

STATE OF NORTH CAROLINA  
COUNTY OF WATAUGA

RESOLUTION TO ACCEPT A CONSERVATION EASEMENT

WHEREAS Blue Ridge Rural Land Trust, whose address is P.O. Box 2557, Boone, N.C. 28607, is a North Carolina non-profit corporation whose Articles of Incorporation allow the corporation to "acquire rights to property, including scenic and conservation easements", and

WHEREAS Mr. E. Reeves Vannoy, of 720 Catherine Court, Fleetwood, N.C. 28626, wishes to donate a conservation easement on his tract of about 189 acres lying between Dick Phillips Road and Will Vannoy Road in Ashe County, and

WHEREAS Mr. Vannoy and the estate of his wife, Beulah Blackburn Vannoy have agreed to cover all transactional and monitoring costs associated with this conservation easement donation,

THEREFORE, the Board of Directors of Blue Ridge Rural Land Trust at its regularly scheduled Meeting of 25 February 2002 does **RESOLVE** to accept the conservation easement on the above-mentioned Property of Mr. E. R. Vannoy and to execute and perform all obligations of the Grantee under the conservation easement.

Blue Ridge Rural Land Trust

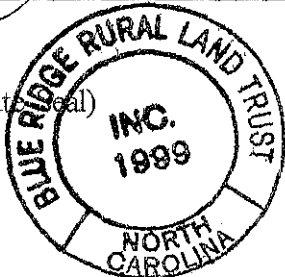
By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Secretary

(Corporate Seal)



STATE OF NORTH CAROLINA

By: *Deane R. Rater, Deputy*

PARCEL ID# 15231-071

PARCEL ID# 15271-022

COUNTY OF ASHE

## GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement (hereinafter "Conservation Easement") is made the 15th day of February, 2002, by E. Reeves Vannoy of 720 Catherine Court, Fleetwood, North Carolina 28626, (hereinafter "Grantor") and BLUE RIDGE RURAL LAND TRUST, a North Carolina nonprofit corporation, of Post Office Box 2557, Boone, N.C. 28607 (hereinafter "Grantee").

The designation Grantor as used herein shall refer to E. Reeves Vannoy, his heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter pronouns as required by context. Specifically, the designation Grantor shall include The Blackburn-Vannoy Foundation created at the death of E. Reeves Vannoy. The designation Grantee as used herein shall refer to Blue Ridge Rural Land Trust, its heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter pronouns as required by context.

### RECITALS

*Vannoy Farm*

WHEREAS Grantor is the sole owner in fee simple of a 118-acre parcel of real property (listed as Parcel # 15231-071 in the Ashe County Tax Records) and a 96-acre parcel of real property (listed as Parcel #15271-022 in the Ashe County Tax Records) described more fully in Exhibit A, attached hereto and incorporated herein by reference;

WHEREAS Grantor desires to grant a conservation easement to Grantee in the 118-acre parcel and in all of the 96-acre parcel except for a 25-acre tract located at the southern end of the 96-acre parcel which tract is described more fully in Exhibit B, attached hereto and incorporated herein by reference;

WHEREAS the Grantor desires to grant a conservation easement in all real property owned by him in fee simple as of the date of this grant except for the 25-acre tract identified in Exhibit B (said property subject to the conservation easement to be hereinafter referred to as the "Property");

WHEREAS Grantee is a nonprofit corporation, operated primarily for conservation purposes, including protection of environmentally valuable and sensitive land for charitable, scientific, educational, and aesthetic purposes;

WHEREAS Grantee is a tax exempt public charity under §§ 501(c)(3) and 509 (a)(2) of the Internal Revenue Code, is authorized by the laws of the State of North Carolina to

accept, hold and administer interest in land including conservation easements, is willing to accept this Conservation Easement under the terms and conditions hereinafter described, and is a "qualified organization" and an "eligible donee" within the meaning of § 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder;

WHEREAS the Property is a significant natural area that qualifies in its present condition as a " ... relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC §170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder;

WHEREAS the Property is habitat for a typical community of mammals, birds, amphibians, reptiles, and insects found in middle elevation forest and pasture tracts and provides:

- (i) breeding, foraging and migrating habitat for white-tailed deer, raccoons, gray and red foxes, Virginia opossum, bobcat, black bear, gray and fox squirrel, southern flying squirrel, wild turkey, striped skunk, eastern cottontail rabbit, woodchuck, eastern chipmunk, and a large variety of mice, voles, and bats;
- (ii) a habitat for the large number of bird species that breed, winter, or migrate through Ashe County, the most important being the hemispherically imperiled neotropical migrants, i.e.; warblers, vireos, cuckoos, thrushes and flycatchers;
- (iii) a habitat for the group of reptile and amphibian species located in the small streams and pond on the Property which reptiles and amphibian species are expected to be found in relatively clean, unpolluted waterways on well-managed farmland;

WHEREAS the Grantor and the Grantee further recognize the historic, natural, scenic, aesthetic, educational and open space values of the Property, and the special character of the Property, in its present state as farm and forestland, the preservation of which is pursuant to federal, state, and local government policy as evidenced by:

- (i) Article XIV Section 5 of the Constitution of the State of North Carolina which states "It shall be the policy of the State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a property function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this state its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty;"

