

**SAMPLE EASEMENT FOR DISCUSSION PURPOSES ONLY
PLEASE DO NOT CIRCULATE AND DO NOT RELY ON ANY PROVISION
OF THIS DOCUMENT FOR LEGAL ADVICE**

Drafted by Kalen Kingsbury, Esq. Piedmont Land Conservancy
And return to: P.O. Box 4025, Greensboro, NC 27404

STATE OF NORTH CAROLINA

PIN NO.

COUNTY OF _____

CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Deed” or “Easement”) is made as of this ____ day of December, 200__, by and between _____ with an address at _____ (“Grantor”) and the **PIEDMONT LAND CONSERVANCY**, a North Carolina non-profit corporation (“Grantee”) with an address at Post Office Box 4025, Greensboro, NC 27404, for the purpose of forever conserving the open space character, agricultural productivity and scenic qualities of the subject property.

RECITALS & CONSERVATION PURPOSES

The Grantor is the sole owner in fee simple of the real property consisting of three parcels, legally described in Exhibit A, attached to and made a part of this Deed, which consist, in the aggregate, of approximately 211 acres of land, together with buildings and other improvements, located in _____ Township, _____ County, North Carolina (the “Property”).

Grantor now desires to grant and convey this Easement to Grantee over all of the Property except and excluding the three areas legally described on Exhibit B and identified on the survey attached hereto as Exhibit C, as Excluded Area A, which includes .952 acres, Excluded Area B, which includes 3.624 acres and Excluded Area C, which includes .938 acres, (collectively the “Excluded Areas”).

Comment [KK1]: This Paragraph illustrates how PLC handles an easement with a landowner who wants to exclude certain portions of the property from the Easement.

The Grantee is a “qualified conservation organization”, as defined by the Internal Revenue Code of 1986, as amended, and accepts the responsibility of enforcing the terms of this Deed and upholding its conservation purposes forever.

The Property consists primarily of productive agricultural land and forest. It is the primary purpose of this Easement to protect the agricultural soils and viability of the Property. The Property also has outstanding scenic qualities, wildlife habitat and open space character that can be enjoyed by the general public from _____ Road.

Comment [KK2]: This paragraph helps support the “public benefit” that is required by the IRS regulations if the landowner intends to take a federal tax deduction for the donated easement.

The agricultural, natural habitat, and scenic resources of the Property are collectively referred to as the “conservation values” of the Property.

The agricultural capacity, wildlife habitat, open space character and scenic characteristics of the Property and its current use and state of improvement, are described in a *Easement Documentation Report* (the “Report”), of even date herewith, which was prepared by the Grantee with the cooperation of the Grantor, and acknowledged by both parties to be complete and accurate as of the date of this Deed as indicated by their signatures on the Report, the form of which is attached hereto as Exhibit D. Both the Grantor and Grantee have copies of this report. The Report will be used by the Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Report is not intended to preclude the use of other evidence to establish the condition of the Property at the time of closing if there is a controversy over its use.

Comment [KK3]: PLC does not include the baseline report as an exhibit to the Easement because it would significantly increase the cost of recording fees and it includes a number of items - pictures, surveys, environmental assessments and correspondence. Exhibit D is the form that acknowledges the present conditions of the property. It is signed at closing by PLC and the landowner and refers to the baseline documentation report. At closing, we give the landowner a notebook that is identical to the one we keep in the office.

The Grantor has agreed to convey to the Grantee by donation, a conservation easement over all of the Property except for the Excluded Areas. Exhibit C contains a survey showing the three parcels that comprise the Property and the three Excluded Areas. All of the Property except for the Excluded Areas is subject to this conservation easement and shall be referred to hereafter as the "Easement Area." Grantor is conveying this Easement to Grantee for the purpose of assuring that under the perpetual stewardship of the Grantee, the agricultural and forestry productivity, open space character, and scenic qualities of the Easement Area will be conserved and maintained forever and that the uses of the Easement Area that are inconsistent with these conservation purposes will be prevented or corrected. Agricultural uses for the Easement Area may include, but not be limited to, row cropping, livestock, specialty crops, market gardening, nursery, orchards, and silviculture.

The conservation purposes of this Deed are recognized by, and the grant of this Deed will serve, the following clearly delineated governmental conservation policies:

1. The Farmland Protection Policy Act, P.L. 97-98 7 U.S.C. 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;"
2. 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;
3. The Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. 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 use and which provides for tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvement less any reduction in value caused by the agreement;"
4. The special use assessments of farm and forest lands set forth in N.C.G.S. 105-277.2 et seq.;
5. 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 NCGS 105-130.34 and 105.151.12 et seq.;
6. The Clean Water Management Trust Fund Act, NCGS 113-145.1;
7. North Carolina General Statute 139-2 et seq., which provide 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;"
8. The Soil and Water Conservation Districts Act, N.C.G.S. § 139-1, et seq., which provides for the preservation of farm, forest and grazing lands; and
9. The establishment of the N.C. Farmland Preservation Trust Fund established in 1986 (N.C.G.S. 106-744(c)) to preserve important farmland in North Carolina.

Grantee is a tax exempt public charity under Section 501(c)(3) and 509(a)(2) of the Internal Revenue Code, is authorized by laws of the State of North Carolina to accept, hold and administer conservation easements, possesses the authority to accept and is willing to accept this Easement under the terms and conditions hereinafter described, and is a "qualified organization" and an "eligible donee" within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder;

The Grantor owns the entire fee simple interest in the Property, including the entire mineral estate.

NOW, THEREFORE, for the reasons given, and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby

Comment [KK4]: So you're probably wondering, "why do lawyers always throw in so many references to statutes" and why does it matter that the easement meets "clearly delineated conservation policies?" IRS Regulation 1.170A-14 (d) defines conservation purposes. In the case of farmland and forest land the regulations provide that the easement will meet the conservation purposes test if either of two requirements are met. The first of these is that the preservation is "pursuant to a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit" which is why we recite these statutes in the easement. The second requirement is the the preservation is "for the scenic enjoyment of the general public and will yield a significant public benefit." See also IRS Reg 1.179A-14(d) (4) iii (A) and (B).

Comment [KK5]: This is also required by IRS regulations. 1.170A-14 (c) (iii)

acknowledged by the Grantor, the Grantor grants and conveys to the Grantee, and the Grantee accepts, a conservation easement, in perpetuity, for the purpose of conserving and forever maintaining the agricultural and forestry productivity, open space character, and scenic qualities of the Property. This Easement authorizes the Grantee to take appropriate legal action in law or equity to enjoin, prohibit and remedy any violation of the terms of the easement created by this Deed and to enter the Property at reasonable times to observe and document the state of preservation and to prevent any violation of the terms of this Easement.

ARTICLE I. RIGHTS RETAINED BY THE GRANTOR

As owner of the Property, the Grantor retains the right to perform any act not specifically prohibited or limited by this Deed, provided such acts are not contrary to the conservation purposes of this Deed. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose.

All rights reserved by the Grantor are reserved for the Grantor, their representatives, successors and assigns and are considered to be consistent with the conservation purposes of this Easement and, except as set forth herein, do not require prior notification to or approval from Grantee. Notwithstanding the foregoing, the Grantor and Grantee have no right to agree to any activity that would result in the termination of this Easement or would cause it to fail to qualify as a qualified conservation contribution as described in section 170(h) of the Internal Revenue Code, or any regulations promulgated thereunder.

Comment [KK6]: This is to alleviate landowners' concerns that the easement somehow prevents them from selling their land or requires public access.

ARTICLE II. PROHIBITED ACTS

The 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 below. It also authorizes the Grantee to enforce these covenants in the manner described below. However, unless otherwise specified below, nothing in this Deed shall require the Grantor to take any action to restore the condition of the Property after any Act of God or other event over which it had no control. The Grantor understands that nothing in this Deed relieves it of any obligation or restriction in the use of the Property imposed by law.

Comment [KK7]: Don't be fooled by the heading - this section actually contains a lot of provisions that provide the requirements that must be met for certain permitted activities - most notably - the construction of new buildings on the property.

1. Industrial and Commercial Use

Industrial and commercial activities and any right of passage for such purposes are prohibited, except for those activities related to agricultural practices conducted solely on the Property. Nothing in this paragraph shall be construed as limiting the Grantor's right to grant or renew hunting and farming leases on or over the Property.

