ADFPTF – USAF Conservation Easement Template (01-05-2023)

This instrument prepared by and return to:

Enter name

STATE OF NORTH CAROLINA ADFP TRACKING #ADM-ADFP-MIL-

COUNTY OF Enter county name TAX ID/PARCEL/PIN: Enter tax ID/parcel/PIN

WARRANTY DEED OF

AGRICULTURAL CONSERVATION CONTAINING MILITARY MISSION COMPATIBLE USE

This Deed of Agricultural Conservation containing Military Mission Compatible Use Easement (sometimes referred to as “Easement”) is granted on this Enter day with numerals and letter suffixes day of  , 20\_\_\_, by Enter landowner name(s) (herein “GRANTOR”) whose address is Enter landowner mailing address (ADDRESS), to the:

I Enter easement holding entity, (herein “LAND TRUST” or “COUNTY”) having its principal office at Enter entity mailing address (ADDRESS), and

ii) The State of North Carolina (“STATE”) acting by and through the Department of Agriculture and Consumer Services (“NCDA&CS”) and the North Carolina Agriculture Development and Farmland Preservation Trust Fund (“NCADFP Trust Fund”), having its principal office at 2 West Edenton Street, Raleigh, NC 27601

The LAND TRUST/ COUNTY and STATE are hereby collectively referred to throughout this easement as “GRANTEES” for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space, and for the purpose of limiting the use or development of the Protected Property that would otherwise be incompatible with the mission of Seymour Johnson Air Force Base, North Carolina (the “Installation”).

GRANTOR AND GRANTEES are collectively referred to as “THE PARTIES” and include, their heirs, successor and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

RECITALS

A. WHEREAS, the United States Department of Defense, the United States Department of

Agriculture, and the United States Department of the Interior have established the Sentinel Landscapes Partnership, a federal, state, local, and private collaboration dedicated to promoting natural resource sustainability in areas surrounding military installations in order to preserve specific military mission-critical areas and to take action to help sustain military readiness, working lands, and natural resources.

B. WHEREAS, GRANTOR is the sole owner in fee simple, of a certain farm property located in Enter township name Township, Enter county name County, North Carolina and identified on the plat of property entitled “Survey of Agricultural Development and Farmland Preservation Trust Fund / Military Conservation Easement Area” prepared by Enter surveyor which plat is recorded at Enter county name County Register of Deeds Plat Slide Enter plat slide with said farm property totaling Enter number of acres acres covered by this Easement (the “Protected Property”).

C. WHEREAS, the Protected Property is adjacent to or in the vicinity of Seymour Johnson Air Force Base, North Carolina (the “Installation”), and therefore, the United States of America, acting by and through the Secretary of the Air Force or his or her delegate (hereinafter referred to as “Government”) entered into an agreement 21 September 2015 pursuant to 10 U.S.C. § 2684a (“2684a Agreement”) with NCDA&CS a qualified eligible entity, to receive Government contribution(s) to acquire interests in property such as the Protected Property in the vicinity of the Installation in order to limit encroachment on military training, testing, and operations and otherwise meet the objectives of the Government and the Grantees through such acquisition from a willing landowner. Thus, it is also the purpose of this Easement to limit any development or use of the Protected Property that would otherwise be incompatible with the mission of the Installation, or might interfere, whether directly or indirectly, with current or future military training, testing, or operations on or near the Installation (together, with “mission compatibility purposes”).

D. WHEREAS, the Protected Property also includes outstanding woodland and riparian habitats for a variety of wildlife species of importance to GRANTEE, the people of Enter county name County and the people of North Carolina.

E. WHEREAS, an additional conservation purpose of this Easement is to protect the natural wildlife habitat, historical, and scenic resources of the Protected Property. The agricultural, natural, wildlife habitat and scenic resources of the Protected Property are collectively referred to as the “Conservation Values” of the Protected Property.

F. WHEREAS, the specific Conservation Values of the Protected Property and its current use and state of improvement are described in a Baseline Documentation Report (“Report”) prepared by GRANTEES with the cooperation of GRANTOR and acknowledged by all PARTIES to be accurate as of the date of this Easement. This Report may be used by the GRANTEES to evaluate any future changes in the use or character of the Protected Property in order to ensure the terms and conditions of this Easement are fulfilled. The Report, however, is not intended to preclude the use of other evidence to establish the present condition of the Protected Property if there is a controversy over its use. The PARTIES have copies of the Report, and the original Report will remain on file at the office of the NCADFP Trust Fund.

G. WHEREAS, The PARTIES agree that the current agricultural use of, and improvements to, the Protected Property are consistent with the conservation purposes of this Easement.

H. WHEREAS, GRANTOR intends that the Conservation Values and mission compatibility purposes of the Protected Property be preserved and maintained, and further, GRANTOR intends to convey to the GRANTEES the right to preserve and protect the agricultural and other Conservation Values, and mission compatibility purposes of the Protected Property in perpetuity.

