NORTH CAROLINA
DURHAM COUNTY

LEASE BETWEEN THE CITY OF DURHAM AND
THE STATE OF NORTH CAROLINA FOR MST TRAIL
SIX PARCELS NORTH OF THE ENO RIVER

THIS LEASE is made as of the _____ day of _____, 2016 between the City of Durham (hereinafter "Durham") and the State of North Carolina under the authority of North Carolina General Statute 160A-274 (hereinafter "the State").

1. **GRANT**. The City of Durham hereby leases to the State to be administered by the North Carolina Department of Agriculture & Consumer Services, Plant Conservation Program, an agency of the State of North Carolina (hereinafter "NCDA&CS"), and the State accepts, all of the land in parcels, PIN 179770, PIN 179766, PIN 179767, PIN 179768, PIN 179792, and PIN 179790 lying north of the Eno River and extending from the boundary line of the subject parcel with the land of the United States of America ("Point A" on the map below)west to that point where a southward extension of the eastern boundary of the land of the Eno River Association, PIN 207243, would intersect the subject property ("Point B" on the map), all as shown on the map attached as **Exhibit A** to this Lease ("**the Durham Property**"). The City of Durham Property is located in the County of Durham.

2. **TERM**. This Lease is for a period of twenty (20) years and shall begin February 1, 2016 and end January 31, 2036.

4. **CONSIDERATION of TRAIL CONSTRUCTION**. The consideration for this Lease is the State's agreement that it will allow the construction and maintenance of a recreational hiking trail on the State Property. The trail will be a segment of the Mountains-to-Sea Trail. The State shall not pay any rent or security deposit to Durham. As shown on Exhibit A, the trail segment to be constructed shall also cross portions of the Durham Property, land owned by the State of North Carolina, and land owned by the Eno River Association. The trail segment to be constructed shall connect that area of land known as "Penny's Bend" owned by the United States and administered by the US Army Corps of Engineers (lying on the north side of the Eno River just west of Old Oxford Road) with River Forest Park owned by the City of Durham lying on the north side of the Eno River. Shown on **Exhibit A** is a "GPS" track of the mutually agreed location of the trail segment.

5**. PURPOSE.** The State, through the North Carolina Department of Agriculture & Consumer Services, Plant Conservation Program ("PCP") shall use and manage the Durham Property to further the mission of PCP, which is to conserve the native plant species of North Carolina in their natural habitats, now and for future generations. In furtherance of this

mission, PCP shall manage the Durham Property in the same manner as it manages that portion of the State Property for which it is responsible. Management activities may include prescribed burns, planting of species designed to further the mission of PCP, and the removal or destruction of invasive or exotic plants and animal species. PCP will not construct, place or allow the construction or placement of any buildings or structures on the Durham Property, except structures and improvements which add to the safety and enjoyment of a recreational hiking trail, such as pedestrian bridges, boardwalks, styles, benches, and signage. The State shall not use the Durham Property for any other purpose than those described in this section**.**

6. **CONDITION OF PROPERTY**. The State accepts the Durham Property "as is, where is and with all faults."

7. **MOUNTAINS-TO-SEA TRAIL.** This Lease is conditioned on the following: (a) the State and NCDA&CS shall enter and keep in force an agreement with the Friends of the Mountains-to- Sea Trail (FMST), a North Carolina non-profit corporation, to allow FMST access to the State Property and the Durham Property to construct and maintain a recreational hiking trail open to the general public as part of the MST. (b) A recreational hiking trail open to the general public shall be constructed across the State Property and the Durham Property as a part of the Mountains to the Sea Trail (MST) within a reasonable period following the execution of this Lease by both parties and the execution of the agreement between the State/NCDA&CS and FMST. The hiking trail shall have a permeable surface and generally shall be constructed to the same standards as other permeable surface sections of the MST. (c) The hiking trail on the State Property and Durham Property shall be maintained as a hiking trail in accordance with the same standards as other sections of the MST having a permeable tread. Durham shall have no rights in the State Property. Durham shall have no obligations or responsibilities with regard to the construction and maintenance of the segment of the MST built on the State Property or the Durham Property, for any modifications made to the Durham Property by the State, NCDA&CS or FMST, nor for any other conditions on the Durham Property during possession of the Durham Property by the State, NCDA&CS or FMST, and Durham shall not be liable for any failure of these segments or associated modifications to the Durham Property to meet any particular standard. Should Durham be sued regarding any condition related to the State's use of the Durham property during the course of the State's possession of it, the State will provide defense of Durham with legal counsel reasonably acceptable to Durham.

8. **NO ASSIGNMENT AND SUBLETTING**. The State shall not assign this Lease or sublet the Durham Property to any party. This shall not prevent the State from entering into an agreement for the construction and maintenance of a recreational hiking trail across a portion of the Durham Property. Neither party shall assign their rights under this Lease to another party without the written consent of the other party.

9. **TAXES.** During the term of this Lease, Durham shall pay all taxes and assessments imposed on the Durham Property.