2. Construction of Buildings and other Structures

The construction and reconstruction of any buildings or other structures, except those existing on the date of this Deed or previously approved by the Grantee, is prohibited except in accordance with this paragraph. Before undertaking any construction or reconstruction that requires advance permission, the Grantor shall give written notice to Grantee at least 30 days prior to commencing construction of any such building, structure or other improvement on the Easement Area and, if required, shall obtain the Grantee's consent prior to beginning construction.

- (a) Fences- Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife without notice to the Grantee.
- (b) Existing Agricultural Structures and Improvements- Existing agricultural buildings, structures and other improvements used solely for agricultural purposes including the processing or sale of farm products predominately grown or raised on the Property, but not including any dwelling or farm labor housing, may be repaired, reasonable

enlarged or replaced at their current location, provided Grantor gives Grantee written notice at least 30 days prior to beginning any construction.

Comment [KK8]: PLC does not always require notice before modifying existing structures but the reason for doing so is to avoid what could be a violation of the easement before it occurs.

- (c) New Agricultural Structures and Improvements - New buildings and other structures and improvements to be used solely for agricultural purposes including the processing or sale of farm products predominately grown or raised on the Property, but not including any dwelling or farm labor housing, may be built anywhere on the Easement Area, subject to the requirements set forth below in subparagraph (d) and provided Grantor gives Grantee written notice at least 30 days prior to beginning any construction.

Comment [KK9]: We generally like to give farmers the greatest flexibility possible in terms of constructing additional agricultural structures and locating them where needed. This right is often curtailed in USDA FRPP easements because of the overriding purpose of maintaining agriculture viability of soil.

- (d) Location and Structures and Improvements- No building, structure or other improvement shall be located within the Riparian Buffers, as that term is defined in paragraph 4 of this Article, or unnecessarily located on soils designated as prime or statewide important, or otherwise diminish the open space character, agricultural production capacity or scenic qualities of the Easement Area as compared to those conditions existing on the date of this Deed. Notwithstanding the foregoing, all amenities and improvements to be located on the Easement Area must comply with the terms set forth herein. The total cleared and not re-vegetated, pervious and impervious surface areas associated with all aforesaid improvements, including, but not limited to, agricultural buildings, trails, roads, and convenience facilities shall not exceed five percent (5%) of the total area of the Easement Area. The restrictions of this paragraph do not apply to any structures built or located completely within the boundaries of an Excluded Area.

Comment [KK10]: This can create a monitoring headache. To accurately enforce this provision, one must determine how much of the total easement area is impacted by structures at closing and keep track of the impact of each new structure. This is a common provision in USDA and CWMTF easements because it does offer an objective criteria for measuring impact of structures in the Easement Area.

3. Subdivision

The subdivision of the Property, whether by physical or legal process, except in its current configuration, is prohibited. The subdivision of any Excluded Area from the parcel in which it is contained, as shown on Exhibit C, is prohibited.

4. Riparian Buffer Restrictions

Grantor agrees to maintain 50-foot riparian buffers on each side of _____ Creek and the unnamed tributaries on the Easement Area (the "Riparian Buffers"). The activities permitted on and use of the Riparian Buffers shall be governed by this paragraph and Paragraph 8. The Riparian Buffers shall consist of fifty foot (50') buffers maintained in permanently grassed or naturally vegetated buffer areas.

- (a) Buildings or other structures permitted by paragraph 2 of this Article may not be located in the Riparian Buffers.
- (b) Timber Harvesting permitted by paragraph 9 of this Article may not be conducted in the Riparian Buffers.
- (c) Any activity in the Riparian Buffers that results in soil degradation or erosion or is detrimental to the water quality of _____ Creek is prohibited.
- (d) Grazing of livestock is not permitted within five feet (5') of top of bank of _____ Creek and its tributaries.
- (e) Agriculture, timber harvesting, horticultural and animal husbandry operations are prohibited in the Riparian Buffers.

Comment [KK11]: This is not great protection for water quality but it probably conformed to existing fences that were already in place on this farm.

