Chatham County, North Carolina
REBA G. THOMAS Register of Deeds
The foregoing certificate(s) of
BRENDA H. COBB

notary/notaries public
is/are certified to be correct.
Cacu Langley
Assistant - Register of Deeds

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CHATHAM COUNTY
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REGISTER OF DEEDS

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STATE OF NORTH CAROLINA

CHATHAM AND LEE COUNTIES

CONSERVATION EASEMENT

Prepared by and return to: William P. Aycock, II, Esquire
P. O. Box 21847, Greensboro, NC 27420

THIS CONSERVATION EASEMENT DEED, made this 28th day of April, 2005, by and between **MICHAEL R. ALLEN** and spouse, **PATRICIA R. ALLEN**, Grantor, and **RESTORATION SYSTEMS, LLC, a North Carolina limited liability company,** Grantee, whose mailing address is 1101 Haynes Street, Suite 107, Raleigh, North Carolina, 27604. 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, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Ecosystem Enhancement Program within the Department of Environment and Natural Resources for the purposes of funding, acquiring, maintaining, restoring, enhancing, and creating riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District have entered into a Memorandum of Agreement, (MOA) duly executed by all parties on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Gulf Township, Chatham County, and Pocket Township, Lee County, North Carolina (the "**Grantor's Property**"), and being more particularly described in **Deed Book 1005 at Page 727** of the Chatham County Registry, and **Deed Book 839 at Page 036** of the Lee County Registry, North Carolina; and

WHEREAS, the restoration, enhancement, creation, and preservation of Grantor's Property is a condition of the funding provided by the N.C. Ecosystem Enhancement Program. Grantor and Grantee agree that third-party rights of access, monitoring, enforcement and completion of any project encumbered by this conservation easement shall be held by the N.C. Ecosystem Enhancement Program (to include any

successor State agencies), and that these rights are in addition to, and do not limit, the rights of enforcement under this conservation easement; and

WHEREAS, upon receipt of the appropriate permits, Grantor intends to remove the Carbonton Dam which is located across the portion of the Deep River on the Grantor's Property; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Grantor's Property, thereby restricting and limiting the use of the included and described areas of the Grantor's Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such easement. This Conservation Easement shall be for the protection, restoration and benefit of the waters of the Deep River and certain of its tributaries.

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 Grantor's Property, referred to hereafter as the "**Easement Area**," for the perpetual protection of the Easement Area, and being more particularly described as follows:

SEE EXHIBIT 'A' ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

Grantor and Grantee acknowledge the restoration, enhancement, creation, and preservation of the Easement Area is a condition of any funding as provided by the Ecosystem Enhancement Program. Grantor and Grantee further agree that third-party rights of access, monitoring, enforcement and completion of any Easement Area encumbered by this Conservation Easement shall be held by the Ecosystem Enhancement Program (to include any successor State agencies), and that these rights are in addition to, and do not limit, the rights of enforcement under this Conservation Easement.

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve 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 a 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. 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 or restricted, as indicated:

> No dam or similar structure of any type shall be constructed over, on or across the portion of the Deep River located within the Easement Area nor shall there be any alteration, modification or removal of any in-stream structures or other improvements that may be placed or located in, on or adjacent to the portion of the Deep River within the Easement Area in connection with the restoration, enhancement, creation and/or preservation of stream and riparian mitigation within the Easement Area.

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Grantor's Property, at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the riparian resources of the Easement Area. These activities include utilization of heavy equipment to remove any dam or in-stream structures installed in violation of the above-described restriction and to direct in-stream, above ground, and subterraneous water flow. In addition, the Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Grantor's Property, at all reasonable times for the purpose of inspecting said property to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement.

III. 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 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 Easement Area; 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. The 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. The Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Easement Area over the Grantor's Property at reasonable times for the purpose of inspection to determine whether the 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 the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Easement Area resulting from such causes.

D. Costs of Enforcement. 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.

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

IV. MISCELLANEOUS

A. This Conservation Easement shall be construed to promote the purposes of N.C. Gen Stat. § 143-214.8 et seq., the Ecosystem Enhancement Program.

B. 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.

C. 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.

D. Grantor shall notify Grantee in writing of the name and address and any party to whom the Grantor's 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 Grantor's Property is conveyed subject to the Conservation Easement herein created.

E. The Grantor and Grantee agree that the terms of this Conservation Easement shall be binding upon the Grantee, its successors and assigns and shall survive any merger of the fee and easement interests in the Easement Area or any portion thereof.

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

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

V. QUIET ENJOYMENT

Except as expressly set forth herein, Grantor reserves all remaining rights accruing from ownership of the Grantor's 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 the Grantor, and the 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 Grantee 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.

