

This instrument prepared by and return to:  
Enter name

**ADFP Tracking #**  
ADM-ADFP-

**STATE OF NORTH CAROLINA**  
**COUNTY OF Enter county name**

**Parcel ID (PIN) #**  
**Enter PIN**

**WARRANTY**  
**DEED OF AGRICULTURAL LAND EASEMENT**

This Deed of Agricultural Land Easement (“ALE”) is granted on this Enter day with numerals and letter suffixes day of January , 20 , by Enter landowner name(s) having an address of Enter landowner mailing address (collectively “Grantor”), to Enter easement holding entity having an address of Enter entity mailing address (“Grantee”), the North Carolina Department of Agriculture and Consumer Services (“NCDA&CS”) acting by and through the North Carolina Agriculture Development and Farmland Preservation Trust Fund (“NCDA&CS” or “ADFP Trust Fund”) 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.

Grantee through the ADFP Trust Fund is providing Enter percentage% of the Easement Value, for a total cash contribution of \$Enter amount. Grantor is donating Enter percentage% of the Easement Value, for a total in-kind contribution of \$Enter amount. The total Easement Value is \$Enter total amount from grantor, and grantee cash contributions.

The Grantor and Grantee agree that any difference between the amount of this total cash payment and the fair market value of this Agricultural Land Easement (“ALE”), as determined by a “qualified appraisal” (as that term is defined by U.S. Treasury Regulations section 1.170A-13(c)(5)), or as determined by one of the valuation methods and rules that affect valuation as set forth in Regulation §1.170A-14(h)(3) is a charitable donation from Grantor to Grantee.

The “Effective Date” of this ALE is the date and time it was first recorded in the Enter county name County, North Carolina Registry.

## RECITALS

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

WHEREAS, the Protected Property consists primarily of productive agricultural land. The Protected Property also contains within its boundary [*Optional terms:* : buildings and/or improvements as shown on Exhibit Enter exhibit letter or number attached hereto and incorporated herein ; or is unimproved or contains no buildings or structures.]. The majority of the soils on the Protected Property have been classified as “prime” or “statewide important” soils by the NRCS), United States Department of Agriculture (“USDA,” also referred to as “United States”). It is the primary purpose of this ALE Deed to protect the agricultural soils and agricultural viability and productivity by limiting non-agricultural uses of the Protected Property.

**[Delete this and the below box if it is not relevant]**

WHEREAS, the Protected Property contains [Enter road name] a public road and provides a scenic view to the traveling public of [describe view of nature].

**[Delete this and the below box if it is not relevant]**

WHEREAS, the Protected Property also includes [insert brief description of natural resources; e.g., important species of plants and animals, habitat, etc.] of importance to the Grantor, the people of [County Name] County and the people of North Carolina.

**[Delete this and the below box if it is not relevant]**

WHEREAS, the Protected Property contains [insert brief description of water resources, such as streams, lakes, ponds, wetlands, located on or bordering, the Protected Property].

WHEREAS, the agricultural, natural, wildlife habitat and scenic resources of the Protected Property described above, and in the Baseline Documentation Report (hereinafter described) 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 both Parties to have been available to them on the Effective Date, and to be accurate as of the date of this ALE. 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 conditions of the ALE are fulfilled. This Report, however, is not intended to preclude the use of other evidence to establish the present condition of the Protected Property if there is a controversy over its use. The Grantor and Grantee have copies of this Report, and this Report will remain on file at the office of the Grantee.

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

WHEREAS, the Grantor intends that the Conservation Values of the Protected Property be preserved and maintained, and further, Grantor intends to convey to the Grantee the right to preserve and protect the agricultural and other Conservation Values of the Protected Property in perpetuity [IF TERM EASEMENT: for Enter number of years years].

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

- (A) N. C. Gen. Stat. § 139-2 et seq., which provides that “it is hereby declared ...that the farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people... It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and resources of this State;”
- (B) N. C. Gen. Stat. § 106-583 et seq., which states that “It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity;”
- (C) The Uniform North Carolina Conservation and Historic Preservation Agreements Act (N. C. Gen. Stat. § 121-34 et seq.) which provides for the enforceability of restrictions, easements, covenants or conditions “appropriate for retaining in land or water areas predominantly in their natural, scenic, or open condition or in agricultural, horticultural, farming or forest use;” and which provides for tax assessment of lands subject to such agreements “on the basis of the true value of the land and improvement less any reduction in value caused by the agreement;”
- (D) The establishment of the North Carolina Farmland Preservation Trust Fund established in 2005 (N.C. Gen Stat § 106-744 (c)) to preserve important farmland in North Carolina;
- (E) The special use assessment of farm and forest land as set forth in N. C. Gen. Stat. § 105-277.2 et seq.; and
- (F) 16 U.S.C. § 3865 et seq. and 7 CFR Part 1468, for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting non-agricultural uses that negatively affect the agricultural uses and conservation values of the Protected Property.

**FOR NON-PROFIT ENTITIES INCLUDE THE FOLLOWING:**

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

**FOR COUNTIES OR SWCDs INCLUDE THE FOLLOWING:**

WHEREAS, the Grantee is a body politic existing under Chapter 139 of the North Carolina General Status 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).

