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Excise Tax: $19.00
Iredell County, NC
Brenda D. Bell Register of Deeds
BK 1547 PG 2371-2379

NORTH CAROLINA
Iredell COUNTY

# CONSERVATION EASEMENT

Revenue: $19.00

THIS CONSERVATION EASEMENT made this 30th day of JANUARY, 2004 by and between Dorothy E. Smiley (Widow); hereinafter called the "Grantor(s)" and the North Carolina Department of Transportation, Division of Highways, 1548 Mail Service Center, Raleigh, NC 27699-1548, hereinafter called the "NCDOT," provides the following:

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## WITNESSETH

WHEREAS, the Grantor is the sole owner in fee simple of certain real property in Cook Springs Township of Iredell County, North Carolina, as more particularly described in Book 612, Page 682 of the Iredell County Registry, North Carolina, which land is hereinafter referred to as "the Property";

WHEREAS, 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;

WHEREAS, the NCDOT desires to preserve 610.69 feet of stream in Iredell County on the said Property:

WHEREAS, the Grantor is willing to grant a perpetual Conservation Easement over 0.925 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.

WHEREAS, the Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34 et. seq., 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;

WHEREAS, the USACE has reviewed and approved the use of the Conservation Easement on the Property to mitigate for the stream impacts, and such will satisfy the said permit conditions after the completion of the stream monitoring period;

WHEREAS, the purposes of this Conservation Easement are to protect the mitigation activities performed by the NCDOT, to preserve and protect the conservation values of the Conservation Easement Area, to prevent any use of the Conservation Easement Area that will significantly impair or interfere with these purposes, and to maintain permanently the dominant woodland, scenic and natural character of the Conservation Easement Area designated on the Property as hereinafter described.

NOW THEREFORE, in consideration of the sum of NINE THOUSAND SIXTY SEVEN DOLLARS ($9,067.00) and other valuable considerations to the Grantor in hand paid by the NCDOT, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the Grantor hereby grants and conveys unto the NCDOT and its successors or assigns forever and in perpetuity a Conservation Easement, pursuant to the USACE Section 404 permit requirements, of the nature and character and to the extent hereinafter set forth, in respect to the land of the grantor situated in Iredell County, North Carolina, as described in **Exhibit A**, and hereinafter referred to as the "Conservation Easement Area". Please see plat titled "Conservation Easement" recorded in Plat Book 44, Page 133 of the Iredell County Registry.

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

## ARTICLE I. DURATION OF EASEMENT

A. Conservation Easement. This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by the NCDOT or its successors and/or assigns against the Grantor(s), Grantor(s) heirs, devisees, successors and assigns, lessees, agents and licensees.

B. Public Access. The easement rights granted herein do not include public access rights. However, the public has the right to view the Conservation Easement Area from any adjacent publicly accessible area.

## ARTICLE II. PROHIBITED, RESTRICTED AND RESERVED 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. Any rights not expressly reserved hereunder by the Grantor have been acquired by the NCDOT.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

1. 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 shall give its prior written consent or unless otherwise expressly permitted herein.

2. Agricultural, Grazing and Horticultural Use. Agricultural, grazing and horticultural use, including landscaping, of the Conservation Easement Area is prohibited.

3. 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 the NCDOT. The gathering of firewood in the Conservation Easement Area shall be limited to dead trees, such that the gathering is consistent with purposes of this Conservation Easement. Removal of large live trees and nonnative invasive vegetation 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.

4. Hunting and Fishing. Grantor expressly reserves the right to hunt and fish on the Conservation Easement Area and to control access of all persons for the purpose of hunting and fishing; provided that these activities do not impact the protection and conservation of any wildlife habitat or other conservation values of the Conservation Easement Area.

5. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, 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.

6. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other material, and no change in the topography of the land in any manner on the Conservation Easement Area nor shall there be any activities conducted on the Conservation Easement Area or on adjacent property if owned by the Grantor and their successors which would cause erosion or siltation on the Conservation Easement Area.

7. Industrial Use. Industrial activities in the Conservation Easement Area are prohibited.

8. Residential Use. Residential use of the Conservation Easement Area is prohibited.

9. Commercial Use. Commercial activities in the Conservation Easement Area are prohibited

10. New Construction. There shall be no building, shed, facility, mobile home, or other structure constructed or placed in the Conservation Easement Area; provided, however, that the NCDOT expressly reserves the right to install, operate and maintain structures for the purpose of reestablishing, protecting, and enhancing stream functional values.

