THIS OPTION TO PURCHASE A CONSERVATION EASEMENT (“Option”) is made this \_\_\_\_ day of      ,       by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Seller”); and the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Buyer”).

**RECITALS**

A. For the purposes of notice, the addresses of the parties to this Option are:

SELLER: BUYER:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_

B. Property legal description as described at Register of Deeds (County Deed Book and Page) and as shown on the proposed conservation easement map on page 6 of this Option.

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| --- | --- | --- |
| County | Deed Book and Page | Parcel Identification Number (PIN) |
|  |  |  |

C. It is the intention of both the Seller and Buyer that +/- \_\_\_\_\_\_\_\_\_\_ acres of the Property is preserved with conservation easements and maintained for the preservation of use as crop, horticulture or forestry as described in N.C. General Statue 106 Article 61.

D. Seller acknowledges that Buyer enters into this Option in its own right.

E. Buyer is a conservation organization having among its purposes the acquisition on behalf of the public of open space, scenic, and recreational lands.

F. Seller acknowledges that Buyer enters into this Option Agreement as an initial step in the purchase of a conservation easement on +/- \_\_\_\_\_\_\_\_\_\_ acres of the Property. The value of the conservation easement shall be determined by an appraisal performed to the Uniform Standards of Professional Appraisals Practice (USPAP) with confirmation approval by the North Carolina Department of Agriculture ADFP Trust Fund and other funding partner agencies such as USDA or military.

G. By entering into this Option, Seller acknowledges that it will obtain independent tax counsel and be solely responsible for compliance with any requirement of the Code to substantiate the value of the conservation easement if claiming an IRS charitable contribution.

NOW, THEREFORE, for the reasons given and other good and valuable consideration and in consideration of their mutual covenants, terms, conditions and restrictions contained herein, the receipt and legal sufficiency of which are hereby acknowledged, the Seller hereby voluntarily grants and conveys to the Buyer, and the Buyer hereby voluntarily accepts the exclusive and irrevocable option to Purchase a Conservation Easement on +/- \_\_\_\_\_\_\_\_\_\_ acres on the Property.

This option is given on the following terms and conditions:

1. **OPTION PERIOD.** This option shall remain in effect through four years from the date of the signatures in this contract.

2. **EXERCISE.** All rights granted by this Option shall be exercised upon posting, by certified mail, a written notice to the Seller at the first address stated in the Recitals above. Exercise shall be deemed timely if such written notice is mailed on or before the date set forth in Paragraph 1 above.

3. **CONSERVATION EASEMENTS.** The Conservation Easement on the Property to be conveyed by Seller to Buyer, should Buyer exercise the Option granted herein, shall be in a form similar to the form of the draft conservation easement of the **ADFP Trust Fund Model Conservation Easement** as described in this contract and at [www.ncadfp.org](http://www.ncadfp.org) with such additional changes or modifications requested by Seller or Buyer, and agreed to by both parties with confirmation approval by the North Carolina Department of Agriculture ADFP Trust Fund and applicable funding conservation partners.

4. **PURCHASE PRICE.** The total purchase price of the Conservation Easement +/- \_\_\_\_\_\_\_\_\_\_ acres shall be payable in cash at closing. The fair market value of the Conservation Easement shall be determined by an appraisal performed to the Uniform Standards of Professional Appraisals Practice (USPAP) with confirmation approval by the North Carolina Department of Agriculture ADFP Trust Fund and applicable funding conservation partners. The Conservation Easement shall be fixed as noted on the attached land map.

5. **CLOSING.** Closing will take place at the offices of the Buyer’s closing attorney or at such other place as the parties may mutually agree when the conditions for closing set out in this Option have been met.

6. **TITLE.**

(a) At closing, the Seller will convey the Conservation Easements to the Buyer. At the time of conveyance, the Property shall be free and clear of all liens, encumbrances, restrictions, rights or exceptions except for exceptions of record approved by Buyer.

(b) During the period of time between execution of this Option and the recordation of the Conservation Easements, should Buyer exercise the Option granted herein, Seller shall not encumber the Property nor shall they grant any interest in the Property to a third party without the prior written consent of Buyer.