I. WHEREAS, the conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation policies:

(1) The protection of working or natural lands is important to the nation’s defense, fulfilling the objectives of the Sentinel Landscapes Partnership, including but not limited to the protection of aviation training routes and the prevention of uses incompatible with the test and training missions conducted on the military installations that anchor such landscapes.

(2) North Carolina General Statute 139-2 et seq., which provides that “it is hereby declared…that the farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State of North Carolina and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people… It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and resources of this State;”

(3) North Carolina General Statute 106-583 et seq., which states that “It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity;”

(4) The Uniform North Carolina Conservation and Historic Preservation Agreements Act, North Carolina General Statute 121-34 et seq., which provides for the enforceability of restrictions, easements, covenants or conditions “appropriate for retaining in land or water areas predominantly in their natural, scenic, or open condition or in agricultural, horticultural, farming or forest use,” and which provides for tax assessment of lands subject to such agreements “on the basis of the true value of the land and improvement less any reduction in value caused by the agreement;”

(5) The establishment of the NCADFP Trust Fund established in 2005 (N.C.G.S. 106-744 (c)) to preserve important farmland in North Carolina; and

(6) The special use assessment of farm and forest land as set forth in North Carolina General Statute 105-277.2 et seq.

J. WHEREAS, Enter easement holding entity name is a “qualified organization” as that term is defined in 26 U.S.C. §170(h)(3) and applicable regulations and is eligible to receive NCADFP Trust fund monies pursuant to Article 61 of Chapter 106 of the North Carolina General Statutes.

K. WHEREAS, The PARTIES, have the common purpose of protecting the above described Conservation Values and current condition of the Protected Property and preventing conversion of the Protected Property to non-agricultural uses or other uses that will conflict with the intent, training, testing, mission or military operation of the Installation.

NOW, THEREFORE, In consideration of the following:

i) Enter amount spelled out dollars ($Enter amount in numerals) from Enter ADFP/ALE grantee organization name-Grantee for interest granted herein (Enter numeral percentage% of ownership)

ii) Enter amount spelled out ($Enter amount in numerals) from Government as contribution pursuant to the 2684a Agreement (Enter numeral percentage% of acquisition price/easement value)

iii) Enter amount spelled out dollars ($Enter amount in numerals) from the State-Grantee for interest granted herein (Enter numeral percentage% of ownership),

iv) Enter amount spelled out dollars ($Enter amount in numerals) donated by Grantor which represents (percentage %) of the acquisition price/easement value.

the receipt thereof being hereby acknowledged, and the mutual covenants, terms, and conditions contained in this Easement, the GRANTOR hereby voluntarily grants and conveys to GRANTEES, and GRANTEES hereby voluntarily accept, a perpetual Easement on the Protected Property, which Easement is an immediately vested interest in real property of the nature and character described herein. GRANTOR promises that it will not perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the covenants contained herein. GRANTOR authorizes GRANTEES to enforce these covenants in the manner described below.

ARTICLE I. GENERAL

1.1. Statement of Purpose. It is the primary conservation purpose of this Agricultural Conservation Easement to enable the Protected Property to remain in agricultural use by preserving and protecting its green space, silvicultural and agricultural soils and agricultural and silvicultural viability and productivity by limiting nonagricultural uses of the Protected Property. No activity that would significantly impair the actual or potential agricultural use of the Protected Property shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, natural wildlife habitat or scenic values referenced in this Easement are consistent with the primary conservation purpose stated above, it is within the secondary conservation purpose of this Easement to also protect those values, and no activity that would significantly impair those values shall be permitted. It is also the purpose of this Easement to limit any development or use of the Protected Property that would otherwise be incompatible with the mission of the Installation, or might interfere, whether directly or indirectly, with current or future military training, testing, or operations on or near the Installation, the mission compatibility purposes; and activity that would significantly impair the mission compatibility purposes of the Protected Property shall be permitted as provided in this Easement.

1.2. Perpetual Duration. This Easement over the Protected Property shall be perpetual. This Easement runs with the land and is enforceable by GRANTEES against GRANTOR as provided herein, and against GRANTOR’s representatives, successors, assigns, leasees, agents and licensees.

1.3. Extinguishment of Development Rights. Except as otherwise reserved to GRANTOR in this Easement, the PARTIES agree that all development rights appurtenant to the Protected Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Protected Property as it now or hereafter may be bounded or described, or used or transferred to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Protected Property or any other property by anyone including GRANTOR and GRANTEES.

1.4. Compliance with Other Regulatory Requirements. GRANTOR is responsible for complying with any and all additional permits or regulation to use or develop the Protected Property under the terms of this Easement, including Enter county name County, State of North Carolina or federal requirements, regardless of any reserved rights or permissions contained in this Easement Document.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

2.1. Subdivision. Subdivision, partitioning or dividing the Protected Property is prohibited except as allowed in Section 3.4 of this Easement.

2.2. Residential, Industrial and Commercial Use. Residential, industrial and commercial use, including use as airfields and/or airstrips, of the Protected Property, and access for such purposes is prohibited. This restriction does not prohibit the use of the Protected Property or construction of improvements primarily for agricultural, horticultural, forestry, silvicultural and non-developed recreational purposes as more specifically defined herein.

2.3. Mining. There shall be no filling, excavation, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, peat, minerals, hydrocarbons or other materials, and no change in the topography of the Protected Property in any manner except as necessary for the purpose of farming operations, or combating erosion and as reasonably necessary for any permitted maintenance, construction or reconstruction on the Protected Property.

2.4. Dumping and Trash. Dumping or storage of soil, trash, refuse, debris, ashes, garbage, waste, abandoned vehicles or parts, appliances, machinery, or hazardous substances, or toxic or hazardous waste, is prohibited with the exception of agricultural products, byproducts (including the composting of biodegradable materials for on-farm use) and agricultural equipment used on the Protected Property, so long as such storage is done in accordance with all applicable government laws and regulations and in such a manner so as to not impair the Conservation Values and mission compatibility purposes of the Protected Property.

2.5. Signage and Structures. Display to the public of billboards, signs or advertisements is prohibited on or over the Protected Property, except to state the name of the property and its farmland status, including its easement status, the name and address of the occupant, to advertise an on-site activity, and to advertise the Protected Property for sale or rent, as allowed by the sign ordinance set forth in any applicable city or county development ordinance. GRANTOR shall be permitted to erect “no trespassing” signs, traffic or directional signs or warning signs as may be expedient and to post the property. No man-made structure, building, antenna, tower, wire, or other obstruction, whatever its nature, shall be erected, constructed, installed or altered to extend more than 150 feet above ground level (AGL).

2.6 Lighting. Exterior light emissions that would interfere with pilot vision are not allowed. All lighting equipment, including but not limited to lasers, floodlights, searchlights, and recreational lighting, and all protective lighting, such as streetlights, shall have positive optical control that shines downward so that no direct light is emitted above the horizontal plane. The Protected Property shall not be used to generate visible emissions which violate the provisions of North Carolina Administrative Code (NCAC) 15 2D.0520, Control of Visible Emissions as these provisions exist on the date of this Easement.

2.7 Operational and Training Hazards. No operations of any type, with the exception of activities incidental to agriculture, are permitted that produce smoke, steam, glare or other visual hazards, or encourage concentrations of birds, such as bird feeding stations, fracking ponds, manmade lakes, created wetlands or waste water treatment plants that may be dangerous for aircraft operating under the control of the Installation. Use of prescribed fire for silvicultural purposes and or burning for mitigation of fire hazards may be conducted on the Protected Property with two conditions. First, GRANTEES require that these activities be in compliance with the Conservation Plan and Forest Management Plan. Second, the Installation, specifically the Airspace Manager, must be coordinated with prior to and after burning activities (location, dates and times). GRANTEES require that habitat improvement activities be in compliance with the Conservation Plan and Forest Management Plan. New or expanded aquaculture land use on the Protected Property must be coordinated by all PARTIES, including the Installation. GRANTEES and the Installation shall receive request for aquaculture land use activities in written format and shall have sixty (60) calendar days upon receipt of request to respond with approval, denial, or need for mitigation. Failure to respond to within sixty (60) days shall not be deemed approval by Grantees or the Installation. If any approval of these proposed activities requires mitigation, such mitigation must also be approved by all Parties and coordinated with the Installation to ensure such mitigation will not interfere with Installation missions. Further, unmanned aerial vehicle (UAV)/unmanned aerial system (UAS) operations above 100 feet are prohibited.

2.8 Emissions. Land uses that produce electrical emissions that would interfere with aircraft communications or navigational and or targeting equipment (air to air and air to ground) are prohibited.

ARTICLE III. RIGHTS AND RESPONSIBILITIES RETAINED BY GRANTOR

Notwithstanding any provisions of this Easement to the contrary, GRANTOR reserves to and for themselves and their successors all customary rights and privileges of ownership, including the rights to sell, lease, and devise the Protected Property, together with any rights not specifically prohibited by or limited by this Easement, and consistent with the Section 1.1., “Statement of Purpose”. Unless otherwise specified below, nothing in this Easement shall require GRANTOR to take any action to restore the condition of the Protected Property after any Act of God or other event over which they have no control. GRANTOR understands that nothing in this Easement relieves them of any obligation or restriction on the use of the Protected Property imposed by law.

3.1. Right to Farm. GRANTOR retains the right to farm, or to permit others to farm the Protected Property, consistent with the Conservation Values and mission compatibility purposes of the Protected Property and in accordance with applicable local, state and federal laws and regulations and in accordance with (“the Conservation Plan”) adopted by GRANTOR and the Natural Resources Conservation Service (NRCS) as required by Section 4.5 of this Easement. Subject to any prohibitions stated herein, farming, grazing, silvicultural, horticultural and animal husbandry operations are permitted only if conducted consistent with best management practices promulgated by the State of North Carolina and in conformity with the Conservation Plan.

3.2. Right to Privacy. GRANTOR retains the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property. This Easement is not intended to create any rights of the public in, on or to the Protected Property.

