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BOOK PAGE  
2987 288

Prepared by: Lana Armstrong, Clean Water Management Trust Fund, and Wayne R. Hadler, Attorney at Law  
Return to: Grantor

STATE OF NORTH CAROLINA

PIN NO: 9890-74-1324

COUNTY OF ORANGE

**DECLARATION OF COVENANTS AND RESTRICTIONS  
LEON E. CARROLL PROPERTY**

THESE RESTRICTIVE COVENANTS ("**Restrictive Covenants**") are made on this \_\_\_ day of April 2003, by and between Town of Chapel Hill, a municipal corporation existing under the laws of the State of North Carolina 27514 ("**Grantor**") and the STATE OF NORTH CAROLINA, with its address c/o State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321 ("**State**" or "**Grantee**"), acting solely through the North Carolina Clean Water Management Trust Fund, with its address at 1651 Mail Service Center, Raleigh, NC 27699-1651 ("**Fund**").

A. Grantor is the sole owner in fee simple of the property being approximately 17.60 acres located in Chapel Hill Township, Orange County, North Carolina and being all of that certain tract as more particularly described in Exhibit A attached hereto and by this reference incorporated herein ("**Property**"); and

B. The State of North Carolina will be the Grantee and Holder of these Restrictive Covenants until which time Grantor conveys to the State a Conservation Easement.

C. The Clean Water Management Trust Fund is an agency of the State of North Carolina and is authorized by Article 13A, Chapter 113 of the North Carolina General Statutes ("**N.C.G.S.**") to finance projects and to acquire land and interests in land, including conservation easements for riparian buffers for the purposes of providing environmental

protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses.

D. The Grantor has received a grant from the Fund identified Grant No. 1998A-103 for acquisition of the Property in consideration of which the Grantor has agreed that the Property will be conserved and managed in the manner that will protect the quality of waters of the Dry Creek which drains into the B. Everett Jordan Reservoir, addressing the cleanup and prevention of pollution of the State's surface waters, and the establishment of a network of riparian buffers and greenways, and otherwise protect the public purposes authorized by Article 13A, Chapter 113 of the N.C.G.S.

E. Grantor, State and Fund (the "Parties") hereto recognize that the Property has been deemed by the State to qualify as a riparian buffer. The Parties intend that the conservation and water quality values of the Property in its present state will be preserved and maintained according to those purposes set forth by said Grant Agreement entered into between the Grantor and the Fund dated 1st day of January 1999, incorporated herein by reference, and available for inspection in the offices of the North Carolina Department of Environment and Natural Resources, Grantor and Fund.

F. In order to ensure such conservation and management of the Property, the Fund requires Grantor to convey to the State a Conservation Easement, which must be approved by the Council of State and duly recorded by the State. Grantor has delivered to the Fund said Conservation Easement, and the Fund wishes to proceed with the Grant prior to, and conditional upon such approval and subsequent recordation of the Conservation Easement by the State; and

G. Fund and State requires the Grantor to record these Restrictive Covenants to ensure appropriate conservation and management of the Property as set forth herein and by said Grant Agreement entered into between the Grantor and the Fund until such time as the Conservation Easement is approved by the Council of State and duly recorded by the State Property Office, North Carolina Department of Administration.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration to Grantor and to the State as protector of the public interests it promotes, the Grantor hereby adopts and declares the Property subject to the restrictions hereinafter set forth, the purposes which are to provide environmental protection for surface waters and to protect the wildlife and natural heritage values of the Property.

#### ARTICLE I. DURATION OF RESTRICTIVE COVENANTS

These foregoing covenants and restrictions shall be construed to be covenants running with the land and, with any amendments made pursuant to Section VI.E. herein, shall be binding and effective until January 1, 2095, at which time they shall be automatically extended for successive periods of five (5) years; provided that these restrictions and covenants may be terminated at any time by recordation of an instrument of

termination executed by Grantor and State or by recordation by the State of a Conservation Easement by the Town of Chapel Hill covering the Property and naming as grantee the State or its designee.

