



Gaston County

Gaston County
Board of Commissioners
www.gastongov.com

Parks & Recreation

Board Action

File #: 23-286

Commissioner Worley - Parks and Recreation - To Approve a Conservation Easement for the Catawba Cove Property and Authorize the County Manager or her Designee to Execute Necessary Documents for Recording Purposes

STAFF CONTACT

Cathy Hart - Parks and Recreation - 704-922-2162

BUDGET IMPACT

No additional County funds.

BUDGET ORDINANCE IMPACT

N/A

BACKGROUND

Gaston County, the Catawba Lands Conservancy, The Conservation Fund, and Duke Ventures Real Estate are partnering to preserve the 557-acre Catawba Cove Property which lies along the headwaters of Lake Wylie in the southeastern portion of Gaston County. The partners wish to preserve the character, aesthetic quality, and ecological integrity of the property while providing a public recreation area available to the citizens of Gaston County. This property will provide a unique opportunity for Gaston County residents to enjoy the outdoors and is consistent with Gaston County's Strategic Plan. A portion of the property will require an additional conservation easement that must be recorded upon closing for preservation purposes. This easement is a condition of a North Carolina Land and Water Fund grant previously approved for the project. A final draft of the conservation easement is attached to this Board Action. The remaining portions of the site are either already encumbered by conservation easements, or are unencumbered for access, parking and maintenance purposes. This Board Action approves the conservation easement terms and conditions, authorizes the County Attorney to finalize said documents and make any final non-material changes, and authorizes the County Manager or her designee to execute said documents for recording purposes. No additional appropriations are necessary as a result of this Board Action.

POLICY IMPACT

N/A

ATTACHMENTS

Deed of Conservation Easement; Catawba Cove Lake Wylie Property Map

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

| NO. | DATE | M1 | M2 | CBrown | CCloninger | AFraley | BHovis | KJohnson | TKeigher | RWorley | Vote |
|----------|------------|----|----|--------|------------|---------|--------|----------|----------|---------|------|
| 2023-204 | 06/13/2023 | RW | AF | A | A | A | A | A | AB | A | U |

DISTRIBUTION:

Laserfiche Users

A=AYE, N=NAY, AB=ABSENT, ABS=ABSTAIN, U=UNANIMOUS

STATE OF NORTH CAROLINA

DEED OF CONSERVATION EASEMENT

COUNTY OF GASTON

THIS DEED OF CONSERVATION EASEMENT (the “**Agreement**”) is made this _____ day of _____, 2023, by **GASTON COUNTY**, a political subdivision of the State of North Carolina, (hereinafter referred to as the “**Grantor**”) in favor of **CATAWBA LANDS CONSERVANCY**, a North Carolina nonprofit corporation, (hereinafter referred to as “**Grantee**”).

BACKGROUND STATEMENT

A. Grantor is the sole owner in fee simple of that certain parcel of land containing approximately two hundred and nine (209) acres total and located on the west side of South New Hope Road and Armstrong Drive, Gaston County, North Carolina, identified as Gaston County tax parcel identification number 191727, and more particularly described in **Exhibit A** attached hereto and by reference incorporated herein (the “**Property**”).

B. Grantee is a non-profit organization whose primary purpose is the conservation, preservation, or restoration of North Carolina’s cultural, environmental, or natural resources.

C. The Property possesses natural, scenic, open space, and riparian buffer values (hereinafter referred to collectively as “**Conservation Values**”) of great importance to Grantee, the people of Union County, North Carolina, and the people of the State of North Carolina.

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

E. The State of North Carolina (the “**State**”) has enacted the Conservation and Historic Preservation Agreements Act, Chapter 121, Article 4 of the North Carolina General Statutes (“N.C.G.S.”), which provides for the enforceability of restrictions, easements, covenants, and

Drawn by and mail to:

Catawba Lands Conservancy
4530 Park Road, Suite 420
Charlotte, NC 28209
Attn: Land Conservation Director

conditions "appropriate to retaining land or water areas predominantly in their natural, scenic or open condition"

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

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

G. Because of its location in the Lake Wylie watershed, the Property, if preserved in accordance with this Agreement, will contribute to the maintenance of surface water and ground water quality of the Lake Wylie watershed.

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

I. Preservation of the Property pursuant to federal, state, and local governmental conservation policy will yield a significant public benefit. The conservation purposes of this Agreement are recognized by the following governmental conservation policies:

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

II. N.C. GEN. STAT. §143B-135.230 et seq. The Clean Water Management Trust Fund recognizes the importance of protecting riparian buffers in protecting and conserving clean surface water.

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

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

K. Grantee is a party to the Catawba Cove Project, managed by The Conservation Fund (“**The Conservation Fund**”), a Maryland nonprofit corporation, which has received or will receive a grant from the Fund in accordance with Grant Contract No. 2020-056 between The Conservation Fund and the Fund, dated XX, XX XXXX (the “**Contract**”). In the Contract, The Conservation Fund agrees that Grantee will enter into and hold this Conservation Easement. The terms and conditions of the Grant Contract are incorporated herein by reference as if fully set forth herein. The Contract is on file and available for public inspection in the offices of The Conservation Fund, the Grantee and the Fund. The Catawba Cove Project, including the Contract and this Conservation Easement are collectively referred to herein as the “**Project**.”

L. The Board of Directors of Grantee, at its meeting on October 19, 2022, has approved acceptance of the conservation easement contained in this Agreement, which shall be known as the “Catawba Cove Conservation Easement,” because it fulfills the requirements of the Conservancy’s adopted project selection criteria.

M. The specific Conservation Values of the Property are documented in a Baseline Documentation Report outlining relevant features of the Property, dated April 5, 2023, on file at the offices of Grantee, said Baseline Documentation Report consisting of reports, maps, photographs, and other documentation (collectively, the “**Baseline Report**”), which the parties agree provides an accurate representation of the Property at the time of this conveyance and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Agreement.

N. Grantor intends that the Conservation Values of the Property be preserved and maintained by and through this Agreement.

O. This Agreement shall provide a third party right of enforcement to the State, such that in the event that the Grantee fails to protect any of the Conservation Values of the Property, the State shall have the independent right to protect the conservation values of the Property through any and all authorities available under State law.

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

Q. The Conservation Easement shall be conveyed as an absolute gift to Grantee subject to an executory interest in the State such that in the event the Grantee attempts to terminate,

transfer, or otherwise divest itself of any rights, title or interest in and to the Conservation Easement without the prior written consent of the State, then all rights, title and interest in the Conservation Easement shall automatically vest in the State.

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

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

STATEMENT OF AGREEMENT

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

1. Purpose. As set forth in the recitals above, which recitals are incorporated herein by reference, it is the purpose of this Agreement to assure that the Property will be retained forever in its natural, undeveloped, scenic and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that this Agreement will confine the use of the Property to such activities as are consistent with the purpose of this Agreement.

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

(a) All present and future development rights for the Property, except as otherwise reserved and provided in Paragraphs 4 and 5 below. The parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Property or to any other property.

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

(c) To enter upon the Property in accordance with the provisions of Paragraphs 7 and 12 of this Agreement.

(d) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Agreement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, all pursuant to Paragraph 7 below.

3. Third Party Right of Enforcement. In the event that the Grantee fails to enforce any terms in this Agreement, the State shall have the independent right to enforce the terms of this Agreement through any and all means and authorities available under law or equity. Any forbearance by the State to exercise this right of enforcement shall not be deemed or construed to be a waiver by the State of such right in general or with respect to a specific violation of any of the terms of this Agreement. Grantor grants the State, and its agents, employees, and representatives the right of entry and access to the Property for the purposes of inspecting the Property and carrying out its third party rights of enforcement set forth herein.

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

(a) *Subdivision.* The legal or de facto subdivision of the Property.

(b) *Commercial Use.* Any commercial or industrial use of or activity on the Property other than those related to education about Conservation Values and historic features of the Property.

(c) *Structures.* The placement or construction of any buildings, structures, or other improvements of any kind other than those permitted in Paragraph 5 below.

(d) *Surface Alteration.* Any alteration of the surface of the land, including without limitation the excavation or removal of soil, sand, gravel, rock or sod except (i) as permitted in Paragraph 5 below, (ii) for the purposes of combating erosion, or (iii) incidental to conservation management activities otherwise permitted in this Agreement.

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

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

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

- (i) only with the prior written consent of Grantee, for restoration or improvement purposes; and
- (ii) only with the prior written consent of Grantee, for stormwater management.

(g) *Utilities.* The installation of new utility systems or extensions of existing systems, including without limitation, water, sewer, power, fuel and communication lines and related facilities (such as cell towers, telephone relay towers, and other stand-alone tower structures), except as permitted in Paragraph 5.

