

Tax Parcel PIN #(s) – 0512-45-3656

This instrument prepared by and should be returned to:

Grainger R. Barrett
County Attorney
P.O. Box 1829
Fayetteville, N.C. 28302

**STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND**

**MILITARY MISSION AND OPERATIONS AREA
CONSERVATION AND PROTECTION AGREEMENT
FOR A DEFINITE TERM**

This MILITARY MISSION AND OPERATIONS CRITICAL AREA CONSERVATION AND PROTECTION AGREEMENT FOR A DEFINITE TERM ("Agreement") is made on this 1st day of October, 2005, by MCCORMICK FARMS LIMITED PARTNERSHIP ("Grantor"), and the COUNTY OF CUMBERLAND, North Carolina, ("Grantee"), a body politic and corporate and a subdivision of the State of North Carolina, P.O. Box 1829, Fayetteville, N.C. 28302.

RECITALS & PURPOSES

- A. Grantor is the sole owner in fee simple of the property ("Property"), being approximately 89.09 acres, in the County of Cumberland, State of North Carolina and being that tract or portion of a tract identified in Exhibit A attached hereto and by this reference incorporated herein; and
- B. The Grantee has authority in Part 4, Art. 19, of Chapter 160A of the North Carolina General Statutes to acquire, lease and/or enter into deeds, easements and other agreements to preserve and conserve open space and natural resources; and
- C. The Property is located in the Fort Bragg Land Use Study Area conducted by the Fort Bragg Regional Land Use Advisory Commission, and is designated a military mission and operations critical or important tract in the Cumberland County Planning Department Small Area Land Use Study for such area; and
- D. Fort Bragg and Pope Air Force Base missions are critical to the security and well-being of the nation, and are central to the identity, quality of life and economic vitality of the Cumberland County community; and
- E. The overall aggregate pattern of development of land uses around Fort Bragg and Pope Air Force Base directly affects the suitability and compatibility of military missions which can be performed at the bases; and
- F. It is in the public interest to maintain and enhance the military missions of Fort Bragg and Pope Air Force Base, and that further intense and/or urban development of tracts five acres or larger designated military mission and operations critical and important in the study area be minimized, while protecting property owners' property rights, economic interests and investment expectations; and

It is in the public interest that Cumberland County afford owners of tracts five acres or larger designated military mission and operations critical and important in the study area a voluntary opportunity to enter into Agreements intended to minimize further intense and/or urban development of their tracts during the term of the Agreement by maintaining (i) open spaces, or (ii) woodland, agricultural, or rural settings, scenic vistas and natural views, or

(iii) natural resources such as pastures, meadows, fields, rock outcroppings, creeks, streams, wetlands, croplands, etc.

NOW, THEREFORE the Grantor hereby unconditionally and irrevocably bargains and sells and conveys to Cumberland County, its successors and assigns, an easement for the term stated below for conservation and open space and natural resources protection purposes. Grantor covenants and agrees, for the direct benefit of Cumberland County, to preserve and conserve the Property substantially in the same condition and state of development as exists on the effective date hereof for the term of ten (10) years from the date this Agreement is recorded in the Cumberland County Registry, terminable as set forth herein.

The effective date of this Agreement shall be the date it is recorded in the Cumberland County Registry. Grantor may terminate this Agreement effective no sooner than five years from the commencement hereof, but only on at least one year's prior written notice to County.

Article I. Uses and Activities.

A. Definitions.

1. Current Uses include agriculture generally, such as farming, livestock, husbandry, horticulture, silviculture, nursery, timber, forest products, and other miscellaneous uses. Activities associated with livestock uses include raising, feeding, breeding, herding, moving, loading, buying and selling horses, cattle, goats, chickens, and dogs. Current Activities associated with agriculture uses include disking, fertilizing, and applying herbicides, insecticides, pesticides and fungicides to cropland and pasture. They also include planting, sowing, harvesting, cutting, raking, baling, milling, grinding, and storing row crops, hay, grass, and straw. Current Activities associated with timber uses include planting, fertilizing, burning and applying herbicides, insecticides, fungicides, and pesticides to timberland. They also include harvesting, felling, logging, loading, transporting, and selling timber, logs, poles, pulpwood, and firewood. Current Activities associated with forest products include clearing, burning, and applying herbicides, insecticides, pesticides and fungicides to timberland. They also include raking, baling, loading, storing, and selling pine straw. Other Miscellaneous Uses and Activities include hunting, fishing, trapping; leased hunting, fishing and trapping rights; riding horses, mules and ponies; clearing land, removing stumps; drilling wells; installing water and electric lines, and building driveways, unimproved roads, fire lines, farm residences, farm buildings, well houses, and sheds in support of farming and agriculture. Current Uses and Activities also include the rental and maintenance of the three dwellings that currently exist on the Property.

2. Commercial Uses. Industrial, manufacturing or commercial uses and activities not directly related to or supportive of agricultural, horticultural, silvicultural, forestry, nursery or other uses permitted under the A-1 zoning classification.

3. Development. Development includes the construction, building, sale, lease, rent, and maintenance, of houses, offices, plants, facilities, buildings, roads, parking lots, grounds and associated infrastructure not directly related to or supportive of agriculture, horticulture, silviculture, forestry, nursery or of other uses permitted under the A-1 zoning classification.

B. Prohibited and Restricted Uses and Activities.

During the term of this agreement, the following activities are prohibited or restricted:

1. "Commercial Uses" and "Development" as described in Article I, Paragraph A. are specifically prohibited.
2. Grantor may not itself, or permit others to, dump trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the property.
3. Filling, excavation, dredging, mining or drilling, or removal of topsoil, sand, gravel, rock, peat, minerals or other materials, or changes in the topography of the land shall be prohibited except as necessary for the purposes of combating erosion or as incidental to Permitted Uses and Activities allowed by this Agreement.
4. Although permitted uses in the A1 zoning classification, quarries, airports, assemblies, motor vehicle service stations and borrow source operations shall not be permitted under this Agreement.
5. The Property may not be subdivided, or partitioned, except that the Property may be subdivided into tracts five acres in size or larger.

C. Permitted Uses and Activities.

1. Current Uses and Activities described in Article I, Paragraph A. are permitted and can be expanded or extended without limitation or restriction.

2. Additional Uses or Activities, i.e., any uses or activities that are not Current Uses and Activities and that are not Prohibited and Restricted Uses and Activities, but are related to or extensions of Permitted Uses and Activities shall be considered Permitted Uses and Activities, however, Best Management Practices associated with those Additional Uses or Activities must be implemented. The term “related to or extensions of Permitted Uses and Activities” shall be construed and interpreted broadly consistent with the intent of this Agreement, to allow the widest variety of agricultural uses, including, by way of example but not of limitation, directly supporting retail uses such as feed stores or blacksmith shops and retail outlets for agricultural products such as nurseries or wineries, while avoiding urban-type development not appropriate, consistent with proper land use planning, to be located near active military uses now existing or existing during the term of this Agreement. The term “related to or extensions of Permitted Uses and Activities” shall be construed and interpreted broadly to allow Grantor wide flexibility in adapting to and evolving changed agricultural conditions and best management practices.

Such Additional Activities may include, for example, farming, silvaculture, husbandry, timber, forestry, horticulture, nursery or related uses or businesses (such as, by way of example but not by way of limitation, agricultural supply or nursery wholesale and retail sales). Best Management Practices may include, for example, taking appropriate steps to maintain water quality, minimize sedimentation in or over the Property or into surface waters, etc.

In adopting Additional Uses and Activities, the parties desire to conserve, where consistent with such uses, the Property’s (i) open spaces, and/or (ii) woodland, agricultural or rural settings, and/or (iii) scenic and natural vistas, and/or natural resources such as meadows, pastures, fields, woods, croplands, rock outcroppings, creeks, streams, wetlands, etc.

