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Book 2980, p. 581

Johnston County, North Carolina
CRAIG OLIVE, Register of Deeds
The following certificate(s) of
MARY B NICHOLS
Notary/notaries public is/are certified to be correct
Peggy W. Ingram
Deputy - Assistant - Register of Deeds

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT DEED

JOHNSTON COUNTY

Prepared by and return to: William P. Aycock II, Esquire
Schell Bray Aycock Abel & Livingston P.L.L.C.
P. O. Box 21847
Greensboro, North Carolina 27420

THIS CONSERVATION EASEMENT DEED, made this 21st day of September, 2005, by and between **RESTORATION SYSTEMS, LLC, a North Carolina limited liability company,** Grantor, and the **STATE OF NORTH CAROLINA,** whose mailing address is c/o The State Property Office, 1321 Mail Service Center, Raleigh, North Carolina 27699-1321, Grantee. 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 within the Department of Environment and Natural Resources for the purposes of funding, acquiring, maintaining, restoring, enhancing, and creating 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 Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District have entered into a Memorandum of Agreement, (MOA) duly executed by all parties on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Clayton Township, Johnston County, North Carolina (the **"Grantor's Property"**), and being more particularly described in **Deed Book** 2980 **at Page** 575, of the Johnston County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Grantor's Property, thereby restricting and limiting the use of the included and described areas of the Grantor's Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to

accept such easement. This Conservation Easement shall be for the protection and benefit of the waters of White Oak Creek, certain of its tributaries and associated wetlands.

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 Grantor's Property, referred to hereafter as the "**Easement Area**," for the perpetual protection of the Easement Area, and being more particularly described as follows:

SEE EXHIBIT 'A' ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

Grantor and Grantee acknowledge the restoration, enhancement, creation, and preservation of the Easement Area is a condition of any funding as provided by the Ecosystem Enhancement Program. Grantor and Grantee further agree that third-party rights of access, monitoring, enforcement and completion of any Easement Area encumbered by this Conservation Easement shall be held by the Ecosystem Enhancement Program (to include any successor State agencies), and that these rights are in addition to, and do not limit, the rights of enforcement under this Conservation Easement.

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

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 ACTIVITIES

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. Usage of motorized vehicles in the Easement Area is prohibited.

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 Easement Area 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.

G. **Roads and Trails.** There shall be no construction of roads, trails, walkways, or asphalt or concrete paving in the Easement Area.

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 Grantor's 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.
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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.

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 Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

The Grantor, authorized representatives of the Grantor 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 Grantor's 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. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

III. 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 Easement Area; 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 Grantor's 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 Easement Area 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.

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.

IV. 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 Grantor's 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 Grantor's 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 Easement Area 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 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.

V. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Grantor's 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 caused this Deed of Conservation Easement to be duly executed, the day and year first above written.

RESTORATION SYSTEMS, LLC

By: _____

Name: George A Howard

Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Mary B. Nichols, a Notary Public, do hereby certify that George A. Howard, a Manager of RESTORATION SYSTEMS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution and sealing of the foregoing instrument as Manager on behalf of and as the act of the company referred to in this acknowledgment.

WITNESS my hand and official seal this the 16 day of September, 2005.

Notary Public

My commission expires:

June 26, 2010

MARY B. NICHOLS NOTARY PUBLIC MY COMMISSION EXPIRES JUNE 26 2010

EXHIBIT "A"

