

This instrument prepared by and return to:

ADFT TRACKING #

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

TAX ID/PARCEL/PIN

**WARRANTY  
DEED OF CONSERVATION EASEMENT**

This Deed of Conservation Easement (“Easement”) is granted on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ having and address of \_\_\_\_\_ (“GRANTOR”), to \_\_\_\_\_, having an address of \_\_\_\_\_ (“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 (“NCADFP Trust Fund”), for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as open space. The Grantor, Grantee, and NCDA&CS are collectively referred to as “**The Parties**”.

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.

**RECITALS**

WHEREAS, Grantor is the sole owner in fee simple, of a certain farm property identified in Exhibit A located in \_\_\_\_\_ Township, \_\_\_\_\_ County, North Carolina and identified on the plat of property entitled “\_\_\_\_\_ Conservation Easement” prepared by \_\_\_\_\_ which plat is recorded at Plat Book \_\_\_\_\_ Page \_\_\_\_\_, \_\_\_\_\_ County Registry with said farm property totaling \_\_\_\_\_ acres covered by this Conservation Easement (the “Protected Property”).

WHEREAS, the Protected Property consists primarily of productive agricultural land and forest land. The Protected Property also contains within its boundary buildings and/or improvements as shown on Exhibit attached hereto and incorporated herein. The majority of the soils on the Protected Property have been classified as “prime” or “statewide important” soils by NRCS. It is the primary purpose of this Easement to protect the green space, silvicultural

and agricultural soils, and agricultural and silvicultural viability and productivity by limiting nonagricultural 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 \_\_\_\_\_ County and the people of North Carolina.

WHEREAS, it is a secondary purpose of this Easement to protect the 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, the specific Conservation Values of the Protected Property and its current use and state of improvement are described in a Baseline Documentation Report ("Report") prepared by the Grantee with the cooperation of the Grantor, and acknowledged by all parties to be accurate as of the date of his Easement. 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 Easement 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 said 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 Easement.

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 for \_\_\_\_\_ years.

WHEREAS, the consideration paid for this Conservation Easement does not represent fair market value of the Protected Property and it is the Grantor's intent to make a charitable contribution to Grantee. The fair market value of the Protected Property shall be determined by one of the valuation methods and rules that affect valuation as set forth in Regulation §1.170A-14(h)(3).

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

- (1) North Carolina General Statute 139-2 et seq., which provides that "it is hereby declared...that the farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State 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;"
- (2) North Carolina General Statute 106-583 et seq., which states that "It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity;"
- (3) The Uniform North Carolina Conservation and Historic Preservation Agreements Act, North Carolina General Statute 121-34 et seq., which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate for retaining in land or water areas predominantly in their natural, scenic, or open condition or in agricultural, horticultural, farming or forest use," and which provides for tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvement less any reduction in value caused by the agreement;"

- (4) The establishment of the NCADFP Trust Fund established in 2005 (N.C.G.S. 106-744 (c ) to preserve important farmland in North Carolina; and
- (5) The special use assessment of farm and forest land as set forth in North Carolina General Statute 105-277.2 et seq.

WHEREAS, Grantor and Grantee have the common purpose of protecting the above described Conservation Values and current condition of the Protected Property and preventing conversion of the Protected Property to non-agricultural uses and Grantor agrees to create and implement a conservation plan (hereinafter the “Conservation Plan”) that is developed utilizing the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12, and is approved by the Grantee

WHEREAS, the Grantee is a body politic existing under Chapter 153A of the North Carolina General Statutes, and is qualified to hold Easements under the applicable laws of the State of North Carolina and is a qualified organization under I.R.C. section 170(h). Further, the Grantee is eligible to receive NCADFP Trust fund monies pursuant to Article 61 of Chapter 106 of the North Carolina General Statutes.

NOW, THEREFORE, for \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) 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 Conservation Easement in the Protected Property for \_\_\_\_\_ years, which Easement is an immediately vested interest in real property of the nature and character described herein. Grantor promises that he 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. It is the primary purpose of this Agricultural Conservation Easement to enable the Protected Property to remain in agricultural use by preserving and protecting its green space, wildlife, silvicultural and agricultural soils and agricultural and silvicultural viability and productivity by limiting nonagricultural uses of the Protected Property. No activity that would significantly impair the actual or potential agricultural use of the Protected Property or that is otherwise inconsistent with the purposes of this Conservation Easement shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Easement are consistent with the primary purposes stated above, it is within the purpose of this Easement to also protect those values, and no activity that would significantly impair those values shall be permitted.

