

CONSERVATION EASEMENT

Property Project # _____

Prepared by: Conserving Carolina, and North Carolina Land and Water Fund

After Recording Return to: Conserving Carolina, 847 Case St., Hendersonville, NC 28792

NORTH CAROLINA
Parcel Identification Nos.

TRANSYLVANIA COUNTY
NCLWF No.

THIS DEED OF CONSERVATION EASEMENT ("**Conservation Easement**") is made, given, granted, and executed on this the ____th day of June, 2023 by and between _____ organized and existing under the laws of the State of North Carolina ("**Grantor**"), its address being 847 Case St., Hendersonville, NC 28792 and Conserving Carolina ("**Grantee**"), their address being: 847 Case St., Hendersonville, NC 28792. Grantor and Grantee may hereinafter be referred to as a "**Party**" and collectively as the "**Parties**."

RECITALS & CONSERVATION PURPOSES

A. Grantor owns in fee simple absolute certain real property lying and being in Crab Creek Township, Etowah, North Carolina, which consists of 98.56 acres, and which is more particularly described in "**Exhibit A**" which is attached hereto and incorporated herein by reference as if fully set forth herein (the "**Property**").

B. Grantor is a nonprofit organization whose primary purpose is the conservation, preservation, or restoration of North Carolina's cultural, historical, environmental, or natural resources.

C. The State of North Carolina has enacted the Conservation and Historic Preservation Agreements Act, Chapter 121, Article 4 of the North Carolina General Statutes ("**N.C.G.S.**"), which provides for the enforceability of restrictions, easements, covenants, and conditions "appropriate to retaining land or water areas predominantly in their natural, scenic or open condition"

D. The North Carolina Land and Water Fund (the "Fund") is authorized by N.C.G.S. Chapter 143B, Article 2, Part 41 to acquire land and interests in land on behalf of the State:

- for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses,
- for the purpose of protecting and conserving surface waters and enhancing drinking water supplies, including the development of water supply reservoirs,
- to provide buffers around military bases to protect the military mission,
- that represent the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes, and
- that contribute to the development of a balanced State program of historic properties.

E. Grantor and Grantee have agreed to set aside a ____-acre area of the Property for the purpose of creating a conservation easement. The area is hereinafter referred to as the "Easement Area." The Easement Area is described in "**Exhibit B**" which is attached hereto and incorporated herein by reference as if fully set forth herein.

The Easement Area has the following conservation values and serves the following conservation purposes:

- to preserve, enhance, restore, and maintain the natural features and resources of the riparian buffer, to control runoff of sediment, and to improve and maintain the water quality, of portions of the French Broad River and Little Willow Creek,
- to preserve and maintain the natural features and resources of the riparian buffer, and to provide environmental, educational, and recreational uses, including partnership with Henderson County for the creation of a public park on the tract,
- to protect and preserve ecological diversity including natural features such as the French Broad River, Little Willow Creek, wetlands, and flood plain for recreational, scientific, educational, cultural, and aesthetic purposes.

Moreover, Grantor and Grantee recognize that the Easement Area has other conservation values and purposes, including fish and wildlife conservation, open space values, and scenic values (hereinafter, collectively with the conservation values described in this **Section E** of the Recitals and the conservation purposes of this Conservation Easement, the "**Conservation Values**").

F. Grantor has received or will receive a grant from Fund in accordance with Grant Contract No. 2021-405 between Grantor and Fund dated September 15, 2021 (the "**Grant Contract**"). In the Grant Contract, Grantor agreed to enter into this Conservation Easement. The terms and conditions of the Grant Contract are incorporated herein by reference as if fully set forth herein.

The Grant Contract is on file and available for public inspection in the offices of Grantor and Fund. The Grant Contract and this Conservation Easement are collectively referred to herein as the "**Project**."

G. Grantor and Grantee acknowledge that the Easement Area is currently unencumbered except as permitted in **Article V** of this Conservation Easement. The Easement Area's characteristics, its current use, and its state of improvement are described in a Baseline Documentation Report (the "**BDR**"), which is incorporated into the Grant Contract and is on file and available for public inspection in the offices of Grantee and Fund. The Parties acknowledge that the BDR is the appropriate basis for monitoring compliance with the objectives of preserving the Conservation Values and that it is not intended to preclude the use of other evidence (e.g. surveys, appraisals) to establish the condition of the Easement Area at the time of the execution of this Conservation Easement if there is a controversy over such condition.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Grantor hereby unconditionally and irrevocably gives, grants, and conveys forever and in perpetuity to Grantee, its successors and assigns, and Grantee hereby accepts, this Conservation Easement of the nature and character and to the extent hereinafter set forth in, on, over, under, through, above, and across the Easement Area, together with the right and easement to preserve and protect the Conservation Values.

