STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

HENDERSON COUNTY

THIS CONSERVATION EASEMENT DEED, made this 1st day of October, 2001, by and between **Mrs. Nelle B. Cantrell, Widow, a/k/a Mrs. B.M. Cantrell, Grantor**, and the **State of North Carolina**, Grantee, whose mailing address is State of North Carolina State Property Office, 116 West Jones Street, Raleigh, NC 27603-8003. The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Wetlands Restoration Program (as defined in N.C. Gen Stat. § 143-214.8) within the Department of Environment and Natural Resources 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 Wetlands Restoration Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; 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 8th day of February 2000; and

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8, two of the components of the Wetlands Restoration Program are (1) restoration and perpetual maintenance of wetlands, riparian areas, and surface waters and (2) land ownership and management; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in Hendersonville Township, Henderson County, North Carolina (the "Protected Property"), and being more particularly described as that certain parcel of land containing 69.40 acres as conveyed to the Grantor by deed recorded in **Deed Book 280 at Page 30** of the Henderson County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement on the Protected Property, thereby restricting and limiting the use of the Protected Property to the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such easement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over a portion of the Protected Property, referred to hereafter as the Easement Area, for the benefit of the people of North Carolina, and being all of the tract of land as identified as being 6.397 acres as shown on a plat of survey entitled "Survey for Mrs. B. M. Cantrell" dated August 2, 2001 certified by R. Joel Johnson, NCPLS, and **recorded in Map Book ____, Page ____**, Henderson County Registry. Tract is more particularly described as follows:

Being all of that tract of land containing 6.397 acres, more of less, lying in Hendersonville Township, Henderson County, North Carolina; bounded by Clear Creek Road on the West, Interstate 26 (DOT Project Number 8.18293 – FA I-26-1(5) 12, Sheet 14) on the East, Moody (DB. 638,PG. 677) on the South and Cantrell (DB. 280,PG. 039) on the North; said conservation easement being located approximately 2 1/4 miles northeast of the Town of Hendersonville, N.C. and being more particularly described by courses based on N.C. Grid North (NAD 83) and horizontal ground distances according to a survey with a precision before angular adjustment of 1 to 23,268 by R. Joel Johnson, PLS, L-3882; W. K. Dickson Co., Inc. – Asheville, NC (WKD # 10463.00 AV) dated August 02, 2001 as follows :

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COMMENCING from a NGS Monument " Collins" having NC Grid coordinates N 597,719.0834 ft, E 973,960.9096 ft; North 58 degrees 46 minutes 50 seconds West, 3,638.15 feet (Grid Distance) to NGS Monument " Clear" having NC Grid coordinates N 599,604.8276 ft, E 970,849.6264 ft; thence North 53 degrees 51 minutes 50 seconds West, 418.26 feet to a 5/8" Rebar Set with WKD plastic Cap (Typical for Rebar Set) having NC Grid ground coordinates N 599,851.4761 ft, E 970,511.8290 ft; said Rebar being on the North line of a 20 foot wide sewer easement and within the Western Right of Way of Interstate 26; the True Point of BEGINING (Point A on referenced survey); thence with the Northern line of the sewer Right of Way in a Southwesterly direction the following eight courses and distances:

South 73 degrees 34 minutes 25 seconds West, 65.88 feet to a 5/8" Rebar set;
South 78 degrees 20 minutes 05 seconds West, 247.31 feet to a 5/8" Rebar set;
North 87 degrees 09 minutes 30 seconds West, 245.56 feet to a 5/8" Rebar set;
North 88 degrees 42 minutes 50 seconds West, 140.65 feet to a 5/8" Rebar set;
South 87 degrees 29 minutes 00 seconds West, 252.60 feet to a 5/8" Rebar set;
South 67 degrees 07 minutes 50 seconds West, 127.30 feet to a 5/8" Rebar set;
South 25 degrees 35 minutes 25 seconds West, 85.45 feet to a 5/8" Rebar set on the Right of Way of Clear Creek Road thence leaving the sewer easement South 59 degrees 58 minutes 55 seconds West, 21.38 feet to a P.K. Nail set (Point B) in the centerline of Clear Creek Road; said P.K. Nail being located North 38 degrees 14 minutes 05 seconds West, 184.86 feet from a ½" Rebar found in the fence line between Moody and Cantrell; thence with the centerline of Clear Creek Road; a common line with Holbert (DB. 897, PG. 729) the following ten courses and distances;

North 14 degrees 14 minutes 40 seconds West, 15.36 feet to a point;
North 13 degrees 49 minutes 45 seconds West, 49.81 feet to a P.K. Nail Set in the centerline of a bridge over Clear Creek;
North 17 degrees 44 minutes 40 seconds West, 16.32 feet to a point;
North 14 degrees 05 minutes 50 seconds West, 58.92 feet to a point;
North 12 degrees 00 minutes 50 seconds West, 30.39 feet to a point;
North 09 degrees 58 minutes 20 seconds West, 28.43 feet to a point;
North 07 degrees 26 minutes 30 seconds West, 48.87 feet to a point;
North 05 degrees 11 minutes 45 seconds West, 50.79 feet to a point;
North 04 degrees 08 minutes 35 seconds West, 58.42 feet to a point;
North 03 degrees 49 minutes 30 seconds West, 39.45 feet to a P.K. Nail Set (Point C) in the centerline of Clear Creek Road; thence leaving the centerline of Clear Creek Road with a Conservation Easement line within the Cantrell Property on the North side of Clear Creek the following six courses and distances:

North 85 degrees 10 minutes 20 seconds East, 62.10 feet to a 5/8" Rebar set;
North 85 degrees 32 minutes 55 seconds East, 284.23 feet to a 5/8" Rebar set;
South 67 degrees 55 minutes 15 seconds East, 193.80 feet to a 5/8" Rebar set;
North 80 degrees 23 minutes 25 seconds East, 230.23 feet to a 5/8" Rebar set;
North 87 degrees 00 minutes 10 seconds East, 165.16 feet to a 5/8" Rebar set;
South 87 degrees 10 minutes 35 seconds East, 186.10 feet to a 5/8" Rebar set in the Right of Way of Interstate 26 near an existing fence line;

thence with the fence line South 07 degrees 14 minutes 05 seconds East, 70.11 feet to a NCDOT concrete right of way marker found;

thence South 36 degrees 03 minutes 50 seconds East, 131.74 feet across Clear Creek (Centerline of creek being 88.39 feet along line from right of way marker) to the point of BEGINING. Containing 6.397 Acres more or less as calculated by coordinate computations.

This description prepared by R. Joel Johnson, PLS, NC L 3882. August 10, 2001

The purposes of this Conservation Easement are to maintain, restore, enhance, and create wetland and/or riparian resources in the Easement Area that contributes to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth.

I. DURATION OF EASEMENT

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

II. RESERVED USES AND RESTRICTED ACTIVITES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

A. **Recreational Uses.** Grantor expressly reserves the right to undeveloped recreational uses, including hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited.
B. **Educational Uses.** The Grantor reserves the right to undeveloped educational uses and the right of access to the Easement Area for such purposes including organized educational activities such as site visits, studies, and observations.
C. **Vegetative Cutting.** Cutting, removal, mowing, harming, or destruction of any vegetation in the Easement Area is prohibited.
D. **Industrial Use.** Industrial activities in the Easement Area are prohibited.
E. **Residential Use.** Residential use of the Easement Area is prohibited.
F. **Commercial Use.** Commercial activities in the Easement Area are prohibited.
G. **Agricultural Use.** Agricultural use of the Easement Area including use for cropland, waste lagoons, or pastureland is prohibited.
H. **New Construction.** There shall be no building, facility, mobile home, or other structure constructed or placed in the Easement Area.
I. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Protected Property and the holder of the Conservation Easement, and signs giving directions or proscribing rules and regulations for the use of the Easement Area.
J. **Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material in the Easement Area is prohibited.
K. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.
L. **Water Quality and Drainage Patterns.** There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.
M. **Subdivision.** Subdivision, partitioning, or dividing the Easement Area is prohibited.
N. **Development Rights.** No development rights which 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.

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Protected Property, at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area. These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-

stream, above ground, and subterraneous water flow. In addition, the Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Protected Property, at all reasonable times for the purpose of inspecting said property to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The easement rights granted herein do not include public access rights.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the Wetlands Restoration Program, whose mailing address is 1619 Mail Services Center, Raleigh, NC 27699-1619.

III. ENFORCEMENT AND REMEDIES

A. In the event that the Grantee determines that the Grantor has violated or is threatening to violate any of these terms, conditions, or restrictions, the Grantee may institute a suit to enjoin such violation and if necessary, to require the restoration of the Easement Area to its prior condition at the expense of the Grantor.

B. No failure on the part of 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 of Grantee to enforce the same in the event of a subsequent breach or default.

IV. MISCELLANEOUS

A. This Conservation Easement shall be construed to promote the purposes of N.C. Gen Stat. § 143-214.8 et seq., the Wetlands Restoration Program.

B. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.

D. Grantor shall notify Grantee in writing of the name and address and any party to whom the Protected Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Protected Property is conveyed subject to the Conservation Easement herein created.

V. QUIET ENJOYMENT

Grantor reserves all rights accruing from ownership of the Protected Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

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

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent easement herein granted; that the same are free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

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

Nelle B. Cantrell (SEAL)

NORTH CAROLINA COUNTY OF HENDERSON

I, Robin Baumgartner, a Notary Public in and for the County and State aforesaid, do hereby certify that Nelle B. Cantrell, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITHNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the 1st day of October, 2001.

Robin Baumgartner
Notary Public

My commission expires:

4-9-02

ROBIN BAUMGARTNER
NOTARY PUBLIC
HENDERSON COUNTY, N. C.

North Carolina, Henderson County The foregoing certificate(s) of Robin Baumgartner Notary Public (~~Notarine Public~~) is/~~are~~ certified to be correct, this instrument presented for registration and recorded in this office this 1 day of Oct, 2001 at 2:20 P in book 1076, page 430

Sedra W. Moles
Register of Deeds

Doris W. Sinclair
(~~Assistant~~ Deputy)