FILED
WARREN COUNTY, NC
ELSIE R. WELDON
REGISTER OF DEEDS

FILED	Sep 13, 2005
AT	04:17:31 pm
BOOK	00805
START PAGE	0795
END PAGE	0803
INSTRUMENT #	03907

STATE OF NORTH CAROLINA
COUNTY OF WARREN
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

93-V

CONSERVATION EASEMENT OPTION AGREEMENT
Ecosystem Enhancement Program

THIS OPTION AGREEMENT, hereinafter referred to as Option, made and entered into this 10 **day of** Sept, **2005** by and between **Matt R. Johnston, William R. Johnston, Margaret H. Johnston, Elizabeth J. Witt, and Gerald L. Witt,** hereinafter referred to as the **Seller**, and **Tar River Land Conservancy**, and its successors and assigns, hereinafter referred to as the **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 **61.34** 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 Reedy Creek in Warren County as shown in Appendix A. The **Easement Area** begins at the centerline of Reedy Creek and extends outwardly from the top of the bank running approximately 7,441 linear feet along Reedy Creek and 1,770 linear feet of both banks of Reedy Creek, along with the related tributaries. This easement area will contain approximately **61.34** acres out of an approximate 1,330 acre parent tract(s) that are identified as Warren County Parcel ID Numbers 2994-85-6343.000 & 3904-29-1491.000, and being in Map Book J8, page 16 & 20, 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 9th **day of** September **2006.** This Option shall be exercised upon posting, by certified mail, fax or written notice to the **Seller** at the following address: **P.O. Box 356, Littleton, NC 27850.** 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 total purchase price for the **Easement Area** shall be **Two Hundred Twenty Thousand, Eight Hundred Twenty Four ($220,824)**, or **Three Thousand Six Hundred Dollars Per Acre ($3,600 per acre)** for approximately 61.34 acres. Total acres 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:

By: Matt R Johnston
Matt R. Johnston

By: William R. Johnston
William R. Johnston

By: Margaret H. Johnston
Margaret H. Johnston

By: Elizabeth J Witt
Elizabeth J. Witt

By: Gerald L. Witt
Gerald L. Witt

STATE OF NORTH CAROLINA
COUNTY OF Warren

I, Suzanne P. Pearce, a Notary Public in and for the County and State aforesaid, do hereby certify that **Matt R. Johnston**, Seller, 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 9th day of August, 2005.

Suzanne P. Pearce
Notary Public

My commission expires:

9-14-07

STATE OF NORTH CAROLINA
COUNTY OF Halifax

I, Stephen Freeman, a Notary Public in and for the County and State aforesaid, do hereby certify that **William R. Johnston**, Seller, 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 16th day of September, 2005.

Stephen Freeman
Notary Public

My commission expires:

3-5-07

STEPHEN FREEMAN
NOTARY PUBLIC
HALIFAX COUNTY, N.C.
My Commission Expires 3/5/07

STATE OF NORTH CAROLINA
COUNTY OF Nash

I, Barbara W. Phillips, a Notary Public in and for the County and State aforesaid, do hereby certify that **Margaret H. Johnston**, Seller, 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 9th day of September, 2005.

Barbara W. Phillips
Notary Public

BARBARA W. PHILLIPS
NOTARY PUBLIC
NASH COUNTY, NC

My commission expires:

April 24, 2006

STATE OF VIRGINIA

COUNTY OF VA Beach

I, ~~Elizabeth J~~ WENDI L S. Butler, a Notary Public in and for the County and State aforesaid, do hereby certify that **Elizabeth J. Witt**, Seller, 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 15th day of AUGUST, 2005.

Wendi L S Butler
Notary Public

My commission expires:
June 30, 2008

WENDI L. S. BUTLER NOTARY PUBLIC STATE OF VIRGINIA

STATE OF VIRGINIA

COUNTY OF VA Beach

I, WENDI L S. Butler, a Notary Public in and for the County and State aforesaid, do hereby certify that **Gerald L. Witt**, Seller, 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 15th day of August, 2005.

Wendi L S Butler
Notary Public

My commission expires:
June 30, 2008

WENDI L. S. BUTLER NOTARY PUBLIC STATE OF VIRGINIA

Tar River Land Conservancy

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

STATE OF NORTH CAROLINA
COUNTY OF Franklin

I, Cynthia W. Satterfield, a Notary Public of said County and State, do hereby certify that **Jason C. Peoples**, as Assistant Secretary and Executive Director of the Tar River Land Conservancy, acting for the organization, 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 13th day of September, 2005.

