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Surry County North Carolina
Carolyn M. Comer Reg of Deeds

Bk 1402 Pg 372-381

PERMANENT CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("Conservation Easement") made this 15th day of May, 2012 by and between Jimmy Ray Newman ("Grantor") and Surry Soil & Water ("Grantee").

The designation 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.

RECITALS

WHEREAS, Grantor owns in fee simple certain real property situated, lying and being in Surry County, North Carolina, more particularly described in Figure 1 attached hereto and incorporated herein, and as shown on a map titled "*Conservation Easement Survey for Surry Soil and Water Conservation District on the Property of Jimmy Ray Newman*", dated April 17, 2012, and recorded in the Surry County Registry at ~~Deed~~ Book 28, Page 146 ("Property");

WHEREAS, Grantor and Grantee recognize the conservation, scenic, natural, or aesthetic value of the property in its natural state, which includes the following natural communities: Stream channel and associated vegetated riparian buffer and floodplain areas. The purpose of this Conservation Easement is to maintain wetland and/or riparian resources and other natural values of the Property, and prevent the use or development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its natural condition.

WHEREAS, the preservation of the Property is a condition of Department of the Army permit Action ID SAW-2010-01397, issued by the Wilmington District Corps of Engineers, required to mitigate for unavoidable stream and/or wetland impacts to authorize by that permit. Grantor and Grantee agree that the third-party rights of enforcement shall be held by the U.S. Army Corps of Engineers, Wilmington District (Corps, to include any successor agencies), and that these rights are in addition to, and do not limit, the rights of enforcement under said permit.

NOW, THEREFORE, for and in consideration of the covenants and representations contained herein and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Grantor hereby unconditionally and irrevocably grants and conveys unto Grantee, its heirs, successors and assigns, forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Property described on Figure 1, together with the right to preserve and protect the conservation values thereof, as follows:

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ARTICLE I.
DURATION OF EASEMENT

This Conservation Easement shall be perpetual. This Conservation Easement is an easement in gross, runs with the land and is enforceable by Grantee against Grantor, Grantor's personal representatives, heirs, successors and assigns, lessees, agents and licensees.

ARTICLE II.
PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purpose of this Conservation Easement is prohibited. The Property shall be preserved in its natural condition and restricted from any development that would impair or interfere with the conservation values of the Property.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

- A. Disturbance of Natural Features. Any change disturbance, alteration or impairment of the natural features of the Property or any introduction of non-native plants and/or animal species is prohibited.
- B. Construction. There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock or any other temporary or permanent structure or facility on or above the property.
- C. Industrial, Commercial and Residential Use. Industrial, residential and/or commercial activities, including any right of passage for such purposes are prohibited.
- D. Agricultural, Grazing and Horticultural Use. Agricultural, grazing, animal husbandry, and horticultural use of the Property are prohibited.
- E. Vegetation. There shall be no removal, burning, destruction, harming, cutting or mowing of trees, shrubs, or other vegetation on the Property.
- F. Roads and Trails. There shall be no construction of roads, trails or walkways on the property; nor enlargement or modification to existing roads, trails or walkways.

- G. Signage. No signs shall be permitted on or over the Property, except the posting of no trespassing signs, signs identifying the conservation values of the Property, signs giving directions or proscribing rules and regulations for the use of the Property and/or signs identifying the Grantor as owner of the property.
- H. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Property is prohibited.
- I. Excavation, Dredging or Mineral Use. There shall be no grading, filling, excavation, 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 on the Property, except to restore natural topography or drainage patterns.
- J. Water Quality and Drainage Pattern. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities or altering or tampering with the water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocide is prohibited.
- K. Development Rights. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.
- L. Vehicles. The operation of mechanized vehicles, including, but limited to, motorcycles, dirt bikes, all-terrain vehicles, cars and trucks is prohibited.
- M. Other Prohibitions. Any other use of, or activity on, the Property which is or may become inconsistent with the purposes of this grant, the preservation of the Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

ARTICLE III.
GRANTOR'S RESERVED RIGHTS

The Grantor expressly reserves for himself, his personal representatives, heirs, successors or assigns, the right to continue the use of the property for all purposes not inconsistent with this Conservation Easement, including, but not limited to, the right to quiet enjoyment of the Property, the right to sell, transfer, gift or otherwise convey the Property, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of, and shall specifically reference, this Conservation Easement.

Notwithstanding the foregoing Restrictions, Grantor reserves for Grantor, its successors and assigns, the right to construct wetland and stream mitigation on the Property, in accordance with the Cooks Creek Mitigation Site Compensatory Stream Mitigation Plan dated December 19, 2011 with Department of the Army permit Action ID SAW-2010-01397.

ARTICLE IV.
GRANTEE'S RIGHTS

The Grantee or its authorized representatives, successors, and assigns, and the Corps, shall have the right to enter the Property at all reasonable times for the purpose of inspecting said property to determine if the Grantor, or his personal representatives, heirs, successors, or assigns, is complying with the terms, conditions, restrictions, and purposes of this Conservation easement. The Grantee shall also have the right to enter and go upon the Property for purposes of making scientific or educational observations and studies, and taking samples. The easement rights granted herein do not include public access rights.

ARTICLE V.
ENFORCEMENT AND REMEDIES

- A. To accomplish the purposes of this Easement, Grantee is allowed to prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Property that may be damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor that comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of such breach. The Grantor shall have 30 days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after 30 days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunction or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances

damage to the Grantee 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. The costs of a breach, correction or restoration, including Grantee's expenses, court costs, and attorneys' fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. The Corps shall have the same right to enforce the terms and conditions of this easement as the Grantee.

