

STATE OF NORTH CAROLINA

**DEED OF CONSERVATION EASEMENT
AND RIGHT OF ACCESS PROVIDED
PURSUANT TO
FULL DELIVERY
MITIGATION CONTRACT**

_____ COUNTY

SPO File Number:

DMS Project Number:

Prepared by: Office of the Attorney General
Property Control Section
Return to: NC Department of Administration
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS DEED OF CONSERVATION EASEMENT AND RIGHT OF ACCESS, made this _____ day of _____, 20__, by _____ *Landowner name goes here*, (“**Grantor**”), whose mailing address is _____ *Landowner address goes here*, to the State of North Carolina, (“**Grantee**”), whose mailing address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The designations of Grantor and Grantee as used herein shall include said parties, their heirs, employees, agents, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Division of Mitigation Services (formerly known as the Ecosystem Enhancement Program and Wetlands Restoration Program) within the Department of Environmental Quality (formerly known as the Department of Environment and Natural Resources) for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, this Conservation Easement from Grantor to Grantee has been negotiated, arranged, and provided for as a condition of a full delivery contract between (insert name and address of full delivery contract provider) and the North Carolina Department of Environmental Quality, to provide stream, wetland and/or buffer mitigation and/or nutrient offset pursuant to the North Carolina Department of Environmental Quality Purchase and Services Contract Number _____.

WHEREAS, the State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

WHEREAS, the Department of Environment and Natural Resources and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Understanding, (MOU) duly executed by all parties on November 4, 1998. This MOU recognized that the Wetlands Restoration Program was to provide effective compensatory mitigation for authorized impacts to wetlands, streams and other aquatic resources by restoring, enhancing and preserving the wetland and riparian areas of the State; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003, which recognized that the Wetlands Restoration Program was to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, the Department of Environment and Natural Resources, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the North Carolina Wildlife Resources Commission, the North Carolina Division of Water Quality, the North Carolina Division of Coastal Management, and the National Marine Fisheries Service entered into an agreement to continue the In-Lieu Fee operations of the North Carolina Department of Natural Resources' Ecosystem Enhancement Program with an effective date of 28 July, 2010, which supersedes and replaces the previously effective MOA and MOU referenced above; and

WHEREAS, the authority for the acceptance of this instrument for and on behalf of the State of North Carolina was granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February 2000; and

WHEREAS, the Division of Mitigation Services in the Department of Environmental Quality and the State Property Office of the Department of Administration have jointly approved acceptance of this instrument; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in _____ Township, _____ County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately _____ acres and

being conveyed to the Grantor by deed as recorded in **Deed Book** _____ at **Page** _____ of the _____ County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement and Right of Access over the herein described areas of the Property, thereby restricting and limiting the use of the areas of the Property subject to the Conservation Easement to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept said Easement and Right of Access. The Conservation Easement shall be for the protection and benefit of the waters of ***if known, insert name of stream, branch, river or waterway here.***

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee forever and in perpetuity, a Conservation Easement and Right of Access over and upon the Property or such portion(s) thereof described below.

The Conservation Easement Area consists of the following:

Tracts Number _____ containing a total of _____ **acres** as shown on the plats of survey entitled “Final Plat, Conservation Easement for North Carolina Division of Mitigation Services, Project Name: _____, SPO File No. _____, DMS Site No. _____, Property of _____,” dated _____, 20__ by *name of surveyor*, PLS Number _____ and recorded in the _____ County, North Carolina Register of Deeds at **Plat Book** _____ **Pages** _____.

See attached “**Exhibit A**”, Legal Description of area of the Property hereinafter referred to as the “Conservation Easement Area” or “Easement Area”

The purposes of this Conservation Easement are to maintain, restore, enhance, construct, create and preserve wetland and/or riparian resources in the Conservation Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Conservation Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

I. DURATION OF EASEMENT

Pursuant to law, including the above referenced statutes, this Conservation Easement and Right of Access shall be perpetual, and it shall run with, and be a continuing restriction upon the use of, the Property, and it shall be enforceable by the Grantee against the Grantor and against Grantor’s heirs, successors and assigns, personal representatives, agents, lessees, and licensees.