## ARTICLE II. RIGHTS RESERVED TO GRANTOR

Grantor reserves certain rights accruing from ownership of the Property, including the right to engage in or permit others to engage in uses of the Property that are not inconsistent with the purpose(s) of these Restrictive Covenants. The following rights are expressly reserved:

Grantor reserves certain rights accruing from ownership of the Property, including the right to engage in or permit others to engage in uses of the Property that are not inconsistent with the purpose(s) of this Conservation Easement. All rights reserved by Grantors are reserved for Grantors, their representatives, successors, and assigns, and are considered to be consistent with the conservation purposes of this Conservation Easement. The following rights are expressly reserved:

A. To engage in passive recreational uses of the Property requiring minimal surface alteration of the land as indicated by Grantor's "New Hope Creek Corridor Open Space Master Plan, adopted 1991" and amendments thereto, said plans to be provided by Grantor's Parks, and Recreation Department and approved by the Fund, so long as related alterations, construction, improvements, maintenance and uses pose no threat to conservation values of this Conservation Easement.

B. To allow public access to the Property for the purpose of providing a public greenway trail and associated recreational activities, including without limitation, conducting educational tours, scientific study, animal and plant observation, walking, biking, picnicking, and any other purpose consistent with these accepted uses and maintaining conservation values. To accomplish the above uses, the Grantor may construct, maintain, repair no closer than fifteen (15) feet to the top of the bank of Dry Creek, a ten (10) foot wide greenway trail constructed of impervious materials, with wooden boardwalks, steps, handrails and ramps wherever required by the terrain. The Grantor may also construct and maintain parking facilities (for access to trails and open space), park benches, picnic tables, garbage receptacles, bollards, trail/feature signs and fencing. Construction, maintenance, and repair of the amenities described herein shall be conducted in a manner that does not materially diminish the wooded, open space character and scenic and natural qualities of the Property as compared to the conditions existing on the date of this Conservation Easement. The total combined cleared pervious and impervious surface area associated with all amenities and improvements, including, but not limited to the greenway trail and park benches shall not exceed ten (10) percent of the total area of the Property. All amenities and improvements shall be subject to the prior approval of the Fund and to the terms set forth in the aforementioned Grant Agreement, and any amendments thereto. Notwithstanding the foregoing, all picnic tables and or facilities shall be located no closer than fifty (50) feet to the top of the bank

of Dry Creek, and all access easements, right-of-ways, and parking facilities shall be located no closer than three hundred (300) feet to the top of the bank of Dry Creek.

Notwithstanding the foregoing, Grantor and Grantee have no right to agree to any activity that would result in the termination of this Conservation Easement.

### ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purposes of these Restrictive Covenants is prohibited. The Property shall be maintained in its natural, scenic, wooded and open condition and restricted from any development or use that would impair or interfere with the conservation purposes of these Restrictive Covenants set forth above.

Except for those rights specifically reserved to Grantor in Article II and without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted.

A. Industrial and Commercial Use. Industrial and commercial activities and any right of passage for such purposes are prohibited on the Property.

B. Agricultural, Timber Harvesting, Grazing and Horticultural Use. Agricultural, timber harvesting, grazing, horticultural and animal husbandry operations are prohibited on the Property.

C. Disturbance of Natural Features, Plants and Animals. There shall be no cutting or removal of trees, or the disturbance of other natural features within the Property except for the following: (1) as incidental to boundary marking, fencing, signage, construction and maintenance of nature trails and public access allowed hereunder; (2) removal of diseased or dangerous trees to the extent needed to protect the property of adjacent landowners; (3) selective cutting and prescribed burning or clearing of vegetation and the application of mutually approved pesticides for fire containment and protection, disease control, restoration of hydrology, wetlands enhancement and/or control of non-native plants; subject however, to the prior approval of Fund; (4) hunting and trapping to the extent necessary to keep the animal population within numbers consistent with the ecological balance of the area and pursuant to applicable rules and regulations; and (5) fishing pursuant to applicable rules and regulations.

D. Construction of Buildings and Recreational Use. 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 except for the placing and display of: no trespassing signs; local, state or federal traffic or similar information signs; for sale or lease signs; fencing; signs identifying the conservation values of the Property, and/or signs identifying the Grantor as owner of the Property, the

conservation purposes to which it is restricted and that the State is the source of funding for the acquisition of this Property; educational and interpretative signs; identification labels; or any other similar temporary or permanent signs reasonably satisfactory to the Fund.

