CONSERVATION EASEMENT

\_\_\_\_\_\_\_\_\_\_\_ Property

Prepared by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and North Carolina Land and Water Fund

After Recording Return to: [Address of preparing organization]

NORTH CAROLINA \_\_\_\_\_\_\_\_ COUNTY

## Tax Parcel No. \_\_\_\_\_\_\_\_\_\_\_ NCLWF No. \_\_\_\_\_\_

IF THE FEE SIMPLE OWNER WILL BE A NONPROFIT OR LOCAL GOVERNMENT, USE THE FOLLOWING FIRST PARAGRAPH.

THIS DEED OF CONSERVATION EASEMENT (“**Conservation Easement**”) is made, given, granted, and executed on this the \_\_\_ day of \_\_\_\_\_\_\_, \_\_\_\_\_\_, by and between [NAME OF NONPROFIT ORGANIZATION], a nonprofit corporation organized and existing under the laws of the State of North Carolina (“**Grantor**”) OR [NAME OF LOCAL GOVERNMENT], a local government of the State of North Carolina (“**Grantor**”), its address being: [Address], and the STATE OF NORTH CAROLINA (“**Grantee**” or “**State**”), its address being: Attn: NCLWF Real Property Agent, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321, acting by and through NORTH CAROLINA LAND AND WATER FUND a.k.a. North Carolina Clean Water Management Trust Fund, a division of the North Carolina Department of Natural and Cultural Resources (“**Fund**”), its address being: Attn: Stewardship, North Carolina Land and Water Fund, 1651 Mail Service Center, Raleigh, North Carolina 27699-1651. Grantor and Grantee may hereinafter be referred to individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

A. Grantor owns in fee simple absolute certain real property lying and being in [Township] Township, [County], North Carolina, which consists of [acres] acres, and which is more particularly described in “**Exhibit A**” which is attached hereto and incorporated herein by reference as if fully set forth herein (the “**Property**”).

If the Fee Simple Owner Is a Nonprofit Use This Paragraph “B”

B. Grantor is a nonprofit organization whose primary purpose is the conservation, preservation, or restoration of North Carolina’s cultural, historical, environmental, or natural resources.

Or If the Fee Simple Owner Is a Local Government Use This Paragraph “B”

B.Grantor is a North Carolina local government. Grantor’s \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Department will help manage and maintain the Property.

C. The State has enacted the Conservation and Historic Preservation Agreements Act (the “**Act**”), Chapter 121, Article 4 of the North Carolina General Statutes (“**N**.**C**.**G**.**S**.”), which provides for the enforceability of restrictions, easements, covenants, and conditions “appropriate to retaining land or water areas predominantly in their natural, scenic or open condition . . . .”

D. The North Carolina Land and Water Fund a.k.a. North Carolina Clean Water Management Trust Fund is authorized by N.C.G.S. Chapter 143B, Article 2, Part 41 to acquire land and interests in land on behalf of the State:

* for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses,
* for the purpose of protecting and conserving surface waters and enhancing drinking water supplies, including the development of water supply reservoirs,
* to provide buffers around military bases to protect the military mission,
* that represent the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes, and
* that contribute to the development of a balanced State program of historic properties.

E. Grantor and Grantee have agreed that the entire Property shall be subject to this Conservation Easement. As aforementioned, the Property is more particularly described in **Exhibit A**.

The Property has the following conservation values and serves the following conservation purposes:

CHOOSE APPLICABLE LANGUAGE BASED ON GRANT CONTRACT

* to preserve, enhance, restore, and maintain the natural features and resources of the riparian buffer, to control runoff of sediment, and to improve and maintain the water quality, of portions of [name of surface water] and its tributaries,
* to preserve and maintain the natural features and resources of the riparian buffer, and to provide environmental, educational, and recreational uses, including riparian greenway along portions of [name of surface water] and its tributaries,
* to protect and preserve the ecological diversity including natural features such as [name of natural features] for recreational, scientific, educational, cultural, and aesthetic purposes,
* to preserve and protect the natural, historic, and cultural features of the Property containing or located next to [name of historical or cultural event, site, building, object], to develop a balanced State program of historic properties,
* to eliminate or prevent any use of the Property that restricts, impedes, or otherwise interferes, whether directly or indirectly, with the current or anticipated military operations of [name of military base].

Moreover, Grantor and Grantee recognize that the Property has other conservation values and purposes, including fish and wildlife conservation, open space values, scenic values, and archaeological values (hereinafter, collectively with the conservation values described in this **Section E** of the Recitals and the conservation purposes of this Conservation Easement, the “**Conservation Values**”).

F. Grantor has received or will receive a grant from Fund in accordance with Grant Contract No. \_\_\_\_\_\_\_\_\_\_ between Grantor and Fund dated [date] (the “**Grant Contract**”). In the Grant Contract, Grantor agreed to enter into this Conservation Easement. The Grant Contract is on file and available for public inspection in the offices of Grantor and Fund. The Grant Contract and this Conservation Easement are collectively referred to herein as the “**Project**.”

