This instrument prepared by and return to: **ADFP Tracking #**

Enter name ADM-ADFP-

**STATE OF NORTH CAROLINA Parcel ID (PIN) #**

**COUNTY OF** **Enter county name** **Enter PIN**

**WARRANTY**

**DEED OF AGRICULTURAL LAND EASEMENT**

This Deed of Agricultural Land Easement (“ALE”) is granted on this Enter day with numerals and letter suffixes day of Enter month, 20     , by Enter landowner name(s) having an address of ­­­­­­­­­­Enter landowner mailing address (collectively “Grantor”), to Enter easement holding entity having an address of Enter entity mailing address (“Grantee”), the North Carolina Department of Agriculture and Consumer Services (NCDA&CS) acting by and through the North Carolina Agriculture Development and Farmland Preservation Trust Fund (“NCDA&CS” or “ADFP Trust Fund”) and with a right of enforcement to the United States of America (“the United States”) acting by and through the United States Department of Agriculture (“USDA”), Natural Resources Conservation Service (**“**NRCS**”**), on behalf of the Commodity Credit Corporation (CCC) as its interest appears herein and the United States Air Force (USAF), Department of Defense, by and through the Secretary of the Air Force (“USAF Secretary”) for the purpose of forever conserving the agricultural productivity of the Protected Property, as defined herein, and its value for resource preservation and as open space. The Grantor, Grantee, NCDA&CS, and the United States are collectively referred to as **“**the Parties”.

The purpose of this easement is to forever conserve the agricultural productivity of the Protected Property, as defined herein, 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”).

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

The United States, through NRCS is providing $Enter amount toward the purchase of this ALE Deed; which amount represents Enter percentage% of the appraised fair market value of the rights conveyed by this ALE Deed (“Easement Value”). Grantor is donating Enter percentage% of the Easement Value $Enter amount, and the remaining Enter percentage% of the Easement Value is provided by the Grantee through the ADFP Trust Fund in the amount of $Enter amount; with the United States, through the USAF Secretary, contributing $Enter Amount toward the purchase of this ALE Deed; which amount represents Enter percentage% of the appraised fair market value of the rights conveyed by this ALE Deed (“Easement Value”) for a total cash consideration of $Enter total amount from US, grantor, and grantee cash contributions.

**RECITALS**

**WHEREAS**, the United States Department of Defense, the United States Department of Agriculture, and the United States Department of the Interior have established the North Carolina Sentinel Landscapes (NCSL) 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.

**WHEREAS**, the Protected Property, as defined herein, is adjacent to or in the vicinity of the Installation, and therefore, the United States of America, acting by and through the USAF Secretary or his or her delegate entered into an agreement DATE pursuant to 10 U.S.C. § 2684a (“2684a Agreement”) with NCDA&CS, a qualified eligible entity, to receive USAF 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 USAF and the Grantee through such acquisition from a willing landowner. Thus, it is also the purpose of this Agricultural Land 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 (collectively, “Mission Compatibility Purposes”). This term shall refer to three missions – that of the United States Air Force, Air Combat Command, and Seymour Johnson Air Force Base. These missions are included within each of the official websites identified above. Mission Compatibility Purposes, collectively defined above, basically means that this ALE Deed shall not negatively impact or interfere with these missions.

**WHEREAS**, Grantor is the sole owner in fee simple, of a certain farm property identified in Exhibit Enter exhibit letter or number located in Enter township name Township, Enter county name County, North Carolina and identified on the plat of property entitled “Plat Showing Boundary Survey & Conservation Easement” prepared by Enter surveyor which plat is recorded at Plat Book Enter book number Page Enter page number, Enter county name County Registry with such farm property totaling Enter number of acres acres covered by this ALE Deed (the “Protected Property”).

 **WHEREAS**, the Protected Property consists primarily of productive agricultural land. The Protected Property also contains within its boundary buildings and/or improvements as shown on Exhibit Enter exhibit letter or number attached hereto and incorporated herein. The majority of the soils on the Protected Property have been classified as “prime” or “statewide important” soils by the NRCS, United States Department of Agriculture. It is the primary purpose of this ALE Deed to protect the agricultural soils and agricultural viability and productivity by limiting non-agricultural uses of the Protected Property.

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

 **WHEREAS**, it is a secondary purpose of this ALE Deed to protect natural wildlife habitat, historical, and scenic resources. The agricultural, natural, wildlife habitat and scenic resources of the Protected Property are collectively referred to as the “Conservation Values” of the Protected Property.

 **WHEREAS**, Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report (“Report”), a copy of which is maintained in the files of the Grantee. The specific Conservation Values of the Protected Property and its current use and state of improvement are described in this Report prepared by the Grantee with the cooperation of the Grantor, and acknowledged by both parties to be accurate as of the date of this ALE Deed. This Report may be used by the Grantee to document any future changes in the use or character of the Protected Property in order to ensure the terms and condition of the ALE Deed are fulfilled. This 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 Grantor and Grantee have copies of this Report, and this Report will remain on file at the office of the Grantee.

 **WHEREAS**, the Grantor and Grantee agree that the current agricultural use of, and improvements to, the Protected Property are consistent with the Conservation Purposes of this ALE Deed.

 **WHEREAS**, the Grantor intends that the Conservation Values of the Protected Property be preserved and maintained, and further, Grantor intends to convey to the Grantee the right to preserve and protect the agricultural and other Conservation Values of the Protected Property in perpetuity.

 **WHEREAS**, the Conservation Purposes of the ALE Deed are recognized by, and the grant of this ALE Deed will also serve the following delineated governmental conservation statutes and regulatory framework:

1. This ALE Deed in perpetuity is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP), 16 U.S.C. § 3865 et seq. and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related Conservation Values, by limiting non-agricultural uses that negatively affect the agricultural uses and Conservation Values of the Protected Property
2. N. C. Gen. Stat. § 106-747 et seq., which states that “The General Assembly finds that sentinel landscapes are places where preserving the working and rural character of the State's private lands is important for both national defense and conservation priorities.” The Installation is located within the NCSL.
3. N. C. Gen. Stat. § 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 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;”
4. N. C. Gen. Stat. § 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;”
5. The Uniform North Carolina Conservation and Historic Preservation Agreements Act (N. C. Gen. Stat. § 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;”
6. The establishment of the North Carolina Farmland Preservation Trust Fund established in 2005 (N.C. Gen Stat § 106-744 (c)) to preserve important farmland in North Carolina; and
7. The special use assessment of farm and forest land as set forth in N. C. Gen. Stat. § 105-277.2 et seq.

 **WHEREAS**, the Grantee, of Enter entity name is a tax-exempt public charity under Section 501(c) and 509(a)2 of the Internal Revenue Code and the regulations promulgated thereunder. The Grantee is a qualified organization under I.R.C. Section 170(h).

 **NOW, THEREFORE**, for Enter amount spelled out Dollars ($Enter amount in numerals) and for the reasons given and other good and valuable consideration and in consideration of their mutual covenants, terms, conditions and restrictions contained herein, the Grantor hereby voluntarily grants and conveys to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual ALE Deed in the Protected Property, which ALE Deed is an immediately vested interest in real property of the nature and character described herein. Grantor promises that they 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 the Grantee to enforce these covenants in the manner described below.

**ARTICLE I. GENERAL**

1.1. Statement of Purpose (“Purpose”). It is the primary purpose of this ALE Deed to enable the Protected Property to remain in agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity by limiting nonagricultural uses that negatively affect the agricultural uses and Conservation Values and be consistent with the Mission Compatibility Purposes of the Protected Property. No activity that would significantly impair the actual or potential agricultural use of the Protected Property, or that is otherwise inconsistent with the Purpose of this ALE Deed, shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this ALE Deed are consistent with the primary Purpose stated above, it is within the Purpose of this ALE Deed to also protect those values, and no activity that would significantly impair those values shall be permitted. Any activity that would significantly impair the Mission Compatibility Purposes of the Protected Property shall not be permitted as provided in this ALE.

1.2. Preserving Agricultural Uses. The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the Purpose of the ALE Deed, No uses will be allowed that violate federal laws, including federal drug laws, or that decrease the ALE Deed’s protection for the Purpose of the ALE Deed. Allowed uses of the Protected Property include the specific uses allowed in Section 2.1(B)(i)-(iv) and the following activities, subject to the qualifications stated below:

1. Agricultural Production – The production, processing and marketing of agricultural crops and livestock compatible with the Purpose of the ALE Deed are allowed provided these activities are conducted in a manner consistent with the terms of the ALE Deed and the ALE Plan described in Section 4.5.
2. Forest Management and Timber Harvest – Forest management and timber harvesting are allowed, provided these activities are carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property, and in accordance with a written Forest Management Plan as described in Section 3.7.

1.3. Perpetual Duration. This ALE Deed over the Protected Property as further described in Exhibit Enter exhibit letter or number shall be perpetual. It is an ALE Deed in gross, runs with the land and is enforceable by Grantee against Grantor as provided herein, and against Grantor’s representatives, successors, assigns, lessees, agents and licensees.

1.4. Extinguishment of Development Rights. Except as otherwise reserved to the Grantor in this ALE Deed, 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 the Grantor and Grantee.

1.5. Compliance with other Regulatory Requirements. The 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 ALE Deed, including Enter county name County, State of North Carolina or federal requirements, regardless of any reserved rights or permissions contained in this ALE Deed.

**ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES**

Any activities inconsistent with the Purpose of this ALE Deed are prohibited.

The terms and conditions of this ALE Deed run with the land and are binding upon the Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this ALE Deed including the following:

2.1. Limitations on Nonagricultural Uses.

 (A) Subdivision. Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited. Grantor hereby waives any right to subdivide the protected property pursuant to North Carolina General Statute 106-744(b)(1).

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this ALE Deed, and the restrictions and covenants of this ALE Deed will apply to the Protected Property as a whole.

(B) Residential, Industrial and Commercial Use. Residential, Industrial or commercial activities, including use as airfields and/or airstrips on the Protected Property, and access for such purposes on the Protected Property are prohibited except for the following:

1. Agricultural production and related uses in accordance with the terms and conditions of this ALE Deed.
2. The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the Purpose of this ALE Deed and in accordance with the terms and conditions of this ALE Deed;
3. Temporary or seasonal outdoor activities or events that do not harm the Purpose of the ALE Deed; and
4. Commercial enterprises related to agricultural or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, farm wineries; small-scale retail enterprises compatible with agriculture or forestry, including but not limited to cafes, shops, and studios for arts or crafts. 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.

2.2. Surface and Subsurface Mineral Exploration and Extracting. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel coal, or any other mineral substance owned by Grantor as of the date of this ALE Deed or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited. Limited mining activities for materials (e.g., sand, gravel, or shale) used to facilitate the agricultural operations on the Protected Property are allowed where the extraction of such materials is limited, localized, and small with a defined area and acreage identified on Exhibit       and does not harm the Purpose of the ALE Deed.

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this ALE Deed is executed, and their interests have not been subordinated to this ALE Deed, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third part is conducted in accordance with this section

2.3. Any mineral leases or other conveyances of mineral entered into or renewed after the date of this ALE Deed are subordinate to the terms of this ALE Deed and must incorporate by reference this ALE Deed.

2.4. Surface Alteration. Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

(i) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, and/or wildlife enhancement or wildlife creation.

(ii) Erosion and sediment control pursuant to a plan approved by the Grantee;

(iii) Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the Purposes of the ALE Deed

(iv) Agricultural activities and related conservation activities conducted in accordance with the terms and conditions of this ALE Deed and the ALE Plan described herein.

2.5. Motorized Vehicle Use. Grantor shall not use motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Purpose of the ALE Deed; however, notwithstanding the foregoing, use of snowmobiles on snow is allowed on the Protected Property.

2.6. 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. The placement of underground or above ground storage tanks or other materials is prohibited, with the exception of agricultural products, byproducts (including the composting of biodegradable material 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 Purposes of the Protected Property.

2.7. Structures and Improvements. There shall be no building, tower, facility, mobile home, or other structure constructed or placed on the Protected Property unless specifically authorized in Article III. Any structures permitted or reserved by Grantor shall be of such reasonable size, proportion, height and character so as not to significantly detract from the open space and agricultural Purpose of this ALE Deed. Under no circumstances shall recreational fields, golf courses or ranges, airstrips or helicopter pads be constructed or permitted on the Protected 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 one hundred and fifty (150) feet above ground level .

2.8. Signage. 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 ALE Deed status, the name and address of the occupant, to advertise an on-site activity, and to advertise the property for sale or rent, as allowed by the sign ordinance set forth in the Enter county name County Zoning and Subdivision 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.

2.9. Limitation on Impervious Surfaces. Impervious surface will not exceed type the number percent (     %) of the Protected Property, excluding NRCS approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings, with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE Deed. Excluded from this definition are compacted dirt and gravel surfaces. This restriction shall apply to permanent and temporary structures and facilities, both existing and proposed. The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the agricultural use and future viability and related Conservation Purposes of the Protected Property as determined by the Grantee in consultation with the Chief of NRCS.

2.10. Lighting and Visible Emissions. Exterior light and visible 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. Public Law 112-95, Title III, Subtitle A, Section 311 prohibits against aiming a laser pointer at an aircraft, making it a criminal offense (18 U.S.C. § 39A). The Protected Property shall not be used to generate visible emissions which violate the provisions of North Carolina Administrative Code (NCAC) 15A NCAC 02D.0521, Control of Visible Emissions as these provisions exist on the date of this ALE Deed.

2.11. 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, Grantee requires that these activities be in compliance with the ALE 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). Grantee requires that habitat improvement activities be in compliance with the ALE Plan and Forest Management Plan, to include the requirements of section 3.11 (Pond Creation and Wetland Restoration). New or expanded aquaculture of any size, or wetland restoration or pond creation (permanent standing water) larger than twenty (20) acres of land use on the Protected Property must be coordinated by all Parties, including the Installation. Grantee and the Installation shall receive request for aquaculture, wetland restoration, or pond creation 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 Grantee 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 or its general Mission Compatibility Purposes. Further, unmanned aerial vehicle (UAV)/unmanned aerial system (UAS) operations one hundred (100) feet above ground level are prohibited.

2.12. Electrical 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**

The 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 ALE Deed, and consistent with the Purpose defined and described in Section 1.1. Unless otherwise specified below, nothing in this ALE Deed shall require the 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 ALE Deed 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 for farming or other agricultural activities that are consistent with the Purposes of the Protected Property and in accordance with applicable federal, state, and local laws and regulations, and in accordance with the ALE Plan. Subject to any prohibitions stated herein, farming, grazing, horticultural (provided such activity does not remove topsoil from the Protected Property) 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 ALE Plan as required in Section 4.5 hereafter.

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 ALE Deed 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, farm machinery repair, sawmills, 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

Grantor has the right to establish and carry out customary rural enterprises provided such activities are compatible with the Purposes of this ALE Deed and agriculture and forestry uses of the Protected Property and are subordinate to the agricultural and residential 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 allows 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 Purposes of this ALE Deed. Any parking associated with such events shall be located within the existing farm roads as depicted in Exhibit Enter exhibit letter or number.

3.4. Construction on the Protected Property - Procedure to Construct Buildings and Other Improvements. The Grantor’s rights to construct, enlarge or reconstruct/repair buildings and other improvements on the Protected Property are described in sections 3.4 and 3.6. Any construction or reconstruction not permitted below is prohibited. Except as otherwise permitted in sections 3.4 and 3.6, no structures or improvements, whether existing or in the future, may be constructed, replaced or enlarged on the Protected Property. .

Grantor further understands that the type the number percent (     %) maximum impervious surface limit set by the USDA Agricultural Conservation Easement Program-ALE disallows the construction of any new structures or impervious roads or other improvements to the Protected Property or replacement of said structures that would increase the total impervious surface area above the type the number percent (     %) maximum. All permanent construction and/or placement upon the Protected Property of any impervious surface must be approved in writing by the Grantee to ensure the maximum impervious limit is not exceeded.

1. Fences - Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Protected Property or to mark boundaries of the Protected Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose of the ALE Deed.
2. Paving and Road Construction - New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and are necessary to carry out the agricultural operations or other allowed uses on the Protected Property. Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property. The granting or modification of easements for roads is prohibited when the road will adversely impact the Purpose of the ALE Deed as determined by the Grantee in consultation with the Chief of NRCS.
3. Temporary Structures - Any temporary structures proposed shall be for agricultural purposes only and may only be erected with the advance written permission of the Grantee. The Grantee shall give such permission within a reasonable time and ensure the proposed temporary structure is erected in a way that minimizes any negative impact to the soils, diminishes and/or in any way is inconsistent with the Conservation Values of the ALE Deed.
4. Permanent Structures – Only structures required for on farm energy production / renewable energy as outlined in 3.6 or required for conservation purposes in the ALE Plan are allowable.

3.5. Recreational Improvements. 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 Purposes of the Protected Property.

3.6. Utility Services, Septic Systems, and Fuel Storage. No utility services, septic systems or fuel storage is permitted in the conservation easement area. The modification of easements for utilities recorded prior to the recording of this ALE Deed is prohibited when the utility will adversely impact the purpose of the ALE Deed as determined by the Grantee in consultation with the Chief of NRCS.

On-farm energy production/renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the Conservation Values of the Protected Property and consistent with the Purpose of the ALE Deed.

3.7. Forest Management and Timber Harvest. Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains twenty (20) contiguous acres of forest then forest management and timber harvesting must be performed in accordance with a written Forest Management Plan. The Forest Management Plan must be prepared by a professional resource manager, in consultation with the Grantee. A Forest Management Plan will not be required for the following allowed noncommercial activities: cutting of trees for the construction of allowed roads, utilities, buildings and structures on the Protected Property, cutting of trees for trail clearing, cutting of trees for domestic use as firewood or for other domestic uses by Grantor, removal of trees posing an imminent hazard to the health or safety of person or livestock, or removal of invasive species.

Pursuant to a Forest Management Plan trees may be removed, cut and otherwise managed (to control insects, for pasture restoration, for firewood and other non-commercial uses, including construction of permitted improvements, cutting of trees for trail clearing, removal of trees posing an imminent hazard to the health or safety of persons or livestock, removal of invasive species, and fences) on the Protected Property.

Any other cutting, removal or harvesting of trees may be undertaken within the areas identified and marked as “Forest” on Exhibit Enter exhibit letter or number where the purpose is for commercial harvesting of trees if in accordance with the ALE Plan referenced in Section 4.5 herein and a Forest Management Plan that is consistent with the above-referenced ALE Plan and prepared by a professional forester approved by Grantee, such approval not to be unreasonably withheld.

 “Forever wild” or other similarly written Forest Management Plans are prohibited.

3.8. Water Rights. Grantor shall retain and reserve the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Protected Property. Grantor shall not transfer, encumber, lease, sell or otherwise separate such water rights from title to the Protected Property itself.

3.9. Land Application. The land application, storage and placement on the Protected Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with all applicable federal, state and local laws and regulations and in accordance with the ALE Plan. Spray irrigation of domestic septic effluent to serve the Protected Property’s dwelling(s) is prohibited.

3.10. Natural Resource Restoration and Enhancement Activities. 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, that are consistent with the Purposes of this ALE Deed and the ALE Plan and subject to the written approval of Grantee.

3.11. Pond Creation, and Wetland Restoration. The Grantor is permitted to construct ponds and restore wetlands in accordance with Section 2.11, the ALE Plan, and NRCS standards and specifications. Ponds must support agricultural operations such as irrigation, livestock water supplies, or fire control. Wetlands must be either used to treat agricultural waste or support critical habitat needs for wildlife species. The size of ponds and wetlands must be supported by appropriate documentation in the ALE Plan.

3.12. Grassland Use of the Protected Property. Grantors are allowed to graze, harvest hay for feed and non-crop seed production, mow, construct fire breaks, conduct fire suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and Conservation Purposes of this ALE Deed. The term “common grazing practices” means those practices customary to the region where the Protected Property is located to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property.

**ARTICLE IV. ONGOING RESPONSIBILITY OF GRANTOR AND GRANTEE AND RELATED RIGHTS OF THE UNITED STATES**

Other than as specified herein, this ALE Deed is not intended to impose any legal or other responsibility on the Grantee or the United States, or in any way to affect any existing obligation of the Grantor as owners of the Protected Property.

Due to the State’s interest in this ALE Deed other than as specified herein, this ALE Deed is not intended to impose any legal or other responsibility on the NCDA&CS, or in any way to affect any existing obligation of the Grantor as owners of the Protected Property.

Among other things, this shall apply to:

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

4.2. Upkeep and Maintenance. The 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. The Grantee and the United States shall have no obligation for the upkeep or maintenance of the Protected Property. Due to the State’s interest in this ALE Deed, NCDA&CS shall have no obligation for the upkeep or maintenance of the Protected Property.

4.3. Transfer of Protected Property. The Grantor agrees to incorporate by reference the terms of this ALE Deed in any deed or other legal instrument by which they transfer or divest themselves of any interest, including leasehold interests, in the Protected Property. The Grantor shall notify the Grantee and the United States’ representatives as provided in Section 6.11 in writing at least thirty (30) days before conveying the Protected Property, or any interest therein. Failure of Grantor to do so shall not impair the validity of this ALE Deed or limit its enforceability in any way.

4.4. Transfer of ALE Deed. Subject to the right of enforcement or other rights of the United States as specified in Section 4.9 and other pertinent paragraphs herein, and with timely written notice to and prior written approval of the United States, the Grantee shall have the right to transfer the rights created by this ALE Deed to any public agency or to any private nonprofit organization approved by Grantor, such approval to not be unreasonably withheld, that, at the time of transfer, is a qualified organization under Section 170(h) of the Internal Revenue Code, as amended and under N. C. Gen. Stat. § 121-34 et seq., provided the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this ALE Deed. If the Grantee ever ceases to exist or no longer qualifies under Section 170(h) of the U.S. Internal Revenue Code, or applicable State law, a court with jurisdiction may transfer this ALE Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed by this ALE Deed.

Subject to the contingent rights of the State of North Carolina with timely written notice and approval of the United States, the Grantee shall have the right to transfer this ALE Deed to any public agency or private nonprofit organization that, at the time of transfer, is a qualified organization under 26 U.S.C. § 170(h) of the Internal Revenue Code, as amended and under N. C. Gen. Stat. § 121-34 et seq., provided the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this ALE Deed. As a condition of such transfer, Grantee shall require that the Conservation Purposes intended to be advanced hereunder shall be continued to be carried out. If the Grantee ever ceases to exist or no longer qualifies under 26 U.S.C. § 170(h) of the Internal Revenue Code, or applicable State law, a court with jurisdiction shall transfer this ALE Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed by the ALE Deed.

4.5. ALE Plan. The Grantors, their heirs, successors, or assigns, shall conduct agricultural operations on the Protected Property in a manner consistent with the Agricultural Land Easement Plan (the “ALE Plan”) prepared by Grantee in consultation with Grantor and, as needed, NRCS and approved by the Soil and Water Conservation district. This ALE 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 Deed. However, the Grantor may develop and implement an ALE Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. A copy of the current ALE Plan will be kept on file with the Grantee. The ALE Plan shall describe the farm or ranch management system, describe the natural resource concerns on the Protected Property, describes the conservation measures and practices that may be implemented to address the identified resource concerns, and promotes the long-term viability of the land to meet the Purpose of the ALE Deed.

 The ALE Plan shall reflect the Best Management Practices (BMP) in the production and usage of the land resources on the Protected Property. The ALE Plan shall address the use of the land for crop, pasture and timber production. The ALE Plan shall include any or all of the following components, as applicable.

1. If the Protected Property contains Highly Erodible Cropland, then the ALE Plan shall include a conservation plan that complies with 7 CFR Part 12 pertaining to all highly erodible cropland on the Protected Property. If the NRCS standards and specifications for highly erodible cropland are revised after the date of this ALE Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan.
2. The ALE Plan will summarize current cropping systems on the Protected Property and recommended conservation practices for maintaining the agricultural production capability, as defined in NCGS 106-744 (b), for all cropland on the Protected Property that is deemed not highly erodible.
3. If applicable, the ALE Plan will include a pasture conservation plan to address management of the grassland on the Protected Property to maximize grazing opportunities and to assure that the soil resource base is protected
4. If applicable, the ALE Plan will include a Forest Management Plan, as described in Section 3.7, that describes the management system and practices to conserve, protect, or enhance the viability of the forest land on the Protected Property and as applicable, any significant conservation benefits. The Forest Management Plan will address landowner objectives, potential soil erosion issues relevant to roadways, logging decks and other stream related issues. The Forest Management Plan must be prepared by a professional resource manager, in consultation with the Grantee.

The Grantee must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NCADFP may notify the Grantee. NCADFP will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the ALE Deed, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

 4.6. Inspection and Access. With reasonable advance notice to the Grantor or with the Grantor’s prior verbal consent, Grantee or NCDA&CS, its employees and agents and its successors and assigns, shall have the right to enter the Protected Property for the purpose of inspecting the Protected Property to determine whether the Grantor, its successors or assigns are complying with the terms, conditions and restrictions of this ALE Deed.

4.7. Enforcement. The Grantee shall have the primary responsibility for management and enforcement of the terms of this ALE Deed.

Due to the State’s interest in this ALE Deed, the Grantee shall have the primary responsibility for management, monitoring, and enforcement of the terms of this ALE Deed, subject to the rights of the NCDA&CS. Grantee shall complete and file the annual monitoring reports as stipulated in the ADFP Grant, a copy of which is kept on file with the NCDA&CSADFP Trust Fund and also provide a copy to the USAF Secretary’s representative as provided in Section 6.11. The terms of such contract are hereby incorporated by reference as if fully set forth herein.

Grantee shall have the right to prevent violations and remedy violations of the terms of this ALE Deed 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 ALE Deed. Except when an ongoing or imminent violation could irreversibly diminish or impair the Purposes of the Protected Property, the Grantee shall give the Grantor and NCDA&CS written notice of the violation and Grantor shall have thirty (30) days to cure the violation or submit a plan of action to cure violation which must receive approval from NCDA&CS, Chief of NRCS, and the USAF Secretary’s authorized representative by notifying the United States pursuant to Section 6.11 before commencing any legal proceedings. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop the violation, temporarily or permanently. Grantor, Grantee, and NCDA&CS agrees that a court may issue an injunction or order requiring the 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 the Grantee 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, Grantor, Grantee, and NCDA&CS shall bear its own costs.

4.8. Rights of the State of North Carolina**.** Subject to the United States’ right of enforcement in Paragraph 4.9 below, in the event that the Grantee fails to enforce any of the terms of this ALE Deed, as determined in the discretion of the NCDA&CS, the said North Carolina Commissioner of Agriculture and his or her successors and assigns shall have the right to enforce the terms of this ALE Deed through any and all authorities available under federal or state law.

In the event that Grantee attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this ALE Deed without the prior consent of the North Carolina Commissioner of Agriculture and payment of consideration to the State of North Carolina, then, at the option of the North Carolina Commissioner of Agriculture, all right, title, and interest in the ALE Deed shall become vested in the State of North Carolina. Notwithstanding the foregoing, nothing in this paragraph shall affect the United States Rights as set forth in Section 4.9. and 4.10.

4.9. USDA/NRCS Right of Enforcement. Pursuant to 16 U.S.C. § 3865 et seq., the United States, by and through NRCS, is granted the right of enforcement that it may exercise only if the terms of the ALE Deed are not enforced by the Grantee. The Secretary of the United States Department of Agriculture (the “Secretary”) or the Secretary’s assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under state or federal law if Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE Deed, as determined in the sole discretion of such Secretary.

In the event the United States, by and through NRCS, exercises this right of enforcement, 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 ALE Deed from the Grantor, including, but not limited to, attorney’s fees and expenses related to Grantor’s violations. In the event the United States, by and through NRCS, exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this ALE Deed from the Grantee, including, but not limited to, attorney’s fees and expenses related to Grantee’s violations or failure to enforce the ALE Deed against the Grantor up to the amount of the United States, by and through NRCS, contribution to the purchase of the ALE Deed.

