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ROWAN County
Real Estate Excise Tax
ID. 9808

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

ROWAN COUNTY
SPO File Number 80-U
Prepared by: Office of the Attorney General
Property Control Section
Return to: Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, made this 18th day of October, 2005, by Helen K. Hill, Jerry Lee Hill and Brenda C. Hill ("**Grantor**"), with a mailing address of 570 Hill Farm Road, Gold Hill, NC 28071, 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 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 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

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

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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, Grantor owns in fee simple certain real property situated, lying, and being in Morgan Township, Rowan County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately 42.48 acres and being conveyed to the Grantor by deed as recorded in **Deed Book 1024 at Page 001** of the Rowan 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 ***Dutch Second Creek.***

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 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 as Tract "1" as shown on a plat of survey entitled "Conservation Easement Survey for The LandTrust for Central North Carolina" dated May 31, 2005, certified by Riley O. Gobble, Jr., PLS L-3750, and **recorded in Map Book 9995, Page 5484,** Rowan County Registry. Tract "1" being legally described in Exhibit "A," attached hereto and incorporated by this reference.

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 Grantor, their personal representatives, heirs, successors, and assigns, lessees, agents, and licensees.

II. GRANTOR 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 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 Grantor reserves 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 Grantor 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. No further subdivision, partitioning, or dividing of the Easement Area is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future conveyance of the remaining fee simple rights shall be subject to this Conservation Easement. Grantor agrees for itself, its successors and assigns, that in the event it transfers the Property, or any portion thereof, such transfer 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 Grantor is prohibited.

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 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

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 Grantor, 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 Grantor 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 Grantor, their successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

C. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor, their successors or assigns, for any injury or change in the Easement Area caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor 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 Grantor, their successors or assigns, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

E. **No Waiver.** 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. Grantor 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 Grantor 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 a 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

Grantor reserves 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 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.

Exhibit "A"
Legal Description

BEGINNING at a ¾ inch iron pipe in the northern line of Paul P. Johnson, III (now or formerly)(Deed Book 623 Page 520) and a common corner with Trexler Trucking, Inc. (now or formerly) (Deed Book 650 Page 336); said beginning point having North Carolina Grid Coordinates (NAD 83) of: Y (Northing)= 663900.81 feet and X (Easting)= 1597627.26 feet; thence from said beginning point with the line of Paul P. Johnson, III (now or formerly), South 89 degrees 54 minutes 10 seconds West a total of 87.32 feet to a point in the centerline of a branch, passing a ¾ inch iron pipe at 62.93 feet; thence with four lines along the center of said branch and with the line of Yadkin, Inc. (now or formerly)(Deed Book 870 Page 898 parcel 17) as follows: (1) North 24 degrees 43 minutes 39 seconds West 24.80 feet to a point in the center of the branch; (2) North 66 degrees 51 minutes 17 seconds West 64.60 feet to a point in the center of the branch; (3) North 81 degrees 05 minutes 08 seconds West 46.25 feet to a point in the center of the branch; (4) South 88 degrees 43 minutes 45 seconds West 36.03 feet to a point in the center of the branch on the 655 feet contour line (Alcoa Power Generating Inc. datum); thence 55 calls with the 655 feet contour line (Alcoa Power Generating Inc. datum) and the eastern bank of Dutch Second Creek as follows: (1) North 16 degrees 18 minutes 40 seconds West 23.35 feet to a point; (2) North 60 degrees 55 minutes 44 seconds West 27.42 feet to a point; (3) North 79 degrees 43 minutes 05 seconds West 24.34 feet to a point; (4) North 66 degrees 34 minutes 21 seconds West 27.40 feet to a point; (5) North 87 degrees 52 minutes 47 seconds West 13.24 feet to a point; (6) North 59 degrees 08 minutes 56 seconds West 12.43 feet to a point; (7) North 27 degrees 25 minutes 51 seconds West 40.04 feet to a point; (8) North 03 degrees 23 minutes 58 seconds West 25.10 feet to a point; (9) North 30 degrees 15 minutes 29 seconds West 26.93 feet to a point; (10) North 18 degrees 21 minutes 55 seconds West 27.52 feet to a point; (11) North 05 degrees 57 minutes 08 seconds East 39.53 feet to a point; (12) North 53 degrees 32 minutes 29 seconds East 29.82 feet to a point; (13) North 71 degrees 37 minutes 57 seconds East 29.84 feet to a point; (14) North 57 degrees 06 minutes 33 seconds East 17.69 feet to a point; (15) North 30 degrees 07 minutes 43 seconds East 49.05 feet to a point; (16) North 34 degrees 55 minutes 51 seconds East 137.87 feet to a point; (17) North 47 degrees 58 minutes 29 seconds East 42.07 feet to a point; (18) North 61 degrees 43 minutes 09 seconds East 77.32 feet to a point; (19) North 64 degrees 48 minutes 55 seconds East 111.63 feet to a point; (20) North 61 degrees 13 minutes 55 seconds East 40.46 feet to a point; (21) North 65 degrees 10 minutes 51 seconds East 26.79 feet to a point; (22) North 44 degrees 12 minutes 03 seconds East 24.26 feet to a point; (23) North 34 degrees 35 minutes 10 seconds East 21.78 feet to a point; (24) North 31 degrees 04 minutes 35 seconds West 21.54 feet to a point; (25) North 07 degrees 04 minutes 57 seconds West 41.06 feet to a point; (26) North 61 degrees 05 minutes 47 seconds West 53.66 feet to a point; (27) North 81 degrees 34 minutes 01 seconds West 24.79 feet to a point; (28) South 64 degrees 22 minutes 27 seconds West 27.08 feet to a point; (29) South 83 degrees 33 minutes 51 seconds West 30.78 feet to a point; (30) South 54 degrees 49 minutes 49 seconds West 34.95 feet to a point; (31) South 89 degrees 47 minutes 22 seconds West 37.90 feet to a point; (32) North 56 degrees 21 minutes 45 seconds West 26.46 feet to a point; (33) North 13 degrees 54 minutes 03 seconds West 57.86 feet to a point; (34) North 12 degrees 29 minutes 12 seconds East 41.27 feet to a point; (35) North 39 degrees 07 minutes 36 seconds East 59.81 feet to a point; (36) North 46 degrees 13 minutes 28 seconds East 56.20 feet to a point; (37) North 06 degrees 57 minutes 18 seconds East 53.90 feet to a point; (38) North 10 degrees 08 minutes 18 seconds West 33.77 feet to a point; (39) North 31 degrees 22 minutes 39 seconds West 63.83 feet to a point; (40) North 45 degrees 38 minutes 14 seconds West 48.67 feet to a

