deed duly recorded in Deed Book 694, Page 682 of the Surry County, North Carolina Registry.

Easement

The following described permanent conservation easement being 128 feet in width, and is described as follows:

Being a portion of a 128-foot easement, perpendicular and parallel to the centerline of Beaver Creek. The easement is to be 64 feet each side of the centerline of said creek and is to affect the above-mentioned property at each point that the property touches the centerline of Beaver Creek.

CONTAINING: 139,084 square feet or 3.19 acres of land, more or less.
Having a perimeter of 2411.06 feet.

This description was written from record information found in the Surry county court house, and information provided by others. The description is to be used for easement acquisition only and is not to be used for the transfer of title. No field survey was conducted to benefit this description.

At the present time this permanent Easement is more particularly described as follows:
(See attached surveyed description)

OFFICES IN:
Fayetteville
Raleigh

104 Gillespie St.
P.O. Box 103
Fayetteville, NC 28302
(910) 323-3400
FAX (910) 323-1023

The intent is to describe a portion of a 128-foot easement, perpendicular and parallel to the new centerline of Beaver Creek. The easement is to be 64 feet each side of the centerline of said creek and is to affect the above-mentioned property at each point that the property touches the centerline of Beaver Creek.

This description was written from record information found in the Surry county court house, and information provided by others. The description is to be used for easement acquisition only and is not to be used for the transfer of title. No field survey was conducted to benefit this description.

02-08-02

THE ROSE GROUP

ENGINEERS
PLANNERS
SURVEYORS

NORTH CAROLINA -- SURRY COUNTY -- DOBSON TOWNSHIP
Property of
Wayne L. Draughn Revocable Trust Agreement

The following described easement lies within that certain parcel of land on the northern and southern side of Beaver Creek and is more fully described by deed duly recorded in Deed Book 694, Page 682 of the Surry County, North Carolina Registry.

Easement

The following described permanent easement being 128 feet in width, containing 139,084 square feet and is described as follows:

Beginning at a point in the western line of the tract of which this is a part, said point being on the new centerline of Beaver Creek and thence running with the western line of said tract, N 13°00'52" W, 14.00 feet to a point on the northern bank of Beaver Creek, and on the eastern bank of Fisher River; thence, N 13°00'52" W, 50.00 feet to a point on the western line of the tract of which this is a part; thence leaving said line, N 76°59'08" E, 53.68 feet to a point; thence, along a curve the radius of which is 14.00 feet and running thence with said curve the arc distance of 9.40 feet as it curves to the left (Chord Bearing and Distance N 57°45'08" E 9.22 feet) to a point; thence, N 38°31'08" E, 129.28 feet to a point; thence, along a curve the radius of which is 124.00 feet and running thence with said curve the arc distance of 237.14 feet as it curves to the right (Chord Bearing and Distance S 86°41'40" E 202.62 feet) to a point; thence, S 31°54'28" E, 92.62 feet to a point; thence, S 36°37'35" E, 143.45 feet to a point; thence, along a curve the radius of which is 14.00 feet and running thence with said curve the arc distance of 15.95 feet as it curves to the left (Chord Bearing and Distance S 69°15'21" E 15.10 feet) to a point; thence, N 78°06'52" E, 89.85 feet to a point; thence, along a curve the radius of which is 136.00 feet and running thence with said curve the arc distance of 56.64 feet as it curves to the right (Chord Bearing and Distance S 89°57'13" E 56.24 feet) to a point; thence, S 78°01'18" E, 89.94 feet to a point; thence, along a curve the radius of which is 14.00 feet and running thence with said curve the arc distance of 11.37 feet as it curves to the left (Chord Bearing and Distance N 78°42'28" E 11.06 feet) to a point; thence, N 55°26'14" E, 143.72 feet to a point in the eastern line of the tract of which this is a part; thence with said line, S 21°50'51" E, 51.26 feet to a point on the northern bank of Beaver Creek; thence with the eastern line, S 21°50'51" E, 14.35 feet to a point in the new centerline of Beaver Creek; thence with the eastern line, S 21°50'51" E, 14.35 feet to a point on the southern bank of Beaver Creek; thence with the eastern line, S 21°50'51" E, 51.26 feet to a point on the eastern line of the tract of which this is a part; thence leaving said line, S 55°26'14" W, 123.07 feet to a point; thence, along a curve the radius of which is 122.85 feet and running thence with said curve the arc distance of 99.79 feet as it curves to the right (Chord Bearing and Distance S 78°42'28" W 97.07 feet) to a point; thence, N 78°01'18" W, 96.91 feet to a point; thence, along a curve the radius of which is 14.00 feet and running thence with said curve the arc distance of 5.83 feet as it curves to the left (Chord Bearing and Distance N 89°57'13" W 5.79 feet) to a point; thence, S 78°06'52" W, 97.55 feet to a point; thence, along a curve the radius of

