

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

PIN: 1763-58-7801

Excise Tax: \$0.00

PREPARED BY: Scott T. Slusser
Special Deputy Attorney General
North Carolina Department of Justice

RETURN TO: Chris Underwood
North Carolina Department of Transportation
1598 Mail Service Center
Raleigh, North Carolina 27699-1598

Brief Description for Index: Two tracts, 66.09 acres, Mark's Creek Twmsp.

**CONSERVATION EASEMENT AND
EASEMENT OF INGRESS AND EGRESS
IN PERPETUITY**

THIS CONSERVATION EASEMENT AND EASEMENT OF INGRESS AND EGRESS IN PERPETUITY (this "Conservation Easement") is granted on this ____ day of _____, 2018, by **THE COUNTY OF WAKE**, c/o Wake County Attorney's Office, Post Office Box 550, Raleigh, North Carolina 27602 ("Grantor"), to **THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**, its successors and assigns, having an address of 1598 Mail Service Center, Raleigh, North Carolina 27699-1598 ("NCDOT").

The designation Grantor and NCDOT (collectively, the "Parties") as used herein shall include the Parties, their heirs, successors, assigns, respective agents, executors, administrators,

grantees, devisees, licensees, and/or all other successors as their interests may appear, and shall include singular, plural, masculine, feminine or neuter as required by context.

WHEREAS:

NCDOT, through the State of North Carolina, transferred to Grantor in fee simple by Non-Warranty Deed, signed and recorded concurrently with this Conservation Easement, certain real property lying and being in Wake County, North Carolina, more particularly described on the attached **Exhibit A** (the “Property”).

The Property possesses natural, wetland, scenic, open space, educational, and/or recreational values of great importance to NCDOT, Grantor, and the people of North Carolina.

Grantor is willing to grant to NCDOT a perpetual conservation easement over the entire Property with an area consisting of approximately 66.083 acres, more or less (the “Conservation Easement Area”), which area coincides with the area described in the attached **Exhibit A**, thereby restricting and limiting the use of lands and waters within the Conservation Easement Area to the terms and conditions and for the conservation purposes and values hereinafter set forth, and to further grant to NCDOT a permanent ingress/egress access easement (the “Permanent Access Easement”) to the Conservation Easement Area upon and along the Property as more particularly set forth hereinafter.

NCDOT is an agency of the State of North Carolina whose purpose includes the construction of transportation projects for public use and that has the authority to acquire land and interests in land for the purpose of mitigating the environmental impacts of these transportation projects.

Grantor may hold and maintain open land in its natural state and receive title to the Property from NCDOT, subject to the terms and conditions of this Conservation Easement.

The purposes of the Conservation Easement are to preserve, enhance, restore, and maintain the natural features, streams and associated streamside wetlands and other resources of the Conservation Easement Area consistent with the dictates of Federal and State agencies pursuant to permits from the agencies necessary for NCDOT road projects; to provide habitat for native land, air and aquatic flora and fauna; to improve and maintain water quality; to control runoff of sediment; to use the Conservation Easement Area for activities including those in the mitigation plan pertaining to the Conservation Easement Area, which is on file with NCDOT; to prevent any use of the Conservation Easement Area that will significantly impair or interfere with these purposes; to protect the mitigation activities performed by NCDOT within the Conservation Easement Area; and to maintain permanently the dominant woodland, estuarine, scenic, and natural character of the Conservation Easement Area designated on the Property as hereinafter described (the purposes enumerated in this Paragraph are collectively referred to as the “conservation values”).

The Property is currently devoted to public use as a park and recreational area. NCDOT and Grantor recognize the conservation values of the Conservation Easement Area and have the common goal of the perpetual conservation and protection of the Conservation Easement Area. Grantor intends for the conservation values of the Conservation Easement Area to be preserved and maintained. Further, Grantor intends to convey to NCDOT the right to enforce the preservation and protection of the conservation values of the Conservation Easement Area in perpetuity.

The conservation values and purposes of this Conservation Easement are recognized by the 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, if applicable, 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.

The Conservation Easement Area and the Conservation Easement are subject to permits issued by Federal and/or State resource agencies associated with NCDOT TIP No. R-2547 WM and U.S. Army Corps of Engineers Action ID 2002-2-0819 (“Permits”). The U.S. Army Corps of Engineers (“USACE”) has reviewed and approved the use and terms of this Conservation Easement to protect the mitigation by NCDOT. USACE Action ID 2002-2-0819, issued by the Wilmington District on May 1, 2002, required NCDOT to mitigate for unavoidable stream and/or wetland impacts authorized by that permit.

