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Kathy M. Adcock Reg of Deeds
BK 1438 PG 302-312

PREPARED BY AND RETURN TO:
Ashley L. Warner
PO Drawer 1475
Kinston, NC 28503-1475

STATE OF NORTH CAROLINA
COUNTY OF GRANVILLE

PERMANENT CONSERVATION
EASEMENT

THIS CONSERVATION EASEMENT ("Conservation Easement") made this 16th day of August, 2012, by and between JAMES DOUGLAS EZELL, *Divorced*, and being the same person as Doug Ezzell and James D. Ezzell, of 1641 HWY 96, Franklinton, NC 27525 ("Grantor") and NORTH CAROLINA WILDLIFE HABITAT FOUNDATION, a Non-Profit North Carolina Corporation with its principal office located at 300 North Greens Street, Greensboro, NC 27429 ("Grantee"). 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.

RECITALS AND DECLARATIONS

WHEREAS, Grantor owns in fee simple certain real property situated, lying and being in Granville County, North Carolina and being more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter referred to as the "Property");

WHEREAS, Grantee is a nonprofit corporation whose purpose is the conservation of property, and is qualified to be the Grantee of a conservation easement pursuant to N.C. Gen. Stat. § 121-35;

WHEREAS, the purpose of this Conservation Easement is to create and maintain riparian resources and other natural values on a portion of the Property, consisting of approximately 27.02 acres and being more particularly described in Exhibit B (hereinafter referred to as the "Conservation Easement Property"), and prevent the use or development of the Conservation Easement Property for any purpose or in any manner that would be in conflict with the creation and maintenance of the Conservation Easement Property in accordance with this Conservation Easement. The creation, restoration and preservation of the Conservation Easement Property is a condition of the approval of the inclusion of the Conservation Easement Property in the "Ezell Bank Site Proposed Neuse

Riparian Buffer & Nutrient Mitigation Site, Granville County, NC, Bank Parcel Development Package" dated July 23, 2012 ("Ezell Bank Site") which was approved by the North Carolina Department of Environment and Natural Resources – Division of Water Quality ("DWQ"), and this Conservation Easement may therefore be enforced by the State of North Carolina.

WHEREAS, the preservation of the Conservation Easement Property is required by The EBX Neuse Riparian Buffer and Nutrient Offset Umbrella Mitigation Bank Instrument, made and entered into by and between EBX Neuse I, LLC, acting as the Bank Sponsor, and the North Carolina Department of Environment and Natural Resources-Division of Water Quality ("DWQ"). The Ezell Bank Site is intended to be used to compensate for unavoidable riparian buffer and nutrient impacts.

NOW, THEREFORE, for and in consideration of the covenants and representations contained herein and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Grantor hereby unconditionally and irrevocably grants and conveys unto Grantee, its heirs, successors and assigns, forever and in perpetuity a conservation easement over the Conservation Easement Property, of the nature and character and to the extent hereinafter set forth, over a portion of the Property, together with the right to create, preserve and protect the conservation values thereof, as follows:

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. This Conservation Easement is an easement in gross, runs with the land and is enforceable by Grantee against Grantor, Grantor's personal representatives, heirs, successors and assigns, lessees, agents and licensees.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Conservation Easement Property inconsistent with the purpose of this Conservation Easement is prohibited. The Conservation Easement Property shall be created and preserved in its created and natural condition and restricted from any development that would impair or interfere with the conservation values of the Conservation Easement Property.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

- A. Disturbance of Natural Features. Any change disturbance, alteration or impairment of the natural features of the Conservation Easement Property or any introduction of non-native plants and animal species is prohibited.
- B. Construction. There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock or any other temporary or permanent structure or facility on or above the Conservation Easement Property.
- C. Industrial, Commercial and Residential Use. Industrial, residential and commercial activities, including any right of passage for such purposes is prohibited.

- D. Agricultural, Grazing and Horticultural Use. Agricultural, grazing, animal husbandry, and horticultural use of the Conservation Easement Property are prohibited.
- E. Vegetation. There shall be no removal, burning, destruction, harming, cutting or mowing of trees, shrubs, or other vegetation on the Conservation Easement Property.
- F. Roads and Trails. There shall be no construction of roads, trails or walkways on the Conservation Easement Property; nor enlargement or modification to existing roads, trails or walkways.
- G. Signage. No signs shall be permitted on or over the Conservation Easement Property, except the posting of no trespassing signs, signs identifying the conservation values of the Conservation Easement Property, signs giving directions or proscribing rules and regulations for the use of the Conservation Easement Property and signs identifying the Grantor as owner of the Conservation Easement Property.
- H. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or hazardous substances, or toxic or hazardous waste, or any placement of underground or above ground storage tanks or other materials on the Conservation Easement Property is prohibited.
- I. Excavation, Dredging or Mineral Use. There shall be no grading, filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Conservation Easement Property, except to restore natural topography or drainage patterns.
- J. Water Quality and Drainage Pattern. 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, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Conservation Easement Property by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.
- K. 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.
- L. Vehicles. The operation of mechanized vehicles, including, but not limited to, motorcycles, dirt bikes, all-terrain vehicles, cars and trucks is prohibited above, on or over the Conservation Easement Property.
- M. Other Prohibitions. Any other use of, or activity on, the Conservation Easement Property which is or may become inconsistent with the purposes of this grant, the preservation of the Conservation Easement Property substantially in its natural or created condition, or the protection of its environmental systems, is prohibited.

