

Prepared by: City of Asheville Attorney's Office
Mail after recording to: Jannice Ashley, City Attorney's Office, P.O. Box 7148, Asheville, NC
28802

**STATE OF NORTH CAROLINA
BUNCOMBE COUNTY**

**REVISED PERMANENT AND
TEMPORARY GREENWAY
EASEMENT**

THIS PERMANENT AND TEMPORARY GREENWAY EASEMENT, is made and entered into this ____ day of September, 2016 by **Buncombe County** (herein "Grantor") and the **City of Asheville**, a North Carolina Municipal Corporation (herein "Grantee").

WITNESSETH

WHEREAS, pursuant to N.C.G.S. 160A-296, the City has the authority to open streets and other ways of public transit, and to acquire the necessary land therefore by dedication and acceptance, purchase, or other lawful means; and

WHEREAS, Grantee desires to establish and construct a Greenway, as part of the Clingman Forest Greenway Project, over the Property of the Grantor described in **Deed Book 5188, Page 0997 and Plat Book 08, Page 046** recorded in the Buncombe County, Register of Deeds Office, State of North Carolina and further described as PIN Number 9648-17-2323 on the Buncombe County Tax Maps, said property is currently being leased to the **Asheville City Schools**; and

WHEREAS, the Grantor originally granted a permanent and temporary easement for greenway purposes on this same property as recorded in Buncombe County register of deeds Book 5338 at Pg 461 on July 28, 2015 and subsequently, the Grantee's greenway plans changed

slightly leading to the need for an increase in the permanent area required and a reduction in the temporary easement required; and

WHEREAS, Grantee now desires a revised permanent and temporary easement for ingress, egress and regress over the Grantor's Property for the purposes of locating, constructing, enlarging, replacing, and continuing general maintenance of the Greenway, said revised easement to replace the aforementioned easement recorded in DB 5338 at Pg 461; and

WHEREAS, the Grantor is willing to grant this Easement over its Property and the City has agreed to accept such Easement; and

WHEREAS, Grantor understands that the Greenway shall be a public greenway to be used by the public and shall remain open for travel by the public.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and upon the terms and conditions set forth herein, the Grantor hereby gives, grants and conveys unto the Grantee, its successors and assigns, the temporary and permanent, non-exclusive right, privilege and easement over and upon certain portions of the Grantor's Property in Asheville, Buncombe County, North Carolina, said property being more particularly described in **Deed Book 5188, Page 0997 and Plat Book 08, Page 046** Buncombe County Registry (hereinafter "Real Property") for use as a greenway to be devoted solely to public recreational and transit purposes; reserving the right to the Grantee to construct on, over or under said property paved or unpaved greenway trail(s) not more than fifteen (15) feet in width for pedestrian, bicycle, or related non-motorized traffic as well as features and facilities incidental to the greenway including, but not limited to, fences, benches, picnic tables, pedestrian bridges, trash receptacles, retaining walls, public art, lighting, signs, utilities, and other related facilities; and the Grantor further grants unto Grantee reasonable access to the described property for the purposes of developing and maintaining the greenway within an easement area described as follows:

TEMPORARY CONSTRUCTION EASEMENT

A Temporary Construction easement for the purposes of grading, excavation, digging, storing dirt, supplies and materials, moving and using equipment and generally carrying out the completion of the construction of the adjacent greenway over and upon the Grantor's Real Property for all purposes in connection with such construction, it being understood that this right of use as set out in this paragraph shall terminate upon the final completion of the project construction; said temporary construction easement being more particularly described as follows:

Temporary Construction Easement #1

Beginning at a rebar with NAD83(2011) coordinates North 687,540.11 feet, East 940,655.35 feet being N73°41'52"W 690.15' grid distance from NCGS monument "PATE" with NAD83(2011) coordinates North 687,346.38 feet, East 940,317.75 feet; thence from point of Beginning N 68°07'43"E 63.35'; thence N74°05'38" 71.15'; thence N36°37'10"E 113.88'; thence S57°50'23"E 127.91'; thence N26°07'05"E 145.75'; thence N75°43'11"E 130.52' to a point in

an unopened right of way thence with said right of way N43°35'01"W 13.61'; thence leaving said right of way S85°30'20"W 57.71'; thence S70°20'50"W 74.00'; thence S17°27'22"W 73.59'; thence S55°15'32"W 36.21' thence on a curve to the right with a chord N37°52'01"W 78.39', Length 138.27' Radius 39.76'; thence S67°43'32"W 148.54'; thence S4°50'04"W 50.09'; thence S73°44'29"W 67.34'; thence S42°28'29"E 75.79' to the Point of Beginning. Being 15,005 square feet, 0.344 acre.