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

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

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

(k) *Hazardous Substances.* The storage, dumping, or other disposal of toxic and/or hazardous materials or non-compostable refuse, except for the above ground storage and use of fuels, fertilizers, treated lumber, and legal chemicals as necessary for recreational or other operations permitted by this Agreement. All materials shall be stored in accordance with all applicable laws and regulations, and in a manner which (i) prevents spillage, leakage, and dumping, (ii) prevents soil and surface water or groundwater contamination, and (iii) is otherwise consistent with the preservation of the Conservation Values of the Property. Notwithstanding anything in this Agreement to the contrary, this prohibition does not make Grantee an owner of the Property, nor does it permit Grantee to control any use of the Property by Grantor which may result in the storage, dumping, or disposal of hazardous or toxic materials; provided, however, that Grantee may bring an action to protect the Conservation Values of the property, as described in this Agreement. This prohibition does not impose liability on Grantee, nor shall Grantee be construed as having liability as a “responsible party” under the Comprehensive Environmental Response, Compensation, and Liability Act or similar federal or state statutes. Recycling shall be permitted in accordance with the terms of Paragraph 5.

(l) *Removal of Vegetation.* Cutting, removing, or otherwise destroying trees, grasses, or other vegetation, except as specifically permitted in Paragraph 5 below.

(m) *Timbering.* No timbering is permitted except as set forth in Paragraph 5.

(n) *Open Space and Development Rights.* The Property shall not be used to satisfy open space or density requirements of any cluster or other development scheme or plan. The development rights encumbered by this Agreement shall not be transferred to any other land pursuant to a transfer of development rights scheme, a cluster development arrangement, or otherwise

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

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

(a) *Recreational Use.* Grantor shall be permitted to engage in and permit others to engage in passive recreational uses of the Property, including without limitation walking, hiking, bicycle riding, and animal or plant observation.

(b) *Transfer of Property.* Subject to the terms of Paragraph 18 below, Grantor shall be permitted to sell, gift, mortgage, lease, or otherwise convey the Property. Grantor agrees that any mortgage of the Property shall be subordinate to the terms of this Agreement.

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

(d) *Trails and Recreation Areas.* Grantor shall be permitted operate the Property as a public park and greenway and to develop and construct pedestrian trails and associated nature viewing blinds, picnic tables and shelters, and benches for passive recreational use on the Property. Motorized vehicles are prohibited on the trails except as set forth in Paragraph 4(j) above.

(e) *Timbering.* No timbering shall be permitted; provided, however, that Grantor shall be permitted to prune, cut down, or otherwise harvest trees only as necessary (i) to prevent hazard, disease, or fire on the property, (ii) for firewood collection for Grantor's individual use, or (iii) to restore or enhance the hydrology and protection of

native plant species on the Property. All timber harvesting, with the exception of incidental firewood cutting and tree pruning to prevent hazard, shall be done in accordance with a plan prepared in consultation with a registered professional forester or other conservation professional that is designed to protect the Conservation Values of the Property, including without limitation scenic and wildlife habitat values, which plan must be approved in writing by Grantee.

(f) *Roads and Driveways.* Grantor shall be permitted to use, improve, replace, and maintain the roads and driveways described in the Baseline Report and **Exhibit B**. All driveway and road design, improvement, construction and maintenance shall be conducted in a manner that minimizes the impact on the natural and hydrologic features of the land consistent with maintaining the Conservation Values of the Property. Grantor must obtain Grantee's prior written consent to any new driveway construction or to any improvements to existing driveways that involve replacing, widening, extending, or significantly altering the surface of the road.

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

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

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

7. Access. Grantee shall have the right to enter the Property at reasonable times, and upon prior reasonable notice to Grantor (except that such notice is not required when Grantee believes in good faith that the Conservation Values of the Property are at imminent and substantial risk), in order to (i) exercise its rights granted hereunder, including without limitation the preservation and maintenance of the Property; (ii) to monitor Grantor's compliance with and otherwise enforce the terms of this Agreement; and (iii) to conduct scientific studies, monitoring and management of rare species populations and their habitat, if found. Grantee shall indemnify, defend and hold

Grantor harmless from and against any claims, damages or liability (including reasonable attorneys' fees) resulting from Grantee's exercise of its right of entry, except to the extent that such claims, damages or liability arise from the negligence or intentional acts of Grantor. Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property as long as such use does not interfere with the Conservation Values. The general public is not granted access to the Property under this Agreement.

8. Costs and Liabilities. Grantor retains all responsibility and shall bear all costs related to the ownership, use, operation, upkeep, and maintenance of the Property (excluding improvements made by Grantee at its own cost and expense), including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall provide Grantee with evidence of such coverage upon request. Grantor shall keep the Property free of any and all liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor, unless such lien is subordinate to this Agreement.

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

10. Representations and Warranties. Grantor represents and warrants that, to the best of their knowledge:

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

(b) There is legal access to the Property.

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

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

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

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

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

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

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

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

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

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

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

also be entitled to recover all reasonable attorney fees, court costs, and other expenses incident to enforcement of this Agreement.

(a) *Costs of Enforcement.* Any costs incurred by Grantee in successfully enforcing the terms of this Agreement against Grantor, its successors or assigns, including without limitation reasonable costs of court and attorney's fees, and any reasonable costs of restoration necessitated by Grantor's violation of the terms of this Agreement, shall be borne by Grantor.

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

(c) *Waiver of Certain Defenses.* Grantor hereby waives any defense of laches, estoppel or prescription.

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

13. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with this Agreement, Grantor agrees not to proceed with the use or activity pending resolution of the dispute, and either party may refer the dispute to mediation before, and as a condition to, any right of either to institute litigation. Either party may invoke the mediation requirement under this Paragraph 13 by furnishing written notice to the other of its intent to mediate. The notice shall specify the issue(s) for mediation, including the amount, if any, of monetary or other relief at issue. Upon receipt of such notice, the recipient may within five (5) business days deliver to the other a notice of other issue(s) or relief for mediation. The parties shall work together in good faith to conclude mediation regarding the indicated issue(s) no later than sixty (60) days from the date of the initial notice of intent to mediate. Mediation shall occur in Charlotte, North Carolina. The parties may either agree on a mediator within ten (10) days of the date of the initial notice of intent to mediate or, if the parties have not or cannot so agree, the mediator shall be named by JAMS/Endispute, with the party issuing the initial notice of intent to mediate bearing the obligation to arrange for mediator services through this organization (or any other mediation organization on which the parties may agree in writing) no later than five (5) days from the expiration of the ten (10) day period for appointment of a mediator by agreement of the parties. The parties shall bear equally all costs and expenses of mediation, including mediator

compensation and expenses, subject to any other agreement regarding allocation of such costs and expenses the parties may achieve in context of a particular dispute.

If either party refuses to participate in good faith in the mediation process required under this Paragraph 13, the party shall have failed to fulfill an absolute condition precedent to its right to pursue litigation or any other means of resolving any issue to be mediated. Any statute or other period of limitations shall be tolled during the time the parties are in good faith fulfilling their obligations of mediation under this Paragraph 13, but such tolling shall not apply to any claim or issue sought to be resolved by a party that shall have failed to participate in good faith in the mediation process.

14. Extinguishment. If circumstances arise in the future that render the purposes of this Agreement impossible to accomplish, this Agreement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by North Carolina law at the time, in accordance with Paragraph 15 below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

15. Proceeds. This Agreement constitutes a real property interest immediately vested in Grantee, which, for the purposes of Paragraphs 14 and 16, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by this Agreement by the ratio of the value of this Agreement at the time of this grant to the value of the Property, without deduction for the value of the Agreement, at the time of this grant. The values used to arrive at the fair market value of this Agreement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code, as amended. For the purposes of this Paragraph 15, the ratio of the value of the conservation easement herein granted to the value of the Property unencumbered by such conservation easement shall remain constant.

16. Condemnation. If the Property or any other right or interest hereunder is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant. If all or any of the Property is taken under the power of eminent domain by a public, corporate, or other entity, or otherwise acquired by such entity through a purchase or settlement in lieu of condemnation, Grantor and Grantee shall join in appropriate proceedings at the time of such condemnation to recover the full fair market value (without regard to any diminution in value attributable to the Agreement) of the interests in the Property subject to the condemnation and all incidental or direct damages resulting therefrom. Prior to the payment of any expenses reasonably incurred by the parties to this Agreement in connection with such condemnation, Grantee shall be entitled to its proportionate share from the recovered proceeds in conformity with the provisions of Paragraph 15 (with respect to the allocation of proceeds). The respective rights of Grantor and Grantee set forth in this Paragraph 16 shall be in addition to, and not in limitation of, any rights they may have at common law. All such proceeds used by Grantee shall be used in a manner consistent with the conservation purposes of this Agreement as of the effective date of this grant.

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

(a) *Prior Written Approval*. Any transfer or assignment of the Agreement shall have prior written approval of the Fund. Grantor and Grantee recognize and agree that the benefits of the Agreement are in gross and, with the prior written approval of the Fund, assignable with any such assignee having all the rights and remedies of Grantee.

(b) *Qualified Organization*. In the event the Agreement is transferred or assigned, the transferee or assignee of the Agreement will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, and the regulations promulgated thereunder (the "Code") that is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, a qualified holder as that term is defined in the Conservation and Historic Preservation Agreements Act, N.C.G.S. Chapter 121, Article 4 or any successor statute, and a qualified grant recipient pursuant to N.C.G.S. Chapter 143B, Article 2, Part 41.

