

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FUNDING AGREEMENT

This Funding Agreement (“Agreement”) entered into this the \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the County of Wake (“Wake County”) and the Triangle Land Conservancy, a North Carolina non-profit organization (“TLC”), collectively referred to herein as the “Parties”.

WITNESSETH:

WHEREAS, TLC has executed an Agreement for Purchase and Sale of Conservation Easement (“Contract”) to acquire as grantee a deed of conservation easement encumbering a portion of that certain approximately 88.44-acre parcel of land with Wake County Parcel Identification Number 1774940466 and all of that certain approximately 40.88-acre parcel of land with Wake County Parcel Identification Number 1774935339 located in Wake County, North Carolina (collectively, the “Subject Property”). The Subject Property is more particularly described on **Exhibit “A”** attached hereto and incorporated herein; and

WHEREAS, TLC’s intention to acquire a Conservation Easement (as defined herein) encumbering the Subject Property meets Wake County’s farmland preservation criteria and qualifies for the use of funds from the Wake County Farmland Preservation Rollover Tax Program; and

WHEREAS, subject to the terms and conditions herein, TLC has requested, and the County agrees to, the expenditure of funds from the Wake County Farmland Preservation Program in order to acquire and steward the Conservation Easement encumbering the Subject Property (the “Acquisition”) which shall ensure conservation of farmland, the protection of water quality, wildlife habitats, and scenic areas.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, Wake County and TLC agree as follows:

**ARTICLE I**

**Purpose, Amount of Funding, and Ownership**

1.1 Purpose. The purpose of this Agreement is to establish a mutual understanding between the Parties as to the funding pre-requisites and the post-closing responsibilities of the Parties related to the Acquisition of the Conservation Easement and for the preservation of the Conservation Values as set forth in the Conservation Easement that is attached hereto as **Exhibit “B”**.

1.2 Purchase Price/Amount of Funding. The agreed upon purchase price of the Conservation Easement is One Million and no/1.00s Dollars (\$1,000,00.00) (“Purchase Price”). The appraised value of the Conservation Easement is Two Million Five Hundred and Eighty-Eight Thousand

and no/1.00s Dollars (\$2,588,000). TLC intends to acquire the Conservation Easement with the following funding commitments which include due diligence costs and fees:

Wake County	\$ 1,079,000.00
Landowner Land Value Contribution	<u>\$ 1,588,000.00</u>
Total	\$2,667,000.00

Subject to the availability of funds, approval by the Board of Commissioners and meeting the terms and conditions of this Agreement prior to Closing, the County agrees to provide to TLC, the total amount up to One Million and Seventy Nine Thousand and no/1.00s Dollars (\$1,079,000.00) (“Total Wake County Funding Commitment”) from funds dedicated to the Wake County Farmland Preservation Program (“Funds”) to apply as provided in this Agreement.

1.3 Ownership. TLC shall purchase the Conservation Easement encumbering the Subject Property at Closing. The Conservation Easement shall be in a form substantially similar to that attached hereto as **Exhibit “B”** (the “Conservation Easement”).

## **ARTICLE II**

### **Conditions of Funding**

2.1 TLC agrees that any Funds received pursuant to this Agreement shall be used exclusively for the Acquisition of the Conservation Easement, which shall be granted in perpetuity to protect the Conservation Values as set forth in the Conservation Easement. TLC will apply all Funds received from the County pursuant to this Agreement as set forth in **Exhibit “C”** attached. No funding from the County shall be required for any expenses except as set forth herein.

2.2 Should TLC fail to use the Funds to purchase the Conservation Easement in the form shown on **Exhibit “B”** within the deadline set forth in Section 3.2 or apply the Funds as provided herein, TLC will return to the County a sum equal to all monies paid under this Agreement within 30 days of TLC’s receipt of demand from the County.

2.3 The Parties acknowledge that the Funds include an amount that shall be delivered at Closing to a Donor Advised Fund held by Triangle Community Foundation (the “Endowment”). The Endowment shall be used over the lifetime of the Conservation Easement solely for purposes of monitoring and enforcing the Conservation Easement. The Endowment has been calculated in accordance with industry standards for stewardship costs, and a copy of the stewardship calculation worksheet to estimate a stewardship endowment for the Subject Property is included as **Exhibit “C-1”**.

## **ARTICLE III**

### **Conditions Precedent to Acquisition**

3.1 The County shall disburse funds for the Acquisition of the Conservation Easement only after all of the following items have been delivered to and approved by the County as satisfactory

in form and substance:

- a. Purchase Agreement. A copy of the fully executed Contract which sets forth the terms of the Acquisition. For purposes of this Agreement, the Parties recognize that the Contract is in the form of an Agreement for Purchase and Sale of Conservation Easement, which expires on or about December 22, 2023.
- b. Proposed Conservation Easement. A copy of the Conservation Easement showing TLC as Grantee and Wake County holding enforcement rights in a form satisfactory to the County.
- c. Proposed Plat. A copy of the Plat that will be recorded prior to Closing, reflecting the Subject Property, in form satisfactory to the County.
- d. Legal Description. A legal description of the conservation easement area based on the Plat.
- e. Title Insurance Binder. A standard ALTA title insurance binder, with a policy to be delivered after closing (“Title Policy”) from The Title Company, insuring TLC as the holder of the Conservation Easement encumbering the Subject Property without exception as to matters of survey and providing coverage for the full principal amount of the purchase price for the Conservation Easement, subject to title exceptions approved by the County.
- f. Title Exceptions. Copies of all recorded documents creating exceptions to the Title Policy. The closing and/or title attorney shall provide this documentation to TLC.
- g. Survey. A full-sized copy of a complete and accurate survey of the Subject Property certified within 30 days prior to the Closing of the Acquisition. The survey shall depict a metes and bounds description. The survey shall be in accordance with the latest version of NCAC Title 21 Chapter 56.1600 “Standards for Practice of Land Surveying in North Carolina”; in particular, Paragraph 21-56.1602(g). The survey shall depict any and all Property Identification Number(s) (PIN). The survey shall specify the length of any boundaries that the Subject Property shares with surface waters.
- h. Appraisal. Appraisal(s) of the value of the Conservation Easement to be purchased, satisfactory to the County, performed by an independent certified appraiser acceptable to the County which reflects that the Purchase Price is not in excess of a current fair market value for the Conservation Easement.
- i. Environmental Transaction Screen. An Environmental Transaction Screen regarding the environmental condition of the Subject Property satisfactory to the County. The Environmental Transaction Screen shall be performed by a qualified consultant acceptable to the County and shall conform to the requirements of the latest version of ASTM Standard E-1528-14e1. Matters of concern identified in the report shall be addressed by TLC in a letter to the County, stating TLC’s method of and schedule for remedy for each matter of concern. The County reserves the right to require TLC to remedy any concerns prior to tendering the funds for Closing.
- j. Taxes. Evidence that the ad valorem taxes have been paid through the year prior to the year in which the Acquisition is to take place under this Agreement, and information as to tax parcel identification numbers, tax rates, estimated tax values and the identities of the taxing authorities; provided, however, that deferred taxes exist and are not required to be paid at the time of Closing. No taxes shall be paid with funds from the County.
- k. Seller’s Environmental Warranties. The Parties acknowledge that the Contract contains representations and warranties of Seller as to the environmental condition of the Subject Property. Any modification to Seller’s environmental warranties or any matters of concern identified by TLC as to the environmental condition of the property shall be immediately

reported to the County prior to Closing. TLC shall provide confirmation prior to Closing that there are no known environmental concerns. The County reserves the right to require TLC to remedy any environmental concerns prior to tendering the funds for Closing.

- l. Authorization Documents. Authorization from TLC's governing board for TLC to: (1) enter the Contract, (2) enter this Agreement and perform the functions and obligations set out in this Agreement, (3) appropriate the funding necessary to perform the terms and conditions of the Contract, and (4) acquire the Conservation Easement. This condition will be satisfied upon delivery of TLC's governing board meeting minutes verifying the above.
- m. Balance of Funds. Proof of availability of the balance of funds required to fund the full Purchase Price of the Conservation Easement (if any).
- n. Compliance with Laws. Evidence satisfactory to the County that the Subject Property is in compliance with all applicable laws, regulations and ordinances, including without limitation, land use, health and environmental protection laws.
- o. Annual Monitoring- Stewardship Funds. Confirmation in writing that Triangle Community Foundation ("TCF") has agreed to accept the Endowment on behalf of TLC for deposit to accounts held at TCF that are designated as TLC's stewardship and legal defense endowments, in accordance with Section 2.3 above.

3.2 Funding Commitment Expires after 1 year. The Conditions Precedent to Disbursement as set forth in Article III must be met within one year of the date of the last signature to this Funding Agreement.

## **ARTICLE IV**

### **Affirmative Covenants**

4.1 Right of Inspection. TLC shall permit representatives of the County to review the activities of TLC pursuant to this Agreement, including books and records in any way related to this Agreement or the use of the Funds to acquire the Conservation Easement, at all reasonable times and with seven (7) days advance notice.

4.2 Right to Receive Copies of Notices. TLC shall provide representatives of the County copies of any notices received from the Grantor (as defined in the Conservation Easement) pursuant to the terms of the Conservation Easement.

4.3 Acquisition. TLC agrees to carry out the Acquisition of the Conservation Easement as approved by the County. The Conservation Easement, their purpose, the budget, and the accompanying or related Plat submitted to the County by TLC are the foundation of this Agreement.

4.4 Annual Reporting. TLC acknowledges that, in its capacity as the holder of the Conservation Easement, it has affirmative obligations to monitor the Subject Property for compliance with the Conservation Easement, including visiting the Subject Property. TLC agrees that it will monitor the Conservation Easement in accordance with the terms of the Conservation Easement and best practices of the land trust industry, including visiting the Subject Property at least once a year. Further, TLC shall complete and submit to the County an Easement Monitoring Report, in form reasonably acceptable to the County, on an annual basis for the lifetime of the

Conservation Easement.

4.5 Limitations of County Funding. TLC warrants that it has the financial capacity to hold the Conservation Easement and that it will monitor and enforce the Conservation Easement without request for additional contribution or compensation from the County. TLC hereby acknowledges that the County's funding obligations are limited to the Funds as expressly set forth in this Agreement.

4.6 Publicity. To the extent possible, TLC will use reasonable efforts to appropriately publicize the Project's farmland preservation and water quality benefits to the general public, local government and state representatives, including the role of the County in the funding the project.

4.7 Conflicts of Interest. TLC, as a non-profit corporation, shall at all times comply with its conflict-of-interest policy.

4.8 Additional Requirements. TLC shall comply with all laws, including legal requirements applicable to the use of the Funds as identified by the County.

4.9 Closing Documentation. TLC shall, within 30 days of the Closing, provide to the County copies of the recorded Conservation Easement, signed closing statement and all other material documents that the closing attorney prepared or received at Closing.

4.10 Project Audit. TLC agrees that the County shall have the right to audit the books and records of TLC pertaining to this Agreement or Amendments hereto both prior to the Closing and after the Closing. TLC shall retain complete accounting records including original invoices, contracts, or other documents clearly showing the nature of all costs incurred under this Agreement, for that same period of time, including the costs incurred and expended for any stewardship and monitoring activity performed post-closing.

4.11 Condemnation or Termination of Conservation Easement. TLC agrees to adhere to the distribution provisions set forth in the Conservation Easement and to administer or distribute any such proceeds in the event of an extinguishment of all or part of the Conservation Easement in accordance therewith.

## **ARTICLE V**

### **Representations and Warranties**

5.1 In order to induce the County to enter into this Agreement and to provide the funds as herein provided, TLC makes the following representations, warranties and covenants, which shall remain in effect after the execution and delivery of this Agreement and any other documents required hereunder, any inspection or examinations at any time made by or on behalf of the County, and the purchase of the Conservation Easement by TLC:

- a. No Actions. There are no actions, suits, or proceedings pending, or to the knowledge of TLC threatened against or affecting TLC before any court, arbitrator, or governmental or administrative body or agency, which might affect TLC's ability to observe and perform its obligations under this Agreement.