3.3. Right to Use the Protected Property for Customary Rural Enterprises. GRANTOR retains the right to use the Protected Property for otherwise lawful and customary rural enterprises, such as, but not limited to, firewood distribution, for nature and historic tours, equestrian activities, and other passive or “Ecotourism”, “Agritourism” and “Special Events” as defined herein, educational programs or farm meetings and like activities, so long as such activities are consistent with Enter county name County zoning regulations and permits required by and issued by Enter county name County under its laws and ordinances.

GRANTOR has the right to establish and carry out such customary rural enterprises provided said activities are compatible with the Conservation Values and mission compatibility purposes of this Easement and agriculture and forestry uses of the Protected Property, and are subordinate to the agricultural use of the Protected Property. Enterprises which market petroleum or chemical products are prohibited.

For purposes herein, the term “Ecotourism” shall be broadly defined to mean tourism and activities that are carried out in a relatively undisturbed natural area that serves as a tool for the education, appreciation, and promotion of natural and cultural heritage that has minimal negative impacts on the environment and farming resources of the Protected Property and promotes conservation and best management practices and provides constructive ongoing contributions to and for the local community.

The term “Agritourism” shall be broadly defined to mean those farming activities and traditional rural activities that are carried out on any agricultural location, including horticultural and agribusiness operations, that allow members of the general public, for recreational, entertainment, active involvement, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions, or “Special Events” as defined herein, that have minimal negative impacts upon the environment and the Conservation Values of the Protected Property and are limited to “de minimis” access to and uses of the Protected Property. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

The term “Special Events” shall be broadly defined to mean a one-time or infrequently occurring event outside normal “Agritourism” programs or activities that provides for an agriculturally based leisure, social or cultural experience outside the normal range of agritourism choices or beyond the everyday agricultural experience such as but not limited to: seasonal festivals, harvest celebrations, field days, square dances and the like. In no event, shall “Special Events” exist on the Protected Property for more than seven (7) days per twelve (12) month period nor exist in a manner that negatively impacts the soils or Conservation Values and mission compatibility purposes.

3.4. Procedure to Construct Improvements. GRANTOR’s rights to construct or reconstruct/repair improvements are described in subparagraphs (a) through (d) below so long as such activities are consistent with the Conservation Values and mission compatibility purposes of this Easement. Any construction or reconstruction not permitted in paragraphs (a) through (d) below is prohibited. Before undertaking any construction or reconstruction that requires advance permission, GRANTOR shall notify GRANTEES and obtain written consent from each GRANTEE. All construction or reconstruction is subject to Enter county name County zoning regulations and must be consistent with permits required by and issued by the Enter county name County under applicable laws and ordinances for such construction activities.

a) Fences. Existing fences may be repaired and replaced, and new fences may be built on the Protected Property for purposes of reasonable and customary management of livestock and other agricultural activities or to fence off the perimeter of the Protected Property without any further permission of GRANTEES.

b) Paving and Road Construction. Construction and maintenance of unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Protected Property by this Easement are permitted. Such roads shall be located so as to minimize impact to prime and unique soils on the Protected Property. No portion of the Protected Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the advance written permission of GRANTEES.

c) Lots. In accordance with North Carolina General Statute 106-744(b)(1), not more than three lots that meet applicable county and municipal zoning and subdivision regulations may be created.

\*GRANTOR chooses one of the following\*

\_\_\_\_\_\_\_\_\_(Initial) The lots have been clearly subdivided and delineated on that plat referenced on Page One of this Conservation Easement.

\_\_\_\_\_\_\_\_(Initial) The right to subdivide three lots is hereby waived by GRANTOR.

d) Farm Structures & Improvements.

\*GRANTOR chooses one of the following\*

\_\_\_\_\_(Initial) No new buildings, barns, sheds and other structures shall be permitted on the Protected Property.

\_\_\_\_\_(Initial) Prohibited and Restricted Activities in the Farmstead Area designated on the survey plat referenced herein *shall include the limitations as defined in 2.4, 2.5, 2.6, 2.7 and 2.8.*

3.5. Recreation. GRANTOR expressly reserves the right to engage in low impact non-developed recreational activities such as hunting, fishing, hiking, bird watching, etc. and to control access of all persons for the purpose of hunting and fishing, hiking, bird watching, etc.; provided that these activities do not impact the protection and conservation of any animal habitat or other Conservation Values and mission compatibility purposes of the Protected Property.

3.6. Forest and Land Management. Pursuant to a forest management plan prepared by the North Carolina Forest Service or a North Carolina Registered Forester, trees may be removed, cut and otherwise managed. Land used for silvicultural operations on the Protected Property shall be in a manner consistent with a Conservation Plan as required in Section 4.5.

3.7. Natural Resource Restoration and Enhancement Activities. Notwithstanding any terms contained within this Easement, GRANTOR may engage or contract others to engage in any activity designed to repair, restore, or otherwise enhance the natural resources found or once present on the Protected Property in a manner that is not inconsistent with the Conservation Values and mission compatibility purposes of the Protected Property.

ARTICLE IV. ONGOING RESPONSIBILITY OF GRANTOR and GRANTEES

This Easement is not intended to impose any legal or other responsibility on the STATE, or in any way to affect any existing obligation of GRANTOR as owner of the Protected Property.

Among other things, this shall apply to:

4.1. Taxes. GRANTOR shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property. If (LAND TRUST, COUNTY GOVERNMENT OR STATE) is ever required to pay any taxes or assessments on their interest in the Protected Property, GRANTOR shall upon demand reimburse (LAND TRUST, COUNTY GOVERNMENT OR STATE) for the same.

4.2. Upkeep and Maintenance. GRANTOR shall continue to be solely responsible for the upkeep and maintenance of the Protected Property, to the extent it may be required by law. GRANTEES shall have no obligation for the upkeep or maintenance of the Protected Property.

4.3. Transfer of Protected Property. GRANTOR agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which they transfer or divest themselves of any interest, including leasehold interests, in the Protected Property. GRANTOR shall notify GRANTEES in writing at least thirty (30) days before conveying the Protected Property, or interest therein. Failure of GRANTOR to do so shall not impair the validity of this Easement or limit its enforceability in any way.

4.4. Transfer of Easement. GRANTEES shall have the right to transfer this Easement, subject to the provisions of Article V, to any public agency or private nonprofit organization that, at the time of transfer, is a qualified organization under 26 U.S.C. Section 170(h) of the Internal Revenue Code, as amended and under North Carolina General Statute 121-34 et seq., provided the agency or organization expressly agrees to assume the responsibility imposed on GRANTEES by this Easement. As a condition of such transfer, GRANTEES shall require that the conservation and restrictive purposes intended to be advanced hereunder shall be continued to be carried out. If Enter easement holding entity ever ceases to exist or no longer qualifies under 26 U.S.C. Section 170(h) of the Internal Revenue Code, or applicable state law, a court with jurisdiction shall transfer Enter easement holding entity’s interest in this Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed by this Easement.

4.5. Conservation Practices. GRANTOR, its heirs, successors, or assigns, shall conduct agricultural operations on the Protected Property in a manner consistent with the conservation plan prepared for GRANTOR in consultation with NRCS and approved by the Soil and Water Conservation district (the “Conservation Plan”). The Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date of execution of this Easement and shall be in place prior to the commencement of agricultural operations. However, GRANTOR may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Protected Property, with advance notice to GRANTOR, in order to monitor compliance with the Conservation Plan.

4.6. Inspection and Access. With reasonable advance notice to GRANTOR or with GRANTOR’s prior verbal consent, GRANTEES, their employees and agents and their successors and assigns, shall have the right to enter the Protected Property for the purpose of inspecting the Protected Property to determine whether GRANTOR, its successors or assigns are complying with the terms, conditions and restrictions of this Easement.

4.7. Enforcement/ Rights of Enforcement.

(a) LAND TRUST/COUNTY GOVERNMENT shall have the primary responsibility for management, monitoring and enforcement of the terms of this Easement, subject to the rights of the STATE. LAND TRUST/COUNTY GOVERNMENT shall complete and file the annual monitoring reports due on or before December 31 of each calendar as stipulated in ADFP Trust Fund Grant Contract #Enter contract number, a copy of which is kept on file with the NCADFP Trust Fund. The terms of said contract are hereby incorporated by reference as if fully set forth herein.

(b) Any GRANTEE shall have the right to prevent violations and remedy violations of the terms of this Easement through judicial action, which shall include, without limitation, the right to bring proceedings in law or in equity against any PARTY or PARTIES attempting to violate the terms of this Easement. Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values and mission compatibility purposes of the Protected Property, GRANTEES shall give GRANTOR written notice of the violation and GRANTOR shall have thirty (30) days to cure the violation, before commencing any legal proceedings. If a court with jurisdiction determines that a violation may exist or has occurred, GRANTEES may obtain an injunction to stop the violation, temporarily or permanently. The PARTIES agree that a court may issue an injunction or order requiring GRANTOR to restore the Protected Property to its condition prior to the violation, as restoration of the Protected Property may

be the only appropriate remedy. The failure of GRANTEES to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. In any case where a court finds no such violation has occurred, each party shall bear its own costs.

(c) Under this Easement, GRANTEES are granted the right of enforcement in order to protect the public investment. Any GRANTEE may exercise this right of enforcement under any authority available under State or Federal law. If LAND TRUST, COUNTY GOVERNMENT fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Commissioner of Agriculture, the said Commissioner of Agriculture and their successors and assigns shall have the right to enforce the terms of this Conservation Easement through any and all authorities available under federal or state law. Further, GRANTOR intends that the Government, by and through the Secretary of the Air Force (the “Third Party Beneficiary” or “United States”), pursuant to 10 USC 2684a, be vested with the authority to enforce this Easement, as provided in Section 4.7 and Article V.

