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WAYNE COUNTY, NC
DEBORAH C. LANE REGISTER OF DEEDS
BK 2036 PG 558-564

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This instrument prepared by T. Dewey Mooring, Jr., Attorney at Law, La Grange, NC

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STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

COUNTY OF WAYNE

THIS CONSERVATION EASEMENT DEED, made this 21st day of February, 2003, by and between **RESTORATION SYSTEMS, LLC**, a North Carolina limited liability company, whose mailing address is 1101 Haynes Street, Suite 203, Raleigh, NC 27604 ("Grantor") and **NORTH CAROLINA WILDLIFE HABITAT FOUNDATION**, a North Carolina non-profit corporation, whose mailing address is P. O. Box 29187, Greensboro, NC 27429-9187 ("Grantee"). The designations Grantor and Grantee as used herein shall include said parties, their personal representatives, successors, assigns, lessee, agents and licensees, 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) ("WRP") 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, on May 13, 2002, WRP issued a Request for Proposals for riparian buffer restoration in the Neuse River Basin ("the RFP"); and

WHEREAS, Grantee desires to submit a proposal to provide riparian buffer restoration to WRP in response to the RFP; and

WHEREAS, Grantor owns in fee simple certain real property, together with access easements to said real property described in Exhibit A attached hereto, situated, lying, and being in New Hope Township, Wayne County, North Carolina (the "Protected Property"), and being more particularly described as those certain parcels of land described on that Exhibit A attached hereto and being conveyed to the Grantor by those deeds recorded in Deed Book 2021, Page 659, Deed Book 2021, Page 663, Deed Book 2021, Page 665, Deed Book 2027, Page 55, and Deed Book 2032, Page 770, all of the Wayne County Registry, North Carolina; and

WHEREAS, the Protected Property is suitable for Grantee's riparian buffer restoration project; 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; and

WHEREAS, WRP has approved acceptance of this instrument by Grantee.

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, 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 those tracts of land as described on that Exhibit A attached hereto and made a part hereof by reference. Said Easement Area being the individual parcels of land described in Exhibit A, but not including the easements for access to the parcels which are described following each parcel description.

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.

II. 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 Areas that is inconsistent with the purposes of this Conservation Easement is prohibited. Any rights not expressly reserved hereunder by Grantor have been acquired by 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. 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. Notwithstanding the foregoing, Grantee expressly reserves the following rights: (i) the right to clear the Easement Area of snags after it has been restored and planted, provided that (a) documentation can be presented to WRP, whose mailing address is 1619 Mail Services Center, Raleigh, NC 27699-1619,

demonstrating that the surface flow of waters within the Easement Area is being impeded by the snags, and (b) all snags shall be removed by hand or cabled out of the Easement Area to avoid impacts to vegetation, soil compaction or other disturbance; and (ii) the right to clear and manage timber within the Easement Area to the extent necessary to protect the natural environment in Areas where the Easement Area is damaged, or has the potential to be damaged, by natural forces such as hurricane, flood, storm, fire, insects or infectious organisms, provided that such timber clearing will be carried out in a manner that will not affect the natural condition of the Easement Area, and shall be subject to prior approval by WRP.

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.

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. In addition, Grantee, and authorized representatives of 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 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.

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; provided, however, that Grantor shall not vary from the above restrictions without first obtaining written approval from WRP.

III. ENFORCEMENT AND REMEDIES

A. In the event that Grantee determines that Grantor has violated or is threatening to violate any of these terms, conditions, or restrictions, 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 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.

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 this 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 addresses 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. This Conservation Easement and rights of Grantee hereunder may be assigned by Grantee to any third party without the approval of Grantor.

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, Grantor expressly reserves to Grantor, and 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 caused this instrument to be executed on its behalf by its manager, who has hereunto set his hand and seal the day and year first above written.

RESTORATION SYSTEMS, LLC

_____ **(SEAL)**
By: GEORGE HOWARD, Manager

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Kathryn Ayers, a Notary Public in and for the County and State aforesaid, do hereby certify that **GEORGE HOWARD, Manager of Restoration Systems, LLC**, 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 21 day of February, 2003.

(Notary Seal) KATHRYN AYERS NOTARY PUBLIC WAKE COUNTY, N.C. My Commission Expires 6/12/06

_____
Notary Public

My commission expires: June·12·2006
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restsys

NORTH CAROLINA – Wayne County
The foregoing certificate of Kathryn Ayers
a notary public is certified to be correct.
Filed for registration this the 24th day of February, 20 03, at 03:45:55 o'clock P. M.

DEBORAH C. LANE, *Register of Deeds*

By Rose L Webber
Deputy/~~Assistant~~ Register of Deeds

Exhibit A to Conservation Easement Deed between Restoration Systems, LLC, Grantor, and North Carolina Wildlife Habitat Foundation, Grantee dated February 21st, 2003

PARCEL ONE: Being all of that 2.95 acres, more or less, as depicted on that map entitled, "Survey for Restoration Systems, LLC, New Hope Township, Wayne County, North Carolina," dated December 11, 2002, prepared by K2 Design Group, P.A., John A. Rudolph, PLS L-4194, and being of record in Plat Cabinet L, Slide 98-G, Wayne County Registry, to which reference is hereby made for a more complete and accurate description.

