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Ck \$ 59 Ck # 4484 Cash \$ 13.00  
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STATE OF NORTH CAROLINA

P.I.N. # 21900001

COUNTY OF BRUNSWICK

PREPARED BY: Lisa Glover  
Assistant Attorney General  
North Carolina Department of Justice

RETURN TO: North Carolina Department of Transportation  
Natural Environment Unit  
1598 Mail Service Center  
Raleigh, NC 27699-1598

### CONSERVATION EASEMENT and ACCESS EASEMENT

This Conservation Easement and Access Easement is granted on this 28 day of August, 2007, by RESERVE DEVELOPMENT CO., LLC, having an address of P.O. Box 10879, Southport, North Carolina, 28461 (hereinafter, "Grantor"), to THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, having an address of 1598 Mail Service Center, Raleigh, NC 27699-1598 (hereinafter, "NCDOT" or "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.

WHEREAS:

The Grantor is the sole owner in fee simple, subject to the exceptions hereinafter stated, of four (4) tracts or parcels of land located in Lockwood Folly Township, Brunswick County, North Carolina, and more particularly described on Exhibit A attached hereto. The tracts or parcels described on Exhibit A as Bay Area and Wildlife Corridor are hereinafter referred to as the "Conservation Easement Area."

The Conservation Easement Area provides natural wildlife habitat for a wide variety of land, air and aquatic species, because of the wetland and Carolina Bay habitat that are present within the Conservation Easement Area; many of these species, which rely on the wetland and bay habitat, are of great importance to the Grantor and the people of North Carolina.

The Grantor is willing to grant a perpetual Conservation Easement over the Conservation Easement Area, thereby restricting and limiting the use of land within the Conservation Easement Area to the terms and conditions and for the purposes hereinafter set forth. The Grantor is further willing to grant a perpetual Access Easement over the area so designated in Exhibit B between Wildlife Corridor 2 and the East Bay as more particularly set forth hereinafter.

The NCDOT is an agency of the State of North Carolina whose purpose includes the construction of transportation projects for public use and who has the authority to acquire land for the purpose of mitigating environmental impacts of these transportation projects.

In connection with construction of Transportation Improvement Program Project R-2245, a controlled access highway connecting North Carolina State Highway 211 to the Town of Oak Island, Brunswick County (hereinafter, the "Proposed Highway"), the NCDOT desires to preserve Carolina Bays located near the Project and preserve wildlife crossings between the Bays, and to hold a conservation easement over said Bays and crossings;

The purposes of the Conservation Easement are (1) to preserve and protect the conservation values of the Conservation Easement Area, which include, but are not limited to, natural resources; wildlife habitat for land, air and aquatic species; aquatic resources, including streams, rivers, ponds, bays, and wetlands; and scenic resources of the Conservation Easement Area; (2) to prevent any use of the Conservation Easement Area that will significantly impair or interfere with these purposes; and, (3) to maintain permanently the dominant woodland, scenic and natural character of the Conservation Easement Area.

The Grantor intends that the conservation values of the Conservation Easement Area be preserved and maintained, and further, the Grantor intends to convey to the Grantee the right to preserve and protect the conservation values of the Conservation Easement Area in perpetuity.

The conservation purposes of this Conservation Easement are recognized by the Uniform North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34 *et*



*seq.*, which 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,” N.C.G.S. § 121-35(1); and which provides for tax assessment of lands subject to such agreements “on the basis of the true value of the land and improvement less any reduction in value caused by the agreement,” N.C.G.S. § 121-40.

NOW, THEREFORE, in consideration of the sum of ONE Dollar (\$1.00) and for other valuable considerations to the Grantor, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, the Grantor hereby grants and conveys unto the Grantee and its successors or assigns forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, in respect to the Conservation Easement Area situated in Brunswick County, North Carolina as described in Exhibit A, together with a perpetual Access Easement as more particularly described below in Paragraph 4 and Exhibit B.

The terms, conditions and restrictions of the Conservation Easement and Access Easement are as hereinafter set forth:

1. Grant of Conservation Easement

The Grantor hereby voluntarily grants and conveys to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual Conservation Easement, which is an immediately vested interest in real property of the nature and character described herein. The Grantor agrees that it will not perform any act on or affecting the Conservation Easement Area that is inconsistent with the covenants herein. The Grantor authorizes the Grantee to enforce these covenants in the manner described below.

