

Prepared By: Kenneth L. Eagle, 2235 Gateway Access Point, Suite 201, Raleigh, NC
Mail To: US Army Corps of Engineers, 3331 Heritage Trade Drive, Suite 105, Wake Forest NC 27587

PERMANENT CONSERVATION EASEMENT

THIS PERMANENT CONSERVATION EASEMENT ("Conservation Easement") is made this ____ day of _____, 2016, by and between **Chatham Park Investors LLC, a North Carolina limited liability company**, ("Grantor") and **Chatham County North Carolina, a body politic of the State of North Carolina** ("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 **Chatham** County, North Carolina, more particularly described in **Exhibit A** attached hereto and incorporated herein ("Property");

WHEREAS, Grantee is a public body of this state and is qualified to be the Grantee of a conservation easement pursuant to N.C. Gen. Stat. § 121-35;

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: Bottomland Hardwood Forest; Non-Tidal Freshwater Marsh; Piedmont Bottomland Forests; Mesic Mixed Pine-Hardwood Forest; Dry-Mesic Oak-Hickory Forests; Beech Bluffs; Loblolly Pine Plantations; and Dominant Pine Forests. 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 required by a Mitigation Banking Instrument for the Chatham Umbrella Mitigation Bank, Department of the Army Action ID SAW-2010-00982. The Mitigation Bank is intended to be used to compensate for unavoidable stream and/or wetland impacts authorized by permits issued by the Department of the Army. Grantor and Grantee agree that 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 the parties to the Mitigation Banking Instrument.

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 **Exhibit A**, together with the right to preserve and protect the conservation values thereof, as follows:

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 (together the "Restrictions"):

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 on the Property, 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, except for cutting or removal of diseased or dead vegetation and/or non-native plant species, or vegetation on the Property whose growth extends outside of the boundaries of the Property and interferes with the use and enjoyment of any real property adjoining or in the proximity of the Property subject to the Conservation Easement that is owned by Grantor on the date of Grantor's execution of this Conservation Easement or subsequently is acquired by Grantor (together, "Grantor's Remaining 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 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 Property by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Notwithstanding the foregoing or any other provision of this Conservation Easement, in connection with development and use of Grantor's Remaining Property, Grantor, and Grantor's successors and assigns, including successors in title to any part of Grantor's Remaining Property, may construct, install, use, alter, replace, repair, remove, and maintain in, on, over, or under Grantor's Remaining Property such storm water structures and facilities as may be required or allowed by the North Carolina Department of Environmental Quality ("NCDEQ") or its Division of Water Resources ("DWR"), or any other governmental entity having jurisdiction over Grantor's Remaining Property for impounding storm water in, on, over, or under, releasing storm water from, or redirecting the flow of storm water in, on, over, or under Grantor's Remaining Property. Such rights shall include the following rights: (i) the right to have storm water drain naturally from Grantor's Remaining Property into the Property subject to the Conservation Easement; and (ii) the right to have storm water released from such storm water structures and facilities into the Property subject to the Conservation Easement, provided such release is from storm water structures and storm water facilities that have been approved by NCDEQ, DWR, or any other governmental entity having jurisdiction over Grantor's Remaining Property.

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 on the Property, including, but not 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 itself and its 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 rights of ingress and egress, the right to hunt, fish, and hike on 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, and all other rights specifically reserved to the Grantor in this Conservation Easement (all of the rights in this Article III and all other rights specifically reserved to Grantor in this Conservation Easement being referred to herein together as the "Reserved Rights").

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, injunctive 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 the 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 Grantor either owns all interests in the Property which may be impaired by the granting of this Conservation Easement, except for (i) rights under recorded rights of way or easements existing prior to the recording of this Conservation Easement in the Chatham County, North Carolina Registry, and (ii) the rights of others in and to the continued, uninterrupted flow of waters in Stinking Creek (i and ii together being referred to as the "Title Exceptions"), 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. Grantor further warrants that Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement, and that Grantor will warrant and defend title to the Property against the claims of all persons, except for the Title Exceptions.

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 to Grantee 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. 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:

Chatham Park Investors LLC
100 Matrix Drive
Box 8000
Cary, NC 27513

To Grantee:

County Manager
Chatham County
12 East Street
P.O. Box 1809
Pittsboro, NC 27317

To the Corps:

US Army Corps of Engineers
Attn: Chief, Raleigh Regulatory Field Office
3331 Heritage Trade Drive, Suite 105

Wake Forest, NC 27587
Phone No.: (919) 554-4884
Fax No.: (919) 562-0421

Action ID No: SAW-2010-00982

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 a 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 Section 5 of the Mitigation Plan, dated December, 2014, 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.

(end of page; execution page follows)

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

IN TESTIMONY WHEREOF, the Grantor has caused this Conservation Easement to be executed in legal and binding form by its duly authorized official, the day and year first above written, and Grantee, in acceptance of this Conservation Easement, has caused this Conservation Easement to be executed in legal and binding form by its duly authorized official.

Grantor:
Chatham Park Investors LLC

By: _____
Name: _____
Title: Manager

Wake County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he signed the foregoing document on behalf of Chatham Park Investors LLC in the capacity indicated:

_____.

Date: _____
(affix seal or stamp here)

Notary Public
Printed/Typed Name: _____
My Commission Expires: _____

County of Chatham

By: _____
Chair of the Board of Commissioners
of Chatham County, North Carolina

Attest:

Name: _____
Title: _____

(affix official County seal here)

Chatham County, North Carolina

I certify that _____ personally appeared before me this day and acknowledged to me that he/she is _____ Clerk to the Board of Commissioners of Chatham County, North Carolina, and that by authority duly given and as the act of said County, the foregoing document was signed in its name by the _____ Chair of its Board of Commissioners, sealed with its official seal, and attested by himself/herself as its _____ Clerk.

Date: _____

(affix seal or stamp here)

Notary Public
Printed/Typed Name: _____
My Commission Expires: _____

EXHIBIT A
DESCRIPTION OF PROPERTY SUBJECT TO EASEMENT

LYING AND BEING in Chatham County, North Carolina, and being all of that real property contained in “Conservation Easement #1, containing 853,942 square feet (19.604 acres), more or less, and in Conservation Easement #2, containing 1,059,524 square feet (24.323 acres), more or less, as shown on a map recorded in the office of the Register of Deeds of Chatham County, North Carolina in Book of Maps 2013, Page 48 (which also may be known as Plat Slide 2013-48), said map being incorporated by reference as if fully set out herein.