Return: City of Durham
Engineering
Attn Lee Murphy

FOR REGISTRATION REGISTER OF DEEDS
WILLIE L. COVINGTON
DURHAM COUNTY, NC
2001 OCT 24 03:12:29 PM
BK:3238 PG:254-262 FEE:$22.00
INSTRUMENT # 2001047641

STATE OF NORTH CAROLINA
DURHAM COUNTY

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT DEED, is made this the 23RD day of October 2001, by and between the **CITY OF DURHAM**, a North Carolina municipal corporation, (hereinafter the "Grantor"), and the **State of North Carolina**, (hereinafter the 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 Patterson Township, Durham County, North Carolina (the "Protected Property"), and being more particularly described as that certain parcel of land identified as **TM – 464 -01-002** and being conveyed to the Grantor by deed recorded in **Deed Book 88 at Page 620** of the Durham 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 all of the tract of land as identified as shown on the attached map identified as "conservation easement area" and being more particularly described as follows:

See; Addendum "A" - Legal description of Conservation Easement
Addendum "B" - Map of Conservation Easement

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 except within the Sanitary Sewer outfall area described in O. below.
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.
O. **Sanitary Sewer outfall.** Grantor expressly reserves the right to operate, maintain, repair, and *perform all tasks necessary to operate the existing sewer outfall and the 40 foot strip of land that it*

is centered within. Operating includes but is not limited to mowing, pipe repair, pipe replacement, excavating, cleaning, and access with maintenance vehicles.

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.

ATTEST:

CITY OF DURHAM

City Clerk

By: Marcia L. Conner

City Manager

NORTH CAROLINA COUNTY OF Durham

I, LaVerne V. Brooks, a Notary Public in and for the County and State aforesaid, do hereby certify that Marcia L. Conner, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the 23rd day of October, 2001.

LaVerne V. Brooks

Notary Public

LAVERNE V. BROOKS NOTARY PUBLIC DURHAM COUNTY, N.C.

My commission expires: 6/25/2002

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

Vardup S. Gill 10/17/01

FINANCE OFFICER DATE

NORTH CAROLINA
DURHAM COUNTY

I, a notary public in and for said county and state, certify that D. Ann Gray personally appeared before me, and acknowledged that she is _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing Conservation Easement was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested by herself as its said City Clerk or Deputy City Clerk. This the 24th day of October, 2001.

My commission expires:

6/25/2002

LaVerne V. Brooks
Notary Public

NOTARY PUBLIC LAVERNE V. BROOKS DURHAM COUNTY, N.C.

The foregoing certificate of the following notary public,

_____,is certified to be correct.

This instrument and this certificate are duly registered at the date and time and in the Book and Page shown in the Register of Deeds' stamp on this instrument.

