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BOOK 1201 PAGE 684

Revenue Stamps $ **NONE**
STATE OF NORTH CAROLINA

P.I.N. # **8773-54-7542.000**
8773-73-0994.000
8773-73-1084.000

COUNTY OF **Chatham**

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

RETURN TO: North Carolina Department of Transportation
Office of Natural Environment
1548 Mail Service Center
Raleigh, NC 27699-1548

CONSERVATION EASEMENT and
EASEMENT OF INGRESS AND EGRESS

This Conservation Easement and Easement of Ingress and Egress is granted on this **14th** day of **June**, **2005**, by **Ernest H. Smith, AKA Ernest Hugh Smith, AKA E.H. Smith, and wife, Linda S. Smith, AKA Linda J. Smith, and Ernest H. Smith, Trustee of the Ernest H. and Linda S. Smith Revocable Living Trust dated July 16, 2003, and wife, Linda S. Smith, Trustee of the Ernest H. and Linda S. Smith Revocable Living Trust dated July 16, 2003**, having an address of **700 Smith Hudson Rd., Siler City, North Carolina, 27344**, ("Grantor"), to **THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION ("NCDOT")**, having an address of **1548 Mail Service Center, Raleigh, NC 27699-1548** ("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 **1042**, Page **0095**, and Plat Book **2002**, Page **0427**, Deed Book **789**, Page **755**, Deed Book **482**, Page **894**, Deed Book **433**, Page **66**, Deed Book **357**, Page **474**, and Plat Book **2003**, Page **0422** of the **Chatham** County Registry, and described in Exhibit A, attached hereto and incorporated herein (hereafter the "Property"), which consists of approximately. **67.529** acres, more or less, located in **Matthews** Township, **Chatham** County, North Carolina.

The life estate reserved by H. W. Smith recorded in Deed Book **290**, Page **73**, of the **Chatham** County Registry terminated upon the death of H. W. Smith on April 20th, 1967 as evidenced by H. W. Smith's Will and Testament being admitted for probate on April 19, 1967 and recorded in the **Book of Wills, Book M, Page 367**, in the **Chatham** County Registry.

The life estate reserved by Vivian H. Smith recorded in Deed Book **290**, Page **73**, of the **Chatham** County Registry terminated upon the death of Vivian H. Smith on August 3rd, 1976 as evidenced by the **Estate File: 76 E 109**, recorded in the **Chatham** County Registry.

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 **9.094** 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, and to further grant a Permanent Access Easement of Ingress and Egress ("Permanent Access Easement") to the Conservation Easement Area upon and along the Property as more particularly set forth hereinafter.

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 approximately **2,000** linear feet of stream and associated streamside wetlands in **Chatham** 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 **9.094** 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 an Easement Documentation Report *[or some other title]* dated **February 4th, 2004**, prepared by **Mr. B. D. Bass – NCDOT Right of Way Agent** and acknowledged by all parties to be accurate as of the date of this Conservation Easement. The Easement Documentation Report 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 Easement Documentation Report, 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 Easement Documentation Report, and said report 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 sum of **Seventy One Thousand Six Hundred Fifty Five and 27/100**---Dollars (**$71,655.27**) and for other valuable considerations to Grantor, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, the Grantor hereby grants and conveys unto the 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 Conservation Easement Area of the Property of the Grantor situated in **Chatham** County, North Carolina, as described in **Exhibit B**; together with a Permanent Access Easement as more particularly described below in **Paragraph 4** and in **Exhibit C**, attached hereto and incorporated by reference. For a plat of the above described Conservation Easement Area, please see plat entitled "**Conservation Easement of the Ernest H. Smith Tract for the North Carolina Department of Transportation**," dated **December 1st, 2003**, prepared by **Jeffery D. Aker – PLS of McKim & Creed Co.** and recorded in Plat Book **2003 Page: 422**, of the **Chatham** County Registry. All subsequent references to the Conservation Easement shall include, where appropriate, reference to the Permanent Access Easement.

The terms, conditions and restrictions of the Conservation Easement and Permanent Access 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.

1a. Allocation of Payment

It is understood and agreed that the total sum of said consideration ($71,655.27) includes a total sum of $41,377.77 for this "Conservation & Access Easement"; and a total sum of $30,277.50 for water issues and fencing. Therefore, as stated and agreed, these two sums, when added together, make up the total consideration of ($71,655.27) to be paid for said easement, access, etc. as stated herein above. No more. No less.

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. Description of Conservation Easement Area

The Conservation Easement Area encompasses perennial streams, wetlands and surrounding land located on the Property, as more particularly depicted in Exhibit B, a survey entitled "**Conservation Easement of the Ernest H. Smith Tract for the North Carolina Department of Transportation**," dated **December 1st, 2003**, prepared by **Jeffery D. Aker – PLS of McKim & Creed Co.** and recorded in Plat Book **2003 Page: 422**, of the **Chatham** County Registry, and is comprised of **9.094** total acres.