- b. Validity of Documents. Upon execution and delivery of items required hereunder, this Agreement and the other documents and items required hereunder will be valid and binding agreements, enforceable against TLC in accordance with the terms thereof.
- c. No Untrue Statements. To the best of TLC's knowledge, neither this Agreement nor any information, certificate, statement, or other document furnished by TLC in connection with this Agreement, contains any untrue statement of a material fact or omits disclosure of a material fact which affects the Subject Property, the Conservation Easement or the ability of TLC to perform this Agreement.
- d. Environmental Condition of Subject Property. TLC warrants, represents and covenants to the County that to the best of its actual knowledge: (1) the Subject Property is in full compliance with all federal, state and local environmental laws and regulations, and (2) as of the date hereof, there are no hazardous materials, substances, wastes or other environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the Subject Property or used in connection therewith, and (3) that to the extent that TLC's consent is required and may be withheld in TLC's sole discretion pursuant to the terms of the Conservation Easement, TLC will not consent to such uses or conditions; all of the foregoing are subject to any matters that may be disclosed in the Environmental Assessment (if any).
- e. Access. TLC warrants that, as of the date of this Agreement, there is legal public access to the Subject Property from a public roadway.

## **ARTICLE VI**

### **Events of Default**

6.1 The happening of any of the following, after the expiration of any applicable cure period without the cure thereof, shall constitute an event of default by TLC of its obligations to the County and shall entitle the County to exercise all rights and remedies under this Agreement and as otherwise available at law or equity:

- a. Subject Property Unsuitable. A determination by the County, prior to the Closing of the Acquisition, that the Subject Property is unsuitable for the purpose(s) for which this Agreement is made.
- b. Material Breach of Conservation Easement. A material breach by TLC of its obligations under the terms of the Conservation Easement. The Parties stipulate that the Conservation Easement place certain stewardship obligations on TLC as more fully set forth in the Conservation Easement.
- c. Default in Performance. The default by TLC in the observance or performance of any of the terms, conditions or covenants of this Agreement; provided, however, that no such default shall occur until TLC has been given written notice of the default and the conditions constituting the default remain uncured at the expiration of the thirty (30) days period after the date of the notice.
- d. Misrepresentation. If any representation or warranty made by TLC in connection with this Agreement or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made.
- e. Eligibility of the TLC. If TLC ceases to be qualified to receive funding required for the Closing of the Acquisition or the obligations under this Agreement or is dissolved or

otherwise ceases to exist.

## **ARTICLE VII**

### **Rights and Remedies of the County**

7.1 If an Event of Default shall occur, the County shall have the following rights and remedies, all of which are exercisable at the County's sole discretion, and are cumulative concurrent, and independent rights:

- a. Default Prior to Closing. If any Event of Default occurs prior to closing, the County may, at its discretion, suspend and/or terminate all obligations of the County hereunder.
- b. Default Subsequent to Closing. If an Event of Default occurs subsequent to Closing, the County may, at its discretion elect to suspend and/or terminate all obligations of the County hereunder, bring an action in law or equity, including but not limited to an action for specific performance.
- c. Non-waiver. No delay, forbearance, waiver, or omission of the County to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to the County may be exercised from time to time and as often as may be deemed expedient by the County.

## **ARTICLE VIII**

### **Miscellaneous**

8.1 Modification. This Agreement may be rescinded, modified or amended only by written agreement executed by all parties hereto.

8.2 No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the County and TLC, and their respective successors and assigns. There shall be no third-party beneficiaries to this Agreement.

8.3 Further Assurance. In connection with and after the disbursement of funds under this Agreement, upon the reasonable request of the other party, the parties hereto shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by the requesting party or otherwise appropriate to carry out and effectuate the funding contemplated by this Agreement.

8.4 ADA Compliance. The Americans with Disabilities Act 1990 as it may be amended from time to time, and the rules and regulations promulgated in connection therewith (the "ADA") makes it unlawful to discriminate in employment against a qualified individual with a disability and outlaws discrimination against individuals with disabilities in State and local government services and public accommodations. TLC agrees to make reasonable efforts to comply with and agrees to make reasonable efforts to cause its principals and subcontractors to comply with, the ADA as it relates to its employment practices.

8.5 Assignment. The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; provided, however, that prior to Closing, TLC may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any funds or other moneys to be advanced hereunder in whole or in part without the prior written consent of the County, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without which said consent shall be void. After Closing, and in the event that TLC conveys its interest as may be permitted pursuant to the Agreement and the Conservation Easement, TLC shall assign its rights, interests, duties and obligations hereunder to the grantee of its interest.

8.6 No Partnership, Joint Venture, or Agency. This Agreement shall not in any way be interpreted or construed as making the County a partner or joint venture with TLC, nor making TLC an agent or representative of the County. TLC agrees that neither it nor its agents or employees are or shall be agents or employees of the County. In no event shall the County be liable for debts or claims accruing or arising against TLC.

8.7 Indemnity. TLC agrees, to the fullest extent permitted by law, to release, defend, protect, indemnify and hold harmless the County, employees and agents against claims, losses, liabilities, damages, and costs, including reasonable attorney fees, which result from or arise out of damages or injuries to persons or property caused by the negligent acts or omissions of TLC, its employees, or agents in the exercise of its rights under the Conservation Easement. The obligations under this Section are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Funds, as well as any termination of this Agreement.

8.8 Governing Law, Construction and Jurisdiction. This Agreement and the other Documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of North Carolina, notwithstanding the principles of conflicts of law. The headings and section numbers contained herein are for reference purposes only. The terms of this Agreement shall be construed according to their plain meaning, and not strictly construed for or against either party hereto. TLC hereby submits to the jurisdiction of the State and Federal courts located in North Carolina and agrees that the County may, at its option, enforce its rights under this Agreement in such courts. The parties hereto intend this document to be an instrument executed under seal. The County and any party that is an individual, partnership or limited liability company hereby adopts the word "SEAL" following his/her signature and the name of the County or partnership or limited liability company as his/her/its legal seal.

8.9 Notices. All notices, requests or other communications permitted or required to be made under this Agreement or the other documents contemplated by this Agreement shall be in writing, signed by the party giving such notice to the address set forth below, and shall be given three (3) business days following the date when deposited in the mail, postage prepaid, registered or certified mail, return receipt requested, to the other party hereto at the address indicated below or such other addresses as such party may establish in writing to the other party in the manner provided hereunder for notices:  
If to the County:

Wake County



Soil & Water Conservation District Director  
4001-D Carya Dr.  
Raleigh, NC 27610

If to TLC:

Triangle Land Conservancy  
P.O. Box 1848  
Durham, NC 27702

8.10 Additional Remedies. Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.

8.11 Survivorship. Where any representations, warranties, covenants, indemnities or other provisions contained in this Agreement by its context or otherwise, evidences the intent of the parties that such provisions should survive the closing or termination of this Agreement, the provisions shall survive the closing or any termination. Without limiting the generality of the foregoing, the parties specifically acknowledge and agree that the provisions of Articles V, VI, VII, and VIII shall survive the Closing, as well as any termination of this Agreement.

8.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

[This space left blank intentionally.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement under seal through their duly authorized representatives, to be effective the day and year first above written.

**COUNTY OF WAKE, NORTH CAROLINA**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Ellis, Wake County Manager

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Teresa Furr, Soil & Water Conservation District Director

Approved as to form:

\_\_\_\_\_  
Scott W. Warren  
Wake County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Wake County Finance Director, or designee

## **TRIANGLE LAND CONSERVANCY**

By: \_\_\_\_\_  
Sandra J. Sweitzer  
Executive Director

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

**Exhibit A**  
Legal Description

BEING all of that parcel identified as Tract 2, containing 40.88 acres, more or less, as shown on that plat entitled “Property of James Edward Bailey & Matthew Edward Bailey - Conservation Easement (124.97 Ac.) Survey for Triangle Land Conservancy” prepared by Ben L. Bryan, P.A. dated \_\_\_\_\_, 2023, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry, to which reference is hereby made for a more particular description.

AND

BEING all of that parcel identified as Tract 1, containing 88.44 acres, more or less,, as shown on that plat entitled “Property of James Edward Bailey & Matthew Edward Bailey - Conservation Easement (124.97 Ac.) Survey for Triangle Land Conservancy” prepared by Ben L. Bryan, P.A. dated \_\_\_\_\_, 2023, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry (the “Plat”), to which reference is hereby made for a more particular description.

LESS AND EXCEPT

All of that certain 2.13 acres identified as “B” and “Not Part of Easement”, that certain 0.33 acres identified as “B1” and “Not Part of Easement”, and that certain 1.89 acres located within the Road Right-of-Way, as depicted on the Plat.

**Exhibit B**  
Conservation Easement

Prepared by Weatherspoon & Voltz LLP, 3700 Glenwood Ave., Suite 250, Raleigh, NC 27612  
Return to Grantee, P.O. Box 1848, Durham, NC 27702

**Excise Tax:** \$ \_\_\_\_\_

**NORTH CAROLINA**  
**WAKE COUNTY**

PIN: 1774935339 and a portion of PIN 1774940466

**DEED OF CONSERVATION EASEMENT**

This Deed of Conservation Easement (hereinafter “Conservation Easement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2023, by James Edward Bailey and wife, Caren C. Bailey, and Matthew Edward Bailey, unmarried, whose address is P.O. Box 338, Wendell, NC 27591-0338 (“Grantor”) and Triangle Land Conservancy, a North Carolina nonprofit corporation, whose address is P.O. Box 1848, Durham, NC 27702 (“Grantee”), and with a right of enforcement to Wake County (“Wake County”).

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neutral pronouns as required by context.

**RECITALS**

A. Grantor is the sole owner in fee simple of that certain property that consists of approximately 88.44 acres (“Tract 1”), and that certain property that consists of approximately 40.88 acres (“Tract 2”), which are more particularly described in **Exhibit A** attached hereto and incorporated by this reference (Tract 1 and Tract 2 are collectively referred to hereinafter as the “Property”).

B. Grantor and Grantee have agreed to set aside all of Tract 2 and an 84.09 acre area of Tract 1 (collectively 124.97 acres) for the purpose of creating a conservation easement, which areas are collectively hereinafter referred to as the “Easement Area.” The Easement Area is described in **Exhibit A-1**, which is attached hereto and incorporated herein by reference as if fully set forth herein. A survey of the Easement Area is shown on the plat recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry (the “Plat”). The Plat is incorporated herein by reference.

C. Grantee is a nonprofit organization, operated primarily for conservation purposes, including protection of environmentally valuable and sensitive land for charitable, scientific, educational, and aesthetic purposes. Grantee is a tax exempt public charity under Section 501(c)(3) and 509(a)(2) of the Internal Revenue Code, is authorized by the laws of the State of North

Carolina to accept, hold and administer interests in land including conservation easements, is willing to accept this Conservation Easement under the terms and conditions hereinafter described, and is a “qualified organization” and “eligible donee” within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder.

D. Grantor and Grantee recognize that the Easement Area has outstanding open space, agricultural, forestry, water quality, and wildlife values. The Easement Area in its present state has conservation value because it has not been subject to significant development and because it provides a “relatively natural habitat” for “fish, wildlife, or plants or similar ecosystem” as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code. More specifically, the North Carolina Natural Heritage Program, a Division of the Division of Land and Water Stewardship within the North Carolina Department of Natural and Cultural Resources, has designated a portion of the Easement Area as the Robertson Mill Pond and Buffalo Creek Floodplain Natural Heritage Area. These conservation values of the Easement Area are herein collectively referred herein to as the “Conservation Values.”

E. The protection of the Easement Area will yield significant public benefits, as evidenced by:

(1) N.C.G.S. § 139-2 et seq., which provides that “It is hereby declared . . . [that t]he 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 soil resources of this State . . . .”

(2) N.C.G.S. § 106-583 et seq., which states, “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 Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. Section 4201, et seq., whose purpose is “to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland”;

(4) The American Farm and Ranch Protection Act, P.L. 105-34, Sec. 508, whose purpose is “to encourage conservation easements on family farms and ranch lands”;

(5) Article 14 Section 5 of the Constitution of the State of North Carolina which states “It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and

in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands, and places of beauty”;

(6) The special use assessment of farm and forest lands set forth in N.C.G.S. § 105-277.2 et seq. and of historic properties set forth in N.C.G.S. § 105-278;

(7) The Easement Area has significant forested acreage in the Neuse River Basin and contributes to the requirement by the State of North Carolina of a basin-wide management plan for the Neuse River, for the purpose of protecting water quality, public water supply, significant wetlands and natural areas within the watershed; and

(8) The enabling legislation for the Clean Water Management Trust also known as the North Carolina Land and Water Fund at N.C.G.S. § 143B-135.230 et seq. which recognizes the importance of protecting riparian buffers in conserving clean surface water.

