

Prepared by: Michael C. Frue, Buncombe County Senior Staff Attorney
Return to: Jannice Ashley, Assistant City Attorney, PO Box 7148, Asheville, NC 28802

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

GREENWAY EASEMENT

THIS RIGHT OF WAY EASEMENT, made and entered into this the ____ day of November 2017, by and between the Buncombe County, a body politic and corporate of the State of North Carolina, hereinafter referred to as "Grantor," and City of Asheville, a North Carolina municipal corporation, hereinafter referred to as "Grantee."

WITNESSETH:

WHEREAS, Grantor owns a certain tract or parcel of land as same is set forth and described in Deed Book 5310, Page 500 Buncombe County Registry, and being that 137.21 acre parcel as same is shown on plat recorded in Plat Book 50, Page 107 in said registry;

WHEREAS, the terms and conditions of said Deed Book 5310, Page 500 require that this property is subject to "An easement in the name of the City of Asheville for use as a greenway and related recreational purposes;"

WHEREAS, this condition is in accordance with the terms and conditions of that certain Inter-Local Agreement dated April 16, 2014 by and between Grantor's predecessor in interest, Henderson County, and the City of Asheville;

WHEREAS, pursuant to NCGS §160A-273 a county has the authority to grant easements over, through, under, or across any county property;

WHEREAS, pursuant to N.C.G.S. 160A-353, the City has the authority to acquire interests in real property for parks and recreation facilities by any lawful means, including gifts or grants or purchase and to accept such gifts, grants or devises subject to the terms and conditions that may be imposed by the Grantor;

WHEREAS, Grantee desires a permanent and temporary easement for ingress, egress and regress over the Grantor's Property for purposes of constructing, enlarging, replacing, and continuing general maintenance of the greenway; and

WHEREAS, Grantor is willing to grant this Greenway Easement over its Property in compliance with the terms of the aforementioned Inter-Local Agreement.

NOW, THEREFORE, for valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Grantor hereby grants, dedicates and conveys unto the Grantee, its successors and assigns a perpetual right and easement over the Grantor's Property herein described for use as a greenway and reserving the right to the Grantee to construct on, over or under said property a paved strip 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, pedestrian bridges, retaining walls, lighting, signs, public art, 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:

BEING, a 15 foot easement located within 50 feet of the perimeter boundary of said plat recorded in Plat Book 50, Page 107. The permanent location of the greenway shall run either clockwise or counter-clockwise beginning near the intersection of Ferry Road (SR-3481) with the Jack Faulkner property as shown on said plat and running thence in one direction or the other to the southernmost line of the parcel.

IT IS UNDERSTOOD AND AGREED BETWEEN THE GRANTOR AND THE GRANTEE:

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

1. Grantee shall have the right to grade, fill and construct permanent improvements within the easement area and to clear the easement area described above and to keep the easement clear at all times, and to remove from the easement all brush, trees and other obstructions, and to go upon said easement 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.
2. Grantor shall have the full power and right to use the land over which the greenway easements exist 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 successors or assigns.
3. Grantee shall have the right to relocate signs, landscaping, etc. which belong to Grantor within the 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.
4. Grantee agrees to restore the topography of the 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 agrees to pay the actual damages caused both inside and outside the greenway easement related exclusively to the construction, inspection and maintenance of the greenway easement by the Grantee only.

5. Grantee shall have the right to plant and maintain trees, shrubs, grass and other similar plantings in and upon the greenway for landscape, buffering and /or for controlling stormwater flowing through said greenway.

TO HAVE AND TO HOLD the aforesaid right of way easement together with all rights, privileges and appurtenances thereunto belonging unto the said Grantee.

The Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

[Signature Page Follows]

IN WITNESS WHEREOF, County of Buncombe has caused this instrument to be executed by its Chairman, attested to by its Clerk, and its seal to be hereunto affixed all by authority duly given by resolution referenced above and of even date herewith this the day and year first above written.

BUNCOMBE COUNTY

By: _____
Brownie Newman, Chairman

ATTEST:

Kathy Hughes, Clerk to the Board

Accepted by the City of Asheville

Attest: CITY OF ASHEVILLE

Magdalen Burleson, City Clerk

By: _____
Esther E. Manheimer, Mayor

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, Notary Public for said County and State, has personal knowledge of the identity of Kathy Hughes, and hereby certifies 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 Brownie Newman is the Chairman of the Board of Commissioners of Buncombe County, 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 November, 2017.

Notary Public

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 Mayor and voluntarily attested by herself as its City Clerk.

Witness my hand and notarial seal, this the ____ day of November, 2017.

Notary Public

My Commission Expires: