

DEED OF CONSERVATION EASEMENT

Prepared by Lyman J. Gregory, III, a North Carolina licensed attorney,
and return to:
Southern Appalachian Highlands the Conservancy,
372 Merrimon Avenue
Asheville, NC 28801

Excise Tax:\$ _____

NOTE: THIS DOCUMENT CONTAINS PROVISIONS REQUIRING NOTICE UPON TRANSFER OF ALL OR ANY PART OF THE REAL PROPERTY LEGALLY DESCRIBED HEREUNDER. SEE PARAGRAPHS 9 AND 21 BELOW.

Any time the Property or a permitted portion thereof is transferred by Landowner to any third party, Landowner shall pay a fee of \$100 to the Conservancy and notify the Conservancy pursuant to the requirements of Section 13 of this Deed.

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement") is granted on this ____ day of _____, 20__ by and between _____ ("Landowner"), whose address is _____; and the **SOUTHERN APPALACHIAN HIGHLANDS CONSERVANCY** ("the Conservancy"), a Tennessee non-profit corporation, with an address of 372 Merrimon Avenue, Asheville, NC 28801, ("the Conservancy"), (individually a "Party" and collectively the "Parties").

The following Exhibits are attached hereto and are incorporated by this reference; in case of any conflicting information among the Exhibits to this Conservation Easement, Exhibit "A" shall control as to identification of the boundaries of the Property:

Exhibit A: Legal Description of the Property
Exhibit B: Map of the Property

RECITALS

A. Description of Property. Landowner is the owner of the fee simple interest in the subject property legally described in Exhibit A and labeled Conservation Easement Area on the survey completed by Ed Holmes & Associates Land Surveyors, PA and recorded in the Buncombe County Register of Deeds in Plat Book 238 at Page 44, consisting of approximately 55.7 acres of land, located in Buncombe County, State of North Carolina and is the same conveyed to Landowner by deed

recorded at Deed Book 4663 at Page 172, Buncombe County Registry (hereinafter the “Property”).

- B. *Qualified Organization.*** The Conservancy is a “qualified organization,” as defined in §170(h)(3) of the Internal Revenue Code of 1986, as amended, (Code) and regulations promulgated thereunder, Treasury Regulation § 1.170A-14(c) (Regulation), and a qualified holder under Section 121-35(2) of the North Carolina General Statutes. The Conservancy is a nonprofit corporation with purposes including the conservation and protection of significant natural areas, wildlife habitat, waterways, scenic resources, farmland, and open lands, for aesthetic, scientific, charitable, and educational purposes. The Conservancy is a tax exempt public charity under Code Sections 501(c)(3) and 509(a)(2), is authorized by the laws of the State of North Carolina to accept, hold, and administer conservation easements, possesses the authority to accept and is willing to accept this Conservation Easement under the terms and conditions hereinafter described, has the resources to enforce this Conservation Easement, and is a “qualified organization” and an “eligible donee” within the meaning of Code Section 170(h)(3).
- C. *Conservation Easement.*** This Conservation Easement is a perpetual right and interest in real property under NCGS § 121-38(b) that runs with the land, The Conservancy and Landowner, for itself, its agents, successors, personal representatives, heirs, and assigns, agree that this Conservation Easement shall be held exclusively for the Purpose defined below.
- D. *Conservation Purpose and Values.*** Pursuant to Code § 170(h)(4)(A) and Regulation § 1.170A-14(d), the conservation purposes of a qualified conservation contribution must include one or more of the following: (1) to protect relatively natural habitat of fish, wildlife or plants; and (2) to preserve open space. The conservation purposes and values of this Easement are as follows:
- 1. *Relatively Natural Habitat*** [§ 1.170A-14(d)(3)]. The Property contains relatively natural habitat identified and described in the Baseline Documentation Report, which provides food, shelter, breeding ground, and migration corridors for several wildlife species, including bear, deer, bobcat, coyote, grouse, quail, pheasant, turkey, and migratory and non-migratory song birds, a variety of forest types, including mixed hardwoods in different stages of succession; Diverse habitats, including understory plant communities and habitat that supports a diversity of native species; Seeps, springs, streams, ponds and water courses of high water quality, including Kuykendall Branch and two of its headwater tributaries, plus two unnamed tributaries to the French Broad River, which is located across N.C. Highway 251 from the Property; Wildlife habitat for large mammal species; smaller mammal species; large birds and birds of prey; small birds, including migratory species; a variety of species of amphibians and reptiles; and insect and aquatic life.
 - 2. *Open Space*** [§ 1.170A-14(d)(4)]. The Property qualifies as Open Space because it is being preserved for the scenic enjoyment of the general public and pursuant to the following clearly delineated federal, state or local governmental conservation policy and will yield a significant public benefit.
 - 2.1 *Scenic Enjoyment.*** The Property adds to the scenic character of the local rural landscape in which it lies, contains a harmonious variety of shapes and textures, and provides a degree of openness, contrast and variety to the overall landscape. A majority of the

Property is visible to the general public from N.C. Highway 251 (Riverside Drive), from the French Broad River, and from the N.C. Wildlife Resource Commission's Sandy Mush Game Lands, which are open to and actively utilized by residents of Buncombe County and the City of Asheville metropolitan area, and the State of North Carolina. In particular, the Property contains scenic views of Appalachian oak forest, pine forest, cove forest, and Eastern hemlock. Preservation of the Property will continue to provide an opportunity for the general public to appreciate the unobstructed scenic views it provides of an open and undeveloped landscape. The terms of this Conservation Easement do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land.

2.2 Agriculture/Forestry. The Property has a history of agricultural uses and is currently used for homestead gardening. This use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural production.

2.3 Clearly Delineated Government Conservation Policy. Protection of the Property furthers the specific objectives of clearly delineated government conservation policies as follows:

2.3.1 Federal Policies. Federal legislation supports conservation of the Property through:

- Section 170(b)(1)(E)(iv) of the Internal Revenue Code, as amended by the 2006 Pension Protection Act and extended to make the incentive permanent, creates a greater tax deduction and carry forward period for landowners conserving their properties through the use of perpetual conservation easements, with even greater tax benefits available to agricultural landowners provided that the conserved property remains available for either agricultural or livestock production, or both. The Property's protection with this Easement for open space and agricultural purposes furthers this policy's objective by actively encouraging uses for agriculture, and by requiring that the land remain available for agriculture when not in active use.
- The United States provides further support for agriculture conservation through the Agricultural Conservation Easement Program, Title XII, Subtitle H, Section 2401 of the Food, Conservation, and Energy Act of 2014, Public Law 113-79, 16 U.S.C. 3865 and 3865b authorizes the Agricultural Conservation Easement Program under which the Secretary of Agriculture, acting through the Natural Resources Conservation Service, on behalf of the Commodity Credit Corporation, facilitates and provides funding for the purchase of conservation easements for the purpose of protecting agricultural uses and related Conservation Values of eligible land by limiting nonagricultural uses of the land. The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. § 4201, *et seq.*, the purpose of which is "to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland;" The Property's protection with this Easement for open space and agricultural purposes furthers this policy's objective by protecting agricultural

and related uses of the land.

2.3.2 *Statewide Policies*. The State of North Carolina has recognized the importance of private efforts toward the preservation of land by the enactment of the following laws and policies:

- The goals of the North Carolina Division of Water Resources in its French Broad River Basinwide Water Quality Plan (2011), which include encouraging preservation of open spaces in the basin in order to protect water quality, and retaining vegetated stream buffers on headwaters.
- The policies and purposes of the North Carolina Land and Water Fund (formerly the Clean Water Management Trust Fund), N.C.G.S. Section 143B-135.230 *et seq.*, which recognizes the importance of preserving riparian buffers in protecting and conserving clean surface water.
- The policies and purposes of the North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. Section 121-34 *et seq.*, which provides 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 use,” and which provides 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”.
- The purposes of the North Carolina Wildlife Action Plan, completed by the North Carolina Wildlife Resources Commission in 2015, which goals include conserving and enhancing habitats and communities supporting North Carolina’s species diversity, and supporting educational efforts to improve understanding of wildlife resources among the general public and conservation stakeholders.
- The “Million Acres Initiative,” enacted in June 2000, in N.C.G.S. 113A-240, which provides that the state shall encourage, facilitate, plan, coordinate, and support appropriate federal, state, local, and private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands are permanently protected by December 31, 2009, and which continues to be a goal of the state.
- The One North Carolina Naturally initiative of the NC Department of Environmental Quality, the mission of which includes maintaining functional ecosystems, biological diversity, and working landscapes through the stewardship of land and water resources.
- The State of North Carolina’s special use assessment of agricultural, horticultural and forest lands as set forth in N.C.G.S. 105-277.2 *et seq.*, which is a deferred tax program for land actively in commercial production under a sound management program for farms growing crops, plants or animals; horticultural land growing

fruits, vegetables, nursery or floral products; or a forest unit growing trees.

- 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 subdivisions 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, openlands, and places of beauty.”
- The policies and purposes of the North Carolina Agricultural Development and Farmland Preservation Trust Fund, N.C.G.S. Section 106-735 *et seq.*, which recognizes the importance of the preservation of farmland and to foster the growth, development, and sustainability of family farms and N.C.G.S. 106-744 which provides for the purchase of agricultural conservation easements, including transaction costs.
- North Carolina General Statute 106-583 *et seq.*, which provides that "It is declared to be the 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".
- North Carolina General Statute 139-2 *et seq.*, which provides that “It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this State, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, utilization, and disposal of water, and the development of water resources and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this State.

2.3.3 *Regional/County Policies.* Applicable County policies include:

The goals and recommendations of the Buncombe County Land Conservation Advisory Board established by Buncombe County Commissioners in 2004 to promote the establishment of voluntary conservation easements on high priority lands in the County, which policy is promoted by the protection of this Property and Buncombe County's Farmland Preservation Plan and 2043 Comprehensive Plan.

2.4 **Significant Public Benefit.** There is a foreseeable trend of intense development in the vicinity of the Property in the near future from sprawling development of the Asheville

metropolitan area. The Property would be desirable land for substantial residential development because of its size, location, scenic views and topographical orientation. As such, there is a strong likelihood that the Property would be developed if left unprotected, which would in turn lead to or contribute to the degradation of the scenic and natural character of the surrounding area. Conservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values from N.C. Highway 251 (Riverside Drive), other public roads, the French Broad River, and the N.C. Wildlife Resources Commission's Sandy Mush Game Lands. The Property also lies across N.C. Highway 251 and the French Broad River from the Sandy Mush Game Lands and thereby serves as a critical buffer area to those public lands. The Property's conservation will increase the amount of privately conserved land in the French Broad River Valley.

The conservation purposes and values set forth in this recital shall hereafter be referred to as the "Conservation Values." These Conservation Values are of great importance to the Parties, the residents of Buncombe County and the State of North Carolina.

E. Conveyance of Conservation Easement. Landowner intends to convey the entirety of the property interest that is the Conservation Easement created by this deed to the Conservancy pursuant to N.C.G.S. §121-34 *et seq.*

NOW, THEREFORE, in consideration of the premises and the mutual covenants, benefits, and promises recited herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, and incorporating the subject and content of the foregoing recitals, the Parties agree as follows:

1. Acknowledgement of Purpose and Intent. As a guide to the interpretation of this Conservation Easement and administration of this Conservation Easement, the Parties, for themselves, and for their successors and assigns, expressly declare their agreement and dedication to the following purpose and intent:

1.1. Purpose. The purpose of this Conservation Easement is to permanently preserve and protect the Conservation Values in perpetuity in accordance with Code §170(h), Regulation § 1.170A-14, and North Carolina Conservation and Historic Preservation and Conservation Agreements Act, N.C.G.S. Section 121-34 *et seq.* and to assure that the Property will remain forever predominantly in its scenic, natural and open space condition], subject to the uses of the Property permitted hereunder, including ongoing agricultural/forestry use, to prevent any use of the Property that is not consistent with the preservation and protection of the Conservation Values and, in the event of their degradation or destruction, to require restoration of such Conservation Values (the "Purpose"). In this Conservation Easement, "consistent with the Purpose" means acts on and uses of the Property that have a positive impact, neutral impact, or no impact on the Conservation Values, as determined by the Conservancy in its sole discretion.

