2006036814

FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
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INSTRUMENT # 2006036814

STATE OF NORTH CAROLINA

DURHAM COUNTY
SPO File Number 032-AQ
Prepared by and return to:
Marion Patrick, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

Revised and Corrected
CONSERVATION EASEMENT
(replacing DB 4496 at Page 159)

THIS CONSERVATION EASEMENT DEED, is made this 10th day of May, 2006, by City of Durham, Grantor, to the State of North Carolina, Grantee, whose mailing address is State of North Carolina State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. 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.

This deed is intended to correct and replaces the previous deed of a conservation easement recorded at DB 4496, Page 159, Durham County Registry. Grantor and Grantee have agreed that excess land was included in the easement area in such deed, and Grantee desires that such excess property should not be encumbered by this conservation easement, and should remain with Grantor. To this end, the State of North Carolina, through its authorized representatives signing below, quitclaims to the City of Durham all property interests in the easement area defined in the easement recorded at DB 4496, Page 159, Durham County Registry that is not hereafter included within the conservation easement area defined in this deed.

WITNESSETH:

WHEREAS, the State of North Carolina is qualified to be the Grantee of a conservation easement pursuant to N.C. Gen. Stat. § 121-35; and

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. э 143-214.8 et seq., the State of North Carolina has established the Ecosystem Enhancement Program (formerly known as the NC Wetlands Restoration Program) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, and creating wetland and 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 Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; 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, the acceptance of this instrument for and on behalf of the State of North Carolina has been granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February 2000; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Forest Hills Township, Durham County, North Carolina (the "Protected Property"), and being more particularly described as:

1) 7.93 acres approximately and being conveyed to the Grantor by deed recorded in **Deed Book 129 at Page 277** of the Durham County Registry, North Carolina and further identified as PIN# 0821-19-50-8644

2) 26.40 acres approximately and being conveyed to the Grantor by deed recorded in **Deed Book 102 at Page 422** of the Durham County Registry, North Carolina and further identified as PIN# 0821-19-52-9071

WHEREAS, Grantor is willing to grant a Conservation Easement on the Protected Property, thereby restricting and limiting the use of the Protected Property to the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such easement.

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 portion of the Protected Property, referred to hereafter as the Easement Area, for the benefit of the people of North Carolina, and being all of the tracts of land as identified as Easements "A", "B", "C", "D", and "E" as shown on a plat of survey entitled "Conservation Plan for the City of Durham, Forest Hills Park Stream Restoration, Durham, NC" dated April 14, 2004 , revised February 21, 2006, certified by James M. Gellenthin PLS, L-3860 of KCI Associates of North Carolina, recorded in Map

Book 172 Page 211 Durham County Registry and attached as Exhibit "A". The easement areas being more particularly described as follows:

1) **Easement "A"** being approximately 0.171 acres and further described in Exhibit A attached hereto.
2) **Easement "B"** being approximately 2.594 acres and further described in Exhibit A attached hereto.
3) **Easement "C"** being approximately 1.282 acres and further described in Exhibit A attached hereto.
4) **Easement "D"** being approximately 4.684 acres and further described in Exhibit A attached hereto.
5) **Easement "E"** being approximately 0.163 acres and further described in Exhibit A attached hereto.

The purposes of this Conservation Easement are to maintain, restore, enhance, and/or create wetland/riparian resources in the Easement Area that contributes to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Easement Area in its natural 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. RESERVED USES AND RESTRICTED ACTIVITES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement except as allowed herein. Unless expressly reserved as a compatible or allowed 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 with the exception of uses or activities for which Grantor receives written permission from Grantee. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated below:

A. **Recreational Uses.** Grantor expressly reserves the right to undeveloped recreational uses for the general public, including but not limited to hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles for recreational uses in the Easement Area is prohibited.
B. **Educational Uses.** The Grantor reserves the right to educational and scientific uses and the right of access to the Easement Area for such purposes

including organized educational activities such as site visits, studies, and observations.

C. **Vegetative Cutting.** Except as related to the removal of diseased or damaged trees and vegetation that obstructs, destabilizes, or renders unsafe the Easement Area, or except as necessary to control invasive and/or exotic species, or except as necessary to provide for the other expressly allowed uses in this conservation easement, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement area is prohibited. All vegetative cutting shall be done in a manner that maintains the integrity of the Conservation Easement.

D. **Industrial Use.** Industrial activities in the Easement Area are prohibited.

E. **Residential Use.** Residential use of the Easement Area is prohibited.

F. **Commercial Use.** Commercial activities in the Easement Area are prohibited.

G. **Agricultural Use.** Agricultural use of the Easement Area including use for cropland, waste lagoons, or pastureland is prohibited.

H. **New Construction/Existing Improvements.** There shall be no building, facility, mobile home, or other structure constructed or placed in the Easement Area except as follows. Grantor reserves the right to repair, maintain, and/or renovate existing structures, including the existing sewer line within the conservation easement as shown on map of "Conservation Plan for the City of Durham, Forest Hills Park Stream Restoration, Durham, NC," dated April 14, 2004, revised February 21, 2006 and certified by James Gellenthin PLS-L 3860 of KCI Associates of North Carolina, widen East Forest Hills Boulevard and add culverts or widen bridges located at the East Forest Hills Boulevard crossings. Grantor may add or install an additional sewer line as further provided below, and other new structures if written permission is granted from EEP for such other structures. Any construction permitted shall be in compliance with regulatory authorities and shall be done in a manner that maintains the integrity of the conservation easement. Vehicles used for maintenance and/or construction shall stay outside the conservation area to the greatest extent reasonably possible.

I. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Protected Property and the holder of the Conservation Easement, signs giving directions or proscribing rules and regulations for the use of the Easement Area, and similar signs as allowed by the Grantee.

J. **Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material in the Easement Area is prohibited.

K. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

L. **Water Quality and Drainage Patterns.** There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or

disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

M. **Subdivision.** Subdivision, partitioning, or dividing the Easement Area is prohibited.

N. **Development Rights.** No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

O. **Utilities.** Through, over, under and across the Easement Area, the following utility uses are allowed, conditioned as follows:

1) The City reserves a permanent 30 foot sewer easement for its use in maintaining and repairing the City's existing sewer line. This easement is shown on the "Conservation Plan for the City of Durham, Forest Hills Park Stream Restoration, Durham, NC," dated April 14, 2004, revised February 21, 2006 and certified by James Gellenthin PLS-L 3860 of KCI Associates of North Carolina. In addition, the City reserves the right to construct a proposed future sewer line which, if built, shall lie parallel to the existing sewer line either within the existing easement described above, or between the existing sewer line and University Drive/ Forest Wood Drive. Prior to construction of the new sewer corridor, Grantor shall provide written notification to the Ecosystem Enhancement Program, 1652 Mail Service Center, Raleigh, NC 27699-1652.
2) All disturbed facilities; features and vegetation will be restored to their original condition to the greatest extent reasonably practicable. Due to the environmental sensitivity of the Conservation Easement Area, any disturbed and removed vegetation in access areas, staging areas, constructed areas, excluding the permanent utility easement, will be replaced with herbaceous species such that the Protected Property achieves a rapid recovery from the disturbance. The permanent utility easement shall be planted with suitable grass vegetation which shall be restored when disturbed.
3) Corridor and clearing width for construction will be limited to the minimum necessary to construct the needed facilities, subject to line size, equipment size and work zone. The temporary construction easements will be vegetated with native herbaceous species at the completion of construction.
4) Depth of underground construction shall be to a sufficient depth to avoid future exposure due to scouring to the greatest extent reasonably practicable.
5) Maintenance/repair of existing sewer shall be done within the existing sewer easement to the extent practicable. Vehicles used for maintenance and/or construction shall stay outside the conservation area to the greatest extent reasonably possible.

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 Protected Property, at all reasonable times to undertake any

activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area. These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed 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 Protected 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. The Grantee and authorized representatives of the Grantee shall provide prior notification to the Grantor of the construction schedule including but not limited to bid opening, award, notice to proceed, and pre-construction meetings. The easement rights granted herein do not include public access rights.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. ENFORCEMENT AND REMEDIES

A. In the event that the Grantee determines that the Grantor has violated or is threatening to violate any of these terms, conditions, or restrictions, the Grantee may institute a suit to enjoin such violation and/or may pursue any other remedy otherwise allowed under the law.

B. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

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 addresses 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 Protected 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 Protected Property is conveyed subject to the Conservation Easement herein created.

E. If significant changes are made to the proposed channel design, the Grantee will provide an updated No-Rise analysis and certification to the Grantor. Also, upon completion of construction of the restoration project, the Grantee will provide certified as-built plans to the Grantor. In addition, the Grantee will prepare and request a Letter of Map Revision (LOMR) from the Federal Emergency Management Agency (FEMA) to revise the effective floodway and floodplain for the project area within six months from the end of construction.

F. Grantor and Grantee may make changes to this conservation easement, provided that such changes are in writing, are signed by both parties, and are recorded in the office of the Durham County Register of Deeds.

V. QUIET ENJOYMENT

Grantor reserves all rights accruing from ownership of the Protected 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 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.

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

_____ (SEAL)

City of Durham
Title:_____

Attested: _____
City Clerk

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

_____ 4/24/06
FINANCE OFFICER DATE

NORTH CAROLINA
COUNTY OF Durham

I, Tonette Amos, a Notary Public in and for the County and State aforesaid, do hereby certify that D. Ann Gray, 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 10 day of May, 2006.

_____
Notary Public

My commission expires: 07-17-07

TONETTE AMOS
NOTARY
PUBLIC
DURHAM COUNTY, NC

State of North Carolina

By: _____
Joseph H. Henderson
State Property Office Director

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 with proper authorization 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 18th day of May, 2006.

Teresa P Matthews
Notary Public

TERESA P. MATTHEWS NOTARY PUBLIC JOHNSTON CO., N.C.

My commission expires:
8 June 2008

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

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C-EASE 10 PGS $38.00

Recorder: **APRIL J WILLIAMS**

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