- (ii) The qualification of the Property for the special use ad valorem provision of the state property tax regime for farm and forest land, as set forth in N. C.G.S. §105-277.3 et seq.;
- (iii) The New River Basinwide Management Plan enacted by the State of North Carolina for the purpose of protecting water quality, public water supply, significant wetlands and natural areas along the corridor;
- (iv) The Clean Water Management Trust Fund, N.C.G.S. §113-145.1 et seq., which recognizes the importance of protecting riparian buffers in protecting and conserving surface water;
- (v) The North Carolina Conservation Tax Credit Program, N.C.G.S. §105-130.34 and 105-151.12 et seq., which provides for state income tax credits for donations of land that is useful for fish and wildlife conservation and other similar land conservation purposes;
- (vi) The Soil and Water Conservation Districts Act, N.C.G.S. §139-1, et seq., which provides for the preservation of farm, forest, and grazing lands;
- (vii) The Uniform North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. §121-34 et seq., which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate for retaining land or water areas predominately in their natural, scenic, or open condition or in agricultural, horticultural or forestry use;" and which provides for tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvements less any reduction in value caused by the agreement."

WHEREAS the Property possesses natural, scenic, open space, historic, and educational values (collectively "conservation values") of great importance to the Grantor, Grantee, and general public;

WHEREAS the characteristics of the Property, its current use and state of improvement, are described in a Baseline Report prepared on the Property prepared by Grantee for the Grantor and attached as Exhibit C to this Conservation Easement;

WHEREAS the Grantor worked with the Grantee to ensure that the Baseline Report is a complete and accurate description of the Property as of the date of this Conservation Easement;

WHEREAS the Baseline Report will be used by the Grantor and Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement although the Baseline Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use;

WHEREAS the Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Property in perpetuity, and the State of North Carolina has authorized the creation of Conservation Easements pursuant to the terms of the North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. 121-34 et seq., and G.S. 160A-266 to 279, which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming, or forest uses," and which further provides for tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvements less any reduction in value caused by the agreement"; and

WHEREAS the Grantor and Grantee wish to avail themselves of the provisions of the North Carolina Conservation and Historic Preservation Agreements Act.

**NOW, THEREFORE,** the Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an absolute and unconditional gift, hereby gives, grants and conveys unto the Grantee, its successors and assigns, forever and in perpetuity for the benefit of the people of North Carolina, a Conservation Easement over the Property of the nature and character as follows:

1. **PURPOSE.** The purposes of this Conservation Easement are (i) to preserve and protect the Property in its natural, scenic, historical, agricultural, forested or open-space condition or use; (ii) to protect native plants, animals, or plant communities on the Property; (iii) to protect all buildings of historical significance on the Property; and (iv) to prevent any use of the Property that will significantly impair or interfere with the conservation values or interest of the Property. The purposes of this Conservation Easement should not be construed to prohibit traditional uses of the Property compatible with and not destructive of the conservation values of the Property such as grazing, hunting, selective timber harvesting and farming of existing pastures and fields.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes of this Conservation Easement. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control. Grantor understands that nothing in this Conservation Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

2. **PROPERTY USES.** Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Easement is prohibited. The Property shall be maintained in its natural, scenic, historical, agricultural, forested and open-space condition and restricted from any development that would significantly impair or interfere with the conservation values of the Property. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are expressly prohibited or which are expressly allowed. Grantor and Grantee

have determined that the allowed activities do not impair the conservation values of the Property. Additional retained rights of Grantor are set forth in Paragraph 3 below.

- 2.1 Subdivision. The Property may not be subdivided.
- 2.2 Construction. No other residential structures may be placed or constructed on the Property by any person other than E. Reeves Vannoy except as permitted in subsection 2.9. E. Reeves Vannoy may construct additional residential structures as provided in Section 4. Furthermore, there shall be no constructing or placing of any recreational court, mobile home, airplane landing strip, billboard or other advertising display, utility pole (other than those necessary to service the Property's improvements), utility tower, conduit or line on or above the Property. Outdoor lighting shall be placed and shielded so as to minimize the impact on surrounding areas.
- 2.3 Existing Improvements. The existing improvements consist of A.) the old circa 1910 Vannoy farmhouse, B.) several small agricultural structures, including sheds and barns that may be beyond salvage, C.) a small rock quarry, no longer in use, approximately 100 feet wide by 40 feet long, D.) a concrete foundation used for crushing rocks mined from the quarry during its time of operation and E.) several woods-roads or logging trails running through the Property. Grantor shall have the right to maintain, remodel, repair, replace or demolish any existing structures, barns, water tanks, water wells, fences, header dams, utilities, and other improvements, and in the event of their destruction, to reconstruct any such existing improvements with another of similar function, capacity, location and material. Grantor agrees to notify Grantee in writing of plans to remodel, replace or demolish at least thirty (30) days prior to beginning work and to submit to Grantee detailed plans for approval. Grantor further retains the right to move onto the Property, with similar advance written notice to Grantee, certain older farm structures, contemporary with the Vannoy farmhouse, from other properties whose presence, in the opinion of both Grantor and Grantee, may enhance the historic and educational features of the Property.
- 2.4 Agricultural Use. Grantor shall have the right to i) breed, raise, and pasture livestock in existing fields on the Property, ii) to breed and raise bees, fish, poultry and other fowl in existing facilities on the Property, iii) to plant, raise and harvest legal crops and herbs (including native medicinal species) in existing fields and forest areas on the Property, and iv) to perform primary processing, store and sell, including direct sales to the public, of crops and products harvested and produced principally on the Property. Grantor shall have the right to build any needed agricultural buildings and structures, including, but not limited to, barns, greenhouses, fishing piers, sheds, fences and corrals as needed to facilitate such agricultural enterprises on the Property. Grantor may not establish or maintain any commercial feedlot on the Property, which is defined for the purpose of this easement as a confined area or facility within which the land is not grazed or

cropped at least annually and which is used to receive livestock that has been raised off the Property for feeding and fattening for market. Grantor agrees to conduct all agricultural use of the Property in accordance with a Farm Management Plan drawn up by the Natural Resource Conservation Service, or its successors and approved by Grantee, such approval not to be unreasonably withheld. Grantor further agrees to have such a Farm Management Plan updated every ten (10) years, and to supply the Grantee a copy.

