

Prepared by: Charles E. Roe, Conservation Trust for N.C.

Return to: William F. Slawter, Nesbitt & Slawter

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

REGISTERED

ASHEVILLE WATERSHED CONSERVATION EASEMENT

'96 DEC -3 P1:18

THIS CONSERVATION EASEMENT (herein "Conservation Easement") made this 15 day of ~~November~~ 1996, by and between the City of ~~Asheville~~ Asheville, a North Carolina municipal corporation (hereinafter the "Grantor") and the CONSERVATION TRUST FOR NORTH CAROLINA, a non-profit corporation organized under the laws of the State of North Carolina (hereinafter the "Grantee") with an address of 883 Washington Street, Raleigh, North Carolina 27605.

RECITALS:

A. The Grantor is the owner of certain real property known as the Asheville watershed (inclusive of the North Fork and Bee Tree watersheds) and consisting of 7,356.4 acres, more or less, located in Buncombe County, North Carolina, and more particularly described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter "Protected Property").

B. The Grantee is a nonprofit corporation established for the preservation and protection of land in its natural, scenic, and open space condition for scientific, educational, charitable, and aesthetic purposes.

C. The Grantor is desirous of conveying a perpetual Conservation Easement over the Protected Property, pursuant to the terms of the North Carolina Conservation and Historic Preservation Agreements Act of 1979 (N.C.G.S. 121-34 et seq.) and N.C.G.S. 160A-266 to 279, thereby restricting and limiting the use of the Protected Property, on the terms and conditions and for the purposes hereinafter set forth.

D. The Grantor conveys this Conservation Easement to the Grantee after approval by a majority of the members of the city council of the city of Asheville, NC, at a meeting duly held on June 28, 1996.

E. The Grantee is a tax-exempt public charity under section 501(c)(3) and 509(a)(2) of the Internal Revenue code, 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, and is a "qualified organization" and an eligible donee within the meaning of N.C.G.S. 121-34 and within the meaning of Section 170(H)(3) of the Internal Revenue code and regulations promulgated thereunder.

F. Grantor and Grantee recognize the conservation value of the Protected Property in its present state as forest land and surface water supply reservoirs, the preservation of which is pursuant to federal, state and local government policy, as evidenced by designation of the Asheville Watershed as a "nationally significant" natural area in the North Carolina Natural Heritage Protection Plan (1995), prepared by the North Carolina Natural Heritage Program, N.C. Department of Environment, Health and Natural Resources, pursuant to N.C.G.S. chapter 113A-164 of Article 9A.

BK 1938 PG 018

Additionally, preservation of the Protected Property provides for the scenic enjoyment of the general public, as evidenced by its location and visual access to the public traveling on the Blue Ridge Parkway, a unit of the National Park system, which traverses the ridgetop above the Asheville Watershed.

The Protected Property yields significant public benefit by permanently protecting the principal public drinking water supply for the citizens of Asheville and Buncombe County.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity a conservation Easement of the nature and character and to the extent hereinafter set forth, over the Protected Property, for the benefit of the people of North Carolina, together with the right to preserve and protect the conservation values of the Protected Property.

#### ARTICLE I. PURPOSE OF EASEMENT

The Protected Property is used primarily to provide a clean, safe, plentiful source of drinking water for the people of the City of Asheville and surrounding areas. Subject to this primary use of providing water, the Grantor conveys this easement for the following purposes: to ensure that the Protected Property will be retained forever in its predominantly natural, scenic and forested condition; to protect native plants, animals and plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the Protected Property described above.

#### ARTICLE II. PROHIBITED ACTS

Grantor promises that it will not perform, and not knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the purposes for which this conservation easement is given.

#### ARTICLE III. CONSISTENT USES

The following uses and practices on the Protected Property, although not an exhaustive recital of consistent uses and practices, are consistent with this Easement, and these uses and practices shall not be precluded, prevented or limited by this Easement:

- a) To produce and deliver drinking water, including the right to:
  - (i) build and maintain all structures, buildings and improvements necessary to collect, process and deliver water, including but not limited to the reservoirs, dams, treatment facilities, pipelines, roads, parking areas, office, maintenance and storage facilities that currently exist (hereinafter referred to as the "Water Production Facilities").
  - (ii) to replace all or part of the Water Production Facilities with facilities used for a like purpose.
  - (iii) the right to expand the Water Production Facilities to meet growing demand for water

usage or to comply with governmental regulations.

