BOOK 3907
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Gaston County, NC
Recorded 01/05/2004 01:26:14pm
No 9999-00128278 1 of 10 pages
Alice B. Brown, Register of Deeds

STATE OF NORTH CAROLINA
GASTON COUNTY

CONSERVATION EASEMENT

SPO File Number 36-Z
Prepared by and return to:
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321
Rankin Tract

THIS CONSERVATION EASEMENT DEED, made this 5th day of January, 2004, by and between Catawba Lands Conservancy, Grantor, a North Carolina non-profit Corporation having its principle office address at 105 West Morehead Street, Charlotte, North Carolina, 28202, and the State of North Carolina, Grantee, whose mailing address is State of North Carolina 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, 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, 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 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 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 have entered into a Memorandum of Agreement, (MOA) duly executed by all parties on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land 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 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, Grantor owns in fee simple certain real property situated, lying, and being in River Bend Township, Gaston County, North Carolina (the "Protected Property"), and being more particularly described as that certain parcel of land in the attached "Exhibit A" (consisting of five pages), attached hereto and by this reference

(10) RECORDING FEE 41.00
EXCISE TAX PAID 0

incorporated herein, and being conveyed to the Grantor by deed recorded in **Deed Book** 3905 **at Page** 211 **and Deed Book** 3907 **at Page** 573 of the Gaston 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 506.136 acre tract of land, described in the attached "Exhibit A" and shown on an unrecorded plat of survey(s) entitled "Property of Annie Estelle Rankin Maps 1 and 2" dated April – May, 2003, certified by W. Bradley Freeman of Freeman Surveying.

The purposes of this Conservation Easement are to preserve, 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, except as they are used for management, maintenance, or stewardship purposes, or on existing roads and driveways.
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 Ecosystem Enhancement 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 Ecosystem Enhancement 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.

E. If circumstances arise under which an amendment to or modification of this Deed of Conservation Easement would be appropriate, Grantor and Grantee may amend this Deed of Conservation Easement, provided that no amendment shall be allowed that will affect the qualification of this Deed of Conservation Easement or the status of Grantee under any applicable laws, including N.C.G.S. 121 34 or any succeeding statute thereto, or Section 170(h) of the Internal Revenue Code of 1986, as amended, and any amendment shall be consistent with the purpose(s) of this Deed of Conservation Easement and shall not affect its perpetual duration. Any such amendment or modification must be executed by both Grantor and Grantee and shall be recorded in the public registry of Gaston County.

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 parties hereto have subscribed their names, the day and year first above written, all with authority duly given.

CATAWBA LANDS CONSERVANCY

By: _____, _____**President**

J. Frank Bragg, Jr.

STATE OF NORTH CAROLINA
Cabarrus COUNTY

I, Eleanor S. Gow, a Notary Public of the County and State aforesaid, certify that J. Frank Bragg personally appeared before me this day and acknowledged that s/he is _____ President of Catawba Lands Conservancy, a North Carolina non-profit corporation, and that s/he, as _____ President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and notarial seal this the 5th day of January, 2004.

Eleanor S. Gow (Seal)
NOTARY PUBLIC

My commission expires: My Commission Expires September 5, 2005

ELEANOR S. GOW NOTARY PUBLIC CABARRUS COUNTY, N.C.

NORTH CAROLINA, GASTON COUNTY
The foregoing certificate(s) of Eleanor S. Gow
Notary Public of Cabarrus Co, NC and _____
Notary Public of _____ is/are certified to be correct. This instrument was [illegible] registration and recorded in this office in Book 3907 Page 588 this 5th day of January, 2004 at 1:26 o'clock P. M.

ALICE B. BROWN REGISTER OF DEEDS BY: [illegible] Assistant/Deputy

Exhibit A

Property of Annie Estelle Rankin north of Old NC 27 Highway

Being a tract of land lying in River Bend Township, Gaston County, NC, being bounded on the east by American Land Corporation and Kathleen Rankin, on the north by Rankin, Civils, Catawba Lands Conservancy, on the west by Rhyne, on the south by Old NC 27 Highway (S.R. 1923), and being shown on a survey for "Catawba Lands Conservancy of the Annie Estelle Rankin property, Map 2" dated May 9, 2003 by W. Bradley Freeman, P.L.S., Freeman Surveying, Job No. 0342 and more particularly described as follows :