(d) GRANTEES shall have the right to recover any and all administrative and legal costs from GRANTOR, including attorney’s fees or expenses associated with any enforcement or remedial action as it relates to the enforcement of this Easement.

(e) In the event that Enter easement holding entity attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this Easement without the prior consent of and payment of consideration to State, then, at the option of the Commissioner of Agriculture, all right, title, and interest in the Easement shall become vested in STATE.

ARTILCE V. RIGHTS OF UNITED STATES GOVERNMENT

5.1 EnforcementRights. Should GRANTEES or GRANTOR fail to carry out its obligation to monitor and enforce this Easement to assure compliance with its terms, restrictions, or conditions, or allow the Protected Property to be used for a purpose inconsistent with this Easement, especially with respect to failure to limit any development or use of the Protected Property that would otherwise be incompatible with the mission of the Installation, or might interfere, whether directly or indirectly, with current or future military training, testing, or operations on or adjacent to the Installation, the Government or its assign, shall have the same rights as GRANTEES with respect to the Easement, including the right to inspect the Protected Property as provided in Section 4.6 and enforce such terms, restrictions and conditions as provided in Section 4.7.

5.2 GRANTEES Notification of Transfers. GRANTEES shall notify the Government in writing prior to transferring this Easement pursuant to Section 4.3 and the Government or its assign, at its option, shall have the right to demand transfer of this Easement, or percentage of interest based upon Governments contribution to acquisition price/easement value as provided in this Easement, to the United States within thirty (30) days from the date of such notification of the GRANTEES intent to transfer the Easement (“Response Period”); and upon such exercise of this option, GRANTOR and GRANTEES shall accept such transfer of interest and subsequent recordation. If the Government does not notify the GRANTEES of such an intent to demand the transfer of the Easement within the Response Period, then the GRANTEES shall be free to transfer the Easement, subject to the terms of the Easement, including but not limited to the rights set forth in this **Article V**. Any approved deed of transfer shall include the third-party rights of the Government as set forth in this Easement and the requirements that all terms, restrictions, conditions, and purposes set forth in this Easement are to be continued in perpetuity by reference to this Easement. If GRANTEES attempt to transfer or otherwise divest itself of this Easement without such notice and opportunity, such transfer shall be legally ineffective and the Government rights shall include the rights pursuant to Section 4.7 and this **Article V**.

5.3 Other Transfer Rights. Should GRANTEES allow the Protected Property to be used for a purpose inconsistent with this Easement, its terms, restrictions, or conditions, or allow the Protected Property to be used for a purpose inconsistent with this Easement, especially with respect to failure to limit any development or use of the Protected Property that would otherwise be incompatible with the mission of the Installation, or might interfere, whether directly or indirectly, with current or future military training, testing, or operations on or adjacent to the Installation, the Government or its assign shall have the right to demand transfer of this Easement, or percentage of interest based upon Government’s contribution to acquisition price/easement value as provided in this Easement, to the United States as provided in this Article V.

5.3.1. Notwithstanding these specified occasions upon which the Government or its assign, at its option, has the right to demand transfer of this Easement, the Government or its assign shall have the right to demand such transfer of the Easement, or percentage of interest based upon Government’s contribution to acquisition price/easement value as provided in this Easement, to the United States as provided in this Article V, at any time for any other purpose deemed necessary to fulfill the purposes of the Easement or the obligations of the Government.

5.3.2. In the event the Government exercises any of these rights, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from GRANTOR, including, but not limited to, attorney’s fees and expenses related to the GRANTOR violations. In the event the Government exercises these rights, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the GRANTEES, including, but not limited to, attorney’s fees and expenses related to GRANTEES violations or failure to enforce the Easement against the GRANTOR.

5.4. In the event of an emergency, the Government or its authorized agent may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice GRANTEES and GRANTOR representative at the earliest practicable time.

ARTICLE VI. REPRESENTATIONS OF THE PARTIES

6.1. GRANTOR’s Title Warranty. GRANTOR covenants and represents that GRANTOR is the sole owner of the Protected Property and is seized of the Protected Property in fee simple, that title is marketable and GRANTOR has good right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Easement, that GRANTEES shall have the use of and enjoy all the benefits derived from and arising out of this Easement subject to existing easements for roads and public and private utilities, and that GRANTOR will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

6.2. GRANTOR’s Environmental Warranty. GRANTOR hereby promises to hold harmless and indemnify the GRANTEES against all litigation, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Law by GRANTOR or any other prior owner of the Protected Property.

“Environmental Law” or “Environmental Laws” means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infections materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

6.3. Liability and Indemnification. GRANTOR agrees to indemnify and hold GRANTEES harmless from any and all cost, claims or liability, including but not limited to reasonable attorneys’ fees arising from any personal injury, accidents, negligence or damage relating to the Protected Property, or any claim thereof, unless due to the negligence of GRANTEES or its agents, in which case liability shall be apportioned accordingly. GRANTOR is responsible for obtaining liability insurance covering the Property with limits deemed necessary by GRANTOR, in its sole discretion.

