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CHATHAM COUNTY NC  
TREVA B. SEAGROVES  
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Prepared by William A. Anderson, III  
Return to Grantee

BOOK 1511 PAGE 0042

NCDACS Contract Number: G20100002810ADF  
NCDACS Project Number: ADM-ADFP-09-64

Excise Tax: \$192.00, part charitable donation

Tax Parcel ID #: Portion of 0012138

NORTH CAROLINA

CHATHAM COUNTY

#### DEED OF AGRICULTURAL EASEMENT

This Deed of Agricultural Easement (hereinafter "**Agricultural Easement**") is made this 5<sup>th</sup> day of May 2010, by Ayrshire Farm, LLC whose address is 602 Friendly Pooch Lane, Pittsboro, North Carolina 27312 (collectively "**Grantor**"), and TRIANGLE LAND CONSERVANCY, a North Carolina non-profit organization having an address of 1101 Haynes Street, Suite 205, Raleigh, NC 27604 ("**Grantee**").

The designation Grantor and Grantee as used herein shall include said parties, their respective 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 property lying in Hickory Mountain Township, Chatham County, North Carolina which consists of approximately 20.97 acres, is identified as Tax Parcel Number 0012138, and which is more particularly described in that certain deed recorded in Book 1431, Page 211, Chatham County Registry (the "**Property**"). Grantor owns an easement appurtenant to the Property for the purposes of access to and from the Property (the "**Access Easement**"). This Access Easement is also described in the deed recorded in Book 1431, Page 211, Chatham County Registry.

B. Grantor and Grantee have agreed to set aside approximately 20.97 acres of the Property (the "Easement Area"), as more particularly shown on that certain plat recorded at Plat Slide 2010-108, Chatham County Registry (the "Plat") and being more particularly described on Exhibit A attached hereto and incorporated herein by reference for the purpose of creating an Agricultural Easement (i) to enhance, restore, and maintain the natural features and resources of the Easement Area, (ii) to preserve the agricultural, horticultural and forestland nature of the Easement Area, (iii) to foster the growth, development and sustainability of family farms, and (iv) to improve and maintain water quality, agricultural soils and native plants, animals and plant communities of the Easement Area (collectively, the "Conservation Purposes").

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 (the "State") to accept, hold and administer interests in land including conservation easements, is willing to accept this Agricultural 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. The Easement Area in its present state has conservation value as a significant natural area that has not been subject to significant development and that 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.

E. The Easement Area in its present state has additional conservation value as scenic open space as evidenced by the fact that development of the Easement Area would impair the natural, scenic, rural, and open space character of the Easement Area and the surrounding area. The protection of the Easement Area will yield significant public benefits, as evidenced by:

(1) North Carolina General Statute 139-2 *et seq.*, which provides that "It is hereby declared . . . that the farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people . . . . It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this State . . .";

(2) North Carolina General Statute 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";

(3) Article 17 of the North Carolina General Statute NCGS 113A-240, -241, entitled Conservation, Farmland and Open Space Protection and Coordination, otherwise known as the Million Acre Initiative, 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 are permanently protected by December 31, 2009";

(4) 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 and policies 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”;

(5) 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”;

(6) Article 14 Section 5 of the Constitution of the State 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 North Carolina Conservation Tax Credit Program that encourages contributions of land that provides habitat for fish and wildlife and other similar land conservation purposes set forth in N.C.G.S. 105-151.12 *et seq.*;

(8) 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;

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

(10) The Clean Water Management Trust Fund, North Carolina General Statute 113-145.1 *et seq.*, which recognizes the importance of protecting riparian buffers in conserving clean surface water.

F. The Agricultural Development and Farmland Preservation Trust Fund (the “**Fund**”) of the North Carolina Department of Agriculture and Consumer Services (“**NCDACS**”), an agency of the State, is authorized by the General Statutes of North Carolina to finance the acquisition of conservation easements.

G. Grantee has received a grant from the Fund identified as Contract Number G20100002810ADF having Project Number ADM-ADEP-09-64 (“**Grant Agreement**”) for the acquisition of an agricultural conservation easement in consideration of which Grantor has agreed that the Easement Area will be conserved and managed in a manner that will preserve the Conservation Purposes.

H. The Clean Water Management Trust Fund is an agency of the state of North Carolina (the “**CWMTF**”) and is authorized by Article 18, Chapter 113A of the North Carolina General Statutes to finance projects and to acquire land and interests in land, including conservation easements for riparian buffers for purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses.

