B1737 P0104 11-29-2012 15:02:25.000
Davis H. Brinson PROP
Duplin County, NC Register of Deeds page 1 of 10

Davis H. Brinson Register of Deeds
11-29-2012 15:02:25.000 Duplin County, NC
NC REVENUE STAMP: $282.00 (#167948)

DUPLIN COUNTY
STATE OF NORTH CAROLINA
COUNTY OF DUPLIN
This instrument has been filed for Registration on the Date, Time and in the Book and Page shown on the first page hereof, and is being returned for your safekeeping.
Register of Deeds
NORTH CAROLINA

$ 282.00 stamps
10 $26.00

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT PROVIDED PURSUANT TO FULL DELIVERY MITIGATION CONTRACT

Parcel # 10-529-1
DUPLIN COUNTY
SPO File Number 31-0
EEP Site ID Number 95363 (Twin Bays)
Prepared by: Office of the Attorney General
Property Control Section
Return to: NC Department of Administration
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, made this 27th day of NOVEMBER, 2012, by Danny B. Keir and wife, Annice Morrison Keir (collectively, "**Grantor**"), whose mailing address is 5114 Clear Run Drive, Wilmington NC 28403, 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 of 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, this Conservation Easement from Grantor to Grantee has been negotiated, arranged and provided for as a condition of a full delivery contract between **KCI Technologies, Inc.** and the North Carolina Department of Environment and Natural Resources, to provide stream, wetland and/or buffer mitigation pursuant to the North Carolina Department of Environment and Natural Resources Purchase and Services Contract Number 004739.

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 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, which 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, the Ecosystem Enhancement Program in the Department of Environment and Natural Resources, which has been delegated the authority authorized by the Governor and Council of State to the Department of Administration, has approved acceptance of this instrument; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in **Rockfish Township, Duplin County**, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately **31.958 net** acres, described as "Tract C" on plat recorded in Map Book 23, Page 315, Duplin County Registry, and being conveyed to the Grantor by deed as recorded in **Deed Book 1645 at Page 99** of the **Duplin 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 **Rockfish 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 along with a general Right of Access.

The Easement Area consists of the following:

Conservation Easement containing a total of **11.72 acres** as shown on the plat of survey entitled "Final Plat, Conservation Easement for North Carolina Ecosystem Enhancement Program, Project Name: **Twin Bays Wetland Restoration Site**, EEP Project #: 95363, SPO#: **31-O**," dated **August 20, 2012** by **James M. Gellenthin**, PLS Number **L-3860** and recorded in the **Duplin County**, North Carolina Register of Deeds at **Map Book 26 Page 384.**

See attached "**Exhibit A**", Legal Description of area of the Property hereinafter referred to as the "Easement Area"

The purposes of this Conservation Easement are to maintain, restore, enhance, construct, 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 and Right of Access 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. Any rights not expressly reserved hereunder by the Grantor, including the rights to all mitigation credits, including, but not limited to, stream, wetland, and riparian buffer mitigation units, derived from each site within the area of the Conservation Easement, are conveyed to and belong to 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.

B. Motorized Vehicle Use. Motorized vehicle use in the Easement Area is prohibited.

C. 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.

D. Vegetative Cutting. Except as related to the removal of non-native plants, diseased or damaged trees, or vegetation that 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.

E. Industrial, Residential and Commercial Uses. All industrial, residential and commercial uses are prohibited in the Easement Area.

F. Agricultural Use. All agricultural uses are prohibited within the Easement Area including any use for cropland, waste lagoons, or pastureland.

G. New Construction. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

H. Roads and Trails. There shall be no construction of roads, trails, walkways, or paving 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 Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Easement Area.

J. Dumping or Storing. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or any other material in the Easement Area is prohibited.

K. Grading, Mineral Use, Excavation, Dredging. There shall be no grading, filling, excavation, dredging, mining, drilling; 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 diverting, causing, allowing or permitting the diversion of surface or underground water in the Easement Area. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns is allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides in the Easement Area 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 on the Property.

M. Subdivision and Conveyance. Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying Property owned by the Grantor in fee simple ("fee") that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee and the rights 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.

N. Development Rights. All development rights are permanently removed from the Easement Area and are non-transferrable.

O. 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 not inconsistent with the purposes of this Conservation Easement, and the Grantor obtains advance 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. Right of Access, Construction, and Inspection. The Grantee, its employees and agents, successors and assigns, are hereby granted and receive a perpetual non-exclusive easement for access to the Easement Area over the Property at reasonable times to undertake any activities to restore, construct, manage, maintain, enhance, and monitor the stream, wetland and any other riparian resources in 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. The recommended access to the site from Cornwallis Road is shown on the plat of survey entitled "Final Plat, Conservation Easement for North Carolina Ecosystem Enhancement Program, Project Name: **Twin Bays Wetland Restoration Site**, EEP Project #: 95363, SPO#: **31-O**," dated **August 20, 2012** by **James M. Gellenthin**, PLS Number **L-3860** and recorded in the **Duplin County**, North Carolina Register of Deeds at **Map Book 26 Page 384.**

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.

C. Signs. The Grantee, its employees and agents, successors or assigns, shall be permitted to place signs and witness posts on the Property to include any or all of the following: describe the project, prohibited activities within the Conservation Easement, or identify the project boundaries and the holder of the Conservation Easement.