Beginning at a railroad spike found in the centerline intersection of Old NC 27 Highway and Spratt Drive, said beginning point having NC Grid Coordinates of N = 584,530.9812 feet, E = 1,389,981.4045 feet and being located N 76-33-10 W 14,470.90' from NCGS "Forestry"; thence from said beginning point running 31 calls with the centerline of Old NC 27 Highway : with a curve to the right, having a radius of 268.00', an arc distance of 188.75', a chord distance of 184.87', and having a chord bearing of N 84-35-57 W to a point in the centerline of highway, with a curve to the right with a radius of 1,000.00', an arc distance of 98.55', a chord distance of 98.51', and having a chord bearing of N 61-36-02 W to a point in the center of the highway; N 58-46-38 W 1,351.39' to a point in centerline of highway, with a curve to the right having a radius of 600.00', an arc distance of 322.38', a chord distance of 318.52', a chord bearing N 43-23-05 W to a point in the center of highway; N 27-59-32 W 302.67' to a point in the center of highway; with a curve to the left having a radius of 327.51', an arc distance of 460.76', a chord distance of 423.69', a chord bearing of N 68-17-47 W to a point in the centerline of highway; with a curve to the left having a radius of 600.00', an arc distance of 190.12', a chord distance of 189.33', a chord bearing of S 62-19-19 W to a point in the centerline of highway; S 53-14-40 W 139.50' to a point in the centerline of highway; with a curve to the right having a radius of 900.00', an arc distance of 142.33', a chord distance of 142.18', a chord bearing of S 57-46-30 W to a point in the centerline of highway; with a curve to the right having a radius of 360.00', an arc distance of 145.19', a chord distance of 144.21', a chord bearing of S 73-51-34 W to a point in the centerline of highway; with a curve to the right having a radius of 1,400.00', an arc distance of 95.82', a chord distance of 95.81', a chord bearing of S 87-22-28 W to a point in the centerline of highway; with a curve to the right having a radius of 684.66', an arc distance of 309.70', a chord distance of 307.07', a chord bearing of N 77-42-21 W to a point in the centerline of highway; N 64-44-49 W 287.19' to a point in the centerline of highway; with a curve to the left having a radius of 609.00', an arc distance of 145.08', a chord distance of 144.74', a chord bearing of N 71-34-14 W to a railroad spike set in the centerline of highway being the northeast corner of the McLurd Development Corp. property recorded in Deed Book 2042 page

found in broken concrete on the southern right-of-way of Old NC 27 Highway at a distance of 1,147.76', a total distance of 1,183.27' to a railroad spike set in the centerline of road; thence 14 calls with the center-line of Old NC 27 Highway to unmarked points in the centerline of said highway with a curve to the right having a radius of 609.00', an arc distance of 145.08', a chord distance of 144.74', a chord bearing of S 71-34-14 E, S 64-44-49 E 287.19', with a curve to the left having a radius of 684.66', an arc distance of 309.70', a chord distance of 307.07', a chord bearing of S 77-42-21 E , with a curve to the left having a radius of 1,400.00, an arc distance of 95.82', a chord distance of 95.81' , a chord bearing N 87-22-28 E, with a curve to the left having a radius of 360.00', an arc distance of 145.19', a chord distance of 144.21', a chord bearing of N 73-51-34 E, with a curve to the left having a radius of 900.00, an arc distance of 142.33', a chord distance of 142.18', a chord bearing of N 57-46-30 E, N 53-14-40 E 139.50', with a curve to the right having a radius of 600.00, an arc distance of 190.12', a chord distance of 189.33', a chord bearing of N 62-19-19 E, with a curve to the right having a radius of 327.51', an arc distance of 460.76', a chord distance of 423.69', a chord bearing of S 68-17-47 E, S 27-59-32 E 302.67', with a curve to the left having a radius of 600.00', an arc distance of 322.38', a chord distance of 318.52', a chord bearing of S 43-23-05 E, S 58-46-38 E 1,351.39', with a curve to the left having a radius of 1,000.00', an arc distance of 98.55', a chord distance of 98.51', a chord bearing of S 61-36-02 E, with a curve to the left having a radius of 268.00', an arc distance of 188.75', a chord distance of 184.87', a chord bearing of S 84-35-57 E to the point of beginning containing 187.8092 acres.

Property of Annie Estelle Rankin north of Old NC 27 Highway

Being a tract of land lying in River Bend Township, Gaston County, NC, being bounded on the east by American Land Corporation and Kathleen Rankin, on the north by Rankin, Civils, Catawba Lands Conservancy, on the west by Rhyne, on the south by Old NC 27 Highway (S.R. 1923), and being shown on a survey for "Catawba Lands Conservancy of the Annie Estelle Rankin property, Map 2" dated May 9, 2003 by W. Bradley Freeman, P.L.S., Freeman Surveying, Job No. 0342 and more particularly described as follows :