The Grantor hereby voluntarily grants and conveys to the Grantee all development rights for the Conservation Easement Area, except as otherwise reserved and provided by the terms of this Conservation Easement, that are now or hereafter inherent in the Conservation Easement Area. The parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any other property.

2. Statement of Purpose, Duration

The purposes of the Conservation Easement are, as more particularly described above, to preserve current and future conservation values inherent in the Conservation Easement Area. Except as specifically permitted herein, no activity that shall significantly impair the condition of the Conservation Easement Area shall be permitted.

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

3. Description of Conservation Easement Area

The Conservation Easement Area is comprised of 416.97 total acres, as more particularly described in Exhibit A. For purposes of this Conservation Easement, the Conservation Easement Area contains two sub-areas: the Bay Area, consisting of both the North Bay and the East Bay; and the Corridor Area, consisting of both Wildlife Corridor 1 and Wildlife Corridor 2. As noted in Exhibit A, plats of the Conservation Easement Area are recorded in Map Cabinet 42 at Pages 46 and 47-50 of the Brunswick County Registry (hereinafter, "the Plats").

4. Access Easement

The Grantor hereby grants and conveys to the Grantee a perpetual Access Easement between Wildlife Corridor 2 and the East Bay. The location of the Access Easement is described in Exhibit B.

Access to the North Bay, Wildlife Corridor 1, and Wildlife Corridor 2 will be by way of the Proposed Highway to be constructed by the NCDOT, as shown on the Plats. Access to the East Bay will be from the west through adjoining property over which NCDOT holds or will hold a Conservation Easement and from the north through the Access Easement described in Exhibit B hereto.

The NCDOT and its authorized representatives, including the United States Army Corps of Engineers and the Ecosystem Enhancement Program of the North Carolina Department of Environment and Natural Resources (hereinafter, "EEP"), at all reasonable times and continuing in perpetuity, shall have the right to access the Conservation Easement Area in the manner described above (1) in order to study, inventory, monitor, maintain, enhance, and preserve the Conservation Easement Area; (2) in order to access, study, inventory, monitor, maintain, enhance, and preserve adjoining property in which NCDOT holds or will hold a conservation easement; and (3) for the purpose of inspecting the Conservation Easement Area to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The NCDOT will notify the Grantor by phone, email, or other correspondence before entering the Conservation Easement Area for the purpose of determining compliance. However, if the NCDOT in its sole discretion determines that circumstances require immediate entry, such party is not required to notify the Grantor prior to entry but will notify the Grantor within two business days of such entry.

5. Rights and Responsibilities Retained by the Grantor

Subject to the terms and restrictions contained herein, the Grantor reserves to and for itself and its successors all customary rights and privileges of ownership, including without limitation the right to quiet enjoyment of the Conservation Easement Area; the rights to sell, lease, encumber, impose restrictions on and devise the Conservation Easement Area, provided such transaction is subject to the terms of this Conservation Easement and written notice is provided to the Grantee; together with any rights not specifically prohibited by or limited by this Conservation Easement, and not inconsistent with the purposes of this Conservation Easement.



Unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Conservation Easement Area after any Act of God. The Grantor understands that nothing in this Conservation Easement relieves it of any obligation or restriction on the use of the Conservation Easement Area imposed by law.

6. Right to Privacy

The Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Conservation Easement Area. This Conservation Easement does not create any rights of the public in, on or to the Conservation Easement Area, although the public has the right to view the Conservation Easement Area from any adjacent publicly accessible areas. The Grantor may allow public access to the Conservation Easement Area; however, any such access must be consistent with the terms and conditions of this Easement, and may not impair or interfere with the conservation values of this Conservation Easement Area.

7. Subdivision and Conveyance

The Conservation Easement Area may not be subdivided, partitioned nor conveyed, except in its current configuration. Provided, however, that the Grantor may convey the North Bay and the East Bay to the St. James Plantation Property Owners' Association, Inc., pursuant to the terms of paragraph 13 herein, and may convey Wildlife Corridor 1 and Wildlife Corridor 2 to future adjoining property owners or to a local government or state agency, pursuant to the terms of paragraph 13 herein. Upon conveyance of such tract by the Grantor, the Grantor shall have no further obligation hereunder with respect to such tract.