II. ACCESS EASEMENT

choose one option based on survey and deed, delete other

[SPECIFIC LOCATION OPTION] Grantor hereby grants and conveys unto Grantee a perpetual, non-exclusive easement for ingress and egress over and upon the Property at all reasonable times and at the location more particularly described on **Exhibit ___** (“Access Easement”) attached hereto and incorporated herein by this reference, to access the Conservation Easement Area for the purposes set forth herein. This grant of easement shall not vest any rights in the public and shall not be construed as a public dedication of the Access Easement. Grantor covenants, represents and warrants that it is the sole owner of and is seized of the Property in fee simple and has the right to grant and convey this Access Easement.

[GENERAL LOCATION OPTION] Grantor hereby grants and conveys unto Grantee a perpetual, non-exclusive easement for ingress and egress over and upon the Property at all reasonable times and at such location as practically necessary to access the Conservation Easement Area for the purposes set forth herein (“Access Easement”). This grant of easement shall not vest any rights in the public and shall not be construed as a public dedication of the Access Easement. Grantor covenants, represents and warrants that it is the sole owner of and is seized of the Property in fee simple and has the right to grant and convey this Access Easement.

III. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Conservation Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Conservation Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Grantor shall have an affirmative duty to prevent third parties from engaging in prohibited actions on the Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. Any rights not expressly reserved hereunder by the Grantor, including the rights to all mitigation credits, including, but not limited to, stream, wetland, and riparian buffer mitigation units, derived from each site within the area of the Conservation Easement, are conveyed to and belong to the Grantee or its employees, contractors, agents, successors, and assigns. Without limiting the generality of the foregoing, the following specific uses are prohibited, restricted, or reserved as indicated:

A. Recreational Uses. Grantor expressly reserves the right to undeveloped recreational uses, including but not limited to hiking, bird watching, hunting, and fishing, and access to the Conservation Easement Area for the purposes thereof. This reservation of right shall not allow Grantor to violate any other prohibition, restriction, or reservation contained herein.

B. Motorized Vehicle Use. Motorized vehicle use in the Conservation Easement Area is prohibited except within a crossing area(s) or road or trail as shown on the recorded survey plat. This provision shall also apply to the use of any equine species.

C. Educational Uses. The Grantor reserves the right to engage in and permit others to engage in educational uses in the Conservation Easement Area not inconsistent with this Conservation Easement, and the right of access to the Conservation Easement Area for such purposes including organized educational activities such as site visits and observations. Educational uses of the

Property shall not alter vegetation, hydrology, or topography within the Conservation Easement Area.

D. Damage to Vegetation. Except within crossing area(s) as shown on the recorded survey plat and as related to the removal of non-native plants, diseased or damaged trees, or vegetation that destabilizes or renders unsafe the Conservation Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Conservation Easement Area is prohibited.

E. Agricultural and Silvicultural Use. All agricultural and silvicultural uses are prohibited within the Conservation Easement Area including, but not limited to, any use for cropland, orchards, waste lagoons, timber harvesting or pastureland. Direct application of pesticides and/or agricultural waste within the Conservation Easement Area is prohibited. The Grantor shall be solely responsible for the protection of the Conservation Easement Area from intrusion by livestock and shall be solely responsible for the installation and maintenance of any livestock exclusion measures (e.g. fencing) in accordance with the terms and conditions of this Conservation Easement outside of the Conservation Easement Area for so long as there are livestock on the Property adjacent to the Conservation Easement Area.

F. Structures. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Conservation Easement Area. All previously existing buildings, facilities, utilities, ponds, dams, stormwater conveyances, wells, mines, and other structures within the Conservation Easement Area shall be shown on the recorded survey plat. Any such structures not shown on the recorded survey plat shall be deemed to have been abandoned and shall not be repaired or replaced.

G. Roads and Trails. There shall be no construction or maintenance of new roads, trails, walkways, paving, or other infrastructure in the Conservation Easement Area. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Easement Area for purposes consistent with this Conservation Easement. Existing roads, trails, or paths may be maintained with loose gravel or vegetation to stabilize or cover the surfaces.

