

TD 3706

Issued May 26 2009
\$644.00
State of MITCHELL
North Carolina County
Real Estate Excise Tax
~~\$644~~

STATE OF NORTH CAROLINA

P.I.N. # 0860 00 39 7683

COUNTY OF MITCHELL

PREPARED BY: W. Richard Moore
Special Deputy Attorney General
North Carolina Department of Justice

RETURN TO: Marissa K. Rodman
North Carolina Department of Transportation
Natural Environment Unit
1598 Mail Service Center
Raleigh, NC 27699-1598

**CONSERVATION EASEMENT and
EASEMENT OF INGRESS AND EGRESS**

This Conservation Easement and Easement of Ingress and Egress is granted on this 17th day of February, 2009, by THE McCARTY FAMILY GENERAL PARTNERSHIP, having an address of 71 Chestnut Hill Road, Spruce Pine, North Carolina 28777; MARY M. MARTIN, and husband; EDWARD B. MARTIN; WILLIAM G. McCARTY and wife MARTHA J. McCARTY; SUSAN M. SCHIERECK and husband LESTER T. SCHIERECK; and KATHERINE McCARTY BOONE (formerly KATHERINE M. NAGEL) (hereinafter collectively, "Grantor"), to THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, its successors and assigns, having an address of 1598 Mail Service Center, Raleigh, NC 27699-1598 (hereinafter, "NCDOT" or "Grantee").

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WHEREAS:

The Grantor is the sole owner in fee simple of certain real property more particularly described in Deed Book 278, Page 676, of the Mitchell County Registry, which consists of approximately 42.7 acres, more or less, located in Snow Creek Township, Mitchell County, North Carolina (hereinafter, "the Property").

The Property provides natural wildlife habitat for a wide variety of land, air and aquatic species, specifically including threatened and endangered aquatic mussel species such as the Appalachian elktoe mussel (*Alasmidonta raveneliana*), because of the streams that run through the Property; many of these species, which rely on the streams, are of great importance to the Grantor and the people of North Carolina.

The Grantor is willing to grant a perpetual Conservation Easement over two areas of the property consisting of 24.37 acres and 1.378 acres of the Property (hereinafter collectively, the "Conservation Easement Area"), thereby restricting and limiting the use of land within the Conservation Easement Area to the terms and conditions and for the purposes hereinafter set forth, and to further grant a Permanent Access Easement of Ingress and Egress (hereinafter, "Permanent Access Easement") to the Conservation Easement Area upon and along the Property as more particularly set forth hereinafter.

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

The purposes of the Conservation Easement are to preserve, enhance, restore, and maintain the natural features and resources of the Conservation Easement Area; to provide habitat for native plants and animals, specifically including threatened and endangered aquatic mussel species such as the Appalachian elktoe mussel (*Alasmidonta raveneliana*); to improve and maintain water quality; and to control runoff of sediment (hereinafter the "conservation values"); as well as 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.

The specific conservation values of the Conservation Easement Area and its current use and state of improvement are described in a Mitigation Feasibility Study dated August 2005, prepared by Buck Engineering and acknowledged by all parties to be accurate as of the date of this Conservation Easement. The Mitigation Feasibility Study may be used by the Grantee to document any future changes in the use or character of the Conservation Easement Area in order to ensure the terms and conditions of this Conservation Easement are fulfilled. This Mitigation Feasibility Study, however, is not intended to preclude the use of other evidence to establish the present condition of the Conservation Easement Area if there is a controversy over its use. The

Grantor and Grantee have copies of this Mitigation Feasibility Study, and said report will remain on file with the Office of Natural Environment of NCDOT.

The Grantor intends that the conservation values of the Conservation Easement Area be preserved and maintained, and further, the Grantor intends to convey to the Grantee the right to preserve and protect the conservation values of the Conservation Easement Area in perpetuity.

The conservation purposes of this Conservation Easement are recognized by the Uniform North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34 *et seq.*, which provides for the enforceability of restrictions, easements, covenants or conditions “appropriate to retaining land or water areas predominantly in their natural, scenic, or open condition or in agricultural, horticultural, farming or forest use,” N.C.G.S. § 121-35(1); and which provides for tax assessment of lands subject to such agreements “on the basis of the true value of the land and improvement less any reduction in value caused by the agreement,” N.C.G.S. § 121-40.

NOW, THEREFORE, in consideration of the sum of THREE HUNDRED TWENTY-ONE THOUSAND EIGHT HUNDRED AND TWENTY-FIVE Dollars (\$321,825.00.00) and for other valuable considerations to the Grantor, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, the Grantor hereby grants and conveys unto the Grantee and its successors or assigns forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, in respect to the Conservation Easement Area of the Property of the Grantor situated in Mitchell County, North Carolina, as described in Exhibit A; together with a Permanent Access Easement as more particularly described below in Paragraph 4 and in Exhibit B, attached hereto and incorporated by reference. All subsequent references to the Conservation Easement shall include, where appropriate, reference to the Permanent Access Easement.

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

1. Grant of Conservation Easement

The Grantor hereby voluntarily grants and conveys to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual Conservation Easement, which is an immediately vested interest in real property of the nature and character described herein. The Grantor agrees that it will not perform, nor knowingly allow others to perform, any act on or affecting the Conservation Easement Area that is inconsistent with the covenants herein. The Grantor authorizes the Grantee to enforce these covenants in the manner described below.

The Grantor hereby voluntarily grants and conveys to the Grantee all development rights for the Conservation Easement Area, except as otherwise reserved and provided by the terms of this Conservation Easement, that are now or hereafter inherent in the Conservation Easement Area. The parties agree that such rights are terminated and extinguished, and may not be used on

or transmitted to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property.

2. Duration

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by the Grantee against the Grantor, its representatives, heirs, successors and assigns, lessees, agents, and licensees.

3. Description of Conservation Easement Area

The Conservation Easement Area encompasses perennial streams, wetlands and surrounding land located on the Property, as more particularly described in Exhibit A, and is comprised of 25.745 total acres.

4. Access

The Grantor hereby grants and conveys to the Grantee a Permanent Access Easement over the Property to the Conservation Easement Area, continuing in perpetuity. The location of the Permanent Access Easement is described in Exhibit B. This access also allows Grantee to access the Conservation Easement conveyed herein as well as the Conservation Easement area conveyed to Grantee by Richard S. Prisco and Cheryl V. Prisco.

The NCDOT and its authorized representatives, including the Ecosystem Enhancement Program of the North Carolina Department of Environment and Natural Resources (hereinafter, "EEP"), at all reasonable times and continuing in perpetuity, shall have the right to access the Conservation Easement Area through the Property over this Permanent Access Easement 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 the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The NCDOT will notify the Grantor by phone, email, or other correspondence before entering the Property for the purpose of determining compliance. However, if the NCDOT in its sole discretion determines that circumstances require immediate entry, such party is not required to notify the Grantor prior to entry but will notify the Grantor within two business days of such entry.

5. Rights and Responsibilities Retained by the Grantor

Subject to the terms and restrictions contained herein, the Grantor reserves to and for itself and its successors all customary rights and privileges of ownership, including without limitation the right to quiet enjoyment of the Conservation Easement Area; the rights to sell, lease, encumber, impose restrictions on and devise the Conservation Easement Area, provided such transaction is subject to the terms of this Conservation Easement and written notice is provided to the Grantee; together with any rights not specifically prohibited by or limited by this Conservation Easement, and not inconsistent with the purposes of this Conservation Easement.

Unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Conservation Easement Area after any Act of God. The Grantor understands that nothing in this Conservation Easement relieves it of any obligation or restriction on the use of the Conservation Easement Area imposed by law.

6. Right to Privacy

The Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Conservation Easement Area. This Conservation Easement does not create any rights of the public in, on or to the Conservation Easement Area, although the public has the right to view the Conservation Easement Area from any adjacent publicly accessible areas.

7. Subdivision

The Conservation Easement Area may not be subdivided, partitioned nor conveyed from the Property, except in its current configuration as an entity or block of the Property.

8. Passive Recreational Use

The Grantor retains the right to engage in passive recreational uses of the Conservation Easement Area (requiring no surface alteration of the land and posing no threat to the conservation values set forth herein), including, without limitation, walking, fishing, hunting or animal and plant observation as long as such activity is consistent with the purposes of this Conservation Easement and is not prohibited by Paragraph 9 below.

9. Permitted and Restricted Activities

Any activity on, or use of, the designated Conservation Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Conservation Easement Area by the Grantor is prohibited as inconsistent with the purposes of the Conservation Easement. The Conservation Easement Area shall be maintained in its natural, scenic and open condition and restricted from any development that would significantly impair or interfere with the conservation values of this Conservation Easement Area, and any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or sub-surface waters is prohibited. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee.

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

A. *Disturbance of Natural Features*

Any changes, disturbance, alteration or impairment of the natural, scenic and aesthetic features of the Conservation Easement Area or any introduction of non-native plants and/or animal species is prohibited unless the NCDOT gives its prior written consent or unless otherwise expressly permitted herein.

B. *Agricultural, Grazing, and Horticultural Use and Fencing*

Agricultural, grazing and horticultural use, including landscaping, of the Conservation Easement Area is prohibited. No herbicides, insecticides, fungicides, fertilizers or other potentially harmful substances may be used in the Conservation Easement Area without advance written permission from the NCDOT. No agricultural products or by-products may be disposed of in the Conservation Easement Area or within 100 feet of the streambank, whichever is greater, or result in or cause discharge or runoff directly into the Conservation Easement Area. Existing fences may be repaired and replaced. Grantee or its representatives, specifically including the EEP, may install fencing around the perimeter of the Conservation Easement Area. Grantor will be responsible for maintenance of all fences.

C. *Silvicultural Use and Land Clearing*

There may be no destruction or cutting of trees or plants in the Conservation Easement Area, except upon written approval of NCDOT. The gathering of firewood in the Conservation Easement Area shall be limited to dead trees, such that the gathering is consistent with the purposes of this Conservation Easement. Removal of large live trees, or thinning of the forest or removal of brush for fire management, may be allowed in some cases provided that any such request is consistent with the purposes of this Conservation Easement and the Grantor obtains prior written approval from the NCDOT.

D. *Dumping and Storage*

Dumping or storage of soil, trash, refuse, debris, ashes, garbage, waste, abandoned vehicles or parts, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Conservation Easement Area is prohibited. No agricultural products or by-products, or agricultural equipment, may be dumped or stored in the Conservation Easement Area. Grantor shall be responsible for removing any dumped or stored material.

E. *Mineral Use, Excavation, and Dredging*

There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Conservation Easement Area, or on adjacent property if owned by the Grantor or his successors, which would cause erosion or siltation on the Conservation Easement Area.

F. *Industrial Use*

Industrial activities on the Conservation Easement Area are prohibited.

G. *Residential Use*

Residential use of the Conservation Easement Area is prohibited.

H. *Commercial Use*

Commercial activities in the Conservation Easement Area are prohibited.

I. *Construction, Roads and Road Building, Motorized Vehicles*

There shall be no building, shed, facility, mobile home, or other structure constructed or placed in the Conservation Easement Area. No new roads, either paved or unpaved, may be constructed in the Conservation Easement Area except as allowed and described in the Mitigation Feasibility Report. Motorized vehicles, including off-road vehicles, are prohibited in the Conservation Easement Area. However, the NCDOT expressly reserves the right to install, operate, and maintain structures or unpaved roads, and to use motorized vehicles in any manner necessary, for the purpose of reestablishing, protecting, and enhancing conservation values for the Conservation Easement Area.

J. *Signs*

No signs shall be permitted in the Conservation Easement Area except interpretive signs describing activities and the conservation values of the Conservation Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, and signs giving directions or prescribing rules and regulations for the use of the Conservation Easement Area, which shall specifically include "No Trespassing," "No Hunting," and "Posted" signs, if applicable.

K. *Utilities*

The installation of utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, is prohibited. If there are existing utility easements located in the Conservation Easement Area or affecting the Conservation Easement Area, the Grantor shall notify the NCDOT if right-of-way clearing or other work in the Conservation Easement Area is scheduled by the utility. Any such clearing should be in keeping with the intent of the Conservation Easement.

L. *Water Quality and Drainage Patterns*

The Grantor shall conduct no activities in the Conservation Easement Area that would be detrimental to water quality or to any of the plants or habitats within the Conservation Easement Area, specifically including the Appalachian elktoe mussel (*Alasmidonta raveneliana*) and its

habitat, 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, the Grantor is prohibited from diverting or causing or permitting the diversion of surface or underground water into, within or out of the Conservation Easement Area by any means; polluting or discharging into waters, springs, seeps, or wetlands; or using pesticides or biocides in the Conservation Easement Area unless agreed to in writing by the NCDOT.

M. *NCDOT's Rights*

The NCDOT, on behalf of itself and its authorized representatives, specifically including the EEP, 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 the conservation values of the Conservation Easement Area. NCDOT specifically reserves the right to use the Property in the future for additional mitigation or conservation activities that further the conservation values of the Conservation Easement Area.

10. Ongoing Responsibilities of the Grantor

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

A. *Taxes*

The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same.

B. *Upkeep and Maintenance*

The Grantor retains all responsibilities and shall bear all costs and liabilities of any kinds related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

C. *Liability and Indemnification*

The Grantor agrees to indemnify and hold the Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorney's fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the intentional misconduct or negligence of the Grantee or their agents, in which case liability shall be apportioned accordingly.

11. Enforcement

The NCDOT shall have the right to prevent violations and remedy violations of the terms of this Conservation Easement through judicial action, which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties attempting to violate the terms of this Conservation Easement. Except when an ongoing or imminent violation could irreversibly diminish or impair the conservation values of the Conservation Easement Area, the NCDOT shall give the Grantor written notice of the violation and thirty (30) days to cure the violation, before commencing any legal proceedings. If a court with jurisdiction determines that a violation may exist or has occurred, the NCDOT may obtain an injunction to stop the violation, temporarily or permanently. The parties agree that a court may issue an injunction or order requiring the Grantor to restore the Conservation Easement Area to its condition prior to the violation as restoration of the Conservation Easement Area may be the only appropriate remedy. In any case where a court finds that a violation has occurred, the Grantor shall reimburse the NCDOT for all its expenses incurred in stopping and correcting the violation, including but not limited to court costs, attorneys' fees, and any other costs incurred with onsite remediation. If legal action is brought by the NCDOT and the court finds that no violation has occurred, each party shall bear its own costs. The failure of the NCDOT to discover a violation or to take immediate legal action shall not bar it from doing so at a later time for that violation or any subsequent violations.

12. Transfer of Easements

The Grantee shall have the right to transfer this Conservation Easement and Permanent Access Easement to the EEP, or any public agency or to a private nonprofit organization that, at the time of transfer, is a qualified organization under §170(h) of the U.S. Internal Revenue Code, as amended and under NCGS §121-34 *et seq.*, provided the agency or organization expressly agrees to assume the responsibility imposed on the transferring party or parties by this Conservation Easement. As a condition of such transfer, the Grantee shall require that the conservation purposes intended to be advanced hereunder shall be continued to be carried out.

13. Transfer of Property

The Grantor agrees to incorporate by reference the terms of this Conservation Easement and Permanent Access Easement in any deed or other legal instrument by which it transfers or divests itself of any interests, including leasehold interests, in all or a portion of the Conservation Easement Area. Failure of the Grantor to comply with this section shall not impair the validity of this Conservation Easement and Permanent Access Easement as to successor owners or limit their enforceability in any way, nor shall the Grantor's failure to comply with this section constitute a default under this Conservation Easement.

14. Amendment of Easements

This Conservation Easement and Permanent Access Easement may be amended by a written instrument executed by the Grantee and the Grantor. Any such amendment shall be consistent with the purpose of this Conservation Easement and its terms, and shall comply with

Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be duly recorded.

15. Procedure in the Event of Changed Conditions

The grant or donation of this Conservation Easement gives rise to a property right immediately vested in the Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole. That proportionate value of the Grantee's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Conservation Easement Area for conservation purposes, the restrictions contained herein may only be extinguished by judicial proceeding. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of the Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by the Grantor and Grantee in such action shall be paid out of the recovered proceeds. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Upon such proceedings, such portion shall be equal to the proportionate value that the Grantee's, its successor's and assign's, interest in the Conservation Easement Area bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Conservation Easement Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding.

16. Procedure in the Event of Condemnation or Eminent Domain

Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor shall immediately give notice to the Grantee and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking and all incidental or direct damages resulting from the taking. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of the Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by the Grantor and Grantee in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that the Grantee's, its successor's and assign's interest in the Conservation Easement Area bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Conservation Easement Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding.

17. Interpretation

This Conservation Easement shall be interpreted under the laws of the State of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

18. Perpetual Duration; Severability

This Conservation Easement and Permanent Access Easement shall be servitudes running with the land in perpetuity. Every provision of this Conservation Easement and Permanent Access Easement that applies to the Grantor or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this Conservation Easement or Permanent Access Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof, which shall remain in full force and effect.

19. Notices

Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail to the parties respectively at the following addresses, unless a party has been notified in writing by the other of a change of address:

To the Grantor:
 c/o Katherine McCarty Boone
 71 Chestnut Hill Road
 Spruce Pine, NC 28777

To NCDOT:
 Natural Environment Unit
 Attn: Marissa Rodman
 North Carolina Department of Transportation
 1548 Mail Service Center
 Raleigh, NC 27699-1548

In any provision of this Conservation Easement in which the Grantor is required to provide advance notice to the Grantee of any activity on the Property, such notice shall be given not less than thirty days prior to the planned commencement of the activity. If the Grantee's approval is required, such approval shall be deemed withheld unless the Grantee provides to the Grantor written notice of approval within 30 days of receipt of said request. If the Grantor has received no response after said 30 days, the Grantor may send a second written notice to the Grantee requesting a statement of the reasons for the disapproval and the Grantee shall respond within 30 days with an explanation for the specific reasons and basis for its decision to disapprove.

20. Grantor's Title Warranty

The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement and Permanent Access Easement; that the Conservation Easement Area and Permanent Access Easement are free and clear of any and all encumbrances, and the Grantor will warrant and defend the title against the lawful claims of all persons whomsoever; that there is legal access to the Property; and the Grantor covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid easements conveyed.

21. Subsequent Liens

No provisions of this Conservation Easement should be construed as impairing the ability of the Grantor to use the Conservation Easement Area as collateral for subsequent borrowing. Any such liens shall be subordinated to this Conservation Easement.

22. Subsequent Easements/Restrictions

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

23. Grantor's Environmental Warranty

The Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable federal and state law, and hereby promises to defend and indemnify the Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste caused by the intentional or negligent act of the Grantor or violation of federal, state or local environmental laws caused by the negligent or intentional act of the Grantor. Without limiting the generality of the foregoing, nothing in this Conservation Easement shall be construed as giving rise to any right or ability in the Grantee, nor shall the Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

24. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and Permanent Access Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the said easements.

25. Recording

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

26. Merger

The Parties agree that the terms of this Conservation Easement and Permanent Access Easement shall survive any merger of the fee and easement interest in the Property.

TO HAVE AND TO HOLD this Conservation Easement and Permanent Access Easement unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR: THE McCARTY FAMILY GENERAL PARTNERSHIP

BY: Mary M. Martin (Seal)
MARY M. MARTIN, PARTNER

BY: Edward B. Martin (Seal)
EDWARD B. MARTIN, spouse of Mary M. Martin*
**executes this document solely to the extent that he has any marital right to the Property*

STATE OF SC
Union COUNTY

I, Kathy S. Meador a Notary Public of Union County, State of SC do hereby certify that Mary M. Martin and Edward B. Martin personally appeared before me this day and executed the foregoing instrument.
Witness my hand and official stamp or seal this the 12th day of Dec., 2008.

Kathy S. Meador
Notary Public (SEAL)
Printed Name of Kathy S. Meador
My commission expires 05/2011



[The McCarty Family General Partnership
Signatures, Con't.]

BY: William G. McCarty (Seal)
WILLIAM G. McCARTY, PARTNER

BY: Martha J. McCarty (Seal)
MARTHA J. McCARTY, spouse of William G. McCarty*
**executes this document solely to the extent that she
has any marital right to the Property*

NORTH CAROLINA
Mecklenburg COUNTY

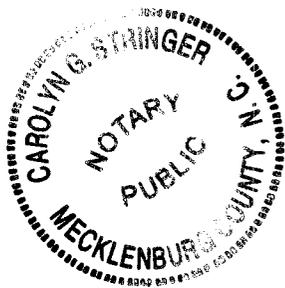
I, Carolyn G. Stringer a Notary Public of mecklenburg County, North Carolina do
hereby certify that William G. McCarty and Martha J. McCarty personally appeared before me
this day and executed the foregoing instrument.

Witness my hand and official stamp or seal this the 8th day of December, 2008.

Carolyn G. Stringer
Notary Public (SEAL)

Printed Name of Notary: Carolyn G. Stringer

My commission expires: 01-28-2013



[The McCarty Family General Partnership
Signatures, Con't.]

BY: Susan M Schiereck (Seal)
SUSAN M. SCHIERECK, PARTNER

BY: Lester X Schiereck (Seal)
LESTER X SCHIERECK, spouse of Susan M. Schiereck*
LCS *executes this document solely to the extent that he
has any marital right to the Property

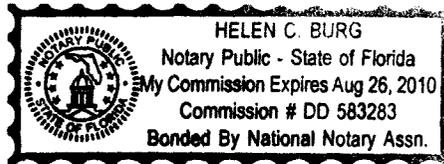
STATE OF Florida
Pinellas COUNTY

I, Helen C. Burg, a Notary Public of Pinellas County, State of
Florida do hereby certify that Susan M. Schiereck and Lester X Schiereck personally
appeared before me this day and executed the foregoing instrument. *CMB*
Witness my hand and official stamp or seal this the 17 day of February, 2008.

Helen C. Burg
Notary Public (SEAL)

Printed Name of Notary: Helen C. Burg

My commission expires: 08/26/2010



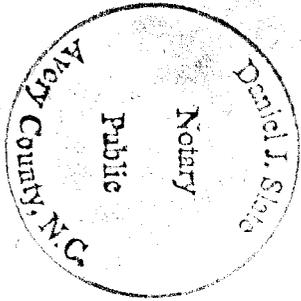
[The McCarty Family General Partnership
Signatures, Con't.]

Katherine McCarty Boone, Partner
BY: *Katherine M. Nagel* (Seal)
KATHERINE McCARTY BOONE, PARTNER
(Formerly KATHERINE M. NAGEL)

NORTH CAROLINA
Mitchell COUNTY

I, DANIEL J. SLATE, a Notary Public of Avery County, North Carolina do hereby certify that ~~KATHERINE M. BOONE~~ ^{McCarty} personally appeared before me this day and executed the foregoing instrument.

Witness my hand and official stamp or seal this the 5th day of December, 2008.



Daniel J. Slate
Notary Public (SEAL)

Printed Name of Notary: DANIEL J. SLATE

My commission expires: Aug 7th 2010

ACCEPTED:

GRANTEE:

THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

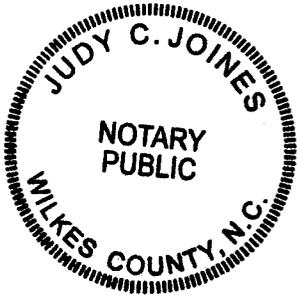
[Handwritten signature of A.D. Allison, II]

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

NORTH CAROLINA
Wilke COUNTY

I, Judy C. Joines, a Notary Public of Wilkes County, North Carolina do hereby certify that A.D. Allison, II personally came before me this day and acknowledged that he is the Manager of the Right of Way Branch of the North Carolina Department of Transportation, an agency of the State of North Carolina, and that by authority duly given he executed the foregoing instrument.

Witness my hand and official stamp or seal this the 26th day of March, 2009.



[Handwritten signature of Judy C. Joines]
Notary Public (SEAL)

Printed name of notary: Judy C. Joines

My commission expires: 3/29/2012

EXHIBIT A

CONSERVATION EASEMENT AREA

Conservation Easement Area No. 1- (24.367 acres, more or less)-

Said conservation easement area consisting of 24.367 acres, more or less, over and upon a portion of those certain 42.7 acres conveyed to the McCarty Family General Partnership by that certain deed recorded in Book 278, Page 676 of the Mitchell County Registry, North Carolina, and lying and being situated in Snow Creek Township, Mitchell County, North Carolina, east of NC 80; south of Snow Creek Road (SR 1171); north of the CSX Railroad, and on the west side of Lily Branch, and being described according to a plat or survey dated December 1, 2008 and captioned, "Boundary Survey of Conservation Easements For North Carolina Department of Transportation," prepared by TGS Engineers, Shelby, North Carolina and recorded contemporaneously herewith, and being more particularly described by metes and bounds as follows:

BEGINNING at a point in the southern right of way line of a 24 foot wide road known as Snow Creek Road (SR 1171), said point having NC Grid State Plane Coordinates N=810452.3607; E=1063904.5027; NAD 83 (CORS96) DATUM by OPUS GPS OBSERVATION COMBINED GRID FACTO=0.99982538; thence from said point of BEGINNING along the arc of a curve to the right having an arc length of 61.76 feet, a radius of 39.95 feet and a chord bearing and distance of N 47 degrees 00 minutes 56 seconds E 55.79 feet to a point; thence along the arc of a curve to the right having an arc length of 18.97 feet, a radius of 89.97 feet and a chord bearing and distance of S 82 degrees 39 minutes 32 seconds E 18.93 feet to a point; thence S 10 degrees 19 minutes 11 seconds E 65.26 feet to a point; thence S 27 degrees 58 minutes 44 seconds E 22.01 feet to a point; thence S 29 degrees 12 minutes 24 seconds E 22.50 feet to a point; thence S 47 degrees 09 minutes 08 seconds E 38.18 feet to a point; thence S 53 degrees 14 minutes 36 seconds E 52.91 feet to a point; thence S 36 degrees 37 minutes 42 seconds E 83.68 feet to a point; thence S 32 degrees 24 minutes 25 seconds E 52.25 feet to a point; thence S 48 degrees 27 minutes 19 seconds E 76.49 feet to a point; thence S 50 degrees 50 minutes 26 seconds E 23.41 feet to a point; thence S 87 degrees 44 minutes 44 seconds E 30.30 feet to a point; thence S 58 degrees 08 minutes 10 seconds E 30.77 feet to a point; thence S 41 degrees 11 minutes 27 seconds E 30.74 feet to a point; thence S 64 degrees 12 minutes 31 seconds E 27.69 feet to a point; thence N 87 degrees 47 minutes 36 seconds E 12.95 feet to a point; thence N 87 degrees 47 minutes 36 seconds E 11.17 feet to a point; thence S 70 degrees 13 minutes 16 seconds E 39.71 feet to a point; thence S 74 degrees 40 minutes 21 seconds E 37.50 feet to a point; thence S 31 degrees 22 minutes 33 seconds E 56.59 feet to a point; thence S 46 degrees 43 minutes 17 seconds E 136.30 feet to a point; thence S 66 degrees 07 minutes 39 seconds E 66.54 feet to a point; thence S 65 degrees 41 minutes 40 seconds E 80.38 feet to a point; thence S 14 degrees 43 minutes 11 seconds W 11.03 feet to a point; thence S 14 degrees 43 minutes 11 seconds W 25.87 feet to a point; thence S 47 degrees 58 minutes 14 seconds E 51.58 feet to a point; thence S 22 degrees 16 minutes 53 seconds E 52.20 feet to a point; thence S 04 degrees 43 minutes 31 seconds E 58.95 feet to a point; thence S 20 degrees 44 minutes 48 seconds E 76.64 feet to a point; thence S 25 degrees 51 minutes 50 seconds W 18.88 feet to a point; thence S 25 degrees

51 minutes 50 seconds W 67.19 feet to a point; thence S 34 degrees 59 minutes 15 seconds W 79.75 feet to a point; thence S 26 degrees 27 minutes 40 seconds W 68.06 feet to a point; thence S 05 degrees 39 minutes 36 seconds W 66.20 feet to a point; thence S 07 degrees 37 minutes 15 seconds E 78.67 feet to a point; thence S 06 degrees 02 minutes 42 seconds E 86.70 feet to a point; thence S 15 degrees 02 minutes 35 seconds E 96.25 feet to a point; thence S 09 degrees 41 minutes 33 seconds E 75.98 feet to a point; thence S 06 degrees 56 minutes 57 seconds E 75.60 feet to a point; thence S 01 degrees 37 minutes 06 seconds W 63.81 feet to a point; thence S 32 degrees 00 minutes 49 seconds E 134.92 feet to a point; thence along the arc of a curve to the right having an arc length of 86.39 feet, a radius of 705.19 feet and a chord bearing and distance of S 60 degrees 59 minutes 25 seconds W 86.34 feet to a point; thence along the arc of a curve to the right having an arc length of 411.85 feet, a radius of 379.94 feet and a chord bearing and distance of N 84 degrees 26 minutes 45 seconds W 391.98 feet to a point; thence along the arc of a curve to the right having an arc length of 128.96 feet, a radius of 524.02 feet and a chord bearing and distance of N 46 degrees 20 minutes 30 seconds W 128.63 feet to a point; thence N 39 degrees 17 minutes 30 seconds W 1372.96 feet to a point; thence along the arc of a curve to the left having an arc length of 199.22 feet, a radius of 732.48 feet and a chord bearing and distance of N 47 degrees 05 minutes 00 seconds W 198.61 feet to a point; thence along the arc of a curve to the left having an arc length of 365.46 feet, a radius of 673.63 feet and a chord bearing and distance of N 70 degrees 25 minutes 02 seconds W 361.00 feet to a point; thence along the arc of a curve to the left having an arc length of 77.43 feet, a radius of 673.63 feet and a chord bearing and distance of N 89 degrees 15 minutes 07 seconds W 77.38 feet to a point; thence along the arc of a curve to the left having an arc length of 17.82 feet, a radius of 673.63 feet and a chord bearing and distance of S 86 degrees 41 minutes 50 seconds W 17.82 feet to a point; thence N 03 degrees 24 minutes 50 seconds W 27.74 feet to a point; thence N 34 degrees 37 minutes 48 seconds W 213.09 feet to a point; thence along the arc of a curve to the left having an arc length of 63.01 feet, a radius of 166.88 feet and a chord bearing and distance of N 49 degrees 44 minutes 05 seconds E 62.63 feet to a point; thence along the arc of a curve to the right having an arc length of 152.12 feet, a radius of 923.63 feet and a chord bearing and distance of N 87 degrees 05 minutes 14 seconds E 151.95 feet to a point; thence along the arc of a curve to the right having an arc length of 192.92 feet, a radius of 923.63 feet and a chord bearing and distance of S 82 degrees 12 minutes 40 seconds E 192.57 feet to a point; thence along the arc of a curve to the right having an arc length of 285.48 feet, a radius of 923.63 feet and a chord bearing and distance of S 67 degrees 22 minutes 22 seconds E 284.35 feet to a point; thence along the arc of a curve to the right having an arc length of 58.73 feet, a radius of 923.63 feet and a chord bearing and distance of S 56 degrees 41 minutes 47 seconds E 58.72 feet to a point; thence along the arc of a curve to the right having an arc length of 144.03 feet, a radius of 982.48 feet and a chord bearing and distance of S 50 degrees 40 minutes 31 seconds E 143.91 feet to a point; thence along the arc of a curve to the right having an arc length of 123.18 feet, a radius of 982.48 feet and a chord bearing and distance of S 42 degrees 53 minutes 01 seconds E 123.10 feet to a point; thence S 38 degrees 13 minutes 19 seconds E 234.75 feet to a point; thence S 38 degrees 13 minutes 19 seconds E 181.67 feet to a point; thence S 38 degrees 13 minutes 19 seconds E 317.18 feet to a point; thence S 38 degrees 13 minutes 19 seconds E 230.44 feet to a point; thence N 50 degrees 45 minutes 11 seconds E 4.33 feet to a point; thence S 39 degrees 03 minutes 08 seconds E 180.48 feet to a point; thence S 39 degrees 03 minutes 08 seconds E 172.82 feet to a point; thence S 39 degrees 03 minutes 08 seconds E 118.70 feet to a point;

