## **Template when the easement is on the whole property with a clause added terminating the easement upon the recording of articles of dedication.**

CONSERVATION EASEMENT

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

Prepared by: NAME OF ORGANIZATION and Clean Water Management Trust Fund

After Recording Return to:

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

## Tax Parcel No. \_\_\_\_\_\_\_\_\_\_\_ CWMTF No. \_\_\_\_\_\_

[If the Fee Simple Owner Is 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 MONTH YEAR 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: CWMTF Real Property Agent, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321, acting by and through NORTH CAROLINA CLEAN WATER MANAGEMENT TRUST FUND, a division of the North Carolina Department of Natural and Cultural Resources (“**Fund**”), its address being: Attn: Contract Administrator, NC Clean Water Management Trust Fund, 1651 Mail Service Center, Raleigh, North Carolina 27699-1651. Grantor and Grantee and/or Fund may hereinafter be referred to collectively as the “**Parties**.”

[Or, If the Fee Simple Owner Is a Private Individual or a for Profit Entity, Use the Following First Paragraph because the Easement Must Be between the Private Individual or For Profit and the Grant Recipient, and the Conservation Easement Will Be Assigned to the State.]

THIS DEED OF CONSERVATION EASEMENT ("**Conservation Easement**") is made, given, granted, and executed on this the \_\_\_ day of MONTH YEAR by and between NAME OF GRANTOR (“**Grantor**”) its address being: ADDRESS and NAME OF NONPROFIT ORGANIZATION, a nonprofit corporation organized and existing under the laws of the State of North Carolina (“**Grantee**”) its address being: ADDRESS (Grantor and Grantee may hereinafter be collectively referred to as the “**Parties**”).

RECITALS & CONSERVATION PURPOSES

A. Grantor owns in fee simple absolute certain real property lying and being in \_\_\_\_\_\_\_\_\_\_\_\_Township, \_\_\_\_\_\_\_\_\_\_\_\_, North Carolina, which consists of \_\_\_\_ 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 non-profit organization whose primary purpose is the conservation, preservation, or restoration of North Carolina’s cultural, environmental, or natural resources.

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

B.Grantor is a local government with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Department that will help manage and maintain the Property.

[Or If the Fee Simple Owner Is a Private Landowner Use this Paragraph “B”]

B. Grantee is a non-profit organization whose primary purpose is the conservation, preservation, or restoration of North Carolina’s cultural, environmental, or natural resources.

C. The State has enacted the Conservation and Historic Preservation Agreements 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 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**.

[USE THE FOLLOWING PARAGRAPH IF SPECIFIC MANAGEMENT AREAS WERE APPROVED AT TIME OF FUNDING]

The Property is divided into specific management areas which are hereinafter referred to as the “**Management Areas.**” The Management Areas are described in “**Exhibit B**” which is attached hereto and incorporated herein by reference as if fully set forth herein.

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

[CHOOSE APPLICABLE LANGUAGE]

* 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 LIST NATURAL FEATURES for recreational, scientific, educational, cultural, and aesthetic purposes,
* to preserve and protect the natural and cultural features of the Property containing or located next to NAME OF HISTORICAL 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, and scenic 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 the Fund in accordance with Grant Contract No. \_\_\_\_\_\_\_\_\_\_ between Grantor and the Fund on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Grant Contract**”). In the Grant Contract, Grantor agreed to enter into this Conservation Easement. The terms and conditions of the Grant Contract are incorporated herein by reference as if fully set forth herein. The Grant Contract is on file and available for public inspection in the offices of the Grantor and the Fund. The Grant Contract and this Conservation Easement are collectively referred to herein as the “**Project**.” GRANTOR AND GRANTEE NEED TO BE SWITCHED IN THIS PARAGRAPH IF THIS EASEMENT IS BETWEEN GRANT RECIPIENT (GRANTEE) AND LANDOWNER (GRANTOR).