ARTICLE VII. MISCELLANEOUS

7.1. Recording. GRANTEES shall record this instrument in a timely fashion in the official record of Enter county name County, North Carolina, and may re-record it at any time as may be required to preserve the rights of GRANTEES under this Easement.

7.2. Survival of Terms/Merger of Fee and Easement. GRANTOR and GRANTEES agree that the terms of this Easement shall survive any merger of this fee and easement interest in the Protected Property. In the event LAND TRUST OR COUNTY GOVERNMENT becomes owner of the Protected Property, or any portion thereof, LAND TRUST OR COUNTY shall, at the request of STATE, transfer any right title and interest it holds in this Easement to a third party in accordance with Section 4.4.

7.3. Amendment of Easement. This Easement may be amended by a written instrument executed by GRANTEES and GRANTOR. Any such amendment shall be consistent with Section 1.1 the Statement of Purpose of this Easement and with GRANTEES’ easement amendment policies, and shall comply with 26 U.S.C. §170 of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be recorded. GRANTEES shall give notice of any amendment to and secure approval from, STATE prior to signing and recordation and, must receive written consent prior to amending this Easement.

7.4. Procedure in the Event of Termination of Easement. If it is determined that conditions on or surrounding the Protected Property change so much that it becomes impossible to fulfill the conservation or mission compatibility purposes of this Easement, a court with jurisdiction may, at the joint request of both GRANTOR and GRANTEES, as provided herein, terminate or modify this Easement in accordance with applicable state law.

If this Easement is terminated and the Protected Property is sold as required by Section 1 of 170A-14(g) (6) of the IRS regulations, GRANTOR and GRANTEES shall be entitled to recover the proceeds of this Easement based on the appraised fair market value of this Easement at the time this Easement is extinguished or terminated, subject to any applicable law which expressly provides for a different disposition of the proceeds. The respective shares of GRANTOR and GRANTEES shall be proportionate to the percentage of their investment or contribution to the establishment or acquisition of the Easement. GRANTOR percent is Enter numeral percentage%, LAND TRUST/ COUNTY GOVERNMENT percent is Enter numeral percentage%, Government receipt percent is Enter numeral percentage% and NCADFP Trust Fund percent is Enter numeral percentage%.

7.5 Boundary Line Adjustments. Boundary line adjustments are permitted only in the case of technical errors made in the survey or legal description. In such cases, boundary line adjustments cannot exceed two acres for the entire Protected Property. A correction deed containing the revised legal description shall be properly executed and duly recorded.

7.6 Procedure in the Event of Condemnation or Eminent Domain. GRANTOR and GRANTEES recognize that the sale of this Easement, or any part thereof, gives rise to a property right, immediately vested in GRANTEES with a fair market value equal to the proportionate value that this Easement bears to the value of the Protected Property prior to the restrictions imposed by this Easement. Accordingly, if any condemnation or eminent domain action shall be taken, on all or part of the Protected Property, by any authorized public authority, said authority shall be liable to GRANTEES for the value of the property right vested in GRANTEES at the time of the signing of this Easement. STATE, if not the initiator of a condemnation action, must consent to any such condemnation action.

If condemnation or a taking by eminent domain of a part of the Protected Property or the entire Protected Property by a public authority renders it impossible to fulfill any of the conservation purposes of this Easement on all or part of the Protected Property, this Easement may be terminated through appropriate legal proceedings. If this Easement is terminated and any or all of the Protected Property is sold or taken for public use, then, as set forth by Section 1 of 170A-14(g) (6) of the IRS regulations, the GRANTEES shall be entitled to the proportionate value of this Easement, which has been predetermined as the Protected Property’s unrestricted value, subject to any applicable law which expressly requires a different disposition of the proceeds. GRANTEES shall use its proceeds consistently with the general conservation purposes of this Easement.

If this Easement is extinguished or terminated and the Protected Property was taken by such Condemnation or Eminent Domain action, GRANTOR and GRANTEES, shall receive their proportional share of their investments in the Protected Property at the time of termination. The respective shares of GRANTOR and GRANTEES shall be proportionate to the percentage of their original investment. GRANTOR percent is Enter numeral percentage%, LAND TRUST/ COUNTY GOVERNMENT percent is Enter numeral percentage%, Government percent is Enter numeral percentage% and NC ADFP Trust Fund percent is Enter numeral percentage%.

7.7 Interpretation. This Easement shall be interpreted under the laws of the State of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes, unless such application in lieu of an applicable federal law would violate the Supremacy Clause of the United States Constitution.

7.8. Perpetual Duration; Severability. This Easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to GRANTOR or GRANTEES shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

7.9. Subsequent Liens on Protected Property. No provision of this Easement should be construed as impairing the ability of GRANTOR to use the Protected Property as collateral for subsequent borrowing. Any such liens shall be and remain subordinate to this Easement.

7.10. Subsequent Easements/Restrictions on the Protected Property. The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Protected Property or otherwise diminish or impair the Conservation Values and mission compatibility purposes of the Protected Property is prohibited.

