

DEED OF CONSERVATION EASEMENT

Excise Tax \$

Tax ID/Parcel/PIN:

NORTH CAROLINA
_____ **COUNTY**

Prepared by and

After Recording Return to:

**N.C. Dept. of Agriculture and Consumer Services
Office of the General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001**

THIS DEED OF CONSERVATION EASEMENT (“Conservation Easement”), effective as of the ____ day of _____ and given by _____ citizen and resident of the State of North Carolina, (hereinafter “Grantor” or “Owner”), to the STATE OF NORTH CAROLINA (hereinafter “Grantee” or “State”) by and through the DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, (hereinafter “NCDA&CS”);

WITNESSETH:

WHEREAS, the State has established the Conservation Reserve Enhancement Program (“CREP”) pursuant to Chapter 113A, Article 16 of the North Carolina General Statutes, for the purposes of acquiring, maintaining, restoring and enhancing wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, wildlife habitat, and recreational opportunities; and

WHEREAS, the State is authorized by Chapter 121, Article 4 of the North Carolina General Statutes to acquire conservation easements; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina has been granted to the Department of Agriculture and Consumer Services 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 13th day of September, 2011; and

WHEREAS, Grantor owns in fee simple absolute certain real property lying and being in Gum Neck Township, Tyrrell County, North Carolina (the "Property"), and more particularly described on the attached “Exhibit A” which is incorporated by reference as if fully set forth herein; and

WHEREAS, Grantor and Grantee have agreed to set aside _____ acres more or less of the Property (as described herein below and hereinafter referred to as the “Easement Area”), for the purpose of including but not limited to; creating a conservation easement to preserve, enhance, restore, and maintain the natural features and resources of the easement Area, to provide habitat for native plants and animals, to improve and maintain water quality, and to control runoff of sediment (hereinafter the “Conservation Values”).

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Ten Dollars (\$10.00) and other good and valuable consideration provided pursuant to the terms of CREP, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, this Conservation Easement in the Easement Area, (exclusive of any area known to or later identified as containing hazardous substances or wastes) which is more particularly described on the attached “Exhibit B” incorporated

by reference as if fully set forth herein.

THE FURTHER TERMS AND CONDITIONS OF THE CONSERVATION EASEMENT ARE AS FOLLOWS:

I. DURATION OF EASEMENT

This Conservation Easement shall remain in effect in perpetuity from the effective date. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, its personal representatives, heirs, successors, assigns, lessees, agents, and licensees.

II. PROHIBITED AND RESTRICTED USES AND ACTIVITIES

Any activity on, or use of, the Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. The Easement Area shall be maintained in its natural and open condition and restricted from any development that would impair or interfere with the Conservation Values.

In addition to the foregoing, the following specific activities are prohibited, restricted, or reserved, as the case may be, within the Easement Area:

A. PROHIBITED USES AND ACTIVITIES

1. **Industrial Uses.** All industrial uses are prohibited.
2. **Residential Uses.** All residential uses are prohibited.
3. **Commercial Uses.** All commercial uses are prohibited.
4. **Agricultural Uses.** Agricultural uses are prohibited except for silvicultural practices as expressly allowed and described in Sections II.B.4. and II.B.5. herein-below.
5. **Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material on the easement area is prohibited.
6. **Livestock.** There shall be no livestock grazing within the Easement Area, nor shall be allowed therein any confined animal facilities.

