118236

*Tom Martin

RECORDING FEE $62.00 REVENUES -0-

Filed in CLEVELAND County,NC
on Jan 09 2009 at 01:15:29 PM
by BONNIE E. REECE
REGISTER OF DEEDS
Book 1567 Page 1571

STATE OF NORTH CAROLINA

P.I.N. # _____

COUNTY OF CLEVELAND

PREPARED BY: Lisa Glover
Assistant Attorney General
North Carolina Department of Justice

RETURN TO: North Carolina Department of Transportation
Natural Environment Unit
1598 Mail Service Center
Raleigh, NC 27699-1598

NORTH CAROLINA SPECIAL WARRANTY DEED WITH RESERVATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS SPECIAL WARRANTY DEED made this the 26th day of November, 2008, by and between **The State of North Carolina** (hereinafter, "Grantor"), acting on behalf and at the request of its agency, the North Carolina Department of Transportation, and **The Broad River Greenway, Inc.** (hereinafter, "Grantee"), with a mailing address of P.O. Box 2626, Shelby, North Carolina, 28151.

WITNESSETH:

The Grantor, for 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 Cleveland County, North Carolina, conveyed to the North Carolina Department of Transportation by instrument recorded in Deed Book 1369, Page 1380, of the Cleveland County Registry. Said conveyance is subject and together with all easements, restrictions, covenants, and rights-of-way heretofore of record; ad valorem taxes for the year of conveyance; and the covenants, conditions, restrictions and

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easements reserved by the Grantor as set forth in Schedule A attached hereto and herein incorporated by reference.

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, subject always to the reservation of covenants, conditions, restrictions and easements hereinabove set forth.

And the Grantor covenants with the Grantee, that the Grantor has done nothing to impair such title as the Grantor received.

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.

IN WITNESS WHEREOF, the Grantor has hereunto caused this instrument to be executed by its appropriate officials and its Seal affixed hereto, the day and year first above written.

STATE OF NORTH CAROLINA

By: Michael F. Easley (SEAL)
Michael F. Easley, Governor

ATTEST:

Elaine F. Marshall
Secretary of State

APPROVED AS TO FORM:

ROY COOPER
Attorney General

By: Mourke Haywood
Spec. Deputy Attorney General

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STATE OF NORTH CAROLINA

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COUNTY OF Wake

I, Jennell Baughman, a Notary Public in and for ~~the~~ Johnston County and State aforesaid, do certify that ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, personally came before me this day and acknowledged that she is Secretary of State of the 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 MICHAEL F. EASLEY, 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.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the 25th day of November, 2008.

Jennell Baughman
Notary Public

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

My Commission Expires:

11-21-2011

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SCHEDULE A

STATE OF NORTH CAROLINA

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COUNTY OF CLEVELAND

RESERVATION OF CONSERVATION EASEMENT

This Reservation of Conservation Easement is granted on this 26th day of November, 2008, by and between THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina and the holder of the conservation easement (hereinafter, "NCDOT" or "Holder,") and THE BROAD RIVER GREENWAY, INC. (hereinafter, "the Greenway" or "Owner").

The designation Holder and Owner 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.

WHEREAS:

The NCDOT, through the State of North Carolina, has agreed to transfer to the Greenway by special warranty deed approximately 1000 acres of land, more or less, being all that certain lot or parcel of land situated in Cleveland County, North Carolina, conveyed to the North Carolina Department of Transportation by instrument recorded in Deed Book 1369, Page 1380 of the Cleveland County Registry.

The Property provides natural wildlife habitat for a wide variety of land, air and aquatic species, because of the wetlands, streams, and wooded slopes throughout the Property; many of these species, especially the Dwarf-flowered Heartleaf, *Hexastylis naniflora* (hereinafter, "DFHL"), rely on the topography, as well as the wetlands and streams, and are of great importance to the NCDOT, the Greenway and the people of North Carolina.

The Greenway is chartered to hold and maintain open land in its natural state, and has agreed to receive title to the Property subject to the terms and conditions set forth herein.

The NCDOT is an agency of the State of North Carolina whose purpose includes the construction of transportation projects for public use and who has the authority to acquire land for the purpose of mitigating environmental impacts of these transportation projects.