F. The characteristics and specific Conservation Values of the Easement Area, and its current use and state of improvement, are described in a report entitled Bailey Farm Baseline Documentation Report (the “Baseline Documentation Report”) prepared by Grantee with the cooperation of Grantor. The parties acknowledge that the Baseline Documentation Report is accurate as of the date of this Conservation Easement. A copy of the Baseline Documentation Report will remain on file in the office of Grantee and will be used to assure that the terms and conditions of this Conservation Easement are fulfilled and that any future changes in the use of the Easement Area will be consistent with the terms of this Conservation Easement. However, the Baseline Documentation Report is not intended to preclude the use of other evidence to establish the present condition of the Easement Area if there is a controversy over its use or state of improvement.

G. Grantor and Grantee have the common purpose of conserving the above-described Conservation Values of the Easement Area in perpetuity, and the State of North Carolina has authorized the creation of Conservation Easements pursuant to the terms of the North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34 et seq., and N.C.G.S. §§ 160A-266 to 279, which provides for the enforceability of restrictions, easements, covenants or conditions “appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming, or forest uses,” and which provides for tax assessment of lands subject to such agreements “on the basis of the true value of the land and improvements less any reduction in value caused by the agreement”; and Grantor and Grantee wish to avail themselves of the provisions of that law.

**NOW, THEREFORE**, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Grantor hereby unconditionally and irrevocably gives, grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity for the benefit of the people of North Carolina, a Conservation Easement over the Easement Area of the nature and character as follows, together with the right to preserve and protect the Conservation Values thereof and the right of access to the Easement Area for the purposes granted herein:

## 1. PURPOSE

The purposes of this Conservation Easement are: (1) to assure, subject to the reservations herein set out, that the Easement Area will be retained forever predominantly in its natural, scenic, rural, forested, agricultural, and open space condition; (2) to protect and maintain agricultural soils, native plants, animals, and plant communities on the Easement Area, while allowing traditional uses on the Easement Area that are compatible with and not destructive of the Conservation Values of the Easement Area, such as timber harvesting, grazing, agriculture, hunting, and other similar recreational use; and (3) to prevent any use of the Easement Area that will significantly impair or interfere with the Conservation Values or interests of the Easement Area. The goal is to allow long-term responsible management of forest and agricultural resources in a manner that does not compromise water quality, wildlife habitat, unique plant communities or other cultural, historic or natural resource values on the Easement Area.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Easement Area that is inconsistent with the purposes of this Conservation Easement. All rights reserved by Grantor are considered to be consistent with the conservation purposes of this Conservation Easement and require no notification to or approval by Grantee unless expressly provided for hereunder. Grantor understands that nothing in this Conservation Easement relieves Grantor of any obligation or restriction on the use of the Property imposed by law.

## 2. EASEMENT AREA USES

Grantor reserves to itself, its personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Easement Area, including the right to engage in, or permit or invite others to engage in, all uses of the Easement Area that are not expressly prohibited herein and are not inconsistent with this Conservation Easement. Any activity on, or use of, the Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. The Easement Area shall be maintained in its natural, scenic and open condition and restricted from any development that would significantly impair or interfere with the Conservation Values of the Easement Area. Without limiting the generality of the foregoing, the following is a list of activities and uses which are expressly prohibited or which are expressly allowed.

### (A) *Forest Management*

Except as prohibited within the Habitat Zone and Water Quality Buffer pursuant to the terms of Section 2(E) below, forest management to maintain the general health of the forest ecosystem and generate occasional income from the harvest and sale of forest products, including the harvesting of timber and cutting or destruction of trees or other plants, may be allowed with the prior written approval of the Grantee and in accordance with this Section 2(A).

All forest management activities must be (1) in accordance with a written forest management plan prepared by a North Carolina registered forester ("Forest Management Plan"), and (2) approved in advance by the Grantee. The Forest Management Plan must



be updated and re-approved by Grantee at least every ten (10) years so long as Grantor wishes to continue to actively manage the forest or harvest forest products. If no forest management is intended, a Forest Management Plan is not required, but there shall be no active forest management without an approved Forest Management Plan.

A Harvest Plan prepared by a North Carolina registered forester (“Harvest Plan”) must be submitted to the Grantee for its approval at least thirty (30) days prior to any commercial harvest of timber. There shall be no active timber harvest without a Harvest Plan approved by Grantee. All timber harvesting shall be conducted: (1) outside the Habitat Zone and Water Quality Buffer as defined in Section 2(E); (2) on a sustainable yield basis; and (3) in accordance with a written Forest Management Plan and Best Management Practices described below. No commercial silvicultural activity may occur until the Forest Management Plan and a more specific Harvest Plan have been approved in writing by the Grantee.

All forest management activities shall be conducted in accordance with North Carolina Division of Forest Resources’ Best Management Practices guidelines for timber harvest and management as the same may be promulgated by law or regulation in the State of North Carolina and as adopted by the North Carolina organization of professional foresters, as may be amended from time-to-time.

Notwithstanding the foregoing, tree or vegetation cutting may be permitted outside the Habitat Zone and Water Quality Buffer (as defined in Section 2(E) below) without approval of the Grantee to maintain existing trail and road access, cutting for firewood and for the maintenance of fences and permitted Ponds.

(B) *Agricultural and Horticultural Use*

Except as prohibited within the Habitat Zone and Water Quality Buffer pursuant to the terms of Section 2(E), and subject to the terms set forth in 2(I) below, agricultural use, horticultural use, and grazing of the Easement Area are permitted provided that all such uses are conducted in a manner not inconsistent with the purposes of this Conservation Easement and provided further that:

- (i) Livestock are permitted, but under no circumstances shall there be such use of a size or scope as to constitute an industrial or factory-type agricultural or livestock operation, intensive livestock operations, or animal husbandry, any of which may be characterized by the continuous confinement of livestock in tightly confined environments for the purposes of raising, feeding, and fattening for market. Waste retention ponds and anaerobic lagoons are not allowed on the Easement Area. Slaughtering facilities are not permitted on the Easement Area; provided, however, that slaughtering facilities are permitted for the sole purposes of slaughtering animals predominantly raised on the Easement Area. In no event shall animals be brought onto the Easement Area solely for purposes of slaughter. As used herein, the term “livestock” means equine animals, cloven-hoofed animals, chickens, turkeys, ducks, geese, or other domestic fowl. As used herein, “intensive

livestock operations” means “concentrations of 300 or more animal units” or “any enclosure, pen, feedlot, building, or group of buildings intended for the confined feeding, breeding, raising or hold of animals where animal waste may accumulate or where vegetative cover cannot be maintained due to the concentration of animals.”

(ii) All farming operations shall be in accordance with Best Management Practices of the State of North Carolina and applicable federal, state, and local laws under a “Conservation Plan” a copy of which shall be provided to Grantee. The Conservation Plan shall be developed using the standards and specifications of the Natural Resource Conservation Service (NRCS) Field Office Technical Guide and 7 CFR Part 12 or equivalent standards developed by the appropriate federal, state or local conservation entity if these standards are no longer the standards used by the industry; any change in agricultural use or activity shall require updating of the Conservation Plan as may be required pursuant to such standards and specifications. The Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and that is consistent with the NRCS Field Office Technical Guide standards and specifications or other such standards and specifications as developed by the appropriate governmental authority. The Conservation Plan shall be designed to ensure the maintenance of a good quality mix of introduced and native grasses and forbs, while managing pests and nutrients on portions of the Easement Area that are used as pasture land, and protecting soil stability, water quality and other Conservation Values of the Easement Area on portions of the Easement Area that are used for agriculture. This Conservation Plan shall be reviewed and updated every five (5) years unless otherwise permitted by Grantee; provided, if no active agricultural use is intended, no Conservation Plan is required. Grantor shall deliver to Grantee copies of all Conservation Plan updates and modifications promptly upon completion of the same.

(iii) No agricultural activities, whether now existing or commenced in the future, shall be conducted in any manner that will in the opinion of the Grantee: (a) adversely impact the water quality of any creek, river, stream, wetland or other water resource; (b) harm any threatened or endangered species; (c) destroy any “significant conservation interest” as that phrase is used in Treas. Reg. § 1.170A-14(e)(2); or (d) otherwise conflict with the conservation purposes of this Conservation Easement.

For purposes of this Conservation Easement, “agricultural use” is defined as the science or practice of farming, including: cultivation of soil for the growing of crops; dairying; the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (as defined in Section 15(g) of the Agricultural Marketing Act, 12 U.S.C. 1141); the raising of livestock, fur-bearing animals, or poultry; private or commercial stabling of animals; the rearing of animals to provide food, wool and other products; and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations (including preparation for market, delivery to storage or to market, or to carriers for transportation to market); provided that the foregoing excepts

activities expressly allowed pursuant to Section 2(A) above, and provided further that the foregoing excepts raising bees (including but not limited to practices incidental to beekeeping, including harvesting honey), which shall be subject to the terms of the second paragraph of Section 2(C) below. For purposes of this Conservation Easement, “horticultural use” is defined as the art or practice of garden cultivation and management, including but not limited to growing plants that are used by people for food, for medicinal purposes, and for aesthetic gratification.

(C) *Recreational Use and Other Use*

Subject to the terms set forth in Section 2(E), Grantor shall have the right to engage in and permit others, whether or not for consideration, to engage in “Non-intensive Outdoor Recreation” on the Easement Area. “Non-intensive Outdoor Recreation” is defined as dispersed, non-motorized recreational activities that do not generally rely on buildings and have minimal impact on renewable natural resources. Such activities include but are not limited to hiking, bird watching, camping, picnicking, mountain biking, horseback riding, and lawful hunting and fishing that require no surface alterations or other development of the Easement Area. Grantor may lease or license any portion of the Easement Area for such Non-intensive Outdoor Recreation purposes. Grantor reserves the right to promulgate and enforce reasonable rules and regulations for all activities incidental to recreational use of the Easement Area, including but not limited to the right to prohibit any recreational use that would permit severe damage to or destruction of other significant Conservation Values of the Easement Area. All hunting and fishing activities shall be conducted in such a manner so as to not harm any threatened or endangered species. No hunting, fishing, wildlife enhancement or other recreational activity shall be conducted in any manner that would permit the “destruction of [any] significant conservation interest” as that phrase is used in Treas. Reg. § 1.170A-14(e)(2) or otherwise conflict with the conservation purposes of this Conservation Easement.

Additionally, Grantor also reserves the right to engage in activities carried out on a farm because of its farm or rural setting and that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own-activities, or natural activities and attractions, whether or not the participants pay to participate in the activity (collectively referred to hereinafter as “Agritourism”). In all events, the manner of undertaking the activity shall not permit the destruction of any “significant conservation interest” as that phrase is used in Treas. Reg. § 1.170A-14(e)(2), or otherwise undermine the conservation purposes of this Conservation Easement.

Grantor and Grantee acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future uses, future technologies, future evolution of the Easement Area and other natural resources, and other future occurrences affecting the purposes of this Conservation Easement. Grantee therefore may approve, or disapprove, a proposed activity not expressly contemplated by or addressed in this Conservation Easement, provided that such proposed activity is consistent, or in the case of disapproval inconsistent, with the purposes of this Conservation Easement.

(D) *Envelope(s); Uses; Construction of Buildings and Other Structures and Improvements*

Grantor and Grantee have identified the areas on the Easement Area herein referred to as “Farmstead Envelope 1”, “Farmstead Envelope 2”, and “Residential Building Envelope” (collectively the “Envelopes”), as more fully described on **Exhibit B** attached hereto and incorporated herein, and more particularly described in the Baseline Documentation Report. Farmstead Envelope 1 and Farmstead Envelope 2 are collectively referred to as the “Farmstead Envelopes.”

Subject to the terms of this Conservation Easement, in addition to the uses expressly permitted in Sections 2(A), (B), and (C), Grantor reserves the right to use the Farmstead Envelopes for lawful and customary rural enterprises that are carried out in farm or rural settings, including, by way of illustration, but not limitation: equestrian facilities; farm machinery repair enterprises; bed and breakfast; events for weddings, meetings, birthday parties, anniversaries, reunions and similar events; religious activities such as ceremonies and rituals; and heritage tourism or educational programs. The Farmstead Envelopes may also be used for residential purposes only if the residential purpose is secondary and incidental to other permissible uses in the Farmstead Envelopes, and for home occupations so long as they are incidental and subordinate to the use for residential purposes and the home occupation is otherwise in compliance with applicable federal, state, and local laws, regulations, and requirements. Notwithstanding the foregoing, no primary residences are permitted within the Farmstead Envelopes; all primary residences shall be located in the Residential Building Envelope.

