

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FUNDING AGREEMENT

This Funding Agreement entered into this the _____ day of _____, 2016, by and between the County of Wake ("Wake County") and the Triangle Land Conservancy, a North Carolina non-profit organization ("TLC").

WITNESSETH:

WHEREAS, TLC has identified and contracted to purchase (the "Contract") that certain approximately 39.9965 acre tract or parcel of land in Wake County, North Carolina ("Subject Property"), made up of the majority of four (4) parcels of real property commonly known as the Liles Tract, Wake County Parcel Identification Numbers 1619-35-1091, 1619-35-4273, 1619-35-7184, and 1619-45-1104, more particularly described on **Exhibit A** attached hereto and incorporated herein; and

WHEREAS, the Subject Property and TLC's intended use of the Subject Property meet Wake County's open space criteria and qualify for the use of funds from the Wake County Open Space Preservation 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 Open Space Preservation Program in order to acquire a conservation easement on the Subject Property (the "Acquisition") which shall ensure conservation of open space, 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 provide for the Acquisition of the Subject Property for the conservation of open space in Wake County. A description of the Subject Property is attached hereto as **Exhibit "A"**.

1.2 Purchase Price/Amount of Funding. The agreed upon purchase price of the Subject Property is Seven Hundred Ninety Nine Thousand Nine Hundred Thirty Dollars (\$799,930.00). TLC intends to acquire the Subject Property with the following funds:

City of Raleigh (Upper Neuse Clean Water Initiative Funds)	\$399,965
Wake County	<u>\$399,965</u>
Total	\$799,930

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 above referenced amount of Three Hundred Ninety Nine Thousand Nine Hundred Sixty Five Dollars (\$399,965.00) from funds dedicated to the Wake County Open Space Preservation Program ("Funds") to apply to the purchase of the Subject Property.

1.3 Ownership. TLC shall purchase fee simple title to the Subject Property as approved by Wake County. The conveyance of the Subject Property shall be contingent on the immediate recordation of the Deed of Conservation Easement granted to Wake County in the form attached hereto as **Exhibit "B"**, and subject to other encumbrances as set forth in the Contract and reflected on that Commitment for Title Insurance issued by Metro Title (the "Title Company").

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 Subject Property to be used in perpetuity for open space. TLC will apply all Funds received from the County pursuant to this Agreement for up to fifty percent (50%) of raw land costs of the Subject Property. "Raw land cost" is defined as the actual cost of the unimproved land, which shall not include any other expenses related to acquisition or closing. In addition to the Funds, Wake County also approves the funding of fifty percent (50%) of closing costs, including but not limited to attorneys' fees, title premiums, appraisal fees, survey fees, and environmental engineering fees. The combined total of Wake County's contribution to such closing costs shall not exceed \$10,600.00 ("Closing Cost Contribution") as set forth on Exhibit D. No other funds from Wake County shall be required for other expenses related to acquisition or closing.

2.2 Should TLC fail to use the Funds to purchase the Subject Property, or if the Subject Property is not subject to the recorded Deed of Conservation Easement to Wake County in the form shown on **Exhibit "B"** at the time TLC takes fee simple title to the Subject Property, or if the Deed of Conservation Easement is inconsistent with any recorded restriction affecting the Subject Property, then TLC will return the Funds to the County in a sum equal to all monies actually paid under this Agreement by County to TLC within 30 days of TLC's receipt of demand from the County. TLC authorizes its closing attorney for this transaction to accept and disburse Funds in accordance with the escrow instructions to be delivered to TLC by the County in substantially the form shown on **Exhibit "C"** ("Escrow Instructions").

ARTICLE III

Conditions Precedent to Disbursement

3.1 The County shall disburse funds for the Acquisition of the Subject Property 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 and Assignment. A copy of the fully executed Contract and Assignment which sets forth the terms of the Acquisition.
- b. Proposed Deed. A copy of the proposed Special Warranty Deed (the "**Deed**") or other instrument of conveyance, which indicates the TLC's ownership and possession of fee simple title, free and clear of any liens, charges or encumbrances that would materially affect the use of the Subject Property as set forth in this Agreement as open space, but subject to Permitted Encumbrances.
- c. Proposed Deed of Conservation Easement. A copy of the Deed of Conservation Easement ("Conservation Easement") showing the County as grantee in form satisfactory to the County.
- d. Proposed Recombination Plat. A copy of the Recombination Plat that will be recorded prior to closing, recombining the Subject Property into a single tax lot, in form satisfactory to the County.
- e. Legal Description. A legal description of the Subject Property based on the Recombination Plat.
- f. Title Insurance Binder. A standard ALTA title insurance binder, with a policy to be delivered after closing ("Title Policy"), insuring TLC as Purchaser of the Subject Property from the Title Company without exception as to matters of survey: (a) providing coverage for the full principal amount of the funds used to purchase the Subject Property; (b) including title exceptions and (c) including insurance of all appurtenant easements, if any. The closing and/or title attorney shall provide this documentation to TLC.
- g. 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.
- h. Survey. A full-sized copy of a complete and accurate survey of the Subject Property made within 60 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.
- i. Appraisal. Appraisal(s) of the value of the Subject Property to be purchased, satisfactory to the County, performed by an independent certified appraiser acceptable to the County which reflects that TLC did not pay in excess of a current fair market value for the Subject Property. The County acknowledges that the appraisal dated January 27, 2016, performed by B. Carter Kennemur, CCIM, is satisfactory for this purpose, subject to the appraiser updating the appraisal and confirming that the value has not decreased at or near the time of purchase. TLC shall provide an appraisal to the County updated within sixty (60) days prior to Closing.
- j. Environmental Report. A Phase I Environmental Site Assessment report regarding the environmental condition of the Subject Property, updated within sixty (60) days prior to Closing, satisfactory to the County. The Phase I Environmental Site Assessment 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-1527. 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.

