

Prepared by and return after recording to:  
Timothy D. Swanson, Esq.  
Young, Morphis, Bach & Taylor, LLP  
P.O. Drawer 2428  
Hickory, NC 28603

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**STATE OF NORTH CAROLINA  
BURKE COUNTY**

**TRAIL EASEMENT AGREEMENT**

This Trail Easement Agreement (this “**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between **BURKE COUNTY PUBLIC SCHOOLS BOARD OF EDUCATION**, a North Carolina school system, its successors and assigns (“**Grantor**”), and the **TOWN OF VALDESE**, a body politic and corporate of the State of North Carolina (“**Grantee**”). Grantor and the Grantee are hereinafter sometimes referred to individually as “**Party**” and collectively as “**Parties.**” **DUKE POWER COMPANY** and **CRESCENT RESOURCES, LLC** join this Agreement to consent to its terms and the release of any restrictions related thereto.

**RECITALS:**

WHEREAS, Grantor is the owner of certain real property situated in the Town of Valdese, Burke County, North Carolina commonly known as 0 Lake Rhodhiss Drive NE and 709 Lovelady Road NE, Valdese, North Carolina, Parcel ID Number 2744557428, being more particularly described in Deed Book 1556, Pages 91-104 (the “**Grantor Property**”), which Grantor Property is more particularly described in **EXHIBIT “A”** attached hereto and made a part hereof; and

WHEREAS, Grantee desires to construct a multi-use trail improvement project on the Grantor Property for recreational use by the public (the “**Project**”); and

WHEREAS, Grantee desires to acquire a perpetual, non-exclusive easement for public recreational pedestrian use comprised of \_\_\_\_\_ square feet (\_\_\_\_\_ acres), more or less, over, across, under and through a portion of the Grantor Property, as legally described in **EXHIBIT “B”** attached hereto and made a part hereof (the “**Permanent Trail Easement**”), for the benefit of Grantee and the Project, and to enter into certain covenants and agreements with Grantor in connection with said Permanent Trail Easement, all as more fully set forth in this Agreement; and

WHEREAS, Grantor desires to grant the Permanent Trail Easement for public recreational pedestrian use pursuant to the Recreational Use Statute, N.C. Gen. Stat. § 38A-1, *et seq.*, and to enter into certain covenants and agreements with Grantee in connection with the Easements, all as more fully set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

## **ARTICLE I**

### **CONSTRUCTION AND MAINTENANCE OF TRAIL FACILITIES**

1.01. Grant of Trail Facilities Easement. Subject to the terms hereof, Grantor hereby grants to Grantee, for the benefit of Grantee and the Project the Permanent Trail Easement on, under, across and through a portion of the Grantor Property described in **EXHIBIT “B”** (the “**Permanent Trail Easement Area**”) for the purpose of constructing, installing, operating, maintaining, repairing and replacing within the Permanent Trail Easement Area a public trail (the “**Trail**”) and all necessary improvements associated with the Trail (the “**Trail Improvements**”) for public recreational pedestrian use, together with the right, permission and authority to enter upon the Permanent Trail Easement Area as necessary for the purpose of exercising the rights and performing the obligations of Grantee in accordance with the terms of this Agreement and in compliance with all applicable federal, state and local laws, rules, regulations, codes, ordinances, judgments, decrees, or orders of any state, federal or local government or agency having jurisdiction over the Grantor Property, or any portion thereof (“**Applicable Laws**”). All Trail Improvements within the Permanent Trail Easement Area constructed by Grantee shall remain the property of Grantee. The construction, installation, operation, maintenance, repair, and replacement of the Trail Improvements within the Permanent Trail Easement shall be done at Grantee’s sole cost and expense and shall be conducted in a prompt, good, safe, and workmanlike condition and in accordance with all Applicable Laws. Notwithstanding the foregoing, each Party shall be responsible for the costs of repairing any damage caused to the Permanent Trail Easement Area by the negligence or willful misconduct of such Party, its lessees, tenants, occupants, employees, agents, contractors, engineers, consultants, vendors, suppliers, customers, invitees and licensees.