Article II. Enforcement and Remedies.

- A. Upon any breach of the terms of this Agreement by Grantor that comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to begin undertaking actions that are reasonably calculated to correct promptly the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Agreement by appropriate legal proceedings including for injunctive and other related relief.
- B. Grantee, its employees and agents and its successors and/or assigns, shall have the right, with reasonable notice and at reasonable times, to enter the Property for the purpose of inspecting the Property to determine whether the Grantor and its successors and/or assigns are complying with the terms, conditions and restrictions of this Agreement. Grantor shall not be liable to Grantee, its employees and agents and its successors and/or assigns, for any personal injury or damage which may result from Grantee’s exercise of this right of inspection, and Grantee shall, to the extent allowed by law, hold harmless and indemnify Grantor against any such personal injury or damage which may result from Grantee’s exercise of this right of inspection.
- C. Nothing contained in this Agreement 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.

Article III. Documentation and Title.

- A. Property Condition. The parties acknowledge that the Property is currently developed to the following extent, as generally described in Exhibit B, attached hereto and incorporated by reference, which sets forth a narrative description of the general extent of use and/or development of the property as of the date hereof. Exhibit C, attached hereto and incorporated by reference, is an aerial photograph of the Property from the County’s GIS system.

- B. Title. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant this Agreement and convey the easement rights hereby conveyed, that the Property is free and clear of any and all encumbrances, except agreements of record, and Grantor covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Agreement. .

Article IV. Compensation.

- A. In consideration of this Agreement, Grantee shall pay to Grantor \$347.15 annually on each February 1 that this Agreement is in effect, contingent upon (i) Grantor's compliance herewith, and (ii) Grantor's timely payment of ad valorem property taxes attributable to the calendar year preceding such February 1. Grantor acknowledges that such payment is made in consideration of the term hereof being at least ten (10) years. If Grantor shall terminate this Agreement in his, her or its discretion prior to expiration of the stated term hereof, then Grantor shall reimburse to Grantee a pro rata portion of the compensation payments made hereunder, as follows: (I) if termination occurs during the first five years, Grantor shall reimburse Grantee all amounts paid by Grantee as compensation hereunder; (II) if termination occurs after the fifth year, then Grantor shall reimburse Grantee half [50%] of all amounts paid by Grantee as compensation hereunder attributable to any period after the fifth year of the term hereof. Grantor shall make such payment to Grantee within 45 days after the effective date of a termination triggering such reimbursement obligation.
- B. In further consideration of this Agreement, Grantee shall assess, during the term of this agreement, Grantor's Property for ad valorem property tax purposes at the lower of its current assessment or the assessment which Grantee's Tax Administrator would apply to the Property were the Property zoned CD (Conservation District). The Grantor and Grantee acknowledge that Grantee's Tax Administrator assesses CD real property at the rate of \$700 per acre.
- C. Nothing in this agreement shall be construed to affect or otherwise alter the zoning classification of the Property at the end of the term of this agreement. Nothing in this agreement shall be construed to affect or otherwise alter the Grantor's use of the Special Use tax program at the end of the term of this agreement.

Article V. Miscellaneous.