The purpose of this Conservation Easement is to protect and preserve the Conservation Values as outlined above in **Section E** of the Recitals including the conservation purposes and it shall be so held, maintained, and used therefor. Grantor hereby conveys to Grantee all development rights that are now or hereafter allocated to, or are implied or inherent in, the Easement Area, and the Parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Property, as it is now or hereafter may be bounded or described, or to any other property. It is the further purpose of this Conservation Easement to prevent any use of the Easement Area that will impair or interfere with the preservation of the Conservation Values. Grantor intends that this Conservation Easement will restrict the use of the Easement Area to such activities as are consistent with the Conservation Values.

FURTHER, for the purpose of providing interrupted access to the Easement Area, Grantor grants and conveys unto Grantee, its successors and assigns, a perpetual right of ingress, egress, and regress to and from the Easement Area (1) in that certain 60-foot wide public right-of-way depicted by the Plat identified in **Exhibit A** as providing access to the

Property from Pleasant Grove Road (S.R. 1191) , (2) across the Property, (3) in any other right-of-way appurtenant to the Property, and (4) across any other lands owned by Grantor.

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee, its successors and assigns, against Grantor, its representatives, successors, assigns, lessees, agents, and licensees.

ARTICLE II. RIGHTS RESERVED TO GRANTOR

Grantor reserves the right accruing from the fee simple ownership of the Property to engage in or permit others to engage in the uses of the Easement Area that are specifically reserved by this **Article II**. All other uses of and activities on the Easement Area are prohibited. All rights specifically reserved by Grantor are reserved for Grantor and its successors and assigns and are considered to be consistent with this Conservation Easement and the Conservation Values. The Parties acknowledge and agree that they have no right to agree to any activity that would result in the termination of this Conservation Easement.

The Easement Area shall be restricted from any development or usage that would impair or interfere with the Conservation Values including the purposes of this Conservation Easement. The following uses are reserved as indicated:

A. Public Access and Use. Grantor reserves the right to allow public access and use of the Easement Area for the purposes of the public activities permitted herein.

B. Passive Recreational Use. Grantor reserves the right to engage in and to permit others to engage in passive recreational uses of the Easement Area that do not require surface alteration of the land, except as permitted herein, and pose no threat to the Conservation Values. By way of illustration, such passive recreational uses may include hiking, walking, scientific study, animal/plant observation, nature and environmental education, historic tours, photography, so long as such uses are consistent with the maintenance of the Conservation Values, and such uses are subject to all applicable federal, state, and local laws and regulations.

C. Existing Roads and Trails. ~~Grantor reserves the right to maintain existing unpaved roads and trails in the Easement Area. These roads and trails shall not be paved without prior written approval of Fund. The existing roads and trails may be stabilized with gravel and permanent vegetation. Associated ditches, culverts, stream crossings, and bridges may be maintained and replaced as necessary as maintenance of the road or trail. All necessary care shall be taken to maintain existing roads and trails in a manner so as not to impair any Conservation Values. Existing roads and trails shall not be realigned without the prior written approval of Fund.~~

D. Motorized Vehicles. ~~Grantor reserves the right to use motorized vehicles on permitted roads and trails for management, maintenance, or stewardship purposes.~~

E. New Trails. ~~Grantor reserves the right to construct and maintain new natural surface trails for the purpose of hiking and non-motorized biking. All trails must be located a minimum distance of fifty (50) feet from the top of the bank of all surface water, unless such locations are physically impracticable, and must be located so as not to impair the Conservation Values. All trail construction involving soil disturbance must follow best practices for sustainable trail design and construction and must have prior written approval by Fund. When required by the terrain, trails may include boardwalks, ramps, and handrails to the extent necessary. Trails may include stream crossings up to twenty feet (20') wide, provided they are permitted by all applicable regulatory authorities. All necessary care shall be taken to construct and maintain trails in a manner so as not to impair any Conservation Values either during or after construction. Fund shall have the authority to require the closure of any trail that is detrimental to any Conservation Values.~~

F. Trail and Recreational Accessories. ~~Grantor reserves the right to construct and maintain park benches, litter receptacles, and directional, educational, and informational signs along existing trails and approved new trails. Grantor further reserves the right to construct and maintain five (5) platforms for camping, fishing, boating and/or other passive recreational use along existing and approved new trails or on the banks of surface water if allowed and approved by all applicable regulatory authorities. All necessary care shall be taken to construct and maintain trail and recreational accessories in a manner so as not to impair any Conservation Values either during or after construction. Fund shall have the authority to require the removal of any trail or recreational accessory that is detrimental to any Conservation Values.~~

G. Vegetation Management. Grantor reserves the right to manage vegetation for boundary marking, fencing, signage, fire containment, disease control, insect control, invasive exotic plant control, and removal of conditions that threaten life or property. Methods of vegetation management may include, but are not limited to, selective cutting, prescribed burning, application of herbicides or pesticides.

H. Early Successional Habitat Areas. ~~Grantor reserves the right to maintain the existing early successional habitat areas identified in the Baseline Documentation Report for the purpose of providing habitat diversity for wildlife species and may include the planting of various native grasses, forbs, and herbaceous vegetation. This activity must be conducted a minimum distance of 100 feet from surface waters as measured from top of bank.~~

I. Native Community Restoration, Management, and Maintenance. Grantor reserves the right to perform all activities necessary to restore, manage, or maintain the native plant and animal communities in the Easement Area, provided, however, that the conversion of one habitat type to a native habitat type requires prior written approval of Fund. All necessary care shall be taken to protect all Conservation Values, and restoration, management, and maintenance activities shall be carried out in a manner so as not to impair any Conservation Values either during or after the activities.

J. Stream/Wetland Restoration. Grantor reserves the right to perform all

activities necessary to restore and stabilize streams and wetlands to enhance water quality on the Easement Area. Such activities shall be based upon prevailing design and permitting standards. Restoration and stabilization activities shall be based on a design using as many natural materials as possible, shall require prior written approval of Fund, and shall be subject to all applicable regulatory authorities.

K. Hunting and Fishing. ~~Grantor reserves the rights to recreational hunting and recreational fishing and to permit others to hunt and fish on the Easement Area, including the right to lease or license the Easement Area for recreational hunting and fishing, in compliance with all federal, state, and local rules and regulations. Grantor lease or license the Easement Area for recreational hunting and fishing in accordance with Article VI, Paragraph B, but such leases and licenses are exempt from the 60-day notice requirement. Recreational fishing leases and licenses shall be in writing and shall reference this Conservation Easement and shall require tenants and licensees to abide by its terms.~~

L. Signs. Grantor reserves the right to post the following signs: no trespassing signs, local, state, or federal traffic or similar information signs, for sale or lease signs, signs identifying the Conservation Values of the Easement, signs identifying Grantor as owner of the Property, signs identifying the funders or the holders of Conservation Easements, educational signs, directional signs, and interpretative signs.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on or use of the Easement Area that is inconsistent with this Conservation Easement or the Conservation Values is prohibited. All activities on or uses of the Easement Area other than those specifically reserved in **Article II** are prohibited. Except for the activities and uses specifically reserved in **Article II**, the Easement Area shall be maintained in its natural, scenic, wooded, and open condition. Any activity on or use of the Easement Area that is not specifically reserved in **Article II** is considered to impair or interfere with this Conservation Easement or the Conservation Values.

Without limiting the generality of the immediately foregoing Paragraph, the following activities and uses are expressly prohibited or restricted in the Easement Area as stated, except to the extent of rights specifically reserved to Grantor in **Article II**. When an activity or use is prohibited or restricted in, within, on, or of the Easement Area, the activity or use is prohibited or restricted in, on, over, under, through, above, and across the Easement Area.

A. Industrial and Commercial Use. Industrial and commercial activities and any rights of passage for such purposes are prohibited in the Easement Area.

B. Agricultural, Grazing and Horticultural Use. Agriculture, grazing, horticultural and animal husbandry operations and any rights of passage for such purposes are prohibited in the Easement Area.

C. Disturbance of Natural Features, Plants, and Animals. There shall be no cutting or removal of trees and no disturbance of other natural features within the Easement Area.

