

OPTION TO PURCHASE MITIGATION USE RIGHTS AGREEMENT

This Option to Purchase Mitigation Use Rights Agreement is between **Oakburn Associates, LLC**, a North Carolina limited liability company ("Seller") and **Wildlands Engineering, Inc.**, a North Carolina corporation ("Buyer").

A. Seller is the owner of real property comprised of approximately 162.40 acres located at 5708 US Highway 220 N in Stokesdale, Guilford County, North Carolina, recorded in the Guilford County Register of Deeds at Book 8223, Page 1403, and approximately 33.23 acres located at Ogburn Mill Road in Stokesdale, Rockingham County, North Carolina, recorded in Rockingham County Register of Deeds at Book 1569, Page 1429 (the "Property"). The Property is also identified as Guilford County tax parcel number 7921-51-2336 and Rockingham County tax parcel number 7921-04-62-5929 and is shown on Exhibit A.

B. Buyer is interested in restoring, establishing, enhancing, or preserving a portion of the Property, which is generally depicted on Exhibit A as Project Area A, Project Area B and Project Area C (collective, the "Project Area"), for the purpose of establishing one or more of the following: a stream, wetland, or riparian buffer restoration project, a nutrient offset bank, a conservation bank, a mitigation bank, a permittee responsible mitigation project, or any other type of project involving the restoration, enhancement, or preservation of environmental or natural resources for the purpose of developing, creating, or generating offsets, credits, or values from the Project Area (the "Mitigation Project"). The exact size and legal description of the Project Area shall be determined in accordance with section 2.2 below.

C. Seller desires to grant Buyer an option to purchase the Mitigation Use Rights (as defined) with respect to the Project Area, and Buyer desires to acquire the exclusive right to purchase the Mitigation Use Rights associated with the Project Area.

The parties therefore agree as follows:

ARTICLE 1

AGREEMENT

1.1 **Effective Date.** This agreement will become effective on the date this agreement is signed by the last party (the "Effective Date").

1.2 **Grant of Option.** Seller hereby grants to Buyer the exclusive option to purchase the Mitigation Use Rights (the "Option") on the Project Area.

1.3 **Option Consideration.** Within ten business days following the Effective Date, Buyer will pay Seller \$2,500.00 (the "Option Consideration"). The Option Consideration is consideration for Seller granting this Option and for Seller's forbearance in keeping the Mitigation Use Rights off the market during the Option Term. If Buyer does not pay the Option Consideration within ten business days after receipt of Seller's notice to Buyer, this agreement is cancelled and neither party shall have any further obligation under this agreement. Except as otherwise provided in this agreement, the Option Consideration is the property of Seller when paid, and will not be refunded if this Option ends, except if

Seller

Seller

Buyer

Seller defaults. If Buyer exercises the Option, the Option Consideration will be credited against the Purchase Price for the Mitigation Use Rights at Closing.

1.3.1 **Additional Payment.** On the date that is sixty (60) days after the Effective Date, Buyer shall pay to Seller **\$2,500.00** (the "**Additional Payment**") as additional consideration for the Option. If Seller has not received the Additional Payment Seller shall notify Buyer of non-receipt and Buyer will have five additional business days to make the Additional Payment. If Buyer does not pay the Extension Payment within five business days after receipt of Seller's notice to Buyer, this agreement is cancelled and neither party shall have any further obligation under this agreement. The Additional Payment is consideration for Seller granting the Option and for Seller's forbearance for keeping the Mitigation Use Rights off the market during the Option Term. Except as otherwise provided in this agreement, the Additional Payment is the property of Seller when paid, and will not be refunded if this Option ends unless Seller defaults. If Buyer exercises the Option, the Additional Payment will be credited against the Purchase Price for the Mitigation Use Rights at Closing.

1.4 **Mitigation Use Rights.** "**Mitigation Use Rights**" means the exclusive right to permit, create, develop, maintain, operate, and sell the rights to use the Project Area as mitigation for impacts to streams, wetlands, and protected species and habitat as set forth in this agreement. The Mitigation Use Rights include, but are not limited to, the exclusive right to create and maintain a Mitigation Project, the right to encumber the Project Area with a conservation easement and other land use restrictions, the right to sell to third parties stream, wetland, riparian buffer, water quality, nutrient, habitat, and species credits or offsets, and any other environmental or natural resource related credits, offsets or values that Buyer deems appropriate (all such credits, offsets and values are collectively referred to as the "**Mitigation Values**"). More specifically, but without limitation, the Mitigation Use Rights include all the following:

1.4.1 **Exclusive Rights to Mitigation Values.** The exclusive right to, and ownership of, all Mitigation Values in the Project Area.

1.4.2 **Exclusive Right to Develop Mitigation Project.** The exclusive right to use the Project Area to develop a Mitigation Project, including, without limitation, the following: the right to determine the streams, wetlands, riparian buffers, habitat, species, and other natural resources to be protected; and the right to design, permit, create, develop, maintain, operate, and monitor a Mitigation Project.

1.4.3 **Exclusive Right to Build and Maintain Mitigation Project.** The exclusive right to perform any grading and construction activities necessary for the development, operation, and maintenance of the Mitigation Project; and the exclusive right to monitor, maintain, repair, rebuild or otherwise operate the Mitigation Project in a manner that will maximize the Mitigation Values.

1.4.4 **Exclusive Right to Sell Mitigation Values.** The exclusive right to market and sell all credits, offsets, and other Mitigation Values from the Project Area.

1.4.5 **Access and Construction Rights.** A nonexclusive easement over and across the Property for vehicular and pedestrian ingress, egress and regress between all public roads and the Project Area (the "**Access Easement**"). The Access Easement shall include, but is not limited to, the right of Buyer to (i) use the roads, paths, trails and other access-ways on the Property, as they may exist from time to time; and (ii) create service roads and construction staging areas necessary or convenient to

Seller



Seller



Buyer


SW

plan, design, construct, maintain, monitor, repair and reconstruct the Mitigation Project. The location of any service road or construction staging areas to be constructed outside the Project Area shall be mutually agreed upon between Seller and Buyer.

1.4.6 Incidental Rights. Incidental rights necessary to develop, maintain, operate, and preserve the Project Area in accordance with any requirements of the Regulatory Agencies (as defined).

1.5 Option Term. The Option commences on the Effective Date and remains in effect and may be exercised anytime on or before 11:59 p.m. on **September 15, 2024** (the "Option Term"). The Option Term may be extended as provided below, or otherwise in writing signed by both Buyer and Seller.

1.5.1 First Option Term Extension. Buyer may extend the Option Term by paying Seller **\$5,000.00** on or before 11:59 p.m. on **September 15, 2024** (the "First Extension Payment"). If Buyer pays Seller the Extension Payment as set forth in this paragraph, the Option Term shall be extended to 11:59 p.m. on **September 15, 2025**. The Extension Payment is nonrefundable and is applicable to the Purchase Price. If Seller has not received the Extension Payment, Seller will notify Buyer of non-receipt and Buyer will have an additional five business days after receipt of such notice to pay Seller the Extension Payment. If Buyer does not pay the Extension Payment within five business days after receipt of Seller's notice to Buyer, this agreement is cancelled and neither party shall have any further obligation under this agreement.

1.5.2 Second Option Term Extension. Buyer may extend the Option Term by paying Seller **\$10,000.00** on or before 11:59 p.m. on **September 15, 2025** (the "Second Extension Payment"). If Buyer pays Seller the Extension Payment as set forth in this paragraph, the Option Term shall be extended to 11:59 p.m. on **September 15, 2026**. The Extension Payment is nonrefundable and is applicable to the Purchase Price. If Seller has not received the Extension Payment, Seller will notify Buyer of non-receipt and Buyer will have an additional five business days after receipt of such notice to pay Seller the Extension Payment. If Buyer does not pay the Extension Payment within five business days after receipt of Seller's notice to Buyer, this agreement is cancelled and neither party shall have any further obligation under this agreement.

1.5.2 Third Option Term Extension. Buyer may extend the Option Term by paying Seller **\$75,000.00** on or before 11:59 p.m. on **September 15, 2026** (the "Third Extension Payment"; the First, Second and Third Extension Payments may be referred to individually as an "Extension Payment" or jointly as the "Extension Payments"). If Buyer pays Seller the Extension Payment as set forth in this paragraph, the Option Term shall be extended to 11:59 p.m. on **September 15, 2027**. The Extension Payment is nonrefundable and is applicable to the Purchase Price. If Seller has not received the Extension Payment, Seller will notify Buyer of non-receipt and Buyer will have an additional five business days after receipt of such notice to pay Seller the Extension Payment. If Buyer does not pay the Extension Payment within five business days after receipt of Seller's notice to Buyer, this agreement is cancelled and neither party shall have any further obligation under this agreement.

1.6 Exercise of Option. Buyer may exercise the Option during the Option Term by delivering a written notice to Seller stating that Buyer is exercising the Option (that notice, the "Exercise Notice").

Seller RRB Seller ABM
Buyer SW

1.7 Due Diligence by Buyer.

1.7.1 Subordination. If any portion of the Project Area is encumbered with any debt or lien, Seller shall, prior to Closing, cause the lender or lienholder to subordinate or release its secured interest in the Project Area or subordinate its secured interest to the Recorded Documents (as defined) and any other Mitigation Documents (as defined) that are recorded against the Project Area.

1.7.2 Covenant Not to Encumber. From the Effective Date through Closing, Seller shall not execute any documents or take any action that will encumber the Property in any way.