- (iv) the right to remove and destroy any plant or animal within or immediately adjacent to the Water Production Facilities which interferes with the production and delivery of drinking water.
- b) Uneven-aged, selective timber harvesting may be conducted below the 3600 foot topographic elevation, but in accordance with the following restrictions and conditions:
- (i) Best Management Practice guidelines for the timber industry as the same may be promulgated by law or regulation in the state of North Carolina and amended from time-to-time.
  - (ii) maintenance and restoration, insofar as possible, of old-growth forests and preservation of the same where it already exists, as documented by the conservation Easement Documentation Report, established by Article VIII(A) below.
  - (iii) maintenance and protection of habitats of state-listed or candidate endangered or threatened species of plants or animals.
- c) Development of recreational facilities in a manner not inconsistent with the use of the property as a primary water source, whether under existing regulations or under such regulations as may be promulgated in the future, whether such regulations are more or less restrictive.
- d) Such other uses as the Asheville City Council may determine as is necessary and in the best interests of the City of Asheville provided:
- (I) that such uses are consistent with the use of the property for drinking water production whether under existing regulations or under such regulations as may be promulgated in the future, including regulations that may be less restrictive as to the uses that are incompatible with water production, if the property is used for water production at the time of such uses.
  - (ii) that such uses are consistent with the maintaining of scenic views from the Blue Ridge Parkway and is compatible with the natural surroundings present on the property.
  - (iii) that such uses are carried out in such a manner as to minimize the destruction of trees and forest area.

#### ARTICLE IV. PROHIBITED USES

The following uses and practices are inconsistent with the purposes of this Conservation Easement and shall be prohibited upon or within the Protected Property, unless otherwise allowed pursuant to Article III above.

- a) The division, subdivision or partition of the Protected Property except in conjunction with any consistent use.
- b) The construction or placement of any permanent or mobile buildings or structures on the Protected Property except in connection with any consistent use.

- c) The filing, dumping, excavation, and removal of soil, minerals, gravel or sand except in conjunction with any consistent use. However, this provision shall not prevent an archaeological excavation conducted with the approval of the Grantee.
- d) The manipulation, degradation, pollution, alteration, or draining through human activities of the natural watercourses of the Protected Property except in conjunction with any consistent use.
- e) The cutting or the destruction of trees or other plants, except as may be necessary for protection against outbreaks of disease or imminent hazard, or for maintenance of the Grantors public water supply or except in connection with any consistent use.
- f) The introduction of non-native plants or animals or grazing of domestic animals.
- g) The use of poisons except within structures.
- h) The storage or dumping of trash, garbage, hazardous substances or toxic waste.
- l) The construction of new roads except in connection with any consistent use.
- j) Horseback riding or operation of vehicles except on existing roads for monitoring and management of the Protected Property or except in connection with any consistent use.
- k) The construction of utility lines on the Protected Property other than to service allowed improvements or except in connection with any consistent use.
- l) The erection of signs except as necessary for the management of the Protected Property and except in conjunction with any consistent use.

#### ARTICLE V. RIGHTS RETAINED BY GRANTOR

The Grantor retains the right to perform any act not specifically prohibited by this Conservation Easement and which is not inconsistent with the purposes for which this conservation Easement was given.

#### ARTICLE VI. ENFORCEMENT AND REMEDIES

A. If a breach of the terms of this conservation Easement by the Grantor or a third party comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of the breach. The Grantor shall have thirty (30) days after receipt of such notice to take actions that are reasonably calculated to correct the conditions constituting such a breach. If the Grantor fails to take such corrective action within thirty (30) days after written notice is provided by Grantee to Grantor, the Grantee may enforce the conservation restrictions and prohibitions by appropriate legal or equitable proceedings, as are reasonably necessary to require and compel the Grantor to correct such conditions, including but not limited to the exercise of the right to require that the Protected Property be restored promptly to the condition required by the conservation Easement.

B. No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right

to Grantee to enforce the same in the event of a subsequent breach or default.

C. Nothing contained in this conservation Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury or change in the Protected Property resulting from causes beyond the Grantors control, including, without limitation, fire, flood, storm, and earth movement, third parties, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property, or harm to the Protected Property resulting from such causes.

#### ARTICLE VII. PUBLIC ACCESS

The Grantor agrees to allow and does hereby grant visual access of the Protected Property to the general public from the Blue Ridge Parkway, other public roads, and adjacent public lands. The granting of this conservation Easement neither (1) conveys to the public any right to enter the Protected Property or to land or buildings owned by Grantor or on land that is adjacent to the Protected Property for any purpose whatsoever, nor (2) prohibits any public access thereto which may be permitted by Grantor.

#### ARTICLE VIII. DOCUMENTATION AND TITLE

A. Documentation Report. The parties acknowledge that the conservation Easement

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Documentation Report dated October 1, 1996, a copy of which is on file at the offices of the Grantee, accurately established the uses, structures, conservation values and condition of the Protected Property as of the date hereof.

B. Title. The Grantor represents that the Grantor is the sole owner of the Protected property in fee simple and has the right to grant and convey the aforesaid Conservation Easement.

#### ARTICLE IX. MISCELLANEOUS

A. Subsequent Transfers. Grantor agrees for itself, its successors and assigns, to notify Grantee in writing of the names and addresses of any party to whom the Protected Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Grantor, and its successors and assigns, further agree 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 Protected Property is conveyed.

B. Conservation Purpose. Grantee, for itself, its successors and assigns agrees that this Conservation Easement shall be held exclusively for conservation purposes, as defined in Section 170 (h) (4) (a) of the Internal Revenue code.

C. Merger. Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Protected Property.

D. Assignment. The parties hereto recognize and agree that the benefits of this conservation

Easement are in gross and assignable by the Grantee to The Nature Conservancy, a nonprofit corporation organized and existing under the laws of the District of Columbia, whose address is 1815 N. Lynn street, Arlington, Fairfax county, Virginia 22209, or to an assignee designated by The Nature Conservancy, provided, however that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this conservation Easement, the organization 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 and operated primarily for the conservation purposes specified in Section 170 (h) (4) (A) of the Internal Revenue code, and Grantee 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 conservation purposes which the contribution was originally intended to advance, set forth in Article I herein.

E. Access for Inspection and Research. The Grantee, its employees and agents and its successors and assigns, have the right, with five (5) days prior written notice to Grantor, to enter the Protected Property at reasonable times provided that the time and manner of such visitations shall be approved in advance by Grantor, such approval not to be unreasonably withheld or delayed, for the following purposes: (1) to inspect the Protected Property to determine whether the Grantor, its representatives, successors or assigns are complying with the terms, conditions restrictions and purposes of this Conservation Easement; (2) to conduct scientific research on the Protected Property.

F. Construction of Terms. This conservation Easement shall be construed to promote the purposes of N.C.G.S. section 121-34 et seq., the conservation and Historic Preservation Agreements Act, which authorizes the creation of Conservation Easements for purposes including those set forth in the recitals herein, and the conservation purposes of this conservation Easement, including such purposes as are defined in section 170(h)(4)(A) of the Internal Revenue code.

G. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements related to the conservation Easement. If any provision is found to be invalid, the remainder of the provisions of this conservation Easement, and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

H. Recording. The Grantee shall record this instrument in timely fashion in the official records of Buncombe county, North Carolina, and may rerecord it at any time as may be required to preserve their rights under this Conservation Easement.

I. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, to the parties at their addresses shown herein above or to other addresses as either party establishes in writing upon ratification to the other. In any case where the terms of this conservation Easement require the consent of the Grantee, such consent shall be requested by notice to the Grantee. Such consent shall be deemed to have been given unless, within fortyfive (45) days after receipt of notice, the Grantee mails notice to the Grantor of disapproval and the reason therefore.

J. Amendment, modification, Rescission. This conservation Easement may not be amended, modified, nor rescinded except upon written consent of both parties to this easement. The Grantor shall evidence authority to execute any such consent by adoption of a resolution or ordinance after due notice and upon the respective vote of the city council of the City of Asheville.

As attested by the Seal of the Conservation Trust for North Carolina and the signature of its President affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this conservation Easement. This conservation Easement shall be effective as of the date recorded in the Registry of Deed, Buncombe county, North Carolina.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto the Conservation Trust for North Carolina, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon the Grantor, its successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

IN WITNESS WHEREOF, the parties hereto have set their hands and caused these presents to be executed in their respective names by authority duly given this 15 day of November, 1996.

ATTEST:

Magdalen Boulson  
City Clerk

THE CITY OF ASHEVILLE  
a municipal corporation

By: [Signature]  
Mayor

ACCEPTED:

CONSERVATION TRUST FOR NORTH  
CAROLINA,

a not-for-profit corporation

By: [Signature]  
President

Charles E. Roe  
Secretary

Exhibit A. (Legal description for Protected Property to be attached)

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, Janet M. Rhodes a Notary Public of the County and State aforesaid, certify that Magdalena Burleson personally came before me this day and acknowledged that he (she) is clerk of the City of Asheville, a North Carolina municipal corporation, and that by authority duly given and as the act of the city, the foregoing instrument was signed in its name by its mayor, sealed with its official seal, and attested by him (herself) as its clerk.

Witness my hand and official stamp or seal, this 29<sup>th</sup> day of October, 1996.

Janet M. Rhodes  
Notary Public

[seal]

My commission expires 10-3-98.

STATE OF NORTH CAROLINA

COUNTY OF ~~BUNCOMBE~~ WAKE

I, Miriam R. Brown a Notary Public of the County and State aforesaid, certify that Charles E. Roe personally came before me this day and acknowledged that he is secretary of the conservation Trust for North Carolina Inc. a North Carolina corporation, and that by authority duly given and as the act of the city, the foregoing instrument was signed in its name by its president, sealed with its official seal, and attested by him as its secretary.

Witness my hand and official stamp or seal, this 18 day of November, 1996.

Miriam R. Brown  
Notary Public

[seal]

My commission expires 2-26-2000.