

FILED in CHOWAN County, NC  
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By: SUSAN S ROUNTREE  
REGISTER OF DEEDS  
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**CONSERVATION EASEMENT**

**NORTH CAROLINA  
CHOWAN COUNTY**

Prepared by and return to Robert B. Hobbs, Jr., Attorney  
Hornthal, Riley, Ellis & Maland, LLP  
PO Box 310, Nags Head, NC 27959

THIS CONSERVATION EASEMENT DEED, made this 23<sup>rd</sup> day of April, 2007, by WATERFRONT GROUP NC, LLC, a North Carolina limited liability company ("Grantor"), to MARINE LEARNING INSTITUTE, a Virginia nonprofit corporation, whose address is 309 Ewatts Hill Road, Hendersonville, NC 28739-4747 ("Grantee") The designations 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.

**WITNESSETH:**

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Yeopim Township, Chowan County, North Carolina (the "Property"), and being more particularly described as that certain parcel of land conveyed to Grantor by Deed recorded in Book 344, Page 641, Chowan County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. This Conservation Easement shall be for the protection and benefit of the waters of the Yeopim River and Middleton Creek; and

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WHEREAS, Grantee is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35(2).

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over a described area of the Property, referred to hereafter as the "Easement Area," for the benefit of the people of North Carolina, and being all of the tract of land described as follows:

All of that property located bounded as follows: On the north and west by the Yeopim River; on the west by Middleton Creek; and on the east, south and west by the lines delineated as "PHASE LINE OF WETLANDS DELINEATION" as shown on that survey entitled, in part, "Wetland Boundary Survey Plat on Phase I of 'Riversound' of the Property of International Paper Realty Corp. for Waterfront Group NC, LLC, Yeopim Township, Chowan County, North Carolina" by Fred C. Howell, P.L.S., dated May 19, 2006, and recorded in ~~Map Book~~ <sup>Plat, Cabinet</sup> 2, ~~Pages~~ <sup>Side</sup> 6-5 through \_\_\_\_\_, Chowan County Registry. Said parcel is more particularly described as follows:

Beginning at a point on the northern right of way line of Drummonds Point Road (Secondary Road 1100), said point located North 66 degrees 22 minutes 28 seconds West 817.21 feet from a concrete monument located at grid coordinate N: 852129.57, E: 2742808.06, CSF: 0.99997911; thence along the following courses and distances: North 06 degrees 46 minutes 11 seconds East 23.46 feet; North 06 degrees 46 minutes 11 seconds East 92.51 feet to a point; North 06 degrees 46 minutes 11 seconds East 54.03 feet to a point; thence North 08 degrees 33 minutes 30 seconds West 94.57 feet to a point; thence North 06 degrees 45 minutes 12 seconds East 596.05 feet to a point; thence North 06 degrees 54 minutes 25 seconds East 70.98 feet to a point; thence North 06 degrees 46 minutes 11 seconds East 861.56 feet to a point; thence North 06 degrees 46 minutes 11 seconds East 128.51 feet to a point; thence North 06 degrees 46 minutes 11 seconds East 339.47 feet to a point; thence North 15 degrees 32 minutes 15 seconds East 82.95 feet to a point; thence North 24 degrees 17 minutes 41 seconds East 403.18 feet to a point; thence North 23 degrees 00 minutes 10 seconds East 102.00 feet to a point; thence North 21 degrees 42 minutes 38 seconds East 197.16 feet to a point; thence North 21 degrees 42 minutes 38 seconds East 244.10 feet to a point; thence North 21 degrees 42 minutes 38 seconds East 1515.10 feet to a point; thence North 17 degrees 55 minutes 44 seconds East 13.17 feet to a point; thence North 16 degrees 47 minutes 51 seconds East 30.43 feet to a point; thence North 07 degrees 55 minutes 46 seconds East 53.57 feet to a point; thence North 00 degrees 07 minutes 26 seconds East 39.16 feet to a point; thence North 04 degrees 32 minutes 04 seconds West 92.86 feet to a point; thence North 53 degrees 55 minutes 34 seconds East 439.39 feet to a point; thence North 72