- k. 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. Any deferred taxes due or payable at the time of Closing shall be satisfied prior to or at Closing by the Seller or TLC, as agreed between those parties. No taxes shall be paid with funds from Wake County.
- l. Seller's Affidavit. An affidavit signed and acknowledged by the Seller, that to the best of its knowledge: (a) the Subject Property described herein is in material compliance with all federal, state and local environmental laws and regulations, and (b) 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 that there is no environmental condition existing on the Subject Property that may prohibit or impede use of the Subject Property for the purposes set forth in this Agreement. Said affidavit shall be delivered to TLC prior to Closing.
- m. Authorization Documents. Authorization from TLC's governing board for TLC to 1) enter the Contract for the Acquisition of the Subject Property 2) enter this Funding Agreement and perform the functions and obligations set out in this Agreement 2) appropriate the funding necessary to perform the terms and conditions of the Contract and 3) convey the Conservation Easement to the County.
- n. Balance of Funds. Proof of availability of the balance of funds required to fund the full Purchase Price of the Subject Property, including an acknowledgement from the City of Raleigh that TLC has met or is expected to meet all funding requirements.
- o. Compliance with Laws. Evidence satisfactory to the County that the Subject Property and its intended uses are, and will continue to be, in compliance with all applicable laws, regulations and ordinances, including without limitation, land use, health and environmental protection laws.

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; or this Funding Agreement and the funding commitment of Wake County outlined herein shall automatically terminate.

Article IV **Affirmative Covenants**

4.1 Right of Entry and Inspection. TLC shall permit representatives of the County to visit the Subject Property and 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

Subject Property, at all reasonable times and with seven (7) days advance notice.

4.2 Right to Approve Plans. TLC shall provide representatives of the County with advance notice of any plans for intended construction or improvement(s) to the portion of the Subject Property located in Wake County for the purpose of the County determining that the proposed construction or improvements do not violate any restrictions of this Agreement or the Conservation Agreement in place. TLC shall not proceed with such plans without the written approval of the County that the proposed construction or improvements do not violate any restrictions of this Agreement or the Conservation Agreement in place.

4.3 Retention, Operation, Maintenance and Use. TLC agrees to carry out the Acquisition of the Subject Property as approved by the County. The Subject Property description, purpose, and budget, and accompanying or related plans and maps (the "Plans") submitted to the County by TLC are the foundation of this Agreement. Only changes to the Plans that are deemed non-material in type as determined by County may be made without the consent of the Board of Commissioners. Subject Property acquired, developed or improved with Funds from the County shall be used for and maintained exclusively as open space and used only for passive recreation or maintenance of water quality consistent with the terms of the Deed of Conservation Easement.

4.4 Non-Discrimination. Subject Property acquired, developed or improved for public use with County funding that is open for entry and use by the public shall be open to entry and use equally by all persons, regardless of race, color, creed, national origin, or residence, subject to reasonable published rules governing use of the Subject Property consistent with this Agreement.

4.5 Signage. TLC agrees that the County may post visible signs (consistent with County's Open Space signage plan) along boundaries of the Subject Property that acknowledges participation of the County in the Project.

4.6 Publicity. To the extent possible, TLC will use reasonable efforts to appropriately publicize the Project's open space and water quality benefits to the general public, local government and state representatives, including the role of the County in the funding the project. At least ten (10) days prior to any planned event celebrating the opening of a nature center or nature preserve on the Subject Property, TLC shall notify the Public Information Officer of the County of the event.

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 Property and the County 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 deed, the recorded Deed of Conservation Easement to Wake County, the recorded Memorandum of Agreement, and any and all other executed documents recorded in connection with this transaction, the signed closing statement with attached schedule of disbursements, 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 for thirty six (36) months after the Closing or the completion or termination of the Contract or any amendments hereto. 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.

