FILED
GRANVILLE COUNTY
12/29/2004 12:19 PM
KATHRYN CREWS AVERETT
Register Of Deeds

Prepared by and mail to:
Jeffrey A. Fisher, Esq.
The Tar River Land Conservancy
PO Box 1161
123 Main St.
Louisburg, NC 27549

State of North Carolina
County of Granville

ASSIGNMENT OF CONSERVATION EASEMENT

THIS ASSIGNMENT is made on the 29th day of December, 2004, by and between **TAR RIVER LAND CONSERVANCY** to the **STATE OF NORTH CAROLINA**, (the "**STATE**" or "**ASSIGNEE**") acting by and through the **NORTH CAROLINA ECOSYSTEM ENHANCEMENT PROGRAM ("EEP")**

WITNESSETH:

WHEREAS, EEP has agreed to provide funding to **TAR RIVER LAND CONSERVANCY** for the purchase of a Conservation Easement over real property situated along Shelton Creek and the main stem of the Tar River within the Upper Tar River Basin, and

WHEREAS, pursuant to the funding, the **TAR RIVER LAND CONSERVANCY** has, on the 29th day of December, 2004, acquired Conservation Easements, over the property of **RANDALL W. GUTHRIE and BARBARA LEE GUTHRIE**, which easements are recorded in Deed Book 1066, Page 26, Granville County Registry, and

WHEREAS, in furtherance of the terms and conditions of the Grant Agreement, the **TAR RIVER LAND CONSERVANCY** desires to assign its right, title, and interest in the Conservation Easement to the **STATE**, and the **STATE** has agreed to this Assignment.

NOW, THEREFORE, in consideration of funding paid by **EEP** to the **TAR RIVER LAND CONSERVANCY**; the mutual benefits accruing to the **STATE**, the **TAR RIVER LAND CONSERVANCY**, and the public from the Conservation Easement herein referenced and assigned, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the **TAR RIVER LAND CONSERVANCY** conveys and assigns to the **STATE**, acting by and through the **EEP**, all the rights, title, easement, privilege and interest (and subject to all conditions contained therein), in those Conservation Easements conveyed to the **TAR RIVER LAND CONSERVANCY** by **RANDALL W. GUTHRIE and wife, BARBARA LEE GUTHRIE** dated the 29th day of December, 2004, and recorded in Deed Book _____, Page, _____, Granville County.

The **TAR RIVER LAND CONSERVANCY** hereby expressly reserves from this Assignment the rights to make "Educational Visits" found in found in Section III A, and the nonexclusive rights initially acquired by the Conservation Easement to inspect monitor, enforce and maintain the Conservation Easement found in Sections III and IV, and to access the property for such purposes as described in the easement.

TO HAVE AND TO HOLD the said right, privilege and easement herein granted and assigned to the **STATE**, its successors and assigns in perpetuity.

AND the **ASSIGNOR** covenants that it is properly vested with the Conservation Easement; has the right to assign the same to the **ASSIGNEE**; that the Easement is free from encumbrances except as may be expressly excepted to by the terms and conditions of the Conservation Easement; and that the **ASSIGNOR** will warrant and defend title to the same against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the **TAR RIVER LAND CONSERVANCY**, has executed the foregoing in its corporate name, under seal, signed by the **BOARD PRESIDENT** with proper authorization by **TAR RIVER LAND CONSERVANCY**, the date and year first above written.

TAR RIVER LAND CONSERVANCY

By: _____ (SEAL)
Ernest B. Averett, III
Board President
Tar River Land Conservancy

ATTEST

By: _____
Jeffrey A. Fisher
Executive Director/Assistant Secretary
Tar River Land Conservancy

NORTH CAROLINA
GRANVILLE COUNTY

I, Nancy J. Davis, a Notary Public in and for the County and State aforesaid, do hereby certify that Ernest B Averett III personally appeared before me this day and acknowledged that he is the Board President of the Tar River Land Conservancy, a North Carolina Non-Profit Corporation, and that by the authority duly given as an act of the corporation, the foregoing instrument was signed in its name by its Board President and attested by Jeffrey A. Fisher, its Executive Director and Assistant Secretary.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 29th day of December, 2004.