11. Signs. No signs shall be permitted in the Conservation Easement Area except interpretive signs describing restoration activities and the conservation values of the Conservation Easement Area, signs identifying the owner of the Protected Property and the holder of the Conservation Easement, and signs giving directions or proscribing rules and regulations for the use of the Conservation Easement Area.

12. Subdivision. Subdivision, partitioning, or dividing the Conservation Easement Area is prohibited.

13. Development Rights. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

14. 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 (rights of way) located in the Conservation Easement Area or affecting the Conservation Easement, Grantor shall notify the NCDOT if right of way clearing or other work in the Conservation Easement Area is scheduled by the utility.

15. Water Quality and Drainage Pattern. Grantor shall conduct no activities in the Conservation Easement Area that would be detrimental to water purity 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.

16. Grantor's Rights. The Grantor, for themselves, their successors, assigns, invitees and licensees, hereby reserves the right to quiet enjoyment of the Conservation Easement Area; the right to an 8 foot mowing strip within the Conservation Easement as shown on the recorded plat; the right of ingress and egress to the Conservation Easement Area and all adjacent property of the Grantor; the right to continue such uses as exists as of the date of this grant not inconsistent with this Conservation Easement; and the right to sell, transfer, gift or otherwise convey the Conservation Easement Area, in whole, provided such sale, transfer or gift conveyance is subject to the terms of this Conservation Easement and written notice is provided to the NCDOT in accordance with the provisions herein below.

17. 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 functional values, and monitor the restoration resources, as described in the Conceptual Restoration Plan (**Exhibit C**) for the Conservation Easement Area, in order to mitigate for impacts to streams 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 man-made materials as needed to direct in-stream, above ground, and subterraneous water flow; planting of trees, shrubs and herbaceous vegetation; collecting live cuttings; 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.

## ARTICLE III. ENFORCEMENT AND REMEDIES

Nothing contained herein shall be construed to entitle the Grantor or NCDOT to bring any action against the other party for any injury or change in the Property resulting from causes beyond the control of either party, including fire, flood, storm, war, acts of God or third parties, or from any prudent action taken in good faith by either party under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Conservation Easement Area resulting from such causes, in accordance hereunder.

The NCDOT has the right to prevent any action on or use of the Conservation Easement Area that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use. If the NCDOT determines that the Grantor is in violation of the terms

of this Conservation Easement or that a violation is threatened, NCDOT shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Conservation Easement Area resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Conservation Easement Area so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from NCDOT, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, NCDOT may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of conservation values, and to require the restoration of the Conservation Easement Area to the condition that existed prior to any such injury. If the NCDOT, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Conservation Easement Area, the NCDOT may pursue its remedies without prior notice to the Grantor. NCDOT shall exercise reasonable efforts to notify the Grantor and shall, in any event, notify Grantor within two business days after action is taken to explain the action undertaken.

NCDOT's remedies shall be cumulative and shall be in addition to any other rights and remedies available to NCDOT at law or equity. Any cost incurred by NCDOT in enforcing the terms of this Conservation Easement against Grantor or its successors or assigns, including, without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement shall be borne by Grantor.

No failure on the part of the NCDOT to enforce any covenant or provision hereof shall be a waiver to discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of NCDOT to enforce the same in the event of a subsequent breach or default.

The Grantor reserves the right to take action against the NCDOT for use of the Conservation Easement Area in a way that is inconsistent with the purpose of this Conservation Easement. Any cost incurred by Grantor in enforcing the terms of this Conservation Easement against NCDOT or its successors or assigns, including, without limitation, costs of suit and attorney's fees, shall be borne by NCDOT.

## ARTICLE IV. MISCELLANEOUS

A. Amendments. The NCDOT and Grantor may amend this Conservation Easement only by a jointly executed written agreement, and provided that no amendment will be allowed that is inconsistent with the purposes stated herein, and provided that it is approved by the USACE.

B. Exhibits. The attached Exhibit A, , Exhibit C and Plat recorded in Plat Book 44, Page 133 of the Iredell County Registry are incorporated in and made a part of this instrument by reference. The parties acknowledge that the Conceptual Restoration Plan, developed by NCDOT (Exhibit C), a copy of which is on file at the office of the NCDOT, describes the plan for mitigation activities in the Conservation Easement Area.