G. Grantor acknowledges that the Property is [part of / adjacent to] property listed on the National Register of Historic Places and as part of the grant from Fund, Grantee was required by N.C.G.S. 121-12 to take into account the effect of the grant on any district, site, building, structure, or object that is listed on the National Register of Historic Places. Said account was taken and documented by Fund on [date]. Grantor acknowledges that any future state-assisted undertaking, approval, or authorization which may be potentially harmful to the cause of historic preservation involving the Property would be required to again abide by the process required by N.C.G.S. 121-12.

  H. Grantor and Grantee acknowledge that the Property is currently unencumbered except as permitted in **Article V** of this Conservation Easement. The Property’s characteristics, its current use, and its state of improvement are described in a Baseline Documentation Report (the “**BDR**”), which was required under the Grant Contract and is on file and available for public inspection in the offices of Grantor and Fund. The Parties acknowledge that the BDR is the appropriate basis for monitoring compliance with the objectives of preserving the Conservation Values and that it is not intended to preclude the use of other evidence (e.g. surveys, appraisals) to establish the condition of the Property at the time of the execution of this Conservation Easement if there is a controversy over such condition.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Grantor hereby unconditionally and irrevocably gives, grants, and conveys forever and in perpetuity to Grantee, its successors and assigns, and Grantee hereby accepts, this Conservation Easement of the nature and character and to the extent hereinafter set forth in, on, over, under, through, above and across the Property, together with the right and easement to preserve and protect the Conservation Values, for so long as a Letter of Allocation is not recorded for the Property, or any part thereof, within ten (10) years of the execution hereof, and if a Letter of Allocation is recorded for the Property, or any part thereof, within ten (10) years of the execution hereof, then this Conservation Easement shall immediately and automatically revert to Grantor and its heirs, successors, or assigns, and terminate. The Conservation Easement that Grantor hereby conveys to Grantee is a determinable easement that will automatically revert to Grantor and terminate upon a Letter of Allocation being recorded for the Property, or any part thereof, within ten (10) years of the date of the execution hereof. If a Letter of Allocation is not recorded for the Property, or any part thereof, within ten (10) years of the execution hereof, then this Conservation Easement will be absolute and no longer determinable. As used herein, “Letter of Allocation” means any dedication by allocation as provided for in North Carolina General Statutes § 143B-135.264 as amended. It is not the Parties’ intention to create an easement subject to a condition subsequent or to an executory limitation. It is the Parties’ intention to create a determinable easement and a possibility of reverter.

The purpose of this Conservation Easement is to protect and preserve the Conservation Values as outlined above in **Section E** of the Recitals including the conservation purposes and it shall be so held, maintained, and used therefor. Grantor hereby conveys to Grantee all development rights that are now or hereafter allocated to, or are implied or inherent in, the Property, and the Parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any other property. It is the further purpose of this Conservation Easement to prevent any use of the Property that will impair or interfere with the preservation of the Conservation Values. Grantor intends that this Conservation Easement will restrict the use of the Property to such activities as are consistent with the Conservation Values.

FURTHER, for the purpose of providing uninterrupted access to the Property, Grantor grants and conveys unto Grantee, its successors and assigns, a perpetual vehicular and pedestrian right of ingress, egress, and regress to and from the Property (1) in that certain \_\_\_\_\_ foot wide right-of-way described in the easement recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, \_\_\_\_\_\_\_\_ County Register of Deeds or shown on the Plat identified in **Exhibit A** as providing access to the Property from \_\_\_\_\_\_\_\_, (2) in any other right-of-way appurtenant to the Property, and (3) across any other lands owned by Grantor.

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual subject to the possibility of reverter hereinabove described. It is an easement in gross, runs with the land, and is enforceable by Grantee, its successors and assigns, against Grantor, its representatives, successors, assigns, lessees, agents, and licensees.

ARTICLE II. RIGHTS RESERVED TO GRANTOR

Grantor reserves the right accruing from the fee simple ownership of the Property to engage in or permit others to engage in the uses of the Property that are not inconsistent with this Conservation Easement or the Conservation Values. All rights reserved by Grantor, are reserved for Grantor and its successors and assigns. The specific reserved rights listed below in this **Article II** are considered to be consistent with this Conservation Easement and the Conservation Values. Grantor shall continue to own and may use the Property in any lawful manner that is consistent with this Conservation Easement and the Conservation Values. The Parties acknowledge and agree that they have no right to agree to any activity that would result in the termination of this Conservation Easement.

The Property shall be restricted from any development or usage that would impair or interfere with the Conservation Values including the purposes of this Conservation Easement. The following uses are reserved as indicated:

A. Access and Use. Grantor reserves the right to allow access and use of the Property for the purposes of the activities permitted herein.

B. Passive Recreational Use.Grantor reserves the right to engage in and to permit others to engage in passive recreational uses of the Property that do not require surface alteration of the land and pose no threat to the Conservation Values. By way of illustration, such passive recreational uses may include hiking, walking, scientific study, animal/plant observation, nature and environmental education, historic tours, photography, so long as such uses are consistent with the maintenance of the Conservation Values, and such uses are subject to all applicable federal, state, and local laws and regulations.

C. Existing Roads and Trails. Grantor reserves the right to maintain existing unpaved roads and trails on the Property. These roads and trails shall not be paved without prior written approval of Fund. The existing roads and trails may be stabilized with gravel and permanent vegetation. Associated ditches, culverts, stream crossings, and bridges may be maintained and replaced as necessary as maintenance of the road or trail. All necessary care shall be taken to maintain existing roads and trails in a manner so as not to impair any Conservation Values. Existing roads and trails shall not be realigned without the prior written approval of Fund.

INSERT PARAGRAPH FOR ANY NEW ROAD AND/OR PARKING RESERVED RIGHTS APPROVED BY THE BOARD AT TIME OF FUNDING

1. Motorized Vehicles. Grantor reserves the right to use motorized vehicles on allowed roads and trails for management, maintenance, or stewardship purposes. [Grantor further reserves the right to allow motorized vehicles on existing [and new] roads [and parking areas] for the purpose of public access.]

E. New Natural Surface Trails. Grantor reserves the right to construct and maintain new natural surface trails for the purpose of hiking [and non-motorized biking]. All natural surface trails must be located a minimum distance of fifty (50) feet from the top of the bank of all surface water, unless such locations are physically impracticable, and must be located so as not to impair the Conservation Values. All natural surface trail construction involving soil disturbance must follow best practices for sustainable trail design and construction and must have prior written approval by Fund. When required by the terrain, natural surface trails may include boardwalks, ramps, and handrails to the extent necessary. Natural surface trails may include stream crossings up to \_\_\_ feet wide, provided they are permitted by all applicable regulatory authorities. All necessary care shall be taken to construct and maintain natural surface trails in a manner so as not to impair any Conservation Values either during or after construction. Fund shall have the authority to require the closure of any natural surface trail that is detrimental to any Conservation Values. All realignments of natural surface trails are subject to the requirements of this Paragraph.

F. New Paved Trails. Grantor reserves the right to construct and maintain new paved trails for the purpose of non-motorized recreation. All paved trails must be located a minimum distance of fifty (50) feet from the top of the bank of all surface water, unless such locations are physically impracticable, and must be located so as not to impair the Conservation Values. All paved trail construction involving soil disturbance must follow best practices for sustainable trail design and construction and must have prior written approval by Fund. When required by the terrain, paved trails may include boardwalks, ramps, and handrails to the extent necessary. Paved trails may include stream crossings up to \_\_\_ feet wide, provided they are permitted by all applicable regulatory authorities. All necessary care shall be taken to construct and maintain paved trails in a manner so as not to impair any Conservation Values either during or after construction. Fund shall have the authority to require the closure of any paved trail that is detrimental to any Conservation Values. All realignments of paved trails are subject to the requirements of this Paragraph.

G. Trail and Recreational Accessories. Grantor reserves the right to construct and maintain park benches, litter receptacles, and directional, educational, and informational signs along existing trails and approved new natural surface and paved trails. Grantor further reserves the right to construct and maintain \_\_\_ observation platforms/fishing platforms/boat docks along existing and approved new natural surface and paved trails or on the banks of surface water if allowed and approved by all applicable regulatory authorities. All necessary care shall be taken to construct and maintain trail and recreational accessories in a manner so as not to impair any Conservation Values either during or after construction. Fund shall have the authority to require the removal of any trail or recreational accessory that is detrimental to any Conservation Values.

INSERT PARAGRAPH FOR ANY OTHER AMENITIY RESERVED RIGHT APPROVED BY THE BOARD AT TIME OF FUNDING

H.Vegetation Management. Grantor reserves the right to manage vegetation for boundary marking, fencing, signage, fire containment, disease control, insect control, invasive exotic plant control, and removal of conditions that threaten life or property. Methods of vegetation management may include, but are not limited to, selective cutting, prescribed burning, and application of herbicides or pesticides.

I. Early Successional Habitat Areas. Grantor reserves the right to maintain the existing early successional habitat areas identified in the Baseline Documentation Report for the purpose of providing habitat diversity for wildlife species and may include the planting of various native grasses, forbs, and herbaceous vegetation. All necessary care shall be taken to protect all Conservation Values, and maintenance of existing early successional habitat areas shall be carried out in a manner so as not to impair any Conservation Values either during or after the maintenance activities. This activity must be conducted a minimum distance of 100 feet from surface waters as measured from top of bank.

J. Native Community Restoration, Management, and Maintenance. Grantor reserves the right to perform all activities necessary to restore, manage, or maintain the native plant and animal communities on the Property, provided, however, that the conversion of one habitat type to a native habitat type requires prior written approval of Fund. All necessary care shall be taken to protect all Conservation Values, and restoration, management, and maintenance activities shall be carried out in a manner so as not to impair any Conservation Values either during or after the activities.

K. Stream/Wetland Restoration. Grantor reserves the right to perform all activities necessary to restore and stabilize streams and wetlands to enhance water quality on the Property. Such activities shall be based upon prevailing design and permitting standards. Restoration and stabilization activities shall be based on a design using as many natural materials as possible, shall require prior written approval of Fund, and shall be subject to all applicable regulatory authorities.

L. Hunting and Fishing. Grantor reserves the rights to recreational hunting and recreational fishing and to permit others to hunt and fish on the Property in compliance with all federal, state, and local rules and regulations. Grantor may lease or license the Property for recreational hunting and fishing in accordance with **Article VI, Paragraph B**, but such leases and licenses are exempt from the 60-day notification requirement. Recreational hunting and fishing leases and licenses shall be in writing and shall reference this Conservation Easement and shall require tenants and licensees to abide by its terms.

M. Signs. Grantor reserves the right to post the following signs: no trespassing signs, local, state, or federal traffic or similar information signs, for sale or lease signs, signs identifying the Conservation Values of the Easement, signs identifying Grantor as owner of the Property, signs identifying the funders or the holders of Conservation Easements, educational signs, directional signs, and interpretative signs.

N. Historic and Cultural Restoration, Management, and Maintenance. Grantor reserves the right to manage the Property for the purposes of restoring, managing, altering, or maintaining the historic resources on the Property. All historic resource restoration, management, alteration, or maintenance must be outlined in a formal plan and must have prior written approval by Fund.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property that is inconsistent with this Conservation Easement or the Conservation Values is prohibited. The Property shall be maintained in its natural, scenic, wooded, and open condition and restricted from any development or use that would impair or interfere with this Conservation Easement or the Conservation Values.

Without limiting the generality of the immediately foregoing Paragraph, the following activities and uses are expressly prohibited or restricted on the Property as stated, except to the extent of rights specifically reserved to Grantor in **Article II**. When an activity or use is prohibited or restricted in, within, on, or of the Property, the activity or use is prohibited or restricted in, on, over, under, through, above, and across the Property.

  A. Industrial and Commercial Use. Industrial and commercial activities and any rights of passage for such purposes are prohibited on the Property.

B. Agricultural, Grazing and Horticultural Use. Agriculture, grazing, horticultural, and animal husbandry operations and any rights of passage for such purposes are prohibited on the Property.

C. Disturbance of Natural Features, Plants, and Animals.There shall be no cutting or removal of trees and no disturbance of other natural features on the Property.

D. Construction of Structures or Improvements.There shall be no constructing or placing of any temporary or permanent structure, improvement, building, fixture, mobile home, asphalt, concrete, or other pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, or facility on the Property.

E. Motorized Vehicles. Use of motorized vehicles on the Property is prohibited.

F. Signs. Signs are not permitted on the Property.

G. Mineral Use, Excavation, Dredging.There shall be no filling, excavation, dredging, mining, or drilling on the Property. There shall be no removal of topsoil, sand, gravel, rock, peat, minerals, hydrocarbons, or other materials from the Property. There shall be no change in the topography of the Property in any manner.

H. Wetlands and Water Quality. There shall be no pollution or alteration of surface waters on the Property. There shall be no construction or other activities that would be detrimental to water quality or that would alter the natural water levels, drainage, sedimentation, or water flow in, on, or over the Property or into any surface waters. There shall be no construction or other activities that would cause soil degradation or erosion. There shall be no diking, dredging, alteration, draining, filling, or removal of wetlands.

I. Dumping.Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or other materials on the Property is prohibited.

USE FIRST PARAGRAPH J IF THE PROPERTY IS ONE PARCEL:

J. Conveyance and Subdivision. The Property shall not be divided, subdivided, or partitioned. No property interest in the Property, including, but not limited to the fee simple interest, shall be divided, subdivided, or partitioned. Without limiting the foregoing, the Property shall not be conveyed except in its current configuration as a single parcel of property.

USE SECOND PARAGRAPH J IF THE PROPERTY IS MULTIPLE PARCELS AND UPDATE INFO IN YELLOW:

J. Conveyance and Subdivision. The Property consists of \_\_\_\_ non-contiguous/contiguous parcels of land. The Property shall not be further divided, subdivided, or partitioned. No property interest in the Property, including, but not limited to the fee simple interest, shall be further divided, subdivided, or partitioned. Without limiting the foregoing, the individual parcels included in the Property shall not be conveyed except all together in undivided ownership and in their current configuration.