D. Construction of Structures or Improvements. There shall be no constructing or placing of any temporary or permanent structure, improvement, building, fixture, mobile home, asphalt, concrete, or other pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, or facility in the Easement Area.

E. Motorized Vehicles. Use of motorized vehicles in the Easement Area is prohibited.

F. Signs. Signs are not permitted in the Easement Area.

G. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining, or drilling in the Easement Area. There shall be no removal of topsoil, sand, gravel, rock, peat, minerals, hydrocarbons, or other materials from the Easement Area. There shall be no change in the topography of the land in the Easement Area in any manner.

H. Wetlands and Water Quality. There shall be no pollution or alteration of surface waters in the Easement Area. There shall be no construction or other activities that would be detrimental to water quality or that would alter the natural water levels, drainage, sedimentation, or water flow in, on, or over the Easement Area or into any surface waters. There shall be no construction or other activities that would cause soil degradation or erosion. There shall be no diking, dredging, alteration, draining, filling, or removal of wetlands.

I. Dumping. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or other materials in the Easement Area is prohibited.

J. Conveyance and Subdivision. The Easement Area shall not be divided, subdivided, or partitioned. No property interest in the Easement Area, including but not limited to the fee simple interest, shall be divided, subdivided, or partitioned. Without limiting the foregoing, the Easement Area shall not be conveyed except in its current configuration as a single parcel of property.

K. Open Space and Development Rights. The Easement Area shall not be used to satisfy open space or density requirements of any cluster or other development scheme or plan. The development rights encumbered by this Conservation Easement shall not be transferred to any other land pursuant to a transfer of development rights scheme, a cluster development arrangement, or otherwise.

L. Mitigation. There shall be no use of the Easement Area or any portion thereof to satisfy compensatory mitigation requirements under 33 USC Section 1344, N.C.G.S. §143-214.11 or any successor or replacement provision in the foregoing.

ARTICLE IV. ENFORCEMENT AND REMEDIES

A. Enforcement and Remedies. Grantee has the right to prevent and stop any

violation of this Conservation Easement, including, but not limited to, preventing and stopping any activity on or use of the Easement Area that is inconsistent with this Conservation Easement or its purposes, and to require the prompt restoration to the condition required by this Conservation Easement of such areas or features of the Easement Area that may have been damaged by such violation, activity, or use. Upon any breach of the terms of this Conservation Easement by Grantor that comes to the attention of Grantee, Grantee, may notify Grantor in writing of such breach. Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, Grantee may enforce this Conservation Easement by legal proceedings for damages, injunctive relief, and any other legal or equitable remedy. Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement, (b) to otherwise preserve or protect its interest in the Easement Area, and (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, Grantee has the immediate right, without notice, to obtain a temporary restraining order, injunction, or other appropriate relief if a breach or threatened breach of the terms of this Conservation Easement is or would irreversibly or materially impair the benefits to be derived from this Conservation Easement. Grantor and Grantee acknowledge that under such circumstances damage to Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement, including, without limitation, those set forth in the Grant Contract under which this Conservation Easement was obtained.

B. Access for Inspection and Right of Entry. Grantee shall have the right, by and through its agents and employees, to enter the Property to inspect the Easement Area for compliance with this Conservation Easement at all reasonable times and with prior notice and, if necessary, cross other lands owned by Grantor for the purposes of (1) inspecting the Easement Area to determine if Grantor is complying with this Conservation Easement and its purposes, (2) enforcing the terms of this Conservation Easement, (3) taking any and all actions with respect to the Easement Area as may be necessary or appropriate with or without order of the Court, to remedy or abate violations hereof, and (4) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Easement Area by Grantor.

C. Termination and Proceeds of Property Rights Created. For purposes of this paragraph, the proportionate value of the Grantee's property rights shall remain constant. This Conservation Easement gives rise to a property right that is immediately vested in Grantee at the time of recordation, with a fair market value that is equal to the proportionate value that the Conservation Easement bears to the full value of the whole Property, as if unencumbered by the Conservation Easement, on the date of the recording of this Conservation Easement. This proportionate value shall remain constant. For the purposes of determining any distribution of proceeds pursuant to this Paragraph, Grantor's

proportionate contribution to the purchase price shall be deemed to be 100%, and Grantee's proportionate contribution to the purchase price shall be deemed to be 0% and the proportionate value of the Grantee's property rights shall remain constant. If any Proceeds of Sale (defined below) are due, payable, or otherwise obligated to the United States government or any department or agency thereof related to funding provided to Grantor, then any such obligation shall be paid or satisfied solely from Grantor's portion of the Proceeds of Sale.

