

**STATE OF NORTH CAROLINA**

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

**COUNTY OF MECKLENBURG**

**THIS DEED OF CONSERVATION EASEMENT** (the “**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the **TOWN OF DAVIDSON**, a North Carolina municipal corporation, (“**Grantor**”) in favor of **DAVIDSON 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 20 acres and located on the south side of Beaty Street in the Town of Davidson, Mecklenburg County, North Carolina, and more particularly described in **Exhibit A** attached hereto and by reference incorporated herein (the “**Property**”).

B. The Property is to be a public park and possesses natural, scenic, open space, wildlife habitat, historical, educational, recreational, water quality, water quantity, and watershed protection values (hereinafter referred to collectively as “**Conservation Values**”) of great importance to the Grantor, Grantee, the people of the Town of Davidson, Mecklenburg County, and the State of North Carolina.

C. The Property, if preserved in accordance with this Agreement, will provide an important habitat for a diversity of plant communities and wildlife in the Piedmont area of North Carolina, including white-tailed deer, migratory songbirds, wildflowers, ferns, and mature hardwood trees.

D. Because of its location in the Catawba River watershed, the Property, preservation of the Property will contribute to the maintenance of surface water and ground water quality of the Catawba River watershed, including Lake Davidson.

Drawn by and mail to:

Law Offices of Tilman Thomas Gates PLLC  
602 East Morehead Street  
Charlotte, NC 28202  
Attn: T. Thomas Gates

E. The Property, if preserved in accordance with this Agreement, will provide for public access and use, and the public's scenic enjoyment of water features, open undeveloped land, natural features, and forests.

F. Conservation of the Property will provide a significant and substantial public benefit in the form of relief from urban closeness as Davidson and its surrounding communities, including the Charlotte metropolitan area, continue to expand and increase in population.

G. 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. §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.

II. 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."

H. 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 Grantor and Grantee wish to avail themselves of the provision of that law.

I. The Board of Directors of Grantee, at its meeting on May 20, 2019, approved acceptance of the conservation easement contained in this Agreement, which shall be known as the "Park at Beaty Conservation Easement," because it fulfills the requirements of the Conservancy's adopted project selection criteria.

J. The specific Conservation Values of the Property are documented in a Baseline Documentation Report outlining relevant features of the Property, dated \_\_\_\_\_, 2019, 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.

K. Grantor intends that the Property be used as a public park and that the Conservation Values of the Property be preserved and maintained by and through this Agreement.

L. The Property's water features existing as of the date of this Agreement, including a dam, pond, spring and perennial and ephemeral streams, do not maximize water quality, Conservation Values, and public enjoyment and benefit. Substantial alterations of the water features, of undetermined scope and extent, are anticipated following execution of this Agreement. Nothing in this Agreement is intended to restrict the enhancement, alteration, removal, establishment, or re-establishment of water features to maximize the Property's Conservation Values and public benefit.

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

N. 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.

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

### **STATEMENT OF AGREEMENT**

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

1. Purpose. As set forth in the recitals above, which recitals are incorporated herein by reference, it is the purpose of this Agreement to assure that the Property will be retained forever in its natural, largely 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, subject to the development provisions specified in this Agreement. Grantor intends that this Agreement will confine the use of the Property to such activities as are consistent with the purpose of this Agreement, including without limitation public park use, education, public recreation, public gathering, and park ancillary uses, as specified in this agreement.

The Property will consist of two (2) distinct zones, shown as the "Development Zone" and the "Preservation Zone" on Exhibit B and more particularly defined in Exhibit C, which exhibits are attached hereto and by reference incorporated herein. The Development Zone will be the area in which active recreational park facilities are developed and used on the Property. The balance of the Property, the Preservation Zone, will be limited to passive recreational use except as otherwise expressly permitted in Exhibit C and 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 3 and 4 below and in **Exhibit C**. The parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Property or to any other property.

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

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

(d) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Agreement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, all pursuant to Paragraphs 6 and 11 below.

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

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

(b) *Business, Residential or Commercial Use.* Any commercial, residential, or industrial use of, or activity on, the Property other than (i) those relating to and ancillary to public park use as permitted under Paragraph 4 and **Exhibit C**, and (ii) the residential use permitted under Paragraph 4(n). Permanently established commercial offices, residences (except as expressly permitted under Paragraph 4(n)), hospitality or business uses of the property are prohibited.