- 2.5 Scientific and Educational Use. Grantor shall have the right, but not the obligation, to engage in and permit others, whether for consideration or not, to engage in scientific and educational uses of the Property, including but not limited to (i) conducting studies and/or surveys of the native plant and animal life on the Property; performing tests, studies, and surveys of the soil, water, or geological characteristics of the Property so long as any such test, study, or survey is related to the conservation purposes of the Property; (iii) permitting field trips, camping trips, hikes, seminars, or field days designed to educate the participants about the plants, animals, agricultural and silvicultural techniques or conservation purposes of the land; or (iv) establishing a museum, classroom, laboratory, office, or other educational or scientific use in one or more buildings on The Blackburn-Vannoy Estate.

- 2.6 Timber Harvest. Grantor shall have the right to harvest timber from the Property pursuant to a Forest Management Plan, to be updated at least every ten years, that is prepared by a registered professional forester and approved by Grantee and that is designed to insure the maintenance of good quality growing stock of improved white pine and native hardwoods while protecting soil stability, water quality and other conservation values of the Property, including without limitation, riparian and wildlife habitat and scenic values.

All timbering activities shall be conducted only in accordance with Best Management Practices guidelines for timber harvest and management as the same may be promulgated by law or regulation in the state of North Carolina and as adopted by the North Carolina organization of professional foresters, as amended from time-to-time and provided further that all such activities shall be either specifically approved by the Grantee or shall be in accordance with a Forest Management Plan which shall be in writing and approved by Grantor (and Grantee), whose approval may not be unreasonably withheld, and may be amended from time-to-time and provided further that all timber roads shall be constructed of permeable materials and shall be no wider than ten (10) feet.

- 2.7 Grazing. Grantor shall have the right to graze and pasture animals pursuant to a grazing plan produced by Natural Resource Conservation Service or its successors, to be updated at least every ten years, and reviewed or approved by the Grantee, whose approval may not be unreasonably withheld, and that is designed to ensure the maintenance of a good quality mix of grasses and forbs,

while protecting soil stability, water quality and other conservation values of the Property. Grantor agrees to maintain livestock exclusion zones around springs, seeps, and watercourses.

- 2.8 Christmas Trees. Grantor agrees that no Christmas trees are to be grown on the Property other than those Christmas trees grown on the Property pursuant to a lease dated June 30, 1998, a copy of which is attached as Exhibit D and expressly incorporated herein by reference.
- 2.9 Recreational Use. Grantor shall have the right, but not the obligation, to engage in and permit others, whether or not for consideration, to engage in recreational uses of the Property, including, but not limited to, hiking, camping, picnicking, horseback riding, non-motorized bicycling, lawful hunting and fishing, and other recreational uses that require no buildings, facilities, surface alteration or other development of the land. Pursuit of wildlife by any form of motorized transportation is not allowed. Grantor reserves the right to build suitable overnight lodging to accommodate guests on the Property; provided that Grantor may construct no more than two additional buildings for lodging and the location, structure and size of any such building must be approved by Grantee prior to its construction. Grantor reserves the right to build and maintain unpaved foot- or horse-trails to allow such recreational use of the Property. Grantor reserves the right to promulgate and enforce reasonable rules and regulations for all activities incident to recreational use of the Property, including but not limited to the right to prohibit any recreational use that would permit destruction of other significant conservation value of the Property.
- 2.10 Excavation. 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 land in any manner except as necessary to allow the construction of the improvements allowed above, the maintenance of existing or permitted roads, hiking and horseback trails and for the purpose of combating erosion or flooding.
- 2.11 Destruction of Plants. Grantor shall have the right to cut and remove diseased trees, shrubs, or other plants, and to cut firebreaks, subject to prior approval by the Grantee (except that such approval shall not be required in case of emergency firebreaks), such approval not to be unreasonably withheld. Grantor shall also have the right to cut and remove trees, shrubs, or other plants to accommodate the activities expressly allowed under this easement. There shall be no additional removal, harvesting, destruction or cutting of native trees, shrubs or other plants, except as allowed under subsections 2.4 and 2.6 above. Except for use around improvements or in gardens there shall be no planting of non-native trees, shrubs, or other plants on the Property.