Subject to the terms of this Conservation Easement, in addition to the uses expressly permitted in Sections 2(A), (B), and (C), Grantor reserves the right to use the Residential Building Envelope for:

- (i) lawful and customary rural enterprises that are carried out in farm or rural settings, including, by way of illustration, but not limitation: equestrian facilities; farm machinery repair enterprises; bed and breakfast; events for weddings, meetings, birthday parties, anniversaries, reunions and similar events; religious activities such as ceremonies and rituals; heritage tourism or educational programs; and
- (ii) residential purposes, short term residential tenancies, ancillary uses to a residential structure, and home occupations so long as they are incidental and subordinate to the use for residential purposes and the home occupation is otherwise in compliance with applicable federal, state, and local laws, regulations, and requirements.

Grantor is prohibited from using the Residential Building Envelope for any other purpose without prior written approval from the Grantee. In requesting any such prior written approval, Grantor must notify Grantee in writing in accordance with the provisions of

Section 9, including at a minimum, sufficient information to enable Grantee to determine whether the proposed use is consistent with the terms of this Conservation Easement. Grantor shall provide Grantee with any additional information requested by Grantee that is necessary or proper in Grantee's evaluation of Grantor's proposed use. In determining whether to approve Grantor's proposed use, Grantee shall take into whether the proposed use requires the expansion of structures within the Residential Building Envelope or the increase of impervious surface area within the Residential Building Envelope, and shall also take into account the impact of such use on: (a) the value of the Easement Area as an open space (including the impact of access roads or related traffic associated with any new improvements located on the Easement Area); (b) the Easement Area and surrounding area's environment, including but not limited to air and water quality issues; (c) any threatened or endangered species located in or near the Easement Area; and (d) such other considerations as the Grantee shall deem proper in order to preserve the Conservation Values of the Easement Area. Under no circumstances shall Grantee approve any use that permits the destruction of any "significant conservation interest" as that phrase is used in Reg. Section 1.170A-14(e)(2), Income tax regs. or otherwise conflict with the conservation purposes of this Conservation Easement.

The intent of the use allowance set forth within this Section 2(D) within the Envelopes is for the purpose of making ownership of the Easement Area economically viable and possibly creating a revenue stream to maintain the buildings and structures on the Easement Area in good condition and repair.

In all events, the manner of undertaking any use or activity within the Envelopes shall not permit the destruction of any "significant conservation interest" as that phrase is used in Reg. Section 1.170A-14(e)(2), Income tax regs. or otherwise conflict with the conservation purposes of this Conservation Easement.

The construction, replacement and reconstruction of any building or other structure on the Easement Area is prohibited except in accordance with this Section 2(D). It is the intent of this Section and Section 2(M) below that no buildings or other structures (except minor structures as provided in subsection (ii) of this Section below and fences as provided in subsection (iv) of this Section below) are permitted to be constructed, replaced, or reconstructed outside of the Envelopes.

All new construction and improvements shall be sited so as to cause the least disturbance to the Easement Area's Conservation Values and shall conform to the restrictions described in Section 2(E). Notwithstanding anything herein to the contrary, the total impervious surfaces within the Easement Area shall not exceed two percent (2%) of the total acreage of the Easement Area, provided that the impervious surface area that may exist within the Greenway expressly permitted in Section 2(F) below shall not be included as impervious surface for purposes of the foregoing calculation. For purposes of this Conservation Easement, the term "impervious surface" shall include: roof tops; asphalt surfaces; concrete surfaces; brick surfaces; stone surfaces; patios or decks (not including wood slatted decks, docks, or pervious pavers or patio system); retaining walls; concrete bases of solar panel installations; and all other surfaces that fully restrict the percolation of water

into the soil. The term “impervious surface” shall not include compacted dirt or gravel surfaces or other surfaces that do not fully restrict the percolation of water into the soil.

Subject to the foregoing:

- (i) *Agricultural Structures & Improvements* - New buildings and other structures and improvements used or usable for agricultural or forestry purposes, including processing or sale of farm products predominantly grown or raised on the Easement Area, may be built within the Envelopes.

No building or structure permitted pursuant to this subsection may exceed fifty (50) feet in height, measured from the original average grade of the structure’s locus to the ridgeline, chimneys included. Notwithstanding the foregoing, buildings and structures existing as of the date of this Conservation Easement shall not be in violation of this provision so long as their height is not increased, and in the event such buildings and structures are damaged or destroyed as a result of an event outside of Grantor’s control, such buildings and structures may be rebuilt to the same height as they exist as of the date of this Conservation Easement.

- (ii) *Minor Structures* – Subject to the impervious surface area limitations set forth above, Grantor reserves the right to install minor, small-scale structures that are not served by utilities, with a height of no more than sixteen (16) feet measured from the original average grade of the structure’s locus to the ridgeline, chimneys included, to enhance the opportunity for uses expressly permitted in Sections 2(A), 2(B), and 2(C). No minor structure outside the Envelopes shall have a footprint exceeding one hundred and forty-four (144) square feet.

Notwithstanding the foregoing, Grantor reserves the right to locate Removable Minor Improvements on the Easement Area, provided that their location and use do not permit the destruction of any “significant conservation interest” as that phrase is used in Reg. Section 1.170A-14(e)(2), Income tax regs. or otherwise conflict with the conservation purposes of this Conservation Easement, and provided that the following applies to Removable Minor Improvements:

- (a) Removable Minor Improvement are not subject to the impervious square footage limitations set forth in this subsection 2(D)(ii). Notwithstanding the foregoing, in the event that a Removable Minor Improvement is, or is intended to be, located on the Easement Area outside of the Building Envelope(s) for more than fourteen (14) consecutive days, then: (i) Grantor shall give notice to Grantee of the location and identification of the Removable Minor Improvement, and (ii) the square footage of the footprint of such Removable Minor Improvement shall be included in and subject to the impervious surface area limitation set forth in this subsection 2(D)(ii) for minor structures.
- (b) For purposes of this Conservation Easement, “Removable Minor

Improvement” means structures without permanent foundations and/or utilities, that are easily assembled, disassembled, and moved without heavy equipment, that are in fact removed from the Easement Area periodically or seasonally, whose disturbance to vegetation and wildlife is minimal, and that are intended: for agricultural use; for horticultural use; and to support Agritourism and other uses permitted pursuant to Section 2(C). By way of example, without limitation, Removable Minor Improvements includes: “high tunnel” or “hoop houses” or other similar floorless, framed structures that cover crops or vegetation that are periodically removed to expose the soil surface; hunting and observation blinds; movable livestock sheds; and special event tents.

(c) For purposes of this Conservation Easement, the term “Removable Minor Improvement” shall include recreational vehicles, campers, and other similar self-propelled or towed vehicles (each, a “Recreational Vehicle”), provided that the Recreational Vehicle:

- i. is built on a single chassis, is 300 square feet or less when measured at the largest horizontal projection, and is intended to provide short-term recreational living accommodations, designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use;
- ii. is fully licensed and ready for highway use; and
- iii. is not attached to the Easement Area other than by quick disconnect type utilities.

(d) The parties acknowledge that repeated and regular use of a portion of the Easement Area by Recreational Vehicles (even periodically) has the potential to permit the destruction of a “significant conservation interest” as that phrase is used in Reg. Section 1.170A-14(e)(2), Income tax regs, and therefore, Grantee has the right to prohibit Recreational Vehicles from being located on or using portions of, or all of, the Easement Area outside of the Building Envelope(s) if in the opinion of the Grantee, the location and use (including the periodic use) of such Recreational Vehicles in such locations: (a) adversely impact the water quality of any creek, river, stream, wetland or other water resource; (b) harm any threatened or endangered species; (c) destroy any “significant conservation interest” as that phrase is used in Treas. Reg. § 1.170A-14(e)(2); or (d) otherwise conflict with the conservation purposes of this Conservation Easement.

(iii) *Residential Dwellings on the Easement Area* – No Residential Dwelling exists on the Easement Area at the time of this grant of this Conservation Easement, except for an uninhabitable Residential Dwelling located in Farmstead Envelope 2, as documented in the Baseline Documentation Report. For purposes of this

Conservation Easement, the term “Residential Dwelling” shall mean a residential dwelling designed for residential use.

Grantor reserves the right to maintain, repair, enlarge, renovate, rebuild or replace a maximum of one (1) Residential Dwelling in the Residential Building Envelope. No Residential Dwelling on the Easement Area shall exceed a footprint of four thousand (4,000) square feet. No Residential Dwelling permitted pursuant to this subsection may exceed forty (40) feet in height, measured from the original average grade of the structure’s locus to the ridgeline, chimneys included.

(iv) *Fences* – Existing fences may be repaired and replaced, and new perimeter fences may be built, for purposes of reasonable and customary management of livestock and wildlife and to mark property boundaries, without the permission of Grantee. Fences for the purpose of protecting Waterways (as defined in Section 2(E)) on the Easement Area are also permitted without prior consent of Grantee. Fences permitted pursuant to this provision shall blend with the natural surroundings to the extent practicable.

(v) *Utilities Services and Septic Systems* – Installation, maintenance, repair, replacement, removal and relocation of Utilities (as defined below) over or under the Easement Area for the purpose of providing electrical, gas, water, sewer, or other utilities to serve structures located within: (a) the Envelopes as permitted herein; and (b) portions of the Property not encumbered by this Conservation Easement; and the right to grant easements over and under the Easement Area for such purposes, is permitted, provided that: such Utilities are sized and designed to serve the structures located within the Envelopes; such Utilities shall not be installed for purposes of facilitating development, use, or activities on an adjacent or other property (other than the portion of the Property not encumbered by this Conservation Easement); and any easements, contracts, and agreements with respect to such Utilities shall be made expressly subordinate to this Conservation Easement. All reasonable efforts shall be made to locate such Utilities (i) outside of the Habitat Zone and Water Quality Buffer, (ii) if possible, within fifty (50) feet of the roads permitted herein below and the driveways used to access the Envelopes in existence as of the date of this Conservation Easement as described in the Baseline Documentation Report and as depicted on the Plat and as may be installed as permitted in this Conservation Easement, and (iii) in all events in such a manner and location that minimizes the impact, as much as is reasonably possible, on the Conservation Values as set forth in this Conservation Easement. Except as expressly permitted herein, the construction of any other Utilities on the Easement Area is prohibited without prior approval of Grantee, which approval shall take into account the impact of the new Utility on the aesthetic quality of the Easement Area, water quality and other environmental issues, the value of the Easement Area as an open space, any endangered or threatened species on the Easement Area and such other considerations as Grantee shall deem just and proper in order to ensure that any new Utilities do not permit the destruction of any “significant conservation interest” as that phrase is used in Treas. Reg. § 1.170A-14(e)(2), or otherwise



undermine the conservation purposes of this Conservation Easement. For purposes of this Conservation Easement, the term “Utilities” means electric, gas, and water lines and facilities, sanitary lines and storm sewers, septic systems, cisterns, wells, water storage and delivery systems, telephone and other communication services, satellite dishes, and renewable energy systems (including but not limited to solar energy devices on a permitted structure; geothermal heating and cooling systems, also known as ground source heat pump; wind energy devices; and other renewable energy systems that are not prohibited by governmental regulations); but does not include cellular or wireless communication towers. Cellular and wireless communication towers, and similar commercial towers and antenna, are prohibited on the Easement Area.

(vi) *Notice to Grantee* – Grantor is prohibited from proceeding with any site preparation, construction, substantial exterior alteration, replacement, relocation, or removal of any structure, building, improvement, or Utility described in Section 2(C) of this Conservation Easement without prior written approval from the Grantee. In requesting any such prior written approval, Grantor must notify Grantee in writing in accordance with the provisions of Section 9, including at a minimum, sufficient information to enable Grantee to determine whether the proposed plans are consistent with the terms of this Conservation Easement. Grantor shall provide Grantee with any additional information requested by Grantee that is necessary or proper in Grantee’s evaluation of Grantor’s proposed site preparation, construction, substantial exterior alteration, replacement, relocation, or removal of any structure described herein. In determining whether to approve Grantor’s proposed site preparation, construction, substantial exterior alteration, replacement, relocation, or removal of any structure described herein, Grantee shall take into account the impact of such site preparation, construction, substantial exterior alteration, replacement, relocation, or removal of any structure described herein on: (a) the scenic value of the Easement Area; (b) the value of the Easement Area as an open space (including the impact of access roads or related traffic associated with any new improvements located on the Easement Area); (c) the Easement Area and surrounding area’s environment, including but not limited to air and water quality issues; (d) any threatened or endangered species located in or near the Easement Area; and (e) such other considerations as the Grantee shall deem proper in order to preserve the Conservation Values of the Easement Area. Under no circumstances shall Grantee approve any site preparation, construction, substantial exterior alteration, replacement, relocation, or removal of any structure described herein that permits the destruction of any “significant conservation interest” as that phrase is used in Reg. Section 1.170A-14(e)(2), Income tax regs. or otherwise conflict with the conservation purposes of this Conservation Easement.

