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by Elizabeth R. Roupe
Register of Deeds
Elizabeth Rowes Roupe

STATE OF NORTH CAROLINA

ALLEGHANY COUNTY

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT DEED, made this 6th day of January, 2000, by and between Eva Sue Wagoner, 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 duly approved by the Governor and Council of State by resolution adopted at a meeting held in the City of _____, North Carolina, on the _____ day of _____, 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 properties situated, lying, and being in Glade Creek Township, Alleghany County, North Carolina (the "Protected Property"), being more particularly described as those certain parcels of land located approximately 0.9 mile Norhwest from the intersection of SR 1444 and SR 1454, being bounded on the East, and South by Brush Creek, and being conveyed to the Grantor by **deeds recorded in Deed Book 72 at Page 333, and Deed Book 84 at Page 207 of the Alleghany 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 that certain tract of land containing 2.89 acres as identified as "Tract #1", shown on a plat of survey entitled "Property of A. Anderson Huber and wife, Frances R. Huber and Eva Sue Wagoner" dated November 5, 1999, certified by W. Kevin Dowell, PLS-3695, and **recorded in Map Book _____, Page _____, Alleghany County Registry.** "Tract #1" being more particularly described as follows:

Beginning on a 5/8" Rebar set, said rebar being located North 55° 12' 20" East 90.78 feet from an existing Marked 14" Maple on West bank of Brush Creek and running thence South 48° 21' 30" East 82.20 feet to a point in the center of Brush Creek, said point being located North 48° 21' 30" West 76.38 feet from a 5/8" Rebar set, and running thence with the Center of Brush Creek and A. Anderson Hubers' line the following thirtynine (39) courses and distances: (1) North 03° 22' 40" East 41.51 feet: (2) North 32° 13' 25" East 128.72 feet: (3) North 10° 53' 12"

West 86.10 feet: (4) North 06° 02' 40" East 74.32 feet: (5) North 38° 20' 34" East 53.71 feet: (6) North 45° 56' 20" East 170.63 feet: (7) North 72° 58' 30" East 129.77 feet: (8) North 56° 27' 35" East 68.37 feet: (9) North 33° 37' 32" West 70.44 feet: (10) North 10° 29' 54" West 50.13 feet: (11) North 21° 25' 02" East 58.81 feet: (12) North 33° 35' 01" East 111.81 feet: (13) North 59° 58' 31" East 77.88 feet: (14) North 38° 35' 12" East 68.57 feet: (15) North 31° 17' 52" East 87.10 feet: (16) North 02° 46' 56" West 48.04 feet: (17) North 08° 38' 45" West 70.85 feet: (18) North 16° 58' 38" West 60.81 feet: (19) North 29° 27' 12" West 56.46 feet: (20) North 44° 34' 31" West 64.80 feet: (21) North 62° 15' 03" West 45.54 feet: (22) South 74° 50' 19" West 93.45 feet: (23) South 71° 01' 45" West 52.94 feet: (24) North 75° 50' 16" West 57.49 feet: (25) North 58° 33' 43" West 40.32 feet: (26) North 16° 14' 03" West 39.31 feet: (27) North 14° 28' 29" East 33.45 feet: (28) North 59° 13' 21" East 44.38 feet: (29) North 68° 15' 26" East 71.90 feet: (30) North 34° 32' 03" East 54.07 feet: (31) North 03° 58' 10" East 38.49 feet: (32) North 30° 22' 20" West 24.14 feet: (33) North 64° 45' 24" West 107.01 feet: (34) North 68° 13' 00" West 79.56 feet: (35) North 58° 45' 56" West 119.58 feet: (36) North 53° 35' 37" West 120.62 feet: (37) North 50° 43' 13" West 109.75 feet: (38) North 54° 41' 45" West 82.81 feet: (39) North 58° 36' 25" West 96.60 feet, said point being located South 27° 50' 23" West 65.81 feet from a 5/8" Rebar set on the North Band of Brush Creek; thence leaving Brush Creek and running thence South 27° 50' 23" West 37.29 feet to a 5/8" Rebar set; thence South 60° 33' 42" East 115.39 feet to a 5/8" Rebar set; thence South 50° 42' 37" East 124.63 feet to a 5/8" Rebar set; thence South 49° 26' 04" East 93.06 feet to a 5/8" Rebar set; thence South 56° 56'14" East 151.47 feet to a 5/8" rebar set; thence South 61° 58' 28" East 137.86 feet to a 5/8" Rebar set; thence South 64° 14' 54" East 78.12 feet to a 5/8" Rebar set; thence 53° 02' 26" West 159.17 feet to a 5/8" Rebar set; thence South 01° 47' 25" West 112.57 feet to a 5/8" Rebar set; thence South 49° 12' 48" East 80.32 feet to a 5/8" Rebar set; thence North 89° 00' 12" East 250.49 feet to a 5/8" Rebar set; thence South 20° 36' 56" East 145.40 feet to a 5/8" Rebar set; thence South 07° 33' 34" West 96.83 feet to a 5/8" Rebar set; thence South 33° 54' 11" West 74.81 feet to a 5/8" Rebar set; thence South 47° 06' 42" West 107.23 feet to a 5/8" Rebar set; thence South 35° 00' 00" West 85.02 feet to a 5/8" Rebar set; thence South 14° 50' 47' West 103.87 feet to a 5/8" Rebar set; thence South 04° 45' 45" East 99.44 feet to a 5/8" Rebar set; thence South 71° 40' 22" West 152.00 feet to a 5/8" Rebar set; thence South 49° 16' 59" West 157.75 feet to a 5/8" Rebar set; thence South 27° 11' 22" West 117.92 feet to a 5/8" Rebar set; thence South 02° 13' 59" West 123.57 feet to a 5/8" rebar set; thence South 40° 07' 02" West 89.27 feet to a 5/8" Rebar set; thence South 18° 18' 35" West 51.55 feet to the BEGINNING, containing 2.89 acres, by coordinate geometry, as surveyed by W. Kevin Dowell, P.L.S., L-3695, on November 5, 1999, and being a portion of the lands as conveyed to Eva Sue Wagoner by Deeds recorded in Db. 72, Pg. 333, and Db. 84, Pg. 207.

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 the Grantor, its 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 on, 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.** The Grantor expressly reserves the right to undeveloped recreational uses, including hunting, hiking, and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles on 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. The 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. The 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

The 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' 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.

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

Eva Sue Wagoner (SEAL)

NORTH CAROLINA COUNTY OF Alleghany

I, Michelle H. Combs, a Notary Public in and for the County and State aforesaid, do hereby certify that Eva Sue Wagoner, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITHNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the 6th day of January, 2000.

Michelle H. Combs
Notary Public

My commission expires:

2-19-02

MICHELLE H. COMBS
NOTARY
***
PUBLIC
ALLEGHANY COUNTY, N.C.

NORTH CAROLINA - ALLEGHANY COUNTY
The foregoing certificate (s) of
Michelle H. Combs Notary Public
Alleghany Co., NC
is (are) certified to be correct.
LIZABETH REEVES ROUPE
By Lizabeth Reeves Roupe
Assistant/Deputy