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND REGRESS to the above-described 2.95 acre tract from NCSR 1724 (Casey Dairy Road) across Grantors remaining acreage, being the remainder of Tract D, containing 25.190 acres, as depicted on that map recorded in Plat Cabinet L, Slide 29-C, Wayne County Registry. Said easement is to be 15-feet in width and shall be located along existing farm paths where possible. Grantee herein shall have no right to improve said easement by permanent pavement in the form of asphalt or concrete.

PARCEL TWO: Being all of that 3.25 acres, more or less, as depicted on that map entitled, "Survey for Restoration Systems, LLC, New Hope Township, Wayne County, North Carolina," dated December 11, 2002, prepared by K2 Design Group, P.A., John A. Rudolph, PLS L-4194, and being of record in Plat Cabinet L, Slide 98-H, Wayne County Registry, to which reference is hereby made for a more complete and accurate description.

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND REGRESS to the above-described 3.25 acre tract from NCSR 1724 (Casey Dairy Road) across Grantors remaining acreage, being the remainder of Tract C, containing 29.14 acres, as depicted on that map recorded in Plat Cabinet A, Slide 48-AB, Wayne County Registry. Said easement is to be 15-feet in width and shall be located along existing farm paths where possible. Grantee herein shall have no right to improve said easement by permanent pavement in the form of asphalt or concrete.

PARCEL THREE: Being all of that 2.56 acres, more or less, as depicted on that map entitled, "Survey for Restoration Systems, LLC, New Hope Township, Wayne County, North Carolina," dated December 11, 2002, prepared by K2 Design Group, P.A., John A. Rudolph, PLS L-4194, and being of record in Plat Cabinet L, Slide 97-H, Wayne County Registry, to which reference is hereby made for a more complete and accurate description.

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND REGRESS to the above-described 2.95 acre tract from NCSR 1724 (Casey Dairy Road) across Grantors remaining acreage, being the remainder of Tract A, containing 17.12 acres, as depicted on that map recorded in Plat Cabinet A, Slide 48-AB, Wayne County Registry. Said easement is to be 15-feet in width and shall be located along existing farm paths where possible. Grantee herein shall have no right to improve said easement by permanent pavement in the form of asphalt or concrete.

PARCEL FOUR: Being all of that 2.87 acres, more or less, as depicted on that map entitled, "Survey for Restoration Systems, LLC, New Hope Township, Wayne County, North Carolina," dated December 11, 2002, prepared by K2 Design Group, P.A., John A. Rudolph, PLS L-4194, and being of record in Plat Cabinet L, Slide 97-I, Wayne County Registry, to which reference is hereby made for a more complete and accurate description.

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND REGRESS to the above-described 2.95 acre tract from NCSR 1724 (Casey Dairy Road) across Grantors remaining acreage, being the remainder of Tract B, containing 20.76 acres, as depicted on that map recorded in Plat Cabinet A, Slide 48-AB, Wayne County Registry. Said easement is to be 15-feet in width and shall be located along existing farm paths where possible.

Grantee herein shall have no right to improve said easement by permanent pavement in the form of asphalt or concrete.

PARCEL FIVE: Being all of that 25.95 acres, more or less, as depicted on that map entitled, "Survey for Restoration Systems, LLC, New Hope Township, Wayne County, North Carolina," dated December 11, 2002, prepared by K2 Design Group, P.A., John A. Rudolph, PLS L-4194, and being of record in Plat Cabinet L, Slide 99-G, Wayne County Registry, to which reference is hereby made for a more complete and accurate description.

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND REGRESS to the above-described 25.95 acre tract from NCSR 1724 (Casey Dairy Road) and/or US Hwy 70 across Grantors remaining acreage, including, but not limited to, those certain five (5) tracts of land, being Share No. 2, allotted to Benjamin A. Casey as set forth in the Report of Commissioners filed December 11, 1950, in the special proceeding to divide the lands of Benjamin Casey, Jr., which said report is recorded in Book 374, Page 177, Wayne County Registry. Said easement is to be 15-feet in width and shall be located along existing farm paths where possible. Grantee herein shall have no right to improve said easement by permanent pavement in the form of asphalt or concrete.

PARCEL SIX: Being all of that 10.86 acres, more or less, as depicted on that map entitled, "Survey for Restoration Systems, LLC, New Hope Township, Wayne County, North Carolina," dated December 11, 2002, prepared by K2 Design Group, P.A., John A. Rudolph, PLS L-4194, and being of record in Plat Cabinet L, Slide 98-F, Wayne County Registry, to which reference is hereby made for a more complete and accurate description.

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND REGRESS to the above-described 10.86 acre tract from NCSR 1725 (Ditchbank Road) across Grantor remaining acreage, being the remainder of that tract of land containing 84 acres, as described in that deed recorded in Deed Book 444, Page 296, Wayne County Registry. Said easement is to be 15-feet in width and shall be located along existing farm paths where possible. Grantee herein shall have no right to improve said easement by permanent pavement in the form of asphalt or concrete.