The provisions of this Conservation Easement 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, Agriculture Conservation Plan and conservation easement purposes, and do not violate federal or state laws, including federal drug laws. No uses will be allowed that decrease the conservation easement protection for the agricultural use and future viability, and related conservation values of the Protected Property. The production, processing, and marketing of agricultural crops and livestock is allowed provided it is conducted in a manner consistent with the terms of the Agricultural Conservation Plan.

- 1.2. **Duration.** This Conservation Easement over the Protected Property as further described in Exhibit A, shall be for \_\_\_\_\_ years. It is an easement in gross, runs with the land and is enforceable by Grantee against Grantor as provided herein, and against Grantor's representatives, successors, assigns, leases, agents and licensees.
- 1.3. **Extinguishment of Development Rights.** Except as otherwise reserved to the Grantor in this Easement, the parties agree that all development rights appurtenant to the Protected Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Protected Property as it now or hereafter may be bounded or described, or used or transferred to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Protected Property or any other property by anyone including the Grantor and Grantee.
- 1.4. **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 Easement, including \_\_\_\_\_ City or County, State of North Carolina or Federal requirements, regardless of any reserved rights or permissions contained in this Easement Document.

## **ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES**

- 2.1. **Subdivision.** Separate conveyance of a portion of the Protected Property, subdivision, partitioning or dividing the Protected Property is prohibited except as designated in Paragraph 3.4(c). 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 Conservation Easement, and the restrictions and covenants of this Conservation Easement will apply to the Protected Property as a whole.
- 2.2. **Industrial and Commercial Use.** Industrial and commercial use of the Protected Property and access therefore is prohibited. This restriction does not prohibit the use of the Protected Property or construction of improvements primarily for agricultural, horticultural, forestry, silvicultural, lawful and customary rural enterprises, such as, but not limited to, a winery, bed and breakfast, saw mills, farm machinery repair enterprises and non-developed recreational purposes as more specifically defined herein. Conducting customary rural commercial enterprises on any other part of the Property is not permitted without the advance written permission of the Grantee in each instance. The Grantee shall not give such permission unless the Grantee determines that the proposed use will not substantially diminish or impair the conservation values of the Property
- 2.3. **Mining.** There shall be no filling, excavation, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, peat, minerals, hydrocarbons or other materials, and no change in the topography of the land in any manner except as necessary for the purpose of farming operations or combating erosion of flooding and as reasonably necessary for any permitted maintenance, construction or reconstruction on the Protected Property. Disturbed areas for the purpose of removing topsoil, sand, gravel, rock, peat, minerals, or other materials must not harm the conservation values or the agricultural uses of the Property and will be restored as soon as practicable after the disturbance. Any removal of material as provided for in this subsection shall be solely for the purposes of the Protected Property and shall not be removed and sold to a third party. Under no circumstances is the exploration, exploitation and/or drilling for oil, natural gas, coal and/or other hydrocarbons permitted in, on or to the Protected Property. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this

Conservation Easement is executed, and their interests have not been subordinated to this Conservation Easement, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph.

- 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: dam construction in accordance with the Agricultural Conservation Plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation; erosion and sediment control pursuant to a plan approved by the Grantee; 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 conservation purpose of this Conservation Easement; or agricultural activities conducted in accordance with the Agricultural Conservation Plan.
- 2.5. Dumping and Trash. Dumping or storage of soil, trash, refuse, debris, ashes, garbage, waste, abandoned vehicles or parts, appliances, machinery, or hazardous substances, or toxic or hazardous waste, is prohibited with the exception of agricultural products, byproducts (including the composting of biodegradable materials for on-farm use) and agricultural equipment used on the Protected Property, so long as such storage is done in accordance with all applicable government laws and regulations and in such a manner so as to not impair the Conservation Values of the Protected Property.
- 2.6. 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 easement 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 City-County Unified Development Ordinance. Grantor shall be permitted to erect no trespassing signs, traffic or directional signs or warning signs as may be expedient and to post the property.

