

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

PERMANENT CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("Conservation Easement") made this _____ day of _____, 201_ by and between _____, ("Grantor") and _____ ("Grantee").

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

RECITALS

WHEREAS, Grantor owns in fee simple certain real property situated, lying and being in _____ County, North Carolina, more particularly described in Exhibit A attached hereto and incorporated herein (the "Property");

WHEREAS, Grantee is a charitable, not-for-profit or educational corporation, association, or trust qualified under § 501 (c)(3) and § 170 (h) of the Internal Revenue Code, the purposes or powers of which include one or more of the purposes (a) – (d) listed below;

(a) retaining or protecting natural, scenic, or open-space aspects of real

- property;
- (b) ensuring the availability of real property for recreational, educational, or open-space use;
- (c) protecting natural resources;
- (d) maintaining or enhancing air or water quality.

WHEREAS, Grantor and Grantee recognize the conservation, scenic, natural, or aesthetic value of the property in its natural state, which includes the following natural communities: **add or delete as appropriate : wetlands, streams and riparian buffers**. The purpose of this Conservation Easement is to maintain streams, wetlands and riparian resources and other natural values of approximately ____ acres, more or less, and being more particularly described in Exhibit B attached hereto and incorporated fully herein by reference (the "Conservation Easement Area"), and prevent the use or development of the Conservation Easement Area for any purpose or in any manner that would conflict with the maintenance of its natural condition.

WHEREAS, the restoration, enhancement and preservation of the Conservation Easement Area is a condition of the approval of the Mitigation Banking Instrument (MBI) and Mitigation Plan for the _____ Mitigation Bank, Department of the Army (DA) Action ID Number SAW-_____, entitled "Agreement to Establish the _____ Mitigation Bank in the _____ River Basin within the State of North Carolina", entered into by and between _____ acting as the Bank Sponsor and the Wilmington District Corps of Engineers (Corps), in consultation with the North Carolina Interagency Review Team (IRT). The _____ Mitigation Site has been approved by the Corps for use as a mitigation bank to compensate for unavoidable stream and wetland impacts authorized by DA permits.

WHEREAS, Grantor and Grantee agree that third-party rights of enforcement shall be held by the U.S. Army Corps of Engineers, Wilmington District ("Third-Party," to include any successor agencies), and may be exercised through the appropriate enforcement agencies of the United States, and that these rights are in addition to, and do not limit, the rights of enforcement under the Department of the Army instrument number SAW-_____ ("Mitigation Banking Instrument"), or any permit or certification issued by the Third-Party.

NOW, THEREFORE, for and in consideration of the covenants and representations contained herein and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Grantor hereby unconditionally and irrevocably grants and conveys unto Grantee, its heirs, successors and assigns, forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Conservation Easement Area described on Exhibit B, together with the right to preserve and protect the conservation values thereof, as follows:

ARTICLE I.
DURATION OF EASEMENT

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

ARTICLE II.
PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Conservation Easement Area inconsistent with the purpose of this Conservation Easement is prohibited. The Conservation Easement Area shall be preserved in its natural condition and restricted from any development that would impair or interfere with the conservation values of the Conservation Easement Area.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

A. Disturbance of Natural Features. Any change disturbance, alteration or impairment of the natural features of the Conservation Easement Area or any introduction of non-native plants and/or animal species is prohibited.

B. Construction. 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 or above the Conservation Easement Area.

C. Industrial, Commercial and Residential Use. Industrial, residential and/or commercial activities, including any rights of passage for such purposes are prohibited.

D. Agricultural, Grazing and Horticultural Use. Agricultural, grazing, animal husbandry, and horticultural use of the Conservation Easement Area are prohibited.

E. Vegetation. There shall be no removal, burning, destruction, harming, cutting or mowing of trees, shrubs, or other vegetation in the Conservation Easement Area except as provided in the Mitigation Plan. Mowing of invasive and herbaceous vegetation for purposes of enhancing planted or volunteer trees and shrubs approved in the Mitigation Plan is allowable once a year for no more than five consecutive years from the date on page 1 of this Conservation Easement, except where mowing will negatively impact vegetation or disturb soils. Mowing activities shall only be performed by _____ and shall not violate any part of Item L of Article II.