C. Title. The Grantors covenant and represent that the Grantors are the sole owner and are seized of the Property in fee simple and have good right to grant and convey the aforesaid

Conservation Easement ; that the Conservation Easement Area is free and clear of any and all encumbrances, except easement and leases of record or in effect by prescriptive rights as of the date hereto, and Grantors covenant that the NCDOT shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid easement conveyed. The easements conveyed herein shall run with the land and must be made part of any transfer of title by the Grantors.

D. Notification. Except as otherwise provided herein, any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other addresses as either party establishes in writing upon notification to the other.

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

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

G. Costs and Liabilities. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish NCDOT with satisfactory evidence of payment upon request.

H. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. ə 121-34, which authorizes the creation of Conservation Easements for purposes including those set forth in the recitals herein, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

I. Conservation Purpose. The NCDOT, for themselves, and their successors and assigns agree that this Conservation Easement shall be held exclusively for conservation purposes. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, provided, however, that the NCDOT hereby covenants and agrees that in the event they transfer or assign this Conservation Easement they hold under, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) and section 2301 of the Internal Revenue Code, and the NCDOT 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 to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

TO HAVE AND TO HOLD the aforesaid Conservation Easement unto the NORTH CAROLINA DEPARTMENT of TRANSPORTATION, its successors and assigns, forever. The rights and obligations set forth herein shall inure to and be binding upon the Grantor and the NCDOT, their heirs, executors, assigns and successors in title or interest.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals and caused this instrument to be signed in their respective names by authority duly given, the day and year first above written.

**GRANTOR(S)**:

Dorothy E. Smiley (Seal) _____ (Seal)
DOROTHY E. SMILEY

_____ (Seal) _____ (Seal)

_____ (Seal) _____ (Seal)

NORTH CAROLINA, COUNTY OF _____

I, _____ a Notary Public of _____ County do hereby certify that _____, Grantor(s), personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this ____ day of _____, 2001.

_____ My Commission Expires: _____
Notary Public

STATE OF Florida, COUNTY OF Dade

I, CASSANDRA HARRISON a Notary Public of Dade County do hereby certify that Dorothy E Smiley, Grantor(s), personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 30 day of Jan, ~~2001~~ 2004.

_____ My Commission Expires: _____
Notary Public

CASANDRA HARRISON
Notary Public State of Florida
My comm. expires Apr. 07, 2004
No. CC [illegible]

**NCDOT**:
ACCEPTED FOR THE DEPARTMENT OF TRANSPORTATION BY:

APR 14 2004
name and title

ASS'T MANAGER OF RIGHT OF WAY

NORTH CAROLINA, COUNTY OF Sampson

I, Neal O. Strickland a Notary Public of Sampson County do hereby certify that A.D. Allison II, Asst. Manager of Right of Way, of the North Carolina Department of Transportation, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 5 day of April, 2001.

Notary Public

My Commission Expires: March 29, 2003

The foregoing Certificate(s) of Neal O Strickland, Notaries/Notary Public, is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof. This the 4th day of May, 2001.

Brenda D Bell
Register of Deeds For Pendell County

BY: Joyce R Bess
Deputy/~~Assistant~~ Register of Deeds

**"EXHIBIT A"**

**CONSERVATION EASEMENT NO. 1, PARCEL 711WM , DOROTHY FREEZE SMILEY.**

The conservation easement area shown as **Conservation Easement No. 1, Parcel 711WM** of **Iredell County**, being more particularly shown and described on a plat entitled Survey of Conservation Easement and being recorded in **Plat Book** 44 **Page** 133 of the Iredell County Registry.

The Conservation Easement is described as follows: Beginning at a new iron pin with cap located in the common property line of Eva Harris Anderson (Estate Book 85-E-77) and Dorothy Freeze Smiley, said iron being located N 55° 07'19" E 347.7' from a one inch iron pipe. Thus beginning with said new iron pin with cap N 55° 07'19"E 136.07' the center of Five Mile Branch; thence with said branch N 72° 02'44" E 474.62' to a point in the center of said branch; thence with the western property line of Robert Allen Freeze (D.B.1188, Pg. 224) S 02° 12'39" W 75.88' to a new iron pin with cap; thence S 61° 56'05" W 71.72' to a new iron with cap; thence S 74° 13'25" W 292.36' to a new iron with cap; thence N 88° 41' 14" W 75.40' to a new iron with cap; thence S 57° 47'20" W 136.21' to a new iron with cap; thence N 34° 52'41" W 43.66' to the point of Beginning. Described parcel containing 0.925 acres and being taken out of that land described in Deed Book 612, Page 682.