2005045215

FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2005 SEP 29 01:47:24 PM
BK:4966 PG:624-629 FEE:$26.00

INSTRUMENT # 2005045215

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

Prepared by: State Property Office
Return to: Marion Patrick
1321 Mail Service Center
Raleigh, NC 27699-1321

CONSERVATION EASEMENT OPTION AGREEMENT
Ecosystem Enhancement Program
SPO File Number 032-aak

THIS OPTION AGREEMENT, hereinafter referred to as Option, made and entered into this 23rd day of June, 2005 by and between Durham Public Schools, Board of Education hereinafter referred to as the **Seller**, and the **State of North Carolina**, and its successors and assigns, hereinafter referred to as the **State.**

WITNESSETH

In consideration of $10.00 and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and of the agreements contained in this Option, **Seller** hereby grants to the **State**, its successors and assigns, the exclusive right and option to receive a **Conservation Easement** over agreed upon portions of that certain parcel of land, located in Durham County, North Carolina, containing 14.445 +/- acres, more or less and known as **Eastway Elementary School**. The property subject to the **Conservation Easement** is more particularly described as PIN# 0831-10-45-0648 and recorded in Deed Book 1838 at Page 314, Durham County Registry.

Lands and the rights to be acquired, hereinafter referred to as the **Easement Area**, are described as follows:

Being a perpetual **Conservation Easement** that will permanently protect the restoration, enhancement or preservation of Goose Creek between Liberty and Taylor Streets. The **Easement Area** begins at the centerline of Goose Creek and extends outwardly 50 feet where possible along the entire length of the property on both sides of the day lighted stream and runs as the stream meanders.

The following terms, provisions, and conditions are further agreed to:

1. **OPTION PERIOD.** This option shall remain in effect from the date that this Option has been executed by the **Seller** until the **31st day of December 2006.** This Option shall be exercised upon posting, by certified mail, fax or written notice to the **Seller** at the following address: Attention: Superintendent, Durham Public Schools, 511

Cleveland Street, Durham, NC 27701. Exercise shall be deemed timely if such written notice is mailed on or before the date first set forth in this paragraph.

2. **PURCHASE PRICE.** ~~The total purchase price for the Easement Area shall be the sum of $_____, (_____ Dollars) per acre subject to final survey. ($_____ per acre)~~. **The Seller elects to not receive compensation for this conveyance and shall donate this conservation easement to the State by striking through the mandatory compensation stated above and placing full initials here** GWH **_____.**

3. **CLOSING.** A closing of the sale of this property under this Option shall be held within **90 days** of the exercise of this Option; provided, however, in the event of objections to title or condition of land at closing, and diligent efforts on **Seller's** part to cure said objections, a closing shall be held within a reasonable time following the removal of said objections.

4. **EVIDENCE OF TITLE.** Upon receipt of this signed Option, the **State** will have title to the property examined, and if applicable, obtain a preliminary title insurance commitment on the Property. The title examination and/or commitment must evidence the **Seller's** ability to deliver title at closing as set forth below. All costs necessary to procure the title examination and, if applicable, the title commitment and final title insurance policy to be issued at closing, shall be the responsibility of the **State**.

5. **TITLE.** At closing, the **Seller** shall convey good, insurable and marketable title to the property together with all rights necessary to protect the **Easement Area** in perpetuity, including legal access, all mineral rights and all development rights, to the **State** free and clear of all liens, encumbrances, restrictions, rights, or exceptions unless excepted of record as are acceptable to the **State**.

6. **TITLE DEFECTS.** If for any reason the **Seller** cannot deliver title at closing as required by Paragraph 5 of this Option, the **State** may elect to a) accept the **Easement Area** with title as is; b) refuse to accept the Property; or c) allow the **Seller** additional time to pursue reasonable efforts to correct the problem, including bringing any necessary quiet title actions or other lawsuits.

7. **SUBJECT TO SURVEY.** It is understood and intended that the final **Easement Area** under this option is subject to final survey as agreed and approved by the **Ecosystem Enhancement Program** with these costs paid by the **State.**

8. **DOCUMENTS FOR CLOSING.** The **Seller** shall execute and deliver at closing a **Conservation Easement (see Exhibit A)**, any owner's affidavits or documents required by a title insurance company to remove the standard title policy exceptions, and any other documents necessary to close in accordance with the terms of this Option. These documents will be prepared at the expense of the **State**.

9. **PROPERTY TAXES.** Any delinquent real estate taxes and all levied assessments are the **Seller**'s responsibility and should be satisfied of record by the **Seller** at or

before closing. Any deferred taxes on the **Easement Area**, which become due as a result of this conveyance, shall be the responsibility of the **Seller**. Real estate taxes for the year in which the transaction is closed shall be the responsibility of the **Seller** and not prorated, as the **State** is not receiving fee simple title.

10. **MISCELLANEOUS CLOSING EXPENSES.** The **Seller** will pay any documentary stamp tax, real estate transfer fee or any similar charge due upon conveyance of title to the **State**. The **State** will pay recording fees.

