FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2006 FEB 02 09:41 AM
BK:19973 PG:340-356 FEE:$59.00

INSTRUMENT # 2006021138

2006021138

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

Tax Code: 051-133-35, 051-134-66

Parcel # R-2559WM_704WM

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

Mail To:
Division Right of Way
204 Chanter Street
Albemarle, N.C. 28001

CONSERVATION EASEMENT

This Conservation Easement is granted on this 21st day of December, 2005, by MECKLENBURG COUNTY, a political subdivision of the State of North Carolina, having an address of 600 East Fourth Street, Charlotte, North Carolina, 28202 ("Grantor"), to THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION ("NCDOT"), having an address of 1598 Mail Service Center, Raleigh, NC 27699-1598 ("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.

WHEREAS:

Grantor is the sole owner in fee simple of certain real property more particularly described in Deed Book 15984, Page 225 and Deed Book 11829, Page 265, of the Mecklenburg County Registry, which consists of approximately 16 acres, more or less, located in Crab Orchard Township, Mecklenburg County, North Carolina.

The Property provides natural wildlife habitat for a wide variety of land, air and aquatic species, because of the streams that run through the Property; many of these species, which rely on the streams, are of great importance to the Grantor and the people of North Carolina.

The Grantor is willing to grant a perpetual Conservation Easement over 10.911 acres of the Property (the "Conservation Easement Area"), thereby restricting and limiting the use of land within the Conservation Easement Area to the terms and conditions and for the purposes hereinafter set forth.

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 restore, enhance or preserve stream and associated streamside wetlands in Mecklenburg County on the Conservation Easement Area (hereinafter, the "Stream Mitigation Project"), and to hold a conservation easement over said length of stream and surrounding land and wetlands encompassing approximately 10.911 acres and referred to as the Conservation Easement Area;
>
> The NCDOT, under a Section 404 permit granted by the United States Army Corps of Engineers ("USACE"), must conduct certain off-site stream and wetland mitigation work to compensate for impacts to streams and wetlands resulting from road construction;
>
> The Stream Mitigation Project will be undertaken pursuant to a Stream Mitigation Plan developed by NCDOT, in coordination with the Grantor, for the restoration, enhancement and preservation of the streams and wetlands on the Conservation Easement Area, and kept on file with NCDOT;
>
> The purposes of the Conservation Easement over the Conservation Easement Area are (1) to protect the mitigation activities performed by the NCDOT; (2) to preserve and protect the conservation values of the Conservation Easement Area, which include natural resources; wildlife habitat for land, air and aquatic species; aquatic resources, including streams, rivers, ponds, and wetlands; and scenic resources of the Property; (3) to prevent any use of the Conservation Easement Area that will significantly impair or interfere with these purposes; and, (4) to maintain permanently the dominant woodland, scenic and natural character of the Conservation Easement Area.

The specific conservation values of the Conservation Easement Area and its current use and state of improvement are described in the Back Creek Site Detailed Stream and Wetland Mitigation Plan (hereinafter "Mitigation Plan"), dated January 2003 and amended October 2003, prepared by Ecoscience Corporation, and acknowledged by all parties to be accurate as of the date of this Conservation Easement. The Mitigation Plan may be used by the Grantee to document any future changes in the use or character of the Conservation Easement Area in order

to ensure the terms and conditions of this Conservation Easement are fulfilled. This Mitigation Plan, however, is not intended to preclude the use of other evidence to establish the present condition of the Conservation Easement Area if there is a controversy over its use. The Grantor and Grantee have copies of this Mitigation Plan, and said plan will remain on file with the Office of Natural Environment of NCDOT.

The Grantor intends that the conservation values of the Conservation Easement Area be preserved and maintained, and further, Grantor intends to convey to the Grantee the right to preserve and protect the conservation values of the Conservation Easement Area in perpetuity.

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 premises and other valuable considerations to Grantor, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby grants and conveys unto Grantee and its successors or assigns forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, in respect to the following property:

Tract 1: All of that property designated as "Conservation Easement Tract 1 Area = 1.591 ac." as shown on survey for NC Department of Transportation (Project No. 6.678019) dated June 13, 2005 prepared by ESP Associates, P.A. recorded in Map Book 43 at Page 799 in the office of the Register of Deeds for Mecklenburg County.

Tract 2: Being all of that property designated as "Conservation Easement Tract 2 Area = 9.320 ac." as shown on survey for NC Department of Transportation (Project No. 6.678019) dated June 13, 2005 prepared by ESP Associates, P.A. recorded in Map Book 43 at Page 799 in the office of the Register of Deeds for Mecklenburg County.

There is excluded from this Easement those two tracts of land described as "NCDOT Conservation Easement Tract 1 Area = 0.021 Ac. (909 sq. ft.)" and "NCDOT Conservation Easement Tract 2 Area = 0.117 Ac. (5093 sq. ft.)" as shown on the aforesaid map.

Being a portion of the same property conveyed to Mecklenburg County by deed recorded in Book 11829 at Page 265 and Book 15984 at Page 225 in said Registry.

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

1. Grant of Conservation Easement

Grantor hereby voluntarily grants and conveys to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual Conservation Easement, which is an immediately vested interest in real property of the nature and character described herein. Grantor agrees that it will not perform, nor knowingly allow others to perform, any act on or affecting the Conservation Easement Area that is inconsistent with the covenants herein. Grantor authorizes the Grantee to enforce these covenants in the manner described below.

Grantor hereby voluntarily grants and conveys to the Grantee all development rights for the Conservation Easement Area, except as otherwise reserved and provided by the terms of this Conservation Easement, that are now or hereafter inherent in the Conservation Easement Area. 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 primary purpose of the Conservation Easement is to protect the NCDOT's mitigation activities within the Conservation Easement Area, including the restored, enhanced, and preserved stream areas. Except as specifically permitted herein, no activity that shall significantly impair the condition of the restored, enhanced or preserved stream areas on the Conservation Easement Area shall be permitted.

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

3. Zones within Conservation Easement Area

The Conservation Easement Area in each tract is divided into three zones. "Zone One" begins at the top of bank and extends landward a distance of 30 feet on all sides of the stream, measured horizontally on a line that is perpendicular to a vertical line marking the edge of the stream. "Zone Two" begins at the outer edge of Zone One and extends landward a distance of 20 feet, measured horizontally on a line that is perpendicular to a vertical line marking the edge of the stream. The remainder of the Conservation Easement Area is classified as "Zone Three."

4. Access

Access to the Conservation Easement Area will be by way of State Road 2827, also known as Back Creek Church Road, as well as by way of an NCDOT-maintained access point from Interstate 485.

The NCDOT and its authorized representatives, including the USACE and the Ecosystem Enhancement Program of the North Carolina Department of Environment and Natural Resources, at all reasonable times and continuing in perpetuity, shall have the right to access the

Conservation Easement Area (1) in order to conduct and monitor the Stream Mitigation Project; and (2) for the purpose of inspecting the Conservation Easement Area to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The NCDOT will notify the Grantor by phone, email, or other correspondence before entering the Property for the purpose of determining compliance. However, if the NCDOT in its sole discretion determines that circumstances require immediate entry, such party is not required to notify Grantor prior to entry but will notify Grantor within two business days of such entry.

5. Rights and Responsibilities Retained by Grantor

Subject to the terms and restrictions contained herein, the Grantor 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 Conservation Easement Area; the rights to sell, lease, encumber, impose restrictions on and devise the Conservation Easement Area, provided such transaction is subject to the terms of this Conservation Easement and written notice is provided to the Grantee; together with any rights not specifically prohibited by or limited by this Conservation Easement, and not inconsistent with the purposes of this Conservation Easement. Unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Conservation Easement Area after any Act of God or other event over which it had no control. Grantor understands that nothing in this Conservation Easement relieves it of any obligation or restriction on the use of the Conservation Easement Area imposed by law.

6. Right to Privacy

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Conservation Easement Area. This Conservation Easement does not create any rights of the public in, on or to the Conservation Easement Area, although the public has the right to view the Conservation Easement Area from any adjacent publicly accessible areas.

7. Subdivision

The Conservation Easement Area may not be subdivided, partitioned nor conveyed from the Property, except in its current configuration as an entity or block of the Property.

8. Passive Recreational Use

Grantor retains the right to engage in, or allow the public to engage in, passive recreational uses of the Conservation Easement Area (requiring no surface alteration of the land and posing no threat to the conservation values set forth herein), including, without limitation, walking, jogging, running, or bicycling on established greenways; wildlife observation; or nature study; as long as such activity is consistent with the purposes of this Conservation Easement and is not prohibited by Paragraph 9 below. Grantor is specifically allowed to construct the trails described below in Paragraph 9(I).

9. Permitted and Restricted Activities

Any activity on, or use of, the designated Conservation Easement Area 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 Conservation Easement Area by the Grantor is prohibited as inconsistent with the purposes of the Conservation Easement. The Conservation Easement Area 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 Area, 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 reserved hereunder by the Grantor have been acquired by the Grantee.

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 Conservation Easement Area 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 Conservation Easement Area is prohibited. No herbicides, insecticides, fungicides, fertilizers or other potentially harmful substances may be used in the Conservation Easement Area without advance written permission from the NCDOT. No agricultural products or by-products may be disposed of in the Conservation Easement Area or within 100 feet of the streambank, whichever is greater, or result in or cause discharge or runoff directly into the Conservation Easement Area. Existing fences may be repaired and replaced.

C. *Silvicultural Use and Land Clearing*

There may be no destruction or cutting of live trees or plants in the Conservation Easement Area, except upon written approval of NCDOT, or unless otherwise expressly permitted herein. Removal of diseased or damaged live trees, large snags for safety or protection of property, or removal of dead brush for fire management, is permitted.

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

Conservation Easement Area is prohibited. No agricultural products or by-products, or agricultural equipment, may be dumped or stored in the Conservation Easement Area.

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 Conservation Easement Area, or on adjacent property if owned by the Grantor or its successors, which would cause erosion or siltation on the Conservation Easement Area.

F. *Industrial Use*

Industrial activities on the Conservation Easement Area are prohibited.

G. *Residential Use*

Residential use of the Conservation Easement Area is prohibited.

H. *Commercial Use*

Commercial activities in the Conservation Easement Area are prohibited.

I. *Construction, Roads, Motorized Vehicles, Greenways*

There shall be no building, shed, facility, mobile home, or other structure constructed or placed in the Conservation Easement Area. No new roads, either paved or unpaved, may be constructed in the Conservation Easement Area except as allowed and described in the Stream Mitigation Plan. Motorized vehicles, including off-road vehicles, are prohibited in the Conservation Easement Area; provided, however, that Grantor may use motorized vehicles to maintain the greenway trails discussed below or to provide security for the greenway trails. Any motorized vehicles so used must remain on the greenway trail to the maximum extent possible.

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 stream functional values, including those described in the Stream Mitigation Plan, for the Conservation Easement Area. All structures allowed under this paragraph, but not necessary for maintenance of the stream mitigation activities, will be removed once the USACE has given final approval of the Stream Mitigation Project.

Grantor is hereby authorized to construct a ten (10) foot wide greenway trail in the Conservation Easement Area, which may be surfaced in asphalt, concrete, and/or boardwalk. The maximum trail corridor width permanently cleared and maintained shall not exceed twenty (20) feet. Grantor shall construct the greenway trail within existing utility easements wherever practical. Grantor may construct the following listed trail amenities within the twenty (20) foot

wide corridor: trashcans, signs, benches, security cameras, and emergency phones. In addition to these requirements, Grantor shall construct the greenway trail in accordance with Appendix D, Corridors and Facility Design Guidelines, of the Mecklenburg County Greenway Master Plan (1999 – 2009), prepared by Haden-Stanziale and Greenways, Inc., as adopted in March 1999 by the Mecklenburg County Board of Commissioners, and including any subsequent amendments adopted by the Board.

NCDOT must provide advance written approval, which will not be unreasonably withheld, before construction begins of the greenway trail construction plan and any stream crossings of the greenway, including the crossing location, width, and design. Nothing in this Conservation Easement relieves Grantor's responsibilities to obtain any needed environmental permits or authorizations necessary to construct a greenway.

J. *Signs*

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

K. *Utilities*

Grantor is allowed to perform routine maintenance on any existing utility system located in the Conservation Easement Area. The installation of new or expanded utility systems is discouraged, and is allowed only to the extent permitted by this Paragraph 9(K).

Cellular and other communication towers are prohibited. New sewer lines, and other non-electric utility lines such as water lines, are allowed only in Zone Three of the Conservation Easement Area, except for perpendicular crossings of the stream that disturb equal to or less than forty (40) linear feet in width of the Conservation Easement Area with a maintenance corridor equal to or less than ten (10) feet in width. Connections to the existing sewer line are permitted in Zone Two or Zone Three, and may cross perpendicular to the stream if they disturb equal to or less than forty (40) linear feet in width of the Conservation Easement Area, and have a maintenance corridor equal to or less than ten (10) feet in width.

Overhead electric utility lines are allowed in Zone Two and Zone Three only; provided, however, that overhead electric utility line perpendicular crossings of the stream are allowed if they disturb equal to or less than 150 linear feet in width of the Conservation Easement Area. Underground electric utility lines are allowed in Zone Two and Zone Three only; provided, however, that underground electric utility line perpendicular crossings of the stream are allowed if they disturb less than or equal to forty (40) linear feet in width of the Conservation Easement Area.

All new stream crossings associated with utility lines (electric or non-electric) must be approved in advance in writing by NCDOT, which approval will not be unreasonably withheld. New stream crossings should be minimized and are encouraged to be grouped together whenever practicable.

Nothing in this Conservation Easement relieves Grantor's responsibilities to obtain any needed environmental permits or authorizations necessary to construct utilities or permit utility placement. Grantor shall notify the NCDOT Division Engineer if right-of-way clearing or other work in the Conservation Easement Area is scheduled by a utility and notice is provided to the Grantor. Any such clearing should be in keeping with the intent of the Conservation Easement.

L. *Water Quality and Drainage Patterns*

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

M. *NCDOT's Rights*

The NCDOT reserves the right to use the Conservation Easement Area in any way necessary, consistent with the terms herein, to undertake any activities to protect, restore, manage, maintain, or enhance stream or wetland functional values, and monitor the mitigation work, as described in the Stream Mitigation Plan, in order to mitigate for impacts to streams or wetlands resulting from road construction. These mitigation activities include, but are not limited to, construction of new stream channels; restoration/stabilization of existing stream channels; installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow; planting of trees, shrubs and herbaceous vegetation; and utilization of heavy equipment to grade, fill, and prepare the soil. The NCDOT further reserves the right to monitor the results of the mitigation activities in perpetuity and to repair or restore any damage to the Conservation Easement Area occurring after initial completion of the construction associated with mitigation activities.

10. <u>Ongoing Responsibilities of Grantor</u>

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

A. *Taxes*

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

B. *Upkeep and Maintenance*

The Grantor 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 Grantee shall have no obligation for the upkeep or maintenance of the Property. The Grantor shall have no obligation for the upkeep or maintenance of the Conservation Easement Area, except to the extent that Grantor-controlled utility systems, greenway trails, or other structures are located in the Conservation Easement Area. Grantor retains responsibility for upkeep and maintenance of those facilities.

C. *Liability and Indemnification*

Grantor agrees to indemnify and hold Grantee 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 Grantee or its agents, in which case liability shall be apportioned accordingly.

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 Conservation Easement Area, the NCDOT shall give the Grantor 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 Grantor to restore the Conservation Easement Area to its condition prior to the violation as restoration of the Conservation Easement Area may be the only appropriate remedy. In any case where a court finds that a violation has occurred, the Grantor 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 Grantee shall have the right to transfer this Conservation Easement to the Ecosystem Enhancement Program of the North Carolina Department of Environment and Natural Resources, or to any public agency or 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, Grantee shall require that the conservation purposes intended to be advanced hereunder shall be continued to be carried out.

13. Transfer of Property

Grantor 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 Conservation Easement Area. Failure of Grantor 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 Grantor's failure to comply with this section constitute a default under this Conservation Easement.

14. Amendment of Easement

This Conservation Easement may be amended by a written instrument executed by the Grantee and the Grantor. 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 grant or donation of this Conservation Easement gives rise to a property right immediately vested in Grantee, 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 Grantee's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Conservation Easement Area 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 Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds. The Grantee, 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 Grantee's, its successor's and assign's, interest in the Conservation Easement Area 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 Conservation Easement Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor'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 Grantor shall immediately give notice to Grantee 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 Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. The Grantee, 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 Grantee's, its successor's and assign's interest in the Conservation Easement Area 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 Conservation Easement Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor'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 Grantor or the Grantee 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 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 Grantor:
Attn: County Manager
Mecklenburg County
600 East Fourth Street
Charlotte, NC 28202

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

In any provision of this Conservation Easement in which the Grantor is required to provide advance notice to the Grantee 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 Grantee's approval is required, such approval shall be deemed withheld unless Grantee provides to the Grantor written notice of approval within 30 days of receipt of said request. If Grantor has received no response after said 30 days, Grantor may send a second written notice to Grantee requesting a statement of the reasons for the disapproval and the Grantee shall respond within 30 days with an explanation for the specific reasons and basis for its decision to disapprove.

20. Grantor's Title Warranty

The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that the Conservation Easement Area is free and clear of any and all encumbrances, except easements and leases of record or in effect by prescriptive rights as of the date hereto; and that there is legal access to the Property; and Grantor covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid easements conveyed.

21. Subsequent Liens

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

22. Subsequent Easements/Restrictions

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

23. Grantor's Environmental Warranty

The Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable federal and state law, and hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste caused by the intentional or negligent act of the Grantor or violation of federal, state or local environmental laws caused by the negligent or intentional act of the Grantor. Without limiting the generality of the foregoing, nothing in this Conservation Easement shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

24. 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.

25. Recording

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

26. 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 unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

MECKLENBURG COUNTY

By: _____ (Seal)
Harry L. Jones, Sr.
County Manager

ATTEST: _____ (Seal)
Name: Janice S Paige
Clerk to the Board of Mecklenburg County Commissioners

NORTH CAROLINA
MECKLENBURG COUNTY

I, Tangela A. White, a Notary Public of mecklenburg County, North Carolina do hereby certify that Janice S. Paige personally appeared before me this day and by me duly swears that he/she knows the common seal of said County of Mecklenburg, and is acquainted with Harry L. Jones, Sr., who is the County Manager of said County, and that he/she, the said Clerk, is Clerk to the Board of Commissioners of said County, and that he/she, the said Clerk, affixed said seal to said instrument, and that he/she, the said Clerk, signed his/her name in attestation of execution of said instrument.

Witness my hand and official stamp or seal this the 21st day of December, 2005.

Tangela A. White 1-5-2010
Notary Public (SEAL)
My commission expires: January 5, 2010

Accepted:

GRANTEE:

THE NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

By: A.D. Allison, II
Assistant Manager, Right of Way Branch

NORTH CAROLINA
Wake COUNTY

I, Luis E. Pages, a Notary Public of Moore County, North Carolina do hereby certify that A.D. Allison, II personally came before me this day and acknowledged that he is the Assistant Manager of the Right of Way Branch of the North Carolina Department of Transportation, an agency of the State of North Carolina, and that by authority duly given he executed the foregoing instrument.

Witness my hand and official stamp or seal this the 5 day of JAN, 2006.

LUIS E. PAGES
NOTARY
PUBLIC
MOORE COUNTY, N.C.

Notary Public (SEAL)
My commission expires: 4.24.2010

JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of the recorded document, and must be submitted with original for re-recording and/or cancellation.

****

Filed For Registration:	**02/02/2006 09:41 AM**
Book:	**RE 19973 Page: 340-356**
Document No.:	**2006021138**
	ESMT 17 PGS $59.00
Recorder:	**SERENA ROSS**

2006021138