

STATE OF NORTH CAROLINA

DEED OF CONSERVATION EASEMENT;  
OPTION TO PURCHASE REAL ESTATE  
AND RIGHT OF FIRST REFUSAL

COUNTY OF \_\_\_\_\_

THIS DEED OF CONSERVATION EASEMENT (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and \_\_\_\_\_, husband and wife, each a resident of \_\_\_\_\_ County, North Carolina, (\_\_\_\_\_ and \_\_\_\_\_ are hereinafter collectively referred to as the "Grantor") in favor of CATAWBA LANDS CONSERVANCY, a North Carolina nonprofit corporation (hereinafter referred to as "Grantee").

BACKGROUND STATEMENT

A. Grantor is the sole owner in fee simple of that certain parcel of land containing approximately \_\_\_\_\_ acres and located on the \_\_\_\_\_ side of \_\_\_\_\_ Road in the City of \_\_\_\_\_, \_\_\_\_\_ County, North Carolina, and more particularly described in Exhibit A attached hereto and by reference incorporated herein (the "Property") [*Insert if applicable: together with the access easement area described in Exhibit A (the "Access Easement")*].

B. The Property possesses [*Insert as applicable: agricultural, natural, scenic, open space, historical, educational, recreational and/or water quality/riparian, buffer/water supply/watershed protection*] values (hereinafter referred to collectively as "Conservation Values") of great importance to Grantee, the people of \_\_\_\_\_ County, North Carolina, and the people of the State of North Carolina.

C. The Property is a significant natural area that qualifies in its present condition as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder.

**[BOLD PARAGRAPHS ARE CONSERVATION VALUE OPTIONS;  
INCLUDE AS APPLICABLE]**

**D.** The Property, if preserved in accordance with this Agreement, will provide an important habitat for *[Insert as applicable: a diversity of plant communities, wildlife species, and/or geological features]* in the \_\_\_\_\_ area of North Carolina, including *[Insert as applicable: white-tailed deer, migratory songbirds, wildflowers, ferns, mature hardwood trees, planted pine stands, a variety of herbs and other plant species not common in the region]*.

**E.** The Property provides varying topography and has a range of soil types as well as scenic vistas across the property.

**F.** Because of its location in the \_\_\_\_\_ watershed, the Property, if preserved in accordance with this Agreement, will contribute to the maintenance of surface water and ground water quality of the \_\_\_\_\_ watershed.

**G.** The Property also includes agricultural land that *[Insert, for example: has recently been planted in loblolly pines, is currently producing high quality pasture]*, and Grantor and Grantee acknowledge that one of the purposes of this Agreement is to protect the agricultural soils, agricultural viability and productivity of the Property.

**H.** The Property, if preserved in accordance with this Agreement, will provide for the public's scenic enjoyment *[to/from] [name of waterbody, road or nature preserve]* in that *[Insert as applicable: the Property remains relatively undisturbed in an area undergoing development, is a large tract totaling \_\_\_\_ acres with \_\_\_\_\_ of shoreline or road frontage along \_\_\_\_\_, and contains [list other prominent topographical, geological or other characteristics showing property is uniquely important in maintaining scenery].*

**I.** The Property consists primarily of productive agricultural land. The majority of the soils on the Property being classified as *[Insert as applicable: prime, unique, farmland of statewide or local importance]* by the Natural Resources Conservation Service, U.S. Department of Agriculture. It is the primary purpose of this Agreement to protect the agricultural soils and agricultural viability and productivity of the Property.

**J.** The Property is bounded by \_\_\_\_\_ acres of forest land which is already protected by conservation easements in favor of Grantee, which protected property is commonly known as \_\_\_\_\_.

**K.** Because of its proximity to other permanently protected lands, the Property is an important part of the \_\_\_\_\_ Conservation Area.

**L.** The Property is considered a significant natural heritage site, called "\_\_\_\_\_" in the \_\_\_\_\_, \_\_\_\_\_ 20\_\_\_\_, because of the overall natural community present, as well as several unusual plant species found on the Property.

**M. The Property can provide a significant and substantial public benefit in the form of relief from urban closeness as the neighboring Charlotte metropolitan area continues to expand and increase in population.**

**N. Preservation of the Property pursuant to federal, state, and local governmental conservation policy will yield a significant public benefit. The conservation purposes of this Agreement are recognized by the following governmental conservation policies [*Insert items I through V, as applicable*]:**

**I. N.C. GEN. STAT. §§105-130.34 and 105-151.12 et seq. The special North Carolina Conservation Tax Credit Program encourages contributions of land that provide habitat for fish and wildlife and other similar land conservation purposes.**

**II. N.C. GEN. STAT. §106-583. The declaration of policy for agricultural development states a “policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity.”**

**III. N.C. GEN. STAT. §113A-251 et seq. The Clean Water Management Trust Fund recognizes the importance of protecting riparian buffers in protecting and conserving clean surface water.**

**IV. N.C. GEN. STAT. §113A-164.1 et seq. The Nature Preserves Act establishes and maintains a “State Registry of Natural Heritage Areas and [prescribes] methods by which nature preserves may be dedicated for the benefit of present and future citizens of the State.”**