(c) *Terms of Transfer or Assignment*. Grantor and Grantee covenant and agree that in the event the Agreement is transferred or assigned, the terms of the transfer or the assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the purposes of the Agreement, which reflect the purposes that the grant from the State were originally intended to advance. The transferee or assignee must agree to continue to monitor and observe the Agreement in perpetuity, and to report to the Fund any violations hereof and any proposed amendments hereof.

(d) *Executory Interest in the State*. This Agreement is subject to an executory interest in the State, and Grantee shall not attempt to terminate, transfer, or otherwise divest itself of any rights, title, or interest in and to this Agreement without the prior written approval of the Fund. In the event Grantee attempts to terminate, transfer, assign, or divest itself of any rights, title, or interest in and to the Agreement without the prior written approval of the Fund, then all rights, title, and interest in the Agreement shall automatically vest in the State.

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

19. INTENTIONALLY OMITTED.

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

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

To Grantor: Gaston County Government
128 West Main Avenue
Gastonia, NC 28052
Attention: County Manager

To Grantee: Catawba Lands Conservancy
4530 Park Road, Suite 420
Charlotte, North Carolina 28209
Attention: Executive Director

To Fund: North Carolina Land and Water Fund
1651 Mail Service Center
Raleigh, North Carolina 27699-1651
Attention: Contract Administrator

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

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

23. General Provisions.

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

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

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

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Agreement, all of which are merged herein.

(e) Amendment. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Grantor and Grantee may amend this Agreement provided that no amendment shall be allowed that will affect the qualification of this Agreement or the status of Grantee under any applicable laws, including N.C. GEN. STAT. §121-34 or any successor statute, or Section 170(h) of the Code, and any amendment shall be consistent with (i) Grantee's policies pertaining to easement amendments and (ii) the purposes of this Agreement, and shall not affect its perpetual duration. Any such amendment or modification must be executed by both Grantor and Grantee and shall be recorded in the public registry of Union County. If an amendment is made at Grantor's request, Grantor shall be solely responsible for all costs incurred by Grantee in connection with its evaluation of such amendment and Grantor, as a precondition to Grantee's execution of such amendment, shall reimburse Grantee for any expenses incurred as a result of Grantee's evaluation of such proposed amendment, including without limitation compensation for Grantee's staff time, transaction-related costs and fees such as fees charged to Grantee by third-party experts or consultants, and reasonable attorney fees.

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

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

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

(i) Successor Limitation. The Parties hereto recognize and agree that the benefits of this Agreement are in gross and assignable with any such assignee having all the rights and remedies of Grantee hereunder. The Parties hereby covenant and agree, that in the event this Agreement is transferred or assigned, the transferee or assignee of the Agreement will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, and the regulations promulgated thereunder (the "Code") that is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, a qualified holder as that term is defined in the Act or any successor statute, and a qualified grant recipient pursuant to N.C.G.S. Chapter 143B, Article 2, Part 41. The Parties further covenant and agree that the terms of the transfer or the assignment will be such that the

transferee or assignee will be required to continue to carry out in perpetuity the purpose(s) of the Agreement that the contribution was originally intended to advance as set forth herein, but acknowledge specifically that any transfer or assignment of the Agreement shall have no effect on Grantee's obligation to monitor and observe the Property, except with prior written approval of the State of North Carolina and the Fund.

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

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

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

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

[Signatures begin on following page.]

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

GRANTOR:

GASTON COUNTY

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public in and for said County and State, do hereby certify that _____ personally came before me this day and acknowledged that he or she is _____ of GASTON COUNTY, a political subdivision of the State of North Carolina, and that he or she, as _____, being authorized to do so, executed the foregoing on behalf of the entity, and the said _____ acknowledged the said writing to be the act and deed of said corporation.

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

Notary Public

My commission expires:

[NOTARIAL SEAL]

Attest:

Clerk to the Board/Deputy Clerk to the Board

Approved As To Form:

County Attorney/Deputy County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget Act.

Finance Director/Deputy Finance Director

GRANTEE:

CATAWBA LANDS CONSERVANCY, a
North Carolina nonprofit corporation

By: _____
C. Barton Landess, Executive Director

STATE OF NORTH CAROLINA

COUNTY OF _____

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

Witness my hand and official stamp or seal, this the _____ day of _____,
20__.

My Commission Expires:

Notary Public

[NOTARY SEAL]

EXHIBIT A
Legal Description

EXHIBIT B
Site Plan

