

**NORTH CAROLINA
WAKE COUNTY**

AGREEMENT

This Agreement made and entered into this 23 day of December, 1998 by and between the **NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**, an agency of the State of North Carolina, (hereinafter called "NCDOT"); and **TRIANGLE WETLAND CONSULTANTS, L.L.C.**, a North Carolina partnership, (hereinafter called "TWC"), having an address of P.O. Box 33604, Raleigh, NC 27636.

WITNESSETH:

WHEREAS, NCDOT wishes to purchase wetlands mitigation credits needed to compensate for impacts to wetlands systems within and adjacent to highway projects that are required under Federal and State environmental legislation;

WHEREAS, TWC has acknowledged that it has the experience, ability, competence, and reputation to provide wetlands credits and;

WHEREAS, NCDOT requires wetlands mitigation pursuant to Section 404 of the Clean Water Act, and other pertinent Federal and State environmental laws, to mitigate for impacts associated with the expansion of U. S. 64 from Plymouth to Columbia, and other road projects within the Service Area;

WHEREAS, TWC, through its MBI and Restoration Plan(s) for the Scuppernong River Corridor Mitigation Bank (See, Attachment A), already has releasable credits to sell to NCDOT that will fully satisfy any and all permit requirements associated with road projects within the Service Area;

WHEREAS, TWC will bond NCDOT for the full amount of the purchase price to cover the time period until the permits are issued allowing the use of these credits for road project wetlands mitigation.

NOW THEREFORE, in consideration of the promises herein and other good and valuable consideration, the parties agree as follows:

1. TWC hereby agrees to sell, and NCDOT hereby agrees to purchase, wetland mitigation credits to be used in connection with a permit(s) to be issued by the U. S. Army Corps of Engineers (the Corps), pursuant to Section 404 of the Clean Water Act, or any other such State or Federal permit requirements, to mitigate for impacts to wetlands associated with the expansion of U.S. 64 from Plymouth to Columbia, in North Carolina, and other road projects in the Service Area.

2. The terms, conditions and legal effect of such credits are set forth in the mitigation banking instrument (MBI) and the Scuppernong River Corridor Mitigation Bank (Attachment A). The Corps will determine a multiplier ("ratio" herein, with 1:1 being the best and 1+:1 being less than best) to the credits regarding the wetlands impacted by the highway construction, depending on the quality and character of the impacted acreage and related factors. TWC will assist the NCDOT in attempting to obtain the best multiplier possible for the use of the credits.

3. TWC will assume full responsibility for, and hold NCDOT harmless from, any suit, action, claim, administrative order or other such cause of action, legal or equitable, known or unknown arising as a part of TWC's guarantee of success for the mitigation, the acquisition of mitigation land, performance of restoration, enhancement and preservation work, transfers of restored, enhanced and preserved parcels to appropriate donees, as well as all monitoring, reporting and record-keeping requirements that may be imposed by the Corps or other applicable agency in connection with the project per any and all permit requirements. TWC commits to have all necessary credits available for debiting at the time of payment to be used at such time as the Corps approves the Section 404 permit(s), or other applicable agency approves other such permit(s) for said project(s).

4. TWC promises to guarantee the success of the mitigation project referred and incorporated herein as Attachment A, which is the Scuppernong River Corridor Mitigation Bank. TWC agrees to meet permit requirements of the Corps and any other State or Federal agency as may be required by said agencies. TWC bears the full obligation and legal burden to complete said mitigation project to the satisfaction of all regulatory agencies that may be involved, and NCDOT, pursuant to this Agreement and said permit requirements. NCDOT is not responsible for any payments beyond that described in this agreement. Work that must be performed by TWC beyond that contained in this agreement to achieve success of this project that may be needed to satisfy any and all Federal and/or State agency permits, collaborations administrative orders and consent orders will be completed by TWC in a timely manner and at TWC's expense, as a part of TWC's guarantee of success of the sale of said credits. TWC agrees to hold NCDOT harmless from any suit, action, claim, or other such situation as a result of, pursuant to, or related to this Agreement.

5. NCDOT agrees to purchase 22.8 credits the Corps has approved as part of the Scuppernong River Corridor Mitigation Bank Restoration Plan. If the ratio determined by the Corps pursuant to NCDOT's permit requirements is greater than 2.5:1, or if no ratio is assigned this contract shall be deemed rescinded; whereupon TWC shall refund to NCDOT the full purchase price hereunder paid by NCDOT within one hundred and twenty (120) days of written notice of such recession by NCDOT, unless the parties agree upon another price within that time period, in which event TWC need only refund any difference between the price hereunder and the price as then agreed, if lower.

6. NCDOT will pay \$11,750.00 per credit for a purchase price of \$267,900.00. Such payment shall be made promptly upon the recording of the Conservation Easement required by the MBI, pursuant to paragraph 8 herein, and upon TWC's furnishing to NCDOT a contract performance bond in the amount of \$267,900.00 in form and with a company satisfactory to NCDOT.

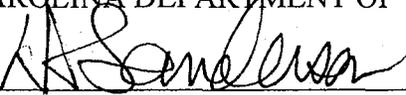
7. TWC bears the full obligation and legal burden to complete its mitigation project to the satisfaction of all regulatory agencies that may be involved, and NCDOT, pursuant to this Agreement, the MBI, restoration plan(s), and said permit requirements.

8. TWC hereby agrees to allow NCDOT an opportunity to comment on any proposed grants of easements or other property interests relating to the underlying property.

IN TESTIMONY WHEREOF, the parties have set their hands and seals this the day and year first above written.