D. Fences. The Grantee, its employees and agents, successors or assigns, shall be permitted to place fencing on the Property to restrict livestock access. Although the Grantee is not responsible for fence maintenance, the Grantee reserves the right to repair the fence, at its sole discretion.

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 in the Easement Area that may have been damaged by such unauthorized activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, the Grantee shall, except as provided below, notify

the Grantor-in writing of such breach and the Grantor shall have ninety (90) days after receipt of such notice to correct the damage caused by such breach. If the breach and damage remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by bringing appropriate legal proceedings including an action to recover damages, as well as 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 is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement, and the Grantor and Grantee acknowledge that the damage would be irreparable and remedies at law 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 is 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 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, or damage to the Property resulting from such causes.

D. Costs of Enforcement. Beyond regular and typical monitoring expenses, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, 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. Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Property. Grantee shall not be responsible for any costs or liability of any kind related to the

ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Upkeep of any constructed bridges, fences, or other amenities on the Property are the sole responsibility of the Grantor. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of the Reserved Rights.

C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown herein 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 Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees that any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

E. 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.

F. This Conservation Easement and Right of Access may be amended, but only in writing signed by all parties hereto, or their successors or assigns, if 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. The owner of the Property shall notify the U.S. Army Corps of Engineers in writing sixty (60) days prior to the initiation of any transfer of all or any part of the Property. Such notification shall be addressed to: Justin McCorkle, General Counsel, US Army Corps of Engineers, 69 Darlington Avenue, Wilmington, NC 28403

G. 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 is 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.

_____ (SEAL)
Danny B. Keir

_____ (SEAL)
Annice Morrison Keir

NORTH CAROLINA
COUNTY OF NEW HANOVER

I, ROBERT G COLLINS, a Notary Public in and for the County and State aforesaid, do hereby certify that **Danny B. Keir and Annice Morrison Keir**, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 27th day of NOVEMBER, 2012.

_____
Notary Public

ROBERT G. COLLINS NOTARY PUBLIC NEW HANOVER COUNTY, NC

My commission expires:
SEPTEMBER 19, 2015

Exhibit A
Conservation Easement Description

A parcel of land to be used for conservation easement purposes located on lands now or formerly owned by Danny B. Keir (DB 1666 Pg 116), located in Rockfish Township, Duplin County, North Carolina and being more particularly described as follows:

Commencing at a found railroad spike in the center of Cornwallis Road (60 foot public right-of-way) at the Southwest corner of said Danny B. Keir lands; said point having State Plane Coordinates (NAD '83) of Northing:364604.71 and Easting:2291890.15; Thence South 82°54'05" East on the South line of said lands owned by Danny B. Keir, a distance of 34.37 feet to the intersection with the Easterly right-of –way line of Cornwallis Road (NCSR 1101); Thence North 22°07'18" West, on the said Easterly right-of-way line of Cornwallis Road, a distance of 5.67 feet to the **Point of Beginning;**

Thence N 22°07'18" W, continuing on the Easterly line of Cornwallis Road, a distance of 459.93 feet to a point;

Thence N 29°06'58" E a distance of 243.43 feet to a point on a Southwesterly line of lands now or formerly owned by Larry Allen Keir, Jr. (DB 1645 PG 107);

Thence S 34°16'08" E, on the said Southwesterly line of Larry Allen Keir, Jr. lands, a distance of 5.37 feet to a point;

Thence N 28°38'16" E on the Southeasterly line of said Larry Allen Keir, Jr. lands a distance of 93.28 feet to a point;

Thence N 06°26'39" E, on the Easterly line of said Larry Allen Keir, Jr. lands, a distance of 81.86 feet to a point;

Thence S 89°35'35" E a distance of 82.68 feet to a point;

Thence S 06°22'31" W a distance of 284.75 feet to a point;

Thence S 82°45'43" E a distance of 162.72 feet to a point;

Thence N 14°37'28" E a distance of 266.95 feet to a point;

Thence S 75°01'38" E a distance of 105.07 feet to a point;

Thence S 17°42'38" W a distance of 207.27 feet to a point;

Thence S 71°55'53" E a distance of 174.39 feet to a point;

Thence N 12°11'01" E a distance of 195.71 feet to a point;

Thence S 70°36'57" E a distance of 44.79 feet to a point;

Thence S 10°24'40" E a distance of 183.19 feet to a point;

Thence S 22°51'13" E a distance of 624.43 feet to a point;

Thence N 82°50'51" W a distance of 852.09 feet to the **Point of Beginning.**

Containing 510721 square feet or 11.72 acres.

Exhibit A (Continued)

Point Table (Table of Coordinates)			
Point	Northing	Easting	Description
1	364605.59	2291922.18	Easement Corner
2	365031.66	2291748.98	Easement Corner
3	365244.33	2291867.43	Easement Corner
4	365239.90	2291870.45	Easement Corner
5	365321.77	2291915.16	Easement Corner
6	365403.11	2291924.35	Easement Corner
7	365402.52	2292007.03	Easement Corner
8	365119.54	2291975.41	Easement Corner
9	365099.04	2292136.83	Easement Corner
10	365357.33	2292204.23	Easement Corner
11	365330.19	2292305.74	Easement Corner
12	365132.74	2292242.68	Easement Corner
13	365078.65	2292408.47	Easement Corner
14	365269.95	2292449.77	Easement Corner
15	365255.09	2292492.02	Easement Corner
16	365074.91	2292525.13	Easement Corner
17	364499.50	2292767.64	Easement Corner