- 2.12 Water Quality and Drainage Patterns. There shall be no pollution of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Property. Other than the construction of a well to serve allowed improvements, there shall be no alteration, depletion or extraction of surface water, natural watercourses, lakes, ponds, marshes, subsurface water or any other water bodies on the Property. Diking, draining, filling or removal of wetlands is prohibited.
- 2.13 Signage. No signs or billboards or other advertising displays are allowed on the Property, except that signs whose placement, number and design do not significantly diminish the scenic character of the Property may be displayed to identify trails and the conservation values of the Property, to identify the Property as "The Blackburn-Vannoy Estate," to identify the owner of the Property as The Blackburn-Vannoy Foundation and the Grantee of the conservation easement as Blue Ridge Rural Land Trust, to identify the name and address of the Property and the names of persons living on the Property, to give directions, to advertise or regulate permitted uses on the Property and proscribe rules and regulations for recreational and educational use of the protected Property, to advertise the Property for rent, and to post the Property against trespassers.
- 2.14 No Biocides. There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except as approved by Grantee to control invasive species detrimental to the conservation values of the Property, and except as needed around improvements on the Property and in existing agricultural fields. Biocide usage in the existing agricultural fields and forest areas of the Property shall be in accordance with the Farm Management Plan noted in Items 2.4 and 2.7 above and the Forest Management Plan noted in Item 2.6 above.
- 2.15 No Dumping. There shall be no storage or dumping of trash, garbage abandoned vehicles, appliances, or machinery, or other unsightly or offensive material, hazardous substance, or toxic waste on the Property (except the short term storage of household garbage and waste). There shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Property or on adjacent property owned by Grantor, that could cause erosion or siltation on the Property.
- 2.16 Predator Control. Grantor shall have the right to control, destroy, or trap predatory and problem animals which pose a material threat to livestock and/or humans by means and methods approved by the Grantee. The method employed shall be selective and specific to individuals, rather than broadcast, nonselective techniques.

2.17 Commercial Development. Any commercial or industrial use of or activity on the Property, other than those relating to agriculture, horticulture, silviculture, recreation, or home businesses as permitted herein is prohibited.

2.18 Development Rights. With the exception of buildings permitted to be constructed in accordance with the provisions of this Section 2 and Section 4 below, Grantor conveys to Grantee all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property.

3. **ADDITIONAL RIGHTS RETAINED BY GRANTOR.** Grantor retains the following additional rights:

3.1 Existing Uses. The right to undertake or continue any activity or use of the Property not prohibited by this Conservation Easement. Prior to making any change in use of the Property, Grantor shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

3.2 Transfer. The right to sell, give, mortgage, lease, or otherwise convey the Property, or any permitted subdivision thereof, subject to the terms of this Conservation Easement.

4. **PERSONAL RIGHTS RETAINED BY E. REEVES VANNOY.** The following additional rights shall be personal to E. Reeves Vannoy and shall be available to him notwithstanding the grant of this conservation easement so long as he is living and competent and so long as he is the owner in fee simple of the Property. The additional rights granted hereunder shall not be assignable or transferable to any person.

4.1 Current Residential Use. The right to reside in the old Vannoy homeplace.

4.2 Right to Construct Additional Buildings. The right to construct and use two additional residential structures on the Property; provided that each such structure built shall not exceed a total of 2,000 square feet. The right to maintain and repair any such structure and to construct and improve roads needed for access to the structure. The rights granted pursuant to this subsection 4.2 shall not include the right to separately sell or lease any such structure.

4.3 Timber Harvesting. The right to clear cut two tracts of land without the consent of Grantee; provided that E. Reeves Vannoy shall notify Grantee in writing of his intent to clear cut a tract of land fourteen days prior to conducting the clear cut and further provided that any such clear cut shall be restricted to five or fewer acres in size. Any clear cut conducted by E. Reeves Vannoy shall be handled in

accordance with the provisions of subsection 2.6. E. Reeves Vannoy agrees that he shall not clear cut any land within 75 feet of any stream or creek and further agrees to maintain appropriate timber levels on the Property so that any wildlife displaced by a clear cut would be able to relocate on the Property. Neither E. Reeves Vannoy nor Grantee is aware of any rare, endangered or threatened species that would be permanently displaced by a clear cut conducted in accordance with the provisions of this subsection.

5. **GRANTEE'S RIGHTS AND RESPONSIBILITIES.** To accomplish the purpose of this Conservation Easement, the following rights and responsibilities are granted to Grantee by this Conservation Easement:

- 5.1 Right to Protect. The right to preserve and protect the conservation values of the Property and enforce the terms of this Conservation Easement.
- 5.2 Right of Entry. Grantee, its employees, representatives, and agents and its successors and assigns, have the right, after prior written notice to Grantor, to enter the protected Property at reasonable times for the purposes of: (a) inspecting the protected Property to determine whether the Grantor, its representatives, assigns, heirs and successors are complying with the covenants and purposes of this Conservation Easement; and (b) monitoring and research as described below. Grantee agrees that such entry on to the Property will be at Grantee's sole risk and expense and at times acceptable and convenient to the Grantor, and subject to the Grantor's approval. Grantor agrees that such approval of proposed times of entry onto the Property by Grantee will not be unreasonably withheld.
- 5.3 Monitoring and Research. The right, but not the obligation, to monitor the native plant and wildlife populations, plant communities and natural habitats on the Property. Grantee agrees that such monitoring will be at Grantee's sole risk and expense and will only occur at times acceptable and convenient to the Grantor, and Grantor agrees that such permission to enter the Property will not unreasonably be denied. Grantor agrees that all monitoring activity, inventory and assessment work or other natural resource research conducted by the Grantor or others shall be reported to the Grantee.
- 5.4 Management of Exotics and Invasive Species. The right, but not the obligation, at the Grantee's sole risk and expense, to control, manage or destroy exotic non-native species or invasive species of plants and animals that threaten the conservation values of the Property. Grantee will consult with Grantor prior to implementing control activities.