8. Passive Recreational Use

The Grantor retains the right to engage in passive recreational uses of the Conservation Easement Area (requiring no surface alteration of the land and posing no threat to the conservation values set forth herein), including, without limitation, walking or animal and plant observation as long as such activity is consistent with the purposes of this Conservation Easement and is not prohibited by Paragraph 9 below. Fishing, hunting, or equestrian use of the Conservation Easement Area is prohibited.

9. Permitted and Restricted Activities

Any activity on, or use of, the designated Conservation Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Conservation Easement Area by the Grantor is prohibited as inconsistent with the purposes of the Conservation Easement. The Conservation Easement Area shall be maintained in its natural, scenic and open condition and restricted from any development that would significantly impair or interfere with the conservation values of this Conservation Easement Area, and any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or sub-surface waters is



prohibited. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee.

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 changes, disturbance, alteration or impairment of the natural, scenic and aesthetic features of the Conservation Easement Area or any introduction of non-native plants and/or animal species is prohibited unless the NCDOT gives its prior written consent or unless otherwise expressly permitted herein.

B. *Agricultural, Grazing, and Horticultural Use and Fencing*

Agricultural, grazing and horticultural use, including landscaping, of the Conservation Easement Area is prohibited. No herbicides, insecticides, fungicides, fertilizers or other potentially harmful substances may be used in the Conservation Easement Area without advance written permission from the NCDOT. No agricultural products or by-products may be disposed of in the Conservation Easement Area.

C. *Silvicultural Use and Land Clearing; Trails*

There may be no destruction or cutting of trees or plants in the Conservation Easement Area, except upon written approval of NCDOT. The gathering of firewood in the Conservation Easement Area shall be limited to dead trees, such that the gathering is consistent with the purposes of this Conservation Easement. Removal of large live trees, or thinning of the forest or removal of brush for fire management, may be allowed in some cases provided that any such request is consistent with the purposes of this Conservation Easement and the Grantor obtains prior written approval from the NCDOT.

The Grantee is permitted to construct and maintain walking trails on upland areas within the Conservation Easement Area. Designated wetland areas must be bridged or crossed using an elevated boardwalk. The trails may be a maximum width of six (6) feet. No additional clearing may take place outside the six (6) foot width. The trails may be surfaced with compacted soil or gravel (maximum aggregate size of three quarters (3/4) of an inch) if necessary to allow access for the disabled. The trails may be maintained through mowing.

D. *Dumping and Storage*

Dumping or storage of soil, trash, refuse, debris, ashes, garbage, waste, abandoned vehicles or parts, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Conservation Easement Area is prohibited. No agricultural products or by-products, or agricultural equipment, may be dumped or stored in the Conservation Easement Area.



E. *Mineral Use, Excavation, and Dredging*

There shall be no 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 Conservation Easement Area.

F. *Industrial Use*

Industrial activities on the Conservation Easement Area are prohibited.

G. *Residential Use*

Residential use of the Conservation Easement Area is prohibited.

H. *Commercial Use*

Commercial activities in the Conservation Easement Area are prohibited.

I. *Construction, Roads and Road Building, Motorized Vehicles*

There shall be no building, shed, facility, mobile home, or other structure constructed or placed in the Conservation Easement Area. No new roads, either paved or unpaved, may be constructed in the Conservation Easement Area. Motorized vehicles, including off-road vehicles, are prohibited in the Conservation Easement Area. However, the NCDOT expressly reserves the right to install, operate, and maintain unpaved roads, and to use motorized vehicles in any manner necessary, for the purpose of preserving, protecting, and maintaining the conservation values of the Conservation Easement Area.

J. *Signs*

No signs shall be permitted in the Conservation Easement Area except interpretive signs describing activities and the conservation values of the Conservation Easement Area, signs identifying the owner of the Conservation Easement Area and the holder of the Conservation Easement, and signs giving directions or prescribing rules and regulations for the use of the Conservation Easement Area, which shall specifically include "No Trespassing," "No Hunting," and "Posted" signs, if applicable.