[IF A BASELINE DOCUMENTATION REPORT HAS BEEN DRAFTED, INSERT THE FOLLOWING PARAGRAPH:]

  G. 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 is incorporated into the Grant Contract and is on file and available for public inspection in the offices of Grantor and the 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. GRANTOR NEEDS TO BE SWITCHED IN THIS PARAGRAPH IF THIS EASEMENT IS BETWEEN GRANT RECIPIENT (GRANTEE) AND LANDOWNER (GRANTOR).

[IF THERE IS NO BASELINE DOCUMENATION REPORT, INSERT THE FOLLOWING PARAGRAPH:]

G. 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 **Exhibit \_\_\_.**

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 is hereby acknowledged by the Parties, the Grantor hereby unconditionally and irrevocably gives, grants, and conveys forever and in perpetuity to the Grantee, its successors and assigns, and the Grantee hereby accepts, this Conservation Easement of the nature and character and to the extent hereinafter set forth in, on, over, through, and across the Property, together with the right and easement to preserve and protect the Conservation Values, for so long as Articles of Dedication are not recorded for the Property, or any part thereof, within ten (10) years of the execution hereof, and if Articles of Dedication are 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 the Grantor and terminate upon Articles of Dedication being recorded for the Property, or any part thereof, within ten (10) years of the date of the execution hereof. If Articles of Dedication are 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, “Articles of Dedication” means articles of dedication as defined by North Carolina General Statutes § 143B-135.252 (1) 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 Conservations Purpose(s) and it shall be so held, maintained, and used therefore. 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 said 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.

[INSERT ANY RECORDED EASEMENTS AND DEED REFERENCES THE PARTIES ARE RELYING ON FOR ACCESS INTO ITEMS 1 AND 2 IMMEDIATELY BELOW.]

FURTHER, for the purpose of providing uninterrupted access to the Property, Grantor grants and conveys unto Grantee, its successors and assigns, a perpetual right of ingress, egress, and regress to and from the Property (1) in that certain \_\_\_\_\_ foot wide right-of-way shown on the Plat identified in **Exhibit A** as providing access to the Property from \_\_\_\_\_\_\_\_\_\_\_\_\_\_, (2) in that certain instrument recorded at deed book \_\_\_\_, page blank \_\_\_\_\_, \_\_\_\_\_ County Registry (3) in any other right-of-way appurtenant to the Property, and (4) 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 the Grantor, are reserved for Grantor and its successors and assigns, and 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:

[THE FOLLOWING LANGUAGE MAY NEED TO BE TAILORED FOR SPECIFIC MANAGEMENT SCENARIOS AND FEATURES FOUND ON THE PROPERTY]

1. Passive Recreational Use. Grantor reserves the right to engage in and to permit others to engage in passive recreational uses of the Property requiring minimal surface alteration of the land, so long as related alterations, construction, improvements, maintenance, activities, and uses 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, and any other purposes consistent with these accepted uses and the maintenance of the Conservation Values, subject to all applicable federal, state, and local laws and regulations. All improvements shall be subject to the terms and conditions set forth herein and by the Grant Contract. Usage of motorized vehicles on the Property is prohibited, except as they are used on allowed roads, trails, or paths, exclusively for management, maintenance, or stewardship purposes.

B. Public Use and Access. Grantor reserves the right to allow public access and use of the Property for the purpose of creating open space with associated passive recreational activities as provided for herein.