(E) *Surface Water Protection; Water Quality Buffer; Habitat Zone; and Ponds*

There shall be no activities, pollution, or surface alteration that would be detrimental to water purity or that would alter natural water levels, drainage, sedimentation, and/or flow

in or over the Easement Area or into any surface waters, or cause soil degradation or erosion, including but not limited to any sort of diking, dredging, alteration, draining, or filling or removal of wetlands, except as a necessary part of restoring natural hydrology, enhancing wetlands, or improving water quality, as permitted by state and any other appropriate authorities, and then only after written approval is granted by the Grantee for such activities. For purposes herein, “surface waters” shall be defined as including but not limited to intermittent streams, perennial streams, lakes, ponds and estuaries. Provided, however, that the foregoing is not intended to prohibit the forest management and harvest activities allowed pursuant to Section 2(A), the agricultural and horticultural activities allowed pursuant to Section 2(B), the construction of structures and improvements otherwise allowed pursuant to Section 2(D), the roads permitted pursuant to Section 2(F), and Pond maintenance and any activities reasonably required to prevent flooding or erosion as permitted pursuant to this Section 2(E).

Notwithstanding the foregoing, Grantor may undertake reasonable steps to prevent flooding or erosion as permitted by state and other applicable governmental authorities, and only after written approval of the Grantee.

Certain lakes, ponds, marshes, wetlands, or other water bodies (“Waterways”) are located on the Easement Area as more fully described in the Baseline Documentation Report. The Waterways (including their bed and banks) together with the adjoining land measuring 100 feet landward from the Top of the Banks of the Waterways (to the extent that the land is located within the Easement Area) are hereby designed as the “Water Quality Buffer.” If the position of the Waterways and the Top of the Banks of the Waterways shift with time, the Water Quality Buffer moves with them. The term “Top of the Bank” is the elevation at which rising waters begin to inundate the floodplain. In the case of ambiguous, indefinite, or nonexistent floodplain or question regarding location, the Top of the Bank shall be the bankfull water elevation as delineated by a person trained in fluvial geomorphology. Notwithstanding any other term contained in this Section 2(E), no portion of the Easement Area located within Farmstead Envelope 2 shall be considered within the Water Quality Buffer.

Grantor and Grantee have designated a habitat protection zone as legally described in **Exhibit C**, attached hereto and incorporated herein (“Habitat Zone”), for the purpose of protecting the Natural Heritage Areas identified in Recital D of this Conservation Easement. Grantor may mark the boundaries of the Habitat Zone and the Water Quality Buffer, and any question arising as to the boundaries of the Habitat Zone or Water Quality Buffer shall be resolved reasonably by Grantee based on the conservation purposes of this Conservation Easement.

Commercial forestry, agricultural, horticultural and animal husbandry operations, grazing, timber removal, cutting, logging, and mowing or other disturbance or interference of native plants are prohibited within the Habitat Zone and Water Quality Buffer. The cutting or removal of trees or other vegetation, dead or alive, or the disturbance of other natural resources is prohibited except for removal of hazards to visitors, control of disease that would damage or reduce the significance of the Habitat Zone or Water Quality Buffer,

removal of non-native plant species, reduction of fire fuel load after severe storm damage, trail clearance or maintenance, or for purposes of maintenance or restoration of natural communities or rare species populations in the Habitat Zone and Water Quality Buffer consistent with the conservation purposes of this Easement. Salvage timber cuts after a natural catastrophe will be allowed in the Habitat Zone and Water Quality Buffer, but only with the prior consent of Grantee, and only in a manner that will contribute to the recovery of the prevailing natural conditions of the forest. Construction of roads, trails, and paths on the Easement Area within the Habitat Zone and Water Quality Buffer is prohibited, except for (1) the maintenance of those unpaved paths that exist as of the date of this Conservation Easement as described in the Baseline Documentation Report, (2) construction and maintenance of primitive foot paths limited to single file pedestrian traffic, and (3) construction and maintenance of the Greenway expressly permitted in Section 2(F) below. The unpaved paths may not be widened or covered with asphalt or other impervious materials. Construction of buildings, structures, and improvements (including but not limited to minor structures and fences) within the Habitat Zone or Water Quality Buffer is prohibited.

Prior to engaging in any activity outside of the Habitat Zone or the Water Quality Buffer that may result in the degradation of the Habitat Zone or the Water Quality Buffer, the Grantor agrees to consult with the Grantee and/or appropriate governmental agencies to ensure that any potential degradation is avoided or minimized.

As of the date of this Conservation Easement, two (2) man-made ponds (each, a "Pond" and collectively, "Ponds") and two man-made dams (each, a "Dam" and collectively, "Dams") exists on the Easement Area, as documented in the Baseline Documentation Report and as identified as "Pond" on the Survey. Notwithstanding any other term contained in this Conservation Easement, and notwithstanding that the Pond is located within the Water Quality Buffer, Grantor reserves the right to mow and clear vegetation around the Pond.

Grantor and Grantee acknowledge that the existence of the Dams and Ponds create habitat and water levels that are different than those that existed prior to the installation of the Dams. Grantor reserves the right to reconstruct, replace, demolish, or remove the Dams and Ponds (or either of them) (collectively, "Dam and Pond Work"). In the event that Grantor desires to undertake any Dam and Pond Work, Grantor shall prepare, in consultation with Grantee, a plan to reconstruct, replace, demolish, or remove the Dam ("Pond Restoration and Management Plan") consistent with the purposes of this Conservation Easement. Grantor and Grantee acknowledge that the Dam and Pond Work may: (i) temporarily or permanently alter the condition of the Easement Area as it exists on the date of this Conservation Easement; (ii) impact the habitat for wildlife or plants or similar ecosystem, as it exists on the date of this Conservation Easement; (iii) alter the natural water levels, drainage, sedimentation, or flow in or over the Easement Area, as it exists as of the date of this Conservation Easement; or (iv) require diking, dredging, alteration, draining, filling, or removal of wetlands or the Pond. Notwithstanding the foregoing, the Dam and Pond Work shall not constitute a violation of this Conservation Easement, provided that: (a) all Dam and Pond Work shall be completed in accordance

with applicable permits and best management practices for the maintenance, reconstruction, replacement, demolition, or removal (as applicable) of dams; (b) Grantee has given Grantor prior written approval of the Pond Restoration and Management Plan; (c) the Dam and Pond Work shall be subject to the same notice and review requirements set forth above in Section 2(D)(vii); (d) to the extent practical, the Dam and Pond Work shall be completed in an ecologically beneficial manner; and (e) in the event the Dam and Pond Work involves removal of the Dam, it shall be done in a manner that reestablishes a natural flow regime and promotes a healthy, functioning ecosystem, using then-current industry knowledge that maximizes the long-term beneficial environmental effects, including the well-being of water quality and habitat on the Easement Area. If the Dam is breached or at risk of failure, Grantor shall promptly notify Grantee of the failure or risk of failure. Grantor further reserves the right to undertake daily maintenance of the Pond(s) and Dam, including but not limited to managing drainage, treating and controlling algae, and removing large woody debris, provided that the manner of undertaking such maintenance shall be consistent with the purposes of this Conservation Easement. Routine maintenance of the Pond(s) and Dam is not required to be part of a Pond Restoration and Management Plan.

Grantor reserves the right to use the Ponds for crop irrigation to support agricultural and horticultural use expressly allowed by this Conservation Easement irrigation and/or for livestock watering, subject to the prior approval of Grantee and provided that such use is consistent with the purposes of this Conservation Easement and in compliance with the rules, regulations, and guidance of the Soil and Water Conservation District. Under no circumstances shall Grantee approve the use of the Ponds for irrigation or livestock watering if such use would permit the destruction of any “significant conservation interest” as that phrase is used in Reg. Section 1.170A-14(e)(2), Income tax regs. or otherwise conflict with the conservation purposes of this Conservation Easement.

(F) *Construction and Maintenance of Roads*

Subject to Section 2(D) above, construction and maintenance of unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Easement Area by this Conservation Easement are permitted with the prior written approval of Grantee as to location and width. No portion of the Easement Area shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material without the advance written permission of the Grantee. For the purposes of this Conservation Easement, gravel shall not be considered an impervious material. In determining whether to grant permission as provided in this Section, Grantee shall take into account the impact of the new road on the aesthetic quality of the Easement Area, water quality and other environmental issues, the value of the Easement Area as an open space, any endangered or threatened species on the Easement Area and such other considerations as Grantee shall deem just and proper in order to ensure that any new road and/or utilities do not permit the destruction of any “significant conservation interest” as that phrase is used in Treas. Reg. § 1.170A-14(e)(2), or otherwise undermine the conservation purposes of this Conservation Easement.

Notwithstanding any other term contained in this Conservation Easement, one (1) corridor of protected open space managed for conservation and recreation purposes, also known as a greenway (“Greenway”) is permitted on the Easement Area, provided that (i) it is part of a local governmental initiative; (ii) any impervious surface within the Greenway is no more than ten (10) feet wide; (iii) located a minimum distance of 100 feet from the top of bank of any surface waters on the Easement Area, except where reasonably necessary to accommodate reasonable stream crossings; and (iv) in all events, the Greenway shall be located and the area improved to accommodate the Greenway in such a manner and location as is reasonably possible to minimize the impact on the Conservation Values as set forth in this Conservation Easement.

(G) *Excavation, Dredging, or Mineral Use*

There shall be no filling, excavation, dredging, mining, or drilling which materially affects the topography of the land or is detrimental in any material way to the flora and fauna on the Easement Area, no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner except as necessary to allow permitted uses set forth in Section 2(B) above, to allow the construction of the improvements allowed in Section 2(D) above, for the purpose of combating erosion or flooding as allowed in Section 2(E) above, to allow the construction of roads allowed in Section (F) above, and for the maintenance of existing roads, hiking and horseback trails as documented in the Baseline Documentation Report.

(H) *Signage*

No signs or billboards or other advertising displays are allowed on the Easement Area, except signs whose placement, number and design do not diminish the scenic character of the Easement Area may be displayed to identify trails and the Conservation Values of the Easement Area, to identify the name and address of the Easement Area and the names of persons living on the Easement Area, to give directions, to advertise or regulate permitted uses of the Easement Area and prescribe rules and regulations for recreational use of the Easement Area, to advertise the Easement Area for sale or rent, and to post the Easement Area against trespassers. The face of signs permitted pursuant to this provision may not exceed nine (9) square feet without the prior written approval of Grantee, which approval shall not be unreasonably withheld. Signs permitted pursuant to this provision shall not exceed fourteen (14) feet in height above ground level.

(I) *No Biocides*

Except in accordance with this section, there shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except as to control invasive species detrimental to the Conservation Values of the Easement Area. Agricultural and silvicultural use of biocides is allowed, if prescribed in the Conservation Plan, the Forest Management Plan, or with prior written approval by Grantee.

(J) *No Dumping or Storage*

There shall be no storage or dumping of trash, garbage, abandoned vehicles or vehicle parts, rubbish, debris, junk, waste, contaminated soil, or other unsightly or offensive material, hazardous substance, or toxic waste on the Easement Area; provided, however, the storage of agricultural products, byproducts (including the composting of biodegradable material for use on the Easement Area) and agricultural equipment on the Easement Area is allowable 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 Easement Area. Grantor shall, insofar as may be reasonable, make a good faith effort to keep the Easement Area in a clean state, free of unsightly debris, trash and abandoned goods.

(K) *Predator Control*

Grantor shall have the right to control, destroy, or trap predatory and problem animals that pose a material threat to forestry, agriculture, drainage, livestock and/or humans by means and methods approved by applicable federal, state, and local laws, regulations, and requirements. The method employed shall be selective and specific to individuals, rather than broadcast, nonselective techniques.

(L) *Commercial Development*

Except as expressly permitted herein, any commercial or industrial use of or activity on the Easement Area is prohibited.

Grantee shall have the right in its sole discretion to approve the establishment and conduct of non-agricultural commercial and industrial uses or activities that Grantee determines in its sole discretion (a) are compatible with the purposes of this Conservation Easement, (b) will not substantially diminish or impair the agricultural productivity of the Easement Area, and (c) can be reasonably accommodated with only a de minimis adverse impact on the Conservation Values of the Easement Area.

