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Fee Amt: $32.00 Page 1 of 7
Workflow# 0000003308-0001
Craven, NC
Sheeri B. Richard Register of Deeds
BK 2817 PG 206

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STATE OF NORTH CAROLINA
COUNTY OF CRAVEN
Prepared by State Property Office
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OPTION AGREEMENT FOR CONSERVATION EASEMENT
FOR STORMWATER
BEST MANAGEMENT PRACTICES (BMP)
Ecosystem Enhancement Program
SPO File Number 25-Y
EEP Number 92646

THIS OPTION AGREEMENT, hereinafter referred to as Option, made and entered into this 10th day of March, 2009 by and between The City of New Bern, a municipal corporation, hereinafter referred to as the **Seller**, and the **State of North Carolina**, and its successors and assigns, hereinafter referred to as the **State.**

WITNESSETH

In consideration of $10.00 and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and of the agreements contained in this Option, **Seller** hereby grants to the **State**, its successors and assigns, the exclusive right and option to receive a **Conservation Easement for Stormwater Best Management Practice (BMP)** for a term of 35 years over mutually agreed upon lands owned by the **Seller**, hereinafter referred to as the **Parent Tract**. The **Conservation Easement and Stormwater BMP** shall protect those lands hereinafter referred to as the **Easement and BMP Areas.** The **Parent Tract or Property** is located in Craven County, North Carolina and contains 51.978 +/- acres, more or less, subject to survey. The **Parent Tract** subject to the **Conservation Easement** is recorded in Deed Book 2706, Page 914 and Deed Book 1685, Page 254, Craven County Registry. Property is also identified as being Tax Parcel Number 8-240-62 and is located along the eastern side of Simmons Street extension north of the Atlantic and North Carolina Railroad.

(SEAL)

Being a 35 year **Stormwater BMP** that will protect the restoration, enhancement or preservation of Jack Smith Creek, the Neuse River and its tributaries. The **Conservation Easement for Stormwater BMP Area** are estimated to be an approximate 20 to 25 acre portion of the Parent tract, containing the creek, its tributaries, and wetlands, subject to survey, to be mutually agreed upon as shown on **"Exhibit A"** attached hereto.

The following terms, provisions, and conditions are further agreed to:

1. **OPTION PERIOD**. This option shall remain in effect from the date that this Option has been executed by the **Grantor** until the 31st **day of December 2010.** This Option shall be exercised upon posting, by certified mail, a written notice to the **Grantor** at the following address: ***City of New Bern, PO Box 1129, New Bern, NC 28563*** attention: Danny Meadows, Director of Public Works. Exercise shall be deemed timely if such written notice is mailed on or before the date first set forth in this paragraph.

2. **PURCHASE PRICE**. This is a donation.

3. **CLOSING**. A closing of the sale of this **Conservation Easement for Stormwater BMP** under this Option shall be held within **90 days** of the exercise of this Option; provided, however, in the event of objections to title or condition of land at closing, and diligent efforts on **Seller's** part to cure said objections, a closing shall be held within a reasonable time following the removal of said objections.

4. **EVIDENCE OF TITLE**. Upon receipt of this signed Option, the **State** will have the title to the **Parent tract** examined, and if applicable, obtain a preliminary title insurance commitment. The title examination and/or commitment must evidence the **Seller's** ability to deliver title at closing as set forth below. All costs necessary to procure the title examination and, if applicable, the title commitment and final title insurance policy to be issued at closing, shall be the responsibility of the **State**.

5. **TITLE**. At closing, the **Seller** shall convey good, insurable and marketable title for the **Conservation Easement** to the State together with all rights necessary to protect the BMP Area for a term of 35 years, including legal access, along with all mineral rights and all development rights (including roads) within the Easement Area, to the **State** free and clear of all liens, encumbrances, restrictions, rights, or exceptions except those of record that are acceptable to the **State**.

6. **TITLE DEFECTS**. If for any reason the **Seller** cannot deliver title at closing as required by Paragraph 5 of this Option, the **State** may elect to a) accept the **Conservation Easement** with title as is; b) refuse to accept the **Conservation Easement**; or c) allow the **Seller** additional time to pursue reasonable efforts to correct the problem, including bringing any necessary quiet title actions or other lawsuits.

