



REQUEST FOR BOARD ACTION

ITEM NO. 12.

DATE OF MEETING: May 2, 2011

REQUESTED BY: Rick Benton, County Manager

SHORT TITLE: Resolution Authorizing a Lease Agreement for the Future Topsail Regional Library Site and an Associated Conservation Declaration for Wetland Mitigation

BACKGROUND: The design and engineering work for the future Topsail Regional Library in Hampstead is completed. The site is 2.8 acres and is owned by the Pender County Board of Education. While construction is not planned immediately due to economic and financial conditions, a lease agreement with the Board of Education is recommended for preserving the site for the project. As well, since wetlands will be impacted due to construction, mitigation is proposed by imposing a conservation declaration on up to 7.56 acres of property in Pender Commerce Park on US 421, the final number being subject to Corps of Engineers approval. The mitigation site will not impact future development of the industrial park.

A map reflecting the location of the library site is attached. As well, a map of the proposed mitigation site is attached. A draft of the proposed lease agreement is also attached.

SPECIFIC ACTION REQUESTED: To consider a resolution to authorize a lease agreement with the Pender County Board of Education for the future Topsail Regional Library site (2.8 acres) on US 17; and to authorize recordation of a Conservation Declaration for wetland mitigation (up to 7.56 acres) site in Pender Commerce Park, both subject to approval of the County Attorney.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

DB
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby authorizes execution of a lease agreement with the Pender County Board of Education for the future Topsail Regional Library site (2.8 acres) on US 17; and authorizes recordation of a Conservation Declaration for wetland mitigation (up to 7.56 acres) site in Pender Commerce Park, both subject to final approval of the County Attorney. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS _____

YEA VOTES: Brown ___ Tate ___ Rivenbark ___ Ward ___ Williams ___

George R. Brown, Chairman Date

ATTEST Date

DRAFT

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF PENDER

THIS LEASE AGREEMENT, (hereinafter "Lease"), made and entered into this _____ day of _____, _____, by and between Pender County Board of Education, a body corporate and politic, (hereinafter "Landlord") and Pender County (hereinafter "Tenant").

WITNESSETH :

WHEREAS, Landlord is authorized to lease its real property to Tenant pursuant to the provisions of NCGS 160A-274, for one dollar (\$1.00) per year; and

WHEREAS, Landlord and Tenant believe that it is in the best interests of the citizens and taxpayers of Pender County to enter into this Lease;

NOW THEREFORE, IN CONSIDERATION of the mutual terms, covenants and agreements set forth herein, the Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord the premises described below (hereinafter "Premises"), upon the following terms and conditions:

1. PREMISES. The Premises consists of approximately _____ acres located in Pender County North Carolina, as more specifically described on Exhibit A, attached hereto and incorporated herein and any improvements placed thereon during the term of this Lease, except for personal property.

2. TERM. The initial term of this Lease shall be for a period of forty (40) years, beginning effective _____, (the Effective Date), and terminating at 5:00 P.M. on the day before the fortieth annual anniversary of the Effective Date, unless sooner terminated as herein provided. Tenant shall take possession of the Premises

as of the Effective Date. Any holdover by the Tenant after the expiration of the initial term of this Lease shall be a holdover by the Tenant as a Tenant from month to month, upon the same terms and conditions as provided herein, and may thereafter be terminated by either Landlord or Tenant by giving the other party written notice thirty (30) days prior to the effective date of termination.

3. RENT. Tenant shall pay all rentals when due. Rent for the initial term shall be payable for the entire initial term, but for the convenience of the Tenant, shall be paid in yearly installments, on the 10th day of January, each year, beginning on January 10th, 2010.