10. **ACCESS TO PROPERTY BY DURHAM**. The State requires and Durham agrees to provide written notification to State two weeks prior to Durham and its agents and contractors entering the Durham Property to inspect, maintain, construct and reconstruct utility lines or other improvements related to providing utilities, or to take any actions as it may deem necessary to ensure the continued natural flow of the Eno River. In case of an emergency, the State understands that Durham will notify the State as soon as is reasonably possible. In exercising Durham's rights under this Section, Durham and its agents and contractors shall exercise such rights in a manner and at such times so as to minimize interference with the State's use and occupancy of the Durham Property.

11. **VACATING.** The State shall surrender possession of the Durham Property on or before the end of the term unless it is extended as set forth in this Lease. Time is of the essence in complying with the preceding sentence.

12. **DEFAULT**. **WAIVER**.

(a) **Default**. If the State fails to perform a material obligation under this Lease, and such failure continues for ninety (90) days after notice of such failure is sent, then Durham may at any time terminate this Lease and cause the State's estate to be ceased. In the event of termination, the State shall deliver possession of the Durham Property to Durham. In addition, Durham may reenter and take possession in accordance with legal procedures. A termination of this Lease by Durham shall automatically terminate the agreement between the State and FMST for the construction and maintenance of the hiking trial across the Durham Property and the State Property.

(b) **Waiver**. Either party's waiver of or failure to exercise or enforce any of its rights under this Lease shall not constitute a waiver of any right thereunder. The parties' respective rights under this Section are in addition to other rights under this Lease or as provided by law.

13. **ADA**. If either party receives any notice or document (i) which alleges any violation of the Americans with Disabilities Act ("ADA") relating to the Durham Property, or (ii) which pertains to any claim made or threatened relating to the Durham Property regarding alleged noncompliance with the ADA, or (iii) which pertains to any governmental or regulatory action or investigation instituted or threatened relating to the Durham Property regarding alleged noncompliance with the ADA, it shall, within ten (10) days after receipt of such notice or document, provide the other party with a copy.

14. **ADDRESSES. NOTICES**. Notices to the Durham shall be in writing and such notice shall be sent to:

Real Estate Manager
City of Durham

General Services Department
Real Estate Division
101 City Hall Plaza
Durham, North Carolina 27701
Office: (919) 560-4197
Fax: (919) 560-4196

With a copy to:

Friends of the Mountains-to-Sea Trail
PO Box 10431
Raleigh, NC 27605

Notices to the State shall be in writing and shall be sent to:

The State of North Carolina
Attention: Todd Wahler
Title: Real Property Agent
1001 Mail Service Center
Raleigh, NC 27699-1001
919-707-3099
919-715-0291

With a copy to:

Friends of the Mountains-to-Sea Trail
PO Box 10431
Raleigh, NC 27605

By sending a notice stating its new address, either party may change the address to which notices may be sent. Any notice required to be given under this Lease shall be deemed properly given on the date it is personally delivered, delivered to an overnight courier service, sent by telecopy (facsimile) transmission, or deposited with the United States Postal Service by registered or certified mail, postage prepaid, return receipt requested.

15. **INTERPRETATION**. Unless the context requires otherwise, the singular includes the plural, and vice versa. "Including" and "included" mean including or included but not limited to. Section headings are not for interpretation of this Lease. If any provision of this Lease shall be determined to be invalid or unenforceable in whole or in part, for any reason, such invalidity or unenforceability shall not affect the validity or enforceability of any of the remaining provisions and such invalid or unenforceable provision shall be revised so that it will be valid and enforceable to the maximum extent legally possible consistent with its intent.

16. **COVENANTS**. Durham warrants that Durham has title to the Durham

Property, the right to lease the Durham Property to the State, and that for as long as the State is not in default under this Lease after notice and the opportunity to cure, the State shall have peaceable possession and quiet enjoyment of the Durham Property for the Term.

17. **MEMORANDUM**. At either party's request, the other party shall execute and deliver a memorandum of this Lease in the form reasonably requested by the requesting party and as prepared by the requesting party.

18. **CITY POLICY. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER DURHAM CONTRACTS.**

IN WITNESS WHEREOF, the parties have executed this Lease as of the date written above.

