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STATE OF NORTH CAROLINA
COUNTY OF ROWAN

AMENDMENT TO THE DECLARATION OF
EASEMENTS, COVENANTS, CONDITIONS
AND RESTRICTIONS

THIS AMENDMENT TO THE DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS ("Restrictive Covenants") is made on this ____ day of _____, 2012, between the City of Kannapolis, a North Carolina municipal corporation ("Declarant"), and The Land Trust for Central North Carolina, Inc, a North Carolina nonprofit corporation ("Grantee"), for itself and for its successors in title to the real property encumbered hereby.

RECITALS AND CONSERVATION PURPOSES

WHEREAS, Grantee is the sole owner in fee simple of the property being approximately 203 acres in Rowan County, State of North Carolina and being all of that certain real property as more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein ("Property"); and

WHEREAS, Declarant placed Easements, Covenants, Conditions, and Restrictions on Property in conjunction with the sale of Property and other adjacent real property to Grantee in February 2008 for the express purpose of protecting natural resources on and downstream of Property, which is in the watershed of one of Declarant's drinking water intakes and said Easements, Covenants, Conditions, and Restrictions can be found at Rowan County Registry Book 1077, Page 666. Said sale from Declarant to Grantee is recorded in the Rowan County Registry at Book 1114, Page 819; and

WHEREAS, Property is only a portion of a larger parcel purchased by Grantee in Rowan Registry Book 1114, Page 819; and

WHEREAS, Grantee now desires to sell Property to a third party, and desires to have the Easements, Covenants, Conditions, and Restrictions amended in such a way as to make the Property usable for limited residential and recreational purposes while continuing to protect natural resources of Property; and

WHEREAS, the existing Declaration of Easements, Covenants, Conditions, and Restrictions allow for amendment by Declarant under Article V, Paragraph D; and

WHEREAS, Grantee formally requested Declarant's governing body (the Kannapolis City Council) to consider amending said Declaration of Easements, Covenants, Conditions, and Restrictions at a regularly called meeting for purposes of requesting said amendment; and

WHEREAS, said request for amendment of Easements, Covenants, Conditions, and Restrictions was favorably received, discussed, voted upon, and approved by Declarant in a public meeting on Monday, October 25, 2010; and

WHEREAS, the Property is predominately agricultural in character and use which has not been subject to significant development, portions of which provide "relatively natural habitat for fish, wildlife or plants or similar ecosystem" as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code; and

WHEREAS, the property contains many streams, creeks and other bodies of water adjacent to and in the watershed of Second Creek, a major tributary of the South Yadkin River, and has outstanding open space and scenic and recreational qualities, the preservation of which is pursuant to federal, state and local government policy and will yield significant public benefit as evidenced by:

- (1) Requirements promulgated by the State of North Carolina for a basin wide management plan for the Yadkin-Pee Dee River, for the purpose of protecting water quality, public water supply, significant wetlands and natural areas along the corridor; and
- (2) Recognition by the legislature of the importance of protecting water quality as set forth in N.C.G.S. 113A-251; and

WHEREAS, North Carolina law generally, and the Uniform Conservation and Historic Preservation Agreements Act, specifically, N.C.G.S. 121-34 *et seq.*, provides, *inter alia*, for the enforceability of restrictions, easements, covenants or conditions appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use.

NOW, THEREFORE, the Declarant does hereby amend the Declaration of Easements, Covenants, Conditions, and Restrictions to apply to the Property and to read as follows:

The Property is and shall be held, sold and transferred, conveyed and occupied subject to the amended covenants, conditions, restrictions, easements, uses, privileges, charges and liens hereafter set forth, all of which shall be binding on all parties having or acquiring any right, title and interest said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of and encumber each subsequent owner thereof.

ARTICLE I. DURATION OF RESTRICTIVE COVENANTS

A. Duration. These Restrictive Covenants shall be construed to be covenants running with the land and, with any amendments shall be binding and effective until January 1, 2095, at which time they shall be automatically extended for successive periods of five (5) years; provided that these Restrictive Covenants may be terminated at any time by recordation of an instrument of termination executed by Declarant, or by the formal designation by the State of North Carolina as a preserve or natural area so as to protect the natural resources on the property in perpetuity so long as such designation is consistent with the terms, provisions and conditions hereof.

B. Unaffected Property. These Restrictive Covenants shall have no force or effect as to any real property, whether owned by the Declarant or by others, except that real property specifically described herein as the Property.

