FILED
CABARRUS COUNTY NC
LINDA F. McABEE
REGISTER OF DEEDS

FILED	May 26, 2010
AT	09:30 am
BOOK	09168
START PAGE	0270
END PAGE	0278
INSTRUMENT #	11144
EXCISE TAX	$0.00

STATE OF NORTH CAROLINA
DECLARATION OF PERMANENT
COVENANTS AND RESTRICTIONS

CABARRUS COUNTY
SPO File Number 13-J, 13-16.1, EEP Parcel ID 1044
Prepared by and return to
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS DECLARATION OF COVENANTS AND RESTRICTIONS, made this ___ day of _____, 2010, by the State of North Carolina, whose address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. This declaration of covenants and restrictions is meant to be binding on the owner, their heirs, successors and assigns.

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 an preserving wetland an riparian resources that contribute to the protection an improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, the Ecosystem Enhancement Program in the North Carolina Department of Environment and Natural Resources ("EEP") has approved the acceptance of this instrument; and

WHEREAS, the State of North Carolina has received funding from EEP for the acquisition of the Property conveyed and described in the attached General Warranty Deed ("the Property") recorded in Deed Book 5770 at Page 253 of the Cabarrus County Registry.

9/38

WITNESSETH

In consideration of the funding provided by EEP for the acquisition of the Property and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the following Permanent Covenants and Restrictions are hereby placed upon the Property in perpetuity.

The State hereby sets aside, declares, reserves and recognizes a perpetual protected area, hereinafter identified as the (**"Restricted Area"**). The Restricted Area extends over the entire parcel with exception of a sewer easement conveyed in Deed Book 6217 at Page 186 and a gas line easement conveyed in Deed Book 8851 at Page 272 of the Cabarrus County Registry. 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 Indian Run and UT to Coddle Creek, and otherwise promote the public purposes authorized under the provisions of N.C. General Statute § 143-214.8 and pursuant to the mitigation requirements associated with section 404 of the Clean Water Act (33 U.S.C. 1344).

The purposes of these Covenants and 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 restrictions are permanently placed upon the Property:

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 with loose gravel, soil, or permanent vegetation in order to minimize runoff, prevent 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.

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.

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. There shall be 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.

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, successors or assigns.

M. 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.

N. Notice. The owner of the Property shall notify the U.S. Army Corps of Engineers in

writing sixty (60) days prior to the initiation of any amendment or change to these Covenants and Restrictions or any transfer of all or any part of the Property. Such notification shall be addressed to : Justin McCorkle, General Counsel, US Army Corps of Engineers, 69 Darlington Avenue, Wilmington, NC 28403.

IN TESTIMONY WHEREOF, the State of North Carolina has caused this instrument to be executed in its name by BEVERLY E. PERDUE, Governor, attested by ELAINE F. MARSHALL, Secretary of State, and the Great Seal of the State of North Carolina hereunto affixed, by virtue of the power and authority aforesaid, all as of the date set forth in the notary acknowledgment below.

STATE OF NORTH CAROLINA

By: _____
Governor

ATTEST:

By: _____
Secretary of State

APPROVED AS TO FORM:

ROY COOPER
Attorney General

By: _____
Assistant Attorney General

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Jennell Baughman, a Notary Public of Johnston County and State of North Carolina, do hereby certify that ELAINE F. MARSHALL, Secretary of State of North Carolina, personally came before me this day and acknowledged that she is Secretary of State of North Carolina, and that by authority duly given and as the act of the State, the foregoing instrument was signed in its name by BEVERLY E. PERDUE, Governor of the State of North Carolina, sealed with the Great Seal of the State of North Carolina, and attested by herself as Secretary of State of North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal, this the 18th day of May, ~~2009.~~ 2010.

JENNELL BAUGHMAN
Notary Public
Johnston County
State of North Carolina
My Commission Expires Nov 21, 2011

Jennell Baughman
Notary Public
Print Name: Jennell Baughman

My Commission Expires: 11-21-2011

"Attachment"

FILED
SEP 16 2005
SECRETARY OF STATE

CABARRUS COUNTY
FILED
01/26/2005 3:49 PM
LINDA F. MCABEE
Register Of Deeds
By. KA Deputy/Asst.
EXCISE TAX $222.00

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: $222.00

Parcel Identifier No. 010060038.000000 Verified by _____ County on the ____ day of _____, 20__
By: _____

Mail/Box to: Dana C. Hall, P.O. Box 36957, Charlotte, NC 28236

This instrument was prepared by: Dana C. Hall

Brief description for the Index: 7.922 acres

THIS DEED made this 26 day of January, 2005, by and between

GRANTOR	GRANTEE
EDWARD F. KIRGAN and wife, VICKY L. KIRGAN	STATE OF NORTH CAROLINA c/o State Property Office 1321 Mail Service Center Raleigh, NC 27699-1321 (File 013-J)

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 the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of _____, No. 1 Township, Cabarrus County, North Carolina and more particularly described as follows:

See Exhibit "A" attached hereto and made part hereof.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 578 page 272.

A map showing the above described property is recorded in Plat Book _____ page _____.

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TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions: taxes for the current and subsequent years and enforceable easements and restrictions of record.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

_____ (Entity Name)

By: _____
Title: _____

By: _____
Title: _____

By: _____
Title: _____

USE BLACK INK ONLY

Edward F Kirgan (SEAL)
EDWARD F. KIRGAN

Vicky L. Kirgan (SEAL)
VICKY L. KIRGAN

_____ (SEAL)

_____ (SEAL)

SEAL STAMP

USE BLACK INK ONLY

State of North Carolina - County of Cabarrus

I, the undersigned Notary Public of the County and State aforesaid, certify that Edward F. Kirgan and Vicky L. Kirgan personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 26 day of January, 20 05

My Commission Expires: 1-21-2008

Dana C Hall
Notary Public

OFFICIAL SEAL
Notary Public, North Carolina
County of Cabarrus
DANA C. HALL
My Commission Expires January 21, 2008

SEAL STAMP

USE BLACK INK ONLY

State of North Carolina - County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that _he is the _____ of _____, a North Carolina or _____ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of each entity, _he signed the forgoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal this _____ day of _____, 20__.

My Commission Expires: _____

Notary Public

SEAL STAMP

USE BLACK INK ONLY

State of North Carolina - County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____

Witness my hand and Notarial stamp or seal this _____ day of _____, 20__.

My Commission Expires: _____

Notary Public

NORTH CAROLINA – CABARRUS COUNTY

The foregoing (or annexed) certificate(s) of Dana C. Hall, a notary public, is (are) certified to be correct. This the 26 day of Jan, 20 05.

LINDA F. McABEE, REGISTER OF DEEDS

by: D. Williamson Asst./Deputy

Lying and being in Number 1 Township, Cabarrus County, North Carolina and being part of deed book 578 page 272, Cabarrus County Register of Deeds, and more particularly described as follows:

Beginning at NCGS monument "Jackson", having North Carolina grid coordinates of N: 591,218.6633, E: 1,524,060.5728 (NAD 1983 (86)). Thence, S 00°19'01" E 8587.56' (ground dist, 8586.18' grid distance, combined grid factor 0.999839661) to a point in the centerline of Rocky River Road (S.R. 1139), a common corner with Choann K. Hoyle (deed book 578 page 274 Cabarrus County Register of Deeds), in the center of a 100' A.T. & T. right of way. **The True Point and Place of Beginning.**

Thence with the line of Hoyle N 36°28'39" E, passing a set #5 rebar at a distance of 39.02' and at 1152.11', in all a total distance of 1281.64' to a set #5 rebar a common corner of Hoyle in the line of Roy D. Mills Trustee (deed book 2362 page 21 Cabarrus County Register of Deeds), said point being S 06°56'25" E 230.52' from an existing #5 rebar, witnessed by an 1 ½" pipe.

Thence two calls with the line of Mills:

1. S 06°56'25" E 75.32' to an existing #3 rebar.
2. S 77°23'52" E 49.21' to set #5 rebar a common corner with Tract 1 in the line of Mills.

Thence with the common line of tracts 1 and 2 nine (9) calls as follows:

1. S 24°13'36" W 419.52' to a set #5 rebar.
2. S 07°33'26" W 185.04' to a set #5 rebar.
3. S 39°22'34" W 140.23' to a set #5 rebar.
4. S 49°06'46" W 198.60' to a set #5 rebar.
5. S 28°05'18" W 205.74' to a set #5 rebar.
6. S 12°27'44" W 327.86' to a set #5 rebar.
7. S 34°14'19" W 92.55' to a set #5 rebar.

8. S 58°14'22" W 76.14' to an existing rebar with N.C.D.O.T. Cap.
9. S 81°08'49" W, passing a point on the right of way of Rocky River Road at a distance of 25.00', in all a total distance of 48.35' to a point in the centerline of Rocky River Road.

Thence with the centerline of Rocky River Road two (2) calls as follows:

1. N 08°51'11" W 299.11 to a point.
2. N 01°35'14" W 189.53' to a point, the **Point and Place of Beginning**, containing 7.922 acres including the existing right of way for Rocky River Road, as shown on a plat entitled "Boundary survey of Kirgan Property" by Concord Engineering and Surveying, Inc. dated 12/09/04, CESI Job no. 041111.001, and recorded in map book 45, page 93 of the Cabarrus County Register of Deeds.