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 PRESENTED & RECORDED:  
 12-27-2007 09:03:30 AM  
 CINDY M OWNBEY  
 REGISTER OF DEEDS  
 BY: BETH C SALES  
 ASSISTANT  
 BK: DOC 441  
 PG: 196-224

After recording please return to:

~~North American Land Trust~~ VAN WINKLE LAW FIRM  
~~P.O. Box 467~~ 11 NORTH MARKET ST  
~~Chadds Ford, PA 19317~~ ASHEVILLE NC 28901

**NOTICE OF CONVEYANCE**  
**REQUIRED - SEE SECTION 6.11**

**CONSERVATION EASEMENT  
 AND  
 DECLARATION OF RESTRICTIONS AND COVENANTS**

**THIS CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS** ("Conservation Easement") made Dec. 18, 2007 by and between **JOHN ANTHONY FISHER III AND JEANETTE K. FISHER**, husband and wife (together, "Owner"), having an address of #307 Toxaway Views, Lake Toxaway, NC 28747 and **NORTH AMERICAN LAND TRUST** ("Holder"), a Pennsylvania non-profit corporation having an address of Post Office Box 467, 100 Hickory Hill Road, Chadds Ford, PA 19317,

**WITNESSETH THAT:**

**WHEREAS**, Owner is the owner of certain real property in Transylvania County, NC, that consists of approximately 106 acres (hereinafter called the "Property") as most recently described in a deed granted to Owner and recorded among the land records for Transylvania County at Book 214, page 572; and

**WHEREAS**, the Property includes, within its boundaries, land consisting of 44.37 acres, more or less, depicted and identified as the "Conservation Area" on the plan attached hereto as Exhibit "A" (hereinafter called the "Conservation Area"); and

**WHEREAS**, Holder is a non-profit corporation, having a tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), which has been established as a public charity for the purpose of preserving and conserving natural habitats and environmentally sensitive areas and for other charitable, scientific and educational purposes and which is a "qualified organization" under Section 170(h)(3) of the Code; and

**WHEREAS**, preservation of the Conservation Area shall serve the following purposes, (the "Conservation Purposes"):

Preservation of the Conservation Area as a relatively natural habitat of fish, wildlife, or plants or similar ecosystem; and

Preservation of the Conservation Area as open space which provides scenic enjoyment to the general public and yields a significant public benefit; and

**WHEREAS**, the features of the Conservation Area having ecological and scenic significance (which may be hereinafter called the "Conservation Values") and the Conservation Purposes have been established in the reports, plans, photographs, documentation, and exhibits assembled by, and retained in the offices of, North American Land Trust (collectively called the "Baseline Documentation"), which describes, among others, the following Conservation Values of the Conservation Area:

The Conservation Area contains at least three perennial streams, predominantly surrounded by forested vegetation, thus contributing to the overall health of the Upper Savannah watershed; and

The Conservation Area includes sloped woodlands within the Upper Savannah River watershed, thus helping to improve and maintain the deposition of good quality waters into the watershed; and

The Conservation Area contains over 2,700 feet of stream frontage along Bearwallow Creek, listed as High Quality Waters suitable for natural and stocked trout propagation by the North Carolina Department of Water Quality; and

The Conservation Area contains a large waterfall of noteworthy scenic value, highly visible from Gorges State Park; and

The Conservation Area lies directly adjacent to Gorges State Park, a newly acquired 7,500 acre natural area containing over 120 species of rare plants and animals; and

The Conservation Area contains intact examples of at least two natural communities: Southern Appalachian White Pine Forest and Montane Oak Hickory Forest; and

The Conservation Area contains Blue Ridge Table Mountain Pine-Pitch Pine Woodland, a globally ranked natural community considered rare due to its restricted range; and

The Conservation Area provides the natural ecological requirements for at least 87 species of plants; and

The Conservation Area contains the state-listed Significantly Rare Large Purple-fringed Orchid (*Platanthera grandiflora*); and

The Conservation Area contains three North Carolina Plant Watch List species: Biltmore Carrion-flower (*Smilax biltmoreana*) and Turkey Beard (*Xerophyllum asphodeloides*), both considered rare within the state; and Galax (*Galax urceolata*), a species exploited for commercial trade; and

The Conservation Area contains the regionally rare Dwarf Huckleberry (*Gaylussacia dumosa*); and

The Conservation Area contains habitat that could potentially support at least six rare plant and animal species known from the adjacent Gorges State Park; they are: Southern Appalachian Woodrat (*Neotoma floridana haematoreia*), Southern Oconee Bells (*Shortia galacifolia*) Mountain Witch Alder (*Fothergilla major*), Southern Appalachian Salamander (*Plethodon teyahalee*), Common Raven (*Corvus corax*), and Swainson's Warbler (*Limnothlypis swainsonii*); and

The Conservation Area provides suitable habitat for, and is occupied by wildlife species such as Bobwhite Quail, Black Bear, Ruffed Grouse, White-tail Deer, and Wild Turkey; and

Protection of the Conservation Area will contribute to the policies and goals of the North Carolina "Million Acre Initiative" sponsored and campaigned by the North Carolina Division of Parks and Recreation and North Carolina Department of Environment and Natural Resources (including the North Carolina Natural Heritage Program); and

**WHEREAS**, Owner and Holder desire to perpetually conserve the natural, scientific, educational, open space, scenic and historical resources of the Conservation Area to accomplish the Conservation Purposes; and

**WHEREAS**, Owner intends to grant the easement and impose the restrictive covenants on the Conservation Area as set forth in this Conservation Easement to accomplish the Conservation Purposes; and

**WHEREAS**, Owner and Holder intend that this document be a "conservation agreement" as defined in Chapter 121, Article 4, Section 121-34 et seq. of the General Statutes of North

Carolina, known as the Historic Preservation and Conservation Agreement Act (the "State Conservation Easement Law").

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, conditions, restrictions, and promises contained in this Conservation Easement, and intending to be legally bound hereby, Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Holder, its successors and assigns, the easements, covenants, prohibitions and restrictions set forth in this Conservation Easement, in perpetuity, to accomplish the Conservation Purposes. Holder hereby accepts the grant of such easements and agrees to hold such easements exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in this Conservation Easement.

#### ARTICLE 1. GRANT OF EASEMENTS

Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Holder, its successors and assigns, a perpetual easement in gross over the Conservation Area for the purpose of preserving and protecting the Conservation Purposes and enforcing the restrictive covenants set forth below. In addition, Owner hereby grants and conveys unto Holder, its successors and assigns, the easement and right of Holder and its agents to enter upon and inspect the Conservation Area for compliance with this Conservation Easement at any time and from time to time, with access over and across the Property if necessary. Holder shall give Owner notice of any such entry and inspection at least seven (7) days in advance, except in cases of suspected or known violations of this Conservation Easement.

#### ARTICLE 2. OWNER'S DECLARATION OF COVENANTS AND RESTRICTIONS

Owner, for Owner and Owner's heirs, successors and assigns, covenants and declares that the Conservation Area shall be, and hereby is, bound by and made subject to the following covenants and restrictions in perpetuity, subject to and excepting only the Reserved Rights set forth in Article 3 of this Conservation Easement:

- 2.1. Use Restrictions. The Conservation Area shall not be used for a residence or for any commercial, institutional, industrial or agricultural purpose or purposes. Among the uses prohibited by the preceding sentence are, without limiting the meaning or interpretation of the preceding sentence, any of the following: (1) construction or occupancy of any dwellings; (2) manufacture or assembly of any products, goods, equipment, chemicals, materials or substances of any kind or nature whatsoever; (3) sale of any products, goods equipment, chemicals, materials, substances or services of any kind or nature whatsoever; (4) storage of any products, goods, equipment, chemicals, materials or substances of any kind or nature, except if stored for use upon the Property in connection with activities not prohibited by this Conservation Easement; and (5) offices for persons involved in the sale, manufacture or assembly of goods or services or for the performance of services.