F. Roads and Trails. There shall be no construction of roads, trails or walkways on the Conservation Easement Area; nor enlargement or modification to existing

roads, trails or walkways.

G. Signage. No signs shall be permitted on or over the Conservation Easement Area, except the posting of no trespassing signs, signs identifying the conservation values of the Conservation Easement Area, signs giving directions or proscribing rules and regulations for the use of the Conservation Easement Area and/or signs identifying the Grantor as owner of the Conservation Easement Area.

H. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Conservation Easement Area is prohibited.

I. Excavation, Dredging or Mineral Use. There shall be no grading, filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Conservation Easement Area, except to restore natural topography or drainage patterns. For purposes of restoring and enhancing streams and wetlands within the Conservation Easement Area, _____ is allowed to perform grading, filling, and excavation associated with stream and wetland restoration and enhancement activities as described in the Mitigation Plan and authorized by Department of the Army Nationwide Permit 27.

J. Water Quality and Drainage Pattern. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

K. Development Rights. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

L. Vehicles. The operation of mechanized vehicles, including, but not limited to, motorcycles, dirt bikes, all-terrain vehicles, cars and trucks is prohibited other than for temporary or occasional access by the Enter Sponsor Name, the Grantee, its employees and agents, successors, assigns, and the Corps for purposes of constructing, maintaining and monitoring the restoration, enhancement and preservation of streams, wetlands and riparian areas within the Conservation Easement Area.

M. Other Prohibitions. Any other use of, or activity on, the Conservation Easement Area which is or may become inconsistent with the purposes of this grant, the preservation of the Conservation Easement Area substantially in its natural

condition, or the protection of its environmental systems, is prohibited.

ARTICLE III GRANTOR'S RESEVERED RIGHTS

The Grantor expressly reserves for himself, his personal representatives, heirs, successors or assigns, the right to continue the use of the Conservation Easement Area for all purposes not inconsistent with this Conservation Easement, including, but not limited to, the right to quiet enjoyment of the Conservation Easement Area, the rights of ingress and egress, the right to hunt, fish, and hike on the Conservation Easement Area, the right to sell, transfer, gift or otherwise convey the Conservation Easement Area, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of, and shall specifically reference, this Conservation Easement.

Notwithstanding the foregoing Restrictions, Grantor reserves for Grantor, its successors and assigns, including _____ acting as the Bank Sponsor, the right to construct and perform activities related to the restoration, enhancement, and preservation of streams, wetlands and riparian areas within the Conservation Easement Area in accordance with the approved _____ Mitigation Plan, and the Mitigation Banking Instrument described in the Recitals of this Conservation Easement.

ARTICLE IV. GRANTEE'S RIGHTS

The Grantee or its authorized representatives, successors and assigns, and the Corps, shall have the right to enter the Property and Conservation Easement Area at all reasonable times for the purpose of inspecting the Conservation Easement Area to determine if the Grantor, or his personal representatives, heirs, successors, or assigns, is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The Grantee, **Enter Sponsor Name**, and its authorized representatives, successors and assigns, and the Corps shall also have the right to enter and go upon the Conservation Easement Area for purposes of making scientific or educational observations and studies, and taking samples. The easement rights granted herein do not include public access rights.

ARTICLE V ENFORCEMENT AND REMEDIES

A. To accomplish the purposes of this Easement, Grantee, and the Corps are allowed to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Conservation Easement Area that may be 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 notify the Grantor in writing of such breach. The Grantor shall have 30 days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after 30 days, the Grantee may enforce this Conservation Easement by

appropriate legal proceedings including damages, injunctive and other relief. 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 of the terms 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. The costs of a breach, correction or restoration, including the Grantee's expenses, court costs, and attorneys' fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. The Corps shall have the same rights and privileges as the said Grantee to enforce the terms and conditions of this Conservation easement.

