

STATE OF NORTH CAROLINA

PUBLIC TRAIL EASEMENT

BURKE COUNTY

THIS PERPETUAL TRAIL EASEMENT AGREEMENT (this “Easement”), made on this ____ day of _____, 20__ by and between **LAKE JAMES CAMPING RESORT LLC**, having an address of 263 Nevada St., Auburn, CA 95603 (hereinafter, “Grantor”), and the **COUNTY OF BURKE**, a body politic and corporate of the State of North Carolina, having a mailing address of P.O. Box 219, Morganton, NC 28680 (hereinafter “Grantee”). The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property situated, lying, and being in Linville Township, Burke County, North Carolina, and being more particularly described in instruments recorded in Deed Book 2415, Page 493 of the Burke County Registry, North Carolina (hereinafter, “the Property”); and

WHEREAS, Grantor is willing to set aside a public trail in the property, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (hereinafter referred to as the “Easement Area”), for the purpose of creating a Public Trail Easement, thereby restricting and limiting the use of land within the easement area to the terms and conditions and for the purposes hereinafter set forth; and

WHEREAS, Grantee intends to use the Easement Area for its Fonta Flora State Trail and Overmountain Victory National Historic Trail programs, and agrees to use and maintain the Easement Area in its natural condition for education, aesthetic, passive recreational, and scientific purposes, without alteration or disturbance of habitats, plants, or animal populations except as may be deemed necessary and appropriate under an approved plan for use of the Easement Area;

NOW, THEREFORE, Grantor hereby grant and convey unto grantee and its successors or assigns a Public Trail Easement of the nature and character and to the extent hereinafter set forth, in the Easement Area. The terms, conditions and restrictions of the Public Trail Easement are as hereinafter set forth:

1. **Duration.** This Public Trail Easement shall be enforceable in perpetuity. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, their representatives, heirs, successors and assigns, lessees, agents, and licensees.

2. **Easement.** The permanent easement hereby granted is for a trail across the Easement Area, which shall be open to the public. It is anticipated that this trail shall connect to the adjoining properties to form a part of the Fonta Flora State Trail and Overmountain Victory National Historic Trail.

3. **Reserved Uses and Restricted Activities.** This easement shall be held and developed for the public use and benefit as a part of the parks and recreation system operated by the Grantee, for the establishment of the Fonta Flora State Trail and Overmountain Victory National Historic Trail through the Easement Area, and associated uses. Grantee shall have the right to construct, install, maintain, and repair the Trail, including the right to selectively cut and remove shrubbery, trees, and other vegetative growth which might otherwise block or impede the Trail or the public use thereof. Grantor shall be restricted from any development or usage that would impair or interfere with the purposes of this Public Trail Easement. The following terms and conditions apply:
 - a. **Description of Trail Facilities:** An unpaved trail constructed of natural materials not to exceed six (6) feet in width, together with steps, railings, and other surface structures which, as to wet areas, may include bridges, boardwalks, and culverts (collectively, the "Trail").

 - b. **Recreational Uses:** The parties expressly restrict the recreational use of the Easement Area to permit only passive recreational uses. The use of motorized vehicles in the Easement Area is prohibited, except as may be deemed appropriate for the construction and management of the Fonta Flora State Trail and Overmountain Victory National Historic Trail.

 - c. **Maintenance:** Grantee shall keep the Trail and its surroundings in a reasonably maintained state

 - d. **Educational Uses:** Grantee may engage in educational use of the Easement Area and the right of access to the Easement Area for such purposes including, but not limited to, engaging in organized educational activities.

 - e. **Non-Commercial Forestry Use:** The parties restrict forestry and timber cutting within the Easement Area to limit such activities to maintaining forest health, managing and restoring natural forest types, controlling invasive species, and to selective, non-commercial timbering to enhance wildlife habitat, natural ecosystems, and aesthetics. Only Grantor's limited harvest and sale of timber in the Easement Area that is incidental to forestry management permitted herein this paragraph is allowed. The restrictions set forth in this paragraph shall not apply in areas where forest is damaged by ice, fire, storm, wind, insects, infectious organisms, or other natural disasters, or is considered a human safety problem.