K. *Utilities*

The installation of utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, is prohibited, except as permitted by existing easements of record. However, existing electric transmission lines and other facilities located within the Conservation Easement Area may be maintained, replaced and/or upgraded, notwithstanding that there may be no easement of record for such facilities.



L. *Water Quality and Drainage Patterns; Wetland Creation*

The Grantor shall conduct no activities in the Conservation Easement Area that would be detrimental to water quality or to any of the plants or habitats within the Conservation Easement Area, or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Conservation Easement Area, or cause soil degradation or erosion. Diking, dredging, alteration, draining, filling or removal of wetlands in the Conservation Easement Area by the Grantor is prohibited. However, land development, excavation, grading, and construction adjacent to the Conservation Easement Area, including installation of ponds, vegetated swales and other stormwater facilities that direct or cause water to flow into the Conservation Easement Area, shall be permitted, provided that such activities are done in compliance with applicable laws, regulations and permit requirements regarding erosion and sedimentation control and stormwater management.

Further, and notwithstanding the foregoing or any other provisions of this Conservation Easement, the Grantor shall be permitted to convert any or all of the uplands located within Wildlife Corridor 1 and Wildlife Corridor 2 into wetlands. Such activities may include, without limitation, removal of existing vegetation and soils from, and excavation and grading of, such upland areas for the purpose of creating wetlands. The Grantor must obtain any required permits from the appropriate regulatory agencies prior to commencement of such activities. The Grantor shall give notice to NCDOT of any such planned activities prior to commencement, but such activities shall not require approval from NCDOT. Subject to approval from the appropriate regulatory agencies, the Grantor may use any mitigation credits resulting from such wetland creation in connection with any permit requirements related to other activities or projects of the Grantor, and the Grantor shall have the right to assign any such mitigation credits to others for similar purposes.

M. *NCDOT's Rights*

The NCDOT, on behalf of itself and its authorized representatives, specifically including the EEP, reserves the right to use the Conservation Easement Area in any way necessary, consistent with the terms herein, to undertake any activities to protect, restore, manage, maintain, or enhance the conservation values of this Conservation Easement. NCDOT specifically reserves the right to use the Bay sub-areas of the Conservation Easement Area in the future for additional conservation activities that further the conservation values of the Conservation Easement Area.

10. Ongoing Responsibilities of the Grantor

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

A. *Taxes*

The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against its interest in the Conservation Easement Area.

B. *Upkeep and Maintenance*

Except as otherwise provided herein, the Grantor retains all responsibilities and shall bear all costs and liabilities of any kinds related to the ownership of the Conservation Easement Area. The Grantee shall have no obligation for the upkeep or maintenance of the Conservation Easement Area, except to the extent that the need for upkeep or maintenance results from activities of the Grantee.

C. *Liability and Indemnification*

The Grantor agrees to indemnify and hold the Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees actually incurred arising from any personal injury, accidents, negligence or damage relating to the Conservation Easement Area, or any claim thereof, except to the extent due to any act of the Grantee or their agents, in which case liability shall be apportioned to the extent allowed by law.

11. Enforcement

The NCDOT shall have the right to prevent violations and remedy violations of the terms of this Conservation Easement through judicial action, which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties attempting to violate the terms of this Conservation Easement. Except when an ongoing or imminent violation could irreversibly diminish or impair the conservation values of the Conservation Easement Area, the NCDOT shall give the Grantor written notice of the violation and thirty (30) days to cure the violation, before commencing any legal proceedings. If a court with jurisdiction determines that a violation may exist or has occurred, the NCDOT may obtain an injunction to stop the violation, temporarily or permanently. The parties agree that a court may issue an injunction or order requiring the Grantor to restore the Conservation Easement Area to its condition prior to the violation as restoration of the Conservation Easement Area may be the only appropriate remedy. In any case where a court finds that Grantor has violated the terms of this Conservation Easement, the Grantor shall reimburse the NCDOT for all its expenses incurred in stopping and correcting the violation, including but not limited to court costs, reasonable attorneys' fees actually incurred, and any other reasonable costs incurred with onsite remediation. The failure of the NCDOT to discover a violation or to take immediate legal action shall not bar it from doing so at a later time for that violation or any subsequent violations.

