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BOOK 1638 PAGE 0428

STATE OF NORTH CAROLINA
CHATHAM COUNTY

CONSERVATION EASEMENT
AND RIGHT OF ACCESS

SPO File Number 019-AW
EEP Site ID 26
Prepared by: Office of the Attorney General
Property Control Section
Return to: NC Department of Administration
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS DEED OF CONSERVATION EASEMENT AND RIGHT OF ACCESS, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 29th day of August, 2012, by **Gary Phillips**, "**Grantor**"), whose mailing address **7691 Siler City Glendon Road, Bear Creek, NC 27207**, to the State of North Carolina, ("**Grantee**"), whose mailing address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The designations of 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 (formerly known as the Wetlands Restoration Program) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving 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 State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; 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 and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Understanding, (MOU) duly executed by all parties on November 4, 1998. This MOU recognized that the Wetlands Restoration Program was to provide effective compensatory mitigation for authorized impacts to wetlands, streams and other aquatic resources by restoring, enhancing and preserving the wetland and riparian areas of the State; 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, entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003. This MOA recognized that the Ecosystem Enhancement Program was to provide for compensatory mitigation by effective restoration and protection of the land, water and natural resources of the State; and

WHEREAS, the Department of Environment and Natural Resources, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Division of Water Quality, the North Carolina Division of Coastal Management, and the National Marine Fisheries Service entered into an agreement to continue the In-Lieu Fee operations of the North Carolina Department of Natural Resources' Ecosystem Enhancement Program with an effective date of 28 July, 2010, which supersedes and replaces the previously effective MOA and MOU referenced above; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina was 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 Bear Creek Township, Chatham County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately 112 acres and being conveyed to the Grantor by will as recorded in **Will Book 08E at Page 0424 and in Deed Book 418, Page 143** of the Chatham County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement and Right of Access over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept said Conservation Easement and Right of Access. The Conservation Easement shall be for the protection and benefit of the waters of ***Bear Creek***.

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 along with a general Right of Access.

The Conservation Easement Area (Easement Area) consists of the following:

Areas **A, B, C, and D** containing a total of **1.28 acres** as shown on the plats of survey entitled "Final Plat, Conservation Easement Addition for NCEEP Project Bear Creek, SPO File # 019-AW, Project Number 26, Property of Garry Phillips," dated January 12, 2012 by *Douglas R. Yarbrough*, PLS Number L-3395 and recorded in the Chatham County, North Carolina Register of Deeds at **Plat Book 2012 Page 18.**

See attached "**Exhibit A**", Legal Description of area of the Property hereinafter referred to as the "Easement Area"

The purposes of this Conservation Easement are to maintain, restore, enhance, construct, create and preserve wetland and/or 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 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

Pursuant to law, including the above referenced statutes, this Conservation Easement and Right of Access shall be perpetual and it shall run with, and be a continuing restriction upon the use of, the Property, and it shall be enforceable by the Grantee against the Grantor and against Grantor's heirs, successors and assigns, personal representatives, agents, lessees, and licensees.

II. GRANTOR RESERVED USES AND 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. Any rights not expressly reserved hereunder by the Grantor, including the rights to all mitigation credits, including, but not limited to, stream, wetland, and riparian buffer mitigation units, derived from each site within the area of the Conservation Easement, are conveyed to and belong to the Grantee. Without limiting the generality of the foregoing, the following specific uses are prohibited, restricted, or reserved as indicated:

A. Recreational Uses. Grantor expressly reserves the right to undeveloped recreational uses, including hiking, bird watching, hunting and fishing, and access to the Easement Area for the purposes thereof.

B. Motorized Vehicle Use. Motorized vehicle use in the Easement Area is prohibited.

C. Educational Uses. The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the Easement Area for such purposes including organized

educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.

D. Vegetative Cutting. Except as related to the removal of non-native plants, diseased or damaged trees, or vegetation that destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

E. Industrial, Residential and Commercial Uses. All industrial, residential and commercial uses are prohibited in the Easement Area.

F. Agricultural Use. All agricultural uses are prohibited within the Easement Area including any use for cropland, waste lagoons, or pastureland.

G. New Construction. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

H. Roads and Trails. There shall be no construction of roads, trails, walkways, or paving in the Easement Area.

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 Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Easement Area.