All previously existing roads, trails, bridges, crossings, and other infrastructure within the Conservation Easement Area shall be shown on the recorded survey plat. Any such infrastructure not shown on the recorded survey plat shall be deemed to have been abandoned and shall not be repaired or renewed.

H. Signs. No signs shall be permitted in the Conservation Easement Area except boundary signs, interpretive signs describing restoration activities and the conservation values of the Conservation Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Conservation Easement Area.

I. Dumping or Storing. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or any other material in the Conservation Easement Area is prohibited.

J. Grading, Mineral Use, Excavation, Dredging. There shall be no grading, filling, excavation, dredging, mining, drilling, hydraulic fracturing, removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

K. Water Quality and Drainage Patterns. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water in the Conservation Easement Area. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns are allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use pesticides or biocides in the Conservation Easement Area is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Conservation Easement Area may temporarily be withdrawn for good cause shown as needed for the survival of livestock on the Property.

L. Subdivision and Conveyance. Grantor voluntarily agrees that no further subdivision, partitioning, or dividing of the Conservation Easement Area portion of the Property owned by the Grantor in fee simple (“fee”) that is subject to this Conservation Easement is allowed. Any future transfer of the Conservation Easement Area portion of the Property shall be subject to this Conservation Easement and Right of Access and to the Grantee’s right of unlimited and repeated ingress and egress over and across the Property to the Conservation Easement Area for the purposes set forth herein.

M. Development Rights. All development rights are permanently removed from the Conservation Easement Area and are non-transferrable.

N. Disturbance of Natural Features. Any change, disturbance, alteration, or impairment of the natural features of the Conservation Easement Area or any intentional introduction of non-native plants, trees, and/or animal species by Grantor is prohibited. Any introduction of livestock to the Conservation Easement Area by the Grantor is expressly prohibited. Any introduction of native plants, trees, and animal species consistent with the purposes of this Conservation Easement shall be done in accordance with prior written approval by the Division of Mitigation Services or any subsequent entity designated to steward the Conservation Easement by the Division of Mitigation Services.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is not inconsistent with the purposes of this Conservation Easement, and the Grantor obtains advance written approval from the Grantee entity designated to steward the Conservation Easement by the Division of Mitigation Services.

IV. GRANTEE RESERVED USES

A. Right of Access, Construction, and Inspection. The Grantee shall have a perpetual Right of Access over and upon the Conservation Easement Area to undertake or engage in any activities

necessary to construct, maintain, manage, enhance, repair, restore, protect, monitor and inspect the stream, wetland and any other riparian resources in the Conservation Easement Area for the purposes set forth herein or any long-term management plan for the Conservation Easement Area developed pursuant to this Conservation Easement.

B. Restoration Activities. These activities include, but are not limited to, the planting of trees, shrubs and herbaceous vegetation, installation of monitoring gauges, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterranean water flow.

C. Research and Educational Activities. The Grantee shall be permitted to enter, inspect, observe, and study the Conservation Easement Area for the purpose of conducting reasonable educational and scientific research activities related to the condition of the Conservation Easement Area and the protected resources therein. These activities include but are not limited to the installation of monitoring equipment, the creation of monitoring zones, and the performance of surveys, geotechnical investigations, and biological studies. Any parties other than the Grantee, its employees and agents, successors or assigns, desiring to conduct such activities must obtain written permission from both the Grantor and the Grantee in advance and be consistent with the intent of the mitigation project.

D. Signs. The Grantee shall be permitted to place signs and witness posts on the Property to include any or all of the following: describe the project, prohibited activities within the Conservation Easement Area, or identify the project boundaries and the holder of the Conservation Easement.

E. Fences. If livestock is maintained on the Property, the Grantor is required to restrict livestock access to the Conservation Easement Area. If the Grantor fails to restrict livestock access to the Conservation Easement Area, Grantee reserves the right to repair or install livestock exclusion devices (i.e., fences) within the Conservation Area at its sole discretion and to recover the cost of such installation or repairs from Grantor. In such cases, Grantor must provide access to Grantee to make such installation and repairs. Grantee shall have no responsibility to repair or maintain any fences installed under this provision.