thence N 09 degrees 49 minutes 11 seconds W 229.19 feet to a point; thence N 09 degrees 49 minutes 48 seconds W 101.20 feet to a point; thence N 00 degrees 16 minutes 16 seconds W 124.32 feet to a point; thence N 00 degrees 16 minutes 10 seconds W 145.30 feet to a point; thence N 10 degrees 31 minutes 33 seconds W 134.69 feet to a point; thence N 33 degrees 44 minutes 26 seconds W 94.12 feet to a point; thence N 18 degrees 31 minutes 39 seconds W 112.71 feet to a point; thence N 40 degrees 13 minutes 55 seconds W 116.46 feet to a point; thence N 45 degrees 13 minutes 44 seconds W 148.27 feet to a point; thence N 40 degrees 19 minutes 37 seconds W 71.13 feet to a point; thence N 23 degrees 44 minutes 47 seconds W 86.85 feet to a point; thence N 11 degrees 24 minutes 01 seconds W 68.20 feet to a point; thence N 17 degrees 30 minutes 00 seconds W 76.98 feet to a point; thence N 30 degrees 22 minutes 25 seconds W 136.82 feet to the point and place of BEGINNING; containing 24.367 acres according to a plat or survey dated December 1, 2008 and captioned, "Boundary Survey of Conservation Easements For North Carolina Department of Transportation," prepared by TGS Engineers, Shelby, North Carolina and recorded contemporaneously herewith.

Conservation Easement Area No. 2- (1.378 acres, more or less)-

Said conservation easement area consisting of 1.378 acres, more or less, over and upon a portion of those certain 42.7 acres conveyed to the McCarty Family General Partnership by that certain deed recorded in Book 278, Page 676 of the Mitchell County Registry, North Carolina, and lying and being situated in Snow Creek Township, Mitchell County, North Carolina, east of NC 80; south of Snow Creek Road (SR 1171); north of the CSX Railroad, and on both sides of Pennywinkle Branch, and being described according to a plat or survey dated December 1, 2008 and captioned, "Boundary Survey of Conservation Easements For North Carolina Department of Transportation," prepared by TGS Engineers, Shelby, North Carolina and recorded contemporaneously herewith, and being more particularly described by metes and bounds as follows:

BEGINNING at a point in the southern right of way line of a 24 foot wide right of way for Snow Creek Road (SR 1171), said beginning point being evidenced by a 5/8 inch rebar set (with NCDOT conservation easement cap) and located by measuring along the arc of a curve having an arc length of 63.01 feet, a radius of 166.88834 feet and a chord bearing and distance of N 49 degrees 44 minutes 05 seconds E 62.63 feet from a 5/8 inch rebar set (with NCDOT conservation easement cap) in the southern right of way of said road in the line of the lands now or formerly owned by Tom Emsley; thence from said point of beginning, along the arc of a curve to the left having an arc length of 88.16 feet, a radius of 166.88 feet and a chord bearing and distance of N 23 degrees 47 minutes 06 seconds E 87.14 feet to a point; thence N 08 degrees 39 minutes 05 seconds E 71.35 feet to a point; thence along the arc of a curve to the right having an arc length of 94.26 feet, a radius of 82.46 feet and a chord bearing and distance of N 41 degrees 24 minutes 00 seconds E 89.21 feet to a point; thence along the arc of a curve to the right having an arc length of 70.54 feet, a radius of 82.46 feet and a chord bearing and distance of S 81 degrees 20 minutes 37 seconds E 68.41 feet to a point; thence along the arc of a curve to the left having an arc length of 195.14 feet, a radius of 2346.50 feet and a chord bearing and distance of S 59 degrees 13 minutes 06 seconds E 195.08 feet to a point; thence along the arc of a curve to the left having an arc length of 105.36 feet, a radius of 1459.76 feet and a chord bearing and distance