To accomplish the Purpose of this Conservation Easement, the Conservancy shall permanently preserve and protect the Conservation Values of the Property in order of the following priority, (1) maintaining the Open Space values of the Property, including the dominant woodland and natural character of the Property, water resources, native plant and

animal populations, and natural communities; (2) protecting the quality of water resources originating on or flowing through the Property; (3) maintaining the scenic values of the Property; and (4) managing the land for forest products and agricultural production in the most ecologically sound manner possible. If preserving one of the Conservation Values would potentially harm one of the other Conservation Values, Landowner and the Conservancy agree to establish guidelines, cooperatively and utilizing good scientific and technical information, to avoid, reduce, or mitigate such conflict. If such guidelines cannot be developed, resolution of such conflicts shall prioritize protecting the open space, woodlands, water resources, plant and wildlife habitat over allowing agricultural or forestry uses. Further, the Conservancy will consider whether and how to adapt to changing conservation practices, evolving science and shifting environmental, climate, economic, and cultural circumstances consistent with the Purpose of the Conservation Easement in perpetuity, or adjusting according to prioritization.

Should the Property's use for the primary purpose become impossible to achieve, the Property shall continue to be protected for the secondary, tertiary, and quaternary purposes, while remaining available for the primary purpose. Should the Property's use for the secondary purpose become impossible to achieve, the Property shall continue to be protected for the tertiary and quaternary purposes, and remain available for the primary and secondary purposes and et cetera. Should the Property's use for all of the listed purposes become impossible, the parties shall proceed in accordance with the Termination Section in paragraph 12 below, and consistent with applicable laws, to continue to honor the original purposes set out for protection by this Easement.

1.2. Intent. The Parties' intent is to permit acts on and uses of the Property that are consistent with the Purpose and to restrict or prohibit acts on and uses of the Property that are not consistent with the Purpose, as determined by the Conservancy in its sole discretion ("Intent"). Nothing in this Conservation Easement is intended to prevent Landowner's quiet and reasonable enjoyment of the Property, or to compel a specific use of the Property other than the preservation and protection of the Conservation Values.

2. Grant, Conveyance, and Acceptance of Perpetual Conservation Easement. Landowner hereby unconditionally and irrevocably grants and conveys to the Conservancy, its successors, and assigns, forever and in perpetuity, the right and interest in real property that is the Conservation Easement, and the Conservancy hereby accepts without reservation, this perpetual Conservation Easement over and across the Property as an immediately vested right and interest in real property, which the Conservancy agrees to hold in perpetuity, pursuant to N.C.G.S. 121-34, *et seq.* Further, Landowner agrees that the conveyance of the Conservation Easement gives rise to a property right, immediately vested in the Conservancy, which it is hereby agreed and acknowledged shall constitute a binding servitude upon the Property and a vested interest in land that includes the Conservancy's right to preserve and protect the Purpose.

3. Rights of the Conservancy. To accomplish the Purpose, Landowner conveys the following rights to the Conservancy, its employees and its representatives, as an interest owner in the Property:

3.1. To preserve and protect the Purpose in perpetuity;

3.2. To prevent acts on or uses of the Property that are not consistent with the Purpose and when appropriate, require the restoration of such areas or features of the Property that are damaged

by an act or use not consistent with the Purpose;

- 3.3. To prevent or enjoin Landowner or third parties from engaging in any activity or use of the Property that is not consistent with the Purpose; and the right to require Landowner or third parties, as may be responsible, to restore such areas or features of the Property that are damaged by any use or activity not consistent with the Purpose;
 - 3.4. To enter upon the Property at least annually with seven (7) days' prior notice to Landowner, or less as agreed to by the Parties, at reasonable times, in order to inspect and monitor Landowner's compliance with the terms, conditions, and restrictions of this Conservation Easement pursuant to paragraph 8 of this Conservation Easement, and to enforce the terms of this Conservation Easement pursuant to paragraph 9 of this Conservation Easement, with the exception that no such notice shall be required in the event the Conservancy reasonably believes that immediate entry upon the Property is essential to prevent, terminate, or mitigate a violation of the Conservation Easement. In either case, notice need not be in writing. If such immediate entry occurs, the Conservancy shall notify Landowner within a reasonable time thereafter of such entry. Further, the Conservancy may engage such experts or consultants that the Conservancy deems necessary to assist in monitoring, including conducting aerial or drone flyovers of the Property;
 - 3.5. To have and hold all Development Rights of this Conservation Easement. The Parties agree that all Development Rights deriving from the Property in any way shall be held, and not exercised or used, by the Conservancy in perpetuity to accomplish the Purpose. The Development Rights are forever released and terminated as to Landowner, except those expressly reserved by Landowner in this Conservation Easement;
 - 3.6. To have all other rights conveyed by this Conservation Easement, including but not limited to rights as an owner in the rights and interest of the Property represented by this Conservation Easement, and therefore to receive notification from and join Landowner as a party to any leases, agreements, mortgages, negative pledges, UCC financing statements, or rights-of-way that may be proposed, granted, or required hereafter as a result of any action affecting, changing, or threatening the existence of the Conservation Easement, including condemnation or eminent domain proceedings, or for the purpose of exploring for or extracting oil, natural gas or other mineral resources on or below the Property in a manner that has the potential to impact the surface of the Property or the Purpose or both; and
 - 3.7. To any other rights that the Parties may approve consistent with the Purpose, including adding additional purposes under the Purpose or defining additional Conservation Values.
4. **Rights of Landowner.** Landowner retains to itself and to its personal representatives, heirs, successors, and assigns, all rights and obligations accruing from its ownership of the Property not granted and conveyed to the Conservancy, including the right to engage in activities and uses of the Property that are consistent with the Purpose and not prohibited herein, pursuant to Code §170(h)(4) and N.C.G.S. 121-34 *et seq.*, the right of access to the Property, and the right of quiet enjoyment of the Property, subject to the Purpose and terms of this Conservation Easement.
 5. **Baseline Documentation Report.** Pursuant to Regulation §1.170A-14(g)(5) and in order to

document the condition of the Property as of the date of this Conservation Easement, a report has been prepared by Southern Appalachian Highlands Conservancy and dated _____ 2023 (“Baseline Documentation Report”). The Baseline Documentation Report contains a description of the Property’s habitat types and natural resources, which comprise its Conservation Values, and documents the characteristics, current use, and status of anthropogenic improvements on and development of the Property. The Baseline Documentation Report has been provided to the Parties and is acknowledged by the Parties as an accurate representation of the Property at the time of the conveyance of this Conservation Easement. The Baseline Documentation Report will be used by the Conservancy to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement, but is not intended to preclude the use of other evidence to establish the condition of the Property as of the date of this Conservation Easement.

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6. Permitted and Prohibited Uses. The following uses and practices by Landowner, though not an exhaustive recital, are either permitted or prohibited by this Conservation Easement. Certain uses, where indicated, require notice to or approval from the Conservancy, or both, according to paragraphs 10 and 11. All activities permitted in this Conservation Easement shall be conducted in a manner consistent with the Purpose, and in accordance with Applicable Laws. Landowner shall request the Conservancy’s Approval for uses not expressly described herein when there is a question as to their consistency with the Purpose.

6.1. Land and Ownership Division. The Property described in Exhibit A may be granted, sold, exchanged, devised, gifted, transferred or otherwise conveyed but shall remain in unified title as one (1) parcel only, which may be jointly-owned or undivided. The following are expressly prohibited: the legal or "de facto" division, partition, subdivision, division into remainder tracts, platting, testamentary division, or other process by which equitable title to different portions of the Property are held by different owners, regardless of political or tax authority boundaries. Landowner may not indirectly divide any of the Property through the allocation of property rights among partners, shareholders, or members of any legal entity, condominiumization, interval or time-share ownership, partitioning among tenants-in-common, judicial partition or by any other means. Notwithstanding the foregoing, any portion of the Property may be conveyed to an entity that meets the qualifications set forth in paragraph 14, for permanent conservation ownership by such a qualified entity, subject to the Approval of the Conservancy pursuant to paragraph 23 and continuation of the terms of this Conservation Easement. Pursuant to IRS Notice 2023-30, Landowner and Conservancy agree that boundary line adjustments to the Property subject to this Conservation Easement may be made only pursuant to a judicial proceeding to resolve a bona fide dispute regarding a boundary line’s location. Except as provided in this Section 6.1, no other change in the boundaries of this Conservation Easement is permitted.

6.2. Property Improvements. Improvements existing as of the Effective Date of this Conservation Easement are permitted, and those improvements are five (5) existing structures on the Property as follows: one residence with an attached garage and two sheds within Building Area A (defined below); and one barn and one dilapidated chicken coop outside Building Area A. The existing structures are further described in the Baseline Report, and shown on Exhibit B. All other construction or placement of improvements is

prohibited except as provided herein. Landowner may repair and maintain existing improvements at their current location without further Approval of Conservancy.

A. Residential and Nonresidential Structures. The construction, placement, replacement, enlargement, maintenance and repair of residential and nonresidential structures and improvements is permitted pursuant to the limitations set forth herein. The terms “Residential Improvements”, “Nonresidential Improvements”, “Unenclosed Improvements”, “Agricultural Improvements” and “footprint” are defined in the Definitions Section in paragraph 26.1.

- Landowner may construct, place, replace or enlarge one (1) new Residential Structure, attached to the existing primary residence, within Building Area A, provided that its construction complies with all applicable statutes, ordinances, regulations, or other legal requirements, and all applicable of covenants, easements, negative easements, servitudes, or private restrictions of any kind.
- Landowner may construct, place, replace, or enlarge Unenclosed Improvements anywhere on the Property if consistent with the Purpose and scenic Conservation Values, with consideration of how such construction is designed and protects the viewshed.
- Landowner may construct, place, replace or enlarge Nonresidential Improvements outside of the Building Area A, with Conservancy Approval pursuant to paragraph 23 and for scenic Conservation Values, with consideration of how such construction is designed and protects viewsheds.
- Landowner may construct, place, replace or enlarge Agricultural Improvements, provided the maximum number of Agricultural Improvements shall not exceed two (2). Improvements in excess of the foregoing require the Conservancy’s Approval pursuant to paragraph 23 of this Conservation Easement.

B. Building Areas. There shall be one (1) building area permitted on the Property (referred to herein as “Building Area A” or “BAA”). All Residential Improvements shall be located within the Building Area.

- i. **Building Area A.** Building Area A consists of 1.94 acres. The location of Building Area A is generally depicted on Exhibit B. Landowner may construct, place, replace, or enlarge Residential or Nonresidential Improvements within Building Area A subject to the following limitations: The maximum number of Residential Improvements (including attached appurtenances) shall not exceed two (2) or that allowed by law, local code, or regulation. The maximum height for each Residential and Nonresidential Improvement shall not exceed that allowed by law, local code, or regulation. Improvements proposed in excess of or contrary with, the foregoing require Conservancy Approval pursuant to paragraph 23.

C. Roads. Construction, maintenance, paving (e.g. with concrete, asphalt, or other impermeable material) or otherwise surfacing of all Improved and Unimproved Roads is permitted within the Building Area.

