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Register Of Deeds

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STOKES COUNTY NC 05/26/2004
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STATE OF NORTH CAROLINA
Real Estate
Excise Tax

PREPARED BY: Blaine Rice, State Property Office.

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

STOKES COUNTY
SPO File Number 085-AB
Prepared by and return to:
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, made this 31st day of March, 2004, by and between Scott Wheeler Whitley and wife, Sunita Whitley, Grantor, whose mailing address is 1225 Prabhupada Road, Sandy Ridge, NC 27046 and 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.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. ∋ 143-214.8 et seq., the State of North Carolina has established the Wetlands Restoration Program (as defined in N.C. Gen Stat. ∋ 143-214.8) 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 Wetlands Restoration Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; 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, pursuant to the provisions of N.C. Gen. Stat. э 143-214.8, two of the components of the Wetlands Restoration Program are (1) restoration and perpetual maintenance of wetlands, riparian areas, and surface waters and (2) land ownership and management; and

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

Tract #1 That certain parcel of land containing 5 acres and being conveyed to the Grantor by deed recorded in **Deed Book 389 at Page 2395** of the Stokes County Registry, North Carolina and further identified as**Tax Map 6968 Parcel 8587** and

Tract #2 That certain parcel of land containing 3.927 acres and being conveyed to the Grantor by deed recorded in **Deed Book 467 at Page 2084** of the Stokes County Registry, North Carolina and further identified as **Tax Map 6968 Parcel 6190**

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 containing

Conservation Easement Area #1 - 1.12 acres, more or less, being the same easement shown on a survey prepared by Murphy & Sacks Surveyors (Greensboro, NC) dated 19 May, 2003, entitled "Conservation Easement Dedication Exhibit along Snow Creek, Property of the Scott Wheeler Whitley and wife, Sunita, **DB 389 at Page 2395**." (Drawing File SNOWCRKD.dwg) Said tract being more particularly described in Exhibit A attached and incorporated hereinto:

See Exhibit A

Conservation Easement Area #2 - 0.63 acres, more or less, being the same easement shown on a survey prepared by Murphy & Sacks Surveyors (Greensboro, NC) dated 12 May, 2003, entitled "Conservation Easement Dedication Exhibit along Snow Creek, Property of the Scott Wheeler Whitley and wife, Sunita , **DB 467 at Page 2084**." (Drawing File SNOWCRKD.dwg) Said tract being more particularly described in Exhibit B attached and incorporated hereinto:

See Exhibit B

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

A. **Recreational Uses.** Grantor expressly reserves the right to undeveloped recreational uses, including hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited.
B. **Educational Uses.** The Grantor reserves the right to undeveloped educational 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.** Cutting, removal, mowing, harming, or destruction of any vegetation in the Easement Area is prohibited.
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.** There shall be no building, facility, mobile home, or other structure constructed or placed 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 Protected Property and the holder of the Conservation Easement, and signs giving directions or proscribing rules and regulations for the use of the Easement Area.
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, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. The Grantor reserves the right to pump or otherwise divert water from the stream for uses related to agriculture and livestock production.
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.

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 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 Wetlands Restoration Program, whose mailing address is 1619 Mail Services Center, Raleigh, NC 27699-1619.

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 if necessary, to require the restoration of the Easement Area to its prior condition at the expense of the Grantor.

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 Wetlands Restoration 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 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.

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, except as shown on Exhibit C attached hereto and incorporated herein by reference, 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,

Wheeler

Scott W. Whitley **(SEAL)**
Scott Wheeler Whitley

Sunita Whitley **(SEAL)**
Sunita Whitley

NORTH CAROLINA

COUNTY OF Stokes

I, Kathy W. Gwyn, a Notary Public in and for the County and State aforesaid, do hereby certify that SCOTT WHEELER WHITLEY and SUNITA WHITLEY, 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 31st

day of March, 2004

Kathy W. Gwyn
Notary Public

KATHY W. GWYN NOTARY PUBLIC SURRY COUNTY, N.C.