1. 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 or covered with asphalt, but gravel and permanent vegetation may be used to stabilize them. Associated ditches, culverts, 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 shall not be realigned without the prior written consent of the Fund.
2. Greenway Trails. Subject to the Fund’s prior written approval, Grantor reserves the right to construct paved greenway trails on the Property for the purpose of recreation. All paved greenway trails must be located a minimum distance of 30 feet from the top of bank of surface waters, unless such locations are physically impracticable, and must be located so as not to impair the Conservation Values. When required by the terrain, paved greenway trails may include boardwalks, ramps, and handrails to the extent necessary. The Grantor may also construct and maintain park benches, litter receptacles, and trail/feature signs along paved greenway trails. All necessary care shall be taken to construct and maintain such features and paved greenway trails in a manner so as not to impair any Conservation Values either during or after construction. The Fund reserves the right to close any paved greenway trails that are considered detrimental to the Conservation Values. All realignments of greenway trails shall be treated the same as new greenway trails and require the prior written approval of the Fund.
3. Natural Surface Trails. Grantor reserves the right to construct natural surface trails on the Property for the purpose of hiking [and non-motorized bicycling]. All natural surface trails must be located a minimum distance of 30 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 trail construction involving soil disturbance must follow best practices for sustainable trail design and construction and must have prior written approval by the Fund. Private trails for personal use by the landowner and a small number of guests that will not have more than a de minimis impact on the land, water quality, or environment are excepted from the requirements of the immediately preceding sentence. When required by the terrain, natural surface trails may include boardwalks, ramps, and handrails to the extent necessary. The Grantor may also construct and maintain park benches, litter receptacles, and trail/feature signs along natural surface trails. All necessary care shall be taken to construct and maintain such features and natural surface trails in a manner so as not to impair any Conservation Values either during or after construction. The Fund reserves the right to close any natural surface trails that are considered detrimental to conservation values. All realignments of natural surface trails are subject to the requirements of this Paragraph
4. Stream Crossings.Grantor reserves the right to construct and maintain bridges or other stream crossings up to \_\_\_\_\_ feet wide across streams on the Property, provided such crossings are connected to trails permitted herein, constructed in a way as to maximize water quality protection, and permitted by all applicable regulatory authorities. The number and width of stream crossings must be minimized. New stream crossings and realignments thereof, require the prior written approval of the Fund.

G. Observation/Viewing Platform.Grantor reserves the right to construct, maintain, and repair (\_) observation/viewing platform(s) on the Property with optional bench seating, handrails, and connecting steps and ramps as required by the terrain, so long as the Conservation Values are not impaired. Observation/viewing platforms may be located on the bank of the NAME OF SURFACE WATER if allowed and approved by all applicable regulatory authorities, provided such platforms must connect to a trail permitted herein. All necessary care shall be taken to construct and maintain observation/viewing platforms in a manner so as not to impair any Conservation Values either during or after construction. (Note: the number of observation/viewing platforms must be determined at the time of the application and must be minimized.)

H.Vegetation Management. Grantor reserves the right to manage vegetation for the following activities: (1) boundary marking, fencing, and signage, (2) selective cutting, prescribed burning, and the application of herbicides and pesticides for fire containment, insect and disease control, restoration of hydrology, wetlands enhancement, and/or control of invasive exotic plants, and (3) removal of damaged trees and debris caused by storms, fire, or other casualty, which pose a threat to life or property. Salvage timber cuts, which may be appropriate due to natural catastrophe, require the prior written permission of the Fund. Salvage timber cuts must be done in a manner that contributes to the recovery of the natural conditions of the Easement Area.

I. Early Successional Habitat Areas. Grantor reserves the right to maintain existing early successional habitat areas in early successional habitat for the purpose of providing habitat diversity for wildlife species and may include the planting of various native grasses, forbs, and herbaceous vegetation. This activity must be conducted a minimum distance of 100 feet from surface waters as measured from top of bank. Any reintroduction of a species native to the natural community shall be done with previous written approval of the North Carolina Natural Heritage Program. [Early successional habitat areas must be identified and approved at time of funding. They must be identified in the BDR.]

J. Native Community Restoration, Management, and Maintenance. Grantor reserves the right to perform all activities necessary to restore, manage, and/or maintain the native plant and animal communities on the Property. 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. Any reintroduction of a species native to the natural community shall be done with previous written approval of the North Carolina Natural Heritage Program.

