



CAROLINA DEPARTMENT OF TRANSPORTATION, having an address of 1548 Mail Service Center, Raleigh, NC 27699-1548 (hereinafter, "NCDOT" or "Grantee").

The designation Grantors 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 Grantors are the sole owner in fee simple of certain real property located in Number 6 Township, Cabarrus County, North Carolina, and more particularly described in Deed Book 178, Page 597; Deed Book 189, Page 36; Deed Book 193, Page 287; Deed Book 243, Page 484; Deed Book 503, Page 157; Deed Book 673, Page 213; and Deed Book 761, Page 259; of the Cabarrus County Registry, and referred to hereinafter as the "Property." The Property consists of real property now or formerly owned by (1) Louis R. Suther and wife (hereinafter, "Louis Suther Property"); and, (2) the estate of John D. Suther (hereinafter, the "Estate Property").

The Property provides natural wildlife habitat for a wide variety of land, air and aquatic species, because of the streams that run through the Property; many of these species, which rely on the streams, are of great importance to the Grantors and the people of North Carolina.

The Grantors are willing to grant a perpetual Conservation Easement over 67.413 acres of the Property (hereinafter, 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") and Temporary Access Easement of Ingress and Egress (hereinafter, "Temporary 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 NCDOT desires to restore, enhance or preserve approximately 12,800 linear feet of stream and associated streamside wetlands in Cabarrus County on the Conservation Easement Area (hereinafter, the "Stream Mitigation Project"), and to hold a conservation easement over said length of stream and surrounding land and wetlands encompassing approximately 67.413 acres and referred to as the Conservation Easement Area;

The NCDOT, under a Section 404 permit granted by the United States Army Corps of Engineers (hereinafter, "USACE"), must conduct certain off-site stream and wetland mitigation work to compensate for impacts to streams and wetlands resulting from road construction;

The purposes of the Conservation Easement over the Conservation Easement Area are (1) to protect the mitigation activities performed by the NCDOT; (2) to preserve and protect the conservation values of the Conservation Easement Area, which include natural resources; wildlife habitat for land, air and aquatic species; aquatic resources, including streams, rivers, ponds, and wetlands; and scenic resources of the Property; (3) to prevent any use of the Conservation Easement Area that will significantly impair or interfere with these purposes; and, (4) to maintain permanently the dominant woodland, scenic and natural character of the Conservation Easement Area.

The specific conservation values of the Conservation Easement Area and its current use and state of improvement are described in the Suther Estate of the Yadkin River Basin Site Search Study, dated August, 2002, prepared by Ecoscience Corporation and acknowledged by all parties to be accurate as of the date of this Conservation Easement. The Site Search 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 Site Search 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 Grantors and Grantee have copies of this Site Search Study, and said report will remain on file with the Office of Natural Environment of NCDOT.

The Grantors intend that the conservation values of the Conservation Easement Area be preserved and maintained, and further, the Grantors intend 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 total sum of FOUR HUNDRED SIXTY THOUSAND EIGHT HUNDRED SEVENTY-SIX DOLLARS AND NO/100s (\$460,876.00) and for other valuable considerations to the Grantors, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, the Grantors hereby grant and convey 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 Grantors situated in Cabarrus County, North Carolina, as depicted in plats entitled (1) "Conservation Easement – John D. Suther Estate Property Department of Transportation," dated January 31, 2005, prepared by ESP Associates, P.A., and recorded in Plat Book 47, Pages 69 & 70, of the Cabarrus County Registry; and (2) "Conservation Easement – Louis R. Suther Property Department of Transportation," dated

January 31, 2005, prepared by ESP Associates, P.A. and recorded in Plat Book 47, Page 68, of the Cabarrus County Registry; together with a Permanent Access Easement and Temporary Access Easement as more particularly described below in Paragraph 4 and Exhibit C. Reduced-size copies of the plats are incorporated herein as Exhibits A and B. All subsequent references to the Conservation Easement shall include, where appropriate, reference to the Permanent and Temporary Access Easements.

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

1. Grant of Conservation Easement

The Grantors hereby voluntarily grant and convey 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 Grantors agree that they 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 Grantors authorize the Grantee to enforce these covenants in the manner described below.

The Grantors hereby voluntarily grant and convey 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. Statement of Purpose, Duration

The primary purpose of the Conservation Easement is to protect the NCDOT's mitigation activities within the Conservation Easement Area, including the restored, enhanced, and preserved stream areas. Except as specifically permitted herein, no activity that shall significantly impair the condition of the restored, enhanced or preserved stream areas on the Conservation Easement Area shall be permitted.

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by the Grantee against the Grantors, their 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 depicted in Exhibits A and B, and is comprised of two tracts. Tract One, depicted on Exhibit A, consists of 38.496 acres. Tract Two, depicted on Exhibit B, consists of 28.818 acres.

4. Access

Certain of the Grantors have access to a portion of the Estate Property from State Road 2427 (also known as Cline School Road), continuing through the property of Perry Lynn Rice and wife, Stefanie Suther Rice as provided in a document recorded in Deed Book 5023, Page 1 of the Cabarrus County Registry, which reserves a forty-five foot wide exclusive unlimited use right-of-way for perpetuity (hereinafter, "reserved right-of-way") to a portion of the Estate Property. The Grantors hereby grant and convey to the Grantee a Permanent Access Easement through the reserved right-of-way and over the Property to the Conservation Easement Area, continuing in perpetuity. The location of the Permanent Access Easement is depicted in Exhibit C, attached hereto and incorporated herein by reference. From the reserved right-of-way, the Permanent Access Easement continues on a generally westerly direction until it intersects with an existing farm road on the Property, then follows that existing farm road in a generally southerly direction to the portion of the Conservation Easement Area labeled "Access Easement 1" on Exhibit A. Access to the portion of the Conservation Easement Area located on the Louis Suther Property will be through the Conservation Easement Area located on the Estate Property.

The NCDOT and its authorized representatives, including the USACE and the Ecosystem Enhancement Program of the North Carolina Department of Environment and Natural Resources, 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 (1) in order to conduct and monitor the Stream Mitigation Project; and (2) for the purpose of inspecting the Conservation Easement Area to determine if the Grantors are complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The NCDOT will notify the Grantors 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 Grantors prior to entry but will notify the Grantors within two business days of such entry.

Grantors further grant and convey to the Grantee a Temporary Access Easement to the Conservation Easement Area from State Road 2408 (also known as Gold Hill Road) and over the Property, as depicted in Exhibit C, in order that NCDOT, or its authorized representatives, including the Ecosystem Enhancement Program of the North Carolina Department of Environment and Natural Resources, may conduct the mitigation activities. This Temporary Access Easement generally follows two existing farm roads on the Estate Property; one temporary access road terminates at the area labeled "Access Easement 1" on Exhibit A, while the other terminates at the area labeled "Access Easement 2" on Exhibit A. NCDOT and its authorized representatives shall have the right to place equipment and materials on the Temporary Access Easement as necessary. The Temporary Access Easement will be valid until the completion of the construction and monitoring of the Stream Mitigation Project. Upon final approval by the USACE of the Stream Mitigation Project, the Temporary Access Easement will dissolve and no longer be a part of this Conservation Easement. NCDOT will return any land in the Temporary Access Easement that is disturbed as a result of the mitigation activities to its pre-disturbance state, if requested by the Grantor, after completion of the mitigation activities and final approval by the USACE.

5. Rights and Responsibilities Retained by the Grantors

Subject to the terms and restrictions contained herein, the Grantors reserve to and for themselves and their 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 Grantors to take any action to restore the condition of the Conservation Easement Area after any Act of God or other event over which it had no control. The Grantors understand 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 Grantors retain 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 Grantors retain 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 Grantors 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.

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 Grantors obtain 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.

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 Grantors or their 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. 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 stream functional values for the Conservation Easement Area. All structures allowed under this paragraph, but not necessary for maintenance of the stream mitigation activities, will be removed once the USACE has given final approval of the Stream Mitigation Project.

As part of the Stream Mitigation Project, Grantee shall construct two ford stream crossings in the locations labeled on Exhibit A as "60.00' Access Easement 1" and "60.00' Access Easement 2." Grantors are expressly permitted to improve the two stream crossings within the access easements in the future. All required permits for such improvements are the responsibility of the Grantors.

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 Grantors 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 Grantors 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, 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 Grantors is prohibited. In addition, the Grantors are 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 reserves the right to use the Conservation Easement Area in any way necessary, consistent with the terms herein, to undertake any activities to protect, restore, manage, maintain, or enhance stream or wetland functional values, and monitor the mitigation work, in order to mitigate for impacts to streams or wetlands resulting from road construction. These mitigation activities include, but are not limited to, construction of new stream channels; restoration/stabilization of existing stream channels; installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow; planting of trees, shrubs and herbaceous vegetation; and utilization of heavy equipment to grade, fill, and prepare the soil. The NCDOT further reserves the right to monitor the results of the mitigation activities in perpetuity and to repair or restore any damage to the Conservation Easement Area occurring after initial completion of the construction associated with mitigation activities.

10. Ongoing Responsibilities of the Grantors

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 Grantors as owners of the Property. Among other things, this shall apply to:

A. *Taxes*

The Grantors 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 Grantors will reimburse the Grantee for the same.

B. *Upkeep and Maintenance*

The Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. The Grantee shall have no obligation for the upkeep or maintenance of the Property outside of the Conservation Easement Area.

C. *Liability and Indemnification*

The Grantors agree 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 Grantors 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 Grantors 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 Grantors 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.

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12. Transfer of Easements

The Grantee shall have the right to transfer this Conservation Easement and Permanent Access Easement to the Ecosystem Enhancement Program of the North Carolina Department of Environment and Natural Resources, or to 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 Grantors agree to incorporate by reference the terms of this Conservation Easement and Permanent Access Easement in any deed or other legal instrument by which they transfer or divest themselves of any interests, including leasehold interests, in all or a portion of the Conservation Easement Area. Failure of the Grantors 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 Grantors' 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 Grantors. 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 Grantors' and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by the Grantors 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 Grantors' 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 Grantors 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 Grantors' and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by the Grantors 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 Grantors' 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 Grantors 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 Grantors:  
Louis Suther  
6200 Gold Hill Road  
Concord, NC 28025

To NCDOT:  
Office of Natural Environment  
1548 Mail Service Center  
Raleigh, NC 27699-1548

In any provision of this Conservation Easement in which the Grantors are 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 Grantors written notice of approval within 30 days of receipt of said request. If the Grantors have received no response after said 30 days, the Grantors 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. Grantors' Title Warranty

The Grantors covenant and represent that the Grantors are the sole owner and are seized of the Property in fee simple and have good right to grant and convey the aforesaid Conservation Easement and Permanent Access Easement; that the Conservation Easement Area and Permanent Access Easement are free and clear of any and all encumbrances, except easements and leases of record or in effect by prescriptive rights as of the date hereto; and that there is legal access to the Property; and the Grantors covenant 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 Grantors 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 are prohibited. Any such easements or restrictions shall be subordinated to this Conservation Easement and Permanent Access Easement.

23. Grantors' Environmental Warranty

The Grantors warrant that they have 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 Grantors or violation of federal, state or local environmental laws caused by the negligent or intentional act of the Grantors. 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 Cabarrus 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 Grantors and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTORS:

Gladys R. Suther (Seal)  
Gladys R. Suther

John A. Suther (Seal)  
John A. Suther

Martha H. Suther (Seal)  
Martha H. Suther

Louis R. Suther (Seal)  
Louis R. Suther

Madelyn D. Suther (Seal)  
Madelyn D. Suther

George A. Suther (Seal)  
George A. Suther

Frances C. Suther (Seal)  
~~Frances A. Suther~~  
Frances C.

Charlie R. Suther (Seal)  
Charlie R. Suther

Susan H. Suther (Seal)  
Susan H. Suther

Linda S. Herring (Seal)  
Linda S. Herring

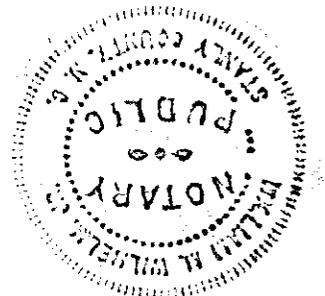
William M. Herring (Seal)  
William M. Herring

NORTH CAROLINA  
CABARRUS COUNTY

I, William M. Wilhelm, Jr., a Notary Public of Cabarrus County, North Carolina do hereby certify that Gladys R. Suther, John A. Suther and wife Martha H. Suther, Louis R. Suther and wife Madelyn D. Suther, George A. Suther and wife Frances C. Suther, Charlie R. Suther and wife Susan H. Suther, Linda S. Herring, and husband William M. Herring personally appeared before me this day and executed the foregoing instrument.

Witness my hand and official stamp or seal this the 3rd day of September, 2005.  
My commission expires: March 19, 2007

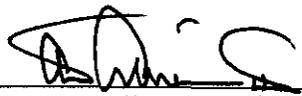
William M. Wilhelm, Jr.  
Notary Public (SEAL)



Accepted:

GRANTEE:

THE NORTH CAROLINA DEPARTMENT  
OF TRANSPORTATION

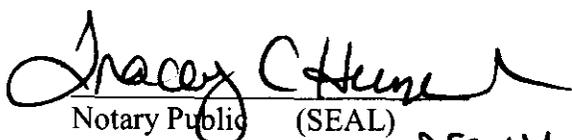
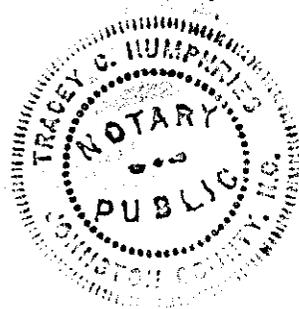


By: A.D. Allison, II  
Assistant Manager, Right of Way Branch

NORTH CAROLINA  
Wake COUNTY

I, Tracey C. Humphris a Notary Public of Johnston County, North Carolina do hereby certify that A.D. Allison, II personally came before me this day and acknowledged that he is the Assistant 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 1<sup>st</sup> day of September, 2005.



Notary Public (SEAL)

My commission expires: 08-14-2010

NORTH CAROLINA - CABARRUS COUNTY

The foregoing (or annexed) certificate(s) of William M. Wilkerson Jr  
and Tracey C. Humphris <sup>each</sup>, a notary public,  
is (are) certified to be correct. This the 6<sup>th</sup> day of Sept, 2005.

LINDA F. M'ABEE, REGISTER OF DEEDS

by: Dezyd J. Deamore ~~Not.~~/Deputy

NOTES:

- PROPERTY SURVEYED IS RECORDED IN DB 176, PG 597; DB 193, PG 287, AND DB 243 PG 484 IN THE CABARRUS COUNTY REGISTER OF DEEDS.
- NO NECS CONTROL MONUMENTS FOUND WITHIN 2000'. GNSS STATIC GPS SESSIONS WERE CONDUCTED ON GPS-1 AND GPS-2 ON DECEMBER 15, 2004 AND ON GPS-4 AND GPS-5 ON DECEMBER 22, 2004. THE PROJECT WAS LOCALIZED ABOUT POINT GPS-1 WITH A NAD 83 NC STATE PLANE COORDINATE OF NORTH 623243.976' AND EAST 1555532.351'. AVERAGE CORRECTION FACTOR IS 0.9985255. LOCALIZED PROJECT COORDINATES FOR THE GPS CONTROL POINTS ARE LISTED BELOW.  

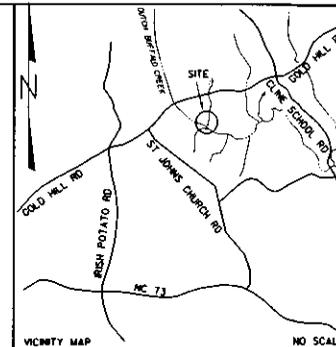
Point	North	East
GPS-1	623,243.9760	1,555,532.3510
GPS-2	622,435.0060	1,555,481.1640
GPS-4	622,521.2890	1,553,132.6900
GPS-5	621,933.3100	1,563,019.3390
- ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DISTANCES.
- ALL PROPERTY LINES NOT FIELD SURVEYED ARE SHOWN AS DASHED LINES.
- ALL AREAS ARE COMPUTED BY COORDINATE METHOD.
- NO UNDERGROUND UTILITIES OR OTHER IMPROVEMENTS WERE LOCATED AS PART OF THIS SURVEY.
- PART OF THIS PROPERTY IS INSIDE A ZONE "A" FEMA SPECIAL FLOOD HAZARD AREA AS SHOWN ON CABARRUS COUNTY FIRM PANEL 50 D OF 190 DATED NOVEMBER 2, 1994. THE FEMA FLOOD LINE IS SCALED FROM THE FIRM MAP AND WAS NOT FIELD SURVEYED.
- ACCESS EASEMENT AREAS ARE INCLUDED IN THE CONSERVATION EASEMENT AREA.