E. Mineral Use, Excavation, 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 Property in any manner except as necessary for the purpose of combating erosion, construction of trails and amenities permitted in Article 2 herein, or incidental to any conservation management activities otherwise permitted in these Restrictive Covenants.

F. Wetlands and Water Quality. There shall be no pollution or alteration of water bodies and no activities that would be detrimental to water purity or that would alter natural water levels, drainage, sedimentation and/or flow in or over the or into any surface waters, or cause soil degradation or erosion nor diking, dredging, alteration, draining, filling or removal of wetlands, except activities to restore natural hydrology or wetlands enhancement as permitted by State and any other appropriate authorities.

G. Dumping. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the Property is prohibited.

H. Conveyance and Subdivision. The Property shall not be subdivided, partitioned nor conveyed, except in its current configuration as an entity or block of property.

I. Mitigation. There shall be no use of the Property or any portion thereof to satisfy compensatory mitigation requirement under 33 U.S.C. Section 1344 or N.C.G.S. 143-214.11.

#### ARTICLE IV. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of these Restrictive Covenants, Grantee is allowed to prevent any activity on or use of the Property that is inconsistent with the purposes of these Restrictive Covenants and to require the restoration of such areas or features of the Property that may have been damaged by such activity or use. Upon any breach of the terms of these Restrictive Covenants by Grantor that comes to the attention of the State, the State shall notify the Grantor in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to begin undertaking actions that are reasonably calculated to correct promptly the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the State may enforce these Restrictive Covenants by appropriate legal proceedings including damages, injunctive and other relief. The State shall also have the power and authority: (a) to prevent any impairment of the Property by acts which may be unlawful or in violation of these Restrictive Covenants; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. The rights and remedies of the State provided hereunder shall be in addition to, and not in lieu of, all other rights and

remedies available to the State in connection with this Declaration of Covenants and Restrictions, including, without limitation, those set forth in the Grant Agreement under which these Restrictive Covenants were obtained.

B. Right of Entry and Inspection. State, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Grantor, Grantor's representatives, or assigns are complying with the terms, conditions and restrictions of these Restrictive Covenants.

C. Acts Beyond Grantor's Control. Nothing contained in these Restrictive Covenants shall be construed to entitle State to bring any action against Grantor for any injury or change in the Property caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the 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.

D. Cost of Enforcement. Any cost incurred by Grantee in enforcing the terms of these Restrictive Covenants against Grantor, including, without limitation, any cost of restoration necessitated by Grantor's acts or omissions in violation of the terms of these Restrictive Covenants, shall be borne by Grantor.

E. No Waiver. Enforcement of the Restrictive Covenants shall be at the discretion of the Grantee and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or of any other term of these Restrictive Covenants or of Grantee's rights. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

#### ARTICLE V. DOCUMENTATION AND TITLE

A. Property Condition. The parties acknowledge that the Property is currently undeveloped land, its current use and state of improvement described Exhibit B, incorporated herein by reference, and easements and rights of way of record.

B. Title. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to establish the aforesaid; that there is legal access to the Property, that the Property is free and clear of any and all encumbrances, except easements of record, none of which would nullify, impair or limit in any way the terms or effect of these Restrictive Covenants; Grantor shall defend its title against the claims of all persons whomsoever, and Grantor covenants that the State shall have the benefit of all of the benefits derived from and arising out of the aforesaid Restrictive Covenants.



## ARTICLE VI. MISCELLANEOUS

A. Subsequent Transfers. Grantor hereby covenants and agrees, that in the event it transfers or assigns the Property, the transferee of the Property shall be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, and the regulations promulgated thereunder (the "**Internal Revenue Code**"), which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code. Grantor agrees for itself, its successors and assigns, to notify State in writing of the names and addresses of any party to whom the Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Any transferee or assignee of the Property shall take title subject to these Restrictive Covenants and subject to Grantor's obligation to grant State the Conservation Easement as set forth herein, shall perform all such acts as shall be necessary to effect the transfer. Grantor, for itself, its successors and assigns, further agrees to make specific reference to these Restrictive Covenants in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Property is conveyed.