**V. N.C. GEN. STAT. §139-2 et seq. The declaration of policy for soil and water conservation districts states that “the farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people ... [I]t is hereby declared to be the policy of the legislature to provide for the conservation of the soil and resources of this State.”**

**VI. Article XIV, Section 5 of the Constitution of the State of North Carolina. “It shall be the policy of the State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivision to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this state its forests, wetlands, estuaries, beaches, historical sites, open lands, and places of beauty.”**

**O. Grantor and Grantee have the common purpose of conserving the Conservation Values of the Property in perpetuity, and the State of North Carolina has authorized the creation of conservation easements pursuant to the terms of the North Carolina Historic Preservation and**

Conservation Agreements Act, N.C. GEN. STAT. §121-34 et seq. (the “Act”), and N.C. GEN. STAT. §§160A-266 through 279 and §105-317, which provide for the enforceability of restrictions, easements, covenants or conditions “appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming, or forest uses,” and which provide for tax assessment of lands subject to such agreements “on the basis of the true value of the land and improvements less any reduction in value caused by the agreement;” and Grantor and Grantee wish to avail themselves of the provision of that law.

P. The Board of Directors of Grantee, at its meeting on \_\_\_\_\_, 20\_\_, has approved acceptance of the conservation easement contained in this Agreement, which shall be known as the “\_\_\_\_\_ Conservation Easement,” because it fulfills the requirements of the Conservancy’s adopted project selection criteria.

Q. The specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, dated \_\_\_\_\_, 20\_\_, on file at the offices of Grantee, said inventory consisting of reports, maps, photographs, and other documentation (collectively, the “**Baseline Inventory**”), which the parties agree provide an accurate representation of the Property at the time of this conveyance and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement.

R. Grantor intends that the Conservation Values of the Property be preserved and maintained by and through this Agreement *[Insert if applicable: , and by the continuation of certain land use patterns of the Property, including, without limitation, those relating to its agricultural, natural vegetation and limited uses existing at the time of this grant that do not significantly impair or interfere with those values]*.

S. Grantor further intends, as owner of the property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.

T. Grantee is (i) a publicly supported, tax-exempt non-profit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986 (as amended, the “Code”), whose primary purpose is the preservation, protection and enhancement of land in its natural, scenic or open space condition, and is authorized by the laws of the State of North Carolina to accept, hold and administer interests in land including conservation easements, (ii) a “qualified organization” and an “eligible donee” within the meaning of Section 170(h)(3) of the Code and the Treasury Regulations thereunder, and (iii) willing to accept this Agreement under the terms and conditions hereinafter described.

U. Grantee agrees by accepting this conveyance to honor the intentions of Grantor stated herein and to use its best reasonable efforts to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and generations to come.

## STATEMENT OF AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of North Carolina and in particular the Act, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. As set forth in the recitals above, which recitals are incorporated herein by reference, it is the purpose of this Agreement to assure that the Property will be retained forever in its natural, undeveloped, scenic and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that this Agreement will confine the use of the Property to such activities as are consistent with the purpose of this Agreement, including without limitation ***[Insert as applicable: farming, ranching, timber production, public recreation, or education]***.

2. Rights of Grantee. To accomplish the purposes of this Agreement the following rights are conveyed to Grantee:

(a) All present and future development rights for the Property, except as otherwise reserved and provided in Paragraphs 3 and 4 below. The parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Property or to any other property.

(b) To preserve and protect the Conservation Values of the Property; provided, however, that Grantor shall have reasonable discretion with respect to its use of the Property and management practices so long as those uses and practices are consistent with the terms and conditions of this Agreement.

(c) To enter upon the Property in accordance with the provisions of Paragraphs 6 and 11 of this Agreement.

(d) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Agreement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, all pursuant to Paragraph 6 below.

(e) ***[Insert if applicable: To use, improve and maintain the Access Easement to provide vehicular and pedestrian access to and from the Property.]***

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Agreement is prohibited by Grantor and Grantee. Without limiting the generality of the foregoing, the following activities on and uses of the Property are expressly prohibited:

(a) Subdivision. The legal or de facto subdivision of the Property ***[Insert if applicable: , except for \_\_\_ subdivision(s), resulting in a total of no more than \_\_\_ parcels containing at least \_\_\_ acres per parcel, with one homesite permitted per parcel, as described in Paragraph 4. ]***

**OR**

*[(a) Subdivision. The legal or de facto subdivision, or other transfer or sale of any portion thereof or interest therein, of the Property for any purpose; provided, however, that the following shall not be prohibited by this Paragraph 3(a): (i) a lease of a portion of the Property for agricultural use; (ii) the transfer or sale of all of the parcels that constitute the Property to a single transferee; or (iii) the subdivision and subsequent transfer of up to \_\_\_\_\_ (\_\_) parcels of land within the Property containing a minimum land area of \_\_\_\_\_ (\_\_) acres each; provided, however, that upon the initial transfer of each subdivided parcel pursuant to this Paragraph 3(a), Grantor shall make a one-time payment to Grantee in the amount of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00) as compensation for the additional administrative, monitoring and enforcement costs associated with ownership of the Property by more than one party.]*

(b) *Commercial Use.* Any commercial or industrial use of or activity on the Property other than those related to *[Insert as applicable: agriculture, animal husbandry, silviculture, passive recreation, or education about Conservation Values.]*

(c) *Structures.* The placement or construction of any buildings, structures, or other improvements of any kind other than those permitted in Paragraph 4 below.