4. USE OF PREMISES. The Premises shall continually and without interruption be used by Tenant for the purpose of a public library except that, in the event that Tenant's leasehold interest is purchased at a foreclosure sale, the purchaser of such leasehold interest shall be allowed to use the Premises for any other purpose allowed under the zoning and land use ordinances, laws, rules and regulations of Pender County and any other governmental entity with proper jurisdiction, except as set forth in this paragraph

4. The Premises shall not be used for any of the following purposes, whether or not such purpose is allowed by the applicable zoning code: Adult Entertainment, Entertainment Establishment, Bar, Cabaret, Disco, Gun Sales, Livestock Sales, Pawn Shop, Cemetery, Crematory, Funeral Home, Race Track; Shooting Range (indoor and outdoor), Stables, Gun Repair, Incinerator, Landfill, Salvage Yard, Junk Yard, Scrap Processing, Sludge Disposal, Agricultural (all types), Mining (all types), Manufacturing (all types) and Transportation, Communication, Utilities (all types), all as described or defined in the Zoning Ordinance of Pender County (February 2nd, 2009). Also, no

alcoholic beverages shall be consumed, served or sold on the Premises. Tenant shall not use or permit the use of the Premises for any unlawful purpose, in violation of any code, regulation, or ordinance, or in any manner which would increase the rate of insurance on the Premises or in any manner which would constitute or create a nuisance, and shall comply with all such applicable laws, ordinances, regulations and codes affecting its use and occupancy of the Premises. Tenant shall not keep any pets or animals of any kind at the Premises, or permit others to bring same on to the Premises. Tenant will not carry on, allow, or cause any activities on or about the Premises which would directly or indirectly tend to detract from or impair the reputation or dignity of the business of others conducted in the area, or which would interfere with the peaceful and quiet use of Landlord's nearby public schools and related facilities, namely those schools and facilities presently named Topsail High School, Topsail Middle School and Topsail Elementary School. Tenant shall place no sign on the Premises unless such sign is approved in writing by the Landlord in advance, such approval not to be unreasonably withheld, and unless such sign is in compliance with all governmental restrictions. Tenant shall not install or allow to be installed on the Premises any communications tower, including a cellular telephone tower.

5. TENANT'S OBLIGATIONS. In addition to the other obligations of the Tenant under this Lease, during the term of this Lease, Tenant shall:

- a. keep the Premises, including, all improvements constructed on the Premises, and including but not limited to, all structures, buildings, roofing systems, walls, windows, parking areas, plate glass, landscaping, drainage systems, signage, exterior trim, siding, paint, and exterior

fixtures located on or about the Premises in a clean, safe, sanitary, and presentable condition;

- b. comply with any and all obligations imposed upon Tenants by applicable building codes; the city, county and state health codes and health department regulations; and any other city, county, state, or federal regulatory bodies;
- c. dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner and comply with all applicable ordinances concerning garbage collection, waste and other refuse;
- d. not deliberately or negligently destroy, deface, damage or remove any part of the Premises or permit any person known or unknown to Tenant to do so, or allow the Premises to deteriorate, or commit or permit any waste;
- e. be responsible for and liable to Landlord for all damage to, defacement of, or removal of property from the Premises, whatever the cause, except such damage, defacement, or removal caused by ordinary wear and tear, or acts of the Landlord, or of Landlord's agent;
- f. not abandon or vacate the Premises during the term of this Lease;
- g. not allow any lien for labor, materials, design services, or otherwise to attach to the Premises and in the event such a lien is filed, to obtain cancellation or release of any such lien within twenty (20) days of the date such may be filed;

- h. Not use any portion of the Premises which is outdoors for any purpose, other than parking and access to the Premises, without the prior written approval of the Landlord, which approval may not be unreasonably withheld and subject to such reasonable limitations as Landlord may impose;
- i. Not cause or permit music or other sound, whether acoustic or amplified, to be caused, created or played, whether live or in recorded form, such that same is audible from the interior or exterior of property presently known at Topsail High School, Topsail Middle School, or Topsail Elementary School, and their related facilities or such that same is audible from the interior of any other building in the area of the Premises.