The NCDOT desires to preserve the Property and to hold a conservation easement over said acreage encompassing approximately 1000 acres;

The NCDOT, under a Section 404 permit granted by the United States Army Corps of Engineers (hereinafter, "USACE"), must conduct certain conservation measures to compensate for impacts resulting from road construction;

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The Property will be managed pursuant to the Conservation Plan discussed below developed by NCDOT, in coordination with the Grantor and the U.S. Fish and Wildlife Service (hereinafter, "USFWS"), and kept on file with NCDOT;

The purposes of the Conservation Easement are (1) to protect the conservation activities performed by the NCDOT; (2) to preserve and protect the conservation values of the Property, which include, but are not limited to, natural resources; wildlife habitat for land, air and aquatic species; aquatic resources, including streams, rivers, ponds, and wetlands; existing and future DFHL populations; and scenic resources of the Property; (3) to prevent any use of the Property that will significantly impair or interfere with these purposes; and, (4) to maintain permanently the dominant woodland, scenic and natural character of the Property.

The specific conservation values of the Property and its current use and state of improvement are described in the Conservation Plan for Broad River Greenway Conservation Area (hereinafter, "Conservation Plan") finalized in November 2006, prepared by NCDOT and acknowledged by all parties to be accurate as of the date of this Conservation Easement. The Conservation Plan may be used by the Grantee to document any future changes in the use or character of the Property in order to ensure the terms and conditions of this Conservation Easement are fulfilled. This Conservation Plan, however, is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use. The Grantor and Grantee have copies of this Conservation Plan, and said report will remain on file with the Natural Environment Unit of NCDOT.

The NCDOT and the Greenway recognize the conservation values of the Property, and have the common goal of the perpetual conservation and protection of the Property for the primary purpose of assuring that the conservation values of the Property be preserved and that the wetlands and streams on the Property be preserved.

The conservation purposes of this Conservation Easement are recognized by the Uniform North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34 *et seq.*, which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate to retaining land or water areas predominantly in their natural, scenic, or open condition or in agricultural, horticultural, farming or forest use," N.C.G.S. § 121-35(1); and which provides for tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvement less any reduction in value caused by the agreement," N.C.G.S. § 121-40.

NOW, THEREFORE, in consideration of the NCDOT, through the State of North Carolina, conveying the underlying fee of the Property to the Greenway and for other good and valuable consideration, the benefits of which flowing to the NCDOT and the Greenway from each other, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants, terms, conditions and restrictions contained herein, the NCDOT hereby reserves a

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conservation easement in the Property being conveyed to the Greenway situated in Cleveland County, North Carolina, as more particularly described above.

The terms, conditions and restrictions of the Conservation Easement are as hereinafter set forth:

1. Reservation of Conservation Easement

The Holder hereby reserves a perpetual Conservation Easement, which is an immediately vested interest in real property of the nature and character described herein. The Owner agrees that it will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants herein. The Owner authorizes the Holder to enforce these covenants in the manner described below.

The Holder hereby reserves all development rights for the Property, that are now or hereafter inherent in the Property. The parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property.

2. Statement of Purpose, Duration

The purpose of the Conservation Easement is to protect the NCDOT's conservation activities within the Property and preserve current and future conservation values inherent in the Property. Except as specifically permitted herein, no activity that shall significantly impair the condition of the DFHL populations or the conservation values of the Property shall be permitted.

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by the Holder against the Owner, its representatives, heirs, successors and assigns, lessees, agents, and licensees.

3. Description

The Property encompasses perennial streams, wetlands and surrounding land, as described in the Conservation Plan, and is comprised of approximately 1000 total acres, more or less.

4. Access

The NCDOT and its authorized representatives, including the USACE, the USFWS, and the North Carolina Department of Environment and Natural Resources (hereinafter, "NCDENR"), specifically including the Ecosystem Enhancement Program (hereinafter, "EEP"), at all reasonable times and continuing in perpetuity, shall have the right to access the Property in perpetuity for the purposes of implementing or monitoring the Conservation Plan or conducting any future activities to protect, restore, or enhance the conservation values of this Conservation Easement, and to inspect the Property. Access will be by way of State Road 1195, also known as College Farm Road. The Owner may do nothing that would interfere with NCDOT's access to

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the Property. The NCDOT or its representatives will notify the Owner by phone, email, or other correspondence before entering the Property for the purpose of determining if the Owner is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. However, if the NCDOT or its representatives in their sole discretion determine that circumstances require immediate entry, such party is not required to notify the Owner prior to entry but will notify the Owner within two business days of such entry.