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 Subject Property 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, to the best of TLC's knowledge, this Agreement and the other documents and items required hereunder will be valid and binding agreements, enforceable 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: (a) the Subject Property is and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, and (b) 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 that there is no environmental condition existing on the Subject Property that may prohibit or impede use of the Subject Property

for the purposes set forth in this Agreement or the Deed of Conservation Easement, and TLC will not allow such uses or conditions; subject to any matters that may be disclosed in the Environmental Assessment (if any) (c) there are no environmental conditions that have been discovered since the performance of the Environmental Assessment that would adversely affect the intended use of the Subject Property . TLC warrants that the trash or debris reflected in Purchaser's Phase I assessment have been removed from the Property.

- 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, although it may be pedestrian access. TLC acknowledges that the Access is for the public benefit and safety moving in and out of the public space due to increase in size and traffic count, and that TLC shall not take any action to diminish the Access, although it may be improved.

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 for which this Agreement is made.
- b. Use Unsuitable. The Subject Property is used in a manner materially inconsistent with the purposes of this Agreement.
- 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 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 and TLC shall immediately refund to the County all Funds, in a sum equal to all monies previously paid to TLC under this Agreement.
- 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 fee simple interest as may be permitted pursuant to the Conservation Easement, TLC shall assign its rights, interests, duties and obligations hereunder to the grantee of its interest, and TLC shall automatically be released from all obligations, liabilities, or covenants under this Agreement that occurring after the date of the assignment.

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 use or management of the Subject Property. 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
Parks, Recreation and Open Space Director
P.O. Box 550
Raleigh, NC 27602

If to TLC:

Triangle Land Conservancy
514 South Duke Street
Durham, NC 27701

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 III, IV, V, VI, and VII 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: _____
James K. Hartmann, Wake County Manager

Date: _____

By: _____
Frank R. Cope, Community Services Director

Date: _____

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: _____
(Name)
(Title of Authorized Signatory)

Date: _____

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

Finance Director, or designee

Exhibit A
Legal Description

BEING all of New Lot 2, containing approximately 39.9965 acres, as shown on map entitled "Recombination Map: Liles Property (Previously recorded in Book of Maps 2003, Pages 1385 and 206)" prepared by Sullivan Surveying and recorded in Book of Maps 2016, Page 2015, Wake County Registry, reference to which is hereby made for a more accurate description by metes and bounds.

Exhibit B
Deed of Conservation Easement

[To be attached]

Prepared by: Nicole S. Loeffler of Manning Fulton & Skinner, P.A. P.O. Box 20389, Raleigh, NC 27619
Return to: Grantee, 514 South Duke Street, Durham, NC 27701

Excise Tax: \$0.00 (charitable donation)

TAX PIN: _____

**NORTH CAROLINA
WAKE COUNTY**

**DEED OF CONSERVATION EASEMENT
[Liles- Lake Benson]**

This Deed of Conservation Easement (the "Conservation Easement") is made this ____ day of _____, 2016 by and between Triangle Land Conservancy, whose address is 514 South Duke Street, Durham, NC 27701 (the "Grantor") and Wake County, whose address is c/o Parks, Recreation and Open Space Director, P.O. Box 550, Raleigh, NC 27602 (the "Grantee").

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 approximately 39.9965 acre tract or parcel of land in Wake County, North Carolina, more particularly described on **Exhibit A** attached hereto and incorporated herein, together with improvements thereon as more particularly described herein or in the BDR as defined herein (the "Property"). Grantor has agreed and desires to set aside and convey to Grantee a conservation easement in and affecting the Property, as depicted on that plat of survey recorded in Plat Book _____, Pages _____, Wake County Registry (the "Survey").

B. Grantee is a governmental unit and political subdivision of the State of North Carolina and as such is a "qualified organization" and eligible donee within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder, is authorized by the laws of the State of North Carolina to accept, hold and administer interests in land including conservation easements, and is willing to accept this Conservation Easement under the terms and conditions hereinafter described.

C. It is the purpose of this Conservation Easement to protect the outstanding open space, agricultural, forestry, and wildlife values (collectively, the "Conservation Values"), including its significant undeveloped natural area and its "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, and its scenic open space, the development of which would impair the natural, scenic, historic, rural and open space character of the Property and its surrounding area. Moreover, the Property has significant forested acreage in the Swift Creek Watershed 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 that watershed.

D. The characteristics and specific conservation values of the Property, and its current use and state of improvement, are described in a report entitled "Lake Benson Baseline Documentation Report", prepared by Grantee with the cooperation of Grantor and acknowledged by the parties to be accurate as of the date of this Conservation Easement (the "BDR"). A copy of the BDR will remain on file in the office of the Grantee and will be used to assure that the terms and conditions of the Conservation Easement are fulfilled and that any future changes in the use of the Property will be consistent therewith; provided, however, that the BDR is not intended to preclude the use of other evidence (including, without limitation, surveys and appraisals) to establish the present condition of the Property should a controversy arise over its use or state of improvement.

E. The conservation purposes of this Conservation Easement are recognized by, and the grant of the Conservation Easement will yield significant public benefits and serve, the following clearly delineated governmental conservation policies:

(1) The North Carolina Conservation and Historic Preservation Agreements Act, North Carolina General Statute ("N.C. Gen. Stat.") § 121-34 *et seq.*, 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;"

(2) The Soil and Water Conservation Districts Law, N.C. Gen. Stat. § 139-2 *et seq.*, which declares "that the farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this State . . . ;"

(3) N.C. Gen. Stat. § 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 soils 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;"

(4) N.C. Gen. Stat. §§ 113A-240 and -241, entitled Conservation, Farmland and Open Space Protection and Coordination, which states “The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, state, local, and private land protection efforts so that an additional one million acres of farmland, open space and conservation lands in the State are permanently protected by December 31, 2009;”

(5) Sections 1238 H and 1238 I of the Food Security Act of 1985, as amended, which authorizes the Farm and Ranchland Protection Program, administered through the United States Department of Agriculture, Natural Resources Conservation Service, which provides funds for the acquisition of Conservation Easements or other interests in prime, unique, or other productive soils for the purpose of limiting conversion to nonagricultural uses of that land;

(6) Article 14 Section 5 of the North Carolina State Constitution 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;”

(7) The special use assessment of farm and forest lands set forth in N.C. Gen. Stat. § 105-277.2 *et seq.* and of historic properties set forth in N.C. Gen. Stat. § 105-278; and

(8) The Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, which provides a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found.

F. Grantor and Grantee have the common purpose of conserving the above-described Conservation Values of the Property 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. Gen. Stat. § 121-34 *et seq.* Grantor and Grantee wish to avail themselves of the provisions of the foregoing law.

NOW, THEREFORE, Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an absolute and unconditional gift, hereby 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 of the nature and character and to the extent as hereinafter set over the Property, together with the right to preserve and protect the Conservation Values thereof and the right of access to the Property 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 Property will be retained forever predominantly in its natural, scenic, rural, forested, agricultural, and open space condition; (2) to protect and maintain high quality water resources (including the waters of the Neuse River Basin), agricultural soils, native plants, animals, and plant communities on the Property, while allowing traditional uses on the Property that are compatible with and not destructive of the Conservation Values of the Property such as timber harvesting, grazing, agriculture, hunting, and other similar recreational use; and (3) to prevent any use of the Property that will significantly impair or interfere with the Conservation Values or interests of the Property. 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 Property.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property 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. However, unless otherwise specified below, nothing in this Conservation Easement shall require Grantee to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control. Grantor understands that nothing in this Conservation Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

2. PROPERTY USES

Grantor reserves to itself, its personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with this Conservation Easement. Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Easement is prohibited. The Property 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 Property. 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*

Subject to the terms set forth in Section 2(E) below, harvesting of timber, cutting or destruction of trees or other plants, may be allowed with the prior written approval of the Grantee and in accordance with a Forest Management Plan or Harvest Plan as set forth below. Tree or vegetation cutting may be permitted without approval of the Grantee and without a Forest Management Plan to maintain existing trail and road access, cutting for firewood and for the maintenance of fences. Forest management is permitted to generate occasional income from harvest and sale of forest products and to maintain the general health of the forest ecosystem, provided that all timber harvesting shall be

conducted: (1) consistent with the water quality restrictions described in Section 2(E) and outside the Water Quality Buffer Zone 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.

All forest management activities must be in accordance with a written Forest Management Plan that is prepared by a N.C. registered forester and that is approved by the Grantee at least thirty (30) days prior to any active forestry management or commercial silviculture. 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 activity is intended, a forest management plan is not required, but there shall be no active forest management without an approved Forest Management Plan.

There shall be no active timber harvest without an approved Harvest Plan. A Harvest Plan prepared by a N.C. registered forester must be submitted to the Grantee for its approval at least thirty (30) days prior to any commercial harvest of timber. 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 and harvest 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, and amended from time-to-time.

(B) *Agricultural and Horticultural Use*

Subject to the terms set forth in Section 2(E), agricultural use, horticultural use, and grazing of the Property 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; nor shall any slaughtering facilities be allowed;

(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. 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 pasture land, and protecting soil stability, water quality and other conservation values of the Property on all agricultural lands. If no farming operations are intended, a Conservation Plan is not required, but there shall be no farming operations without a Conservation Plan. The Conservation Plan shall be reviewed and updated every five (5) years so long as Grantor wishes to actively conduct farming operations;

(iii) Grantor must notify Grantee of any change in agricultural use or activity on the Property. Such change shall be subject to the approval of Grantee, which approval shall not be unreasonably withheld. Any change in agricultural use or activity requires updating of the Conservation Plan; and

(iv) 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. Section 1.170A-14(e)(2); or (d) otherwise conflict with the conservation purposes of this Conservation Easement.