1.7.3 Mineral, Oil and Gas Rights. Seller shall not perform, and shall not authorize any tenant, successor-in-interest, or any other party to perform any surface or subsurface mining or other extraction activities on the Project Area nor shall Seller enter into any lease for mineral, oil or gas rights on the Project Area.

1.7.4 Documents and Materials. No later than ten business days after the Effective Date, Seller will deliver to Buyer, at Seller's expense, copies of all material tests, surveys, maps, plans, records, permits, title policy, correspondence, reports, and other materials related to the Property that are within Seller's possession or control (the "Property Documents").

1.7.5 Right of Entry. Between the Effective Date and Closing, Buyer, its employees, agents, contractors, subcontractors, and any necessary Regulatory Agencies (as defined), have the right to enter the Property at reasonable times, to make any and all surveys, environmental evaluations, inspections, and tests as are necessary in Buyer's discretion to permit and develop the Mitigation Project. Prior to Buyer's entry, Buyer shall notify Seller and Seller's Tenant as identified in paragraph 3.1.3. Buyer shall indemnify and hold Seller and the Property harmless from any and all damages, claims, liabilities, expenses (including reasonable attorneys' fees) arising out of: (i) the entry onto the Property by Buyer, its employees, agents, contractors and subcontractors except liability which results from the discovery or release of pre-existing toxic or Hazardous Substances (as defined), the presence of which Seller had actual knowledge, on or about the Property resulting from normal environmental testing procedures or other due diligence efforts; (ii) the spread of pre-existing Hazardous Substances in the Project Area except to the extent caused by the negligence or willful misconduct of Buyer; or (iii) the negligence or willful misconduct of Seller.

1.7.6 Cooperation of Seller. At its expense, Buyer will obtain all necessary permits for the Mitigation Project from the regulatory agencies with jurisdiction over the Mitigation Project (the "Regulatory Agencies") and will prepare any necessary conservation easements or declaration of restrictive covenants, survey plats, prospectus, bank parcel development plans, mitigation plans, or mitigation banking instruments (collectively, the "Mitigation Documents"). Seller shall cooperate with Buyer, as needed, in obtaining approval of the Mitigation Documents and in signing any necessary Mitigation Documents or other documents related to the Mitigation Project required by applicable federal, state, county, municipal and other governmental and quasi-governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting the Project Area or the occupancy, operation, ownership, lease or use thereof in connection with obtaining the Regulatory Agencies' approval of the Mitigation Documents or the development or monitoring of the Mitigation Project.

Seller RRB Seller [Signature]
Buyer [Signature]

1.7.7 No Representation or Warranty. Buyer makes no representation or warranty concerning (a) whether the Regulatory Agencies will approve the Mitigation Documents or Mitigation Project, (b) the timing for obtaining the Regulatory Agencies' approval of the Mitigation Documents or Mitigation Project, or (c) the timing for the creation of the Mitigation Project and the sale of Mitigation Values. If Buyer is contracted by the NC Division of Mitigation Services for a Full Delivery Contract pursuant to RFP # 16-745714731, Buyer will provide Seller a PDF copy of the contract within 10 business days of execution.

1.8 Termination. Buyer has the right to end this agreement before it delivers the Exercise Notice. If Buyer fails to deliver the Exercise Notice before the Option Term expires, this agreement will automatically terminate upon the expiration of the Option Term. In such event, all of the respective obligations of Buyer and Seller relating to this agreement and the Project Area will terminate, except for those obligations which specifically survive termination of this agreement.

ARTICLE 2

PURCHASE OF THE MITIGATION USE RIGHTS

2.1 Purchase and Sale. If Buyer exercises the Option, Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller the Mitigation Use Rights.

2.2 Purchase Price. The purchase price for the Mitigation Use Rights will be determined by multiplying the applicable price per acre for each Project Area outlined below by the acreage of that Project Area and then adding the price for each Project Area together (the sum of the three Project Areas shall be the "Purchase Price"). The acreage for each Project Area will be determined by a licensed professional land surveyor selected by Buyer at Buyer's expense and shown on a new survey completed during the Option Term. The anticipated acreage for each Project Area listed below in paragraphs 2.2.1, 2.2.2, and 2.2.3 is a good faith estimate by Buyer but is not exact and is subject to change based on the surveyor's findings, jurisdictional determinations of the aquatic resources, and any Project Area revisions agreed to by Buyer and Seller during the Option Term.

2.2.1 Project Area A Purchase Price. The price per acre for Project Area A will be **\$20,000.00**. Project Area A represents areas of the Property where Buyer anticipates receiving stream and wetland *restoration* credits. The parties anticipate that Project Area A will be approximately, but is not guaranteed to be, **48 acres** and thus the Project Area A portion of the Purchase Price will be approximately, but is not guaranteed to be, **\$960,000.00**.

2.2.2 Project Area B Purchase Price. The price per acre for Project Area B will be **\$5,000.00**. Project Area B represents areas of the Property where Buyer anticipates receiving stream and wetland *preservation* credits. If Buyer ends up receiving preservation credits for Project Area B at a higher ratio than 10:1, the price per acre for Project Area B will increase by \$1,666.66 per acre for each incremental increase in the awarded credit ratio. For example, if Buyer receives credits at a 1:1 ratio, the price per acre for Area B will be \$20,000.00. If Buyer receives credits at a 5:1 ratio, the price per acre for Area B will be \$13,333.33. Based on the expected 10:1 credit ratio, the parties anticipate that Project Area B will be approximately, but is not guaranteed to be, **7.5 acres** and thus the Project Area B portion of the Purchase Price will be approximately, but is not guaranteed to be, **\$37,500.00**.

Seller  Seller 

Buyer  SW

2.2.3 Project Area C Purchase Price. The price per acre for Project Area C will be **\$10,000.00**. The parties anticipate that Project Area C will be approximately, but is not guaranteed to be, **1.5 acres** and thus the Project Area C portion of the Purchase Price will be approximately, but is not guaranteed to be, **\$15,000.00**.

2.3 Payment of Purchase Price. Before Closing, Buyer will deliver the Purchase Price (less the Option Consideration, Additional Payment, and any applicable Extension Payments) to a closing attorney chosen by Buyer. Funds shall be held in escrow after Closing (as defined) until title is verified by Buyer and then disbursed to Seller.

2.4 Closing. "Closing" is the date one or more of Exhibits B, C, D or E is recorded against the Project Area and any other portions of the Property that are affected by the Mitigation Use Rights or the Access Easement (the "Recorded Documents"). Closing shall occur within 30 days after Buyer delivers the Exercise Notice to Seller (the "Closing Date"). The general forms of the Recorded Documents are attached as Exhibits B, C, D and E. Seller acknowledges that Exhibits B, C, D and E are only drafts and agrees to accept reasonable modifications of the Recorded Documents, if necessary, to address any additional restrictions imposed by the Regulatory Agencies. Although Seller agrees to execute Recorded Documents that are substantially similar to those attached as Exhibits B, C, D, and E, the parties agree that prior to Closing, the applicable Recorded Documents shall be revised to provide Seller the right to one or two subdivisions of the Project Area after Closing as determined by Buyer in its sole discretion (the "Right of Subdivision"). During the Option Term Buyer will work in good faith to draft revisions to the applicable Recorded Documents providing a Right of Subdivision that is satisfactory to both Regulatory Agencies and Seller. Revising the applicable Recorded Documents to provide Seller the Right of Subdivision is a material term of this agreement and a condition precedent to Seller's obligation to Close. The addition of the Right of Subdivision in the applicable Recorded Documents is not intended to limit Seller's right to use the Property in any way, so long as such use is not contrary to or incompatible with the terms or intent of the Recorded Documents. Subject to the Right of Subdivision revision to the Recorded Documents mentioned above, Buyer has the right to record any of the Recorded Documents on the Project Area concurrently with or at any time after Closing, and Seller agrees to sign any necessary Recorded Documents granting easement rights on the Project Area in favor of Buyer or a third-party entity selected by Buyer or required by the Regulatory Agencies.

2.5 Conditions to Closing.

2.5.1 Buyer's Conditions. Buyer's obligations to close on the Project Area and pay the Purchase Price are conditioned on all of the following:

(a) **Good Title.** Seller shall deliver and convey marketable and insurable title to the Project Area, without exception for mechanics' liens and free from any other liens, encumbrances or defects, including those which would be revealed by a current and accurate survey of the Property, except: ad valorem taxes for the current year; utility easements and unviolated covenants, conditions or restrictions that do not materially affect the value of the Property or the Mitigation Values; and such other liens, encumbrances or defects as may be assumed or specifically approved by Buyer in writing prior to Closing. The Project Area must have legal access to a public right of way.

(b) **Title Policy.** At Closing, the title company selected by Buyer shall issue or shall have committed to issue either its standard form American Land Title Association Owner's Policy of Title Insurance or other title policy sufficient to insure Buyer's interest as determined by Buyer in its

Seller  Seller 

Buyer 

sole discretion (the "Title Policy"). Buyer's obligation to close and pay Seller the Purchase Price is contingent upon the title company issuing the Title Policy free of encumbrances except for any conservation easement or restrictive covenants placed on the Project Area by Buyer.

(c) **Owner's Representations.** All representations made by Seller to Buyer in this agreement are true as of Closing.

(d) **No Default by Seller.** Seller shall have performed all of its obligations under this agreement.

