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Fee Amt: \$34.00 Page 1 of 17  
Excise Tax: \$0.00  
Nash County North Carolina  
Anne J. Melvin Register of Deeds  
BK 2600 PG 248-264

PREPARED BY: Tammy A. Bouchelle  
& Assistant Attorney General  
RETURN TO: North Carolina Department of Justice  
Transportation Section  
1505 Mail Service Center  
Raleigh, North Carolina 27699-1505

**STATE OF NORTH CAROLINA**

**COUNTY OF NASH**

Portions of

Tax Parcels: 105931 (2744-0004-1901), 005434 (2744-0005-4941),  
004762 (2744-0005-2976), 005409 (2744-0005-1828),  
005435 (2734-0095-9839), 008271 (2734-0095-8835),  
105892 (2734-0095-3961) and 005415 (2734-0095-6836)

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

This Conservation Easement and Easement of Ingress and Egress in Perpetuity is granted on this 13th day of February, 2012 by **NASH HOSPITALS, INC.**, having an address of 2460 Curtis Ellis Drive, Rocky Mount, North Carolina 27804 ("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 said 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:**

Grantor is the sole owner in fee simple of certain real property more particularly described in those Deeds recorded in Book 2392, Page 776; Book 2458, Page 549; Book 2458, Page 557; Book 2458, Page 565; Book 2458, Page 553; and Book 2458, Page 561 of the Nash County Registry, which consists of approximately 68 acres, more or less, located in Drywells Township, Nash County, North Carolina (the "Property").

Portions of the Property possess 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 an area of the Property consisting of approximately 18.35 acres, more or less, and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Conservation Easement Area"), thereby restricting and limiting the use of lands and waters within the Conservation Easement Area to the terms and conditions and for the purposes 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 who has the authority to acquire land and interests in land for the purpose of mitigating the 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 consistent with the dictates of Federal and State agencies pursuant to permits from said agencies necessary for NCDOT road projects; to provide habitat for native land, air and aquatic flora and fauna, **specifically including endangered plant species such as Michaux's Sumac (*Rhus Michauxii*)**; to improve and maintain water quality; to control runoff of sediment; to use the Conservation Easement Area for activities included in, but which are not limited to, those activities included 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, scenic, and natural* character of the Conservation Easement Area designated on the Property as hereinafter described (the purposes are collectively referred to as the "conservation values").

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, and 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 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.

This Conservation Easement is subject to any and all permits issued by state and/or federal agencies associated with the proposed road for the Middlesex Corporate Center, bordered by US 264 to the north, US 264 Alternate to the south, NC 231 to the west, and Turkey Creek to the east in Middlesex, Nash County, North Carolina.

Department of the Army permit Action ID Number **SAW-2009-00640**, issued by the Wilmington District Corps of Engineers on January 6, 2010, required NCDOT to mitigate for unavoidable stream and/or wetland impacts authorized by that permit. Grantor and NCDOT agree that third party rights of enforcement shall also be held by U.S. Army Corps of Engineers, Wilmington District, and any successor agencies, and these rights are in addition to, and do not limit, the rights of enforcement under said permit.

North Carolina Department of Environment and Natural Resources, Division of Water Quality issued permit **DWQ EXP # 07-0228v4** on December 8, 2009. Pursuant to that permit, the areas shown on the recorded plat (Exhibit A) as Conservation Easement Areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall violate or attempt to violate the terms of this Conservation Easement or the Riparian Buffer Protection Rule (15A NCAC 2B .0233) or use of the Conservation Easement Area in any way that is inconsistent with the conservation values and purposes of this Conservation Easement. This covenant is intended to ensure continued compliance with authorizations issued by the State of North Carolina, Division of Water Quality, GC3705, and, therefore, may be enforced by the State of North Carolina.

**NOW, THEREFORE**, for 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. All subsequent references to the Conservation Easement shall include, where appropriate, a reference to the Permanent Access Easement.

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

**1. Grant Of Conservation Easement**

Grantor hereby voluntarily grants and conveys to 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 agrees that it will not perform, nor willingly or knowingly allow others to perform, any act on or affecting the Conservation Easement Area that is inconsistent with the covenants herein. Grantor authorizes NCDOT 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 subject Property, as it is now described or as the Property may be described in the future, 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 the right to access the Conservation Easement Area from the public right-of-way known as Middlesex Corporate Parkway as shown on the Plat referenced in Exhibit A, in perpetuity ("Permanent Access Easement").

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 described in the immediately preceding paragraph 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 Conservation Easement Area 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 business days of such entry.

**4. Rights And Responsibilities Retained By The Grantor**

Subject to the terms and restrictions contained herein, Grantor reserves to and for itself and its successors and assigns the customary rights and privileges of ownership, including, but not limited to, 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 NCDOT pursuant to Paragraph 17, together with any rights not specifically prohibited by or limited by this Conservation Easement, and not inconsistent with the conservation values and purposes of this Conservation Easement. 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. 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.

Prior to performing any maintenance or construction in the Conservation Easement Area, Grantor must submit a written plan to NCDOT (Natural Environment Unit) detailing the proposed maintenance or construction activities. Grantor may not perform any maintenance or construction activities in the Conservation Easement Area whatsoever until Grantor receives written approval of the submitted plan from NCDOT. Such written approval shall not be unreasonably withheld, conditioned or delayed by NCDOT.

**5. Subdivision**

Without the express written permission of NCDOT, no portion of the Property, which includes all or part of the Conservation Easement Area, may be subdivided, partitioned or conveyed from the remainder of said Property by Grantor, except in its current configuration as an entity or block of the Property. Such express written permission shall not be unreasonably withheld, conditioned or delayed by NCDOT.

**6. Permitted And Restricted 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. However, 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, but not limited to, walking, fishing, hunting or animal and plant observation 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. Any rights not expressly reserved by Grantor have been acquired by NCDOT.

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

**A. Disturbance of Natural Features**

Any change, 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 NCDOT gives its prior written consent or unless otherwise expressly permitted herein. (See Paragraph 4.)

**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 without advance written permission from NCDOT. Grantor is authorized to remove non-native species by hand and to use spot application of herbicides or pesticides to remove non-native species without advance written permission. No agricultural products or by-products may be 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. Existing fences may be repaired and replaced by Grantor; however, no new fencing shall be installed or erected by Grantor within the Conservation Easement Area.

**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 conservation values and 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 conservation values and purposes of this Conservation Easement and Grantor obtains prior written approval from NCDOT before undertaking any of these activities. Grantor may remove fallen, damaged, hazardous, or dangerous trees (e.g., hanging limbs, split trees, leaning trees, dead trees, ice damages, trees struck by lightning, and other hazardous conditions) if, in the discretion of Grantor, such trees pose a safety or maintenance issue.

Destruction, cutting, mowing or harming any vegetation on the Property, except for management activities designed to benefit the Conservation Easement Area as a wetland, wildlife management area, or for the benefit of endangered species is prohibited, unless Grantor receives written approval from NCDOT for such activities. (See Paragraph 4.)

**D. Dumping and 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, with the exception of trash and/or recycling

receptacles, whose type and location are approved in writing by NCDOT. (See Paragraph 4.) No agricultural products, by-products, or agricultural equipment may be dumped or stored within the Conservation Easement Area. Grantor shall be responsible for removing any material it has dumped or stored, or has knowingly or willingly permitted to be dumped or stored, within the Conservation Easement Area.

***E. Mineral Use, Excavation, and Dredging***

There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, sod, minerals or other materials; no exploration for, or development and/or extraction of minerals and 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 his successors, which would cause erosion or siltation 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, or other structure constructed or placed within the Conservation Easement Area unless specifically set forth in this Conservation Easement. Motorized vehicles, including off-road vehicles, are prohibited within the Conservation Easement Area. However, 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 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 of the Conservation Easement Area and/or Property; (ii) signs identifying the owner of the Property and the holder of the 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, without limitation, water, sewer, power, fuel, and communication lines and related facilities, is prohibited. If there are existing utility easements located within the Conservation Easement Area or affecting the Conservation Easement Area, Grantor shall notify NCDOT if it becomes aware that right-of-way clearing or other work within the Conservation Easement Area is scheduled or performed by any utility; however, this notice requirement shall not apply to such easements located in the right-of-way of the adjacent road known as Middlesex Parkway. 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***

Grantor shall conduct no activities 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 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 or streams by Grantor is prohibited. In addition, Grantor is prohibited from diverting or causing or willingly or knowingly 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 unless agreed to in writing by NCDOT. (See Paragraph 4.)

***M. NCDOT's Rights***

NCDOT, on behalf of itself and its authorized representatives, 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 Conservation Easement Area in the future for additional mitigation or conservation activities that further the conservation values of the Conservation Easement Area.

**7. Ongoing Responsibilities Of The 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. Among other things, this shall apply to:

**A. Taxes**

Grantor shall continue to be solely responsible for payment of all taxes and assessments validly levied against the Property. If NCDOT is ever required to pay any taxes or assessments on its interest in the Conservation Easement Area, Grantor will reimburse NCDOT for the same if NCDOT has given Grantor timely notice of the claim for such taxes so that Grantor may contest their imposition.

**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. Notwithstanding the foregoing, Grantor shall have no responsibility for upkeep, maintenance, restoration, enhancement or preservation of the Conservation Easement Area except as specifically set forth in this Conservation Easement.

**C. Liability and Indemnification**

Grantor agrees to indemnify and hold NCDOT harmless from any and all costs, claims or liability, including, but not limited to: personal injury, accidents, negligence or damage relating to the Property, or any claim arising there from, including attorneys' fees, unless due to the negligence, willful or intentional conduct, of NCDOT or its agents, in which case liability shall be as provided by North Carolina law.

The Parties acknowledge that NCDOT is an agency and Department of the State of North Carolina and Grantor acknowledges that NCDOT takes the position that it has no known ability to give or provide any indemnity to any party whatsoever. Further, NCDOT enjoys the State's sovereign immunity except as otherwise provided by North Carolina law.

**8. Enforcement**

NCDOT shall have the right to prevent violations and remedy violations of the terms of this Conservation Easement through judicial action, which shall include, but is not limited to, the right to bring proceedings in law or in equity against any party or parties attempting to violate, or who has violated, 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, NCDOT shall give Grantor written notice of any violation and thirty (30) days to cure before commencing legal proceedings. If a court with jurisdiction determines that a violation may exist, is occurring or has occurred, NCDOT may seek to obtain an injunction to stop the violation, temporarily or permanently and to provide for an appropriate remedy, including, but not limited to, an injunction or order requiring the violator(s) 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.

Additionally, 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. NCDOT has the right to request a court of competent jurisdiction 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. In any case where a court finds that a violation of this Conservation Easement by Grantor has occurred, and that the violation was by Grantor, or was willingly or knowingly allowed by Grantor, Grantor shall reimburse NCDOT for all its expenses incurred in stopping and/or correcting the violation, including, but not limited to: court costs, attorneys' fees, damages for losses for environmental or conservation values, 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 to that action 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.

Grantor shall have concurrent jurisdiction and authority for the enforcement of the conditions, restrictions, and prohibitions on the use of the Conservation Easement Area, and other terms covenants and conditions of this Conservation Easement, as to any person or entity other than NCDOT. 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 exercise enforcement rights hereunder shall not be deemed or construed to be a waiver of any right of enforcement by either Party.

**9. Transfer Of Easements**

NCDOT shall have the right to transfer this Conservation Easement and Permanent Access 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, it will provide advance notification to NCDOT in writing of the names and addresses of any party to whom the Property is to be transferred pursuant to the notification procedure in Paragraph 17.

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 all or a portion of the Conservation Easement Area. Failure of Grantor to comply with this Paragraph 10 shall not impair the validity of this Conservation Easement and Permanent Access Easement as to successor owners or interest holders in the Property or limit the enforceability of this Conservation Easement and Permanent Access Easement in any way, nor shall Grantor's failure to comply with this Paragraph 10 constitute a default under this Conservation Easement.

**11. Amendment Of Easements**

This Conservation Easement and Permanent Access Easement may be amended by a written instrument executed by both NCDOT and Grantor. 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. Any such amendment shall be duly recorded in the Office of the Nash 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 are agreed to be five percent (5%), and 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 all or any portion of this Conservation Easement and the restrictions contained herein. NCDOT may extinguish all or any portion of this Conservation Easement and the restrictions contained herein by appropriate judicial proceeding.

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 (five percent (5%)). "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.

**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 in Paragraph 12; 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

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 as specified in Paragraph 12. "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 from such transactions or proceedings.

**14. 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 the conservation values and other purposes sought to be protected herein.