No Improved Roads shall be constructed or established outside of the Building Area except for those permitted Improved Roads depicted on Exhibit B or unless Conservancy determines that the proposed road is consistent with the Purpose, and provides Approval pursuant to paragraph 23 of this Conservation Easement. Paving or otherwise surfacing of Improved Roads is prohibited unless the Conservancy determines that the proposed paving or surfacing is consistent with the Purpose, and provides Approval pursuant to paragraph 23 of this Conservation Easement. Permitted Improved Roads may be relocated provided that the Conservancy determines that the proposed relocation is consistent with the Purpose, and provides Approval pursuant to paragraph 23 of this Conservation Easement, and provided that the abandoned road shall be promptly re-vegetated and restored to a condition that is consistent with the Purpose. Improved Roads shall be no wider than physically or legally necessary to provide access or to meet local land use codes.

No Unimproved Roads shall be constructed or established outside of the Building Area(s) except for Unimproved Roads that are consistent with the Purpose. No Unimproved Road shall be altered to become an Improved Road unless Conservancy determines that the proposed alteration is consistent with the Purpose, and provides Approval under paragraph 23 of this Conservation Easement.

- D. *Trails.*** The development and use of unimproved footpaths and unimproved single- or two-track trails (including vehicle trails, not to be considered “roads” for the purpose of this Conservation Easement) are permitted in a Low-Impact manner and location that minimizes erosion and disturbance to the Property’s wildlife and scenic values for non-motorized recreation, property management and agricultural purposes and that minimize erosion and disturbance to water quality and sensitive plant habitat. Recreational courses or tracks for motorized vehicles are prohibited, however, the use of electric bikes or e-bikes may be permitted on designated, appropriately designed trails with the Conservancy’s Approval pursuant to paragraph 23.
- E. *Fences.*** Existing fences and fencerows may be maintained, repaired and replaced and new fences may be built anywhere on the Property as Unenclosed Improvements, provided that the location and design of said fences are consistent with the public’s scenic view of the Property. Notwithstanding the foregoing, privacy fencing and the planting of trees or other vegetation along Property boundaries that detrimentally affects the general public’s visual access to and across the Property is prohibited outside of the Building Area.
- F. *Signage.*** Existing signs may be maintained, repaired and replaced (with signs similar in character and size) in their current location. New signs may be placed and maintained on the Property provided that the number and size of the new signs are consistent with the Purpose. Display of billboards, signs or advertisements is prohibited on or over the Property, except for signs relating to the Property’s management, real estate marketing, construction, the existence and nature of this Conservation Easement, ownership, or the Property’s recreational or other

Conservation Values.

G. Utility Improvements, Utilities, and Other Technology. Existing energy generation or transmission infrastructure and other utility improvements, including but not limited to: (i) electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) septic systems; (iv) domestic water storage and delivery systems; (v) buried propane tanks; and (vi) Renewable Energy Generation Systems including, but not limited to, wind, solar, geothermal, or hydroelectric (“Utility Improvements”), may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without Approval from Conservancy. Utility Improvements may be enlarged or constructed on the Property, subject to the restrictions below and provided that they are consistent with Purpose.

- i. Landowner may enlarge or construct Utility Improvements within the Building Area(s) without Approval of the Conservancy, provided that no Utility Improvements exceed 35 feet in height.
- ii. Landowner shall not enlarge or construct Utility Improvements outside of the Building Area(s) without Approval of Conservancy. Prior to the enlargement or construction of Utility Improvements, Landowner shall provide notice so that Conservancy can evaluate whether the proposal is consistent with Purpose, and if so, provide its Approval.
- iii. Any easement, right of way, or other interest established or otherwise reserved to be used for Utility Improvements after this Conservation Easement is granted is subject to the Conservancy’s Approval and paragraph 6.5 (Easements, Rights of Way or Other Interests) of this Easement.
- iv. Renewable Energy Generation Systems are permitted for use on the Property primarily for the purpose of allowing Landowner to offset its own non-renewable energy consumption. Outside of Building Area A, only Low-Impact on or off-grid wind- and solar- and geo-thermal and micro-hydro powered generators, fuel cells, propane tanks, and other Low-Impact renewable energy-generating or storing improvements (referring to energy sources that are replaced rapidly by natural processes, such as biomass, hydro, geothermal, solar or wind), such as roof-mounted solar panels, solar- or wind-powered pumps, or solar-powered electric fences, and other Low-Impact technological improvements (such as network routers and satellite dishes) are permitted, provided no new Open Areas are created. The terms “Low-Impact” and “Off-Grid” are defined for the purpose of this Conservation Easement in paragraph 26.1. Any renewable energy generated on the Property in accordance with this paragraph that incidentally is in excess of Landowner’s consumption may be sold, conveyed, or credited to a provider of retail non-renewable energy service. Commercial production of energy or the connection of energy-generating structures to the power

grid requires the Conservancy's Approval.

- H. *Water Supply Infrastructure.*** Landowner is permitted to construct drinking water wells on the Property; install spring boxes, reservoir tanks, and water pipes from springs or streams on the Property; and upgrade any existing water system. Said uses shall be solely for the purpose of transporting water from these approved water supply infrastructure to residential improvements in Building Area A and for permitted agricultural uses on the Property pursuant to the Conservation Plan at paragraph 6.3.B.iii.
- I. *Other Improvements.*** Golf courses, sod farms, helicopter pads, and airstrips are prohibited. Towers of any kind are prohibited unless the Conservancy determines that the proposed tower is consistent with the Purpose, and grants Approval pursuant to paragraph 23.
- J. *Restoration after Improvements.*** Following the repair, replacement, enlargement, installation, maintenance, or construction of any of the above-described improvements Landowner shall promptly reseed and restore any disturbed area and surface impacts that result from the of any of the improvements to a condition consistent with the Purpose and to as close to the Property's original condition as possible within three (3) months, season permitting, or with the Conservancy's Approval pursuant to paragraph 23.

6.3 Natural Resource Management Land Use. Landowner recognizes the importance of sound resource management and stewardship to preserve and protect the Purpose. Habitat management activities that have the potential to not be consistent with the Purpose such as constructing or altering ponds, wetlands, or stream channels, and conducting controlled burns may be permitted provided that the Conservancy determines that such management activities are consistent with the Purpose, and provides its Approval pursuant to paragraph 23. To this end, the following uses of the Property shall be conducted in accordance with the provisions below.

- A. *Water Quality and Drainage Patterns.*** There shall be no alteration of natural drainage patterns on the Property, except for the continued maintenance of the existing ditches and culvert(s) on the Property or those permitted under this Conservation Easement, and stormwater management practices consistent with the North Carolina Division of Water Resources Stormwater Best Management Practices Manual (or subsequent document that may replace it). Diking, draining, filling or removal of wetlands, and pollution or discharge into waters, springs, seeps, or wetlands is prohibited, as is the creation of ponds by human activity. Landowner may use water from streams and springs on the Property for personal use, and for the agricultural and horticultural activities permitted in paragraph 6.3.B herein.
- B. *Agricultural and Horticultural Use.*** Within Building Area A only, agricultural and horticultural uses of the Property, including foraging of nuts and berries, non-timber tree crops such as fruits and nuts, or evergreens intended for use as Christmas trees, row-cropping, tillage, grazing, planting, plowing, and pasturage are permitted,

provided these uses are conducted consistent with the Purpose, in accordance with sound husbandry principles and agricultural Best Management Practices, and in accordance with the Conservation Plan described below, and any timber clearings within Building Area A are consistent with paragraph 6.3.C, and provided further that:

- i. CAFO, Feedlot: No industrial or factory-type agricultural or livestock operation is permitted, including but not limited to intensive livestock operations or animal husbandry characterized by the continuous confinement of livestock in tightly confined environments for the purpose of raising, feeding, and fattening for market, nor any slaughtering facility improvements; nor the establishment or maintenance of a Feedlot. Nothing in this paragraph shall prevent Landowner from seasonally confining livestock into an area, corral, or other facility for warm-up or feeding, or from leasing pasture for the grazing of livestock owned by others.
- ii. Grazing: Grazing of animals is permitted for agricultural use and invasive species management, provided said grazing is in sufficiently limited numbers to prevent overgrazing and the risk of erosion, and to maintain the health of the forest including its understory. Notwithstanding the foregoing, grazing of goats is permitted anywhere on the Property for purposes of invasive species management.
- iii. Conservation Plan: In the event that the Conservancy determines that overgrazing is occurring, or that the contamination of surface water on the Property by livestock becomes a management issue, or that livestock or other agricultural or horticultural uses are otherwise threatening the Purpose, then Landowner shall promptly prepare and implement: (a) a Conservation Plan in partnership with the USDA Natural Resources Conservation Service (NRCS) or Buncombe County Soil and Water Conservation Service (hereinafter the "Conservation Plan"), (b) present the Conservation Plan to the Conservancy for approval, and (c) use the Conservation Plan to guide and inform the management of the Property, consistent with the Purpose. The plan may be updated from time to time. Landowner agrees to submit to the Conservancy any updates to the Conservation Plan. In the event that the Conservancy determines that agricultural or horticultural uses are threatening the Purpose, then Landowner shall promptly update the Conservation Plan to address the new management issues. The Conservancy shall work with Landowner and NRCS to explore methods of compliance and give Landowner a reasonable amount of time, not to exceed twelve (12) months, to begin corrective action.

Waiver to the Conservation Plan. The Conservancy, at its sole discretion, may waive the requirement for a Conservation Plan if all of the following conditions are met on the Protected Property: 1) there is no active or planned soil tillage associated with row crops or otherwise; 2) there is no cattle grazing, as documented in the Baseline Documentation Report,

and 3) the Conservancy does not deem that agricultural or horticultural uses are threatening the Conservation Values of the Property.

C. *Vegetation and Forest Management.* As of the date of this Conservation Easement, the Property is in a substantially natural, predominantly forested condition, with approximately eighty-five one hundredths of an acre (0.85 acres) of existing, non-forested Open Area(s) on the Property, currently being used for Landowner's residences, associated improvements and landscaping depicted on Exhibit B ("the Open Area(s)") The Property shall remain in a substantially forested condition, and no new Open Areas shall be created, unless Landowner receives the Conservancy's approval under paragraph 23 to establish, re-establish, maintain and use Open Areas not to exceed the existing 0.85 acres. The creation, re-establishment and use of said Open Areas shall be in accordance with the Purpose of the Conservation Easement, or as applicable, with Best Management Practices for forestry and agriculture, and in compliance with the Forest Management Plan and the Conservation Plan.