ARTICLE III GRANTOR'S RESERVED RIGHTS

The Grantor expressly reserves for himself, his personal representatives, heirs, successors or assigns, the right to continue the use of the property for all purposes not inconsistent with this Conservation Easement, including, but not limited to, the right to quiet enjoyment of the Conservation Easement Property, the rights of ingress and egress, the right to hunt, fish, and hike on the Conservation Easement Property, the right to sell, transfer, gift or otherwise convey the Conservation Easement Property, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of, and shall specifically reference, this Conservation Easement.

Notwithstanding the foregoing restrictions, Grantor reserves for EBX Neuse I, LLC, as Bank Sponsor, its successors and assigns, (i) the right to construct, monitor and maintain a mitigation bank on the Conservation Easement Property and (ii) the right to any and all mitigation credits derived from the Conservation Easement Property.

ARTICLE IV GRANTEE'S RIGHTS

- A. Ingress, Egress, and Regress: The Grantee, its employees and agents, successors and assigns, shall have a perpetual right of general ingress, egress and regress over the Property at reasonable times to undertake any activities to create, restore, manage, maintain, enhance and monitor the wetland and riparian resources of the Conservation Easement Property in accordance with restoration activities or a long-term management plan. Unless otherwise specified in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.
- B. Right to Inspect, Observe and Study: The Grantee or its authorized representatives, successors and assigns shall have the right to enter the Conservation Easement Property at all reasonable times for the purpose of inspecting the Conservation Easement Property to determine if the Grantor, or his personal representatives, heirs, successors, or assigns, is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The Grantee shall also have the right to enter and go upon the Conservation Easement Property for purposes of making scientific or educational observations and studies, and taking samples. The easement rights granted herein do not include public access rights.

ARTICLE V ENFORCEMENT AND REMEDIES

- A. To accomplish the purposes of this Easement, Grantee is allowed to prevent any activity on or use of the Conservation Easement Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Conservation Easement Property that may be damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor that comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of such breach. The Grantor shall have 30 days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after 30 days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. 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. The costs of a breach, correction or restoration, including the Grantee's expenses, court costs, and attorneys' fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach.

- B. No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right to Grantee to enforce the same in the event of a subsequent breach or default.
- C. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Conservation Easement Property resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, war, acts of God or third parties, except Grantor's lessees or invitees; or from any prudent action taken in good faith by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Conservation Easement Property resulting from such causes.

ARTICLE VI MISCELLANEOUS

- A. Warranty. Grantor warrants, covenants and represents that he owns the Conservation Easement Property in fee simple, and that Grantor owns either all interests in the Conservation Easement Property which may be impaired by the granting of this Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Conservation Easement Property which have not been expressly subordinated to this Conservation Easement. Grantor further warrants that Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement, and that Grantor will warrant and defend title to the Conservation Easement Property against the claims of all persons.
- B. Subsequent Transfer: The Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument that transfers any interest in all or a portion of the Conservation Easement Property. The Grantor agrees to provide written notice of such transfer at least thirty (30) days prior to the date of the transfer. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Conservation Easement Property or any portion thereof. Grantor shall not subdivide any Conservation Easement Property without prior, written approval from Grantee.
- C. Assignment. 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.

- D. Entire Agreement and Severability. 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 void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.
- E. Obligations of Ownership. Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Conservation Easement Property. Grantor shall keep the Conservation Easement Property free of any liens or other encumbrances for obligations incurred by Grantor. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Conservation Easement Property, except as expressly provided herein. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of the Reserved Rights.
- F. Extinguishment. In the event that changed conditions render impossible the continued use of the Conservation Easement Property for the conservation purposes, this Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding.
- G. Eminent Domain. Whenever all or part of the Conservation Easement Property is taken in the exercise of eminent domain so as to substantially abrogate the restrictions imposed by this Conservation Easement, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.
- H. Proceeds. This Conservation Easement constitutes a real property interest immediately vested in Grantee. In the event that all or a portion of this Conservation Easement Property is sold, exchanged, or involuntarily converted following an extinguishment or the exercise of eminent domain, Grantee shall be entitled to the fair market value of this Conservation Easement. The parties stipulate that the fair market value of this Conservation Easement shall be determined by multiplying the fair market value of the Property that is unencumbered by this Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of this easement at the time of this grant to the value of the Property (without deduction for the value of this Conservation Easement) at the time of this grant. The values at the time of this grant shall be the values used, or which would have been used, to calculate a deduction for federal income tax purposes, pursuant to Section 170(h) of the Internal Revenue Code (whether eligible or ineligible for such a deduction). Grantee shall use its share of the proceeds in a manner consistent with the purposes of this Conservation Easement.
- I. Notification. Any notice, request for approval, or other communication required under this Conservation Easement shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph)