5. Rights and Responsibilities Retained by the Owner

Subject to the terms and restrictions contained herein, the Owner reserves to and for itself and its successors all customary rights and privileges of ownership, including without limitation the right to quiet enjoyment of the Property, and the rights to sell, lease, encumber, impose restrictions on and devise the Property, provided such transaction is subject to the terms of this Conservation Easement and written notice is provided to the Holder. Unless otherwise specified below, nothing in this Conservation Easement shall require the Owner to take any action to restore the condition of the Property after any Act of God. The Owner understands that nothing in this Conservation Easement relieves it of any obligation or restriction on the use of the Property imposed by law.

Pursuant to the terms of the Conservation Plan, the Owner will be responsible for management of the Property. Management will consist primarily of protection of DFHL habitat, with little direct manipulation of habitat or individuals foreseen. Maintaining the boundaries of the Property against any harmful trespass (i.e., all-terrain vehicle use) will be the responsibility of the Owner.

All management recommendations for the DFHL populations will be determined by the Advisory Committee established in the Conservation Plan. The Owner will implement recommendations agreed upon by the Advisory Committee as resources are available. Any proposals to modify DFHL habitat, in full or part, shall be submitted in writing to the Advisory Committee for consideration of consistency with the intent of the Conservation Easement and the goals and objectives of this Conservation Plan. The Owner shall also be responsible for submitting monitoring and incident reports, as described in the Conservation Plan.

6. Right to Privacy

The Owner retains the right to privacy and the right to exclude any member of the public from trespassing on the Property. This Conservation Easement does not create any rights of the public in, on or to the Property, although the public has the right to view the Property from any adjacent publicly accessible areas. The Owner may allow public access to the Property, as long as such activity is consistent with the purposes of this Conservation Easement and is not prohibited by Paragraph 9 below.

7. Subdivision

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The Property may not be subdivided, partitioned nor conveyed, except in its current configuration as an entity or block.

8. Passive Recreational Use

The Owner retains the right to engage in passive recreational uses of the Property (requiring no surface alteration of the land and posing no threat to the conservation values set forth herein), including, without limitation, walking, fishing, hunting or animal and plant observation as long as such activity is consistent with the purposes of this Conservation Easement and is not prohibited by Paragraph 9 below. Environmental education activities may be undertaken if consistent with the terms of the Conservation Plan and as long as such activity is consistent with the purposes of this Conservation Easement and is not prohibited by Paragraph 9 below.

9. Permitted and Restricted Activities

Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Easement is prohibited. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Property by the Owner is prohibited as inconsistent with the purposes of the Conservation Easement. The Property shall be maintained in its natural, scenic and open condition and restricted from any development that would significantly impair or interfere with the conservation values of this Conservation Easement, and any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or sub-surface waters is prohibited. Any rights not expressly granted hereunder to the Owner have been reserved by the Holder.

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 changes, disturbance, alteration or impairment of the natural, scenic and aesthetic features of the Property or any introduction of non-native plants and/or animal species is prohibited unless the NCDOT gives its prior written consent or unless otherwise expressly permitted herein.

B. *Agricultural, Grazing, and Horticultural Use and Fencing*

Agricultural, grazing and horticultural use, including landscaping, of the Property is prohibited. No herbicides, insecticides, fungicides, fertilizers or other potentially harmful substances may be used without advance written permission from the NCDOT, with the exception of weed control used in the management of the DFHL populations as described in the Conservation Plan. No agricultural products or by-products may be disposed of on the Property or result in or cause discharge or runoff directly into the Property. Existing fences may be repaired and replaced.