STATE:

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

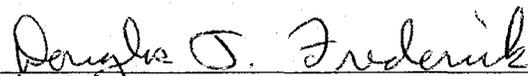
By 
State Highway Administrator

Recommend for Approval

By 
Manager Planning & Environmental Branch

CONSULTANT:

TRIANGLE WETLAND CONSULTANTS, L.L.C.

By 
Managing Partner

(SEAL)
ATTEST:

NA
Secretary

Agreement to Establish the *Scuppernong River Corridor Wetland Mitigation Bank in Tyrrell County, North Carolina*

This agreement made and entered into on the 4TH day of FEBRUARY, 1998, by and between Douglas J. Frederick, (Sponsor) and: (1) the U.S. Army Corps of Engineers (Corps); the U.S. Environmental Protection Agency (EPA); (3) the U.S. Fish and Wildlife Service (FWS); (4) the National Marine Fisheries Service (NMFS); (5) the North Carolina Wildlife Resources Commission (NCWRC); (6) the North Carolina Division of Water Quality (NCDWQ); and (7) the North Carolina Division of Coastal Management (NCDCM) hereinafter collectively referred to as the Mitigation Bank Review Team (MBRT).

WHEREAS the purpose of this MBI is to establish a mitigation bank for the purpose of providing compensatory mitigation for unavoidable wetland impacts authorized by Section 404 Clean Water Act permits in appropriate circumstances; and

WHEREAS the Sponsor is the record owner of that certain parcel of land containing approximately 38 acres located in Tyrrell County, North Carolina, described in the **Scuppernong River Corridor Wetland Mitigation Bank - Forested Wetland Restoration and Management Plan (Mitigation Plan)**, and as shown on an appropriate survey (collectively, "The Bank"). The Mitigation Plan and survey are attached hereto and incorporated herein by reference as Appendices A & B respectively; and

WHEREAS the agencies comprising the MBRT agree that Sponsor's property (Bank Site) is a suitable mitigation bank site, and that implementation of the Mitigation Plan has resulted in net gains in wetland functions and values at the Bank Site;

THEREFORE, it is mutually agreed among the parties to this MBI that the following provisions are adopted, agreed to and shall be implemented upon signature of this MBI.

General Provisions

1. The goal of The Bank is to restore and preserve forested wetland systems and their functions and values to compensate in appropriate circumstances for unavoidable wetland impacts authorized by Section 404 Clean Water Act permits in circumstances deemed appropriate by the Corps after consultation with members of the MBRT.
2. Use of credits from the Bank to offset wetland impacts authorized by Clean Water Act Section 404 permits shall be in compliance with the Clean Water Act and implementing regulations, in addition to the following statutes, regulations, and policies:

A Federal

- a. Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1251 et seq., including specifically Section 401 (a);
- b. Rivers and Harbors Act of 1899, 33 U.S.C. § 403 et seq.;
- c. Fish and Wildlife Coordination Act (16 U.S.C., 661 et seq.);
- d. National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., including the Council on Environmental Quality's implementing regulations, 40 C.F.R. Parts 1500-1508;
- e. Executive Order 11990, Protection of Wetlands (May 24, 1977);
- f. Federal Guidance for the Establishment, Use and Operation of Mitigation Banks, 60 Fed. Reg. 58605 (Nov. 28, 1995);
- g. Department of the Army, Section 404 Permit Regulations, 33 C.F.R. Parts 320-330), and policies for evaluating permit applications to discharge dredged or fill material;
- h. Department of Transportation, Federal Highway Administration Regulations, 23 C.F.R. Part 777, concerning Mitigation of Environmental Impacts to Privately Owned Wetlands;
- i. U.S. Environmental Protection Agency, Section 404 Regulations, 40 C.F.R. Parts 230-233 (guidelines for specification of disposal sites for dredged and fill material);
- j. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act Section 404 (b) (1) Guidelines (February 6, 1990)

B. North Carolina

- a. N.C. Admin. Code tit. 15A, r. 02H.0500; and
- b. N.C. Admin. Code tit. 15A, r. 02B.0100 and r. 02B.0200

10. This MBI may be executed by the parties in any combination, in one or more counterparts, all of which shall constitute but one and the same instrument.
11. Any delay or failure of Bank Sponsor shall not constitute a default hereunder if and to the extent that such delay or failure is primarily caused by any act, event or condition beyond Bank Sponsor's reasonable control and significantly adversely affects its ability to perform its obligations hereunder including: (i) acts of God, lightning, earthquake, fire, landslide, drought, hurricane, storm, flood, or interference by third parties; (ii) condemnation or other taking by any governmental body; (iii) change in applicable law, regulation, rule, ordinance or permit condition, or the interpretation or enforcement thereof; (iv) any order, judgment, action or determination of any federal, state or local court, administrative agency or government body; or (v) the suspension or interruption of any permit, license, consent, authorization or approval. If the performance of Bank Sponsor is affected by any such event, Bank Sponsor shall give written notice thereof to all MBRT members as soon as is reasonably practicable and further shall attempt diligently to remove such condition, and repair any damage to the mitigation property caused by such condition prior to the termination of sponsor's obligations as provided in paragraph 18, below.
12. No third party shall be deemed a beneficiary hereof and no one except the signatories hereof, their successors and assigns, shall be entitled to seek enforcement hereof. Except as describe in paragraphs 28 and 29 below and as to express rights created by any future transfer of title, no party other than the Sponsor shall have any property rights to the Bank Site.
13. The MBRT shall be chaired by the MBRT representative from the Corps' Wilmington District. The MBRT shall review monitoring and accounting reports more fully described hereinbelow. In addition, the MBRT will review proposals for remedial actions proposed by the Sponsor, or any of the agencies represented on the MBRT. The MBRT's role and responsibilities are more fully set forth in Sections II.C. 3& 6 of the federal guidance document referenced in Paragraph 2(A)(f) above. The MBRT will reach consensus on all required actions.
14. The parties hereto understand that, where practicable, on-site, in-kind compensatory mitigation is preferred, unless use of the Bank is determined by the Corps to be environmentally preferable.