The Grantee will annually monitor compliance and provide NRCS with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE Deed. If the annual monitoring report is insufficient or is not provided annually, or if the NRCS has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States, by and through NRCS, may exercise its right of inspection. For purposes of inspection and enforcement of the ALE Deed, and NRCS ALE-Agreement with the Grantee, the NRCS will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the NRCS shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the NRCS may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of the ALE Deed and will give notice to Grantee and Grantor or Grantor’s representative at the earliest practicable time.

4.10. USAF Right of Enforcement and Transfer. The USAF is granted the following in order to protect the public investment of the USAF to this ALE Deed.

1. Should Grantee or Grantor fail to carry out its obligation to monitor and enforce this Agricultural Land Easement to assure compliance with its terms, restrictions, or conditions, or allow the Protected Property to be used for a purpose inconsistent with this ALE Deed, especially with respect to failure to be consistent with Mission Compatibility Purposes, the USAF, acting by and through the USAF Secretary or his or her delegate, shall have the same rights as Grantee with respect to the ALE Deed, 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.
2. Grantee shall notify the USAF in writing prior to transferring this ALE Deed pursuant to Section 4.3 and the USAF Secretary, at his or her option and through his or her delegate, shall have the right to demand transfer of this ALE Deed to the United States and under the administrative control of the USAF, or demand payment of the percentage of interest to the USAF based upon the USAF contribution to the acquisition price of the ALE Deed value as provided in this ALE Deed, within thirty (30) days from the date of such notification of the Grantee’s intent to transfer the ALE Deed (“Response Period”); and upon such exercise of this option, Grantor and Grantee shall accept such transfer of interest and subsequent recordation. If the USAF does not notify the Grantee of such an intent to demand the transfer of the ALE Deed within the Response Period, then the Grantee shall be free to transfer the ALE Deed, subject to the terms of the ALE Deed, including but not limited to the rights set forth in this Section 4.10. Any approved deed of transfer shall include the third-party rights of the USAF as set forth in this Section 4.10 and the requirements that all terms, restrictions, conditions, and purposes set forth in this ALE Deed are to be continued in perpetuity by reference to this Easement. If Grantee attempts to transfer or otherwise divest itself of this ALE Deed without such notice and opportunity, such transfer shall be legally ineffective and the USAF rights shall include the rights pursuant to this Section 4.10.
3. Should Grantee allow the Protected Property to be used for a purpose inconsistent with this ALE Deed, especially with respect to failure to be consistent with the Mission Compatibility Purposes, the USAF, acting by or through the USAF Secretary or his or her delegate, shall have the right to demand transfer of this ALE Deed to the United States and under the administrative control of the USAF, or demand payment of the percentage of interest to the USAF based upon the USAF contribution to the acquisition price of the ALE Deed value as provided in this ALE Deed and this Section 4.10.
4. Notwithstanding these specified occasions upon which the USAF Secretary, at his or her option or through his or her delegate, has the right to demand transfer of this ALE Deed to the United States and under the administrative control of the USAF, or demand payment of the percentage of interest to the USAF based upon the USAF contribution to the acquisition price of the ALE Deed value as provided in this ALE Deed, as provided in this Section 4.10, at any time for any other purpose deemed necessary to fulfill the Mission Compatibility Purposes of the ALE Deed or the obligations of the USAF.
5. In the event the USAF 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 ALE Deed from Grantor, including, but not limited to, attorney’s fees and expenses related to the Grantor violations. In the event the USAF exercises these rights, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Grantee, including, but not limited to, attorney’s fees and expenses related to Grantee violations or failure to enforce the Easement against the Grantor.
6. In the event of an emergency, the USAF 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 to Grantee’s and Grantor’s representative at the earliest practicable time.

**ARTICLE V. REPRESENTATIONS OF THE PARTIES**

5.1. Grantor’s Title Warranty. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey this ALE Deed; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this ALE Deed, that Grantor will warrant and defend title to the same against the claims of all persons whomsoever, and that the Grantee shall have the use of and enjoy all the benefits derived from and arising out of this ALE Deed subject to existing easements for roads and public and private utilities.

5.2. Grantor’s Environmental Warranty. Grantor warrants that Grantor is in compliance with, and will remain in compliance with, all applicable Environmental Laws, as defined herein. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law as defined herein relating to the operations or conditions of the Protected Property. Grantor further warrants that they have no actual knowledge of a release or threatened release of Hazardous Materials as defined herein, as such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee and the United States 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 Laws by Grantor or any other prior owner of the Protected Property. Grantor’s indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Protected Property or any restoration activities carried out by Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

Furthermore, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Due to the State’s interest in this ALE Deed, the Grantor hereby promises to hold harmless and indemnify the NCDA&CS 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 Laws 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, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

5.3. General Disclaimer, Grantor Warranty, Liability and Indemnification. The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee’s or Grantor’s negligent acts or omissions or Grantee’s or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any federal, state or local laws, including all Environmental Laws defined in Section 5.2 including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Grantor agrees to indemnify and hold harmless the United States, it’s employees, agents, and assigns the Grantee, and the State of North Carolina harmless from any and all costs, claims or liability, including but not limited to reasonable attorney’s 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 Grantee or its agents, in which case liability shall be apportioned accordingly. Grantor is responsible for obtaining liability insurance covering the Protected Property with limits deemed necessary by Grantor, in their sole discretion.

Grantor must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys’ fees and attorneys’ fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor’s negligent acts, omissions or breach of any representation, warranty, covenant or agreement contained in this ALE Deed or violations of any federal, state, or local laws, including all Environmental Laws (defined in Section 5.2).

Due to the State’s interest in this ALE Deed, Grantor agrees to indemnify and hold Grantee and the State of North Carolina, its employees, agents and assigned harmless from any and all costs, claims or liability, including but not limited to reasonable attorney’s 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 Grantee or its agents, in which case liability shall be apportioned accordingly.

**ARTICLE VI. MISCELLANEOUS**

6.1. Recording. Grantee 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 the Grantee, the State of North Carolina and the United States under this ALE Deed.

6.2. Survival of Terms/Merger of Fee and Easement. The Grantor and Grantee agree that the terms of this ALE Deed shall survive any merger of this fee and easement interest in the Protected Property. In the event the Grantee becomes owner of the Protected Property, or any portion thereof, Grantee shall transfer any right, title and interest in this ALE Deed to a third party in accordance with Section 4.4.

6.3. Amendment of Easement. This ALE Deed may be amended only if, in the sole and exclusive judgement of the Grantee and the United States, by and through the Chief of NRCS, the North Carolina Commissioner of Agriculture, and the USAF Secretary or his or her delegate, such amendment is consistent with the Purposes of this ALE Deed and complies with all applicable laws and regulations. The Grantee must provide timely written notice to the Chief of NRCS, USAF Secretary or his or her delegate, and North Carolina Commissioner of Agriculture of any proposed amendments. Prior to the signing and recordation of the amended ALE Deed, such amendments must be mutually agreed upon by the Grantee, Grantor, Chief of NRCS, USAF Secretary or his or her delegate, and the North Carolina Commissioner of Agriculture. Any purported amendment that is recorded without the prior approval of the United States and North Carolina Commissioner of Agriculture is null and void.

Any such amendment shall be consistent with the Purpose of this ALE Deed and comply with Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be duly recorded in the Enter county name County Registry. Grantee must provide to United States and the North Carolina Commissioner of Agriculture timely notice in writing of the proposed amendment prior to signing and recordation.

6.4. Boundary Line Adjustments. Boundary line adjustments are permitted only in the case of technical errors made in the survey or legal description. A correction deed containing the revised legal description shall be properly executed and duly recorded after approval of the amendment in accordance with Section 6.3.

6.5. Procedure in the Event of Extinguishment, Termination, and Condemnation. The interests and rights under this ALE Deed may only be extinguished or terminated with written approval of the Grantee, the Chief of NRCS, USAF Secretary or his or her delegate, and the North Carolina Commissioner of Agriculture. Due to the federal interest in this ALE Deed any proposed extinguishment, termination, or condemnation action that may affect the United States’ interest its Federal interest in the Protected Property must be reviewed and approved by the Chief of NRCS, USAF Secretary or his or her delegate and the North Carolina Commissioner of Agriculture. Due to the State’s interest in this ALE Deed, prior written consent must also be provided by NCDA&CS prior to termination or modification of this ALE Deed, in accordance with applicable State law.

If it determines that conditions on or surrounding the Protected Property change so much that it becomes impossible to fulfill the Conservation Purposes of this ALE Deed, a court with jurisdiction may, at the joint request of both the Grantor and the Grantee and with prior written consent of the United States, through the Chief of NRCS and the USAF Secretary, and North Carolina Commissioner of Agriculture, as provided herein, terminate or modify the ALE Deed in accordance with applicable State law.

If the ALE Deed is terminated and the Protected Property is sold then the Grantee, ADFP Trust Fund and United States shall be entitled to recover the proceeds of the ALE Deed based on the appraised fair market value of the ALE Deed at the time the easement is extinguished or terminated, subject to any applicable law which expressly provides for a different disposition of the proceeds.

With respect to a proposed extinguishment, termination, or condemnation action, the Grantee and United States stipulate that the fair market value of the ALE Deed is Enter percent percent, hereinafter the “Proportionate Share,” of the fair market value of the land unencumbered by this ALE Deed. The Proportionate Share will remain constant over time.

If this ALE Deed is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse the Grantee and each United States contributing agency share an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this ALE Deed. The fair market value will be determined at the time all or a part of this ALE Deed is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and United States.

The allocation of the Proportionate Share between the Grantee, United States, and NCDA&CS will be as follows:

(a) to the Grantee or its designee, Enter percent percent of the Proportionate Share,

(b) to the United States (NRCS) Enter percent percent of the Proportionate Share,

(c) to NCDA&CS Enter percent percent of the Proportionate Share,

(d) to Grantor Enter percent percent of the Proportionate Share, and

(e) to United States (USAF) Enter percent percent of the Proportionate Share.

Until such time as the Grantee, the United States and NCDA&CS receive the Proportionate Share from the Grantor or the Grantor’s successor or assign, the Grantee, United States, and NCDA&CS each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Grantee, the Grantee must reimburse the United States for the amount of the Proportionate Share due to the each United States contributing agency, NCDA&CS, and Grantor.

6.6. Procedure in the Event of Condemnation or Eminent Domain. Grantor and Grantee recognize that the sale of this ALE Deed, or any part thereof, gives rise to a property right, immediately vested in the Grantee and United States, with a fair market value equal to the proportionate value that the ALE Deed bears to the value of the Protected Property prior to the restrictions imposed by the ALE Deed. 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 the Grantee for the value of the property right vested in the Grantee at the time of the signing of this ALE Deed. Due to the federal interest in this ALE Deed, the United States, by and through the Chief of NRCS and the Secretary of the Air Force or his or her delegate, must consent to any such condemnation action. Due to the State’s interest in this ALE Deed, NCDA&CS must consent to any such condemnation action.

If condemnation or a taking by eminent domain on all or part of the Protected Property by a public authority renders it impossible to fulfill any of the Conservation Purposes of this ALE Deed on all or part of the Protected Property, the ALE Deed may be terminated through condemnation proceedings. If the ALE Deed is terminated and any or all of the Protected Property is sold or taken for public use, then the Grantee shall be entitled to the proportionate value of the ALE Deed, which has been predetermined as the Protected Property’s unrestricted value, subject to any applicable law which expressly provides for a different disposition of the proceeds. The Grantee shall use its proceeds consistently with the general Conservation Purposes of this ALE Deed.