K. Hunting and Fishing. Grantor reserves the rights to recreational hunting and recreational fishing and to permit others to hunt and fish for recreational purposes on the Property, including the right to lease and license the Property for recreational hunting, in compliance with all federal, state, and local rules and regulations. Grantor 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 Conservation Easement and shall require tenants and licensees to abide by its terms. Additionally, the Grantor reserves the right to use hunting and fishing as a tool under **Paragraph J of Article II** to restore, manage, and maintain native animal and plant species including hunting and fishing for the purpose of culling overpopulation and eradicating non-native species.

[Use the following Language If Specific Management Areas were approved at time of funding. use a separate paragraph as needed for each management area or management goal]

Specific activities allowed in Management Area(s) \_\_\_ as depicted on **Exhibit B**, with the goals and objectives of ­­­­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_, include, but may not be limited to:

[Include the Following Paragraphs As Needed]

L. Agricultural and Horticultural Uses. The Fund recognizes that the Property has significant historic value and that the Property has historically been used for agricultural activities; therefore, the following agricultural and horticultural uses are allowed in Management Area as depicted on **Exhibit B**:

List Permitted Agricultural and Horticultural Uses Here

M. Military Buffer Uses. The Fund recognizes that the Property is a military buffer and that the Property has historically been used for agricultural activities; therefore, the following agricultural and horticultural uses are allowed in Management Area as depicted on **Exhibit B**.

[List Permitted Agricultural and Horticultural Uses Here]

N. Historic and Cultural Restoration, Management, and Maintenance. If Grantor desires to develop or manage the Property for purposes of restoring, managing, or maintaining historic resources, but does not have an approved plan on the date this Conservation Easement is recorded, then Grantor may develop management plans or park development plans for the Property; however, such plans may be adopted and implemented by Grantor only after formal consultation with and prior written approval from the Fund as well as from the North Carolina Office of State Archaeology and the State Historic Preservation Office, in accordance with all relevant state and federal laws.

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 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. [Any exceptions to this prohibition should be listed at the end of **Article II**. These uses are only allowed in historical context with historic sites and military buffers. Exceptions do not need to be repeated here.]

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 except as permitted in **Article II**.

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

E. Signs. Signs are not permitted on the Property except for 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 the Grantor as owner of the Property, signs identifying the Grantee as the funder or the holder, or both, of the Conservation Easement, educational signs, and interpretative signs.

F. 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 except as necessary to combat erosion or incidental to conservation management activities permitted on the Property.

G. 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, except as a necessary part of restoring natural hydrology, enhancing wetlands, or improving water quality, as permitted by state and any other appropriate authorities, and then only after written approval is granted by the Fund for such activities.

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

I. Conveyance and Subdivision. The Property shall not be divided, subdivided, or partitioned. Interests in the Property, including, but not limited to the fee simple interest, shall not 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.

J. 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.

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

[INCLUDE THE FOLLOWING PARAGRAPHS AS NEEDED]

L. Destruction of Archaeological Resources Prohibited.Notwithstanding anything to the contrary stated herein, Grantor agrees not to demolish or destroy or otherwise deface or alter, the archaeological [and historic earthwork] features on the Property and to manage the Property in such a way as to protect the archaeological integrity of the Property. The Grantee, through the North Carolina Office of State Archaeology, will further ensure protection of the Property and its contents against vandalism or unauthorized excavation or removal of archaeological remains, through enforcement of North Carolina General Statute 70, Article 2, the Archaeological Resources Protection Act. The Property meets the definition of “State lands” for those purposes (NCGS 70-12(3)), through this Agreement with the Grantor. This restriction prohibits the use of metal detectors or means to locate archaeological remains for the purpose of unauthorized excavation or removal.

M Military Buffer Restrictions. **[**IF THE PROPERTY IS ENCUMBERED BY AN EASEMENT FOR DEPARTMENT OF DEFENSE, THEN REFERENCE THE DOD EASEMENT IN ARTICLE V AND DO NOT INCLUDE MILITARY BUFFER RESTRICTIONS IN ARTICLE III.]