The USACE has reviewed and approved the general use and terms of this Conservation Easement to protect the mitigation by NCDOT. Grantor and NCDOT agree that third party rights of enforcement associated with the Permits shall be held by USACE, Wilmington District, and any successor agencies, and these rights are in addition to, and do not limit, the rights of enforcement under the permit. Notwithstanding the above and unless otherwise directed by this Conservation Easement, NCDOT recognizes that it is solely responsible for and shall bear the cost of all compliance activities and duties required under the Permits.

NOW, THEREFORE, in consideration of the conveyance by separate Non-Warranty Deed of the Property to Grantor by NCDOT, through the State of North Carolina, and for other good and valuable consideration acknowledged by both Grantor and NCDOT, the benefits of which flow to NCDOT and Grantor from each other, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby grants and conveys unto NCDOT and its successors or assigns forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, situated over, upon and across the Conservation Easement Area, in Marks Creek Township, Wake County, together with a Permanent Access Easement (as defined herein). All subsequent references to the Conservation Easement Area shall include, when appropriate, reference to the Permanent Access Easement.

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

1. Grant Of Conservation Easement

Grantor hereby voluntarily grants and conveys to NCDOT, and NCDOT hereby voluntarily accepts, a perpetual Conservation Easement, which is an immediately vested interest in real property of the nature and character described herein.

Grantor and NCDOT agree that they will not perform, nor willingly or knowingly allow others to perform, any act on, within or affecting the Conservation Easement Area that is inconsistent with the covenants herein. Grantor and NCDOT authorizes each other to enforce these covenants in the manner described below.

Grantor hereby voluntarily grants and conveys to NCDOT 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 the development rights in the Conservation Easement Area are terminated and extinguished and may not be used on or transmitted to the Property or to any other property.

2. Perpetual Duration

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by NCDOT against Grantor. Every provision of this Conservation Easement that applies to Grantor or NCDOT shall also apply to their respective agents, heirs, executors, administrators, assigns, grantees, devisees, licensees, and/or all other successors as their interests may appear. This Conservation Easement is enforceable regardless of any subdivision, partition, or conveyance of the Property or any portion thereof.

3. Access

Grantor hereby grants and conveys to NCDOT a permanent access easement over the Property to the Conservation Easement Area, continuing in perpetuity (the "Permanent Access Easement"). NCDOT may access the Conservation Easement Area upon and along the same route used by Grantor to access and traverse the Conservation Easement Area and/or from any portion of the Conservation Easement Area that fronts US 64.

NCDOT and its authorized representatives at all reasonable times and continuing in perpetuity, shall have the right to access the Conservation Easement Area through the Permanent Access Easement for the purpose of undertaking activities to protect, restore, manage, maintain, or enhance the conservation values of the Conservation Easement Area, and for the purpose of inspecting the Conservation Easement Area to determine if Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. Grantor may do nothing that would interfere with NCDOT's access to the Conservation Easement Area. NCDOT will notify Grantor by phone, email, or other correspondence before entering the Property for the purpose of determining compliance. However, if NCDOT, in its sole discretion, determines that

circumstances require immediate entry, NCDOT is not required to notify Grantor prior to entry but will notify Grantor within two (2) business days of such entry.

It is expected that the public may access the Conservation Easement Area. Such public access will be developed through coordination between Grantor, NCDOT, and USACE.

Grantor also grants to NCDOT the right to permit USACE personnel to access the Conservation Easement Area to the extent necessary to inspect, monitor, and exercise enforcement rights in order to ensure that the mitigation plan and the conservation purposes and values of this Conservation Easement are maintained, in accordance with the terms of the USACE Permits.

4. Rights And Responsibilities Retained By Grantor

Subject to the terms and restrictions contained herein, Grantor reserves to and for itself and its successors the customary rights and privileges of ownership, including the right to quiet enjoyment of the Conservation Easement Area; the right of ingress and egress to the Conservation Easement Area and any adjacent property of Grantor; the right to continue such uses as exist as of the date of this grant not inconsistent with the Conservation Easement; and the right to sell, lease, encumber, transfer, gift, impose restrictions on, devise, or otherwise convey the Property subject to the Conservation Easement Area in its entirety, provided such transaction is subject to the terms of this Conservation Easement and written notice is provided to NCDOT. Unless otherwise specified herein, nothing in this Conservation Easement shall require Grantor to take any action to restore the condition of the Conservation Easement Area after any Act of God. Likewise, nothing herein shall require Grantor to assume responsibility for any duties required by NCDOT pursuant to any Permits or mitigation activities required by USACE or its affiliates. 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.

