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WARREN COUNTY, NC
ELSIE R. WELDON
REGISTER OF DEEDS

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STATE OF NORTH CAROLINA
COUNTY OF WARREN
SPO File No. 093-AI

Prepared by and return after recording to:
Jason C. Peoples
Tar River Land Conservancy
123 N. Main St.
PO Box 1161
Louisburg, N.C. 27549

CONSERVATION EASEMENT OPTION AGREEMENT
Ecosystem Enhancement Program

THIS OPTION AGREEMENT, hereinafter referred to as Option, made and entered into this 31st **day of March, 2006** by and between **Capps Forestry Enterprises, Inc., a North Carolina Corporation,** hereinafter referred to as the **Seller**, and **Tar River Land Conservancy, Inc., a North Carolina Non-profit Corporation** and its successors and assigns, hereinafter referred to as **TRLC.**

WITNESSETH

In consideration of $10.00 and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and of the agreements contained in this Option, **Seller** hereby grants to **TRLC**, its successors and assigns, the exclusive right and option to receive a **Conservation Easement** over agreed upon portions of that certain parcels of land, located in Warren County, North Carolina, containing approximately **85** acres, more or less. Lands and the rights to be acquired, hereinafter referred to as the **Easement Area,** are described as follows:

> Being a perpetual **Conservation Easement** that will permanently protect portions of Fishing Creek in Warren County as shown in Appendix A. The **Easement Area** begins at the centerline of Fishing Creek and extends outwardly from the top of the bank running approximately 3,080 linear feet along Fishing Creek. This easement area will contain approximately **17.5** acres out of an approximate 85 acre parent tract that is identified as being recorded in Map Book G10, page 15, Map Book G10, page 16, and Deed Book 627, Page 292 of the Warren County Registry.

The following terms, provisions, and conditions are further agreed to:

1. **OPTION PERIOD.** This option shall remain in effect from the date that this Option has been executed by the **Seller** until the 30th **day of March 2007.** This Option shall be exercised upon posting, by certified mail, fax or written notice to the **Seller** at the following address: **PO Box 321, Warrenton, NC 27589.** Exercise shall be deemed timely if such written notice is mailed on or before the date first set forth in this paragraph.

2. **PURCHASE PRICE.** The purchase price for the **Easement Area** shall be **Sixty-Three Thousand Dollars ($63,000)**, or **Three Thousand Six Hundred Dollars Per Acre ($3,600 per acre)** for approximately 17.5 acres. Total acres and purchase price are subject to final survey.

3. **CLOSING.** A closing of the sale of this property under this Option shall be held within **90 days** of the exercise of this Option; provided, however, in the event of objections to title or condition of land at closing, and diligent efforts on **Seller's** part to cure said objections, a closing shall be held within a reasonable time following the removal of said objections.

4. **EVIDENCE OF TITLE.** Upon receipt of this signed Option, **TRLC** will have title to the property examined, and if applicable, obtain a preliminary title insurance commitment on the Property. The title examination and/or commitment must evidence the **Seller's** ability to deliver title at closing as set forth below. All costs necessary to procure the title examination and, if applicable, the title commitment and final title insurance policy to be issued at closing, shall be the responsibility of the **State of North Carolina** (hereinafter the **State**).

5. **TITLE.** At closing, the **Seller** shall convey good, insurable and marketable title to the property together with all rights necessary to protect the **Easement Area** in perpetuity, including legal access, all mineral rights and all development rights, to **TRLC** free and clear of all liens, encumbrances, restrictions, rights, or exceptions unless excepted of record as are acceptable to **TRLC**.

6. **TITLE DEFECTS.** If for any reason the **Seller** cannot deliver title at closing as required by Paragraph 5 of this Option, **TRLC** may elect to a) accept the **Easement Area** with title as is; b) refuse to accept the Property; or c) allow the **Seller** additional time to pursue reasonable efforts to correct the problem, including bringing any necessary quiet title actions or other lawsuits.