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

(d) *Surface Alteration.* Any alteration of the surface of the land, including without limitation the excavation or removal of soil, sand, gravel, rock or sod except (i) as permitted in Paragraph 4 and **Exhibit C**, (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, ponds, or other bodies of water may not be further diverted or altered, except to restore or enhance

the hydrology of the Property, improve water quality, maintain or enhance the existing water features, or for the protection of native plant and animal species on the Property. Any such restoration, enhancement or habitat protection or alteration of water features shall be conducted in accordance with a plan prepared by qualified engineering or conservation professional, and designed to protect the Conservation Values of the Property including, without limitation, water quality, scenic and wildlife habitat values, and shall be approved in writing by Grantee.

Notwithstanding the foregoing, damming, diking, draining, filling or alteration of the landscape, springs, streams, or ponds shall be permitted as necessary to maintain, dredge, enhance, establish or remove the existing or legally approved and permitted ponds, springs, or streams on the Property only as necessary to improve the public enjoyment of the property or protect wildlife habitat or water quality.

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

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

(h) *Mining.* The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method or any other method.

(i) *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, construction of permitted alterations or improvements, or stewardship purposes, or (ii) on permitted roads and driveways providing access to structures, or (iii) for emergency access, public safety or to provide access to the Property by any disabled persons.

(j) *Hazardous Substances.* The storage, dumping, or other disposal of toxic and/or hazardous materials or non-compostable refuse, except for use of fertilizers, treated lumber, and legal chemicals as permitted by this Agreement. All materials shall be applied 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 and application of chemicals for control of invasive species shall be permitted in accordance with the terms of Paragraph 4.

(k) *Recycling, Refuse and Composting.* Recycling, refuse or garbage handling operations beyond those associated with park use of the Property are prohibited. Small scale composting associated with a community garden use at the Property is permissible.

(l) *Removal of Vegetation.* Cutting, removing, or otherwise destroying trees, grasses, or other vegetation, except as specifically permitted in Paragraph 4 and **Exhibit C**.

(m) *Timbering.* No timbering is permitted except as set forth in Paragraph 4 and **Exhibit C**.

4. **Reserved Rights.** Grantor reserves to itself, and to its 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 public park use 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 must permit others to engage in public park and recreational uses of the Property, including without limitation walking, hiking, fishing, other active and passive recreational uses, animal or plant observation, and other uses consistent with public park use and public enjoyment.

(b) *Business or Commercial Use.* Grantor shall be permitted to conduct commercial uses only to the extent such uses are ancillary and contributory to public park use of the Property and provide public benefit, and are in compliance with the provisions of **Exhibit C**. Examples include concession stands, small vendor carts and operations, office uses by the Town’s Park and Recreation staff and/or by nonprofit organizations complementary to the public park use of the Property, and farmers markets. Permanently established commercial offices, hospitality or business use of the property is prohibited.

(c) *Utilities.* Grantor may install, alter, expand or replace utility lines and services required to support the permitted uses specified in **Exhibit C**.

(d) *Alteration of Water Courses.* Grantor may establish, alter, remove or enhance the Property’s water features including dams, ponds, springs, streams and drainage areas as necessary to restore or enhance the hydrology of the Property, improve water quality, improve the public’s enjoyment of the property or maximize the Conservation Values, including water quality and quantity and the protection of native plant and animal species on the Property. Any such restoration, enhancement or habitat protection activity shall be conducted in accordance with a plan prepared by qualified engineering or

conservation professional, and designed to protect the long-term Conservation Values of the Property including, without limitation, water quality, scenic and wildlife habitat values, and shall be approved in writing by Grantee.

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

(f) *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 install landscaping features required to support the permitted building and site improvements specified in **Exhibit C**. Also permissible is performance of routine grounds keeping and landscape maintenance on the Property, and management of invasive species, including without limitation (i) trimming and removal of grass and bushes, (ii) irrigation for landscaping purposes, (iii) application of chemical and non-chemical based fertilizers, herbicides, pesticides and fungicides as required to properly manage the Property, and (iv) maintenance of landscaping improvements.