(C) *Recreational 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 Property. "Non-intensive Outdoor Recreation" is defined as dispersed, non-commercial and 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, horseback riding, and lawful hunting and fishing. Gardening and other activities customary in rural homesteads are also permitted. Grantor may lease or license any portion of the Property for such Non-intensive Outdoor Recreation purposes, subject to the terms, conditions, and limitations on use in accordance with this Conservation Easement. Grantor reserves the right to promulgate and enforce reasonable rules and regulations for all activities incident to recreational use of the Property, 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 Property. 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 non-commercial 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. Section 1.170A-14(e)(2) or otherwise conflict with the conservation purposes of this Conservation Easement.

(D) *Construction of Buildings and Other Structures and Improvements*

The construction, replacement or reconstruction of any building or other structure 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, improvements or other structures (except minor structures as provided in subsection (ii) of this Section 2(D) and fences as provided in subsection (iii) of this Section 2(D)) are permitted to be constructed, replaced, or reconstructed on the Property unless they comply with the impervious surface limitations set forth in this paragraph. All new construction and improvements permitted under this Section 2(D) shall be sited so as to cause the least disturbance to the Property’s Conservation Values and shall conform to the water quality restrictions described in Section 2(E).

Notwithstanding any other term contained in this Conservation Easement:

(i) the total impervious surfaces within the Swift Creek Watershed Area (as defined in Section 2(E) below) shall not exceed two percent (2%) of the total acreage of the Property; provided that in no event shall impervious roads, trails or paths be permitted within the Swift Creek Watershed Area, except in connection with the Greenway expressly permitted in Section 2(E) below;

(ii) the total impervious surfaces within the Property (*including* any permissible impervious surfaces located within the Swift Creek Watershed Area) shall not exceed five percent (5%) of the total acreage of the Property; and

(iii) in no event shall impervious surfaces be permitted within the Stream Buffer Zone, except in connection with the Greenway expressly permitted in Section 2(E) below.

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 or pervious pavers or patio system); retaining walls; 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. For purposes of determining the total impervious surfaces within the Property, the impervious surface area that may exist within the Greenway shall not be included as impervious surface.

Subject to the foregoing:

(i) *Buildings, Major Structures and Improvements* - The Grantor

reserves the right to construct, maintain, repair, enlarge, renovate, and rebuild buildings, barns, sheds, garages, carports, passive recreational support structures, pergolas, yurts, parking lots, and other similar buildings, structures, and improvements. The foregoing shall include structures and improvements to be used exclusively for agricultural or forestry purposes, including processing or sale of farm products predominantly grown or raised on the Property.

(ii) *Minor Structures* – Grantor reserves the right to install minor, small-scale structures (such as benches, hunting stands, bird houses and other minor, small-scale structures that are not typically included within the definition of “impervious surface”) to enhance the opportunity for traditional “non-intensive outdoor recreation” as defined in Section 2(C), and as necessary for the management of such recreation not detrimental to the conservation values of the Property including but not limited to trail construction, maintenance and improvements, horseback riding and lawful hunting and fishing.

(iii) *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 any ponds, permanent or intermittent watercourses on the Property are also permitted.

(iv) *Utilities Services and Septic Systems* – Installation, maintenance, repair, replacement, removal and relocation of water wells, electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve structures or improvements located on the Property as permitted herein, and the right to grant easements over and under the Property for such purposes, is permitted. Provided, however, that all reasonable efforts shall be made to locate such utilities (i) consistent with the water quality restrictions described in Section 2(E) and outside of the Stream Buffer Zone, (ii) if possible, within fifty (50) feet of the roads permitted hereinbelow, and (iii) in all events 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. In no event shall cellular or other communication towers be allowed on the Property. The construction of any other utilities on the Property 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 Property, water quality and other environmental issues, the value of the Property as an open space, any endangered or threatened species on the Property 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. Section 1.170A-14(e)(2) or otherwise undermine the conservation purposes of this Conservation Easement.

(v) *Notice to Grantee* – Grantor is prohibited from proceeding with any site preparation, construction, substantial exterior alteration, replacement, relocation, or removal of any structure described herein, 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 8, 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 aesthetic value of the Property; (b) the value of the Property as an open space (including the impact of access roads or related traffic associated with any new improvements located on the Property); (c) the Property 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 Property; and (e) such other considerations as the Grantee shall deem proper in order to preserve the conservation value of the Property. 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 Treas. Reg. Section 1.170A-14(e)(2) or otherwise conflict with the conservation purposes of this Conservation Easement.

(E) *Water Quality and Drainage Patterns; Stream Buffer Zone; Swift Creek Watershed Area*

Activities that could alter the natural water level or flow in or over the Property are prohibited; provided that the foregoing is not intended to prohibit the construction of buildings or other structures and improvements otherwise allowed pursuant to Section 2(D), the roads permitted pursuant to Section 2(F), or the forest management and harvest activities allowed pursuant to Section 2(A). There shall be no pollution of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the property that would be detrimental to water purity. Diking, draining, filling or removal of wetlands is prohibited. There shall be no buildings or other structures, including those allowed under Section 2(D) above, constructed within fifty (50) feet of any surface waters. For purposes herein, "surface waters" shall be defined as including but not limited to intermittent streams, perennial streams, lakes, ponds, seasonal wetlands, and estuaries.