Mitigation Plan

15. The Bank Site is a complex of natural forested wetlands and prior converted (PC) fields near the Scuppermong River and south of Columbia on Highway 94. A more detailed description of the pre-project baseline conditions on the site is contained in the Mitigation Plan.

16. During the past five years, the Sponsor has performed wetlands restoration work as described on pages 8-33 of the Mitigation Plan, including hydrologic and soil modifications and plantings. The purpose of the work, and the objective of the Bank, was to restore 19 acres of prior converted (PC) crop land to wetflat (WF), non riverine swamp (NRS) and Atlantic white cedar (AWC) wetlands, and to preserve 19 acres of natural WF and NRS wetlands.
17. During the past five years, the Sponsor has monitored the Bank Site as described on pages 32-33 of the Mitigation Plan and the Corps has determined that wetland parameters have been successfully restored. Assuming concurrence with this determination by the MBRT, as evidenced by their execution of this MBI, 100% of the credits approved for The Bank will be available for compensatory mitigation purposes upon the recording of the Conservation Easement described in paragraph 29 below.
18. The Sponsor currently remains responsible for assuring the success of the restoration and preservation activities at the Bank Site, and for the overall operation and management of the Bank.

Upon conveyance by the Sponsor of the Bank Site property to the FWS (or another appropriate resource protection entity acceptable to the MBRT), and upon the final sale of all credits from The Bank (or permanent termination by Sponsor of all rights to sell any remaining credits from The Bank (or permanent termination by Sponsor of all rights to sell any remaining credits), Sponsor shall have no further obligation of any nature whatsoever under the terms of this MBI.

19. The Sponsor shall provide the reports described on page 33 of the Mitigation Plan to each member of the MBRT.

Use of Mitigation Credits

20. The Geographic Service Area (GSA) is the designated area wherein a bank can reasonably be expected to provide appropriate compensation for impacts to wetland and/or other aquatic resources. The GSA for the Bank shall include that portion of the Albemarle Sound Hydrologic Unit (03010205) in North Carolina south of the center of Albemarle Sound (Appendix C).
21. Implementation of the Mitigation Plan has resulted in the following forms and amounts, in acres, of compensatory mitigation:

3. The Corps is responsible for making final permit decisions pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, including final determinations of compliance with the Corps permit regulations and the Section 404 (b) (1) Guidelines. The Corps will determine the amount of compensation needed for a given general or Department of the Army permit, including permits under the Nationwide Permit program. In the MBI, the MBRT has established the total number of restoration-equivalent credits available for sale from the Bank by evaluating the Sponsor's actions and proposals to restore and preserve various wetland areas comprising the Bank Site. In the case of permit applications and compensatory mitigation required solely under the Section 401 of the CWA, the NCDWQ will determine the amount of credits, if any, that can be purchased by a permit applicant from The Bank to satisfy the applicant's Section 401 requirements. Any credits debited for compensatory mitigation required solely by the State of North Carolina under Section 401 of the CWA shall be debited from The Bank and not thereafter be available for use as compensatory mitigation for any Department of the Army permit.
4. Modifications to this MBI may be proposed by any MBRT member. Proposed modifications shall be made in writing and submitted to all other MBRT members. All MBRT members must approve and sign any proposed modification in order to implement any proposed change to this MBI.
5. Any MBRT member can withdraw from this MBI with 30 days advance written notice to the MBRT and Bank Sponsor. Membership withdrawal shall not affect any prior sale of credits.
6. The terms and conditions of this MBI shall be binding upon, and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, and legal representatives.
7. This MBI constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings. The terms of this MBI may be modified only by written instrument, executed by all of the parties hereto.
8. In the event any one or more of the provisions contained in this MBI are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this MBI shall be construed as if such valid, illegal or unenforceable provision had not been contained herein.
9. This MBI shall be governed by and construed in accordance with Federal laws and the laws of the State of North Carolina as appropriate.

Natural Community Description	Area (ac.)	Mitigation Activity	Wetland Type ^{1,1}	HGM Type ^{2,1}
Atlantic white cedar forest (<i>Chamaecyparis thyoides</i>)	1.0	restoration	PFOE	WF
Nonriverine wet hardwood forest (<i>Quercus-Liquidambar-Nyssa-Pinus</i>)	17 ac. +/- 16 ac.	preservation, restoration	PFO1E	WF
Nonriverine hardwood swamp (<i>Nyssa-Taxodium</i>)	2 ac. +/- 2 ac.	preservation, restoration	PFO1C/F	NRS
TOTAL AREA: 38 ac. +/-				

1.] Cowardin, 1979

2.] Brinson, 1993

22. Successful implementation of the Mitigation Plan has resulted in creation of the following mitigation credits, identified by wetland type, that will be available for sale upon execution of this MBI and recording of the Conservation Easement described in paragraph 29 below:

1.0 credits of AWC wetlands (1.0 acres, restoration @ 1:1 ratio)

16.4 credits of non-riverine wet flat hardwood wetlands (16.0 acres, restoration @ 1:1 ratio and 2 acres preservation @ 5:1 ratio)

5.4 credits of nonriverine swamp hardwood wetlands (2 acres restoration @ 1:1 ratio and 17 acres preservation @ 5:1 ratio)

Total Credits: 22.8

23. It is anticipated and recognized by the parties that use of mitigation available from The Bank shall be "in-kind;" that is, that the Corps, under appropriate circumstances, may allow Section 404 permit applicants to purchase the above-described types of wetland mitigation credits in order to mitigate impacts to the same type of wetlands that are caused by the permit applicant's development activity.