(d) *Surface Alteration.* Any alteration of the surface of the land, including without limitation the excavation or removal of soil, sand, gravel, rock or sod except (i) as permitted in Paragraph 4 below, (ii) for the purposes of combating erosion, or (iii) incidental to conservation management activities otherwise permitted in this Agreement.

(e) *Erosion; Pollution.* Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or sub-surface waters.

(f) *Alteration of Water Courses.* Natural water courses, wetlands, or other bodies of water may not be further diverted or altered, except to restore or enhance the hydrology of the Property, or for the protection of native plant species on the Property. Any such restoration, enhancement or habitat protection activity shall be conducted in accordance with a plan prepared by a conservation professional, and designed to protect the Conservation Values of the Property including, without limitation, scenic and wildlife habitat values, and shall be approved in writing by Grantee.

*[Insert if applicable: Notwithstanding the foregoing, damming, diking, draining, filling or alteration of springs, streams, or ponds shall be permitted as necessary for the following limited purposes:*

- (i) to maintain, dredge, or remove the existing or permitted manmade ponds shown on Exhibit B; and*
- (ii) only with the prior written consent of Grantee, for restoration or improvement purposes; and*

**(iii) *only with the prior written consent of Grantee, for stormwater management and agricultural activities.]***

(g) *Utilities.* The installation of new utility systems or extensions of existing systems, including without limitation, water, sewer, power, fuel and communication lines and related facilities (such as cell towers, telephone relay towers, and other stand-alone tower structures), except as permitted in Paragraph 4.

(h) *Signage.* Placement of any signs or billboards on the Property, except signs related to protecting the Property or Conservation Values whose placement, number, and design do not significantly diminish the scenic character of the Property.

**OR**

***[(i) Signage. Placement of any signs, billboards, or outdoor advertising of any kind on the Property. Notwithstanding the above, (i) Grantor may erect and maintain informational signage, including without limitation signs indicating the name of the Property and its ownership by Grantor, boundary markers, directional signs, memorial plaques, informational and interpretive signs, and signs limiting access or use, and (ii) Grantee may erect and maintain signs designating the Property as land under the protection of Grantee; provided in each case that the placement, number, and design of such signs do not significantly diminish the scenic character of the Property.]***

(i) *Mining.* The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method or any other method that would impair or interfere with the Conservation Values of the Property.

(j) *Motorized Vehicles.* Motorized vehicles, including without limitation recreational off-road vehicles, are prohibited on the Property, except as they are used for (i) management, maintenance, or stewardship purposes, or (ii) on permitted roads and driveways providing access to structures, or (iii) for the personal mobility of an individual unable to traverse the Property on foot.

(k) *Hazardous Substances.* The storage, dumping, or other disposal of toxic and/or hazardous materials or non-compostable refuse, except for the above ground storage and use of fuels, fertilizers, treated lumber, and legal chemicals as necessary for agricultural or other operations permitted by this Agreement. All materials shall be stored in accordance with all applicable laws and regulations, and in a manner which (i) prevents spillage, leakage, and dumping, (ii) prevents soil and surface water or groundwater contamination, and (iii) is otherwise consistent with the preservation of the Conservation Values of the Property. Notwithstanding anything in this Agreement to the contrary, this prohibition does not make Grantee an owner of the Property, nor does it permit Grantee to control any use of the Property by Grantor which may result in the storage, dumping, or disposal of hazardous or toxic materials; provided, however, that Grantee may bring an action to protect the Conservation Values of the property, as described in this Agreement. This prohibition does not impose liability on Grantee, nor

shall Grantee be construed as having liability as a “responsible party” under the Comprehensive Environmental Response, Compensation, and Liability Act or similar federal or state statutes. Recycling shall be permitted in accordance with the terms of Paragraph 4.

(l) ***[If applicable: Removal of Vegetation. Cutting, removing, or otherwise destroying trees, grasses, or other vegetation, except as specifically permitted in Paragraph 4 below.]***

(m) ***[If applicable: Agricultural Operations. No agricultural operations of any kind are permitted on the Property.]***

(n) ***[If applicable: Timbering. No timbering is permitted except as set forth in Paragraph 4.]***

4. **Reserved Rights.** Grantor reserves to ***[him, her, itself, themselves]***, and to ***[his, her, its, their]*** heirs, successors, and assigns, all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Agreement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) ***Recreational Use.*** Grantor shall be permitted to engage in and permit others to engage in passive recreational uses of the Property, including without limitation ***[Insert as applicable: walking, hiking, fishing, horseback riding, bicycle riding, swimming and animal or plant observation.]***

(b) ***Business Use.*** Grantor shall be permitted to conduct any lawful, commercial or home-based business within the permitted residences, garages or granaries. ***[Insert if applicable: the existing commercial use of a portion of the Property for \_\_\_\_\_ is expressly permitted, provided and on the condition that such use complies with applicable law and does not require construction of permanent facilities.]***

(c) ***Transfer of Property.*** Subject to the terms of Paragraph 17 below, Grantor shall be permitted to sell, gift, mortgage, lease, or otherwise convey the Property. Grantor agrees that any mortgage of the Property shall be subordinate to the terms of this Agreement.