7. **SUBJECT TO SURVEY.** It is understood and intended that the final **Easement Area** under this option is subject to final survey as agreed and approved by the **EEP** with these costs paid by the **State.**

8. **DOCUMENTS FOR CLOSING.** The **Seller** shall execute and deliver at closing a **Conservation Easement**, any owner's affidavits or documents required by a title insurance company to remove the standard title policy exceptions, and any other documents necessary to close in accordance with the terms of this Option. These documents will be prepared at the expense of the **State**.

9. **PROPERTY TAXES.** Any delinquent real estate taxes and all levied assessments are the **Seller**'s responsibility and should be satisfied of record by the **Seller** at or before closing. Any deferred taxes on the **Easement Area**, which become due as a result of this conveyance, shall be the responsibility of the **Seller**. Real estate taxes for the year in which the transaction is closed shall be the responsibility of the **Seller** and not prorated, as **TRLC** is not receiving fee simple title.

10. **MISCELLANEOUS CLOSING EXPENSES.** The **Seller** will pay any documentary stamp tax, real estate transfer fee or any similar charge due upon conveyance of title to **TRLC**. The **State** will pay recording fees.

11. **POSSESSION.** Unless otherwise agreed in writing, the **Seller** will deliver possession of the **Easement Area** to **TRLC** at closing subject to no leases, mortgages, liens or other reserved rights, and in the condition set forth below in Paragraph 12.

12. **CONDITION OF PROPERTY/ RISK OF LOSS.** The **Seller** shall not transfer or encumber any interests in the **Easement Area** prior to closing. The **Seller** shall keep the **Easement Area** in its current condition until closing and shall prevent and refrain from any use of the **Easement Area**, for any purpose or in any manner that would diminish its value or adversely affect **TRLC's** intended use of the **Easement Area**.

    In the event of any adverse change in the condition of the **Easement Area**, whether said change is caused by **Seller** or by forces beyond **Seller's** control, **TRLC** may elect to a) refuse to accept the **Easement Area**; or b) accept the **Easement Area**, or a portion thereof, in which case there may be an equitable adjustment of the purchase price based on a change in circumstances. In the event of any adverse change in the condition of the **Easement Area** is caused by Seller, **TRLC** may require restoration of the **Easement Area** to its condition at the time this Option was granted. Seller cannot restore changes in the condition of the **Easement Area** caused by an Act of God or any other force beyond **Seller's** control.

13. **RIGHT OF ENTRY AND INSPECTION.** **TRLC** and its agents shall have the right to enter upon the Property at reasonable times for surveying, engineering, conducting environmental inspections and assessments to detect hazardous or toxic substances, and other reasonable purposes related to this transaction. Based upon the results of the environmental inspections and assessments, or upon other conditions revealed to be unsuitable to the **TRLC**, **TRLC** may elect to refuse to accept the **Easement Area**.

14. **REMEDIES.** In addition to any other remedy specifically set forth in this Option, **TRLC** has the right to enforce the provisions of this Option through an action for specific performance, injunctive relief, damages, contribution or any other available proceedings in law or equity. The election of any one remedy available under this Option shall not constitute a waiver of any other available remedies.

15. **BINDING EFFECT.** This Option becomes effective when signed by the **Seller** and shall then apply to and bind the **Seller** and **Seller's** heirs, executors, administrators, successors, and assigns.

16. **COMPLETE AGREEMENT.** This Option constitutes the sole and complete agreement between the parties and cannot be changed except by written agreement. The **Ecosystem Enhancement Program** promotes the preservation, restoration and enhancement of streams and/or wetlands. Any representations, contracts or agreements created by or for the **Ecosystem Enhancement Program** are exclusive of this option unless specifically incorporated herein by exhibit.

17. **NO WAIVER.** No provision of the Option shall be deemed amended or waived unless such amendment or waiver is set forth in a writing signed by **TRLC**. No act or failure to act by **TRLC** shall be deemed a waiver of its rights hereunder, and no waiver in any one circumstance or of any one provision shall be deemed a waiver in other circumstances or of other provisions.