B. RESTRICTED USES AND ACTIVITIES

1. **New Construction.** There shall be no building, facility, mobile home, or other structure constructed on or placed within the Easement Area, except as necessary for the cleanup or remediation of hazardous substances or hazardous wastes on the Property.
2. **Signs.** No signs shall be permitted within the Easement Area except interpretative signs identifying the Conservation Values of the Easement Area, signs identifying CREP, the Owner, Grantee and/or NCDA&CS, and/or signs giving directions or prescribing rules and regulations for the use of the Easement Area and the Property.
3. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavating, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials; and no change in the topography of the land in any manner except as reasonably necessary for the purpose of alleviating erosion, dispersing sheet flow maintain water quality and wetland values, except as necessary for the cleanup or remediation of hazardous material or hazardous wastes on the Property.
4. **Burning, Cutting, Removal, Grazing or Destruction of Vegetation.** There shall be no burning, cutting, removal, grazing or destruction of trees, shrubs, grasses or other vegetation (collectively, "Vegetation") within the Easement Area except for: (1) practice establishment; (2) non-native, invasive or noxious Vegetation; (3) dead, insect-infested or diseased Vegetation; (4) trees impeding the flow of the Water Body; (5) removal necessary to protect rare and endangered species; (6) Vegetation for one crossing for vehicular access to the remainder of the Property; (7) burning in accordance with the established Conservation Plan and/or Forest Management Plan. Notwithstanding the previous sentence, the Grantors, beginning in year 16, may selectively harvest trees more than 50 feet from the watercourse according to an established forestry management plan.

5. **Cutting, Haying, Mowing, Seed Harvesting, Grazing, Plowing and Tilling.** There shall be no cutting, haying, mowing, seed harvesting, grazing, use of pesticides, plowing or tilling within the Easement Area except for: (1) practice establishment; (2) non-native or invasive grasses or noxious weeds; (3) dead (not dormant), insect-infested or diseased grasses; (4) removal to protect rare and endangered species; or (5) burning in accordance with the established Conservation Plan. Whenever mowing is allowed as set forth in this paragraph, it shall not take place between April 15 and September 15 of any year (or as may be otherwise determined by the State). Mowing for cosmetic purposes is not permitted under any circumstances. Any of the activities described in this section II.B.5. or in Section II.B.4. herein-above, must be conducted in strict compliance with the Conservation Plan (as defined herein-below), and in no event may vegetation be cut lower than 6 inches.

III. GRANTORS' OBLIGATIONS AND WARRANTIES

A. Establishment of Conservation Practices. The Grantor shall establish and maintain riparian buffers, grass filter strips, wetlands, or hardwood tree plantings within the Easement Area and along the protected riparian resource in accordance with a written conservation plan (the "Conservation Plan"). If the Grantor chooses to establish a forested practice, the buffer must be consistent with a forest management plan developed for the Easement Area and approved by a forester registered by the North Carolina State Board of Registration for Foresters (the "Forest Management Plan"). The Forest Management Plan shall be prepared in conjunction with the State, the Natural Resource Conservation Service, and the local Soil and Water Conservation District. All practices established under CREP shall be maintained according to the Conservation Plan and the Forest Management Plan. A copy of the Conservation Plan shall be kept on file in the office of the local Soil and Water Conservation District.

B. Establishment of Forest Management Plan. Forest management practices shall be consistent with the intent of this Easement and the water quality and wildlife habitat purposes of CREP and shall maintain the effectiveness of the CREP enrollment. Forest management practices shall be in accordance with the Forest Management Plan. Protection of water quality shall be the primary goal of the Forest Management Plan. All Forest Management Plans shall provide for diverse wildlife habitat to the maximum extent practicable, including but not limited to early successional habitat for activities. Singletree or group selection methods should be used as harvesting methods. After canopy closure, thinning shall be allowed to an average of 25 square feet basal area below the basal area recommended in the thinning guide published by the USDA Forest Service. As a general rule, enough trees should be removed to allow direct sunlight to fall on 50 percent of the forest floor at noon on a bright day. Subsequent thinning should be considered in order to maintain the tree stand in a productive early successional wildlife habitat condition. Forest Management Plans will be used during the term of this Easement to regenerate the next stand of trees by enhancing the natural regeneration processes, including ecological succession, while maintaining water quality benefits. Forest management may be used to remedy adverse stand conditions created by natural or human-induced catastrophes. Forestry activities, including harvesting, must be carried out according to all existing Federal, State and local laws, rules, regulations and guidelines, and should be limited to a time of the year when the water table is low enough that rutting and compaction will not occur to such extent that normal hydrology is interrupted or soil structure changed. A copy of the Forest Management Plan shall be kept on file in the office of the local Soil and Water Conservation District.

