

Tax Parcel ID# _____

NEVILL'S CREEK NATURAL AREA AND UPLANDS

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

GRANT OF CONSERVATION EASEMENT
AND DEVELOPMENT RIGHTS

This Grant of Conservation Easement and Development Rights ("Conservation Easement") is made on this 21st day of December, 1995, by MICHAEL A. GODFREY and wife HEATHER ELISE MAIN, who joins solely for the purpose of releasing her marital interest in the Property, ("Grantor"), and NORTH CAROLINA COASTAL LAND TRUST, a non-profit North Carolina corporation, ("Grantee") for the purpose of forever conserving the natural area character, forest and wetland resources and scenic qualities of the subject property.

WITNESS THAT:

The Grantor is the sole owner in fee simple of the property ("Property") legally described in Exhibit A, attached hereto and incorporated by this reference, being approximately 450 acres in Chocowinity Township, Beaufort County, State of North Carolina and being Registered Estate No. 693.

The Property is a natural area that has not been subject to significant development which provides a "relatively natural habitat for fish, wildlife or plants or similar ecosystem" as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, and includes portions of Nevill's Creek Natural Area, a complex of habitats that supports a high diversity of plant species, has been designated by the North Carolina Natural Heritage Program as "regionally significant" and which is more particularly depicted in the maps attached to the Easement Documentation Report hereinafter described; habitats represented include mesic hardwood slopes, floodplain forest, swamp forest and marshlands of *Spartina alterniflora* and *Juncus* (along Nevill's Creek and Jack's Creek, tributaries of the Pamlico River), together with buffer areas of mixed pine and mesic hardwood forestland on the higher elevation uplands.

The Property also has outstanding scenic qualities that can be enjoyed by the general public, namely frontage on Jack's Creek and Nevill's Creek.

The floristic, scenic, natural and other characteristics of the Property, its current use and state of improvement, are described in the Easement Documentation Report, dated December, 1995, acknowledged by the Grantor and Grantee to be complete and

Exhibit A

Located in Chocowinity Township, Beaufort County, North Carolina, more particularly described as follows:

BEGINNING at the mouth of Jack's Creek and running up said Creek, its various courses 55 chains to an iron pipe, Mrs. Sallie Swindell's corner; thence with said Swindell's line South 5 degrees 45 minutes West 40.15 chains to an iron pipe, said Swindell's corner; thence South 15 degrees 30 minutes East 1.76 chains; thence South 37 degrees 15 minutes East 2.15 chains to an iron pipe; thence the following courses and distances to and with Cool Spring Branch: South 25 degrees 45 minutes East 2.03 chains, South 66 degrees 45 minutes East 2.53 chains, South 34 degrees 15 minutes West 3.24 chains, South 18 degrees 45 minutes West 1.50 chains, South 26 degrees 15 minutes East 1.86 chains, South 15 degrees 30 minutes West 2.42 chains, South 46 degrees East 2.18 chains, South 15 degrees 15 minutes West 4.59 chains, South 20 degrees 30 minutes East 2.52 chains, South 46 degrees East 2.56 chains, South 0 degrees 45 minutes East 2.58 chains, South 26 degrees 15 minutes East 1.74 chains, South 11 degrees 45 minutes East 3.91 chains, South 1 degree 15 minutes West 1.80 chains, South 37 degrees 15 minutes East 4.97 chains, South 70 degrees 30 minutes East 2.97 chains, South 40 degrees East 4.56 chains, South 48 degrees East 1.92 chains, North 36 degrees 15 minutes East 1.64 chains and North 62 degrees 30 minutes East 0.89 chains to Nevill's Creek; thence down said Creek to the mouth of Jack's Creek, the point of beginning, containing 450 acres, more or less.

accurate as of the date hereof. Both the Grantor and the Grantee have copies of this report. It will be used by the parties to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, this report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

The Grantor owns the entire fee simple interest in the Property, including the entire mineral estate. All holders of liens or other encumbrances upon the Property have agreed to subordinate their interests in the Property to this Conservation Easement.

The Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. 121-34 *et seq.*, provides for the enforceability of restrictions, easements, covenants or conditions appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use.

The Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code, as evidenced by its IRS determination letter dated December, 1992 and, as certified by a resolution of its Board of Directors, accepts the responsibility of enforcing the terms of this Conservation Easement and upholding its conservation purposes forever.

The purposes of this Conservation Easement are to protect in perpetuity the natural values, scenic open space character and other conservation values of the Property (collectively the "Conservation Values").

NOW, THEREFORE, as an absolute gift, but in consideration of the restrictions contained herein, and pursuant to N.C.G.S. 121-34 *et seq.*, Grantor does hereby convey unto Grantee, its successors and assigns forever, conservation easement grant of and development rights of and over the Property, as more particularly described, in perpetuity, and consisting of the covenants hereinafter set forth:

1. *Prohibited Acts*

Grantor promises that he will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the preservation of the Property's natural or scenic open space character or with the specific covenants below. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Property after any Act of God or other event over which they had no other control. Grantor understands that nothing in this Conservation Easement relieves him of any obligation or restriction on the use of the Property imposed by law.

2. *Construction of Buildings and Other Structures*

The construction or reconstruction of any building or other structure, except those existing on the date of this Conservation Easement or previously approved by the Grantee, is prohibited except in accordance with paragraphs A through B below.

A. *Fences* -- Existing fences, gates and other structures may be repaired and replaced, and new fences, gates and boundary signs may be built or placed anywhere on the Property for purposes of reasonable and customary forestland management, without permission of the Grantee;

B. *Single-Family Residential Dwellings* -- There are currently no residential dwellings on the Property.

(1) *Nevill's Creek Natural Area Natural Heritage Site*

No more than eight (8) new single-family residential dwellings, together with reasonable appurtenances such as garages, sheds, piers, docks and boat landings ("Residential Unit") may be built on and subdivided from the Property in that part of the Property designated as the Nevill's Creek Natural Area by the North Carolina Natural Heritage Program and so depicted on the maps attached to the Easement Documentation Report; provided, however that:

(a) no building, placement of structures, construction activity, land clearance or disturbance except for permitted docks, piers or boat landings, is allowed at any location below the thirty (30) foot contour lines as shown on the maps attached to the Easement Documentation Report;

(b) no more than a total of four docks, piers and boat landings, are permitted;

(c) the Grantee shall approve the location of any such homesite and the proposed construction; said approval shall not be unreasonably withheld;

(d) each such Residential Unit shall be contained within a building envelope of no more than one (1) acre; and

(e) no more than eight (8) parcels of the Property, each containing a Residential Unit, may be subdivided from the Property; minimum lot size for each such subdivided parcel is ten (10) acres.

(2) *Areas Outside the Nevill's Creek Natural Area Natural Heritage Site*

In the areas outside the Nevill's Creek Natural Area, there may be new single-family residential dwellings, together with reasonable appurtenances such as garages and sheds, swimming pools and tennis courts, but excluding docks, piers and boat landings ("Residential Unit"); provided, however, that:

(a) each such Residential Unit shall be contained within a building envelope of no more than one (1) acre;

(b) there shall be no more than one Residential Unit per ten (10) acres; and

(c) each Residential Unit may be subdivided from the Property. At the time that construction of such Residential Unit, or any proposed major additions or replacement, Grantor shall be notified so that its records can be updated and so that it may review and consider the proposed location and construction. Reasonable access to and utilities for such structures are permitted, subject to the other provisions set forth in paragraph 9.

3. *Subdivision*

The subdivision of the Property into tracts less than ten (10) acres in size, whether by physical or legal process, is prohibited except as permitted in paragraph 2 above.

4. *Development Rights*

With the exception of buildings permitted in paragraph 2(b) above, Grantor conveys to Grantee all developmental rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

5. *Timber Harvesting*

A. *Areas Outside the Nevill's Creek Natural Area*

Any Commercial timber harvesting on that portion of the Property outside the Nevill's Creek Natural Area shall be conducted only in accordance with:

- (1) Best Management Practice guidelines for the timber industry as the same may be promulgated by law or regulation in the state of North Carolina and amended from time-to-time; and
- (2) a written timber and forest management plan prepared for the Grantor by a professional forester registered in the State of North Carolina who is approved by the Grantee; said approval shall not be unreasonably withheld. The technique of prescribed burns may be utilized.