- 2.2. **Structures Prohibited.** No Structure (hereinafter defined) of any kind shall be built, erected, installed, placed, affixed or assembled within or upon the Conservation Area or upon any trees or other natural features upon the Conservation Area. "Structure" shall mean any assembly of material forming a construction for occupancy or use for any purpose and erected upon or attached to the ground including, for example but not to limit the foregoing definition, the following: building, platform, shed, bin, shelter, dam, dike, tower, tank, antenna, and bulkhead.
- 2.3. Limitation on Recreational Activities. No recreational activities shall occur within the Conservation Area except for recreational activities that, by their nature, are likely not to have a material adverse effect on the Conservation Values of the Conservation Area. Examples of permitted activities which are included here for illustration and not for limitation of the foregoing, include walking, jogging, wildlife observation, photography, and horseback riding. Notwithstanding the foregoing, all recreational activities within the Conservation Area must be conducted at all times in a manner that, in Holder's judgment, (a) shall have no material adverse effect upon the Conservation Purposes or Conservation Values and (b) are otherwise in conformance with this Conservation Easement.
- 2.4. Limitation on Hunting and Trapping Game. The Conservation Area shall not be used for hunting or trapping mammals.
- 2.5. Removal of Ground or Surface Water from Conservation Area. No ground or surface water from the Conservation Area shall be removed, collected, impounded, stored, transported, diverted or otherwise used for any purpose or use outside the boundaries of the Conservation Area nor for any purpose or use within the boundaries of the Conservation Area that is prohibited by this Conservation Easement.
- 2.6. Roads, Driveways, Etc. There shall not be constructed, cut, created or placed on the Conservation Area any road, driveway, cartway, path or other means of right of passage across or upon the Conservation Area nor may any road, driveway, cartway, path or other means or right of passage located on the Conservation Area be used, as access for any use (whether or not upon the Conservation Area) which is prohibited by this Conservation Easement.
- 2.7. Live or Dead Trees. No cutting, removal or destruction of live or dead trees shall be permitted upon or within the Conservation Area. Dead trees that have fallen shall be allowed to remain where they have fallen unless a dead tree blocks a road or trail or threatens the safety of persons or property, in which case it may be moved to the extent necessary to prevent such blockage or threat.
- 2.8. Signs and Similar Structures. No signs, billboards or outdoor advertising structures shall be placed, erected or maintained within the Conservation Area.

- 2.9. Land Disturbance. There shall be no filling, excavating, dredging, surface mining, drilling, or any removal of topsoil, sand, gravel, rock, peat, minerals or other materials, upon or from the Conservation Area.
- 2.10. Dumping. There shall be no dumping of ashes, trash, garbage, or any other unsightly or offensive materials at any place on, under or within the Conservation Area.
- 2.11. Change of Topography. There shall be no material change in the topography of the Conservation Area in any manner.
- 2.12. Water Courses. There shall be no dredging, channelizing or other manipulation of natural water courses or any water courses existing within the Conservation Area as of the date of this Conservation Easement. There shall be no discharge of chemicals, waste water or other pollutants into any permanent or intermittent water course.
- 2.13. Riparian Buffer. That part of the Conservation Area that lies within, or within 100 feet of: (a) the area between the banks of any permanent or intermittent watercourse (including but not limited to any lake or pond, but excluding manmade storm water swales not fed by a spring, pond or other natural source) or (b) any governmentally regulated wetland shall be referred to herein as the "Riparian Buffer". There shall be no clearing, cutting or removal of live or dead trees, other clearing or removal of vegetation, clearing or removal of leaf litter or other natural detritus, or digging, earth movement or other alteration of the earth surface or topography within the Riparian Buffer. Owner shall be responsible for ascertaining the boundaries of the Riparian Buffer, at Owner's expense, in consultation with Holder, before undertaking any action that is or may be prohibited in the Riparian Buffer. If the banks of a water course are not clearly defined then Holder shall, in its reasonable discretion, establish a line to substitute for that purpose upon request by Owner, relying on available topographic and other maps and information.
- 2.14. Soil Erosion and Sedimentation Control. All activity on the Conservation Area shall be conducted so as to avoid the occurrence of soil erosion and sedimentation of streams or other water courses. Without limitation of the foregoing, Owner and Holder shall, in identifying practices that will prevent soil erosion and sedimentation, refer to the soil conservation practices as then established or recommended by the Natural Resources Conservation Service of the United States Department of Agriculture or any successor governmental office or organization performing the same function within the United States government, as approved by Holder.
- 2.15. Livestock. There shall be no livestock grazing in the Conservation Area.
- 2.16. Non-Native Plant Species. There shall be no introduction of plant species within the Conservation Area except those that are native to the area in which the Conservation Area is located or that are recognized as non-invasive horticultural specimens.

- 2.17. Transfers of Development Rights or Development Density Credits. The Conservation Area may not be used as open space for purposes of obtaining or qualifying for governmental approval of any subdivision or development on lands outside the boundaries of the Conservation Area nor, without limitation of the foregoing, may the Conservation Area be used in the calculation of the amount or density of housing units or other construction for development on lands outside the boundaries of the Conservation Area or for sale by Owner.
- 2.18. No Subdivision. There shall be no subdivision or other division of the Conservation Area into one or more lots, tracts or parcels of land under separate ownership.
- 2.19. Subdivision-Notice. There shall be no subdivision or other division of the Conservation Area into one or more lots, tracts or parcels of land under separate ownership without prior notice and written acknowledgement of receipt of such notice by Holder.
- 2.20. Notice of Exercise of Reserved Rights. As required by 26 C.F.R. § 1.170A-14(g)(5)(ii), Owner shall notify Holder in writing before exercising any Reserved Right that may impair the conservation interests associated with the Conservation Area.
- 2.21. Preservation of Conservation Area. The parties recognize that this Conservation Easement cannot address every circumstance that may arise in the future, and the parties agree that the purpose of this Conservation Easement is to preserve the Conservation Area predominantly in its present condition and to protect or enhance the Conservation Area's rare, threatened, or exemplary natural communities, usefulness to rare or threatened species, and contributions to improved water quality. Without limiting the preceding covenants and restrictions, any use or activity which is not reserved in Article 3 of this Conservation Easement and which is inconsistent with the Conservation Purposes or which materially threatens the Conservation Purposes is prohibited.
- 2.22. Restrictions Cumulative. The prohibitions and restrictions in this Conservation Easement shall be considered cumulative. No prohibition or restriction contained herein shall be interpreted as a limitation on the meaning, effect, interpretation or enforceability of another prohibitive or restrictive provision.

### **ARTICLE 3. RESERVED RIGHTS**

Owner reserves for Owner and Owner's heirs, successors and assigns who may now or hereafter be owner of all or part of the Conservation Area the rights set forth in this Article 3 (the "Reserved Rights"). Owner and Holder intend that these Reserved Rights and the activities and uses which are described below as the Reserved Rights are narrow exceptions to the prohibitions and restrictions set forth in Article 2 and, hence, may be conducted as described below

notwithstanding the prohibitions and restrictions of Article 2 without having an adverse effect on the Conservation Purposes.

- 3.1. Pond. Owner may construct a pond having a surface area not exceeding two (2) acres in size and having a location and design that is approved in advance by Holder in its discretion.
- 3.2. Restoration of Wetland. Owner may remove or trim trees, shrubs and other vegetation within the area of wetlands if done according to a written plan, approved in advance by Holder, for the purpose of promoting the growth within the wetlands of native wildflowers and wetland flora and fauna.
- 3.3. Picnic Pavilion. Owner may construct one (1) covered picnic pavilion not exceeding 1000 square feet of covered area.
- 3.4. Shelters. Owner may construct open-sided, roofed shelters (not exceeding an aggregate of 1000 square feet of covered area for all shelters), constructed of natural materials and in muted colors, and may install picnic tables and benches, and similar Structures commonly associated with passive outdoor recreation.
- 3.5. Service Vehicle Trails. Owner may also install and maintain service vehicle trails for limited vehicular access to the areas of the Property otherwise inaccessible by vehicle for use in maintenance, emergency access, and other permitted uses of the Property if the following requirements and conditions are satisfied: (a) the surface of such trails shall remain pervious (such as dirt or gravel); (b) such trails shall be located, to the extent possible, in the path of forestry roads existing on the date of this Conservation Easement; (c) the width of the area cleared for such trails shall not exceed that which is necessary for a single lane of vehicular traffic; (d) such trails shall be otherwise installed in a manner to avoid unnecessary tree removal and land disturbance; (e) if such trails require any grading or change in topography, then such grading shall blend into the natural topography of the Property, shall control erosion, and shall be of a design and location approved, in advance, by Holder in its discretion; and (f) Holder approves the proposed service vehicle trail, as shown in the Baseline Documentation, based on the foregoing requirements.
- 3.6. Individual Residential Waste Water Disposal. Owner may use the Property for the underground disposal of waste water for service to a residential use located within either or both of the Property; provided, that this Reserved Right shall only be exercised if the following conditions are first satisfied:
  - 3.6.1. Owner shall demonstrate to Holder's satisfaction, in the reasonable exercise of its discretion, that it is not possible, for reasons beyond Owner's control, to utilize for such waste water disposal purpose an area that is within the residential areas of the Property which are not subject to the Conservation Easement.