(d) ***Landscaping and Maintenance.*** Provided and on the condition that such use is in full compliance with applicable law, and does not have an otherwise detrimental effect on the Conservation Values of the Property, Grantor may perform routine groundskeeping and landscape maintenance on the Property, including without limitation (i) trimming and removal of grass and bushes, (ii) irrigation for landscaping purposes, and (iii) application of chemical and non-chemical based fertilizers, herbicides, pesticides and fungicides.

(e) *Recycling.* Grantor shall be permitted to recycle and reuse household garbage, waste and debris for composting purposes, so long as such composting operation does not consist of more than one quarter (1/4) acre of surface area, is located within the residential building areas shown on **Exhibit B**, and is not located within three hundred (300) feet of a stream or wetland area.

(f) *Trails and Recreation Areas.* Grantor shall be permitted to develop and construct pedestrian trails and associated nature viewing blinds, picnic tables, and benches for passive recreational use on the Property. *[Insert if applicable: Where feasible, equestrian trails are permitted, provided and on the condition their use does not negatively impact the natural and hydrologic features of the land and is consistent with maintaining the Conservation Values of the Property.]* Motorized vehicles are prohibited on the trails except as set forth in Paragraph 3(j) above.

OR

*[(f) Trails and Recreation Areas. Grantor shall be permitted to develop and construct unpaved agricultural and forestry roads, as well as fire lanes, pedestrian trails and associated nature viewing blinds, picnic tables, and benches for passive recreational use on the Property. Paving of said trails and agricultural and forestry roads is permitted only when it serves to protect the Conservation Values of the Property, such as preventing soil erosion, and is subject to the prior written approval of Grantee. [Insert if applicable: Where feasible, equestrian trails are permitted, provided their use does not negatively impact the natural and hydrologic features of the land and is consistent with maintaining the Conservation Values of the Property.] Motorized vehicles are prohibited on the trails except as set forth in Paragraph 3(j) above.]*

(g) *Timbering.* Grantor shall be permitted to harvest timber from those areas delineated on **Exhibit B** and/or the Baseline Inventory and identified as “dominated by pine forest” *[Insert if applicable: or mixed pine and hardwood]. [Insert if applicable: Grantor shall be permitted only to selectively harvest hardwood tree species. Said harvest of hardwoods shall not be conducted within \_\_\_ hundred (\_\_) feet of a perennial stream. Hardwood forests shall be replanted with native hardwood tree species, or allowed to regenerate naturally. No pine planting is permitted in areas that contain predominantly hardwood forest cover as of the date of this Agreement.]* Grantor shall be permitted to prune, cut down, or otherwise harvest trees only as necessary (i) to prevent hazard, disease, or fire on the property, (ii) for firewood collection for Grantor’s individual use, or (iii) to restore or enhance the hydrology and protection of native plant species on the Property. All timber harvesting, with the exception of incidental firewood cutting and tree pruning to prevent hazard, shall be done in accordance with a plan prepared in consultation with a registered professional forester or other conservation professional that is designed to protect the Conservation Values of the Property, including without limitation scenic and wildlife habitat values, which plan must be approved in writing by Grantee.]

OR

*[(g) Timbering. No timbering shall be permitted; provided, however, that Grantor shall be permitted to prune, cut down, or otherwise harvest trees only as necessary (i) to prevent hazard, disease, or fire on the property, (ii) for firewood collection for Grantor's individual use, or (iii) to restore or enhance the hydrology and protection of native plant species on the Property. All timber harvesting, with the exception of incidental firewood cutting and tree pruning to prevent hazard, shall be done in accordance with a plan prepared in consultation with a registered professional forester or other conservation professional that is designed to protect the Conservation Values of the Property, including without limitation scenic and wildlife habitat values, which plan must be approved in writing by Grantee.]*

(h) *Agriculture.* On those portions of the Property that are delineated on **Exhibit B** and/or the Baseline Inventory and identified as “dominated by pine forest” or “cleared land,” and provided that such actions shall be consistent in size and scope with present practices on the Property and with the preservation of the Conservation Values, Grantor shall be permitted to

- (i) breed, raise, and pasture livestock or horses,
- (ii) breed and raise bees, poultry, and other fowl,
- (iii) plant, raise, and harvest crops,
- (iv) perform primary processing of, and store and sell, crops and related products, including direct sales to the public,
- (v) build and maintain barns, sheds, fences, or other nonresidential structures to enclose or house animals, equipment, tools, and agricultural and forestry products, and
- (vi) build and maintain livestock water wells.