1. Eminent Domain. Whenever all or part of the Property is taken by eminent domain, threatened to be taken by an entity with the power of eminent domain, or acquired, or sought to be acquired, by negotiated sale in lieu of condemnation, whether by public, corporate, or other authority, Grantor shall immediately give notice to Grantee and Fund, and shall take all appropriate actions related to such taking or negotiated sale in coordination with and with the prior written approval of Grantee and Fund, to recover the full fair market value (without regard to any diminution in value attributable to the Conservation Easement) of the taking or acquisition and all incidental, direct, and severance damages resulting from the taking or acquisition. Grantee, its successors and assigns, shall be entitled to its proportionate share of the Proceeds of Sale which shall include, but not be limited to, the proceeds of such taking, sale, exchange, or involuntary conversion of the Property, and any damage or just compensation otherwise awarded with respect to any judicial proceedings, according to Grantee's proportional interest in the value of the Property as determined under Treasury Regulations §1.170A-14(g)(6)(ii) or any successor regulation. **"Proceeds of Sale"** shall mean the cash value of all money and property paid, transferred, or contributed in consideration for, or as otherwise required as a condition to, the taking, sale, exchange, or involuntary conversion of the Property, and any damages or just compensation otherwise awarded as a result of judicial proceedings, *minus* Grantor's expenses from such transaction or proceeding. As allowed by N.C.G.S. §146-30(a), Grantee shall use its share of the Proceeds of Sale in a manner consistent with the purpose(s) of the Conservation Easement as set forth herein. Notwithstanding the foregoing, all Proceeds of Sale shall be distributed among the Parties according to each Party's respective contribution to the purchase price of the Property and this Conservation Easement as specified above; the Grantee shall be entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction. Nothing herein limits Grantee's right to be included as a named party in any eminent domain action or its right to just compensation for the taking of its property interest.

2. Changed Conditions. If a subsequent, unexpected change in conditions surrounding the Property makes impossible or impractical the continued use of the Property for the purposes of this Conservation Easement as set forth herein, and the Conservation Easement is extinguished by judicial proceeding, Grantee, its successor and assigns, shall be entitled to its proportionate share of the proceeds of any sale, exchange, or involuntary conversion of the Property, and any damage award with respect to any judicial proceedings according to Grantee's proportional interest in the value of the Property as determined under Treasury Regulations §1.170A-14(g)(6)(ii) or any successor regulation. **"Proceeds of Sale"** shall mean the cash value of all money

and property paid, transferred, or contributed in consideration for or as otherwise required as a condition to the sale, exchange, or involuntary conversion of the Property, and any damages otherwise awarded as a result of judicial proceedings, *minus* Grantor's expenses from such transaction or proceeding. As allowed by N.C.G.S. §146-30(a), Grantee shall use its share of the Proceeds of Sale in a manner consistent with the purpose(s) of the Conservation Easement as set forth herein. Notwithstanding the foregoing, all Proceeds of Sale shall be distributed among the Parties according to each Party's respective contribution to the purchase price of the Property and this Conservation Easement as specified above; the Grantee shall be entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction. Nothing herein limits Grantee's right to be included as a named party in any judicial proceedings related to changed conditions.

D. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Easement Area resulting from the acts of third parties not authorized by Grantor, or from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, property, or the Easement Area, resulting from such causes.

E. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

F. No Waiver. Any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or of any other term of this Conservation Easement or of Grantee's rights. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

ARTICLE V. TITLE

Grantor covenants, represents, and warrants (i) that Grantor is the sole owner and is seized of the Property including the Easement Area in fee simple and has good right to grant and convey this Conservation Easement, (ii) that there is legal access to the

Property and the Easement Area, (iii) that the Property and Easement Area are free and clear of any and all encumbrances, except those permitted exceptions outlined below, none of which would nullify, impair, or limit in any way the terms or effect of this Conservation Easement, (iv) that Grantor shall defend its and Grantee's title against the claims of all persons whomsoever, and (v) that Grantee, its successors and assigns, shall have the right to monitor and defend the terms of this Conservation Easement.