1.02. Construction of Trail Facilities. The Grantee shall have the right to construct and maintain the Trail within the Trail Easement Area, along with the other items (collectively, with the Trail, the “**Trail Facilities**”) described in paragraph (a) of this Section 1.02.

- (a) Description of Trail Facilities. The Trail shall be constructed of asphalt, concrete, or soft surface natural materials, not to exceed ten feet (10') in width, together with certain Trail Facilities, including, but not limited to:
- (1) Steps, railings, and other surface structures;
  - (2) As to wet areas, bridges, boardwalks and culverts;
  - (3) Signs to mark the Trail, to provide information related to the Trail and for interpretive purposes; and
  - (4) Facilities incidental to and for the convenience of users of the Trail, such as benches and wastebaskets.

Grantor shall have the right to review and approve the Trail Facilities prior to their construction/installation and such approval shall not be unduly withheld.

- (b) Maintenance of Trail Facilities. Following the construction of the Trail, the Grantee, at its sole expense, shall forever, completely and solely, keep the Trail free from debris, obstructions and undergrowth, and shall maintain the Trail and the other Trail Facilities in an orderly condition consistent with their intended use, including any repair and replacement of trail surfaces. If the Grantee fails to fulfill their maintenance obligations, Grantor shall, after providing reasonable notice to Grantee and Grantee's failure to remedy, have the right to declare the Grantee in default of this Agreement and the seek all legal remedies as contained herein.

1.03. Exercise of Rights.

- (a) Scope of Construction. Grantor acknowledges that the creation of the Trail and other construction, installation, maintenance and repair of the Trail Facilities includes all activities necessary for the proper construction, installation, maintenance and repair of the Trail Facilities, and may include, without limitation, installation of signage; mowing, cutting or removal of soil, rock, trees or vegetation; application of asphalt, concrete, gravel, crushed stone, wood chips or paving; or other means of creating the Trail and/or identifying the Trail's path. These activities may include vehicular use.
- (b) Standards for Construction. The Grantee, its employees, contractors or agents shall (i) perform all construction, maintenance, repair and replacement of the Trail Facilities in a good and workmanlike manner, in accordance with all applicable federal, state and local laws and regulations and in accordance with any standards which may apply to the performance thereof, including any professional engineering standards; (ii) obtain all necessary governmental permits and approvals for the performance of all construction, maintenance, repair and replacement of the Trail Facilities; and (iii) be responsible for all costs of performing all construction, maintenance, repair and replacement of the Trail

Facilities, including permitting costs. Grantor shall cooperate with the Grantee to obtain any such permits if reasonably requested at no cost to Grantor.

- (c) Removal of Trees. In connection with the construction of the Trail Facilities, the Grantee, or its contractors or agents will minimize any large tree removal, it being understood, however, that although the trail will be constructed in such a manner as to minimize tree removal, where necessary to create a level trail, it may be necessary to cut into some tree roots.
- (d) Repairs. The Grantee, at its sole expense, shall be responsible for repairing like new or replacing with like-kind any damage/destruction to Grantor's subdivision infrastructure, landscaping and hardscape damaged by Grantee or its heirs, successors or assigns.

## **ARTICLE II**

### **GRANT OF EASEMENT FOR PUBLIC ACCESS**

2.01. Grant of Public Access Trail Easement. Grantor, intending to be legally bound, grants to the Grantee the right to make available to the public a perpetual non-exclusive easement and right-of-way over the Trail, and the right to use Trail Facilities for the purposes ("**Permitted Trail Uses**") described in Section 2.02 ("**Public Access Trail Easement**"). The Public Access Trail Easement is granted subject to conditions, covenants, restrictions, easements and other matters of record. Grantor and the Grantee shall work together in good faith to develop mutually acceptable rules and regulations for the use of the Trail Facilities.

2.02. Permitted Trail Uses. The Trail Facilities shall be used solely between sunrise and sunset:

- (a) As a right-of-way for (i) walking, hiking, jogging, bicycling, bird watching, or nature study; (ii) wheelchair use by persons who need to use wheelchairs; (iii) maintenance vehicles used in the construction, management, maintenance, or stewardship purposes of the Trail Facilities; and (iv) emergency vehicles in the case of emergency within the Trail Easement Area. Any other use of or event held on the Trail Facilities shall require prior notification to, and written consent from, Grantor.
- (b) For resource management, including the right (but not obligation) to mow, cut or remove trees, vegetation, or plant vegetation, within the Trail Easement Area.