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627; thence N 89-18-05 W 37.55' to a point in the centerline of highway; S 75-28-24 W 99.46' to a point in the centerline of highway; S 60-01-14 W 98.22' to a point in the centerline of highway; S 58-30-16 W 98.43' to a point in the centerline of highway; S 58-45-32 W 101.26' to a point in the centerline of highway; S 58-37-52 W 98.79' to a point in the centerline of highway; S 61-47-02 W 101.21' to a point in the centerline of highway; S 74-59-50 W 97.94' to a point in the centerline of highway; N 84-26-10 W 98.94' to a point in the centerline of highway; N 66-29-02 W 105.69' to a point in the centerline of highway; N 62-11-24 W 303.04' to a point in the centerline of highway; N 58-40-20 W 104.68' to a point in the centerline of highway; N 53-20-06 W 101.32' to a point in the centerline of highway; N 47-02-50 W 140.51' to a point in the centerline of highway; N 33-56-37 W 108.13' to a point in the centerline of highway; N 26-51-26 W 98.59' to a point in the centerline of highway; N 25-39-30 W 118.13' to a railroad spike set in the centerline of highway; thence leaving the highway a running with the eastern line of the Rhyne, LLC property, N 31-46-22 E 1,370.32' to a concrete monument found; thence with the Barbara Lowe Rhyne property N 35-37-30 E crossing a branch 1,542.54' to a an iron rod found at a fence corner; thence 3 lines with the Catawba Lands Conservancy property, S 54-17-58 E crossing a branch 980.61' to a rebar set to replace an old cedar fence corner; thence S 19-06-36 W 267.84' to a 20" post oak tree at fence corner; thence S 52-10-23 E passing a rebar set at 2.00' and crossing a wet weather ditch and a power line, a total distance of 954.01' to a PK nail placed in a stone found at a fence corner (placed metal post beside stone); thence 5 lines with the Rankin property : S 39-55-23 E crossing 2 branches 1,683.00' to a rebar set (hacks placed on 20" white oak); S 76-27-21 E 1,074.40' to an iron pipe found; N 22-27-37 W 1,221.56' to an 18" marked pine tree on the eastern edge of an old road bed; thence S 85-57-25 E passing a rebar set at 2.00' for a total distance of 288.68' to an iron pipe found; thence N 16-41-01 E crossing a branch 373.27' to an iron pipe found; thence 2 lines with the Lyman property N 15-13-55 E 106.43' to an iron pipe found near the western right-of-way of Willowside Drive (S.R. 1935); thence crossing Willowside Drive N 15-18-48 E 118.73' to an iron pipe found (being located S 42-34-15 E 512.64' from a mag nail set in the centerline intersection of Stanley Creek & Willowside Drive); thence 3 lines with the Civils property N 75-59-23 E 709.89' to a pointed stone found (placed metal post beside stone); thence N 37-16-27 E passing a rebar set on the southern bank of Stanley Creek at a distance of 389.03' for a total distance of 429.00' to a point in said creek; thence N 06-57-34 E passing a rebar set on the northern bank of creek at a distance of 24.19' for a total distance of 361.81' to an iron pipe found; thence 3 lines with the Kathleen Vance Rankin property S 87-45-42 E 657.01' to a tall iron pipe found; thence S 85-36-16 E 318.43' to an iron pipe found; thence S 01-24-46 W 990.07' to an iron pipe found at a "T" post in stones at marked ash tree; thence 6 lines with American Land

Corp. Charlotte, Inc. property S 14-00-38 W passing an old cemetery 274.84' to a rebar set on the northern bank of Stanley Creek; continuing S 14-00-38 W 30.00' to an unmarked point in creek; thence up the creek S 88-09-43 W 192.55' to an unmarked point in Stanley Creek; thence S 02-42-43 W passing a rebar set on the southern creek bank at a distance of 26.07' a total distance of 362.90' to an iron rod found at a "T" post and marked tree; thence S 46-36-17 E 428.77' crossing a branch to an iron rod found at a "T" post; thence S 23-35-19 E crossing and recrossing a branch 412.24' to a pointed stone buried 1' deep at a "T" post; thence S 33-08-35 W crossing a branch 906.05' to a chisel hole in a large stone at a "T" post and marked cedar tree; thence 2 lines with Branum property N 65-47-28 W passing a rebar found at 206.30' also passing a rebar found at 385.74' also passing a rebar found at 521.42', a total distance of 660.15' to an iron pipe found on the west bank of gulley; thence S 75-07-48 W passing a rebar set at 180.50' , a total distance of 215.07' to a bent iron rod found 1' east of the centerline of Willowside Drive; thence 3 lines with the Ewing property N 08-04-51 W running within the right-of-way of Willowside Drive, 263.59' to a bent iron rod found 3.5' west of the east edge of the pavement; thence leaving the road S 88-36-04 W 404.39' to an iron pipe found; thence S 03-21-08 E 362.95' to a rebar found at a tall iron rod in a gulley; thence 4 lines with the Thomas property S 74-49-50 W 340.86' to an axle found at a 20" poplar tree; thence S 21-01-50 E 246.66' to a concrete nail placed in a large stone; thence S 32-22-47 W 400.74' to a mag nail placed in a large stone; thence S 46-59-37 W 118.59' to the point of beginning, containing 318.3268 acres.