Any Forestry (defined in paragraph 26.1 below) conducted for commercial purposes on the Property shall be performed in accordance with the subparagraphs below. Forestry conducted for non-commercial purposes on the Property, such as but not limited to the production of firewood for personal use by the Landowner and not for sale for offsite use, shall not be subject to the following subparagraphs, but shall be subject to Best Management Practices for forestry and agriculture, Forest Management Plan, and other relevant provisions of this Conservation Easement; shall not degrade the productive capacity of the Property to yield forest, agricultural, or horticultural crops; and shall not be detrimental to the Purpose. For any proposed vegetation management activity of over one (1) acre of vegetative disturbance in the aggregate, Landowner shall obtain the Conservancy's Approval pursuant to paragraph 23 which Approval may also require a Forest Management Plan. Further, vegetation and trees may not be cut, disturbed, altered, or removed from anywhere on the Property, including within the Riparian Buffer, except the Property may be managed as follows:

- i. To clear, selectively cut, prune, and manage vegetation and forest cover to the extent necessary for permitted uses within Building Area A and for maintaining a permitted road to access Building Area A, subject to Approval of the Conservancy pursuant to paragraph 23 and provided that all temporarily disturbed areas must be restored as soon as possible to a state protective of the Purpose.
- ii. To create a view from permitted residence(s) by selectively cutting, limbing, and trimming trees requires the Conservancy's Approval pursuant to paragraph 23 and must be conducted in a manner consistent with the Forest Management Plan or a Viewshed Management Plan ("Viewshed Plan") prepared by a Landscape Architect, unless the Conservancy determines the impact to the area is negligible, with the following restrictions and permitted activities for view cutting activity:

- a. Within the Riparian Buffer, a shaded canopy of mature vegetation is to be maintained. If mature trees are identified to be removed, limbed or trimmed within the Riparian Buffer and that removal would cause a stream section to become unshaded, then such would not be permitted unless appropriate trees or shrubbery, could be immediately planted to maintain shade over the stream; and
 - b. If any cutting activity could impact the stabilization of a creek bank, a plan for stabilizing the creek banks shall be provided to the Conservancy for its Approval pursuant to paragraph 23.
- iii. To restore ecology through prescribed burns, provided that if such burns are conducted pursuant to the Forest Management Plan and are consistent with the Purpose.
- iv. To selectively cut or collect trees on the Property for personal use by Landowner and Landowner's family's or tenants' as firewood in a manner that does not create new Open Areas. Trees cut incidental to other allowed activities may be used for firewood. Firewood collected from the Property shall not be commercially sold.
- v. To selectively remove trees to combat disease and infestation or to remove diseased trees or "hazard trees" (defined as trees that present danger or threat of injury or death to people or danger or threat of damage to property), in accordance with any current, relevant guidelines provided by the U.S. Department of Agriculture or the North Carolina Division of Forest Resources.
- vi. To manage forest activities for commercial and non-commercial use in accordance with a Forest Management Plan (FMP) approved by the Conservancy, provided there is no systematic disturbance of plant populations and their ecosystem or habitats, and including the following as forest management activities:
 - a. To harvest timber and other non-timber products, including understory plants, with Notice of Timber Harvest to the Conservancy and to the County Ranger's Office of the N.C. Division of Forest Resources for the county in which the harvest will occur, at least forty-five (45) days prior to commencement of any timber harvest activities of the specific activities of the Forest Management Plan to be implemented; with supervision by a Registered NC Forester (State Forester); to be conducted within the constraints of the FMP under a written contract, which shall specify relevant requirements for compliance with this Conservation Easement and shall require a performance bond in favor of Landowner with the Conservancy named as an additional insured party for compliance with the terms hereof. At the Conservancy's sole discretion, the Conservancy may waive the requirement of Registered NC Forester (State Forester) supervision or performance bond in certain cases of a small-scale harvest.

All Notices related to Forestry activities in this Paragraph 6.3.C shall supersede any general Notice requirements in Paragraph 21.

- b. “Thin”, defined as the selective removal of trees primarily undertaken to improve the growth rate or health of the remaining trees.
- c. To enhance native habitat and overall ecological health.
- d. To enable personal use of wood products on the Property.

Vegetation and Forest Management activities described in the above paragraph and subparagraphs shall be conducted where indicated with a Forest Management Plan (FMP) that complies with: this Conservation Easement; the standards set forth in the then-current Forest Practices Guidelines Related to Water Quality of the State of North Carolina; and the Best Management Practices of the State of North Carolina, and be prepared or approved by a N.C. Registered Forester, as that term is defined by N.C.G.S. §89B-2 or any successor provisions. Said FMP shall be prepared at the sole expense of the Landowner by a registered North Carolina forester (hereinafter, State Forester) The FMP shall have been prepared, or else reviewed and updated as required by a State Forester, not earlier than ten (10) years prior to the commencement of any commercial forestry activities, such as but not limited to the cutting of trees, timber stand improvement, and construction of woods roads, and shall be submitted to the Conservancy for its Approval pursuant to paragraph 23 at least forty-five (45) days prior to conducting any permitted timber harvest or other forest management activity requiring a FMP, as noted above.

All updates, amendments, or other changes to the FMP shall be submitted to the Conservancy for its Approval pursuant to paragraph 23 prior to any harvesting or forest management activity, and shall be included in any reference to the FMP herein.

The Conservancy may rely on the advice and recommendations of foresters, wildlife experts, conservation biologists, or other experts to determine whether the FMP would be detrimental to the Purpose. The Conservancy may also rely on such advice for an activity’s compliance with the FMP during or after the activity has been executed.

The FMP shall include at least, but not be limited to, the following elements, as applicable (except that those elements that do not change need not be re-submitted in FMP updates, amendments or changes):

- a. A statement of the following forestry goals:
 - 1. Maintenance of soil productivity;
 - 2. Protection of water quality, wetlands, and riparian zones;
 - 3. Maintenance or improvement of the overall quality of forest resources;
 - 4. Conservation of scenic quality;
 - 5. Protection or enhancement of significant natural communities, and significant plant and animal species or their habitats, identified as Conservation Values or as otherwise identified by the State of North

- Carolina, or the agency then recognized by the State of North Carolina as having responsibility for the identification or conservation of such communities, species, or habitats; and
6. Protection of significant historic, archeological, and cultural features identified as Conservation Values or as otherwise identified by the State of North Carolina, or other party or agency then recognized by the State as having responsibility for the identification or conservation of such resources;
- b. A statement of the Landowner's objectives, which must be consistent with the forestry goals and the Purpose;
 - c. Forest type map showing stands related to the prescriptions provided in the FMP;
 - d. Maps appropriately scaled and accurate, showing topography, and soil types as determined by the U.S. Department of Agriculture's Natural Resources Conservation Service (or by another similarly charged successor governmental agency);
 - e. Maps appropriately scaled and accurate, showing the following types of features but only to the extent such features and their locations are known by the Landowner or State Forester or are otherwise identified as Conservation Values or further described in the Baseline Documentation Report: forest stands; wetlands including but not limited to vernal pools; surface waters; habitat features, including significant natural communities or significant plant or animal species; recreational trails and other recreational or educational features; significant historic, archeological, or cultural features; and any other Conservation Values; and indicating major access routes (truck roads, landings, and major skid trails);
 - f. Copy of, or recording reference to, this Conservation Easement;
 - g. Prescriptions for each described stand, including but not limited to commercial and non-commercial treatments, and proposed schedule for activities, forest stand ("treatment unit") descriptions (such as forest types, species, stocking levels before and after harvesting, soils, topography, stand quality, site class, insect and disease occurrence, previous management history, and prescribed silvicultural treatment including harvest schedules, logging equipment, and practices to be employed or avoided);
 - h. Plant and wildlife considerations (identification of significant habitats and management recommendations);
 - i. Soil productivity and water quality considerations, including reforestation practices to be employed upon completion of harvesting operations to ensure soil stabilization and directions for clear marking of stream buffers and Streamside Management Zones;
 - j. Aesthetic and recreational considerations (impact on viewsheds from public roads, trails, and places);
 - k. Historic and cultural resource considerations (identification of resources and associated management recommendations); and
 - l. Summary of activities and practices intended to achieve compliance with this Conservation Easement and its Purpose.

And shall specifically address:

- the accomplishment of the Purposes of this Conservation Easement;
- the aforementioned list of forestry goals; and

Provision of FMP for Certification. At least forty-five (45) days prior to the commencement of any of said forestry operations, including but not limited to on-site preparations, the Landowner shall provide to the Conservancy the FMP so that the Conservancy may certify that such FMP is in compliance with the terms of this Conservation Easement and its Purpose. Landowner shall provide the Conservancy a copy of said FMP, including any proposed revisions thereto, except that forestry operations already prescribed within a FMP previously provided to the Conservancy within the past ten (10) years are not subject to this submission requirement. At any time, upon request by the Conservancy, the Landowner shall submit the FMP to the Conservancy within ten (10) days of such request. In general, although the FMP's purpose is to guide forest management activities in compliance with this Conservation Easement and its Purpose, actual activities will determine compliance.

The FMP shall be updated within ten (10) years of a timber harvest or harvest of non-timber wood products. Amendments to the FMP shall be required in the event that Landowner proposes a forest management treatment not included in the FMP. However, an amendment shall not be required for any change in timing or sequence of treatments if such change is within five (5) years of the prescription set forth in the FMP as approved by the Conservancy. In the event that any treatment unit is substantially damaged by natural causes such as an insect infestation, disease, fire, or wind, Landowner may elect to conduct an alternative treatment in which event Landowner shall submit an amendment to the FMP for the Conservancy's approval prior to conducting any alternative treatment. The requirement to complete a Forest Management Plan for timber harvest and other forest management activities may be waived at the sole discretion of the Conservancy provided that all activities comply with this Conservation Easement and the standards set forth in the then-current *Forest Practices Guidelines Related to Water Quality* of the State of North Carolina and Best Management Practices of the state of North Carolina.

- D. Riparian Protection:** No land within fifty (50) feet (slope measurement) of the top of the bank of any creek or any streams, springs, or the edge of any wetland (the "Riparian Buffer") may be plowed or planted with new crops.
- E. Non-native Invasive Species:** The intentional introduction of non-native invasive species (plant, animal, or pest), including horticultural use for the purpose of growing plants commonly recognized as non-native invasive species, is prohibited.
- F. Management of Invasive Species:** The control of species recognized by the Southeast Exotic Pest Plant Council (or subsequent authority) as non-native invasive species in accordance with ecologically sound prescriptions is permitted if all such activity occurs in a manner that maximizes protection of the Purpose.

Grazing animals may be introduced to manage non-native invasive plants. Landowner may cut, disturb, alter, or remove non-native invasive species within the Riparian Buffer provided that any area where vegetation is completely removed and bare soil is exposed is immediately re-vegetated and restored with native species. Except for activities contained within Building Area A, any activity to manage non-native invasive species requiring over one (1) acre disturbance in the aggregate must receive the Conservancy's Approval pursuant to paragraph 23 and may require a Forest Management Plan (described above).

- G. *Non-native, Non-invasive Species:*** The conversion of native vegetation to non-native species is prohibited, provided, however, that:
- (a) Non-native, non-invasive agricultural or horticultural crops may be introduced in Building Area A;
 - (b) Non-native, non-invasive species may be introduced in Building Area A for lawns or landscaping purposes; and
 - (c) Other non-native, non-invasive species may be introduced with the Conservancy's Approval pursuant to paragraph 23.
- H. *Toxins:*** Follow all Applicable Laws regarding the application or use of any chemical herbicides, pesticides, rodenticides, fungicides, fertilizers, and other toxic agents on the Property.
- I. *Minerals and Other Deposits.*** As of the date of this Deed, Landowner owns all rights and interests in the minerals and mineral rights located on, under, or in the Property or otherwise associated with the Property. Landowner shall not mine, develop, extract, explore for, transfer or otherwise separate by any method the rights or interests in and to any minerals and mineral rights on, under, in, from, or otherwise associated with the Property.
- J. *Surface Disturbance/Changes to Topography.*** There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, minerals or other materials; nor any dumping or changing of the topography of the land in any manner, except as reasonably necessary to construct and maintain the improvements permitted under this Conservation Easement, or for the purpose of combating erosion, flooding, fire, or for creating firebreaks.
- K. *Dumping.*** Dumping of soil, trash, garbage, waste, abandoned vehicles, appliances, or machinery, or other similar materials on the Property is prohibited, except where soil, ashes excluding coal ash, or other materials are used for permitted agricultural or vegetation management activities, and except as otherwise provided in this Conservation Easement. Composting of biodegradable material is permitted, and such materials may be deposited and spread on the Property as fertilizer. Disposal of storm debris, dead leaves, vegetative matter from permitted agricultural, horticultural, and vegetation management activities, and other biodegradable matter

by depositing or burning these materials in appropriate places is allowed, if consistent with the Purpose.

L. Hazardous Materials. The use of Hazardous Materials (defined in paragraph 26.1 herein) is only permitted in accordance with Applicable Laws. The use of any other materials is only permitted in accordance with Applicable Laws, including the use of herbicides or agricultural chemicals for invasives control pursuant to the Conservation Plan. The treatment, permanent storage, disposal or release of Hazardous Materials on, from or under the Property is prohibited.