2.5.2 Failure of Condition. If any of the conditions in section 2.5 are not timely satisfied, Buyer may elect to terminate this agreement. If Buyer elects to terminate this agreement pursuant to this section 2.5.2, Seller must immediately return the Option Consideration and the Extension Payment, if applicable, to Buyer and the parties shall have no further obligations under this agreement. Subject to the preceding sentence, if Closing does not occur as a result of a breach of this agreement by either party, then the provisions of Article 4 pertaining to Default Prior to Closing control.

2.6 Expenses. Buyer and Seller shall each pay their respective legal and professional fees and fees of other attorneys and consultants incurred with regard to this agreement and transaction. Seller will be responsible for any taxes that may be incurred with respect to the Property or associated with recording the Recorded Documents. Buyer will be responsible for recording fees.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES

3.1 Seller's Representations. Seller states the following:

3.1.1 Seller's Title and Authority. Seller is the sole owner of fee title to the Property. Seller and the individual(s) signing this agreement on behalf of Seller have the right, authority, and capacity to enter into this agreement and to comply with the obligations herein. This agreement is the binding obligation of Seller and enforceable against Seller subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and, as to enforceability, the general principles of equity. This agreement does not violate any provision of any other agreement or document to which Seller is a party or otherwise bound, which violation would materially impair the ability of Seller to perform its obligations under this agreement. No further approval of any person or entity is required for Seller to perform its obligations under this agreement.

3.1.2 Pending Transactions, Suits or Proceedings. To the Seller's best knowledge, there are no transactions, suits, proceedings, litigation, including zoning or other land use regulation proceedings, condemnation, or investigations pending or threatened against or affecting Seller or the Property that would prevent Seller from meeting any of its obligations under this agreement or that would result in a material adverse change in the condition, operation, developability or marketability of the Project Area for a Mitigation Project from its condition as of the Effective Date.

3.1.3 No Other Interest. Except as disclosed below, no person, firm, or entity other than Buyer has any right or interest in, or right to acquire, lease or obtain any interest in the Project Area. Seller discloses the following mortgages, liens and interests in the Project Area held by other

Seller

Seller

Buyer

persons, firms or entities and states that the persons, firms, or entities listed are the only persons, firms or entities that hold a mortgage, or other interest on or in the Project Area:

NAME OF PERSON, FIRM OR ENTITY	AMOUNT OF MORTGAGE OR LIEN
Brian Stanley – tenant farmer and hunter Mobile: 336-669-4597 home: 336-643-9371 GMSlandscape@aol.com	Lease runs in one year renewals effective October 31 st each year.
No deeds of trust against the Property	

As long as this agreement remains in effect, Seller will not, without Buyer's prior written consent which shall not be unreasonably withheld, lease, transfer, option, mortgage, pledge, subdivide, or convey any right, interest, or title in the Project Area. Buyer understands that Seller intends to eventually sell the Property and that the sale could occur prior to Closing. Buyer agrees to work with Seller in good faith to allow the sale of the Property prior to Closing and/or the subdivision of the Property to facilitate density bonus requirements of Guilford or Rockingham County. Seller understands that once Buyer submits a mitigation plan to the Army Corps of Engineers which includes a survey of the Project Area, Buyer will not consent to a change in ownership or subdivision because it would cause unreasonable project delays and cost overruns. Notwithstanding the forgoing, after Closing, Seller shall be allowed to sell the Property without condition save and except being subject to the Recorded Documents.

3.1.4 Environmental Contamination. To the Seller's best knowledge, no Hazardous Substances (as defined) have been disposed of, released, or identified on, under or at the Property in violation of applicable Environmental Laws (as defined) and, to the Seller's best knowledge, none of Seller's predecessors in interest disposed of, released, or identified Hazardous Substances on, under or at the Property in violation of Environmental Laws. Seller has not received written notice of violation from any authorities, or any political or quasi-political, subdivision, agency, authority, department, court, commission, board, bureau, entity, or instrumentality of any of the foregoing asserting jurisdiction over Seller or over the Property stating that the Property is or may be in violation of any applicable federal, state, or municipal law, ordinance, or regulation regarding Hazardous Substances. To the Seller's best knowledge, no Hazardous Substances were used in the construction of any improvements at the Property, no "Release" of Hazardous Substances has occurred at, from, in, adjacent to, or on the Property, nor are there any Hazardous Substances in, on, about or migrating to the Property, and the Property is not affected in any way by any Hazardous Substances. To the Seller's best knowledge, no Hazardous Substances have been or are discharged from the Property, directly or indirectly, into any body of water by Seller or any other party. The term "Hazardous Substances" means: (a) those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "industrial wastes," and "toxic pollutants," as such terms are defined under the Environmental Laws, or any of them; (b) petroleum and petroleum products, including, without limitation, crude oil and any fractions of crude oil; (c) natural gas, synthetic gas and any mixtures of natural gas and synthetic gas; (d) asbestos and or any material which contains any hydrated mineral silicate, whether friable or non-friable; (e) polychlorinated biphenyl ("PCBs") or PCB-containing materials or fluids; (f) radon; (g) any other hazardous or radioactive substance, material, pollutant, contaminant or waste; and (h) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation. The term "Environmental Laws" means all federal, state and local laws, statutes, ordinances and regulations, now or later in effect, including, without limitation, all applicable judicial or administrative orders,

Seller



Seller



Buyer



applicable consent decrees and binding judgments relating to the regulation and protection of human health, safety, the environment and natural resources, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 5101 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 et seq.), the Clean Air Act, as amended (42 U.S.C. § 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. § 300f et seq.), any state or local counterpart or equivalent of any of the foregoing, and any federal, state or local transfer of ownership notification or approval statutes. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Substances.

3.1.5 Underground Storage Tanks. To the Seller's best knowledge, there are no underground storage tanks on the Property or if there have been or are any underground storage tanks located on the Property, their location has been identified to the Buyer in writing, the tanks have been properly registered with all appropriate authorities (if required), they are in full compliance with all applicable statutes, ordinances and regulations, and they have not resulted in the release of any Hazardous Substance. If Seller does have knowledge of a release of any Hazardous Substance from an underground storage tank currently or formerly on the Property, Seller has disclosed all knowledge in writing to Buyer.

3.1.6 No Default. Seller is not in default with respect to any of its obligations or liabilities pertaining to the Property and is not in default under any contracts, leases, agreements, easements or any other documents or instruments relating to or affecting this agreement or the Project Area. Seller does not have actual or constructive knowledge are of any facts, circumstances, conditions, or events which would constitute or result in any default of any obligations, liabilities, contracts, leases, agreements, easements or any other documents or instruments relating to or affecting this agreement or the Project Area.

3.1.7 Material Change. From the Effective Date through Closing, Owner shall keep the Property in substantially the same condition as the Property is on the Effective Date, reasonable wear and tear resulting from ordinary use and exposure over time excepted. Seller shall not develop any structures, alter any natural resources, or cut timber on the Property unless Buyer approves in writing. Seller shall notify Buyer of any material change with respect to the Property and any information furnished to Buyer with respect to the Property, including any change that would make any portion of this agreement untrue or misleading.

3.1.8 Consultant Agreements. All amounts Seller owes pursuant to any agreement affecting the Project Area have been and will continue to be paid on a current basis. Buyer has no obligation or liability for any such agreements unless Buyer specifically elects, in writing, to assume the agreements.

3.1.9 No Liens. To the Seller's best knowledge, there are no liens, encumbrances, covenants, conditions, reservations, restrictions, easements, or other matters affecting the Project Area except as disclosed to Buyer. To the Seller's best knowledge, there is now, and as of Closing will be, no claim in favor of any person or entity which is or could become a lien on the Project Area arising on account of the furnishing of labor or materials to the Property.

Seller  Seller 
Buyer  

3.1.10 Agreements Affecting the Project Area. There are no commitments to or agreements with any federal, state, or local governmental agencies, public utilities, adjacent landowners, or other parties affecting the Project Area that have not been disclosed to Buyer in writing nor has Seller received any communication from any federal, state, or local governmental agency, public utility or adjacent landowner or other party that would affect the Project Area.

3.1.11 Information Provided to Buyer. As of the Effective Date, Seller does not have any Property Documents in its possession to provide to Buyer in accordance with paragraph 1.7.4. However, to the extent Seller does provide any Property Documents to Buyer, they will be complete and true copies, and Seller will make Buyer aware of any material inaccuracy or material misrepresentation in the Property Documents that is known to Seller, to the best of Seller's best knowledge.

3.1.12 Indemnification. Seller agrees to indemnify, protect, and hold Buyer and Buyer's employees, directors, officers, affiliates, subsidiaries, agents, and representatives harmless from and against any and all losses, claims, demands, damages, costs and expenses including, attorneys' fees, arising out of a breach of Seller's representations and warranties in this agreement. The covenants contained in this section survive Closing.

ARTICLE 4

MISCELLANEOUS

4.1 Property Taxes. Seller is responsible for the payment, prior to delinquency, of all real property taxes and assessments on the Project Area, both before and after Closing. Upon Buyer's written request, Seller will provide Buyer with evidence of such payment. If Seller fails to timely pay real property taxes and assessments, then Buyer may pay the real property taxes and assessments and the Purchase Price will be reduced by the amount paid by Buyer.

4.2 Default Prior to Closing; Remedies.

4.2.1 Default by Seller. If Closing does not occur because of Seller's default, Buyer is, entitled to an immediate return of the Option Consideration, the Extension Payment, if applicable, and any other monies paid to Seller by Buyer, and shall have the right to pursue any other remedy available, including, but not limited, to specific performance.