 - f. **Access & Driveways:** Existing driveways of the Easement Area, including any providing access to Grantors' adjoining property, may be maintained and

improved but not significantly widened. Grantor may add driveways or access across the Trail so long as it does not interfere or prohibit the construction, maintenance, or use of the Trail. Any such construction, maintenance or improvement must be conducted to minimize runoff and erosion on to the Trail. Grantee retains the right to protect the Trail from runoff from driveways and will conduct such maintenance and improvements in coordination with Grantor. Grantor and Grantors' assigns, visitors, and tenants may use motorized vehicles on such existing driveways.

- g. New Construction: Grantor reserves the right to construct foot bridges across any streams, ditches, or other waterways which may originate in, terminate in, or flow through the Easement Area.
- h. Accessory Facilities: A reasonable number of benches, picnic tables, and wastebaskets may be installed within the Easement Area by Grantee, subject to approval of size and location by Grantor. Fences, gates, and barriers may be installed within the Easement Area to control access to the Trail.
- i. Hours: Use of the Easement Area is limited to the hours between dawn and dusk.
- j. Signs: No signs shall be permitted in the Easement Area except interpretive signs describing the conservation values of the Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, signs identifying the Trail as a part of the Fonta Flora State Trail, signs identifying the Trail as a part of the Overmountain Victory National Historic Trail, and signs giving directions or prescribing rules and regulations for the use of the Easement Area.
- k. Dumping: Dumping of soil (except as deemed appropriate for the construction or maintenance of the Trail), trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.
- l. Grading, Mineral Use, Excavation, and Dredging: Grading, filling, excavation, dredging, mining, and drilling is prohibited. Removal of topsoil, sand, gravel, rock, peat, minerals, or other materials from the Easement Area is prohibited except as may be deemed appropriate for the construction and maintenance of the Trail.
- m. Water Quality and Drainage Patterns: Diking, draining, dredging, channeling, filling, leveling, pumping, impounding or engaging in any related activity constituting a disruption or alteration of the natural drainage patterns on the Easement Area is prohibited by either party. Diverting, or causing or permitting the diversion of, surface or underground water into, within, or out of the Easement Area by any means, is prohibited. Removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticides or biocides is prohibited.

- n. **Criminal Conduct:** Both parties reserve the right to take action to prevent loud, boisterous, or disorderly conduct, or to prevent persons from loitering, lounging, or gathering in the easement area; or to prevent persons disturbing the peace therein.
4. **Rights and Responsibilities Retained by the Grantor.** Subject to the terms and restrictions contained herein, Grantor reserves to and for itself and its successors all customary rights and privileges of ownership, including without limitation the right to quiet enjoyment of the Easement Area; the rights to sell, lease, encumber, impose restrictions on and devise the Easement Area, provided such transaction is subject to the terms of this Public Trail Easement and written notice is provided to Grantee; together with any rights not specifically prohibited by or limited by this Public Trail Easement, and not inconsistent with the purposes of this Public Trail Easement. Grantor understands that nothing in this Public Trail Easement relieves it of any obligation or restriction on the use of the Easement Area imposed by law.
5. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property.
6. **Liens and Subordination.** Grantor warrants to Grantee that the Easement Area is, as of the date of this agreement, free and clear of all liens or, if it is not, that Grantor has obtained and attached to this agreement as an exhibit the legally binding subordination of any mortgage, lien or other encumbrance affecting the Easement Area as of the date of this agreement.
7. **Liability.** Grantor intends, by granting this Public Trail Easement, to make the Easement Area available to the public for recreational and educational purposes as contemplated by Chapter 38A of the North Carolina General Statutes and are therefore afforded the statutory limitations upon liability as set forth in N.C. Gen. Stat. 38A-4, as amended, from any duty to the users of the Trail. The parties hereto agree that no provision of this Public Trail Easement shall be construed as constituting a waiver of Grantee's sovereign immunity, and that Grantee's liability for any claims arising hereunder or from the use of the above described premises shall be within the coverage of the Tort Claims Act.
8. **Assignment and Transfer.** Neither Grantor nor Grantee may assign or otherwise transfer any of their respective rights and duties under this Easement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this section is void.
 - a. **By Grantee:** Grantee shall have the right to transfer this Public Trail Easement and Permanent Access Easement to any public agency or to a private nonprofit organization that, at the time of transfer, is a qualified organization under §170(h) of the U.S. Internal Revenue Code, as amended, and under N.C. Gen. Stat. §121-34 et seq., provided the agency or organization expressly agrees to assume the responsibility imposed on the transferring party or parties by this Public Trail

