**DECLARATION OF COVENANTS AND RESTRICTIONS**

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

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

After Recording Return to: INSERT ADDRESS FOR PREPARING ORGANIZATION

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

**Tax Parcel No. \_\_\_\_\_\_\_\_ NCLWF No. ­­­\_\_\_\_\_\_\_\_**

**THIS DECLARATION OF COVENANTS AND RESTRICTIONS** (“**Declaration**”) made on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by the [name of organization, a North Carolina a North Carolina body politic] (“**Declarant**”), with an address of­­­­­ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for the benefit of the State of North Carolina (“**State**”) as the protector of the public interest.

**RECITALS, CONSERVATION PURPOSES, AND DECLARATION**

WHEREAS, Declarant is the sole owner in fee simple of that certain real property lying and being in \_\_\_\_\_\_\_\_ Township, \_\_\_\_\_\_\_\_ County, North Carolina, containing approximately \_\_\_\_ acres more or less, which is more particularly described in “**Exhibit A**” attached hereto and incorporated herein by reference as if fully set forth (the “**Property**”); and

WHEREAS, theNorth 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 with an address at 1651 Mail Service Center, Raleigh, North Carolina 27699-1651 (“**Fund**”) is authorized by Chapter 143B, Article 2, Part 41 of the General Statutes of North Carolina (“**N.C.G.S.**”) to acquire land and interests in land for 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 prevent encroachment, provide buffers, and preserve natural habitats around military installations or military training areas 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.

WHEREAS, Declarant has received a grant of a substantial monetary sum from the Fund (Grant Contract No. \_\_\_\_-\_\_\_) for Declarant to acquire the Property in consideration of which Declarant has agreed with the State that the Property will be restricted in a manner that will:

CHOOSE APPLICABLE LANGUAGE BASED ON GRANT CONTRACT

* 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,
* 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,
* protect and preserve the ecological diversity including natural features such as [LIST NATURAL FEATURES] for recreational, scientific, educational, cultural, and aesthetic purposes,
* 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,
* 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, Declarant and Fund recognize that the Property has other conservation values in addition to those described above, including wildlife conservation, open space, and scenic values for environmental, educational, and recreation uses (hereinafter, collectively with the conservation values described above, the “**Conservation Values**”).

WHEREAS, as consideration for the acquisition funds provided by the State to Declarant, the State requires Declarant to record this Declaration to ensure appropriate conservation and management of the Property.

NOW, THEREFORE, in consideration of the premises and the benefits recited herein, together with other good and valuable consideration to Declarant, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Declarant hereby declares and agrees that the Property shall be and hereby is subject in perpetuity to the covenants and restrictions hereinafter set forth, the purposes of which are to protect and preserve the Conservation Values of the Property in perpetuity for the benefit of the State as the protector of the public interest.

# **ARTICLE I. DURATION OF COVENANTS AND RESTRICTIONS**

The covenants and restrictions contained in this Declaration shall be permanent and perpetual, shall run with the land, and shall be binding upon Declarant and all parties having any right, title, or interest in the Property, and their heirs, successors, and assigns, and shall be binding upon all those claiming by, through or under each such party, in perpetuity. This Declaration is intended to be a “conservation agreement” as defined and contemplated in the Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34, *et seq*. (the “**Act**”). The State is intended to be a “holder” of this Declaration under the Act.

**ARTICLE II. EXCEPTIONS TO RESTRICTIONS**

1. **Access and Use.** Declarant shall be permitted to allow access and use of the Property for the purposes of the activities permitted herein. Subject to the covenants and restrictions in this Declaration, Declarant shall have the sole right to promulgate or approve rules and regulations for the reasonable use of the Property by the public. Declarant may generate income from individuals and groups related to permitted uses, so long as the uses are not detrimental to the Conservation Values.
2. **Passive Recreational and Educational Use.** Declarant shall be permitted to engage in and permit others to engage in passive recreational or educational uses of the Property that do not require surface alteration of the land and pose no threat to the Conservation Values, including, walking, hiking, swimming, picnicking, scientific study, animal/plant observation, nature and environmental education, historic tours, and photography.

**C.** **Paved** **Trails and Incidental Facilities.** Declarant may construct, maintain, and relocate paved trails for the purpose of establishing [greenway and/or accessible] trails on the Property. Paved trails shall be located at least fifty (50) feet from the top of any stream bank where practicable. 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. Paved trails may include facilities and infrastructure incidental to and for the convenience of users of the trails, including benches, litter receptacles, picnic tables, and observation platforms. All necessary care shall be taken to construct and maintain paved trails and incidental facilities in a manner so as not to impair any Conservation Values either during or after construction.

**D. Signs.** Declarant may install signs and informational kiosks including local, state, or federal traffic or similar informational signs, trail signs, for sale or lease signs, signs identifying the Conservation Values of the Property, signs identifying the Declarant as the owner of the Property, signs identifying the funders of the project, educational and interpretive signs, identification labels or any other similar temporary or permanent signs.

**E. Motorized Vehicles.**  Declarant may use motorized vehicles on the trails permitted herein to carry out the purposes of this Declaration and for safety and security purposes. Declarant may allow motorized wheelchairs and similar personal mobility assistance devices on [greenway and/or accessible] trails. All other use of motorized vehicles on the Property is prohibited.

**F.** **Maintenance.** Declarant shall be responsible, at its expense, for maintaining the Property and permitted facilities consistent with this Declaration and the purposes set forth herein, including maintaining trails, removal of trash, waste, and litter, and efforts to control vandalism and other crimes on the Property. Declarant may mow to maintain trails and permitted facilities, provided such mowing is conducted a minimum of 100 feet from the top of all stream banks.

**G.** **Vegetation Management.** Declarant may manage vegetation for boundary marking, fencing, signage, fire containment, disease 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, application of herbicides or pesticides. Declarant may install appropriate native landscaping.

**H.** **Stream/Wetland Restoration.** Declarant reserves the right, at its expense, 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, and shall be subject to all applicable regulatory authorities.

**I. [Park/Greenway] Utilities.** Declarant may, and may grant easements across the Property to others to, construct, operate, repair, and maintain utilities, including water, electrical, and telecommunication lines for the purpose of serving, the [recreational and/or greenway] amenities allowed herein on the Property or allowed on other property owned by Declarant as part of a [park or greenway system] that includes the Property. Such utilities and easements shall be located in a manner that will minimize the impact on the Conservation Values.

**J. Public Utilities and Public Roads.** Declarant may grant easements across the Property to others to construct, operate, repair, and maintain public utilities including water, sewer, electrical, and telecommunication lines, and public roads, which serve property other than the Property. The cumulative total area subjected to easements of any kind under this Paragraph shall not exceed \_\_\_ (\_\_\_\_) acre of the Property. Such utilities, roads, and easements shall be located in a manner that will minimize the impact on Conservation Values.

**K. Hunting and Fishing.** Declarant reserves the rights to recreational hunting and recreational fishing and to permit others to hunt and fish on the Property, including the right to lease or license the Property for recreational hunting and fishing, in compliance with all federal, state, and local rules and regulations. Declarant may charge a fee for a lease or license permitted by this Paragraph. Leases and licenses permitted by this Paragraph shall be in writing and shall reference this Declaration and shall require tenants and licensees to abide by its terms.

**ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES**

**A.** **Disturbance of Natural Features, Plants and Animals.** There shall be no cutting or removal of trees, or disturbance of other natural features, including plant and animal life, except as permitted in **Article II**.

**B.** **Industrial and Commercial Use.** Industrial and commercial activities and any right of passage across the Property for such purposes are prohibited.

**C.** **Agricultural, Grazing, and Horticultural Use.** Agriculture, grazing, horticultural and animal husbandry operations on the Property and any right of passage across the Property for such uses are prohibited.