12. Transfer of Easements

The Grantee shall have the right to transfer this Conservation Easement to the EEP, or any public agency or to a private nonprofit organization that, at the time of transfer, is a qualified



organization under §170(h) of the U.S. Internal Revenue Code, as amended and under NCGS §121-34 *et seq.*, provided the agency or organization expressly agrees to assume the responsibility imposed on the transferring party or parties by this Conservation Easement. As a condition of such transfer, the Grantee shall require that the conservation purposes intended to be advanced hereunder shall be continued to be carried out.

13. Transfer of Property

The Grantor agrees to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which it transfers or divests itself of any interests, including leasehold interests, in all or a portion of the Conservation Easement Area or Access Easement. Failure of the Grantor to comply with this section shall not impair the validity of this Conservation Easement as to successor owners or limit their enforceability in any way, nor shall the Grantor's failure to comply with this section constitute a default under this Conservation Easement.

14. Amendment of Easements

This Conservation Easement may be amended by a written instrument executed by the Grantee and the Grantor. Any such amendment shall be consistent with the purpose of this Conservation Easement and its terms, and shall comply with Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be duly recorded.

15. Procedure in the Event of Changed Conditions

The grant or donation of this Conservation Easement gives rise to a property right immediately vested in the Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Conservation Easement Area as a whole. That proportionate value of the Grantee's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Conservation Easement Area for conservation purposes, the restrictions contained herein may only be extinguished by judicial proceeding. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of the Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by the Grantor and Grantee in such action shall be paid out of the recovered proceeds. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Conservation Easement Area, or any damage award with respect to any judicial proceeding. Upon such proceedings, such portion shall be equal to the proportionate value that the Grantee's, its successor's and assign's, interest in the Conservation Easement Area bears to the value of the Conservation Easement Area 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 Easement Area, or any damages



otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding.

16. Procedure in the Event of Condemnation or Eminent Domain

Whenever all or part of the Conservation Easement Area 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 the 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 the Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by the 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 Conservation Easement Area, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that the Grantee's, its successor's and assign's interest in the Conservation Easement Area bears to the value of the Conservation Easement Area 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 Easement Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding.

17. Interpretation

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

18. Perpetual Duration; Severability

This Conservation Easement and Access Easement shall be a servitude running with the land in perpetuity. Every provision of this Conservation Easement and Access Easement that applies to the Grantor or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this Conservation Easement or Access Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof, which shall remain in full force and effect.

19. Notices

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

To the Grantor:  
Reserve Development Co., LLC  
P.O. Box 10879  
Southport, NC 28461

To NCDOT:  
Office of Natural Environment  
1598 Mail Service Center  
Raleigh, NC 27699-1598

In any provision of this Conservation Easement in which the Grantor is required to provide advance notice to the Grantee of any activity on the Conservation Easement Area, such notice shall be given not less than thirty days prior to the planned commencement of the activity. If the Grantee's approval is required, such approval shall be deemed withheld unless the Grantee provides to the Grantor written notice of approval within 30 days of receipt of said request. If the Grantor has received no response after said 30 days, the Grantor may send a second written notice to the Grantee requesting a statement of the reasons for the disapproval and the Grantee shall respond within 30 days with an explanation for the specific reasons and basis for its decision to disapprove.

20. Grantor's Title Warranty

The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Conservation Easement Area and Access Easement in fee simple and has good right to grant and convey the aforesaid Conservation Easement, and that the Conservation Easement Area is free and clear of any and all encumbrances, except reservations of mineral rights, easements and leases of record or in effect by prescriptive rights as of the date hereof (which shall be deemed to include all existing electric transmission lines and other facilities, regardless whether a recorded easement exists for such facilities). The Grantor covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the easement conveyed hereby.

21. Subsequent Liens

No provisions of this Conservation Easement should be construed as impairing the ability of the Grantor to use the Conservation Easement Area as collateral for subsequent borrowing. Any such liens shall be subordinated to this Conservation Easement.

22. Subsequent Easements/Restrictions

The grant of any easements or use restrictions that might diminish or impair the conservation values of the Conservation Easement Area is prohibited. Any such easements or restrictions shall be subordinated to this Conservation Easement.

