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State of North Carolina
YANCEY County
Real Estate Excise Tax

STAMPS $48.00

CONSERVATION EASEMENT

GRANTOR(S): Hap-Y-Homer, LLC

GRANTEE(S): State of North Carolina

PREPARED BY: Ann W. Matthews, Office of the Attorney General, Property Control Section

MAIL TO: Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

YANCEY COUNTY
SPO File Number 100-B
Prepared by: Office of the Attorney General
Property Control Section
Return to: NC Department of Administration
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 25 day of June, 2008, by **Hap-Y-Homer, LLC.**, (**"Grantor"**), whose mailing address is **708 Sweet Hollow Road, Burnsville, NC 28714** 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 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 ~~Burnsville Township~~, Yancey County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately **25.86 +/- acres** and being conveyed to the Grantor by deed as recorded in **Deed Book 532 at Page 465** of the Yancey 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 ***UT to Bald 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 Parcel 1 and Parcel 2 as shown on a plat of survey entitled "**Conservation Easement for the State of North Carolina Ecosystem Enhancement Program**" dated **03/24/2008**, certified by **Kenneth D. Suttles, P.L.S. L-2678**, and **recorded in Map Book 03, Page 222, Yancey County Registry**. Parcels 1 and 2 being more particularly described as follows in the attached **Exhibit A**:

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

Pursuant to law, including the above referenced statutes, this Conservation Easement shall be perpetual and it shall run with, and be a continuing restriction upon the use of, the Property, and it shall be enforceable by the Grantee against the Grantor and against Grantor's heirs, successors and assigns, personal representatives, agents, lessees, 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. Without limiting the generality of the foregoing, 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.** Grantor voluntarily agrees 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 unlimited and repeated ingress and egress 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, and Inspection.** The Grantee, its employees and agents, successors and assigns, receive the perpetual right of unlimited and repeated ingress and egress 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.

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 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.

TO HAVE AND TO HOLD the said rights and easements perpetually unto the State of North Carolina for the aforesaid purposes.

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent Conservation 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.

Grantor: Hap-Y-Homer , LLC

Henry Clay Turner III (SEAL)

Name (print): Henry Clay Turner, III
Title: Member/Manager

(SEAL)

Name (print): Homer H. Graham
Title: Member/Manager

NORTH CAROLINA

COUNTY OF BUNCOMBE

I, Arvilla Annette Brown, a Notary Public in and for the aforesaid County and State, do hereby certify that Henry Clay Turner, III, Manager of Hap-Y-Homer, LLC a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 25 day of June, 2008.

Notary Public

ARVILLA ANNETTE BROWN NOTARY PUBLIC BUNCOMBE CO. N.C.

My commission expires: 9 July 2011

NORTH CAROLINA

COUNTY OF Buncombe

I, Arvilla Annette Brown, a Notary Public in and for the aforesaid County and State, do hereby certify that Homer H. Graham, Manager of Hap-Y-Homer, LLC a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 25 day of June, 2008.

Notary Public

My commission expires:

9 July 2011

ARVILLA ANNETTE BROWN NOTARY PUBLIC BUNCOMBE CO. N.C.

EXHIBIT A

Legal descriptions of two parcels being located within the lands of HAP-Y-HOMER, LLC as described in Deed Book 532, Page 465 of the Yancey County Register of Deeds; the parent tract being described in an unrecorded plat by Dallas G. Miller, PLS dated August 3, 2004; Map No. 8881-08D.

Subject to the restrictions set forth in Deed Book 329, Page 60.