LINE TABLE			LINE TABLE		
LINE	BEARING	DISTANCE	LINE	BEARING	DISTANCE
L1	S 57°22'50" E	110.35	L15	N 10°23'50" E	151.95
L2	S 20°05'44" E	59.39	L16	N 21°36'34" E	106.85
L3	S 12°33'29" W	74.90	L17	N 79°34'09" E	23.47
L4	S 19°56'14" W	103.09	L18	S 36°15'20" E	147.05
L5	S 34°08'18" E	157.69	L19	N 31°20'35" E	131.97
L6	S 70°53'53" E	65.37	L37	N 39°56'46" W	121.64
L7	S 05°42'55" E	93.74	L38	N 67°06'53" W	194.72
L8	S 83°08'18" E	148.63	L39	N 85°24'59" W	102.00
L9	N 50°05'44" E	138.55	L40	S 41°43'11" E	164.33
L10	S 79°31'13" W	104.70	L41	S 13°07'04" E	120.99
L11	N 82°37'01" E	119.65	L42	S 04°31'50" W	178.43
L12	N 30°21'02" E	104.06	L43	N 66°47'45" W	34.77
L13	N 66°49'44" E	90.66	L44	S 23°36'50" E	44.52
L14	S 71°11'18" E	181.26	L45	S 30°54'33" E	12.66
			L46	S 79°13'59" E	57.80
			L47	S 45°07'37" W	94.84
			L48	S 64°54'31" W	256.21
			L49	S 52°40'58" W	91.27
			L50	N 59°15'47" W	64.69
			L51	N 52°40'58" E	121.87
			L52	N 64°54'31" E	252.18
			L53	N 45°07'37" E	54.81
			L54	N 59°15'47" W	69.13

I, Randy W. Nance, certify to one or more of the following as indicated:

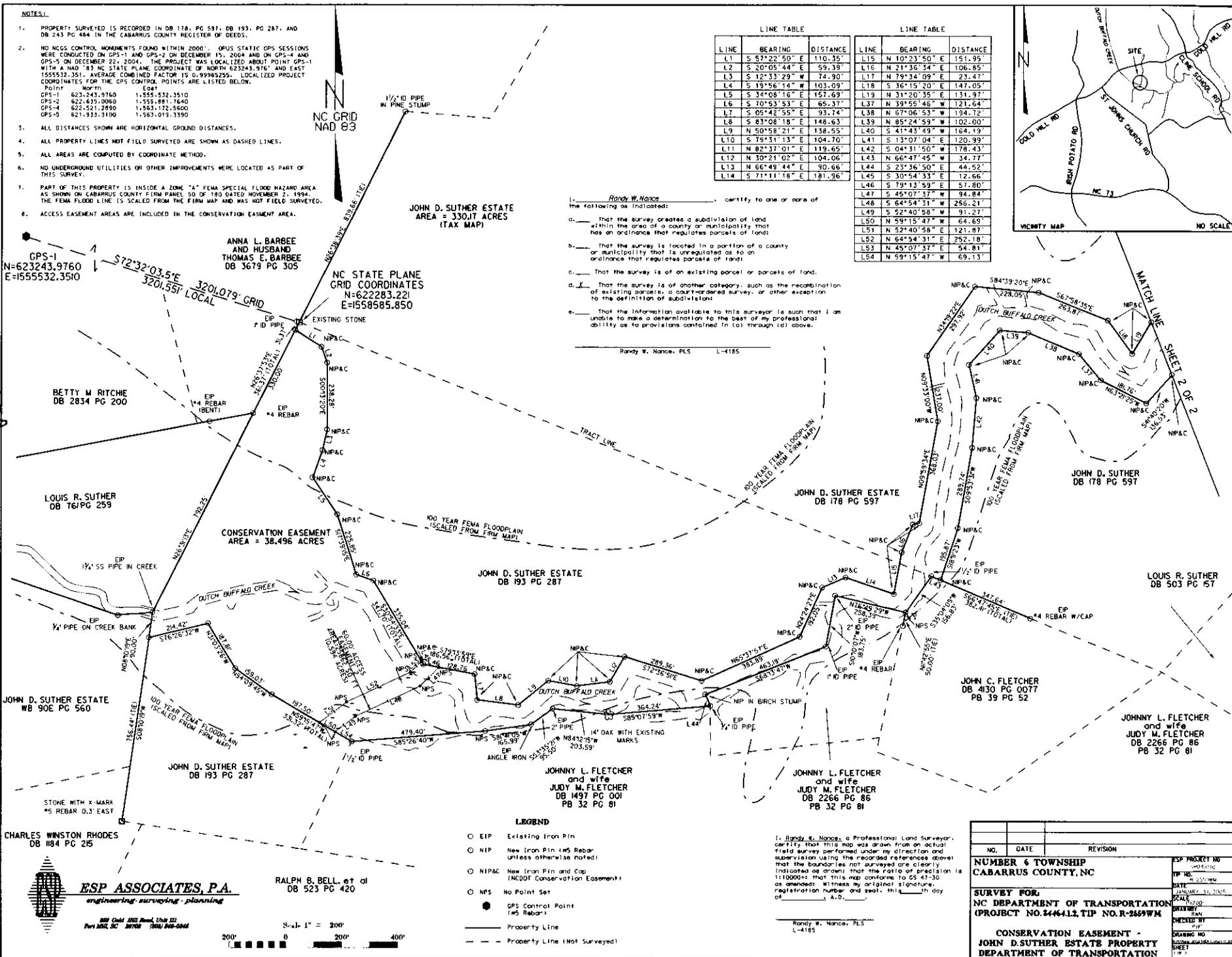
- That the survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land.
- That the survey is located in a portion of a county or municipality that is unregulated or to an ordinance that regulates parcels of land.
- That the survey is of an existing parcel or parcels of land.
- That the survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivisions.
- That the information available to this surveyor is such that I am unable to make a determination to the best of my professional ability as to provisions contained in (a) through (d) above.

Randy W. Nance, PLS L-4185



BOOK 6211 PAGE 124

Exhibit A



- LEGEND**
- EIP Existing Iron Pin
  - NIP New Iron Pin w/ Rebar (unless otherwise noted)
  - NIP&C New Iron Pin and Cap (INDOT Conservation Easement)
  - NPS No Point Set
  - GPS Control Point (w/ Rebar)
  - Property Line
  - - - Property Line (Not Surveyed)

I, Randy W. Nance, a Professional Land Surveyor, certify that this map was drawn from an actual field survey performed under my direction and supervision using the recorded references above; that the boundaries not surveyed are clearly indicated as shown; that the ratio of precision is 1:10000; that this map conforms to GS 41-36 as amended; witness my original signature, registration number and seal, this 15 day of NOV, A.D. 2005.

Randy W. Nance, PLS L-4185

NO.	DATE	REVISION

**NUMBER 6 TOWNSHIP  
CABARRUS COUNTY, NC**

**SURVEY FOR:  
NC DEPARTMENT OF TRANSPORTATION  
(PROJECT NO. 44-464.12, TIP NO. R-2369'WM)**

**CONSERVATION EASEMENT -  
JOHN D. SUTHER ESTATE PROPERTY  
DEPARTMENT OF TRANSPORTATION**

ESP PROJECT NO.	44-464.12
TIP NO.	R-2369'WM
DATE	NOVEMBER 15, 2005
SCALE	AS SHOWN
DRAWN BY	RAN
CHECKED BY	RWN
DRAWING NO.	44-464.12-12
SHEET	12 OF 17

**ESP ASSOCIATES, P.A.**  
engineering, surveying, planning

RALPH B. BELL, et al  
DB 523 PG 420

1000 Quail Hollow Road, Suite 122  
Parsippany, NJ 07054 (908) 849-0866

Scale: 1" = 200'

6211 0124