I. Grantee has received a grant from the CWMTF, which is identified as Grant Agreement 2009D-003 (the "Grant Agreement"), the terms and conditions of which are incorporated by reference; the Grant Agreement is on file and available for public inspection in the offices of the Grantee, the CWMTF, and the North Carolina Department of Environment and Natural Resources. Grantee will use the Grant for certain transactional costs in its acquiring this Conservation Easement as well as for the perpetual cost of monitoring and inspecting the Property to assure compliance with the covenants and purposes of this Conservation Easement.

J. Grantor, Grantee, and NCDACS hereto intend that the conservation values of the Easement Area will be preserved and managed pursuant to the terms and conditions of said Grant Agreement entered into between Grantee and NCDACS on July 1, 2009, incorporated herein by reference, and available for inspection in the offices of Grantee and NCDACS.

K. The biological, natural, and other conservation characteristics of the Easement Area are described and depicted in a report entitled Baseline Documentation Report for the Dow Property (the "**Baseline Documentation Report**"), on file with Grantee, and acknowledged by both Grantor and Grantee to be complete and accurate as of the date hereof. Both Grantor and Grantee have copies of the Baseline Documentation Report. The Baseline Documentation Report will be used by Grantor and Grantee, as well as their respective successors and assigns, to assure that any future changes in the use of the Easement Area will be consistent with the terms of this Agricultural 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. The above reference to the Baseline Documentation Report shall not limit the terms contained in this Agricultural Easement and it is expressly understood that this Agricultural Easement, and the rights, obligations and privileges contained herein, shall run with the Easement Area.

L. Grantor and Grantee have the common purpose of conserving the above-described Conservation Purposes of the Easement Area in perpetuity, and the State has authorized the creation of Agricultural Easement pursuant to the terms of the North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. 121-34 *et seq.*, and 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**, Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein, hereby voluntarily gives, grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, and Grantee hereby voluntarily accepts, this Agricultural Easement of the nature and character and to the extent hereinafter set forth in, over, through and across the Easement Area, together with the right and easement to preserve and protect the Conservation Purposes, and together with an easement for ingress, egress, and regress to and from the Easement Area over, through and across the Access Easement. Grantor promises that it will not perform, nor knowingly allow others to perform, any act on or affecting the Easement Area that is inconsistent with the covenants herein. Grantor authorizes Grantee to enforce these covenants in the manner described herein.

ARTICLE I. BOOK 1511 PAGE 0046  
DURATION OF EASEMENT

This Agricultural Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, its representatives, successors, assigns, lessees, agents and licensees.

ARTICLE II.  
DEVELOPMENT RIGHTS

Grantor herein voluntarily grants and conveys to Grantee all development rights for the Easement Area, except as otherwise reserved and provided by the terms of this Agricultural Easement, that are now or hereafter inherent in the Easement Area. Except as expressly permitted herein, 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 Purposes of the Easement Area.

ARTICLE III.  
RIGHTS RESERVED TO GRANTOR

Subject to the terms and restrictions hereto, Grantor reserves to and for Grantor, and Grantor's successors and assigns, all customary rights and privileges of ownership, unless otherwise specifically prohibited herein. All rights expressly reserved by Grantor herein are considered to be consistent with the Conservation Purposes of this Agricultural Easement and require no notification to or approval by Grantee unless expressly provided for hereunder. Grantor expressly reserves the following rights:

A. *Agricultural and Horticultural Use*

1. Subject to the prohibitions described in Article IV, Section J, 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 Conservation Purposes of this Agricultural Easement, and provided further that all farming operations shall be in accordance with the Best Management Practices promulgated by the Natural Resource Conservation Service ("NRCS"), all applicable federal, state, and local laws and the "**Conservation Plan**," a copy of which shall be provided to Grantee. The NRCS shall develop the Conservation Plan after consultation with Grantee. The NRCS shall use the standards and specifications of the 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. 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. After consulting with Grantee, NRCS shall review and update the Conservation Plan periodically, but no less frequently than every five (5) years.

2. Grantor must notify Grantee of any proposed change in agricultural use of or activity in the Easement Area if such proposed changes involve an activity or use other than raising poultry and grazing animals, harvesting hay or planting and cultivating crops. Such change shall be subject to the approval of Grantee, which approval shall not be unreasonably withheld. Any change in agricultural use or activity in the Easement Area shall require that NRCS consult with Grantee and thereafter update and revise the Conservation Plan to ensure that the proposed change in use of the Easement Area has a minimal adverse impact on the conservation values of the Easement Area.

3. No agricultural activities, whether now existing or commenced in the future, shall be conducted in any manner that will in the opinion of 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 Treasury Reg. Section 1.170A-14(e)(2); (d) otherwise conflict with the Conservation Purposes of this Agricultural Easement; or (e) violate any provision of the Conservation Plan.

B. *Forest Management*

1. Subject to the terms of Article V, Section J, selective tree or vegetation cutting is permitted to maintain existing fences and trail and road access, to enhance fire protection, to provide firewood for Grantor's personal use and to promote conservation management purposes (as described in Article V, Section J). 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: (a) outside the Stream Buffer Zone; (b) on a sustainable yield basis; and (c) in accordance with a written Forest Management Plan and Best Management Practices described below and the Conservation Plan.

2. All forest management activities must be (a) in accordance with a written Forest Management Plan prepared by a N.C. registered forester, and (b) approved by 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 or harvest without an approved Forest Management Plan and Harvest Plan.

3. 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 and as adopted by the North Carolina organization of professional foresters, and amended from time-to-time. If the provisions of the Forest Management Plan are inconsistent with the provisions of the Conservation Plan, the latter shall prevail.

C. *Recreational Use*

Grantor shall have the right to engage in and permit others, whether or not for consideration, to engage in "Non-intensive Outdoor Recreation" in the Easement Area, provided that such engagement is in compliance with the Conservation Plan. "Non-intensive Outdoor Recreation" is defined as dispersed, non-commercial 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. 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 incident 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 Purposes of the Easement Area. No motorized vehicles of any type shall be used in the Stream Buffer Zone (as hereinafter defined). 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 Treasury Reg. Section 1.170A-14(e)(2) or otherwise conflict with the Conservation Purposes of this Agricultural Easement.

D. *Natural Resource Restoration and Enhancement Activities*

Notwithstanding any terms contained within this Agricultural Easement, Grantor may engage or contract others to engage in any activity designed to repair, restore, or otherwise enhance the natural resources found or once present in the Easement Area, so long as such uses do not significantly diminish or impair the Conservation Purposes of this Agricultural Easement and are in compliance with the Conservation Plan.

E. *Maintenance of Existing Roads*

Grantor may maintain the existing farm roads in the Easement Area so long as such roads continue to be made of pervious materials and the maintenance thereof complies with the Conservation Plan. Construction and maintenance of new unpaved farm roads that may be reasonably necessary and incidental to carrying out the improvements and uses are permitted in the Easement Area 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 Grantee. For the purposes of this Agricultural 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 in 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 Treasury Reg. Section 1.170A-14(e)(2), or otherwise undermine the Conservation Purposes of this Agricultural Easement. For purposes of determining “aesthetic quality” “aesthetic value” or the impact on “aesthetic quality” or “aesthetic value” in this Agreement, Grantee shall consider the factors set out in Treasury Reg. Section 1.170A-14(d)(4)(ii)(A).

F. *Farm Envelopes, Construction of Buildings and Other Structures*

1. Farm Envelopes. Subject to the terms contained in Article IV, Section J, Grantor reserves two (2) Farm Envelopes, which are more particularly shown and identified as Farm Envelope A and Farm Envelope B on the Plat (“Farm Envelopes”). The combined footprint of all buildings constructed, replaced, or reconstructed in each Farm Envelope, when combined with all other impervious surface areas of such Farm Envelope and cleared, pervious areas that are not vegetated, shall not at any time exceed twenty percent (20%) of the total acreage of such Farm Envelope. Grantor retains the right to use the Farm Envelopes for otherwise lawful and customary rural enterprises, such as, but not limited to, a winery, bed and breakfast, saw mills, and farm machinery repair enterprises. Conducting customary rural commercial enterprises on any other part of the Easement Area is not permitted without the advance written permission of Grantee in each instance. Grantee shall not give such permission unless Grantee determines that the proposed use will not substantially diminish or impair the conservation values of the Easement Area and violate the Conservation Plan.

2. Residential Dwellings. One habitable residential dwelling exists in the Easement Area, located within “Farm Envelope A” at the time of this grant of Agricultural Easement as documented in the Baseline Documentation Report. It is the express intention of the parties that

no more than two dwellings for human habitation will exist within the Easement Area at any one time, with a maximum of one residential dwelling permitted in "Farm Envelope A" and a maximum of one residential dwelling permitted in "Farm Envelope B". One dwelling shall be designated as the "Single Family Residential Dwelling" and the other shall be designated the "Farm Laborer/Caretaker Residential Dwelling". The conditions for the maintenance, repair and/or construction of said dwellings is as follows:

(a) Single Family Residential Dwelling in Farm Envelope B - Grantor reserves the right to build, maintain, repair, enlarge, renovate, rebuild or replace one (1) Single Family Residential Dwelling within Farm Envelope B. For purposes of this Agricultural Easement, the term "Single Family Residential Dwelling" shall mean a residential dwelling designed for single-family or extended-family use that has no more than one kitchen.