NOW, THEREFORE, for Enter amount spelled out Dollars (\$Enter amount in numerals) and for the reasons given and other good and valuable consideration and in consideration of their mutual covenants, terms, conditions and restrictions contained herein, ***[if there is a charitable component to the grant of the easement add:*** and as a charitable contribution by Grantor to Grantee of the difference between such sum and the fair market value of this ALE, the Grantor hereby voluntarily grants and conveys to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual [IF TERM EASEMENT: for Enter number of years years] ALE Deed in the Protected Property, which ALE Deed is an immediately vested interest in real property of the nature and character described herein. Grantor promises that they will not perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the covenants contained herein. Grantor authorizes the Grantee to enforce these covenants in the manner described below.

***Optional: if the Protected Property does not front on a public road, it will be necessary for the easement to also convey a right-of-way for access to and from the property for monitoring and enforcement:*** Grantor also grants to Grantee and NCDA&CS, an access easement to the Protected Property, used by Grantee and by NCDA&CS, for the sole purpose of monitoring compliance with, and enforcement of, the provisions of this ALE, Spell out square feet (Enter numeric number) feet in width, in the location shown on Exhibit B, attached hereto and made a part hereof. The access easement shall be used by NCDV&CS, for the sole purpose of monitoring compliance with, and enforcement of, the provisions of this ALE.

## ARTICLE I. GENERAL

1.1 **Statement of Purpose.** It is the primary purpose of this ALE Deed to enable the Protected Property to remain in agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity by limiting nonagricultural uses that negatively affect the agricultural uses and conservation values 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 ALE Deed, shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this ALE Deed are consistent with the primary purpose stated above, it is within the purpose of this ALE Deed to also protect those values, and no activity that would significantly impair those values shall be permitted.

The provisions of this ALE Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Protected Property, so long as the agricultural operations are consistent with the long-term viability of the Protected Property and the purpose of the ALE Deed. Allowed uses of the Protected Property include the specific uses allowed in Section 2.1(B)(i)-(iv) and the following activities, subject to the qualifications stated below:

- (A) Agricultural Production – The production, processing and marketing of agricultural crops and livestock compatible with the purpose of the ALE Deed are allowed provided these activities are conducted in a manner consistent with the terms of the ALE Deed and the ALE Plan described in Section 4.5.
- (B) Forest Management and Timber Harvest – Forest management and timber harvesting are allowed, provided these activities are carried out, to the extent practicable, in

accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property, and in accordance with a written forest management plan as described in Section 3.7.

- 1.2. Duration. This ALE Deed over the Protected Property as further described in Exhibit Enter exhibit letter or number shall be perpetual [IF TERM EASEMENT: for Enter number of years] years. It is an ALE Deed in gross, runs with the land and is enforceable by Grantee against Grantor as provided herein, and against Grantor’s representatives, successors, assigns, lessees, agents, and licensees.
- 1.3. Extinguishment of Development Rights. Except as otherwise reserved to the Grantor in this ALE Deed, the parties agree that all development rights appurtenant to the Protected Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Protected Property as it now or hereafter may be bounded or described, or used or transferred to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Protected Property or any other property by anyone including the Grantor and Grantee.
- 1.4. Compliance with other Regulatory Requirements. The Grantor is responsible for complying with any and all additional permits or regulations to use or develop the Protected Property under the terms of this ALE Deed, including Enter county name County, State of North Carolina or Federal requirements, regardless of any reserved rights or permissions contained in this ALE Deed.

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

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

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

- 2.1. Limitations on Nonagricultural Uses. Any activities inconsistent with the purpose of the ALE Deed are prohibited.
  - (A) Subdivision. Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited. Grantor hereby waives any right to subdivide the protected property pursuant to North Carolina General Statute 106-744(b)(1).

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

- (B) Industrial and Commercial Use. Industrial or commercial activities on the Protected Property are prohibited except for the following:
  - (i) Agricultural production and related uses in accordance with the terms and conditions of this ALE Deed.

- (ii) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the purposes of this ALE Deed and in accordance with the terms and conditions of this ALE Deed;
- (iii) Temporary or seasonal outdoor activities or events that do not harm the purpose of the ALE Deed; and
- (iv) Commercial enterprises related to permitted agricultural [and/ or forestry] use including but not limited to agritourism, processing, packaging, and marketing of farm products. [optional: When the Easement permits buildings that are appropriate for housing the following uses: Farm machinery repair, and small-scale farm wineries; small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafes, shops, and studios for arts and crafts. This restriction does not prohibit the use of the Protected Property or construction of improvements primarily for agricultural, horticultural, forestry, silvicultural and non-developed recreational purposes as more specifically defined herein.

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

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Protected Property at the time this ALE Deed is executed, and their interests have not been subordinated to this ALE Deed, the Grantor must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this Paragraph 2.2. Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this ALE Deed and must incorporate by reference this ALE Deed.

