Doc ID: 007180150012 Type: CRP
Recorded: 06/13/2007 at 04:34:36 PM
Fee Amt: $52.00 Page 1 of 12
Excise Tax: $5.00
Alamance, NC
DAVID J.P. BARBER REGISTER OF DEEDS
BK 2583 PG 803-814

Stps - $5.00

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

ALAMANCE COUNTY
SPO File Number: 001-AAAC
Prepared by: Office of the Attorney General
Property Control Section:
~~Return to~~: NC Department of Administration
State Property Office : Blane Rice
1321 Mail Service Center
Raleigh, NC 27699-1321

Prepared By and Mail To.
HOLT, LONGEST, WALL & BLAETZ, PLLC
P. O. DRAWER 59
Burlington, NC 27216

THIS CONSERVATION EASEMENT DEED, made this 11th day of June, 2007, by **Charles R. Cheek** (life estate), whose mailing address is **9170 Walking Horse Trail, Liberty NC 27298,** and each individual owner holding an undivided interest in the entire property, **Charles Wade Cheek and wife, Julie D. Cheek**, whose mailing address is **9170 Walking Horse Trail, Liberty, NC 27298, Deborah Ferguson Staley and husband Mitchell Staley** , whose mailing address is **P.O. Box 334, Liberty NC 7298, Vanda C. Reitzel (single),** whose mailing address is **9109 Walking Horse Trail, Liberty, NC 27298** and **Linda C. Collins and husband, James L. Collins,** whose mailing address is **5556 Friendship –Patterson Mill Rd. Burlington, NC 27215, ("Grantors")** to the **State of North Carolina**, ("**Grantee**"), whose mailing address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The designations Grantors 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 (formerly known as the Wetlands Restoration Program) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving 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 State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

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WHEREAS, the Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; 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 entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina was 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, Grantors collectively own in fee simple certain real property situated, lying, and being in **Patterson** Township, **Alamance County**, North Carolina (the "**Property**"), and being more articularly described as that certain parcel of land containing approximately 121 acres and being conveyed to the Grantor by deed as recorded in **Deed Book 1264 at Page 592** of the Alamance County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. This Conservation Easement shall be for the protection and benefit of the waters of Greenbrier Creek.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantors 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 described area of the 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 **0.52** acres on a plat of survey entitled "**Conservation Easement for NC Ecosystem Enhancement Program" dated 07/21/06, certified by Douglas R.Yarbrough, Professional Land Surveyor, PLS L-3395 and recorded in Map Book 71, Page 176, Alamance County Registry**. Being more particularly described as follows:

A certain easement of land in Patterson Township, Alamance County, North Carolina and being more particularly described as follows:

Beginning at a new iron pipe on the western bank of Greenbrier Creek in the Line of Jerrold L. Murchison, running thence with said Murchison N 87°11'37" E 38.51' to a point in the center of Greenbrier Creek; thence down the center of the creek with Jerrold L. Murchison the following: S 48°39'09" E 46.92', S 79°49'44" E 27.34', N 68°18'32" E 38.22', S 46°25'03" E 54.12', S 15°15'09" W 47.19', S 33°17'31" E 73.83', S 67°44'43" W 51.59', S 24°48'33" E 76.92', S 78°38'44"E 21.93' to a point in the center of Greenbrier Creek a corner with Michelle S. Lanzer and Ramon V. Macapagal; thence with said Macapagal S 74°38'50" W 53.29' to a new iron pipe in said Macapagal's line; thence a new line across Charles Robert Cheek N 30°08'51" W 314.73' to the point and place of beginning and containing 0.52 acre more or less as surveyed by Douglas R. Yarbrough dated July 21, 2006 and revised October 03, 2006 and recorded in the Alamance County Register of Deeds in Plat Book 71 Page 176.

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the Easement Area that contribute 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 Grantors, their personal representatives, heirs, successors, and assigns, lessees, agents, and licensees.

II. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

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 Grantors is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantors have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

A. **Recreational Uses.** Grantors expressly reserve the right to undeveloped recreational uses, including hiking, bird watching, hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

B. **Educational Uses.** The Grantors reserve the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the Easement Area for such purposes including organized educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.

C. **Vegetative Cutting.** Except as related to the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

D. **Industrial, Residential and Commercial Uses.** All are prohibited in the Easement Area.

E. **Agricultural Use.** All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.

F. **New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

G. **Roads and Trails.** There shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area may be maintained by

Grantors in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

H. 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 Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Easement Area may be allowed.

I. Dumping or Storing. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

J. 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.

K. Water Quality and Drainage Patterns. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. Subdivision and Conveyance. Grantors voluntarily agree that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of ingress, egress, and regress over and across the Property to the Easement Area for the purposes set forth herein.

M. Development Rights. All development rights are removed from the Easement Area and shall not be transferred.

N. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantors is prohibited.