- 3.6.2. **Wastewater shall be from residential sources only.**
- 3.6.3. Holder determines that the design of the system of waste water treatment, the location of the area of disposal, and the standards of design, treatment, waste water quality, waste water quantity, loading, maintenance, operation and other relevant features of the proposed system are sufficient, whether or not consistent with or sufficient to satisfy governmental requirements, to **prevent any surface or ground water contamination, damage to or degradation of habitat for flora or fauna or adverse effect on any of the Conservation Purposes or Conservation Values.**
- 3.6.4. The installation and maintenance of the waste water disposal system and appurtenances, including underground transmission lines, shall not require the removal of any live trees having a diameter of greater than 10” at a point four feet above ground level.
- 3.7. Water Courses. Dredging, channelizing or other manipulation of previously-altered natural or manmade water courses within the Conservation Area may be conducted if necessary to maintain wetlands, if any, existing on the Conservation Area, and to restore wetlands previously existing on the Conservation Area. Owner shall be responsible for obtaining all necessary government permits and approvals for such activity and Holder shall have the right, but not the obligation, to require that such permits and approvals be produced for inspection by Holder before Holder’s approval is granted.
- 3.8. Fences. Owner may construct fences up to six feet in height except, however, that any fence that is visible from any road or waterway that is accessible to the public and from which is offered a scenic view into the Conservation Area shall be prohibited unless such fence shall have no material adverse effect upon the scenic Conservation Purpose and such fence is approved in writing by Holder.
- 3.9. Wildlife Stands, Nests and “Blinds”. Owner may construct a reasonable number of wildlife observation stands and “blinds” and houses, nests or perches for birds or other wildlife; provided that in the installation or construction of any such Structure Owner shall comply with all other covenants and restrictions of this Conservation Easement.
- 3.10. Trails and Paths. Owner may construct trails or paths for nature education and outdoor recreation purposes if the following requirements and conditions are satisfied: (a) the surface of the trail shall remain pervious (such as dirt, wood chips or gravel); (b) the trail shall be located, to the extent possible, in the path of a trail or forestry road existing on the date of this Conservation Easement; (c) the width of the area cleared and improved for the trail shall not exceed that which is necessary for pedestrian or equestrian use; and (d) the trail shall be otherwise installed in a manner to avoid unnecessary tree removal, grading and other land disturbance. In addition,

such trails shall be subject to, and the use thereof may be conditioned upon compliance with, rules and regulations established from time to time by Holder in order to prevent the adverse effects upon the Conservation Purposes or other natural conditions protected by this Conservation Easement.

- 3.11. Raised Walkways. Owner may construct raised walkways for access to any or all of the land within the Property if the following requirements and conditions are satisfied: (a) it can be demonstrated to Holder that it is not feasible to use any existing walkway or pathway or to improve any existing walkway or pathway for such access purpose; (b) Owner shall comply with all other covenants and restrictions of this Conservation Easement; and (c) Holder approves the proposed walkway based on the foregoing requirements.
- 3.12. Stream or Wetland Restoration. Owner may perform work, including the removal of vegetation or disturbance of land, within the vicinity of existing water courses or regulated wetlands if the following requirements and conditions are satisfied: (a) such work is intended and designed to restore natural stream channel morphology and natural wetland hydrology and (b) the written approval of Holder is obtained. Owner shall be responsible for obtaining all necessary government permits and approvals for such work and Holder shall have the right, but not the obligation, to require that such permits and approvals be produced for inspection by Holder before Holder's approval is granted.
- 3.13. Existing Structures. Structures existing on the Conservation Area on the date of this Conservation Easement, whether or not such Structure would be permitted to be erected or installed on the Conservation Area under these Reserved Rights, may, nevertheless, be repaired or restored to the condition and dimensions in which the Structure existed on the date of this Conservation Easement.
- 3.14. Forest Management. Timber thinning or salvaging exclusively for the abatement of disease, insect infestation or fire hazard or to improve habitat conditions for exceptionally rare species in existing forest shall be permitted upon or within the Conservation Area, and such trees may be sold and removed from the Conservation Area, only if the following conditions are first satisfied:
  - 3.14.1. Owner submits for Holder's approval, and receives Holder's approval in its reasonable discretion, of a timber harvest or management plan, prepared by qualified natural resource personnel at Owner's expense.
  - 3.14.2. Owner contacts Holder prior to preparation of the timber harvest or management plan to obtain the required information to be included in any such plan. At a minimum, the timber harvest or management plan must address and provide detailed information regarding harvesting plans and protocols, road locations and design standards, and erosion control measures.

- 3.14.3. Such forest management activities do not adversely effect rare, threatened or exemplary natural communities as determined by Holder in its discretion or otherwise adversely affect the Conservation Purposes.
- 3.15. Tree Cutting. Cutting, removal or destruction of trees shall be permitted upon or within the Conservation Area only under the following conditions:
  - 3.15.1. A live tree that has been damaged or disturbed by forces of nature may be cut if such tree presents a threat of injury to persons or property or blocks a trail, road or other means of access to any part of the Conservation Area. Once cut, the tree shall be allowed to remain in its fallen location unless such location presents a threat of injury to persons or property or blocks a trail, road or other means of access to any part of the Conservation Area.
  - 3.15.2. Early successional tree species may be selectively removed for the purpose of preserving areas of meadow that existed as meadow on the date of this Conservation Easement.
- 3.16. Signs. Owner may install a reasonable number of signs of the following types:
  - 3.16.1. regulatory or directional signs including, for example but not for limitation of the foregoing, "no trespassing" signs, "no gunning" signs, or "no hunting" signs;
  - 3.16.2. signs stating the common name of the Conservation Area, the names and addresses of the occupants or both;
  - 3.16.3. signs advertising or directing participants to an activity permitted under the provisions of this Conservation Easement;
  - 3.16.4. signs identifying the interest of Owner or Holder in the Conservation Area; and
  - 3.16.5. signs educating the public as to the ecology of the Conservation Area.

Notwithstanding the foregoing, any sign that is greater than four square feet in surface area and visible from any public road or waterway accessible to the public and from which is offered a scenic view into the Conservation Area shall be prohibited unless such sign shall have no material adverse effect upon the Conservation Purposes and such sign is approved in writing by Holder.

- 3.17. Hunting, Etc. Not Prohibited. Nothing in this Conservation Easement shall be construed to limit the right of Owner and Owner's guests and invitees to hunt, trap, and otherwise harvest fish and other wildlife.

- 3.18. Maintenance of Roads, Trails, Etc. Owner may maintain in passable condition the Structures, roads, trails or walkways existing within the Conservation Area at the date of this Conservation Easement. Included within this right of maintenance, without limitation, are: the right to prune trees or other vegetation which threaten the safety of persons who may use or maintain the road, trail or walkway; the right to install or apply materials necessary to correct or impede erosion; grading of earth to maintain a passable condition or to control or impede erosion; replacement of existing culverts, water control structures and bridges; and maintenance of roadside ditches.
- 3.19. Utility Installations. Owner may construct facilities normally used in connection with supplying utilities, providing water to fire hydrants and controlling storm water runoff if the following requirements and conditions are satisfied: (a) such facilities may only be constructed and used to serve the uses and improvements permitted under the terms of this Conservation Easement; (b) all such facilities be located underground to the extent feasible; (c) all such construction and maintenance is conducted in a manner designed to produce no material adverse effect on the Conservation Purposes; and (d) Holder approves the proposed utility facility based on the foregoing requirements.
- 3.20. Waste Water Disposal. Owner may use the Property for the underground disposal of waste water for service to uses outside of the Conservation Area; provided, that this Reserved Right shall only be exercised if the following conditions are first satisfied:
- 3.20.1. Owner shall demonstrate to Holder's satisfaction, in the reasonable exercise of its discretion, that it is not possible, for reasons beyond Owner's control, to utilize an area that is outside the Conservation Area for such waste water disposal purpose.
- 3.20.2. Holder determines that the design of the system of waste water treatment, the location of the area of disposal, and the standards of design, treatment, waste water quality, waste water quantity, loading, maintenance, operation and other relevant features of the proposed system are sufficient, whether or not consistent with or sufficient to satisfy governmental requirements, to prevent any surface or ground water contamination, damage to or degradation of habitat for flora or fauna or adverse effect on any of the Conservation Purposes or Conservation Values.
- 3.20.3. The installation and maintenance of the waste water disposal system and appurtenances, including underground transmission lines, shall not require the removal of any live trees having a diameter of greater than 10" at a point four feet above ground level.