(b) Farm Laborer/Caretaker Residential Dwelling in Farm Envelope A - Grantor reserves the right to maintain, repair, enlarge, renovate, rebuild or replace one (1) Farm Laborer/Caretaker Residential Dwelling within the Farm Envelope A for the purpose of housing farm laborers or caretakers.

3. Agricultural Structures and Improvements. Within the Farm Envelopes, Grantor may construct, maintain, repair, enlarge, renovate, or rebuild buildings, barns, sheds and other 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. The buildings that exist in the Easement Area at the time of grant of this Conservation Easement are documented in the Baseline Documentation Report.

4. 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 in the Easement Area are also permitted.

5. Utilities Services and Septic Systems. Installation, maintenance, repair, replacement, removal and relocation of electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Easement Area for the purpose of providing electrical, gas, water, sewer, or other utilities to serve structures located within the Farm Envelopes as permitted herein, and the right to grant easements over and under the Easement Area for such purposes are permitted. Provided, however, that all reasonable efforts shall be made to locate such utilities (i) outside of the Stream Buffer Zone, (ii) if possible, within fifty (50) feet of the roads and driveways used to access the Farm Envelopes and Easement Area, and (iii) in all events in such a manner and location as is reasonably possible to minimize the impact on the Conservation Purposes as set forth in this Agricultural Easement. In no event shall cellular or other communication towers be allowed in the Easement Area. The construction of any other utilities in 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 in 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. Section 1.170A-14(e)(2), or otherwise undermine the Conservation Purposes of this Agricultural Easement.



6. Restrictions on Permitted Construction. No other structures or improvements may be constructed or placed in the Easement Area except as expressly permitted by this Agricultural Easement. All new construction and improvements shall be sited so as to cause the least disturbance to the Easement Area's Conservation Purposes and shall conform to the water quality restrictions described in Article IV, Section J.

7. Notice to Grantee. Grantor is prohibited from proceeding with any site preparation, construction, substantial exterior alteration, replacement, relocation, or removal of any structure described in this Article III, Section F without prior written approval from Grantee. In requesting any such prior written approval, Grantor must notify Grantee in writing in accordance with the provisions of Article XIII, Section C including, at a minimum, sufficient information to enable Grantee to determine whether the proposed plans are consistent with the terms of this Agricultural 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 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 in 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 Grantee shall deem proper in order to preserve the conservation value 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 Treas. Reg. Section 1.170A-14(e)(2), or otherwise conflict with the Conservation Purposes of this Agricultural Easement.

G. *Transfer.*

Grantor reserves the right to sell, give, mortgage, lease, or otherwise convey the Property subject to the terms of this Agricultural Easement. Notwithstanding the foregoing, the grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Easement Area, or otherwise diminish or impair the conservation values of the Easement Area is prohibited.

**ARTICLE IV.  
PROHIBITED ACTIVITIES**

Any activities, practices, or uses of the Easement Area that would in any way alter, impede, or interfere with the conservation values and agricultural goals sought to be protected by this Agricultural Easement are strictly prohibited. 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 Agricultural Easement. However, unless otherwise specified below, nothing in this Agricultural Easement shall require Grantor to take any action to restore the condition of the Easement Area after any act of God or other event over which Grantor had no control. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

A. *Mining*

There shall be no filling, excavating, dredging, mining, removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the Easement Area in any manner except as necessary for the purpose of combating erosion or flooding and as reasonably necessary for any permitted maintenance, construction or reconstruction of the improvements and roads permitted in Article III.

B. *Trash and Hazardous Waste*

No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive or hazardous waste shall be placed, stored, dumped, buried, or permitted to remain in the Easement Area; provided, however, that the storage of agricultural products, byproducts (including the composting of biodegradable material for on-farm use) and agricultural equipment in the Easement Area is allowable, so long as such storage is done in accordance with all applicable governmental laws and regulations and in such a manner so as to not impair the conservation values of the Easement Area. 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.

C. *Signage*

No signs or billboards or other advertising displays are allowed in the Easement Area; provided, however, that 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 Purposes of the Easement Area, 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 Easement Area and prescribe rules and regulations for recreational use of the Easement Area, to advertise the Property for sale or rent, to post the Property against trespassers and to indicate that the Property is participating in an NCDACS program. 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.

D. *Pesticides*

Grantor shall use pesticides only in accordance with state and federal laws.

E. *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.

F. *Commercial Development*

Any commercial or industrial use of or activity in the Easement Area (other than silvicultural, agriculture and recreational uses or activities that are expressly permitted in Article III), is prohibited.

G. *Construction of Improvements*

No other structures or improvements may be constructed or placed in the Easement Area except as expressly permitted by this Agricultural Easement.

H. *Development Rights*

With the exception of construction, repair and replacement of structures and improvements expressly permitted in Article III, 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.

I. *Subdivision*

The Property is currently one tax parcel. The subdivision of the Easement Area, whether by physical or legal processes, is prohibited.

J. *Stream Buffer Zone*

Grantor and Grantee have designated a "Stream Buffer Zone" in the Easement Area which is identified and more particularly shown on the Plat. Notwithstanding anything to the contrary contained herein, 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, trail maintenance, 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 if undertaken in accordance with a Forest Management Plan as described in Article III, Section B. Hunting and fishing are permitted pursuant to applicable rules and regulations. The use of motorized vehicles in the Stream Buffer Zone is prohibited.

Within the Stream Buffer Zone 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 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, filling or removal of wetlands, agricultural practices or timber management.

Notwithstanding anything to the contrary contained herein, construction of roads, trails, and paths in the Easement Area within the Stream Buffer Zone is prohibited, except for (1) the maintenance of those unpaved paths that exist as of the date of this Agricultural Easement as described in the Baseline Documentation Report, and (2) construction and maintenance of primitive foot paths limited to single file

pedestrian traffic. The unpaved paths may not be widened or covered with asphalt or other impervious materials. For the purposes of this Agricultural Easement, gravel shall not be considered an impervious material.

Construction of buildings, structures, and improvements (including, but not limited to, minor structures and fences) within the Stream Buffer Zone is prohibited; provided, however, that Grantor shall be permitted to construct, maintain, and repair one wildlife observation platform or gazebo not to exceed 100 square feet in size. All necessary care shall be taken to complete the construction of such platform or gazebo in a manner so as not to cause or allow sedimentation of the water course either during or after construction.

**ARTICLE V.  
GRANTEE'S RIGHTS**

To accomplish the purposes of this Agricultural Easement, the following rights are granted to Grantee by this Agricultural Easement:

A. *Right to Protect*

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

B. *Right of Entry*

Upon fifteen (15) days prior written notice, Grantee shall have the right to enter the Easement Area at reasonable times for the purpose of inspecting the Easement Area to determine whether Grantor is complying with the covenants and purposes of this Agricultural Easement and to inspect for violations.

**ARTICLE VI.  
TITLE, TRANSFER AND OWNERSHIP OBLIGATIONS**

A. *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 the aforesaid Agricultural Easement; that there is legal access to the Easement Area, that the Easement Area is free and clear of any and all encumbrances, except easements of record, none of which would nullify, impair or limit in any way the terms or effect of this Agricultural Easement; that Grantor has a valid interest in the Access Easement subject only to the right of others to use the Access Easement; that Grantor shall defend its title against the claims of all persons whomsoever, and Grantor covenants that Grantee, its successors and assigns, shall have the right to monitor and defend the terms of the aforesaid Agricultural Easement. Grantor agrees that it shall promptly disclose any encumbrances in the Easement Area to NCDACS and Grantee.

B. *Transfer of Property.*

Grantor agrees to incorporate by reference the terms of this Agricultural Easement in any deed or other legal instrument by which they transfer or divest themselves of any interests, including leasehold interests, in all or a portion of the Property. Grantor agrees to give written notice to Grantee of any 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. Failure of Grantor to comply with this Section shall not impair the validity of the Agricultural Easement as to successor owners or limit its enforceability

in any way, nor shall any Grantor's failure to comply with this Section constitute a default under this Agricultural Easement.