J. Dumping or Storing. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or any other material in the Easement Area is prohibited.

K. Grading, Mineral Use, Excavation, Dredging. There shall be no grading, filling, excavation, dredging, mining, drilling; 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 diverting, causing, allowing or permitting the diversion of surface or underground water in the Easement Area. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns is allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides in the Easement Area is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production on the Property.

M. Subdivision and Conveyance. Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying Property owned by the Grantor in fee simple ("fee") that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee and the rights conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement.

Any transfer of the fee is subject to the Grantee's right of unlimited and repeated ingress and egress over and across the Property to the Easement Area for the purposes set forth herein.

N. Development Rights. All development rights are permanently removed from the Easement Area and are non-transferrable.

O. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantor is prohibited.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is not inconsistent with the purposes of this Conservation Easement, and the Grantor obtains advance written approval from the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. GRANTEE RESERVED USES

A. Right of Access, Construction, and Inspection. The Grantee, its employees and agents, successors and assigns, receive a perpetual Right of Access to the Easement Area over the Property at reasonable times to undertake any activities to restore, construct, manage, maintain, enhance, and monitor the stream, wetland and any other riparian resources in the Easement Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

B. Restoration Activities. 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.

C. Signs. The Grantee, its employees and agents, successors or assigns, shall be permitted to place signs and witness posts on the Property to include any or all of the following: describe the project, prohibited activities within the Conservation Easement, or identify the project boundaries and the holder of the Conservation Easement.

IV. 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 in the Easement Area that may have been damaged by such unauthorized activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, the Grantee shall, except as provided below, notify the Grantor-in writing of such breach and the Grantor shall have ninety (90) days after receipt of such notice to correct the damage caused by such breach. If the breach and damage remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by bringing appropriate legal proceedings including an action to recover damages, as well as 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 Property; 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 is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement, and the Grantor and Grantee acknowledge that the damage would be irreparable and remedies at law 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 Property at reasonable times for the purpose of inspection to determine whether the Grantor is 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 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, or damage to the Property resulting from such causes.

D. Costs of Enforcement. Beyond regular and typical monitoring expenses, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, 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, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

V. MISCELLANEOUS

A. 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.

B. Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Property. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Upkeep of any constructed bridges, fences, or other amenities on the Property are the sole responsibility of the Grantor. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of the Reserved Rights.

C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown herein 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 Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees that any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

E. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof.

F. This Conservation Easement and Right of Access may be amended, but only in writing signed by all parties hereto, or their successors or assigns, if 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. The owner of the Property shall notify the U.S. Army Corps of Engineers in writing sixty (60) days prior to the initiation of any transfer of all or any part of the Property. Such notification shall be addressed to: Justin McCorkle, General Counsel, US Army Corps of Engineers, 69 Darlington Avenue, Wilmington, NC 28403

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.

VI. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the 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 the State of North Carolina 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 is 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)
Gary Phillips

NORTH CAROLINA
COUNTY OF Chatham

I, Camelia W. Morris, a Notary Public in and for the County and State aforesaid, do hereby certify that Garry Phillips, 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 29th day of August, 2012.

_____
Notary Public Camelia W. Morris

CAMELIA W. MORRIS
NOTARY
PUBLIC
CHATHAM COUNTY, N.C.

My commission expires:

May 22, 2015

Exhibit A

Metes and Bounds Descriptions

Bear Creek SPO Number 019-AW NCEEP Project Number 26

Conservation Easement Addition Area A

Beginning at an existing rebar and NCEEP Cap in the eastern Right if way of Siler City Glendon Road (SR# 1006), said point being an existing conservation easement boundary for Easement Area 2 as shown in plat book 2004 Page 372 thence with the boundary of the existing conservation easement boundary the following courses: N 61°11'24"E – 123.53' to an existing rebar and NCEEP Cap; N 77°44'38"E – 209.78' to an existing rebar and NCEEP Cap; S 81°50'03"E – 86.58' to an existing rebar and NCEEP Cap; thence and new conservation easement line with Garry Phillips S 68°14'36"W – 54.50' to an existing iron stake corner with Garry Phillips and wife Ina Jane Phillips; thence with the line of Phillips S 78°14'12"W – 355.77' to an existing iron stake corner with Phillips in the Margin of Siler City – Glendon Road (SR #1006); thence with the right of way of Siler City – Glendon Road N 01°48'46"W – 0.97' to a rebar and NCEEP Cap the point and place of beginning, containing 0.27 Acres more or less shown as area A on Plat of Survey by Landmark Surveying, Inc., dated 01/12/12, entitled "Final Plat Conservation Easement Addition NCEEP Project Bear Creek, SPO # 019-AW, Project Number 26 Property of Garry Phillips" as recorded in plat Book 2012 Page 18 of the Chatham County Register of Deeds on February 15, 2012.

