



2015-0636

**AGREEMENT TO ESTABLISH THE NEVILLE FARMS MITIGATION BANKING INSTRUMENT FOR RIPARIAN BUFFER MITIGATION AND NUTRIENT OFFSET CREDITS PURSUANT TO THE JORDAN WATER SUPPLY NUTRIENT STRATEGY**

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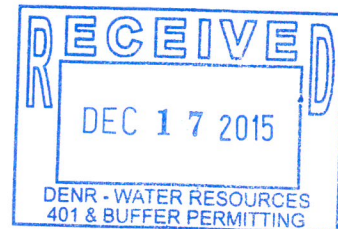
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- A – Division of Water Resources Authority document
- B – Rule Text 15A NCAC 02B .0240
- C – Rule Text 15A NCAC 02B .0295 (Effective October 24, 2014)
- D – Jordan Buffer Ledger Template
- E – Jordan Nutrient Offset Ledger Template



**AGREEMENT TO ESTABLISH THE NEVILLE FARMS MITIGATION BANKING  
INSTRUMENT FOR RIPARIAN BUFFER MITIGATION AND NUTRIENT OFFSET  
CREDITS PURSUANT TO THE JORDAN WATER SUPPLY NUTRIENT STRATEGY**

**I. PREAMBLE**

This Mitigation Banking Instrument (“Instrument”) regarding the establishment, use, operation, and maintenance of the Neville Farms Nutrient and Buffer Mitigation Bank Parcel (“Bank Parcel”) to provide Jordan Lake Riparian Buffer Mitigation Units (“Riparian Buffer Credits”) and Jordan Lake nutrient load reduction credit (“Nutrient Offset Credits”) is made and entered into by and among Watershed Investments NC, LLC, acting as the Bank Sponsor (“Sponsor”), and the North Carolina Department of Environment and Natural Resources – Division of Water Resources (“DWR”). This Instrument is in accordance with 15A NCAC 02B .0240 (see Attachment B), and the temporary Consolidated Mitigation Rule 15A NCAC 02B .0295 (see Attachment C), which became effective on October 24, 2014 and replaces the Instrument signed by Watershed Investments NC, LLC and DWR on October 6, 2015.

The purpose of the Bank is:

- A. To improve water quality in Neville Creek and downstream waters through the restoration and preservation of riparian buffer habitat and adjacent riparian areas; and
- B. To provide mitigation and sell Riparian Buffer Credits and Nutrient Offset Credits, nitrogen and/or phosphorous, to third parties in the Upper New Hope Sub-watershed for development (both existing and proposed) requiring such mitigation.

**II. LOCATION AND GEOGRAPHIC SERVICE AREA**

- A. The Geographic Service Area (“GSA”) is the designated area wherein a Bank can reasonably be expected to sell Riparian Buffer Credits and/or Nutrient Offset Credits for impacts due to development activities.
- B. The Bank Parcel is comprised of two rural tracts (Tract 1 and Tract 2) in Orange County, South of Chapel Hill, North Carolina and in the 14-digit Hydrologic Unit Code 03030002060070 of the Upper New Hope Sub-watershed of Jordan Lake. Tract 1 is accessed from a right-of-way entrance at 1426 Old Greensboro Highway. Tract 2 is accessed from Stansbury Rd which intersects Bowden Rd. The Site’s longitude and latitude in decimal degrees are -79.129 W and 35.892 N, respectively.
- C. The land uses on Tract 1 of this Bank Parcel comprise of agriculture, and the land uses on Tract 2 of this Bank Parcel comprise of managed grass lawn.

- D. Neville Creek is the receiving body of water for stormwater runoff from these two parcels.
- E. The GSA for this Instrument is limited to the Upper New Hope Sub-watershed of Jordan Lake as defined in rule 15A NCAC 02B .0262.
- F. Sale or transfer of credits shall be limited to the Upper New Hope Sub-watershed of the Jordan Lake watershed, as defined in Rule 15A NCAC 02B .0262.

### III. AUTHORITIES

- A. The Bank Parcel will be used to provide Riparian Buffer Credit and Nutrient Offset Credit in accordance with the requirements in the DWR Authority document referenced herein as “Attachment A” and attached to this Instrument.
- B. Projects eligible for utilization of the credits are those requiring authorization under the requirements of Attachment A and any new approved North Carolina (“State”) statutes and rules for the Jordan Lake Nutrient Sensitive Waters Management Strategy.
- C. All activities, including the sale of mitigation credits, shall be consistent with approved North Carolina statutes and rules for the Jordan Lake Nutrient Sensitive Waters Management Strategy.

### IV. ESTABLISHMENT OF NEVILLE FARMS BANK PARCEL(S)

- A. The Bank Parcel proposed for inclusion under this Instrument shall require a Bank Parcel Development Package (“BPDP”) be submitted to, and approved by, the DWR prior to use of the Bank Parcel for mitigation purposes or sale or transfer of any associated credits. The contents of the BPDP are provided in Section (V).
- B. The BPDP will be placed on public notice and made available for public commenting for 15 calendar days.
- C. Riparian Buffer Credit may be achieved through restoration and preservation of the DWR riparian buffers, as defined in 15A NCAC 02B .0267 and other riparian areas as allowed per 15A NCAC 02B .0295.
- D. The Bank Parcel is expected to provide Jordan Riparian Buffer mitigation as follows:

1. Planting hardwood trees and shrubs on a Restoration Site, as defined in 15A NCAC 02B .0295 (b) and per 15A NCAC 02B .0295 (i), along Neville Creek.
  2. Maintaining a Preservation Site, as defined in 15A NCAC 02B .0295 (b) and per 15A NCAC 02B .0295 (m) along Neville Creek.
- E. Nutrient Offset Credit may be achieved through restoration of the riparian area adjacent to Neville Creek, which is a perennial stream and is subject to the buffer protection rule 15A NCAC 02B .0267. The width of the restoration area begins at the most landward limit of the top of bank or the rooted herbaceous vegetation and extends landward a maximum distance of 200 feet on all sides of the surface water.
- F. The Bank Parcel is expected to provide Nutrient Offsets as follows:
1. Planting hardwood trees and shrubs on a Restoration Site, as defined in 15A NCAC 02B .0295 (b) and per 15A NCAC 02B .0295 (i) (4), along Neville Creek. Land uses on the Restoration Sites are hay/wheat cultivation on Tract 1 and managed grassed lawn on Tract 2.
- G. The total area of mitigation on the Bank Parcel is expected to be less than 10 acres.

## V. PRE-CONSTRUCTION DOCUMENTATION

### **Bank Parcel Development Package**

- A. The Neville Farms Bank Parcel Development Package (BPDP) shall include detailed information consistent with the sections below concerning: 1) site location (14-digit HUC is required); 2) existing land use conditions; 3) proposed buffer mitigation and/or nutrient offset activities including a detailed vegetation plan; 4) monitoring and maintenance plans; 5) financial assurances; 6) associated buffer mitigation/nutrient credit calculations, which shall include credit generation, delivery factors, service area, and accounting as appropriate for each regulatory authority; 7) stream buffer determination letter from DWR (where applicable); (8) cost analysis; and (9) site viability letter from DWR.
- B. The Sponsor will obtain all applicable federal, state, and local documentation, permits, or authorizations needed to construct and

maintain the Bank Parcel. This Instrument does not qualify as, or substitute for, such documentation, permit or authorization.

- C. The restoration and preservation of riparian buffers and other riparian areas on the Bank Parcel to produce Riparian Buffer Credit or Nutrient Offset Credit must be approved by DWR prior to construction or renovation.
- D. Requests for deviation from the approved BPDP must be submitted to the DWR in writing. Written approval from the DWR must be received prior to implementing any deviation from the approved BPDP.

### **Property Disposition & Long Term Management**

- E. Prior to the release of any credits, the Sponsor shall acquire a permanent conservation easement(s) at the County Register of Deed's office that is sufficient to ensure protection, operation and maintenance of restored riparian buffers and other riparian areas for the duration specified in the approved BPDP.
- F. The form of the conservation easement shall be consistent with the standards employed by the State of North Carolina in the protection of restored riparian buffers and riparian areas and shall be approved by the DWR prior to the release of any credits.
- G. The Sponsor shall not grant additional easements, right of ways, or any other property interest in or to the project areas without prior approval from the DWR.
- H. The Sponsor agrees to transfer or assign the conservation easement and its interests in perpetuity to a qualified holder under N.C. General Statute ("G.S.") 121-34 et seq. and 170(h) of the Internal Revenue Code prior to the submittal of the Year 4 Monitoring report. The holder shall be a land trust or stewardship program that will hold and enforce the conservation easement and the interests in perpetuity. The Sponsor shall choose a land trust or stewardship program that is accredited by the Land Trust Accreditation Commission and/or has been approved by DWR prior to the end of the fourth year monitoring period. A land trust must be certified under 501(c) (3) of the Internal Revenue Code.
- I. In the event that the Sponsor is also the owner of the underlying fee interest in the property, the conveyance of the conservation easement to a land trust or stewardship fund must be arranged at the outset of the approved BPDP.

## **Financial Assurance**

- J. Following approval of the BPDP, the Sponsor shall provide a Performance/Maintenance Bond from a surety company that is rated no less than an "A-" as rated by A.M. Best. The Performance Bond amount shall be 100% of the estimated cost for implementation of the mitigation activities of the Bank Parcels described in the approved BPDP. No bond shall be less than \$50,000 to cover construction costs.
- K. Alternatively, in lieu of posting the Performance Bond, the Sponsor may elect to construct the project prior to the first credit release.
- L. The Sponsor must provide cost analyses in the BPDP as part of the review and acceptance of the amount of the performance bond, and must include all reasonably potential contingency costs associated with the establishment of the Bank.
- M. If the Bank Parcel does not meet all of the criteria set out in items 1 through 4 below, then the Bank Sponsor must provide a minimum performance/maintenance bond of \$150,000 to cover construction costs:
  - 1. Bank Parcel is primarily a buffer/nutrient offset riparian restoration project with only a small area of buffer preservation;
  - 2. The area proposed for mitigation within the Bank Parcel is 10 acres or less, as will be shown in a survey performed and sealed by a professional surveyor registered in North Carolina;
  - 3. The area proposed for mitigation within the Bank Parcel does not require fencing as part of the approval;
  - 4. The area proposed for mitigation within the Bank Parcel is not part of a larger mitigation area that includes stream or wetland mitigation.
- N. Once DWR has released all credits for completion of Task 2 according to the credit release schedule in Section VIII., and the DWR has received and approved the As-Built Report as described in Section VI, the Bank Sponsor can be released from its performance obligations under the performance bond required in "J" of this Section.

## **VI. POST CONSTRUCTION DOCUMENTATION**

### **As-Built Report**

- A. The Sponsor agrees to perform all necessary work, in accordance with the provisions of this Instrument, to establish, maintain, and monitor Jordan

Lake Riparian Buffers or other riparian areas until Items B (1) and (2) of Section X have been satisfied.

- B. The Sponsor will submit an as-built plan and report for the Bank Parcel within 30 calendar days after completing the establishment of the buffer area and nutrient offset area. The as-built report will describe any deviation from the approved BPDP and will document the following:
1. Buffer restoration: planting details, invasive species control, monitoring device locations, vegetation plot locations, photo point locations, surface and groundwater elevations, as appropriate.
  2. Boundary Survey signed and sealed by a licensed surveyor, of the conservation easement area including an enumeration of the final mitigation area for Riparian Buffer and/or Nutrient Offset Credits in square feet and/or acres.
  3. As-Built aerial map of the mitigation area showing where restoration and preservation were performed.
  4. Aerial map of the mitigation area that was included in the approved Bank Parcel Development Package.
  5. Cost Analysis of Monitoring and Maintenance.

### **Financial Assurance**

- C. After completion of the restoration/construction, a separate Performance/Maintenance Bond will be secured for 100% of the estimated cost to implement the monitoring and maintenance plan as described in the approved BPDP. A Performance/Maintenance Bond shall be secured each year for a minimum of five years, and until DWR has released all mitigation credits to the Bank Sponsor. Upon DWR approval, the bond may be lowered each year based on the adjusted cost to complete the monitoring. No bond shall be less than \$25,000 to cover monitoring and maintenance costs.
- D. The Sponsor must provide cost analyses in the As-Built report for monitoring and maintenance, as part of the review and acceptance of the amount of the performance bonds, and must include all reasonably potential contingency costs associated with the establishment of the Bank.

- E. If the Bank Parcel does not meet all of the criteria set out in items 1 through 4 below, then the Bank Sponsor must provide a minimum performance/maintenance bond of \$100,000 to cover monitoring and maintenance costs, respectively:
1. Bank Parcel is primarily a buffer/nutrient offset riparian restoration project with only a small area of buffer preservation;
  2. The area proposed for mitigation within the Bank Parcel is 10 acres or less, as will be shown in a survey performed and sealed by a professional surveyor registered in North Carolina;
  3. The area proposed for mitigation within the Bank Parcel does not require fencing as part of the approval;
  4. The area proposed for mitigation within the Bank Parcel is not part of a larger mitigation area that includes stream or wetland mitigation.

### **Monitoring & Maintenance Reports**

- F. The Sponsor shall monitor and maintain the Bank Parcel as described in the BPDP until such time as DWR determines that the performance standards described below have been met. The monitoring period shall be a minimum of five consecutive years.
- G. Once, DWR has released all credits for completion of Tasks 1-9 according to the credit release schedule in Section VIII. the Bank Sponsor can be released from its performance obligations under the performance bond required in "C" of this Section.
- H. Performance Standards for Vegetation: Native hardwood trees or native hardwood tree and shrub species should be planted at a density sufficient to provide 260 stems per acre after five years. A minimum of four (4) native hardwood trees or four (4) native hardwood tree and shrub species must be planted. No one species shall be greater than 50 percent of the planted stems. A list of species for planting will be detailed in the BPDP for approval. Native hardwood tree volunteer species may be included to meet performance standards as determined by the DWR.
- I. A "stem" means a woody seedling, sapling, shrub or tree, no less than 10 centimeters in height.
- J. If the performance standards of the vegetation are not met, supplemental plantings may be required. Supplemental plantings will be utilized until the required densities have been achieved and maintained for five years. Bank Parcel maintenance, such as ensuring diffuse flow, managing invasive species, and pest control will be included in the BPDP.



**K. Monitoring Reports for Riparian Restoration and Preservation Sites:**

Reporting criteria of the riparian buffer restoration shall be based on the Carolina Vegetation Survey (“CVS”) - EEP Protocol for Recording Vegetation Level 2 Plot Sampling Only Version 4.0 or any updated versions of this protocol in place at the date of acceptance of the BPDP. The Sponsor shall submit to the DWR an annual monitoring report no later than December 31 of each year for a minimum of five consecutive years after the first full growing season. This report will describe the conditions of the Bank Parcel, including an evaluation of the performance standards of the vegetation contained within the approved BPDP. Reports shall contain the following:

1. A U.S. Geological Survey map and an aerial map showing the location of the Bank Parcel;
2. A detailed narrative summarizing the current condition of the Bank Parcel along with any maintenance or remediation performed during that year; and
3. A map, survey or other figure showing locations of sampling plots, permanent photo points, location of transects, etc.; and
4. Monitoring data, including specific vegetative counts showing that the trees or tree and shrub species planted are meeting performance standards (not required on the Preservation Sites) and updated photographs; and
5. A copy of the most recent Bank credit/debit ledgers; and
6. Corresponding verification letters from designated local governments upon request; and
7. Corresponding Mitigation Transfer Certificates upon request

**Contingency Plans/Remedial Actions**

- L. In the event the Bank Parcel fails to achieve the performance standards described in this Instrument and the approved BPDP, the Bank Sponsor shall develop necessary contingency plans in coordination with the DWR and implement appropriate remedial actions for the Bank Parcel and the Bank. Depending on the degree of remedial actions required, the DWR may modify the monitoring period.

## VII. CALCULATION OF MITIGATION CREDITS

### Riparian Buffer Credits

- A. All Riparian Buffer Credits shall be determined based on the ratios and percentages provided in 15A NCAC 02B .0295 (h) and (i).
- B. Riparian buffer restoration on the Bank Parcel, as defined in 15A NCAC 02B .0295 may be used for *either* Riparian Buffer Credit or Nutrient Offset Credit, but not both.
- C. Riparian buffer preservation, as described in 15A NCAC 02B .0295 (m) can only be used for Riparian Buffer Credit. These credits are not transferrable into Nutrient Offset Credits.
- D. Riparian Buffer Credit is defined as one (1) buffer credit per one square foot or 43,560 buffer credits per one acre.

### Nutrient Offset Credits

- E. All Nutrient Offset Credits will be determined by including the applicable ratio as provided in 15A NCAC 02B .0295 (h).
- F. The Nutrient Abatement of Restored Riparian Area on Agricultural Lands versus Residential-Managed Grass lawns: The Sponsor and DWR agree to the following:
  - 1. Pursuant to the Jordan Trading Rule Item 15A NCAC 02B .0273(2)(a), load reductions eligible for credit are only those that exceed reduction needs calculated by applying the strategy sub-watershed percentage reduction goals as provided in 15A NCAC 02B .0262 (5). For this Bank Parcel's location in the Upper New Hope, this requirement results in a reduction of credits yielded per acre of restored riparian buffers on agricultural land when compared with the credits given for agricultural lands in other river basins. The nutrient offset credit generation for riparian restoration of agricultural land on Tract 1 of this Bank Parcel is depicted in Table 1.0 below.
  - 2. The nutrient offset credit generation for riparian restoration of residential-managed grass lawn on Tract 2 of this Bank Parcel is depicted in Table 2.0, and is derived by using the Jordan Falls Lake Stormwater Nutrient Load Accounting Tool (JFSAT) Version 3.0 to calculate nutrient load reductions for nutrient

offset credit where the land use is residential-managed grass lawn.

**Table 1.0 Generated credit yields for riparian restoration of Agricultural land**

	Credit Generated (pounds/30 year/acre)	
<b>Jordan Sub-watershed</b>	<b>Nitrogen</b>	<b>Phosphorus</b>
Upper New Hope	2,169.26	143.81

**Table 2.0 Generated credit yields for Tract 2 of Neville Farms.**

	Credit Generated (pounds/30 year/acre)	
<b>Jordan Sub-watershed</b>	<b>Nitrogen</b>	<b>Phosphorus</b>
Upper New Hope	909.25	202.50

G. As required under Jordan Trading Rule Item 15A NCAC 02B .0273 (2)(d)(i), the party seeking to sell credits must account for differences in instream nutrient losses between the location of the reduction need and excess loading reduction being delivered to the affected arm of Jordan lake.

1. Delivered credits are calculated by applying the delivery factors and the acreage of riparian restoration to the generated credit yields from Tables 1.0 and 2.0 above. Specific delivery factors for Total Nitrogen (TN) and Total Phosphorus (TP) will be included in the BPDP.
2. The Bank Sponsor shall report the pounds of nitrogen and phosphorus credit per acre of restored riparian areas in their BPDP for both credits generated at the site of the nutrient reduction activity and the credits delivered to Jordan Lake.

H. The Sponsor and DWR agree that the methodology and calculations for determining nitrogen and total phosphorous reduction, including delivery factors, associated with the restoration of riparian areas, shall be fixed as part of the approval of the MBI and corresponding BPDP, with the fixed amount not changing during the development of or credit release schedule for the Bank Parcel.

## VIII. CREDIT RELEASE SCHEDULE

- A. Credit Release: Upon submittal of all appropriate documentation by the Sponsor, and subsequent approval by DWR, it is agreed that the mitigation credits associated with the Bank Parcel will become available for sale to a third party in accordance with the following credit release schedule:

<b>Task</b>	<b>Project Milestone</b>	<b>% Credit Available for Sale</b>
1	MBI and BPDP Approved by DWR, Conservation Easement Recorded* and Financial Assurance Posted	20
2	Mitigation Site Earthwork, Planting and Installation of Monitoring Devices Completed	20
3	Monitoring Financial Assurance Posted and Approval of As-Built Report	10
4	Monitoring Report #1: Approved by the DWR**	10
5	Monitoring Report #2: Approved by the DWR**	10
6	Monitoring Report #3: Approved by the DWR**	10
7	Item B (1) of Section X in this Instrument has been completed and approved by DWR.	5
<i>No remaining credits will be released until Task 7 has been satisfied</i>		
8	Monitoring Report #4: Approved by the DWR**	5
9	Monitoring Report #5: Approved by the DWR** and final site visit by DWR has been conducted	10
	<b>Total</b>	<b>100%</b>

\* For specification, please see Section V in this Instrument

\*\* DWR Approval provided upon a determination that the site is meeting performance standards contained within the approved BPDP

- B. DWR may modify the credit release schedule based on the information submitted or the order in which required information is received. DWR will notify the Sponsor of any modification to the credit release schedule.

## IX. PROCEDURE FOR DEBITING AND CREDITING MITIGATION CREDITS

### Credit Ledgers

- A. The Bank Sponsor shall maintain four (4) credit ledgers for the Bank Parcel under this Instrument: one accounting for buffer restoration credits in square feet and acres, one accounting for buffer preservation credits in square feet and acres, one accounting for nitrogen offset credits in pounds and acres, and one accounting for phosphorus offset credits in pounds and acres.

- B. Each credit ledger shall be submitted on a separate 8 ½in X 11in spreadsheet with legible font style and font size. All ledgers shall be submitted using the templates provided in Attachment D and E of this Instrument or any updated versions to these templates as provided by DWR.

### **Credit Processing**

- C. Riparian Buffer and Nutrient Offset credits generated on this Bank Parcel can only be provided to offset impacts within the Upper New Hope Sub-watershed of Jordan Lake, as defined in 15A NCAC 02B .0262.
- D. Available mitigation credits (credits that have been released by DWR but not sold by the Sponsor) that are generated from riparian restoration, as defined in 15A NCAC 02B .0295 (b) and described in 15A NCAC 02B .0295 (i), can be converted and transferred from Riparian Buffer Credits to Nutrient Offset Credits and from Nutrient Offset Credits to Riparian Buffer Credits upon written approval from DWR. Ratios and percentages of full credit will be applied to Riparian Buffer Credits according to 15A NCAC 02B .0295 (h) and (i) and ratios will be applied to Nutrient Offset Credits according to 15A NCAC 02B .0295 (h).
- E. Riparian buffer preservation credits are not transferrable into nutrient offset credits.
- F. The Bank Sponsor shall obtain written verification of buffer mitigation required from the delegated local government in the Upper New Hope Sub-watershed or DWR prior to debiting Riparian Buffer Credits from the Bank Parcel.
- G. The Bank Sponsor shall obtain written verification of nutrient offset need from a designated local government in the Upper New Hope Sub-watershed prior to debiting Nutrient Offset Credits from the Bank Parcel.
- H. All credit and debit transactions for each Bank Parcel under this Instrument shall be accurately depicted in the credit ledgers. DWR shall be notified of each credit sale within thirty (30) calendar days by electronically submitting an updated credit ledger to DWR. At a minimum, DWR shall receive a hard copy of updated credit ledgers along with the corresponding Mitigation Credit Transfer Certificates and all corresponding letters from the designated local governments twice a year. Notification of all credit sales shall be provided to DWR until all credits that have been released have been sold.

## **Mitigation Credit Transfer Certificates**

- I. All credit sales will include a Mitigation Credit Transfer Certificate (“Certificate”) that is required to be provided to the buyer of Riparian Buffer and/or Nutrient Offset credits, that will include, at a minimum, the following information:
  1. Bank Details: (1) sponsor Name, (2) name of the approved banking instrument as it appears on the instrument document, (3) bank parcel name as it appears on the BPDP, (4) DWR project number for the BPDP.
  2. Credit Details: (1) date of receipt, (2) identify if full or partial payment, (3 – when applicable) amount of nitrogen credits purchased in pounds and confirmation from the designated local government of the amount required, (4 – when applicable) amount of phosphorous credits purchased in pounds and confirmation from the designated local government of the amount required, and (5 – when applicable) amount of Riparian Buffer Credits purchased in square feet and the confirmation from DWR or the local government of the amount required.
  3. Project Details: (1) project name as it appears on DWR or local government permits and/or certifications, (2) 14-digit HUC and the sub-watershed for the Jordan Lake Nutrient Strategy), (4) nutrient strategy applicable to the project, (5 – when applicable) designated local government requiring Nutrient Offset Credits, and/or (6) DWR Authorization or Variance number or delegated local government requiring Riparian Buffer Credits for this project.
- J. If the DWR determines that the Bank is operating at a deficit (e.g. the Sponsor is closing on sales and/or transferring credit that is not available), or the Bank is selling credits out of compliance with statutes, rules or this Agreement, the sale/transfer of credits will immediately cease, and the DWR, in consultation with the Sponsor, will determine what remedial actions are necessary.