- 3.21. Notice and Approval Before Exercise of Certain Reserved Rights. None of the Reserved Rights for which the approval of Holder is expressly required in any Section of this Article 3 may be exercised or undertaken unless Owner has first satisfied the following conditions and requirements:
- 3.21.1. Owner shall notify Holder in writing before exercising any of such Reserved Rights.
  - 3.21.2. Holder must be satisfied, as evidenced by its prior written approval of Owner's proposed exercise of a Reserved Right, that any use or activity done in the exercise of the Reserved Right will meet the requirements and conditions for such Reserved Rights and will have no material adverse effect on the Conservation Purposes or on the significant environmental features of the Conservation Area described in the Baseline Documentation.
  - 3.21.3. Notwithstanding anything in this Conservation Easement to the contrary, if Owner undertakes to exercise a Reserved Right or other action, without prior approval of Holder, where such approval is expressly required under this Conservation Easement, then (a) such exercise of the Reserved Right by Owner may be treated by Holder, in Holder's sole discretion, as an action that was prohibited by this Conservation Easement as fully as if the Reserved Right or other right was not contained in, or reserved to, Owner under this Conservation Easement and (b) Holder may decline to accept or consider any request for approval of an action that has already been commenced. Holder may, but shall not be obligated to, accept and consider a request for approval after a Reserved Right has been commenced or exercised by Owner. Should Holder elect, in its discretion, to decline to assert this prohibition and to waive a violation of the Conservation Easement arising solely from Owner's failure to seek and obtain Holder's approval before exercising a Reserved Right or other right where such approval is required, Holder shall not be thereby obligated to do so in any future circumstance or event and Holder's waiver shall not be construed to require any waiver in a subsequent instance.
- 3.22. Procedure for Obtaining Approval. Holder's prior written approval of the exercise of Reserved Rights for which approval of Holder is required shall be obtained, conditionally obtained or declined according to the procedure provided in this Section. Before Owner begins, or allows, any exercise of Reserved Rights on the Conservation Area Owner must notify Holder in writing of Owner's intentions to do so. Such notice must include plans depicting, in such detail as Holder requests, the construction or other use or activity, and location thereof, which Owner intends to undertake. Owner may also be required to present to Holder for review any applications to, and approvals or permits issued by, any governmental entity that is required for the exercise of the Reserved Right for which Holder's approval is sought. Holder may request additional information or details not provided by Owner

regarding Owner's proposed exercise of Reserved Rights as Holder reasonably believes necessary to determine compliance with this Article. Holder shall have thirty (30) days from receipt of the notice or, if later, any additional information regarding the proposed use or activity requested by Holder, in which to make one of the following determinations:

- 3.22.1. Approve Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by Owner. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right solely in accordance with the notice and other information submitted to Holder; which covenant shall be enforceable by Holder as fully as if set forth in this Conservation Easement.
  - 3.22.2. Approve Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by Owner but subject, however, to such qualifications and conditions as Holder may impose in its notice of approval. Such qualifications and conditions shall be limited to those which Holder deems necessary to: assure compliance by Owner with any of the express covenants or restrictions of this Conservation Easement, preserve and protect the Conservation Purposes or restrict Owner's exercise of the Reserved Rights to that which Owner has represented to Holder. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right, if at all, only in accordance with the notice and other information submitted to Holder, as modified or supplemented by the qualifications and conditions that Holder imposed; which covenant shall be enforceable by Holder as fully as if set forth in this Conservation Easement.
  - 3.22.3. Decline to grant approval of Owner's proposed exercise of a Reserved Right on the basis of the notice and other materials submitted. Should Holder decline to grant approval Holder shall set forth in writing its reasons.
  - 3.22.4. Holder shall not be obligated to accept or respond to any request for consent or approval of a Reserved Right if Owner is then in violation of this Conservation Easement in any material respect.
- 3.23. Limits on Time To Exercise Approved Reserved Right. Unless a longer period is expressly provided in writing by Holder, any activity involving the exercise of any of the Reserved Rights approved by Holder as aforesaid shall be completed within five years after Holder's written approval of the activity. If such approved activity has not been completed within such five year period, Owner must reapply for approval by Holder according to the procedure set forth in this Article. Owner may request Holder's approval of a period longer than five years and so long as such request is not, in Holder's sole judgment, inconsistent with the Conservation Purposes, such approval shall not be unreasonably withheld.

- 3.24. Repeated Requests. Owner shall be free to make further requests for approval of the exercise of Reserved Rights; provided, however, that Holder may decline to accept repetitive submissions not materially modified from prior submissions not accepted by Holder.
- 3.25. Costs and Expenses of Review and Approval. Owner shall be responsible, as a condition of the right to exercise the Reserved Rights, for payment of Holder's reasonable costs and expenses, including legal and consultant fees, associated with review of Owner's request for approval. Holder may condition consideration of a proposal for exercise of Reserved Rights upon the deposit of a sum of money with Holder to secure payment of Holder's reasonable costs of review. The time period for Holder's consideration of Owner's request shall not run until such deposit is made.
- 3.26. Limitation of Liability. No assurance is given that any of the above Reserved Rights for which the consent or approval of Holder is expressly required in this Conservation Easement, may be exercised, in such manner as Owner might propose, without having an adverse effect on the Conservation Purposes or other significant ecological values of the Conservation Area. The foregoing procedure is established for the purpose of making that determination. The Reserved Rights for which the consent or approval of Holder is expressly required in this Conservation Easement may not be exercised unless and until Holder is satisfied that the exercise of the Reserved Right for which approval is sought, and in the manner proposed by Owner, can be done without an adverse effect on the Conservation Purposes or other significant ecological values of the Conservation Area. Owner hereby waives, for Owner, and Owner's heirs, successors, legal representatives, and assigns, to the fullest extent allowed by law, any and all right to seek or recover damages from Holder in any litigation or other legal action arising from a dispute over Holder's exercise of its rights, obligations or interpretations under this Article 3 and agrees that the sole remedy or legal right to seek redress arising from any decision of Holder pursuant to this Article 3 shall be to seek a declaratory judgment or other legal declaration by a court of competent jurisdiction as to the rights of Owner hereunder.

#### ARTICLE 4. HOLDER'S COVENANTS

- 4.1. Best Efforts to Enforce. Holder shall use its best efforts to enforce both the rights granted to it and the restrictions imposed upon the Conservation Area under this Conservation Easement.
- 4.2. Inability to Enforce: Procedure. If at any time Holder or any successor or assignee is unable to enforce this Conservation Easement or if Holder or any successor or assignee of Holder's rights under this Conservation Easement ceases to exist or ceases to be a "qualified organization" (as defined in the Code) and if, within a reasonable period of time after the occurrence of any of these events, Holder or any successor or

assignee fails to assign all of its rights and responsibilities under this Conservation Easement to a “qualified organization” and “holder”, then the rights and responsibilities under this Conservation Easement shall become vested in and fall upon another qualified organization in accordance with a proceeding before, and the order of, any court of competent jurisdiction.

- 4.3. Assignment by Holder. Notwithstanding the foregoing or anything else in this Conservation Easement to the contrary, Holder and its successors and assigns shall have the right to assign, either wholly or partially, its right, title and interest hereunder provided that the assignee is a “qualified organization” under the Code and provided that the assignee shall hold the Conservation Easement exclusively for the Conservation Purposes. Holder agrees to notify Owner of its intent to assign the Conservation Easement, including disclosing the identity of the intended assignee, at least 30 days prior to such assignment and to offer Owner, during such period after notice and until assignment, an opportunity to comment on, but not approve or disapprove, such assignment. The term “Holder” as used in this Conservation Easement shall mean the above-named Holder and any of its successors and assigns during such period as any such entity is the holder of the rights granted to Holder in this Conservation Easement.