F. Crossing Area(s). Grantee is not responsible for the maintenance of crossing area(s), however, the Grantee after the appropriate notice required under this Conservation Easement, reserves the right to repair crossing area(s) at its sole discretion and to recover the cost of such repairs from Grantor if such repairs are needed as a result of activities of the Grantor. In such cases, the Grantor must provide access to the Grantee to make repairs.

V. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Conservation Easement Area that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features in the Conservation Easement Area that may have been damaged by such unauthorized activity or

use. Upon any breach of the terms of this Conservation Easement by Grantor, the Grantee shall, except as provided below, notify the Grantor in writing of such breach and the Grantor shall have thirty (30) days after receipt of such notice to correct the damage caused by such breach. If the breach and damage remain uncured after thirty (30) days, the Grantee may enforce this Conservation Easement by bringing appropriate legal proceedings including an action to recover damages, as well as injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Conservation Easement Area 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, injunctive or other appropriate relief, if the breach is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement, and the Grantor and Grantee acknowledge that the damage would be irreparable and remedies at law 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 the Grantee in connection with this Conservation Easement.

B. Inspection. The Grantee has the right, with reasonable notice, to enter the Conservation Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor is complying with the terms, conditions, and restrictions of this Conservation Easement. Notice for purposes of this subsection may be accomplished by registered or certified mail, regular postal mail (i.e., postcard or letter), electronic mail (“email”), or by personal contact with the Grantor (i.e., phone or in-person).

C. 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 Conservation Easement Area resulting 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 or damage to the Property resulting from such causes. Grantor shall have an affirmative duty to prevent third parties from engaging in prohibited activities within the Conservation Easement Area but shall not be liable where such actions could not have been reasonably prevented.

D. Costs of Enforcement. Beyond regular and typical monitoring expenses, any costs incurred by Grantee to enforce the terms of this Conservation Easement against Grantor or to protect Grantee’s rights and interests in and to the Conservation Easement and Access Easement, including, without limitation, any costs of restoration necessitated by Grantor’s acts or omissions in violation of the terms of this Conservation Easement and any legal expenses or court costs, including reasonable attorney’s fees, shall be borne by Grantor.

E. No Waiver. Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

VI. MISCELLANEOUS

A. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the 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.

B. Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Property. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Upkeep of any constructed bridges, fences, or other amenities on the Property is the sole responsibility of the Grantor. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations, and permits that may apply to the exercise of the Reserved Rights.

C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown herein or to other addresses as either party establishes in writing upon notification to the other.

D. Grantor agrees that any subsequent lease, deed, or other legal instruments by which any interest in the Property is conveyed is subject to the Conservation Easement herein created.

E. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof and shall be binding on any successor owners.

F. This Conservation Easement and Right of Access may be amended, but only in a writing signed by all parties hereto, or their successors or assigns, if such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement. In accordance with 33 CFR 332.7(a)(3), the owner of the Property shall notify the State Property Office, the U.S. Army Corps of Engineers, and the Division of Mitigation Services in writing sixty (60) days prior to the initiation of any transfer of all or any part of the Property which includes the Conservation Easement Area, any request to void or modify this Conservation Easement, or prior to establishing any other legal claims over the Conservation Easement Area. Such notifications and modification requests shall be addressed to:

NC State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

and

Division Engineer

US Army Corps of Engineers
69 Darlington Avenue
Wilmington, NC 28403

and

Division of Mitigation Services
1652 Mail Service Center
Raleigh, NC 27699-1652

G. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq., § 143-214.12(a1) and § 170(h) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

VII. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in only those uses of the Conservation Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Conservation Easement Area, and the right of quiet enjoyment of the Conservation Easement Area,

TO HAVE AND TO HOLD, the said rights and easements perpetually unto the Grantee for the aforesaid purposes,

AND Grantor covenants that Grantor is seized of the Property in fee and has the right to convey the permanent Conservation Easement herein granted; that the same is free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY, WHEREOF, the Grantor has hereunto set its hand and seal, the day and year first above written.

_____ (SEAL)

NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS, WHEREOF, I have hereunto set my hand and Notary Seal this the _____ day of _____, 20__.

Notary Public

My commission expires:

Exhibit A

[INSERT LEGAL DESCRIPTION]