Temporary Construction Easement #2

Beginning at a point in an unopened right of way being N17°56'14"W 484.80' grid distance from NCGS monument "PATE" with NAD83(2011) coordinates North 687,346.38 feet, East 940,317.75 feet; thence N14°18'59"E 38.24'; thence N26°57'05"E 160.15'; thence S61°42'25"E 89.70'; thence S31°32'13"E 72.62'; thence S46°03'13"E 49.18' to a point in the West margin of Charles Street; thence with said margin N5°15'47"E 6.21'; thence leaving said margin N45°52'33"W 43.87'; thence N19°42'30"W 41.58' thence N46°48'27"W 35.32'; thence N63°37'16"W 90.23'; thence S71°44'26"W 35.30'; thence S33°01'07"W 100.30'; thence S1°29'27"W 78.56' to a point in an unopened right of way; thence with said right of way S43°35'01"W 10.64' to the Point of Beginning. Being 5,992 square feet, 0.138 acre.

Temporary Construction Easement #3

Beginning at a point in the West margin of Charles Street being N9°23'40"E 536.58' grid distance from NCGS monument "PATE" with NAD83(2011) coordinates North 687,346.38 feet, East 940,317.75 feet; thence with said margin N5°15'47"E 7.92'; thence leaving said margin N30°54'01"W 66.34'; thence N46°20'52"W 41.03'; thence N63°04'52"W 85.22'; thence N15°37'52"W 37.39'; thence N64°24'12"W 66.27'; thence N21°58'52"W 56.72'; thence N14°32'58"E 193.94' to the northern property line; thence with said line N85°18'33"W 10.59'; thence leaving said line on a curve to the left with a chord of S18°30'38" 26.97' Length 27.00', Radius 160.00'; thence S13°40'33"W 156.00'; thence on a curve to the left with a chord of S28°58'32"E 98.52' Length 107.54', Radius 74.84'; thence S63°32'43"E 41.02'; thence S27°39'08"E 28.59'; thence S60°28'28"E 80.55'; thence S47°33'01"E 43.43'; thence S18°53'14"E 40.19'; thence S46°10'54"E 34.01' to the Point of Beginning. Being 5,071 square feet, 0.116 acre.

Temporary Construction Easement #4

From the Point of Beginning for Temporary Construction Easement #2; thence N43°35'01"W 10.64'; thence N43°35'01"W 44.51'; thence N14°07'35"E 110.80'; thence N27°20'18"W 96.05' to the Point of Beginning for Temporary Construction Easement #4 thence N13°21'41"E 120.78'; thence N14°38'14"E 133.39'; thence on a curve to the right with a chord of N16°59'47"E 22.01' Length 22.02', Radius 190.00' to the northern property line; thence with said line N85°18'33"W 7.55' thence leaving said line S19°21'51"W 243.14'; thence S27°20'18"E 43.74' to the Point of Beginning. Being 4,569 square feet 0.105 acre.

Said Temporary Construction Easements ("TCE") having a total area of **0.703** acre (30,641 square feet) more or less.

The foregoing description is based on a survey prepared for the City of Asheville by Johnny D. White, PLS entitled "Greenway Easement Survey for: Clingman Forest Greenway,

City of Asheville” dated August 16, 2016 and recorded in **Plat Book ___** at **Page ___**, Buncombe County Register of Deeds Office, State of North Carolina, reference to which is hereby made for a more particular description. All bearings are based on NC Grid North NAD83 (2011) and all distances are horizontal ground lengths (combined factor: 0.99979328). A copy of said survey is attached hereto and incorporated herein as **Exhibit A**.

PERMANENT EASEMENT

A non-exclusive Permanent Easement for purposes of constructing, maintaining, repairing and replacing the greenway, together with such accessories as from time to time may be required for the use and maintenance of such greenway, and for purposes of inspecting and performing appropriate tests within said permanent easement including but not limited to, archaeological, environmental, engineering and architectural studies; said permanent easement being more particularly described as follows:

Permanent Easement #1

Beginning at a point being N42°28'29"E 75.79' from the rebar with NAD83(2011) coordinates North 687,540.11 feet, East 940,655.35 feet being N73°41'52"W 690.15' grid distance from NCGS monument "PATE" with NAD83(2011) coordinates North 687,346.38 feet, East 940,317.75 feet; thence from established point N42°28'29"E 133.95'; thence N71°06'04"E 100.11' to a rebar; thence N71°04'36"E 100.31' to a rebar; thence N71°17'42"E 61.24'; thence N72°01'49"E 76.72'; thence S43°35'01"E 32.61'; thence S85°30'20"W 57.71'; thence S70°20'50"W 74.00'; thence S17°27'22"W 73.59'; thence S55°15'32"W 36.21' thence on a curve to the right with a chord N37°52'01"W 78.39', Length 138.27' Radius 39.76'; thence S67°43'32"W 148.54'; thence S4°50'04"W 50.09'; thence S73°44'29"W 67.34' to the Point of Beginning. Being 15,584 square feet, 0.358 acre.