- B. No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right to Grantee to enforce the same in the event of a subsequent breach or default.
- C. 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 Property resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, war, acts of God or third parties, except Grantor's lessees or invitees; or from any prudent action taken in good faith by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

ARTICLE VI.
MISCELLANEOUS

- A. Warranty. Grantor warrants, covenants and represents that it owns the Property in fee simple, and that the Grantor either owns all interest in the Property which may be impaired by the granting of this Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Property which have not been expressly subordinated to this Conservation Easement, and that Grantor will warrant and defend title to the Property against the claims of all persons.
- B. Subsequent Transfers. The Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument that transfers any interest in all or a portion of the Property. The Grantor agrees to provide written notice of such transfer at least thirty (30) days prior to the date of the transfer. 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 and shall not be amended, modified or terminated without the prior written consent and approval of the Corps.

- C. Assignment. 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.
- D. Entire Agreement and Severability. 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 void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.
- E. Obligations of Ownership. Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Property. Grantor shall keep the Property free of any liens or other encumbrances for obligations incurred by Grantor. 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. 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.
- F. Extinguishment. In the event that changed conditions render impossible the continued use of the Property for the conservation purposes, this Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding.
- G. Eminent Domain. Whenever all or part of the property is taken in the exercise of eminent domain so as to substantially abrogate the Restrictions imposed by this Conservation Easement, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.
- H. Proceeds. This Conservation Easement constitutes a real property interest immediately vested in Grantee. In the event that all or a portion of this Property is sold, exchanged, or involuntarily converted following an extinguishment or the exercise of eminent domain, Grantee shall be entitled to the fair market value of this Conservation Easement. The parties stipulate that the fair market value of this Conservation Easement shall be determined by multiplying the fair market value of

the Property unencumbered by this Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of this easement at the time of this grant to the value of the Property (without deduction for the value of this Conservation Easement) at the time of this grant. The values at the time of this grant shall be the values used, or which would have been used, to calculate a deduction for federal income tax purposes, pursuant to Section 170(h) of the Internal Revenue Code (whether eligible or ineligible for such a deduction). Grantee shall use its share of the proceeds in a manner consistent with the purposes of this Conservation Easement.

- I. Notification. Any notice, request for approval, or other communication required under this Conservation Easement, shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this Paragraph):

To Grantor:

Jimmy Ray Newman
2914 Red Brush Road
Mount Airy, North Carolina 27030
Fax: N/A

To Grantee:

Gordon Holder
Surry Soil and Water Conservation District
P.O. Box 218
Dobson, North Carolina 27017
Fax: 336 386-9428

To the Corps:

James Lastinger
69 Darlington Avenue
Wilmington, North Carolina 28403
Fax: _____

- J. Failure of Grantee. If at any time Grantee is unable or fails to enforce this Conservation Easement, or if Grantee ceases to be a qualified grantee, and if within a reasonable period of time after the occurrence of one of these events Grantee fails to make an assignment pursuant to this Conservation Easement, then the Grantee's interest shall become vested in another qualified grantee in accordance with an appropriate proceeding in a court of competent jurisdiction.

- K. Amendment. This Conservation Easement may be amended, but only in writing signed by all parties hereto, 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 conservation purposes of this grant.
- L. Present Condition of the Property. The wetlands, scenic, resource, environmental, and other natural characteristics of the Property, and its current use and state of improvement, are described in Sections 1 and 2 of the Mitigation Plan, dated December 19, 2011, prepared by Grantor and acknowledged by the Grantor and Grantee to be complete and accurate as of the date hereof. Both Grantor and 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.

TO HAVE AND TO HOLD the said rights and easements perpetually unto Grantee for the aforesaid purposes.

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

GRANTOR:

By: James Ray Neen

Landowner

GRANTEE:

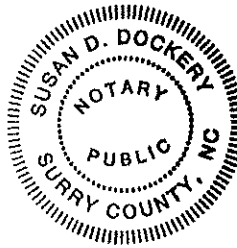
By: London Alder

Surry Soil and Water Conservation District

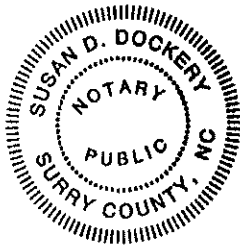
STATE OF NORTH CAROLINA

COUNTY OF SURRY

GRANTOR:

By: Jimmy Ray NewmanPrint Name: Jimmy Ray Newman

I, Susan D. Dockery, the undersigned Notary Public, certify that Jimmy Ray Newman, personally appeared before me this day, proved their identity to me by satisfactory evidence in the form of in person, and acknowledged to me that they voluntarily signed the foregoing document for the purpose stated therein. Witness my hand and Notarial stamp or seal this the 15 day of May, 2012.

Susan D. Dockery

Signature of Notary Public

Susan D. Dockery

Typed or Printed Name of Notary

My Commission Expires: 12-28-2012

STATE OF NORTH CAROLINA

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COUNTY OF SURRY

GRANTEE:

By: Gordon Holder

Surry Soil and Water Conservation District

Print Name:

I, Deborah Butcher Cave the undersigned Notary Public, certify that Gordon Holder, personally appeared before me this day, proved their identity to me by satisfactory evidence in the form of drivers license, and acknowledged to me that they voluntarily signed the foregoing document for the purpose stated therein. Witness my hand and Notarial stamp or seal this the 15th day of May, 2012.

Deborah Butcher Cave

Signature of Notary Public

Deborah Butcher Cave

Typed or Printed Name of Notary

My Commission Expires: July 6, 2015