FOR REGISTRATION JUDITH A GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
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INSTRUMENT # 2003005103

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

MECKLENBURG COUNTY

Prepared by and return to:
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, made this 25th day of November 2002, by and between Mary Ewart Cato, William Ewart Cato and wife, Shelia S. Cato, John H. Cato and wife, Linda P. Cato **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 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, the Grantors own in fee simple certain real property situated, lying, and being in Huntersville Township, Mecklenburg County, North Carolina (the "Protected Property"), and being more particularly described as that certain parcel of land being located at 12920 Huntersville-Concord Road, Huntersville, NC 28078; and

WHEREAS, Grantors are 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.

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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 portion of the Protected Property, referred to hereafter as the Easement Area, for the benefit of the people of North Carolina, and being the tract of land being more particularly described as follows:

Starting at a point in an unnamed stream located on the northwestern property line of the parent tract and running thence in a southerly direction in a corridor extending 60 feet from both sides of the centerline of an unnamed stream and running as the stream meanders, thereby ending at the point where said stream flows into Clark Creek. Stream conservation easement shall be configured such as shown in the document known as "**Restoration Report, Cato Farm Stream Restoration Project**" as prepared for the NC Wetlands Restoration Program by CH2MHILL, S. Paige Baker, Professional Engineer, dated July 25, 2002. The parties to this conservation easement further agree that the above description may be amended with a more particular description to be furnished from the "as built" survey provided by the NC Wetlands Restoration Program within one year from the date of execution of this document.

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. Grantor reserves the right to mow and maintain inside easement along the fence line within a 10' wide area running along the entire length of the fence.
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. **Crossings:** Two crossings shall be allowed, reserved and built for Grantor as shown on the "**Restoration Report, Cato Farm Stream Restoration Project**" as prepared by **CH2M**HILL, S. Paige Baker, Professional Engineer, dated July 25, 2002. Also Reserved to Grantor is the right for one future crossing of the unnamed stream as duly authorized and approved by the Mecklenburg Soil and Water District.

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

1) All existing or proposed utility easements are exempt from the requirements as previously set forth and are permissible under the conditions as follows:

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.

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. Vegetative clearing and general construction disturbance will be minimized to the greatest extent possible.

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,

Mary Ewart Cato by (SEAL)
Mary Ewart Cato
William Ewart Cato, POA

William Ewart Cato (SEAL)
William Ewart Cato

Shelia S. Cato (SEAL)
Shelia S. Cato

John H. Cato (SEAL)
John H. Cato

Linda P. Cato (SEAL)
Linda P. Cato

NORTH CAROLINA COUNTY OF Mecklenburg

I, Linda P. Jordan, a Notary Public in and for the County and State aforesaid, do hereby certify that William Ewart Cato, POA for Mary Ewart Cato, 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 25th day of November, 2002.

Linda P. Jordan
Notary Public

My commission expires:

December 22, 2002

NORTH CAROLINA COUNTY OF Mecklenburg

I, Linda P. Jordan, a Notary Public in and for the County and State aforesaid, do hereby certify that William Ewart Cato & Stella S. Cato, 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 25th day of November, 2002.

Linda P. Jordan
Notary Public

My commission expires:

December 22, 2002

NORTH CAROLINA COUNTY OF Mecklenburg

I, Linda P. Jordan, a Notary Public in and for the County and State aforesaid, do hereby certify that John H. Cato & Linda P. Cato, 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 25th day of November, 2002.

Linda P. Jordan
Notary Public

My commission expires:

December 22, 2002