C. *Transfer of Agricultural Easement.*

Subject to the contingent rights of the State, with timely written notice and approval of the NCDACS, Grantee shall have the right to transfer this Agricultural Easement to any public agency or private nonprofit organization that, at the time of transfer, is a qualified organization under 26 U.S.C. §170(h) of the Internal Revenue Code, as amended, and under NCGS 121-34 *et. seq.*, provided the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Agricultural Easement. As a condition of such transfer, Grantee shall require that the Conservation Purposes intended to be advanced hereunder shall continue to be carried out. If Grantee ever ceases to exist or no longer qualifies under 26 U.S.C. §170(h) of the Internal Revenue Code, or applicable state law, a court with jurisdiction shall transfer this Agricultural Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed by this Agricultural Easement. Grantee hereby covenants and agrees to monitor and observe the Easement Area in perpetuity for such purposes set forth by this Agricultural Easement and Grant Agreement and to report to the NCDACS any observed violations in the Easement Area.

D. *Obligations.*

Other than as specified herein, this Agricultural Easement does not impose any legal or other responsibility on Grantee or the State, or in any way affect any existing obligation to Grantor as owner of the Property, which includes the Easement Area. Grantor understands that nothing in this Agricultural Easement relieves Grantor of any obligation or restriction on the use of the Property imposed by law, including, without limitation, the following:

1. Taxes. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Easement Area, Grantor will reimburse Grantee for the same.
2. Upkeep and Maintenance. Grantor shall continue to be solely responsible for the upkeep and maintenance of the Easement Area, to the extent it may be required by law. Grantee shall have no other obligation for the upkeep or maintenance of the Easement Area.

**ARTICLE VII.  
GRANTOR'S ENVIRONMENTAL WARRANTY**

Grantor represents and warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property or in the Easement Area that violates any Environmental Law (as hereinafter defined) and there is no environmental condition existing in the Easement Area or on the Property that may prohibit or impede use of the Easement Area for the Conservation Purposes. As used herein, "Environmental Law" means any applicable current or future federal, state, or local governmental law, regulation or ruling applicable to environmental conditions on, under or about the Easement Area, including, without limitation, federal, state or local solid waste disposal rules, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, the Toxic Substances Control Act, as amended, the Water Pollution Control Act, as amended, the Clean Air Act, as amended, or any other applicable federal, state or local laws, regulations or ordinances.

**ARTICLE VIII.  
LIABILITY AND INDEMNIFICATION**

Grantor agrees to indemnify and hold Grantee and the State harmless from any and all costs, claims or liability, including but not limited to, reasonable attorneys' fees, arising from (i) any personal injury, accidents, negligence, or damage relating to the Easement Area, or any claim thereof; (ii) any violation of any federal, state or local environmental or land use law or regulation or the use of or presence of hazardous substances, waste or other regulated materials in, on or under the Easement Area; and (iii) Grantee's exercise of its rights of entry pursuant to this Agricultural Easement; provided, however that if such costs, claims or liability are due in whole or in part to the negligence of Grantee or its agents, contractors or employees, liability shall be apportioned according.

**ARTICLE IX.  
ENFORCEMENT**

With fifteen (15) days prior written notice to Grantor, Grantee shall have the right to enter the Easement Area for the purpose of inspecting for compliance with the terms of this Agricultural Easement. Grantee shall have the right to prevent violations and remedy violations of the terms of this Agricultural Easement through judicial action. The parties agree that a court may issue an injunction or order requiring Grantor to restore the Easement Area to its condition prior to the violation as restoration of the Easement Area may be the only applicable remedy. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to, court costs, attorneys' fees, and any other costs incurred with onsite remediation. 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. In any case where the court finds no such violation has occurred, each party shall bear its own costs.

In the event that Grantee fails to enforce any of the terms of this Agricultural Easement, as determined in the sole discretion of the Commissioner of Agriculture of the State, the Commissioner of Agriculture, and his or her successors and assigns, shall have the right to enforce the terms of the Agricultural Easement through any and all authorities available under federal or state law. In the event that Grantee attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this Agricultural Easement without the prior written consent of the Commissioner of Agriculture and payment of consideration to the State, then, at the option of the Commissioner of Agriculture, all right, title and interest in this Agricultural Easement shall become vested in the State. The State shall have the right to enter the Easement Area for the purposes of exercising the third party right of enforcement granted to it in this paragraph.

**ARTICLE X.  
PROCEDURE IN THE EVENT OF CONDEMNATION OR EMINENT DOMAIN**

Grantor and Grantee recognize that the partial donation and partial sale of this Agricultural Easement gives rise to a property right, immediately vested in Grantee, with a fair market value equal to the proportionate value that the Agricultural Easement bears to the value of the Easement Area prior to the restrictions imposed by the Agricultural Easement. Accordingly, if any condemnation or eminent domain action shall be taken, on all or part of the Easement Area, by an authorized public authority, said authority shall be liable to Grantee for the value of the property right vested in Grantee at the time of the signing of this Agricultural Easement.

If condemnation or a taking by eminent domain of a part of the Easement Area or the entire Easement Area by a public authority renders it impossible to fulfill any of the Conservation Purposes of this Agricultural Easement on all or part of the Easement Area, the Agricultural Easement may be terminated or modified accordingly through condemnation proceedings. If the Agricultural Easement is terminated or modified, and any or all of 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 the proportionate value of the Agricultural Easement which has been predetermined at 82.58% of the Easement Area's unrestricted value. Grantee shall use its proceeds consistently with the Conservation Purposes of this Agricultural Easement. If this Agricultural Easement is extinguished or terminated, NCDACS and Grantee shall receive its proportionate share of the Agricultural Easement value at the time of termination. Those proportionate shares of the Agricultural Easement value are as follows: 35% to Grantee, and 65% to the NCDACS.

**ARTICLE XI.**

**PROCEDURE IN THE EVENT OF TERMINATION OF AGRICULTURAL EASEMENT**

If it determines the conditions on or surrounding the Easement Area change so much that it becomes impossible to fulfill the Conservation Purposes of this Agricultural Easement, a court with jurisdiction may, at the joint request of both Grantor and Grantee, and with prior consent of NCDACS as provided herein, terminate or modify this Agricultural Easement in accordance with applicable state law. If the Agricultural Easement is terminated and the Easement Area is sold then as required by Treas. Reg. 1.170A-14(g)(6), then Grantee shall be entitled to 82.58% (percent funded of development rights) of the gross sale proceeds representing an amount equal to the ratio of the appraised value of this Agricultural Easement to the unrestricted fair market value of the Easement Area, as these values are determined on the date of this Agricultural Easement. Grantee and NCDACS shall divide the resulting proceeds in accordance with the percentage of the purchase price of the Agricultural Easement that each party contributed. The percentages are 35% for Grantee and 65% for the NCDACS. Grantee shall use its proceeds consistently with the general Conservation Purposes of this Agricultural Easement.

**ARTICLE XII.**

**NOTICE OF INTENTION TO UNDERTAKE CERTAIN ACTIONS**

Grantor shall notify Grantee before undertaking any use or change in use of the Easement Area which may have an adverse impact on the Conservation Purposes of the Easement Area. 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 Agricultural 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.

In any case where the terms of this Agricultural Easement require the consent or approval of any party, such consent or approval shall be requested by written notice in accordance with Article XIII, Section C. Such consent or approval shall be deemed denied unless, within ninety (90) days after receipt of notice, a written notice of consent or approval has been mailed to the party requesting consent or approval. In any case where only prior notice is required, the party shall give sixty (60) days prior notice.

**ARTICLE XIII.**

**MISCELLANEOUS**

- A. *Subsequent Easements/Restrictions in the Easement Area.*

The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Easement Area, or otherwise diminish or impair the conservation values of the Easement Area is prohibited.

B. *Amendment.*

This Agricultural Easement may be amended by written instrument executed by Grantee and Grantor and approved by the Commissioner of Agriculture. Any such amendment shall be consistent with the Statement of Purpose of this Agricultural Easement and with Grantee's Agricultural Easement amendment policies, and shall comply with 26 U.S.C. §170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be duly recorded. Grantee shall give notice of any amendment to and secure approval from, the NCDACS.

C. *Notices.*

Any notices required by this Agricultural Easement shall be in writing and shall be personally delivered or sent by first-class mail to Grantor and Grantee respectively at the following addresses, unless a party has been notified in writing by the other of a change of address:

Grantor: Ayrshire Farm, LLC  
602 Friendly Pooch Lane  
Pittsboro, North Carolina 27312

Grantee: Triangle Land Conservancy  
1101 Haynes Street, Suite 205  
Raleigh, North Carolina 27604  
Attn: President

NCDACS: North Carolina Department of Agriculture and Consumer Services  
NC ADFP Trust Fund  
2 West Edenton Street  
Raleigh, NC 27601

All notices shall be deemed given or made three (3) days after being placed in the United States mail as herein provided.

D. *Interpretation.*

This Agricultural 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.

E. *Severability.*

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

F. *Parties.*



Every provision of this Agricultural 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.

G. *Merger.*

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

H. *Subsequent Liens on Easement Area.*

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

I. *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 Easement and otherwise evidences the status of this Easement, as may be reasonably requested by Grantor.