- A. Subsequent Transfers. 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 part thereof, is to be transferred after the effective date hereof at least ten business days prior to the time said transfer is consummated. Grantor, for itself, its successors and/or assigns, further agrees to make specific reference to this Agreement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Property is conveyed.
- B. Conservation Purpose. Grantee, for itself, its successors and assigns, agrees that this Agreement shall be held by it exclusively for conservation of natural resource, agricultural, agroforestry, silvopasture, forestry, horticulture, silvaculture , open space purposes or related uses as more fully described above.
- C. The parties hereto agree that the benefits of this Agreement are not assignable.
- D. Construction of Terms. This Agreement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. 160A-401 et seq., which authorizes the creation of open space and natural resource conservation agreements, easements, deeds, etc. for purposes including those set forth in the recitals herein.
- E. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Agreement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Agreement. If any provision shall be found to be invalid, the remainder of the provisions of this Agreement, 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.
- F. Recording. The Grantee may record this instrument and any amendment hereto in timely fashion in the official records of the Cumberland County, North Carolina Registry.
- G. Notices. Any notices shall be sent by certified mail, return receipt requested, addressed in the case of Grantor, to McCormick Farms Limited Partnership, 8195 McCormick Bridge Road, Spring Lake, NC 28390, and in the case of

Grantee to Cumberland County, c/o County Manager, P.O. Box 1829, Fayetteville, N.C. 28302, or to such other addresses such party may establish in writing to the other.

H. Environmental Condition of Property. The Grantor warrants and represents to the Grantee that to the best of its knowledge as of the date hereof there are no hazardous materials, substances, wastes, or environmentally regulated substances located on, in or under the Property or used in connection therewith. Notwithstanding the foregoing, Grantor expressly advises Grantee that asbestos was a common building material at the time many structures on the Property were constructed, and Grantor makes no warranty or representation to Grantee as to the presence or absence of asbestos in any particular structure on the Property. Grantor further expressly advises Grantee that use of regulated or restricted chemicals incorporated into pesticides, insecticides, herbicides, etc. is customary, common and normal incidental to the activities carried on by Grantor and permitted hereunder, and Grantor makes no warranty or representation to Grantee as to the presence or absence of such regulated or restricted chemicals on the Property.

TO HAVE AND TO HOLD unto Cumberland County, North Carolina, its successors and assigns, forever on the terms above stated. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor and Grantor's successors and/or assigns, and shall continue as a servitude running during the term of this Agreement with the Property.

IN WITNESS WHEREOF, Grantor and Grantee by authority duly given, have hereunto caused these presents to be executed by their respective officers and their corporate seals affixed, as of the date first appearing hereinabove, to be effective upon the date of recordation in the public registry of Cumberland County, North Carolina.

GRANTOR:

MCCORMICK FARMS LIMITED PARTNERSHIP

By: BGM Farms, Inc, its General Partner

By: Thomas Lea Brooks IV, its President

WITNESS:

GRANTEE: CUMBERLAND COUNTY,

NORTH CAROLINA

By: _____

Chairman of the Board of Commissioners

ATTEST

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

I, _____, a Notary Public in and for the State of North Carolina, certify that _____ personally appeared before me this day and acknowledged that he is the _____ Secretary of McCormack Farms, Inc., a corporation; that _____ is the _____ of said limited partnership; that said instrument was signed by said _____ on behalf of said limited partnership, all by its authority duly granted; and that he acknowledged the said instrument to be the act and deed of the said limited partnership.

WITNESS my hand and seal this the ___ day of _____, 2006.

Notary Public

[Notary Stamp or Seal]

My commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

I, _____, a Notary Public in and for the State of North Carolina, certify that MARSHA FOGLE personally appeared before me this day and acknowledged that she is the Clerk to the Cumberland County Board of Commissioners; that BILLY R. KING is the Chairman of said Board; that said instrument was signed and sealed by him and attested by the said Clerk on behalf of said Board, all by its authority duly granted as the act and deed of the said Board.

WITNESS my hand and notarial seal this ___ day of _____, 2006.

Notary Public

My commission expires:

STATE OF NORTH CAROLINA

CUMBERLAND COUNTY

The foregoing certificate(s) of _____, Notaries Public, are certified to be correct.

This ___ day of _____, 2006.

Register of Deeds

EXHIBIT "A" TO MILITARY MISSION AND OPERATIONS AREA CONSERVATION AND PROTECTION
AGREEMENT

BEING all of Cumberland County Tax Map Lot PIN 0512-45-3656