Grantor desires to qualify this Conservation Easement for estate tax exclusion under § 2031(c) of the Internal Revenue Code. In order to qualify this Conservation Easement for treatment under, and as required by, Internal Revenue Code Section 2031(c)(8)(B), notwithstanding anything in this Conservation Easement to the contrary, this Conservation Easement hereby prohibits more than a de minimis use of the Easement Area for commercial recreational activity.

(M) *Development Rights*

With the exception of buildings permitted in Section 2(D), all housing, commercial and industrial development rights that are now or hereafter allocated to, implied, reserved or inherent in the Easement Area, are terminated and extinguished, and may not be used on or transmitted to any portion of the Easement Area, as it now or hereafter may be bound or

described, or to any other property.

(N) *Subdivision*

The subdivision of the Easement Area, whether by physical or legal processes, is prohibited. Notwithstanding that the Easement Area was acquired in separate parcels or lots or may be the subject of an approved subdivision, the Easement Area shall remain in unified ownership, which may be joint or undivided, but without division, partition, subdivision, or other legal or de facto creation of lots or parcels in separate ownership. Notwithstanding the foregoing, the Property may be subdivided to separate the Easement Area from the remainder of the Property along either or both of the following boundary lines: (i) the boundary line shared by the Easement Area and that certain 2.13 acre area identified as “B” “(Not Part of Easement)” and more fully depicted on the Plat; and (ii) the boundary line shared by the Easement Area and that certain 0.33 acre area identified as “B1” “(Not Part of Easement)” and more fully depicted on the Plat (collectively, the “Non-Encumbered Properties”); in the event of such subdivision, the term “Property” shall thereafter mean and include only the Easement Area and any portion of the Non-Encumbered Properties that were not subdivided from the Property as permitted herein.

3. ADDITIONAL RIGHTS RETAINED BY GRANTORS

Grantor retains the following rights:

(A) *Existing Uses*

The right to undertake or continue any activity or use of the Easement Area not prohibited by this Conservation Easement so long as it does not detract or impair the Conservation Values of the Easement Area.

(B) *Transfer*

The right to sell, give, mortgage, lease, or otherwise convey the Easement Area subject to the terms of this Conservation Easement. Grantor shall be required to disclose this Conservation Easement in full in connection with any rental or lease of all or any portion of the Easement Area.

4. GRANTEE’S RIGHTS

To accomplish the purpose of this Conservation Easement, the following rights are granted to Grantee by this Conservation Easement:

(A) *Right to Protect*

The right to preserve and protect the Conservation Values of the Easement Area and enforce the terms of this Conservation Easement.

(B) *Right of Entry*

Grantee, its employees, representatives, and agents and its successors and assigns, have the right, after prior written notice to Grantor, to enter the Easement Area at reasonable times for the purpose of inspecting the Easement Area to determine whether Grantor, its representatives, assigns, heirs and successors are complying with the covenants and purposes of this Conservation Easement and to inspect for violations.

5. RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED

Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibilities on Grantor, or in any way to affect any existing obligation of Grantor as owner of the Easement Area. Among other things, this shall apply to:

(A) *Taxes and Assessments*

Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property, including the Easement Area.

(B) *Upkeep and Maintenance*

Grantor shall be solely responsible for the upkeep, operation, and maintenance of the Easement Area, to the extent it may be required by law. Grantee shall have no obligation for the upkeep, operation, or maintenance of the Easement Area.

6. ACCESS

No right of access by the general public to any portion of the Easement Area is conveyed by this Conservation Easement. However, the public has the right to view the Easement Area from adjacent publicly accessible areas such as public roads and waterways. Notwithstanding the above, nothing herein shall prohibit the construction of a Greenway in accordance with Section 2(F) that may be accessed by the public, subject to the terms of this Conservation Easement.

7. ENFORCEMENT

Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement in accordance with the following terms:

(A) If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purposes of this Conservation Easement, to restore the portion of the Easement Area so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or if the violation cannot reasonably be cured within said period, fails to commence to cure such violation within the thirty (30) day period, and



thereafter to diligently prosecute the cure to completion, Grantee may bring an action at law or in equity to enforce the terms of this Conservation Easement, to enjoin the violation by temporary and/or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation Easement, and to require the restoration of the Easement Area to the condition that existed prior to any such injury. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. Grantee shall also be entitled to recover all reasonable attorneys' fees, court costs, and other expenses incident to enforcement of this Conservation Easement.

(B) If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party shall cause the dispute to be mediated by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single mediator to mediate the matter. If the parties are unable to agree on the selection of a single mediator, either or both may request the Senior Resident Judge of the Superior Court of Wake County, without the necessity of filing an action, to appoint a mediator. The matter shall then be mediated in accordance with the then current Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions that were first adopted by the Supreme Court in 1991, pursuant to [N.C. Gen. Stat. § 7A-38.1](#). To the extent the said Rules do not apply, the Mediator may set the rules, including the time and place for the mediation, and other such matters, in accordance with the practice that is customary in Wake County, North Carolina. In the event the mediation is unsuccessful, either party may proceed with litigation in a court of competent jurisdiction. All costs of said mediation shall be divided equally between Grantor and Grantee. It is the intent of this paragraph that such litigation may not be commenced until pre-litigation mediation is attempted by the parties so long as Grantor agrees not to proceed with the use or activity pending resolution of the dispute.

(C) Notwithstanding any other provision in this Section, in the event that Grantee reasonably determines that a violation of the terms of this Conservation Easement occurs or threatens to occur and that such violation would cause immediate and irreparable injury for which Grantee would have no adequate remedy at law, Grantee may immediately and without notice bring an action at law or in equity to enforce the terms of this Conservation Easement, to enjoin the violation by temporary and/or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation Easement, and to require the restoration of the Easement Area to the condition that existed prior to any such injury.

(D) Grantor waives any bond requirement otherwise applicable to any petition for injunctive relief sought by Grantee to enforce its rights with respect to the Easement Area.

(E) Grantee has the right in its sole discretion to allow minor deviations of express height, width, footprint, and area limitations in connection with the construction or installation of buildings and other improvements, and to allow de minimis encroachments of improvements within the Water Quality Buffer, provided that Grantee determines in its sole discretion that (i) the allowed deviation or encroachment is compatible with the purposes of this Conservation Easement, and (ii) the allowed deviation or encroachment will not harm the Conservation Values of the Easement Area.

(F) In the event that the Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the discretion of Wake County, Wake County shall have the right to enforce the terms of this Conservation Easement through any and all authorities available under federal or state law.

In the event Wake County exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Conservation Easement from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. Wake County is entitled to recover any and all administrative and legal costs associated with any enforcement of this Conservation Easement from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the Conservation Easement against the Grantor up to the amount of Wake County's contribution to the purchase of the Conservation Easement.

The Grantee will annually monitor compliance and provide Wake County with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the Conservation Easement. If the annual monitoring report is insufficient or is not provided annually, or if Wake County has a reasonable and articulable belief of an unaddressed violation, Wake County may exercise its right of inspection. For purposes of inspection and enforcement of the Conservation Easement, and the Wake County Funding Agreement with the Grantee, Wake County will have reasonable access to the Easement Area. Prior to its inspection of the Easement Area, Wake County shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

## 8. ACTS OF THIRD PARTIES.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Area resulting from (a) acts of third parties legally authorized to act by recorded instrument or other legally established rights to which this Conservation Easement is subject; (b) the wrongful acts of third parties other than Grantor's agents, employees, invitees or contractors (provided the Grantor has taken reasonable actions to prevent such third parties from trespassing and from causing harm to the Easement Area

and has not authorized, consented to or participated in the acts of such third parties); or causes beyond Grantor's control, including without limitation, fire, flood, storm, and earth movement, or from prudent actions taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, property damage, or harm to the Easement Area resulting from such causes. Grantor shall notify Grantee of any act or occurrence that would adversely affect or interfere with the purpose of this Conservation Easement, whether caused by the Grantor's acts or omissions or by a third party or parties or causes beyond Grantor's control. In the event of a violation of this Conservation Easement caused by the wrongful acts of a third party, Grantor shall cooperate fully with Grantee in enforcement of this Conservation Easement, including but not limited to: gathering facts and information relevant to the violation; assigning its right of action to the Grantee; joining in any claim or legal action; and/or appointing the Grantee as its attorney-in-fact for purposes of enforcement, all at the election of the Grantee. In the event that such third party acts interfere with the purposes of this Conservation Easement and/or Conservation Values of this Conservation Easement, Grantor and Grantee will work together to identify restoration or rehabilitation activities and develop a restoration plan. This Section shall not be construed to relieve Grantor of the obligation to clean up garbage or materials dumped on the Easement Area by third parties, to take all reasonable actions to prevent violations of this Conservation Easement by third parties, or to otherwise maintain the Easement Area in a condition consistent with the purpose of this Conservation Easement. Nothing in this Section shall prohibit Grantee from bringing an action against Grantor resulting from Grantor's failure to take reasonable actions to prevent violations of this Conservation Easement by third parties or from Grantor's authorization, consent, or participation in the wrongful acts of third parties resulting in violations of this Conservation Easement.

9. NOTICE OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS.

Grantor shall notify Grantee before undertaking any use or change in use of the Easement Area pursuant to Sections 2(A), 2(B)(ii), 2(B)(iii), 2(D), 2(E), 2(F), and 2(H) above which may have adverse impact on the Conservation Values of the Easement Area. Uses described in the Baseline Documentation Report, and in any Conservation Plan, Harvest Plan, and/or Forest Management Plan delivered to Grantee pursuant to the terms of this Conservation Easement, shall constitute proper notice for purposes of the foregoing sentence. The purpose of this notice requirement is to comply with the provisions of Treas. Reg. § 1.170A-14(g) (5) (ii), in order to allow Grantee a reasonable period to consider the prospective impact to the extent Grantee deems appropriate.

(A) *Notices to Grantee*

- (i) *Means of Notice* – Any notices to Grantee required in this Conservation Easement shall be sent by registered or certified mail, or other courier providing reliable proof of delivery, to Triangle Land Conservancy's Easement Steward at the address for Grantee in the caption of this Conservation Easement, or such other person or address as may be hereafter specified by notice in writing. All other communication shall be made by reasonable means under the circumstances,

provided that electronic communication will not be deemed received unless accompanied by delivery by one of the foregoing methods.

(ii) *Consent of Notice* – The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities, as provided in Sections 2(A), 2(B)(ii), 2(B)(iii), 2(D), 2(E), 2(F), and 2(H) above, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designated and carried out in a manner consistent with the terms and Purposes of this Conservation Easement. Such notices to Grantee or requests for Grantee consent, required or contemplated hereunder, must include, at a minimum, sufficient information, including the nature, scope, design, location, timetable, and any other material aspect of the proposed activity, in sufficient detail to enable Grantee to determine whether proposed plans are consistent with the requirements of this Conservation Easement and the purposes hereof.

(iii) *Process of Notice and Approval* – Whenever notice to Grantee is required, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the requirements and purpose of this Conservation Easement. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefore.

(iv) *Failure to Respond* – If Grantee approval is required under the terms of this Conservation Easement prior to the exercise of a reserved right that is the subject of the notification and request for approval, failure of Grantee to respond within sixty (60) days shall be deemed to be a denial of the request for approval.

(v) *Transfer of Ownership* – Grantor further agrees to give written notice to Grantee of the transfer of any interest in the Easement Area, including but not limited to any sale, gift, or long-term lease, at least thirty (30) days prior to the date of such transfer.

(B) *Notices to Grantor*

(i) *Means of Notice* – Any notices to Grantor required by this Conservation Easement shall be sent by registered or certified mail or other courier providing reliable proof of delivery, to Grantor at the address set forth in the caption hereof, or to such other person or address as may be hereafter specified by notice in writing to Grantee. All other communication shall be made by reasonable means under the circumstances.

10. TRANSFER OF EASEMENT

The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable; provided, however, that Grantee's interest in this Conservation Easement (a) may only be transferred or assigned to an organization (i) that is a qualified organization as that term is defined under Section 170(h)(3) of the Internal Revenue Code, as amended, or any successor section, and the regulations promulgated thereunder which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code and (ii) that is authorized to acquire and hold conservation easements under the Conservation and Historic Preservation Agreements Act, or any successor provision thereto, and (b) may not be assigned to a governmental entity without the prior written consent of Grantor. The parties further covenant and agree that the terms of the transfer or the assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance as set forth in the recitals above, which recitals are incorporated herein by this reference. Grantee, its successors or assigns, hereby covenants and agrees to monitor and observe the Easement Area in perpetuity for the purposes set forth in this Conservation Easement.

#### 11. TRANSFER OF PROPERTY

Any time the Property itself, or any interest in it, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing at least thirty (30) days prior to the transfer of the Property (except where otherwise expressly stated). **IN THE EVENT OF ANY CONVEYANCE OF ANY INTEREST IN THE PROPERTY, GRANTOR, ITS SUCCESSORS AND ASSIGNS SHALL IDENTIFY THIS CONSERVATION EASEMENT AS AN EXCEPTION IN ANY DEED OR OTHER INSTRUMENT OF CONVEYANCE.**

#### 12. AMENDMENT OF EASEMENT

This Conservation Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Section 170(h) of the Internal Revenue Code, and any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the Uniform Conservation and Historic Preservation Agreement Act, N.C.G.S. § 121-34 et.seq. and any regulations promulgated pursuant to that law. Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement, significantly impair Conservation Values, or be inconsistent with the purposes of this Conservation Easement. Any such amendment or modification must be executed by both Grantor and Grantee and shall be recorded in the public registry of Wake County.

#### 13. TERMINATION OF EASEMENT

If it is determined that conditions on or surrounding the Easement Area have changed so much that it is impossible to fulfill the conservation purposes set forth above, a court with jurisdiction may,

at the joint request of both Grantor and Grantee, terminate this Conservation Easement. Notwithstanding the foregoing, in entering into this Conservation Easement, Grantor has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Grantor and Grantee that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

In the event that all or part of the Easement Area is taken, or threatened to be taken, by exercise of eminent domain by public, corporate, or other authority, or by negotiated sale in lieu of condemnation, the Grantor shall immediately give notice to Grantee and shall take all appropriate actions related to such taking or negotiated sale in coordination with and with the consent of the Grantee, to recover the full value of the taking and all incidental or direct damages resulting from the taking. If condemnation of a part of the Easement Area or of the entire Easement Area by public authority renders it impossible to fulfill any of the conservation purposes of this Conservation Easement, then this Conservation Easement may be terminated through condemnation proceedings.

At the time of conveyance of this Conservation Easement to Grantee, this Conservation Easement gives rise to a real property right, immediately vested in Grantee. If the Conservation Easement or part thereof is terminated and the Easement Area is sold or taken for public use, then, as required by Treas. Reg. § 1.170A-14(g)(6), Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement (“Proportionate Share”).

After Grantee has received its Proportionate Share, Grantee shall pay an amount to Wake County equal to the percentage that the value of Wake County’s cash payments for the purchase of this Conservation Easement (as stated above) represent of the Proportionate Share. All of the Proportionate Share shall be used by Grantee and Wake County in a manner that is consistent with the Conservation Purposes.

Until such time as Grantee and Wake County receive their share of the Proportionate Share, they shall each have a lien against the Easement Area 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 Conservation Easement.

Grantee shall use all proceeds distributed to it under this Section in a manner consistent with the conservation purposes of this Conservation Easement.

14. INTERPRETATION

This Conservation Easement shall be interpreted under the laws of North Carolina, resolving any ambiguities and questions of the validity of specific provisions as to give maximum effect to its conservation purposes.

15. INDEMNIFICATION

Grantor agrees to protect, defend, indemnify and hold harmless Grantee from and against any and all actions, liabilities, damages, fines, penalties, costs, claims and expenses, including but not limited to reasonable attorneys' fees, arising from or related to any personal injury, accident, negligence or damage relating to the Easement Area, or any claim thereof, except to the extent due to the negligence of Grantee or its agents, contractors or employees. Grantor's indemnification of Grantee shall be construed broadly to extend to the indemnification of Grantee for loss, claims or damage suffered by Grantee as a result of the environmental condition of the Easement Area, and as a result of violations of any federal, state, or local laws, ordinances and regulations, including violations of Environmental Laws. In the event that Grantor elects to open any portion of the Easement Area to the public, Grantor's liability extends to indemnification of Grantee for loss, claims, or damages suffered by Grantee as a result of any failure of the Easement Area to comply with all applicable laws, ordinances, and regulations.

16. TITLE

Grantor covenants and represents: that Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement; that the Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement; and that Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

17. ENVIRONMENTAL CONDITION

Grantor warrants that Grantor is in compliance with, and will remain in compliance with, all applicable Environmental Laws (as defined herein). Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Laws relating to the operations or conditions of the Property. Grantor covenants, represents and warrants, without investigation, that it has no actual knowledge of a release or threatened release of Hazardous Materials on the Property in violation of applicable Environmental Laws.

"Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governing 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 protections, inland wetlands and watercourses, health protection, and similar environmental health, safety, building and land use as may not 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, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment.

18. SEVERABILITY

Invalidity of any of the covenants, terms or conditions of this Conservation 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.

19. PARTIES

Every provision of this Conservation Easement that applies to Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

20. RE-RECORDING

In order to ensure the perpetual enforceability of this Conservation Easement, Grantee is authorized to re-record this instrument or any other appropriate notice or instrument; for such purpose, Grantor appoints Grantee as Grantor's attorney-in-fact to execute, acknowledge, and deliver any necessary instrument on Grantor's behalf. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request.

21. MERGER

The parties agree that, because of the public interest in the enforcement of this Conservation Easement, the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

22. SUBSEQUENT LIENS ON PROPERTY

No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, providing that any mortgage or lien arising from such a borrowing is subordinate to this Conservation Easement.

23. ESTOPPEL CERTIFICATES



Upon request by Grantor, Grantee shall within thirty (30) days of written request by Grantor execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement, as may be reasonably requested by Grantor; provided, however, that such estoppel shall be restricted to the actual knowledge of Grantee and shall in no event be deemed a waiver of any violations by Grantor of the terms of this Conservation Easement.

24. ENTIRE AGREEMENT; COUNTERPARTS

This instrument sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to this Conservation Easement, all of which are merged herein. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against the party who has signed it.

25. NO FORFEITURE

Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

26. TERMINATION OF RIGHTS AND OBLIGATIONS

A party's rights and obligations under this Conservation Easement shall terminate upon the transfer of the party's interest in this Conservation Easement or Property to a party assuming its obligations hereunder, except that liability for acts or omissions occurring prior to transfer shall survive transfer, but this Conservation Easement shall not be affected by such transfer, the transferee having the rights and obligations of the transferring party.

27. DISCLAIMER

Grantee does not represent the interests of Grantor. Grantee has advised Grantor to have this Conservation Easement reviewed by Grantor's attorney, and Grantor has had ample opportunity to do so. Grantee makes no representation as to whether this Conservation Easement qualifies for a charitable deduction or if it is in proper form for that purpose, in the event that the Grantor claims a charitable gift deduction on its federal or state income tax returns.

28. SUCCESSOR LIMITATION

If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code, or to be authorized to acquire and hold conservation easements under N.C.G.S. § 121-34 et seq., and a prior assignment is not made pursuant to Section 9 above, then Grantee's rights and obligations under this Conservation Easement shall become immediately vested in such organization as a court of competent jurisdiction shall direct pursuant to North Carolina law and

with due regard to the requirements for an assignment pursuant to said Section 9.

29. ACCEPTANCE AND EFFECTIVE DATE

As attested by the signature of its authorized representatives affixed hereto, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Wake County Registry of Deeds.

TO HAVE AND TO HOLD, this grant of Conservation Easement and development rights, together with all appurtenances and privileges belonging or in any way pertaining thereto, unto the Triangle Land Conservancy, its successors and assigns forever.

*[Remainder of Page Intentionally Blank; Signature Pages to Follow]*

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

GRANTOR:

By: \_\_\_\_\_ (Seal)

Name: James Edward Bailey

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

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

Date \_\_\_\_\_

\_\_\_\_\_  
Official Signature of Notary

(Official Seal)

\_\_\_\_\_  
Notary's printed or typed name

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

By: \_\_\_\_\_ (Seal)

Name: Caren C. Bailey

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

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

Date \_\_\_\_\_

\_\_\_\_\_  
Official Signature of Notary

(Official Seal)

\_\_\_\_\_  
Notary's printed or typed name

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

By: \_\_\_\_\_ (Seal)

Name: Matthew Edward Bailey

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

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

Date \_\_\_\_\_

\_\_\_\_\_  
Official Signature of Notary

(Official Seal)

\_\_\_\_\_  
Notary's printed or typed name

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

GRANTEE:

Triangle Land Conservancy,  
a North Carolina nonprofit corporation

By: \_\_\_\_\_  
Sandra J. Sweitzer, Executive Director

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

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

Date \_\_\_\_\_

\_\_\_\_\_  
Official Signature of Notary

(Official Seal)

\_\_\_\_\_  
Notary's printed or typed name  
My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

TRACT ONE:

BEING all of that parcel identified as Tract 1, containing 88.44 acres, more or less, as shown on that plat entitled “Property of James Edward Bailey & Matthew Edward Bailey - Conservation Easement (124.97 Ac.) Survey for Triangle Land Conservancy” prepared by Ben L. Bryan, P.A., dated \_\_\_\_\_, 2023, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry, to which reference is hereby made for a more particular description.

TRACT TWO:

BEING all of that parcel identified as Tract 2, containing 40.88 acres, more or less, as shown on that plat entitled “Property of James Edward Bailey & Matthew Edward Bailey - Conservation Easement (124.97 Ac.) Survey for Triangle Land Conservancy” prepared by Ben L. Bryan, P.A., dated \_\_\_\_\_, 2023, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry, to which reference is hereby made for a more particular description.

**EXHIBIT A-1**  
**LEGAL DESCRIPTION OF EASEMENT AREA**

BEING all of that parcel identified as Tract 2, containing 40.88 acres, more or less, as shown on that plat entitled “Property of James Edward Bailey & Matthew Edward Bailey - Conservation Easement (124.97 Ac.) Survey for Triangle Land Conservancy” prepared by Ben L. Bryan, P.A. dated \_\_\_\_\_, 2023, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry, to which reference is hereby made for a more particular description.

AND

BEING all of that parcel identified as Tract 1, containing 88.44 acres, more or less,, as shown on that plat entitled “Property of James Edward Bailey & Matthew Edward Bailey - Conservation Easement (124.97 Ac.) Survey for Triangle Land Conservancy” prepared by Ben L. Bryan, P.A. dated \_\_\_\_\_, 2023, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry (the “Plat”), to which reference is hereby made for a more particular description.

LESS AND EXCEPT

All of that certain 2.13 acres identified as “B” and “Not Part of Easement”, that certain 0.33 acres identified as “B1” and “Not Part of Easement”, and that certain 1.89 acres located within the Road Right-of-Way, as depicted on the Plat.

**EXHIBIT B**  
**LEGAL DESCRIPTION OF BUILDING ENVELOPES**

**Residential Building Envelope**

BEING all of that certain 1.47 acre portion of the Easement Area designated as “A” and “Residential Building Envelope” on the plat entitled “Property of James Edward Bailey & Matthew Edward Bailey - Conservation Easement (124.97 Ac.) Survey for Triangle Land Conservancy” prepared by Ben L. Bryan, P.A. dated \_\_\_\_\_, 2023, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry, to which reference is hereby made for a more particular description.

**Farmstead Envelope 1**

BEING all of that certain 2.32 acre portion of the Easement Area designated as “C” and “Farmstead Envelope 1” on the plat entitled “Property of James Edward Bailey & Matthew Edward Bailey - Conservation Easement (124.97 Ac.) Survey for Triangle Land Conservancy” prepared by Ben L. Bryan, P.A. dated \_\_\_\_\_, 2023, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry, to which reference is hereby made for a more particular description.

**Farmstead Envelope 2**

BEING all of that certain 1.00 acre portion of the Easement Area designated as “D” and “Farmstead Envelope 2” on the plat entitled “Property of James Edward Bailey & Matthew Edward Bailey - Conservation Easement (124.97 Ac.) Survey for Triangle Land Conservancy” prepared by Ben L. Bryan, P.A. dated \_\_\_\_\_, 2023, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry, to which reference is hereby made for a more particular description.



**EXHIBIT C**  
**LEGAL DESCRIPTION OF HABITAT ZONE**

BEING all of that certain 15.83 acre portion of the Easement Area designated as “Habitat Zone” on the plat entitled “Property of James Edward Bailey & Matthew Edward Bailey - Conservation Easement (124.97 Ac.) Survey for Triangle Land Conservancy” prepared by Ben L. Bryan, P.A. dated \_\_\_\_\_, 2023, recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Wake County Registry, to which reference is hereby made for a more particular description.