5. Subdivision

For purposes of this Conservation Easement, the Conservation Easement Area is to be considered one contiguous property. The Conservation Easement Area may not be subdivided, partitioned, split, separated, or otherwise divided. The Conservation Easement Area may not be conveyed except in its current configuration as described herein. The intent of this provision is to ensure the Conservation Easement Area exists and remains in perpetuity as an integral whole, the fee of which is under single ownership.

6. Permitted, Restricted & Reserved Activities

Any activity on, or use of, the designated Conservation Easement Area inconsistent with the conservation values and purposes of this Conservation Easement is prohibited. Grantor reserves 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, except as expressly permitted herein), including walking, fishing, boating, hiking,

picnicking, animal and plant observation, or education and events as long as such activity is consistent with the conservation values and purposes of this Conservation Easement. The Conservation Easement Area shall be maintained in its natural, scenic and open condition and restricted from any activity that would impair or interfere with the conservation values of the Conservation Easement Area. Any use or activity that causes or is likely to cause soil degradation, erosion and/or pollution of any surface or sub-surface waters is prohibited. The parties agree that Grantor's current uses of the Property are Permitted Activities within the scope of this Conservation Easement.

If Grantor intends to perform any maintenance, construction, or other activity in the Conservation Easement Area that is not expressly permitted without the approval of NCDOT and USACE in this Conservation Easement, Grantor shall submit a written plan to NCDOT (Natural Environment Section) detailing the proposed activity(ies) (each a "Work Plan"). NCDOT shall have sixty (60) days to review the Grantor's proposed written plan. If NCDOT determines the requested activity is consistent with the conservation values and purposes of this Conservation Easement, NCDOT will on or before the expiration of the sixty (60) day review period submit the written plan to USACE for review and approval, in accordance with the USACE Permits. Grantor may not perform any maintenance, construction, or other activity not expressly permitted without the approval of NCDOT and USACE in this Conservation Easement until Grantor receives written approval of the submitted plan from both NCDOT and USACE (each an "Approved Work Plan"), which approval may be withheld or conditioned in the sole discretion of NCDOT and/or USACE.

If NCDOT intends to perform any maintenance, construction, or other activity in the Conservation Easement Area that is not expressly permitted without the approval of USACE, Grantor shall provide a copy of the written plan to be submitted to USACE at the same time to County (Attention: Director of Parks, Recreation and Open Space Division) detailing the proposed activity(ies) (each a "Work Plan").

Without limiting the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder. Unless otherwise expressly provided below, Grantor may obtain waivers or variances from such restrictions and regulations only with an Approved Work Plan:

A. Disturbance of Natural Features

Any change, disturbance, alteration or impairment of the natural, scenic or aesthetic features of the Conservation Easement Area or any introduction of non-native plants and/or animal species is prohibited.

B. Agricultural, Grazing, Horticultural Use and Fencing

Agricultural, grazing and horticultural uses, including landscaping, of the Conservation Easement Area are prohibited. No herbicides, insecticides, fungicides, fertilizers or other potentially harmful substances may be used in the Conservation Easement Area. Grantor is

authorized to remove non-native species by hand and to use spot application of herbicides or pesticides to remove non-native species. No agricultural products or by-products may be dumped, stored, or disposed of within the Conservation Easement Area or within 100 feet in any direction of any pond, stream, tributary, lake, spring, seep, watercourse, or wetlands on the Property. Without the permission of NCDOT, Grantor may repair and replace any fences existing within the Conservation Easement Area as of the date of this Conservation Easement. Additional fencing may be added by Grantor, so long as it is consistent with the scope of this Conservation Easement and does not otherwise interfere with NCDOT's ongoing mitigation activities required by USACE.

C. Silviculture and Land Clearing

There shall be no destruction or cutting of trees or native plants in the Conservation Easement Area or removal of large live trees or thinning of the forest. The gathering of firewood in the Conservation Easement Area shall be limited to dead trees, such that the gathering is consistent with the conservation values and purposes of this Conservation Easement.

Notwithstanding the foregoing, Grantor may, without an Approved Work Plan, remove fallen, damaged, diseased, hazardous, or dangerous trees (e.g., hanging limbs, split trees, leaning trees, dead trees, trees damaged by ice, wind or snow, trees struck by lightning, and other hazardous conditions) if, in the discretion of Grantor, such trees pose a safety or maintenance issue within the Conservation Easement Area.

Except as expressly permitted herein for management activities designed to benefit the Conservation Easement Area as a wetland, wildlife management area, or for the benefit of endangered species pursuant to an Approved Work Plan, the destruction, cutting, mowing or harming any native vegetation on the Conservation Easement Area is prohibited. Nothing herein shall prevent, but not require, Grantor from performing general maintenance activities that exist as of the date of this Easement, such as grass mowing, brush cuts and weed removal that is customary to the recreational uses of the Property as designated herein.

D. Dumping or Storage

Dumping, disposal, or storage of soil, trash, refuse, debris, ashes, garbage, waste, abandoned vehicles or parts, appliances, machinery, hazardous substances, toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials within the Conservation Easement Area is prohibited; provided, trash and/or recycling receptacles shall be permitted within the Conservation Easement Area pursuant to an Approved Work Plan.

No agricultural products, by-products, or agricultural equipment may be dumped, stored or disposed of within the Conservation Easement Area or within 100 feet in any direction of any pond, stream, tributary, lake, watercourse, spring, seep, or wetlands on the Property. Grantor shall be responsible for removing any and all material dumped, stored and/or disposed of by Grantor within the Conservation Easement Area; provided that Grantor shall not be responsible for removing any material dumped or placed within the Conservation Easement Area prior to its

acquisition of the Property, and NCDOT shall not be released from any responsibility it may have as a former owner-operator of the Property.

E. Mineral Use, Excavation, and Dredging

There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, sod, minerals or other materials; no exploration for, or development and/or extraction of rocks, minerals, precious metals, ores, carbons, gemstones, or hydrocarbons by any method; and/or no change in the topography of the land in any manner within the Conservation Easement Area, or on adjacent property if owned by Grantor or its successors, which would cause erosion or siltation or change the turbidity within the Conservation Easement Area.

F. Industrial Use

Industrial activities within the Conservation Easement Area are prohibited.

G. Residential Use

Residential use of the Conservation Easement Area is prohibited.

H. Commercial Use

Commercial activities within the Conservation Easement Area are prohibited.

I. Construction, Roads and Road Building, Motorized Vehicles

There shall be no building, shed, facility, mobile home, antenna, utility pole, or any temporary or permanent structure, facility, or fixture constructed or placed within the Conservation Easement Area, unless expressly permitted in this Conservation Easement. Grantor shall have the right to install and maintain unpaved roads, footpaths, trails, and/or boardwalks within the Conservation Easement Area, so long as it does not interfere with the purpose and values of the Conservation Easement Area. Further, Grantor may operate and use motorized vehicles in any manner on such ways necessary for reestablishing, protecting, and enhancing the conservation values of the Conservation Easement Area.

J. Signs

No signs, billboards or advertisements shall be permitted within the Conservation Easement Area except: (i) interpretive signs describing conservation activities and the conservation values and purposes of the Conservation Easement Area and/or Property; (ii) signs identifying the owner of the Property and the holder of this Conservation Easement; (iii) signs prescribing rules and regulations for the use of the Conservation Easement Area and/or Property, which shall specifically include “No Trespassing,” “No Hunting,” and “Posted” signs, if

applicable; (iv) signs used to mark trails or identify directions, locations, or otherwise aiding navigation within the Conservation Easement Area and/or Property; and (v) educational signs.

K. Utilities

The installation of utility systems, including water, sewer, power, fuel, and communication lines and related facilities, is prohibited. Grantor shall notify NCDOT if Grantor becomes aware that a utility intends to perform clearing activities or other work within any existing utility rights of way within or affecting the Conservation Easement Area. In such case, Grantor shall make the utility aware of this Conservation Easement and notify the utility that any such clearing should be minimized to the extent practicable and performed in a manner consistent with the principles of permanently protecting the conservation values of the Conservation Easement Area.

L. Water Quality and Drainage Patterns

No activities shall be permitted in the Conservation Easement Area that would be detrimental to water quality or to any of the plants, animals, or habitats within the Conservation Easement Area or that would alter natural water levels, drainage, sedimentation, turbidity, 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, ponds, watercourses, tributaries, lakes, rivers, or streams 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, ponds, watercourses, streams, tributaries, lakes or wetlands; or using pesticides or biocides in the Conservation Easement Area.

M. 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, cluster development arrangement, or otherwise.

N. Hunting and Fishing

Grantor expressly reserves the right to permit hunting and fishing within the Conservation Easement Area and to control access of all persons for the purpose of hunting and fishing in the Conservation Easement Area, so long as these activities do not impact the protection and conservation of any animal, plant or aquatic habitat or any other of the conservation values and purposes set forth herein.

O. NCDOT's Rights

Provided it does not otherwise interfere with Grantor's ownership, privileges, or use consistent with the terms of the Conservation Easement designated herein, NCDOT, shall have

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 the conservation values and purposes of the Conservation Easement Area. NCDOT further shall have the right to monitor the results of the mitigation activities in perpetuity and to repair, restore, or cause to be repaired or restored, any damage to the Conservation Easement Area. NCDOT shall have the exclusive right to use the Conservation Easement Area for mitigation or conservation activities that further the conservation values and purposes of the Conservation Easement Area, including the exclusive right to use, procure, and/or debit any and all credits within the Conservation Easement Area (e.g., the preservation, restoration, enhancement, and creation of streams, wetlands, and riparian buffers; threatened or endangered species conservation measures; and carbon offset). To the extent consistent with the terms of this Conservation Easement, and subject to the requirements of N.C.G.S. Chapter 44A, Article III, NCDOT shall have the right (1) to install and maintain unpaved roads, footpaths, trails, and/or boardwalks within the Conservation Easement Area, subject to the express written approval of the County and USACE, to exercise NCDOT's rights set forth in this Paragraph and to operate and use motorized vehicles in any manner on such ways necessary for reestablishing, protecting, and enhancing the conservation values of the Conservation Easement Area; and (2) to install fencing around the perimeter of the Conservation Easement Area, provided NCDOT will maintain any such fencing at NCDOT's own cost and expense. NCDOT shall keep the Property and Conservation Easement Area free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by NCDOT.

7. Ongoing Responsibilities Of Grantor

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

A. *Taxes [intentionally omitted]*

B. *Upkeep and Maintenance*

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep, and maintenance of the Property and the Conservation Easement Area. Further, Grantor shall keep the Property and Conservation Easement Area free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

C. *Liability and Indemnification*

The Parties acknowledge that Grantor is a political subdivision of the State of North Carolina and NCDOT is an agency and Department of the State of North Carolina and neither party has the ability to give or provide any indemnity to the other.

Grantor agrees to be responsible for any and all costs, claims or liability, including: personal injury, accidents, negligence or damage relating to the Property, or any claim arising therefrom, caused by Grantor or its employees consistent with the terms of and as allowed by Grantor's 2003 Resolution Regarding Limited Waiver of Sovereign Immunity and may be liable only as therein provided.

NCDOT agrees to be responsible for any and all costs, claims or liability, including: personal injury, accidents, negligence or damage relating to the Property, or any claim arising therefrom, caused by NCDOT or its employees, consistent with the terms of and as allowed by the North Carolina Tort Claim Act, Article 31 of Chapter 143 of the General Statutes of North Carolina. Further, NCDOT enjoys the State's sovereign immunity except as expressly waived by the North Carolina Tort Claim Act, and may be liable only as therein provided.

8. Enforcement

NCDOT shall have the right to conduct regular inspections of the Conservation Easement Area and to prevent any action within or use of the Conservation Easement Area that is inconsistent with the conservation values and purposes of this Conservation Easement and to require the mitigation of such areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use.

Except when an ongoing or imminent violation could irreversibly diminish or impair the conservation values of the Conservation Easement Area, should NCDOT determine that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, NCDOT shall give Grantor written notice of any violation. The written notification will include a demand for a corrective action sufficient to cure the violation; if the violation involves injury to the Conservation Easement Area, NCDOT will demand that the injured/damaged portion of the Conservation Easement Area be repaired. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from NCDOT or under circumstances in which 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 to enforce the terms of this Conservation Easement, to enjoin a violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation 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. The Parties agree that a court may issue an injunction or order requiring 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. If 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, NCDOT may pursue its remedies without prior notice to Grantor. NCDOT shall exercise reasonable efforts to notify Grantor and shall, in any event, notify Grantor within two (2) business days after action is taken to explain the action undertaken.

NCDOT has the right to prevent any activity on, or use of, the Conservation Easement Area that is inconsistent with any federal or state environmental permit requirements applicable to the Property or associated with the Conservation Easement Area. NCDOT has the right to require the restoration and/or remediation of any and all conservation values damaged by any activity or use of the Conservation Easement Area that is inconsistent with any federal or state permit requirements applicable to the Property. The parties acknowledge that no known violation exists at the time this Conservation Easement is granted.