My commission expires:

December 6, 2007

North Carolina, Stokes County
The foregoing certificate(s) Kathy W. Gwyn a Notary (or Notaries) Public of the government units designated is (are) certified to be correct.
KATHY YOUNG, Register of Deeds
By Kathy Young

LEGAL DESCRIPTION

Exhibit A

Lying and being located in Snow Creek Township, Stokes County, North Carolina, being an easement for the conservation of Snow Creek and associated tributaries lying within the boundaries of property owned, now or formerly by Scott Wheeler Whitley and wife, Sunita Whitley as described in Deed Book 389 Page 2395, Stokes County Registry, and being more particularly described as follows:

COMMENCING at a 5/8" iron rod found in the westerly line of property owned, now or formerly, by the Temple of the Holy Name as described in Deed Book 376 Page 1884 of said Stokes County Registry, being also the northeastern corner with property owned, now or formerly, by John R. McLeod and wife, Frances L. McLeod as described in Deed Book 439 Page 971 of said Stokes County Registry, said iron rod having North Carolina Grid Coordinates (NAD 1983) of y = 300,625.625 meters North and x = 507,232.965 meters East, said iron lying South 59 deg 55' 12" East a grid distance of 457.829 meters from an iron rebar know as "M&S Control Point #101"set in a cow pasture owned, now or formerly by Michael A. Rothstein as described in Deed Book 461 Page 468 of said Stokes County Registry and having North Carolina Grid Coordinates (NAD 1983) of y = 300,855.094 meters North and x = 506,836.795 meters East, said "M&S Control Point #101" lying North 73 deg 45' 55" East a grid distance of 2721.659 meters from NCGS Monument "Oakley", said monument having North Carolina Grid Coordinates (NAD 1983) of y = 300,094.192 meters North and x = 504,223.664 meters East and a combined scale and ellipsoid factor of 1.000046931; thence from said point of COMMENCEMENT with the westerly line of the Temple of the Holy Name as described in Deed Book 376 Page 1884 of said Stokes County Registry North 18 deg 37' 42" West a distance of 561.75 feet to an iron pipe set at the southeasterly corner of the conservation easement herein described, the POINT OF BEGINNING; thence from said point of BEGINNING with a new line, the southerly line of the conservation easement herein described, South 68 deg 16' 52" West a distance of 364.80 feet to an iron pipe set in the easterly line of property owned, now or formerly, by Adrian Scott and wife, Rebecca Scott as described in Deed Book 363 Page 1879 of said Stokes County Registry; thence with the easterly line of Scott North 27 deg 30' 23" a distance of 129.17 feet to a computed point lying in the center of Snow Creek; thence with the centerline of Snow Creek the following four (4) courses and distances: 1) North 48 deg 49' 56" East a distance of 32.42 feet to a computed point; 2) North 62 deg 59' 45" East a distance of 64.78 feet to a computed point; 3) North 78 deg 37' 10" East a distance of 92.28 feet to a computed point; and 4) North 71 deg 59' 48" East a distance of 198.64 feet to a computed point at the centerline of Snow Creek, the northwesterly corner of the said property owned by the Temple of the Holy Name, thence leaving Snow Creek with the westerly line of the Temple of the Holy Name South 18 deg 37' 42" East a distance of 116.01 feet (passing through the center of a 32 inch poplar tree at a distance of 34.55 feet) to the POINT AND PLACE OF BEGINNING, containing 1.12 acres, more or less, being the same easement shown on a survey prepared by Murphy & Sacks Surveyors (Greensboro, NC) dated 19 May, 2003, titled "Conservation Easement Dedication Exhibit along Snow Creek, property of Scott Wheeler Whitley & Sunita Whitley, DB 389 PG 2395." (Drawing File SNOWCRKE.dwg)

Exhibit B

LEGAL DESCRIPTION

Lying and being located in Snow Creek Township, Stokes County, North Carolina, being an easement for the conservation of Snow Creek and associated tributaries lying within the boundaries of property owned, now or formerly by Scott Wheeler Whitley and wife, Sunita Whitley as described in Deed Book 467 Page 2084, Stokes County Registry, and being more particularly described as follows:

COMMENCING at a 5/8" iron rod found, the northwesterly corner of the property described in Deed Book 467 Page 2084, a corner with property owned, now or formerly, by Michael A. Rothstein as described in Deed Book 461 Page 468 of said Stokes County Registry, said iron rod having North Carolina Grid Coordinates (NAD 1983) of y = 300,914.432 meters North and x = 507,018.614 meters East, said iron lying North 71 deg 55' 32" East a grid distance of 191.256 meters from an iron rebar know as "M&S Control Point #101"set in a cow pasture owned, now or formerly by Michael A. Rothstein as described in Deed Book 461 Page 468 of said Stokes County Registry and having North Carolina Grid Coordinates (NAD 1983) of y = 300,855.094 meters North and x = 506,836.795 meters East, said "M&S Control Point #101" lying North 73 deg 45' 55" East a grid distance of 2721.659 meters from NCGS Monument "Oakley", said monument having North Carolina Grid Coordinates (NAD 1983) of y = 300,094.192 meters North and x = 504,223.664 meters East and a combined scale and ellipsoid factor of 1.000046931; thence from said point of COMMENCEMENT with the easterly line of Rothstein as described in Deed Book 461 Page 468 of said Stokes County Registry South 16 deg 12' 04" East a distance of 379.90 feet to an iron pipe set at the northwesterly corner of the conservation easement herein described, the POINT OF BEGINNING; thence from said point of BEGINNING with a new line, the northerly line of the conservation easement herein described, the following three (3) courses and distances: 1) North 61 deg 17' 53" East a distance of 140.07 feet to an iron pipe set; 2) North 82 deg 48' 02" East a distance of 151.80 feet to an iron pipe set; and 3) North 54 deg 20' 08" East a distance of 100.56 feet to an iron pipe set in the westerly line of property owned, now or formerly, by Nirguna Das and wife, Victoria Dasi as described in Deed Book 467 Page 783 of said Stokes County Registry; thence with the said westerly line of Das South 14 deg 34' 53" East a distance of 89.23 feet (passing a 5/8" iron rod found at 25.53 feet) to a computed point lying at the center of Snow Creek; thence with the centerline of Snow Creek the following four (4) courses and distances: 1) South 71 deg 59' 48" West a distance of 195.38 feet to a computed point; 2) South 78 deg 37' 10" West a distance of 92.28 feet to a computed point; 3) South 62 deg 59' 45" West a distance of 64.78 feet to a computed point; 4) South 48 deg 49' 56" West a distance of 31.01 feet to a computed point at the centerline of Snow Creek, a corner with the said Rothstein property; thence leaving Snow Creek with the easterly line of Rothstein North 16 deg 12' 04" West a distance of 72.74 feet (passing a 5/8" iron rod found at a distance of 42.97 feet) to the POINT AND PLACE OF BEGINNING, containing 0.63 acres, more or less, being the same easement shown on a survey prepared by Murphy & Sacks Surveyors (Greensboro, NC) dated 12 May, 2003, titled "Conservation Easement Dedication Exhibit along Snow Creek, property of Scott Wheeler Whitley & Sunita Whitley, DB 467 PG 2084." (Drawing File SNOWCRKC.dwg)

Exceptions:

1. Restrictive Covenants recorded in Book 361, Page 1919, Stokes County Registry.

2. Declaration of Restrictions and Provisions for Private Road dated November 6, 1992, and recorded in Book 361, Page 1925.

3. Road maintenance agreement dated May 1, 1997, and recorded in Book 400, Page 1341, Stokes County Registry.

4. Easement to Davidson Electric Membership Corporation recorded in Book 369, Page 2120, with attachment recorded in Book 369, Page 2121, Stokes County Registry.

5. Easement to Davidson Electric Membership Corporation recorded in Book 348, Page 2117.

6. Save and except any discrepancies which would be revealed by a survey of the property.

7. Stokes County taxes for 2004 are a lien but are not due and payable.

8. Easement to Duke Power Company recorded in Book 444, Page 266, Stokes County Registry.

9. Easement to Duke Power Company recorded in Book 460, Page 988, Stokes County Registry.

Exhibit C