C. Warranty as to Environmental Conditions. The Grantor warrants that it has no actual knowledge of the existence of any hazardous substances or wastes or the release or threatened release of any hazardous substances or wastes on the Easement Area, and that no notice of a violation of any state, federal or local environmental law, ordinance, statute, treaty, decree, rule or regulation has been issued or is pending with respect to the Easement Area.

IV. RIGHT OF ENTRY

The Grantee or the Grantee's designated representatives shall have the right of ingress, egress and regress to and across the Property, Easement Area, and existing paths and farm roads, including but not limited to the lands, paths and farm roads of other property owners, required to gain access from a public road at all reasonable times for the purpose of inspecting said Easement Area to determine if Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. It shall be the responsibility of the Grantor to provide and ensure the above-referenced right of entry across the Property, the lands of other owners and existing paths and farm roads situated thereon, if necessary, to satisfy the terms of this Deed.

V. ENFORCEMENT AND REMEDIES

A. Enforcing Authority. Grantee or its agents, representatives or designees, shall have the right to enforce all of the terms of this Easement. In addition, this Easement may only be amended by a written document that is executed by the Grantor and the Grantee and recorded among the land records of the appropriate jurisdiction.

B. Methods of Enforcement. In the event a violation of these terms, conditions, or restrictions is found to exist, the Grantee may institute a suit to enjoin by ex parte temporary or permanent injunction such violation and to require the restoration of the Easement Area to its prior condition. Additionally, the parties hereto may agree to binding mediation before the Soil and Water Conservation Commission of any dispute regarding an alleged violation of this Easement.

C. Failure to Enforce. No failure on the part of Grantee to enforce any covenant provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee or the State of North Carolina to enforce the same in the event of a subsequent breach or default.

VI. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This instrument sets forth the entire agreement between the parties with respect to the Conservation Easement. All prior discussions, negotiations, understandings or agreements relating to the Conservation Easement are hereby merged into this Easement.

B. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of the 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. Gender. The designations Grantor, Grantee, Owner and State as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter gender as required by context.

D. Headings. The headings of the various sections of this Conservation Easement have been inserted for convenience only and shall in no way modify, define, limit or expand the express provisions of this Conservation Easement.

E. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, to the parties at their addresses shown below:

If to Grantee:
NCDA&CS
Attn: DSWC (CREP)
1614 Mail Service Center
Raleigh, NC 27699-1614

If to Owner:

F. Transfer of the Property. Grantor shall notify NCDA&CS in writing of the name and street address of any party to whom the Easement Area or any part of the Property is to be transferred at or prior to the time said transfer is made. Such subsequent owner's name and address shall be then substituted in paragraph E. hereinabove. Grantor further agrees to make any subsequent lease, deed or other legal instrument by which any interest in the Easement Area or the Property is transferred subject to this Conservation Easement.

G. Quiet Enjoyment. Grantor reserves all rights accruing from ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not expressly prohibited or restricted herein and are not inconsistent with the purposes of the Conservation Easement. Without limiting the generality of the foregoing, Grantor expressly reserves unto itself, its invitees, licensees, successors and assigns, the rights of access to and quiet enjoyment of the Easement Area. Grantor further reserves unto itself, its licensees, invitees, successors and assigns the right to hunt, fish, temporarily camp or make any other recreational use of the Property that does not impact the Conservation Values of the Easement Area or the Property; provided however, that all such activity shall be conducted in accordance with all applicable state and federal laws, rules and regulations pertaining thereto, existing on the date hereof or as the same may be amended in the future. The Grantor also reserves the right to charge a fee to any persons engaged in such activities on the Property.

H. Subsequent Liens on Property. No provision of this Easement should be construed as impairing the ability of Grantor to use the Property as collateral for any subsequent loan, provided that any mortgage or lien arising from such a transaction must not be inconsistent with the terms of this Easement and must be subordinate to this Easement.

I. Waste; Impairment of Title; Payment of Taxes and Other Charges. Owner shall not destroy, damage or impair the Easement Area, allow it to deteriorate, commit waste on the Easement Area or otherwise take any action on the Property or in the Easement Area in conflict with the terms of the Conservation Plan, the Forest Management Plan or this Conservation Easement. Owner shall take no action that can impair his title to the Property unless otherwise allowed by the terms of this Conservation Easement. Owner shall promptly and regularly pay all taxes, assessments, charges, fines, and impositions attributable to the Property that can attain priority over this Conservation Easement.

