2005001285

FILED
MAY 17 2005
SECRETARY OF STATE

FOR REGISTRATION REGISTER OF DEEDS
ELIZABETH T COOPER
BURKE COUNTY, NC
2005 JAN 27 01:40:48 PM
BK:1431 PG:840-847 FEE:$32.00
NC REV STAMP:$6,129.00
INSTRUMENT # 2005001285

| | |
|---|---|
| | S-Tracts 2105.01, 2105.02 and 2079 |
| Excise Tax $ 6,129.00 | Recording Time, Book and Page |

Tax Lot No.: 16720, 16722, 33462 and 33484 Parcel Identifier No. _____
Verified by _____ County on the _____ day of _____, 2005
by _____
Mail after recording to Crescent Resources, LLC, Attn: S. Higginson, P.O Box 1003, Charlotte, NC 28201-1003
This instrument was prepared by Parker, Poe, Adams & Bernstein L.L.P., Three Wachovia Center, Suite 3000, 401 South Tryon Street, Charlotte, NC 28202 (BMM)
Brief Description For The Index:

1,425.3 Acres, Upper Creek and Linville Townships, Burke County, NC

# NORTH CAROLINA SPECIAL WARRANTY DEED

**THIS DEED** made this 25th day of January, 2005, by and between:

| GRANTOR | GRANTEE |
|---|---|
| **CRESCENT RESOURCES, LLC,**<br>a Georgia limited liability company | **STATE OF NORTH CAROLINA**<br>c/o State Property Office<br>1321 Mail Service Center<br>Raleigh, NC 27699-1321 |

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation 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**, that Grantor, for a valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto Grantee in fee simple, all that certain lot or parcel of land described in **Exhibit A** attached hereto ("**Property**").

The Property is conveyed subject to the easement(s), conditions and restrictions set forth on **Exhibit A** attached hereto.

The conveyance is made subject to the covenants and restrictions set forth on **Exhibit B** and on **Exhibit C** attached hereto and incorporated herein by reference.

**TO HAVE AND TO HOLD** the Property and all privileges and appurtenances thereto belonging to Grantee in fee simple.

And Grantor covenants with Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated.

Title to the Property is subject to the following exceptions:

(1) flood easements in favor of Duke Energy Corporation (formerly known as Duke Power Company) and riparian rights of others, including, but not limited to, the flood easement to flood to the 1210 foot contour line and all other reservations, restrictions and conditions contained in that deed recorded in Deed Book 351, Page 229;

(2) transmission line and retail electric line rights-of-way, if any, reserved by or granted to Duke Energy Corporation (formerly known as Duke Power Company);

(3) ad valorem taxes for the year 2005 and subsequent years;

(4) "rollback" or other deferred ad valorem property taxes;

(5) matters affecting title to the Property as shown on the Plat or which would be shown on a current and accurate survey of the Property (including any encroachments);

(6) easements, covenants, restrictions and conditions of record, and rights-of-way of public and private streets and roads;

(7) easements, restrictions and rights-of-way as may be apparent from an inspection of the Property;

(8) zoning, subdivision, land use and other laws, regulations or ordinances applicable to the Property; and

(9) the reservations and restrictions set forth herein.

**IN WITNESS WHEREOF**, Grantor has executed this deed as of the day and year first above written.

**CRESCENT RESOURCES, LLC,**
a Georgia limited liability company

By: _____
James M. Short, Jr.
Senior Vice President

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, a Notary Public of Lincoln County and State of North Carolina, do hereby certify that James M. Short, Jr., personally came before me this day and acknowledged that he is Senior Vice President of **CRESCENT RESOURCES, LLC**, a Georgia limited liability company, and that he, as Senior Vice President, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

Witness my hand and notarial seal, this the 25th day of January, 2005.

_____
Notary Public

My Commission Expires: 3/27/2006

[NOTARIAL STAMP-SEAL]

SUSAN HIGGINSON
NOTARY
***
PUBLIC
LINCOLN COUNTY, N.C.

## EXHIBIT A

All references to recording information shall refer to documents that were recorded in the Office of the Register of Deeds for the county in which the Property is located.