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degrees 12 minutes 40 seconds East 340.12 feet to a point; thence North 16 degrees 56 minutes 01 seconds West 665.24 feet to a point; thence North 32 degrees 51 minutes 53 seconds West 625.75 feet to a point; thence North 81 degrees 03 minutes 07 seconds East 1149.35 feet to a point; thence South 46 degrees 00 minutes 43 seconds East 177.16 feet to a point; thence North 87 degrees 53 minutes 39 seconds East 453.73 feet a point; thence North 50 degrees 34 minutes 12 seconds East 445.33 feet to a point; thence North 10 degrees 53 minutes 58 seconds West 876.38 feet to a point; thence North 18 degrees 47 minutes 49 seconds East 602.68 feet to a point located on or near the mean high water mark of the Yeopin River (the previously described lines running from the point of beginning to the point on the Yeopin River are shown and delineated as lines P19 through and including line P48 as shown on the above described survey); thence along or near the various meanderings of the mean high water mark of the Yeopin River and Middleton Creek, consisting of lines identified as L123 through and including L35 as shown on the above described survey; thence at the point shown on the above described survey located at the intersection of lines L34 and L35; and along a line identified on the said survey as P1, South 89 degrees 32 minutes 32 seconds East 966.53 feet to a point; thence South 63 degrees 37 minutes 22 seconds East 866.05 feet to a point; thence South 21 degrees 42 minutes 38 seconds West 82.02 feet to a point; thence South 21 degrees 42 minutes 38 seconds West 77.10 feet to a point; thence South 21 degrees 42 minutes 38 seconds West 22.67 feet to a point; thence South 23 degrees 00 minutes 10 seconds West 97.95 feet to a point; thence South 24 degrees 17 minutes 41 seconds West 403.18 feet to a point; thence South 15 degrees 32 minutes 10 seconds West 110.37 feet to a point; thence South 06 degrees 46 minutes 11 seconds West 343.57 feet to a point; thence South 06 degrees 46 minutes 11 seconds West 96.25 feet to a point; thence South 06 degrees 46 minutes 11 seconds West 897.42 feet to a point; thence South 06 degrees 46 minutes 11 seconds West 13.95 feet to a point; thence South 06 degrees 46 minutes 11 seconds West 645.39 feet to a point; thence South 22 degrees 05 minutes 52 seconds West 94.58 feet to a point; thence South 06 degrees 46 minutes 11 seconds West 127.58 feet to a point located in the Northern right of way line of Drummonds Point Road (Secondary Road 1100); thence along the Northern right of way line of Drummonds Point Road, South 66 degrees 22 minutes 28 seconds East 146.28 feet to the place and point of beginning. The seventeen previously described courses and distances are identified as lines P1 through P18 (P16 does not exist) on the above described survey.

The total acreage comprising the Easement Area is approximately 133.01 acres according to Note 7 on the above referenced survey.

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and

recreational opportunities; to maintain permanently the Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

### I. DURATION OF EASEMENT

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

### II. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

**A. Recreational Uses.** Grantor expressly reserves the right to undeveloped recreational uses, including hiking, bird watching and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

**B. Educational Uses.** The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the Easement Area for such purposes including organized educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.

**C. Vegetative Cutting.** All cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited with the following exceptions: (1) the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, and (2) Grantor, and Grantor's successors and assigns, including the property owners association for "Riversound" and the owners of lots in "Riversound" directly adjoining the Easement Area, shall have the right to trim, mow, and clean up the first twenty (20) feet of the Easement Area directly adjoining any property of Grantor, and Grantor's successors and assigns, including common elements or lots in "Riversound" directly adjoining the Easement Area.

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**D. Industrial, Residential and Commercial Uses.** All industrial, residential and commercial uses are prohibited in the Easement Area.

**E. Agricultural Uses.** All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.

**F. New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area, except for the construction, use, maintenance and replacement of elevated boardwalks and walkways over and across the Easement Area, which will be located inside a 10-foot wide corridor from the uplands to the shoreline; the location of such 10-foot wide corridor shall be in the discretion of Grantor, and Grantor's successors and assigns.