NCDOT's remedies shall be cumulative and shall be in addition to any other rights and remedies available to NCDOT at law or equity. In any case in which a court finds that Grantor has violated this Conservation Easement, Grantor shall reimburse NCDOT for all reasonable expenses incurred in enforcing the terms of this Conservation Easement against Grantor that are awarded by a court of law of final jurisdiction, including: court costs, reasonable attorneys' fees, damages for losses for environmental or conservation values, any costs of mitigation necessitated by the violation of this Conservation Easement, and any other costs and fees associated with the restoration and/or remediation of the Conservation Easement Area. If legal action is brought by NCDOT and a court finds that no violation has occurred, each Party shall bear its own costs.

The failure of NCDOT to discover a violation or to take immediate legal action shall not bar NCDOT from doing so at a later date for that violation or any subsequent violations. Further, no failure on the part of NCDOT to enforce any covenant, condition, 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.

Grantor shall have concurrent jurisdiction and authority for the enforcement of the conditions, restrictions, and prohibitions on the use of the Property and the Conservation Easement Area, and other terms covenants and conditions of this Conservation Easement..

Grantor and NCDOT acknowledge that, by virtue of Permit No. 199501106, USACE (to include any successor agencies) may exercise third-party rights of monitoring and enforcement to ensure that the mitigation plan and the purposes of this Conservation Easement are successfully maintained, and that these rights are in addition to, and do not limit, the rights of enforcement under Permit No. 199501106. Notwithstanding the above, nothing herein shall require the Grantor to bear any costs, fees or responsibility associated with the mitigation related duties imposed on NCDOT by USACE, its affiliates, or its successor agencies.

The enforcement authority of NCDOT and Grantor may be exercised jointly and severally by them, in their discretion. Any forbearance, delay, or omission by either NCDOT or Grantor to enforce any covenant or a provision hereof shall not be deemed or construed to be a waiver of any right of enforcement by either Party.

Nothing contained in this Conservation Easement shall be construed to entitle either Party to bring any action against the other for any injury or change in the Property and/or Conservation

Easement Area resulting from causes beyond such Party's control, 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.

9. Transfer Of Easements

Subject to the prior written consent of Grantor, NCDOT shall have the right to transfer this Conservation Easement, provided the transferee expressly agrees to assume the responsibility imposed on the transferring party or parties by this Conservation Easement. As a condition of such transfer, NCDOT shall require that the conservation values and purposes intended to be advanced hereunder shall continue to be carried out.

10. Transfer Of The Property

Grantor agrees that in the event the Property or any portion thereof is transferred, leased, encumbered, devised, or otherwise conveyed, Grantor will provide advance notification to NCDOT and USACE in writing of the names and addresses of all parties to the transaction at least thirty (30) days prior to the date of the transaction.

Grantor agrees to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which it transfers or divests itself of any interests, including leasehold interests, in the Conservation Easement Area. Grantor and NCDOT 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. Failure of Grantor to comply with this Paragraph shall not impair the validity of this Conservation Easement as to successor owners or interest holders in the Property or the Conservation Easement Area or limit the enforceability of this Conservation Easement in any way, nor shall Grantor's failure to comply with this Paragraph constitute a breach under this Conservation Easement.

11. Amendment

This Conservation Easement may be amended, modified, or terminated only by a written instrument jointly executed by both NCDOT and Grantor in accordance with N.C.G.S. § 121-39.1. Any such amendment shall be consistent with the conservation values and other purposes 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. No amendment shall be allowed that is inconsistent with the conservation purposes and values stated herein. Any such amendment shall be duly recorded in the Office of the Wake County Register of Deeds.

12. Procedure In The Event Of Changed Conditions

The grant or donation of this Conservation Easement gives rise to a property right immediately vested in NCDOT, with a fair market value equal to the proportionate value that the

Conservation Easement Area bears to the value of the Property as a whole. . The proportionate value of NCDOT'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 by NCDOT (a "Changed Condition"), NCDOT may relinquish or transfer by written instrument jointly executed by both NCDOT and Grantor, all or any portion of this Conservation Easement and the restrictions contained herein in accordance with N.C.G.S. §121-39.1.