#### ARTICLE 5. REMEDIES AND ENFORCEMENT

- 5.1. Remedies Generally. Holder shall have the right to enforce by proceedings at law or in equity each and every one of the covenants and restrictions set forth in this Conservation Easement. The foregoing shall not limit any of the rights or remedies available to Holder as specifically set forth in any law or in this Conservation Easement. Holder’s remedies described in this Article shall be cumulative and concurrent and shall be in addition to all remedies now or hereafter available or existing at law or in equity.
- 5.2. Remedy of Specific Performance. Without limitation of any other rights of Holder in this Conservation Easement, Holder’s right of enforcement of this Conservation Easement shall include the right to seek specific performance by Owner of the restoration of the Conservation Area to its original condition as established in the Baseline Documentation or to its condition prior to any activity that violates this Conservation Easement or as otherwise may be necessary to remedy any violation of any easement, covenant, prohibition or restriction in this Conservation Easement, as Holder may elect.
- 5.3. Remedy of Damages. If Owner violates this Conservation Easement in such a manner as to cause damage to the Property, extract or remove any trees, mineral resources, pond, wetland, stream, or other natural resource protected by this Conservation Easement, including violation resulting from failure to obtain Holder’s approval, Holder shall be entitled to payment of damages in the amount of the value of the



protected natural resource; provided, however, that if the natural resource effected by Owner's violation of this Conservation Easement can be restored to its condition prior to the violation and if Owner does restore the natural resource to its condition prior to the violation within 90 days after notice of violation from Holder, then Holder shall accept such restoration in lieu of damages. Holder may seek payment and recovery of such damages by any means available at law. The value of the protected natural resource shall be the greater of (a) the market value of the resource or, (b) the cost of immediate restoration of the Conservation Area and all resources to its condition prior to the violation. If such immediate restoration is not reasonably possible then the market value of the resource shall be the amount of damages. If the resource does not have a readily determinable market value then the amount of damages shall be the amount which a court having jurisdiction may determine, taking into account the importance of the resource to the fulfillment of the Conservation Purposes.

- 5.4. Rights and Remedies in Relation to Third Parties. As the owner of a real property interest under this Conservation Easement, Holder shall have the right, without limitation of any rights herein as against Owner, to assert and enforce any of the rights and remedies in this Conservation Easement against any person or entity other than Owner that engages in any action upon the Conservation Area that constitutes a violation of any of the covenants or restrictions of this Conservation Easement, whether such person or entity enters upon the Conservation Area as a tenant, guest or invitee of Owner, by an act of trespass or by any claim of right and Owner shall cooperate with Holder by joining in any action or proceeding commenced by Holder for such purpose.
- 5.5. Remedy: Failure to Pay Certain Taxes. If Owner fails to pay taxes or other governmental assessments which may become a lien on the Conservation Area or this Conservation Easement or the rights it represents or that it grants to Holder, Holder may, but shall have no obligation to, pay such taxes or assessments or any part thereof upon ten (10) days after sending written notice to Owner, according to any bill, statement, or estimate procured from the appropriate public office. Payment made by Holder shall become a lien on the Conservation Area in favor of Holder upon payment by Holder and shall bear interest until Holder is paid by Owner at the rate of twelve percent (12%) per annum or at the highest rate of interest per annum as is allowed by applicable law, whichever is less.
- 5.6. Certain Events Not a Violation. Notwithstanding anything herein to the contrary, Holder shall not bring any action seeking to enforce this Conservation Easement against Owner, nor shall this Conservation Easement be considered to have been violated by Owner, as a result of any damage to the Conservation Area if such damage was solely the result of: (a) a natural event such as an earthquake or flood, wind, lightning or other storm event, including those events commonly referred to as "acts of God"; (b) damage by persons trespassing upon the Conservation Area; or (c) any emergency measures reasonably and prudently taken by Owner to abate or

mitigate significant injury to the Conservation Area as a result of any such natural event or trespass.

- 5.7. No Third Party Rights of Enforcement. This Conservation Easement may only be enforced by Owner and Holder and no third party beneficiary rights, rights of enforcement or other rights are created or intended to be created or granted by this Conservation Easement in or to any other person or entity, any person or entity that was once an "Owner" but is no longer an owner of the Conservation Area, the public generally or any governmental authority except to the limited extent necessary to undertake an action under Section 4.2 or as required by statute (and only to the extent such statute cannot be waived by agreement of Holder and Owner).
- 5.8. Reimbursement of Expenses of Enforcement. In the event that Holder acts, after notice to Owner, to enforce this Conservation Easement or any obligation hereunder, all reasonable expenses incurred by Holder shall be charged to and paid by Owner, including reasonable attorneys' fees regardless of whether an action or proceeding is commenced. All such expenses, together with costs of collection (including reasonable attorneys' fees), shall be recoverable by Holder and be subject to collection by all lawful means for the collection of a debt under the law of the state in which the Conservation Area is located and shall be liens upon the Conservation Area, and collection thereof may be enforced by foreclosure and sale of the Conservation Area.
- 5.9. No Merger of Title. Notwithstanding anything to the contrary in this Conservation Easement, should Holder become an Owner of any portion of the Conservation Area, this Conservation Easement shall not merge with any interest in the Conservation Area upon conveyance to Holder and title shall be transferred subject to the continued validity and enforceability of this Conservation Easement in accordance with the laws of the State in which the Conservation Area is located. In such event the rights of Holder under this Conservation Easement as to the portion of the Conservation Area owned by Holder shall forthwith be transferred to a "qualified organization" in accordance with Section 4.3. or, if necessary, 4.2.
- 5.10. Reimbursement of Expenses of Litigation. Should Owner or anyone acting by, through, under or on behalf of Owner, commence litigation against Holder to enforce any rights hereunder or to dispute any actions or inaction of Holder, to enforce any alleged duty or obligation of Holder hereunder or to seek damages or specific performance against Holder then unless Holder is finally determined by a court of competent jurisdiction, beyond right of appeal, to have acted in an arbitrary or capricious manner and contrary to the terms of this Conservation Easement, then Owner shall reimburse Holder on demand for all costs and expenses, including attorneys fees, reasonably incurred by Holder in its defense in such litigation. Holder shall not be considered to have acted in an arbitrary or capricious manner solely based

on the fact that Holder did not or does not prevail in legal proceedings or that Holder is determined to have acted contrary to the terms of this Conservation Easement.

- 5.11. No Waiver of Rights of Enforcement. The failure of Holder to exercise any of its rights under this Conservation Easement on any occasion shall not be deemed a waiver of said rights and Holder retains the right in perpetuity to require full compliance by Owner of the covenants and restrictions in this Conservation Easement.

## ARTICLE 6. GENERAL PROVISIONS

- 6.1. Vesting of Real Property Interest. This Conservation Easement gives rise to a real property right and interest immediately vested in Holder. For purposes of this Conservation Easement, the fair market value of Holder's right and interest shall be equal to the difference between (a) the fair market value of the Property as if not burdened by this Conservation Easement and (b) the fair market value of the Property burdened by this Conservation Easement.
- 6.2. Rules of Construction and Interpretation. The parties recognize the environmental, scenic, and natural values of the Conservation Area and have the common purpose of preserving these values. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to promote, protect and fulfill the Conservation Purposes and the policies and purposes of Holder. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the Conservation Purposes that would render the provision valid should be favored over any interpretation that would render it invalid. If any provision of this Conservation Easement is determined by final judgment of a court having competent jurisdiction to be invalid, such determination shall not have the effect of rendering the remaining provisions of this Conservation Easement invalid. The parties intend that this Conservation Easement, which is by nature and character primarily prohibitive (in that Owner has restricted and limited the rights inherent in ownership of the Conservation Area), shall be construed at all times and by all parties to promote, protect and fulfill the Conservation Purposes.
- 6.3. Indemnification. Owner covenants and agrees to indemnify, defend, reimburse, and hold harmless Holder, its directors, officers and employees from, for and against any Loss (hereinafter defined) to the extent such Loss arose from an Indemnified Cause (hereinafter defined). A "Loss" shall mean any loss, cost, liability, penalty, fine, or damage of any kind or nature whatsoever which Holder or any of its directors, officers or employees may reasonably be concluded to have suffered, paid or incurred. The term "cost" shall include, but shall not be limited to, reasonable attorneys' fees and witness and court fees. An "Indemnified Cause" shall mean any of the following: the violation or alleged violation of any law in, upon or involving the Conservation Area by Owner or anyone acting by, for, through or under the direction of Owner, including