**D. New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed on the Property, except as allowed by **Article II**.

**E. Signs.** Signs are not permitted on the Property except as allowed by **Article II**.

**F. Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or other natural or man-made material on the Property is prohibited.

**G. Mineral Use, Excavation, or Dredging.** There shall be no filling, excavation, dredging, mining, or drilling on the Property and no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials on the Property, except as allowed by **Article II**.

**H. Wetlands and Water Quality.** There shall be no pollution or alteration of surface waters and no activities that would be detrimental to water quality or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Property or into any surface waters, or cause soil degradation or erosion, nor diking, dredging, alteration, draining, filling or removal of wetlands, except as permitted in **Article II**.

USE FIRST PARAGRAPH I IF THE PROPERTY IS ONE PARCEL:

1. **Conveyance and Subdivision.** The Property shall not be divided, subdivided, or partitioned. No property interest in the Property may 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:

**I.** **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.

INCLUDE FOLLOWING PARAGRAPHS AS NEEDED. IF THE PROPERTY IS ENCUMBERED BY AN EASEMENT FOR DEPARTMENT OF DEFENSE, THEN REFERENCE THE DOD EASEMENT IN ARTICLE V AND DO NOT INCLUDE THESE MILITARY BUFFER RESTRICTIONS PARAGRAPHS IN ARTICLE III.

**J. Military Buffer Restrictions.**

1.Lighting. The Property is recognized by the Fund as a military buffer; exterior light emissions that would interfere with pilot vision are prohibited. All lighting equipment, including but not limited to lasers, floodlights, searchlights, recreational lighting, and all protective lighting, such as streetlights, shall have positive optical control that shines downward so that no direct light is emitted above the horizontal plane.

2. Emissions. The Property is recognized by the Fund as a military buffer; land uses that produce electrical emissions that would interfere with aircraft communications, navigational equipment, or targeting equipment (air to air or air to ground) are prohibited.

**K. Scope of Prohibitions and Restrictions.** 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.

**ARTICLE IV. ENFORCEMENT AND REMEDIES**

The State shall have the right to enforce the terms of this Declaration through any and all means and authorities available under law or equity. Any forbearance by the State to exercise this right of enforcement shall not be deemed or construed to be a waiver by the State of such right in general or with respect to a specific violation of any of the terms of this Declaration. Declarant grants the State, and its agents, employees, and representatives the right of pedestrian and vehicular entry and access to the Property using all the entry and access rights that Declarant has including, but not limited to, easements appurtenant to the Property and other property owned by Declarant, for the purposes of inspecting the Property and enforcing this Declaration.

**ARTICLE V. DOCUMENTATION AND TITLE**

**A. Property Condition.** The parties acknowledge that the Property is currently undeveloped land, with no improvements other than as depicted in **Exhibit** **B**.

**B. Title.** The Declarant covenants and represents that the Declarant is the sole owner and is seized of the Property in fee simple, that the Declarant has the right to establish and convey the covenants and restrictions contained herein, that there is legal access to the Property, that the Property is free and clear of any and all encumbrances, except to the items listed immediately below, none of which would nullify, impair, or limit in any way the terms or effect of this Declaration, and that Declarant shall warrant and defend its and the State’s title against the claims of all persons whomsoever.

Exceptions to title covenants and warranties:

**ARTICLE VI. MISCELLANEOUS**

**A. Subsequent Transfer of Fee.** Declarant hereby covenants and agrees, that in the event it transfers or assigns the Property, the transferee of the Property shall be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, and the regulations promulgated thereunder (the “**Internal Revenue Code**”), which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code. Declarant agrees for itself, its successors and assigns, to notify State in writing of the names and addresses of any party to whom the Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Any transferee or assignee of the Property shall take title subject to this Declaration as set forth herein, shall perform all such acts as shall be necessary to effect the transfer. Declarant, for itself, its successors and assigns, further agrees to make specific reference to this Declaration of Covenants and Restrictions in a separate paragraph of any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed.

