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KATHERINE LEE PAYNE
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STATE OF NORTH CAROLINA
COUNTY OF GUILFORD
Prepared by and return to:
Marion Patrick, State Property Office,
Mail Service Center 1321
Raleigh, NC 27699-1321
SPO File # 041-AT
Benbow Park, Greensboro, NC

8/10

P|u Richardson

PERMANENT CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this 25 day of February, 2004, by the **City of Greensboro**, hereinafter known as the "City" or "Grantor", to the **State of North Carolina**, hereinafter known as the "State" or "Grantee". The terms Grantor and Grantee as used herein shall include said parties, their heirs, successors, assigns, lessees, agents and licensees and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of North Carolina General Statute §143-214.8 et seq., the State of North Carolina has established the Wetlands Restoration Program (as defined in North Carolina General Statute §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, pursuant to the provisions of North Carolina General Statute §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

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WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in the City of Greensboro, Guilford County, North Carolina, hereinafter known as **The Land**;

WHEREAS, Grantor is willing to grant a Conservation Easement to Grantee on and over a portion of The Land, thereby restricting and limiting the use of said 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, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Permanent Conservation Easement for the benefit of the people of North Carolina, of the nature and character and to the extent hereinafter set forth, over a portion of The Land, said portion hereinafter known as the **Protected Property**, and being more particularly described in Plat of Survey entitled Conservation Easement Exhibit for North Carolina Wetlands Restoration Program on the Property of the City of Greensboro-Benbow Park by Buck Engineering, 8000 Regency Parkway, Suite 200, Cary, NC 27511, 919-463-5488, dated September 2, 2003 and signed by William Kent, PLS (L-3708) showing a conservation easement totaling 4.320 acres within Benbow Park recorded in Plat Book 153 at Page 55, Guilford County Registry.

Conservation Area #1 being 2.793 acres on above referenced plat, PIN # 7873390136, Deed Book 780 at Page 387, Guilford County Registry.

Conservation Area #2 being 1.527 acres on above referenced plat, PIN# 7873190129, Deed Book 780 at Page 387, Guilford County Registry.

G. PURPOSE

The purpose of this Conservation Easement is to maintain, restore, enhance, and 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 restored 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:

II. 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. For purposes of this easement, **warranty period** is hereby defined as a five-year period beginning with the acceptance of the improvements by Grantee. During the warranty period, Grantee shall be solely responsible for project maintenance. However, Grantor may, at the discretion of the Grantee, participate in

maintenance activities. After the warranty period, Grantor may, at its sole discretion of Grantor, maintain the project in the same functional state as existed on the last day of the warranty period.

III. RESTRICTED ACTIVITIES

Upon completion of a constructed restoration project on the Protected Property, the Protected Property shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. The following specific uses are prohibited, restricted, or reserved as indicated:

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A. **Agricultural Use.** Agricultural use of the Protected Property including use for cropland, waste lagoons, or pastureland is prohibited.

B. **Industrial Use.** Industrial activities are prohibited on the Protected Property.

C. **Residential Use.** Residential use of the Protected Property is prohibited.

D. **Commercial Use.** Commercial activities are prohibited on the Protected Property.

E. **Subdivision.** Subdivision, partitioning, or dividing the Protected Property is prohibited.

F. **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.

H. **New Construction.** There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna utility pole, tower, conduit (excluding water and sewer lines and their appurtenances), line, pier landing, dock or any other temporary or permanent structure or facility on the Property, with the exception that the Grantee may construct and maintain such fences, benches, picnic tables, pedestrian and bicycle trails, bridges, boardwalks (including bridges or boardwalks over stream and wetland areas) related to the use of the Property as a natural area park and green way which is consistent with the protection of the conservation values of the Property.

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.

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K. **Water Quality and Drainage Patterns.** Diking, dredging, alteration, draining, filling or removal of wetland shall be limited to the extent necessary for the protection and well-being and safety of the general public, including property and the proper function of the Protected Property. Notwithstanding the above, Grantor reserves the right, but not the obligation, to undertake such activities as are designed to maintain, protect, enhance or restore natural drainage patterns or wetland values.

L. **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, and no change in the topography of the land in any manner on the Property, except to restore the natural topography or drainage patterns or as may be reasonably necessary for the purpose of combating erosion to maintain the wetland values and except for construction, replacement or maintenance of necessary crossings of the Property by utilities, pedestrian trails, and road ways including bridges or boardwalks, and the continuing maintenance of the foregoing.

M. **Vegetative Cutting.** Cutting, removal, mowing, harming, or destruction of any vegetation on the Protected Property by the Grantor shall be limited to the extent necessary for the protection, well-being and safety of Grantor, and Grantor's property, and for the protection, well-being and safety of the general public, including property and the proper functioning and maintenance of the Protected Property for its intended use.

M. **Utilities.** Through, over, under and across the Protected Properties, the following conditions shall apply:

1) All existing utility easements and facilities are exempt from the requirements described below.

2) Pipeline and utility line construction will be minimized to the greatest extent practicable.

3) All disturbed facilities; features and vegetation will be restored to their original condition. Due to the environmental sensitivity of the Protected Property, disturbed and removed vegetation in access areas, staging areas, constructed areas, excluding the permanent utility easement, will be replaced with herbaceous species such that the Protected Property achieves a rapid recovery from the disturbance. The permanent utility easement will be re-vegetated with suitable grass vegetation.