Permanent Easement #2

Beginning at a point being N43°35'01"W 10.64' from the Point of Beginning for Temporary Construction Easement #2 and N17°56'14"W 484.80' grid distance from NCGS monument "PATE" with NAD83(2011) coordinates North 687,346.38 feet, East 940,317.75 feet; thence from established point N43°35'01"W 44.51'; thence N14°07'35"E 110.80'; thence N27°20'18"W 96.05' thence N13°21'41"E 120.78'; thence N14°38'14"E 133.39'; thence on a curve to the right with a chord of N16°59'47"E 22.01' Length 22.02', Radius 190.00' to the northern property line; thence with said line S85°18'33"E 31.38' thence leaving said line thence leaving said line on a curve to the left with a chord of S18°30'38" 26.97' Length 27.00', Radius 160.00'; thence S13°40'33"W 156.00'; thence on a curve to the left with a chord of S28°58'32"E 98.52' Length 107.54', Radius 74.84'; thence S63°32'43"E 41.02'; thence S27°39'08"E 28.59'; thence S60°28'28"E 80.55'; thence S47°33'01"E 43.43'; thence S18°53'14"E 40.19'; thence S46°10'54"E 34.01' to the margin of Charles Street; thence with said margin S5°15'47"W 12.84' thence leaving said margin N45°52'33"W 43.87'; thence N19°42'30"W 41.58'' thence N46°48'27"W 35.32'; thence N63°37'16"W 90.23'; thence S71°44'26"W 35.30'; thence S33°01'07"W 100.30'; thence S1°29'27"W 78.56' to the point of Beginning. Being 25,160 square feet, 0.578 acre.

Said Permanent Easement areas (“PE”) having a total area of **0.936 acre** (40,744 square feet), more or less.

The foregoing description is based on a survey prepared for the City of Asheville by Johnny D. White, PLS entitled “Greenway Easement Survey for: Clingman Forest Greenway, City of Asheville” dated August 16, 2016 and recorded in **Plat Book ___ at Page ___**, Buncombe County Register of Deeds Office, State of North Carolina, reference to which is hereby made for a more particular description. All bearings are based on NC Grid North NAD83 (2011) and all distances are horizontal ground lengths (combined factor: 0.99979328). A copy of said survey is attached hereto and incorporated herein as **Exhibit A**.

IT IS UNDERSTOOD AND AGREED BETWEEN THE GRANTOR AND THE GRANTEE that this conveyance is made subject to the following terms and conditions:

Grantee shall have the right to do all things necessary or convenient thereto, including, but not being limited to, the following:

1. **Installation of Improvements:** That the Grantee shall have the right to grade, fill and construct permanent improvements within the permanent easement area as shown on **Exhibit A**.
2. **Maintenance and Repair:** The Grantee shall have the primary responsibility for all maintenance and repair of the greenway. Grantee shall have the right to clear the temporary and permanent easement area described above and the right, but not the obligation, to keep the permanent easement area clear at all times, and to remove from the permanent easement area all brush, trees and other obstructions, and to go upon said easement area whenever necessary for the purpose of clearing the same and removing therefrom all brush, trees and other obstructions of any kind. Upon completion of the construction of the greenway, Grantee shall place the greenway on its schedule for regular maintenance, and shall maintain said greenway in a manner not inconsistent with other greenways in Grantee’s greenway system. Grantee specifically agrees that Grantor shall not be responsible for clearing, maintenance or repair of the permanent greenway easement area whether due to normal wear and tear, acts of third parties, and/or acts of nature.
3. **Signage:** Grantee shall have the right to relocate signs, landscaping, etc. which belong to Grantor within the permanent easement area as necessary for functional or aesthetic design at the expense of Grantee. Grantee shall maintain the landscaping in such manner and of a sort that it will not obscure the view of any legally permitted sign of Grantor outside the easement area. Grantee shall have the right to post signs within the permanent easement area as it deems necessary.

