2008007132
MCDOWELL CO, NC FEE $50.00
PRESENTED & RECORDED:
11-18-2008 03:32:44 PM
PATRICIA A. REEL
REGISTER OF DEEDS
BY: CAROLYN I REEL
DEPUTY REGISTER OF DEEDS
BK: CRP 979
PG: 968-980

WHE

**STATE OF NORTH CAROLINA**

**CONSERVATION EASEMENT**

**MCDOWELL COUNTY**
**SPO File Number 059-V**
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 CONSERVATION EASEMENT DEED,** pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 15th day of October, 2008, by **Sherwood Clifton Tate, ~~Rowland Ellis Tate,~~ Carl D. Byrd and Margaret D. Byrd, Co-Trustees of Romulus Jolley Duncan Irrevocable Trust Agreement. Under the Agreement, Carol D. Hendrix and Ronald Eugene Duncan are beneficiaries**, (**"Grantor"**), whose mailing address is **106 Kenwood Drive, Shelby, NC 28150, 520 Oakwood Court, Hendersonville, NC 28739, 109 Random Road, Mocksville, NC 27028, and 766 Bill Shaw Road, Spring Lake, NC 28390,** 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 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

DEB 11/18/08
APPROVED TO RECORD
TAX DEPARTMENT

APPROVED BY WATERSHED ADMINISTRATOR CRA



13/

**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 Enhancement Program is to provide for compensatory mitigation by effective protection of the land, water 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 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 Dysartsville Township, McDowell County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately **180** +/- acres and being conveyed to the Grantor by deed as recorded in **Deed Book 320 at Page 744** of the McDowell County Registry, North Carolina; and

**WHEREAS,** Grantor is willing to grant a Conservation Easement 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 such Conservation Easement. This Conservation Easement shall be for the protection and benefit of the waters of ***South Muddy 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 of the nature and character and to the extent hereinafter set forth, over a described area of the Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, and being all of **Lot #1 containing 2.15 acres** and **Lot #3 containing 0.52 acres** identified on a plat of survey entitled "Conservation Easement for the State of North Carolina" dated November 9, 2007, certified by Kenneth D. Suttles, and **recorded in Plat Book 015, Page 075,** McDowell County Registry. The Easement Area being more particularly described in "Exhibit A" attached and incorporated hereinto:

The purposes of this Conservation Easement are to maintain, restore, enhance, 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 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 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. 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. 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.** 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, Residential and Commercial Uses.** All are prohibited in the Easement Area.

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

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

**G. 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 and 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.

**H. 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 may be allowed.

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

J. **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.

K. **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. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All 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 needed for the survival of livestock and agricultural production.

L. **Subdivision and Conveyance.** 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 for the Easement Area and the rights as 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.

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

N. **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 consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining 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. **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.

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 hereunto set his hand and seal, the day and year first above written.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

# EXHIBIT A

Lying and being in Dysartsville Township, McDowell County, NC; described as being portions of Deed book 320, page 744 and further described as follows:

Tract 1.
Beginning on an existing axle on the Northern side of South Muddy Creek, said axle, having Coordinates of N 695,439.010', E 1,151,229.828', Elevation 1,125.04', and lying N 40-25-09 E - 516.29' from a 10" Spike, a GPS marker, having Coordinates of N 695,046.038', E 1,150,895.079', Elevation 1,129.45', said Axle being the 2nd corner of a boundary line agreement set forth in D.B. 895, pg. 863, and running thence, N 79-51-42 E, crossing South Muddy Creek, 390.00' to an Existing 3/4" iron pipe the beginning corner of said boundary line agreement; thence, two new lines over the lands of Romulus Jolley Duncan and Genevieve Tate Duncan, S 23-15-11 W - 259.50' to a 3/4" iron pipe set, and S48-11-44 W - 318.06' to a 3/4" iron pipe set, a new corner in the agreed line of Duncan and Randolph; thence, with said line agreement and a line common to tract 3 described herein, crossing said Creek, N 6-37-47 W - 384.35' to the beginning. Containing 2.15 Acres.

Tract 3.
Beginning on an existing ¾" iron pipe on the Southern side of South Muddy Creek, said iron pipe being the last and ending corner of a boundary line agreement set forth in D.B. 895, pg. 863, and running thence, with said line agreement and common to tract 3 described herein, N 41-06-42 E – 206.25' to an existing 3/4" iron pipe; thence, N 09-36-42 E – 198.00' to an existing 3/4" iron pipe, thence, N 25-21-42 E – 95.70' to an existing 3/4" iron pipe, thence, N 72-21-42 E – 80.83' to a ¾" iron pipe set, a new corner common to tract 3 described herein; thence, three new lines over the lands of Romulus Jolley Duncan and Genevieve Tate Duncan, S 09-21-02 W – 178.78' to a ¾" iron pipe set, thence, S 41-10-12 W – 227.20' to a ¾" iron pipe set; thence, S 43-26-09 W – 157.20' to the beginning. Containing 0.52 Acres.

Romulus Jolley Duncan joins in this Conservation Easement for the purpose of consenting to the conveyance.

