FOR REGISTRATION J. DAVID GRANBERRY
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
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INSTRUMENT # 2011043290

2011043290

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT AND RIGHT OF ACCESS

MECKLENBURG COUNTY
SPO File Number 060-AF
Prepared by: Office of the Attorney General
Property Control Section
Return to: NC Department of Administration
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED AND RIGHT OF ACCESS, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 23rd day of February, 2011, by **Town of Cornelius**, a municipal corporation, ("**Grantor**"), whose mailing address is P.O. Box 399, Cornelius, NC 28031, 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 5th day of June 2007; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in the Towns of Cornelius and Huntersville, Mecklenburg County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately ____ acres and being conveyed to the Grantor by deed as recorded in **Deed Book _____ at Page ____**of the Mecklenburg County Registry, North Carolina; 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 Caldwell Station 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, and being all of the tract of land as identified as Tax Parcel ID # 005-032-19A Tax Parcel ID # 005-032-19B, Tax Parcel ID # 005-042-19A, Tax Parcel ID # 005-042-19B, As shown in Mecklenburg County, Registry of Deeds, Deed Book 15540, Page 590 and Deed Book 11828, Page 702. The Easement Area as shown on a plat of survey entitled "Caldwell Station dated 04-23-2009, certified by Art Forman, PLS X-12345, and recorded in Plat Book 53, Page 129, Mecklenburg County Register of Deeds. Being more particularly described as follows:

[SEE EXHIBIT A]

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:

I. DURATION OF EASEMENT

Pursuant to law, including the above referenced statutes, this Conservation Easement shall be perpetual and it shall run with, and be a continuing restriction upon the use of, the Property, and it shall be enforceable by the Grantee against the Grantor and against Grantor's heirs, successors and assigns, personal representatives, agents, lessees, and licensees.

II. 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. Without limiting the generality of the foregoing, 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, hunting and 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 trails, paths or roads.

B. Educational Uses. The 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 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 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, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

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 unless allowed under prior agreement.

G. Roads and Trails. There shall be no construction of roads, trails, walkways, or paving in the Easement Area **except the following:**

1) The Grantor reserves the right to establish a 15-foot wide greenway trail within the western boundary of the conservation easement, beginning at the conjunction of the eastern right-of-way of Statesville Road and the northern right-of-way of Northcross Center Court, northward along the western property line to the existing 20-foot wide sanitary sewer easement (SSE), recorded in the Mecklenburg County Register of Deeds DB 6797 PG 818;

2) The Grantor reserves the right to establish a 15-foot wide greenway trail over the existing SSE. Immediately around the existing sanitary sewer manholes, the greenway right-of-way may extend up to 40 feet in width, including the existing SSE.

3) The Grantor reserves the right, after receiving written approval of the EEP and the State Property Office, to establish temporary construction and access easement for the sole purpose of building a greenway trail. Such approval shall be granted within 60 days of receipt of the proposed design of the greenway trail construction and access easement, and such approval shall not be unreasonably withheld.

The trail surface may be constructed of natural and/or man made materials, including but not limited to stone, asphalt, lumber, earth, recycled products or any other material deemed necessary to safely accommodate pedestrians, cyclists and maintenance equipment. It is also understood that the grantor reserves the right to install any and all features necessary to ensure proper drainage of the trail within the Easement Area

New and existing roads or trails must be located, constructed, and repaired in a manner that will not impede the natural drainage of the surrounding easement area, including, but not limited to, the natural flood drainage along the floodplain.

New and existing roads or trails that are located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

The Grantor is responsible for obtaining all applicable permits for construction of any trails.

H. Signs. No signs shall be permitted in the Easement Area except interpretive signs, signs identifying the owner/developer/manager of the Property and the holder of the Conservation Easement, signs giving directions and 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. 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. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. Subdivision and Conveyance. Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of unlimited and repeated ingress and egress 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.

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.

III. GRANTEE RESERVED USES

A. Right of Access, Construction, and Inspection. The Grantee, its employees and agents, successors and assigns, receive a perpetual Right of Access to the Easement Area over the Property at reasonable times to undertake any activities to restore, construct, manage, maintain, enhance, and monitor the stream, wetland and any other riparian resources of the Easement Area, in accordance with restoration activities or a long-term management plan. 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 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.

C. Signs. The Grantee, its employees and agents, successors or assigns, shall be permitted to place signs and witness posts on the Property to include any or all of the following: describe the project, prohibited activities within the Conservation Easement, or identify the project boundaries and the holder of the Conservation Easement.

IV. 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.

V. 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 above or to other address(es) as either party establishes in writing upon notification to the other.

C. Grantor shall notify Grantee in writing of the name and address and 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 and Right of Access may be amended, but only in 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. The U.S. Army Corps of Engineers must be notified 60 days in advance of any amendment to this Conservation Easement or transfer of property interest. Such notification shall be addressed to: General Counsel, US Army Corps of Engineers, 69 Darlington Avenue, Wilmington, NC 28403.

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.