6. **RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or

other responsibility on the Grantor, or in any way to affect any existing obligation of the Grantor as owner of the Property. Among other things, this Conservation Easement shall apply to:

- (a) Taxes - The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.
- (b) Upkeep and Maintenance - The Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation under this conservation easement for the upkeep and maintenance of the Property.

7. **ACCESS.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. However, the public has the right to view the Property from adjacent publicly accessible areas such as public roads, in compliance with applicable laws and regulations.

8. **ENFORCEMENT.** The Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement.

8.1 With advance written notice the Grantee may enter the Property for the purpose of inspecting for violations. If the Grantee finds what is a violation, it may at its discretion and after prior consultation with Grantor take appropriate legal action. Except when an ongoing or imminent violation could substantially diminish or impair the conservation values of the Property, the Grantee shall give the Grantor written notice of the violation and sixty (60) days to correct it (or begin good faith efforts to correct in the event the violation is something which cannot be reasonably corrected in sixty (60) days), before filing any legal actions. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring the Grantor to restore the Property to its condition prior to the violation. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

8.2 Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property 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 action.

9. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this easement are in gross and assignable. The Grantee shall have the right to transfer or assign this Conservation Easement to any qualified organization that is at the time of transfer, is a "qualified organization" under § 170(h) of the U.S. Internal Revenue Code, and the

organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. The Grantee further recognizes that the Grantor must be notified in writing at least thirty (30) days in advance of such a proposed transfer or assignment of the easement. The Grantee further recognizes that any such transfer or assignment of the easement must be to a qualified organization that is (a) acceptable to the Grantor, and (b) similar to the Grantee in mission. If the Grantee ever ceases to exist or no longer qualifies under §170(h) or applicable state law, a court with jurisdiction shall transfer this easement to The Conservation Trust for North Carolina, P.O. Box 33333, Raleigh, North Carolina 27636-3333, which agrees to assume the responsibility.

10. **TRANSFER OF PROPERTY.** Any time the Property, or any subdivision of it, or any interest therein, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing at least thirty (30) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement.

11. **AMENDMENT OF EASEMENT.** This easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with §170(h) of the Internal Revenue Code, and any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. §121-34 et. seq., or any regulations promulgated pursuant to that law. The Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement.

12. **TERMINATION OF EASEMENT.** If it is determined that conditions on or surrounding the Property have changed so much that it is impossible to fulfill the conservation purposes set forth above, a court with jurisdiction may, at the joint request of both the Grantor and Grantee, terminate this Conservation Easement. If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings. At the time of the conveyance of the Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee. If the easement is terminated and the Property is sold or taken for public use, then, as required by §1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributed to new improvements made after the date of the conveyance, which amount shall be reserved to Grantor), equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. The Grantee shall use the proceeds consistently with the conservation purposes of this Conservation Easement.

13. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of North Carolina, resolving any ambiguities and questions of the validity of specific provisions as to give maximum effect to its conservation purposes.

14. **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 grant and convey this Conservation Easement; that the Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that the Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

15. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:  
E. Reeves Vannoy  
720 Catherine Court  
Fleetwood, N.C. 28626-9400

To the Grantee:  
Blue Ridge Rural Land Trust  
P.O. Box 2557  
Boone, N.C. 28607

16. **ENVIRONMENTAL CONDITION.** The Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.

17. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

18. **PARTIES.** Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

19. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, the Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

20. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

21. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Conservation Easement.

22. **EXHIBITS AND DOCUMENTATION.**

- A. Legal Description. Exhibit A, Legal Description of the Property.
- B. Legal Description. Exhibit B, Legal Description of 25-acre tract of land expressly excluded from the grant of the conservation easement hereunder.

- C. Baseline Report. Exhibit C, The Conservation Easement Baseline Report on the Property which accurately establish the uses, structures, conservation values and condition of the protected Property as of the date hereof.
- D. Christmas Tree Lease. Exhibit D, Copy of Lease entered into by E. Reeves Vannoy and wife, Beulah B. Vannoy (now deceased) and James Cline Church and wife, Ellen L. Church dated June 30, 1998.

23. **ENTIRE AGREEMENT.** 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 this 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.

24. **ACCEPTANCE AND EFFECTIVE DATE.** As attested by the Seal of the Grantee and the signature of its authorized representative affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Ashe County Registry of Deeds.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto the Blue Ridge Rural Land Trust, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands and seals on the date first written above.

GRANTOR:  
E. REEVES VANNOY

E. Reeves Vannoy

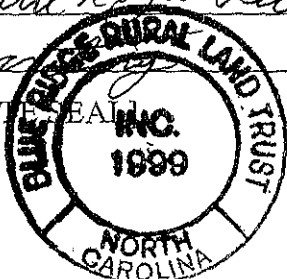
Accepted by  
GRANTEE:  
BLUE RIDGE RURAL LAND TRUST

By: Kelly Laffey  
Its: President

Attest: Paul Bradwell

Its: Secretary

[CORPORATE SEAL]



ACKNOWLEDGMENTS

STATE OF NORTH CAROLINA  
COUNTY OF ASHE

I, Tina C. Barber, a Notary Public of Yadkin County, North Carolina, do hereby certify that E. REEVES VANNOY personally appeared before me this day and duly acknowledged the execution of the foregoing Conservation Easement.

Witness my hand and notarial seal this the 15<sup>th</sup> day of February, 2002.