(g) *Recycling.* Grantor shall be permitted to recycle and reuse garbage, waste and debris for composting purposes, so long as such composting operation is directly associated with the Property and is not detrimental to the Conservation Values, including water quality.

(h) *Trails and Recreation Areas.* Grantor shall be permitted to develop and construct pedestrian trails and associated nature viewing blinds, picnic tables, unenclosed structures, and benches for passive recreational use on the Property as specified in **Exhibit C**. Motorized vehicles are prohibited on the trails except as set forth in Paragraph 3(i) above. Equestrian trails and activities are prohibited.

(i) *Timbering.* Grantor shall be permitted to prune, cut down, or otherwise harvest trees in the Preservation Zone only as necessary (i) to prevent hazard, disease, or fire on the property, (ii) for the purposes of best forestry management practices, (iii) to restore or enhance the hydrology or water features, and protection of native plant species on the Property, or (iv) as minimally required for permissible building and site improvements as specified in **Exhibit C**. All timber harvesting, with the exception of 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.

(j) *Access.* Grantor may control public access to the Property as required to manage the Property and park use, and to maintain public safety, subject to Paragraph 6 below.

(k) *Agriculture.* Agricultural uses are limited to community gardens, bee keeping, and similar low intensity activities. Under no circumstances, (i) shall there be any increase in the size or scope of permitted activities on the Property to the level of industrial or factory type livestock operations (i.e., operations characterized by the continuous confinement of livestock in tightly confined environments for the purpose of raising, feeding and fattening for market), (ii) shall any slaughtering facilities or hog operations be allowed, (iii) shall grazing areas be permitted except as required to support efforts to control invasive species, or (iv) shall areas predominantly forested in hardwoods as of the date of this Agreement be cleared to allow for any agricultural use.

(l) *Roads and Driveways.* Grantor shall be permitted to establish, use, improve, replace, and maintain the roads and driveways specified in Exhibit C. 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.

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

(n) *Existing Residence.* Grantor shall be permitted to use, maintain and repair the existing single-family residential dwelling located at 825 Shearer Street and indicated on Exhibit B as "Existing Residence" until the earlier of (i) the date that the Development Zone is developed, or (ii) the date five (5) years from the date of this Agreement.

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

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



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

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

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

9. Representations and Warranties. Grantor represents and warrants that, to the best of its 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 North Carolina 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 (i) any breach of any representation or covenant of Grantor in this Agreement, (ii) any violation or alleged violation of Applicable Law by Grantor with respect to the Property, and/or (iii) any presence, generation, treatment, storage, disposal, transport, release, threatened release or suspected release of any Hazardous Material brought on, in, under, about, to or from the Property.

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

11. Remedies.

(a) 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.

(b) If Grantee defaults under this Agreement and fails to cure the default within thirty (30) days after receipt of notice thereof from Grantor, or if the default cannot reasonably be cured within said period, fails to commence to cure such default within the thirty (30) day period, and thereafter to diligently prosecute the cure to completion, Grantor may exercise its remedies at law or in equity. Any forbearance by Grantor to exercise its rights hereunder in the event of any breach of any term set forth herein by Grantee shall not be deemed or construed to be a waiver by Grantor of such term or of any subsequent breach of the same or any other term of this Agreement or of any of Grantor's rights. No delay or omission by Grantor in the exercise of any right or remedy upon any breach by Grantee shall impair such right or remedy or be construed as a waiver.

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

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

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

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

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

If either party refuses to participate in good faith in the mediation process required under this Paragraph 12, the party shall have failed to fulfill an absolute condition precedent to its right to pursue litigation or any other means of resolving any issue to be mediated. Any statute or other period of limitations shall be tolled during the time the parties are in good faith fulfilling their obligations of mediation under this Paragraph 12, but such tolling shall not apply to any claim or issue sought to be resolved by a party that shall have failed to participate in good faith in the mediation process.

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

14. Proceeds. Grantor and Grantee acknowledge that the Easement constitutes a real property interest immediately vested in Grantee, but have agreed that Grantor shall be entitled to one hundred percent of any proceeds (less the reasonable and documented expenses of Grantee in connection with such proceedings) related to extinguishment pursuant to Paragraph 13 above or condemnation of the Property pursuant to Paragraph 15 below.