The Grantors 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 Grantors shall not vary from the above restrictions without first obtaining written approval from the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. GRANTEE RESERVED USES

A. Ingress, Egress, Regress and Inspection. The Grantee, its employees and agents, successors and assigns, receive the perpetual right of general ingress, egress, and regress to the Easement Area over the Property at reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

B. Restoration Activities. 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.

IV. ENFORCEMENT AND REMEDIES

V.

A. Enforcement. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantors, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantors and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

B. Inspection. The Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantors, their successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

C. Acts Beyond Grantors' Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantors, their successors or assigns, for any injury or change in the

Easement Area caused by third parties, resulting from causes beyond the Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantors under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

D. Costs of Enforcement. Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantors, their successors or assigns, including, without limitation, any costs of restoration necessitated by Grantors' acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantors.

Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

V. MISCELLANEOUS

A. 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.

B. 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.

C. Grantors shall notify Grantee in writing of the name and address and any party to whom the 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 Property is conveyed subject to the Conservation Easement herein created.

D. The Grantors and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof.

E. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement.

F. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

VI. QUIET ENJOYMENT

Grantors reserve all remaining rights accruing from ownership of the 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 Grantors expressly reserve to the Grantors, and the Grantors' 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 the State of North Carolina for the aforesaid purposes.

AND Grantors covenant that Grantors are collectively seized of said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same is free from all encumbrances except as those as noted on attached Exhibit "A", and that Grantors will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the Grantors have hereunto set their hand and seal, the day and year first above written.

Grantor:

Charles R. Cheek

Charles R. Cheek

NORTH CAROLINA
COUNTY OF Alamance

I, Frances C. Matthews, a Notary Public in and for the County and State aforesaid, do hereby certify that Charles R. Cheek, 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 Notary Seal this the 11 day of June, 2007.

Frances C. Matthews

Notary Public Frances C. Matthews

My commission expires:

April 1, 2011

Grantor:

Vanda C. Reitzel (SEAL)
Vanda C. Reitzel

NORTH CAROLINA
COUNTY OF Alamance

I, Frances C. Matthews, a Notary Public in and for the County and State aforesaid, do hereby certify that Vanda C. Reitzel,

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 Notary Seal this the 11 day of June, 2007.

Frances C. Matthews
Notary Public Frances C. Matthews

My commission expires:

April 1, 2011

Grantor:

Charles Wade Cheek (Seal)
Charles Wade Cheek

Julie D Cheek (Seal)
Julie D. Cheek

NORTH CAROLINA
COUNTY OF Alamance

I, Frances C. Matthews, a Notary Public in and for the County and State aforesaid, do hereby certify that Charles Wade and wife Julie D. Cheek, 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 Notary Seal this the 11 day of June, 2007.

Frances C. Matthews
Notary Public Frances C. Matthews

My commission expires:
April 1, 2011

Grantor:

Deborah Ferguson Staley (Seal)
Deborah Ferguson Staley

Mitchell Staley (Seal)
Mitchell Staley (husband)

NORTH CAROLINA
COUNTY OF Alamance

I, Frances C. Matthews, a Notary Public in and for the County and State aforesaid, do hereby certify that Deborah Ferguson and husband Mitchell Staley, 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 Notary Seal this the 11 day of June, 2007.

Frances C. Matthews
Notary Public Frances C. Matthews

My commission expires:

April 1, 2011

Grantor:

Linda C. Collins (Seal)
Linda C. Collins

James L. Collins (Seal)
James L. Collins (husband)

NORTH CAROLINA
COUNTY OF Alamance

I, Frances C. Matthews, a Notary Public in and for the County and State aforesaid, do hereby certify that Linda C. and husband James L. Collins, 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 Notary Seal this the 11 day of June, 2007.

Frances C. Matthews
Notary Public Frances C. Matthews

My commission expires:

April 1, 2011

Exhibit A

Deed of Trust from Charles R. Cheek, Charles Wade Cheek, Deborah C. Ferguson, William C. Reitzel, Jr. and Vanda C. Reitzel, James L. Collins and Linda C. Collins to William H. Flowe, Jr. as Trustee for North Central Farm Credit, ACA dated 2-25-99 at 1:17 PM in Book 1264 and Page 595 in the amount of $82,200.00 (maximum amount of $200,000.00). Modification Agreement in Book 2087 and Page 417.

Deed of Trust in Book 357 at page 323 is not cancelled of record but has expired pursuant to N.C.G.S. 45-37 (b)(2).

Legal description on the Deeds conveying the subject property to current owners is old and uncertain as to the southeast corner of the subject property which is the location of proposed conservation easement.

2007 Alamance County ad valorem property taxes are a lien on the subject property.

Deferred Alamance County ad valorem property taxes for 2004-2007.

Distribution Line Easement to Randolph Electric Membership Corporation in Book 2540 at Page 978.

Grantor Initials:

C.R.C	C.W.C
V.C.R.	JLC
DCFS	LC
D.M.S.	JPC.