**Exhibit C**  
Budget

Line Item	Landowner Donation	Wake County Farmland Preservation Program	Totals
<b>Appraisal</b>	\$0.00	\$ 3,500.00	\$ 3,500.00
<b>Title Research</b>	\$0.00	\$ 536.25	\$ 536.25
<b>Legal and Closing Costs</b>	\$0.00	\$ 14,063.75	\$ 14,063.75
<b>Baseline Documentation Report</b>	\$0.00	\$ 2,900.00	\$ 2,900.00
<b>Easement Purchase</b>	\$1,588,000.00	\$ 1,000,000.00	\$ 2,588,000.00
<b>Environmental Assessment / Audit</b>	\$0.00	\$ 1,000.00	\$ 1,000.00
<b>Stewardship Endowment</b>	\$0.00	\$ 30,000.00	\$ 30,000.00
<b>Survey</b>	\$0.00	\$ 27,000.00	\$ 27,000.00
<b>Totals</b>	\$ 1,588,000.00	\$ 1,079,000.00	\$ 2,667,000.00
<b>Easement Size (Acres)</b>	<b>124.970</b>		
<b>Easement Purchase Price:</b>	\$ 1,000,000.00		

**Exhibit C-1**  
Stewardship Budget Determination

SUMMARY	
<b>endow</b>	\$20,796.06
<b>legal</b>	\$9,800.00
<b>total</b>	<b>\$30,596.06</b>

## A. Assumptions

*Commentary: The numbers in Section A are designed specifically for this easement specifically and are called the Assumptions. These assumptions are estimates drawn from experience.*

### 1. Staff and Overhead Costs

Annual salary	\$50,000.00
Hours worked per year (52 wks x 40 hrs/wk)	2,080
Salary per hour (annual salary / hours worked per year)	\$24.038
Overhead / staff member / hour (benefits, rent, typing, phone, computer)	\$6.010

### 2. Travel Costs for a Site Visit

Reimbursement per mile (as of 01.01.23 per IRS)	\$0.655
Average miles for a round trip (Durham office to property and return)	88
Average vehicular speed for entire trip	65
Reimbursable travel expenses (tolls, parking)	\$0.00

### 3. Monitoring Costs

Hard costs		
	Cost of annual supplies	\$20.00
Staff time for Monitoring		
	Average pre-monitoring time	1
	Average time spent monitoring	4
	Average post-monitoring time	1

### 4. Frequency of Exercise of Reserved Rights, Management Plan updates etc.

How often will reserved rights etc. be exercised in a 20 year period?	1
Therefore the likelihood of exercise of reserved right etc. in any one year is:	5%
Average staff hours needed for exercise of reserved rights etc. per time	20
Number of site visits required to review change per time	1

### 5. Annual Landowner Relations

Staff time needed for annual landowner relations	2
Likely hard costs per landowner per year (e.g. newsletter, postage, etc.)	\$5.00

### 6. Easement Violations

Negotiations prior to obtaining counsel	
How often will negotiations be anticipated in a 20 year period?	0.5
Therefore likelihood of negotiations in a 20 year period is:	2.5%
Average staff hours needed for negotiations to head off violation	40
Number of site visits required to head off (stop) a violation	1

## 7. Endowment Assumptions

*Commentary: The derivation of these numbers is shown on the last page of this spreadsheet.*

Average 30 year Treasury Bond rate of return	4.85%
Average inflation rate	2.45%
Therefore the Treasury Bond rate less the inflation rate is:	2.40%

## B. Formulas

*Commentary: The following computations are used to calculate the overall expenses for certain rates or activities used in the final calculation. Assumptions from Section A above are used in the formulas.*

### 1. Hourly staff rate (including overhead)

Salary costs per hour	24.038
Overhead costs per staff member per hour	<u>6.010</u>
<b>Total: Hourly staff rate</b>	30.048

### 2. Travel Costs for Each Site Visit

*Commentary: Only those costs associated with travelling to and from an easement have been calculated here.*

Mileage reimbursement: mileage x reimbursement rate	\$57.64
Staff costs for travel time:	
hourly staff rate x (mileage divided by average vehicular speed)	\$40.680
Reimbursable travel expenses	<u>\$0.00</u>
<b>Total: Travel Costs for Each Site Visit</b>	\$98.32

## C. Annual Expenses

**Commentary:** The following summary of expenses adds up to the annual cost of monitoring an easement based on the assumptions and formulas above. Please refer back to the assumptions in Section A or the formulas in Section B above for clarification.

### 1. Annual Monitoring Expenses

Pre-monitoring staff costs: hourly staff rate x staff time needed	\$30.05
Monitoring staff costs: hourly staff rate x staff time needed	\$120.19
Monitoring: hard costs	\$20.00
Post-monitoring staff costs: hourly staff rate x staff time needed	\$30.05
Travel costs for each site visit (see formula #2 above)	<u>\$98.32</u>
<b>Total Annual Monitoring Expenses</b>	<b>\$298.61</b>

### 2. Annual Landowner Relations Costs

Costs of staff time: hourly staff rate x hours needed	\$60.10
Costs of supplies	<u>\$5.00</u>
<b>Total Annual Landowner Relations Costs</b>	<b>\$65.10</b>

### 3. Per Year Cost of Exercise of Reserved Rights

Staff costs: hourly staff rate x hours needed	\$600.96
Travel costs for each site visit (see formula #2 above)	<u>\$98.32</u>
Costs of exercise of reserved right every 20 years	\$699.28
x percentage likelihood of right being exercised within 20 years)	<u>5%</u>
<b>Total: Per year cost of exercise of reserved right</b>	<b>\$34.96</b>

### 4. Per Year Cost of Negotiations Over Violations:

Staff costs: hourly staff rate x hours needed	\$1,201.92
Travel costs for each site visit (see formula #2 above)	<u>\$98.32</u>

Cost of one negotiations over violations ever 20 years	\$1,300.24
x percentage likelihood of negotiations within 20 years	<u>3%</u>
<b>Total:</b> Per year cost of negotiations	\$32.51

5. Annual Terrafirma Premium:

\$67.00

Total Annual Expenses

\$498.18

### D. Endowment Needed to Fund Annual Expenses

*Commentary: The following calucation gives the size of the endowment necessary to spin off enough interest to:*

a. pay for the annual monitoring costs

b. reinvest sufficient monies so the endowment will grow sufficiently to compensate for the effects of inflation.

*Assume that a secure investment will produce 9.4% in interest each year. In this example, you only need 4.0% interest to fund your monitoring program. The remaining 5.2% interest will be plowed back into your investments in order to compensate for the historical effects of inflation. See attached page for illustration.*

Total Annual Costs (see above)	\$498.18
<b>divided by</b> the difference between Treasury Bond rate	
and the interest rate (see assumption above where 4.0% = .040)	<u>0.024</u>
<b>Total:</b> Endowment Needed	<b>\$20,796.06</b>

### E. Costs of Defending an Easement

*Commentary: The better the relationship between the landowner and the land trust, the less likely the two parties will ever have to go to court. Each land trust must, however, recognize that even with the best*

efforts, sometimes it is necessary to go to court.

TLC maintains insurance for defending an easement through Terrafirma, which covers legal costs.  
This insurance policy does not cover staff costs involved in defending an easement.

Terrafirma deductible for claim initiation	\$5,000
Staff time needed to defend an easement (hours)	120
Hourly staff rate for easement defense (senior staff)	\$40
Total staff time needed to defend an easement x hourly staff rate	\$4,800
<b>Total: Contribution needed to Defend an Easement</b>	<b>\$9,800.00</b>

F. Total Funds Needed to Accept, Monitor, and Defend the Easement

Total: Stewardship Endowment Needed to Fund Annual Costs	\$20,796.06
Total: Costs of Defending an Easement	<u>\$9,800.00</u>
<b>Total: Funds needed to accept, monitor and defend the easement</b>	<b>\$30,596.06</b>

Commentary:

Demonstration that endowment does not diminish with time.

Average 30 year Treasury Bond rate of return:	4.85%
Average inflation rate:	2.45%
Difference between average Treasury Bond and interest rate	2.40%
Annual payout needed each year	\$498.18



<u>Year</u>	<u>Beginning Endowmnt</u>	<u>Earned Interest</u>	<u>Monitoring Costs</u>	<u>Return to Endowmnt</u>	<u>Ending Endowmnt</u>
2022	20,796	1,008	498	510	21,306
2023	21,306	1,033	510	522	21,828
2024	21,828	1,058	523	535	22,363
2025	22,363	1,084	536	548	22,911
2026	22,911	1,110	549	562	23,473
2027	23,473	1,138	562	575	24,048
2028	24,048	1,166	576	590	24,638
2029	24,638	1,194	590	604	25,242
2030	25,242	1,223	605	619	25,861
2031	25,861	1,253	620	634	26,495
2032	26,495	1,284	635	649	27,144
2033	27,144	1,316	650	665	27,810
2034	27,810	1,348	666	682	28,491
2035	28,491	1,381	683	698	29,190
2036	29,190	1,415	699	716	29,905
2037	29,905	1,449	716	733	30,638
2038	30,638	1,485	734	751	31,389
2039	31,389	1,521	752	769	32,159
2040	32,159	1,559	770	788	32,947
2041	32,947	1,597	789	808	33,755
2042	33,755	1,636	809	827	34,582
2043	34,582	1,676	828	848	35,430
2044	35,430	1,717	849	869	36,299
2045	36,299	1,759	870	890	37,188
2046	37,188	1,802	891	912	38,100
2047	38,100	1,847	913	934	39,034
2048	39,034	1,892	935	957	39,991
2049	39,991	1,938	958	980	40,971
2050	40,971	1,986	981	1,004	41,976
2051	41,976	2,035	1,006	1,029	43,005

2052	43,005	2,084	1,030	1,054	44,059
2053	44,059	2,135	1,055	1,080	45,139
2054	45,139	2,188	1,081	1,107	46,245
2055	46,245	2,241	1,108	1,134	47,379
2056	47,379	2,296	1,135	1,161	48,540
2057	48,540	2,353	1,163	1,190	49,730
2058	49,730	2,410	1,191	1,219	50,949
2059	47,379	2,296	1,135	1,161	48,540
2060	48,540	2,353	1,163	1,190	49,730
2061	49,730	2,410	1,191	1,219	50,949
2062	50,949	2,469	1,221	1,249	52,198

## Investment Return Analysis

<u>Year</u>	30 Yr US	Consumer Price Index	<u>Difference</u>
	<u>Treasury Bond Yield</u>	<u>Urban Consumers</u>	
1983	11.2%	3.2%	8.0%
1984	12.4%	4.4%	8.0%
1985	10.8%	3.5%	7.3%
1986	7.8%	1.9%	5.9%
1987	8.6%	3.7%	4.9%
1988	9.0%	4.1%	4.9%
1989	8.4%	4.8%	3.6%
1990	8.6%	5.4%	3.2%
1991	8.1%	4.2%	3.9%
1992	7.7%	3.0%	4.7%
1993	6.6%	3.0%	3.6%
1994	7.4%	2.6%	4.8%
1995	6.9%	2.8%	4.1%

	1996	6.7%	3.0%	3.7%
	1997	6.6%	2.3%	4.3%
	1998	5.6%	1.6%	4.0%
	1999	5.9%	2.2%	3.7%
	2000	5.9%	3.4%	2.5%
	2001	5.5%	2.8%	2.7%
	2002	5.4%	1.6%	3.9%
	2006	4.9%	3.2%	1.7%
	2007	4.8%	2.8%	2.0%
	2008	4.3%	3.8%	0.4%
	2009	4.1%	-0.4%	4.4%
	2010	4.3%	1.6%	2.6%
	2011	3.9%	3.2%	0.8%
	2012	2.9%	2.1%	0.9%
	2013	3.5%	1.5%	2.0%
	2014	3.3%	1.6%	1.7%
	2015	2.8%	0.1%	2.7%
	2016	2.6%	1.3%	1.3%
	2017	2.9%	2.13%	0.8%
	2018	3.1%	2.44%	0.7%
	2019	2.6%	1.81%	0.8%
	2020	1.6%	1.23%	0.3%
	2021	2.1%	4.70%	-2.6%
	2022	3.1%	7.10%	-4.0%
Average		4.85%	2.45%	2.40%

Sources:

Treasury Bond Data:

Consumer Price Index (not seasonally adjusted):

Federal  
Reserve  
Board  
Bureau  
of Labor  
Statistics