Cynthia W Satterfield
Notary Public

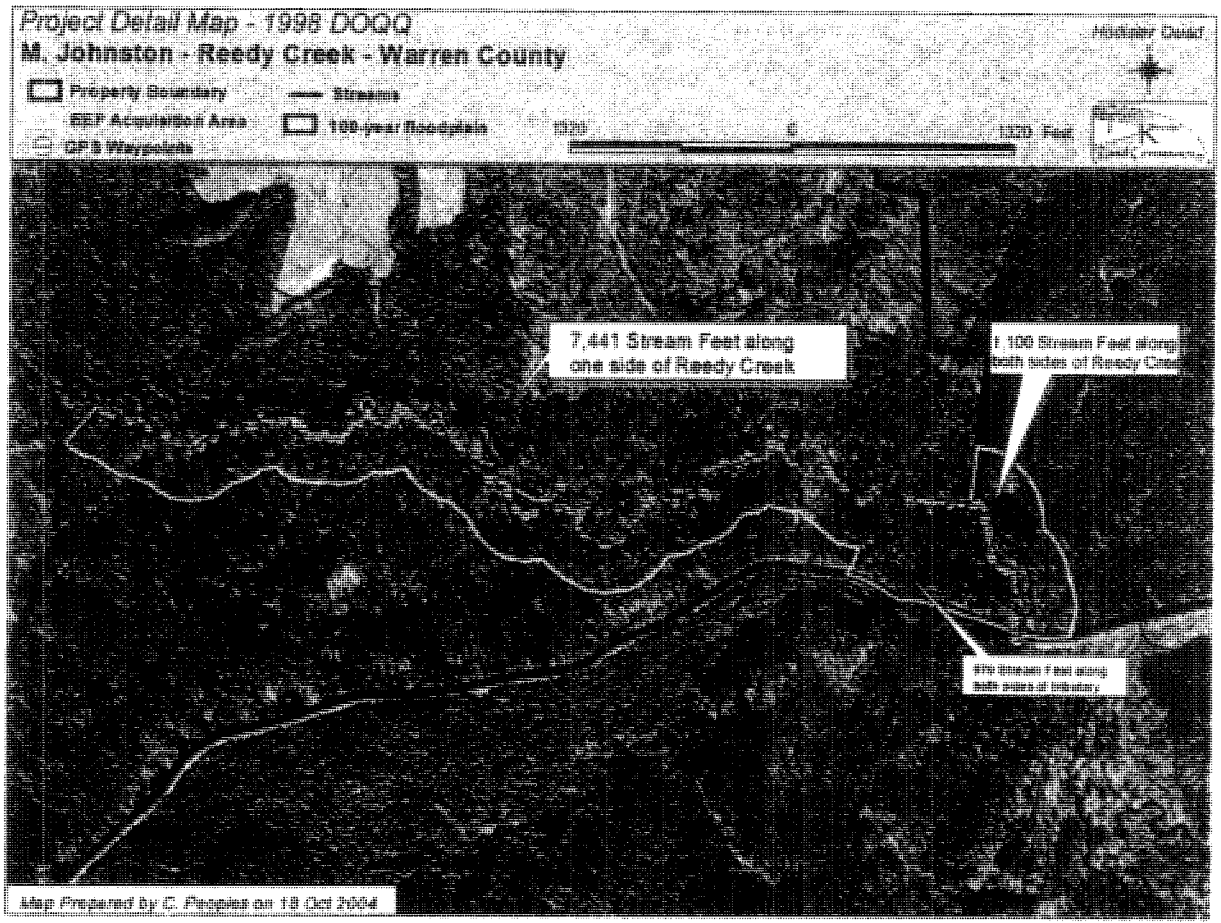
CYNTHIA W. SATTERFIELD NOTARY PUBLIC FRANKLIN COUNTY, NC

My commission expires:

August 8, 2009

NORTH CAROLINA - WARREN COUNTY
The foregoing certificate(s) of
SUZANNE P PEARCE
STEPHEN FREEMAN
Notary Public is (are) certified to be correct.
Duly registered this date and hour shown
on the first page hereof.
ELSIE R. WELDON
Register of Deeds
By Susan D Pippen
Deputy Register of Deeds

NORTH CAROLINA - WARREN COUNTY
The foregoing certificate(s) of
BARBARA W PHILLIPS
WENDI L S BUTLER
Notary Public is (are) certified to be correct.
Duly registered this date and hour shown
on the first page hereof.
ELSIE R. WELDON
Register of Deeds
By Susan D Pippen
Deputy Register of Deeds

NORTH CAROLINA - WARREN COUNTY
The foregoing certificate(s) of
CYNTHIA W SATTERFIELD
Notary Public is (are) certified to be correct.
Duly registered this date and hour shown
on the first page hereof.
ELSIE R. WELDON
Register of Deeds
By Susan D Pippen
Deputy Register of Deeds

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").