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May

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Recorded: 09/30/2009 at 12:16:33 PM
Fee Amt: \$205.00 Page 1 of 19
Excise Tax: \$137.00
Instr# 200900003436
Rutherford County, NC
Faye H. Huskey Register of Deeds
BK 990 PG 282-300

STATE OF NORTH CAROLINA

P.I.N. # 1606 265

COUNTY OF RUTHERFORD

PREPARED BY: Donald T. O'Toole
Assistant Attorney General
North Carolina Department of Justice

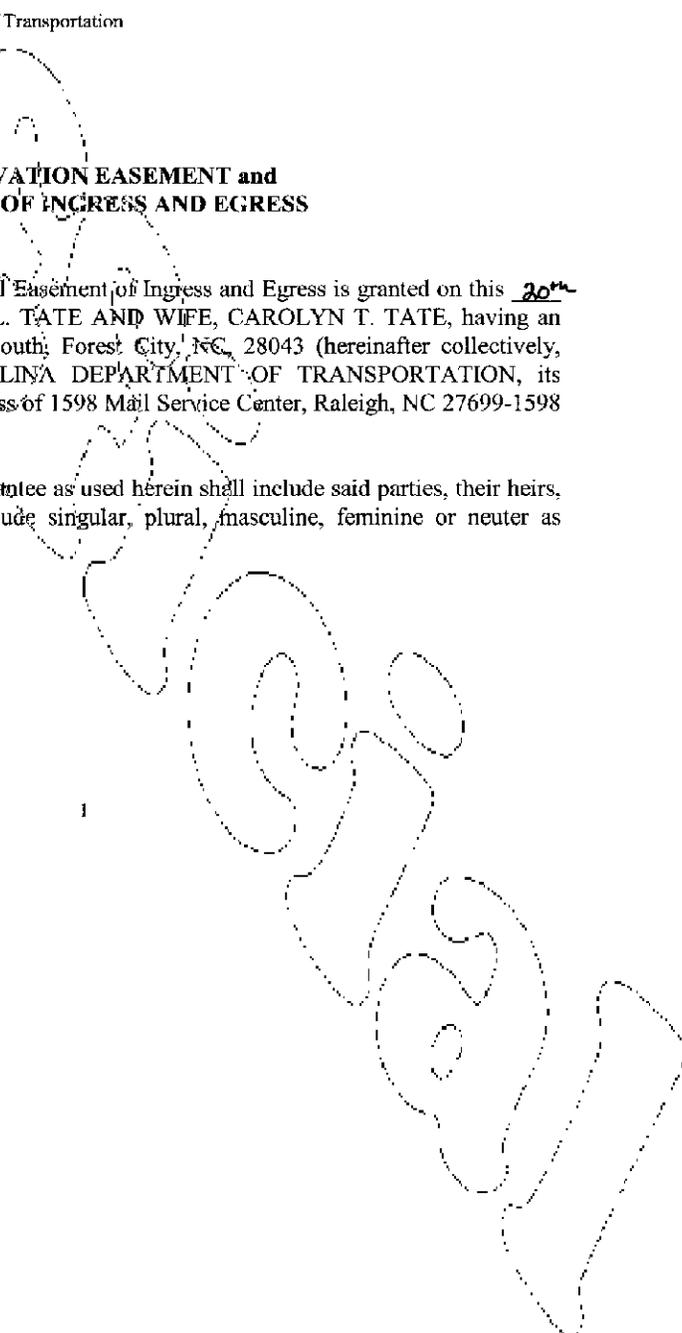
RETURN TO: Zachery B. McNeill
North Carolina Department of Transportation
Natural Environment Unit
1598 Mail Service Center
Raleigh, NC 27699-1598

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

This Conservation Easement and Easement of Ingress and Egress is granted on this 20th day of May, 2009 by ROBERT L. TATE AND WIFE, CAROLYN T. TATE, having an address of 4411 U.S. Highway 221, South, Forest City, NC, 28043 (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.