TO HAVE AND TO HOLD the said rights and easements perpetually unto Grantee for the aforesaid purposes.

IN TESTIMONY WHEREOF, the Grantor has caused this Deed of Conservation Easement to be duly executed, the day and year first above written.

_____(SEAL)
Michael R. Allen

_____(SEAL)
Patricia R. Allen

STATE OF NORTH CAROLINA

COUNTY OF Alamance

I, Brenda H Cobb, a Notary Public, do hereby certify that Michael R. Allen personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this the 28th day of April, 2005

Brenda H Cobb
Notary Public

My commission expires:
September 5, 2009

OFFICIAL SEAL
NOTARY PUBLIC
Alamance County, NC
BRENDA H. COBB

STATE OF NORTH CAROLINA

COUNTY OF Alamance

I, Brenda H Cobb, a Notary Public, do hereby certify that Patricia R. Allen personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this the 28th day of April, 2005

Brenda H Cobb
Notary Public

My commission expires:
September 5, 2009

OFFICIAL SEAL
NOTARY PUBLIC
Alamance County, NC
BRENDA H. COBB

EXHIBIT "A"

All that property located in Pocket Township, Lee County, and Gulf Township, Chatham County, North Carolina, and more particularly described as follows:

BEGINNING at an existing iron pin in the northeast right-of-way of N.C. Hwy. 42, a corner with Kelly (see Deed Book 459, Page 538, Lee County Registry), which iron pin is located the following three calls from NCGS Marker "Junk" (N=645,169.7923'; E=1,910,651.0704'): South 85° 26' 49" West 13884.12 feet to a pump pipe set (NC Grid Coordinate N=644,067.6403'; E=1,896,810.7652'); South 33° 30' 04" West 42.26 feet to a pump pipe set; South 33° 30' 04" West 170.73 feet to the POINT AND PLACE OF BEGINNING; thence from said Beginning Point across N.C. Hwy. 42 to an iron stake set inside the southwestern right-of-way of N.C. Hwy. 42, South 33° 30' 04" West 61.01 feet; thence parallel, but inside the right-of-way of N.C. Hwy. 42, North 36° 19' 56" West 381.00 feet to a mag nail set in a concrete bridge abutment, a corner with Blankley (see Deed Book 745, Page 501, Lee County Registry); thence with Blankley's line, South 72° 30' 04" West 51.01 feet to a non monumented corner; thence continuing with Blankley's line, North 62° 49' 56" West 40.88 feet to a pump pipe set; thence North 62° 49' 56" West 12.53 feet to a non monumented corner on the southeastern bank of the Deep River; thence crossing the Deep River, North 62° 49' 56" West 184.59 feet to a non monumented corner on the northwest bank of the Deep River; thence North 32° 19' 56" West 10.66 feet to an iron stake set; thence North 32° 19' 56" West 46.34 feet to a non monumented corner which lies 2.13 feet± within the Norfolk Southern Railroad Right-Of-Way; thence North 49° 40' 04" East 28.71 feet to an iron stake set; thence North 49° 40' 04" East 78.29 feet to a non monumented corner; thence North 73° 51' 52" East 37.17 feet to an iron stake set; thence North 73° 51' 52" East 32.29 feet to an existing iron pin bent located under the N.C. Hwy. 42 bridge approximately in the center line of N.C. Hwy. 42; thence North 74° 40' 57" East 354.79 feet to an existing iron pipe in Kelly's line (see Deed book 393, Page 610, Chatham County Registry); thence North 50° 41' 42" East 131.55 feet to an iron stake set; thence South 68° 29' 54" East 107.13 feet to an existing concrete monument in the line of Carolina Power & Light Company (see Deed Book 519, Page 199, Chatham County Registry); thence South 20° 44' 00" West 131.87 feet to a 3/8" bolt set in a rock outcrop adjacent to an existing concrete dam; thence crossing the Deep River, South 03° 59' 58" East 323.75 feet to a pump pipe set; thence South 33° 30' 04" West 42.26 feet to a pump pipe set; thence continuing South 33° 30' 04" West 170.73 feet to an existing iron pipe in the northeastern right-of-way of N.C. Hwy. 42, the POINT AND PLACE OF BEGINNING and containing 5.50 acres, including the right-of-way of N.C. Hwy. 42 and as shown on a survey for Restoration Systems, LLC, "Carbonton Hydroelectric Dam," recorded in P. C. 2005, Slide 3, Lee County Registry, and P.C. 2005, Slide 10, Chatham County Registry.