5. Maintenance and Improvement of Water Sources

Grantor retains and reserves the right to use, maintain, establish, construct, and improve water sources, water courses, and water bodies within the Easement Area for the uses permitted by this Easement, provided that Grantor does not materially impair the natural course of the surface water drainage or runoff flowing over the Easement Area and further provided that it is done in accordance with the conservation plan and practices set out in paragraph 7 of this Article. The construction of ponds and reservoirs in the Easement Area is prohibited unless Grantor obtains the

Comment [KK12]: This reference to the conservation plan is a common way for PLC to defer to a more knowledgeable authority. It provides some limits on what the landowner can do and assumes that he will work with the local soil and water district before taking action.

advance written permission of the Grantee. Any pond or reservoir that is allowed, must be constructed in compliance with any regulations or guidelines promulgated by the Natural Resource Conservation Service or other government entity charged with oversight of such activities, whose primary focus is the protection of water quality and prevention of soil erosion related to such activities.

6. Development Rights

The Grantor hereby grants to the Grantee all developmental rights (except as specifically reserved herein) that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise. The open space preserved by this Easement may not be used to permit a higher density of development on adjacent parcels than would otherwise be permitted by applicable zoning or development regulations.

Comment [KK13]: This is the paragraph that essentially terminates the development rights but the added language makes clear that the landowner cannot use the land subject to the easement to get increased development rights on adjacent parcels.

7. Conservation Practices

All farming operations shall be conducted substantially in accordance with a conservation plan that addresses soil and water conservation, pest management, nutrient management and habitat protection recommended by the Natural Resource Conservation Service, or other government entity charged with oversight of such activities. This plan shall be updated at least every ten years, whenever the basic type of agricultural operation on the Property changes, and at the time ownership of the Property changes. It shall be the responsibility of the Grantor to insure the preparation and periodic updating of the conservation plan provided for in this paragraph and to provide a copy of the conservation plan to Grantee whenever it is updated or revised.

Comment [KK14]: This is one of the provisions that I'd like to get your input on. We think it helps insure good agricultural practices without requiring PLC to have too much of a role in the day to day operations on the farm. We've also heard that most conservation plans don't really accomplish this. We've also had mixed results in getting copies of the conservation plan.

8. Disturbance of Natural Features, Plants, and Animals.

There shall be no cutting or removal of trees, or the disturbance of other natural features within the Riparian Buffers except for the following: (1) as incidental to boundary marking, fencing, and signage, (2) to construct and maintain foot trails for hiking and nature observation, and (3) to prevent personal injury and property damage. Selective cutting and prescribed burning or clearing of vegetation and the application of pesticides for fire containment and protection, disease control, restoration of hydrologic resources, wetlands enhancement and/or control of non-native plants; is permitted with the prior approval of the Grantee. Hunting and fishing is permitted pursuant to applicable rules and regulations.

On the Easement Area outside the Riparian Buffers, trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the Property. Trees may also be cut to clear land for cultivation or use of livestock, but only if done in accordance with the Conservation Plan that meets the requirements of paragraph 7 of this Article. Selective timber harvesting is allowed on the Easement Area outside the Riparian Buffers, if said harvesting is conducted on a sustainable yield basis and in substantial accordance with a written forest management plan (hereinafter the "Forestry Plan") for the Property that complies with best management practices in effect at the time it is written, meets all requirements of paragraph 9 of this Article, and is prepared by a North Carolina Registered Forester or by another qualified person who shall be approved in advance and writing by the Grantee.

Comment [KK15]: This is another provision that I'd like your guidance on. Here are some points to discuss: (1) How is "sustainable yield basis" defined? (2) What if "best management practices" change? (3) Why require a NC Registered Forester? and (4) Can a plan meet the requirements of Paragraph 9 and still qualify for present use value?

9. Forestry Management Plan

The Forestry Plan shall be consistent with the purposes of this Deed, shall incorporate best management practices for timbering and must be reviewed and approved by the Grantee. The Forestry Plan shall have been prepared not more than ten (10) years prior to the date any timber harvesting is expected to begin, or shall have been reviewed and updated as required by a North Carolina Registered Forester at least 30 days prior to said date. The Forestry Plan shall include at a minimum:

Comment [KK16]: We have stopped requiring our approval. Most land trusts don't have the expertise in staff to evaluate Forest Management Plans and we try to avoid too much interference with the daily operations of the farm.