24. Notwithstanding paragraph 23, above, all decisions concerning the appropriateness of using credits from The Bank to offset impacts to waters and wetlands, as well as all decisions concerning the amount and type of such credits to be used to offset wetland and water impacts authorized by Department of the Army permits, shall be made by the Corps of Engineers, pursuant to the Clean Water Act, and implementing regulations and guidance, after notice of any proposed use of The Bank to the MBRT, and consultation with the members of the MBRT concerning such use. The Corps shall provide all members of the MBRT and Sponsor with notice regarding final decisions on any such proposed use of credits from The Bank. In the case of compensatory mitigation required solely under Section 401 of the CWA, the NCDWQ will notify the MBRT of any proposed purchase of credits from The Bank and the amount of the proposed credit purchase, and thereafter will provide MBRT members and Sponsor with notice regarding final decisions on any such proposed use of credits.
25. Wetland restoration activities for The Bank began in 1992. On October 16, 1996, the Corps sent a letter (Appendix D) to Sponsor notifying him of the Corps' determination that The Bank property successfully has been restored and immediately can be utilized for compensatory mitigation purposes as otherwise deemed appropriate by the Corps..
26. The Sponsor shall develop accounting procedures for maintaining accurate records of debits made from The Bank in a form acceptable to the MBRT. Such procedures shall include the generation of a report by Sponsor showing credits used at the time they are debited from the bank, which Sponsor shall provide within 10 business days of the date of any debit to each member of the MBRT. In addition, Sponsor shall prepare an Annual Report, on each anniversary of the date of execution of this MBI, showing all credits used, and the balance of credits remaining. This report shall be distributed to each member of the MBRT at least on an annual basis, until such time as all of the credits have been utilized or this MBI is otherwise terminated. All reports shall identify credits debited and remaining by wetland type (e.g., nonriverine swamp wetland), and shall include for each reported debit the Corps Action ID number and/or the NC 401 certificate number, as appropriate, for the permitted activity for which the credits were used.
27. Sponsor may request the addition of other properties to The Bank. In such event, the terms and conditions of any such proposed addition, to be set forth in an amended mitigation banking instrument, will be subject to separate review and approval by the MBRT.

Property Disposition

28. Sponsor's proposed donation of The Bank property to the FWS has been accepted by that agency. Upon final transfer of title by Sponsor to FWS, FWS will take the necessary actions to assure that Bank Site becomes part of the Pocosin Lakes National Wildlife Refuge. A letter of intent confirming this result has been issued by the FWS and is attached as Appendix E. It is anticipated that final transfer of title will take place within 24 months of the date of this MBI.
29. Prior to any sale of any credits from The Bank, Sponsor shall execute and record an irrevocable permanent Conservation Easement, in a form acceptable to the Corps, running in favor of the North Carolina Coastal Land Trust (NCCLT), a non-profit resource protection organization that the MBRT has determined to be an acceptable grantee. The NCCLT has agreed to accept Sponsor's easement grant and thereafter to cooperate with Sponsor to complete ultimate transfer of the Bank site to the FWS in accordance with the terms of this MBI.

Financial Assurances

30. No financial assurances as to ecological viability are necessary for The Bank. The Bank has been developed using the private resources of Sponsor. The Bank already has been judged successful by the Corps and the MBRT, and the FWS has agreed to accept the Bank Site for inclusion in the Pocosin Lakes National Wildlife Refuge, thus assuring long term maintenance and protection of the Bank Site.
31. The FWS will maintain and manage the property consistent with the long-term objectives of The Bank. The Bank property will be protected and managed as an example of a restored and preserved wetland. No commercial timber cutting, hydrology alterations, or change in use will occur. The area will be maintained in its natural state and used for demonstration, environmental education, and research (Appendix E).

Miscellaneous

32. Notices and required reports shall be sent by regular mail to each of the parties at their respective addresses, provided below:

Sponsor:

Douglas J. Frederick
4405 Dewees Court
Raleigh, NC 27612

MBRT Members**Corps:**

Mr. David Lekson
U.S. Army Corps of Engineers
Post Office Box 1000
Washington, NC 27889-1000

EPA:

Mr. Lee Pelej
Wetlands Section - Region IV
Water Management Division
Environmental Protection Agency
61 Forsyth Street, SW
Atlanta, GA 30303

FWS:

Field Supervisor
Attn: Mr. Kevin Moody
U.S. Fish and Wildlife Service
P.O. Box 33726
Raleigh, NC 27636

NMFS:

Mr. Larry Hardy, Chief
Attn: Mr. Ron Sechler
National Marine Fisheries Service
101 Pivers Island Road
Beaufort, NC 28516

NCWRC:

Mr. William Wescott
North Carolina Wildlife Resources Commission
146 Chesterfield Drive
Washington, NC 27889

NCDCM:

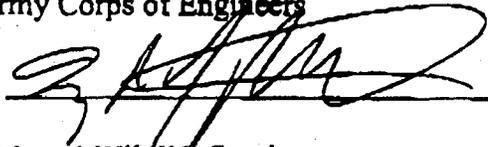
Mr. Mac Haupt
NC Division of Coastal Management
P.O. Box 27687
Raleigh, NC 27611

NCDWQ:

Mr. Ron Ferrell
DENR
NCDWQ
P.O. Box 29535
Raleigh, NC 27626-0535

In witness whereof, the parties hereto have executed this Agreement:

U.S. Army Corps of Engineers

By:  _____

Date: 4 February 1998

U.S. Fish and Wildlife Service

By: _____

Date: _____

U.S. Environmental Protection Agency

By: _____

Date: _____

National Marine Fisheries Service

By: _____

Date: _____

NC Division of Water Quality

By: _____

Date: _____

NC Division of Coastal Management

By: _____

Date: _____

NC Wildlife Resources Commission

By: _____

Date: _____

Bank Sponsor

By: _____

Date: _____

Douglas J. Frederick

In witness whereof, the parties hereto have executed this Agreement:

U.S. Army Corps of Engineers

By: _____

Date: _____

U.S. Fish and Wildlife Service

By: _____

Date: _____

U.S. Environmental Protection Agency

By: William J. Coak

Date: 3/18/98

National Marine Fisheries Service

By: _____

Date: _____

NC Division of Water Quality

By: _____

Date: _____

NC Division of Coastal Management

By: _____

Date: _____

NC Wildlife Resources Commission

By: _____

Date: _____

Bank Sponsor

By: _____

Date: _____

Douglas J. Frederick

In witness whereof, the parties hereto have executed this Agreement:

U.S. Army Corps of Engineers

By: _____

Date: _____

U.S. Fish and Wildlife Service

By: _____

Date: _____

U.S. Environmental Protection Agency

By: _____

Date: _____

National Marine Fisheries Service

By: *[Signature]*

Date: 3/25/98

NC Division of Water Quality

By: _____

Date: _____

NC Division of Coastal Management

By: _____

Date: _____

NC Wildlife Resources Commission

By: _____

Date: _____

Bank Sponsor

By: Douglas J. Frederick

Date: _____

In witness whereof, the parties hereto have executed this Agreement:

U.S. Army Corps of Engineers

By: _____

Date: _____

U.S. Fish and Wildlife Service

By: _____

Date: _____

U.S. Environmental Protection Agency

By: _____

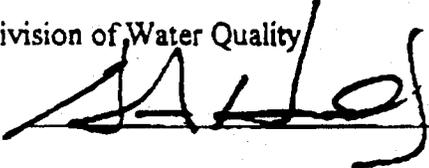
Date: _____

National Marine Fisheries Service

By: _____

Date: _____

NC Division of Water Quality

By:  _____

Date: 3-5-98

NC Division of Coastal Management

By: _____

Date: _____

NC Wildlife Resources Commission

By: _____

Date: _____

Bank Sponsor

By: _____

Date: _____

Douglas J. Frederick

In witness whereof, the parties hereto have executed this Agreement:

U.S. Army Corps of Engineers

By: _____ Date: _____

U.S. Fish and Wildlife Service

By: _____ Date: _____

U.S. Environmental Protection Agency

By: _____ Date: _____

National Marine Fisheries Service

By: _____ Date: _____

NC Division of Water Quality

By: _____ Date: _____

NC Division of Coastal Management

By: *Roger Holcomb* Date: *4/14/98*

NC Wildlife Resources Commission

By: _____ Date: _____

Bank Sponsor

By: _____ Date: _____

Douglas J. Frederick

In witness whereof, the parties hereto have executed this Agreement:

U.S. Army Corps of Engineers

By: _____

Date: _____

U.S. Fish and Wildlife Service

By: _____

Date: _____

U.S. Environmental Protection Agency

By: _____

Date: _____

National Marine Fisheries Service

By: _____

Date: _____

NC Division of Water Quality

By: _____

Date: _____

NC Division of Coastal Management

By: _____

Date: _____

NC Wildlife Resources Commission

By: Franklin J. McBride

Date: 1-30-98

Bank Sponsor

By: _____

Date: _____

Douglas J. Frederick

In witness whereof, the parties hereto have executed this Agreement:

U.S. Army Corps of Engineers

By: _____

Date: _____

U.S. Fish and Wildlife Service

By: _____

Date: _____

U.S. Environmental Protection Agency

By: _____

Date: _____

National Marine Fisheries Service

By: _____

Date: _____

NC Division of Water Quality

By: _____

Date: _____

NC Division of Coastal Management

By: _____

Date: _____

NC Wildlife Resources Commission

By: _____

Date: _____

Bank Sponsor

By: Douglas J. Frederick
Douglas J. Frederick

Date: 3/20/98

List of Appendices

Appendix A:	Scuppernong River Corridor Wetland Mitigation Bank - Forested Wetland Restoration and Management Plan
Appendix B:	Property Survey and Legal Description
Appendix C:	Map - General Service Area
Appendix D:	Corps Letter
Appendix E:	FWS Letter



COMMONWEALTH LAND
TITLE INSURANCE COMPANY
A Reliance Group Holdings Company

File No. DO49485 ..

Policy No.