Tina C. Barber (Seal)  
Notary Public

My commission expires:

12-26-2005  
(Notary Seal)



OFFICIAL SEAL  
TINA C. BARBER  
Notary Public-North Carolina  
COUNTY OF YADKIN

STATE OF NORTH CAROLINA  
COUNTY OF WATAUGA

My Commission Expires Dec 26, 2005

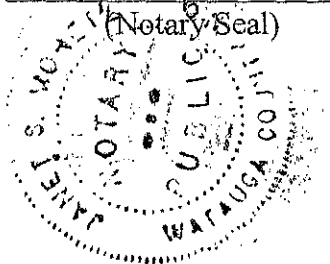
I, Janet S. Monetz, a Notary Public of Watauga County, North Carolina do hereby certify that Paul L. Gaskill personally appeared before me this day and acknowledged that he/she is the \_\_\_\_\_ Secretary of Blue Ridge Rural Land Trust, a non-profit corporation, and that by authority duly given and as act of the corporation the foregoing instrument was signed in its name by its \_\_\_\_\_ President, sealed with its corporate seal and attested by himself as its secretary.

Witness my hand and notarial seal this the 25<sup>th</sup> day of February, 2002.

Janet S. Monetz (Seal)  
Notary Public

My commission expires:

4/20/02  
(Notary Seal)





STATE OF NORTH CAROLINA  
COUNTY OF ASHE

The Foregoing (or annexed) Certificate(s) of Tina C. Barber & Janet S. Moretz,  
both Notaries Public as stated

~~Notary(ies) Public~~ (is)(are) Certified to be correct.

This instrument was filed for Registration on the Day and Hour in the Book and Page shown in the First page hereof.

Shirley B. Wallace

Register of Deeds

*By: Deaett R. Katen, Deputy*

EXHIBIT A. LEGAL DESCRIPTION of the Property

EXHIBIT B. LEGAL DESCRIPTION of 25-acre tract expressly excluded from the  
Conservation Easement

EXHIBIT C. BASELINE REPORT

EXHIBIT D. CHRISTMAS TREE LEASE

This instrument prepared by:

Womble Carlyle Sandridge & Rice, PLLC  
P.O. Drawer 84  
Winston-Salem, NC 27102

Return to:

James H. Coman, III  
Executive Director  
Blue Ridge Rural Land Trust  
P.O. Box 2557  
Boone, N.C. 28607

**EXHIBIT A**

E. Reeves Vannoy, as Grantor, hereby grants a conservation easement in all real property owned by him as of the date of this grant (other than that property listed on Exhibit B), specifically including the following property:

**TRACT ONE:**

Beginning on a stake in public road running South 12 degrees East 26 P to a stake in the Oval road, then South 12 degrees West 30 poles to a chestnut, then south 55 degrees West 66 poles to a stake in the Oval and Idlewild road, then South East with said road to a stake, in E.R. Vannoys line, then South 82 degrees East 81 poles to a locust, then North 23 ½ degrees east 42 poles to a stake, then North 80 degrees East 4 Poles to a stake, then North 15 ½ Degrees West 84 Poles to a chestnut stump, then North 19 degrees East 20 Poles to a stake above old road, then North 12 degrees East 32 Poles to a stake in Oval and Jefferson road, then a south West course with said road to the beginning, containing 108 acres more or less, known as a part of the J.P. Phillips land.

And being the same land described in deed from Mrs. Belle Blackburn and Mabel Blackburn to Mrs. Beulah B. Vannoy and husband Reeves Vannoy dated November 16, 1951 and of record in Deed Book P-3, page 354, Ashe County Registry.

**TRACT TWO:**

Beginning on double chestnuts at road; thence S 59° 20' W 19 2/5 poles to stake N 82° W 18 2/3 poles to East Bar Post on ridge; N 76° 40' W 16 2/3 poles to a stake; N 70° W 23 ½ poles to ash at road; thence with road N 75° W 12 poles; N 13° W 9 poles; N 65° W 10 poles; N 9° W 4; N 83° W 8 poles; N 31° W 10 poles; N 10° W 8 poles; N 6° W 13 poles to a stake; thence leaving road East 70 poles to chestnut at branch S 48° E 55 poles to stake where oak stood; thence S 6° E with old road 20 poles to the beginning, containing 31 7/10 acres, more or less.

And being the same land described in deed from E.R. Vannoy to E.R. Vannoy and wife, Beulah B. Vannoy dated December 11, 1972 and of record in Deed Book C-5, page 209 Ashe County Registry.

And being the same land described in deed to E.R. Vannoy from T. F. Vannoy and wife, Ella Vannoy, dated July 25, 1935 and of record in Deed Book C-4, page 473, Ashe County Registry.

**TRACT THREE:**

Beginning on a double chestnut, E.R. Vannoy's corner; then running with E.R. Vannoy's line to a ashe in the branch, Mack Vannoy's line; then with Mack Vannoy's line to a stake on top of the hill, Bertie Friesband's corner; then with Bertie Friesband's line to a birch in the branch; then with Bertie Friesband's line to C. L. Woodruff's line; then a Southeast direction with Woodruff's line to E. R. Vannoy's line; then with said line to the ridge road; then with the ridge road to the Beginning, containing Forty-two (42) acres, more or less.

And being the same land described in deed from E.R. Vannoy to E.R. Vannoy and wife, Beulah B. Vannoy dated December 11, 1972 and of record in Deed Book C-5, page 209 Ashe County Registry.

