

Prepared by and return to:
Durham County Attorney's Office 200 East Main Street, Durham, NC 27701

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**AMENDMENT TO CONSERVATION EASEMENT
VAN ELLIS FARM**

This amendment to Deed of Conservation Easement ("Conservation Easement") is made as of the ____ day of _____, 2019, by and among VAN B. ELLIS and wife, EDNA L. ELLIS having an address of P.O. Box 168, Bahama, North Carolina, 27503 ("GRANTOR"), to the COUNTY OF DURHAM, STATE OF NORTH CAROLINA, a political subdivision of the state of North Carolina, having an address of 200 East Main Street, Durham, NC 27701 ("GRANTEE"), and the United States of America ("United States") acting by and through the United States Department of Agriculture, Natural Resources Conservation Service (hereinafter "USDA", "United States", or "NRCS"), acting on behalf of the Commodity Credit Corporation as its interest appears herein. The Grantor, Grantee, and the United States are collectively referred to as "The Parties".

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successor and assigns, and shall include singular, plural, masculine, feminine or neuter as require by context.

RECITALS

- A. The Grantor is the sole owner in fee simple of a certain farm property ("Protected Property") identified in Exhibit A and located in Mangum Township, Durham County, North Carolina and identified on the plat of the property entitled "Durham County – Ellis Conservation Easement" prepared by Riley Surveying P.A. which plat is recorded at Plat Book 192, Page 335, Durham County Registry with said farm property totaling 69.08 acres.

- B. The Grantee is holder of a Conservation Easement executed and recorded on the 31st day of December 2013 in the Durham County Registry in Deed Book 7422, Page 718 the “Conservation Easement”);
- C. The primary purpose of said Conservation Easement is to forever conserve the agricultural productivity of the Protected Property, its value for resource preservation as open space, and to protect the agricultural soils and agricultural viability and productivity by limiting nonagricultural uses of the Protected Property;
- D. The Protected Property also includes outstanding woodland and riparian habitats for a variety of wildlife species of importance to the Grantee, the people of Durham County and the people of North Carolina;
- E. The Protected Property contains several unnamed tributaries that drain south into Lake Michie, a source of drinking water for residents of Durham County, and where the Property is within the Flat River Watershed and the Flat River Agricultural Priority Area. It is a secondary purpose of the Conservation Easement to protect the natural wildlife habitat, historical, and scenic resources. The agricultural, natural, wildlife habitat and scenic resources of the Property are collectively referred to as the “Conservation Values” of the Property.
- F. Natural resource restoration and enhancement activities are expressly permitted in Section 3.10 of the Conservation Easement such that the Grantor may engage or contract with others to engage in any activity designed to repair, restore, or otherwise enhance the natural resources found or once present on the Protected Property, that are consistent with the Conservation Values and the Conservation Plan and subject to the written approval of Grantee.
- G. Pursuant to Section 6.3 of the Conservation Easement, amendment of Conservation Easement is expressly permitted only if, in the sole judgement of the Grantee and the United States, by and through the NRCS, such amendment is consistent with the purposes of the Conservation Easement and complies with all applicable laws and regulations. The Grantee must provide timely written notice to NRCS of any proposed amendment(s). Prior to signing and recordation of an amendment to the Conservation Easement, such amendment(s) must be mutually agreed upon by the Grantee, Grantor, and the United States, by and through the NRCS.
- H. Grantee has reviewed the proposed amendment, found it consistent with the purposes of the Conservation Easement, provided timely written notice to the NRCS of the proposed amendment; and both Grantee, Grantor, and United States, by and through the NRCS, have mutually agreed upon the amendment.
- I. Grantor desires to convey to the State of North Carolina, and the State of North Carolina seeks to accept, by and through a subordinate Deed of Conservation Easement,

certain conservation easements that permit the restoration and enhancement of certain watercourses on the Protected Property.

- J. The purposes of this subordinate Deed of Conservation Easement Deed are for acquiring, maintaining, restoring, enhancing, creating and preserving wetland and riparian resources that contribute to protection and improvement of water quality, flood prevention, fisheries, aquatic habit.
- K. Grantee has reviewed the proposed subordinate Deed of Conservation Easement and found that it is compatible with the agricultural viability and Conservation Values of the Protected Property and the Conservation Plan.

NOW, THEREFORE, in consideration of the premise and the mutual benefits, the conservation benefits recited herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby amend the Conservation Easement:

- 1. Article III, Section 3.8 of the Conservation Easement shall be deleted and replaced in its entirety as follows:

Water Rights. Except for the water rights given to the State of North Carolina in the Deed of Conservation Easement and Right of Access recorded in the Durham County Register of Deeds on the ____ day of _____, 2019, and recorded in Deed Book ____ Page ____ Durham County Registry, Grantor shall retain and reserve the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Protected Property. Grantor shall not transfer, encumber, lease, sell, or otherwise separate such water right from the title of the Protected Property itself.

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

To the Grantor:

Van B. and Edna L. Ellis
P.O. Box 168
Bahama, NC 27503

To the Grantee:

**Durham County Open Space &
Farmland Protection Program**
200 East Main Street, 4th Floor
Durham, NC 27701

To the United States:

State Conservationist
4407 Bland Rd
Suite 117
Raleigh, NC 27609

- 3. Defined terms used in this Amendment have the meanings given to them in the Conservation Easement unless otherwise specifically set forth herein. Except as expressly amended by this Amendment, all the terms and conditions of the Conservation Easement shall remain in full force and effect, and the parties hereto ratify and confirm the same.

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

GRANTOR:

By: _____
Van B. Ellis

By: _____
Edna L. Ellis

Date: _____

Date: _____

ACKNOWLEDGEMENT OF GRANTOR:

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public in and for the aforesaid County and State, do hereby certify that Van B. Ellis and wife, Edna L. Ellis personally appeared before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official stamp or seal this ____ day of _____, 2019.

(stamp)
Notary Public

My commission expires: _____

Accepted:

GRANTEE: COUNTY OF DURHAM

By: _____
Wendell M. Davis, County Manager

ATTEST:

By: _____
Monica Toomer
Interim Clerk to the Board of County Commissioners

[County Seal]

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of _____
County, North Carolina, certify that Monica Toomer personally came before me this day and
acknowledged that she is Interim Clerk of the Board of County Commissioners of Durham County,
and that by authority duly given, the foregoing instrument was signed in its name by its Manager,
sealed with its corporate seal and attested by herself as its Interim Clerk.

WITNESS my hand and official seal, this ____ day of _____, 20__.

Notary Public

My commission expires: _____

(seal)

ACCEPTANCE OF AMENDMENT TO PROPERTY INTEREST BY THE NATURAL
RESOURCES CONSERVATION SERVICE ON BEHALF OF THE UNITED STATES OF
AMERICA

The Natural Resources Conservation Service, an agency of the United States Government,
hereby accepts and approves the foregoing Amendment to Conservation Easement, and the rights
conveyed therein, on behalf of the United States of America.

By: _____
Timothy A. Beard
State Conservationist

NORTH CAROLINA
COUNTY OF _____

I, _____, Notary Public of _____ County, North
Carolina, do hereby certify that _____, personally appeared
before me and acknowledged that due execution of the foregoing instrument on behalf of the
Natural Resources Conservation Service.

Witness my hand and official stamp or seal this ____ day of _____, 2019.

_____ (Official Seal)
Notary Public

My commission expires: _____