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C. *Silvicultural Use and Land Clearing; Trails*

There may be no destruction or cutting of trees or plants, prescribed burning, or clearing, except upon written approval of NCDOT. The gathering of firewood shall be limited to dead trees, such that the gathering is consistent with the purposes of this Conservation Easement. Removal of large live trees, or thinning of the forest or removal of brush for fire management, may be allowed in some cases provided that any such request is consistent with the purposes of this Conservation Easement and the Owner obtains prior written approval from the NCDOT.

The Owner is permitted to maintain the existing walking and horseback riding trails, but may not improve or widen the trails, except that the Owner may proceed with construction of improvements as outlined in "Guidelines for Bidding on the Broad River Greenway Bridge and Erosion Project," prepared by the Owner. Owner is responsible for obtaining any necessary permits prior to construction. No additional clearing may take place outside the existing trails. The trails may not be surfaced with any material, including but not limited to asphalt, gravel or mulch; but rather the trails must remain in their natural state.

The Owner will employ best management practices to control erosion, trampling, and transporting of invasive plant species into the DFHL populations, and boardwalks and observation decks will be utilized wherever possible. If necessary to control erosion, gravel and mulch may be used to stabilize the existing trails but may not be used for any other purpose.

D. *Dumping and Storage*

Dumping or storage of soil, trash, refuse, debris, ashes, garbage, waste, abandoned vehicles or parts, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Property is prohibited. No agricultural products or by-products, or agricultural equipment, may be dumped or stored. Grantee shall be responsible for removing any dumped or stored material.

E. *Mineral Use, Excavation, and Dredging*

There shall be no 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 Property, or on adjacent property if owned by the Grantee or its successors, which would cause erosion or siltation on the Property.

F. *Industrial Use*

Industrial activities are prohibited on the Property.

G. *Residential Use*

Residential use of the Property is prohibited.

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H. *Commercial Use*

Commercial activities are prohibited on the Property.

I. *Construction, Roads and Road Building, Motorized Vehicles*

There shall be no building, shed, facility, mobile home, or other structure constructed or placed on the Property. No new roads, either paved or unpaved, may be constructed. Motorized vehicles, including off-road vehicles, are prohibited except as used for the removal of extant trash, refuse, debris, garbage, and waste from the Property. However, the NCDOT expressly reserves the right to install, operate, and maintain structures or unpaved roads, and to use motorized vehicles in any manner necessary, for the purpose of reestablishing, protecting, and enhancing wetland and stream functional values or the conservation values of this Conservation Easement.

J. *Signs*

No signs shall be permitted on the Property except interpretive signs describing activities and the conservation values of the Property, signs identifying vegetation and natural features of the Property, signs identifying the owner of the Property and the holder of the Conservation Easement, and signs giving directions or prescribing rules and regulations for the use of the Property, which shall specifically include "No Trespassing," "No Hunting," and "Posted" signs, if applicable.

K. *Utilities*

The installation of utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, is prohibited. If there are existing utility easements located on or affecting the Property, the Owner shall notify the NCDOT, to the extent that the Owner receives notice, if right-of-way clearing or other work is scheduled by the utility. Any such clearing should be in keeping with the intent of the Conservation Easement.

L. *Water Quality and Drainage Patterns*

The Owner shall conduct no activities that would be detrimental to water quality or to any of the plants or habitats within the Property, or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Property, or cause soil degradation or erosion. Diking, dredging, alteration, draining, filling or removal of wetlands or stream by the Owner is prohibited. In addition, the Owner is prohibited from diverting or causing or permitting the diversion of surface or underground water into, within or out of the Property by any means; polluting or discharging into waters, springs, seeps, or wetlands; or using pesticides or biocides unless agreed to in writing by the NCDOT.

M. *NCDOT's Rights*

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The NCDOT, on behalf of itself and its authorized representatives, specifically including the EEP, reserves the right to use the Property in any way necessary, consistent with the terms herein, to undertake any activities to protect, restore, manage, maintain, or enhance the conservation values of this Conservation Easement. NCDOT specifically reserves the right to use the Property in the future for additional mitigation or conservation activities that further the conservation values of the Property. The NCDOT reserves the right to monitor the activities undertaken pursuant to the Conservation Plan in perpetuity.