4.2.2 Default by Buyer; Liquidated Damages. Buyer recognizes that the Mitigation Use Rights will be removed by Seller from the market during the term of the agreement. If the purchase of the Mitigation Use Rights is not consummated due to Buyer's default, the parties have determined and agreed that the actual amount of damages that would be suffered by Seller as a result of that default would be very difficult or impracticable to estimate on the date of this agreement. As a result, the parties agree that the Option Consideration as of the date of Buyer's default is sufficient to cover any estimated damages that may be incurred by Seller. For these reasons, the parties agree that if the purchase of the Mitigation Use Rights is not consummated because of Buyer's default, Seller may, as its sole and exclusive remedy, retain the Option Consideration and Extension Payment, if applicable and paid to Seller as of the date of Buyer's default. Seller further waives any and all right to seek other rights or remedies against Buyer, including without limitation, specific performance. Nothing stated in this section 4.2.2 precludes any action under any indemnification or defense provision in this agreement, nor for the award of attorney's fees and costs in conjunction with any action relating to this agreement.

Seller



Seller



Buyer



4.3 **Brokers.** Buyer employs four North Carolina licensed real estate brokers, none of which have received a commission or finder's fee in connection with this agreement. Buyer has not employed a broker or finder or incurred any liability to a third party for any brokerage fee, commission, or finder's fee in connection with this agreement.

4.4 **Notice.** All notices required by this agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the Parties in the manner stated below, and shall be conclusively deemed properly delivered: (a) upon receipt when hand delivered during normal business hours; (b) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested; (c) one business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery; or (d) if sent by email, upon receipt of an acknowledgement email sent to the sender's email address in which the party receiving the email notice acknowledges having received that email. An automatic "read receipt" is not acknowledgement for purposes of this section 4.4. The addresses of the parties to receive notices are as follows:

Seller: Laurie Merlo, Managing Member
Oakburn Associates, LLC
6129 Carlyle Drive
Raleigh, NC 27614
Email: gmerlo12345678@gmail.com

and

Robert Russell Blackburn, Managing Member
Oakburn Associates, LLC
848 Lockmaben Street
Wake Forest, NC 27587
Email: blackburn_rr3@yahoo.com

Buyer: Wildlands Engineering, Inc.
1430 S. Mint Street, Suite 104
Charlotte, NC 28203
Attention: Robert W. Bugg
rbugg@wildlandseng.com

4.5 **Assignment.** Buyer may assign this agreement without consent of Seller only to an entity that is owned, managed, or otherwise controlled by Buyer. Any other assignment of this agreement by Buyer shall require written consent by Seller, which consent shall not be unreasonably withheld. No assignment shall be effective unless the assignee has delivered to Seller a written assumption of Buyer's obligations under this agreement. Seller hereby releases Buyer from any obligations under this agreement arising after the effective date of any assignment of this agreement by Buyer. Buyer and Seller agree that this agreement "runs with the land" and if Seller sells the Property including the Project Area to a third party prior to Closing, the provisions of the Agreement are enforceable as to the third party.

Seller

Seller

Buyer

4.6 Value of Project Area; No Power of Eminent Domain. In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Buyer hereby notifies Seller that: (i) Buyer believes that the fair market value of the Mitigation Values of the Project Area is an amount equal to the Purchase Price; and (ii) Buyer does not have the power of eminent domain.

4.7 Entire Agreement. Each party acknowledges they are not relying on any statements made by the other party, other than in this agreement, regarding the subject matter of this agreement. Neither party will have a basis for bringing any claim for fraud in connection with any such statements.

4.8 Additional Documents. Before and after Closing, each party shall sign and deliver documents as needed and as requested by the other party to carry out the purpose of this agreement. This section survives Closing.

4.9 Dispute Resolution. In the event of any dispute, claim, question or disagreement arising out of or relating to this agreement, either party may invoke the Dispute Resolution provision of this section by notifying the other party in writing of the matter in dispute and of the party's intention to resolve the dispute under this section. The parties shall then attempt to resolve the dispute informally for a period of 15 calendar days from the date of the notice. The period of informal negotiations may be extended 15 calendar days by written agreement of the parties to the dispute. If the parties are unable to resolve the dispute through informal negotiation, any party may invoke formal dispute resolution through mediation. The parties will agree to mediate all disputes in good faith and shall agree on a North Carolina Superior Court Certified Mediator to mediate the dispute. The mediation process must commence within 60 days of the selection of a mediator and the costs of mediation shall be borne equally by both parties. If mediation fails to resolve the dispute between the parties, either party may seek judicial resolution of the dispute in a North Carolina Court.

4.10 Attorneys' Fees. If either party commences an action against the other to interpret or enforce any of the terms of this agreement or because of the breach by the other party of any of the terms of this agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees, expenses, court costs, litigation costs and any other expenses incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment.

4.11 Memorandum. Concurrently with the signing of this agreement, Buyer and Seller agree to sign a Memorandum of Option which will be recorded against the Property in the Register of Deeds of the County stated in paragraph A.

4.12 Landowner Authorization. Concurrently with the signing of this agreement, Seller agrees to sign the Landowner Authorization Form in the form approved by the Regulatory Agencies.

4.13 Temporary Access and Construction Easement. Either at Closing or another date no later than the date construction of the Mitigation Project commences, Buyer and Seller shall sign a temporary access and construction easement acceptable to both Seller and Buyer providing for use of those portions of the Property reasonably necessary to access and construct the Mitigation Project (as provided in paragraph 1.3.5, above). At a minimum, this temporary easement shall grant Buyer access to the Project Area and the right to perform construction related staging and any necessary construction work, and require Buyer to evenly grade, seed, straw and stabilize all disturbed areas outside of the Project Area upon completion of the Mitigation Project. Buyer and Seller agree to negotiate any

Seller  Seller 
Buyer 

additional terms in good faith once Seller has finalized the plans for the Mitigation Project and knows the full extent of its access and construction needs.

4.14 Tax Deferred Exchange. If Seller desires to affect a tax-deferred exchange (the "Exchange") in connection with transaction contemplated by this agreement, the parties agree to cooperate in effecting the Exchange. Seller is responsible for all additional costs associated with the Exchange and Buyer shall not have any additional liability with respect to the Exchange. Seller is solely responsible for the timing and preparation of documents to effectuate the Exchange in conjunction with Closing, as the Closing is scheduled by Buyer. While Buyer will cooperate with Seller to effectuate the Exchange, Buyer is not obligated to rush, delay, or reschedule the Closing for the sole purpose of accommodating the Exchange.

4.15 Dependency and Survival of Provisions. The respective warranties, representations, covenants, agreements, obligations, and undertakings of each party survive Closing.

4.16 Condemnation Before Closing. If, before Closing, any portion of the Project Area is taken in condemnation or under the right of eminent domain, or if any portion of the Project Area is damaged or destroyed such and the damaged or destroyed portion cannot be restored by Buyer, then that portion of the Project Area will be excluded from the Project Area, and will not be subject to the Recorded Documents, any of the Mitigation Documents or this agreement. Subject to the preceding sentence, if Buyer, acting in good faith, reasonably determines, that the condemnation action or damage will have such an effect that the Mitigation Project will no longer be economically viable, Buyer may terminate this agreement and the parties will have no further obligations under this agreement and the Option Consideration will be refunded to Buyer.

4.17 Severability. The parties intend as follows:

4.17.1 that if any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;

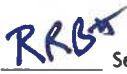
4.17.2 that if an unenforceable provision is modified or disregarded in accordance with this section 4.17, then the rest of the agreement will remain in effect as written; and

4.17.3 that any unenforceable provision will remain as written in any circumstance other than those in which the provision is held to be unenforceable.

4.18 Governing Law and Venue. The laws of the State of North Carolina, without giving effect to its principles of conflicts of law, govern all matters arising out of this agreement.

4.19 Inconsistencies. If there is any inconsistency between the terms of this agreement and any Exhibits, the terms of this agreement will prevail. If any inconsistency is due to scrivener's error discovered after the Effective Date, the parties will cooperate in good faith to correct the scrivener's error.

4.20 Modification; Waiver. No amendment of this agreement will be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the party granting

Seller  Seller 
Buyer 

the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.

4.21 Relationship of the Parties. In the performance of this agreement, Buyer is, at all times, acting as an independent buyer, with the right to resell the Mitigation Values. This agreement does not constitute or give rise to a joint venture, partnership, association, or similar type relationship between the parties, nor an employer-employee or principal-agent relationship between parties or between any party and a third party.

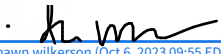
4.22 Mutual Agreement. This is a mutually negotiated agreement and regardless of which party was more responsible for its preparation, this agreement shall be construed neutrally between the parties.

4.23 Counterparts. This agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, together, constitute one and the same instrument. A signed copy of this agreement delivered by electronic mail in portable document format (".pdf" format) shall have the same legal effect as delivery of an original signed copy of this agreement.

Each party is signing this agreement on the date stated below that party's signature.

BUYER:

WILDLANDS ENGINEERING, INC., a North Carolina corporation

By: 
By: [shawn.wilkerson \(Oct 6, 2023 09:55 EDT\)](#)
Shawn D. Wilkerson, President

Date: Oct 6, 2023

Seller  Seller 
Buyer  Buyer [SW](#)

SELLER:

OAKBURN ASSOCIATES, LLC, a North Carolina limited liability company

By: Robert Russell Blackburn III,
Robert Russell Blackburn, III, Managing Member

Date: 10.5.2023

Seller TRB Seller [Signature]
Buyer [Signature] SW

SELLER:

OAKBURN ASSOCIATES, LLC, a North Carolina
limited liability company

By: Mary Laura Blackburn Merlo
Mary Laura Blackburn Merlo, Managing Member

Date: 10/5/23

Seller _____

Seller

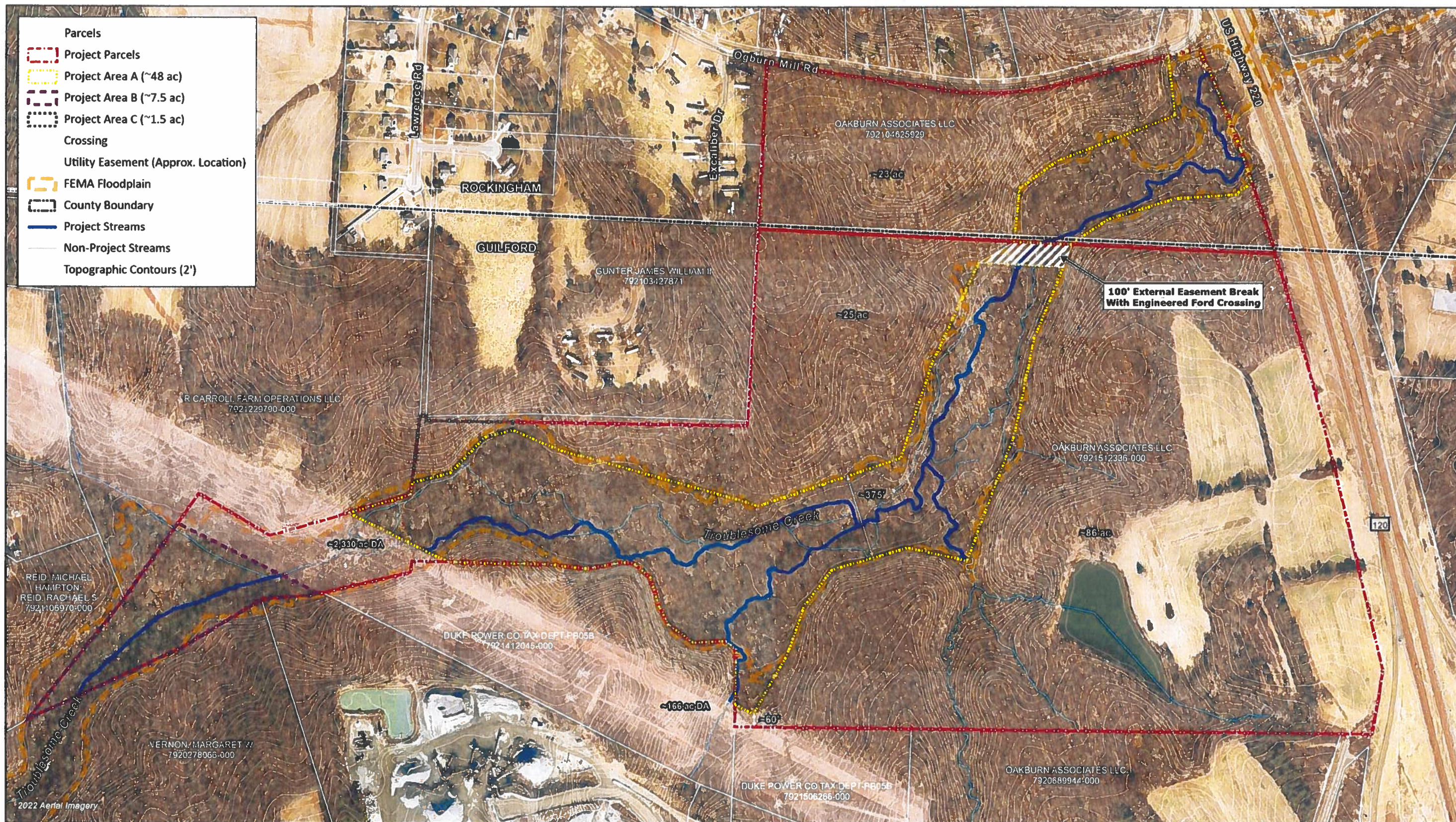
John

Buyer SW

LIST OF EXHIBITS

- Exhibit A - Map of the Property
- Exhibit B - DMS Conservation Easement
- Exhibit C - Wilmington District USACE Conservation Easement
- Exhibit D - Nutrient and Buffer Conservation Easement
- Exhibit E - Land Use and Easement Agreement

Seller RRB Seller CB
Buyer _____



9/5/2023 psrickland

RRD
Xpm

0 400 800 Feet



Oakburn Associates LLC Exhibit A
Cape Fear River Basin 03020002

Guilford and Rockingham Counties, NC

DRAFT TSM

RRB

abm

Exhibit B

STATE OF NORTH CAROLINA

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

_____ COUNTY

SPO File Numbers: XX-XX

DMS Project Number: XXXXXX

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 _____, 2020, by _____ ("Grantor"), whose mailing
address is _____ 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, 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 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 **Wildlands Engineering, Inc.** and the North Carolina Department of Environmental Quality, to provide stream, wetland and/or buffer mitigation pursuant to the North Carolina Department of Environment and Natural Resources 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 recognizes that the Division of Mitigation Services (formerly Ecosystem Enhancement Program) is 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' Division of Mitigation Services (formerly 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 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 (formerly Department of Environment and Natural Resources), which has been delegated the authority authorized by the Governor and Council of State to the Department of Administration, has approved acceptance of this instrument; and

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

_____ acres and being conveyed to the Grantor by deed as recorded in **Deed Book** _____, **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 Access Rights. The Conservation Easement shall be for the protection and benefit of the waters of unnamed tributaries to _____.

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, its successors and assigns, forever and in perpetuity, a Conservation Easement and Right of Access together with an access easement to and from the Conservation Easement Area described below.

The Conservation Easement Area consists of the following:

Total conservation Easement Area containing a total of _____ acres as shown on the plats of survey entitled "Final Plat, Conservation Easement Survey for the North Carolina Division of Mitigation Services, Project Name: _____, SPO File No. _____, DMS Site ID No. _____", Property of _____, dated _____ prepared by _____ PLS Number _____ and recorded in the _____ County, North Carolina Register of Deeds at Plat Book _____, Page _____.

See attached "**Exhibit A**", Legal Description of area of the Property hereinafter referred to as the "Conservation 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, its employees, agents, successors and assigns, 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, its employees, agents, successors and assigns, 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. 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. 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 hiking, bird watching, hunting and fishing, and access to the Conservation Easement Area for the purposes thereof.

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.

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 of the site.

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. Industrial, Residential and Commercial Uses. All industrial, residential and commercial uses are prohibited in the Conservation Easement Area.

F. Agricultural Use. All agricultural uses are prohibited within the Conservation Easement Area including any use for cropland, waste lagoons, or pastureland.

G. New Construction. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Conservation Easement Area.

H. Roads and Trails. There shall be no construction or maintenance of new roads, trails, walkways, or paving in the Conservation Easement except within a Crossing Area as shown on the recorded survey plat. All existing roads, trails and crossings within the Conservation Easement Area shall be shown on the recorded survey plat.

I. Signs. No signs shall be permitted in the Conservation Easement Area except 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.

J. 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.

K. 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.

L. 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 is allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide 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.

M. 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 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.

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

O. 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.

P. Crossing Areas. "Grantor reserves the right to the Internal Crossing Areas as shown on the "Conservation Easement Survey for the North Carolina Division of Mitigation Services _____, SPO File No. _____, DMS Site ID No. _____", Property of _____, and recorded in the _____ County, North Carolina Register of Deeds at Plat Book _____ Page _____ for the following purposes:

- Motorized vehicle crossing;
- Utility crossings to include overhead and buried electrical, water lines and sewer lines;
- Cattle crossing so long as fencing across a culvert in the Crossing Area prevents cattle access to the stream, or a ford crossing is kept gated and cattle are only present in the stream only under supervision while rotating cattle between pastures; and/or
- Installation, maintenance, or replacement of a culvert or ford crossing.

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

IV. GRANTEE RESERVED USES

A. Right of Access, Construction, and Inspection. The Grantee, its employees, agents, successors and assigns, 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 planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, 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. Signs. The Grantee, its employees and agents, successors or assigns, 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, or identify the project boundaries and the holder of the Conservation Easement.

D. Fences. Conservation Easements are purchased to protect the investments by the State (Grantee) in natural resources. Livestock within conservation easements damages the investment and can result in reductions in natural resource value and mitigation credits which would cause financial harm to the State. Therefore, Landowners (Grantor) with livestock are required to restrict livestock access to the Conservation Easement area. Repeated failure to do so may result in the State (Grantee) repairing or installing livestock exclusion devices (fences) within the conservation area for the purpose of restricting livestock access. In such cases, the landowner (Grantor) must provide access to the State (Grantee) to make repairs.

E. Crossing Area(s). The Grantee is not responsible for maintenance of crossing area(s), however, the Grantee, its employees and agents, successors or assigns, reserve the right to repair crossing area(s), at its sole discretion and to recover the cost of such repairs from the Grantor if such repairs are needed as a result of activities of the Grantor, his successors or assigns.

