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JUDITH A. GIBSON REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY
SPO File Number 60-AW
Prepared by: Office of the Attorney General
Property Control Section
Return to: Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

PERMANENT CONSERVATION EASEMENT
Irwin Creek Restoration Project

THIS CONSERVATION EASEMENT is made this 12th day of October, 2007, 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 **State of North Carolina** ("**Grantee**"), whose mailing address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. 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 Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, The State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

WHEREAS, the Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington

District entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina was 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, Grantor owns in fee simple certain real property situated, lying, and being along Irwin Creek in Mecklenburg County, North Carolina (the "**Property**"), and being more particularly described as those certain parcels of land being conveyed to the Grantor by deed as recorded in Deed Book 9276 at Page 437, Deed Book 12634 at Page 505, Deed Book 12739 at Page 766, Deed Book 11748 at Page 987, Deed Book 12362 at Page 214, Deed Book 12471 at Page 283, Deed Book 12254 at Page 818, Deed Book 12238 at Page 241, Deed Book 12634 at Page 514, Deed Book 12271 at Page 295, Deed Book 11986 at Page 126, and Deed Book 3973 at Page 316 of the Mecklenburg County Registry, North Carolina, plus an abandoned portion of Abeline Road; and

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. This Conservation Easement shall be for the protection and benefit of the waters of Irwin Creek.

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 described area of the Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, as shown on a plat titled "Conservation Easement Plat for Irwin Creek, City of Charlotte, Mecklenburg County, North Carolina" as prepared by KCI Associates of N.C., dated February 5, 2007 and recorded in the Mecklenburg County Registry in Map Book 49 at Page 143. Said plat depicts 1.08 acres in the Easement Area on the north side of Irwin Creek and 4.62 acres in the Easement Area on the south side of Irwin Creek. The Easement Areas comprise a total of 5.70 acres and are more particularly described on **Exhibit A** attached hereto and hereby made a part of this document.

I. PURPOSE

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the Easement Area that contribute 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:

II. 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.

III. WARRANTY PERIOD

For purposes of this Conservation Easement, **warranty period** is hereby defined as a five-year period beginning with completion of construction of the improvements by Grantee and ending after a five-year period. If success criteria are not met within five years, the warranty period will be extended until success criteria are met. During the warranty period, Grantee shall be solely responsible for project maintenance and monitoring. However, Grantor may, at the discretion of the Grantee, participate in maintenance activities. After the warranty period, Grantor may, at its sole discretion, maintain the project in the same functional state as existed on the last day of the warranty period.

IV. GRANTOR 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 hiking, bird watching, nature study, fishing and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing or future trails, paths or roads.

B. Educational Uses. Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the Easement Area for such purposes including organized educational activities such as public programs, site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.

C. Vegetative Cutting. Except as related to the construction of trails and the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, harming, or destruction of any trees and vegetation in the Easement Area is prohibited. The only mowing allowed within the Easement Area is within three feet of trail surfaces to maintain park aesthetics.

D. Industrial, Residential and Commercial Uses. All are prohibited in the Easement Area.

E. Agricultural Use. All agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited.

F. New Construction. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

G. Roads and Trails. The construction of roads within the Easement Area is prohibited, with the exception of creek crossings approved by the Grantee. The construction of trails, walkways and greenways shall be permitted within the Easement Area, however, trails shall not be permitted within 50 feet from the top of the restored stream bank, with the exception of approved creek crossings and interpretive overlooks. Short sections of trail may be permitted within 50 feet of the restored top of bank only where no alternative alignment is practicable. All such exceptions must be pre-approved by the Grantee. All road and trail creek crossings must be approved by the Grantee in advance of construction and must be constructed perpendicular to the creek to the greatest extent practicable. Trail treads in the Easement Area may not exceed 10 feet in width and the total clearing limits for trail treads and mowed trail edges may not exceed 20 feet in width. Trail treads may be constructed of natural surface materials, stone, asphalt, concrete or boardwalk.

H. 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 Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Easement Area.

I. Dumping or Storing. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

J. 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.

K. Water Quality and Drainage Patterns. Upon completion of the stream restoration project, there shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

L. Subdivision and Conveyance. No further subdivision, partitioning, or dividing of the Easement Area is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future conveyance of the remaining fee simple rights shall be subject to this Conservation Easement. Grantor agrees for itself, its successors and assigns, that in the event it transfers the Property, or any portion thereof, such transfer is subject to the Grantee's right of ingress, egress, and regress over and across the Property to the Easement Area for the purposes set forth herein.