6. TENANT'S IMPROVEMENTS ON PREMISES. Tenant shall have the right to construct permanent structures, buildings, fixtures and other improvements on the Premises, at Tenant's sole expense which are substantially in compliance with the plans and drawings attached hereto as collective Exhibit B and incorporated herein. All such improvements shall be constructed and installed in accordance with sound building and construction practices, of workmanlike quality and in accordance with all applicable building and zoning codes, ordinances, laws and regulations. Tenant, at its own expense, shall obtain all necessary permits for the construction or installation of such improvements and for the use of the Premises by Tenant. Landlord agrees to cooperate with Tenant in obtaining such permits and agrees to execute such applications or other documents as reasonable necessary to allow Tenant to construct such improvements. Tenant shall begin construction of said improvements on the

Premises no later than January 1st, 2011 and, unless Tenant's leasehold interest is purchased at a foreclosure sale, Tenant shall complete the construction of and open a public library on the Premises no later than January 1st, 2012.

7. TENANT'S TRADE FIXTURES AND PERSONAL PROPERTY. Tenant shall have the right to install trade and other fixtures, its own personal property, and signs in and upon the Premises, provided that such installation can be done without damage to the Premises, and subject to approval of signs by Landlord, as provided herein.

8. MORTGAGE OF LEASEHOLD INTEREST. Notwithstanding any other provision of this Lease, Tenant may mortgage its leasehold interest under this Lease for the sole purpose of obtaining financing to enable Tenant to construct the improvements on the Premises as set forth in Paragraph 6. Said mortgage may secure a note or other indebtedness of Tenant with a payment term not exceeding the term of this Lease (without any holdover period being counted). In the event of a foreclosure of any such mortgage, the purchaser of the Tenant's leasehold interest under this Lease shall have the same rights and privileges that Tenant had under this Lease and shall be deemed to have assumed all liabilities and responsibilities to Landlord that Tenant had under this Lease. Such a foreclosure shall not relieve Tenant of its liabilities and responsibilities to Landlord under this Lease and Tenant shall be jointly and severally liable with said purchaser to Landlord for all such liabilities.

9. REPAIRS, MAINTENANCE AND UPKEEP. Tenant agrees to make any and all necessary repairs and to perform all necessary maintenance to the roof and exterior structural parts of any structure or building now or hereafter located on the Premises, including plate glass, at Tenant's expense unless required by reason of the negligent,

reckless or intentional act(s) or omission(s) of Landlord or Landlord=s agents acting within the course and scope of their agency. Landlord shall not be obligated to make any repairs to the Premises, regardless of the cause of such damage or whether such damage could have been prevented by Landlord. Tenant shall be responsible for all other repairs and maintenance to the Premises, including the maintenance and repair of all portions of all electrical equipment, plumbing equipment, stoppages, heating, air conditioning and other mechanical installations which serve the Premises, and of the ceilings, floors, exterior doors and windows, including plate glass, and all other maintenance and repairs. Tenant shall maintain the exterior of the Premises, including the outdoor areas, in a clean, neat, swept, mowed and pruned condition. Tenant shall surrender the Premises upon the termination of its Lease in as good condition as exists at the completion of Tenant=s improvements, broom and mop clean, and subject only to normal wear and tear.

10. UTILITIES. All utilities, including by way of illustration but not limited to water, electricity, sewer, natural or other gas, refuse collection, telephone service, and cable television and internet connection service, and other entertainment, communications or data transmission service, shall be applied for, obtained and maintained by Tenant and maintained in service by the Tenant, at Tenant's sole expense, throughout the term of this Lease. The Tenant shall pay all bills for utilities and services pertaining to the Premises as same shall become due and payable, and hereby indemnifies and agrees to hold harmless the Landlord of and from any and all cost or expense associated with or related to utility service and connection, or disconnection of utility service arising in

connection with Tenant's possession or the termination of Tenant's possession of the Lease.