ARTICLE VI. MISCELLANEOUS

A. Stewardship of the Conservation Easement. Pursuant to the terms of the Grant Contract and any contract for stewardship of the Easement Area entered into pursuant to the Grant Contract, Grantee will monitor and observe the Easement Area in perpetuity to assure compliance with the purposes and provisions of this Conservation Easement and the provisions of the Grant Contract, and that it will report on the condition of the Easement Area, or provide for such reporting, to State and Fund no less frequently than once a year, and further will report immediately to State and Fund any observed and/or known violations of this Conservation Easement or the Grant Contract. The Parties acknowledge that the associated stewardship monies awarded under the Grant Contract are administered pursuant to N.C.G.S. §143B-135.236 which establishes the North Carolina Conservation Easement Endowment Fund, or any successor law, and Fund's internal policies and procedures, and that Grantee's obligation to monitor the Easement Area at any given time is contingent on the availability of said stewardship funds. Further, the Parties acknowledge that this obligation to monitor the Easement Area is assignable provided such assignment is made with the prior written approval of Fund and evidenced by a written instrument signed by the Parties thereto and recorded in the Office of the Register of Deeds of Henderson County. Provided further, that any such assignment of Grantee's obligation to monitor the Easement Area shall include a right of entry onto the Property and the Easement Area for the assignee of said monitoring obligation, and shall require the monitoring to be carried out in accordance with and subject to N.C.G.S. §143B-135.236 or any successor law, and Fund's internal stewardship policies and procedures. The Parties specifically acknowledge that neither Grantee's obligation to monitor the Easement Area, nor its assignment of said obligation, shall have any effect on the rights and obligations of Grantee of this Conservation Easement. Further, the Parties covenant that the obligation to provide monitoring of the Easement Area will survive any transfer of Grantor's fee interest in the Property.

B. Subsequent Transfers of the Fee or Other Interests. Grantor agrees for itself, its successors and assigns, that in the event it intends to transfer the Property, any interest in the Property, or any portion of the Property that includes the Easement Area, to notify Grantee and Fund in writing of the names and addresses of any party to whom the Property is to be transferred, the nature of the interest to be transferred, and the terms and conditions of the intended transfer, at least sixty (60) days before the transfer is intended to be consummated. Grantor, for itself, its successors and assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed. The Property owner shall not convey the Property or any interest therein, and

shall not incur, assume, or suffer to exist any lien, upon or with respect to the Property, without disclosing to the prospective transferee the Conservation Easement, the obligations of the Property owner, and the limitations on use of the Property. Nothing in this Paragraph abrogates or limits Paragraph J of Article III hereof.

C. Subsequent Transfers of the Conservation Easement. The Parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable with any such assignee having all the rights and remedies of Grantee hereunder. The Parties hereby covenant and agree, that in the event this Conservation Easement is transferred or assigned, the transferee or assignee of the Conservation

Easement will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, and the regulations promulgated thereunder (the "Code") that is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, a qualified holder as that term is defined in the Act or any successor statute, and a qualified grant recipient pursuant to N.C.G.S. Chapter 143B, Article 2, Part 41. The Parties further covenant and agree that the terms of the transfer or the assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the purpose(s) of the Conservation Easement that the contribution was originally intended to advance as set forth herein, but acknowledge specifically that any transfer or assignment of the Conservation Easement shall have no effect on Grantee's obligation to provide stewardship of the Conservation Easement as set forth in this Article VI.

D. Existing Responsibilities of Grantor and Grantee Not Affected. Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of Grantor as owner of the Property, which includes the Easement Area. Among other things, this shall apply to:

1. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property, including the Easement Area. If Grantee is ever required to pay any taxes or assessments on its interest in the Easement Area, Grantor shall reimburse Grantee for the same.
2. **Upkeep and Maintenance.** Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, including the Easement Area, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Easement Area.
3. **Liability and Indemnification.** If Grantee is ever required by a court to pay damages resulting from personal injury or property

damage that occurs on the Property, including the Easement Area, Grantor shall indemnify and reimburse Grantee for these payments, as well as reasonable attorneys' fees and other expenses of defending itself, unless Grantee has committed a deliberate act that is determined to be the sole cause of the injury or damage.

E. Conservation Purpose. Grantor and Grantee, each for itself, and its respective successors and assigns, agree that this Conservation Easement shall be held exclusively for conservation purposes set forth by the Grant Contract, this Conservation Easement, and as specified in Section 170(h)(4)(A) of the Code. Further, this Conservation Easement shall be construed to promote the purposes of the Act and such purposes of this Conservation Easement as are defined in Section 170(h)(4)(A) of the Code.