### **ARTICLE III. RIGHTS AND RESPONSIBILITIES RETAINED BY GRANTOR**

Notwithstanding any provisions of this Easement to the contrary, 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 Easement, and consistent with the section 1.1., "Statement of Purpose". Unless otherwise specified below, nothing in this Easement 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 Easement relieves them of any obligation or restriction on the use of the Protected Property imposed by law. All activities permitted in this Conservation Easement shall be conducted in a manner consistent with the terms of this Conservation Easement that minimizes impairment of and interference with the Conservation Values, and is in accordance with applicable federal, state and local regulations.

- 3.1. Agricultural Production. Grantor retains the right to use the Protected Property for agricultural production or to permit others to use the Protected Property for agricultural production, in accordance with applicable law and in accordance with NRCS Conservation Plan.

As used herein “agricultural production” means any use consistent with the definitions contained in North Carolina General Statute §106-581.1 including but not limited to the production, processing, storage, or retail marketing of crops, livestock and livestock products. For purposes hereof, crops, livestock, and livestock products include, but are not limited to :

- (a) Crops commonly found in the community surrounding the Protected Property;
- (b) Field crops, including corn, soybeans, small grains, hay, potatoes, cotton, tobacco, herbs, and dry beans;
- (c) Fruits, including apples, peaches, grapes, cherries, nuts and berries;
- (d) Vegetables, including lettuce, tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, and soybeans;
- (e) Horticultural specialties, seeds, Christmas trees, and flowers, production of sod or other crops where soil is removed above tolerable limits from the farm are prohibited;
- (f) Livestock and livestock products, including dairy cattle, beef cattle, sheep, swine, goats, horses, poultry, fur bearing animals, bees, milk and other dairy products, eggs and furs;
- (g) Timber, wood, and other wood products derived from trees;
- (h) Aquatic plants, aquatic animals, and their byproducts.

- 3.2. Right to Privacy. Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property. This Easement is not intended to create any rights of the public in, on or to the Protected Property.
- 3.3. Right to Use the Protected Property for Customary Rural Enterprises. Grantor retains the right to use the Protected Property, for otherwise lawful and customary rural enterprises, such as, but not limited to, 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, so long as such activities are consistent with \_\_\_\_\_ County zoning regulations and permits required by and issued by \_\_\_\_\_ County under its laws and ordinances. Any structures required for permitted purposes shall be located only within the Farmstead Areas, as shown on Exhibit . Any permanent or temporary structure or otherwise addition to the impervious surface shall not cause the total impervious surface restriction of the Protected Property to exceed two percent.

Grantor has the right to establish and carry out customary rural enterprises provided said activities are compatible with the Conservation Purposes of this Conservation Easement and agriculture and forestry uses of the Protected Property, and are subordinate to the agricultural and residential use of the Protected Property. The enterprises shall be conducted in the buildings required for the agricultural use of the Protected Property or the residences in which full time employees of the farm reside. Enterprises which market petroleum or chemical products are prohibited.

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

The term “Agritourism” shall be broadly defined to mean those farming activities and traditional rural activities that are carried out on any agricultural location, including horticultural and agribusiness operations, that allow members of the general public, for recreational, entertainment, active involvement, or educational purposes, to

view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions, or “Special Events” as defined herein, that have minimal negative impacts upon the environment and the Conservation Values of the Protected Property and are limited to “de minimis” access to and uses of the Protected Property. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

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

3.4. Procedure to construct Buildings and Other Improvements. The Grantor’s rights to construct or reconstruct/repair buildings and other improvements are described in subparagraphs (a) through (c) below. Any construction or reconstruction not permitted below is prohibited. Before undertaking any construction or reconstruction that requires advance permission, the Grantor shall notify the Grantee and obtain written permission. All construction or reconstruction is subject to \_\_\_\_\_ City-County zoning regulations and must be consistent with permits required by and issued by the City and/or County of \_\_\_\_\_ under applicable laws and ordinances for such construction activities. Any building may be constructed under applicable laws and ordinances for such construction activities. Any building that may be constructed under this section may be repaired and replaced.

- a) **Fences.** Existing fences may be repaired and replaced, and new fences may be built on the Protected Property for purposes of reasonable and customary management of livestock and wildlife or to fence off the perimeter of the Protected Property without any further permission of the Grantee.
- b) **Paving and Road Construction.** Construction and maintenance of unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Protected Property by this Easement are permitted. Such roads shall be located so as to minimize impact to prime and unique soils on the Protected Property. No portion of the Protected Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material, without the advance written permission of the Grantee.
- c) **Lots.** In accordance with North Carolina General Statute 106-744(b)(1), not more than three lots that meet applicable county and municipal zoning and subdivision regulations may be created.

**\*Landowner chooses one of the following\***

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

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

- d) **Farm Structures & Improvements** – New buildings, barns, sheds and other structures and improvements to be used primarily for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Protected Property may be built within the “Farmstead Area” as shown on Exhibit \_\_\_\_, after written approval from the Grantee is obtained. The Grantee shall give such approval within a reasonable time, unless it determines that the proposed building, structure or improvement would be inconsistent with the terms and conditions of the Agricultural Conservation Plan, significantly diminish or impair the Conservation Values of the Protected Property or otherwise be inconsistent with the purposes of this Conservation Easement. Existing buildings/barns/sheds and greenhouses as depicted in Exhibit \_\_\_\_ may be repaired or reconstructed in accordance with all other Conservation Easement provisions.

Any temporary structures proposed for locations outside the Farmstead Areas 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 Conservation Easement Deed.

- 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. and to control access of all persons for the purpose of hunting and fishing; provided that these activities do not impact the protection and conservation of any animal habitat or other Conservation Values of the Protected Property.
- 3.6 **Utility Services, Septic Systems, and Fuel Storage.** Installation, maintenance, repair, replacement, removal and relocation of electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Protected Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve improvements permitted herein, and the right to grant easements over and under the Protected Property for such purposes, is permitted. Installation, maintenance, repair or improvement of a septic system or other underground sanitary system for the benefit of any of the improvements permitted herein, is permitted. Above-ground storage tanks for fuels or any other materials for residential or on-site agricultural use are permitted up to a maximum size of one thousand (1000) gallons. Any such tanks are required to be located within the Farmstead Envelopes, shall be constructed to minimize any pollution to land or water, and in accordance with applicable local, state and federal laws and regulations. All other utilities are prohibited on the Protected Property including, but not limited to, communication towers or structures. Notwithstanding the previous sentence, with advance written permission from Grantee, Grantor retains the right to construct a wind turbine or similar device for the purpose of generating electricity to be used for the permitted improvements and farming operations occurring on the Protected Property.

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 purposes of the Conservation Easement.

- 3.7. Forest and Land Management. Pursuant to a forest management plan prepared by the North Carolina Forest Service or a North Carolina Registered Forester, trees may be removed, cut and otherwise managed. Land used for grazing, horticulture, crops and animal husbandry operations on the Protected Property shall be in a manner consistent with a Conservation Plan as required in Section 4.5.
- 3.7. Natural Resource Restoration and Enhancement Activities. Notwithstanding any terms contained within this Easement, Grantor may engage or contract others to engage in any activity designed to repair, restore, or otherwise enhance the natural resources found or once present on the Protected Property.

#### **ARTICLE IV. ONGOING RESPONSIBILITY OF GRANTOR AND GRANTEE**

This Easement 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 their 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 State of North Carolina 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 Easement in any deed or other legal instrument by which they transfer or divest themselves of any interest, including leasehold interests, in the Protected Property. The Grantor shall notify the Grantee in writing at least thirty (30) days before conveying the Protected Property, or interest therein. Failure of Grantor to do so shall not impair the validity of the Easement or limit its enforceability in any way.
- 4.4. Transfer of Easement. Subject to the contingent rights of the State of North Carolina with timely written notice and approval of the NCDA&CS, the Grantee shall have the right to transfer this Conservation Easement to any public agency or private nonprofit organization that, at the time of transfer, is a qualified organization under 26 U.S.C. Section 170(h) of the Internal Revenue Code, as amended and under NGS 121-34 et seq., provided the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. 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. Section 170(h) of the Internal Revenue Code, or applicable state law, a court with jurisdiction shall transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed by the Conservation Easement.

- 4.5. Conservation Practices. The Grantors, their heirs, successors, or assigns, shall conduct agricultural operations on the Protected Property in a manner consistent with a Conservation Plan prepared by Grantor in consultation with NRCS and approved by the Soil and Water Conservation district. This Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date of execution of this Easement Deed. However the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Protected Property, with advance notice to the Grantor, in order to monitor compliance with the Conservation Plan.
- 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 Easement.
- 4.7. Enforcement. The Grantee shall have the primary responsibility for management, monitoring and enforcement of the terms of this Conservation Easement, subject to the rights of the NCDA&CS. Grantee shall complete and file the annual monitoring reports due on or before December 31 of each calendar as stipulated in ADFP Grant Contract # \_\_\_\_\_, a copy of which is kept on file with the NCADFP Trust Fund. The terms of said contract are hereby incorporated by reference as if fully set forth herein.

Grantee shall have the right to prevent violations and remedy violations of the terms of this Easement through judicial action, which shall include, without limitation, the right to being proceedings in law or in equity against any party or parties attempting to violate the terms of this Easement. Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values 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, 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. The parties agree 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, each party shall bear its own costs.

- 4.8. Rights of the State of North Carolina. In the event that the Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the discretion of the NCDA&CS, the said Commissioner of Agriculture and their successors and assigns shall have the right to enforce the terms of this Conservation Easement through any and all authorities available under federal or state law.
- 4.9. Rights of Enforcement. Under this Conservation Easement, the State of North Carolina is granted the right of enforcement in order to protect the public investment. The Commissioner of the North Carolina Department of Agriculture (the Commissioner) or his or her assigns, on behalf of the State of North Carolina, may exercise this right of enforcement under any authority available under State or Federal law if Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Commissioner.

The State of North Carolina shall have the right to recover any and all administrative and legal costs from the Grantee, including attorney's fees or expenses associated with any enforcement or remedial action as it relates to the enforcement of this Conservation Easement.

In the event that Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Commissioner of Agriculture for North Carolina, the said Commissioner of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the Conservation Easement 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 Conservation Easement without the prior consent of the Commissioner of Agriculture and payment of consideration to the State of North Carolina, then, at the option of the Commissioner of Agriculture, all right, title, and interest in the Conservation Easement shall become vested in the State of North Carolina.

## **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 the Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Easement, and that the Grantee shall have the use of and enjoy all the benefits derived from and arising out of his Easement subject to existing easements for roads and public and private utilities.
- 5.2. Grantor's Environmental Warranty. 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 Law by Grantor or any other prior owner of the Protected Property.

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

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, 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. Liability and Indemnification. Grantor agrees to indemnify and hold the Grantee, and the State of North Carolina harmless from any and all cost, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence or damage relating to the Protected Property, or any claim thereof, unless due to the negligence of Grantee or its agents, in which case liability shall be apportioned accordingly.

Grantor is responsible for obtaining liability insurance covering the Property with limits deemed necessary by Grantor, in its sole discretion.

Grantor agrees to indemnify and hold Grantee and the State of North Carolina harmless from any and all costs, claims or liability, including but not limited to reasonable attorney 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 \_\_\_\_\_ County, North Carolina, and may re-record it at any time as may be required to preserve the rights of the Grantee, the State, and the United States under this Easement.
- 6.2. Survival of Terms/Merger of Fee and Easement. The Grantor and Grantee agree that the terms of this Easement 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 Easement to a third party in accordance with sections 4.4.
- 6.3. Amendment of Easement. This easement may be amended by a written instrument executed by the Grantee and the Grantor and approved by the Commissioner of Agriculture. Any such amendment shall be consistent with the Statement of Purpose of this Conservation Easement and with the Grantee's Conservation Easement amendment policies, and shall comply with 26 U.S.C.§ of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be recorded. Grantee shall give notice of any amendment to and secure approval from, the North Carolina Department of Agriculture and Consumer Services prior to signing and recordation and, must receive written consent prior to awarding the easement.
- 6.4. Procedure in the Event of Termination of Easement. If it is determined that conditions on or surrounding the Protected Property change so much that it becomes impossible to fulfill the conservation purposes of this Easement, a court with jurisdiction may, at the joint request of both the Grantor and the Grantee and with prior written consent of the State of North Carolina, as provided herein, terminate or modify the Easement created by this Easement in accordance with applicable State law.

If the Easement is terminated and the Protected Property is sold then as required by Section 1 of 170A-14(g) (6) of the IRS regulations, the Grantor, the Grantee, NC ADFP Trust Fund shall be entitled to recover the proceeds of the conservation easement based on the appraised fair market value of the conservation easement at the time the easement is extinguished or terminated, subject to any applicable law which expressly provides for a different disposition of the proceeds. The respective shares of the Grantor, the grantee, and NC ADFP Trust Fund shall be proportionate to the percentage of their original investment. The grantor's percent is \_\_\_\_%, the Grantee's percent is \_\_\_\_% and NC ADFP Trust fund's percent is \_\_\_\_%.

