7.29.09

FILED IN HENDERSON COUNTY REGISTER OF DEEDS
OFFICE. NEDRA W. MOLES, REGISTER
PBH DATE: 8-31-09 TIME: 10:35 A.M
EXCISE TAX STAMP: —
BOOK: 1405 PAGE: 385

Prepared by and return to:
State Property Office
*1321 Mail Service Center*
Raleigh, NC 27699-1321
SPO File No. 45-AA
**HENDERSON COUNTY**
EEP ID 138

## TEMPORARY CONSTRUCTION EASEMENT

This Agreement, made this 31st day of July 2009, between the Town of Fletcher, 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 to right of reasonable ingress and egress to the **Project** along Cane Creek and its tributaries in Henderson 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 work area on a *portion* of property identified as 9652.45-29-2855 consisting of an approximate 93.97 +/- acres in the Henderson County Tax Office and recorded in Deed Book 1056 at Page 702 recorded in the Henderson County Registry.

Said **Easement** shall be over a *portion* of the parcel as shown on a plat of survey entitled "Conservation Easement for the State of North Carolina, Cane Creek and Its Tributaries" dated November 2008, certified by Joel Johnson, PLS, and **recorded in ~~Map Book~~** Slide ____, ~~**Page**~~ 7827, Henderson County Registry. The tracts being more particularly described as follows:

Temporary Construction Easement Area "A" containing 16.87 acres
Temporary Construction Easement Area "B" containing 10.48 acres

**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 35 months from the date rendered hereof or upon completion of the above referenced **Project**, whichever is sooner.

The **Grantee**, its successors, and assigns agree to the following conditions of this **Easement:**

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. Utilization of 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. **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 permanent **Conservation Easement** to perpetually protect the intent of said **Project**. The conveyance of the **Conservation Easement** shall occur as stated in the Option Agreement and Addendum to Extend Option Agreement executed by **Grantor** and extensions thereof, recorded in Deed Book 1370 Page 191 of the Henderson County Registry, and will be based upon a metes and bounds description rendered by a Professional Land Surveyor. Grantor and Grantee shall agree on the size (minimum of 35 feet from top of bank of re-aligned stream) and description of the **Conservation Easement** area which includes the area adjacent to the tributary and wetlands. This a donation.

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

**Grantor- Town of Fletcher**

By: Mark E. Biberdorf
Title: (print name) Mark E. Biberdorf, Town Manager

(Corporate Seal)

TOWN OF FLETCHER, NC CORPORATE SEAL 1989 FLETCHER, NC

**Attested by:** Christine F. Thompson
Title:(print name) Christine F. Thompson

**NORTH CAROLINA**

Henderson **COUNTY**

JGM I, a Notary Public in and for the County and State aforesaid, certify that ~~Mark E. Biberdorf~~ Christine Thompson personally appeared before me this day, and acknowledged that he/she is said Town Clerk of the Town of Fletcher, a municipal corporation, and that by authority duly given and as the act of the Town, the foregoing Deed was signed in its corporate name by its ~~Mayor,~~ JGM Town Manager Mark E Biberdorf, sealed with its corporate seal, and attested by him/herself as its said Town Clerk.

**IN WITNESS WHEREOF**, I have hereunto set my hand and Notary Seal this the 31st day of July, 2009.

Janet G. Merrill
Notary Public Janet G. Merrill

(Notary Seal) 3/12/2011

JANET G. MERRILL NOTARY PUBLIC MY COMM. EXPIRES HENDERSON COUNTY, NC