**15. Severability**

Invalidity of any of the covenants, terms, 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 16. 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 16, 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**

Unless otherwise specified herein, any notices required or allowed by this Conservation Easement shall be in writing and shall be personally delivered or delivered by certified United States mail, 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:**

Nash Hospitals, Inc.  
Attn: President/CEO  
2640 Curtis Ellis Drive  
Rocky Mount, North Carolina 27804

**To NCDOT:**

Natural Environment Unit  
Attn: Unit Head  
North Carolina Department of Transportation  
1598 Mail Service Center  
Raleigh, North Carolina 27699-1598

**AND**

Director of Pre-Construction  
North Carolina Department of Transportation  
1501 Mail Service Center  
Raleigh, North Carolina 27699-1501

In any provision of this Conservation Easement in which Grantor is required to provide advance notice to NCDOT of any activity on the Conservation Easement Area, such notice shall be given not less than thirty (30) days prior to the planned commencement of the activity. If NCDOT's approval is required, such approval shall be deemed withheld unless NCDOT provides to Grantor written notice of approval within thirty (30) days of receipt of said request. If Grantor has received no response after said thirty (30) days, Grantor may send additional written notices to NCDOT requesting a statement of the reasons for the disapproval. The failure of NCDOT 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 good right to grant and convey the aforesaid Conservation Easement and Permanent Access Easement; that the Property, Conservation Easement Area, and Permanent Access Easement are free and clear of any and all encumbrances that may adversely affect the Conservation Easement granted herein; Grantor will warrant and defend the title against the lawful claims of all persons whomsoever; that there is 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.

**19. Subsequent Liens**

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

**20. Subsequent Easements/Restrictions**

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

**21. Grantor's Environmental Warranty**

Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes, as such substances and wastes are defined by applicable federal and state law, within the Conservation Easement Area and within 100 feet in any direction of any pond, stream, tributary, lake, spring, seep, watercourse, or wetlands on the Property, and hereby promises to defend and indemnify NCDOT against all 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, omission, or violation of federal, state or local environmental laws or regulations by 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 NCDOT, nor shall NCDOT have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Conservation Easement Area, or otherwise to become an operator with respect to the Conservation Easement Area within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. Grantor hereby conveys the Conservation Easement, and NCDOT accepts the same, with the Conservation Easement Area in an "AS IS," "WHERE IS" condition.

**22. 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 or contemporaneous discussions, negotiations, understandings or agreements relating to said Easements.

**23. Recording**

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

**24. 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.

**25. No Waiver**

Enforcement of this Conservation Easement shall be at the discretion of 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.

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

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

**GRANTOR:**

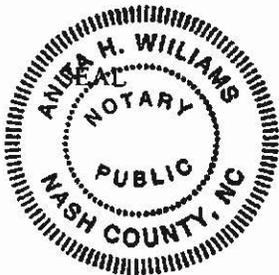
**NASH HOSPITALS, INC.**

By: *Larry H. Chewning* (SEAL)  
Larry H. Chewning, President and CEO

NORTH CAROLINA  
Nash COUNTY

I, *Anita H. Williams*, a Notary Public of Nash County, North Carolina, do hereby certify that Larry H. Chewning personally appeared before me this day and executed the foregoing instrument, and acknowledged that he is President and CEO of Nash Hospitals, Inc., and by authority duly given, he executed the foregoing instrument.

Witness my hand and official stamp or seal this the 13 day of February, 2012.



*Anita H. Williams*  
Notary Public Signature  
Anita H. Williams  
Printed Name of Notary Public

My commission expires: 11-9-2014

AND

NCDOT:

**NORTH CAROLINA DEPARTMENT  
OF TRANSPORTATION**

Virgil R. Pridemore (SEAL)  
Virgil R. Pridemore  
Manager of Right-of-Way Branch

NORTH CAROLINA  
WAKE COUNTY

I, Lisa J. Perry, a Notary Public of Wake 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.

Witness my hand and official stamp or seal this 13<sup>th</sup> day of February, 2012.



Lisa J. Perry  
Notary Public Signature

Lisa J. Perry  
Printed Name of Notary Public

My commission expires: 12.18.2013

**EXHIBIT A**

**CONSERVATION EASEMENT AREA**

Being all of that certain property consisting of 18.35 acres, more or less, and designated as Easements 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 on that plat entitled "Conservation Easement Map for Middlesex Corporate Park, Property of Nash Hospitals, Inc.," dated November 2011 as completed by Green Engineering, and recorded in Map Book 37, Page 366, of the Registry of Nash County, North Carolina.

BOOK **2600** PAGE **264**

34.00  
TSL/SW