6.4. Recreation. Non-motorized recreational uses such as hiking, horseback riding, mountain biking, cross-country skiing, hunting, fishing and camping are permitted on the Property in a non-intensive and Low-Impact manner consistent with Purpose. Motorized recreational use is prohibited except as incidental to permitted hunting activities, and except for occasional, private, non-commercial use that does not result in rutting, erosion, harassment of wildlife, or other uses not consistent with the Purpose. The use of electric bikes or e-bikes may be permitted on designated, appropriately designed trails with the Conservancy's Approval pursuant to paragraph 23. Recreational tracks or courses for dirt bikes or motorcycles are prohibited. Public or commercial shooting ranges are prohibited.

6.5. Easements, Rights of Way or Other Interests. The conveyance or modification of an easement, right of way, or other similar interest after the grant of this Conservation Easement is prohibited unless the Conservancy provides its Approval pursuant to paragraph 23.

6.6. Industrial and Commercial Use. Industrial uses of the Property are prohibited. Commercial (as defined in paragraph 26.1 below) uses of the Property that are not consistent with the Purpose are prohibited, except that subject to the Conservancy's Approval pursuant to paragraph 23, Landowner may conduct certain related forestry, horticultural or agricultural activities for commercial gain on, under, or over the Property that are consistent with the Purpose and that are not "forestry" or "horticulture" or "agriculture" as defined herein. Commercial uses consistent with the Purpose such as sale of agricultural, horticultural, or forestry products or by-products, or other cottage industry or traditional rural enterprise derived from the Property's permitted uses as consistent with the Purpose, or those listed below, are permitted. Landowner's right of passage across or upon the Property is permitted in conjunction with any permitted commercial activity, but third parties have no right of passage across or upon the Property unless they have a pre-existing right of way, or the Conservancy has provided its Approval of such access pursuant to paragraph 23. No utility towers, cellular or digital telephone towers, microwave relay stations, satellite towers, commercial wind turbines, or related or similar improvements of a commercial nature shall be constructed on the Property. Permitted commercial uses and activities are:

- The forest management, agricultural and horticultural activities described as permitted by this Conservation Easement;
- The commercial leasing and licensing of hunting, fishing, hiking, nature

study, historic tours, horseback riding and similar ecologically sound, passive, “eco-tourist” type commercial recreational activities and uses of the Property, at Landowner’s discretion and in accordance with all State regulations and other Applicable Laws, provided that if Landowner is electing to take the Section 2031(c) additional estate tax exclusion, any commercial recreational use shall be *de minimis* according to the provisions of Code Section 2031(c)(8)(B), as it may be amended or superseded;

- The long-term (over two weeks) or short-term (under two weeks) rental of existing or permitted single-family residence(s), and the use of existing or permitted improvements for a retreat, conference center, bed and breakfast or other similar uses; and
- The sale of incidental, excess energy generated from the permitted renewable infrastructure described herein.

6.7. Environmental Attributes. Landowner hereby reserves to itself all Environmental Attributes associated with the Property. “Environmental Attributes” shall mean any and all tax or other credits, benefits, renewable energy certificates, emissions reductions, offsets, and allowances (including but not limited to water, riparian, greenhouse gas, beneficial use, and renewable energy), generated from or attributable to the conservation, preservation and management of the Property in accordance with this Conservation Easement. Nothing in this paragraph shall modify the restrictions imposed by this Conservation Easement or otherwise impair the Purpose, and Landowner acknowledges and understands that in accepting this Conservation Easement, the Conservancy makes no representations or assurances as to the existence of any Environmental Attributes.

7. Public Access. Nothing contained in this Conservation Easement shall be construed as affording the public other than visual access to any portion of the Property, although Landowner may permit public access to the Property on such terms and conditions as Landowner deems appropriate, provided that such access is consistent with the Purpose.

8. Responsibilities of the Parties Not Affected. Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Conservancy, or in any way to affect any existing obligations of Landowner as owner of the Property. Additionally, unless otherwise specified herein, nothing in this Conservation Easement shall require Landowner to take any action to restore the condition of the Property after any Act of God or other event over which Landowner had no control, including [acts of trespassers beyond the control of Landowner addressed in paragraph 9.6 below. Landowner shall continue to be solely responsible for and the Conservancy shall have no obligation for the upkeep and maintenance of the Property, and Landowner understands that nothing in this Conservation Easement relieves Landowner of any obligation or restriction on the use of the Property imposed by law. Among other things, this shall apply to:

8.1. Taxes. Landowner shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Conservancy is ever required to pay any

taxes or assessments on its interest in the Property, Landowner will reimburse the Conservancy for the same. If for any reason Landowner fails to pay any taxes, assessments or similar requisite charges, the Conservancy may pay such taxes, assessments or similar requisite charges, and may bring an action against Landowner to recover all such taxes, assessments and similar charges plus interest thereon at the rate charged delinquent property taxes by the assessor's office in which the Property is located.

8.2. Liability.

A. Environmental Liability. Landowner shall indemnify, defend, and hold the Conservancy and its members, officers, directors, employees, agents, and contractors (collectively, the "Indemnified Parties") harmless from and against any and all loss, damage, cost, or expense, including reasonable attorney fees, arising from or in any way related to: (i) the existence, generation, treatment, storage, use, disposal, deposit or transportation of hazardous substances in, on or across the Property; (ii) the release or threatened release of hazardous substances on, at, beneath or from the Property; (iii) the existence of any underground storage tanks on the Property; or (iv) a violation or alleged violation of, or other failure to comply with, any federal, state, or local environmental law or regulation by Landowner or any other prior owner of the Property. Notwithstanding anything in this Conservation Easement to the contrary, this Conservation Easement does not impose any liability on the Conservancy for hazardous substances, nor does it make the Conservancy an owner of the Property, nor does it permit or require the Conservancy to control any act on or use of the Property that may result in the treatment, storage, disposal or release of hazardous substances within the meaning of CERCLA or any similar federal, state or local law or regulation.

B. Landowner's Liability. Landowner shall indemnify, defend, and hold the Indemnified Parties harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless caused solely by the willful and wanton act or omission of the Indemnified Parties; (ii) the obligations under this paragraph; or (iii) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property.

9. Enforcement. The Conservancy shall have the right to prevent and correct or require correction of violations of the terms of this Conservation Easement. If the Conservancy determines that a violation has occurred, the Conservancy shall notify in writing Landowner of the nature of the alleged violation. Upon receipt of said notice, Landowner shall immediately cease the alleged violation and either (i) if necessary, provide a written plan for restoration and remediation of the Property and, once approved, restore or remediate the Property in accordance with the plan; or (ii) provide written documentation demonstrating that the activity is permitted and is not a violation. The Conservancy's acceptance of Landowner's actions under (i) or (ii) above shall be in the Conservancy's sole discretion, and shall be

confirmed by the Conservancy in writing. If Landowner is unable or unwilling to immediately cease the alleged violation, and comply with (i) or (ii) above, the Parties agree to resolve the dispute through mediation or judicial process. At any point in time, the Conservancy may take appropriate legal action, including seeking an injunction, to stop the alleged violation.

9.1 The Conservancy's Remedies

- A. *Notice of Failure.*** If the Conservancy determines that Landowner is in violation of the Purpose or other provisions of this Conservation Easement or that a violation is threatened, the Conservancy shall give written notice to Landowner 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 this Conservation Easement, restoration of the portion of the Property so injured to its prior condition in accordance with a plan approved by the Conservancy.
- B. *Landowner's Failure to Respond.*** The Conservancy may bring an action as provided in paragraph 9.1.C below if Landowner:
- i. Fails to cure the violation within thirty (30) days after receipt of notice thereof from the Conservancy;
 - ii. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period; or
 - iii. Fails to continue diligently to cure such violation until finally cured.
- C. *The Conservancy's Action.*** The Conservancy may bring an action at law and/or in equity in a court of competent jurisdiction to enforce the provisions of this Conservation Easement, to enjoin the violation, *ex parte* as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the provisions of this Conservation Easement or injury to any of the Conservation Values, including damages for the loss of the Conservation Values; and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Landowner's liability therefore, the Conservancy, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- D. *Immediate Action Required.*** If the Conservancy, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Conservancy may pursue its remedies under this paragraph 9 without prior notice to Landowner or without waiting for the period provided for cure to expire.

Nature of Remedy. The Conservancy's rights under this paragraph 9 apply equally in the event of either actual or threatened violations of the provisions of

this Conservation Easement. Landowner agrees that the Conservancy's remedies at law for any violation of the provisions of this Conservation Easement are inadequate and that the Conservancy shall be entitled to the injunctive relief described in this paragraph 9 both prohibitive and mandatory, in addition to such other relief to which the Conservancy may be entitled, including specific performance of the provisions of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

The Conservancy's remedies described in this paragraph 9 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values. Enforcement of the terms of this Conservation Easement shall be at the sole discretion of the Conservancy, and the failure of the Conservancy to discover a violation or to take action shall not waive any of the Conservancy's rights, claims or interests in pursuing any such action at a later date.

9.2. Costs and Fee Recovery. All reasonable fees and costs incurred by the Conservancy in administration of this Easement including without limitation, all fees, costs and expenses of investigation, dispute management, negotiation, mediation, settlement, or litigation, and reasonable attorney's, experts and consultants fees, staff time, and any fees and costs of restoration, remediation or other damage correction necessitated by any such action, shall be borne by Landowner. If the Conservancy prevails in part, then Landowner shall be responsible for all fees and costs of both parties as set forth above. If Landowner ultimately prevails in full in a judicial enforcement action, each party shall bear its own costs, unless the Conservancy is found by a final court of competent jurisdiction to have acted in bad faith.

9.3. Assistance of Legal Counsel/Waiver. Landowner acknowledges that Landowner has carefully reviewed this Conservation Easement and has been advised to consult with and be advised by legal counsel of its provisions and requirements.

9.4. Waiver of Defenses. In full knowledge of the provisions of this Conservation Easement, in the interest represented by the Conservation Easement, and in the Conservancy's interest in enforcing the Conservation Easement in perpetuity, with and in view of the facts that the Conservancy will not be continually present on the Property, that the resources available to the Conservancy to monitor compliance with the provisions of this Conservation Easement are limited, and that activities not consistent with the Purpose and other provisions of this Conservation Easement could take place without the Conservancy's immediate knowledge, Landowner hereby waives any claim or defense Landowner may have against the Conservancy under or pertaining to this Conservation Easement based upon waiver, adverse possession, prescription, laches, estoppel, prescription, or changed circumstances relating to the Property or this Conservation Easement. Without placing any limitation on the foregoing provisions, Landowner agrees that no statutes of limitation shall start to run and no estoppel or similar defense shall arise against any action brought by the Conservancy to enforce or interpret this Conservation Easement, and Landowner

hereby waives any right to assert any defense contrary to the provisions of this paragraph

9.5. Third Party Enforcement. This Easement is entered into by and between the Parties on behalf of the public, and creates no rights or responsibilities for the enforcement of its terms in third parties including North Carolina's Attorney General and other third party beneficiaries.

9.6. Acts Beyond Landowner's Control. Nothing contained in this Conservation Easement shall be construed to entitle the Conservancy to bring any action against Landowner to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from causes beyond Landowner's control, including, without limitation, fire, flood, storm, and earth movement, from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes, or from acts of trespassers that Landowner could not reasonably have anticipated and prevented. In the event the provisions of this Conservation Easement are violated by acts of trespassers that Landowner could not reasonably have anticipated and prevented, Landowner agrees, at the Conservancy's option (and expense), to join in any suit, to assign Landowner's right of action to the Conservancy, or to appoint the Conservancy its attorney-in-fact, for the purpose of pursuing enforcement action against the responsible parties. It shall be Landowner's burden to demonstrate that a violation was caused by a trespasser and that Landowner could not reasonably have anticipated and prevented such violation.