K. Open Space and Development Rights. The Property shall not be used to satisfy open space or density requirements of any cluster or other development scheme or plan. The development rights encumbered by this Conservation Easement shall not be transferred to any other land pursuant to a transfer of development rights scheme, a cluster development arrangement, or otherwise.

L. Mitigation. There shall be no use of the Property or any portion thereof to satisfy compensatory mitigation requirements under 33 USC Section 1344, N.C.G.S. §143-214.11 or any successor or replacement provision of the foregoing.

M. Destruction of Archaeological Resources Prohibited. Notwithstanding anything to the contrary stated herein, Grantor agrees to manage the Property in such a way as to protect the archaeological integrity of the Property and to not disturb, demolish, destroy, or otherwise deface or alter any known archaeological features on the Property without prior written approval of Fund. In the event that an archaeological feature is uncovered during the course of any improvements on the Property or through a natural event such as but not limited to flood or erosion, Grantor shall notify Fund immediately and shall assist with any requested actions by Grantee to document and protect the feature.

ARTICLE IV. ENFORCEMENT AND REMEDIES

A. Enforcement and Remedies. Grantee has the right to prevent and stop any violation of this Conservation Easement, including, but not limited to, preventing and stopping any activity on or use of the Property that is inconsistent with this Conservation Easement or its purposes, and to require the prompt restoration to the condition required by this Conservation Easement of such areas or features of the Property that may have been damaged by such violation, activity, or use. Upon any breach of the terms of this Conservation Easement by Grantor that comes to the attention of Grantee, Grantee, may notify Grantor in writing of such breach. Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, Grantee may enforce this Conservation Easement by legal proceedings for damages, injunctive relief, and any other legal or equitable remedy. Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Property by acts which may be unlawful or in violation of this Conservation Easement, (b) to otherwise preserve or protect its interest in the Property, and (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, Grantee has the immediate right, without notice, to obtain a temporary restraining order, injunction, or other appropriate relief if a breach or threatened breach of the terms of this Conservation Easement is or would irreversibly or materially impair the benefits to be derived from this Conservation Easement. Grantor and Grantee acknowledge that under such circumstances damage to Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement, including, without limitation, those set forth in the Grant Contract under which this Conservation Easement was obtained.

B. Access for Inspection and Right of Entry. Grantee shall have the right, by and through its agents and employees, to enter the Property to inspect the Property for compliance with this Conservation Easement at all reasonable times and with prior notice and, if necessary, cross other lands owned by Grantor for the purposes of (1) inspecting the Property to determine if Grantor is complying with this Conservation Easement and its purposes, (2) enforcing the terms of this Conservation Easement, (3) taking any and all actions with respect to the Property as may be necessary or appropriate with or without order of the Court, to remedy or abate violations hereof, and (4) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Property by Grantor.

C. Termination and Proceeds of Property Rights Created. This Conservation Easement gives rise to a property right that is immediately vested in Grantee at the time of recordation, with a fair market value that is at least equal to the proportionate value that the Conservation Easement bears to the full value of the whole Property, as if unencumbered by the Conservation Easement, on the date of the recording of this Conservation Easement. This proportionate value shall remain constant. For the purposes of determining any distribution of proceeds pursuant to this Paragraph, Grantor’s proportionate contribution to the purchase price shall be deemed to be \_\_\_%, and Grantee’s proportionate contribution to the purchase price shall be deemed to be \_\_\_%. “**Proceeds of Sale**” shall include, but not be limited to, the cash value of all money and property paid, transferred, or contributed in consideration for, or as otherwise required as a condition to, the taking of, sale of, exchange of, involuntary conversion of, or severance damages to the Property or part thereof, and any money, damages, or just compensation otherwise awarded as a result of judicial proceedings. If any Proceeds of Sale are due, payable, or otherwise obligated to the United States government or any department or agency thereof related to funding provided to Grantor, then any such obligation shall be paid or satisfied solely from Grantor’s portion of the Proceeds of Sale.

