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RICHARD L. WOODRUFF
Register of Deeds
By: _____ Deputy/~~Asst.~~

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

WILKES COUNTY
SPO File Number –97-X
Prepared by and return to:
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, made this 7th day of May, 2003, by and between Roy A. Livingston and wife Betty W. Livingston, **Grantor**, 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. § 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 Boomer Township, Wilkes County, North Carolina (the "Protected Property"), and being more particularly described as that certain parcel of land being conveyed to the Grantor by deed recorded in **Deed Book 532 at Page 774,** of the **Wilkes County Registry;** and

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 tract of land as identified as a **0.4772 acre Easement Area being Parcel G** as shown on a plat of survey entitled "**Plat of Big Warrior Creek Restoration Project-East Sections prepared for State of North Carolina**" dated March 6, 2003 certified by Jeffery L. Caison, PLS L-4403 and **recorded in Map Book 9 Page 592, Wilkes County Registry**.

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.

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

N. **Development Rights.** No development rights that 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 A" 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,

Roy A. Livingston (SEAL)
Roy A. Livingston

Betty W. Livingston (SEAL)
Betty W. Livingston

NORTH CAROLINA

COUNTY OF Wilkes

I, Elaine W. Davidson, a Notary Public in and for the County and State aforesaid, do hereby certify that Roy A. Livingston and Betty W. Livingston, 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 7th day of May, 2003.

Elaine W. Davidson
Notary Public

My commission expires:
7-18-04

OFFICIAL SEAL
North Carolina • Wilkes County
ELAINE W. DAVIDSON
NOTARY PUBLIC

NORTH CAROLINA WILKES COUNTY
The foregoing certificate of Elaine W. Davidson is certified to be correct

Richard L. Woodruff By Vicki L. Triplett
Register of Deeds Deputy/Ass't Register of Deeds

"Exhibit A"

1. Utility easement to Duke Power Company recorded in Book 540, Page 324 and Book 263, Page 427.

2. Easement to NCDOT recorded in Book 725, Page 104.

3. Drainage easement to NCDOT recorded in Book 725, Page 105.

4. Deed of Trust from Roy A. Livingston and wife Betty W. Livingston to Landon Alfriend Dunn, Trustee for Southern National Bank of North Carolina recorded in Book 647, Page 537 of the Wilkes County Registry on January 8, 1987 and securing an original loan of $50,000.00.

5. Water Easement reserved in Book 538, Page 944.

STATE FILE NO. 97-X

ABSTRACTOR'S FINAL CERTIFICATE

Wilkes County, North Carolina

Roy A. Livingston and spouse Betty W. Livingston

LAND

I hereby certify for the use and benefit of the State of North Carolina, its successors and assigns, that I have made a personal and complete examination of all the Public Land Records of Wilkes County, North Carolina, in which the captioned lands are situate, since and including June 5, 2002, the date of my previous certificate, up to and including May 8, 2003, the date of the recording of the Conservation Easement from Roy A. Livingston and spouse Betty W. Livingston, to the State of North Carolina insofar as they affect the title to the captioned land, and from said examination I find that, other than said Conservation Easement to the State of North Carolina, nothing has been filed, docketed or recorded in said county affecting or relating to the title of said captioned land in any manner whatsoever, except the following:

None

I further certify that the exceptions or objections set out in my said previously certificate affecting or relating to the title of said captioned land still exist and that this conveyance was accepted subject to those exceptions or objections.

I further certify that no taxes assessed and levied, including special assessments, now appear upon the records as unpaid, except as follows:

None.

I further certify that the aforementioned Conservation Easement from Roy A. Livingston and spouse Betty W. Livingston, to the State of North Carolina, dated the 7th day of May, 2003, filed for recording on the 8th day of May, 2003, at 2:19 o'clock p .m. and recorded in Book 912, Page 124, in my opinion, vests in the said State of North Carolina a valid Conservation Easement across said captioned lands as described in said Conservation Easement and in my previous certificate as aforesaid, subject only to the liens, encumbrances, and other objections set forth in this final certificate.

THIS TITLE IS CERTIFIED DOWN TO May 8, 2003, AT 2:19 O'CLOCK p. M.

ABSTRACTING ATTORNEY
Sigsbee Miller
206 East Main Street
Wilkesboro, NC 28697

Real Property

File no: 097-x

Creation Date: 12/19/2001 **Status:** Active **Agent :** BR

Complex Name: Big Warrior Creek

County: Wilkes **Complex Number** 0 0 0

Division name: DENR WetLands Restoration Program

Grantor or grantee: Roy Livingston

Mailing Address: ,

Work Phone: H: 336-921-3601

Total Acreage: 0.000

Location/Description:

Transaction: abe Acquisition by Easement

Instrument Type: Conservation Easement

Need PD-1
Liens

Printed: *12/31/2001*