And being the same land described in deed to E.R. Vannoy from T. F. Vannoy and wife, Ella Vannoy, dated September 8, 1941 and of record in Deed Book N-3, page 524, Ashe County Registry.

**EXHIBIT B**

The following real property is expressly excluded from this grant:

Beginning on a Spanish oak in C.L. Woodruff's line running N 41° E with fence crossing creek to stake on bank of creek 25 poles N 14° 15' E 22 poles to stake N 41° E 17 1/3 poles to stake; N 57 1/2° E 18 poles to stake; N 78° E 24 poles to a maple and public road; thence with road S 45° E 46 poles to stake in W. A. Phillips line; S 56° 30' W 90 poles to a stake on top of ridge, C. L. Woodruff's line, N 60° W with main top of ridge 29 1/2 poles to the beginning, containing 25 3/10 acres, more or less.

And being the same land described in deed from E.R. Vannoy to E.R. Vannoy and wife, Beulah B. Vannoy dated December 11, 1972 and of record in Deed Book C-5, page 209 Ashe County Registry.

And being the same land described in deed to E.R. Vannoy from J.G. Vannoy and wife, Ruth Vannoy, dated November 18, 1937 and of record in Deed Book W-2, page 267, Ashe County Registry.

## EXHIBIT C

BLUE RIDGE RURAL LAND TRUST  
P.O.BOX 2557  
BOONE, NC 28607

FEBRUARY 15, 2002

## BASELINE REPORT

On

THE PROPERTY OF E. REEVES VANNOY  
PARCEL I.D. #15271-022 and 15231-071  
"The Dick Phillips Road Tracts"

Owned by:

E. Reeves Vannoy  
720 Catherine Court  
Fleetwood, NC 28626

The Property of E. Reeves Vannoy is composed of two farmland parcels of 96 acres and 118 acres, respectively. The parcels are located in Pine Swamp Township of Ashe County, North Carolina, in the Fleetwood area east of U.S. 221 and seven miles southwest of the town of West Jefferson. The Property is accessed on two sides from Dick Phillips Road and Will Vannoy Road, two state maintained roads, and in the north from the abandoned section of old Water Tank Road. The Property lies in southern Ashe County in the Blue Ridge Mountains and slopes toward the southwest.

A portion of the Property is currently being managed as a clean Christmas tree farm. The remainder of the Property is being managed as woodland. The Christmas tree operation dominates all open land on the Property, occupying around 40 acres of the 214 acres present. Little vegetation exists in any of the fields between the Fraser fir trees due to heavy herbicide use. In places erosion is severe due to a lack of vegetation above ground or rootstock below ground. In places only rocks lie between the Christmas trees where soil has washed away. Old-field vegetation exists mainly along the grassed access roads between tree plantings. Yarrow, blackberries, white clover, Queen-Anne's lace, dandy lions and various grasses were the main herbaceous vegetation. In the open area of the 118 acre tract, successional species such as black locust, thistle, wingstem, goldenrod, Indian tobacco and broom sedge cover over 5 acres, with the remaining open acres in Fraser firs. The forests on both parcels of the Property are of mixed tulip poplar, white oak, pignut hickory, red maple and white pine, and vary little in age. The forests are from 40 to 50 years old. Understory species include mountain laurel, rosebay rhododendron, deer-tongue grass and bottle gentian. The creek across the road of the 96-acre parcel seemed opaque and unclear, but did contain many macroinvertebrates such as mayfly and stonefly nymphs that indicate clean water.

Primary improvements to the Property include (i) a small barn currently used as a staging area for Christmas tree operations on the 96-acre tract, (ii) several other small agricultural structures,

including sheds and barns that may be beyond salvage, (iii) several woods-roads or logging roads, (iv) a concrete foundation used primarily as a rock crusher for a rock quarry formerly located on the Property, (v) a small rock quarry approximately 100' wide by 40' long, and (vi) the old Vannoy two-story family homeplace. The Vannoy house appears to date from 1890 to 1900. It is a typical small mountain farmhouse of the period, quite plain, with a small amount of Victorian gingerbread trim on the two-story porch. There has been some vandalism to the structure, though it is essentially intact. The most notable feature of the homeplace is the two remarkable dry-laid stone chimneys, which are in very good condition. The homeplace may be possible to renovate, although it is currently in disrepair. The several farm structures associated with the Vannoy homeplace on Dick Phillips Road are so dilapidated as to be worthless. In addition there is a relatively new flat roofed barn near old Water Tank Road, with nearby a dilapidated small house used for storage and a dilapidated shed.

The Property thus appears to be in very good condition for its current and projected future uses as an agricultural area. The present erosion caused by the Christmas tree operation could be controlled with ground cover and limited pesticide use. Over all, the Property is a clean, well maintained and managed farm that is a functional economic component of the community.

The primary conservation values of the Property are the rural farm landscape, the recovering 150 acres of mixed hardwood and pine woodland, and the historic farmhouse. The protection of the landscape, the woodland and the farmhouse is valuable to both the aesthetics of the land and its cultural history.