ARTICLE II. RIGHTS RESERVED TO DECLARANT

Declarant reserves certain rights accruing from current ownership of the Property, including the right to engage in or permit others to engage in uses of the Property that are not inconsistent with the purpose(s) of these Restrictive Covenants. The following rights are expressly reserved:

A. Declarant Water Supply. Notwithstanding the provisions of these Restrictive Covenants nothing herein shall be deemed to prohibit, impair, alter or otherwise limit the activities deemed necessary by the Declarant, its successors and assigns, to continue use of Second Creek, Kerr Creek, Sloan Creek, Back Creek or other creeks and bodies of water located thereon (collectively referred to as "Second Creek Streams") for the withdrawal of water at the pump station (the "Pump Station" hereinafter defined) located therein together with the right to maintain, construct and reconstruct all pumping facilities including also the right to dredge or otherwise improve, maintain, build and rebuild the water retention area at the Pump Station and Second Creek Streams from which water is removed.

B. Ingress, Egress, Regress and Inspection. Declarant hereby reserves a perpetual easement in gross upon the Property for itself, its successors and assigns, which easement and right of way shall be for ingress, egress and regress upon the Property for the purpose of inspecting, maintaining, building and rebuilding Second Creek Streams inclusive of all other creeks and waterways located on the Property which are relied upon for drinking water supplies for Declarant. Nothing in these Restrictive Covenants shall be construed to prevent Declarant from constructing and maintaining paved or other hard surfaced roadways along any access easements reserved by Declarant in any previously recorded document.

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Comment [JW1]: Not sure what previous documents say, but there is no infrastructure on this part of the property, which is the westernmost portion of the tract we had under contract. Not sure that any roads would ever be needed, but thought it worth pointing out that Kannapolis is willing to have some roads paved.

Declarant shall, in exercising its rights under such paragraphs A and B, make reasonable effort to minimize the effect of such exercise on the Property restricted by these restrictive covenants.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purposes of these Restrictive Covenants is prohibited. The Property shall be maintained in its natural, scenic, wooded and open condition and restricted from any development or use that would impair or interfere with the conservation purposes of these Restrictive Covenants set forth above, except as permitted herein.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted.

A. Industrial and Commercial Use. Industrial and commercial activities and any right of passage for such purposes are prohibited, except for farming operations or controlled hunting preserve activities; provided that any such activities are undertaken in accordance with Best Management Practices promulgated by the State of North Carolina and consistent with North Carolina Wildlife Resources Commission administrative rules and regulations, and which further do not have a significant negative impact to water quality in Second Creek Streams.

B. Agricultural, Timber Harvesting, Grazing and Horticultural Use. Agricultural, timber harvesting, grazing, horticultural and animal husbandry operations are restricted to those which are conducted in accordance with Best Management Practices promulgated by the State of North Carolina and do not have negative impact to water quality in Second Creek Streams.

C. Construction of Buildings and Structures. Except as specifically provided hereinafter, there shall be no constructing or placing of any building, structure, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier landing, dock or any other temporary or permanent structure or facility on or above the Property without the express consent of Declarant. There currently exists the remains of one old silo, and two agricultural buildings. Said structures may either be maintained in their current location and configuration, or demolished and removed. Furthermore, local, state or federal traffic or similar information signs; for sale or lease signs; signs identifying the conservation values of the Property or the conservation purposes to which it is restricted; educational and interpretative signs; identification labels; trespass signs; or any other similar temporary or permanent signs may be permitted. Similarly, fencing for agricultural purposes shall be permitted, but only to the extent the rights retained in Article II B are not impaired. Notwithstanding the foregoing, the property owner and its successors and assigns shall be permitted to:

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- (1) Construct a maximum of two (2) single family residences on the Property, ("Site" or "Sites"), having a location, and configuration approved in writing in advance of such conveyance by Declarant. In no event shall any such structure exceed five thousand (5000) square feet of above ground surface area. Declarant shall operate in good faith in approving said retained

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development rights, and shall allow appurtenant structures such as television antennae for residential purposes, an attached or detached garage / shed (not to exceed one thousand (1000) square feet in size, driveways, etc. The approval by Declarant shall be conditioned solely upon its assessment of potential detrimental impacts to water quality or quantity in Second Creek Streams created by such development. One of the permitted Sites may be subdivided from Property, with all terms of these Easements, Covenants, Conditions, and Restrictions remaining in full force and effect for the subdivided outparcel and the remnant portion of the Property. In the event a permitted subdivision occurs with a permitted residence herein, such subdivision shall consist of no less than five (5) acres.

Similarly, for purposes of assisting an adjoining landowner in unifying previously subdivided and isolated parcel, one other subdivision may be made with no additional home sites or other infrastructure permitted, and with all terms of these Easements, Covenants, Conditions, and Restrictions on Property remaining in full force and effect. Said additional non-residential Site subdivision shall be limited to the approximately 27 acre parcel west of Graham Road.

The right to construct two (2) single family residences provided herein is cumulative to all present and future owners of the Property or any permitted subdivided outparcels thereof. Therefore there shall never be more than a total of two (2) residences on the Property.

- (2) Construction of one agricultural support building (barn) to be used for storing agricultural and hunting equipment, supplies, and agricultural products, as well as providing some meeting or gathering area for visitors to farm shall be permitted if located no closer than five hundred feet (500') from any Second Creek Stream and out of the five hundred (500) year flood plain. Said barn shall be limited in size to no more than three thousand (3000) square feet of above ground surface area ("footprint"). Furthermore, two unpaved, natural surface (pervious) pens for raising animals shall be permitted if located no closer than five hundred feet (500') from any Second Creek Stream.

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D. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner except as necessary for the purpose of combating erosion, restoring or creating wetland or other water features designed to improve water quality entering Second Creek or any Second Creek tributaries, or incidental to any conservation management activities otherwise permitted in these Restrictive Covenants.

E. Second Creek Streams and Wetlands Water Quality. There shall be no pollution or alteration of Second Creek Streams, other streams or water bodies and no activities that would be

detrimental to water purity or that would alter natural water levels, drainage, turbidity, sedimentation and/or flow in or over the Property or into any surface waters, or cause soil degradation or erosion nor diking, dredging, alteration, draining, filling or removal of wetlands, except activities to restore natural hydrology and wetlands restoration or enhancement as permitted by State and any other governmental regulatory authorities. No activity which does or will diminish, degrade, limit or otherwise alter or impair Declarant's extraction of water from the Second Creek Streams Pump Station or the normal quality thereof will be permitted. Declarant hereby consents and agrees that small culverts or bridges for purposes of crossing any existing ditches shall be permitted for recreational use and access purposes so as to prevent instability in ditches and provided that any such infrastructure does not result in observable erosion or measurable soil loss or detrimental impacts to water quality or quantity in Second Creek Streams.

In addition to the foregoing, two stream buffers shall be permanently established as described hereafter:

- (1) A minimum thirty (30) foot stream buffer (the "Stream Buffer") shall be established on both sides of all Second Creek Streams and on all sides of water impoundments that are fed by Second Creek Streams. The size of a Stream Buffer shall be measured from the average annual stream bank perpendicularly for a distance of 30 feet plus four (4) times the average percent of slope of area adjacent to the stream. This slope shall be calculated by measuring a distance of 250 feet from the center of the stream. The percent of slope for this distance shall serve as the determining factor. However, the maximum distance shall not exceed 120 feet from the edge of the stream.
- (2) A vegetative setback shall be established along and extend out from all Stream Buffers. The vegetative setback shall be measured from the buffer boundary landward in a direction perpendicular to the edge of the Stream Buffer. Perennial vegetation shall be maintained within the vegetative setback. Any area disturbed within the vegetative setback shall be revegetated with perennial vegetation as soon as practical after the disturbance. No building, driveway, or other structure or part thereof shall be erected, established, or constructed within this setback without the express written consent of Declarant. The vegetative setback shall be twenty (20) feet.

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F. Dumping. Dumping of soil, trash, ashes, non-containerized garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the Property is prohibited.

G. Pathways and Trails. There currently exist several pathways and trails on Property which are used for agricultural equipment access. Property owner and its successors and assigns shall have the right to maintain existing pathways and trails, and shall also be allowed to create new pathways and trails through the Property, provided such pathways and trails shall be no larger than the minimum width necessary to allow the reasonable passage of a

pedestrian, bicyclist, equestrian or agricultural machinery such as trucks and tractors and provided that said trails and pathways comply with the provisions set forth in Paragraph E above.

Maintenance of pathways and trails shall be limited to standard practices for non-paved pathways and trails, such as: grading and trail stabilization; the removal of dead vegetation; necessary pruning or removal of hazardous trees and plants; application of permeable materials such as sand, gravel, shell sand or crushed stone to repair or enhance the pathway or trail; application of permeable materials such as sand, gravel, shell sand, or crushed stone in the minimum amount needed to correct erosion.

H. Hunting and Fishing. Lawful hunting and fishing shall not be considered a prohibited activity, and temporary structures such as hunting stands, benches, or other such equipment shall be permitted provided that no such equipment exceeds fifty (50') square feet in size.