- (a) Landowner objectives.

- (b) Timber harvest goals.
- (c) An appropriately scaled, accurate map indicating such items as forest stands, streams, wetlands, major access routes, and topographic contours.
- (d) Forest stand descriptions, including but not limited to, stocking levels, stand quality, soils, insect and disease occurrence, previous management history, and prescribed silvicultural treatment.
- (e) Water quality considerations.
- (f) Plant and wildlife considerations.
- (g) Aesthetic and recreational considerations.

Comment [KK17]: People have advised me that this is the language that might cause a problem under present use value requirements.

The Forestry Plan shall be updated at least once every ten years if Grantor intends to harvest timber or other wood products. Amendments to the Forestry Plan shall be required if Grantor proposes a treatment that is not included in the approved Forestry Plan. No such amendment shall be required for a change in timing or sequence of treatments, if such change does not vary more than five years from the prescription schedule set forth in the approved Forestry Plan. In the event that any forest stand is substantially damaged by natural causes such as insect infestations, disease, ice, fire or wind, Grantor may elect to conduct an alternative treatment for the affected forest stand in which event Grantor shall submit an amendment to the Forestry Plan for Grantee's approval prior to conducting any alternative treatment.

10. Mining

The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance on the Easement Area, using any method whatsoever, is prohibited. Notwithstanding the foregoing, Grantor shall have the right to extract soil, sand, gravel, or rock from the Easement Area solely in connection with and ancillary to the farming operations being conducted solely on the Property without the necessity of obtaining the prior written consent of the Grantee.

11. Paving and Road Construction

Paving shall be permitted of the existing access road to provide access from SR # _____ (_____ Road) to the single family residential dwelling currently owned by Grantor located on Excluded Area B, which is identified as Parcel I.D. # _____ in the tax parcel maps of _____ County. This access road may be paved only if the paved width of this road does not exceed 10 feet. No other portion of the Easement Area shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material. Farm roads may be built on the Property, to access the agricultural structures permitted by paragraph 2 of this Article, to access the timber stands identified in the Forest Management Plan, and to access the Excluded Areas, provided they are not paved or otherwise covered with concrete, asphalt or any other impervious paving material, and are located in a way that does not substantially diminish or impair the open space character, agricultural productivity, or scenic qualities of the Easement Area as compared to those conditions existing on the date of this Deed. Any additional roads may not be unnecessarily located within the Riparian Buffers. If a road or stream crossing is necessary best management practices as defined by the North Carolina Division of Water Quality must be used. All necessary care shall be taken to construct the road or stream crossing in a manner that does not cause or allow sedimentation either during or after construction. At least thirty (30) days prior to the commencement of the paving of the access road or construction of any other roads, Grantor shall provide written notice to Grantee.

Comment [KK18]: This is meant to control having too many roads but it is not a very objective standard.

Comment [KK19]: This is intended to give PLC some ability to discuss the proposed location of new roads to minimize negative impacts.

12. Trash

The dumping or accumulation of any kind of trash or refuse on the Easement Area, other than farm-related trash and refuse produced on the Property, is strictly prohibited. Farm related refuse and trash produced on the Property must be disposed of in accordance with prudent farming practices and applicable state, local and federal laws and regulations and shall not be kept in an unsightly or unsanitary condition. Nothing in this paragraph shall prevent the storage of

agricultural products and byproducts on the Easement Area, so long as it is done in accordance with all applicable government laws and regulations.

13. Recreational Uses

Golf courses, swimming pools, airstrips and helicopter pads are strictly prohibited on the Easement Area. Buildings and facilities for any other public or private recreational use may not be built on the Easement Area without the advance written permission of the Grantee, which may be granted or denied in Grantee’s sole discretion.

14. Utility Lines

Grantor reserves the right to maintain, repair and replace all above ground and underground sewer, power, telephone, natural gas, cable television and other lines (“Utility Lines”) serving the Property on the date of this Deed. Grantor further reserves the right to install and maintain, repair and replace future Utility Lines, as required for operation of any agricultural structures permitted in paragraph 2 of this Article or to access any structures that may be constructed on the Excluded Areas, provided that the placement and location of such Utility Lines shall not have a negative impact on the conservation values of the Easement Area.