11. INSURANCE. Tenant shall obtain and keep in forced during the term of this Lease, including the initial term and any renewal or extension term(s), insurance coverage issued by such properly licensed and responsible companies as are selected by the Tenant, subject to the reasonable approval of the insurer by the Landlord, as provided herein, and upon failure of Tenant to maintain such insurance, Landlord may purchase such insurance in the name of the Landlord or the name of the Tenant as insured, and Landlord may advance the premiums for such insurance and Tenant shall reimburse the Landlord for such premiums advanced by Landlord immediately upon demand by Landlord. Premiums for such insurance, whether procured by the Landlord or by the Tenant, shall be paid by Tenant and Tenant shall furnish a certificate to Landlord evidencing the procurement and maintenance of such insurance coverage as Tenant is required to maintain hereunder upon procurement or change of coverage and from time to time, upon request. Copies of such policies of insurance shall be delivered to Landlord and held by Landlord during the term of this Lease. Regardless of whether Tenant secures such insurance, Landlord and his agents shall not be liable for any damage to, or destruction or loss of, any of Tenant's personal property located or stored upon the Premises regardless of the cause or causes of such damage, destruction, or loss, or loss resulting from termination of the Lease as a consequence of damage or destruction of the building. Tenant shall obtain and keep in force during the existence of this Lease, with both the Landlord and the Tenant named as insureds thereunder,

Commercial General Liability insurance in an amount of not less than a combined single limit of \$1,000,000.00.

12. INSPECTION AND ACCESS. Landlord and its duly authorized employees, agents and other representatives shall have free access to the Premises for inspecting, repairing, altering, and exhibiting the Premises to prospective purchasers and tenants, bank officers, real estate appraisers, and others at reasonable times upon reasonable prior notice to Tenant by telephone. Landlord shall have the right to advertise the Premises for sale or lease by publication and by sign posted at the Premises.

13. CONDEMNATION. If during the existence of this Lease the entire Premises, or so much thereof as to render the remaining Premises unsuitable for use by Tenant, is taken by government or other authority by the exercise of eminent domain, including negotiations and voluntary settlement under threat of condemnation, then this Lease shall terminate by reason of such taking at the time possession must be surrendered to such authority. All proceeds of such condemnation shall be the property of the Landlord, provided Tenant may make separate application for award for the value of the Tenant's leasehold interest.

14. TITLE AND WARRANTY. Landlord warrants that Landlord has the right to enter into this Lease and that Landlord has not placed or suffered to be placed any presently existing lien or encumbrance on said premises and that it will warrant and defend the title to the same against the lawful claims of all persons claiming by, through, under or on account of Landlord, but no further. Except as set forth in this paragraph 14, Landlord conveys the Premises "as is" and makes no representation or warranty concerning the Premises, its condition, its suitability for any particular purpose, its potential uses, its environmental condition or otherwise.

15, DEFAULT. If there is any breach or failure to abide by any terms and conditions herein contained to be kept by Tenant, which do not pertain to payment of rent, and such default shall continue for a period of fifteen (15) days after written notice to Tenant, or shall thereafter be repeated by Tenant, the Tenant shall be in default hereunder without further notice or opportunity to cure; and in any such event of default, Tenant's right to possession, or this Lease shall immediately terminate, at the option of the Landlord, and Tenant shall immediately surrender the Premises, or Landlord at its option and in its sole discretion, may cure the default and Tenant shall be liable to the Landlord for the cost of cure. Landlord shall be entitled to damages for any such default or breach in the amount thereof, and to interest on sums due to Landlord from Tenant which remain unpaid for more than thirty (30) days after same become due and demand for payment is made, at the rate of eight percent (8.0%) per annum. The failure of the Landlord to exercise any right or power hereunder and the granting of any extension of time or any other indulgence by the Landlord to the Tenant shall not constitute or be regarded as a waiver of any right, power or remedy at that time or at any time thereafter.

16. SURRENDER ON TERMINATION. Upon the termination of this Lease or of Tenant's right of possession under this Lease, for any cause, the Tenant shall immediately, quietly and peaceably vacate the Premises and deliver possession thereof to Landlord in good broom and mop clean condition. Upon the termination or expiration of this Lease, or Tenant's right of possession under this Lease, all improvements, including but not limited to buildings, structures, parking areas, landscaping, drainage systems, storm water management facilities, sewer systems, plumbing, electrical and

HVAC systems, and fixtures of any type, constructed or installed on the Premises during the term of this Lease shall become the sole property of Landlord and Tenant shall execute all documentation reasonably necessary to establish or vest clear title to such improvements in Landlord.