10. Ongoing Responsibilities of the Owner

Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Holder, or in any way to affect any obligation of the Owner as owner of the Property. Among other things, this shall apply to:

A. *Taxes*

The Owner shall be solely responsible for payment of all taxes and assessments levied against the Property. If the Holder is ever required to pay any taxes or assessments on its interest in the Property, the Owner will reimburse the Holder for the same.

B. *Upkeep and Maintenance*

The Owner retains all responsibilities and shall bear all costs and liabilities of any kinds related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. The Holder shall have no obligation for the upkeep or maintenance of the Property.

C. *Liability and Indemnification*

The Owner agrees to indemnify and hold the Holder harmless from any and all costs, claims or liability, including but not limited to reasonable attorney's fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the intentional misconduct or negligence of the Holder.

11. Enforcement

The NCDOT shall have the right to prevent violations and remedy violations of the terms of this Conservation Easement through judicial action, which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties attempting to violate the terms of this Conservation Easement. Except when an ongoing or imminent violation could irreversibly diminish or impair the conservation values of the Property, the NCDOT shall give the Owner written notice of the violation and thirty (30) days to cure the violation, before commencing any legal proceedings. If a court with jurisdiction determines that a violation may exist or has occurred, the NCDOT may obtain an injunction to stop the violation, temporarily or permanently. The parties agree that a court may issue an injunction or order requiring the Owner

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to restore the Property to its condition prior to the violation as restoration may be the only appropriate remedy. In any case where a court finds that a violation has occurred, the Owner shall reimburse the NCDOT for all its expenses incurred in stopping and correcting the violation, including but not limited to court costs, attorneys' fees, and any other costs incurred with onsite remediation. If legal action is brought by the NCDOT and the court finds that no violation has occurred, each party shall bear its own costs. The failure of the NCDOT to discover a violation or to take immediate legal action shall not bar it from doing so at a later time for that violation or any subsequent violations.

12. Transfer of Easement

The NCDOT shall have the right to transfer this Conservation Easement to the EEP, or to any public agency or to any private nonprofit organization that, at the time of transfer, is a qualified organization under §170(h) of the U.S. Internal Revenue Code, as amended and under NCGS §121-34 *et seq.*, provided the agency or organization expressly agrees to assume the responsibility imposed on the transferring party or parties by this Conservation Easement. As a condition of such transfer, the NCDOT shall require that the conservation purposes intended to be advanced hereunder shall continue to be carried out.

13. Transfer of Property

The Owner agrees to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which it transfers or divests itself of any interests, including leasehold interests, in all or a portion of the Property. Failure of the Owner to comply with this section shall not impair the validity of this Conservation Easement as to successor owners or limit its enforceability in any way, nor shall the Owner's failure to comply with this section constitute a default under this Conservation Easement.

14. Amendment

This Conservation Easement may be amended by a written instrument executed by the Owner and the Holder. Any such amendment shall be consistent with the purpose of this Conservation Easement and its terms, and shall comply with Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be duly recorded.

15. Procedure in the Event of Changed Conditions

The reservation of this Conservation Easement gives rise to a property right immediately vested in the Holder, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole. That proportionate value of the Holder's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Property for conservation purposes, the restrictions contained herein may only be extinguished by judicial proceeding. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of the

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Holder's and Owner's interests as specified herein; all expenses including attorneys' fees incurred by the Holder and Owner in such action shall be paid out of the recovered proceeds. The Holder, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Upon such proceedings, such portion shall be equal to the proportionate value that the Holder's, its successor's and assign's, interest in the Conservation Easement bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Property, or any damages otherwise awarded as a result of judicial proceeding, minus the Owner's expenses from such transaction or proceeding.

16. Procedure in the Event of Condemnation or Eminent Domain

Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Conservation Easement, the Owner shall immediately give notice to the Holder and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking and all incidental or direct damages resulting from the taking. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of the Holder's and Owner's interests as specified herein; all expenses including attorneys' fees incurred by the Holder and Owner in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. The Holder, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that the Holder's, its successor's and assign's interest in the Conservation Easement bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Property, or any damages otherwise awarded as a result of judicial proceeding, minus the Owner's expenses from such transaction or proceeding.