4. **Condition of Easement Area:** Grantee agrees to restore the topography of said temporary easement area after construction of the greenway and all related accessories to approximately the same condition as existed before construction of said greenway as it relates exclusively to the activities of disturbance caused only by the Grantee. The Grantee shall be responsible for actual damages, if any, both inside and outside the greenway easement that are proximately caused by the greenway construction, inspection and maintenance activities of the Grantee in connection with this Greenway easement.
5. **Landscaping:** Grantee shall have the right to plant and maintain trees, shrubs, grass and other similar plantings in and upon the greenway permanent easement area for landscape, buffering, and aesthetics as dictated by the greenway design.
6. **Public Access:** Members of the general public shall have free access to and use of the greenway and the easement area, subject to the laws and ordinances of the City of Asheville, for recreational purposes, including, but not limited to: walking, hiking, nature studies, bike riding, running, and picnicking.
7. **Grantor's Use of the Easement Area:** Grantor shall have the full power and right to use the land over which the greenway easement exists for all purposes not inconsistent with the rights acquired hereto and the use thereof by Grantee, except that Grantor shall not cause: (a) the greenway to be damaged in any way; (b) any buildings, walls, septic tanks, absorption pits, underground or overhead storage tanks or burial ground to be placed on the easements; and (c) Grantee's facilities to be interfered with or endangered by Grantor, their heirs, successors or assigns.
8. **Access to Grantor's Property:** Grantor, and all other property owners that abut the unopened City Right of Way known as Eugene Avenue and/or Little Big Lane (also shown on Exhibit A), shall have the right to access its/their property via these unopened Rights of Way. The Clingman Avenue Greenway Project has been designed to allow property owners adjacent to the Rights of Way adequate width to construct either a private drive or a roadway meeting city standards (currently 20 feet) and to pass over and upon the permanent greenway easement, as necessary, with said appropriate driveways or roadways for full use of their property. Construction of such driveways or roadways are subject to review and approval by the City Traffic Engineer, such approval not to be unreasonably withheld, and shall be at the sole expense of the private property owner who desires to construct such an improvement. Construction, maintenance and use of said driveway or roadway shall in no way interfere with the greenway and other facilities constructed within the permanent easement area (other than those areas contemplated in the greenway design to allow for right of way access and passage). If damage occurs to the permanent greenway area as a result of Grantor's construction or maintenance of a private drive or roadway, Grantor shall be responsible for the cost of repairing such damage. As to paved roadways or driveways that traverse or intersect with the permanent easement, the Grantee, in future repairs or maintenance of said greenway and accessories, shall only be responsible for regravelling, tamping or patching (or restoring with essentially the same materials) the portion of said paved roads or driveways disturbed by such work. As to non-paved roads and pathways, the Grantee shall only be

responsible for regravelling (or restoring with essentially the same materials) and tamping in connection with any repairs or maintenance.

TO HAVE AND TO HOLD said temporary and permanent easements unto said Grantee, its successors and assigns, upon the terms and for the time periods set forth above. The Grantor covenants to and with the Grantee, its successors and assigns, that the Grantor is seized in fee simple of said lands and premises and has the full right and power to convey this easement to the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto set his/her hands and seals, this the day and year first above written.

COUNTY OF BUNCOMBE
(Grantor)

By: _____
Chair, Buncombe County Commissioners

ATTEST:

Kathy Hughes, Clerk to the Board

Attest:

ACCEPTED BY:
CITY OF ASHEVILLE
(Grantee)

Magdalen Burlison, City Clerk

By: _____
Gary W. Jackson, City Manager

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Notary Public of the County and State aforesaid, have personal knowledge of the identity of Kathy Hughes, and hereby certify that said Kathy Hughes, Clerk to the Board, personally appeared before me this day and acknowledged that she is Clerk to the Board of Commissioners of County of Buncombe and that David Gantt is the Chairman of the Board of Commissioners of County of Buncombe, and that by authority duly given and as the act of the County of Buncombe, the foregoing instrument was signed in its name by said Chairman , sealed with its official seal, and voluntarily attested to by herself as its Clerk as the act and deed of the County of Buncombe, all by authority duly given by its governing body.

Witness my hand and notarial seal this the ____ day of September, 2016.

Notary Public: _____
Type or print Name: _____
My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, Notary Public of the County and State aforesaid certify that Magdalen Burleson, personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

Witness my hand and notarial seal this ____ day of September, 2016.

Notary Public: _____
Type or print Name: _____
My Commission Expires: _____