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WHEREAS:

Grantor is the sole owner in fee simple of certain real property more particularly described in Deed Book 241, Page 146, Deed Book 274, Page 07, Deed Book 459, Page 294, and Deed Book 504, Page 03 of the Rutherford County Registry, which consists of approximately 26.24 acres, more or less, located in Sulpher Springs Township, Rutherford County, North Carolina (hereinafter, "the Property").

The Property contains habitat beneficial to the survival of the dwarf-flowered heartleaf (*Hexastylis naniflora*), which is currently identified as a "threatened" species. As such, NCDOT will incorporate the Property into NCDOT's Onsite Mitigation Program in order to preserve this habitat for the dwarf-flowered heartleaf.

Grantor is willing to grant to Grantee a perpetual Conservation Easement over one area of the Property consisting of approximately 8.03 acres (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 to Grantee 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.

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 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; to provide habitat for native plants and animals, specifically including threatened plant species such as the dwarf-flowered heartleaf (*Hexastylis naniflora*); 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 document entitled "Conservation Management Plan for Dwarf-Flowered Heartleaf (*Hexastylis naniflora*) at the Tate Conservation Easement, Rutherford County, NC" ("Management Plan") dated April 2009, prepared by NCDOT and acknowledged by all parties to be accurate as of the date of this Conservation Easement. The Management Plan may be used by 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 Management Plan, 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. Grantor and Grantee have copies of this

Management Plan, and said Management Plan will remain on file with the Office of Natural Environment within NCDOT.

Grantor intends for the conservation values of the Conservation Easement Area to be preserved and maintained, and further, Grantor intends to convey to 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 SIXTY-EIGHT THOUSAND TWO HUNDRED AND FIFTY-FIVE Dollars (\$68,255.00) payable to Robert L. Tate and wife, Carolyn T. Tate, and for other valuable consideration, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby grants and conveys unto Grantee and his successors or assigns forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, situated in Rutherford 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

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee 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 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 the development rights in the Conservation Easement Area are terminated and extinguished, and may not be used or transmitted to any other portion of the Property, as it is now described or as the Property may be described in the future.

2. Duration

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

3. Description of Conservation Easement Area

The Conservation Easement Area encompasses habitat suitable for the dwarf-flowered heartleaf and is located on the Property, as more particularly described in Exhibit A, and is comprised of approximately 8.03 acres.

4. Access

Grantor hereby grants and conveys to 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.

NCDOT and its authorized representatives at all reasonable times and continuing in perpetuity, shall have the right to access the Conservation Easement Area through the Permanent Access Easement for the purpose of undertaking activities to protect, restore, manage, maintain, or enhance the conservation values of the Conservation Easement Area, and for the purpose of inspecting the Conservation Easement Area to determine if Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. NCDOT will notify Grantor by phone, email, or other correspondence before entering the Property for the purpose of determining compliance. However, if NCDOT in its sole discretion determines that circumstances require immediate entry, NCDOT is not required to notify Grantor prior to entry but will notify Grantor within two business days of such entry.

5. Rights and Responsibilities Retained by the Grantor

Subject to the terms and restrictions contained herein, 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 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 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.

Grantor currently operates a one and a half inch water line ("Water Line") running from Martin's Branch Creek to gardens and lawns on the Property. The Water Line runs through the Conservation Easement Area. Grantor retains the right to operate and maintain this Water Line or a substantially similar water line from Martin's Branch Creek through the Conservation Easement Area to the Property. Prior to performing any maintenance or construction in the Conservation Easement Area, Grantor must submit a plan to NCDOT (Natural Environment Unit) detailing the proposed maintenance or construction activities. Grantor may not perform maintenance or construction activities in the Conservation Easement Area until Grantor receives written approval of the submitted plan from NCDOT. Grantor shall not disturb the dwarf-flowered heartleaf in performing any maintenance or construction in the Conservation Easement Area.

6. Right to Privacy

Grantor retains the right to privacy and the right to exclude members 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

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 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 by Grantor have been acquired by Grantee.