B. Conservation Purpose.

(1) The parties hereto recognize and agree that the benefits of these Restrictive Covenants are in gross and assignable, provided, however that the Grantee hereby covenants and agrees, that in the event it transfers or assigns its interest in these Restrictive Covenants, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) 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 to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

(2) Unless otherwise specifically set forth in these Restrictive Covenants, nothing herein shall convey to or establish for the public a right of access over the Property. The Parties recognize and agree that this Property is open for public entry and use, and shall be open to entry and use equally by all persons, regardless of race, color, creed, national origin, or residence, subject to reasonable published and posted rules governing use of the Property by the Grantor, as approved by the Fund, and consistent with the conservation purposes provided by this Conservation Easement.

C. Recording. Grantor shall record this instrument and any amendment hereto in timely fashion in the official records of Orange County, North Carolina, and may re-record it at any time as may be required to preserve its rights or the rights and interests of the State.

D. Notices. All notices, requests or other communications permitted or required by this Agreement shall be sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above, or to such other addresses such party may establish in writing to the other. All such items shall be deemed given or made three (3) days after being placed in the United States mail as herein provided. In any case, where the terms of these Restrictive Covenants require the consent of any party, such consent shall be requested by written notice. Such consent shall be deemed denied unless, within ninety (90) days after receipt of notice, a written notice of approval and the reason therefore has been mailed to the party requesting consent.

E. Amendments. Grantor shall not amend these Restrictive Covenants except with the consent of the State. Any amendment(s) shall be effective upon recording in the public records of Orange County, North Carolina.

F. Environmental Condition of Property. The Grantor warrants, represents and covenants to the State that to the best of its knowledge after appropriate inquiry and investigation that: (a) the Property described herein is and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, and (b) as of the date hereof there are no hazardous materials (including without limitation any materials) containing asbestos) located on, in or under the Property or used in connection therewith, and that there is no environmental condition existing on the Property that may prohibit or impede use of the Property for the purposes set forth herein and that Grantor will not allow any such uses or conditions.

G. Entire Agreement. This instrument and the Conservation Easement sets forth the entire agreement of the parties with respect to the Restrictive Covenants and supersedes all prior discussions, negotiations, understandings or agreements relating to the Restrictive Covenants. If any provision, or portion thereof, is found to be invalid, the remainder of the provisions of these Restrictive Covenants and portions thereof, and the application of such provision and portion thereof to persons or circumstances other than those as to which it is found to be invalid, shall not be affected hereby, and shall be fully valid and enforceable to the fullest extent and duration allowed by applicable law. The Parties hereto intend this document to be an instrument executed under seal. If any party is an individual, partnership or limited liability company, such party hereby adopts the word "SEAL" following his/her signature and the name of the partnership or limited liability company as his/her/its legal seal. The Recitals set forth above and the Exhibits attached hereto are incorporated herein by reference.

H. Indemnity. The Grantor agrees to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the State from and against all claims, actions, liabilities, damages, fines, penalties, costs and expenses suffered as a direct or indirect result of any violation of any federal, state, or local environmental or land use law or regulation or of the use or presence of any hazardous substance, waste or other regulated material in, on or under the Property.



I. Interpretation. These Restrictive Covenants shall be construed and interpreted under the laws of the State of North Carolina, any ambiguities herein shall be resolved so as to give maximum effect to the conservation purpose sought to be protected herein.

J. Parties. Every provision of these Restrictive Covenants that apply to the Grantor or to the Grantee shall likewise apply to their respective successors, assigns and grantees and all other successors in interest herein.

K. Merger. The parties agree that the terms of these Restrictive Covenants shall survive any merger of the fee and easement interest in the Property.

L. Subsequent Liens. No provisions of these Restrictive Covenants shall be construed as impairing the ability of Grantor to use this Property for collateral for borrowing purposes, provided that any mortgage or lien arising therefrom shall be subordinated to these Restrictive Covenants.

IN WITNESS WHEREOF, Grantor, by authority duly given, has hereunto caused these presents to be executed by their respective officers and its seal affixed, to be effective the day and year first above written.