Comment [KK20]: USDA-FRPP easements prefer a stricter limitation on utility lines because of the negative impacts on agricultural viability of the property.

ARTICLE III. RESPONSIBILITIES OF THE GRANTOR AND THE GRANTEE NOT AFFECTED

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

Comment [KK21]: These provisions were added by PLC to clarify that we are not responsible for property taxes, insurance or upkeep of the property. Landowner's sometimes negotiate minor changes to paragraph (3) but we try to keep it as close to this as possible.

- (1) Taxes – The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Easement Area, the Grantor will reimburse the Grantee for the same.
- (2) Upkeep and Maintenance – The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property and the Grantee shall have no obligation for the upkeep and maintenance of the Property.
- (3) Liability and Indemnification – If the Grantee is ever required by a court to pay damages resulting from personal injury or property that occurs on the Property, the Grantor shall indemnify and reimburse the grantee for these payments as well as for reasonable attorneys fees and other expenses of defending itself, unless the Grantee or any of its agents have committed a deliberate act that is determined by a court to be the sole cause or of the injury or damage.

ARTICLE IV. ENFORCEMENT

1. Enforcement.

To accomplish the purposes of this Easement, Grantee is allowed to prevent any activity on or use of the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Easement by Grantor that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor in writing of such breach. The Grantor shall have (90) days after the receipt of such notice to correct the conditions constituting such breach. If the Grantor has not initiated corrective action within ninety (90) days, the Grantee may enforce this Easement by appropriate legal proceedings including damage, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Easement; (b) to otherwise preserve or protect its interest in the Easement Area; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order,

injunctive or other appropriate relief if the breach of the term of this Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Easement.

2. Right of Entry and Inspection.

Grantee, its employees and agents and its successors and assigns have the right, with reasonable notice, to enter the Property at reasonable times for the purpose of inspecting the Easement Area to determine whether the Grantor, Grantor's representatives, heirs, successors and assigns are complying with the terms, conditions and restrictions of this Easement.

3. Acts Beyond Grantor's Control.

Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

4. Costs of Enforcement.

If Grantee incurs any costs to enforce the terms of this Easement against Grantor, such as legal fees, court costs or other costs related to restoring the Property after any act by the Grantor in violation of the terms of this Easement, Grantor shall reimburse Grantee for such costs.

5. No Waiver.

Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or of any other term of this Easement or of Grantee's rights. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

ARTICLE V. TRANSFER OF EASEMENT

Grantee shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, and the regulations promulgated thereunder (the "Internal Revenue Code"), 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 which expressly agrees to assume the responsibility imposed on Grantee by this Deed. If Grantee ever ceases to exist or no longer qualifies under Section 170(h) or applicable state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Deed.

ARTICLE VI. TRANSFER OF PROPERTY

Grantor agrees for itself, its successors and assigns, to notify Grantee in writing of the names and addresses of any party to whom the Property or any of the parcels that comprise the Property is to be transferred at or prior to the time said transfer is consummated. Grantor, for itself, its successors and assigns, further agrees to make specific reference to this Easement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Property is conveyed.

Comment [KK22]: This language is required by IRS regulations. See 1.170A-14(c)2

ARTICLE VII. AMENDMENT OF EASEMENT

This Deed may be amended only with the written consent of the Grantee and Grantor. Any such amendment shall be consistent with the purposes of this Deed and shall comply with § 170 (h) of the Internal Revenue Service Code of 1986, as amended, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the North Carolina Conservation and Historic Preservation Agreements Act, North Carolina General Statute 121-34, et seq., or any regulations promulgated pursuant to that law.

ARTICLE VIII. TERMINATION OF EASEMENT

If a court with proper jurisdiction determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill the conservation purposes of this Easement, the court may, at the joint request of both the Grantor and the Grantee, terminate the Easement created by this Deed. 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, as determined by the Grantee, in the exercise of its sole discretion, this Easement may be terminated through condemnation proceedings. If the Easement is terminated and the Property is sold or taken for public use, then, as required by §1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Easement Area, as these values are determined on the date of this Deed. The Grantee shall use the proceeds consistently with the conservation purposes of this Deed.

ARTICLE IX. PERPETUAL DURATION

The easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns and all other successors as their interest may appear.

ARTICLE X. NOTICES

All notices, requests or other communications permitted or required by this Easement shall be sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above, or to such other addresses such party may establish in writing to the other. All such items shall be deemed given or made three (3) days after being placed in the United States mail as herein provided. In any case where the terms of this Easement require the consent of any party, such consent shall be requested by written notice. Such consent shall be deemed denied unless, within thirty (30) days after receipt of notice, a written notice of approval and the reason therefore has been mailed to the party requesting consent.

To Grantor:

To the Grantee:

Piedmont Land Conservancy
Post Office Box 4025
Greensboro, NC 27404-4025
Attention: Executive Director

In the event that a party to this Deed shall transfer its interest in the Easement Area or under this Deed by conveyance, descent, devise, operation of law or otherwise, the transferee of such interest shall provide the nontransferring party with written notice of the change of address to which notice is to be sent hereunder.

ARTICLE XI. GRANTOR'S TITLE WARRANTY

The Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances and hereby promises to defend the same against all claims that may be made against it.

ARTICLE XII. GRANTOR'S ENVIRONMENTAL WARRANTY

Grantor has used on and/or applied to the Easement Area feeds, supplements, fertilizers, equipment lubricants and other substances in ordinary and routine farming applications and in accordance with their prescribed instructions for application or use. With the foregoing exception, Grantor warrants, represents and covenants to the Grantee that to the best of its knowledge after appropriate inquiry and investigation that (a) the Easement Area described herein is and at all times hereafter, while owned by Grantor, 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 environmentally regulated substances located on, in or under the Easement Area or used in connection therewith, except as stated above. Grantor hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys fees, arising from or connected with any release of hazardous waste by the Grantor or any violation of federal, state or local environmental laws and regulations by Grantor.

ARTICLE XIII. MISCELLANEOUS

1. **Construction of Terms.**

This Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. 121-34 *et. seq.* which authorizes the creation of conservation easements for purposes including those set forth in the Recitals herein, and the conservation purposes of this Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

2. **Recording.**

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

3. **Entire Agreement.**

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement. If any provision is found to be invalid, the remainder of the provisions of this Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby. The Recitals set forth above and the Exhibits attached hereto are incorporated herein by reference.

4. **Interpretation.**

This Easement shall be construed and interpreted under the laws of the State of North Carolina, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes sought to be protected herein.

5. **Parties.**

Every provision of this Easement that applies to the Grantor or to the Grantee shall likewise apply to their respective heirs, executors, administrators, assigns, and grantees, and all other successors in interest herein.

6. **Merger.**

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

7. **Subordination**

Nothing in this Easement should be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing shall be subordinate to this Easement.

TO HAVE AND TO HOLD, this Deed unto the Grantee, its successors assigns, forever.

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

GRANTOR:

GRANTEE:

PIEDMONT LAND CONSERVANCY, a North Carolina Nonprofit Corporation

BY: _____
President

ATTEST:

Kalen Kingsbury, Assistant Secretary
[Corporate Seal]

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of said State and County, do hereby certify that _____, husband and wife, personally came before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this the ____ day of _____, 200__.

Notary Public

My commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that she is Assistant Secretary of PIEDMONT LAND CONSERVANCY, a North Carolina non-profit corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Assistant Secretary.

WITNESS my hand and official stamp or seal, this ____ day of _____, 200__.

Notary Public

My commission expires: _____

EXHIBIT A

Legal Description of Property

EXHIBIT B

Description of Excluded Areas

EXHIBIT C

Map showing Excluded Areas

EXHIBIT D

REPORT OF PRESENT CONDITIONS

This is to certify that _____, Grantor, and the Piedmont Land Conservancy, representing the Grantee, do accept and acknowledge this report as an accurate description of the current land uses and physical features as of [insert date of closing] on the Easement Area. This report contains documentation data, photographs, and maps. The Grantor and Grantee further certify that to the best of their knowledge there have been and currently are no activities on the Easement Area, which are inconsistent with the terms and covenants contained in the Easement.

GRANTOR:

GRANTEE:

PIEDMONT LAND CONSERVANCY

By: _____