B. *Nevill's Creek Natural Area*

The Grantor shall set aside and protect the Nevill's Creek Natural Area within the boundaries of the Property, including that part of the Property below the thirty (30) foot contour line, at which said Natural Area there may be no cutting, logging, mowing or other disturbance or interference of habitat except 1) to control insects and disease or to prevent personal injury and property damage or 2) for conservation purposes, such as hardwood control practices or practices

conducive to propagation to the propagation and retention of native plant and wild population of game and non-game species of bird, mammals and fish if done in accordance with a written Conservation Management Plan agreed to by Grantor and Grantee.

In the event that Grantor fails to implement any management activities set forth in the Conservation Management Plan, including but not limited to prescribed burning or natural area management, and such failure continues fifteen (15) days after written notice to Grantor, without a schedule of implementation having been agreed to by the Grantee, then Grantee, without further notice, shall have the right, but not the obligation, to implement such management activities at its expense, using trained staff.

6. *Hunting, Fishing and Trapping*

The right to hunt, fish and trap on the Property and the right to lease all or any portion of the Property for hunting and fishing is allowed, provided that all such activity is conducted in accordance with local, state and federal regulations and provided that there shall be no material impairment of any conservation value of the Property.

7. *Mining*

The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited.

8. *Industrial, Commercial, Residential and Agricultural Use*

Industrial, commercial, residential and agricultural use and any right of passage therefore, is prohibited except for commercial timber harvesting activities described in paragraph 5 above.

9. *Paving and Road Construction*

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. Existing timber roads may be maintained in their current condition. No new roads may be built except for temporary timber access roads and access roads to the Residential Units permitted in paragraph 2 above. The location of any new roads shall be to the subject to the approval of the Grantee, which may not be unreasonably withheld.

10. *Trash*

The dumping or accumulation of any kind of trash or refuse on the Property, is strictly prohibited.

11. *Water Quality and Drainage Patterns*

Pollution, alteration, depletion or extraction of surface water, natural water courses, subsurface water, or any other water bodies is prohibited. Disruption of natural drainage patterns and creation of artificial drainage patterns is prohibited except for the maintenance of the existing man-made ponds. Diking, dredging, alteration, draining, filling or removal of wetlands is prohibited.

12. *Recreational Uses*

Recreational use except for hunting, fishing and other passive recreational use is prohibited.

13. *Rights Retained by Grantor*

The Grantor retains the right to perform any act not specifically prohibited or limited by this Conservation Easement. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone it chooses.

14. *Responsibilities of Grantor and Grantees Not Affected*

Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor, or in any way to affect any existing obligation of the Grantor as owners of the Property. Among other things, this shall apply to:

A. *Taxes* -- The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same.

B. *Upkeep and Maintenance* -- The Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

15. *Enforcement*

The Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement. With reasonable advance notice to the Grantor, the Grantee may enter the Property for the purpose of inspecting for violations. If the Grantee finds what is a violation, it may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the natural or scenic open space character or watershed protection values, the Grantee

shall give the Grantor written notice of the violation and ninety (90) days to correct it, before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring the Grantor to restore the Property to its condition prior to the violation. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

16. *Transfer of Easement*

The Grantee shall have the right to transfer this Conservation Easement to any public agency or private nonprofit organization that (a) is approved by the Grantor, such approval not to be unreasonably withheld, and (b) at the time of transfer, is a "qualified organization" under Sec. 170(h) of the U.S. Internal Revenue Code, and under N.C.G.S. 121-34 *et. seq.*, and (c) the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this. If the Grantee ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agree to assume the responsibility.

17. *Transfer of Property*

Any time the Property itself, or any interest in it, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement.

18. *Public Access.*

The granting of this Conservation Easement does not convey to the public any right of access to the Property.

19. *Amendment of Easement*

This easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and the Grantee's easement amendment policies, and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with N.C.G.S. 121-34 *et. seq.* or any regulations promulgated pursuant to that law.

20. *Termination of Easement*

If it determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill its conservation purposes, a court with jurisdiction

may, at the joint request of both the Grantor and Grantee, terminate this Conservation Easement.