Without limiting 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 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 NCDOT. No agricultural products or by-products may be disposed of in the Conservation Easement Area or within 100 feet of Martin's Branch Creek. Existing fences may be repaired and replaced by Grantor. Grantor or its representatives may install fencing around the perimeter of the Conservation Easement Area. Grantor will be responsible for maintaining any fences installed pursuant to this paragraph.

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 Grantor obtains prior written approval from 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. Motorized vehicles, including off-road vehicles, are prohibited in 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 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 (the Water Line defined above is excluded from this prohibition), 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, Grantor shall notify 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*

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 dwarf-flowered heartleaf (*Hexastylis naniflora*) 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 Grantor is prohibited. In addition, Grantor is prohibited from diverting or causing or permitting the diversion of surface or underground water into, within or out of the Conservation Easement Area by any means (except as permitted with regard to the Water Line as described above); 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 NCDOT.

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.

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 Grantee, 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 levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

B. *Upkeep and Maintenance*

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership and operation of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor retains responsibility for maintaining the Property, excluding the Conservation Easement Area. The Conservation Easement Area shall be maintained by Grantee, as dictated by the requirements of the Management Plan. However, Grantor shall retain responsibility for maintaining the Water Line through the Conservation Easement Area.

C. Liability and Indemnification

Grantor agrees to indemnify and hold 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 Grantee or its agents, in which case liability shall be apportioned accordingly.

III. 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, 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, 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 or has occurred, 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 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, Grantor shall reimburse NCDOT for all expenses incurred in stopping and correcting the violation, including but not limited to court costs, attorneys' fees, and any other onsite remediation costs. If legal action is brought by NCDOT and a court finds that no violation has occurred, each party shall bear its own costs. The failure of NCDOT to discover a violation or to take immediate legal action shall not bar NCDOT from doing so at a later date for that violation or any subsequent violations.

12. Transfer of Easements

Grantee shall have the right to transfer this Conservation Easement and Permanent Access Easement 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, Grantee shall require that the conservation purposes intended to be advanced hereunder shall continue to be carried out.

13. Transfer of Property

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 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 the enforceability of this Conservation Easement and Permanent Access Easement in any way.

14. Amendment of Easements

This Conservation Easement and Permanent Access Easement may be amended by a written instrument executed by both Grantee and 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 in the Rutherford County Register of Deeds' office.

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 Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds. 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 Grantee's, its successors and assigns, interest in the Conservation Easement Area bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "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.

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, Grantor shall immediately give notice to 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 Grantor's and Grantee's interests as specified herein; all expenses, including attorneys' fees incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. 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 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 proceedings, minus Grantor's expenses from such transactions or proceedings.

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 Grantor or 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 Grantor:
c/o Robert L. Tate or Carolyn T. Tate
4411 US Highway 221 South
Forest City, NC 28043

To NCDOT:
Natural Environment Unit
Attn: Zachery B. McNeill
North Carolina Department of Transportation
1598 Mail Service Center
Raleigh, NC 27699-1598

In any provision of this Conservation Easement in which Grantor is required to provide advance notice to 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 Grantee's approval is required, such approval shall be deemed withheld unless Grantee provides to the Grantor written notice of approval within 30 days of receipt of said request. If Grantor has received no response after said 30 days, Grantor may send a second written notice to Grantee requesting a statement of the reasons for the disapproval and 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

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 Conservation Easement Area and Permanent Access Easement are free and clear of any and all encumbrances, and Grantor will warrant and defend the title against the lawful claims of all persons whomsoever; that there is legal access to the Property; and Grantor covenants that 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

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 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 an intentional or negligent act of Grantor or violation of federal, state or local environmental laws caused by the negligent or intentional act of 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 Grantee, nor shall 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 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 Rutherford 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.

GRANTORS:

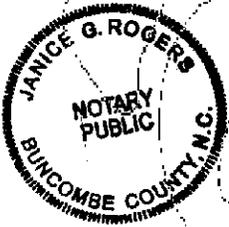
Robert L. Tate (Seal)
Robert L. Tate

Carolyn T. Tate (Seal)
Carolyn T. Tate

NORTH CAROLINA
Rutherford COUNTY

I, Janice G. Rogers, a Notary Public of Buncombe County, North Carolina do hereby certify that Robert L. Tate and Carolyn T. Tate personally appeared before me this day and executed the foregoing instrument.

Witness my hand and official stamp or seal this the 20th day of May, 2009.

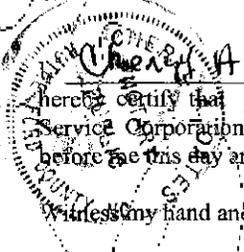


Janice G. Rogers
Notary Public (SEAL)
My commission expires: 11-21-2009

Charles A Cobb (Seal)

Title: Sr. Vice President
BB&T Collateral Service Corporation, as substitute Trustee for Branch Banking & Trust

NORTH CAROLINA
Rutherford COUNTY



Cheryl A Oats a Notary Public of Rutherford County, North Carolina do hereby certify that Charles A Cobb, a duly authorized agent of BB&T Collateral Service Corporation, as substitute Trustee for Branch Banking & Trust, personally appeared before me this day and executed the foregoing instrument.

Witness my hand and official stamp or seal this the 2nd day of May, 2009.

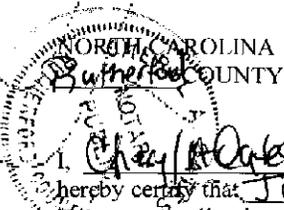
Cheryl A Oats

Notary Public (SEAL)

My commission expires: 4-17-11

[Signature] (Seal)
Title Asst Vice President

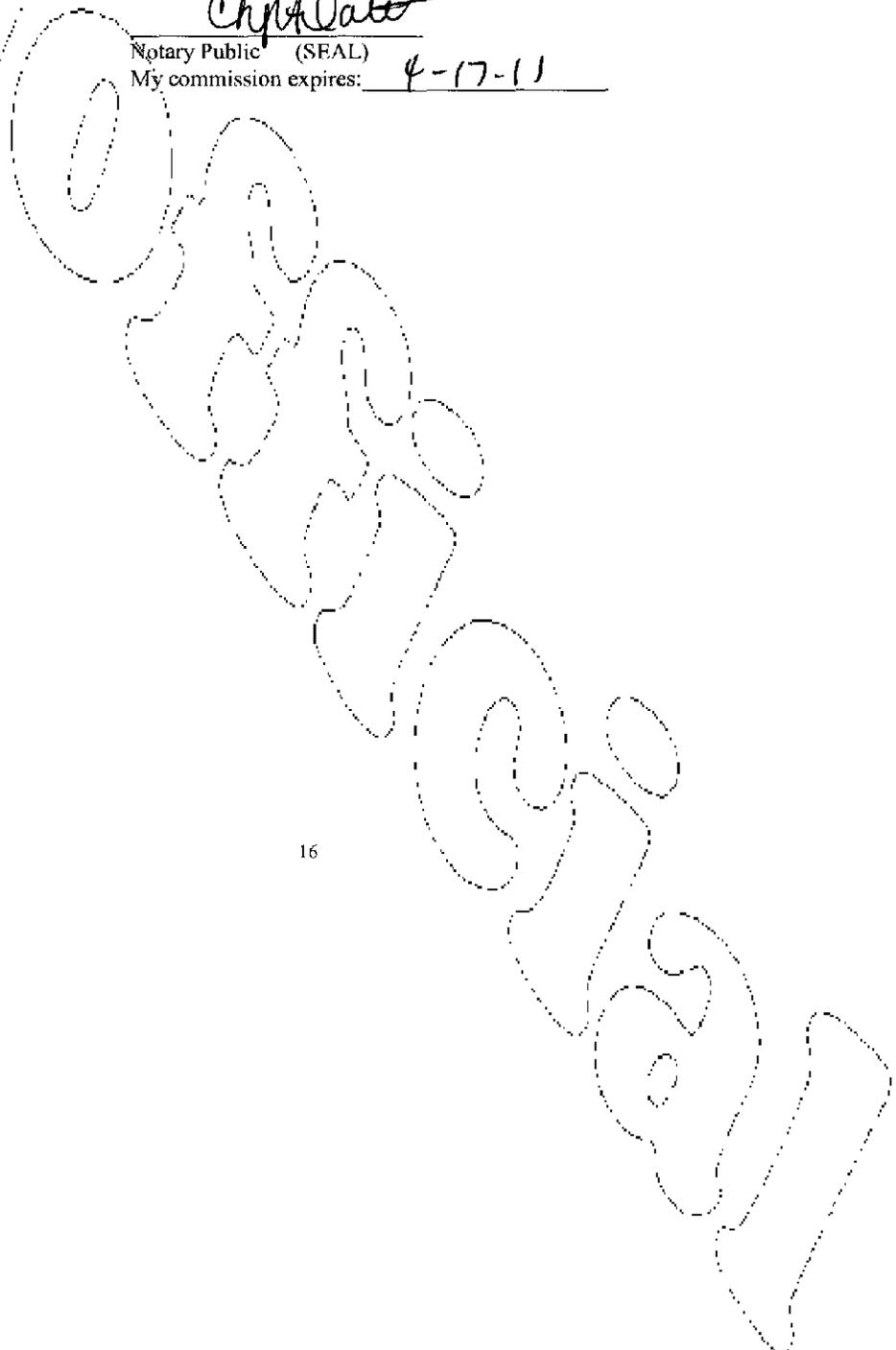
Branch Banking & Trust, P.O. Box 1255, Winston Salem, NC 27102



I, Cheryl A. Oates, a Notary Public of Butcherfield County, North Carolina do hereby certify that Jason M. Harrill, a duly authorized agent for Branch Banking & Trust, personally appeared before me this day and executed the foregoing instrument.

Witness my hand and official stamp or seal this the 21st day of May, 2009.

Cheryl A. Oates
Notary Public (SEAL)
My commission expires: 4-17-11



ACCEPTED:

GRANTEE:

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

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

NGRTH CAROLINA
WAKE COUNTY

I, Denise Amato, a Notary Public of wake 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 29th day of JUNE, 2009.

Denise Amato
Notary Public (SEAL)

Printed name of notary: Denise Amato

My commission expires: 10-28-09

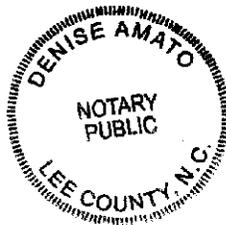


EXHIBIT A

CONSERVATION EASEMENT AREA

Conservation Easement Area- (8.03 acres, more or less)-

Said conservation easement area consisting of 8.03 acres, more or less, over and upon a portion of those certain 26.24 acres owned in fee simple by Robert L. Tate and wife, Carolyn T. Tate and described in Deed Book 241, Page 146, Deed Book 274, Page 07, Deed Book 459, Page 294, and Deed Book 504, Page 03 of the Rutherford County Registry, and located in Sulpher Springs Township, Rutherford County, North Carolina, and being described according to a plat or survey dated October 1, 2008 and captioned, "Plat of Boundary & New Easement Survey for: North Carolina Department of Transportation upon the Lands of Robert L. Tate and wife, Carolyn T. Tate," prepared by Vaughn & Melton, Asheville, North Carolina and recorded in Plat Book 30, Page 70, Rutherford Co. Registry contemporaneously herewith.