10. Transfer of Property. Landowner shall notify the Conservancy in writing of the names and addresses of any party or local, state or federal conservation agency to whom they transfer the Property, or any part thereof (provided that any transfer of a portion of the Property shall be to a conservation organization or agency) pursuant to paragraph 21 at or prior to the time the transfer is consummated. Landowner and its successors, personal representatives, agents, administrators, heirs, 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 failure of Landowner and its successors, personal representatives, agents, administrators, heirs, and assigns to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

Any time the Property or a portion thereof is transferred by Landowner to any third party, Landowner shall notify the Conservancy in writing within five (5) business days after closing, and shall include a copy of the new ownership deed. The document of conveyance shall expressly refer to this Conservation Easement. Landowner shall pay a fee of \$100 to the Conservancy as holder of the real property interest represented by this Conservation Easement, excluding transfer to Landowner's direct descendants and family members, as defined by the Code, and excluding transfers for the sole purpose of changing the type of legal entity by which title is held.

11. Successors in Interest. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties hereto and Landowner's

respective personal representatives, heirs, successors, transferees, and assigns, and Conservancy's successors, transferees, and assigns, and shall continue as a servitude running in perpetuity with the Property.

- 12. Termination of Agreement.** Pursuant to Notice 2023-30, Landowner and Conservancy agree that, if a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation of the perpetual conservation restriction renders impossible the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of Grantee's portion of the proceeds (as determined below) from a subsequent sale or exchange of the property are used by the Grantee in a manner consistent with the conservation purposes of the original contribution.
- 13. Determination of Proceeds.** Landowner and Conservancy agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction, at the time of the gift, bears to the fair market value of the property as a whole at that time. The Parties acknowledge that an appraisal has been completed that indicates that the fair market value of the Conservation Easement is _____ percent (___%) of the full fair market value of the Property unrestricted by this Conservation Easement ("Proportionate Value Percentage"), which percentage shall remain constant and shall be applied pursuant to Regulation §1.170A-14(g)(6)(ii). The proportionate value of Grantee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the subject property occurs, Grantee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the Grantor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.
- 14. Transfer of Agreement.** The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable by the Conservancy to an assignee designated by the Conservancy; provided, however, that the Conservancy hereby covenants and agrees that in the event it transfers or assigns this Conservation Easement, the organization or agency receiving the interest will be a qualified organization and an eligible donee as those terms are defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized or operated primarily for one of the Conservation Values specified in Section 170(h)(4)(A) of the Internal Revenue Code; and the Conservancy further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the Purpose the contribution was originally intended to advance, set forth in this Conservation Easement.
- 15. Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of North Carolina.
- 16. Interpretation and Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be broadly construed in favor of the Conservation Easement to effect the conservation purposes of this Conservation Easement and

the policy and purpose of the North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. Section 121-34 *et seq.*, inclusive, as amended. If any provision in this Conservation Easement is found to be ambiguous or to conflict with another, an interpretation consistent with the Purpose, with ensuring continuation of the Purpose, and that would render the provision valid, shall be favored over any interpretation that would render it invalid, and shall govern. Any decisions resolving such ambiguities or questions shall be documented in writing. The common law rules of construction, including but not limited to disfavoring restrictions on the use of real property, construing restrictions in favor of the free and unrestricted use of real property, and construing instruments against the drafter, shall not apply to interpretations of this Conservation Easement or to disputes between the Parties concerning the meaning of particular provisions of this Conservation Easement.

17. Entire Agreement. This Conservation Easement has resulted from the negotiations of the parties. This Conservation Easement, together with documents incorporated by reference, sets forth the entire agreement of the Parties with respect to the terms of this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Conservation Easement, all of which are merged herein.

18. Amendment, Discretionary Consent, Correction. Landowner and the Conservancy recognize that circumstances could arise which justify amendment of certain of the terms, covenants, or restrictions contained in this Conservation Easement, and that some activities may require the discretionary consent of the Conservancy. To this end, Landowner and the Conservancy have the right to agree to amendments and discretionary consents to this Conservation Easement without prior notice to any other party, provided that in the sole and exclusive judgment of the Conservancy, such amendment or discretionary consent furthers or is not inconsistent with the Purpose. Amendments require the written consent of both Landowner and the Conservancy and shall be effective upon recording in the public records of Buncombe County, North Carolina. Notwithstanding the foregoing, the Conservancy and Landowner have no right or power to consent to any action or agree to any amendment that (1) will affect the qualification of this Conservation Easement as a qualified conservation contribution or the status of the Conservancy under any applicable laws, including Code Section 170(h) or Section 501(c)(3), or N.C.G.S. § 121-34 *et seq.* and any successor provisions thereof and regulations issues pursuant thereto; (2) is not consistent with the Purpose; or (3) affects the perpetual duration of this Conservation Easement.

The Parties shall cooperate to correct mutually-acknowledged errors in this Conservation Easement (and exhibits hereto), including typographical, spelling, or clerical errors. Such correction shall be by recorded written agreement signed by the Parties, with all associated costs being apportioned as the Parties may mutually agree.

19. No Merger, Abandonment, Release, or Adverse Possession. Should the Conservancy in the future own all or a portion of the fee interest in the Property, the Conservancy as successor in title to Landowner, shall observe and be bound by the obligations of Landowner and the restrictions imposed on the Property by this Conservation Easement. In addition, this Conservation Easement shall not merge with the fee title without the prior written approval of Landowner. The Easement shall not be extinguished, in whole or in part, through the legal doctrine of merger in view of the public interest in its enforcement. It is the parties' intent that this Easement not be abandoned, released, or affected by adverse possession. Landowner and

the Conservancy agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property.

- 20. Change of Circumstance, Economic Hardship, Future Land Uses.** Landowner has considered that restricted acts or uses may become more economically valuable than permitted acts or uses. It is the intent of the Parties that such circumstances shall not justify the termination or extinguishment of this Conservation Easement pursuant to paragraph 12 of this Conservation Easement. In addition, the inability to carry on any or all of the permitted acts and uses, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment pursuant to paragraph 12 of this Conservation Easement.

No use shall be made of the Property and no activity thereon shall be permitted which is or is likely to become not consistent with the Purpose. Landowner and the Conservancy acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies, future evolution of the land and other natural resources, and other future occurrences not consistent with the Purpose. The Conservancy, therefore, in its sole discretion, may determine whether proposed uses or proposed improvements not contemplated by or addressed in this Conservation Easement, or alterations in existing uses or improvements, are consistent with the Purpose; or whether and how to adapt to changing conservation practices, evolving science, and shifting environmental, climate, economic, and cultural circumstances, while at the same time protecting the Purpose of the Conservation Easement.

- 21. Notices to the Conservancy.** Landowner agrees to notify the Conservancy prior to undertaking any activity or exercising any reserved right including site preparation, construction, substantial alteration, replacement, relocation, of any improvement, as required in Regulations §1.170A-14(g)(5)(ii), as amended, not less than forty-five (45) days prior to commencement, including at a minimum in such notification sufficient information to enable the Conservancy to identify the action being undertaken.

21.1. Means of Notice. Any notices to the Conservancy required in this Conservation Easement shall be sent by the U.S. Postal Service (including registered or certified mail), or other courier providing reliable proof of delivery, or by electronic communication to which the Conservancy acknowledges receipt, to the Conservancy's Conservation Easement Steward [or executive staff?], at the Conservancy's addresses shown above, or to such other person and address as may be hereafter specified by notice in writing to Landowner by the Conservancy. All other communication shall be made by reasonable means under the circumstances. All notices shall be deemed delivered and effective upon actual receipt.

21.2. Content of Notice. The purpose of requiring Landowner to notify the Conservancy prior to undertaking certain permitted activities, as provided in paragraph 21.1 above, is to afford the Conservancy an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner consistent with the terms and Purpose. Such notices to the Conservancy or requests for the Conservancy consent, required or contemplated hereunder, must include, at a minimum, sufficient information, including the nature, scope, design,

location, timetable, and any other material aspect of the proposed activity, in sufficient detail to enable the Conservancy to determine whether the proposed plans are consistent with the requirements of this Conservation Easement and the Purpose hereof. Any response of the Conservancy time does not start until Conservancy deems notice complete with sufficient information to render its decision

21.3. Failure of the Conservancy to Respond. If the Conservancy approval is required under the terms of this Conservation Easement prior to the exercise of a reserved right that is the subject of the notification and request for approval, failure of the Conservancy to respond by the end of the applicable notice period shall be deemed a denial. No proposed activity may proceed without the Conservancy's written consent and approval as provided herein.

22. Notices to Landowner.

22.1. Means of Notice. Any notices to Landowner required by this Conservation Easement shall be sent by the U.S. Postal Service (including registered or certified mail), or other courier providing reliable proof of delivery to Landowner at its address shown above, or to such other person and address as may be hereafter specified by notice in writing to the Conservancy, or by telephone conversation, telephone message, or electronic communication to which Landowner acknowledges receipt. Notwithstanding the foregoing, the notice required under paragraph 21 will be deemed valid if delivered in writing by any reasonable means, or in person or by telephone conversation or telephone message. All other communication shall be made by reasonable means under the circumstances. All notices shall be deemed delivered and effective upon deposit with the U.S. Postal Service or other courier permitted under this paragraph, or otherwise upon hand delivery or actual receipt.

22.2. Notice to Representative of Landowner. In the event that the Property is owned by a trust, business entity, or any common or jointly held ownership, Landowner shall provide the Conservancy with written notice of a designated representative, who shall be responsible for the receipt of notices on behalf of Landowner hereunder. The approval of, or notice to, the designated representative shall be deemed the approval of, or notice to, the entity or all owners, as the case may be.

23. The Conservancy's Approval. Where the Conservancy's approval is required by this Conservation Easement, Landowner shall notify the Conservancy in writing not less than forty-five (45) calendar days prior to the date Landowner intends to undertake the act or use, with sufficient detail (i.e. location, size, scope, design and nature) to allow the Conservancy to evaluate the consistency of the proposed act or use's consistency with the Purpose in its sole discretion (the Conservancy's Approval or Approved by the Conservancy). The Conservancy shall approve or deny Landowner's written request, or notify Landowner of a delay in the Conservancy's decision, in writing within forty-five (45) calendar days of receipt of Landowner's written request. Landowner shall not engage in the proposed act or use until Landowner receives the Conservancy's approval in writing. Landowner understands and agrees that the Conservancy shall not be compelled by legal action or otherwise to give approval to any request made under this paragraph. Nothing in this paragraph shall require the

Conservancy to approve any act or use otherwise restricted by this Conservation Easement, or to consult or negotiate regarding the withholding or provision of such approval.

23.1. Not a Development or Land Use Approval. Nothing permitted by this Conservation Easement or approved by the Conservancy in accordance with this Conservation Easement constitutes approval by any government or regulatory agency for construction, development or land use; nor does any permit or approval granted by a government or regulatory agency override the terms of this Conservation Easement. Landowner retains responsibility for obtaining and complying with all necessary permits and Applicable Laws before engaging in uses or activities permitted under this Conservation Easement.

24. Liens on the Property. ~~[Insert if applicable: Landowner represents and warrants that the Mortgage recorded in ___ book at ___ page [book/page] in the records of the Town of _____, County of _____, North Carolina is subordinate to the rights of the Conservancy under this Conservation Easement and that lender has subordinated to the Conservation Easement. No provisions of this Conservation Easement should be construed as impairing the ability of Landowner to use the Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a subsequent borrowing is and shall remain subordinate to this Conservation Easement or any amendments hereto.~~

Commented [LG2]: Title counsel to complete as needed.

Commented [LG3R2]: Let's wait to see if buyer gets a loan.