Parcel 1

BEGINNING on a 5/8" rebar set at the Northeast corner of Deed Book 213, Page 346 and runs thence, with the common line of Henry Clay Turner, III and wife Elizabeth P. Turner, South 83 degrees 22 minutes 19 seconds West, 88.39 feet to a 5/8" rebar set; thence, the following twenty-two courses and distances: North 07 degrees 25 minutes 48 seconds West, 144.58 feet to a 5/8" rebar set; North 06 degrees 57 minutes 31 seconds West, 72.86 feet to a 5/8" rebar set; North 07 degrees 53 minutes 26 seconds West, 94.38 feet to a 5/8" rebar set; North 06 degrees 30 minutes 53 seconds West, 103.69 feet to a 5/8" rebar set; North 18 degrees 15 minutes 00 seconds East, 81.86 feet to a 5/8" rebar set; North 20 degrees 32 minutes 03 seconds West, 90.36 feet to a 5/8" rebar set; North 76 degrees 11 minutes 03 seconds East, 72.41 feet to a 5/8" rebar set; South 34 degrees 32 minutes 46 seconds East, 83.67 feet to a 5/8" rebar set; South 13 degrees 31 minutes 18 seconds East, 109.78 feet to a 5/8" rebar set; South 14 degrees 46 minutes 01 seconds East, 92.67 feet to a 5/8" rebar set; South 01 degrees 42 minutes 38 seconds East, 80.88 feet to a 5/8" rebar set; South 13 degrees 50 minutes 40 seconds East, 62.71 feet to a 5/8" rebar set; South 05 degrees 51 minutes 52 seconds East, 64.97 feet to a 5/8" rebar set; South 18 degrees 45 minutes 58 seconds West, 82.90 feet to a 5/8" rebar set; South 07 degrees 49 minutes 50 seconds East, 124.27 feet to a 5/8" rebar set; South 12 degrees 11 minutes 05 seconds East, 61.12 feet to a 5/8" rebar set; South 38 degrees 12 minutes 34 seconds East, 47.11 feet to a 5/8" rebar set; South 10 degrees 47 minutes 41 seconds East, 131.91 feet to a 5/8" rebar set; South 02 degrees 01 minutes 00 seconds West, 94.45 feet to a 5/8" rebar set; South 09 degrees 44 minutes 17 seconds West, 99.35 feet to a 5/8" rebar set; South 42 degrees 47 minutes 53 seconds East, 48.59 feet to a 5/8" rebar set; South 01 degrees 55 minutes 26 seconds West, 47.65 feet to a 5/8" rebar set on the North side of a gravel drive; thence, along the North side of said drive, North 77 degrees 51 minutes 43 seconds West, 65.53 feet to a 5/8" rebar set; thence, the following two (2) courses and distances: North 37 degrees 53 minutes 51 seconds West, 75.01 feet to a 5/8" rebar set; North 02 degrees 40 minutes 54 seconds West, 50.85 feet to a 5/8" rebar set in the common line with Turner, said rebar lying North 83 degrees 22 minutes 19 seconds East, 413.25 feet from a 5/8" rebar set at the Southwest corner of Deed Book 213, Page 346; thence, with said common line, North 83 degrees 22 minutes 19 seconds East, 53.45 feet to a 5/8" rebar set at the Southeast corner of Deed Book 213, Page 346; thence, with the common line of Turner, North 06 degrees 37 minutes 41 seconds West, 103.06 feet to a 5/8" rebar set; thence, leaving said common line the following two (2) courses and distances: North 06 degrees 41 minutes 36 seconds East, 29.78 feet to a 5/8" rebar set; North 40 degrees 28 minutes 15 seconds West, 12.32 feet to a 5/8" rebar set in the common line of Turner; thence, with said common line, North 06 degrees 37 minutes 41 seconds West, 324.42 feet to the BEGINNING; containing 2.42 acres as shown on a survey plat by Suttles Surveying, P.A., dated March 24, 2008 and being recorded in the Yancey County Registry in Plat Book 3, Page 222.

Parcel 2

BEGINNING on a 5/8" rebar set, said rebar being located North 83 degrees 22 minutes 19 seconds East, 73.95 feet from a 5/8" rebar set at the Southwest corner of Deed Book 213, Page 346, and runs thence, with the Southern line of said Deed Book 213, Page 346, North 83 degrees 22 minutes 19 seconds East, 115.88 feet to a 5/8" rebar set, said rebar set being located South 83 degrees 22 minutes 19 seconds West, 276.87 feet from a 5/8" rebar set at the Southeast corner of said Deed Book 213, Page 346; thence, the following two (2) courses and distances: South 57 degrees 33 minutes 07 seconds East, 64.23 feet to a 5/8" rebar set; South 78 degrees 39 minutes 47 seconds East, 138.05 feet to a 5/8" rebar set; thence, along the South side of a 12 feet wide gravel drive the following seven courses and distances: South 52 degrees 42 minutes 08 seconds East, 39.24 feet to a 5/8" rebar set; South 66 degrees 00 minutes 27 seconds East, 57.17 feet to a 5/8" rebar set; South 76 degrees 08 minutes 09 seconds East, 49.86 feet to a 5/8" rebar set; South 65 degrees 42 minutes 32 seconds East, 118.95 feet to a 5/8" rebar set; South 46 degrees 54 minutes 11 seconds East, 86.11 feet to a 5/8" rebar set; South 32 degrees 41 minutes 14 seconds East, 26.13 feet to a 5/8" rebar set, said rebar set lying North 58 degrees 50 minutes 04 seconds West, 21.87 feet from a P.K nail set at the intersection of said gravel drive and Sweet Hollow Road; thence, the following three (3) courses and distances along the Northern margin of Sweet Hollow Road: South 38 degrees 13 minutes 26 seconds West, 29.54 feet to a 5/8" rebar set; South 52 degrees 51 minutes 36 West, 56.97 feet to a 5/8" rebar set; South 71 degrees 30 minutes 21 seconds West, 38.74 feet to a 5/8" rebar set; thence, leaving the margin of Sweet Hollow Road, North 47 degrees 46 minutes 36 seconds West, 145.31 feet to a 5/8" rebar set; North 59 degrees 22 minutes 14 seconds West, 150.37 feet to a 5/8" rebar set; North 69 degrees 54 minutes 48 seconds West, 106.00 feet to a 5/8" rebar set; North 68 degrees 11 minutes 42 seconds West, 69.20 feet to a 5/8" rebar set; North 68 degrees 10 minutes 49 seconds West, 95.59 feet to a 5/8" rebar set; North 42 degrees 26 minutes 15 seconds West, 47.35 feet to the BEGINNING; containing 1.28 acres as shown on a survey plat by Suttles Surveying, P.A., dated March 24, 2008 and being recorded in the Yancey County Registry in Plat Book 3, Page 222.