17. Interpretation

This Conservation Easement shall be interpreted under the laws of the State of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

18. Perpetual Duration; Severability

This Conservation Easement shall be a servitude running with the land in perpetuity. Every provision of this Conservation Easement that applies to the Holder or the Owner shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this

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Conservation Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof, which shall remain in full force and effect.

19. Notices

Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail to the parties respectively at the following addresses, unless a party has been notified in writing by the other of a change of address:

To NCDOT:
NCDOT Natural Environment Unit
1598 Mail Service Center
Raleigh, NC 27699-1598

To the Owner:
Broad River Greenway
P.O. Box 2626
Shelby, NC 28151

In any provision of this Conservation Easement in which the Owner is required to provide advance notice to the Holder of any activity on the Property, such notice shall be given not less than thirty days prior to the planned commencement of the activity. If the Holder's approval is required, such approval shall be deemed withheld unless the Holder provides to the Owner written notice of approval within 30 days of receipt of said request. If the Owner has received no response after said 30 days, the Owner may send a second written notice to the Holder requesting a statement of the reasons for the disapproval and the Holder shall respond within 30 days with an explanation for the specific reasons and basis for its decision to disapprove.

20. Subsequent Liens

No provisions of this Conservation Easement should be construed as impairing the ability of the Owner to use the Property as collateral for subsequent borrowing. Any such liens shall be subordinated to this Conservation Easement.

21. Subsequent Easements/Restrictions

The grant of any easements or use restrictions that might diminish or impair the conservation values of the Property is prohibited. Any such easements or restrictions shall be subordinated to this Conservation Easement.

22. Entire Agreement

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 said easement.

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23. Recording

The Holder shall record this instrument and any amendment hereto in timely fashion with the Office of the Register of Deeds of Cleveland County, North Carolina, and may re-record it at any time as may be required to preserve its rights under this Conservation Easement.

24. Merger

The Parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

TO HAVE AND TO HOLD this Conservation Easement retained by the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, its successors and assigns forever.

IN WITNESS WHEREOF, the NCDOT and the BROAD RIVER GREENWAY GREENWAY, INC., intending to legally bind themselves, have set their hands on the date first written above.

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OWNER:

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THE BROAD RIVER GREENWAY , INC.

By: Darlene Gravett

Attest Sherrie Geer

Name: Darlene Gravett

Sherrie Geer

Title: Vice- President

Secretary

(SEAL)

STATE OF North Carolina

Cleveland COUNTY

I hereby certify that the following persons personally appeared before me this day, acknowledging to me that they voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Darlene Gravett, Vice President and Sherrie Geer, Secretary for Broad River Greenway Inc.

Date: 11-5, 2008

Kimberly B. Greene

Official Signature of Notary

(Official Seal)

KIMBERLY B. GREENE NOTARY PUBLIC CLEVELAND COUNTY, NC

Kimberly B. Greene, Notary Public

Printed or typed name

My commission expires: 1/10/2010

N.C. Dept. of Transportation

NOV 21 2008

Right of Way Branch
Raleigh Office

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HOLDER:

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

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BY: _____
A.D. Allison, II
Manager, Right of Way Branch

ATTEST:

(Seal)

_____
SECRETARY TO THE BOARD OF
TRANSPORTATION AND CUSTODIAN
OF THE SEAL OF THE DEPARTMENT
OF TRANSPORTATION

NORTH CAROLINA,
Wake COUNTY

I, Denise Amato, a Notary Public of the County and State aforesaid, certify that Tammy Denning personally appeared before me this day, and, first being duly sworn, acknowledged that she is the Secretary to the Board of Transportation and Custodian of the Seal of the Department of Transportation; that she is acquainted with A.D. Allison, II, Manager of the Right of Way Branch of the Department Of Transportation; that she witnessed the execution of the foregoing instrument by the said A.D. Allison, II, and, by authority given to her, affixed the said Seal to said instrument and signed her name in attestation of the execution thereof in the presence of said Manager of Right of Way.

WITNESS my hand and Notarial Seal this the 26th day of November, 2008.

_____
Official Signature of Notary

(Official Seal)

DENISE AMATO
NOTARY PUBLIC
LEE COUNTY, N.C.

Denise Amato, Notary Public
Printed or typed name

My commission expires: 10-28-09

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