1. Eminent Domain. The Conservation Easement may only be extinguished due to Eminent Domain, in whole or in part, by judicial proceeding. Whenever all or part of the Property is taken by eminent domain, threatened to be taken by an entity with the power of eminent domain, or acquired, or sought to be acquired, by negotiated sale in lieu of condemnation, whether by public, corporate, or other authority, Grantor shall immediately give notice to Grantee and Fund, and shall take all appropriate actions related to such taking or negotiated sale in coordination with and with the prior written approval of Grantee and Fund, to recover the full fair market value (without regard to any diminution in value attributable to the Conservation Easement) of the taking or acquisition and all incidental, direct, and severance damages resulting from the taking or acquisition. Grantee, its successors and assigns, shall be entitled to its proportionate share of the Proceeds of Sale according to Grantee’s proportional interest in the value of the Property as determined under Treasury Regulations §1.170A-14(g)(6)(ii) or any successor regulation. As such designation is allowed by N.C.G.S. §146-30(a), Grantee shall use its share of the Proceeds of Sale in a manner consistent with the purpose(s) of the Conservation Easement as set forth herein. Notwithstanding the foregoing, all Proceeds of Sale shall be distributed among the Parties according to each Party’s respective contribution to the purchase price of the Property and this Conservation Easement as specified above. Nothing herein limits Grantee’s right to be included as a named party in any eminent domain action or its right to just compensation for the taking of its property interest.
2. Changed Conditions. If a subsequent, unexpected change in conditions surrounding the Property makes impossible or impractical the continued use of the Property or any part thereof for the purposes of this Conservation Easement as set forth herein, the Conservation Easement may only be extinguished in whole or in part by judicial proceeding. If this Conservation Easement is extinguished, in whole or in part, by judicial proceeding because of changed conditions, Grantee, its successors and assigns, shall be entitled to its proportionate share of the Proceeds of Sale according to Grantee’s proportional interest in the value of the Property as determined under Treasury Regulations §1.170A-14(g)(6)(ii) or any successor regulation. As such designation is allowed by N.C.G.S. §146-30(a), Grantee shall use its share of the Proceeds of Sale in a manner consistent with the purpose(s) of the Conservation Easement as set forth herein. Notwithstanding the foregoing, all Proceeds of Sale shall be distributed among the Parties according to each Party’s respective contribution to the purchase price of the Property and this Conservation Easement as specified above. Nothing herein limits Grantee’s right to be included as a named party in any judicial proceedings related to changed conditions.

3. Federal Grant Divestment. In the event that Grantee is divested of this Conservation Easement or it is terminated, in whole or in part, pursuant to or by the operation of any grant program of the United States or any agency thereof, or any law, rule, regulation, or policy related to any such grant program, related to a grant obtained by Grantor, Grantor shall pay to Grantee the value of the Conservation Easement or the part thereof of which the State has been divested or has been terminated. The value of the Conservation Easement if divested or terminated in whole shall be \_\_\_\_% of the full fair market value of the Property, as if unencumbered by any federal grant program restrictions or this Conservation Easement, at the time of the divestment or termination. The value of the part of the Conservation Easement, if divested or terminated in part, shall be \_\_\_\_% of the full fair market value of the part of the Property over which the Conservation Easement is divested or terminated, as if unencumbered by any federal grant program restrictions or this Conservation Easement, at the time of the divestment or termination.

D. Acts Beyond Grantor’s Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property resulting from the acts of third parties not authorized by Grantor, or from causes beyond Grantor’s control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, property, or the Property, resulting from such causes.

E. Costs of Enforcement.Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, any costs of restoration necessitated by Grantor’s acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

F. No Waiver.Any forbearance by Grantee 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 Grantee of such term or of any subsequent breach of the same or of any other term of this Conservation Easement or of Grantee’s rights. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

ARTICLE V. TITLE

Grantor covenants, represents, and warrants (i) that Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement, (ii) that there is legal access to the Property, (iii) that the Property is free and clear of any and all encumbrances, except those permitted exceptions outlined below, none of which would nullify, impair, or limit in any way the terms or effect of this Conservation Easement, (iv) that Grantor shall defend its title and Grantee’s title against the claims of all persons whomsoever, and (v) that Grantee, its successors and assigns, shall have the right to monitor and defend the terms of this Conservation Easement. The following are permitted exceptions to the above covenants, representations, and warranties: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

ARTICLE VI. MISCELLANEOUS

A. Stewardship of the Conservation Easement.  Pursuant to the terms of the Grant Contract and any contract for stewardship of the Property entered into pursuant to the Grant Contract, [Name of steward/monitor] will monitor and observe the Property in perpetuity to assure compliance with the purposes and provisions of this Conservation Easement and the provisions of the Grant Contract, and that it will report on the condition of the Property, or provide for such reporting, to State and Fund no less frequently than once a year, and further will report immediately to State and Fund any observed and/or known violations of this Conservation Easement or the Grant Contract. The Parties acknowledge that the associated stewardship monies awarded under the Grant Contract are administered pursuant to N.C.G.S. §143B-135.236 which establishes the North Carolina Conservation Easement Endowment Fund, or any successor law, and Fund’s internal policies and procedures, and that [Name of steward/monitor]’s obligation to monitor the Property at any given time is contingent on the availability of said stewardship funds. Further, the Parties acknowledge that this obligation to monitor the Property is assignable provided such assignment is made with the prior written approval of Fund and evidenced by a written instrument signed by the Parties thereto and recorded in the Office of the Register of Deeds of [County] County. Provided further, that any such assignment of [Name of steward/monitor]’s obligation to monitor the Property shall include a right of entry onto the Property for the assignee of said monitoring obligation, and shall require the monitoring to be carried out in accordance with and subject to N.C.G.S. §143B-135.236 or any successor law, and Fund’s internal stewardship policies and procedures. The Parties specifically acknowledge that neither [Name of steward/monitor]’s obligation to monitor the Property, nor its assignment of said obligation, shall have any effect on the rights and obligations of Grantee of this Conservation Easement. Further, the Parties covenant that the obligation to provide monitoring of the Property will survive any transfer of Grantor’s fee interest in the Property. If a Letter of Allocation is recorded for the Property, or any part thereof, within ten (10) years of the execution hereof, then [Name of steward/monitor]’s obligation as described in this Conservation Easement to monitor the Property shall terminate and any obligation of Fund and/or State to pay for or reimburse for monitoring related to this Conservation Easement or the Property, under any contract or otherwise, shall terminate.