17. NOTICE. Any notice required in connection with this Lease may be given as follows:

(insert notice provisions)

18. LEASE TO BE RECORDED. This Lease shall be placed on the public record. Upon termination of this Lease for any reason, Tenant shall execute a written Notice of Termination in form recordable in the Office of the Register of Deeds of the county in which the Premises is located, North Carolina.

19. ASSIGNMENT OF LEASE AND SUBLETTING PROHIBITED. The Tenant shall not assign this Lease or sublet the Premises in whole or in part, unless authorized in advance in writing by the Landlord which authorization may be granted or withheld in the sole discretion of the Landlord. No assignment or sublease shall result in the release of the Tenant. Consent or license given for assignment or subletting in one instance shall not discharge this covenant or condition in any other instance. Each consent or license given by the Landlord for assignment or subletting shall be deemed a qualified consent or license, conditioned on there being no further assignment or subletting without the consent of the Landlord. Notwithstanding any provision in this paragraph 19 to the contrary, Tenant's leasehold interest may be purchased at a

foreclosure sale and the purchaser at such sale shall assume all of Tenant's rights and obligations under this Lease.

20. PARTIES INCLUDED. The covenants, terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Landlord and the Tenant, and their respective heirs, executors, successors and assigns, and in the event of a foreclosure of Tenant' leasehold interest, to the purchaser of Tenant's leasehold interest in this Lease.

21. SUBMISSION OF PROPOSED LEASE NOT AN OFFER. The submission of this Lease for examination does not constitute an offer to lease, and this Lease becomes effective only upon execution thereof by both Landlord and Tenant.

22. RELEASE OF LANDLORD UPON SALE OF THE PREMISES, ATTORNMENT. In the event that the Premises shall be sold by the Landlord Tenant shall look solely to the purchaser of the Premises for performance of the obligations of the Landlord hereunder, and hereby releases the Landlord named herein of and from all liability associated with performance (or the failure to perform) of such purchaser as Landlord or otherwise arising after the date of such sale, and in such event, Tenant shall pay the rental and tender all other performance required of the Tenant hereunder to such purchaser.

23. INDEMNITY. If the Tenant shall breach this agreement and as a proximate cause or foreseeable result of Tenant's breach the Landlord shall directly or indirectly suffer any loss, cost, or damage, the Tenant shall be liable to Landlord for same, and Tenant hereby indemnifies and agrees to hold harmless the Landlord of and from all such loss, costs or damage, including the cost of defense of same, including reasonable attorneys

fees. Tenant also, to the maximum extent permitted by law, indemnifies and agrees to hold harmless the Landlord, its Board members, agents and employees of and from all loss, costs, damages and/or claims of Tenant, and of Tenants' officers, agents, employees, guests, invitees, and customers, and all other persons or entities, including but not limited to claims for personal injury, wrongful death, property damage, violations of environmental laws or regulations, violations of worker safety laws or regulations, or violations of any other applicable, law, ordinance or governmental rule or regulation, arising from the use or occupation of the Premises, occurring on or about the Premises, or occurring during or as a result of any construction or real estate development activity on or about the Premises, except as may have been caused solely by the intentional, reckless or negligent act(s) or omission(s) of Landlord or its agents acting within the course and scope of their agency.

24. SEVERABILITY, NO DISCHARGE OF CONDITIONS. In the event that any provision or clause of this Lease conflicts with applicable law, such conflict shall not affect other provisions of this Lease which can be given effect without the conflicting provisions. To this end the provisions of this Lease are declared to be severable. Consent or license given for, or forbearance from enforcement of, any covenant or condition of this Lease in one instance shall not discharge this covenant or condition in any other instance. Each consent or license given by the Landlord for breach of any covenant or condition of this Lease shall be deemed a qualified consent or license, conditioned on there being no further breach.