VI. 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:

TOWN OF CORNELIUS, a municipal corporation

By: _____ **(SEAL)**
Town Manager

ATTEST:

By: _____ **(SEAL)**
Town Clerk

NORTH CAROLINA
COUNTY OF ~~MECKLENBURG~~ Cabarrus

I, Tracy L. Wainwright Notary Public, do hereby certify that Lori A. Pearson, personally appeared before me this day and acknowledged that he/she is Clerk to the Town of Cornelius, 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 25 day of February, 2011.

Tracy L. Wainwright
Notary Public

My commission expires:

7-26-15

TRACY L. WAINWRIGHT NOTARY PUBLIC CABARRUS CO., NC

"EXHIBIT A "

Legal Description for Conservation Easement
On Tax Parcel ID # 005-032-19A
On Tax Parcel ID # 005-032-19B
On Tax Parcel ID # 005-042-19A
On Tax Parcel ID # 005-042-19B

BEING located in the Towns of Cornelius and Huntersville, Mecklenburg County, North Carolina and being more particularly described as follows:

BEGINNING at a found rod with cap being located at the intersection of the eastern right-of-way of Statesville Road, also known as U.S. Highway 21 (150' public right-of-way per Map Book 34 Page 557) with the northern right-of-way of Northcross Center Court (public right-of-way varies per Map Book 33 Page 325), said found rod with cap being the southwestern corner of Lot 17 of Map Book 41 Page 385, said found rod with cap having NC Grid Coordinates, N=623042.618 and E=1444389.827, and said found rod with cap being located N 07-17-24.3 E 62,482.142 (ground) feet from NC CORS Station "CHME" having NC Grid Coordinates, N=560980.53 and E=1436243.62; thence proceeding with said eastern right-of-way of Statesville Road, also known as U.S. Highway 21, N 04-36-31 W 985.10 feet to a found rebar, a common corner with Lot 6 of Map Book 34 Page 801; thence leaving said eastern right-of-way of Statesville Road and running with the common lines of said Lot 6, the following three (3) courses and distances: (1) N 85-19-09 E 112.04 feet to a found rebar; (2) N 32-16-55 E 205.71 feet to a found rebar; and (3) N 42-09-45 E 202.26 feet to a found rebar, a common corner with Lot 2 of Map Book 34 Page 801; thence with the common lines of said Lot 2, the following two (2) courses and distances: (1) N 21-52-17 E 386.47 feet to a found rebar; and (2) N 52-16-17 W 175.33 feet to a found concrete monument located in the line of Mary Lee Cooke et al (now or formerly: Deed Book 3879 Page 343); thence with a new line, not the property line, S 81-57-42 E 172.84 feet to a set rebar; thence with another new line, not the property line, S 74-09-53 E 9.91 feet to a set rebar located in the line of Robert V. and Kristina M. Washam (now or formerly: Deed Book 13023 Page 512); thence with the common line of said Washam, S 04-59-37 W 319.20 feet to a found rebar, a common corner with the Greenway of Map Book 44 Page 161; thence with the common lines of said Greenway, the following three (3) courses and distances: (1) N 69-49-24 E 168.60 feet to a set rebar; (2) S 84-37-36 E 119.45 feet to a found rebar with cap; and (3) S 84-37-36 E 268.64 feet to a found rebar, a common corner with Our Towns of North Mecklenburg-South Iredell Habitat for Humanity, Inc. (now or formerly: Deed Book 20962 Page 772); thence with the common lines of said Our Towns of North Mecklenburg-South Iredell Habitat for Humanity, Inc. the following three (3) courses and distances: (1) S 67-22-08 E 329.12 feet to a found rebar; (2) S 83-39-08 E 178.60 feet to a set rebar and (3) N 63-35-52 E 91.52 feet to a set rebar, a common corner with Urban Open Space #1 of Map Book 50 Page 65; thence with the common line of said Urban Open Space #1, S 55-59-36 E 212.80 feet to a found rebar, a common corner with Lot 199 of Map Book 28 Page 98 and the Common Area of Map Book 28 Page 50; thence with a common line of said Common Area, N 77-19-16 W 164.51 feet to a found nail; thence continuing with said Common Area and

continuing with Lots 142, 141 and 140 of Map Book 28 Page 50, S 54-58-44 W 810.05 feet to a found rebar replaced by a set rebar, located in the line of Lot 14 of Map Book 44 Page 666; thence with a common line of said Lot 14 the following two courses and distances: (1) N 72-20-07 W 255.27 feet to a set rebar; and (2) N 72-20-07 W 262.00 feet to a found rebar, the northern corner of said Lot 14; thence with common lines of said Lot 14 the following two (2) courses and distances: (1) S 05-26-01 W 74.01 feet to a found rod; and (2) S 24-05-28 W 89.11 feet to a set rebar; thence with a common line of said Lot 14 and continuing with the common lines of Lots 16 and 17 of Map Book 41 Page 385, S 24-05-28 W 883.19 feet to a rod with cap located at the intersection of the eastern right-of-way of Statesville Road, also known as U.S. Highway 21 with the northern right-of-way of Northcross Center Court, the POINT AND PLACE OF BEGINNING, containing 900,008 square feet / 20.66 acres and being all as shown on Conservation Easement Survey for the State of North Carolina dated 4.23.2009 by Lucas-Forman, Inc.

J. DAVID GRANBERRY
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

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