- 6.5. Procedure in the Event of Condemnation or Eminent Domain. Grantor and Grantee recognize that the sale of this Easement, or any part thereof, gives rise to a property right, immediately vested in the Grantee with a fair market

value equal to the proportionate value that the Easement bears to the value of the Protected Property prior to the restrictions imposed by the Easement. Accordingly, if any condemnation or eminent domain action shall be taken, on all or part of the Protected Property, by any authorized public authority, said authority shall be liable to the Grantee for the value of the property right vested in the Grantee at the time of the signing of this Easement. NCDA&CS must consent to any such condemnation action.

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

If this Easement is extinguished or terminated, the Grantor, the Grantee, and NC ADFP Trust Fund shall receive their proportional share of the Easement value at the time of termination. The respective shares of the Grantor, the Grantee, and NC ADFP Trust fund shall be proportionate to the percentage of their original investment. The Grantor's percent is \_\_\_%, the Grantee's percent is \_\_\_% and NC ADFP Trust fund's percent is \_\_\_%.

All termination-related or condemnation-related expenses incurred by the Grantor, the Grantee, and NC ADFP Trust Fund shall be paid out of each parties respective proceeds prior to distribution of the net proceeds as described herein.

- 6.6. Interpretation. This Easement shall be interpreted under the laws of the State of North Carolina , resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.
- 6.7. Duration; Severability. The Easement created by this Deed shall be a servitude running with the land for a period of \_\_\_\_\_ years. Every provision of this 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 Easement, or any part thereof by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.
- 6.8. Subsequent Liens on Protected Property. No provision of this Easement should be construed as impairing the ability of Grantor to use the Protected Property as collateral for subsequent borrowing. Any such liens shall be and remain subordinate to this Easement.
- 6.9. 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 Easement.

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

To the Grantor:

To the Grantee:

To the State of North Carolina  
N.C. Dept. of Agriculture & Consumer Services  
NCADFP Trust Fund  
2 West Edenton Street  
Raleigh, NC 27601

6.11. Approval by Grantee. In any case where the terms of this Easement require the approval of the Grantee, unless otherwise stated herein, such approval shall be requested in writing to the Grantee, and the NCDA&CS if required, in accordance with section 6.11. In any provision of this Easement 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 30 calendar days of receipt of said request. If Grantor has received no response after said 30 calendar days, Grantor may send a second written notice to Grantee requesting a statement of the reasons for the disapproval and the Grantee shall respond within 30 calendar days with an explanation for the specific reasons and basis for its decision to disapprove.

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

6.13. Availability or Amount of Tax Benefits. Grantee and NCDA&CS, acting by and through NCADFP 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 Easement or other transaction associated with the donation of this Easement. 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 Easement or of the Protected Property. As to all of the foregoing, Grantor is relying upon Grantor's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon 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.

6.14. Warranties and Representations of Owner. By signing this Easement, Grantor acknowledges, warrants and represents to Grantee that:

- (a) Grantor has had the opportunity to be represented by counsel of Grantor's and fully understands that Grantor is hereby relinquishing, for a period of \_\_\_\_\_ years, property rights which would otherwise permit Grantor to have a fuller use and enjoyment of the Protected Property.
- (b) There are no recorded or unrecorded leases or other agreements for the production of minerals or removal of timber from the Protected Property which would, if any of the activities permitted under such lease or other agreement was undertaken by Grantor, violate the covenants or restrictions in this Easement or otherwise defeat the conservation Purpose.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Grantee, their successors and assigns, forever.

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

GRANTOR:

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

**ACKNOWLEDGEMENT OF GRANTOR:**

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: \_\_\_\_\_

Accepted:

GRANTEE: \_\_\_\_\_

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

Name and Title

ATTEST:

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

Name and Title

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: \_\_\_\_\_

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 Conservation Easement, and the rights conveyed therein, on behalf of the State of North Carolina.

By: \_\_\_\_\_  
Jonathan 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 Lanier personally appeared before me this day and acknowledged that due execution of the foregoing instrument.

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

\_\_\_\_\_  
Notary Public (Official Seal)

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

## List of Exhibits

EXHIBIT A – Legal Description of the Protected Property

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