1. Lighting. Since the Property is recognized by the Fund as a military buffer, exterior light emissions that would interfere with pilot vision are not allowed. All lighting equipment, including but not limited to lasers, floodlights, searchlights, and 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. Since the Property is recognized by the Fund as a military buffer, land uses that produce electrical emissions that would interfere with aircraft communications or navigational and/or targeting equipment (air to air and air to ground) are prohibited.

ARTICLE IV. ENFORCEMENT AND REMEDIES

A. Enforcement and Remedies. To accomplish the purpose(s) of this Conservation Easement, Grantee is allowed to prevent any activity on or use of the Property that is inconsistent with the purpose(s) of this Conservation Easement, 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 activity or use. Upon any breach of the terms of this Conservation Easement by Grantor that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor in writing of such breach. The 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, the Grantee may enforce this Conservation Easement by appropriate legal proceedings for damages, injunctive relief, and any other legal or equitable remedy. The 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; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunction, or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the 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 retained by the Grantor for the purposes of (1) inspecting the Property to determine if the Grantor is complying with the covenants and purpose(s) of this Conservation Easement; (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 the Grantor.

C. Termination and Proceeds of Property Rights Created. This Conservation Easement gives rise to a property right that is immediately vested in the Grantee at the time of recordation, with a fair market value that is equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole on the date of the recording of this Conservation Easement. This proportionate value shall remain constant.

1. Eminent Domain. Whenever all or part of the Property is taken, or threatened to be taken, by exercise of eminent domain by public, corporate, or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate any restriction imposed by this Conservation Easement, the Grantor shall immediately give notice to Grantee and the Fund, and shall take all appropriate actions related to such taking or negotiated sale in coordination with and with the consent of the Grantee and the Fund, to recover the full value of the taking and all incidental or direct damages resulting from the taking. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding 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. “**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 Property, or any damages otherwise awarded as a result of judicial proceeding, *minus*theGrantor’s expenses from such transaction or proceeding. As allowed by NCGS §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. For the purposes of determining any distribution of proceeds pursuant to this section, 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 \_\_%.
2. Changed Conditions. If a subsequent, unexpected change in conditions surrounding the Property makes impossible or impractical the continued use of the Property for the purpose(s) of this Conservation Easement as set forth herein, and the Conservation Easement is extinguished by judicial proceeding, the Grantee, its successor and assigns, shall be entitled to a portion of the proceeds of any sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding 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. “**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 Property, or any damages otherwise awarded as a result of judicial proceeding, *minus*theGrantor’s expenses from such transaction or proceeding. As allowed by NCGS §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. For the purposes of determining any distribution of proceeds pursuant to this section, 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 \_\_%.

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 the Grantor’s control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, property damage or harm to 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. Enforcement of this Conservation Easement shall be at the discretion of the Grantee and 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

The Grantor covenants and represents and warrants (i) that the 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; (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 against the claims of all persons whomsoever; and (v) that the Grantee, its successors and assigns, shall have the right to monitor and defend the terms of the aforesaid Conservation Easement. The following are permitted exceptions to the above covenants, representations, and warranties: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

ARTICLE VI. MISCELLANEOUS

[IF THE EASEMENT WILL NOT HAVE STATE-HELD STEWARDSHIP ENDOWMENT, INSERT THE FOLLOWING PARAGRAPH:]

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 the State and the Fund no less frequently than once a year; and further will report immediately to the State and the Fund any observed and/or known violations of this Conservation Easement or the Grant Contract. The Parties acknowledge that this obligation to monitor the Property is assignable provided such assignment is made with the prior written approval of the 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 \_\_\_\_\_\_\_’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 the Fund’s internal stewardship policies and procedures. The Parties specifically acknowledge that neither \_\_\_\_\_\_’s obligation to monitor the Property, nor its assignment of said obligation, shall have any effect on the rights and obligations of the Grantee of this Conservation Easement. The obligation to provide monitoring will survive any transfer of Grantor’s fee interest in the Property. If Articles of Dedication are recorded for the Property, or any part thereof, within ten (10) years of the execution hereof, then the Grantor’s obligation as described in this Conservation Easement to monitor the Property shall terminate.

