FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2007 SEP 19 04:10 PM
BK:22828 PG:856-869 FEE:$50.00
INSTRUMENT # 2007193596
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STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

MODIFICATION OF CONSERVATION EASEMENT DEED AND RELEASE

SP0 FILE Number 60-40.7
Prepared by: Office of the Attorney General
Property Control Section
Return to: NC Dept. of Administration
State Property Office
1321 MSC, Raleigh, NC 27699-1321

THIS MODIFICATION OF CONSERVATION EASEMENT DEED AND RELEASE, made this 14th day of September, 2007, by and between MARY EWART CATO, unmarried, through her attorney-in-fact, William Ewart Cato, WILLIAM EWART CATO and wife, SHELIA S. CATO, JOHN H. CATO, and wife, LINDA P. CATO, (**"Grantor"**), and the State of North Carolina, (**"Grantee"**), whose mailing address is State of North Carolina State Property Office, 116 West Jones Street, Raleigh, NC 27603-8003. 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:

This deed is intended to modify the previous deed of a conservation easement as recorded in **Deed Book 14665, Pages 660-667** of the Mecklenburg County Registry. Grantor and Grantee (collectively "the Parties") have agreed to modify portions of the land areas that were included in the easement area in such deed, and areas which the parties now agree should not be encumbered by this conservation easement should be released to the Grantor and the conservation easement on all areas which the parties agree should be encumbered will continue to be subject to the conservation easement conveyed to the Grantee. To this end, the State of North Carolina,

through its authorized representatives signing below, quitclaims and releases to the Grantor all property interests in the easement area defined in the easement recorded at **Deed Book 14665, Pages 660-667,** Mecklenburg County Registry, that are not hereafter included within the conservation easement area defined in this document below.

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 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 recognizes that the Ecosystem of Enhancement Program is to provide for the compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing an preserving ecosystem function; 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 5th day of June 2007; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Huntersville Township, Mecklenburg County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land as recorded in **Deed Book 14753, Page 604,** Mecklenburg County Registry, North Carolina; and

WHEREAS, Grantor is willing grant and convey unto Grantee a Conservation Easement on **5.765 acres** of the Property (the "**New Conservation Easement Area**"), thereby restricting and limiting the use of the New Conservation Easement Area 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 Property, referred to hereafter as the New Conservation Easement Area, for the benefit of the people of North Carolina, and being all of the tract of land as identified as Conservation Easement, **5.764 acres** as shown on

a plat of survey entitled "**Conservation Easement Revision for the State of North Carolina - Cato Farm Stream Restoration Project**" dated March 9, 2007, certified by Charles J. Dunbar, NC PLS, L-4159 of PBS&J, recorded in **Map Book 47, Page 927**, Mecklenburg County Registry. The effective date of this conservation easement on the New Conservation Easement Area, a portion of the area described in easement recorded in **Deed Book 14665, Pages 660-667**, Mecklenburg County Registry, North Carolina, shall be January 8, 2003, the date the conservation easement being modified by this document was recorded.

FURTHERMORE, all property interests in the area defined in the easement recorded in **Deed Book 14665, Pages 660-667**, Mecklenburg County Registry, North Carolina that are not included within the New Conservation Easement Area as defined above are hereby quitclaimed and released to the Grantor by the State of North Carolina, through its authorized representatives signing below.

The purposes of this Conservation Easement are to maintain, restore, enhance, and create wetland and/or riparian resources in the New Conservation Easement Area (hereafter referred to as "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

Pursuant to law, including N.C. General Statutes Chapter 121, Article 4, this Conservation Easement shall be perpetual and 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 representative, agents, lessees, and licensees.

II. 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. 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. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

B. 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.

C. Vegetative Cutting. Grantor reserves the right to maintain the vegetative growth within a ten foot wide area adjacent to the fence and running with the fence within the Easement Area. Mowing and the use of herbicides are permitted within the first ten feed inside this fenced area. In all other areas, except as related to the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, 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.

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. All 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, antenna, utility pole, tower or other structure constructed or placed in the Easement Area.

I. Roads and Trails. There shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

J. 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, and signs giving directions or proscribing rules and regulations for the use of the Easement Area may be allowed.

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

L. 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.

M. 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. 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 need for the survival of livestock and agricultural production.

N. Subdivision. Grantor reserves the right to one future subdivision of the Easement Area. Grantor must notify the Grantee in writing of the intent to subdivide at the following address: N.C. Ecosystem Enhancement Program, 1652 Mail Service Center, Raleigh, NC 27699-1652. Otherwise, Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee of the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple or any portion of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee or any portion 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.

O. Development Rights. All development rights are removed from the Easement Area and shall not be transferred.

P. 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.

III. GRANTEE RESERVED USES

A. Ingress, Egress and Inspection. The Grantee, its employees and agents, successors and assigns, receive the perpetual right of unlimited and repeated ingress and egress to the Easement Area over the Property at reasonable times to undertake any activities to restore, manage, maintain, enhance and monitor the wetland and riparian resources of 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.