J. Binding Effect. This Easement shall run with the land and be binding on the Grantor hereof, his heirs, administrators, successors and assigns.

K. Changed Conditions. The grant or donation of this Conservation Easement gives rise to a property right immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole. That proportionate value of Grantee's property rights shall remain constant. If changed conditions occur, which make impossible or impractical any continued protection of the Property for conservation purposes, the restrictions contained herein may be extinguished, but only by judicial proceeding and not by any other manner that may be otherwise in this Conservation Easement. The Grantee shall be entitled to a portion of the Proceeds of Sale of such judicial proceedings. Grantee's portion of the Proceeds of Sale shall be equal to the proportionate value that Grantee's interest in the Easement Area bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Conservation Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding. As allowed by G.S. 146-30(a), Grantee shall use its share of the Proceeds of Sale in a manner consistent with the conservation purposes set forth herein.

L. Condemnation. Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate, or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor shall immediately give notice to Grantee, and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking and all incidental or direct damages resulting from the taking. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that Grantee's interest in the Easement Area bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Conservation Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding. As allowed by G.S. 146-30(a) Grantee shall use its share of the proceeds of sale in a manner consistent with the conservation purposes set forth herein.

M. Availability or Amount of Tax Benefits. Grantee makes no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to Grantor or any other person or entity under United States or any state, local or other tax law to be derived from the conveyance of this Easement or other transaction associated with the conveyance of this Easement. This conveyance is not conditioned upon the availability or amount of any such deduction, credit or other benefit. Grantee makes no warranty, representation or other assurance regarding the value of this Easement or of the Protected Property. As to all of the foregoing, Grantor is relying upon Grantor's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon Grantee or any legal counsel, accountant, financial advisor, appraiser or other consultant of Grantee. In the event of any audit or other inquiry of a governmental authority into the effect of this conveyance upon the taxation or financial affairs involving Grantor or Grantor's heirs, successors or assigns, or other similar matter then Grantee and shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by Grantee in responding or replying thereto.

N. Warranties and Representations of Owner. By signing this Easement, Grantor acknowledges, warrants and represents to Grantee that:

- (a) Grantor has had the opportunity to be represented by counsel of Grantor's and fully understands that Grantor is hereby relinquishing property rights which would otherwise permit Grantor to have a fuller use and enjoyment of the Protected Property.
- (b) There are no recorded or unrecorded leases or other agreements for the production of minerals or removal of timber from the Protected Property which would, if any of the activities permitted under such lease or other agreement was undertaken by Grantor, violate the covenants or restrictions in this Easement or otherwise defeat the conservation Purpose.

TO HAVE AND TO HOLD the aforesaid rights and easements and all privileges and appurtenances thereto unto Grantee for the aforesaid purposes;

AND Grantor covenants that it is seized of said premises in fee and has the right to convey the easement herein granted; that the same are free and clear of encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever subject to the following permitted exceptions, if any, to wit: All matters of record in the _____ County Public Registry.

IN WITNESS WHEREOF, Grantor has hereunto set his hand and seal, as of the day and year first above written.

_____(SEAL)
Landowner

STATE OF NORTH CAROLINA

COUNTY OF _____

I, the undersigned, a Notary Public of the aforesaid county and state do hereby certify that before me this day personally appeared _____, Grantor, and after being first duly sworn, acknowledged the due execution of the foregoing and annexed instrument for the purposes and intents therein expressed. Witness my hand and official seal or stamp, this the ____day of _____, 2014.

Notary Public
Stamp/Seal

My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF BASE TRACT
_____ **TOWNSHIP**
_____ **COUNTY, NORTH CAROLINA**

EXHIBIT B
LEGAL DESCRIPTION OF CREP EASEMENT TRACT
_____ **TOWNSHIP**
_____ **COUNTY, NORTH CAROLINA**