Grantor and Grantee have designated within the Property one (1) stream buffer

area depicted and identified on the Survey as "Stream Buffer Zone." Grantor and Grantee have designated within the Property an area of watershed that drains to Lake Benson, depicted and identified on the Survey as "Swift Creek Watershed Area" (hereinafter referred to as "Swift Creek Watershed Area").

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 Stream Buffer Zone, except selective cutting or clearing of vegetation for fire protection, maintenance of footpaths otherwise permitted herein, and/or conservation management purposes. Conservation management purposes include but are not limited to prescribed burns or practices conducive to propagation and retention of native plants and wild population of game and non-game species and removal of non-native plants. Protection, maintenance, and management activities shall only be allowed within the Stream Buffer Zone if undertaken in accordance with a Forest Management Plan as described in Section 2(A). Hunting and fishing is permitted within the Stream Buffer Zone pursuant to applicable rules and regulations.

Construction of buildings, structures, and improvements (including but not limited to minor structures and fences) within the Stream Buffer Zone is prohibited. Construction of roads, trails, and paths on the Property within the Stream Buffer Zone is prohibited, except for the construction and maintenance of primitive, unpaved footpaths limited to single file pedestrian traffic that are no more than twenty-four (24) inches wide.

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 within the Stream Buffer Zone and within the Swift Creek Watershed Area, provided that: (i) it is part of a local governmental initiative; (ii) the portion of the Greenway located on the Property within the Stream Buffer Zone and Swift Creek Watershed Area is reasonably necessary to complete a larger greenway corridor; (iii) any impervious surface within the Greenway is no more than ten feet (10') wide; 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.

Within the Stream Buffer Zone and Swift Creek Watershed Area there shall be no activities, pollution or surface alteration of any kind that would be detrimental to water purity or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Property or into any surface waters, or cause soil degradation or erosion, including but not limited to any sort of diking, dredging, alteration, draining, filling or removal of wetlands, agricultural practices or timber management. Furthermore, prior to engaging in any activity outside of the Stream Buffer Zone and Swift Creek Watershed Area that may result in the degradation of the buffer or watershed area, the Grantor agrees to consult with the Grantee and/or appropriate governmental agencies to ensure

that any potential degradation is avoided or minimized.

(F) *Construction and Maintenance of Roads*

Subject to Section 2(E) above, construction and maintenance of unpaved roads that may be reasonably necessary and incidental to carrying out the improvements and uses permitted on the Property by this Conservation Easement are permitted, provided that such roads are no wider than fourteen (14) feet in width.

No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material without the advance written permission of the Grantee and except as otherwise in compliance with Section 2(D) above, including but not limited to the impervious surface limitation. In all events, construction of roads, trail, and paths on the Property within the Swift Creek Watershed Area must be pervious, except in connection with the Greenway expressly permitted in Section 2(E) above. 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 Property, water quality and other environmental issues, the value of the Property as an open space, any endangered or threatened species on the Property 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. Section 1.170A-14(e)(2) or otherwise undermine the conservation purposes of 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 Property; 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 the construction of the improvements allowed in Section 2(D) above, the maintenance of existing roads, hiking and horseback trails and for the purpose of combating erosion or flooding or for the construction of a farm pond or ponds and other conservation measures if permitted by and addressed in the Conservation Plan. Any pond construction shall be subject to the same notice and review requirements set forth in above Section 2(D)(vii).

(H) *Signage*

No signs or billboards or other advertising displays are allowed on the Property, except signs whose placement, number and design do not diminish the scenic character of the Property may be displayed to identify trails and the Conservation Values of the Property, to identify the name and address of the Property and the names of persons living on the Property, to give directions, to advertise or regulate permitted uses of the Property and prescribe rules and regulations for recreational use of the Property, to advertise the Property for sale or rent, and to post the Property against trespassers.

(I) *No Biocides*

Except in accordance with this section and Section 2(E) above, 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 Property. Agricultural and silvicultural use of biocides is allowed, if prescribed in the Conservation Plan and the Forest Management Plan.

(J) *No Dumping or Storage*

There shall be no storage or dumping of trash, garbage, abandoned vehicles, appliances, or machinery, or other unsightly or offensive material, hazardous substance, or toxic waste on the Property. There shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Property, that could cause erosion or siltation on the Property. Notwithstanding the foregoing, Grantor is not an insurer of the environmental condition of the property to the extent the same may be affected by the actions of others; nothing herein shall be construed to require any clean up or remediation of contamination caused by those other than Grantor except to the extent the same may be required affirmatively by enforcement action of a governmental agency or subdivision having proper jurisdiction. Grantor shall, insofar as may be reasonable, make a good faith effort to keep the Property 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 Federal, State or Local laws. The method employed shall be selective and specific to individuals, rather than broadcast, nonselective techniques.

(L) *Commercial Development*

Any commercial or industrial use of or activity on the Property, other than those relating to silvicultural, agriculture and recreation, as permitted herein, is prohibited.

