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WAYNE COUNTY, NC
JUDY HARRISON REGISTER OF DEEDS
BK 3222 PG 286-295

Indexed

RECORDED AND VERIFIED
JUDY HARRISON
REGISTER OF DEEDS

10 pgs - 26.00

Prepared by and return to:
Robert H. Merritt, Jr.
Bailey & Dixon, LLP
P. O. Box 1351
Raleigh, NC 27602

STATE OF NORTH CAROLINA

COUNTY OF WAYNE

SPO File Number 096az
IMS Site ID# 92224

AMENDMENT OF CONSERVATION EASEMENT PROVIDED PURSUANT TO FULL DELIVERY MITIGATION CONTRACT

THIS AMENDMENT OF CONSERVATION EASEMENT AND RIGHT OF ACCESS (this "Amendment") made this 23rd day of October, 2015, by and between ELEANOR M. BALLANCE (a widow), whose mailing address is 562 Benton Pond Road, Fremont, NC 27830, (**Grantor**") and the STATE OF NORTH CAROLINA whose mailing address is Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321, ("**Grantee**"). The designations Grantor and Grantee as used herein (collectively, the "Parties") shall include said Parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

W I T N E S S E T H:

WHEREAS, this Amendment is intended to modify that certain Conservation Easement (the "Conservation Easement") as set forth in the Permanent Conservation

Easement Deed recorded in Deed Book 2383, Page 249, Wayne County Registry (the "**Original Conservation Easement Deed**") and as shown on Plat recorded in Plat Book M, Pages 59J and 60A, Wayne County Registry (the "**Original Conservation Easement Plat**"). To the degree they are not identified herein, capitalized terms shall have the same meaning set forth in the Original Conservation Easement Deed.

WHEREAS, Grantor is the successor-in-interest to the grantor in the Original Conservation Easement Deed, and owns in fee simple, that certain real property situated, lying, and being in Wayne County, North Carolina, containing approximately 18.01 acres and identified as PIN # 3624240033, which real property was conveyed to the Grantor by deed recorded in Deed Book 1094, Page 669, Wayne County Registry, North Carolina and by Article I(C)(2) of the Last Will and Testament of Willard Joseph Ballance probated with the Clerk of Court, Wayne County, North Carolina, Case # 13-E-669 (the "**Property**"); and

WHEREAS, pursuant to the Original Conservation Easement Deed, Grantor conveyed the Conservation Easement to Grantee, which Conservation Easement encompassed all of Tract D as shown on the Original Conservation Easement Plat and was more fully described by metes and bounds description in Exhibit 1 to the Original Conservation Easement Deed; and

WHEREAS, in addition to conveyance of the Conservation Easement as specifically described therein, Grantor, pursuant to the Original Conservation Easement Deed, reserved the right of access for ingress, egress and regress over two (2) portions of the Conservation Easement, which access easements are described in Item 3 of Exhibit 1

of the Original Conservation Easement Deed and on the Original Conservation Easement Plat (the "Old Access Easements"); and

WHEREAS, Grantor and Grantee have agreed to relocate the Old Access Easements traversing the Conservation Easement by releasing and removing the Old Access Easements and relocating them to another location within the Conservation Easement; and

WHEREAS, the Old Access Easements to be released and removed are both identified as the "Access Easements Released" on **Exhibit A**, attached hereto and incorporated herein by reference; and

WHEREAS, the portions of the Property that were formerly subject to the Old Access Easements shall be incorporated into the underlying Conservation Easement covering Tract D as shown on the Original Conservation Easement Plat; and

WHEREAS, in lieu of the Old Access Easements two (2) new non-exclusive access easements (the "New Access Easements") shall be granted to Grantor which New Access Easements are described on **Exhibit B** and are shown by the designation of "New Access Easement (non-exclusive)" traversing Tract D on a plat entitled "Conservation Easement Survey Release and Modification for State of North Carolina - Ecosystem Enhancement Program on the Property of 'The Ballance Site,'" dated June 16, 2015 prepared by Marshall Wight, PLS and recorded in Plat Book O, Pages 41G & 41H, Wayne County Registry (the "New Plat"); and

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et. seq., the State of North Carolina has established the Division of Mitigation Services (formerly known as the Ecosystem Enhancement Program and the Wetlands Restoration Program)