of S 63 degrees 40 minutes 06 seconds E 105.33 feet to a point; thence S 49 degrees 26 minutes 29 seconds W 121.06 feet to a point; thence along the arc of a curve to the left having an arc length of 192.92 feet, a radius of 923.63 feet and a chord bearing and distance of N 82 degrees 12 minutes 40 seconds W 192.57 feet to a point; thence along the arc of a curve to the left having an arc length of 152.12 feet, a radius of 923.63 feet and a chord bearing and distance of S 87 degrees 05 minutes 14 seconds W 151.95 feet to the point and place of BEGINNING, containing 1.378 acres more or less according to a plat or survey dated December 1, 2008 and captioned, "Boundary Survey of Conservation Easements For North Carolina Department of Transportation," prepared by TGS Engineers, Shelby, North Carolina and recorded contemporaneously herewith.

EXHIBIT B

PERMANENT ACCESS EASEMENT

THE GRANTORS FURTHER HEREBY GRANT UNTO THE DEPARTMENT, its agents, employees, authorized representatives, contractors, servants, successors and assigns the right of access over, upon and through the 24.37 acre and 1.378 acre Conservation Easement Areas, TOGETHER WITH a perpetual non-exclusive easement for ingress and egress to the aforesaid Conservation Easement Areas along a 15 foot wide gravel driveway, described as follows:

BEGINNING at a point in the center of a 15 foot wide gravel driveway, said beginning point being located by measuring from a point in southern right of way line of a 24 foot wide right of way for Snow Creek Road (SR 1171) designated as point "B" on the plat referenced hereinafter, the following calls and distances: S 36 degrees 00 minutes 00 seconds W 29.81 feet to a point; thence along the arc of a curve to the left having an arc length of 40.09 feet, a radius of 180.68 feet and a chord bearing and distance of S 29 degrees 38 minutes 38 seconds W 40.00 feet to a point; thence S 23 degrees 17 minutes 16 seconds W 17.66 feet to a point; thence along the arc of a curve to the left having an arc length of 70.24 feet, a radius of 71.39 feet and a chord bearing and distance of S 04 degrees 53 minutes 46 seconds E 67.44 feet to a point in the center of the 15 foot wide gravel driveway, the point and place of BEGINNING;

THENCE FROM SAID BEGINNING POINT, along the center of the gravel driveway along the arc of a curve to the left having an arc length of 33.34 feet, a radius of 71.39 feet and a chord bearing and distance of S 46 degrees 27 minutes 34 seconds E 33.04 feet to a point; thence along the arc of a curve to the right having an arc length of 137.47 feet, a radius of 379.91 feet and a chord bearing and distance of S 49 degrees 28 minutes 22 seconds E 136.72 feet to a point; thence along the arc of a curve to the left having an arc length of 133.34 feet, a radius of 266.15 feet and a chord bearing and distance of S 53 degrees 27 minutes 32 seconds E 131.95 feet to a point; thence S 67 degrees 48 minutes 40 seconds E 119.66 feet to a point; thence S 67 degrees 48 minutes 40 seconds E 27.34 feet to a point; thence along the arc of a curve to the right having an arc length of 28.45 feet, a radius of 48.21 feet and a chord bearing and distance of S 50 degrees 54 minutes 26 seconds E 28.04 feet to a point; thence along the arc of a curve to the right having an arc length of 226.73 feet, a radius of 357.03 feet and a chord bearing and distance of S 15 degrees 48 minutes 38 seconds E 222.94 feet to an iron pin set in the centerline of said driveway, located approximately N. 68 degrees 35 minutes 16 seconds E.10.34 feet from an iron pin set near the western edge of said gravel driveway, and being described according to a revised plat or survey dated December 1, 2008 and captioned, "Boundary Survey of Conservation Easements For North Carolina Department of Transportation," prepared by TGS Engineers, Shelby, North Carolina and recorded contemporaneously herewith.

THE GRANTORS FURTHER HEREBY GRANT to the Department the right of ingress and egress over and upon an existing driveway leading from Snow Creek Road (SR 1171) to a gate situated approximately 75 feet from Snow Creek Road as follows:

BEGINNING at a point in the southern right of way line of a 24 foot wide right of way for Snow Creek Road (SR 1171) designated as NC Grid State Plane Coordinates N=810452.3607, E=1063904.5072, NAD 83 (CORS96) DATUM by OPUS GPS OBSERVATION, COMBINED GRID FACTOR=0.99982538, thence from said point of BEGINNING, along an existing driveway, approximately parallel with a line designated as "L121" and measured S. 30 degrees, 22 minutes, 25 seconds E approximately 75 feet to a gate. The GRANTEEES shall have the right to park vehicles upon the said driveway when entering the Conservation Easement Areas so long as the driveway access shall not be blocked to other vehicular traffic.