7.11. Notices. Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail to the GRANTOR, Enter ADFP/ALE grantee entity name-GRANTEE, State-GRANTEE and Government as interested party, respectively, at the following address, and copied to the addresses listed below unless a party has been notified in writing by the other of a change of address.

To the Grantor:

Enter landowner name(s)

Enter landowner name(s)

Enter mailing address

Enter City, State, and Zip

To the GRANTEE:

Enter ADFP/ALE grantee entity name – GRANTEE

Enter entity name

Enter mailing address

Enter City, State, and Zip

To State of North Carolina:

N.C. Dept. of Agriculture &

Consumer Services

NC ADFP Trust Fund

2 West Edenton Street

Raleigh, NC 27601

Copy to:

Air Force Civil Engineer Center

Attention: AFCEC/CI

3515 South General McMullen (Bldg.1)

San Antonio, TX 78226-1710

4TH Civil Engineer Squadron

1095 Peterson Avenue

Seymour Johnson AFB, NC 27531

ATTENTION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

7.12. Approval by GRANTEES. In any case where the terms of this Easement require the approval of GRANTEES, unless otherwise stated herein, such approval shall be requested in writing to GRANTEES, in accordance with Section 6.11 and the terms and conditions of this Easement. In any provision of this Easement in which GRANTOR is required to provide advance notice to GRANTEES of any activity on the Protected Property, such notice shall be given not less than thirty (30) calendar days prior to the planned commencement of the activity. If GRANTEES’ approval is required, such approval shall be deemed withheld/disapproved unless GRANTEES provide to GRANTOR written notice of approval within 30 calendar days of receipt of said request. If GRANTOR has received no response after said 30 calendar days, GRANTOR may send a second written notice to GRANTEES requesting a statement of the reasons for the disapproval and GRANTEES shall respond within 30 calendar days with an explanation for the specific reasons and basis for its decision to disapprove. Government only requires a right to property notice and coordination, and right to object to such activities under the same conditions as provided in this Section 7.12, with the Grantees retaining the authority to approve or disapprove, but will consider the Government’s right to object and mitigate the Government’s concerns if necessary before giving approval

7.13. Entire Agreement. This instrument sets forth the entire agreement of the PARTIES with respect to this Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to this Easement. If any provision is found to be invalid, the remainder of the provisions of this Easement, and the application of such provision to persons of circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

7.14. Availability or Amount of Tax Benefits. GRANTEES make no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to GRANTOR or any other person or entity under United States or any state, local or other tax law to be derived from any donations related to this Easement. Any related donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. GRANTEES make no warranty, representation or other assurance regarding the value of this Easement or of the Protected Property. As to all of the foregoing, GRANTOR is relying upon GRANTOR’s own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon GRANTEES or any legal counsel, accountant, financial advisor, appraiser or other consultant of GRANTEES. In the event of any audit or other inquiry of a governmental authority into the effect of any related donation upon the taxation or financial affairs involving GRANTOR or GRANTOR’s heirs, successors or assigns or other similar matter then GRANTEES shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by GRANTEES in responding or replying thereto.

7.15. Warranties and Representations of GRANTOR. By signing this Easement, GRANTOR acknowledges, warrants and represents to GRANTEES that:

(a) GRANTOR has had the opportunity to be represented by counsel of GRANTOR’s and fully understands that GRANTOR is hereby permanently relinquishing property rights which would otherwise permit GRANTOR to have a fuller use and enjoyment of the Protected Property.

(b) There are no recorded or unrecorded leases or other agreements for the production of minerals or removal of timber from the Protected Property which would, if any of the activities permitted under such lease or other agreement was undertaken by GRANTOR, violate the covenants or restrictions in this Easement or otherwise defeat the conservation purpose of this Easement.

7.16 Damages to Animal Husbandry. The Government is not liable for any damages incurred by aircraft noise to animal husbandry.

TO HAVE AND TO HOLD this Deed of Agricultural Conservation Easement unto GRANTEES, its successors and assigns, forever.

IN WITNESS WHEREOF, GRANTOR and GRANTEES, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

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

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Notary Public in and for the aforesaid County and State, do hereby certify that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ personally appeared before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official stamp or seal this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (stamp)

Notary Public

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

GRANTEE:

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Title)

NORTH CAROLINA

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Notary Public of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, North Carolina do hereby certify that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ personally appeared before me this day and acknowledged that (s)he is of the Board of the \_\_\_\_\_\_\_\_\_\_\_\_\_ and that by authority duly given and as the act of the District, the foregoing instrument was signed by in behalf of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness my hand and official stamp or seal this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (stamp)

Notary Public

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

ACCEPTANCE OF PROPERTY INTEREST BY THE STATE OF NORTH CAROLINA BY AND THROUGH THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES:

The North Carolina Department of Agriculture and Consumer Services, an agency of the State of North Carolina, hereby accepts and approves the foregoing Conservation Easement, and the rights conveyed therein, on behalf of the State of North Carolina.

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

Jonathan T. Lanier

NORTH CAROLINA

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Witness by hand and official stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

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