2.3. 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:

- (A) Dam construction pursuant to a plan approved by the Grantee to create ponds for agricultural use, fire protection, or wildlife enhancement, or creation.
- (B) Repair surface ditches and drainages, and subsurface drains and drainpipes.
- (C) Restore damage to the Protected Property caused by flooding, such as replacement of lost topsoil, and grading areas on which soil or debris have been deposited by flooding;
- (D) Erosion and sediment control pursuant to a plan approved by the Grantee;

(E) 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 purpose of the ALE Deed

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

- 2.4. Motorized Vehicle Use. Grantor shall not use motor vehicles on the Protected Property or grant permission for such use except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or conservation uses of the Protected Property, provided that no use of motorized vehicles shall create impacts that are detrimental to the productivity of the soils on the Protected Property and the Statement of purposes of the ALE Deed; however, notwithstanding the foregoing, use of snowmobiles on snow is allowed on the Protected Property.
- 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. The placement of underground or above ground storage tanks or other materials is prohibited, with the exception of agricultural products, byproducts (including the composting of biodegradable material for on-farm use) and agricultural equipment used on the Protected Property, so long as such storage is done in accordance with all applicable government laws and regulations and in such a manner so as to not impair the Conservation Values of the Protected Property.
- 2.6. Structures and Improvements. There shall be no building, tower, facility, mobile home, or other structure constructed or placed on the Protected Property unless specifically authorized in Article III. Any structures permitted or reserved by Grantor shall be of such reasonable size, proportion, height, and character so as not to significantly detract from the open space and agricultural purposes of this ALE Deed. Under no circumstances shall golf courses or ranges, airstrips or helicopter pads be constructed or permitted on the Protected Property.
- 2.7. Signage. Display to the public of billboards, signs or advertisements is prohibited on or over the Protected Property, except to state the name of the property and its farmland status, including its ALE Deed status, the name and address of the occupant, to advertise an on-site activity, and to advertise the property for sale or rent, as allowed by the sign ordinance set forth in the Enter county name County Zoning and Subdivision Ordinance, to the extent said ordinance is applicable. Grantor shall be permitted to erect no trespassing signs, traffic or directional signs or warning signs as may be expedient and to post the property.
- 2.8. Limitation on Impervious Surfaces. Impervious surface will not exceed two percent (2%) of the Protected Property, excluding Soil and Water Conservation District or NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings, with or without flooring, paved areas, solar panels, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Grantee by this ALE Deed. Excluded from this definition are compacted dirt and gravel surfaces. This restriction shall apply to permanent and temporary structures and facilities, both existing and proposed.

- 2.9 Mitigation. The Protected Property may not be used to satisfy compensatory mitigation requirements under 16 U.S.C. § 1344 or N. C. Gen. Stat. § 143-214.11 or any successor or replacement provision of the foregoing.
- 2.10 Open Space and Development Rights. This ALE shall not be used to satisfy open space or density requirements of any cluster or other development scheme or plan. The development rights encumbered by this ALE shall not be transferred to any other land pursuant to a transfer of development rights scheme, a cluster development arrangement, or otherwise.
- 2.11 Additional Easements. No additional easement or other legal interest extinguishing or limiting development rights, including but not limited to conservation easements, preservation easements, mitigation easements, or any other form of easement that would restrict or limit the use or development beyond the terms of this ALE shall be placed on the Protected Property. Notwithstanding any other provision of this ALE, the Grantor may grant access or utility easements on the Protected Property, subject to the terms and conditions set forth in this ALE. All permitted easements shall be subordinate to this ALE and shall not interfere with, diminish, or otherwise negatively impact the Conservation Purposes of this ALE. Any such permitted easements must be expressly made subject to the terms of this ALE in the instrument granting the permitted easements. No permitted easement shall be granted without the prior written consent of the Grantee, which consent may be withheld if the Grantee determines that the proposed permitted easement would impair or interfere with the Conservation Values of the Property or the purpose of this ALE, subject to the rights of NCDA&CS.

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

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

- 3.1. Right to Farm. Grantor retains the right to farm, or to permit others to farm the Protected Property for farming or other agricultural activities that are consistent with the Conservation Values of the Protected Property and in accordance with applicable local, state, and federal laws and regulations, and in accordance with the ALE Plan. Subject to any prohibitions stated herein, farming, grazing, horticultural (provided such activity does not remove topsoil from the Protected Property) and animal husbandry operations are permitted when carried out, to the extent practicable, in accordance with current, generally accepted best management practices approved by the State of North Carolina, and in conformity with the ALE Plan as required in Section 4.5 hereafter.
- 3.2. Right to Privacy. Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property. This ALE Deed is not intended to create any rights of the public in, on or to the Protected Property.



- 3.3. Right to Use the Protected Property for Customary Rural Enterprises. Grantor retains the right to use the Protected Property, for otherwise lawful and customary rural enterprises, such as, but not limited to, farm machinery repair, sawmills, firewood distribution, for nature and historic tours, equestrian activities, and other passive or “Ecotourism”, “Agritourism” and “Special Events” as defined herein, educational programs or farm meetings and like activities that are consistent with the Conservation Purposes. Any structures required for permitted purposes shall be located only within the Farmstead Building Envelope(s) as shown on Exhibit B. 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 (2%).

Grantor has the right to establish and carry out customary rural enterprises provided such activities are compatible with the Conservation Purposes and agriculture and forestry uses of the Protected Property and are subordinate to the agricultural [when the easement provides for residential use add] and residential use of the Protected Property. The enterprises shall be conducted in the buildings permitted herein required for the permitted agricultural use of the Protected Property [Optional:] and/ or the residences permitted herein. 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. Short-term camping shall be defined to mean low-impact outdoor camping that is one, two, or three nights in length and may be permitted provided the activities are compatible with the Conservation Purposes and agriculture and forestry uses of the Protected Property, minimize negative impacts on future agricultural operations and expansion of agricultural uses, and are subordinate to the agricultural use of the Protected Property. Long-term camping of four nights or more and permanent camping accommodations, including but not limited to recreation vehicles, tent facilities, or enclosures of any sort, must be confined to Farmstead Building Envelopes and are subject to the restrictions set forth in Section 3.4(E), provided the activities are compatible with the Conservation Purposes and agriculture and forestry uses of the Protected Property, minimize negative impacts on future agricultural operations and expansion of agricultural uses, and are subordinate to the agricultural use of the Protected Property.