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 ninety (90) days after receipt of such notice to correct the damage caused by such breach. If the breach and damage remains uncured after ninety (90) 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 Grantee in connection with this Conservation Easement.

B. Inspection. The Grantee, its employees and agents, successors and assigns, have 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.

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 caused by third parties, 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.

D. Costs of Enforcement. Beyond regular and typical monitoring expenses, 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.

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 are 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 shall notify Grantee in writing of the name and address and any party to whom the Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees that any subsequent lease, deed, or other legal instrument 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.

F. This Conservation Easement and Right of Access may be amended, but only in 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. The owner of the Property shall notify the State Property Office and the U.S. Army Corps of Engineers in writing sixty (60) days prior to the initiation of any transfer of all or any part of the Property or of any request to void or modify this Conservation Easement. Such notifications and modification requests shall be addressed to:

Division of Mitigation Services Program Manager
NC State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

and

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

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. 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 State of North Carolina 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 his hand and seal, the day and year first above written.

_____ (SEAL)

NAME

NORTH CAROLINA
COUNTY OF GASTON

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 _____, 2020.

Notary Public

My commission expires:

EXHIBIT A

Insert Legal Description

DRAFT

DRAFT BSM
RRS
JBM

Exhibit C

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
____, 2020 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, and N.C. Gen. Stat. §
121-34 et seq., 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, Grantee agrees that it shall cause the performance of the appropriate environmental mitigation and restoration to be accomplished on the Property as more particularly set forth herein and, either during or after completion of such mitigation, restoration and any required monitoring period, Grantee will transfer ownership of the Conservation Easement to a nonprofit corporation, trust, or other entity whose purpose is the conservation of property and which is qualified to be the holder of a conservation easement pursuant to N.C. Gen. Stat. § 121-35.

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: coastal wetlands, non-riparian wetlands, riparian wetlands, perennial and intermittent 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 [enter Sponsor name] 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 [enter Sponsor name], the North Carolina Division of Water Resources (NCDWR) and the U.S. Army Corps of Engineers, Wilmington District ("Third-Parties," to include any successor agencies), and may be exercised through the appropriate enforcement agencies of the United States and the State of North Carolina, and that these rights are in addition to, and do not limit, the rights of enforcement under the NCDWR Project ID # _____ and Department of the Army instrument number SAW-_____ ("Mitigation Banking Instrument"), or any permit or certification issued by the Third-Parties. [Sponsor name]'s right of enforcement shall terminate upon close-out and final release of all mitigation credits from the _____ Mitigation Bank.

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 [enter Sponsor name] 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, [enter Sponsor name] 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.

[Not required, but may be added if Grantor and Grantee agree:]

L. Subdivision. The Grantor and Grantee agree that the Conservation Easement Area currently consists of _____ within _____ separate parcels. The Grantor may not further subdivide the Conservation Easement Area, except with the prior written consent of the Grantee. If Grantor elects to further subdivide any portion of the Conservation Easement Area, Grantor must provide the Grantee the name, address, and telephone number of new owner(s) of all property within the Conservation Easement Area, if different from Grantor. No subdivision of the Conservation Easement Area shall limit the right of ingress and egress over and across the Property for the purposes set forth herein. Further, in the event of any subdivision of the Property (whether inside or outside of the Conservation Easement Area) provision shall be made to preserve not only Grantee's perpetual rights of access to the Conservation Easement Area, as defined herein, but also Grantee's right of perpetual access to any conservation easements on properties adjacent to the Property which form a part of or are included in the Mitigation Plan. Creation of a condominium or any de facto division of the Conservation Easement Area is prohibited. Lot line adjustments or lot consolidation without the prior written consent of the Grantee is prohibited. The Grantor may convey undivided interests in the real property underlying the Conservation Easement Area. The Grantor shall notify the Grantee immediately of the name, address, and telephone number of any grantee of an undivided interest in any property within the Conservation Easement Area.

M. 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, NCDWR, 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. The use of mechanized vehicles for monitoring purposes is limited to only existing roads and trails as shown in the approved in the mitigation plan.

N. Other Prohibitions. Any other use of, or activity on, the Conservation Easement Area which is or may become inconsistent with the purposes of this Conservation Easement, 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 [enter Sponsor name] 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.

Notwithstanding the foregoing Restrictions, Grantor reserves for Grantor, its successors and assigns, the following rights in the areas labeled as "Internal Crossing" on the plat [insert plat name and recorded plat book page number] in the Conservation Easement Area: vehicular access, livestock access, irrigation piping and piping of livestock waste. All Internal Crossings that allow livestock access will be bounded by fencing and will be over a culvert.

ARTICLE IV. GRANTEE'S RIGHTS

The Grantee or its authorized representatives, successors and assigns, [enter Sponsor name] 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, [enter Sponsor name], the Corps, and NCDWR 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. [enter Sponsor name], the Corps and the NCDWR shall have the same rights and privileges as the said Grantee to enforce the terms and conditions of this Conservation easement. [Sponsor name]'s right of enforcement shall terminate upon close-out and final release of all mitigation credits from the _____ Mitigation Bank.

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.

a. 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 Grantee [or Sponsor] 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.

b. Baseline Documentation Report. The characteristics of the Conservation Easement Area and the status of improvements and development shall be described in a Baseline Documentation Report

(the "Baseline") prepared by the Grantee with the cooperation of the Grantor. The Baseline shall be acknowledged by the Grantee and the Grantor to be complete and accurate upon completion of the mitigation activities conducted in the Conservation Easement Area (close out date of the mitigation project). Both the Grantee and the Grantor will have copies of this report, and a copy will be retained in the Grantee's files. The Baseline will be used by the Grantee to assure that any future changes in the use of the Conservation Easement Area will be consistent with the terms of this Conservation Easement.

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]

DRAFT TIM
RRBth
Zbm

Exhibit D

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

Wildlands Engineering, Inc.
1430 South Mint Street, Suite 104
Charlotte, North Carolina 28203
Attention: Lee Knight Caffery

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**LAND USE AND EASEMENT AGREEMENT
(Project Name)**

This Land Use and Easement Agreement is between _____
("Owner"), and **WILDLANDS ENGINEERING, INC.**, a North Carolina Corporation ("**Wildlands**").

A. Owner is the owner of real property comprised of approximately _____ acres, located at _____ in _____ County, North Carolina, recorded in that county's Register of Deeds at Book _____, Page _____ (the "**Overall Property**"). The Property is shown on exhibit A.

B. Portions of the Overall Property contain potential stream, wetland, riparian resources, or habitat for species protected by applicable laws.

C. Wildlands is restoring, establishing, enhancing or preserving a portion of the Overall Property [pick one: as shown on exhibit B as the Mitigation Property OR shown on the Plat of _____ as recorded in _____ County's Register of Deeds at Plat Book: _____, Page _____]. (the "**Mitigation Property**"), to establish a Mitigation Project (as defined).

D. Owner and Wildlands entered into an Option to Purchase Mitigation Use Rights with an Effective Date of _____ (the "**Option Agreement**"), in which Owner granted Wildlands an option to purchase ("**Option**") the exclusive right to permit, create, develop, maintain, operate and

sell the rights to use the Mitigation Property as mitigation for impacts to streams, wetlands, protected species and habitat (the "**Mitigation Use Rights**"). "**Mitigation Use Rights**" means the exclusive right to permit, create, develop, maintain, operate and sell the rights to use the Mitigation Property as compensatory mitigation for impacts to streams, wetlands, and protected species and habitat as set forth in this agreement. The Mitigation Use Rights include, but are not limited to, the exclusive right to create and maintain a compensatory mitigation project as defined in 40 C.F.R. 230.92, a compensatory buffer mitigation bank as defined in 15 NCAC 02B.0295, a nutrient offset bank to create nutrient offset credits as contemplated by N.C. Gen. Stat. § 143-214.26 and a conservation bank as contemplated by the 2003 guidance from the US Fish and Wildlife Service and found at https://www.fws.gov/endangered/esa-library/pdf/Conservation_Banking_Guidance.pdf (collectively, "**Mitigation Project**"). The Mitigation Use Rights also include the right to create and sell to third parties credits generated by the Mitigation Project and any other environmental credits and values that Buyer deems appropriate ("**Mitigation Values**"). The Mitigation Use Rights are more fully described in paragraph 2 below.

E. Wildlands exercised its Option and has purchased the Mitigation Use Rights.

The parties therefore agree as follows:

Agreement

1. **Grant of Use Rights.** Owner hereby grants to Wildlands the following Mitigation Use Rights:

(a) **Exclusive Rights to Mitigation Values and Mitigation Property.** All Mitigation Values in the Mitigation Property, and an exclusive right to use the Mitigation Property to develop and market the Mitigation Values, including, without limitation, the following: (i) the exclusive right to determine the streams, wetlands, habitat and species sought to be protected, in Wildlands' judgment; (ii) the exclusive right to permit, create, develop, maintain, operate and sell Mitigation Values at prices and on terms determined by Wildlands; (iii) the exclusive right to create, maintain and monitor a Mitigation Project ; (iv) the exclusive right to perform grading and construction activities on the Mitigation Project in conjunction with the development of the Projects; and (v) the exclusive right to represent Owner and its successors-in-interest with respect to each of the Mitigation Values.