7. **TITLE DEFECTS.** Buyer, at its expense, will have the title to the Properties examined. If for any reason the Seller cannot deliver the Conservation Easements at closing with title to the Properties in the condition required by Section 6 of this Option, Buyer may elect to: (a) accept the Conservation Easements with title to the Property as it is; (b) refuse to accept the Conservation Easements in which case the consideration paid for this Option shall be refunded; or (c) allow the Seller additional time to pursue all reasonable efforts to correct the problem, including bringing any necessary quiet title actions or other lawsuits. If Buyer elects to refuse to accept the Conservation Easements, or Seller desires to not pursue reasonable efforts to correct the problem, the rights pursuant to the Option granted herein shall be null and void and the rights of the parties hereto shall terminate, with neither party hereto having any further right or obligation one against the other pursuant to the terms hereof.

8. **DOCUMENTS FOR CLOSING.** The Seller shall execute and deliver at closing the Conservation Easements, any owner’s affidavits or documents required by the Buyer’s title insurance company to remove the standard title policy exceptions, and any other documents necessary to close in accordance with the terms of this Option.

9. **ACCESS.** The Buyer’s obligations under this Option (if exercised) are contingent upon the Property having recorded, appurtenant, insurable legal access to a public road sufficient to allow the Buyer access to the Property to monitor the Conservation Easements.

10. **CONDITION OF PROPERTY.** During the period of time between execution of this Option and exercise of this Option, Seller shall do nothing to or with regard to the Property that shall damage or degrade the property, significantly alter its present appearance and value, or otherwise violate the terms of the proposed Conservation Easements. In the event of any adverse change in the condition of the Property, the Buyer may refuse to accept the Conservation Easements, in which case the consideration paid for this Option shall be refunded.

11. **ENCUMBRANCES.** Seller shall not during the period of time this Option remains in effect sell or contract to sell the Property or do any other act which might hinder the property’s ability to enter the Conservation Easements.

12. **RIGHT OF ENTRY AND INSPECTION.** During the period of time this Option remains in effect, Buyer shall have the right, at its expense, to enter upon the Property at reasonable times to conduct an environmental inspection and assessment to detect hazardous or toxic substances, to have the title to the Property examined, and for other reasonable purposes related to this transaction. Buyer shall give notice in writing to Seller of any defects and objections to the title and Seller shall clear the title of defects and objections so specified within forty-five (45) days after notice thereof. In the event Seller cannot correct defects in or objections to the title so as to be able to deliver good and merchantable title free and clear of all liens, encumbrances, restrictions, and easements, Buyer may, at its election, cancel this Option, in which case the consideration paid for this Option shall be refunded. Based upon the results of the environmental inspection and assessment, the Buyer may elect to refuse to accept the conservation easement, in which case consideration paid for this Option shall be refunded.

13. **SELLER’S REPRESENTATIONS AND WARRANTIES.** The Seller hereby warrants and represents to Buyer the following matters and agrees to indemnify, defend and hold Buyer harmless from any loss or liability relating to these matters, with the intent that these representations, warranties and indemnities shall survive closing.

a. Title to the Property/Authority. Seller is the sole legal owner of the Property in fee simple. The Property is not now subject to any written option or agreement of sale. To the best of Seller’s knowledge and belief, the Property is not now subject to any claim or legal proceeding except as set forth herein. Seller has the full power and authority to execute this Option and all agreements and documents referred to in this Option and to fully perform as required by this Option.

b. Condition of Property. Seller is not aware of any facts that would have adverse effect on the efficacy of the Conservation Easements in protecting the conservation values set forth in the Conservation Easements.

c. Hazardous Materials. The Property is not now nor, to the best of the knowledge and belief of the Seller, has it ever been used for the manufacture, use, storage or disposal of any hazardous or toxic substance, material or waste within the meaning of any applicable environmental statute, ordinance, or regulation. No hazardous or toxic substance, material or waste, including without limitation asbestos or material containing or producing polychlorinated biphenyls (PCBs), is presently stored or located on the Property at levels greater than natural background concentrations. The Property is not subject to any “superfund” or similar lien or any claim by any government regulatory agency or third party related to the release or threatened release of any hazardous or toxic substance, material, or waste.

d. No Condemnation. There are no condemnation proceedings pending with regard to any portion of the Property and Seller does not know of or have reason to know of any proposed condemnation proceedings with regard to any portion of the Property.

e. Non-foreign Status. To inform Buyer that withholding of tax is not required under Section 1445 of the Internal Revenue Code and under penalties of perjury, Seller hereby certifies that Seller is not a non-resident alien or a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined for purposes of federal income tax law. Seller understands that this certification may be disclosed to the Internal Revenue Service and that any false statement made could be punished by fines, imprisonment, or both.

f. No brokers. Seller represents that they have not engaged the services of a real estate broker in the sale or purchase, respectively, of any interest in this Property, and agree to indemnify Buyer from all such claims or liabilities resulting therefrom.