11. **POSSESSION.** Unless otherwise agreed in writing, the **Seller** will deliver possession of the **Easement Area** to the **State** at closing subject to no leases, mortgages, liens or other reserved rights, and in the condition set forth below in Paragraph 12.

12. **CONDITION OF PROPERTY/ RISK OF LOSS.** The **Seller** shall not transfer or encumber any interests in the **Easement Area** prior to closing. The **Seller** shall keep the **Easement Area** in its current condition until closing and shall prevent and refrain from any use of the **Easement Area**, for any purpose or in any manner, that would diminish its value or adversely affect the **State's** intended use of the **Easement Area**.

    In the event of any adverse change in the condition of the **Easement Area**, whether said change is caused by **Seller** or by forces beyond **Seller's** control, the **State** may elect to a) refuse to accept the **Easement Area**; b) accept the **Easement Area**, or a portion thereof, in which case there may be an equitable adjustment of the purchase price based on a change in circumstances; or c) require restoration of the **Easement Area** to its condition at the time this Option was granted.

13. **RIGHT OF ENTRY AND INSPECTION.** The **State** and its agents shall have the right to enter upon the Property at reasonable times for surveying, engineering, conducting environmental inspections and assessments to detect hazardous or toxic substances, and other reasonable purposes related to this transaction. Based upon the results of the environmental inspections and assessments, or upon other conditions revealed to be unsuitable to the **State**, the **State** may elect to refuse to accept the **Easement Area**.

14. **REMEDIES.** In addition to any other remedy specifically set forth in this Option, the **State** has the right to enforce the provisions of this Option through an action for specific performance, injunctive relief, damages, contribution or any other available proceedings in law or equity. The election of any one remedy available under this Option shall not constitute a waiver of any other available remedies.

15. **BINDING EFFECT.** This Option becomes effective when signed by the **Seller** and shall then apply to and bind the **Seller** and **Seller's** heirs, executors, administrators, successors, and assigns.

16. **COMPLETE AGREEMENT.** This Option constitutes the sole and complete agreement between the parties and cannot be changed except by written agreement. The **Ecosystem Enhancement Program** promotes the preservation, restoration and

enhancement of streams and/or wetlands. Any representations, contracts or agreements created by or for the **Ecosystem Enhancement Program** are exclusive of this option unless specifically incorporated herein by exhibit.

17. **NO WAIVER.** No provision of the Option shall be deemed amended or waived unless such amendment or waiver is set forth in a writing signed by the **State**. No act or failure to act by the **State** shall be deemed a waiver of its rights hereunder, and no waiver in any one circumstance or of any one provision shall be deemed a waiver in other circumstances or of other provisions.

18. **ASSIGNMENT.** The **State** has the right to assign this Option. In the event of such assignment, the assignee will have all the rights, powers, privileges and duties held by the **State** pursuant to this Option.

IN TESTIMONY THEREOF, the parties have hereunto set their hands and seals, or if corporate have caused this instrument to be executed in their corporate names by their duly authorized representatives as of the dates indicated below.

Seller

By: _____

(Corporate Seal)

Title: CHAIR
Durham Public Schools Board of Education

Attested by: _____

Secretary

State of North Carolina

By: _____
Joseph H. Henderson
State Property Office Director

NORTH CAROLINA
COUNTY OF ALAMANCE

I, Gwendolyn W. Parker, a Notary Public in and for the County and State aforesaid, do hereby certify that Ann Denlinger, personally appeared before me this day and acknowledged that he is Secretary of Durham Public Schools Board of Education a corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its Chair, sealed with its corporate seal, and attested by himself as its Secretary.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 26th day of August, 2005.

Gwendolyn W. Parker
Notary Public

My commission expires:

3-30-2010

OFFICIAL SEAL
Notary Public, North Carolina
County of Alamance
GWENDOLYN W. PARKER
My Commission Expires Mar. 30, 2010

NORTH CAROLINA
COUNTY OF WAKE

I, TERESA P. MATTHEWS, a Notary Public in and for the County and State aforesaid, do hereby certify that Joseph H. Henderson, as Director of the State Property Office, Department of Administration, acting for the State of North Carolina, 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 1st day of September, 2005.

Teresa P. Matthews
Notary Public

My commission expires: **June 8, 2008**

TERESA P. MATTHEWS
NOTARY
* * *
PUBLIC
JOHNSTON COUNTY, N.C.

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

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of recorded document, and must be submitted with original for re-recording and/or cancellation.

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Filed For Registration: **09/29/2005 01:47:24 PM**

Book: **RE 4966 Page: 624-629**

Document No.: **2005045215**

EASE-AGMT 6 PGS $26.00

Recorder: **APRIL J WILLIAMS**

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State of North Carolina, County of Durham

The foregoing certificate of GWENDOLYN W PARKER , TERESA P MATTHEWS Notaries are certified to be correct. This 29TH of September 2005

WILLIE L. COVINGTON , REGISTER OF DEEDS

By: _____
Deputy/Assistant Register of Deeds

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