J. *Entire Agreement.*

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

K. *No Forfeiture.*

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

L. *Termination of Rights and Obligations.*

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

M. *Document Under Seal.*

The party(ies) hereto intend this document to be an instrument executed under seal. If any party is an individual, partnership or limited liability company, such party hereby adopts the word "SEAL" following his/her signature and the name of the partnership or limited liability company as his/her/its legal seal. The Recitals set forth above and the Exhibits attached hereto are incorporated herein by reference.

N. *Recording.*

Grantee shall record this instrument and any amendment hereto in timely fashion in the official records of Chatham, North Carolina, and may re-record it at any time as may be required to preserve Grantee's rights.

TO HAVE AND TO HOLD, this Grant of Agricultural Easement and development rights unto the Triangle Land Conservancy, its successors and assigns forever.

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

**GRANTOR:**

Ayrshire Farm, LLC (seal)

By: William Watlington Dew (seal)  
Name: W. W. Dew  
Title: Manager

Durham COUNTY, NORTH CAROLINA

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: William Watlington Dew

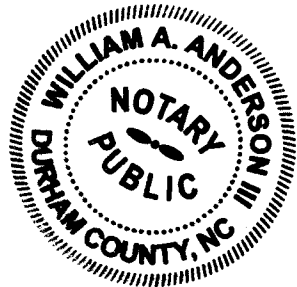
Date 5/5/10

(Official Seal)

William A. Anderson III, Notary Public  
Official Signature of Notary

Printed Name: William A. Anderson III

My commission expires: 1/27/14



GRANTEE:

BOOK 1511 PAGE 0060

Triangle Land Conservancy,  
a North Carolina non-profit corporation

By: Kevin M. Brice  
Kevin M. Brice, President

WAKE COUNTY, NORTH CAROLINA

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: **Kevin M. Brice.**

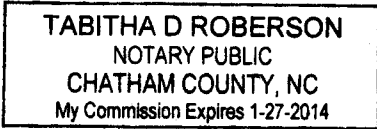
Date 5/4/10

Tabitha D. Roberson, Notary Public  
Official Signature of Notary

(Official Seal)

Printed Name: Tabitha D. Roberson

My commission expires: 1/27/2014



APPROVED AS TO FORM

D. David Steinbock

Authorized Signature for North Carolina Department of Agriculture and Consumer Services  
D. David Steinbock

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I certify that the following person personally appeared before me this day, acknowledging to me that (s)he signed the foregoing document: D. David Steinberg

Date: 5/5/10

William A. Anderson, III  
Notary Public

Print Name: William A. Anderson, III

My commission expires: 01/27/14

[Official Seal]

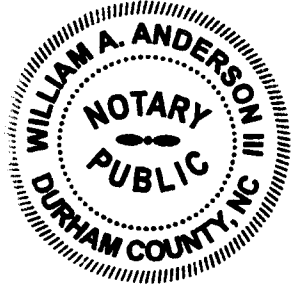


EXHIBIT A

DESCRIPTION OF EASEMENT AREA

Chatham County Parcel Number 0012138

BEING all of that certain tract containing 20.970 acres as shown on the plat by Freehold Land Surveys, Inc. entitled "Triangle Land Conservancy Agricultural Easement, Property of Ayrshire Farm LLC" dated April 27, 2010 and being recorded in Plat Slide 2010-108, Chatham County Registry, to which plat reference is made for a more particular description of same;

TOGETHER WITH a nonexclusive access easement to the above described property, created in the deed recorded in Book 367, Page 51, Chatham County Registry, which easement is more particularly described as follows: BEGINNING at a point in the Southern right of way of S.R. #2167, Benson's northwest corner and running thence with the right of way of said road South 84° 19' West 41.14 feet; thence South 19° 14' East 1058.92 feet; thence South 56° 56' West 798.99 feet; thence South 9° 01' East 245.70 feet; thence North 86° 18' East 77.38 feet; thence South 5° 36' East 947.68 feet to the northern line of that property this day conveyed to Jerome Gerding and wife; thence with Gerding's line North 66° 25' East 40 feet to Brewer's line; thence with Brewer's line North 5° 36' West 987.68 feet to Upchurch's line; thence with Upchurch's line South 86° 18' West 31.53 feet to his corner; thence North 9° 01' West 165.70 feet to Upchurch's other corner; thence on with Upchurch's line North 56° 56' East 758.99 feet to Benson's southwest corner; thence with Benson's line North 19° 14' West 1080.66 feet to the BEGINNING.

The above described property is the same property described in the deed recorded in Book 1431, Page 211, Chatham County Registry which vested title in Ayrshire Farm, LLC, the Grantor.