OFFICES IN:
Fayetteville
Raleigh

104 Gillespie St.
P.O. Box 103
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which is 128.00 feet and running thence with said curve the arc distance of 145.79 feet as it curves to the right (Chord Bearing and Distance N 69°15'21" W 138.04 feet) to a point; thence, N 36°37'35" W, 157.69 feet to a point; thence, N 31°54'28" W, 72.39 feet to a point; thence, along a curve the radius of which is 14.00 feet and running thence with said curve the arc distance of 26.77 feet as it curves to the left (Chord Bearing and Distance N 86°41'40" W 22.88 feet) to a point; thence, S 38°31'08" W, 106.56 feet to a point; thence, along a curve the radius of which is 134.00 feet and running thence with said curve the arc distance of 89.96 feet as it curves to the right (Chord Bearing and Distance S 57°45'08" W 88.28 feet) to a point; thence, S 76°59'08" W, 56.48 feet to a point on the western line of the tract of which this is a part; thence with said line, N 13°00'52" W, 50.00 feet to a point on the southern bank of Beaver Creek, and on the eastern bank of Fisher River; thence, N 13°00'52" W, 14.00 feet to a point in the new centerline of Beaver Creek, the **POINT OF BEGINNING**.

CONTAINING: 139,084 square feet or 3.19 acres of land, more or less.
Perimeter: 2411.06 feet

The intent is to describe a portion of a 128-foot easement, perpendicular and parallel to the new centerline of Beaver Creek. The easement is to be 64 feet each side of the centerline of said creek and is to affect the above-mentioned property at each point that the property touches the centerline of Beaver Creek.

This description was written from record information found in the Surry county court house, and information provided by others. The description is to be used for easement acquisition only and is not to be used for the transfer of title. No field survey was conducted to benefit this description.

02-08-02

Signature of Grantor: As Trustees under the Wayne L.Draughn Revocable Trust

Wayne L. Draughn (SEAL)
Wayne L. Draughn

Kay V. Draughn (SEAL)
Kay V. Draughn

STATE OF NORTH CAROLINA, COUNTY OF YADKIN

I, a Notary Public of the County and State aforesaid, do hereby certify that Wayne L. Draughn personally appeared before me this date and acknowledged the due execution of the foregoing document. WITNESS my hand and official stamp or seal, this 9th day of April, 2002.

Darlene S. Clark, Notary Public

My Commission Expires: February 15,2006

OFFICIAL SEAL
Notary Public - North Carolina
YADKIN COUNTY
DARLENE S. CLARK
My Commission Expires _____

STATE OF NORTH CAROLINA, COUNTY OF YADKIN

I, a Notary Public of the County and State aforesaid, do hereby certify that Kay V. Draughn personally appeared before me this date and acknowledged the due execution of the foregoing document. WITNESS my hand and official stamp or seal, this 9th day of April, 2002.

Darlene S. Clark, Notary Public

My Commission Expires: February 15,2006

OFFICIAL SEAL
Notary Public - North Carolina
YADKIN COUNTY
DARLENE S. CLARK
My Commission Expires _____

STATE OF NORTH CAROLINA, COUNTY OF SURRY

The foregoing or following certificate(s) of Darlene S. Clark, NP of Yadkin Co., NC

is (are) certified to be correct.

DENNIS W. "BUD" CAMERON
REGISTER OF DEEDS

BY: Josephine W. Hardy
Assistant-~~Deputy~~

FILED
SURRY COUNTY NC
05/20/2002 2:25 PM
DENNIS W. "BUD" CAMERON
Register Of Deeds

Signature of Grantor: Mac Thomas (SEAL)
Mac Thomas

Patty S. Thomas (SEAL)
Patty S. Thomas

STATE OF NORTH CAROLINA, COUNTY OF Yadkin :

I, a Notary Public of the County and State aforesaid, do hereby certify that Mac Thomas personally appeared before me this date and acknowledged the due execution of the foregoing document. WITNESS my hand and official stamp or seal, this 9th day of April, 2002.

Darlene S. Clark, Notary Public

My Commission Expires: February 15, 2006

OFFICIAL SEAL
Notary Public - North Carolina
YADKIN COUNTY
DARLENE S. CLARK
My Commission Expires _____

STATE OF NORTH CAROLINA, COUNTY OF Yadkin :

I, a Notary Public of the County and State aforesaid, do hereby certify that Patty S. Thomas personally appeared before me this date and acknowledged the due execution of the foregoing document. WITNESS my hand and official stamp or seal, this 9th day of April, 2002.

Darlene S. Clark, Notary Public

My Commission Expires: February 15, 2006

OFFICIAL SEAL
Notary Public - North Carolina
YADKIN COUNTY
DARLENE S. CLARK
My Commission Expires _____