Easement. As a condition of such transfer, Grantee shall require that the conservation purposes intended to be advanced hereunder shall continue to be carried out.

- b. By Grantor: This agreement is a servitude running with the land binding upon the undersigned Grantor and, upon recordation in the Public Record, all subsequent owners of the Easement Area or any portion of the Easement Area are bound by its terms whether or not the subsequent owners had actual notice of the Easement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Easement.
 - c. This Easement binds and benefits Grantor and Grantee and their respective representatives, successors, and assigns.
9. **Amendment of Easement.** This Public Trail Easement may be amended by a written instrument executed by both Grantee and Grantor. Any such amendment shall be consistent with the purpose of this Public Trail Easement and its terms, and shall comply with Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section, as well as N.C. Gen. Stat. § 121-34 *et seq* or any regulations promulgated in accordance with . Any such amendment shall be duly recorded in the Office of the Burke County Register of Deeds.
10. **Interpretation.** This Public Trail Easement shall be interpreted under the laws of the State of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.
11. **Severability.** Any court order or judgment establishing the invalidity of any of the covenants, terms or conditions of this Public Trail Easement, or any part thereof, shall in no way affect the validity of any of the other provisions of the agreement, which shall remain in full force and effect. However, if any of the covenants, terms, or conditions of the Public Trail Easement affecting the central conservation purposes of the Agreement is deemed invalid, the entire Easement shall be null and void.
12. **Notices.** Any notices required by this Public Trail Easement shall be in writing and shall be personally delivered or sent by first class mail to the parties respectively at the following addresses, or by electronic mail delivered to a party and acknowledged by the recipient, unless a party has been notified in writing by the other of a change of address:

To Grantor:

263 Nevada St
Auburn, CA 95603

To Grantee:

Burke County
P.O. Box 219
Morganton, NC 28680

13. **Grantor's Title Warranty** Grantor covenants and represents that Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Public Trail Easement; that the Easement Area are free and clear of any and all encumbrances, and Grantor will warrant and defend the title against the lawful claims of all persons whomsoever; that there is legal access to the Property; and Grantor covenants that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid easements conveyed.
14. **Counterparts.** This Public Trail Easement may be executed in two or more counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.
15. **Recording.** The Grantee shall record this instrument and any amendment hereto in timely fashion with the Office of the Register of Deeds of Burke County, North Carolina, and may re-record it at any time as may be required to preserve its rights under this Public Trail Easement.

TO HAVE AND TO HOLD this Public Trail Easement unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves subject to the conditions of this Public Trail Easement, have set their hands on the date first written above.

GRANTOR:

_____ (Seal)

LAKE JAMES CAMPING RESORT LLC

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public of _____ County, North Carolina do hereby certify that _____ personally appeared before me this day and executed the foregoing instrument.

Witness my hand and official stamp or seal this the _____ day of _____, 20__.

Notary Public (SEAL)

My commission expires: _____

GRANTEE:

_____ (Seal)

COUNTY OF BURKE

NORTH CAROLINA

BURKE COUNTY

I, _____, a Notary Public of _____ County, North Carolina do hereby certify that _____ personally appeared before me this day and executed the foregoing instrument.

Witness my hand and official stamp or seal this the ____ day of _____, 20__.

Notary Public (SEAL)

My commission expires: _____