_____
Notary Public

My commission expires: 11/16/08

NANCY J. DAVIS NOTARY PUBLIC GRANVILLE COUNTY, N.C.

STATE OF NORTH CAROLINA, GRANVILLE COUNTY.
The foregoing certificate of Nancy J. Davis, a Notary Public is certified to be correct. This instrument was presented for registration and filed in this office in Book 1066, Page 36. This 29 day of December 2004, at 12:19 o'clock P. M.
Kathryn Crews Averett, Register of Deeds By _____ Deputy/Assistant ✓

GRANVILLE COUNTY 7 12/29/2004

$885.00

STATE OF NORTH CAROLINA

Real Estate Excise Tax

FILED
GRANVILLE COUNTY
12/29/2004 12:19 PM
KATHRYN CREWS AVERETT
Register Of Deeds

STATE OF NORTH CAROLINA

GRANVILLE COUNTY

Prepared by and return to:
Jeffrey A. Fisher, Esq.
The Tar River Land Conservancy
123 N. Main St.
PO Box 1161
Louisburg, NC 27549

DEED OF CONSERVATION EASEMENT

This Conservation Easement Deed, made this 29th day of December, 2004, by Randall W. Guthrie, and wife, Barbara Lee Guthrie, ("**Grantor**"), to the Tar River Land Conservancy, ("**Grantee**"), whose mailing address is 123 N. Main St., P.O. Box 1161, Louisburg, N.C. 27549. 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

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, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8, two of the components of the Ecosystem Enhancement 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 Tally Ho Township, Granville County, North Carolina (the "**Protected Property**"), and being more particularly described as that certain parcel of land containing approximately 110.49 acres and being conveyed to the Grantor by deed as recorded in **Deed Book 623 at Page 371** of the Granville County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Protected Property, thereby restricting and limiting the use of the included areas of the Protected Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such easement, and then transfer the Conservation Easement to the State. This Conservation Easement shall be for the protection and benefit of the waters of the Upper Tar River and Shelton Creek, and its associated tributaries.

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 Protected Property, more particularly described in Exhibit A, attached hereto and incorporated herein, which consists of approximately **110.49 acres**, more or less, located in Tally Ho Township, Granville County, North Carolina.

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 (herein "Conservation Values"); 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. 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. 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.

B. **Educational Uses.** The Grantor reserves the right 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 diseased or damaged trees and vegetation that obstructs, destabilizes or renders unsafe the Easement Area, 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. Grantor also reserves the right to reconstruct the historic "cabin" within the "cabin site" both identified on the survey plat and in the Guthrie Baseline Document, a copy of which is on file with the State Property Office and the Grantee. No water or utilities will be extended to the cabin site, and the footprint of the cabin will not exceed 550 square feet.

G. **Roads and Trails.** There shall be no construction of roads, trails, walkways, or asphalt or concrete paving in the Easement Area, with the exception of primitive footpaths limited to single file pedestrian traffic. Usage of motorized vehicles in the Easement Area is

prohibited, except along existing roads and paths identified on the survey plat. Grantor agrees to maintain all roads and paths in a condition that, to the greatest extent possible, protects water quality. Grantor retains the right to maintain and reconstruct, using best management practices to protect water quality and prevent sedimentation, the bridge across Shelton Creek that is identified on the survey plat. Grantor will abandon the use of the stream crossing adjacent to the bridge. The Grantee reserves the right to restore the stream crossing to its natural condition.

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 Protected 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 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, any activity by the Grantor diverting, causing, allowing or permitting the diversion of surface or underground water into, within or out of the Easement Area is not allowed. 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 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. No further subdivision, partitioning, or dividing of the Easement Area is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future division of the remaining fee simple rights shall be subject to this Conservation Easement

M. 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.

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 is prohibited.

III. GRANTEE RESERVED USES

The Grantee, authorized representatives of the Grantee and their successors or assigns 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, in accordance with a long-term management plan. 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.

