

**EXHIBIT A
RESTORATION DECLARATION**

**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR RESTORATION PURPOSES
("RESTORATION DECLARATION")
2022-FRR24-Hendersonville – Mud Creek Flood Risk Reduction
*Former Wilson Property***

Prepared by: Angela S. Beeker, City Attorney, City of Hendersonville
After Recording Return to: Angela S. Beeker, City Attorney, City of Hendersonville Box

NORTH CAROLINA
NCLWF Project No.: 2022-FRR24

HENDERSON COUNTY
PIN: 9568-73-9214

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR RESTORATION PURPOSES ("Restoration Declaration") is made this _____ day of _____, 2025 by *the City of Hendersonville, a body politic and corporate, and owner of the Restricted Property* (the "Declarant").

RECITALS AND CONSERVATION PURPOSES

A. The Declarant is a unit of local government and accepts responsibility for enforcing the terms of this Restoration Declaration and for upholding its conservation purposes forever.

B. The Declarant is the sole owner in fee simple of certain real property containing 22.05 acres more or less, located in Hendersonville Township, Henderson County County, North Carolina, and more particularly described by reference to a recorded plat in Exhibit A, attached hereto and incorporated herein by reference (hereinafter the "Property").

C. The State of North Carolina ("State") enacted the Uniform North Carolina Conservation and Historic Preservation Agreements Act (the "Conservation Agreements Act"), Chapter 121, Article 4 of the North Carolina General Statutes ("NCGS"), which provides for enforceability of restrictions, easements, covenants, or conditions "appropriate for retaining in land or water areas predominantly in their natural, scenic, or open condition . . .".

D. This Restoration Declaration is intended to be a “conservation agreement” and/or a “preservation agreement” as defined and contemplated in the Conservation Agreements Act.

E. The North Carolina Land and Water Fund (the “Fund”), an independent agency of the State with its address at 1651 Mail Service Center, Raleigh, North Carolina 27699-1651, is authorized by NCGS Chapter 113A, Article 18, to provide funding for projects and to acquire land and interests in land for riparian buffers for the purposes of protecting surface waters and urban drinking water supplies.

F. The Declarant is party to an agreement with the Fund through which it has received a grant from the Fund, identified as Grant Contract no. SRP-SW-ARP-0012 (the “Grant Contract”), entered into between the Declarant and the Fund effective 1/10/24 for the purpose of preserving and enhancing flood storage and flood reduction potential which is low lying and which stores floodwater during medium to large flow events on Mud Creek, as well as related water quality and ecological values along Mud Creek and its floodplain, through a restriction of future uses and through anticipated future restoration activities on or bordering the Property and restoring and/or protecting riparian buffers on the Property (the “Restoration Project”).

G. The Declarant and the Fund have determined that the preservation and potential enhancement of flood mitigation benefits and related water quality and ecological restoration opportunities through future restoration activities and maintenance will be enhanced through the long-term protection and maintenance of riparian resources and other natural values on the Property (the “Conservation Values”).

H. In order to protect and maintain the Conservation Values, the Declarant wishes to restrict and limit in perpetuity activities on and uses of the Property that could conflict with the Conservation Values, such restrictions and limitations applying to the entire Property (the “Protection Area”).

NOW, THEREFORE, the Declarant hereby unconditionally and irrevocably declares that the Protection Area will be held and subject to the following restrictions, covenants and conditions as set out herein, to run with the subject real property and be binding on all parties that have or may have any right, title, or interest in said property.

ARTICLE I. DURATION OF RESTORATION DECLARATION

The covenants, conditions, and restrictions contained in this Restoration Declaration are permanent and perpetual, run with the land, and are binding on the Declarant and its successors and assigns as owner of the Property and on all those claiming by, through, or under each such owner, in perpetuity.

ARTICLE II. ACTIVITIES AND USES EXPRESSLY RESTRICTED OR PROHIBITED AND EXCEPTIONS THERETO

A. Prohibited Activities and Uses. The Protection Area will be maintained in a manner and will not be developed or used in any manner that would impair or interfere with the purposes of this Restoration Declaration. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except as expressly identified herein as exceptions:

(1) Industrial, Residential and Commercial Uses. Industrial, residential and commercial activities and the rights of passage for such purposes.

(2) Agricultural, Grazing and Horticultural Use. Agriculture, grazing, horticultural and animal husbandry operations except for the express purpose of managing non-native, invasive species and reasonably protective of water quality.

(3) New Construction. Buildings, facilities, mobile homes, antennas, utility poles, towers, and other structures.

(4) Dumping or Storing. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material.

(5) Mitigation. Neither the Protection Area nor any portion thereof may be used to satisfy compensatory mitigation requirements under 33 USC Section 1344 or NCGS §143-214.11 or any successor or replacement provision of the foregoing.

(6) Open Space Requirements. The Protection Area may not be used to satisfy open space requirements of any cluster or other development scheme.

(7) Development Rights. All development rights are extinguished from the Protection Area and may not be transferred to any other lands pursuant to a transfer of development rights scheme or cluster development arrangement or otherwise.

B. Activities and Uses Restricted in the Easement Area. Without limiting the generality of the foregoing, the following activities and uses are expressly restricted, except as expressly identified herein as exceptions:

(1) Cutting of Vegetation. Except as related to treatment or removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Protection Area to persons or natural habitat or as necessitated by the activities described in Article III, below, all cutting, removal, mowing, harming, or destruction of any trees and vegetation on the Protection Area is prohibited. Vegetation may be mowed and maintain on up to 30 percent of the Property for recreational or maintenance access purposes.

(2) Stream Crossings and Roads. New stream crossings for livestock and non-recreational or maintenance-related access to adjacent property are prohibited, with the understanding that any crossing may not impede flow of water or aquatic life. Existing roads, trails, or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

(3) Signs. Signs are prohibited, except interpretive signs describing activities and the purpose and function of the Protection Area, signs identifying the owner of the Property, signs giving directions, and signs prescribing rules and regulations for the use of the Protection Area.

(4) Grading, Mineral Use, Excavation, Dredging. Grading, filling, excavation, dredging, mining, drilling, and removal of topsoil, sand, gravel, rock, peat, minerals, and other materials are prohibited, except as necessitated by activities described in Article III.

(5) Water Quality and Drainage Patterns. Except as necessitated by activities described in Article III, diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water; altering or tampering with water control structures or devices; disruption or alteration of the restored, enhanced, or created drainage patterns; and removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides are prohibited.

(6) Subdivision and Conveyance. The Protection Area may not be subdivided, partitioned nor conveyed, except in its current configuration as an entity or block of property.

ARTICLE III. ACTIVITIES AND USES EXPRESSLY ALLOWED

Any activity on or use of the Protection Area not consistent with the purposes of this Restoration Declaration or that could interfere with maintenance of the Protection Area in its natural or restored condition is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly allowed on the Protection Area:

A. Passive Recreational Uses. The Declarant may engage in undeveloped recreational uses, including but not limited to hiking, bird watching, hunting and fishing, and access to the Protection Area for the purposes thereof.

B. Greenways and Public Park Uses. The Declarant may construct and maintain paved or unpaved public-access greenway trails, along with related bridges, boardwalks, culverted crossing structures, signage, fencing, benches, bicycle racks, lighting and related amenities typically associated with a public-access greenway. Greenways should maintain a sitewide average distance of at least 30' from streams to allow for buffers and a minimum of 20' at all points except crossings and within 100' of property boundaries. Exceptions may be allowed when reduced environmental impact can be demonstrated.

The Declarant may construct public park amenities, including, but not limited to, landscaped recreational areas and playgrounds, gazebos, pavilions, or similar open structures that are not restrictive of flood flow and which are consistent with floodplain ordinance requirements.

The Declarant may construct public parking facilities for the use of the above described recreational uses, greenways, and public park uses that have a pervious surface or are otherwise designed to minimize impacts to streams, wetlands, and buffers.

C. Maintenance. The Declarant may use motorized vehicles on trails, paths, and roads only for constructing, managing, maintaining, and stewarding the Protection Area and allowable uses herein. Such motorized vehicular access shall maintain an average distance from streams of 30' and planned so as to minimize impacts to streams, wetlands and buffers.

D. Educational Uses. The Declarant may engage in and permit others to engage in educational uses on the Protection Area consistent with this Restoration Declaration and the right of access to the Protection Area for such purposes, including organized educational activities such as site visits and observations. Educational uses of the Protection Area may not alter vegetation, hydrology, or topography. Structures that are not restrictive of flood flow and which are consistent with floodplain ordinance requirements are allowed for educational purposes.

E. Restoration. The Declarant and its representatives may engage in the Restoration Project and related activities for the purpose of flood storage or flood control, stream and wetland restoration, and vegetative restoration. All activity associated with the Restoration Project will be conducted according to the requirements hereof and those incorporated herein from the Grant Contract and pursuant to all applicable laws, rules, regulations, and permits.

F. Utilities. The Declarant may repair, replace and maintain existing utilities on the site, including stream culverts and bridges requiring new geometry, and may design, install and maintain new sanitary sewer infrastructure, new waterline infrastructure and other new subsurface utilities for the public benefit, or utilities to serve the needs of allowable onsite recreational, restoration, or educational uses. Pipe and utility construction shall be minimized to the greatest extent practicable. Utilities should maintain an average distance from streams of 30' except when no viable alternative exists, and should be planned, implemented, and maintained so as to minimize impacts to streams, wetlands, and buffers. Exceptions may be allowed when reduced environmental impact can be demonstrated. Utility construction phase impacts shall be mitigated through replacement of disturbed vegetation and by returning disturbed restoration activities to their preexisting grades and function.

ARTICLE IV. RIGHT OF ENFORCEMENT IN STATE

In the event that the Declarant fails to comply with the terms of this Restoration Declaration, pursuant to the terms of the Grant Contract between the Declarant and the State acting by and through the Fund, the State has the independent right to enforce the terms of this Restoration Declaration through any and all authorities available under State law. Any forbearance by the State to exercise this right of enforcement may not be deemed or construed to be a waiver by the State of such right in general or with respect to a specific violation of any of the terms of this Restoration Declaration. The State and its agents and employees have such right of entry and access to the Protection Area as may be necessary to carry out the rights of enforcement set forth herein.

ARTICLE V. DECLARANT'S WARRANTY OF TITLE

The Declarant covenants, represents, and warrants that (i) the Declarant is the sole owner and is seized of the Protection Area in fee simple and has good right to grant and convey the

aforesaid Restoration Declaration; (ii) there is legal access to the Property and the Protection Area; (iii) the Protection Area is free and clear of any and all encumbrances, except those exceptions of record, none of which would nullify, impair or limit in any way the terms or effect of this Restoration Declaration; and (iv) the Declarant will defend its title against the claims of all persons whomsoever.

ARTICLE VI. MISCELLANEOUS

A. Stewardship of the Protection Area. Pursuant to the terms of the Grant Contract, the Declarant hereby covenants and agrees that it will monitor and observe the Protection Area in perpetuity to assure compliance with the purposes and provisions of this Restoration Declaration and the provisions of the Grant Contract.

B. Subsequent Transfer of Fee. The Declarant may not convey the Property or any interest therein and may not incur, assume, or suffer to exist any lien upon or with respect to the Property without disclosing to the prospective buyer the Restoration Declaration, the obligations of an owner of the Property, and limitations on use of the Property hereunder. The Declarant further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Restoration Declaration herein created.

C. Transfer of the Restoration Declaration. The Declarant has have the right to transfer this Restoration Declaration to a “qualified conservation organization” under Section 170(h) of the Code, only if the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this declaration and if said transfer is approved by the State acting by and through the Fund or its successor agency.

D. Amendments. The Declarant or its successors in interest in the Protection Area is free to amend this Restoration Declaration to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of this Restoration Declaration or affects the perpetual duration of this Restoration Declaration. Such amendment(s) require the written consent of both the Declarant and the Fund and will be effective upon recording in the public records of Henderson County, North Carolina. The Declarant acknowledges that it has no right to agree to any activity that would result in the termination of this Restoration Declaration.

E. Interpretation. This Restoration Declaration will be construed and interpreted under the laws of the State, and any ambiguities herein will be resolved so as to give maximum effect to the purposes of this Restoration Declaration as stated herein. Further, this Restoration Declaration will be construed to promote the purposes of the Conservation Agreements Act, which authorizes the creation of conservation agreements for purposes including those set forth herein, such conservation purposes as are defined in Section 170(h) (4) (A) of the Code and set forth in NCGS Chapter 113A, Article 18. If any provision of this Restoration Declaration is found to be invalid, the remainder of the provisions of this Restoration Declaration, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, will not be affected thereby.

IN WITNESS WHEREOF, Declarant, by authority duly given, has hereunto caused these presents to be executed by its respective officers and its seal affixed, to be effective the day and year first above written.

DECLARANT:
CITY OF HENDERSONVILLE

By: _____(SEAL)

STATE OF NORTH CAROLINA
COUNTY OF _____

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

Name of Signatory

Date _____

Official Signature of Notary

Notary's printed or typed name

(Official Seal) My commission expires: _____

APPROVED AS TO FORM:

CITY ATTORNEY

**ACCEPTED AS TO FORM:
NORTH CAROLINA LAND AND WATER FUND**

BY:

RESTORATION/STORMWATER PROJECT MANAGER

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Being all of that property described in a deed from Ken Wilson Ford, Inc. to The City of Hendersonville, said deed recorded in Deed Book 1107 at page 172 of the Henderson County Registry.