BEGINNING at an existing iron pin in the north line of Lot 3 of Whispering Pines Subdivision (Plat Book 33, Page 399), which iron pin is located at the southeast corner of Tract 3 and the southwest corner of Tract 2 as shown on Plat Book 62, Page 265, Johnston County Registry; thence from said beginning point with the southern line of Tracts 3 and 4 of Plat Book 62, Page 265, and the northern line of Whispering Pines Subdivision, the following six (6) calls: South 72° 51' 26" West 755.11 feet to an existing iron pipe; South 72° 49' 34" West 300.30 feet to an existing iron pipe; South 72° 47' 04" West 370.50 feet to an existing iron pipe, the southeast corner of Tract 4, Plat Book 62, Page 265; South 72° 48' 53" West 1063.48 feet to an existing iron pipe; South 72° 45' 29" West 450.36 feet to an existing iron pipe, the westernmost corner of Lot 18 of Whispering Pines Subdivision; with Adams' north line (see Deed Book 2863, Page 147), South 72° 42' 55" West 626.45 feet to an existing iron stake near the bank of White Oak Creek; thence South 72° 47' 50" West 7.79 feet to a non-monumented corner in the centerline of White Oak Creek; thence with White Oak Creek, the following thirteen (13) calls: North 01° 55' 45" West 215.53 feet to a non-monumented corner; North 12° 53' 46" West 175.29 feet to a non-monumented corner; North 00° 54' 47" East 142.45 feet to a non-monumented corner; North 22° 46' 08" West 75.09 feet to a non-monumented corner; North 03° 49' 03" East 100.73 feet to a non-monumented corner; North 40° 02' 49" East 210.87 feet to a non-monumented corner; North 21° 09' 22" West 117.79 feet to a non-monumented corner; North 48° 24' 37" West 55.26 feet to a non-monumented corner; North 17° 52' 47" East 98.62 feet to a non-monumented corner; North 18° 43' 38" West 50.78 feet to a non-monumented corner; North 23° 11' 18" East 102.60 feet to a non-monumented corner; North 38° 43' 09" East 199.82 feet to a non-monumented corner; North 02° 03' 26" East 54.53 feet to a non-monumented corner; thence North 73° 30' 49" East 5.77 feet to an existing iron pipe near the bank of White Oak Creek; thence North 73° 30' 49" East 462.20 feet to an existing iron pipe, the northwest corner of Lot 2, Plat Book 62, Page 265; thence South 16° 19' 08" East 221.13 feet to an iron pin set (Point "A"); thence South 71° 55' 52" West 50.02 feet to an iron pin set; thence South 71° 55' 52" West 175.44 feet to an iron pin set; thence South 13° 28' 26" East 285.83 feet to an iron stake set; thence continuing South 13° 28' 26" East 207.69 feet to an iron stake set; thence South 16° 51' 04" East 227.95 feet to an iron stake set; thence North 85° 13' 46" East 329.75 feet to an iron stake set; thence North 78° 34' 51" East 463.52 feet to an iron stake set; thence North 73° 22'03" East 521.19 feet to an iron stake set; thence continuing North 73° 22' 03" East 50.00 feet to an iron stake set; thence continuing North 73° 22' 03" East 96.42 feet to an iron stake set; thence South 22° 09' 44" East 97.46 feet to an iron stake set; thence North 64° 11' 04" East 42.38 feet to an iron stake set; thence North 06° 53' 10" West 83.77 feet to an iron stake set; thence South 86° 07' 49" East 305.90 feet to an iron stake set; thence North 74° 34' 59" East 351.63 feet to an iron stake set; thence North 57° 43' 14" East 478.70 feet to an iron stake set; thence North 61° 14' 15" East 79.44 feet to an iron stake set; thence North 35° 09' 04" East 47.14 feet to an iron stake set; thence continuing North 35° 09' 04" East 39.81 feet to an iron stake set; thence North 68° 01' 58" East 162.92 feet to an iron stake set; thence North 73° 40' 51" East 153.09 feet to an existing iron pipe, Sanders' (now or formerly) northwest corner (See Deed Book 714, Page 434); thence with Sanders' line, South 08° 44' 08" West 376.26 feet to an existing iron pipe, Sanders' southwest corner in Story's line; thence South 72° 29' 32" West 133.36 feet to the point and place of Beginning, and containing 36.76± acres and as more particularly shown on a map for Restoration Systems, LLC, "Big Bull Buffer Site," prepared by K2 Design Group, P.A. dated July 25, 2005 (DWG. NO.: RSS529MR05).

TOGETHER WITH:

1. Easement No. 1. A non-exclusive right of ingress, egress and regress over a 50-foot wide access easement running from Government Road (60-foot right-of-way) in a westwardly direction 4,363 feet and as more particularly shown on a Plat Book 62, Page 265, Johnston County Registry; and

2. Easement No. 2. A new 50-foot easement for ingress, egress and regress and utilities connected to the western terminus of Easement No. 1 described in Paragraph 1 above and running in a northwesterly direction and more particularly described as follows: BEGINNING at Point "A" as

identified in the description of the property above; thence from said Beginning Point, South 71° 55' 52" West 50.02 feet to an iron pin set; thence South 16° 19' 08" East 182.83 feet to an iron pin set; thence North 73° 39' 09" East 50.00 feet to an existing iron pipe in the western terminus of Easement No. 1 described above; thence with the western terminus of Easement No. 1, North 16° 19' 08" West 50.00 feet to an existing iron pipe, the southwest corner of Lot 3 as shown on Plat Book 62, Page 265; thence with the western line of said Lot 3, North 16° 19' 08" West 134.33 feet to the point and place of Beginning, and containing .21± acres and more particularly shown on the survey for Restoration Systems, LLC, "Big Bull Buffer Site," more particularly described above.