A total of 1,425.3 acres in Upper Creek Township and Linville Township, Burke County, North Carolina, consisting of the following: (i) the tract of land designated as "AREA = 58.47 ACRES" on plat recorded in Plat Book 27, Pages 91, 93 and 95 ("**Plat 1**"); (ii) the tract of land designated as "AREA = 662.29 ACRES" on Plat 1; and (iii) the tract of land designated as "AREA = 704.54 ACRES" on plat recorded in Plat Book 27, Pages 87 and 89 (**"Plat 2"**); **AND BEING** all or a portion of the land conveyed to CLT Development Corp. (1/100th) by Crescent Resources, Inc. (presently known as Crescent Resources, LLC) recorded in Deed Book 832, Page 1124; by deed to Carolina Centers, LLC from Crescent Resources, Inc. (presently known as Crescent Resources, LLC) and CLT Development Corp. recorded in Deed Book 832, Page 1126; rights and interests conveyed by Timber Deed recorded in Deed Book 839, Page 1041; and by deed to Crescent Resources, LLC, from Carolina Centers, LLC, recorded in Deed Book 1431, Page 835.

Plat 1 and Plat 2 are collectively referred to herein as the "**Plat**."

## EXHIBIT B

## GENERAL DEED RESTRICTIONS

THE PROPERTY SHALL BE CONVEYED SUBJECT TO THE FOLLOWING RESTRICTIONS, WHICH SHALL ENCUMBER THE PROPERTY AND SHALL RUN WITH TITLE TO THE PROPERTY.

1. **Definition of "Property".** As used herein, the word **"Property"** shall mean all of the property conveyed by Grantor to Grantee pursuant to this deed; provided that if the conveyed property consists of more than one subdivided parcel of land, or if the property conveyed is ever subdivided into more than one parcel, then the defined term "Property" shall mean each parcel of land containing all or a portion of the property conveyed hereby and the restrictions set forth herein shall apply to each such subdivided parcel.

2. **Dedication of Property as a State Nature Preserve.** Within twelve (12) months after the date of this Deed, the owner of the Property shall either: (i) dedicate the Property as a State Nature Preserve pursuant to Section 113A-164.6 of the North Carolina General Statutes or Section 113A-164.8 of the North Carolina General Statutes, as applicable; or (ii) convey the Property to the United States Forest Service (**"USFS"**). Upon any such conveyance to the USFS, these General Deed Restrictions hall be null and void and of no further force or effect.

3. **No Claims.** No claim or cause of action shall be made against Grantor or its affiliates arising out of the exercise, or non-exercise, or enforcement, or failure to enforce, or the amendment, release or grant of variance with respect to any covenant, condition, restriction, easement or other right reserved hereunder or referred to herein.

4. **No Delay.** No delay or failure on the part of Grantor to invoke an available remedy with respect to a violation of any restriction contained herein shall be held to be a waiver by Grantor of any right available to it upon the recurrence or continuance of said violation or the occurrence of a different violation.

5. **Rights of Enforcement.** The covenants, conditions and restrictions set forth herein shall run with the title to the Property and shall benefit Grantor. If the Property owner, its heirs, successors, tenants, or assigns shall violate or attempt to violate any of the covenants, conditions or restrictions contained herein, Grantor may enforce the covenants, conditions and restrictions set forth herein by any remedy available at law or in equity, either to prevent or remediate such violation, or recover damages for such violation, or both. Grantor shall have the right to enter the Property in order to monitor or enforce compliance with the terms hereof. The party bringing such action shall be entitled to recover its reasonable attorney's fees and expenses incurred in such proceedings from the person or entity violating or attempting to violate the same. Nothing herein shall be held to impose any restriction on any other land owned by Grantor, its subsidiaries or affiliates.