[IF THE EASEMENT WILL HAVE STATE-HELD STEWARDSHIP ENDOWMENT, INSERT THE FOLLOWING PARAGRAPH:]

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, \_\_\_\_\_\_\_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 the State and the Fund no less frequently than once a year; and further will report immediately to the State and the 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 NCGS §143B-135.236 which establishes the North Carolina Conservation Easement Endowment Fund, or any successor law, and the internal policies and procedures of the Fund, and that \_\_\_\_\_\_\_’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 the 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 \_\_\_\_\_\_\_’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 NCGS §143B-135.236 or any successor law, and the Fund’s internal stewardship policies and procedures. The Parties specifically acknowledge that neither \_\_\_\_\_\_\_’s obligation to monitor the Property, nor its assignment of said obligation, shall have any effect on the rights and obligations of the 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 Articles of Dedication are recorded for the Property, or any part thereof, within ten (10) years of the execution hereof, then \_\_\_\_\_\_\_’s obligation as described in this Conservation Easement to monitor the Property shall terminate and any obligation of the Fund and/or the 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. Grantor agrees for itself, its successors and assigns, that in the event it intends to transfer the Property or any interest in the Property , to notify the Grantee and the Fund in writing of the names and addresses of any party to whom the Property is to be transferred, the nature of the interest 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, or other legal instrument by which any interest in the Property is conveyed. The Property owner shall not convey the Property or any interest therein, and shall not incur, assume, or suffer to exist any lien, upon or with respect to the Property, without disclosing to the prospective buyer the Conservation Easement, the obligations of the Property owner and limitations on use of the Property. Nothing in this Paragraph abrogates or limits **Paragraph I 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, as amended, or any successor section, and the regulations promulgated thereunder (the ”Code”) 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 the Grantor’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 the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Property. Among other things, this shall apply to:

1. Taxes. The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same.

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

3. Liability and Indemnification. If the Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property, the Grantor shall indemnify and reimburse the Grantee for these payments, as well as reasonable attorneys’ fees and other expenses of defending itself, unless the 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 timely fashion in the official records of \_\_\_\_\_ 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 Owner:

ADDRESS ADDRESS

H. Amendments. Grantor and Grantee, or their successors in interest in the Property, are free to jointly amend this Conservation Easement to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purpose(s) of this Conservation Easement or affects the perpetual duration of this Conservation Easement. Such amendment(s) require the prior written consent of both Grantor and Grantee and shall be effective upon recording in the public records of \_\_\_\_\_\_\_ County, North Carolina.

I. Environmental Condition of the Property.The Grantor warrants, represents and covenants to the 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 is no environmental condition existing on the Property that may prohibit or impede use of the Property for the purpose(s) set forth herein; and (d) the Grantor will not allow such uses or conditions.

J. Indemnity. The 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, and expenses suffered 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 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 the Conservation Easement shall control.

L. Interpretation. 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 define 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 provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

M. Parties. Every provision of this Conservation Easement that applies to the Grantor or to the Grantee or to the 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 provisions of this Conservation Easement shall be construed as impairing the ability of Grantor to use this Property for collateral for borrowing purposes, provided that any mortgage or lien arising there from shall be subordinated to this Conservation Easement.

P.Gender. The designations Grantor, Grantee, State, and Fund, as used herein shall include the Parties 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 the 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 non-profit 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 herself as its Corporate Secretary.

Witness my hand and notarial seal this the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2018.

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

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

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

STAMP/SEAL

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

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

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

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

**EXHIBIT B**

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