18. **ASSIGNMENT OF OPTION. TRLC** has the right to assign this Option. In the event of such assignment, the assignee will have all the rights, powers, privileges and duties held by **TRLC** pursuant to this Option.

19. **ASSIGNMENT OF CONSERVATION EASEMENT. TRLC** will assign the **State** the **Conservation Easement** at the time of closing. **TRLC** will retain the right to steward and enforce the **Conservation Easement.**

20. **TAX-DEFERRED EXCHANGE.** In the event **TRLC** or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the property, **TRLC** and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and **TRLC** shall execute such additional documents at no cost to the non-exchanging party, as shall be required to give effect to this provision.

IN TESTIMONY THEREOF, the parties have hereunto set their hands and seals, or if corporate have caused this instrument to be executed in their corporate names by their duly authorized representatives as of the dates indicated below.

Seller: Capps Forestry Enterprises, Inc

By: _____
Name: Lester D. Capps
Its: President

By: _____
Name: Robin W. Capps
Its: Secretary

STATE OF NORTH CAROLINA
COUNTY OF Warren

I, JO ANNE C. YORK, a Notary Public of WARREN County and State aforesaid, certify that Lester D. Capps, personally appeared before me this day, and (I have personal knowledge of the identity of the principal(s)) (I have seen satisfactory evidence of the principal's identity by a current state or federal identification with the principle's photograph in the form of a _____) (a credible witness has sworn to the identity of the principal(s)), and acknowledged that he is President of Capps Forestry Enterprises, Inc., a North Carolina Corporation, and that by authority duly given and as an act of the Corporation, acknowledged the voluntary execution of the foregoing instrument for the purpose stated therein and in the capacity indicated.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 29 day of March, 2006.

JO ANNE C. YORK NOTARY PUBLIC WARREN COUNTY, N.C.

Jo Anne C. York
JO ANNE C. YORK, Notary Public
Typed/Printed Name

My Commission Expires: 4-24-2006

STATE OF NORTH CAROLINA
COUNTY OF Warren

I, JO ANNE C. YORK, a Notary Public of WARREN County and State aforesaid, certify that Robin W. Capps, personally appeared before me this day, and (I have personal knowledge of the identity of the principal(s)) (I have seen satisfactory evidence of the principal's identity by a current state or federal identification with the principle's photograph in the form of a _____) (a credible witness has sworn to the identity of the principal(s)), and acknowledged that he is Secretary of Capps Forestry Enterprises, Inc., a North Carolina Corporation, and that by authority duly given and as an act of the Corporation, acknowledged the voluntary execution of the foregoing instrument for the purpose stated therein and in the capacity indicated.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 29 day of March, 2006.

JO ANNE C. YORK NOTARY PUBLIC WARREN COUNTY, N.C.

Jo Anne C. York
JO ANNE C. YORK, Notary Public
Typed/Printed Name

My Commission Expires: 4-24-2006

Tar River Land Conservancy, Inc.

By: Jason C. Peoples
Jason C. Peoples
Assistant Secretary &
Executive Director

STATE OF NORTH CAROLINA
COUNTY OF Warren

I, Mitchell G. Styers, a Notary Public of Franklin County, North Carolina do hereby certify that **Jason C. Peoples**, personally known to me, personally appeared before me this day and acknowledged that he is the Assistant Secretary and Executive Director of the Tar River Land Conservancy, Inc., a North Carolina non-profit corporation, and that by authority duly given and as an act of the corporation acknowledged the execution of the foregoing Instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 31 day of March, 2006.

Mitchell G. Styers, Notary Public
Typed/Printed Name

My Commission Expires: 2-22-2008

MITCHELL G. STYERS
NOTARY
PUBLIC
FRANKLIN COUNTY, NC

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS. It is a Map created by the Tar River Land Conservancy to document the approximate location of the EEP Conservation Easement ("EEP Buffer").