**G. Roads and Trails.** There shall be no construction of roads, trails, walkways, or paving in the Easement Area, except for the construction, use, maintenance and replacement of elevated boardwalks and walkways over and across the Easement Area, which will be located inside a 10-foot wide corridor from the uplands to the shoreline; the location of such 10-foot wide corridor shall be in the discretion of Grantor, and Grantor's successors and assigns. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

**H. Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Easement Area may be allowed.

**I. Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

**J. Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

**K. Water Quality and Drainage Patterns.** There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. In the event of an emergency interruption or shortage

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of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

**L. Subdivision and Conveyance.** Grantor, Grantor's successors and assigns, reserves the right: (1) to subdivide, partition or otherwise divide the Easement Area, and (2) to convey all or any subdivided, partitioned or otherwise divided portion of the Easement Area in fee simple to the owners of lots in "Riversound" whose lots directly adjoin the Easement Area. Any such conveyance of all or any subdivided, partitioned or otherwise divided portion of the Easement Area under this Paragraph L shall be subject to and encumbered by the terms, conditions and provisions of this Conservation Easement. Grantor agrees for itself, its successors and assigns, that in the event it transfers the Property, or any portion thereof, such transfer is subject to the Grantee's right of ingress, egress, and regress over and across the Property to the Easement Area for the purposes set forth herein.

**M. Development Rights.** All development rights are removed from the Easement Area and shall not be transferred.

**N. Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantor is prohibited.

Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. Grantor shall not vary from the above restrictions without first obtaining written approval from Grantee.

### III. GRANTEE RESERVED USES

**A. Ingress, Egress, Regress and Inspection.** Grantee, its employees and agents, successors and assigns, receive the perpetual right of general ingress, egress, and regress to the Easement Area over the Property at reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

**B. Restoration Activities.** These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterranean water flow.

IV. ENFORCEMENT AND REMEDIES

A. **Enforcement.** To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns, in writing of such breach. The Grantor, its successors or assigns, shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. 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. 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.

B. **Inspection.** Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Easement Area over the Property at reasonable times for the purpose of inspection to determine whether Grantor, their successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

C. **Acts Beyond Grantor's Control.** Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor, their successors or assigns, for any injury or change in the Easement Area 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 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. **Costs of Enforcement.**

1. Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their successors or assigns, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in

violation of the terms of this Conservation Easement, shall be borne by Grantor, or Grantor's successors and assigns as the case may be.

2. All successors and assigns of Grantor, including any grantees of a deed conveying any subdivided, partitioned or otherwise divided portion of the Easement Area (the "Subsequent Party" or "Subsequent Parties"), shall be responsible for the costs of any required restoration described in subparagraph 1 above, required by Grantee, which affects any portion of the Easement Area owned by any Subsequent Party. Such Subsequent Party shall, by acceptance of a deed for all or any portion of the Easement Area, whether or not it shall be so expressed in the particular deed of conveyance, shall be deemed to covenant and agree to indemnify and hold harmless Grantor from any cost or expense relating to any restoration of all or any portion of the Easement Area required by Grantee.

**E. No Waiver.** Enforcement of this Easement shall be at the discretion of Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

**F. Assignment By the Grantee and Effect of Dissolution of Grantee.** Grantee may assign, upon prior written notice to Grantor, its rights under this Conservation Easement to any holder that is qualified to be the grantee of a conservation easement pursuant to N.C. Gen. Stat. § 121-35(2), and only with assurances that the purposes of this Conservation Easement shall be maintained. No assignment may be made by the Grantee of its rights and obligations under this Conservation Easement unless Grantee, as a condition of such assignment, requires the assignee to carry out the conservation purposes of this Conservation Easement. If any assignee shall be dissolved or shall abandon this Conservation Easement or the rights and duties of enforcement herein set forth, the Conservation Easement and rights of enforcement shall revert to Grantee. If Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then the County of Chowan, or its successors or assigns, shall appoint an appropriate successor as Grantee; any such successor shall be any holder that is qualified to be the grantee of a conservation easement pursuant to N.C. Gen. Stat. § 121-35(2).

## V. MISCELLANEOUS

**A.** 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 invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

**B.** Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.



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C. Grantor shall notify Grantee in writing of the name and address and any party to whom the Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

D. 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.

E. 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 Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement.

F. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that 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 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.

G. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. As used herein, words in singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

### VI. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to Grantor, and Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

**TO HAVE AND TO HOLD** the said rights and easements perpetually unto the State of North Carolina for the aforesaid purposes.

**AND** Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same are free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, Grantor has caused this instrument to be executed, the day and year first above written.

WATERFRONT GROUP NC, LLC

BY: Mark R. Adkins (SEAL)  
Manager

Mecklenburg County, State of North Carolina

I certify that the following person personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Mark R Adkins, Manager of Waterfront Group NC, LLC, a North Carolina limited liability company.

Date: 4-23-07

(AFFIX NOTARY SEAL)

A.M. Wilson  
Signature of Notary Public

My commission expires: 7-28-07

Ann Marie Wilson  
Typed or printed name of Notary Public

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