(as defined in N.C. Gen. Stat. 143-214.8) within the Department of Administration for the purposes of 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 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 Division of Mitigation Services in the Department of Administration has approved acceptance of this instrument; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United State Army Corps of Engineers, Wilmington District entered into a Memorandum of Agreement (MOA), duly executed in Greensboro, NC on July 22, 2003. This MOA recognizes that the Division of Mitigation Services (formerly 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 function; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina has been 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 5th day of June 2011; and

WHEREAS, Grantor and Grantee agree to allow the perpetual Conservation Easement to remain in place with the relocation of the access easements to the locations identified for the New Access Easements and for the area beneath the Old Access

Easements to remain and constitute part of the permanent Conservation Easement, all for the protection and benefit of the waters of The Nahunta Swamp, Wayne County, North Carolina;

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the sufficiency of which are hereby acknowledged, the Parties do hereby agree to the following:

1. Recitals. The recitals as set forth in this Amendment are hereby incorporated herein.
2. Release of Old Access Easements. Grantee, through the signature of its authorized representative below, does hereby remise, release, terminate and forever quitclaim unto Grantor, their heirs, successors and assigns any and all rights of access, ingress and egress over and upon the two (2) access easements denoted herein as the Old Access Easements and being more particularly described in Exhibit A, attached hereto and incorporated herein by reference. It is understood and agreed by the Parties that this release extends only to the access easements and the rights of access afforded by the Old Access Easements and no release or quitclaim is hereby given or intended with respect to the underlying Conservation Easement, which Conservation Easement was provided by Grantor to Grantee pursuant to the Original Conservation Easement Deed recorded at Book 2383, Page 249, Wayne County Registry.
3. Grant of New Access Easements. Grantee hereby grants and conveys unto Grantor, its successors and assigns, two (2) new permanent, non-exclusive and perpetual easements for ingress, egress and regress over and upon the

Conservation Easement denoted as the New Access Easements, which New Access Easements are more particularly described on Exhibit B, attached hereto and incorporated herein by reference, and are shown on the New Plat as the New Access Easement (non-exclusive) traversing the northern portion of Tract D and extending from the middle of Tract D to the southwest corner of Tract D on said New Plat.

4. Continuation of Conservation Easement. For purposes of clarity regarding the continuation of the permanent Conservation Easement as modified and amended herein, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a permanent Conservation Easement of the nature and character as that set forth in the Original Conservation Easement Deed, over the area previously covered by the Old Access Easement described on Exhibit A, the metes and bounds description of which are set forth on Exhibit A, which area is and shall continue to be a part of the perpetual Conservation Easement conveyed to Grantee pursuant to the Original Conservation Easement Deed recorded at Book 2383, Page 249, Wayne County Registry, and this Amendment.

5. The effective date of this Amendment shall relate back to the Effective Date of the Original Conservation Easement, December 20, 2005.

6. Except to the extent expressly modified by this Amendment, all other terms and conditions of the Original Conservation Easement as set forth in the Original Conservation Easement Deed are hereby ratified and affirmed and shall remain in full force and effect.

TO HAVE AND TO HOLD the said rights and easements to the Parties so designated herein as their interests appear, and to their respective heirs, successors and assigns forever, it being agreed that said rights and easements hereby granted shall be permanent, appurtenant to, and run with the land as modified herein.

IN TESTIMONY WHEREOF, Grantor has hereunto set Grantor's hand and seals and the State of North Carolina, as Grantee, has caused this instrument to be executed in its name by Speros Fleggas, of the Department of Administration, by virtue of the power and authority duly given as of the date first above written.

STATE OF NORTH CAROLINA

By: Speros Fleggas
Speros Fleggas,
Department of Administration

GRANTOR:

Eleanor M. Ballance (SEAL)
Eleanor M. Ballance

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Marion B. Patrick, a Notary Public, certify that Speros Fleggas, of the Department of Administration for the State of North Carolina, personally appeared before me this day and acknowledged that by authority duly given and as the act of the State, the foregoing instrument was signed in his name as the act and deed of the State of North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this 23rd day of October, 2015.

Marion B. Patrick
Notary Public

My Commission Expires: August 10, 2019

MARION B. PATRICK
NOTARY
PUBLIC
WAKE COUNTY, N.C.