25. ENTIRE AGREEMENT. This Lease expresses all the terms of the agreement of the parties to lease the Premises and all prior agreements, representations or

understandings, oral or written, are merged herein and superseded hereby. There are no representations or agreements between the parties not expressed in this Lease which survive the execution of this Lease and no conditions or contingencies precedent to the effectiveness of this Lease.

26. AMENDMENT. This Lease shall not be modified or amended except by the written and signed agreement of the parties, with specific reference to this Lease.

IN TESTIMONY WHEREOF the parties hereto have duly executed this Lease and affixed their seals thereto in duplicate, as of the day and year first hereinabove written.

LANDLORD:

Pender County Board of Education

By: _____
Chairman

Attest: _____
Superintendent

TENANT:

Pender County

By: _____
Chairman

DRAFT

Pender County Contract # _____

Tax Parcel ID # _____

STATE OF NORTH CAROLINA

PENDER COUNTY

Draft

Declaration of Conservation, Covenants, Conditions and Restrictions

This declaration of Conservation, Covenants and Restrictions (“_____”) is made on this _____ day of _____, 2010, By Pender County, a political subdivision of the State of North Carolina, with an address of XXX South Walker Street, Burgaw, NC, 28435 (“Declarant”).

Recitals & Conservation Purposes

- A. Declarant is the sole owner in fee simple of the certain Conservation Property (“Conservation Property”) being approximately (5.41) acres and constituting a portion of a larger tract upon which the Pender County Water Treatment Plant will be constructed in Pender County, State of North Carolina and being that certain Conservation Property tract as more particularly described in Exhibit A attached hereto and by this reference incorporated herein; and
- B. The United States Army Corps of Engineers, Wilmington District (the “Corps”) has approved the use of the Conservation Property to mitigate waters and wetlands impacts authorized by the Department of the Army Permit Action ID SAW-2009-01295 (the “Permit”) issued to the Declarant on the condition that the Conservation Property be subjected to certain restrictions, covenants and conditions intended to ensure preservation of the Conservation Property in its natural state.

NOW, THEREFORE the Declarant hereby unconditionally and irrevocably declares that all of that approximate (5.41) acres of the Conservation Property more fully described in Exhibit A shall be held and subject to the following restrictions, covenants and conditions as set out herein, to run with the subject real property and be on all parties that have or shall have any right, title, or interest in said property.

The purposes of this Conservation Declaration are to provide environmental protection for the surface waters, including wetlands, and to protect the wildlife and natural heritage values.

Article I. Prohibited and Restricted Activities

Any activity on, or use of, the Conservation Property inconsistent with the purpose of this Conservation Declaration is Prohibited. The Conservation 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 the Conservation Declaration set forth above.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted.

- A. Industrial, Residential and Commercial Use. Industrial, Residential and commercial activities and any right of passage for such purposes are prohibited.
- B. Agricultural, Timber Harvesting, Grazing and Horticultural Use. Agricultural, timber harvesting, grazing, and animal husbandry operations are prohibited.
- C. Disturbance of Natural Features, Plants and Animals. There shall be no cutting, removing, mowing, harming, burning or destruction of plants, or other vegetation or the disturbance of other natural features except for the following: [(1) As incidental to boundary marking, fencing, signage, construction and maintenance of natural trails as approved by the Corps; and (2) 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]
- 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 conservation Property except for the following: placing and display of "No Trespassing" signs, local, state, or federal traffic or similar informational signs, "For Sale" or "For Lease" signs, signs identifying the conservation values of the Conservation Property, educational and interpretative signs, identification labels or any other similar temporary or permanent signs.
- E. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsail, sand, gravel, rock, peat, minerals, or other materials, and no change in the topography of the land in any manner except as necessary for the combating of erosion or incidental to any conservation management activities otherwise permitted in this Conservation Declaration.
- 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 Conservation Property 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 The Corps, the 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 Conservation Property is prohibited.
- H. Conveyance and Subdivision. The Conservation Property may not be subdivided, nor conveyed except in its current configuration as an entity.