Bear Creek SPO Number 019-AW NCEEP Project Number 26

Conservation Easement Addition Area B

Beginning at an existing rebar and NCEEP cap on the existing Conservation Easement Area 2 as shown in plat book 2004 Page 372 thence the following courses and distances being new conservation Easement boundaries N 89°01'22" E - 199.90' to a new rebar and NCEEP Cap; thence S 61°36'25"E – 87.07' to a new rebar and NCEEP Cap; Thence S 32°03'53"E – 257.72' to a new rebar and NCEEP Cap; thence S 20°47'27" W - 15.15' to a mathematical point on the existing conservation easement boundary; thence with the existing conservation easement boundary N 48°24'55" W – 285.02' to an existing rebar and NCEEP Cap; thence with the existing conservation easement boundary N 68°14'47" W – 204.03' to an existing rebar and NCEEP Cap; thence with the existing conservation easement boundary N 42°07'08" W – 7.78' to an existing rebar and NCEEP Cap the point and place of beginning containing 0.60 Acres more or less shown as Area B on Plat of Survey by Landmark Surveying, Inc., dated 01/12/12, entitled "Final Plat Conservation Easement Addition NCEEP Project Bear Creek, SPO # 019-AW, Project Number 26 Property of Garry Phillips" as recorded in plat Book 2012 Page 18 of the Chatham County Register of Deeds on February 15, 2012.

Bear Creek SPO Number 019-AW NCEEP Project Number 26

Conservation Easement Addition Area B

Beginning at an existing rebar and NCEEP cap on the existing Conservation Easement Area 2 as shown in plat book 2004 Page 372 thence the following courses and distances being new conservation Easement boundaries N 20°42'50" E – 54.21' to a new rebar and NCEEP Cap; thence S 65°55'23"E – 321.36' to a new rebar and NCEEP Cap; thence S 00°26'12" E – 37.21' to an existing rebar and NCEEP Cap on the existing conservation easement; thence with the existing conservation easement boundary N 69°23'54"W – 334.23' to an existing rebar and NCEEP Cap being the point and place of beginning containing 0.33 Acres shown as Area C on Plat of Survey by Landmark Surveying, Inc., dated 01/12/12, entitled "Final Plat Conservation Easement Addition NCEEP Project Bear Creek, SPO # 019-AW, Project Number 26 Property of Garry Phillips" as recorded in plat Book 2012 Page 18 of the Chatham County Register of Deeds on February 15, 2012.

Bear Creek SPO Number 019-AW NCEEP Project Number 26

Conservation Easement Addition Area D

Beginning at an existing rebar and NCEEP cap on the existing Conservation Easement Area 2 as shown in plat book 2004 Page 372 thence with the Existing Conservation Easement Boundary the following courses and distances; N 77°49'32"E – 78.02' to an existing rebar and NCEEP Cap; thence N 85°55'02" E – 98.40' to an existing rebar and NCEEP Cap; thence a new conservation easement Boundary S 42°36'34" W 29.16' to an existing rebar and NCEEP Cap; thence with the existing conservation easement boundary S 85°54'54" W - 75.77' to an existing rebar and NCEEP Cap; thence S 77°48'26"W – 78.10' to an existing rebar and NCEEP Cap thence a new conservation easement line N 07°54'22"W – 20.08' to an existing rebar and NCEEP Cap the point and place of beginning containing 0.08 Acres, shown as Area D on Plat of Survey by Landmark Surveying, Inc., dated 01/12/12, entitled "Final Plat Conservation Easement Addition NCEEP Project Bear Creek, SPO # 019-AW, Project Number 26 Property of Garry Phillips" as recorded in plat Book 2012 Page 18 of the Chatham County Register of Deeds on February 15, 2012.