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Alamance, NC
HUGH WEBSTER REGISTER OF DEEDS
BK 3266 PG 684-697

Prepared by and return to:
Robert H. Merritt, Jr.
Bailey & Dixon, LLP
P. O. Box 1351
Raleigh, NC 27602

Excise Tax $ 2.00

STATE OF NORTH CAROLINA

ALAMANCE COUNTY

SPO# 01-N
EEP SITE ID#: 95729

CONSERVATION EASEMENT PROVIDED PURSUANT TO FULL DELIVERY MITIGATION CONTRACT CONTRACT #004951

THIS CONSERVATION EASEMENT DEED, made this 27th day of September, 2013, by BOYD DAN PERRY and spouse, CYNTHIA SAX PERRY, (hereinafter "Grantor"), whose mailing address is P. O. Box 147, Pittsboro, NC 27312, 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

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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 Michael Baker Engineering, 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 004951.

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, (the "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

the Council of State to the Department of Administration, has approved acceptance of this instrument; and

WHEREAS, Grantor owns in fee simple a certain parcels of real property situated, lying and being in Newlin Township, Alamance County, North Carolina, which parcel is identified by Tax PN: 156591 (PIN: 9708-60-6346) containing approximately 92.35 acres having been conveyed to Grantor by deed recorded in Deed Book 3143, Page 792, and Book 3143, Page 794 Alamance County Registry, North Carolina, (the "Property"); and

WHEREAS, Grantor is willing to grant a Conservation Easement (as hereinafter defined) over portions of the Property referred to above, thereby restricting and limiting the use of the included portions of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement for the protection and benefit of the waters and the other portions of the UT to Cane Creek Restoration Project, Alamance County, North Carolina;

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, 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, as follows:

The Easement Area consists of the following:

All of the land identified as follows:

Conservation Easement identified as CE-6 as shown on a Plat entitled "UT to Cane Creek Conservation Easement Survey for State of North Carolina – Ecosystem Enhancement Program on the property of Elwood Paul McBane, Shelby J. McBane, Boyd Dan Perry and Cynthia S. Perry,

Newlin Township, Alamance County – North Carolina" dated April 22, 2013, prepared by Michael Baker Engineering, Inc. and recorded at Plat or Map Book 76, Page 40 - 41, Alamance County Registry.

TOGETHER WITH easements and rights for access, ingress, egress and regress as described on the above-referenced recorded plat and this Conservation Easement Deed.

The Conservation Easements described above are hereinafter referred to as the "Easement Area" or the "Conservation Easement" and are further set forth in a metes and bounds description attached hereto as Exhibit 1 and incorporated herein by reference.

The purposes of the 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 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, lessees, agents and licensees.

II. GRANTOR 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 Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor are hereby and 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. Usage of motorized vehicles 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 Conservation Easement shall not alter vegetation, hydrology or topography of the site.

D. Vegetation Cutting. Except as related to the removal of non-native plants, diseased or damaged trees, and 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 Easement Area, 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 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 in the Easement Area.

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 pesticides 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 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 consistent 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 currently 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, receive the perpetual Right of 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 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.

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 with 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 Conservation 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 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 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 to or change in the Easement Area caused by third parties or 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, 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 Conservation 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 above or to such other address(es) as such 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 shall be 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 a writing signed by all parties hereto, or their successors and/or assigns, 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. 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 are free from

encumbrances except the easements, leases, restrictions and rights-of-way reserved or granted herein or otherwise of record and described below and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever. The easements, leases, restrictions and rights-of-way reserved herein or of record constituting exceptions to title are as follows:

1. Reservation of rights as set forth in Article II, above.

IN TESTIMONY WHEREOF, the Grantor has hereunder set its hand and seal, the day and year first above written.

_____(SEAL)
Boyd Dan Perry

_____(SEAL)
Cynthia Sax Perry

NORTH CAROLINA

COUNTY OF WAKE

I, Robert H. Merritt, Jr, do certify that **Boyd Dan Perry and spouse, Cynthia Sax Perry**, personally appeared before me this day, each acknowledging that they voluntarily signed the foregoing document for the purposes therein expressed. I have received satisfactory evidence of the principals' identity in the form of NC Drivers License.

Witness my hand and official stamp or seal this 27th day of September, 2013.

ROBERT H. MERRITT, JR. NOTARY PUBLIC WAKE COUNTY, NC

_____
Notary Public

Robert H. Merritt, Jr
Printed or typed notary name

My Commission Expires: 5-1-2017

00353757

Exhibit 1
Legal Description
Permanent Conservation Easement
UT to Cane Creek
Alamance County, NC

1. Permanent Conservation Easement (Ref: PIN: 9708606346) (CE-6)

A permanent conservation easement over a portion of land in Newlin Township, Alamance County, North Carolina, as shown on a map entitled *"UT to Cane Creek Conservation Easement Survey for State of North Carolina - Ecosystem Enhancement Program on the property of Elwood Paul McBane, Shelby J. McBane, Boyd Dan Perry, and Cynthia Sax Perry* dated April 22, 2013, and recorded in Plat Book 76, Page 40-41, of the Alamance County Registry, and being a portion of the parcel owned by *Boyd Dan Perry and spouse, Cynthia Sax Perry* (PIN: 9708606346), more particularly described as follows:

Commencing at an iron bar and cap with NC Grid coordinates of X=1,905,977.40 Y=779,113.35, and identified as Control Point # 11 on the above referenced plat and running N 08° 18'02" W , 485.27' to a point, which is the **POINT AND PLACE OF BEGINNING**; thence continuing the following courses and distances:

N 74°28'07" W, 21.76', thence
N 01°15'16" W, 483.73', thence
S 26°59'56" E, 196.26', thence
S 00°59'47" E, 191.33', thence
S 26°16'43" W, 137.48', to the **POINT AND PLACE OF BEGINNING**, said permanent conservation easement containing 0.691 acres, more or less.

6. Access to the Permanent Conservation Easements

Access to and through the permanent conservation easements described above and conveyed herein, shall be (1) as provided in this deed,(2) as provided on the Plat referenced above (see Note 8.,Sheet 1 of 2), and (3), from the 60' Public Right-of-Way of Stockard Road,(NCSR 2338), to provide ingress, egress, and regress for purposes of accessing the permanent conservation easements set forth above, and as shown on the aforesaid map recorded in Plat Book 76, Page 40 - 41, of the Alamance County Registry.