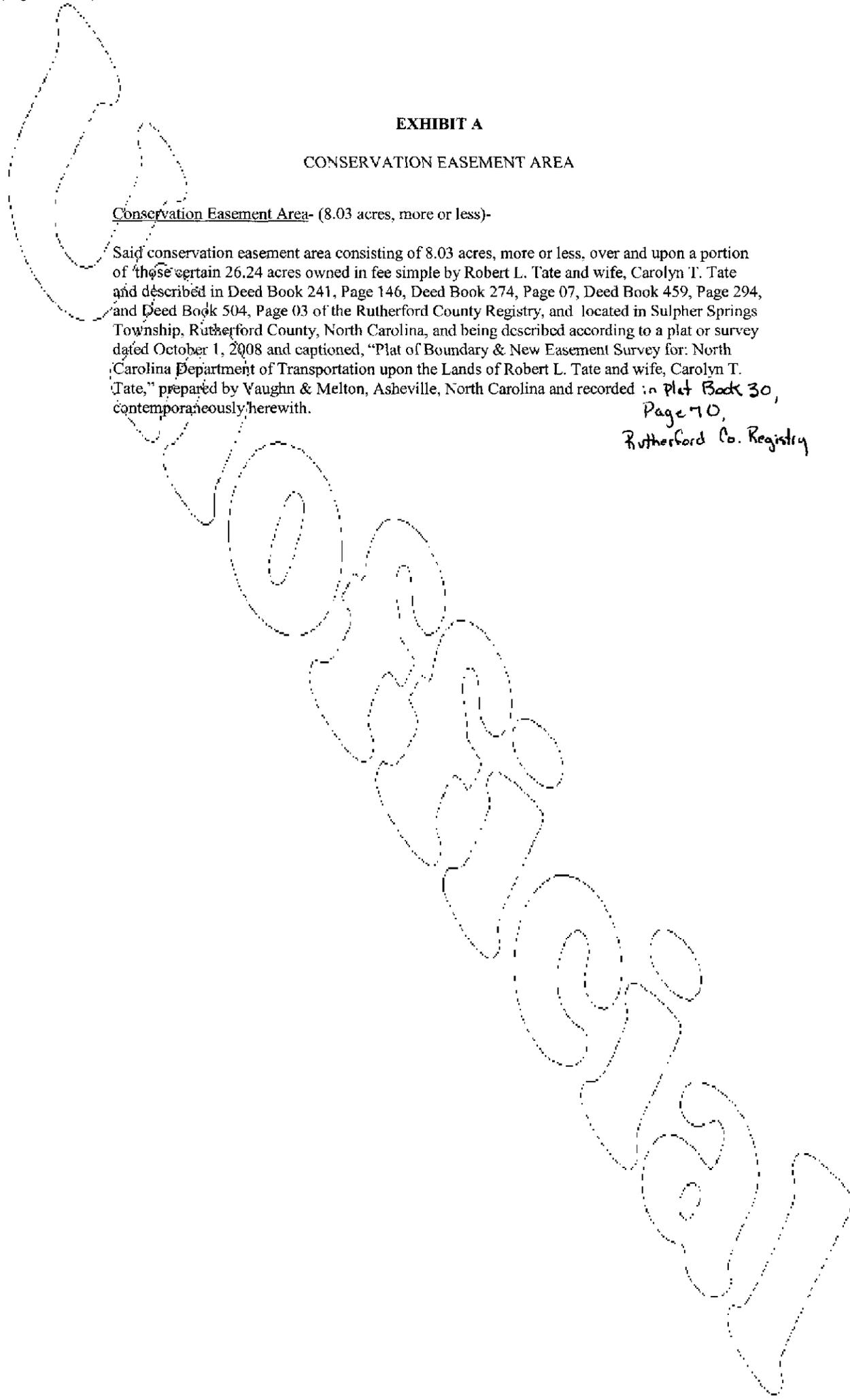


EXHIBIT B

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 8.03 acre Conservation Easement Area, TOGETHER WITH a perpetual non-exclusive easement for ingress and egress to the aforesaid Conservation Easement Area along the entire boundary of the Conservation Easement Area and NCDOT's right-of-way along US 221 and along the entire boundary of the Conservation Easement Area and NCDOT's right-of-way along State Road 2287, Jaynes Road.

