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STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

RIGHT OF WAY
AGREEMENT

KNOW ALL MEN BY THESE PRESENTS that the TRANSYLVANIA COUNTY BOARD OF EDUCATION, a North Carolina public body (hereinafter called Grantor), for and in consideration of One Dollar in hand and other good and valuable consideration paid by the City of Brevard, hereby grants and conveys to the City of Brevard, its successors and assigns forever, a twenty (20) foot wide right-of-way and easement for the exclusive purposes of maintaining, operating, repairing, altering and replacing a trail to be built for public purposes, for pedestrians, bicycles and other non-motorized forms of travel, and electric motorized bicycles which are approved by the City Ordinance for use on the bike/hike trail, over, through and across the lands of Grantor, being that property described in the deeds recorded in Book 702 at page 362 and in Book 302 at page 352 in the Transylvania County Registry, and as shown on a plat, recorded on _____ 2021, in Plat File 21, Slide _____ Transylvania County Registry, prepared by Carolina Mountain Surveying, Brevard, North Carolina dated October 27, 2021.

This right of way runs from the northeast boundary of Grantor's property, down the westernmost boundary of the said property then across the property following the current soccer field to the right-of-way for North Country Club Road at the southeast boundary of Grantor's property. The easement hereby granted crosses over that easement granted by the Grantor to Duke Power recorded in Book 234 at page 644, and to Cadence Point, LLC, recorded in Book 475 at page 62 of the Transylvania County Registry. The Grantee shall be solely responsible for obtaining releases or other permission from such easement owners, and shall indemnify and hold the

Grantor harmless from any loss on account thereof.

There is included in this conveyance the right to construct, maintain, operate, repair and remove said bike/hike trail. The City of Brevard shall have all rights and benefits necessary or convenient for the full enjoyment and use of the right herein granted, including, but without limiting the same to the free and full right of ingress and egress over and across said lands of the Grantor to maintain the same; further, to clear the right-of-way from the growth of trees, undergrowth and other obstructions within said right-of-way that may injure, endanger, or interfere with the use of said right-of-way as described herein above.

Said right-of-way and easement are hereby conveyed unto the City of Brevard, its successors and assigns, to have and to *hold* forever. The Grantor hereby warrants and affirms that the Grantor is the owner of the lands above described and does hereby bind itself, its successors and assigns to warrant and forever defend all the said premises conveyed unto the said City of Brevard, its successors and assigns from and against all persons whomsoever claiming or to claim the same, or any part thereof.

In consideration for this conveyance, the Grantee, further agrees that:

1. The Bike-Hike trail as constructed shall be approximately ten (10) feet in width and shall be paved by Grantee, using asphalt, totally encompassed within the said twenty (20) foot wide easement. Nothing shall be constructed in the area of the easement outside of the ten (10) foot wide paved area unless expressly agreed to in writing between the parties.
2. In the event the Bike-Hike Trail as constructed results in a reduction of the actual size, below the current width of 28.35 feet, of the currently existing exit to North Country Club Road from the parking lot shown on the plat incorporated herein, the Grantee shall enlarge the exit to retain a paved exit lane of at least 28.35 feet wide by expanding the exit to the prior width at their sole expense.
3. In the event that the City closes the bike-hike trail, all interest in and to the right of way granted herein shall revert to Grantor. The reversion may be evidenced by the recordation of a certified copy of the closure resolution, without further action being required.

These requirements and restrictions on the property shall be permanent and perpetual and shall run with the land and shall be binding upon the City of Brevard, and all parties having any right, title,

or interest in the property, and their heirs, successors, and assigns, and shall be binding upon all those claiming by, through, or under each such party, in perpetuity. Furthermore, the State, and its agents, employees, and representatives shall have the right of entry and access to the property for the purposes of inspecting the property and exercising its enforcement rights.

In the event the City of Brevard, its successors or assigns, wishes to transfer the property or any interest therein, it shall notify the Grantor in writing the names and addresses of any party to whom the property is intended to be transferred at least sixty (60) days prior to the time said transfer is to be consummated. Any transferee of the property of any interest therein shall take title subject to the limited purposes, requirements and restrictions referenced herein or applicable to the property. City of Brevard, its successors, and assigns, shall make specific reference to these restrictions in a separate paragraph of all subsequent leases, deeds, or other legal instruments by which the Property or any interest therein is conveyed.

It is agreed that this instrument covers all agreements between the parties and no representations or statements, verbal or written, have been made, modifying, adding to, or changing the terms of this instrument.

IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal, this ____ day of _____, 2021.

TRANSYLVANIA COUNTY BOARD OF EDUCATION

By: _____, Chairman
Tawny B. McCoy

By: _____, Superintendent and Ex-Officio Secretary
Jeffrey McDaris

This Right of Way Agreement and all terms and conditions hereof are approved and accepted on behalf of the City of Brevard by the undersigned City Manager, this the ____ day of _____, 2021.

CITY OF BREVARD

By: _____

JAMES FATLAND, City Manager

State of North Carolina

County of Transylvania

I, _____, a Notary Public the above stated state and county, hereby certify that on this day, the foregoing instrument was produced to me in Transylvania County, North Carolina, and Tawny B. McCoy, Chairman of the TRANSYLVANIA COUNTY BOARD OF EDUCATION and Jeff McDaris as Superintendent and Ex-Officio Secretary for the TRANSYLVANIA COUNTY BOARD OF EDUCATION, personally appeared and executed and acknowledged the foregoing instrument as the act, word and deed of the said TRANSYLVANIA COUNTY BOARD OF EDUCATION; that they are known to me and are known to me to be the people described in the foregoing instrument.

WITNESS my hand and official stamp or seal, this the _____ day of _____ 2021.

Notary Public

My Commission Expires: _____

State of North Carolina

County of Transylvania

I, _____, a Notary Public the above stated state and county, hereby certify that on this day, the foregoing instrument was produced to me in Transylvania County, North Carolina, and Jim Fatland, City Manager for the City of Brevard, personally appeared and executed and acknowledged the foregoing instrument as the act, word and deed of the said municipal corporation; and that he is known to me and is known to me to be the person described in the foregoing instrument.

WITNESS my hand and official stamp or seal, this the _____ day of _____ 2021.

Notary Public

My Commission Expires: _____