STATE OF NORTH CAROLINA
COUNTY OF Lenoir

I, Lea A Zorbaugh, the undersigned Notary Public, certify that Eleanor M. Ballance, a widow personally appeared before me this day, and acknowledged to me that he voluntarily signed the foregoing document.

Witness my hand and Notarial stamp or seal this the 25 day of March, 2016.

Lea A Zorbaugh
Notary Public

Lea A. Zorbaugh
Typed or Printed Name of Notary

LEA A. ZORBAUGH NOTARY PUBLIC LENOIR COUNTY, NC

My Commission Expires: 3-21-17

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EXHIBIT A

Tract D – Access Easements Released

Access Easement over a portion of land now owned by Eleanor Ballance, a widow (PIN: 3624240033) located in Nahunta Township, Wayne County, North Carolina and being Tract D as shown on map entitled "Conservation Easement Survey Release and Modification for State of North Carolina, Ecosystem Enhancement Program on the Property of "The Ballance Site," dated June 16, 2015, prepared by Marshall Wight, PLS and recorded in Plat Book O, Pages, 41G & 41H of the Wayne County Registry and being more particularly described as follows:

(A) Commencing at an iron bar and cap with NC Grid Coordinates of X=2,322, 317.59, Y=643, 866.02 and identified as Control Point #3 on the above referenced plat and running N80°44'01" W 387.93 feet to an iron bar, which bar is the POINT AND PLACE OF BEGINNING; thence continuing the following courses and distances:

S23°11'14"E 21.81, thence
N89°40'54"W 118.77, thence
N10°02'22"W 20.33, thence
S89°40'54"E 113.72 to the POINT AND PLACE OF BEGINNING, containing 0.05 acres, more or less.

(B) Commencing at an iron bar and cap with NC Grid Coordinates of X=2,322, 317.59, Y=643, 866.02 and identified as Control Point #3 on the above referenced plat and running S66°02'40" W 363.68 feet to an iron bar, which bar is the POINT AND PLACE OF BEGINNING; thence continuing the following courses and distances:

S33°32'23"W 94.25; thence
S10°02'22"E 267.84; thence
S12°40'49"W 86.77; thence
S84°15'00"W 7.70; thence
N67°15'30"W 12.90; thence
N12°40'49"E 82.93; thence
N10°02'22"W 271.82; thence
N33°32'23"E 86.00; thence
N84°26'49"E 25.77 to the POINT AND PLACE OF BEGINNING

EXHIBIT B

Tract D – New Access Easements Granted

Access Easement over a portion of land now owned by Eleanor Ballance, a widow (PIN: 3624240033) located in Nahunta Township, Wayne County, North Carolina and being Tract D as shown on map entitled "Conservation Easement Survey Release and Modification for State of North Carolina, Ecosystem Enhancement Program on the Property of "The Ballance Site," dated June 16, 2015, prepared by Marshall Wight, PLS and recorded in Plat Book ____0____, Pages, ___41 G & 41 H___ of the Wayne County Registry and being more particularly described as follows:

(A) Commencing at an iron bar and cap with NC Grid Coordinates of X=2,322, 317.59, Y=643, 866.02 and identified as Control Point #3 on the above referenced plat and running N80°44'01" W 387.93 feet to an iron bar, which bar is the POINT AND PLACE OF BEGINNING; thence continuing the following courses and distances:

N67°45'49"W 132.21, thence
N10°02'22"W 14.83, thence
N34°28'15"W 11.13, thence
S78°31'29"E 24.10, thence
S67°42'26"E 139.44, thence
S52°46'42"W 26.72 to the POINT AND PLACE OF BEGINNING

(B) Commencing at an iron bar and cap with NC Grid Coordinates of X=2,322, 317.59, Y=643, 866.02 and identified as Control Point #3 on the above referenced plat and running S66°02'40" W 363.68 feet to an iron bar, which bar is the POINT AND PLACE OF BEGINNING; thence continuing the following courses and distances:

N84°26'49"E 11.29, thence
S15°05'45"E 325.94, thence
S49°53'39"W 135.61, thence
S32°56'00"W 30.96, thence
S84°15'00"W 7.70, thence
N67°15'30"W 12.90, thence
N01°52'43"W 39.87, thence
N55°54'30"E 137.14, thence
N14°25'58"W 314.96, thence
N85°16'23"E 10.29 to the POINT AND PLACE OF BEGINNING.