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7. **SUBJECT TO SURVEY AND DESIGN.** It is understood and intended that the final **Conservation Easement for Stormwater BMP** under this option is subject to final design and vegetative plan approval, and survey by the **Ecosystem Enhancement Program** with these costs paid by the **State.**

8. **DOCUMENTS FOR CLOSING.** The **Seller** shall execute and deliver at closing a **Conservation Easement for Stormwater BMP**, any owner's affidavits or documents required by a title insurance company to remove the standard title policy exceptions, and any other documents necessary to close in accordance with the terms of this Option. These documents will be prepared at the expense of the **State.**

9. **PROPERTY TAXES.** Any delinquent real estate taxes and all levied assessments are the **Seller**'s responsibility and should be satisfied of record by the **Seller** at or before closing. Any deferred taxes on the **Conservation Easement Area** which become due as a result of this conveyance, shall be the responsibility of the **Seller**. Real estate taxes for the year in which the transaction is closed shall be the responsibility of the **Seller** and not prorated, as the **State** is not receiving fee simple title.

10. **MISCELLANEOUS CLOSING EXPENSES.** The **Seller** will pay any documentary stamp tax, real estate transfer fee or any similar charge due upon conveyance of title to the **State**. The **State** will pay recording fees.

11. 11.**POSSESSION.** The **Seller** will deliver possession of the **Conservation Easement for Stormwater BMP** to the **State** at closing subject to no leases, mortgages, liens or other reserved rights, and in the condition set forth below in Paragraph 12.

12. **CONDITION OF PROPERTY/ RISK OF LOSS.** The **Seller** shall not transfer or encumber any interests in the **Easement Area for the Stormwater BMP** prior to closing. The **Seller** shall keep the **Easement Area for the Stormwater BMP** in its current condition until closing and shall prevent and refrain from any use of the **Easement Area for the Stormwater BMP** , for any purpose or in any manner, that would diminish its value or adversely affect the **State's** intended uses.

13. In the event of any adverse change in the condition of the **Conservation Easement Area**, whether said change is caused by **Seller** or by forces beyond **Seller's** control, the **State** may elect to a) refuse to accept the property; b) accept the Property, or a portion thereof, in which case there may be an equitable adjustment of the purchase price based on a change in circumstances; or c) require restoration of the Property to its condition at the time this Option was granted.

14. **RIGHT OF ENTRY AND INSPECTION.** The **State** and its agents shall have the right to enter upon the **Property** at reasonable times for surveying, engineering, conducting environmental inspections and assessments to detect

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hazardous or toxic substances, and other reasonable purposes related to this transaction. Based upon the results of the environmental inspections and assessments, or upon other conditions revealed to be unsuitable to the **State**, the **State** may elect to refuse to accept the **Easement**.

15. **REMEDIES.** In addition to any other remedy specifically set forth in this Option, the **State** has the right to enforce the provisions of this Option through an action for specific performance, injunctive relief, damages, contribution or any other available proceedings in law or equity. The election of any one remedy available under this Option shall not constitute a waiver of any other available remedies.

16. **BINDING EFFECT.** This Option becomes effective when signed by the **Seller** and shall then apply to and bind the **Seller** and **Seller's** heirs, executors, administrators, successors, and assigns.

17. **COMPLETE AGREEMENT.** This Option constitutes the sole and complete agreement between the parties and cannot be changed except by written agreement.

18. **NO WAIVER.** No provision of the Option shall be deemed amended or waived unless such amendment or waiver is set forth in a writing signed by the **State**. No act or failure to act by the **State** shall be deemed a waiver of its rights hereunder, and no waiver in any one circumstance or of any one provision shall be deemed a waiver in other circumstances or of other provisions.

19. **ASSIGNMENT.** The **State** has the right to assign this Option. In the event of such assignment, the assignee will have all the rights, powers, privileges and duties held by the **State** pursuant to this Option.

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IN TESTIMONY THEREOF, the parties have hereunto set their hands and seals, or if corporate have caused this instrument to be executed in their corporate names by their duly authorized representatives as of the dates indicated below.