Article II. Enforcement & Remedies

- A. This Declaration is intended to ensure continued compliance with the mitigation condition of authorizations issued by the United States of America, I.S. Army Corps of Engineers, Wilmington District, and therefore may be enforced by the United States of America. This covenants is to run with the land and shall be binding on all parties and all persons claiming under the Declarant.
- B. Corps, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the Conservation Property at reasonable times for the purpose of inspecting the Conservation Property to determine whether the Declarant, Declarant's representatives, or assigns are complying with the terms, conditions and restrictions of this Declaration.
- C. Nothing contained in this Conservation Declaration shall be construed to entitle Corps to bring any action against Declarant for any injury or change in the Conservation Property resulting from causes beyond the Declarant's control, including without limitation, fire, flood, storm, and earth movement, or from prudent action taken in good faith by the Declarant under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to Conservation Property or harm to the Conservation Property resulting from such causes.

Article III. Public Access

- A. This Conservation Declaration does not convey to the public the unencumbered right to enter the Conservation Property for any purpose for any purpose whatsoever.

Article IV. Documentation and Title

- A. Conservation Property Condition. The Declarant represents and acknowledges that the Conservation Property is currently undeveloped land, with no improvements other than any existing utility lines, Declarations and rights-of-way.
- B. Title. The Declarant covenants and represents that the Declarant is the sole owner and is seized of the Conservation Property in fee simple and has good right to make the herein Declaration; that there is legal access to the Conservation Property, that the Conservation Property is free and clear of any and all encumbrances, except Declarations of record.

Article V. Miscellaneous

- A. Conservative Purpose.
 - a. Declarant, for itself, itself, its, its successors and assigns, agrees that this Conservation Property shall be held exclusively for conservation purposes. .
- B. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Declaration and supersedes all prior discussions, negotiations, understandings or agreements relating to the Declarations. If any provision is found to be invalid, the remainder of the provisions of this Declaration , and the application of such provisions to persons or circumstances shall not be affected thereby. Notwithstanding the above, the Permit conditions

remain in full force and effect, and are requirements placed on the Declarant independent from this Declaration.

- C. Recording. The Declarant shall record this instrument and any amendment hereto in a timely fashion in the official records of Pender County, North Carolina, and may re-record it at any time as may be required to preserve its rights.
- D. Amendment. The Declarant declares that the terms of this Declaration shall not be amended, modified, or terminated without prior written consent and written approval of the Corps.
- E. Environmental Condition of Conservation Property. The Declarant warrants and represents that to the best of its knowledge after appropriate inquiry and investigation: (a) the Conservation 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, substances, wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the Conservation Property or used in connection therewith, and that there is no environmental condition existing on the Conservation Property that may prohibit or impede use on the Conservation Property for the purposes set forth in Recitals.

IN Witness Whereof, Declarant, by authority duly given, have hereunto caused these presents to be executed by its County Manager, attested by its Clerk to the Board and its corporate seal affixed, as of the dates shown below, to be effective upon the date of recordation in the public records of Pender County.

Declarant: Pender County

By: _____

Rick Benton, County Manager

Attest: _____

Glenda Pridgen, Clerk to the Board

(Agency Seal)

State of _____

County of _____

I, _____, a Notary Public in and for said County and State so hereby certify that _____ personally appeared before me this day and duly acknowledged the she is Clerk to the Board of Commissioners for Pender County, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by its County Manager, sealed with its County Seal and attested by her as its Clerk.

Witness my hand and notarial seal, this _____ day of _____ 2010.

Notary Public

My Commission Expires: _____

State of North Carolina

_____ County

The foregoing certificates(s) of _____, Notary Public, are certified to be correct.

This _____ day of _____, 2010

Register of Deeds

This instrument prepared by and should be returned to: