2006042241

FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
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INSTRUMENT # 2006042241

Prepared by and return to:
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321
SPO File No. 32-AAL
DURHAM COUNTY

TEMPORARY CONSTRUCTION EASEMENT

This Agreement, made this 27th day of JUNE 2006, between **City of Durham**, hereinafter designated as **Grantor**, and the **State of North Carolina**, acting by and through the **Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program)**, hereinafter designated **Grantee**, does hereby grant unto the **Grantee**, its successors, assigns, agents, contractors, subcontractors and employees the exclusive right to perform those certain construction activities necessary to perform a stream restoration, enhancement and/or wetlands restoration, enhancement or creation project, hereinafter designated **Project,** along with the right of reasonable ingress and egress to the **Project** along **Goose Creek** in Durham County for the benefit of the **Grantor.**

Grantor, for the true and actual consideration of Ten Dollars and other valuable consideration does convey to **Grantee**, its successors and assigns, a **Temporary Construction Easement**, hereinafter **Easement,** for a specified work area on the Barnes Avenue properties identified as PIN# 0831-10-46-4195, 0831-10-45-4989, and 0831-10-46-4199, Durham County Tax Office.

Said **Temporary Construction Easement** and subsequent conservation Easement shall extend from the center of the stream to approximately 20 feet East of the 10 foot no-build setback line for PIN #0831-10-46-4199 (611 Barnes Ave.) and PIN# 0831-10-46-4195 (0 Barnes Ave.) and from the center of the stream to approximately 70 feet east of the 10 foot no-build setback line of PIN# 0831-10-45-4989 (0 Barnes Ave.) as shown on the plat for Barnes Avenue recorded with the Durham County Register of Deeds in Plat Book 168 Page 121. **Grantor** agrees the consideration recited herein is just compensation for the **Easement**, including any and all damages to Grantor's remaining property, if any, which may result from the acquisition or use of said property and said **Project**.

The **Grantor** also grants to the **Grantee**, its successors, assigns, agents, contractors, and employees the right to erect and use construction equipment at the site of the **Easement** herein described.

IT IS UNDERSTOOD that the **Easement** rights herein granted shall automatically terminate 2 years from the date shown above, or upon completion of the above referenced **Project**, whichever is sooner.

The **Grantor** conditions its grant of the temporary construction easement upon the following, conditions, which have been agreed to by **Grantee:**

1. The **Grantee** shall exercise care to avoid damaging the property in any manner not consistent with the purpose for which this agreement is issued.

2. The **Grantee** shall at all times cooperate with **Grantor** and comply with reasonable requests not inconsistent with the purpose for which this agreement is issued.

3. The **Grantee** if necessary, shall perform felling, bucking, and decking of merchantable timber according to acceptable logging practices with a minimum of breakage, damage, and waste. **Grantee** may utilize heavy equipment to grade, fill, and prepare the soil, including modification of the hydrology of the site.

4. The **Grantee**, at a minimum, shall spread material uniformly over the construction site for uniform topography and seed with grass. Such material may include the planting of trees, shrubs and herbaceous vegetation. **Grantee** shall fertilize all areas. Upon completion of the **Project**, **Grantee** shall clean all the ground occupied of all rubbish, excess material, temporary structures, and equipment.

5. The **Grantee** is responsible for construction, maintenance, expenses and other responsibilities as set out in the attached letter of understanding (hereafter **EEP letter**) dated May 4, 2006 from the North Carolina Ecosystem Enhancement Program and such letter is incorporated into this easement as if fully set forth herein

6. **Grantee** shall leave all parts of the **Project** site in acceptable condition.

IT IS ALSO UNDERSTOOD that the **Grantor** shall convey and the **Grantee** shall receive a **Conservation Easement** to perpetually protect the intent of said **Project**. The conveyance of the **Conservation Easement** shall occur upon the successful completion of the **Project** in compliance with the conditions identified above and will be based upon a metes and bounds description rendered by a Professional Land Surveyor. Grantor and Grantee shall agree on the size and description of the **Conservation Easement** area.

The **Conservation Easement** area is being donated by the City in exchange for benefits derived from restoration project.

The **Grantor** shall not transfer or encumber any interests in the **Easement Area** between the time the Temporary Construction Easement is executed and the Permanent Conservation Easement's execution at the Project's completion or 2 years from the date of execution of the Temporary Construction Easement.

Said **Conservation Easement** area runs as the stream meanders, extending for the widths from the centerline of said **newly re-aligned** stream as specified below, on both sides of stream where physically possible.

The **Conservation Easement** will have a width of approximately 50 feet from the top of the bank on both sides the newly aligned stream, except in areas where existing buildings, utilities, power poles lie, and runs as the stream meanders.

The **Conservation Easement** area will exclude the existing sewer line, power poles for adjacent ball fields, sidewalks, buildings and/or parking areas as agreed to by Grantor and Grantee.

IN TESTIMONY WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written,

Grantor- City of Durham

By: _____

Title: MAYOR

(Print name:) WILLIAM V. BELL

Attest: Brenda Gray
City Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

FINANCE OFFICER

6/21/06
DATE

NORTH CAROLINA

COUNTY OF Durham

I, Tonette Amos, a Notary Public in and for the County and State aforesaid, do hereby certify that William V. Bell, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 27th day of June, 2006.

Tonette Amos
Notary Public

My commission expires:
07-17-07

TONETTE AMOS NOTARY PUBLIC DURHAM COUNTY, N.C.

TONETTE AMOS NOTARY PUBLIC DURHAM COUNTY, N.C.

Ecosystem Enhancement PROGRAM

May 4, 2006

Mr. Paul Wiebke
Stormwater Services
City of Durham
Durham NC

Reference: **Goose Creek Stream Restoration Letter of Understanding**

Dear Paul:

The NC Ecosystem Enhancement Program (NCEEP) and the City of Durham have entered into a Memorandum of Agreement (dated January 13, 2004) for a restoration project on Goose Creek in Durham NC. The MOA outlines responsibilities and agreements of each party. NCEEP is hereby providing a letter of understanding that summarizes the financial responsibilities of all parties involved. The purpose of this letter is to clarify said responsibilities of the NCEEP and the City of Durham related to the stream restoration project.

The NCEEP will be responsible for 100% of the costs for design, land acquisition, and construction associated with stream restoration (except where noted in the City of Durham's responsibilities). The NCEEP will also be responsible for all costs associated with monitoring and maintaining the physical and biological aspects of the constructed project for a period of five years from completion. In the event that maintenance is required, it may involve such examples as repairing man-made structures designed for stream stability and replanting vegetation is areas where survival is low.

As outlined in the MOA, the City of Durham will be responsible for the removal and disposal of the existing "hard" infrastructure, which lines the banks of Goose Creek, including the fabriform mattress along the Eastway School reach and the masonry walls along the Long Meadow Park reach. The City of Durham holds no responsibility to maintain the project during or after the five-year monitoring/maintenance period following construction. The intent of the project is to create a naturally self-sustaining aquatic system with no long-term need for maintenance. The restored stream system and vegetated areas included in the easement area will be subject to the provisions and restrictions of the conservation easement and the state and federal laws associated with the Clean Water Act that are applicable to the waters of the United States of America.

The design drawing with depicted limits of construction provided as an exhibit with the temporary construction easement does represent the approximate limits of the easement. The easement boundaries will be determined more precisely as the project design is developed.. The City of Durham and the NCEEP will agree on the exact locations of the easement based on the design. Thereafter a survey and legal description will be prepared by a Professional Land Surveyor (cost to be incurred by the NCEEP). A preliminary survey will be made available for all parties to review and comment on. If any modifications are required, they will be done at this time. Once the plat meets the City's approval, it will be recorded. At completion of construction of the restoration project, a permanent easement will be conveyed to the State by the City.

This letter establishes a clear understanding of financial responsibilities related to the stream restoration project and the conservation easement.

With Best Regards,

Suzanne Klimek
Director of Operations

Cc: Perry Sugg - EEP Project Manager
Marion Patrick – State Property Office

Restoring . Enhancing... Protecting Our State
North Carolina Ecosystem Enhancement Program, 1652 Mail Service Center, Raleigh, NC 27699-1652 / 919-715-0476 / www.nceep.net

WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

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EASE 6 PGS $26.00

Recorder: **SHARON M CEARNEL**

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