but not limited to any tenant, contractor, agent, licensee or invitee of Owner; any breach of covenants and restrictions in this Conservation Easement by Owner or anyone acting by, for, through or under the direction of Owner, including but not limited to any tenant, contractor, agent, licensee or invitee of Owner; any tax or assessment upon the Conservation Area or upon this Conservation Easement or the rights it represents or that it grants to Holder; any death or injury to any person occurring on or about the Conservation Area; any lien or attempts to enforce a lien asserted against the Conservation Area; the costs of performing any work on the Conservation Area; any loss or damage to any property on or about the Conservation Area; any dispute involving Owner and Holder regarding the interpretation or enforcement of this Conservation Easement as to which the interpretation or enforcement of Holder is upheld; or any lawsuit (even if initiated by Owner or Holder) or governmental administrative or law enforcement action which is commenced or threatened against Holder or any of its directors, officers or employees or to which any of the foregoing are made a party or called as a witness; but "Indemnified Cause" shall not include any cause which results from Holder's own acts which are finally determined by a court to have been the result of bad faith, negligence or willful misconduct of Holder or damage to property or injury or death to a person caused by Holder or its employee while upon the Conservation Area. It is further agreed that no person shall have an indemnification obligation or liability under this Section as to any Indemnified Cause which arises entirely and solely from events which occurred after such person is no longer the legal or equitable owner of the Conservation Area or any part thereof and is no longer in possession of the Conservation Area or any part thereof (it being understood that one or more subsequent Owners shall have such indemnification, defense, reimbursement, and holding harmless obligation).

- 6.4. Responsibilities and Liabilities of Owner. Without limitation of anything herein to the contrary, Owner shall (a) retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operations, upkeep, and maintenance of the Conservation Area, including general liability insurance coverage and obligation to comply with applicable law and (b) pay all taxes, levies and assessments and other governmental or municipal charges which may become a lien on the Conservation Area or upon this Conservation Easement or the rights it represents or that it grants to Holder.
- 6.5. Allocating Proceeds Following Extinguishment of Conservation Easement. It is the intention of the parties that no change in conditions, including for example but not for limitation of the foregoing changes in the use of properties adjoining or in the vicinity of the Property or Conservation Area, will at any time or in any event result in the extinguishment of any of the covenants, restrictions or easements contained in this Conservation Easement. If, however, notwithstanding the foregoing intention, any cause or circumstance gives rise to the extinguishment of this Conservation Easement or a material term or provision hereof by judicial proceeding then Holder, on any

subsequent sale, exchange or involuntary conversion of the Conservation Area, shall be entitled to a portion of the proceeds of sale equal to the greater of: (a) the Fair Market Value of this Conservation Easement (hereinafter defined) on or about the date of this Conservation Easement; or (b) Holder's Proportionate Share (hereinafter defined) of the proceeds of sale, exchange or involuntary conversion of the Conservation Area. "Fair Market Value of this Conservation Easement" shall mean the difference between (i) the fair market value of the Conservation Area as if not burdened by this Conservation Easement and (ii) the fair market value of the Conservation Area burdened by this Conservation Easement. "Holder's Proportionate Share" shall mean the fraction derived from (x) the Fair Market Value of this Conservation Easement on or about the date hereof, as a numerator, and (y) the fair market value of the Conservation Area if not burdened by this Conservation Easement, on or about the date hereof, as a denominator. "Proceeds of sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of, the Conservation Area minus the actual bona fide expenses of such transaction and an amount attributable to the improvements constructed upon the Conservation Area pursuant to the Reserved Rights hereunder, if any. All such proceeds received by Holder shall be used in a manner consistent with the purposes of this grant.

- 6.6. Allocating Proceeds of Condemnation. Whenever all or part of the Conservation Area is taken by exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, Owner and Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All reasonable expenses incurred by Owner and Holder, including reasonable attorneys' fees, in any such action shall be paid out of the recovered proceeds. Holder shall be entitled to Holder's Proportionate Share of the recovered proceeds and shall use such proceeds in a manner consistent with the purposes of this grant. The respective rights of the Owner and Holder set forth in Section 6.5 and this Section 6.6 shall be in addition to and not in limitation of, any rights they may have in common law with respect to a modification or termination of this Conservation Easement by reason of changed conditions or the exercise of powers of eminent domain as aforesaid.
- 6.7. Amendment or Modification of Conservation Easement. Owner and Holder recognize that circumstances could arise which would justify the modification of certain of the restrictions contained in this Conservation Easement. To this end, Holder and the legal owner or owners of the Conservation Area or, if the Conservation Area has been legally subdivided, the Owner of that portion of the Conservation Area affected by such amendment at the time of amendment shall mutually have the right, in their sole discretion, to agree to amendments to this Conservation Easement which are not inconsistent with the Conservation Purposes; provided, however, that Holder shall have no right or power to agree to any

amendments hereto that would result in this Conservation Easement failing to qualify as a qualified conservation contribution under Section 170(h) of the Internal Revenue Code and applicable regulations.

- 6.8. Covenants, Etc. Run With The Land. This Conservation Easement and all of the covenants, indemnifications, releases, easements and restrictions set forth in this Conservation Easement shall run with the land and be binding upon Owner and Owner's heirs, successors and assigns, unless otherwise expressly provided in this Conservation Easement. The term "Owner" used in this Conservation Easement shall mean and include the above-named Owner and any of Owner's heirs, successors or assigns, whether one or more, that are the legal owners of the Conservation Area or any part thereof. The term "Holder" used in this Conservation Easement shall mean and include the above-named Holder and its successors and assigns, it being understood and agreed that any assignee of the rights of Holder hereunder must be a "qualified organization" as defined in Section 170 (h) of the Code, as amended, and shall carry out the obligations of Holder and the intent of this Conservation Easement.
- 6.9. Limitation on Owner Liability. Owner shall be and remain liable for any breach or violation of this Conservation Easement only if such breach or violation occurs during such time as Owner is the legal or equitable owner of the Conservation Area or any part thereof or is in possession of the Conservation Area or any part thereof.
- 6.10. Effect On Mortgages and Other Liens. All mortgages, deeds of trust and other liens or encumbrances upon all or any part of the Conservation Area which either come into existence or are recorded in the place for the recording of such liens or encumbrances after the date of this Conservation Easement will be subject to and subordinate to this Conservation Easement.
- 6.11. Right of Conveyance Retained; Notice Required. Nothing in this Conservation Easement shall limit the right of Owner, its heirs, successors or assigns to grant or convey the Conservation Area, provided that any such grant or conveyance shall be under and subject to this Conservation Easement. Owner shall notify Holder in writing of any sale, transfer, lease or other disposition of the Conservation Area or any part thereof, whether by operation of law or otherwise, not later than 30 days after such disposition and such notice shall include a copy of the deed, lease, or other declaration of transfer, the date of transfer, and the name or names and addresses for notices of the transferee.
- 6.12. Managerial Control Retained by Owner. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability of Holder to exercise physical or managerial control over day-to-day operations of the Conservation Area, or any of Owner's activities on the Conservation Area, or otherwise to become an operator with

respect to the Conservation Area within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

- 6.13. Compliance With Law. Notwithstanding provisions hereof to the contrary, if any, Owner shall be solely responsible for complying with all federal, state and local laws and regulations in connection with the conduct of any use of the Conservation Area or the erection of any Structure permitted hereunder, and Owner shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.
- 6.14. Public Access Not Created. Nothing in this Conservation Easement shall be construed to create any right of access to the Conservation Area by the public.
- 6.15. Notices. All notices required of Owner under the terms of this Conservation Easement, and all requests for the consent or approval of Holder, shall be in writing and shall be deemed to have been given when either served personally or sent by certified mail, with return receipt requested and postage prepaid or by a nationally recognized overnight courier, addressed to Holder at the address set forth on the first page of this Conservation Easement or such other address provided by notice from Holder or Owner to the other for the purpose. Notices by Holder to an Owner need only be given to the Owner of the portion of the Conservation Area that is the subject of the notice.
- 6.16. Headings. The underlined headings preceding the Sections in this Conservation Easement are intended for convenience of reference only and shall not be applied in the construction or interpretation of the substance of this Conservation Easement nor shall any such headings be construed to add to, detract from or otherwise alter the substance, meaning, force or effect of any of the Sections in this Conservation Easement.
- 6.17. Availability or Amount Of Tax Benefits. Holder makes no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to Owner or any other person or entity under United States or any state, local or other tax law to be derived from the donation of this Conservation Easement or other transaction associated with the donation of this Conservation Easement. This donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. Holder makes no warranty, representation or other assurance regarding the value of this Conservation Easement or of the Conservation Area. As to all of the foregoing, Owner is relying upon Owner's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon Holder or any legal counsel, accountant, financial advisor, appraiser or other consultant of Holder. In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs involving Owner or Owner's heirs, successors or assigns or other similar matter then

Holder shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by Holder in responding or replying thereto.