(b) **Access Rights.** Nonexclusive easements (i) over the Overall Property to use the roads, paths, trails and other access-ways, as they may exist from time to time to maximize Mitigation Values, for purposes of vehicular and pedestrian access to, from and through the Mitigation Property; (ii) over the Overall Property to create such service roads within the Mitigation Property, as may be reasonably necessary to construct, maintain, repair and reconstruct the Mitigation Projects; or (iii) for vehicular and pedestrian access across those portions of the Overall Property necessary or convenient to gain access from public roads, as they may exist from time to time, to the Mitigation Property.

(c) **Water Rights.** Nonexclusive easements to any existing watercourses and other water rights appurtenant to or granted to the Mitigation Property, including the right to install monitoring wells.

(d) **Incidental Rights.** Incidental rights necessary to develop, maintain, operate and preserve the Mitigation Property in accordance any requirements of the Regulatory Agencies (as defined).

2. Development, Operation and Sale of Mitigation Values. Wildlands has the right, at its expense, to apply for and obtain all necessary regulatory permits to enable the Mitigation Property to be approved by any regulatory agencies with jurisdiction over the Mitigation Project (collectively, the "**Regulatory Agencies**") and to sell the Mitigation Values. Wildlands has the right to prepare any necessary plans associated with designing, entitling, constructing and monitoring a Mitigation Project and selling the associated Mitigation Values and any other legally required documents ("**Mitigation Documents**"). The Mitigation Documents may include, without limitation, survey plats, conservation easements, a declaration of restrictive covenants, prospectus, bank parcel development plan, mitigation plan, mitigation banking instrument, a financial assurances document, mitigation bank credit ledger and compensatory mitigation responsibility transfer form. Wildlands will pay for all costs associated with the Mitigation Project and the development, operation and sale of Mitigation Values.

3. Cooperation of Owner. Owner will cooperate with Wildlands, as needed, in obtaining approval and signing of the Mitigation Documents and in signing any necessary Mitigation Documents required by the Regulatory Agencies or any documents reasonably necessary to create credits generated by a Mitigation Project. Owner shall comply with the terms of the Mitigation Documents, including, without limitation, all land use restrictions contained in the conservation easement or restrictive covenants governing the Mitigation Property. Owner acknowledges and understands that its failure to cooperate with Wildlands and comply with Mitigation Documents governing the Mitigation Property as required by this paragraph or Owner's delay in cooperating will cause Wildlands to suffer substantial damages, including, without limitation, lost profits. If Owner fails to timely cooperate with Wildlands or comply with the Mitigation Documents as required by this paragraph, Owner shall be liable for all damages suffered by Wildlands because of Owner's failure to timely cooperate or comply, including without limitation, consequential damages, and Wildlands has the right to pursue all remedies available at law or in equity against Owner.

4. Covenant Not to Encumber. Owner shall not create or permit any new easements, use rights or encumbrances on the title to the Mitigation Property after the recordation of this agreement without the prior written consent of Wildlands. If Wildlands agrees in writing to allow Owner to encumber the Mitigation Property after the recordation of this agreement, Owner must cause any entity with an interest encumbering the Mitigation Property to subordinate or extinguish its interest in the Mitigation Property to any Mitigation Documents that Wildlands elects to record. Wildlands will give Owner written notice of its intent to record any Mitigation Documents and Owner will have 90 calendar days from the date Owner receives notice to subordinate or extinguish any encumbrance on the Mitigation Property. If Owner fails to extinguish or subordinate any encumbrance on the Mitigation Property as required by this paragraph, Owner shall be liable for all damages suffered by Wildlands because of Owner's failure to extinguish or subordinate any encumbrance, including without limitation, consequential damages, and Wildlands has the right to pursue all remedies available at law or in equity against Owner.

5. Mineral, Oil and Gas Rights. Owner shall not perform, and shall not authorize or permit any tenant, successor-in-interest or any other party to perform, any surface or subsurface mining or other extraction activities on the Mitigation Property nor shall Owner enter into any lease for mineral, oil or gas rights on the Mitigation Property.

6. Duration. Unless terminated, all the easements granted in this agreement continue in perpetuity.

7. **Assignment.** Wildlands may assign any of its rights under this agreement, whether by contract or by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution or otherwise, without Owner's consent.

8. **Attorneys' Fees.** If either party commences an action against the other to interpret or enforce any of the terms of this agreement or because of the breach by the other party of any of the terms of this agreement, the losing party shall pay to the prevailing party reasonable attorneys' fees, expenses, court costs, litigation costs and any other expenses incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment.

9. **Notice.** All notices required by this agreement shall be in writing, shall be given only in accordance with the provisions of this paragraph, shall be addressed to the parties in the manner stated below, and shall be conclusively deemed properly delivered: (a) upon receipt when hand delivered during normal business hours; (b) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested; (c) one business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery; or (d) if sent by email, upon receipt of an acknowledgement email sent to the sender's email address in which the party receiving the email notice acknowledges having received that email. An automatic "read receipt" is not acknowledgement for purposes of this paragraph. The addresses of the parties to receive notices are as follows:

Wildlands Engineering, Inc.

[NAME and ADDRESS]

Shawn Wilkerson

1430 S. Mint Street

Charlotte, NC 28203

swilkerson@wildlandseng.com

Notice of change of address shall be given by written notice in the manner described in this paragraph.

10. **Option Agreement.** Nothing contained in this agreement shall limit or otherwise modify Owner's and Wildlands' respective rights, duties and obligations under the Option Agreement.

Each party is signing this agreement on the date stated below that party's signature.

WILDLANDS ENGINEERING, INC., a North Carolina corporation **OWNER:**

By: _____
Shawn D. Wilkerson, President

By: _____

Title: _____

Date: _____

Date: _____

Exhibit A

Map of the Overall Property

DRAFT

Exhibit B

Map of the Mitigation Property

DRAFT

_____ County, North Carolina

I certify that Shawn D. Wilkerson personally appeared before me this day, acknowledging to me that he is President of Wildlands Engineering, Inc., a North Carolina corporation and that he, as President, being authorized to do so, executed the foregoing on behalf of Wildlands Engineering, Inc.

Date: _____

(Official Seal)

Official Signature of Notary

Notary's printed or typed name

My commission expires: _____

_____ County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document:

Name of principal

Date: _____

(Official Seal)

Official Signature of Notary

Notary's printed or typed name

My commission expires: _____

_____ County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document:

Name of principal

Date: _____

(Official Seal)

Official Signature of Notary

Notary's printed or typed name

My commission expires: _____

DRAFT TSM
RRB
ZBM

Exhibit E

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Wildlands Engineering, Inc.
1430 South Mint Street, Suite 104
Charlotte, North Carolina 28203

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

PERMANENT CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("Conservation Easement") made this ____ day of _____, 2020 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 Wayne County, North Carolina, more particularly described in or [shown on if map to be attached] Exhibit A attached hereto and incorporated herein ("Property") and being a portion of the properties conveyed to the grantor by deed as recorded in Deed Book _____ at Page _____ of the _____ County Registry, North Carolina (PIN _____);

WHEREAS, Grantee is a 501(c)(3) North Carolina nonprofit corporation whose purpose is the conservation of the property and which is qualified to be the Grantee of a conservation easement pursuant to N.C. Gen. Stat. § 121-35;

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: unnamed tributaries and open field ditches to the Neuse River. The purpose of this Conservation Easement is to maintain 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 for any purpose or in any manner that would conflict with the maintenance in its natural condition.

WHEREAS, the preservation of the Conservation Easement Area is required by the Bank Name and DWR #. The Conservation Easement Area will be restored to a natural vegetated condition as provided in and specified in Bank Name Bank Parcel Development Package ("BPDP"). The Bank Name is intended to be used to compensate for unavoidable buffer impacts authorized by permits issued by the North Carolina Division of Water Resources (NCDWR) and to provide mitigation for nutrient offsets due to development (both existing and proposed) within restricted areas of the Neuse River Basin. Grantor and Grantee agree that third party rights of enforcement shall be held by the NCDWR and that these rights are in addition to, and do not limit the rights of the parties to the Mitigation Banking Instrument.

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 A, 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 right of passage for such purposes are prohibited in the Conservation Easement Area.

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 on the Conservation Easement Area.

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.

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 Conservation 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.

[Not required, but may be added if Grantor and Grantee agree:]

L. Subdivision. The Grantor and Grantee agree that the Conservation Easement Area currently consists of ___ within ___ separate parcels. The Grantor may not further subdivide the Conservation Easement Area, except with the prior written consent of the Grantee. If Grantor elects to further subdivide any portion of the Conservation Easement Area, Grantor must provide the Grantee the name, address, and telephone number of new owner(s) of all property within the Conservation Easement Area, if different from Grantor. No subdivision of the Conservation Easement Area shall limit the right of ingress and egress over and across the Property for the purposes set forth herein. Further, in the event of any subdivision of the Property (whether inside or outside of the Conservation

Easement Area) provision shall be made to preserve not only Grantee's perpetual rights of access to the Conservation Easement Area, as defined herein, but also Grantee's right of perpetual access to any conservation easements on properties adjacent to the Property which form a part of or are included in the Mitigation Plan. Creation of a condominium or any de facto division of the Conservation Easement Area is prohibited. Lot line adjustments or lot consolidation without the prior written consent of the Grantee is prohibited. The Grantor may convey undivided interests in the real property underlying the Conservation Easement Area. The Grantor shall notify the Grantee immediately of the name, address, and telephone number of any grantee of an undivided interest in any property within the Conservation Easement Area.

M. 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 access for purposes of maintaining the Conservation Easement Area during the five-year monitoring period as described in the BPDP.