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 Building Envelope(s) and/or existing farm roads as depicted in Exhibit Enter exhibit letter or number.

- 3.4. **Construction on the Protected Property.** The Grantor’s rights to construct or reconstruct/repair buildings and other improvements on the Protected Property are described in subparagraphs (A) through (E) below. Any construction or reconstruction not permitted below is prohibited. All new structures and improvements must be located within the Farmstead Building Envelope, containing approximately Spell out number of acres acres and shown in Exhibit B, which is appended to and made a part of this ALE. Before undertaking any construction or reconstruction that requires advance permission, the Grantor shall notify the Grantee and obtain written permission. All construction or reconstruction, to the extent regulated by applicable law, is subject to Enter county name County Zoning and Subdivision Ordinances and must be consistent with permits required by and issued by Enter county name County under applicable laws and ordinances for such construction activities and with the Conservation Purposes. Any building that may be constructed under this Section may be repaired and replaced.

***[The following provisions for minor agricultural structures outside the farmstead must consider the impervious surface limit and the size of existing structures. Minor agricultural structures are recommended to be less than 500 sq. ft. each.]***

Minor agricultural structures, such as feeding and watering facilities and livestock run-in sheds that do not exceed Spell out square feet (Enter square feet numerically) square feet in ground area or Spell out number (Enter number) structures in number and that neither individually nor collectively have an adverse impact on the Conservation Values, may be constructed, located and maintained outside of the Farmstead Building Envelope with prior written approval of Grantee, as necessary to serve the permitted agricultural use of the Protected Property.

Grantor agrees that the two (2) percent maximum impervious surface limit set forth in Section 2.8 disallows the construction of any new structures or impervious roads or other improvements to the Protected Property or replacement of said structures that would increase the total impervious surface area above the two (2) percent maximum. All permanent construction and/or placement upon the Protected Property of any impervious surface must be approved in writing by the Grantee to ensure the maximum impervious limit is not exceeded.

- (A) Fences – Existing fences may be maintained and replaced, and new fences may be installed if they are necessary for the agricultural operations on the Protected Property or to mark the boundaries of the Protected Property.
- (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 ALE 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. New roads may be constructed if they are approved in advance by Grantee, within impervious surface limits, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property. Maintenance of existing roads documented in the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operation or other allowed uses on the Protected Property

- (C) Farm Structures and Improvements – New buildings, barns, sheds and other structures and improvements to be used primarily for permitted agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Protected Property may be built within the “Farmstead Building Envelope”, 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 exceed the total maximum impervious surface limit provided in Section 2.8, significantly diminish, or impair the Conservation Values or otherwise be inconsistent with the Conservation Purposes. **[Optional: when there are buildings, etc. on the property on the Effective Date the following should be included:** "Existing buildings/barns/sheds and greenhouses as depicted in Exhibit Enter exhibit letter or number may be repaired or reconstructed in accordance with all other provisions of this ALE"].
- (D) **[The following provisions for residential use are optional. Residential lots transfer with this easement. NCGS 106-744(1): May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations]** Residential Construction and Use.
- (i) Single-Family Residential Dwellings – There are, as of the Effective Date, Spell out number (Enter number) single-family residential dwellings on the Protected Property as shown on Exhibit B. These residences may be used, renovated and/ or enlarged (but not to exceed a total for each such residence of Spell out number thousand (Enter number) square feet of ground area), in their current locations, so long as the construction is first approved by the Grantee to determine that it does not exceed the maximum impervious surface restriction provided in Section 2.8. No existing residential dwelling may be relocated except to a location within the designated Farmstead Building Envelope.
  - (ii) **Optional:** Existing residential dwellings may be used as “primary residential dwellings” as described in the following paragraph, or as “farm support housing”, as described in paragraph (iii) of this Section 3.4(d).
  - (iii) **Optional:** New Primary Residential Dwellings. Spell out number (Enter number) new single-family residential dwelling and accessory structures to house the owner of the Protected Property and such

owner's non-paying guests, may be built or located on the Protected Property within the designated Farmstead Building Envelope only. (Such primary dwelling may not exceed Spell out number Thousand (Enter number) square feet of ground area.

- (iv) **Optional:** Farm Support Housing - No more than a total of Spell out number (Enter number) new or existing single or multi-family dwelling(s) to house farm tenants, employees or other engaged in permitted agricultural production or other permitted farm support uses on the Protected Property may be built or located on the Protected Property. The dwellings must be no greater than Spell out number (Enter number) square feet in floor size and shall be located within the area identified and marked as the "Farmstead Building Envelope" identified on Exhibit B.
- (v) **Optional:** Other Residential Dwellings - No more than a total of Spell out number (Enter number) new or existing single or multi-family dwelling(s) to house short or long-term renters or owner's non-paying guests may be built or located on the Protected Property. The dwellings must be no greater than Spell out number (Enter number) square feet in floor size and shall be located within the area identified and marked as the "Farmstead Building Envelope" identified on Exhibit B.