NCDOT shall be entitled to a portion of the proceeds of any sale, exchange, involuntary conversion of the Property, or any damage award with respect to any proceeding or transfer commenced by or against Grantor, which portion shall be equal to the proportionate value of NCDOT's interest in the Conservation Easement Area as it bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement minus any improved value added to the Property by Grantor following the date of this 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 proceedings, less any expenses, costs or fees incurred by Grantor associated with the same.

13. 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 (a "Taking"), Grantor shall immediately give notice to NCDOT 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 NCDOT's interests as specified herein; all expenses including attorneys' fees incurred by Grantor and NCDOT in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. NCDOT, 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 NCDOT's, 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, minus any improved value added to the Property by Grantor following the date of this 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 proceedings, minus Grantor's expenses, costs or fees from such transactions or proceedings.

14. Interpretation

This Conservation Easement shall be construed to promote the purposes of the statutes and regulations of the State of North Carolina, 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, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to the conservation values and other purposes sought to be protected herein.

15. Severability

Invalidity of any of the covenants, terms, provisions or conditions of this Conservation Easement, or any part thereof, by court order or judgment, shall in no way affect the validity of any of the other provisions hereof, which shall remain in full force and effect.

16. Venue And Forum Selection

The Parties agree that all actions or proceedings arising in connection with this Conservation Easement shall be tried and litigated exclusively in the Superior Court of Wake County, North Carolina. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation with respect to or arising out of this Conservation Easement in any jurisdiction other than that specified in this Paragraph. In the event of litigation, each Party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Paragraph, and stipulates that the Superior Court of Wake County, North Carolina shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Conservation Easement. Each Party hereby authorizes and accepts service of process pursuant to N.C.G.S. § 1A-1, Rule 4. Any final judgment rendered against a Party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

17. Notices

Any notices required by this Conservation Easement shall be in writing and shall be delivered by commercial courier, overnight delivery, or United States mail, First Class postage pre-paid to ensure delivery 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:

Wake County Attorney's Office
Post Office Box 550
Raleigh, North Carolina 27602

TO NCDOT:

NC Department of Transportation
PDEA Natural Environment Section
1598 Mail Service Center

Raleigh, North Carolina 27699-1598
Attn: Randy W. Griffin, Jr., Group Leader
Email: rgriffin@ncdot.gov
Facsimile: 919-212-5785

With a copy to:

Chris Underwood
PDEA Natural Environment Section
1598 Mail Service Center
Raleigh, North Carolina 27699-1598
Email: csunderwood@ncdot.gov
Facsimile: 919-212-5785

With a copy to:

NC Department of Justice
Transportation Division
1505 Mail Service Center
Raleigh, North Carolina 27699-1505
Facsimile: 919-733-9329

TO USACE:

U.S. Army Corps of Engineers
69 Darlington Avenue
Wilmington, North Carolina 28403

AND

U.S. Army Corps of Engineers
11405 Falls of Neuse Road
Wake Forest, North Carolina 27587

In any provision of this Conservation Easement in which Grantor is required to provide advance notice to NCDOT and/or USACE of any activity on the Property or within the Conservation Easement Area, such notice shall be given not less than thirty (30) days prior to the planned commencement of the activity. If the approval of NCDOT and/or USACE is required (including approval of a Work Plan), such approval shall be deemed withheld unless NCDOT and/or USACE provide(s) to Grantor express written notice of approval within thirty (30) days of receipt of the request. If Grantor has received no response within such thirty (30) days, Grantor may send additional written notices to NCDOT and/or USACE requesting a statement of the reasons for the disapproval. The failure of NCDOT and/or USACE to respond does not convey or constitute approval for the requested activity.

18. Grantor's Title Warranty

Grantor covenants and represents that Grantor is the sole owner and is seized of the Property in fee simple and has record title, along with good right to the extent granted by the Non-Warranty Deed of conveyance from NCDOT to grant and convey this Conservation Easement; that the Property, Conservation Easement Area, and Permanent Access Easement are free and clear of any and all encumbrances, except easements, leases, and valid encumbrances of record as of the date hereto; Grantor will warrant and defend the title against the lawful claims of all persons whomsoever; that both Grantor and NCDOT have legal access to the Property, the Conservation Easement Area, and the Permanent Access Easement; and Grantor covenants that NCDOT shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid easements conveyed. All easements conveyed herein shall run with the land and shall be made part of any transfer of title by Grantor.