N. 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 as provided in Article II, Paragraph L, 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, successors and assigns, and the Bank Sponsor, the right to construct a nutrient offset and riparian buffer mitigation bank within the Conservation Easement Area, in accordance with the Loflin Dairy Phase II Bank Parcel Development Package approved in accordance with the Randleman Lake Umbrella Mitigation Banking Instrument.

ARTICLE IV. GRANTEE'S RIGHTS

The Grantee or its authorized representatives, successors and assigns, and NCDWR, shall have the right to enter the Property and Conservation Easement Area at all reasonable times for the purpose of inspecting said property 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 shall also have the right to enter and go upon the Property and 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 Conservation Easement, Grantee is allowed to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of this Conservation 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 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. 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. NCDWR shall have the same right to enforce the terms and conditions of this easement as the Grantee.

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 Conservation Easement Area 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 to the Grantee of such transfer at least thirty (30) 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 NCDWR.

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 under N.C. Gen. Stat. § 121-34 et seq. 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. 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 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. 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. 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.

G. 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.

H. Proceeds. This Conservation Easement constitutes a real property interest immediately vested in Grantee. In the event that all or a portion of this 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. The parties stipulate that the fair market value of this Conservation Easement shall be determined by multiplying the fair market value of the Conservation Easement Area unencumbered by this Conservation Easement (minus any increase in

value after the date of this grant attributable to improvements) by the ratio of the value of this easement at the time of this grant to the value of the Conservation Easement Area (without deduction for the value of this Conservation Easement) at the time of this grant. The values at the time of this grant shall be the values used, or which would have been used, to calculate a deduction for federal income tax purposes, pursuant to Section 170(h) of the Internal Revenue Code (whether eligible or ineligible for such a deduction). Grantee shall use its share of the proceeds in a manner consistent with the purposes of this Conservation Easement.

I. 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:

To Grantee:

To NCDWR:

NCDENR – Division of Water Resources
401 & Buffer Permitting Unit
Attn: Nutrient Offset Banking Coordinator
1650 Mail Service Center
Raleigh, NC 27699-1650

J. 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 upon approval by the NCDWR and in accordance with an appropriate proceeding in a court of competent jurisdiction.

K. Amendment. This Conservation Easement may be amended, but only in 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.

L. Present Condition of the Conservation Easement Area.

a. Bank Parcel Development Plan. 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 2 of the Bank Parcel Development Package, dated _____, prepared by [Grantee or Wildlands] and acknowledged by the Grantor and Grantee to be complete and accurate as of the date hereof. Both Grantor and Grantee have copies of the Bank Parcel Development

Package. 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.

b. Baseline Documentation Report. The characteristics of the Conservation Easement Area and the status of improvements and development shall be described in a Baseline Documentation Report (the "Baseline") prepared by the Grantee with the cooperation of the Grantor. The Baseline shall be acknowledged by the Grantee and the Grantor to be complete and accurate upon completion of the mitigation activities conducted in the Conservation Easement Area (close out date of the mitigation project). Both the Grantee and the Grantor will have copies of this report, and a copy will be retained in the Grantee's files. The Baseline will be used by the Grantee to assure that any future changes in the use of the Conservation Easement Area will be consistent with the terms of this Conservation Easement.

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.

GRANTOR:

By: _____ (SEAL)
NAME

Date: _____

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 _____, 2019.

Notary Public

My commission expires:

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

GRANTEE:
NAME

By: _____ (SEAL)
NAME

Date: _____

NORTH CAROLINA COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, Grantee, personally appeared before me this day and acknowledged that he is Board Member of _____, a non-profit corporation, and that he, as Director, being authorized to do so, executed the foregoing on behalf of the corporation.

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 Map of Property

DRAFT

EXHIBIT B

Insert Legal Description

DRAFT

DRAFT
RRBT
TSM
Jbm

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

Wildlands Engineering, Inc.
1430 S. Mint Street, Suite 104
Charlotte, NC 28203
Attention: Matt Covington

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TEMPORARY ACCESS AND CONSTRUCTION EASEMENT

This temporary access and construction easement ("Easement Agreement") is between _____ (Grantor), and **WILDLANDS ENGINEERING, INC.**, a North Carolina corporation ("Grantee") and will become effective when all parties have signed it.

A. Grantor is the owner of certain real property comprised of approximately _____ acres located at _____ in _____, _____ County, North Carolina, recorded in that county's Register of Deeds at Book _____, at Page _____ (the _____ Property"). The Property is also identified as Tax Parcel Number _____.

B. Grantee plans to restore the stream (the "Stream Restoration Project") located on the adjacent property owned by _____, the "Restoration Property"). The stream involved in the Stream Restoration Project flows _____.

C. To ensure viability of the Stream Restoration Project, Grantee needs to make certain improvements to the Property and the stream on the Property.

D. Grantor agrees to grant Grantee a temporary access and construction easement upon a portion of the Property during the construction of the Stream Restoration Project.

Grantor and Grantee therefore agree as follows:

1. Grant of Temporary Access and Construction Easement. Grantor grants to Grantee, a temporary access and construction easement across that portion of the Property generally shown on exhibit A as _____ (the "TCE Area") for the purposes of conducting the Construction Activities (as defined). Access granted herein shall not be deemed to include access to the Restoration Property nor the remainder of the Property not in the Project Area.

2. Construction Activities. Grantee and its contractors, agents and assigns shall have the right to utilize the TCE Area for the purpose of restoring the stream within the Project Area by (i) removing those trees within the TCE Area that are reasonably necessary for Grantee to exercise its rights hereunder, (ii) raising the bed elevation, (iii) repairing eroded banks of the stream, (iv) installing and maintaining sediment and erosion control measures as necessary, and (v) planting a vegetative buffer of trees and grasses ("**Construction Activities**"). Grantee shall have the right to deposit tools, implements and other material within the TCE Area, to utilize construction, automotive and other heavy equipment within the TCE Area. Grantee shall not have the right to relocate the stream off the Property or outside of the Project Area.

3. Purchase Price. Within five business days following the Effective Date, Grantee shall pay Grantor _____ and at commencement of Construction Activities, Grantee shall pay Grantor an additional _____.

4. Permitting. Grantee is in the business of stream restoration and warrants that has obtained, or will obtain prior to commencement of the Stream Restoration, all permits and approvals required for the Stream Restoration Project.

5. Insurance. Grantee maintains and will continue to maintain adequate insurance for the Stream Restoration Project and all Construction Activities.

6. Indemnification. Grantee shall indemnify, defend and hold Grantor harmless from any and all damages, claims, liabilities expenses (including reasonable attorneys' fees) arising out of or as a result of the Construction Activities by Grantee, its contractors, agents and assigns.

7. Termination. The Easement Agreement shall terminate upon completion of the Stream Restoration Project. Construction of the Stream Restoration Project will take no longer than _____ months and is anticipated to commence _____ but could be as early as _____ or as late as _____. Grantee agrees that the Stream Restoration Project shall be pursued as diligently and as expeditiously as reasonably possible and that upon completion of the Stream Restoration Project, the TCE Area shall be cleared of all construction debris and any areas impacted by Grantee's use of the TCE Area will be evenly graded, stabilized and seeded with pasture grass and other ground cover consistent with Grantee's previous land use. Upon the termination of the Easement Agreement, the Grantee shall have no further obligation or liability in connection with the TCE Area.

8. Covenants Running with the Land. This Easement Agreement and covenants created by this Easement Agreement shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties.

9. Right to Convey. Grantor covenants that they have the right to convey this Easement Agreement.

Each party is signing this temporary access and construction agreement on the date stated below that party's signature.

GRANTEE:

WILDLANDS ENGINEERING, INC.,
a North Carolina corporation

By: _____
Shawn D. Wilkerson, President

Date: _____

GRANTOR:

By: _____

Date: _____

By: _____

Date: _____

Mecklenburg County, North Carolina

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that *Shawn D. Wilkerson*, personally appeared before me this day and acknowledged to me that he is President of Wildlands Engineering, Inc., a North Carolina corporation and that he, as President, being authorized to do so, executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the _____ day of _____, 2022.

(Official Seal)

Official Signature of Notary

Notary's printed or typed name

My commission expires: _____

_____ County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document:

Name of principal

Date: _____

(Official Seal)

Official Signature of Notary

Notary's printed or typed name

My commission expires: _____

_____ County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document:

Name of principal

Date: _____

(Official Seal)

Official Signature of Notary

Notary's printed or typed name

My commission expires: _____

Oakburn MUR with Exhibits

Final Audit Report

2023-10-06

Created:	2023-10-06
By:	Matt Covington (mcovington@wildlandseng.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAD0-qoiP6DTmhpSziU9zgPgZUVYov4QHM

"Oakburn MUR with Exhibits" History

-  Document created by Matt Covington (mcovington@wildlandseng.com)
2023-10-06 - 1:20:39 PM GMT- IP address: 66.26.136.157
-  Document emailed to shawn wilkerson (swilkerson@wildlandseng.com) for signature
2023-10-06 - 1:25:50 PM GMT
-  Email viewed by shawn wilkerson (swilkerson@wildlandseng.com)
2023-10-06 - 1:53:49 PM GMT- IP address: 174.212.164.173
-  Document e-signed by shawn wilkerson (swilkerson@wildlandseng.com)
Signature Date: 2023-10-06 - 1:55:59 PM GMT - Time Source: server- IP address: 174.212.164.173
-  Agreement completed.
2023-10-06 - 1:55:59 PM GMT