6.18. Warranties and Representations of Owner. By signing this Conservation Easement, Owner acknowledges, warrants and represents to Holder that:

6.18.1. Owner has received and fully reviewed the Baseline Documentation in its entirety.

6.18.2. The Baseline Documentation includes, among other things:

- Naturalist's Report on the Conservation Area.
- Environmental Conditions Map of the Conservation Area.
- Photographs of current site conditions on the Conservation Area.
- Narrative description of the significant ecological and other conservation values and characteristics of the Conservation Area.
- Topographic map of the Conservation Area

6.18.3. The Baseline Documentation is an accurate representation of the condition of the Conservation Area.

6.18.4. Owner has been represented by counsel of Owner's selection, and fully understands that Owner is hereby permanently relinquishing property rights which would otherwise permit Owner to have a fuller use and enjoyment of the Conservation Area.

6.18.5. The undersigned individual or individuals signing as or on behalf of Owner has all legal authority to enter into this Conservation Easement and perform all of the obligations of Owner hereunder, as the binding act of Owner.

6.18.6. Owner is seized of the Conservation Area in fee simple title. Owner has the right to grant and convey this Conservation Easement. The Conservation Area is free and clear of any and all liens and encumbrances except liens for taxes not yet due and payable and mortgage or deed of trust liens that are subordinate to this Conservation Easement by virtue of the executed form of Joinder and Consent of Lienholder attached hereto and incorporated herein.

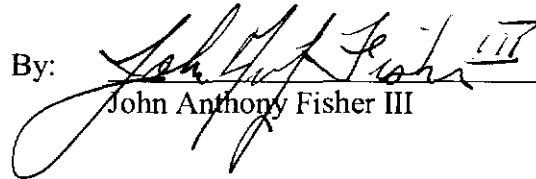
6.19. Governing Law. This Conservation Easement shall be governed by and construed under the law of the state in which the Conservation Area is located.

**TO HAVE AND TO HOLD** the easements and rights set forth in this Conservation Easement unto Holder, its successors and assigns, for its own use and benefit forever.



IN WITNESS WHEREOF, and intending to be legally bound hereby, Owner and Holder have executed this Conservation Easement as of the day and year first above written:

JOHN ANTHONY FISHER III

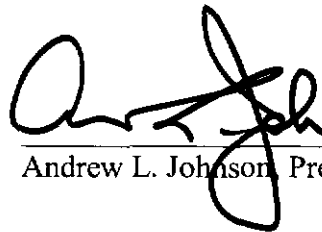
By:  [Seal]  
John Anthony Fisher III

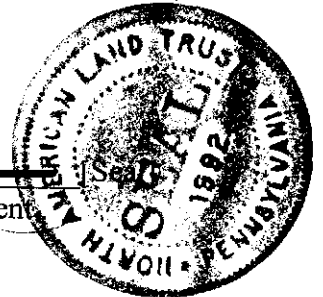
JEANETTE K. FISHER

By:  [Seal]  
Jeanette K. Fisher

NORTH AMERICAN LAND TRUST  
a non-profit corporation

Attest:   
VICE PRESIDENT

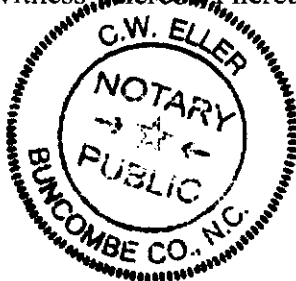
By:   
Andrew L. Johnson, President



STATE OF North Carolina :  
: COUNTY OF Buncombe :

On this, the 26<sup>th</sup> day of December, 2007, before me, the undersigned officer, personally appeared JOHN ANTHONY FISHER III of the State (County or City as the case may be) of North Carolina known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.



C.W. Eller  
Notary Public C.W. Eller  
My commission expires: 5/22/2010

STATE OF North Carolina :  
: COUNTY OF Buncombe :

On this, the 26<sup>th</sup> day of December, 2007, before me, the undersigned officer, personally appeared Jeanette K. Fisher of the State (County or City as the case may be) of North Carolina known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.



C.W. Eller  
Notary Public C.W. Eller  
My commission expires: 5/22/2010

STATE OF PENNSYLVANIA :  
:  
COUNTY OF CHESTER :

On this, the 18<sup>th</sup> day of December, 2007, before me, a Notary Public in and for the State of Pennsylvania, the undersigned officer, personally appeared Andrew L. Johnson, who acknowledged himself to be the President of North American Land Trust, a Pennsylvania Non-Profit Corporation, and that he as such officer, being authorized to do so, executed the foregoing conservation easement for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Seal)

Karen M. Mazza  
Notary Public  
My commission expires: AUG. 22, 2010

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Karen M. Mazza, Notary Public  
Pennsbury Twp., Chester County  
My Commission Expires Aug. 22, 2010  
Member, Pennsylvania Association of Notaries

JOINDER AND CONSENT OF LIENHOLDER

HomeTrust Bank (collectively "Lienholder"), the holder of the Deed of Trust dated September 21, 2007 encumbering the Conservation Area in the amount of \$245,000.00 recorded at Deed Book 428, Page 638 in the records of Transylvania County, State of North Carolina (the "Lien") hereby consents to the terms of this Conservation Easement and agrees that the Lien shall be fully subordinate to this Conservation Easement and the rights of the Holder to enforce this Conservation Easement. Without limitation of the foregoing, Lienholder agrees that, in the event of foreclosure of the Lien or a judgment obtained under the Lien or any promissory note secured thereby, the Conservation Area described in the Conservation Easement shall remain under and subject to the covenants and restrictions set forth in this Conservation Easement, as fully as if the Lien was executed, delivered and recorded after the dates of execution, delivery and recording of this Conservation Easement. This Joinder and Consent of Lienholder shall be binding upon Lienholder's successors and assignees as holders of the Lien and any amendment thereof.

HomeTrust Bank

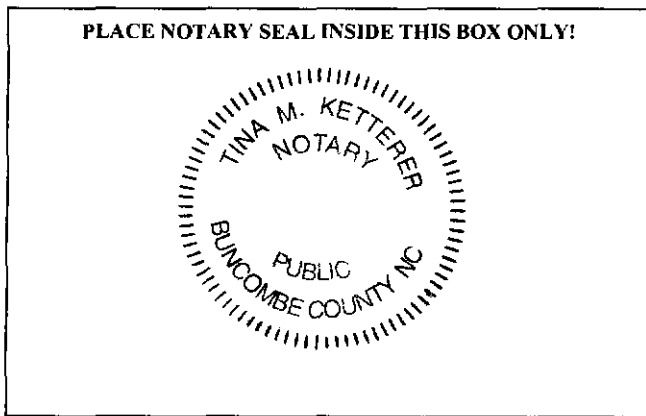
By: Keith Pope  
Name: Keith Pope  
Title: SVP

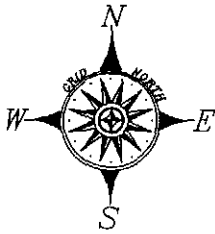
STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Keith Pope, as SVP for HomeTrust Bank

Date: 12/19/07

Tina M. Ketterer  
Notary Public  
Tina M. Ketterer  
(Printed Name of Notary)  
My Commission Expires: 4/20/2012