GRANTOR: TOWN OF CHAPEL HILL

By: W. Calvin Horton (SEAL)  
Town Manager

[Corporate Seal]

ATTEST  
Sandra K. Cook  
Acting Clerk  
TOWN

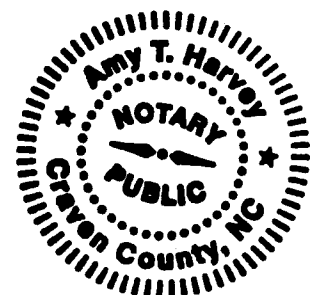


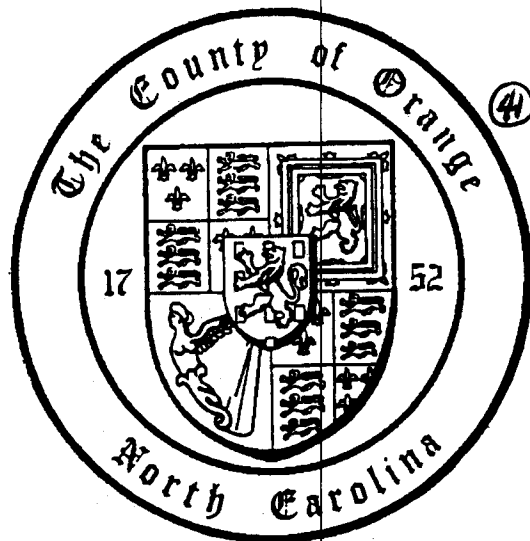
STATE OF NORTH CAROLINA

I, Amy T. Harvey, Notary Public of Craven County do hereby certify that Sandra K. Cook personally came before me this day and acknowledged that he/she is Acting Town Clerk of Town of Chapel Hill, a North Carolina municipal corporation and that by authority duly given and as the act of the Town of Chapel Hill, the foregoing instrument was signed in its name by its Town Manager, sealed with its seal, and attested by him/herself as its Acting Town Clerk

Witness my hand and notarial seal, this the 25 day of April, 2003.

Notary Public: Amy T. Harvey  
My Commission Expires May 8, 2005





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Orange County  
North Carolina

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State of North Carolina, County of Orange

The foregoing certificate/s of Amy T. Harvey, Notary/Notaries Public for the Designated Governmental units is/are certified to be correct. See filing certificate herein.

This day April 28, 2003

JOYCE H. PEARSON, REGISTER OF DEEDS By:

*Linda Clayton*  
Deputy/Assistant Register of Deeds

EXHIBIT A

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LEGAL DESCRIPTION OF PROPERTY

All that certain tract or parcel of land situated, lying and being on the east side of Erwin Road formally part of the W. E. Carroll homeplace, and more particularly described:

BEGINNING at an iron pipe set South 15 degrees 13'16" West 400 feet from a tie to an existing iron pipe in the right-of-way in Erwin Road as shown in an unrecorded boundary survey prepared by Thomas F. Bick, PLS, dated 12/4/02 and prepared for the Town of Chapel Hill, and being the northwest corner of the subject property, thence running South 80 degrees 01' 17" East 1287.82' to an existing iron pipe in concrete, and being the northeast corner of the subject property; thence running South 8 degrees 55' 11" West 659.47 feet to an existing iron pipe in concrete and being the southeast corner of the subject property; running thence North 74 degrees 01' 00" West 1241.29 feet to a control corner; running thence North 54 degrees 10' 04" West 101.33 feet to a computed point to the southwest corner of the subject property; running thence with the Erwin Road right-of-way North 17 degrees 15' 28" East 186.44 feet to a computed point along the Erwin Road right-of-way and along the western boundary of the subject property; running thence North 10 degrees 21' 59" East 300.39 feet to in iron pipe set and the place of BEGINNING, and containing 17.60 acres more or less.

This property was conveyed to Grantor in Book 2345, Page 497, Orange County Registry.

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EXHIBIT B

**CHARACTERISTICS OF PROPERTY**

The majority of the Property is currently wooded with a mixture of young pine and hardwood. The northeast corner of the Property is in pasture. There are no other improvements to the site except a series of encroachments along the northern property line. These include a fill area, a corner of a pond, and some clearing. Encroachments area shown in the survey prepared by Thomas F. Bick, PLS and referenced in the description in Exhibit A.

We are not aware of any water quality sensitive species, including rare and endangered species.