Beginning at a point located in the center line of N. C. Highway No. 94 said point of beginning is shown and designated on a plat of survey hereinafter referred to as Survey Station "2" and is more particularly located by measuring from the point at which the center line of N. C. Secondary Road No. 1105 intersects the center line of N. C. Highway No. 94 (said point of intersection being marked with a PK nail) North 37 degrees 30 minutes 58 seconds West 1195.16 feet to the point and place of beginning and from the beginning point so located running thence along and with the center line of N. C. Highway No. 94 North 37 degrees 30 minutes 58 seconds West 414.08 feet, North 36 degrees 45 minutes 32 seconds West 142.32, North 33 degrees 47 minutes 24 seconds West 209.05 feet, North 29 degrees 24 minutes 08 seconds West 212.42 feet and North 25 degrees 53 minutes 17 seconds West 211.07 feet to a PK nail; thence running North 70 degrees 12 minutes 32 seconds East 33.14 feet to an iron axle located in the eastern right of way line of N. C. Highway No. 94; thence running North 81 degrees 13 minutes 25 seconds 242.62 feet to a point; thence running South 84 degrees 17 minutes 0 seconds East 1232.50 feet to a point; thence running South 38 degrees 32 minutes East 44.0 feet to a point; thence running North 75 degrees 33 minutes 45 seconds East 280 feet to an iron pipe; thence running South 14 degrees 32 minutes 0 seconds East 58.0 feet to an iron pipe; thence running along an old marked line South 12 degrees 00 minutes 36 seconds East 1345.71 feet to a point in the north line of the lands of Kenneth Cooper; thence running North 86 degrees 53 minutes 04 seconds 591.84 feet to an iron rod located in the center of the old Gum Neck Road; thence running along and with the center line of the old Gum Neck Road North 02 degrees 37 minutes 15 seconds West 112.13 feet, North 11 degrees 34 minutes 06 seconds West 64.22 feet, North 36 degrees 05 minutes 14 seconds West 66.53 feet, North 35 degrees 29 minutes 50 seconds West 101.08 feet, North 50 degrees 18 minutes 13 seconds West 113.43 feet, North, 80 degrees 15 minutes 41 seconds 101.86 feet, South 76 degrees 34 minutes 56 seconds West 130.41 feet, South 84 degrees 52 minutes 39 seconds West 91.41 feet, North 84 degrees 07 minutes 56 seconds West 92.45 feet and North 74 degrees 01 minutes 42 seconds West extending to the center line of N. C. Secondary Road No. 94 to a point, the point and place of beginning containing 40.772 acres, more or less, exclusive of the rights of way of N. C. Highway No. 94 and being all of a tract or parcel of land shown and delineated on a plat of survey entitled, "Grace Harrell Cooper Heirs", dated March 27, 1989, prepared by John C. Kirkman, Registered Land Surveyor, of record in Map Cabinet A, Slide 349, in the Office of the Register of Deeds of Tyrrell County.

This conveyance is subject always to the right of way of the North Carolina Department of Transportation for N. C. Highway No. 94 as the same is shown on the aforesaid plat of survey.

This conveyance is subject always to the rights of others for the use of and the passage over the Old Gum Neck Road as it is shown and delineated on the aforesaid plat of survey.

Reference is given to that certain deed dated June 2, 1989, from Mary Dorcas S. Cooper et al to South Fork Farms, Inc. which is of record in Book 161, page 500, of the Office of the Register of Deeds of Tyrrell County.



COMMONWEALTH LAND
TITLE INSURANCE COMPANY
A Reliance Group Holdings Company

File No. DO49485

Policy No.

THERE IS EXCEPTED FROM THE FOREGOING DESCRIPTION THE FOLLOWING:

EXCEPTION NO. ONE: All that certain tract or parcel of land lying in Columbia Township, Tyrrell County, North Carolina, containing 0.607 acres, more or less, and being more particularly described according to a plat of survey entitled, "SOUTH FORK FARMS, INC.", by B. B. White, Registered Land Surveyor, dated November 12, 1990, which plat is attached to and made a part of that certain deed dated November 16, 1990, from South Fork Farms, Inc. to Tanya Mims which is of record in Book 163, page 147, in the Office of the Register of Deeds of Tyrrell County, and is, by reference, incorporated herein as a part of this description.