1. **Subsequent Transfers of the Declaration.** The Parties hereto recognize and agree that the benefits of this Declaration are in gross and assignable with any such assignee having all the rights and remedies of the State hereunder. The Parties hereby covenant and agree, that in the event this Declaration is transferred or assigned, the transferee or assignee of the Declaration 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 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 Declaration that the contribution was originally intended to advance as set forth herein.

**C. Amendments**. Declarant shall not amend this Declaration except with the prior written consent of the State. Authorized amendment(s) shall be effective upon recording in the public records of \_\_\_\_ County, North Carolina.

**D. Termination and Proceeds** **of Property Rights Created**. This Declaration gives rise to a property right that is immediately vested in State at the time of recordation, with a fair market value that is equal to the proportionate value that the Declaration bears to the full value of the whole Property, as if unencumbered by the Declaration, on the date of the recording of this Declaration. This proportionate value shall remain constant. For the purposes of determining any distribution of proceeds pursuant to this Paragraph, Declarant’s proportionate contribution to the purchase price shall be deemed to be \_\_\_%, and State’s proportionate contribution to the purchase price shall be deemed to be \_\_\_%. “**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 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, *minus*Declarant’s reasonable expenses from such transaction or proceeding. 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 Declarant, then any such obligation shall be paid or satisfied solely from Declarant’s portion of the Proceeds of Sale.

1. Eminent Domain. 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, Declarant shall immediately give notice to State 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 State and Fund, to recover the full fair market value (without regard to any diminution in value attributable to the Declaration) of the taking or acquisition and all incidental, direct, and severance damages resulting from the taking or acquisition. State, its successors and assigns, shall be entitled to its proportionate share of the Proceeds of Sale which shall include, but not be limited to, the proceeds of such taking of, sale of, exchange of, involuntary conversion of, and severance damages to the Property or any part thereof, and any damage or just compensation otherwise awarded with respect to any judicial proceedings, according to State’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 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 Declaration 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 Declaration as specified above. Nothing herein limits State’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 Declaration as set forth herein, and the Declaration is extinguished in whole or in part by judicial proceeding, State, its successors and assigns, shall be entitled to its proportionate share of the Proceeds of Sale which shall include, but not be limited to, the proceeds of any sale, exchange, or involuntary conversion of the Property or any part thereof, and any damage award with respect to any judicial proceedings according to State’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 allowed by N.C.G.S. §146-30(a), State 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 Declaration as specified above. Nothing herein limits State’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 State is divested of this Declaration 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 Declarant, Declarant shall pay to State the value of the Declaration or the part thereof of which the State has been divested or has been terminated. The value of the Declaration 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 Declaration, at the time of the divestment or termination. The value of the part of the Declaration, if divested or terminated in part, shall be \_\_\_\_ % of the full fair market value of the part of the Property over which the Declaration is divested or terminated, as if unencumbered by any federal grant program restrictions or this Declaration, at the time of the divestment or termination.

***[The remainder of this page is intentionally blank.]***

**IN WITNESS WHEREOF**, Declarant, by authority duly given, has hereunto caused these presents to be executed by their respective officers and its seal affixed, to be effective the day and year first above written, and the State accepts this Declaration and the covenants and restrictions conveyed to it hereby by the recording hereof in the public records.

**DECLARANT:**

**NAME OF ORGANIZATION**, a North Carolina body politic

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

(Name of Person Signing)

(Title of Person Signing)

**ATTEST:**

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

(Name of Town/County Clerk)

Town/County Clerk

**[Affix Town/County 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 Town/County Clerk of (Name of Declarant), a North Carolina body politic, and that by authority duly given and as the act of (Name of Declarant), 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 Town/County seal, and attested by himself/herself as its Town/County Clerk.

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 THE PROPERTY

Together with those rights of access described as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

LEGAL DESCRIPTION OF THE DECLARATION AREA

Together with those rights of access described as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**EXHIBIT B**

EXISTING TRAILS AND EXISTING IMPROVEMENTS MAP