A. Limited Access for Public Appreciation of Conservation Values.

In addition to the right of ingress and egress to comply with the long term management plan described in this Section, and right to inspect described in Section IV B, the Grantee shall also have the right to enter the Property twice a year to study and appreciate the Conservation Values of the Property (herein "Educational Visit"). On said visits, Grantee may be accompanied by no more than 20 people. Grantee must request permission to make an Educational Visit over two weeks in advance, and permission will not unreasonably be withheld. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any additional 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 Grantee and the Ecosystem Enhancement Program, whose mailing address is 1619 Mail Services Center, Raleigh, NC 27699-1619.

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, Grantor's their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor 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 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 Grantor's 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, Grantor's 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, unless Grantor is found not to have violated the terms of this Conservation Easement, in which case each party to this agreement will cover the costs it incurs.

E. No Waiver. Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

V. MISCELLANEOUS

A. This Conservation Easement shall be construed to promote the purposes of N.C. Gen Stat. § 143-214.8 et seq., the Ecosystem Enhancement 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.

E. 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.

F. This Conservation Easement may be amended, but only in a 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.

G. 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 the State of North Carolina, or 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 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 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.

GRANTOR:

Randall W. Guthrie (Seal)
By: Randall W. Guthrie

Barbara Lee Guthrie (Seal)
By: Barbara Lee Guthrie

GRANTEE:

TAR RIVER LAND CONSERVANCY,
a North Carolina Non-profit Corporation

(Seal)
By: Ernest B. Averett III
President

Attest:

(Seal)
By: Jeffrey A Fisher, Esq.
Assistant Secretary

STATE OF NORTH CAROLINA

GRANVILLE COUNTY

I, Nancy J. Davis, a Notary Public of Granville County, North Carolina, do hereby certify that **Randall W. Guthrie and wife, Barbara Lee Guthrie** personally appeared before me and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 29th day of December, 2004.

Notary Public

My Commission Expires: 1/26/08

NANCY J. DAVIS NOTARY PUBLIC GRANVILLE COUNTY, N.C.

STATE OF NORTH CAROLINA

GRANVILLE COUNTY

I, Nancy J. Davis, a Notary Public of Granville County, North Carolina do hereby certify that **Jeffrey A. Fisher** personally appeared before me this day and acknowledged that he is the Assistant Secretary of the Tar River Land Conservancy, a non-profit corporation, and that by authority duly given and as an act of the corporation the foregoing Instrument was signed in its name by its President, **Ernest B. Averett III**, ~~sealed with its corporate seal~~ and attested by his/herself as its Assistant Secretary.

WITNESS my hand and notarial seal, this the 29th day of December, 2004.

NANCY J. DAVIS NOTARY PUBLIC GRANVILLE COUNTY, N.

Nancy J. Davis
Notary Public

My Commission Expires: 11/16/08

STATE OF NORTH CAROLINA

GRANVILLE COUNTY

The Foregoing (or annexed) Certificate(s) of Nancy J. Davis, Notary Public is Certified to be correct.
This instrument was filed for Registration on the Day and Hour in the Book and Page shown in the First page hereof.

_____
, Register of Deeds

EXHIBIT A

A certain tract or parcel of land situate west of S.R. #1150, Gooch's Mill Road, in Tally Ho Township, Granville County, North Carolina, and more particularly described as follows:

Being all of **Easement B,** containing **17.71 acres**, as shown on survey and plat entitled "Surveyed for Tar River Land Conservancy – Current Owners: Randall W. Guthrie and Barbara Lee Guthrie", prepared by Herbert P. Morton, Jr., R.L.S., dated December 1, 2004, and recorded in **Plat Book 31, Page 39,** and all of **Easement B,** containing **92.78 acres,** as shown on survey and plat entitled "Surveyed for Tar River Land Conservancy – Current Owners: Randall W. Guthrie and Barbara Lee Guthrie", prepared by Herbert P. Morton, Jr., R.L.S., dated December 1, 2004, recorded in **Plat Book 31, Page 40,** Granville County Registry.

For further reference, see Book 623, Page 371, Granville County Registry. (04-176)

STATE OF NORTH CAROLINA, GRANVILLE COUNTY.
The foregoing certificate of Nancy J. Davis, a Notary Public is certified to be correct. This instrument was presented for registration and filed in this office in Book 1066, Page 26. This 29 day of December 2004, at 12:19 o'clock P. M.
Kathryn Crews Averett Register of Deeds By _____ Deputy/Assistant ✓