M. Development Rights. All development rights are removed from the Easement Area and shall not be transferred.

N. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantor is prohibited.

O. Utilities. - The following conditions shall apply to all pipeline and utility lines which go on, over, through, under and across the Easement Area, whether during construction or maintenance:

1) Pipeline and utility line construction will be minimized to the greatest extent reasonably practicable.

2) Corridor and clearing width for construction will be limited to the minimum necessary to construct the needed facilities.

3) Creek crossings for pipelines or utility lines will be avoided at locations where there are structures in place for grade control, habitat improvement, and bank stabilization. If any disturbance occurs to Grantee's structures or improvements in the Easement Area as a result of construction or maintenance of pipelines or utility lines, the Grantor will ensure that the damaged structures and improvements are restored to their original condition.

4) Any features or vegetation disturbed as a result of the construction or maintenance of pipelines or utility lines within the Easement Area will be restored to their original condition to the greatest extent reasonably practicable using native trees, shrubs and herbaceous vegetation. Vegetative plantings must be completed during the next planting season following completion of the construction or maintenance activity and must comply with the mitigation plan specifications for the site.

5) Crossings of stream mitigation sites and any adjacent wetland areas must only be accomplished utilizing directional drilling/ boring methods to the maximum extent possible. Unavoidable stream or wetland crossings must be perpendicular to the wetlands or streams to greatest extent reasonably practicable. Excavated crossings must be constructed in dry areas as much as possible using temporary coffer dams or similar structures. Coffer dams must consist of non-erosive materials or portable structures.

6) Erosion control devices must be utilized in conjunction with construction and maintenance work to contain all disturbed materials and conform to State requirements.

7) Utility corridors that must be constructed parallel to stream corridors must be at least twenty (20) feet from the top of stream bank unless explicit exception is granted by the Grantee. The area between the utility corridor and the top of stream bank must remain undisturbed except for creek crossings.

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 N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

V. GRANTEE RESERVED USES

A. Ingress, Egress, Regress and Inspection. Grantee, its employees and agents, successors and assigns, receive the perpetual right of general ingress, egress, and regress to the Easement Area over the Property at reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area, in accordance with restoration activities or a long-term management plan approved by Grantor and Grantee. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

B. Restoration Activities. These activities include planting of native 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.

VI. MAINTENANCE AND OTHER PERMISSABLE ACTIVITIES

A. The Grantor, at the sole discretion of the Grantor, may refrain from any and all maintenance if, in the belief of the Grantor, a project initiated under this Agreement is progressing through a natural evolutionary succession that may or may not include vegetation, subterranean water, surface water and wildlife diversity.

B. Grantor allowable actions may include, but are not limited to, blockage removal, debris removal, removal of excess vegetation, clearing of undesirable vegetation and nuisance species, replacement of dead or damaged vegetation, planting of native tree species, installation of flood control measures, installation or removal of any or all facilities should their function threaten the health and well being of the general public, maintenance of the creek drainage system to continue to provide flood management, and the installation, maintenance, and replacement of greenway trails and boardwalks and bridges for public benefit and education.

C. In the event of a natural disaster or civil strife, Grantee during the warranty period and Grantor after the warranty period may elect to not restore a project initiated under this Agreement to a functional condition.

VII. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the

Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

B. Inspection. The Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor, their successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

C. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor, their successors or assigns, for any injury or change in the Easement Area caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

D. Costs of Enforcement. Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their successors or assigns, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

E. No Waiver. Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

VIII. MISCELLANEOUS

A. 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.

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

GRANTOR:
Mecklenburg County
County Manager
600 East Fourth Street
Charlotte, NC 28202

GRANTEE:
State of North Carolina
Department of Administration
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

C. Grantor shall notify Grantee in writing of the name and address of any party to whom the 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 Property is conveyed subject to the Conservation Easement herein created.

D. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof.

E. This Conservation Easement may be amended, but only in a writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement.

F. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

IX. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the 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 the State of North Carolina for the aforesaid purposes.

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent Conservation 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.