ATTEST:

CITY OF DURHAM

_____

_____ Clerk

By _____

City Manager

STATE OF NORTH CAROLINA

BY:_____

G. Kent Yelverton, P.E., Director
Real Property & Construction Division
North Carolina Department of Agriculture & Consumer Services

STATE OF NORTH CAROLINA

COUNTY OF WAKE

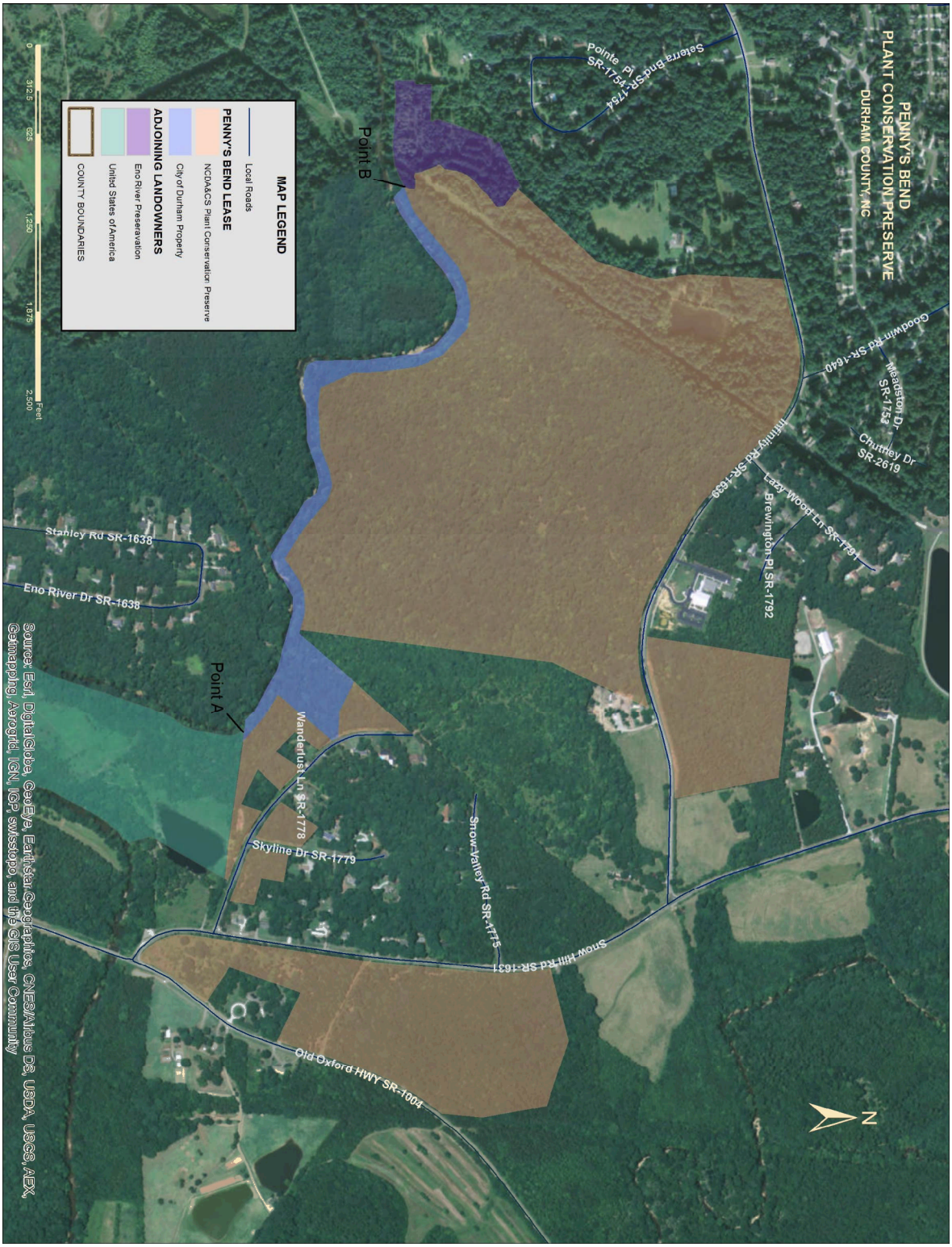
I, _____, a Notary Public for said County and State aforesaid, do hereby certify that G. Kent Yelverton personally appeared before me this day and acknowledged the due execution by him of the foregoing instrument as Director for the North Carolina Department of Agriculture & Consumer Services, and that he has appropriate authority vested in him to bind the State for the purposes herein expressed.

WITNESS my hand and official seal this ___ day of _____, 201_.

_____
NOTARY PUBLIC

My Commission expires _____.

EXHIBIT A


PENNY'S BEND
PLANT CONSERVATION PRESERVE
DURHAM COUNTY, NC
Goodwin Rd SR-1640
Meadston Dr SR-1753
Chutney Dr SR-2619
Infinity Rd SR-1639
Lazy Woof Ln SR-1791
Brewington Pl SR-1792
Pointe Pl SR-1754
Sierra Bnd SR-1754
Point B
Point A
Stanley Rd SR-1638
Eno River Dr SR-1638
Wanderlust Ln SR-1778
Skyline Dr SR-1779
Snow Valley Rd SR-1775
Snow Hill Rd SR-1631
Old Oxford HWY SR-1004
N
MAP LEGEND
Local Roads
PENNY'S BEND LEASE
NCDA&CS Plant Conservation Preserve
City of Durham Property
ADJOINING LANDOWNERS
Eno River Preservation
United States of America
COUNTY BOUNDARIES
0 312.5 625 1,250 1,875 2,500 Feet
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community