F. Recording. Grantee shall record this instrument and any amendment hereto in the official records of Henderson County, North Carolina, and may re-record it at any time as may be required to preserve Grantee's rights.

G. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, to the Parties at their addresses shown below, and each party may update its information by a notice sent in accordance with this Paragraph:

If to Grantee:

If to Grantor:

**Conserving Carolina
847 Case St.
Hendersonville, NC 28792**

H. Amendments. Grantor and Grantee, or their successors in interest in the Property, are free jointly to amend this Conservation Easement to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of this Conservation Easement or affects the perpetual duration of this Conservation Easement. Such amendments require the prior written approval of both Grantor and Grantee and shall be effective upon recording in the public records of Henderson County, North Carolina.

I. Environmental Condition of the Property. Grantor warrants, represents, and covenants to Grantee that to the best of its knowledge after appropriate inquiry and investigation:

(a) the Property described herein is and at all times hereafter will continue to be in full compliance with all federal, state, and local environmental laws and regulations, (b) as of the date hereof, there are no hazardous materials, substances, wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in, or under the Property or used in connection therewith, (c) that there are no environmental conditions existing on the Property that may prohibit or impede use of the Easement Area for the purposes set forth herein, and (d) Grantor will not allow such conditions.

J. Indemnity. Grantor agrees to the fullest extent permitted by law, to protect, indemnify, and hold harmless Grantee from and against all claims, actions, liabilities, damages, fines, penalties, costs, expenses, and attorneys' fees suffered or incurred as a direct or indirect result of any violation of any federal, state, or local environmental or land use law or regulation or of the use or presence of any hazardous substance, hazardous waste, or other regulated material in, on, or under the Property.

K. Entire Agreement. The Recitals set forth above and the exhibits, if any, attached hereto are incorporated herein by reference. This instrument, including the Grant Contract incorporated by reference herein, sets forth the entire agreement of the Parties with respect to the Project and supersedes all prior discussions, negotiations, understandings, and agreements

relating to the Project. To the extent that this Conservation Easement is in conflict with the Grant Contract, the terms of this Conservation Easement shall control.

L. Interpretation and Severance. This Conservation Easement shall be construed and interpreted under the laws of the State and the United States, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes sought to be protected herein. The normal rule of construction of ambiguities against the drafting party shall not apply in the interpretation of this Conservation Easement. Further, this Conservation Easement shall be construed to promote the purposes of the Act, which authorizes the creation of conservation agreements for purposes including those set forth herein, and such conservation purposes as are defined in Section 170(h) (4) (A) of the Code. If any provision of this Conservation Easement is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby and shall remain in full force and effect.

M. Parties. Every provision of this Conservation Easement that applies to Grantor or to Grantee or to Fund shall likewise apply to their respective executors, administrators, successors, and assigns.

N. No Extinguishment through Merger. The Parties agree that the doctrine of extinguishment by merger shall not apply to this Conservation Easement because of the public interest in its enforcement. The Parties agree that this Conservation Easement and its terms shall survive any coming together of the ownership of the fee interest and the Conservation Easement interest in the Easement Area, and that this Conservation Easement shall not be merged into the fee interest. Further, the Parties agree that if Grantee, or any successor in interest to Grantee, acquires title to any fee interest in the Easement Area (i) said owner shall observe and be bound by the obligations and the restrictions imposed upon the Easement Area by this Conservation Easement and (ii) this Conservation Easement shall not be extinguished through the doctrine of merger in any way in view of the public interest in its enforcement.

O. Subsequent Liens. No provision of this Conservation Easement shall be construed as impairing the ability of Grantor to use the Property for collateral for borrowing purposes, provided that any mortgage or lien arising therefrom shall be subordinate to this Conservation Easement.

P. Gender. The designations Grantor, Grantee, State, and Fund, as used herein shall include the persons or entities indicated and their administrators, successors, and assigns, and shall include the singular, plural, masculine, feminine, or neuter as the context may require.

Q. Headings. The headings of the various sections of this Conservation Easement have been inserted for convenience only and shall not modify, define, limit, or expand the express provisions of this Conservation Easement.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions, and purposes imposed as aforesaid shall be binding upon Grantor and Grantor's representatives, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

[Grantor's and Grantees' signatures, accompanied by notary acknowledgements, appear on the following pages.]