(E) Recreational and Accessory Structures – New or existing buildings, barns, sheds, other structures, enclosures, and improvements, both permanent and temporary, to be used primarily for Customary Rural Enterprises, including “Ecotourism”, “Agritourism”, “Special Events” or other passive activities, may be built or placed within the “Farmstead Building Envelope”. Permanent structures, enclosures, and improvements may be built or placed after written approval from the Grantee is obtained. The Grantee shall give such approval within a reasonable time, unless it determines that the proposed structures, enclosures, and improvements would exceed the total maximum impervious surface limit provided in Section 2.8, significantly diminish, or impair the Conservation Values or otherwise be inconsistent with the Conservation Purposes. Existing structures as depicted in Exhibit Enter exhibit letter or number may be repaired or reconstructed in accordance with all other provisions of this ALE. No accessory structure shall be used as a residential dwelling. Long-term camping of four nights or more and permanent camping accommodations, including but not limited to recreation vehicles, tent facilities, or enclosures of any sort, must be placed within the “Farmstead Building Envelope”.

No residential dwellings or recreational and accessory structures may be built or located anywhere on the Protected Property except as expressly permitted in this Section 3.4.

- 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 restrict, permit, or limit access of all persons to the Protected Property for the purpose of hunting and fishing, hiking, bird watching, etc., provided that these activities

do not impact the protection and conservation of any animal habitat or other Conservation Values of the Protected Property. Commercial, non-developed recreational activities are permitted, including granting of leases to enter and use the Protected Property for hunting or fishing, provided the activities are compatible with the Conservation Purposes and agriculture and forestry uses of the Protected Property, minimize negative impacts on future agricultural operations and expansion of agricultural uses, and are subordinate to the agricultural use of the Protected Property. Grantor shall require lessees to abide by the terms of this ALE. No part of this section shall be interpreted to permit intensive recreational activities that concentrate people in a relatively confined area for significant periods of time that are incompatible with the Conservation Purposes and agriculture and forestry uses 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, that neither individually nor collectively have an adverse impact on the purpose of the ALE Deed is permitted with the prior written approval of the Grantee; provided, however, the prior written approval is not required for utilities located entirely within the Building Envelope(s). The granting or modification of easements for such utilities is prohibited when the utility will adversely impact the purpose of the ALE Deed as determined by the Grantee and in consultation with NCDA&CS. 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 Building Envelope, shall be constructed to minimize any pollution to land or water, and in accordance with applicable local, state, and federal laws and regulations. Any areas disturbed as a result of any utility construction shall be revegetated and restored to its condition immediately prior to such disturbance. 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 ALE Deed. Commercial scale renewable energy projects are not permitted on the Protected Property.

- 3.7. Forest Management and Timber Harvest. Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 20 contiguous acres of forest, then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management

plan will not be required for the following allowed noncommercial activities: cutting of trees for the construction of allowed roads, utilities, buildings and structures on the Protected Property, cutting of trees for trail clearing, cutting of trees for domestic use as firewood or for other domestic uses by Grantor, removal of trees posing an imminent hazard to the health or safety of person or livestock, or removal of invasive species.

Pursuant to a forest management plan, trees may be removed, cut, and otherwise managed to control insects, for pasture restoration, for firewood and other non-commercial uses, including construction of permitted improvements, cutting of trees for trail clearing, removal of trees posing an imminent hazard to the health or safety of persons or livestock, removal of invasive species, and fences on the Protected Property. Trees may be planted, harvested, and removed within the Building Envelope(s).

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

“Forever wild” or other similarly written forest management plans are prohibited.

- 3.8. Water Rights. Grantor shall retain and reserve the right to use any appurtenant water rights sufficient to maintain the agricultural productivity, customary rural enterprises, and residential uses of the Protected Property. Grantor shall not transfer, encumber, lease, sell or otherwise separate such water rights from title to the Protected Property itself.
- 3.9. Land Application. The land application, storage, and placement on the Protected Property of domestic septic effluent and municipal, commercial, or industrial sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with all applicable federal, state and local laws and regulations and in accordance with the ALE Plan. Spray irrigation of domestic septic effluent to serve the Protected Property’s dwelling(s) is prohibited.
- 3.10. Natural Resource Restoration and Enhancement Activities. Grantor may engage or contract others to engage in any activity designed to repair, restore, or otherwise enhance the natural resources found or once present on the Protected Property, that are consistent with the Conservation Values of this ALE Deed and the ALE Plan and subject to the written approval of Grantee.
- 3.11. Pond Creation, and Wetland Restoration. The Grantor is permitted to construct ponds and restore wetlands in accordance with the ALE Plan and Natural Resources Conservation Service (NRCS) standards and specifications. Ponds must support agricultural operations such as irrigation, livestock water supplies, or fire control. Ponds that are constructed and used for agricultural purposes are exempt from riparian buffer rules, except as required by federal law, are an imminent threat to public health or safety, or as a component of an animal waste management system. Wetlands must be either used to treat agricultural waste or support critical habitat needs for wildlife species. There shall be no requirement of this ALE Deed for riparian buffers or wetland restoration, except for voluntary management practices by the Grantor or as required by federal, state, and local laws and regulations.