25. Landowner's Representations and Warranties. Except as provided in paragraph 24 of this Conservation Easement ~~[delete if inapplicable (i.e. there are no mortgages on the Property)]~~, Landowner represents and warrants that:

Commented [LG4]: Edit here

- A. Landowner is lawfully seized of and has good and sufficient title to the Property in fee simple, free from all liens and encumbrances securing monetary obligations except ad valorem property taxes for the current year;
- B. Landowner has good right, full power and lawful authority to grant and convey this Conservation Easement;
- C. Landowner shall defend title to the Property and Landowner's right to convey this Conservation Easement, against all claims that may be made against it by any person claiming by, through, or under Landowner and against all persons who may claim such title or challenge Landowner's right to make this conveyance;
- D. Landowner has the right to grant access to the Property to the Conservancy for the purposes described in this Conservation Easement and has in fact granted said access to the Conservancy;
- E. The Conservancy and its successors and assigns shall have the full use of and enjoy all the benefits of this Conservation Easement;
- F. There are no mortgages, liens, encumbrances, or other matters of record affecting the Property that could prevent the Conservancy from enforcing the terms of the Conservation Easement, or if there is a mortgage or lien on the Property, it is and

shall remain subordinate to the terms of this Conservation Easement;

- G. No hazardous materials exist or have been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property; there has been no release or threatened release of any hazardous materials on, at, beneath, or from the Property; and there are no underground storage tanks located on the Property;
- H. Landowner and the Property are in compliance with all federal state, and local laws, regulations, and requirements applicable to the Property and its use; there is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
- 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 violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use.

26. General Provisions:

26.1. Definitions. For the purposes of this Conservation Easement, the following words and phrases are defined as follows:

- A. Agricultural Improvements.** The term “Agricultural Improvements” means covered structures not intended for human habitation the primary purpose of which is to support agricultural uses and production on the Property.
- B. Agriculture.** To distinguish deliberately this definition from that of the state, municipality, or any other entity, the term “agriculture” shall mean:
 - 1) The propagation, planting, growing, production (including use of hydroponic systems), collection, or harvesting of plants, fungi, or parts thereof on the Property, except for certain trees and activities related thereto which are included within the below definition of “forestry” (examples of said plants, fungi, or parts thereof include: vegetables; fruits; nuts; berries; grains; mushrooms; hay and other fodder grazed by livestock; ornamental flowers and nursery stock; and trees planted, grown, and wholly harvested on a predictable, often short-term rotation including but not limited to ornamental trees for landscaping, Christmas trees, and fast-growing tree species harvested for energy production);
 - 2) The breeding, raising, growing, production, boarding, training, exercising, or harvesting of animals on the Property (for example: livestock, poultry, fish, and pets); and
 - 3) The processing, storing, or marketing for sale of plants, fungi, animals, or parts or products thereof on the Property, only if said plants, fungi, or animals were grown or raised on the Property, and except for certain trees and activities related thereto which are included within the below definition of “forestry” (examples of said parts or products include: honey, eggs, milk, cheese, meat, fur, manure, animal feed, and compost).

4) "Agriculture" shall not include any activity on or use of the Property whose principal connection to agriculture relies on the fact that said activity or use may: be enhanced by, or otherwise benefit from, property features created or maintained as a result of agricultural activities; or generate income for the Landowner helpful for maintaining agricultural use of the Property. (Examples of uses or activities which are not part of agriculture include: leasing of a farm for a wedding in a scenic hayfield; vehicular parking for a concert involving purchased tickets; and the sale of wagon rides, of prepared food with ingredients not produced from or grown on the Property, and of handicrafts made with materials not from the Property.

C. Applicable Laws. The term "Applicable Laws" refers to all relevant federal, state, and local statutes, ordinances, judicial decisions, executive orders, codes or regulations, permit requirements having the force and effect of law that have bearing on or may control certain uses allowed by the Conservation Easement.

D. Commercial, Commercial Use. The terms "Commercial" and "Commercial use" and "Commercial activity" for purposes of this Conservation Easement shall refer to the sale of goods or services, or any uses or activities in furtherance thereof, and understood to be occurring on the Property if the sale transaction(s) or the transacted goods or services are located on or came from the Property. A use or activity shall be deemed Commercial regardless of: the form of the sale proceeds (for example, cash vs. bartered goods or services); the form or status of the recipient of the consideration (for example: individual vs. corporation, non-profit vs. for-profit corporation, or governmental vs. private entity); and whether the recipient of the consideration is the Landowner or some third-party. Notwithstanding the foregoing, any sale of services to the Landowner by a third party conducting activities on the Property otherwise permitted by this Conservation Easement shall not constitute a Commercial activity (for example, a licensed forester hired by the Landowner to prepare a forest management plan).

E. Conservation Easement. The terms "Easement," "Conservation Easement," "Deed of Conservation Easement," and "Deed of Conservation Easement in gross" refer to this legal document and to the immediately vested interest in real property defined by NC General Statute sec. 121-34 *et seq.*

F. Consistent with the Purpose. "Consistent with the Purpose" means acts on and uses of the Property that have a positive impact, neutral impact, or no impact on the Conservation Values, as determined by the Conservancy in its sole discretion.

G. Development Rights. "Development Rights" are defined as all present or future rights to (i) construct, place, replace, enlarge, maintain or repair any improvements on the Property; or (ii) receive credit for density for development on or off the Property. **Conservancy's Development Rights.** "The Conservancy's Development Rights" shall mean all Development Rights deriving from the Property granted to the Conservancy with this Conservation Easement held by the Conservancy in perpetuity to accomplish the Purpose, to ensure that such rights are forever released and terminated as to Landowner.

H. Feedlot. The term “feedlot” or “CAFO” is defined as a permanently constructed Confined Animal Feeding Operation, area, or facility used and maintained continuously and exclusively for purposes of warm-up or fattening large numbers of livestock for market.

I. Footprint. “Footprint” is defined as the total ground area occupied by a Residential or Nonresidential Improvement, calculated on the basis of the exterior dimensions of the improvement, including carports or breezeways, but not including Unenclosed Improvements.

J. Forestry and Forestry Terms. To distinguish deliberately this definition from that of the state, municipality, or any other entity, the term "forestry" shall mean:

1) The planting, growing, managing, production, or harvesting of trees, or parts of trees (for example: seeds, sap, leaves, and bark) on the Property, only if said trees are being grown, or were grown as the case may be, in the ground in the Property’s soils and exposed to the natural sunlight, moisture, and other weather conditions of the Property (for example, pre-commercial, silvicultural activities such as but not limited to thinning, girdling, and other forms of forest stand improvement).

2) The processing, storing, or marketing for sale of trees, or parts or products thereof (for example: sawlogs, chips, firewood, sawdust, sap and syrup, and bark mulch) on the Property, only if said trees were grown on the Property as set forth in the immediately preceding paragraph.

3) Notwithstanding the above, excepted from “forestry” and included within “agriculture” as defined below are those activities described in the immediately preceding two paragraphs, above, with respect to trees planted, grown and wholly harvested on a predictable, often short-term rotation (for example: ornamental trees for landscaping, Christmas trees, and fast-growing tree species harvested for energy production).

4) “Forestry” shall not include any activity on or use of the Property whose principal connection to forestry relies on the fact that said activity or use may: be enhanced by, or otherwise benefit from, property features created or maintained as a result of forestry activities; or generate income for the Landowner helpful for maintaining forestry use of the Property. (Examples of activities or uses that are not part of “forestry” include third-party hunting for a fee in managed woodlands or wagon rides along woods roads.

The term “clear cutting” refers to cutting or removal of a stand of trees in which essentially all or most of the trees have been removed in one operation. The term “selective cutting” refers to cutting that removes only a portion of trees in a stand, and “thinning” refers to a treatment made to reduce stand density of trees primarily to improve growth, enhance forest health, or recover potential mortality. “Commercial forestry” refers to any forest management activities (including thinning, clear cutting, or selective cutting) performed for the purpose of processing or selling timber or forest products for use off of the Property.

K. Industrial. The term “industrial” shall mean the use of any land, building, or improvement for the construction, warehousing, manufacturing, processing or

assembly of materials to finished products or byproducts, including the storage of such materials and products.

- L. Horticultural Use.** “Horticultural uses” are growing of fruits, vegetables, nursery products, or floral products. Examples of horticultural products include apples, peaches, strawberries, pecans, shrubs, greenhouse plants, and evergreens intended for use as Christmas trees.
- M. Landowner and the Conservancy.** The terms "Landowner" and "the Conservancy," and any pronouns used in place of those terms, refer to, respectively, the original landowner and its employees and agents, and all other landowners who succeed the original landowner, including but not limited to landowner’s heirs, personal representatives, executors, administrators, successors and assigns; and the Conservancy, its employees, agents, successors and assigns. Further, the designation “Landowner” and “the Conservancy,” wherever used herein, and any pronouns or similar words used in place thereof, shall include, respectively, the above-named Landowner as grantor and its personal representatives, agents, heirs, successors, and assigns and shall also include singular, plural, masculine, feminine, or neuter, as required by context; and the above-named Conservancy as grantee and its employees, agents, successors, and assigns.
- N. Low-Impact.** The term “Low-Impact” refers to activities or improvements whose location, use, and construction have negligible or no surface impact on the Property and do not damage the Conservation Values (meaning they have no scenic impact from public rights-of-way; do not result in harassment of wildlife, increased erosion or compaction of soils; earthmoving or recontouring of land; construction of roads or installation of utility lines; nor damage to relatively natural habitat including rivers, wetlands, riparian areas or other water resources).
- O. Minerals.** “Minerals” are defined as soil, sand, gravel, rock, stone, decorative stone, gold, and other marketable or valuable minerals or ores, rare-earth elements, oil, natural gas, coalbed methane (including any and all substances produced in association therewith from coal-bearing formations), hydrocarbons, fossil fuel, or any other mineral substance, of any kind or description, on, in, under, or part of the Property.
- P. Nonresidential Improvements.** “Nonresidential Improvements” are defined as covered structures not intended for human habitation and include, but are not limited to, barns, pole barns, sheds, arenas, and free-standing garages.
- Q. Off-Grid.** The term “off-grid” refers to structures or improvements that do not require utilities such as electricity or water, or that are not connected to the local or national power grid. Instead, power or water may be provided by attached, built-in, or adjacent energy sources or wells, respectively.
- R. Renewable Energy Generating Improvements.** The term “renewable energy generating improvements” refers to improvements used to collect renewable energy

resources that are replaced rapidly by natural processes, such as biomass, hydro, geothermal, solar or wind.

S. Renewable Energy Resource. The term “renewable energy resource” refers to an energy source that is replaced rapidly by natural processes, such as biomass, hydro, geothermal, solar or wind.

T. Residential Improvements. The term “Residential Improvements” refers to covered structures containing habitable space, including residences, cabins, guest houses, and any space attached to a residence, cabin, or guest house such as a garage, and any other structures intended for human habitation.

U. Roads. “Improved Roads” are defined as any road, driveway or parking area that has a gravel, crushed stone, stone, paver, brick, or an impervious/impermeable surface that is other than the natural earthen material, and Unimproved Roads shall be defined as any track greater than three (3) feet wide where the natural earthen material is the driving surface (“Unimproved Roads”).

V. Unimproved. The term “unimproved” for the purpose of trails or two-tracks means not graded, cut, graveled or filled (except in isolated areas as necessary for trail maintenance), or surfaced with impermeable materials.

W. Unenclosed Improvements. “Unenclosed Improvements,” are defined for purposes of this Conservation Easement as having less than three or no exterior walls and no roof, such as corrals or hunting blinds.

26.2. Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

26.3. Captions. The captions in this Conservation Easement have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

26.5. Recording. The Conservancy shall record this instrument in a timely fashion in the official records of Buncombe County, North Carolina, and the Conservancy may re-record it at any time as may be required to preserve its rights under this Conservation Easement.