IN WITNESS WHEREOF, Grantor, by authority duly given, has hereunto caused these presents to be executed under seal in such form as to be binding, the day and year first above written, and Grantee accepts this Conservation Easement by the recording hereof in the public records.

GRANTOR:

By: _____ (SEAL)

ATTEST:

By: _____ Corporate Seal

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, the undersigned Notary Public of the aforesaid county, North Carolina, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she is the _____ of _____, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its Board President, Patrick J. Cafferty, Jr., sealed with its corporate seal, and attested by himself as its Assistant Board Secretary.

Witness my hand and notarial seal this the _____ day of _____, 20_____.

Notary Public: _____

Printed Name: _____

My commission expires: _____

GRANTEE:

CONSERVING CAROLINA

By: _____
Susan S. McHugh
Board President

ATTEST:

By: _____ Corporate Seal
Kieran C. Roe
Assistant Board Secretary

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, the undersigned Notary Public of the aforesaid county, North Carolina, do hereby certify that Kieran C. Roe personally appeared before me this day and acknowledged that he is the Assistant Board Secretary of Conserving Carolina, a nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Board President, Patrick J. Cafferty, Jr., sealed with its corporate seal, and attested by himself as its Assistant Board Secretary.

Witness my hand and notarial seal this the _____ day of _____, 20____.

Notary Public: _____

Printed Name: _____

My commission expires: _____

GRANTEE:

MOUNTAIN ACRES, LLC

By: _____ (SEAL)

Patrick J. Cafferty, Jr.
Board President of the Executive Committee of the Board
of Directors for Conserving Carolina, Manager of
Mountain Acres, LLC

ATTEST:

By: _____ Corporate Seal

Kieran C. Roe
Assistant Board Secretary of the Executive
Committee of the Board of Directors for
Conserving Carolina, Manager of
Mountain Acres, LLC

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, the undersigned Notary Public of the aforesaid county, North Carolina, do hereby certify that Kieran C. Roe personally appeared before me this day and acknowledged that he is the Assistant Board Secretary of the Executive Committee of the Board of Directors of North Carolina, Manager of Mountain Acres, LLC, a North Carolina Limited Liability Company and that Patrick J. Cafferty, Jr., Board President of the Executive Committee of the Board of Directors of Conserving Carolina, being authorized to do so, voluntarily executed the foregoing instrument on behalf of the Limited Liability Corporation for the purposes therein contained.

Witness my hand and notarial seal this the _____ day of _____, 20__.

Notary Public: _____

Printed Name: _____

My commission expires: _____

STAMP/SEAL

EXHIBIT A

LEGAL DESCRIPTION OF THE "PROPERTY" CRAB CREEK TOWNSHIP HENDERSON COUNTY, NORTH CAROLINA

All that tract of land situated, lying and being in Henderson County, North Carolina, and that is described as follows:

BEING all of those **100.871** acres, more or less, identified as “Tract A” (98.811 acres more or less) and “Tract B” (2.060 acres more or less) as shown on that plat entitled “Boundary Survey of a Conservation Easement for Conserving Carolina” prepared by Jonathan Cory George, N.C. P.L.S. recorded in Plat Card File _____ Slide _____, Henderson County Registry, reference to which is hereby made and incorporated herein for greater certainty of description.

EXHIBIT B

LEGAL DESCRIPTION OF THE NCLWF EASEMENT AREA

BEING all of those **98.811** acres, more or less, identified as “Tract A – Conservation Easement Conserving Carolina” and as shown on that plat as entitled, “Boundary Survey of a Conservation Easement for Conserving Carolina” prepared by Jonathan Cory George, N.C. P.L.S. recorded in Plat Card File _____ Slide _____, Henderson County Registry, reference to which is hereby made and incorporated herein for greater certainty of description.

THIS conveyance specifically excludes that tract identified as “Tract B” (2.060 acres more or less) as shown on that plat entitled “Boundary Survey of a Conservation Easement for Conserving Carolina” prepared by Jonathan Cory George, N.C. P.L.S. recorded in Plat Card File _____ Slide _____, Henderson County Registry, reference to which is hereby made and incorporated herein for greater certainty of description.

Together with those rights of access described on page 3 of this Conservation Easement.