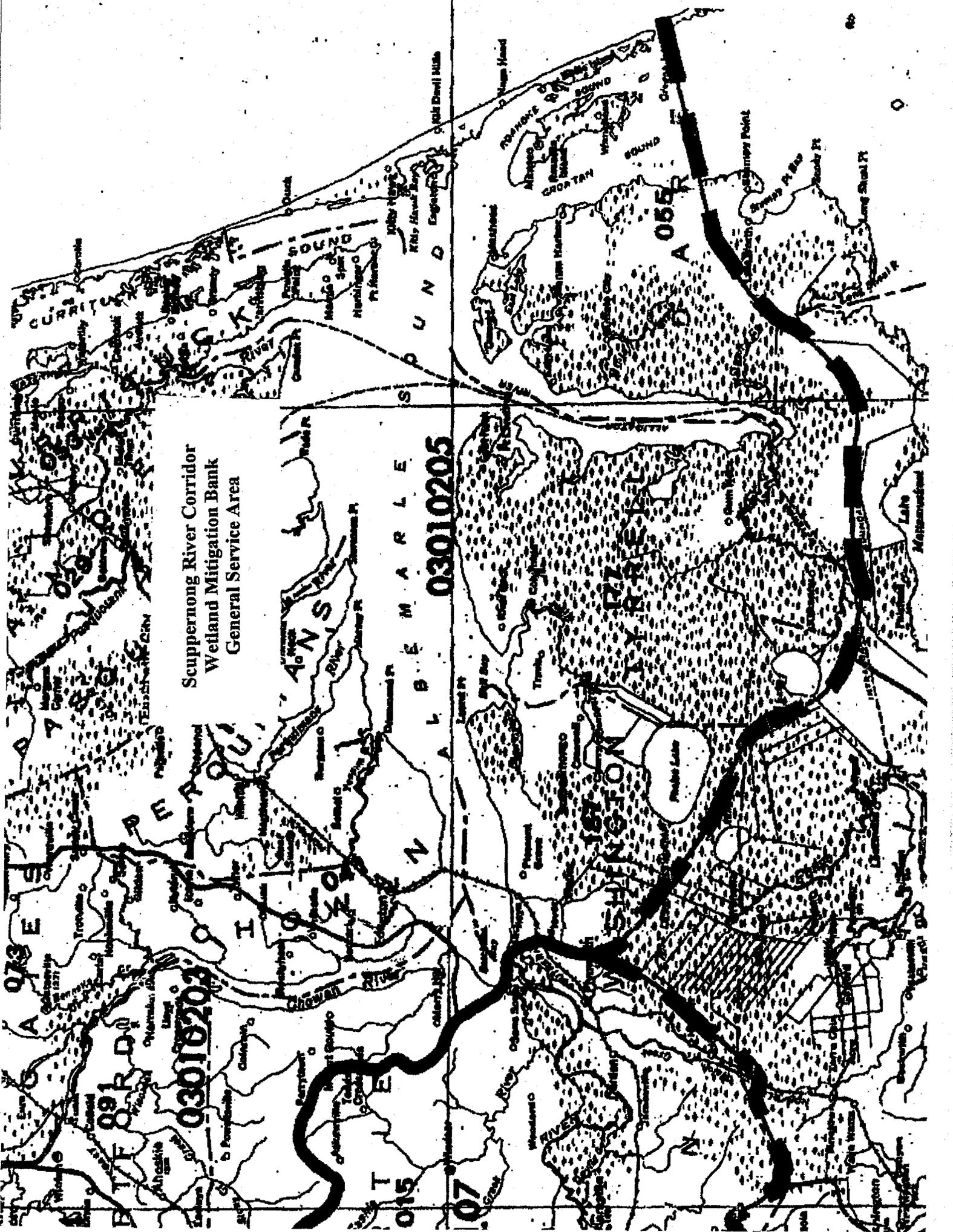
EXCEPTION NO. TWO: All that certain tract or parcel of land lying in Columbia Township, Tyrrell County, North Carolina, containing 2.258 acres, more or less, and being more particularly described according to a plat of survey entitled, "SOUTH FORK FARMS, INC.", by John C. Kirkman, Registered Land Surveyor, dated April 3, 1993, which plat is recorded in the Office of the Register of Deeds of Tyrrell County in Map Cabinet B, Slide _____, and is, by reference, incorporated herein as a part of this description.

Scuppernon River Corridor
Wetland Mitigation Bank
General Service Area

03018203

03010205

055R





DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS

P.O. BOX 1890
WILMINGTON, NORTH CAROLINA 28402-1890

October 16, 1996

IN REPLY REFER TO

Regulatory Branch

Action ID No. 199601505

Dr. Douglas J. Frederick
Triangle Wetlands Associates
Post Office Box 33604
Raleigh, North Carolina 27636

Dear Dr. Frederick:

This correspondence is in reference to the Scuppernon River Corridor Mitigation Project that you have developed on the east side of NC 94, south of Columbia, in Tyrrell County, North Carolina. This letter also confirms our onsite meeting on September 11, 1996.

Based upon my many onsite inspections over the years, as well as three years of monitoring data, it appears that you have successfully restored wetland parameters to the 19 acre prior converted cropland located within the 38 acre mitigation site. Therefore, you have created an opportunity to utilize the restored and preserved wetlands on this property for compensatory mitigation purposes. Provided that wetland conditions are maintained within the project area, we will consider this site available for use in appropriate circumstances for compensatory mitigation required under a Department of the Army permit action.

Regarding the establishment of a credit base for the project, it is difficult to agree on available "credits" outside of the formal mitigation banking context. Therefore, unless you intend to develop this site as a formal mitigation bank pursuant to 60 FR 228, pp. 58605-58614, Federal Guidance for the Establishment, Use and Operation of Mitigation Banks, it may be more appropriate to postpone negotiations regarding "credits" until such time that you propose to "debit" from the site. Should one project utilize all acreage available within this site, negotiations regarding credit ratios could then take place during the permit review process allowing for agency coordination and interaction.

Thank you again for your dedication and work toward establishing a successful compensatory mitigation project. If you have any questions, please call me at the Washington Regulatory Field Office, telephone (919) 975-1616, extension 22.

Sincerely,

David M. Lekson, P.W.S.
Field Office Manager

Copies Furnished:

Mr. John Dorney
Division of Water Quality
North Carolina Department of Environment,
Health and Natural Resources
4401 Reedy Creek Road
Raleigh, North Carolina 27607

Mr. Terry Moore
Washington Regional Office
North Carolina Division of
Coastal Management
Post Office Box 2188
Washington, North Carolina 27889



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pocosin Lakes National Wildlife Refuge
3255 Shore Drive
Creswell, North Carolina 27928

March 12, 1997

Doug Frederick
P.O. Box 33604
Raleigh, N.C. 27636

Dear Doug:

This letter is in reference to the Scuppernong River Corridor Mitigation Tract near Columbia. We are very interested in accepting this tract of land as part of the National Wildlife Refuge System.

Our long term management plans are similar to what has already been accomplished. We would like to foster an enhanced hydrology regime wherever possible on the tract. We would also be interested in developing interpretive trails and environmental education programs. All these management plans would be very passive in nature.

If you need any more information give me a call at 919-797-4431.

Sincerely,

Jim Savery
Refuge Manager

CONTRACT PERFORMANCE BOND

Date of Execution: DECEMBER 23, 1998

Name of Principal: Triangle Wetland Consultants, LLC

Name of Surety: Reliance Insurance Company

Name of Contracting Body: North Carolina Department of Transportation

Amount of Bond: \$267,900.00

**Contract Number:
(Project Number)** Wetlands Mitigation Credit Purchase Agreement between North Carolina Department of Transportation and Triangle Wetland Consultants, LLC, dated DECEMBER 23, 1998.