Under no circumstances, (A) shall there be any increase in the size or scope of permitted activities on the Property to the level of industrial or factory type livestock operations (i.e., operations characterized by the continuous confinement of livestock in tightly confined environments for the purpose of raising, feeding and fattening for market), (B) shall any slaughtering facilities or hog operations be allowed, (C) shall grazing areas be permitted within a two hundred (200) foot buffer zone of any perennial stream or wetlands, or (D) shall areas predominantly forested in hardwoods as of the date of this Agreement be cleared to allow for agricultural operations. All structures permitted by this Paragraph 4(h), individually and combined, must be consistent with the purposes of this Agreement, and protection of the Conservation Values of the Property.

Grantor shall manage the Property in accordance with sound agricultural soil and water conservation practices using a conservation plan approved in writing by Grantee and developed utilizing the standards and specifications of the Natural Resources Conservation Service Field Office Technical Guide and approved by the local Soil and Water Conservation District, so as to promote the agricultural capability of the land and

protect the Conservation Values of the Property, including without limitation agricultural soils, scenic and wildlife habitat values, and water quality values.

Grantor shall implement all soil and water conservation practices that are contained in the approved conservation plan according to the schedule of implementation that exists within the plan. Revisions to the plan and schedule of implementation may be made as approved by Grantee, the Natural Resources Conservation Service and the local Soil and Water Conservation District.

(i) *Existing Residence[s]*. Grantor shall be permitted to maintain, alter, improve, and replace the existing single-family residential dwelling, as indicated on **Exhibit B** as “Existing Residence” together with accessory outbuildings and facilities not for human habitation, including but not limited to power and communication utilities, septic waste disposal systems, fresh water supply, driveway, swimming pool, and usual and customary household outbuildings, including a garage and storage shed. The area impacted by such residence, including accessory outbuildings, facilities, and managed lawn areas, will be contained within an area no greater than two (2) acres in size.

(j) *New Residence[s]*. Grantor shall be permitted to build, maintain, alter, improve, and replace \_\_\_\_\_ new single-family residential dwelling(s), together with accessory outbuildings and facilities not for human habitation, including but not limited to power and communication utilities, septic waste disposal systems, fresh water supply, driveway, swimming pool, and usual and customary household outbuildings, including a garage and storage shed. The area impacted by each residence, including accessory outbuildings, facilities, and managed lawn areas, will be contained within an area no greater than one (1) acre in size and will be located as shown on **Exhibit B** (the “**Building Envelope**”). *[Insert if applicable: Grantor may select \_\_\_\_\_ ( ) building envelopes from the \_\_\_\_\_ ( ) alternatives indicated on Exhibit B as “Alternate Building Envelopes.”]* Construction, expansion, or replacement of said residential and accessory structures, facilities, and driveways requires notification of Grantee. If the permitted Building Envelope *[and Alternate Building Envelopes]* delineated on **Exhibit B** are found to be unsuitable for construction of said residential structure for engineering or technical reasons, an additional alternative building envelope may be defined, subject to the prior written approval of Grantee.

(k) *Roads and Driveways*. Grantor shall be permitted to use, improve, replace, and maintain the roads and driveways described in the Baseline Inventory and **Exhibit B**. *[Insert if applicable:, and shall be permitted to construct one (1) new driveway per dwelling to access the additional residential dwellings described in Paragraph 4(j) above.]* All driveway and road design, improvement, construction and maintenance shall be conducted in a manner that minimizes the impact on the natural and hydrologic features of the land consistent with maintaining the Conservation Values of the Property. Grantor must obtain Grantee’s prior written consent to any new driveway construction or to any improvements to existing driveways that involve replacing, widening, extending, or significantly altering the surface of the road.

(1) *Replacement of Improvements.* In the event of destruction, deterioration or obsolescence of any permitted structures, housing, fences, corrals, roads or other improvements and facilities, whether existing at the date hereof or constructed subsequently pursuant to the provisions of this Agreement, Grantor may replace the same with structures, housing, fences, corrals, roads, or other improvements and facilities of similar size, function, capacity, appearance, and location.

5. Notice of Intention to Undertake Certain Permitted Actions. Grantor shall obtain Grantee's prior written approval before undertaking or permitting any use of the Property as described under subparagraphs 4(e) through (1). The purpose of requiring Grantee approval prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purposes of this Agreement. Whenever Grantee approval is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Agreement.

5.1 Grantee's Approval. Where Grantee approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Except as otherwise expressly provided herein, Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Agreement.