WILLIE COVINGTON, REGISTER OF DEEDS OF DURHAM COUNTY

By:_____

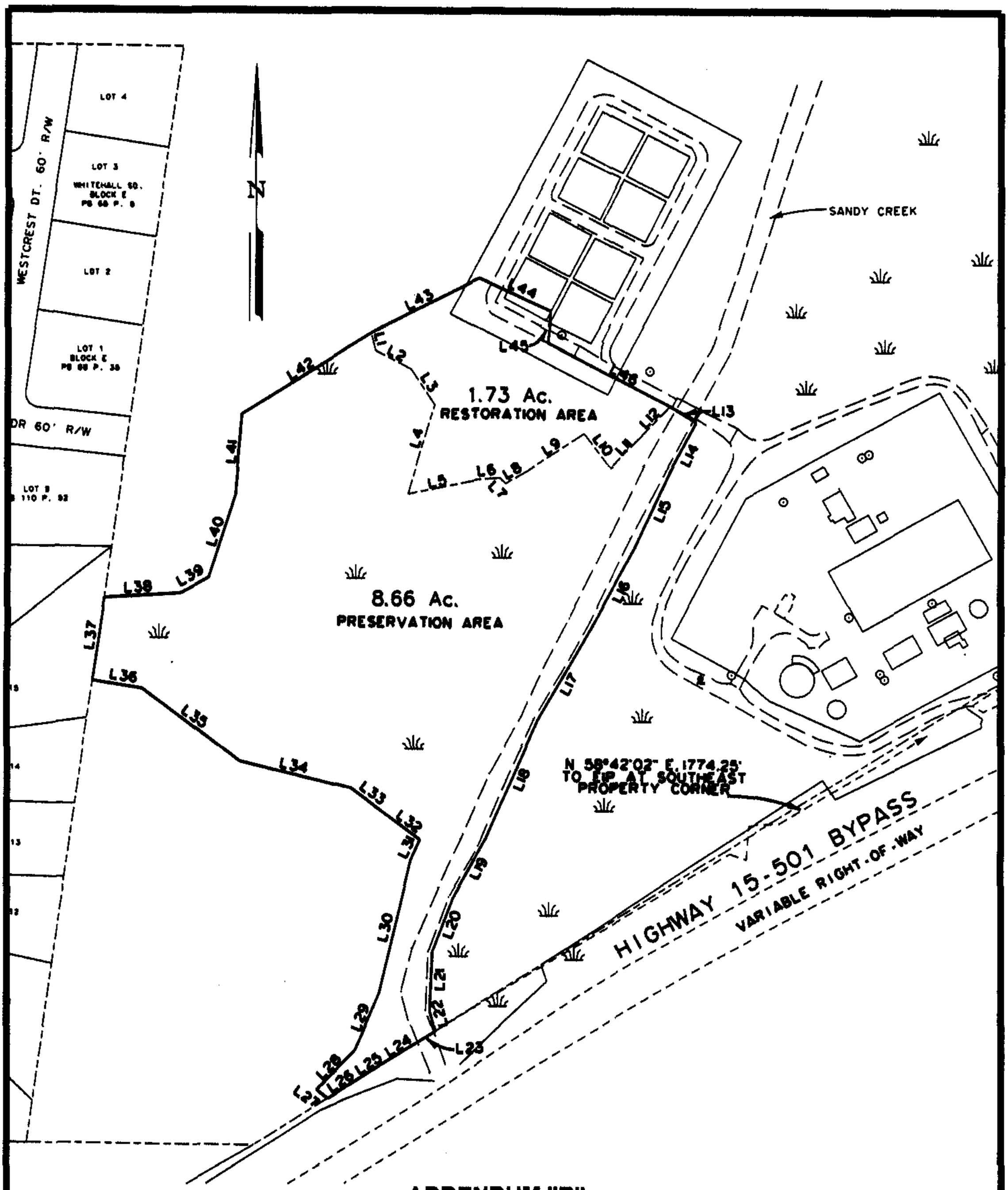
Deputy Register of Deeds

Addendum "A"

<u>Sandy Creek Conservation Easement Description</u>

Beginning at an iron pipe at the Southeast corner of the property owned by the City of Durham and recorded in deed book 88 page 620 of the Durham County Registry, said point also located on the Northern Right of Way of US 15-501; thence S 58° 42' 02" W 1774.25' to a point on the Northern Right of Way of Durham- Chapel Hill Boulevard, said point being the point and place of beginning and also being the beginning of a Conservation Easement; thence said easement runs the following courses and distances: S 57° 57' 55" W 33.24'; S 57°57' 55" W 56.93'; S 57°57' 54" W 42.33'; S 57°53' 39" W 56.66'; N 53° 17' 00" W 21.04'; N 44° 44' 09" E 81.11'; N 23° 06' 28" E 93.81'; N 13°12' 26" E 206.94'; N 24° 32' 58" E 32.72'; N 53° 57'35" W 75.10'; N 52° 38" 19" W 53.26'; N 76° 23' 45" W 171.77'; N 53° 18' 13" W 182.49'; N 81° 02' 36" W 75.36' to the Western property line; N 8° 03' 49" E 125.13' running with the Western property line; N 86° 15' 19" E 114.72'; N 61° 14' 44" E 47.96'; N 17° 47' 13" E 129.39'; N 4° 28'42" E 122.10'; N 57° 44' 01" E 228.55'; N 62° 50' 40" E 181.26'; S 65° 12' 39" E 117.79'; S 6° 00' 48" W 47.95'; S 62° 33' 03" E 205.04'; S 58° 10' 47" E 45.92'; S 27° 54' 36" W 86.34'; S 24° 33' 16" W 125.98'; S 28° 21' 51" W 126.14'; S 29° 27' 58" W 168.37'; S 23° 30' 18" 192.40'; S 28° 41' 53" W 103.26'; S 20° 33' 03" W 84.81'; S 2° 25' 22" W 88.16'; S 14° 39' 34" E 31.37 to the point and place of beginning and being a Conservation Easement containing 10.39 acres.