19. Subsequent Easements/Restrictions

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

20. Environmental Warranties

Grantor and NCDOT each 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 each hereby promises to be responsible for litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste caused by its own intentional or negligent act or violation of federal, state or local environmental laws or regulations. Without limiting the generality of the foregoing, nothing in this Conservation Easement shall be construed as giving rise to any right or ability in NCDOT, nor shall NCDOT 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 ("CERCLA"), as amended.

NCDOT 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 to the extent permitted by the N.C. Tort Claims Act, Grantor against litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste caused by an intentional or negligent act of NCDOT or violation of federal, state or local environmental laws or regulations by NCDOT or its agents. Further, NCDOT recognizes that as a prior owner and operator of the Property, it may be potentially responsible under CERCLA in accordance with 42 U.S.C. 9607(a).

21. Liberal Interpretation

Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the purpose of this Conservation Easement and the policy and purpose of N.C.G.S. § 121-34 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

22. Recording

NCDOT shall record this instrument and any amendment hereto in a timely fashion with the Registry(ies) in the county(ies) in which the Conservation Easement Area is located and may re-record it at any time as may be required to preserve its rights under this Conservation Easement.

23. Merger

The Parties agree this Conservation Easement shall survive any merger of the fee and easement interest in the Property or Conservation Easement Area.

24. No Waiver

Enforcement of this Conservation Easement shall be at the discretion of the NCDOT and any forbearance by NCDOT to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by NCDOT of such term or of any subsequent breach of the same or of any other term of this Conservation Easement or of NCDOT's rights. No delay or omission by NCDOT in exercise of any right or remedy shall be construed as a waiver of any such right or remedy.

25. Entire Agreement

This instrument sets forth the entire agreement of the Parties with respect to subject matter of this Conservation Easement and supersedes all prior or contemporaneous discussions, negotiations, understandings or agreements relating to the Conservation Easement.

The burdens of this Conservation Easement shall run with title to the Property and shall be enforceable against Grantor and all future parties who have an interest in the Property in perpetuity.

26. Principles of Interpretation

In this Conservation Easement, unless the context requires otherwise: (a) pronouns of whatever gender shall include natural persons, corporations, and associations of every kind and character; (b) the singular shall include the plural and vice versa where and as often as may be

appropriate; (c) references to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation; (d) references to contracts and agreements shall be deemed to include all amendments thereto; (e) the words “include”, “includes”, and “including” are to be interpreted as if they were followed by either the phrase “without limitation” or “but not limited to”; (f) references to an “Article”, “Section”, “section”, or “paragraph” shall mean an article or section of this Agreement; (g) headings and titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Agreement; (h) the word “shall” is mandatory; (i) all Exhibits, attachments, or documents attached to this Agreement or referred to in this Agreement are incorporated by reference into this Agreement as if fully set forth herein; and (j) whenever the terms “hereof,” “hereby,” “herein,” or words of similar import are used in this Agreement, they shall be construed as referring to this Agreement in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary.

TO HAVE AND TO HOLD this Conservation Easement unto NCDOT, its successors and assigns, forever, this Conservation Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto.

[SIGNATURES AND NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, Grantor and NCDOT, intending to legally bind each other under seal, have set their hands on the date first written above.

GRANTOR:

_____ (Seal)

Printed Name of Grantor

Title

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public of _____ County, North Carolina, do hereby certify that _____ personally appeared before me this day and executed the foregoing instrument and acknowledged that he/she is _____ for/of _____, and by that authority duly given, he/she executed the foregoing instrument.

Date: _____

Official Signature of Notary

_____, Notary Public
Notary Public's printed or typed name

My Commission expires: _____

(Official Stamp or Seal)

NCDOT:

**NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION**

By: _____(SEAL)
Virgil R. Pridemore, Manager of Right of Way
Branch

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of _____ County, North Carolina,
do hereby certify that Virgil R. Pridemore personally came before me this day and acknowledged
that he is the Manager of Right of Way Branch for 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.

Date: _____

Official Signature of Notary

_____, Notary Public
Notary Public's printed or typed name

My Commission expires: _____

(Official Stamp or Seal)

EXHIBIT A

PROPERTY

BEING those two tracts of land situate, lying and being in Mark's Creek Township, Wake County, North Carolina, containing a total of 66.09 acres, more or less, and being the entirety of the property conveyed from O. Temple Sloan, Jr. and Carol C. Sloan to NCDOT in that General Warranty Deed recorded in Deed Book 8756, Page 410, Wake County Registry, and being a portion of the property more particularly shown in Book of Maps 1981, Page 230, Wake County Registry.

DRAFT