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

This ALE Deed is not intended to impose any legal or other responsibility on the NCDA&CS, or in any way to affect any existing obligation of the Grantor as owners of the Protected Property.

Among other things, this shall apply to:

- 4.1. Taxes. The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property, the Grantor shall upon demand reimburse the Grantee for the same.
- 4.2. Upkeep and Maintenance. The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Protected Property, to the extent it may be required by law. The Grantee and NCDA&CS shall have no obligation for the upkeep or maintenance of the Protected Property.
- 4.3. Transfer of Protected Property. The Grantor agrees to incorporate by reference the terms of this ALE Deed in any deed or other legal instrument by which they transfer or divest themselves of any interest, including leasehold interests, in the Protected Property. The Grantor shall notify the Grantee in writing at least thirty (30) days before conveying the Protected Property, or any interest therein. Failure of Grantor to do so shall not impair the validity of this ALE Deed or limit its enforceability in any way.
- 4.4. Transfer of ALE Deed. Subject to the 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 ALE Deed to any public agency or private nonprofit organization that, at the time of transfer, is a qualified organization under 26 U.S.C. § 170(h) of the Internal Revenue Code, as amended and under N. C. Gen. Stat. § 121-34 et seq., provided the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this ALE Deed. As a condition of such transfer, Grantee shall require that the conservation purposes intended to be advanced hereunder shall be continued to be carried out. If the Grantee ever ceases to exist or no longer qualifies under 26 U.S.C. § 170(h) of the Internal Revenue Code, or applicable state law, a court with jurisdiction shall transfer this ALE Deed to another qualified organization having similar purposes that agrees to assume the responsibility imposed by the ALE Deed.
- 4.5. ALE Plan. If the Protected Property contains Highly Erodible Cropland and/or at least 20 acres of forest land, the Grantors, their heirs, successors, or assigns, shall conduct agricultural operations on the Protected Property in a manner consistent with the Agricultural Land Easement Plan (the "ALE Plan") prepared by Grantee in consultation with Grantor and a professional resource manager, including, but not limited to, NRCS, the local Soil and Water Conservation District, and North Carolina Forest Service. This ALE Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR Part 12 that are in effect on the date of execution of this ALE Deed. However, the Grantor may develop and implement an ALE Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. The Grantee agrees to update the ALE Plan, in consultation with the Grantor, in the event the agricultural uses or ownership of the Protected Property change. A copy of the current ALE Plan will be kept on file with the Grantee.

The ALE Plan may include any or all of the following components, as applicable.

- (A) If the Protected Property contains Highly Erodible Cropland, then the ALE Plan shall include a conservation plan that complies with 7 CFR Part 12 pertaining to all highly erodible cropland on the Protected Property. If the NRCS standards and specifications for highly erodible cropland are revised after the date of this ALE Deed based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan.
- (B) If applicable, the ALE Plan will include a forest management plan, as described in Section 3.7, that describes the management system and practices to conserve, protect, or enhance the viability of the forest land on the Protected Property and as applicable, any significant conservation benefits. The forest management plan will address landowner objectives, potential soil erosion issues relevant to roadways, logging decks and other stream related issues. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee, and reviewed for updates by the Grantor and Grantee every 10 years from the date of the ALE recordation.

The Grantor must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, the Grantee may notify NCDA&CS. If determined by the local Soil and Water Conservation District or NRCS there is substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE plan, NCDA&CS will give the Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action.

- 4.6. Inspection and Access. With reasonable advance notice to the Grantor or with the Grantor's prior verbal consent, Grantee or NCDA&CS, its employees and agents and its successors and assigns, shall have the right to enter the Protected Property for the purpose of inspecting the Protected Property to determine whether the Grantor, its successors or assigns are complying with the terms, conditions, and restrictions of this ALE Deed.
- 4.7. Enforcement. Due to the State's interest in this ALE Deed, the Grantee shall have the primary responsibility for management, monitoring, and enforcement of the terms of this ALE Deed, subject to the rights of the NCDA&CS. Grantee shall complete and file the annual monitoring reports in accordance with the NCDA&CS Conservation Easement Monitoring Policy and Guidelines, a copy of which is kept on file with the NCADFP Trust Fund. The terms of such policy are hereby incorporated by reference as if fully set forth herein.

Grantee shall have the right to prevent violations and remedy violations of the terms of this ALE Deed through judicial action, which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties attempting to violate the terms of this ALE Deed. Except when an ongoing or imminent violation could irreversibly diminish or impair the 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 or submit a plan of action to cure 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. Grantor, Grantee and NCDA&CS 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, Grantor, Grantee and NCDA&CS shall bear its own costs.

Grantee may seek an injunction or order requiring the Grantor to restore the Protected Property to its condition on the Effective Date, or to such other condition as may exist consistent with the provisions of this ALE, as restoration of the Protected Property may be the only appropriate remedy. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. In any case where a court finds no such violation has occurred, Grantor, Grantee and NCDA&CS shall bear their 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 ALE Deed, as determined in the discretion of the NCDA&CS, the said Commissioner of Agriculture and his or her successors and assigns shall have the right to enforce the terms of this ALE Deed through any and all authorities available under federal or state law.

In the event that Grantee attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this ALE Deed without the prior consent of the 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 ALE Deed shall become vested in the State of North Carolina. 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 ALE Deed.