(M) *Development Rights*

All housing, commercial and industrial development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, are terminated and extinguished, and may not be used on or transmitted to any portion of the Property, as it now or hereafter may be bound or described, or to any other property.

(N) *Subdivision*

The subdivision of the Property, whether by physical or legal processes, is prohibited.

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 Property not prohibited by this Conservation Easement so long as it does not detract or impair the Conservation Values of the Property.

(B) *Transfer*

The right to sell, give, mortgage, lease, or otherwise convey the Property subject to the terms of this Conservation Easement.

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*

Grantee shall have the right to preserve and protect the Conservation Values of the Property 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 Property at reasonable times for the purpose of inspecting and monitoring the Property 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 and to enforce the Conservation Easement.

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 Property. 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.

(B) *Upkeep and Maintenance*

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

6. ACCESS

No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. However, the public has the right to view the Property 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(E) 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 Property resulting from any use or activity inconsistent with the purposes of this Conservation Easement, to restore the portion of the Property 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 Property 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.

(B) If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, 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 Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions (MSC Rules) that were first adopted by the Supreme Court in 1991, pursuant to N.C. Gen. Stat. § 7A-38.1. The Rules provide a framework for expediting settlement of superior court civil actions. The MSC Rules were last revised on January 23, 2014, with the revisions effective April 1, 2014. 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 the above, 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 Property resulting from causes beyond Grantor's control, including without limitation fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; and nothing in this Conservation Easement shall require Grantor to take any action to restore the condition of the Property after any act or event over which Grantor has no control.

(D) 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 Property to the condition that existed prior to any such injury.

8. NOTICE OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS.

Grantor shall notify Grantee before undertaking any use or change in use of the Property 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 Property. Uses described in the Baseline Documentation Report, and in any conservation, best management practices and/or forestry plans 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 514 South Duke Street, Durham, NC 27701 or such other person or address as may be hereafter specified by notice in writing to, Grantor. All other communication shall be made by reasonable means under the circumstances.

(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 Easement. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing, with an explanation of the reasons in the event approval is withheld, 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 approval of any activity not specifically prohibited or not inconsistent with the limitations on such activities in this Conservation Easement.

(v) *Transfer of Ownership* – Grantor further agrees to give written notice to Grantee of the transfer of any interest in the Property, 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, or to such other person or address as may be hereafter specified by notice in writing to Grantor. All other communication shall be made by reasonable means under the circumstances.

9. TRANSFER OF EASEMENT

The Parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable; provided, however, that, subject to the terms of Section 24, 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, for itself and its successors or assigns, hereby covenants and agrees to monitor and observe the Property in perpetuity for the purposes set forth in this Conservation Easement.

10. 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. 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.

11. AMENDMENT OF EASEMENT

This 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, or 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. Gen. Stat. § 121-34 *et seq.* or 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. Any such amendment or modification must be executed by both Grantor and Grantee and shall be recorded in the public registry of Wake County.

12. TERMINATION OF EASEMENT

If it is determined that conditions on or surrounding the Property 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.

If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings.

At the time of conveyance of the Conservation Easement to Grantee, this Conservation Easement gives rise to a real property right, immediately vested in Grantee. If the easement or part thereof is terminated and the Property is sold or taken for public use, then, as required by Treas. Reg. Section 1.170A-14(g)(6), Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributed to new improvements made after the date of the conveyance, which amount shall be reserved to Grantors), equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement.

All condemnation related expenses incurred by Grantor and Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

13. 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.

14. INDEMNIFICATION

Grantor agrees to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accident, negligence or damage relating to the Property, or any claim thereof, unless due to the negligence of Grantee or its agents, contractors or employees, in which case liability shall be apportioned accordingly. 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 Property. Grantee agrees to indemnify and hold Grantor harmless from and against any and all costs, claims or liability, including but not limited to reasonable attorney's fees, resulting from Grantee's exercise of its rights of entry pursuant to this Conservation Easement, unless due to the negligence of Grantor or its agents, contractors or employees, in which case liability shall be apportioned accordingly.

15. 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, except easements and rights of way currently recorded in Wake County that do not impair or derogate the Conservation Purposes,

and that Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

16. ENVIRONMENTAL CONDITION

Grantor warrants, without investigation, that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property in material violation of applicable environmental law.

17. 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.

18. 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.

19. MERGER

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

20. 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.

21. ESTOPPEL CERTIFICATES

Upon request by Grantee, Grantor shall within thirty (30) days of written request by Grantee execute and deliver to Grantee any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement, as may be reasonably requested by Grantee.

22. ENTIRE AGREEMENT

This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement, all of which are merged herein.

23. NO FORFEITURE

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

24. 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 the 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.

25. 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. Gen. Stat. § 121-34 *et seq.*, and a prior assignment is not made pursuant to Paragraph 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 Paragraph 9.

26. 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.