6. Access. Grantee shall have the right to enter the Property at reasonable times, and upon prior reasonable notice to Grantor (except that such notice is not required when Grantee believes in good faith that the Conservation Values of the Property are at imminent and substantial risk), in order to (i) exercise its rights granted hereunder, including without limitation the preservation and maintenance of the Property; (ii) to monitor Grantor's compliance with and otherwise enforce the terms of this Agreement; (iii) to *[Insert as applicable: ( ) to conduct scientific studies, monitoring and management of rare species populations and their habitat to conduct educational and conservation projects, ( ) to protect and restore wetlands, ( ) to control non-native or invasive plants, ( ) to maintain vegetative riparian buffers, ( ) to control animal populations at reasonable levels, ( ) to improve water quality, ( ) to prevent erosion, ( ) to restore damaged ecosystems and habitats, or ( ) to conduct educational, non-commercial natural history walking tours open to the public under the control and supervision of Grantee, provided that Grantee in the conduct of such tours shall observe all conditions, restrictions and limitations imposed on Grantor through this Agreement]*. Grantee shall indemnify, defend and hold Grantor harmless from and against any claims, damages or liability (including reasonable attorneys' fees) resulting from Grantee's exercise of its right of entry, except to the extent that such claims, damages or liability arise from the negligence or intentional acts of Grantor. Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property as long as such use does not interfere with the Conservation Values. The general public is not granted access to the Property under this Agreement.

7. Costs and Liabilities. Grantor retains all responsibility and shall bear all costs related to the ownership, use, operation, upkeep, and maintenance of the Property (excluding

improvements made by Grantee at its own cost and expense), including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall provide Grantee with evidence of such coverage upon request. Grantor shall keep the Property free of any and all liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor, unless such lien is subordinate to this Agreement.

8. Taxes. Grantor shall pay before delinquency all property or other taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent governmental authority (hereinafter referred to collectively as “**Taxes**”), including any Taxes imposed upon, or incurred as a result of, this Agreement, and shall furnish Grantee with satisfactory evidence of payment upon request.

9. Representations and Warranties. Grantor represents and warrants that, to the best of [*his, her, its, their*] knowledge:

(a) Grantor is the sole owner, is seized of the Property in fee simple, and has good right to grant and convey the conservation easement in accordance with the terms of this Agreement.

(b) There is legal access to the Property.

(c) Any mortgages or liens on the Property are and shall remain subordinate to the terms of this Agreement.

(d) The Property is free and clear of any and all encumbrances, except easements of record, none of which would nullify, impair or limit in any way the terms or effect of this Agreement.

(e) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment (collectively, “**Hazardous Materials**”) exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property.

(f) There are not any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulation, and requirements.

(g) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use (collectively, “**Applicable Law**”).

(h) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.

(i) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violations of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its uses, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claim, demands, or orders.

(j) Neither the Property, nor any portion thereof, is or shall be used to satisfy mitigation requirements under 33 U.S.C. §1344 or N.C. Gen. Stat. §143-214-11.

Grantor agrees to indemnify, defend and hold harmless Grantee, its officers, directors, shareholders, employees, agents, successors and assigns, from and against all claims, damages, actions, proceedings, costs, liens, requirements, judgments, losses, penalties, fines, settlements and liabilities of any kind (including without limitation attorneys' fees and court costs, and consultant and expert witness fees) arising in any manner, directly or indirectly, out of or by reason of (a) any breach of any representation or covenant of Grantor in this Agreement, (b) any violation or alleged violation of Applicable Law by Grantor with respect to the Property, and/or (c) any presence, generation, treatment, storage, disposal, transport, release, threatened release or suspected release of any Hazardous Material brought on, in, under, about, to or from the Property.

10. Title Warranty; Quiet Enjoyment. Grantor shall defend its title against the claims of all persons whomsoever, and Grantor covenants that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Agreement.

11. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Agreement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of this Agreement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or if the violation cannot reasonably be cured within said period, fails to commence to cure such violation within the thirty (30) day period, and thereafter to diligently prosecute the cure to completion, Grantee may bring an action at law or in equity to enforce the terms of this Agreement, to enjoin the violation by temporary and/or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Agreement or injury to any Conservation Values protected by this Agreement, including damages for the loss of scenic, aesthetic or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee shall also be entitled to recover all reasonable attorney fees, court costs, and other expenses incident to enforcement of this Agreement.

11.1 Costs of Enforcement. Any costs incurred by Grantee in successfully enforcing the terms of this Agreement against Grantor, its successors or assigns, including without

limitation reasonable costs of court and attorney's fees, and any reasonable costs of restoration necessitated by Grantor's violation of the terms of this Agreement, shall be borne by Grantor.

11.2 Grantee's Discretion. Enforcement of the terms of this Agreement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Agreement or of any of Grantee's rights. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

11.3 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel or prescription.

11.4 Acts Beyond Grantor's Control. Nothing contained in this Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; and nothing in this Agreement shall require Grantor to take any action to restore the condition of the Property after any act or event over which Grantor has no control.

12. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with this Agreement, Grantor agrees not to proceed with the use or activity pending resolution of the dispute, and either party may refer the dispute to mediation before, and as a condition to, any right of either to institute litigation. Either party may invoke the mediation requirement under this Paragraph 12 by furnishing written notice to the other of its intent to mediate. The notice shall specify the issue(s) for mediation, including the amount, if any, of monetary or other relief at issue. Upon receipt of such notice, the recipient may within five (5) business days deliver to the other a notice of other issue(s) or relief for mediation. The parties shall work together in good faith to conclude mediation regarding the indicated issue(s) no later than sixty (60) days from the date of the initial notice of intent to mediate. Mediation shall occur in Charlotte, North Carolina. The parties may either agree on a mediator within ten (10) days of the date of the initial notice of intent to mediate or, if the parties have not or cannot so agree, the mediator shall be named by JAMS/Endispute, with the party issuing the initial notice of intent to mediate bearing the obligation to arrange for mediator services through this organization (or any other mediation organization on which the parties may agree in writing) no later than five (5) days from the expiration of the ten (10) day period for appointment of a mediator by agreement of the parties. The parties shall bear equally all costs and expenses of mediation, including mediator compensation and expenses, subject to any other agreement regarding allocation of such costs and expenses the parties may achieve in context of a particular dispute.

If either party refuses to participate in good faith in the mediation process required under this Paragraph 12, the party shall have failed to fulfill an absolute condition precedent to its right to pursue litigation or any other means of resolving any issue to be mediated. Any statute or other period of limitations shall be tolled during the time the parties are in good faith fulfilling

their obligations of mediation under this Paragraph 12, but such tolling shall not apply to any claim or issue sought to be resolved by a party that shall have failed to participate in good faith in the mediation process.

13. Extinguishment. If circumstances arise in the future that render the purposes of this Agreement impossible to accomplish, this Agreement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by North Carolina law at the time, in accordance with Paragraph 14 below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

14. Proceeds. This Agreement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Paragraphs 13 and 15, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the this Agreement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of this Agreement at the time of this grant to the value of the Property, without deduction for the value of the Agreement, at the time of this grant. The values used to arrive at the fair market value of this Agreement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code, as amended. For the purposes of this Paragraph 14, the ratio of the value of the conservation easement herein granted to the value of the Property unencumbered by such conservation easement shall remain constant. *[Alternate where not taking a deduction: The Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Section 14, the parties stipulate to have a fair market value of \_\_\_\_\_ percent (\_\_\_\_%) of the fair market value of the Property (meaning the land containing approximately \_\_\_\_\_ acres expressly defined to be the Property herein, and not any other property of Grantor). For the purposes of this Agreement, the fair market value of the Property shall be established by an appraisal prepared by a licensed appraiser, and the percentage set forth above shall remain constant.]*

15. Condemnation. If the Property or any other right or interest hereunder is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

16. Assignment. This Agreement and other rights and interests hereunder are transferable, but Grantee may assign its rights and obligations hereunder only to an organization that is a qualified organization at the time of the transfer under Section 170(h) of the Code, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder and authorized to acquire and hold conservation easements under the Act, or any successor provision thereto. As a condition of such transfer, Grantee shall require that the conservation purposes of this Agreement continue to be carried out.

17. Subsequent Transfers. Grantor agrees to incorporate the terms of this Agreement in any deed or other legal instrument by which any interest, including without limitation a leasehold interest, in all or a portion of the Property is transferred. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure to perform any act required by this provision shall not impair the validity of this Agreement or limit its enforceability in any way.

18. Right of First Refusal. Except in connection with a transfer of the Property to a Related Party, as defined below, Grantor hereby grants to Grantee a right of first refusal to purchase the Property, or any portion thereof, on the terms and conditions set forth below. If at any time Grantor receives an offer to purchase the Property, or any portion thereof, (the “**Option Parcel**”) acceptable to it from a prospective buyer (each such offer, an “**Offer**”), Grantor shall notify Grantee in writing of the economic terms of the Offer. Grantee shall have the right, for a period of thirty (30) days following receipt of notice from Grantor (the “**Option Period**”), to elect to purchase the Option Parcel by entering into a purchase agreement with Grantor on the same economic terms contained in such Offer, using the most current revision of the North Carolina Bar Association Form No. 2 Offer to Purchase and Contract. In the event that: (i) Grantee fails to respond to Grantor’s notice within the Option Period, or (ii) Grantee rejects the terms and conditions of the Offer, or (iii) the sale of the Option Parcel to Grantee is not consummated within sixty (60) days after the expiration of the Option Period, then Grantee’s right of first refusal with respect to the Offer shall lapse, and Grantor shall be permitted to sell the Option Parcel to the prospective buyer. Notwithstanding the foregoing, (a) if Grantor does not consummate a sale to the prospective buyer on the terms contained in the Offer, then Grantor shall again comply with the requirements of this Paragraph 18 prior to selling all or any portion of the Property to another prospective buyer (or to the same prospective buyer on different terms) and (b) the right of first refusal contained in this Paragraph 18 shall remain binding on subsequent owners of the Property. The rights granted in this Paragraph 18 shall not apply to a transfer by Grantor to a Related Party. For purposes of this Paragraph 18, “Related Party” shall mean, in respect of an individual Grantor, a spouse, any issue, spouse of issue, or ancestor of the Grantor, a trust for the sole benefit of any such Related Party or Parties, or a corporation, partnership, limited liability company or other entity owned entirely by the Grantor and Related Parties of the Grantor.