4) Corridor and clearing width for both crossings and parallel construction will be limited to the minimum necessary to construct the needed facilities, subject to line size, equipment size and work zone. The temporary construction easements will be re-vegetated with native herbaceous species at the completion of construction.

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5) Utility construction will minimize the disturbance of structures used for grade control, habitat and bank stabilization. If disturbance occurs in order to provide service, the structure will be restored to its original condition.

6) Permanent utility easement corridors will be minimized to the greatest extent practicable and are normally limited to thirty (30) feet in width depending upon pipeline size and depth. Exceptions, at the sole discretion of the City, to this limit are allowed in the usual cases of work to be done on very deeply buried utilities.

7.) Vegetative clearing and general construction disturbance will be minimized to the greatest extent practicable.

8) Crossings will be perpendicular whenever possible.

9) Crossings will be accomplished by drilling, boring and jacking methods where practicable. When crossings must be constructed using open trench excavation, temporary discharge of excavated or fill material will be minimized in both quantity and duration to the greatest extent practicable as determined by the City.

10) Erosion control devices shall be utilized to contain all disturbed materials and will conform to State requirements. Crossing of the waterway, wetland or other water feature will be accomplished in a timely manner such that environmental and flooding impact is minimized.

11) Depth of underground construction shall be to a sufficient depth to avoid future exposure due to scouring wherever possible.

12) Utilities constructed parallel to stream corridors will be a minimum of twenty (20) feet horizontally from the top of stream bank unless explicit exception is granted. The area between the utility and 20 feet wide area from the top of stream bank shall remain undisturbed except at crossings.

The Grantee, and authorized representatives of the Grantee, 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 except within permanent utility easements, 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. All grading and filling operations and use of heavy equipment in and across the permanent utility easements will require prior approval of the utility in order to ensure no damage is done to the utility facilities. 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 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.

IV. MAINTENANCE AND OTHER PERMISSIBLE ACTIVITIES

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A. The City, at the sole discretion of the City, may refrain from any and all maintenance if, in the belief of the City, a project initiated under this Agreement is progressing through a natural evolutionary succession that may or may not include vegetation, subterranean water, surface water and wildlife diversity.

B. Allowable actions by the City may include, but are not limited to, mowing in certain prescribed areas, blockage removal, debris removal, removal of excess vegetation, clearing of undesirable vegetation and nuisance species, replacement of dead or damaged vegetation, installation of flood control measures, installation or removal of any or all facilities should their function threaten the health and well being of the general public, maintenance of the creek drainage system to continue to provide flood management, and installation of greenway trails and boardwalks for public benefit and education.

C. In the event of a natural disaster or civil strife, Grantee during the warranty period and Grantor after the warranty period may elect to not restore a project initiated under this Agreement to a functional condition.

VI. MISCELLANEOUS

A. This Conservation Easement shall be construed to promote the purposes of North Carolina General Statute §143-214.8 et seq., the Wetlands Restoration Program.

B. This instrument sets forth the entire agreement of the parties with respect to the Permanent 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 Permanent 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 below or to other address(es) as either party establishes in writing upon notification to the other:

GRANTOR
City of Greensboro
Stormwater Management Division
P.O. Box 3136
Greensboro, NC 27402-3136

GRANTEE
State of North Carolina
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321
SPO File # 041-AT
Project name: Benbow Park

D. Grantor shall notify Grantee in writing of the name and address of 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.

E. The Covenants and Conditions of this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

VII. 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 those uses of the Protected Property that are 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 heirs, successors, assigns, 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.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board, the day and year first above written.

CITY OF GREENSBORO

Approved as to form
Assistant City Attorney

By: _____ (SEAL)

ATTEST: _____
CITY CLERK
2-24-04

ATTEST:

City Clerk

(SEAL)

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NORTH CAROLINA
Guilford COUNTY

I, a Notary Public of the County and State aforesaid, certify that Susan E. Crotts personally appeared before me this day and acknowledged that he/he is Deputy Clerk of the City of Greensboro, and that by authority duly given and as an act of the City, the foregoing instrument was signed by Keith A. Holliday, its Mayor, attested by himself/herself as Clerk, and sealed with the seal of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and official stamp or seal, this 25th day of February, 2004.

Elizabeth H. Richardson
Notary Public

My Commission Expires:

3-1-2005

OFFICIAL SEAL
ELIZABETH H. RICHARDSON
Notary Public
Randolph County, NC
My Commission

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KATHERINE LEE PAYNE, REGISTER OF DEEDS
GUILFORD COUNTY
201 SOUTH EUGENE STREET
GREENSBORO, NC 27402

* *

State of North Carolina, County of Guilford

The foregoing certificate of Elizabeth H. Richardson

A Notary (Notaries) Public is/are certified to be correct. This instrument and this certificate are duly registered at the date and time shown herein.

KATHERINE LEE PAYNE, REGISTER OF DEEDS

By: Deborah Johnson

Deputy - Assistant Register of Deeds

* *

This certification sheet is a vital part of your recorded document.
Please retain with original document and submit when re-recording.