If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings.

If the easement is terminated and the Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. The Grantee shall use the proceeds consistently with the conservation purposes of this Conservation Easement.

21. *Interpretation*

This Conservation Easement shall be interpreted under the laws of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

22. *Perpetual Duration*

This Conservation Easement shall be a servitude running with the land in perpetuity. Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective agents, heirs executors, administrators, assigns, and all other successors as their interests may appear.

23. *Notices*

Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

To Grantor:
Michael Godfrey
210 High Street
Carrboro NC 27510

To the Grantee:
North Carolina Coastal Land Trust
The Cotton Exchange
313 North Front Street, Suite A
Wilmington NC 28401

24. *Environmental Condition*

The Grantor warrants that he has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.

25. *Subsequent Liens on Property*

No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Conservation Easement.

26. *Acceptance and Effective Date*

As attested by the Seal of the North Carolina Coastal Land Trust and the signature of its President affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement shall be effective as of the date recorded in the Registry of Deed, Beaufort County, North Carolina.

TO HAVE AND TO HOLD, this Grant of Conservation Easement and Development Rights unto the Grantee, its successors and assigns, forever.

And the Grantor further grants, assigns and conveys to Grantee, for the purposes herein set forth, a non-exclusive perpetual right of way as more particularly described in Deed Book 782 Page 91, Beaufort County Registry.

IN WITNESS WHEREOF, the Grantor, intending to legally bind himself, has set his hand and seal and Grantee has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

GRANTOR:

 (Seal)
MICHAEL A. GODFREY

 (Seal)
HEATHER ELISE MAIN

Accepted:

GRANTEE:

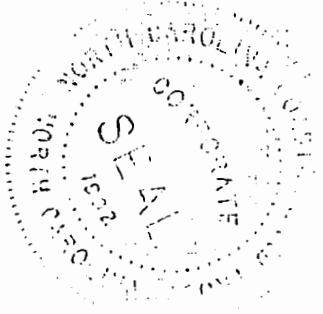
North Carolina Coastal Land Trust,
a North Carolina Non-profit Corporation

By: Michael Murchison
President

Attest:

By: Carmilla M. Hulver
Secretary

(Corporate Seal)



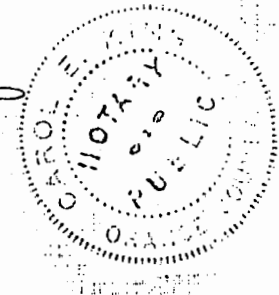
Acknowledgments

NORTH CAROLINA
Orange COUNTY

I, Carol E. King, a Notary Public of Orange County, North Carolina do hereby certify that Michael A. Godfrey and wife, Heather Elise Main, personally appeared before me and acknowledged the due execution of the foregoing instrument.

Carol E. King
Notary Public (SEAL)

My commission expires: June 12, 2000

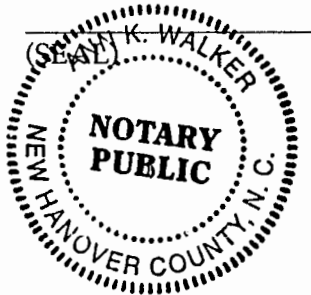


NORTH CAROLINA
New Hanover COUNTY

I, Ann K Walker, a Notary Public of New Hanover County, North Carolina do hereby certify that Camilla Henrich personally appeared before me this day and acknowledged that she is the Secretary of North Carolina Coastal Land Trust, a non-profit corporation, and that by authority duly given and as act of the corporation the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by herself as its secretary.

Witness my hand and notarial seal this the 21 day of December, 1995.

My commission expires: **My Commission Expires September 30, 1998**



Ann K Walker
(Notary Seal)

North Carolina
Beaufort County

The foregoing Certificate of Carol E. King
Ann K. Walker

Notary Public/Notaries Public is/are certified to be correct this instrument was presented for registration and recording in this office at Book 1037, Page 129.

This 28th day of Dec, 1995 at 2:23 o'clock P.M.
Kirk W. Mizelle By Marion J. Hester
Register of Deeds Deputy Register of Deeds 11

J.M. McHull/AN