B. Subsequent Transfers of the Fee or Other Interests; Licenses. Grantor agrees for itself, its successors and assigns, that in the event it intends to transfer the Property, any interest in the Property, or any license to use the Property, to notify Grantee and Fund in writing of the names and addresses of any party to whom the Property, any interest in the Property, or any license to use the Property, is to be transferred, the nature of the interest or license to be transferred, and the terms and conditions of the intended transfer, at least sixty (60) days before the transfer is intended to be consummated. Grantor, for itself, its successors and assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed, license, or other legal instrument by which any interest or license in the Property is conveyed. The Property owner shall not convey the Property or any interest or license therein, and shall not incur, assume, or suffer to exist any lien, upon or with respect to the Property, without disclosing to the prospective transferee the Conservation Easement, the obligations of the Property owner, and the limitations on use of the Property. No interest or license in the Property shall be transferred except in writing in accordance with the above. Nothing in this Paragraph abrogates or limits **Paragraph J of Article III** hereof.

C. Subsequent Transfers of the Conservation Easement.The Parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable with any such assignee having all the rights and remedies of Grantee hereunder. The Parties hereby covenant and agree, that in the event this Conservation Easement is transferred or assigned, the transferee or assignee of the Conservation Easement will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (the “**Code**”), as amended, or any successor section, and the regulations promulgated thereunder that is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, a qualified holder as that term is defined in the Act or any successor statute, and a qualified grant recipient pursuant to N.C.G.S. Chapter 143B, Article 2, Part 41. The Parties further covenant and agree that the terms of the transfer or the assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the purpose(s) of the Conservation Easement that the contribution was originally intended to advance as set forth herein, but acknowledge specifically that any transfer or assignment of the Conservation Easement shall have no effect on [Name of steward/monitor]’s obligation to provide stewardship of the Conservation Easement as set forth in this **Article VI**.

D. Existing Responsibilities of Grantor and Grantee Not Affected. 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:

1. 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 shall reimburse Grantee for the same.

2. Upkeep and Maintenance. Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

3. Liability and Indemnification. If Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property, Grantor shall indemnify and reimburse Grantee for these payments, as well as reasonable attorneys’ fees and other expenses of defending itself, unless Grantee has committed a deliberate act that is determined to be the sole cause of the injury or damage.

E. Conservation Purpose.Grantor and Grantee, each for itself, and its respective successors and assigns, agree that this Conservation Easement shall be held exclusively for conservation purposes set forth by the Grant Contract, this Conservation Easement and as specified in Section 170(h)(4)(A) of the Code. Further, this Conservation Easement shall be construed to promote the purposes of the Act and such purposes of this Conservation Easement as are defined in Section 170(h)(4)(A) of the Code.

F. Recording.Grantee shall record this instrument and any amendment hereto in the official records of [County] County, North Carolina, and may re-record it at any time as may be required to preserve Grantee's rights.

G. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, to the Parties at their addresses shown below, and each Party may update its information by a notice sent in accordance with this Paragraph:

If to Grantee: If to Grantor:

[Address] [Address]

H. Amendments.Grantor and Grantee, or their successors in interest in the Property, are free to jointly amend this Conservation Easement, provided that no amendment will be allowed that is inconsistent with the purposes of this Conservation Easement or affects the perpetual duration of this Conservation Easement. Such amendments require the prior written approval of both Grantor and Grantee and shall be effective upon recording in the public records of [County] County, North Carolina.

I. Environmental Condition of the Property.Grantor warrants, represents, and covenants to Grantee that to the best of its knowledge after appropriate inquiry and investigation: (a) the Property described herein is and at all times hereafter will continue to be in full compliance with all federal, state, and local environmental laws and regulations, (b) as of the date hereof, there are no hazardous materials, substances, wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in, or under the Property or used in connection therewith, (c) that there are no environmental conditions existing on the Property that may prohibit or impede use of the Property for the purposes set forth herein, and (d) Grantor will not allow such conditions.

J. Indemnity. Grantor agrees to the fullest extent permitted by law, to protect, indemnify, and hold harmless Grantee from and against all claims, actions, liabilities, damages, fines, penalties, costs, expenses, and attorneys’ fees suffered or incurred as a direct or indirect result of any violation of any federal, state, or local environmental or land use law or regulation or of the use or presence of any hazardous substance, hazardous waste, or other regulated material in, on, or under the Property.

K. Entire Agreement.The Recitals set forth above and the exhibits, if any, attached hereto are incorporated herein by reference. This instrument, including the Grant Contract incorporated by reference herein, sets forth the entire agreement of the Parties with respect to the Project and supersedes all prior discussions, negotiations, understandings, and agreements relating to the Project. To the extent that this Conservation Easement is in conflict with the Grant Contract, the terms of this Conservation Easement shall control.

L. Interpretation and Severance.This Conservation Easement shall be construed and interpreted under the laws of the State and the United States, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes sought to be protected herein. The normal rule of construction of ambiguities against the drafting party shall not apply in the interpretation of this Conservation Easement. Further, this Conservation Easement shall be construed to promote the purposes of the Act, which authorizes the creation of conservation agreements for purposes including those set forth herein, and such conservation purposes as are defined in Section 170(h)(4)(A) of the Code. If any provision of this Conservation Easement is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby and shall remain in full force and effect.

M. Parties. Every provision of this Conservation Easement that applies to Grantor or to Grantee or to Fund shall likewise apply to their respective executors, administrators, successors, and assigns.

N. No Extinguishment through Merger.  The Parties agree that the doctrine of extinguishment by merger shall not apply to this Conservation Easement because of the public interest in its enforcement. The Parties agree that this Conservation Easement and its terms shall survive any coming together of the ownership of the fee interest in the Property and the Conservation Easement interest, and that this Conservation Easement shall not be merged into the fee interest. Further, the Parties agree that if Grantee, or any successor in interest to Grantee, acquires title to any fee interest in the Property subject to this Conservation Easement, (i) said owner shall observe and be bound by the obligations and the restrictions imposed upon the Property by this Conservation Easement and (ii) this Conservation Easement shall not be extinguished through the doctrine of merger in any way in view of the public interest in its enforcement. Notwithstanding the foregoing, this Paragraph shall not apply to the possibility of reverter hereinabove described. If the possibility of reverter occurs, then this Conservation Easement shall terminate.

O. Subsequent Liens. No provision of this Conservation Easement shall be construed as impairing the ability of Grantor to use the Property for collateral for borrowing purposes, provided that any mortgage or lien arising therefrom shall be subordinate to this Conservation Easement.

P. Gender. The designations Grantor, Grantee, State, and Fund, as used herein shall include the persons or entities indicated and their administrators, successors, and assigns, and shall include the singular, plural, masculine, feminine, or neuter as the context may require.

Q. Headings. The headings of the various sections of this Conservation Easement have been inserted for convenience only and shall not modify, define, limit, or expand the express provisions of this Conservation Easement.

**TO HAVE AND TO HOLD** unto Grantee, its successors and assigns, forever, subject to the possibility of reverter hereinabove described. The covenants agreed to and the terms, conditions, restrictions, and purposes imposed as aforesaid shall be binding upon Grantor and Grantor’s representatives, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

[See next page for signatures and notary acknowledgement]

**IN WITNESS WHEREOF,** Grantor, by authority duly given, has hereunto caused these presents to be executed under seal in such form as to be binding, the day and year first above written, and Grantee accepts this Conservation Easement by the recording hereof in the public records.

**GRANTOR:**

**(NAME OF GRANTOR)**

**By:** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)**

(Name of Person Signing)

(Title of Person Signing)

**ATTEST:**

**By:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Corporate Secretary)

Corporate Secretary

**[Affix Corporate Seal]**

**STATE OF NORTH CAROLINA**

**COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

I, the undersigned Notary Public of the aforesaid county, North Carolina, do hereby certify that (Name of Attester) personally appeared before me this day and acknowledged that he/she is the Corporate Secretary of (Name of Grantor), a nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its (Title of Person signing for Grantor), (Name of person signing for Grantor, sealed with its corporate seal, and attested by himself/herself as its Corporate Secretary.

Witness my hand and notarial seal this the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

Notary Public: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STAMP/SEAL

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**PROPERTY OF\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**TOWNSHIP**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_COUNTY, NORTH CAROLINA**

[Insert legal description]

Together with those rights of access described on page(s) \_\_\_\_ of this Conservation Easement.

**EXHIBIT B**

###### **MANAGEMENT AREA MAP AND DESCRIPTIONS**