In the event of an emergency, NCDA&CS may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Grantee and Grantor or Grantor's representative at the earliest practicable time.

## **ARTICLE V. REPRESENTATIONS OF THE PARTIES**

- 5.1. Grantor's Title Warranty. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey this ALE Deed; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this ALE Deed, that Grantor will warrant and defend title to the same against the claims of all persons whomsoever, and that the Grantee shall have the use of and enjoy all the benefits derived from and arising out of this ALE Deed subject to existing easements for roads and public and private utilities.
- 5.2. Grantor's Environmental Warranty. Grantor warrants that Grantor is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged

violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Grantor further warrants that they have no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

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

Due to the State's interest in this ALE Deed, the Grantor hereby promises to hold harmless and indemnify the NCDA&CS against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected Property.

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

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

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

Grantor agrees to indemnify and hold harmless NCDA&CS, its employees, the Grantee and the State of North Carolina harmless from any and all costs, claims or liability, including but not limited to reasonable attorney's fees arising from any personal injury, accidents, negligence or damage relating to the Protected Property, or any claim thereof, unless due to the negligence of Grantee or its agents, in which case liability shall be

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

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

## ARTICLE VI. MISCELLANEOUS

- 6.1. Recording. Grantee shall record this instrument in a timely fashion in the official record of Enter county name County, North Carolina, and may re-record it at any time as may be required to preserve the rights of the Grantee and the State of North Carolina under this ALE Deed.
- 6.2. Survival of Terms/Merger of Fee and Easement. The Grantor and Grantee agree that the terms of this ALE Deed shall survive any merger of this fee and easement interest in the Protected Property. In the event the Grantee becomes owner of the Protected Property, or any portion thereof, Grantee shall transfer any right, title, and interest in this ALE Deed to a third party in accordance with Section 4.4.
- 6.3. Amendment of Easement. Grantee and Grantor may amend this ALE to enhance the Conservation Value or add real property subject to the restrictions set forth in this ALE to the restricted property by an amended deed of easement, provided that no amendment shall:
- (A) Affect this ALE's perpetual duration;
  - (B) Permit development, improvements, or uses prohibited by this ALE on its Effective Date;
  - (C) Conflict with or be contrary to or inconsistent with the Conservation Purposes;
  - (D) Reduce the protection of the Conservation Values;
  - (E) Affect the qualification of this ALE as a "qualified conservation contribution" or "interest in land";
  - (F) Affect the status of Grantee as a "qualified organization" or "eligible donee"; or
  - (G) Create an impermissible private benefit or private inurement in violation of federal tax law.

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Enter county name County, North Carolina Registry.

Due to the State's interest, this ALE may be amended only with the prior written consent of the Grantee and the Grantor and approved by the Commissioner of the

North Carolina Department of Agriculture and Consumer Services. Any such amendment shall be consistent with Section 1.1., “Statement of Purpose” and with the Grantee’s easement amendment policies and shall comply with Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Grantee must provide to the North Carolina Commissioner of Agriculture timely notice in writing of the proposed amendment prior to signing and recordation.

Due to the State’s interest in the ALE, the Grantee must provide NCDA&CS timely notice in writing of the proposed amendment prior to signing and recordation and must receive written consent prior to awarding the ALE.

6.4 Procedure in the Event of Extinguishment, Termination, and Condemnation.

- (A) Grantor agrees that the conveyance of this ALE gives rise to a right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that this ALE, on the Effective Date, bears to the value of the Protected Property as a whole at that time as though unencumbered by this ALE (“Proportionate Share”). The Proportionate Share shall remain constant. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (“USPAP”) or Uniform Acquisition Standards or Federal Land Acquisition (“UASFLA”). The appraisal must be completed by a certified general appraiser and be approved by the Grantee and the NCDA&CS.
- (B) The interests and rights under this ALE may only be extinguished or terminated with written approval of Grantee and NCDA&CS, and then only pursuant to a judicial determination that, due to changed circumstances, continued use of the Protected Property for conservation purposes is either impossible or impractical, and only if in compliance with 26 U.S.C. § 170(h) of the Internal Revenue Code and applicable Treasury Regulations.
- (C) In the event of an extinguishment of this ALE, Grantee, on a subsequent sale, exchange, or involuntary conversion of the Protected Property, shall be entitled to a portion of the proceeds at least equal to the Proportionate Share computed as set forth in Section 6.4(A).
- (D) Reimbursement Provision. After Grantee has received its Proportionate Share as provided in Sections 6.4 (C) or (D), Grantee shall pay an amount to NCDA&CS equal to the percentage that the value of NCDA&CS’ cash payments for the purchase of this easement (as stated above) represent of the Proportionate Share. All of the Proportionate Share shall be used by Grantee and NCDA&CS in a manner that is consistent with the Conservation Purposes.

Until such time as Grantee and NCDA&CS receive their share of the Proportionate Share, they shall each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. The lien provided for in this paragraph shall be subordinate to the other provisions of this ALE.

Grantors are aware and acknowledge that the activities and uses allowed on the Protected Property once encumbered by this ALE may be less profitable than prohibited activities and uses. This circumstance shall not be grounds for judicial extinguishment of this ALE.