Seller- City of New Bern

By: Mark L. Freeze

Print name and title: Mark L. Freeze

(Corporate Seal)

Attested by: Vickie H. Johnson

Print name and title: Vickie H. Johnson
City Clerk

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STATE OF NORTH CAROLINA
COUNTY OF CRAVEN

I, Dawn E. Heller, a Notary Public in and for the County and State aforesaid, do hereby certify that Vickie H. Johnson personally came before me this day and acknowledged that he/she is City Clerk of the City of New Bern, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by Mack L. Freeze, its Mayor PRO TEM and sealed with its corporate seal, and attested by himself/herself as its Town Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the 11th day of March, 2009

Dawn E. Heller
Notary Public

My Commission Expires:
July 27, 2013

DAWN E. HELLER
NOTARY
PUBLIC
CRAVEN COUNTY, NC

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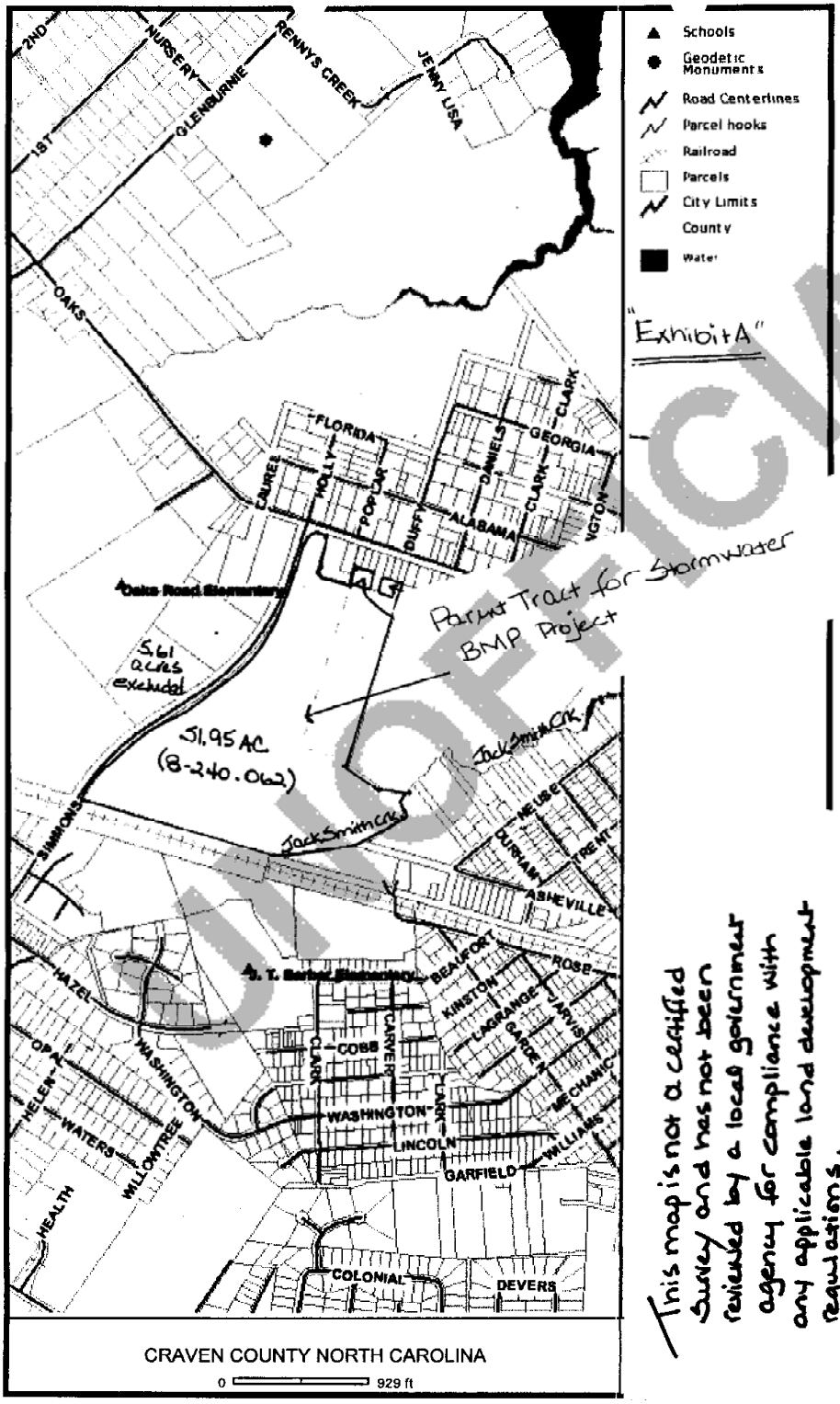

This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

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