27. ATTORNEY'S FEES

Should either party employ an attorney or attorneys to enforce any of the provisions of this Conservation Easement, or to recover damages for the breach of this Conservation Easement, then the nonprevailing party in any final judgment agrees to pay all reasonable costs, charges and expenses, including attorney's fees, expended or incurred in connection therewith.

TO HAVE AND TO HOLD, this Grant of Conservation Easement and development rights, and all privileges and rights thereunto, unto Grantee, its successors and assigns forever.

[signature and acknowledgment pages follow]

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

GRANTOR:
Triangle Land Conservancy,
a North Carolina Non-profit Corporation

By: _____
Name: _____
Title: _____

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: _____

Date _____

Official Signature of Notary

(Official Seal)

Notary's printed or typed name

My commission expires: _____

GRANTEE:

WAKE COUNTY, NORTH CAROLINA

(Corporate Seal)

BY: _____ (SEAL)

James West, Chairman

Wake County Board of Commissioners

ATTESTED TO:

Denise Hogan, Clerk

Wake County Board of Commissioners

NORTH CAROLINA

COUNTY OF WAKE

I, _____, a Notary Public of the County and State aforesaid, certify that Denise Hogan, personally appeared before me this day and acknowledged that she is the Clerk of the Wake County Board of Commissioners, and that by authority duly given, the foregoing instrument was signed in its name by its Chairman of the Wake County Board of Commissioners, sealed with its corporate seal and attested by Denise Hogan as its Clerk. Witness my hand and official stamp or seal, this _____ day of _____, 20__.

(SEAL)

Notary Public

Printed Name: _____

My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Exhibit C
Escrow Letter

[DATE]

[CLOSING ATTORNEY]
[ADDRESS]

via regular mail and electronic mail

RE: Liles closing

Dear :

This letter is furnished to you in connection with the anticipated acquisition of approximately 40 acres of real property located in Wake County, North Carolina, commonly known as the Liles Tract. The closing is scheduled to be completed no later than _____ ("Closing Date"). This letter constitutes the escrow instructions of Wake County ("Wake County" or "County") for disbursement of funds to be provided by Wake County.

- A. Deposit of Funds. Upon approval of the Funding Agreement, the return of this letter with your signature, and delivery of all items identified in Section III of the Funding Agreement, Wake County will tender the amount of Four Hundred Thousand and no/100s Dollars (\$400,000.00) ("Wake County Funds") as set forth in the funding agreement executed by and between the County of Wake and TLC ("Funding Agreement"). The paper check or electronic deposit tendered shall be made payable to [Closing Attorney] and is delivered and payable to you in trust as attorney and settlement agent for Triangle Land Conservancy. You agree to hold and disburse the Wake County Funds strictly in accordance with the terms of this letter.
- B. Disbursement of Funds. The Wake County Funds shall not be disbursed until you have confirmed 1) that all documents identified in Article III of the Funding Agreement are in form and substance approved by the County 2) that the Conditions Precedent to Disbursement of Funds identified in Article III of the Funding Agreement have been satisfied and 3) proof of availability of the balance of funds required to fund the full purchase price of the Subject Property. (Compliance with Laws shall be demonstrated by satisfactory compliance with the terms of the Funding Agreement).
- C. Delivery of Documents. After the Closing, you shall deliver recorded closing documents to Wake County in accordance with Article V, Section 4.9 of the Funding Agreement.
- D. Cancellation of Instructions. Notwithstanding anything to the contrary herein, if the conditions set forth herein are not satisfied on or before the Closing Date, the instructions set forth herein shall be deemed cancelled. Unless you receive written instruction to the contrary, you shall return the Wake County Funds to Wake County immediately per instructions that will be separately provided to you.

Please acknowledge your receipt of this letter and agreement to comply strictly with the foregoing instructions by returning a copy of this letter accepted and agreed to by you as evidenced by your signature in the space provided below.

Sincerely,

[OFFICE OF THE WAKE COUNTY ATTORNEY]

ACCEPTED AND AGREED TO:

[CLOSING ATTORNEY]

By: _____

Date: _____

Exhibit D
Budget

Liles Tract

Fee Simple Acquisition Direct Costs

<u>Budget</u>	<u>UNCWI</u>	<u>Wake County</u>	<u>TPL</u>	<u>TLC*</u>	<u>Total</u>
Acquisition	\$399,965	\$399,965		\$0	\$799,930
Appraisal	\$3,750	\$0	\$450	\$0	\$4,200
Survey	\$4,000	\$4,000	\$2,000	\$0	\$10,000
Transaction Screen		\$1,600	\$1,600	\$0	\$3,200
Baseline	\$3,500	\$0		\$0	\$3,500
Legal Fees and Closing Costs		\$5,000		\$0	\$5,000
TOTAL	\$411,215	\$410,565	\$4,050	\$0	\$825,830
Match	49.8%	49.7%	0.49%	0.00%	

*TLC has supported the project through staff time

\$/acre	\$	20,000
acres		39.9965
Total purchase	\$	799,930