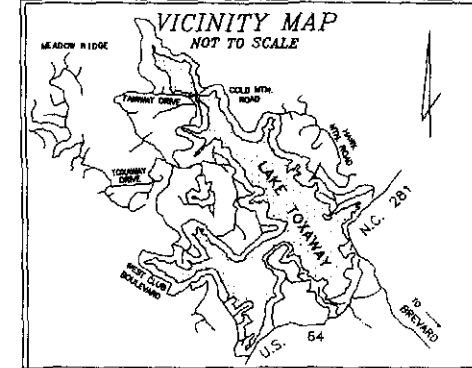
COURSE	BEARING	DISTANCE
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68-69	N 23°56'55"E	741.91'
69-70	N 43°10'15"E	119.52'
70-71	N 44°02'35"E	109.04'
71-72	N 33°28'55"E	153.54'
72-73	N 67°30'55"E	86.96'
73-74	N 68°55'45"E	103.23'
74-75	N 73°28'10"E	76.50'
75-76	N 58°10'00"E	111.13'
76-77	S 28°10'20"E	104.41'
77-78	S 40°50'50"E	261.41'
78-79	S 87°04'00"E	156.13'
79-80	S 87°38'40"E	113.82'
80-81	S 87°23'50"E	164.80'
81-82	N 06°30'20"E	148.08'
82-83	N 08°24'05"E	143.50'
83-84	N 03°45'25"E	222.41'
84-85	N 07°56'30"E	72.10'
85-86	N 48°32'40"E	138.33'
86-1	N 45°48'56"E	328.97'

**LEGEND**

- POB = POINT OF BEGINNING
- ⊙ = CONC. MON. FND.
- EIP = EXIST. IRON PIN
- P— = PROPERTY LINE
- R/W = RIGHT OF WAY
- X- = FENCE
- ⊘ = UTILITY POLE
- P- = POWER LINE
- P-T- = POWER & TELEPHONE
- NIP = NEW IRON PIN
- Δ = P.K. NAIL SET
- ⊙ = CONC. MON. SET.
- B = BUILDING LINE
- ⊙ = CENTER LINE
- = COMPUTED POINT
- = NEW IRON PINS
- C.C. = CONTROL CORNERS

**-NOTES-**

1. THIS PROPERTY IS LOCATED IN ZONE X PER F.E.M.A. FLOOD INSURANCE RATE MAP NUMBER 37175C0185 C & 250 C. DETERMINED TO BE OUTSIDE OF THESE 500-YEAR FLOOD PLAIN.
2. THAT THE SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF AND DOES NOT CREATE A NEW ROAD OR CHANGE AN EXISTING STREET.
3. THIS PROPERTY LIES ABOVE ELEVATION 5540 FT.
4. EXISTING LAND USE IS RURAL RESIDENTIAL PLANNED DEVELOPMENT.
5. THIS PROPERTY IS SUBJECT TO ALL RIGHT-OF-WAY EASEMENTS AND RESTRICTIONS OF RECORD.
6. ALL ROADS ARE PRIVATE.
7. UNDERGROUND UTILITIES ALONG 45' R/W.



TOXAWAY VIEWS INC.

07-3788  
258/773  
P.C.2, Side: 290.

J.A. FISHER III  
115/302  
214/572  
17-3877

CONSERVATION EASEMENT  
44.37 Ac.

J.A. FISHER III  
115/302  
214/572

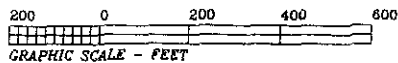
GORGES STATE PARK

447/560

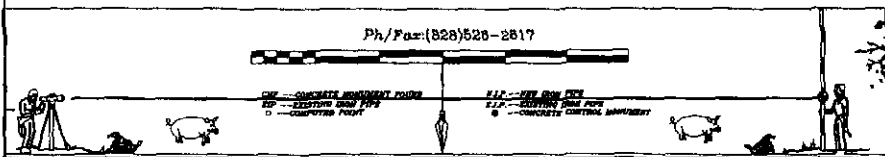


I, WOODROW W. WILSON, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION (SEE DESCRIPTION RECORDED IN BOOK 214, PAGE 512, ETC.) (OTHER); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, THAT THE RATIO OF PRECISION AS CALCULATED IS 1: 7500. THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED, WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 3 DAY OF DECEMBER, 1999.

N.C. R.L.S. No. 6-1009



Ph/Fax: (828) 526-2817



COURSE	BEARING	DISTANCE
1-2	S 47°16'15"E	71.88'
2-3	S 36°06'40"W	171.59'
3-4	S 37°13'25"W	187.16'
4-5	S 42°06'25"E	118.31'
5-6	S 37°47'10"E	240.38'
6-7	S 37°40'15"E	142.12'
7-8	S 25°58'40"W	45.94'
8-9	S 12°08'05"E	70.34'
9-10	S 28°35'45"W	45.03'
10-11	S 60°54'20"W	73.11'
11-12	S 02°15'40"E	60.89'
12-13	S 23°38'55"E	88.70'
13-14	S 25°15'00"W	108.68'
14-15	S 27°47'35"W	123.68'
15-16	S 18°27'40"W	144.40'
16-17	N 71°11'05"W	151.04'
17-18	S 43°19'50"W	100.71'
18-19	S 09°41'35"W	118.87'
19-20	S 25°41'30"W	100.24'
20-21	S 87°12'55"W	187.25'
21-22	S 18°31'45"W	182.70'
22-23	N 09°55'30"E	91.49'
23-24	N 09°00'25"E	104.72'
24-25	N 58°23'30"E	63.73'
25-26	S 23°04'05"W	50.00'
26-27	N 89°46'55"W	141.32'
27-28	S 87°46'10"W	118.38'
28-29	S 11°03'10"W	121.23'
29-30	S 87°25'25"E	155.65'
30-31	S 45°12'00"E	203.47'
31-32	S 02°20'30"E	356.32'

RAD.: 50.00' TAN.: 28.87'  
LEN.: 50.00' DELTA: 80°08'00"

**WITH @ BEARWALLOW STREAM**

COURSE	BEARING	DISTANCE
32-33	N 13°13'25"W	285.88'
33-34	N 32°44'10"W	99.00'
34-35	N 58°12'10"W	138.84'
35-36	N 78°08'10"W	144.13'
36-37	S 74°58'40"W	100.31'
37-38	S 58°58'00"W	82.01'
38-39	S 82°14'58"W	60.31'
39-40	S 85°18'10"W	77.61'
40-41	N 77°24'10"W	74.42'
41-42	N 87°18'35"W	138.53'
42-43	S 64°40'15"W	33.00'
43-44	N 66°50'35"W	87.22'
44-45	S 64°52'00"W	106.32'
45-46	N 47°17'40"W	11.31'
46-47	N 35°35'20"W	51.02'
47-48	N 11°34'35"W	62.02'
48-49	N 23°27'40"E	36.80'
49-50	N 21°58'45"E	108.80'
50-51	N 04°52'40"E	30.81'
51-52	N 07°23'45"E	120.53'
52-53	N 23°27'40"E	37.31'
53-54	N 41°45'30"W	89.83'
54-55	N 49°47'55"W	60.11'
55-56	N 24°43'55"W	43.92'
56-57	N 81°28'45"E	38.10'
57-58	N 72°49'45"W	23.30'
58-59	S 84°12'10"W	81.70'
59-60	S 06°52'15"W	28.09'
60-61	S 48°13'40"W	83.60'
61-62	S 60°54'20"W	134.47'
62-63	S 25°15'15"W	33.10'
63-64	S 81°09'55"W	106.01'
64-65	S 54°19'55"W	61.10'
65-66	S 86°37'40"W	63.91'
66-67	N 63°43'30"W	46.51'

NORTH CAROLINA TRANSYLVANIA COUNTY

This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

GORGES STATE PARK

447/560 STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

I, \_\_\_\_\_ REVIEW OFFICER OF \_\_\_\_\_ COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS APPLIED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

DATE \_\_\_\_\_ REVIEW OFFICER \_\_\_\_\_

8521-17-3877-000 LAKE TOXAWAY N.C. 28747

SURVEY FOR		
<b>JOHN A. FISHER III</b>		
SCALE: 1"=200'	NORTH CAROLINA	DRAWN BY: W.W.W.
DATE: 12/07/2007	C.C.	C.C.
COUNTY---TRANSYLVANIA TOWNSHIP---HOGBACK		
WOODROW W. WILSON P.L.S. 1-1509 P.O. BOX 482 HIGH WAYS N.C. 28741		DRAWING NUMBER 7-1993