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 of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, 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 of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be 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, their successors or assigns are 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, their successors or assigns, 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, damage to property or harm to the Property resulting from such causes.

D. Costs of Enforcement. Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their successors or assigns, 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. 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.

C. 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 to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

D. 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.

E. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided 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.

F. 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 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 executed this instrument under seal, as of the day and year first above written.

Mary Ewart Cato by
William E. Cato (SEAL) August 24, 2007 @ 9:00 am
Mary Ewart Cato, by her Attorney-In-Fact, William Ewart Cato

William Ewart Cato (SEAL)
William Ewart Cato

Sheila Sipes Cato by
William Ewart Cato (SEAL)
Sheila Sipes Cato, by her Attorney-In-Fact, William Ewart Cato

John Horace Cato (SEAL)
John Horace Cato

Linda P. Cato by John Cato POA (SEAL)
Linda P. Cato, by her Attorney-In-Fact, John Horace Cato

NORTH CAROLINA

COUNTY OF MECKLENBURG

I, BRIAN BOWMAN, a Notary Public in and for the County and State aforesaid, do hereby certify that William Ewart Cato, as attorney-in-fact for Mary Ewart Cato, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and on behalf of the said Mary Ewart Cato, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed and recorded in Book 10746, page 420 of the Mecklenburg County Register of Deeds.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 24TH day of AUGUST, 2007. AT 9:00 AM

BRIAN S BOWMAN NOTARY PUBLIC MECKLENBURG COUNTY, N.C.

Notary Public

My commission expires:

3/25/09

3/25/09

NORTH CAROLINA

COUNTY OF MECKLENBURG

I, BRIAN BOWMAN, a Notary Public in and for the County and State aforesaid, do hereby certify that William Ewart Cato, 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 27TH day of AUGUST, 2007.

BRIAN S BOWMAN NOTARY PUBLIC MECKLENBURG COUNTY, N.C.

Notary Public

My commission expires:

3/25/09

3/25/09

NORTH CAROLINA

COUNTY OF MECKLENBURG

I, BRIAN BOWMAN, a Notary Public in and for the County and State aforesaid, do hereby certify that William Ewart Cato, as attorney-in-fact for Shelia Sipes Cato, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and on behalf of the said Shelia Sipes Cato, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed and recorded in Book 16674, page 155 of the Mecklenburg County Register of Deeds.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 27TH day of AUGUST, 2007.

BRIAN S. BOWMAN NOTARY PUBLIC MECKLENBURG COUNTY, N.C.

Notary Public

My commission expires:

3/25/09

NORTH CAROLINA

COUNTY OF MECKLENBURG

I, BRIAN BOWMAN, a Notary Public in and for the County and State aforesaid, do hereby certify that John Horace Cato, 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 27TH day of AUGUST, 2007.

BRIAN S. BOWMAN NOTARY PUBLIC MECKLENBURG COUNTY, N.C.

Notary Public

My commission expires:

3/25/09

NORTH CAROLINA

COUNTY OF MECKLENBURG

I, BRIAN BOWMAN, a Notary Public in and for the County and State aforesaid, do hereby certify that John Horace Cato, as attorney-in-fact for Linda P. Cato, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and on behalf of said Linda P. Cato, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed and recorded in Book 13565, page 302 of the Mecklenburg County Register of Deeds.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 27TH day of AUGUST, 2007.

BRIAN BOWMAN NOTARY PUBLIC MECKLENBURG COUNTY, N.C.

Notary Public

My commission expires:

3/25/09

IN TESTIMONY WHEREOF, the State of North Carolina has caused this instrument to be executed in its name by MICHAEL F. EASLEY, Governor, attested by ELAINE R. MARSHALL, Secretary of State, and the Great Seal of the State of North Carolina hereunto affixed, by virture of the power and authority aforesaid, all as of the date set forth in the notary acknowledgment below.

STATE OF NORTH CAROLINA

By: _____
Governor

ATTEST:

By: _____
Secretary of State

APPROVED AT TO FORM:

ROY COOPER
Attorney General

By: _____
Assistant Attorney General

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Jennell Baughman, a Notary Public of Johnston County and State of North Carolina, do hereby certify that ELAINE F. MARSHALL, Secretary of State of North Carolina, personally came before me this day and acknowledged that she is Secretary of State of North Carolina, and that by authority duly given and as the act of the State, the foregoing instrument was signed in its name by MICHAEL F. EASLEY, Governor of the State of North Carolina, sealed with the Great Seal of the State of North Carolina, and attested by herself as Secretary of State of North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the 14th day of September, 2007.

JENNELL BAUGHMAN
Notary Public
Johnston County
State of North Carolina
My Commission Expires Nov 21, 2011

Jennell Baughman
Notary Public
Print Name: Jennell Baughman

My Commission Expires: 11-21-2011