## EXHIBIT C

## DECLARATIONS AND RESTRICTIONS

For the purposes of this **Exhibit C**, the term **"Declarations"** and the term **"Restrictions"** shall refer only to the declarations and restrictions set forth on this **Exhibit C**. The State of North Carolina has received funding from the N.C. Ecosystem Enhancement Program for acquisition of the Property as conveyed and described in this deed. In consideration of this funding, the N.C. Ecosystem Enhancement Program has required that these Declarations and Restrictions be inserted in this deed, and the State sets aside, declares, reserves and recognizes, for all related State Agencies, and for the benefit of the people of the State, a perpetual riparian buffer, hereinafter identified as the ("**Restricted Area**"). The Restricted Area extends outwardly 300' (Three Hundred Feet) from east side of the top of bank of Linville River, including all associated stream channels, creeks, rivers and all other identified tributaries. The Restricted Area also applies to any and all identified or defined wetlands on the Property. The Restricted Area as defined is subject to the restrictions as recited below and will be forever conserved and managed in a manner that will improve and protect the quality of the waters of the Linville River, and otherwise promote the public purposes authorized under the provisions of N.C. General Statute § 143-214.8.

The purposes of these Restrictions are to maintain, restore, enhance, create and preserve wetland and/or riparian resources within the Restricted 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 Restricted Area in its natural condition, consistent with these purposes; and to prevent any use of the Restricted Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

## RESERVED USES AND RESTRICTED ACTIVITIES

**A.** **Motorized Vehicles.** Usage of motorized vehicles in the Restricted Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads for the purposes recited above.

**B.** **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 Restricted Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Restricted Area is prohibited.

**C.** **Industrial, Agricultural, Residential and Commercial Uses.** All are prohibited in the Restricted Area.

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

**E.** **Roads and Trails.** There shall be no new construction of roads, trails, walkways, or paving in the Restricted Area. Existing roads or trails located in the Restricted Area may be maintained 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 Restricted Area. Existing roads, trails or paths may be maintained with loose gravel, soil, or permanent vegetation to stabilize or cover the surfaces.

F. **Signs.** No signs shall be permitted in the Restricted Area except interpretive signs describing restoration activities and the conservation values of the Restricted Area, signs identifying the owner of the Property, signs giving directions, or signs prescribing rules and regulations for the use of the Restricted Area may be allowed.

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

H. **Grading, Mineral Use, Excavation, Dredging.** Unless related to approved restoration activities, there shall be no grading, filling, excavation, dredging, mining, or drilling within the Restricted Area.

I. **Water Quality and Drainage Patterns.** Unless related to approved restoration activities, 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 in the Restricted Area. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. Any 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 Restricted Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

J. **Subdivision and Conveyance.** No further subdivision, partitioning, or dividing of the Restricted Area is allowed.

K. **Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural features of the Restricted Area or any intentional introduction of non-native plants, trees and/or animal species is prohibited.

L. **Restoration Activities Are Permitted.** Includes but not limited to 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 according to a restoration plan as provided, contracted, or managed by the N.C. Ecosystem Enhancement Program.

M. **Permission.** Permission to vary from the above restrictions may be granted by the N.C. Ecosystem Enhancement Program for good cause shown, provided that any such request is consistent with the purposes of these Restrictions. Permission and approval to vary must be obtained in writing from the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

N. **Enforcement.** The right of enforcement of these Restrictions is hereby granted to and vested entirely with the N.C. Ecosystem Enhancement Program, its successors and assigns. The Grantor is not reserving any right of enforcement in these Declarations or Restrictions or any other right, title or interest in the Property not set forth herein.

ELIZABETH T COOPER
REGISTER OF DEEDS, BURKE
JUDICIAL BUILDING
201 SOUTH GREEN STREET
MORGANTON, NC 28655

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|---|---|
| Filed For Registration: | 01/27/2005 01:40:48 PM |
| Book: | RE 1431 Page: 840-847 |
| Document No.: | 2005001285 |
| | DEED 8 PGS $32.00 |
| NC REAL ESTATE EXCISE TAX: | $6,129.00 |
| Recorder: | WCHURCH |

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State of North Carolina, County of Burke

The foregoing certificate of SUSAN HIGGINSON Notary is certified to be correct. This 27TH of January 2005

ELIZABETH T COOPER , REGISTER OF DEEDS

By: Wanda Church

Deputy/~~Assistant~~ Register of Deeds

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