ARTICLE IV. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of these Restrictive Covenants, Declarant is allowed to prevent any activity on or use of the Property or the Second Creek Streams that is inconsistent with the purposes of these Restrictive Covenants and to require the restoration of such areas or features of the Property that may have been damaged by such activity or use. Declarant may enforce these Restrictive Covenants by appropriate legal or equitable proceedings including damages, injunctive and other relief. Declarant shall also have the power and authority: (a) to prevent any impairment of the Property or the Second Creek Streams by acts which may be unlawful or in violation of these Restrictive Covenants; (b) to otherwise preserve or protect its interest in the Property or the Second Creek Streams; or (c) to seek damages from any person or entity violating these Restrictive Covenants. The rights and remedies of the Declarant provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to the Declarant to enforce these Restrictive Covenants.

B. Inspection. Declarant, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the Property at reasonable times and reasonable manner for the purpose of inspecting the Property to inspect the Property for compliance with the terms, conditions and restrictions of these Restrictive Covenants.

C. No Waiver. Enforcement of the Restrictive Covenants shall be at the discretion of the Declarant and any forbearance by Declarant to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Declarant of such term or of any subsequent breach of the same or of any other term of these Restrictive Covenants or of Declarant's rights. No delay or omission by Declarant in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

ARTICLE V. MISCELLANEOUS

Comment [JW2]: Purchaser concerned about this provision. For purposes of protecting water quality, paved surfaces are likely to result in less sedimentation and run off than gravel, which is why Kannapolis probably reserved that right in regards to protecting their water lines above. Buyer is willing to limit location a far distance from streams, and limit size.

Deleted: One paved driveway shall be permitted to serve each permitted residence allowed in Article III, Section C above, provided that said driveway is no longer than necessary, does not encroach or cross the buffer defined in Section E above, does not

Deleted: cross any perennial stream, and in any event is no longer than 500 feet long and 16 feet in width.

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A. Subsequent Transfers. The covenants and restrictions and provisions contained herein shall run with the land and shall be binding upon Declarant's successors in interest (the "Successors") and as herein provided. Any transferee of the Property shall take title subject to these Restrictive Covenants.

B. Recording. Declarant shall record this instrument and any amendment hereto in timely fashion in the official records of Rowan County, North Carolina, and may re-record it at any time as may be required to preserve its rights or the rights and interests of the State.

C. Notices. Any notices, requests or other communications permitted or required by this Agreement shall be sent by registered or certified mail, return receipt requested.

D. Amendments. Any amendment to these Restrictive Covenants shall require the written consent of Declarant. Any amendment(s) shall be in writing and effective upon recording in the public records of Rowan County, North Carolina.

E. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Restrictive Covenants and supersedes all prior discussions, negotiations, understandings or agreements relating to the Restrictive Covenants. If any provision, or portion thereof, is found to be invalid, the remainder of the provisions of these Restrictive Covenants and portions thereof, and the application of such provision and portion thereof to persons or circumstances other than those as to which it is found to be invalid, shall not be affected hereby, and shall be fully valid and enforceable to the fullest extent and duration allowed by applicable law. The Recitals set forth above and the Exhibits attached hereto are incorporated herein by reference.

F. Interpretation. These Restrictive Covenants shall be construed and interpreted broadly under the laws of the State of North Carolina, any ambiguities herein shall be resolved so as to give maximum effect to the conservation purpose sought to be protected herein.

G. Parties. Every provision of these Restrictive Covenants shall apply to Declarant's respective successors, assigns and all other successors in interest herein.

H. Merger. The parties agree that the terms of these Restrictive Covenants shall survive any merger of the fee and easement interest in the Property.

I. Severability. If any of the covenants, conditions or terms of these Restrictive Covenants shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding provided that in such event Declarant or Declarant's successors in interest shall to the fullest extent possible modify such covenant, condition or term to the extent required to carry out the general intention of these Restrictive Covenants and to impart validity to such covenant, condition or term.

IN WITNESS WHEREOF, Declarant and Grantee, by authority duly given, has hereunto caused these presents to be executed by their respective officers and its seal affixed, to be effective the day and year first above written.

DECLARANT:
City of Kannapolis

By: _____
Robert S. Misenheimer, Mayor

NORTH CAROLINA
_____ COUNTY

I, a Notary Public of the County and State aforesaid, certify that Robert S. Misenheimer personally came before me this day and acknowledged that he is Mayor of the City of Kannapolis, and that he, as Mayor, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this ____ day of _____,
2012.

NOTARY PUBLIC

My commission expires: _____

THE LANDTRUST FOR CENTRAL
NORTH CAROLINA, INC.

_____(SEAL)

BY: _____

ITS: _____

NORTH CAROLINA

_____ COUNTY

I, a Notary Public of the County and State aforesaid, certify
_____ personally came before me this day and acknowledged that he
is _____ President to The LandTrust for Central North Carolina, Inc., and that he, as _____
President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this _____ day of _____,
2012.

NOTARY PUBLIC

My commission expires: _____

EXHIBIT A

(Property Description)

(Insert Description)

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