15. Condemnation. 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, at Grantor's sole expense, 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. After payment of any expenses reasonably incurred by Grantee in connection with such condemnation, Grantor shall be entitled to all recovered proceeds related to the Property in conformity with the provisions of Paragraph 14. The respective rights of Grantor and Grantee set forth in this Paragraph 15 shall be in addition to, and not in limitation of, any rights they may have at common law.

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

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

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

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

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

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

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

To Grantor: Town of Davidson  
Attn: Town Manager  
P.O. Box 579  
Davidson, NC 28036

To Grantee: DAVIDSON LANDS CONSERVANCY  
Attn: Executive Director  
P.O. Box 1952  
Davidson, NC 28036

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

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

22. General Provisions.

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

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

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

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

(e) Amendment. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Grantor and Grantee may amend this Agreement provided that no amendment shall be allowed that will affect the qualification of this Agreement or the status of Grantee under any applicable laws, including N.C. GEN. STAT. §121-34 or any successor statute, or Section 170(h) of the Code, and any amendment shall be consistent with (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 Mecklenburg 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. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Code, or to be authorized to acquire and hold conservation easements under N.C. GEN. STAT. §121-34, and a prior assignment is not made pursuant to Paragraph 16 above, then Grantee's rights and obligations under this Agreement shall become immediately vested in such organization as a Court of competent jurisdiction shall direct pursuant to North Carolina law and with due regard to the requirements for an assignment pursuant to said Paragraph 16.

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

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

any disparity between the counterparts produced, the recorded counterpart shall be controlling.

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

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

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



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

**GRANTOR:**

\_\_\_\_\_  
**TOWN OF DAVIDSON**, a North Carolina  
municipal corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF NORTH CAROLINA**

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

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

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

My commission expires:

\_\_\_\_\_

[NOTARIAL SEAL]

**GRANTEE:**

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

Attest:

\_\_\_\_\_  
Betsy Shores, Town Clerk

By: \_\_\_\_\_  
Yancey Fouche, Board Chair

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 she is \_\_\_\_\_ Chair of the Board of Directors of **DAVIDSON LANDS  
CONSERVANCY**, a North Carolina nonprofit corporation, and that she, as Board Chair, being  
authorized to do so, executed the foregoing on behalf of the corporation. And the said Board Chair  
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 showing Development and Preservation Zones and Existing Residence**

## **EXHIBIT C**

### **Development and Preservation Zones**

The Property is divided into two use zones: Preservation Zone and Development Zone.

#### **Preservation Zone**

The Preservation Zone encompasses the majority of the Property's land area and includes \_\_\_\_ acres, as shown on **Exhibit B**. The purpose of the Preservation Zone is to limit use and development to passive recreation uses, except for sidewalks or multi-purpose paths which are permissible. Development is limited to unenclosed structures such as tree houses, amphitheaters, docks and foot bridges, public art installations, shelters, and decks, picnic areas, benches, trails, multi-purpose paths, and the establishment or enhancement of water features including erosion control installations, dams and ponds, and wetlands and stream alteration installations. Roads, driveways, cell or transmission towers, and utility lines and facilities are prohibited except as required for public safety or to support permitted uses. Active recreational uses, other than multi-purpose paths, such as disc golf, ball fields, playfields, playgrounds, tennis courts, volleyball courts, basketball courts, shuffleboard courts, bocce courts, horseshoe areas, swimming pools, mountain bike trails, enclosed structures, parking areas, or driveways, are prohibited.

#### **Development Zone**

The Development Zone encompasses the easterly sections of the property adjacent to Main Street, consisting of \_\_\_\_ acres, as shown on **Exhibit B**. Development of active recreational park facilities is permitted in this zone, including play structures, active recreation improvements, structures, utilities lines and services, public art installations, patios, walkways, landscaping, parking and driveway areas, and other improvements supporting public park use of the property. The extent of development of impervious area in the Development Zone shall comply with local, state, and federal land use regulations, and the total amount of impervious ground surface coverage, including driveways, access roads, and associated parking areas, shall be limited to seventy percent (70%) of the Development Zone area. No building or other structure may be constructed within the Development Zone that exceeds thirty feet (30') in height.