point; (41) North 17 degrees 29 minutes 56 seconds East 61.13 feet to a point; (42) North 30 degrees 40 minutes 37 seconds East 32.32 feet to a point; (43) North 45 degrees 58 minutes 06 seconds East 29.73 feet to a point; (44) North 30 degrees 34 minutes 36 seconds East 88.37 feet to a point; (45) North 22 degrees 18 minutes 16 seconds East 103.96 feet to a point; (46) North 33 degrees 58 minutes 18 seconds East 80.21 feet to a point; (47) North 24 degrees 25 minutes 17 seconds East 48.46 feet to a point; (48) North 15 degrees 01 minutes 00 seconds East 83.85 feet to a point; (49) North 26 degrees 20 minutes 48 seconds East 70.82 feet to a point; (50) North 38 degrees 24 minutes 38 seconds East 96.98 feet to a point; (51) North 38 degrees 27 minutes 41 seconds East 86.58 feet to a point; (52) North 46 degrees 04 minutes 31 seconds East 75.76 feet to a point; (53) North 43 degrees 48 minutes 44 seconds East 59.37 feet to a point; (54) North 12 degrees 25 minutes 59 seconds East 54.60 feet to a point; (55) North 03 degrees 03 minutes 50 seconds East 24.63 feet to a point on the east bank of Dutch Second Creek and on the 655 feet contour (Alcoa Power Generating Inc. datum), corner of Lunda H. Eller (now or formerly)(Deed Book 898 Page 643); thence with Lunda H. Eller, North 36 degrees 30 minutes 49 seconds East 18.09 feet to a ¾ inch iron pipe in the line of Lunda H. Eller; thence a new easement line South 32 degrees 08 minutes 58 seconds East 397.64 feet to a 1½ inch iron pipe, a corner of Glenn V. Trexler, Jr. (now or formerly)(Deed Book 295 Page 250 and Deed Book 428 Page 513); thence with Glenn V. Trexler, Jr., South 02 degrees 27 minutes 19 seconds West 263.95 feet to an axle, common corner with Glenn V. Trexler, Jr. and Larry Dean Lyerly (now or formerly)(Deed Book 892 Page 285); thence three lines with Larry Dean Lyerly as follows: (1) South 03 degrees 05 minutes 35 seconds West 135.33 feet to a 1½ inch iron pipe; (2) South 02 degrees 09 minutes 10 seconds West 126.71 feet to a ½ inch by 3 inch solid bar; (3) South 01 degrees 33 minutes 52 seconds West 262.25 feet to a 1½ inch iron pipe, common corner with Larry Dean Lyerly, Duane Corl (now or formerly) (Deed Book 887 Page 890) and Trexler Trucking, Inc. (Deed Book 650 Page 336); thence five lines with Trexler Trucking, Inc. as follows: (1) North 89 degrees 26 minutes 56 seconds West 174.90 feet to a 1½ inch iron pipe; (2) South 16 degrees 58 minutes 30 seconds West 207.15 feet to a 1½ inch iron pipe; (3) South 46 degrees 16 minutes 43 seconds West 360.97 feet to a ¾ inch iron pipe; (4) South 60 degrees 37 minutes 50 seconds West 345.19 feet to a ¾ inch iron pipe; (5) South 55 degrees 47 minutes 08 seconds East 325.58 feet to the point and place of **beginning, containing 16.984 acres**, more or less, this according to a survey by Riley O. Gobble, Jr., Professional Land Surveyor, dated May 31, 2005.