## **X. BANK PARCEL CLOSURE**

- A. Bank Parcel Closure shall be identified as the event when the Sponsor is relieved of all of its responsibilities to the Bank Parcel and there are no mitigation credits left to sell.

- B. Bank Parcel Closure shall commence only after all of the following events have occurred:
1. Transfer or assign the conservation easement and all of its interests, in perpetuity, to a land trust or stewardship program as described in Section V of this instrument.
  2. All five years of monitoring completed and all monitoring reports submitted and approved by DWR.
  3. All credits have been released and debited and updated ledgers showing a zero credit balance have been submitted and approved by DWR.

## XI. GENERAL PROVISIONS

- A. Upon the presentation of proper credentials, and during normal business hours, the Sponsor and the landowner shall grant permission to the Director of DWR, or an authorized representative of the Director of DWR to enter the property containing the Bank Parcel(s).
- B. Amendments: This Banking Instrument may be amended or modified only with written approval of all signatory parties.
- C. Any transfer of the Sponsor's rights or obligations outlined in this Instrument or any other agreement referenced in this Instrument to a third party must be approved by DWR prior to the transfer.
- D. Force Majeure: After Bank Parcel Closure, the Sponsor will not be responsible for Bank failure that is attributed to natural catastrophes including but not limited to flood, drought, disease, regional pest infestation, etc. that are beyond the control of the Sponsor.
- E. However, if an event occurs before Bank Parcel Closure, the Sponsor shall take remedial action to restore the property to its condition prior to the event, in a manner sufficient to provide adequate mitigation to cover credits that were sold prior to the occurrence of the event. Such remedial action shall be taken by the Sponsor only to the extent necessary and appropriate, as determined by DWR and the Sponsor.

*DWR must concur in writing that a force majeure event has occurred for this provision to apply.*

- F. Oversight: Actions taken by DWR may include, but are not limited to, the following:

1. Site visits.
2. BPDP review and approval of items listed in Section V of this instrument.
3. Monitoring Report review and approval of items listed in Section VI of this instrument.
4. As-Built Report review and approval of items listed in Section VI of this instrument.
5. Credit Ledger review and approval of items listed in Section IX of this instrument.
6. Certificate review of items listed in Section IX of this instrument and cross analysis to credit ledgers.
7. Information requests, file reviews and audits

Reports, ledgers, files and other information shall be made available to DWR upon request, unless otherwise specified in this or any other document.

- G. Validity of the Banking Instrument: This Instrument will become valid on the date of the last party's signature.
- H. Specific Language of Banking Instrument Shall Be Controlling: To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the Instrument by reference, and that are not legally binding, the specific language within the Instrument shall be controlling.
- I. Any disputes over decisions regarding this Instrument, shall be referred to the Director of DWR for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.
- J. This Agreement shall be binding upon the parties and is entered into knowingly, intelligently, and voluntarily.
- K. Notices: All notices and other communications which may be or are required to be given or made by any party to the other shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out below, or at such other addresses as specified by written notice delivered in accordance herewith.

*This space left back intentionally. Do not write in this space.*



If to Bank Sponsor           Watershed Investments, NC, LLC  
1630 Weatherford Circle  
Raleigh, NC 27604

If to DWR:                    NC Division of Water Resources  
Attn: 401 & Buffer Permitting Unit  
1617 Mail Service Center  
Raleigh, NC 27699-1617

L. Applicable Law: This Agreement shall be construed under the laws of the State of North Carolina.

WATERSHED INVESTMENTS NC, LLC

By: Michael Herrmann (Print)

Michael B. Herrmann (Signature)

Title: Owner, Watershed Investments NC

Date: 12-17-15

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

By: Jay Zimmerman (Print)

Jay Zimmerman (Signature)

Title: Director - Division of Water Resources

Date: 1/7/2016