GRANTOR:

MECKLENBURG COUNTY

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

ATTEST:

By: Janice S. Paige **(SEAL)**
Clerk to the Board of County Commissioners of Mecklenburg County

NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Tangela A. White, Notary Public, do hereby certify that Janice S. Paige, personally appeared before me this day and acknowledged that he/she is Clerk to the Board of County Commissioners of Mecklenburg County, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by its County Manager, sealed with its County seal, and attested by him/herself as its Clerk to the Board.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 12th day of October, 2007.

Tangela A. White
Notary Public

TANGELA A. WHITE
NOTARY PUBLIC
MECKLENBURG COUNTY, N. C.

My commission expires:

January 5, 2010

EXHIBIT A

LEGAL DESCRIPTION OF IRWIN CREEK CONSERVATION EASEMENT

Tract 1: Being all of that property designated as "New Conservation Easement for 'The State of NC, Ecosystem Enhancement Program'" containing 1.08 acres, as shown on map recorded in Map Book 49 at Page 143 in the Mecklenburg County Public Registry, and being more particularly described as follows:

Commencing at a FOUND IRON PIN on the north side of IRWIN CREEK at the southeast corner of the property of the County of Mecklenburg as shown in DEED BOOK 9276, Page 437 on a line located by Frederick Ira Gore, P.L.S. as shown on a boundary survey done Sept. 8th, 1996 and filed in MAP BOOK 28, Page 897;

Thence South 16°52'00" East, a distance of 110.87 feet to a point being the POINT OF BEGINNING;

Thence South 16°51'59" East, a distance of 61.15 feet to a point;
Thence South 56°44'37" West, a distance of 87.49 feet to a point;
Thence South 72°22'57" West, a distance of 196.62 feet to a point;
Thence South 64°37'50" West, a distance of 644.00 feet to a point;
Thence North 25°22'10" West, a distance of 64.97 feet to a point;
Thence North 69°17'31" East, a distance of 266.56 feet to a point;
Thence North 64°57'32" East, a distance of 498.78 feet to a point;
Thence North 62°46'33" East, a distance of 170.17 feet to the said POINT OF BEGINNING.
Containing 46,839 square feet or 1.08 acres, more or less.

Part of Tax Parcel Numbers 145-311-03 and 04

Tract 2: Being all of that property designated as "New Conservation Easement for 'The State of NC, Ecosystem Enhancement Program'" containing 4.62 acres, as shown on map recorded in Map Book 49 at Page 143 in the Mecklenburg County Public Registry, and being more particularly described as follows:

Beginning at a FOUND IRON PIN at the northern corner of the Bennie James Thompson property as shown in DEED BOOK 3012, Page 120 and the eastern corner of the County of Mecklenburg property as shown in DEED BOOK 12634, Page 505 point, said point being the POINT OF BEGINNING;

Thence South 30°00'44" West, a distance of 193.56 feet to a FOUND IRON PIN at a point on a curve;

Thence northwesterly along the arc of the curve, a distance of 15.84 feet to a point, said curve having a radius of 385.74 feet, a chord bearing North 61°11'57" West, and a chord distance of 15.84 feet;

Thence North 62°22'33" West, a distance of 50.20 feet to a FOUND IRON PIN;
Thence South 27°37'27" West, a distance of 50.02 feet to a FOUND IRON PIN;
Thence South 29°34'10" West, a distance of 21.86 feet to a FOUND IRON PIN at a point of curvature;
Thence southwesterly along the arc of the curve, a distance of 123.25 feet to a FOUND IRON PIN, said curve having a radius of 233.95 feet, a chord bearing South 48°04'31" West, and a chord distance of 121.83 feet;

Thence South 63°10'03" West, a distance of 616.72 feet to a point;
Thence North 81°40'28" West, a distance of 139.80 feet to a point;
Thence North 41°24'43" West, a distance of 143.75 feet to a point;
Thence North 64°37'50" East, a distance of 644.00 feet to a point;
Thence North 72°22'57" East, a distance of 196.62 feet to a point;
Thence North 56°44'37" East, a distance of 203.70 feet to a point;
Thence North 67°08'37" East, a distance of 88.00 feet to a point;
Thence South 40°48'57" East, a distance of 65.50 feet to the said
POINT OF BEGINNING.
Containing 201,108 square feet or 4.62 acres, more or less.

Tax Parcel Numbers 145-211-01 through 11, and 145-161-01