**CRP 979 976**

Romulus Jolley Duncan Irrevocable Trust Agreement

BY: Sherwood Clifton Tate
Sherwood Clifton Tate, Co-Trustee

STATE OF NORTH CAROLINA, COUNTY OF Cleveland
I, a Notary Public of the County and State aforesaid, certify that Sherwood Clifton Tate, Co-Trustee, personally appeared before me this the day and
(a) _____ I have personal knowledge of the identity of the principal(s)
(b) ✓ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a NC Drivers License
(c) _____ a credible witness has sworn to the identity of the principal(s) each acknowledge to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal, this the _____ day of October, 2008.

My Commission Expires:
September 16, 2012

Kimberley Noah Fortenberry
(Signature) Notary Public

Kimberley Noah Fortenberry
(Print name of Notary Public)

KIMBERLEY NOAH FORTENBERRY
NOTARY PUBLIC
CLEVELAND COUNTY
STATE OF NORTH CAROLINA
MY COMMISSION EXPIRES 9/16/2012

CRP 979 977

Romulus Jolley Duncan Irrevocable Trust Agreement

BY: Carl D Byrd
Carl D. Byrd, Co-Trustee

Romulus Jolley Duncan Irrevocable Trust Agreement

BY: Margaret D Byrd
Margaret D. Byrd, Co-Trustee

STATE OF NORTH CAROLINA, COUNTY OF McDowell

I, a Notary Public of the County and State aforesaid, certify that Carl D. Byrd and Margaret D. Byrd, Co-Trustees, personally appeared before me this the day and

(a) _____ I have personal knowledge of the identity of the principal(s)

(b) _____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____

(c) ✓ a credible witness has sworn to the identity of the principal(s) each acknowledge to me that they voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal, this the 3rd day of ~~October~~ Nov., 2008.

FAY B. WRIGHT NOTARY PUBLIC McDOWELL COUNTY, NC

My Commission Expires: 2-8-2009

Fay B Wright
(Signature) Notary Public

Fay B. Wright
(Print name of Notary Public)

**CRP 979 978**

Romulus Jolley Duncan Irrevocable Trust Agreement

BY: Ronald Eugene Duncan

Ronald Eugene Duncan

STATE OF NORTH CAROLINA, COUNTY OF McDowell

I, a Notary Public of the County and State aforesaid, certify that Ronald Eugene Duncan, personally appeared before me this the day and

(a) _____ I have personal knowledge of the identity of the principal(s)

(b) ✓ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a NC Drivers Lis.

(c) _____ a credible witness has sworn to the identity of the principal(s) each acknowledge to me that they voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal, this the 15th day of October, 2008.

AMY L. GREGORY NOTARY PUBLIC McDOWELL COUNTY, NC

My Commission Expires: 04-21-2013

Amy L. Gregory
(Signature) Notary Public

Amy L. Gregory
(Print name of Notary Public)

CRP 979 979

Romulus Jolley Duncan Irrevocable Trust Agreement

BY: Carol D. Hendricks

Carol D. ~~Hendrix~~ Hendricks CDH

STATE OF NORTH CAROLINA, COUNTY OF Davie

I, a Notary Public of the County and State aforesaid, certify that Carol D. Hendrix~~s~~ks personally appeared before me this the day and

(a) ✓ I have personal knowledge of the identity of the principal(s)

(b) _____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____

(c) _____ a credible witness has sworn to the identity of the principal(s) each acknowledge to me that they voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal, this the 15 day of October, 2008.

My Commission Expires: 03-20-2010

Renee' R. Bradshaw
(Signature) Notary Public

RENEE 'L. BRADSHAW
(Print name of Notary Public)

RENEE L. BRADSHAW NOTARY PUBLIC DAVIE COUNTY, N. C.

BY: Romulus Jolley Duncan
Romulus Jolley Duncan

STATE OF NORTH CAROLINA, COUNTY OF McDowell
I, a Notary Public of the County and State aforesaid, certify that Romulus Jolley Duncan, personally appeared before me this the day and
(a) _____ I have personal knowledge of the identity of the principal(s)
(b) _____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____
(c) ✓ a credible witness has sworn to the identity of the principal(s) each acknowledge to me that they voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. Witness my hand and official stamp or seal, this the 17 day of ~~October~~ Nov, 2008.

My Commission Expires: 2-8-2009

Fay B Wright
(Signature) Notary Public

Fay B. Wright
(Print name of Notary Public)

FAY B. WRIGHT NOTARY PUBLIC MCDOWELL COUNTY, NC

Patricia A. Reel
Register of Deeds

# Mcdowell County
# Register of Deeds

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752
Telephone 828-652-4727 • Fax 828-652-1537 • E-Mail preelmcdowell@titlesearcher.com

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Filed For Registration: 11/18/2008 03:32:44 PM

Book: CRP 979 Page: 968-980

Document No.: 2008007132

EASEMENT 13 PGS 50.00

Recorder: CAROLYN I REEL

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State of North Carolina, County of McDowell

Filed for registration and Duly Recorded this 18TH day of NOVEMBER 2008.

PATRICIA A. REEL, REGISTER OF DEEDS

By: Carolyn I. Reel
DEPUTY REGISTER OF DEEDS

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DO NOT REMOVE!

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.