- 6.5. Interpretation. This ALE Deed 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.
- 6.6. Perpetual Duration; Severability. This ALE Deed shall be a servitude running with the land in perpetuity or , for a period of Enter number of years years. Every provision of this ALE Deed that applies to the Grantor or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this ALE Deed, or any part thereof by court order or judgment shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.
- 6.7. Subsequent Liens on Protected Property. No provision of this ALE Deed should be construed as impairing the ability of Grantor to use the Protected Property as collateral for subsequent borrowing. Any such liens shall be and remain subordinate to this ALE Deed.
- 6.8. Subsequent Easements/Restrictions on the Protected Property. The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Protected Property or otherwise diminish or impair the Conservation Values of the Protected Property is prohibited. Any such easements or restrictions shall be subordinated to this ALE Deed.
- 6.9. Notices. Any notices required by this ALE Deed shall be in writing and shall be personally delivered or sent by first class mail to the Grantor, Grantee, and NCDA&CS respectively, at the following addresses, unless a party has been notified in writing by the other of a change of address.

To the Grantor:  
 Enter landowner name(s)  
 Enter mailing address  
 Enter City, State, Zip

To the Grantee:  
 Enter entity name  
 Enter mailing address  
 Enter City, State, Zip

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

- 6.10. Approval by Grantee. In any case where the terms of this ALE Deed require the approval of the Grantee, unless otherwise stated herein, such approval shall be requested in writing to the Grantee and NCDA&CS if required, in accordance with Section 6.10. In any provision of this ALE Deed in which the Grantor is required to provide advance notice to the Grantee of any activity on the Protected Property, such notice shall be given not less than thirty (30) calendar days prior to the planned commencement of the activity. If the Grantee's approval is required, such approval shall be deemed withheld/disapproved unless Grantee provides to the Grantor written notice of approval within 30 calendar days of receipt of such request. If Grantor has received no response within such 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.

- 6.11. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the ALE Deed and supersedes all prior discussions, negotiations, understandings, or agreements relating to the ALE Deed. If any provision is found to be invalid, the remainder of the provisions of this ALE Deed, and the application of such provision to persons of circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- 6.12. Availability or Amount of Tax Benefits. Grantee and NCDA&CS, acting by and through the 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 ALE Deed or other transaction associated with the donation of this ALE Deed. This donation is not conditioned upon the availability or amount of any such deduction, credit, or other benefit. Grantee and NCDA&CS make no warranty, representation, or other assurance regarding the value of this ALE Deed or of the Protected Property. As to all of the foregoing, Grantor is relying upon Grantor's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon Grantee or NCDA&CS or any legal counsel, accountant, financial advisor, appraiser or other consultant of Grantee or NCDA&CS. In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs involving Grantor or Grantor's heirs, successors or assigns or other similar matter, then Grantee and NCDA&CS shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by Grantee in responding or replying thereto.
- 6.13. Warranties and Representations of Grantor. By signing this ALE Deed, Grantor acknowledges, warrants, and represents to Grantee that:
- (A) Grantor has had the opportunity to be represented by counsel of Grantor's choice and fully understands that Grantor is hereby permanently relinquishing property rights which would otherwise permit Grantor to have a fuller use and enjoyment of the Protected Property.
  - (B) There are no recorded or unrecorded leases or other agreements for the production of minerals or removal of timber from the Protected Property or other agricultural purposes which would, if any of the activities permitted under such lease or other agreement was undertaken by Grantor, violate the covenants or restrictions in this ALE Deed or otherwise defeat the Conservation Purpose.
- 6.14 Continuing Liability. The rights and obligations of an owner of the Protected Property under this ALE terminate upon proper transfer of such owner's interest in the Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

TO HAVE AND TO HOLD this Deed of ALE unto Grantee and the North Carolina Department of Agriculture and Consumer Services and their successors and assigns, forever.

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

GRANTOR:

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

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

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

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

\_\_\_\_\_ (stamp)  
Notary Public  
My commission expires: \_\_\_\_\_

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

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

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

\_\_\_\_\_ (stamp)  
Notary Public  
My commission expires: \_\_\_\_\_

GRANTEE:

By: \_\_\_\_\_  
\_\_\_\_\_ (Title)

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

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

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

\_\_\_\_\_ (stamp)  
Notary Public  
My commission expires: \_\_\_\_\_

ACCEPTANCE OF PROPERTY INTEREST BY THE NORTH CAROLINA DEPARTMENT  
OF AGRICULTURE & CONSUMER SERVICES



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

By: \_\_\_\_\_  
Jonathan T. Lanier  
N.C. Department of Agriculture and Consumer Services

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

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

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

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

## List of Exhibits

### EXHIBIT A – Legal Documents

Exhibit A-1: Legal Description of the Protected Property

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

### EXHIBIT B – Overview Maps

Exhibit B-1: Regional Context Map

Exhibit B-2: Multi-Easement Context Map

Exhibit B-3: Easement Area Context Map

### EXHIBIT C – Current Conditions and Description Map

Exhibit C-1: Easement Area Description Map

Exhibit C-2: Easement Area Soils Map

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

### EXHIBIT D – Easement Farmstead Locations

Exhibit D-1: Easement Area Farmstead 1 Map

### EXHIBIT E- Easement Existing Impervious Surfaces

Exhibit E-1: Easement Existing Impervious Surface Map

Exhibit E-2: Easement Impervious Surface Calculations