OR

*[18. Right of First Offer. If Grantor intends to offer the Property (or any portion of the Property) for sale to a party other than a Related Party, as defined below, Grantor shall first give Grantee written notice of the primary terms of the offer Grantor intends to make (the “Offer”). Grantee shall have until the date thirty (30) days after receipt of notice to accept the Offer. If Grantee rejects the Offer, or fails to respond to the Offer in writing within said thirty (30) day period, Grantor shall be free to sell the Property at substantially the same sales price as contained in the Offer. A reduction in such sales price of five percent (5%) or less shall not be deemed a substantial change.*

*If Grantor substantially changes the terms of the Offer, Grantor shall resubmit the Offer to Grantee with all changes made to the Offer, and Grantee shall have fifteen (15) days in which to accept any such new offer (“Revised Offer”).*

*If Grantee accepts the Offer or any Revised Offer, a contract shall be deemed to exist between the Grantor and Grantee for the purchase of the property under the terms set forth in the Offer or Revised Offer, as applicable. The closing of such purchase transaction shall occur on or before the applicable date for closing set forth in the Offer or Revised Offer, or if no date for closing is specified, the date sixty (60) days after the date of Grantee's notice of acceptance, at a location reasonably specified by Grantor. The rights granted in this Paragraph 18 shall not apply to a transfer by Grantor to a Related Party of Grantor. For purposes of this Paragraph 18, "Related Party" shall mean, in respect of an individual Grantor, a spouse, any issue, spouse of issue, or ancestor of the Grantor, a trust for the sole benefit of any such Related Party or Parties, or a corporation, partnership, limited liability company or other entity owned entirely by the Grantor and Related Parties of the Grantor.]*

19. Estoppel Certificate. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any reasonable document, including an estoppel certificate, which certifies, to the knowledge of Grantee, Grantor's compliance with any obligation of Grantor contained herein and otherwise evidences the status of the Agreement as may be reasonably requested by Grantor.

20. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantee: Catawba Lands Conservancy  
105 West Morehead Street  
Charlotte, North Carolina 28202  
Attention: Director

or to such other address as either party from time to time shall designate by written notice to the other.

21. Recordation. Grantee shall record this instrument in the office of the Register of Deeds for \_\_\_\_\_ County, North Carolina, and may re-record it at any time as may be required to preserve its rights in the Easement.

22. General Provisions.

(a) Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of North Carolina.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed to effect the purposes of this Agreement and the policy and purpose of the statutes referenced herein. If any provision in this instrument is found to be ambiguous, an interpretation consistent with such

purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) 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, all of which are merged herein.

(e) Amendment. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Grantor and Grantee may amend this Agreement provided that no amendment shall be allowed that will affect the qualification of this Agreement or the status of Grantee under any applicable laws, including N.C. GEN. STAT. §121-34 or any successor statute, or Section 170(h) of the Code, and any amendment shall be consistent with the purposes of this Agreement and shall not affect its perpetual duration. Any such amendment or modification must be executed by both Grantor and Grantee and shall be recorded in the public registry of \_\_\_\_\_ County.

(f) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(g) Successors. The covenants, terms, conditions and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

(h) Termination of Rights and Obligations. A party's rights and obligations under this Agreement shall terminate upon the transfer of the party's interest in the Easement or Property to a party assuming its obligations hereunder, except that liability for acts or omissions occurring prior to transfer shall survive transfer, but this Agreement shall not be affected by such transfer, the transferee having the rights and obligations of the transferring party.

(i) Successor Limitation. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Code, or to be authorized to acquire and hold conservation easements under N.C. GEN. STAT. §121-34, and a prior assignment is not made pursuant to Paragraph 16 above, then Grantee's rights and obligations under this Agreement shall become immediately vested in such organization as a Court of competent jurisdiction shall direct pursuant to North Carolina law and with due regard to the requirements for an assignment pursuant to said Paragraph 16.

(j) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(k) Counterparts. The parties may execute this instrument in two or more counterparts, which shall in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(l) Merger. The parties agree that the terms of this Agreement shall survive any merger of the fee and easement interest in the Property.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

**[Signatures begin on following page.]**

**IN WITNESS WHEREOF**, Grantor and Grantee have caused this Agreement to be executed as of the day and year first above written.

**GRANTOR:**

\_\_\_\_\_  
[Insert name]

\_\_\_\_\_  
[Insert name]

**STATE OF NORTH CAROLINA**

**COUNTY OF** \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for said County and State, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

[NOTARIAL SEAL]

**STATE OF NORTH CAROLINA**

**COUNTY OF** \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for said County and State, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

[NOTARIAL SEAL]

**GRANTEE:**

**CATAWBA LANDS CONSERVANCY**, a  
North Carolina nonprofit corporation

By: \_\_\_\_\_  
\_\_\_\_\_ President

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he or she is \_\_\_\_\_ President of **CATAWBA LANDS CONSERVANCY**, a North Carolina nonprofit corporation, and that he, as \_\_\_\_\_ President, being authorized to do so, executed the foregoing on behalf of the corporation. And the said \_\_\_\_\_ President acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

[NOTARY SEAL]

**EXHIBIT A**

**Legal Description**

**EXHIBIT B**

**Site Plan**