4. Grant of Permanent Access Easement

Grantor hereby grants and conveys to the Grantee a Permanent Access Easement of Ingress and Egress (the "Permanent Access Easement") over the Property to the Conservation Easement Area, continuing in perpetuity. The location of the Permanent Access Easement is depicted in Exhibit C, a survey entitled **"Conservation Easement of the Ernest H. Smith Tract for the North Carolina Department of Transportation," dated December 1st, 2003, prepared by Jeffery D. Aker – PLS of McKim & Creed Co. and recorded in Plat Book 2003 Page: 422,** of the Chatham County Registry.

The NCDOT and its authorized representatives, including the USACE, at all reasonable times and continuing in perpetuity, shall have the right to access the Conservation Easement Area through the Property over this Permanent Access Easement (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 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, 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.

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. *[provisions for livestock crossings and emergency water access may be added here; consult with attorneys for language]*

C. *Silvicultural Use and Land Clearing*

There may be no destruction or cutting of trees or plants in the Conservation Easement Area, except upon written approval of NCDOT. The gathering of firewood in the Conservation Easement Area 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 Grantor obtains prior written approval from the NCDOT.

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 his 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 and Road Building, Motorized Vehicles*

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. 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 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.

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 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*

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 in the Conservation Easement Area or affecting the Conservation Easement Area, Grantor shall notify the NCDOT if right-of-way clearing or other work in the Conservation Easement Area 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*

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. Ongoing Responsibilities of Grantor

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.

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 their 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 Easements

The Grantee shall have the right to transfer this Conservation Easement and Permanent Access Easement 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 and Permanent Access 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 and Permanent Access Easement as to successor owners or limit their enforceability in any way, nor shall Grantor's failure to comply with this section constitute a default under this Conservation Easement.

14. Amendment of Easements

This Conservation Easement and Permanent Access 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 Grantees', its successors' and assigns', 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 Grantees', its successors' and assigns' 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 and Permanent Access Easement shall be servitudes running with the land in perpetuity. Every provision of this Conservation Easement and Permanent Access 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 Permanent Access 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:
Ernest H. Smith, and wife,
Linda S. Smith
700 Smith Hudson Rd.
Siler City, NC 27344

To NCDOT:
Office of Natural Environment
1548 Mail Service Center
Raleigh, NC 27699-1548

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 provide 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 and Permanent Access Easement; that the Conservation Easement Area and Permanent Access Easement are 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 and Permanent Access 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 Permanent Access Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the said easements.

25. Recording

The Grantee shall record this instrument and any amendment hereto in timely fashion with the Office of the Register of Deeds of **Chatham** 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 and Permanent Access Easement shall survive any merger of the fee and easement interest in the Property.

TO HAVE AND TO HOLD this Conservation Easement and Permanent Access 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:

Ernest H. Smith (Seal)
Ernest H. Smith, Trustee

Linda S. Smith (Seal)
Linda S. Smith, Trustee

NORTH CAROLINA
Chatham COUNTY

I, **E. T. Rabens, III**, a Notary Public of **Cumberland** County, North Carolina do hereby certify that **Ernest H. Smith, AKA Ernest Hugh Smith, AKA E. H. Smith and wife, Linda S. Smith, AKA Linda J. Smith, and Ernest H. Smith, Trustee of the Ernest H. and Linda S. Smith Revocable Living Trust dated July 16, 2003, and Linda S. Smith, Trustee of the Ernest H. and Linda S. Smith Revocable Living Trust dated July 16, 2003** personally appeared before me this day and executed the foregoing instrument.

Witness my hand and official stamp or seal this the **15th**, day of **June**, **2005**.

E. T. Rabens, III
NOTARY PUBLIC
CUMBERLAND COUNTY

E. T. Rabens
E. T. Rabens, III
Notary Public (SEAL)
My commission expires: **September 15, 2008**

Accepted:

GRANTEE:

THE NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

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

NORTH CAROLINA
WAKE COUNTY

I, E. T. Rabens, III, a Notary Public of Wake 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 18th day of August, 2005.

E. T. Rabens, III
Notary Public (SEAL)
My commission expires: September 15, 2008.

EXHIBIT A

Being that entire tract of land --- containing approximately 67.529 acres and conveyed to the Grantor by the following Deeds: Deed Book 1042, Page 0095, and Plat Book 2002, Page 0427, Deed Book 789, Page 755, Deed Book 482, Page 894, Deed Book 433, Page 66, Deed Book 357, Page 474, and Plat Book 2003, Page 0422; and recorded in the Chatham County Registry, all of which are incorporated by reference.

EXHIBIT B

REDUCED-SIZE PLAT OF CONSERVATION EASEMENT AREA

See: Plat Book 2003, Page 0422, Titled "Conservation Easement of Ernest H. Smith Tract for the North Carolina Department of Transportation, and recorded in the Chatham County Registry, which Plat is hereby incorporated by reference.

EXHIBIT C

REDUCED –SIZE PLAT OF PERMANENT ACCESS EASEMENT

See: Plat Book 2003, Page 0422, Titled "Conservation Easement of Ernest H. Smith Tract for the North Carolina Department of Transportation, and recorded in the Chatham County Registry, which Plat is hereby incorporated by reference.

Chatham County, North Carolina
REBA G. THOMAS Register of Deeds
The foregoing certificate(s) of
E T RABENS III

notary/notaries public
is/are certified to be correct.

Assistant - Register of Deeds