For further description see Addendum B, "Sandy Creek Conservation Easement".



ADDENDUM "B"
SANDY CREEK CONSERVATION EASEMENT

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

0 200 400 600 800 1000 1200

SCALE IN FEET

TRIANGLE TOWNSHIP, DURHAM COUNTY, NC

This map was prepared based on "Wetland Delineation Survey, Sandy Creek Wastewater Treatment Facility" a survey by Barbara H. Mulkey Eng. Inc., dated 12/1/1997, revised 12/5/1997.

Date : 8/2001

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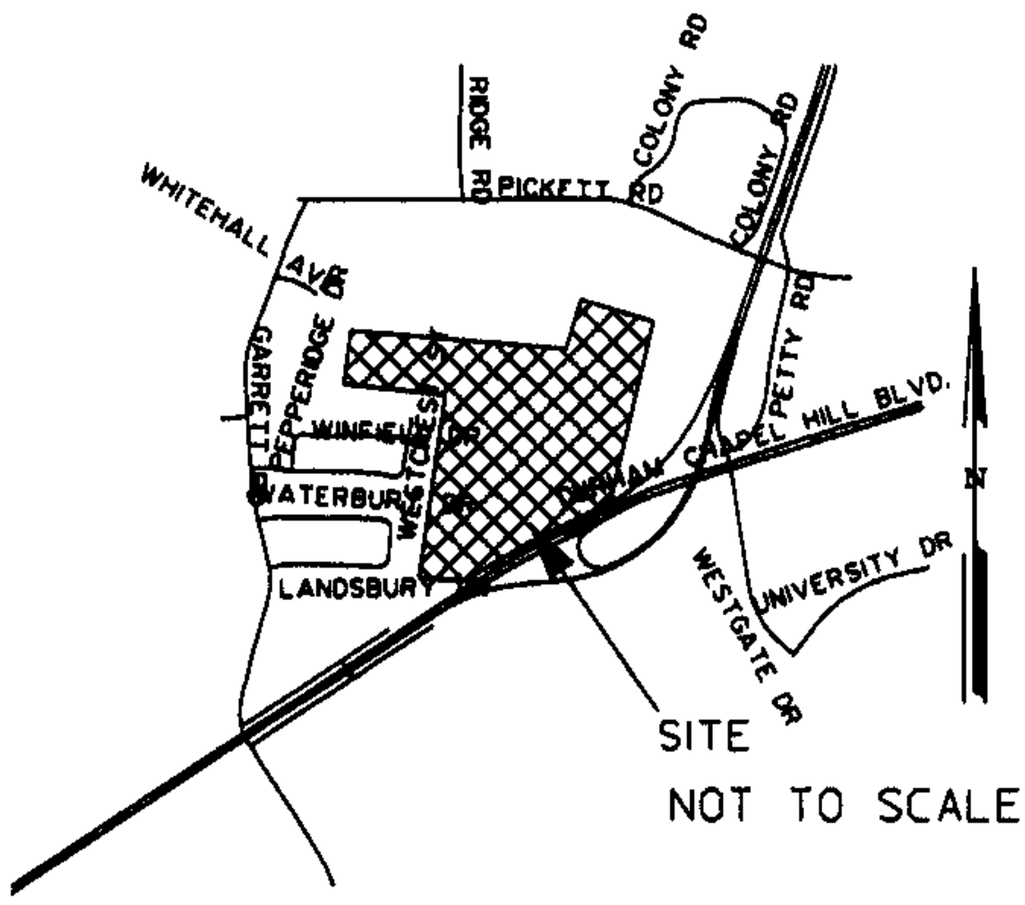
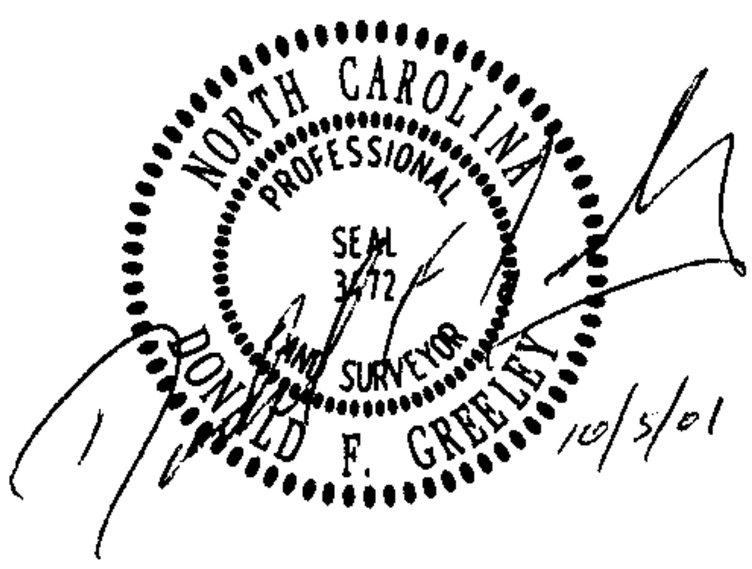
DURHAM