23. Grantor's Environmental Warranty

The Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Conservation Easement Area, as such substances and wastes are defined by applicable federal and state law, and hereby promises to defend and indemnify the Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees actually incurred, arising from or connected with any release of hazardous waste caused by the intentional or negligent act of the Grantor or violation of federal, state or local environmental laws caused by the negligent or intentional act of the Grantor. Without limiting the generality of the foregoing, nothing in this Conservation Easement shall be construed as giving rise to any right or ability in the Grantee, nor shall the Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Conservation Easement Area, or otherwise to become an operator with respect to the Conservation Easement Area within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

24. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and Access Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the said easement.

25. Recording

The Grantee shall record this instrument and any amendment hereto in timely fashion with the Office of the Register of Deeds of Brunswick County, North Carolina, and may re-record it at any time as may be required to preserve its rights under this Conservation Easement.

26. Merger

The Parties agree that the terms of this Conservation Easement and Access Easement shall survive any merger of the fee and easement interest in the Conservation Easement Area.

TO HAVE AND TO HOLD this Conservation Easement and Access Easement unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.



GRANTOR:

**Reserve Development Co., LLC**  
By its Manager,  
**Annapolis Management Co., LLC**

By: *[Signature]*  
John A. Atkinson, Jr., Manager

NORTH CAROLINA  
BRUNSWICK COUNTY

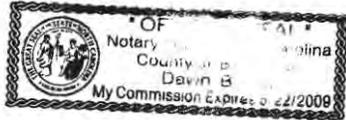
I hereby certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: John A. Atkinson, Jr.

Date: 8/28, 2007  
(Official Seal)

*Dawn Boling*  
Official Signature of Notary

Dawn Boling, Notary Public  
Printed or typed name

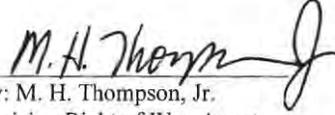
My commission expires: 6/22/09



Accepted:

GRANTEE:

**The North Carolina Department  
Of Transportation**



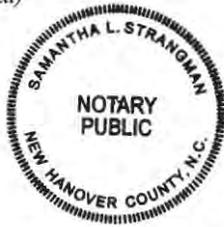
By: M. H. Thompson, Jr.  
Division Right of Way Agent

NORTH CAROLINA  
BRUNSWICK COUNTY

I hereby certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose state therein and in the capacity indicated: M. H. Thompson, Jr.

Date: August 29, 2007

(Official Seal)



Samantha L. Strangman  
Official Signature of Notary

SAMANTHA L. STRANGMAN, Notary Public  
Printed or typed name

My commission expires: 10/22/08

**EXHIBIT A – CONSERVATION EASEMENT AREA**

BAY AREA

All of that property designated as "Parcel #1," consisting of 228.41 acres, as shown on a survey entitled "Survey of the North Bay Conservation Easement for the North Carolina Department of Transportation," and recorded in Map Cabinet 42 at Page 46 in the office of the Register of Deeds for Brunswick County, and also known as the North Bay; together with all of that property designated as "State of North Carolina Perpetual Conservation Easement," consisting of 177.15 acres, as shown on a survey entitled "Conservation Easement Survey for the State of North Carolina - Property of Reserve Development Co., LLC" and recorded in Map Cabinet 42 at Pages 47-50 in the office of the Register of Deeds for Brunswick County, and also known as the East Bay.

WILDLIFE CORRIDOR

All of that property designated as "Parcel #2," consisting of 4.92 acres, as shown on a survey entitled "Survey of the North Bay Conservation Easement for the North Carolina Department of Transportation," and recorded in Map Cabinet 42 at Page 46 in the office of the Register of Deeds for Brunswick County, and also known as Wildlife Corridor 1; together with all of that property designated as "Wildlife Corridor," consisting of 6.49 acres, as shown on a survey entitled "Conservation Easement Survey for the State of North Carolina - Property of Reserve Development Co., LLC" and recorded in Map Cabinet 42 at Pages 47-50 in the office of the Register of Deeds for Brunswick County, and also known as Wildlife Corridor 2.



**EXHIBIT B - ACCESS EASEMENT**

All of that property designated as "Access Easement," consisting of 0.49 acres, as shown on a survey entitled "Conservation Easement Survey for the State of North Carolina - Property of Reserve Development Co., LLC" and recorded in Map Cabinet 42 at Pages 47-50 in the office of the Register of Deeds for Brunswick County.