The secondary conservation value of the Property lies in the amount of food and cover that such a tract offers to a wide variety of mammals, birds and reptiles that utilize such farm areas at elevations above 3000 feet elevation. This Property is a small but diverse tract, having several different plant communities in close proximity to one another, thus offering a diversity of food and cover options for wildlife. The property has very good populations of many species, with white-tailed deer, raccoon, Virginia opossum, woodchuck, gray squirrel, eastern cottontail rabbit, and gray fox obviously present with only a cursory inspection. As the Property constitutes a healthy ecosystem, I must assume that the usual compliment of mice, shrews, bats, moles, and voles are present, and that red foxes and bobcats will on occasion range onto the Property.

The Property's open areas, diverse forests and creekbottom will very likely harbor at various time of the year many of the 204 species of birds proven to occur in Ashe County. Birds in evidence include blue jay, song sparrow, pileated woodpecker, American crow, Carolina chickadee, tufted titmouse, golden-crowned kinglet, downy woodpecker, white-breasted nuthatch and eastern towhee. Attached to, and part of, this Exhibit, are the photographs of the Property taken in November 2001, and a key showing from where they were taken.

In compliance with Section 1.170A-14(g)(5) of the federal tax regulations, this baseline report is an accurate representation of the Property at the time of the conservation easement donation.

IN WITNESS WHEREOF, the Grantor and Grantee, have set their hands and seals as of this the 15<sup>th</sup> day of February, 2002.

GRANTOR:  
E. REEVES VANNOY

E. Reeves Vannoy

GRANTEE:  
BLUE RIDGE RURAL LAND TRUST

By: A. Kelly Hefner

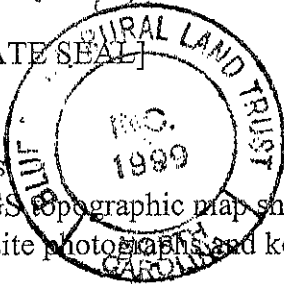
Attest:

Paul J. Gashie

[CORPORATE SEAL]

Attachments

- USGS topographic map showing property lines
- On-site photographs and key



729

FILED in ASHE County, NC  
on Jul 01 1998 at 11:57:52 AM  
by SHIRLEY S WALLACE  
Register of Deeds  
BOOK 231 Pages 729-730  
NORTH CAROLINA  
ASHE COUNTY

## Exhibit D

LEASE AND CONTRACT

This lease, made and entered into, this the 27th day of June, 1998, by and between B.R. VANNOY and wife, BEULAH B. VANNOY, Hereinafter called "Lessors", and JAMES CLINE CHURCH and wife, ELLEN L. CHURCH hereinafter referred to as "Lessee":

WITNESSETH:

That for a sufficient consideration, the Vannoy's have let and leased to Church a certain tract of land hereinafter described, and the Vannoy's and Church have reached certain agreements with respect to said land, all hereinafter more fully set out:

The property that is the subject of this Lease and Contract is in the Pine Swamp Township, Ashe County, North Carolina, conveyed to the Lessors by deeds of record in the Ashe County Public Registry in Deed Book C-5, at page 209, is a cleared partial tract that is lying between Dick Phillips Rd. and Will Vannoy Rd. known as the T.F. Vannoy Farm, this Lease and Contract also includes a partial of bottom land lying West of Dick Phillips Rd. The total amount of acreage is approximately 36.4 acres as measured by The Thomas Herman Company.

The terms and conditions of this Lease and Contract are as follows:

1. This Lease shall begin June 30th, 1998 and shall exist and continue for a period of ten years but with the option on the part of the Lessee to extend the same under the same terms for an additional period of up to 5 years.
2. As rental for the demised premises, the Lessee shall pay to the Lessors the sum of Twenty Five Hundred and NO/100 Dollars, (\$2500.00) the first year. Five Thousand and NO/100 Dollars, (\$5000.00) per year thereafter.
3. It is understood and agreed that the Lessee shall use the demised premises for the purpose of planting, cultivating and harvesting Christmas trees. Lessee has right to ingress and egress to said property for purpose of planting, cultivating and harvesting Christmas Trees.
4. This Lease Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto.
5. Lessor hereby warrants, promises and covenants to Lessee that a) Lessor has a good and sufficient title to the above described Property; b) Lessor has the right and power to lease the Property; c) the Property is free and clear of all encumbrances whatsoever; and d) Lessor will forever defend the title and the rights herein conveyed against the claims of all persons whomsoever.

231/729



730

IN WITNESS WHEREOF, the parties have executed this instrument in duplicate originals, one of which is retained by each of the parties.

North Carolina, Ashe County

The foregoing certificate(s) of BONITA L. E.R. Vannoy (SEAL)  
HARLESS, A NOTARY PUBLIC OF ASHE COUNTY,  
 is (are) certified to be correct. NC  
 This 1ST day of JULY A.D. 1998 BEULAH B. VANNOY (SEAL)

STIRLEY B. WALLACE  
 REGISTER OF DEEDS

BY: James M. Vannoy James Cline Church (SEAL)  
Ellen L. Church (SEAL)  
Asst ELLEN L. CHURCH

NORTH CAROLINA  
 ASHE COUNTY

I, a Notary Public of the said County and State, do hereby certify that E.R. VANNOY and wife, BEAULAH LORAIN VANNOY personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 30th day of June, 1998.

Bonita J. Wallace (SEAL)  
 Notary Public

My commission expires: July 22, 2002

NORTH CAROLINA  
 ASHE COUNTY

I, a Notary Public of the County and State, do hereby certify that JAMES CLINE CHURCH and wife, ELLEN L. CHURCH personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 30th day of June, 1998.

Bonita J. Wallace (SEAL)  
 Notary Public

My commission expires: July 22, 2002