If this ALE Deed is extinguished or terminated, the Parties shall receive compensation as described in Section 6.5 above.

6.7. Interpretation. This ALE Deed shall be interpreted under the laws of the State of North Carolina and the United States of America, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purposes and not otherwise violate the Supremacy Clause of the United States Constitution.

6.8. Perpetual Duration; Severability. This ALE Deed shall be a servitude running with the land in perpetuity. Every provision of this ALE Deed that applies to the Grantor or the Grantee 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 ALE Deed, 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.

6.9. Subsequent Liens on Protected Property. No provision of this ALE Deed 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 ALE Deed.

6.10. 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 of the Protected Property is prohibited. Any such easements or restrictions shall be subordinated to this ALE Deed.

6.11. Notices. Any notices required by this ALE Deed shall be in writing and shall be personally delivered or sent by first class mail to the Grantor, Grantee, NCDA&CS, and United States, respectively, at the following addresses, unless a party has been notified in writing by the other of a change of address.

To the Grantor: To the Grantee:

Enter landowner name(s) Enter entity name

Enter mailing address Enter mailing address

Enter City, State, Zip Enter City, State, Zip

To State of North Carolina:

N.C. Dept. of Agriculture &

Consumer Services

NC ADFP Trust Fund

2 West Edenton Street

Raleigh, NC 27601

To the United States**:**

State Conservationist

4407 Bland Rd., Suite 117

Raleigh, NC 27609-6387

Air Force Civil Engineer Center

Attention: AFCEC/CI

3515 South General McMullen (Bldg.1)

San Antonio, TX 78226-1710

4TH Civil Engineer Squadron

Attention: 4 CES/CENPL

1095 Peterson Avenue

Seymour Johnson AFB, NC 27531-2468

6.12. Approval by Grantee. In any case where the terms of this ALE Deed require the approval of the Grantee, unless otherwise stated herein, such approval shall be requested in writing to the Grantee, United States, and NCDA&CS if required, in accordance with Section 6.11. In any provision of this ALE Deed in which the Grantor is required to provide advance notice to the Grantee 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 the Grantee’s approval is required, such approval shall be deemed withheld/disapproved unless Grantee provides to the Grantor written notice of approval within thirty (30) calendar days of receipt of such request. If Grantor has received no response within such thirty (30) calendar days, Grantor may send a second written notice to Grantee requesting a statement of the reasons for the disapproval and the Grantee shall respond within thirty (30) calendar days with an explanation for the specific reasons and basis for its decision to disapprove. Except where specific notifications or approvals are required in this ALE Deed, the USAF Secretary only requires a right to proper notice and coordination, and right to object to activities under the same conditions as provided in this Section 6.12, with the Grantee retaining the authority to approve or disapprove, but will consider the USAF Secretary’s right to object and mitigate the USAF’s concerns if necessary before giving approval, subject to the USAF rights under Section 4.10.

6.13. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the ALE Deed and supersedes all prior discussions, negotiations, understandings or agreements relating to the ALE Deed. If any provision is found to be invalid, the remainder of the provisions of this ALE Deed, 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.

6.14. Availability or Amount of Tax Benefits. Grantee and NCDA&CS, acting by and through the ADFP Trust Fund 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 the donation of this ALE Deed or other transaction associated with the donation of this ALE Deed.  This donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. Grantee and NCDA&CS make no warranty, representation or other assurance regarding the value of this ALE Deed 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 Grantee or NCDA&CS or any legal counsel, accountant, financial advisor, appraiser or other consultant of Grantee or NCDA&CS.  In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs involving Grantor or Grantor’s heirs, successors or assigns or other similar matter, then Grantee and NCDA&CS shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by Grantee in responding or replying thereto.

6.15. Warranties and Representations of Grantor.  By signing this ALE Deed, Grantor

acknowledges, warrants and represents to Grantee that:

1. Grantor has had the opportunity to be represented by counsel of Grantor’s choice 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.
2. There are no recorded or unrecorded leases or other agreements for the production of minerals or removal of timber from the Protected Property or other agricultural purposes 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 ALE Deed or otherwise defeat the Conservation Purposes.

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

TO HAVE AND TO HOLD this Deed of ALE unto Grantee and the United States and their successors and assigns, forever.

IN WITNESS, the Grantor and Grantee, 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 NORTH CAROLINA DEPARTMENT OF AGRICULTURE & 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 ALE Deed, and the rights conveyed therein, on behalf of the State of North Carolina.

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

 Jonathan T. Lanier

 N.C. Department of Agriculture and Consumer Services

NORTH CAROLINA

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

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

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

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

Notary Public

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

List of Exhibits

EXHIBIT A – Legal Documents

 Exhibit A-1: Legal Description of the Protected Property

Exhibit A-2: Plat Showing A Boundary Survey & Conservation Easement

EXHIBIT B – Overview Maps

 Exhibit B-1: Regional Context Map

 Exhibit B-2: Multi-Easement Context Map

 Exhibit B-3: Easement Area Context Map

EXHIBIT C – Current Conditions and Description Map

 Exhibit C-1: Easement Area Description Map

 Exhibit C-2: Easement Area Soils Map

 Exhibit C-3: Current Conditions & Natural Resources Inventory Certification

EXHIBIT D – Easement Farmstead Locations

 Exhibit D-1: Easement Area Farmstead 1 Map

EXHIBIT E- Easement Existing Impervious Surfaces

 Exhibit E-1: Easement Existing Impervious Surface Map

 Exhibit E-2: Easement Impervious Surface Calculations