B. No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right to Grantee to enforce the same in the event of a subsequent breach or default.

C. 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, war, acts of God or third parties, except Grantor's lessees or invitees; or from any prudent action taken in good faith by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Conservation Easement Area resulting from such causes.

ARTICLE VI MISCELLANEOUS

A. Warranty. Grantor warrants, covenants and represents that it owns the Property in fee simple, and that Grantor either owns all interests in the Property which may be impaired by the granting of this Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Property which have not been expressly subordinated to this Conservation Easement. Grantor further warrants that Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement, and that Grantor will warrant and defend title to the Property against the claims of all persons.

B. Subsequent Transfers. The Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument that transfers any interest in all or a portion of the Conservation Easement Area. The Grantor agrees to provide written notice of such transfer at least sixty (60) days prior to the date of the transfer. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Conservation

Easement Area or any portion thereof and shall not be amended, modified or terminated without the prior written consent and approval of the Corps.

C. Assignment. 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 pursuant to 33 CFR 332.7 (a)(1), N.C. Gen. Stat. § 121-34 et seq. and § 501 (c)(3) 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.

D. Entire Agreement and Severability. The Mitigation Banking Instrument: MBI with corresponding Mitigation Plan, and this Conservation Easement 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 void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.

E. Obligations of Ownership. Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Property. Grantor shall keep the Property free of any liens or other encumbrances for obligations incurred by Grantor, except those incurred after the date hereof, which are expressly subject and subordinate to the Conservation Easement. 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. 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.

F. Long-Term Management. Grantor is responsible for all long-term management activities associated with fencing. These activities include the maintenance and/or replacement of fence structures to ensure the aquatic resource functions within the boundaries of the Protected Property are sustained.

G. Extinguishment. In the event that changed conditions render impossible the continued use of the Conservation Easement Area for the conservation purposes, this Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding.

H. Eminent Domain. Whenever all or part of the Conservation Easement Area is taken in the exercise of eminent domain so as to substantially abrogate the Restrictions imposed by this Conservation Easement, Grantor and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.

I. Proceeds. This Conservation Easement constitutes a real property interest immediately vested in Grantee. In the event that all or a portion of the Conservation

Easement Area is sold, exchanged, or involuntarily converted following an extinguishment or the exercise of eminent domain, Grantee shall be entitled to the fair market value of this Conservation Easement as determined at the time of the extinguishment or condemnation.

J. Notification. Any notice, request for approval, or other communication required under this Conservation Easement shall be sent by registered or certified mail, postage prepaid, to the following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

To Grantor:

[Name, address and fax number]

To Grantee:

[Name, address and fax number]

To Sponsor:

To the Corps:

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

K. Failure of Grantee. If at any time Grantee is unable or fails to enforce this Conservation Easement, or if Grantee ceases to be a qualified grantee, and if within a reasonable period of time after the occurrence of one of these events Grantee fails to make an assignment pursuant to this Conservation Easement, then the Grantee's interest shall become vested in another qualified grantee in accordance with an appropriate proceeding in a court of competent jurisdiction.

L. Amendment. This Conservation Easement may be amended, but only in a writing signed by all parties hereto, and provided 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 conservation purposes of this grant.

M. Present Condition of the Conservation Easement Area. The wetlands, scenic, resource, environmental, and other natural characteristics of the Conservation Easement Area, and its current use and state of improvement, are described in Section ____ of the Mitigation Plan, prepared by Grantor and acknowledged by the Grantor and Grantee to be complete and accurate as of the date hereof. Both Grantor and Grantee have copies of this report. It will be used by the parties to assure that any future changes in the use of the Conservation Easement Area will be consistent with the terms of this Conservation Easement. However, this report is not intended to preclude the use of other evidence to establish the present condition of the Conservation Easement Area if there is a controversy over its use.

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

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

[Signatures of the Grantor and Grantee in appropriate form]