1 8 6 9
CITY OF MEDICINE

DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION
City of Durham
101 City Hall Plaza
Durham, N.C. 27701

VICINITY MAP





NUMBER	DIRECTION	DISTANCE
L1	N 13°30'57" W	27.24'
L2	N 62°49'14" W	60.09'
L3	N 33°47'56" W	63.95'
L4	N 16°38'23" E	139.99'
L5	S 78°03'50" W	102.56'
L6	S 84°48'21" W	36.25'
L7	N 44°30'50" W	12.38'
L8	S 59°03'52" W	38.52'
L9	S 56°31'20" W	100.94'
L10	N 37°31'36" W	64.74'
L11	S 43°34'45" W	64.59'
L12	S 43°34'45" W	63.14'
L13	N 58°10'47" W	45.92'
L14	N 27°54'36" E	86.34'
L15	S 24°33'16" W	125.98'
L16	S 28°21'51" W	126.14'
L17	N 29°27'58" E	168.37'
L18	N 23°30'18" E	192.40'
L19	N 28°41'53" E	103.26'
L20	N 20°33'03" E	84.81'
L21	N 02°25'22" E	88.16'
L22	N 14°39'34" W	31.37'
L23	N 57°57'55" E	33.24'
L24	N 57°57'55" E	56.93'
L25	N 57°57'54" E	42.33'
L26	N 57°53'39" E	56.66'
L27	S 53°17'00" E	21.04'
L28	S 44°44'09" W	81.11'
L29	S 23°06'28" W	93.81'
L30	S 13°12'26" W	206.94'
L31	S 24°32'58" W	32.72'
L32	S 53°57'35" E	75.10'
L33	S 52°38'19" E	53.26'
L34	S 76°23'45" E	171.77'
L35	S 53°18'13" E	182.49'
L36	S 81°02'36" E	75.36'
L37	S 08°03'49" W	125.13'
L38	S 86°15'19" W	114.72'
L39	S 61°14'44" W	47.96'
L40	S 17°47'13" W	129.39'
L41	S 04°28'42" W	122.10'
L42	S 57°44'01" W	228.55'
L43	N 62°50'40" E	181.26'
L44	S 65°12'39" E	117.79'
L45	S 06°00'48" W	47.95'
L46	S 62°33'03" E	205.04'

ADDENDUM "B"
SANDY CREEK CONSERVATION EASEMENT

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

TRIANGLE TOWNSHIP, DURHAM COUNTY, NC

This map was prepared based on "Wetland Delineation Survey, Sandy Creek Wastewater Treatment Facility" a survey by Barbara H. Mulkey Eng. Inc., dated 12/1/1997, revised 12/5/1997.

Date : 8/2001

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DURHAM

1 8 6 9
CITY OF MEDICINE

DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION
City of Durham
101 City Hall Plaza
Durham, N.C. 27701

WILLIE L. COVINGTON
REGISTER OF DEEDS , DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

****

Filed For Registration: **10/24/2001 03:12:29 PM**

Book: **RE 3238 Page: 254-262**

Document No.: **2001047641**

EASE 9 PGS $22.00

Recorder: **SHARON DAVIS**

****

State of North Carolina, County of Durham

The foregoing certificate of LAVERNE V BROOKS Notary is certified to be correct. This 24TH of October 2001

WILLIE L. COVINGTON , REGISTER OF DEEDS

By: Sharon A Davis

Deputy/Assistant Register of Deeds

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2001047641