14. **NOTICE.** Any notice, consent or other communication permitted or required by this Option shall be in writing, and shall be given to the applicable party, at the address set forth below, in the following manner: (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested. Each such notice shall be deemed to have been given upon receipt or refusal to accept delivery. Unless and until changed by written notice to the other party hereto, the addresses for notices given pursuant to this Option shall be the addresses listed for each party in Paragraph A of the Recitals above.

15. **LIQUIDATED DAMAGES; DEFAULT; SPECIFIC PERFORMANCE.**

a. a. Default and Specific Performance. If Seller defaults under this Agreement and fails to cure the same within thirty (30) days of written notice thereof, BUYER may elect, at Buyer’s sole option: (i) to terminate this Option and be released from its obligations hereunder, in which event the consideration paid shall be returned to Buyer; or, for all defaults other than failure to perform due to disagreement with the appraised value as determined in item 4 of this Option (ii) to proceed against Seller for specific performance of this Option. In either event, Buyer shall have the right to seek and recover from Seller all damages suffered by Buyer as a result of Seller’s default in the performance of its obligations hereunder. Damages may include reasonable expenditures performed on behalf of Seller in good faith to fulfill the Option. These include but not limited to travel, administrative, surveying, legal and specialized service fees, appraisals, documentations and reports pertaining to conservation easement implementation associated with the Option.

b. Other remedies. In addition to any other remedy specifically set forth in this Option, for all defaults other than failure to perform due to disagreement with the appraised value as determined in item 4 of this Option Buyer has the right to enforce the provisions of this Option through an action for injunctive relief or damages or through other proceedings in law or equity. The election of any one remedy available to Buyer under this Option shall not constitute a waiver of other available remedies.

16. **BINDING EFFECT.** This Option becomes effective when signed by parties hereto and shall then apply to and bind Seller and Buyer and their respective, heirs, executors, administrators, successors, and assigns.

17. **COMPLETE AGREEMENT.** This Option constitutes the sole and complete agreement between the parties and cannot be changed except by written amendment. No representation or promise not included in this Option or any written amendment shall be binding upon the parties.

18. **NOTICE OF OPTION.** Should this Option Agreement not be recorded, the parties agree to execute a Memorandum of Option for recording purposes if requested by either of the parties hereto, to be prepared and recorded at the expense of the requesting party.

19. **MISCELLANEOUS.**

a. No waiver. No provision of the Option shall be deemed amended or waived unless such amendment or waiver is set forth in a writing signed by both parties. No act or failure to act by a party shall be deemed a waiver of its rights hereunder, and no waiver in any one circumstance or of any one provision shall be deemed a waiver in other circumstances or of other provisions.

b. Holidays. If any date set forth in this Option or computed pursuant to this Option falls on a Saturday, Sunday, or national holiday, such date shall be deemed automatically amended to be the first business day following such weekend day or holiday.

c. Attorneys’ fees. In the event of any breach or default hereof by a party, the non-defaulting party shall be entitled to bring an action to recover its costs and expenses of litigation and settlement, including, without limitation, attorneys’ fees and expenses, court costs, settlement costs, and experts’ costs and fees.

d. Survivability. The provisions of this Option shall survive the closing of the Conservation Easement donation to Buyer.

e. Successors. This option and the contract resulting from the exercise thereof shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of the respective parties.

**IN TESTIMONY THEREOF**, the parties have hereunto set their hands and seals, or if corporate have caused this instrument to be executed in their corporate names by their duly authorized representatives as of the dates indicated below.

**SELLER:**

**Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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| SEAL-STAMP | **NORTH CAROLINA, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County**  The undersigned, a Notary Public for said County and State, does hereby certify that **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** personally appeared before me this day and duly acknowledged the execution of the foregoing Option to Purchase Conservation Easement. **Witness** my hand and official stamp or seal on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_, 201\_.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Notary Public  My commission expires:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**BUYER:**

**Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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| SEAL-STAMP | **NORTH CAROLINA, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County**  The undersigned, a Notary Public for said County and State, does hereby certify that **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(official title) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_personally appeared before me this day and duly acknowledged the execution of the foregoing Option to Purchase Conservation Easement. **Witness** my hand and official stamp or seal on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_, 201\_.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Notary Public  My commission expires:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Conservation Easement Option Map:

Map to provide total estimated acres to receive to agricultural conservation easement. Any areas not the receive the agricultural conservation easement such as farmsteads must also be defined.