26.6. Joint and Several Liability. If Landowner at any time owns the Property in joint tenancy or tenancy in common, Landowner shall be jointly and severally liable for all obligations set forth in this Conservation Easement. If Landowner at any time is an entity which consists of shareholders, partners or members, such Landowner entity is required to include in its operating agreement, bylaws or other documents setting forth the rights and responsibilities of the entity, the right to assess such shareholders, partners or members for any monetary or other obligations set forth in this Conservation Easement. Landowner

shall provide a copy of such documentation at any time upon the Conservancy's request.

26.7. Authority to Execute. Each party represents to the other that such party has full power and authority to execute and deliver this Conservation Easement, and perform its obligations under this Conservation Easement, that the individual executing this Conservation Easement on behalf of said party is fully empowered and authorized to do so, and that this Conservation Easement constitutes a valid and legally binding obligation of said party enforceable against said party in accordance with its terms

TO HAVE AND TO HOLD this Conservation Easement, which it duly accepts, unto the Southern Appalachian Highlands Conservancy, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions, and Purpose shall be binding upon Landowner, its representatives, agents, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

[SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals and caused these presents to be executed in their respective names by authority duly given, and their corporate seal affixed, the day and year below written.

LANDOWNER:

[Landowner Name]

[Landowner Name]

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public in and for said County and State do hereby certify that (**Landowner**) personally appeared before me this day and duly acknowledged that he executed the foregoing instrument for the purposes stated therein.

WITNESS my hand and notarial seal this ___ day of December, 20__.

Notary Public

My commission expires: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public in and for said County and State do hereby certify that (**Landowner**) personally appeared before me this day and duly acknowledged that he executed the foregoing instrument for the purposes stated therein.

WITNESS my hand and notarial seal this ___ day of December, 20__.

Notary Public My commission expires: _____

IN WITNESS WHEREOF, the parties hereto have set their hands and seals and caused these presents to be executed in their respective names by authority duly given, and their corporate seal affixed, the day and year below written.

THE CONSERVANCY:

SOUTHERN APPALACHIAN
HIGHLANDS CONSERVANCY

By: _____
Carl J. Silverstein
Its Executive Director

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public in and for said County and State do hereby certify that **Carl J. Silverstein** personally appeared before me this day and duly acknowledged that he is the Executive Director of the Southern Appalachian Highlands Conservancy, a Tennessee corporation, and that by authority duly given and as the act of the Company, the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal, this ____ day of December, 20__.

Notary Public
My commission expires: _____

ATTACHMENTS:

Exhibit A: Legal Description of the Property

Exhibit B: Map of the Property (with Building Area)

EXHIBIT A
Legal Description of the Property

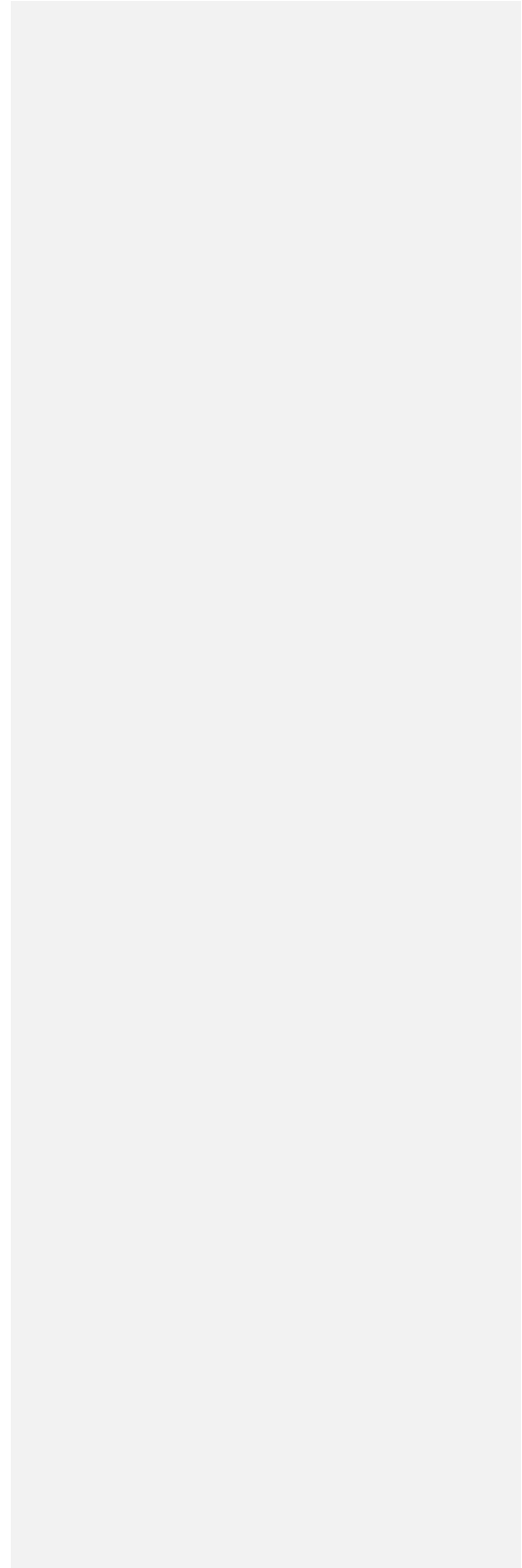


EXHIBIT B

Map of Property with Building Areas

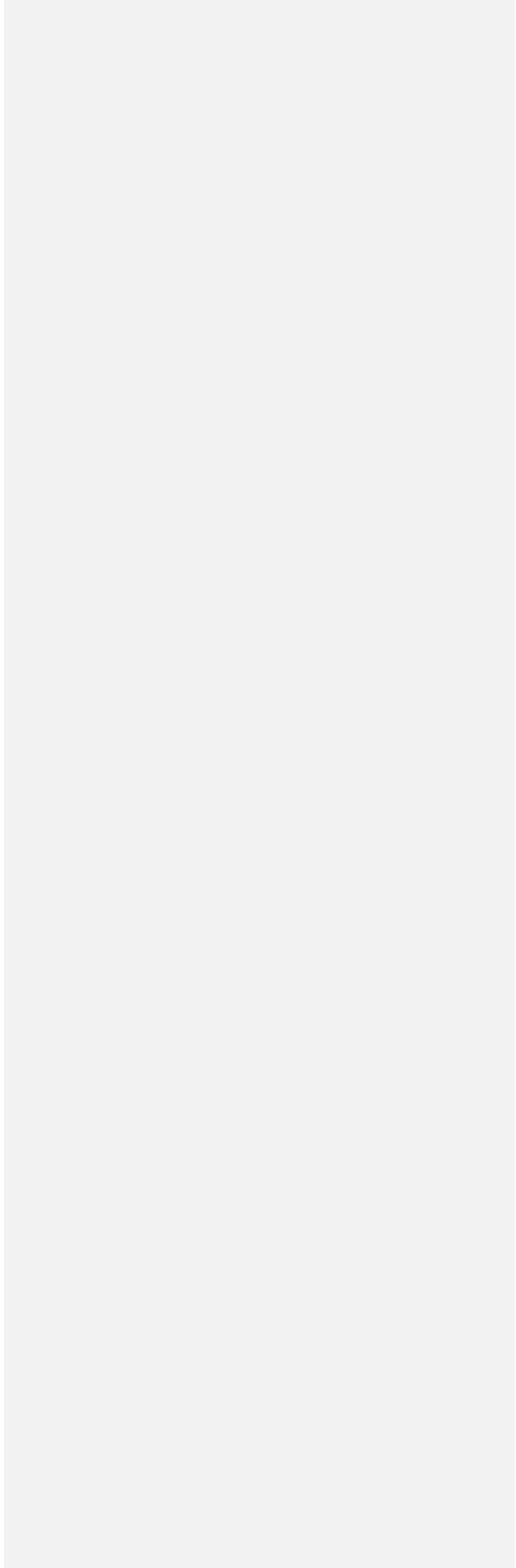
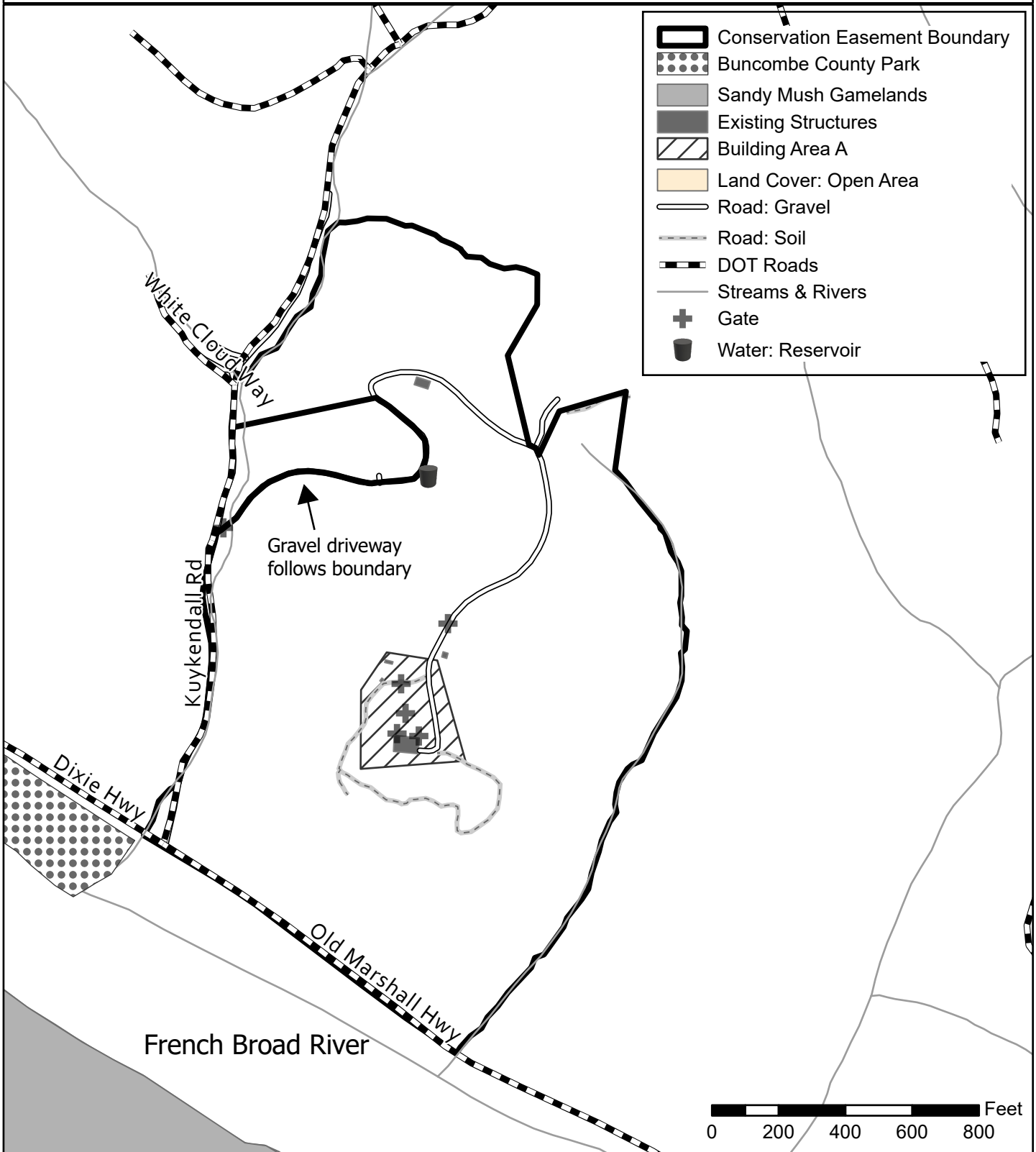


EXHIBIT "B"
Map of the Property



This map may not be a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations and has not been reviewed for compliance with recording requirements for plats.