KNOW ALL MEN BY THESE PRESENTS: That we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into the Mitigation Agreement contract with the Contracting Body, as shown above and hereto attached:

NOW THEREFORE, if the PRINCIPAL shall well and truly perform and fulfill all the obligations, terms and conditions of the Wetlands Mitigation Credit Purchase Agreement between Contracting Body and PRINCIPAL dated 12/23/1998 and the MBI and Restoration Plan(s) for the Scuppernong River Corridor Mitigation Bank entered into by the PRINCIPAL, then this obligation to be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above-bounden parties executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned.

Triangle Wetland Consultants, LLC

By: Douglas J. Frederick
Principal

DOUGLAS J. FREDERICK
(Print Stamp or Type Signer's Name)

By: NA

NA
(Print, Stamp or Type Signer's Name)

Reliance Insurance Company

By: Bobbi D. Peckham
Attorney-in-fact

Bobbi D. Peckham
(Print, Stamp or Type Signer's Name)

(Seal of Surety Company)



Karen Whitaker
Witness

Karen Whitaker
(Print or Type Signer's Name)

RELiance SURETY COMPANY
UNITED PACIFIC INSURANCE COMPANY

RELiance INSURANCE COMPANY
RELiance NATIONAL INDEMNITY COMPANY

ADMINISTRATIVE OFFICE, PHILADELPHIA, PENNSYLVANIA

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that RELIANCE SURETY COMPANY is a corporation duly organized under the laws of the State of Delaware, and that RELIANCE INSURANCE COMPANY and UNITED PACIFIC INSURANCE COMPANY, are corporations duly organized under the laws of the Commonwealth of Pennsylvania and that RELIANCE NATIONAL INDEMNITY COMPANY is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called "the Companies") and that the Companies by virtue of signature and seals do hereby make, constitute and appoint David M. Spencer, Sanders S. Ogle, Bobbi D. Peckham, of Chapel Hill, North Carolina their true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver for and on their behalf, and as their act and deed any and all bonds and undertakings of suretyship and to bind the Companies thereby as fully and to the same extent as if such bonds and undertakings and other writings obligatory in the nature thereof were signed by an Executive Officer of the Companies and sealed and attested by one other of such officers, and hereby ratifies and confirms all that their said Attorney(s)-in-Fact may do in pursuance hereof.

This Power of Attorney is granted under and by the authority of Article VII of the By-Laws of RELIANCE SURETY COMPANY, RELIANCE INSURANCE COMPANY, UNITED PACIFIC INSURANCE COMPANY, and RELIANCE NATIONAL INDEMNITY COMPANY which provisions are now in full force and effect, reading as follows:

ARTICLE VII - EXECUTION OF BONDS AND UNDERTAKINGS

- 1. The Board of Directors, the President, the Chairman of the Board, any Senior Vice President, any Vice President or Assistant Vice President or other officer designated by the Board of Directors shall have power and authority to (a) appoint Attorney(s)-in-Fact and to authorize them to execute on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and (b) to remove any such Attorney(s)-in-Fact at any time and revoke the power and authority given to them.
- 2. Attorney(s)-in-Fact shall have power and authority, subject to the terms and limitations of the Power of Attorney issued to them, to execute deliver on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof. The corporate seal is not necessary for the validity of any bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.
- 3. Attorney(s)-in-Fact shall have power and authority to execute affidavits required to be attached to bonds, recognizances, contracts of indemnity or other conditional or obligatory undertakings and they shall also have power and authority to certify the financial statement of the Company and to copies of the By-Laws of the Company or any article or section thereof.

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the Executive and Finance Committees of the Boards of Directors of Reliance Insurance Company, United Pacific Insurance Company and Reliance National Indemnity Company by Unanimous Consent dated as of February 28, 1994 and by the Executive and Financial Committee of the Board of Directors of Reliance Surety Company by Unanimous Consent dated as of March 31, 1994.

"Resolved that the signatures of such directors and officers and the seal of the Company may be affixed to any such Power of Attorney or any certificates relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such Power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company, in the future with respect to any bond or undertaking to which it is attached."

IN WITNESS WHEREOF, the Companies have caused these presents to be signed and their corporate seals to be hereto affixed, this February 1, 1998.



RELiance SURETY COMPANY
RELiance INSURANCE COMPANY
UNITED PACIFIC INSURANCE COMPANY
RELiance NATIONAL INDEMNITY COMPANY

David T. Akers

STATE OF Pennsylvania }
COUNTY OF Philadelphia } ss.

On this, February 1, 1998, before me, Valencia Wortham, personally appeared David T. Akers, who acknowledged himself to be the Senior Vice President of the Reliance Surety Company, and the Vice President of Reliance Insurance Company, United Pacific Insurance Company, and Reliance National Indemnity Company and that as such, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself as its duly authorized officer.

In witness whereof, I hereunto set my hand and official seal.

Notarial Seal
Valencia Wortham, Notary Public
Philadelphia, Philadelphia County
My Commission Expires Nov. 18, 2000



Valencia Wortham
Notary Public in and for the State of Pennsylvania
Residing at Philadelphia

I, Anita Zippert, Secretary of RELIANCE SURETY COMPANY, RELIANCE INSURANCE COMPANY, UNITED PACIFIC INSURANCE COMPANY, and RELIANCE NATIONAL INDEMNITY COMPANY do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 23 day of DECEMBER 19 98

Anita Zippert
Secretary