To Grantor:

James Douglas Ezell
1641 HWY 96
Franklinton, NC 27525

To Grantee:

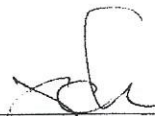
North Carolina Wildlife Habitat Foundation
300 North Greens Street,
Greensboro, NC 27429

- J. Failure of Grantee. If, at any time, Grantee is unable or fails to enforce this Conservation Easement, or if Grantee ceases to be a qualified grantee, and if within a reasonable period of time after the occurrence of one of these events Grantee fails to make an assignment pursuant to this Conservation Easement, then the Grantee's interest shall become vested in another qualified grantee in accordance with an appropriate proceeding in a court of competent jurisdiction.
- K. Amendment. 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 conservation purposes of this Conservation Easement.
- L. Present Condition of the Property. The wetlands, scenic, resource, environmental, and other natural characteristics of the Conservation Easement Property, and its current use and state of improvement, are as described in the Ezell Bank Site and said Ezell Bank Site is acknowledged by the Grantor and Grantee to be complete and accurate as of the date hereof. Both Grantor and Grantee have copies of this report. It will be used by the parties to assure that any future changes in the use of the Conservation Easement Property will be consistent with the terms of this Conservation Easement. However, this report is not intended to preclude the use of other evidence to establish the present condition of the Conservation Easement Property if there is a controversy over its use.

TO HAVE AND TO HOLD the aforesaid rights and easements perpetually unto Grantee for the aforesaid purposes.

IN TESTIMONY WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.

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 (SEAL)
JAMES DOUGLAS EZELL, *Divorced*, and
being the same person as Doug Ezzell and
James D. Ezzell.

NORTH CAROLINA

COUNTY OF

Wake

I, James S. Warren, a Notary Public in and for the County and State aforesaid, do hereby certify that JAMES DOUGLAS EZELL, *Divorced*, Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument and certified that he is the same person as Doug Ezzell and James D. Ezzell.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 16 day of August, 2012.

Notary Public

James S. Warren

My commission expires:

10-3-2015



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IN TESTIMONY WHEREOF, the Grantee has caused this instrument to be signed by its
Treasurer and its seal duly affixed, all by authority given, the day and year
first above written.

NORTH CAROLINA WILDLIFE HABITAT
FOUNDATION, INC.

BY: W. Harrison Stewart Jr. (SEAL)

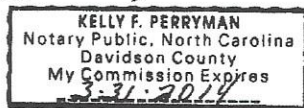
NORTH CAROLINA

COUNTY OF Gaithersburg

I, Kelly F. Perryman, a Notary Public in and for the County and State aforesaid, do
hereby certify that W. Harrison Stewart Jr., Grantee, personally appeared
before me this day and acknowledged that he/she is the Treasurer of North
Carolina Wildlife Habitat Foundation, Inc., a North Carolina non-profit corporation, being authorized to
do so, executed the foregoing on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 10/4 day of
August, 2012.

Kelly F. Perryman
Notary Public



My commission expires:

3.31.2014

EXHIBIT A
"Property"

Tract One: 9.771 Acres, more or less, as described in Deed recorded in Deed Book 251, Page 614, Granville County Registry and also being Lot 1-A as shown on map attached to Deed recorded in Deed Book 251, Page 614, Granville County Registry.

Tract Two: 54.37 Acres, more or less, as described in Deed recorded in Deed Book 246, Page 704, and Deed Book 887, Page 947, Granville County Registry, and also being Lot 2A as shown on map filed in Plat Book 28, Page 31, Granville County Registry.

Tract Three: 9.7701 Acres, more or less, as described in Deed recorded in Deed Book 940, Page 478, and Deed of Correction recorded in Book 1437, Page 852, Granville County Registry and being the same property as shown on map registered in Plat Book 28, Page 31, Granville County Registry.

Tract Four: 14.508 Acres, more or less, as described in Deed recorded in Deed Book 993, Page 549, Granville County Registry.

EXHIBIT B
"Conservation Easement Property"

BEING all of that property listed as the following seven Conservation Areas: Conservation Area # 1, being 4.99 acres, more or less, Conservation Area # 2, being 4.84 acres, more or less, Conservation Area #3, being 0.63 acres, more or less, Conservation Area # 4, being 1.85 acres, more or less, Conservation Area #5, being 9.31 acres, more or less, Conservation Area #6, being 1.65 acres, more or less, and Conservation Area #7, being 3.72 acres, more or less, and together, being all seven Conservation Areas, being 26.98 acres more or less, as shown on Conservation Easement Plat entitled "EZELL PROPERTY, EBX USA, RIPARIAN BUFFER & NUTRIENT OFFSITE MITIGATION SITE, BRASSFIELD TOWNSHIP, GRANVILLE COUNTY, NORTH CAROLINA" by The John R. McAdams Company, Inc., dated August 10, 2012 and being the same map of record in Plat Book 41, Page 47 *et Seq.*, Granville County Registry, North Carolina.