## **ARTICLE III**

### **RIGHTS OF GRANTOR**

3.01. Reserved Rights. Grantor has the rights accorded to the general public to use the Trail Facilities located on the Trail Easement Area, as well as exercise any one or more of the following rights:

- (a) Ownership Rights. Grantor may exercise all rights accruing from ownership of the Grantor Property, including, the right to engage in, or permit or invite others to engage in, all uses of the Grantor Property, that are not expressly prohibited by this Agreement or inconsistent with the easement rights granted hereby and do not interfere with same. Without limiting the foregoing, Grantor may construct, install, maintain, replace and use and or all of the following improvements within the Trail Easement Area in connection with its development of the Grantor Property: public and private roads, driveways and sidewalks (with concrete, asphalt, gravel or other similar surfaces); permanent or temporary signage of any kind; public or private utility or service lines; mail delivery and collection areas; designated areas for refuse collection; and landscaping and related non-building improvements. The Grantee acknowledges that such development activities may lead to temporary closures of portions of the Trail from time to time.
- (b) Enforcement Rights. Grantor may remove or exclude from the Grantor Property any Persons other than the Grantee, the Grantee's contractors or agents, who are (i) in locations other than the Trail or other Trail Facilities located within the Trail Easement Area, or (ii) not engaged in Permitted Trail Uses.
- (c) Grant Utility Easements. From time to time, Grantor may grant utility easements within the Trail Easement Area for underground utilities.
- (d) Relocation of Trail Easement Area. From time to time, Grantor may relocate all or any portion of the Trail Easement Area by recording an Amendment to this Agreement whenever it becomes necessary to re-route the Trail in order to accommodate development of the Grantor; provided, however, that such right may not be exercised in a manner that prevents use of the Trail, and further, that Grantor, at their sole expense, will rebuild and replace to the same standards, any Trail Facilities removed, damaged or destroyed as a result of the exercise of such right. The Grantee acknowledges that such activities may lead to temporary closures of portions of the Trail from time to time. Should the Grantee desire to relocate the Trail within the Trail Easement Area at any time, such relocation shall be subject to Grantor's prior written approval, and be completed at the Grantees' sole expense.

**ARTICLE IV**  
**LIABILITY ISSUES**

4.01. Immunity under Applicable Law. Nothing in this Agreement limits the ability of Grantor and the Grantee to avail themselves of the protections offered by any applicable law affording immunity to Grantor or the Grantee, including, to the extent applicable, the North Carolina recreational use statutes, codified in N.C. Gen. Stat. § 38A-1 *et. seq.*, the North Carolina Trails System Act, codified in N.C. Gen. Stat. § 113A-83 *et. seq.*, or N.C. Gen. Stat. § 115C-524 as they may be amended from time to time. The Grantee agrees to indemnify, hold harmless and defend Grantor, its successors, heirs and assigns from any and all liability

associated with the Trail Facilities unless the liability stemmed from gross negligence by Grantor.

4.02. Public Enters at Own Risk. Use of any portion of the Grantor Property by members of the general public is at their own risk. Notwithstanding any provision herein to the contrary, neither the Grantee nor Grantor by entering into this Agreement assume any duty to or for the benefit of the general public for defects in the location, design, installation, maintenance or repair of the Trail Facilities; for any unsafe conditions within the Grantor Property; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Facilities to public access when unsafe conditions may be present. The Grantee will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until the Grantee receives actual notice given in accordance with Article VI of this Agreement of the need to repair an unreasonably dangerous condition.

4.03. Covenant Against Liens. The Grantee shall promptly pay and discharge on or before the due date any claim or obligation for labor or materials furnished at the direction of the Grantee which, if not paid or discharged, would result in a lien on the Grantor Property. This Section 4.03 shall survive the termination of this Agreement.

## **ARTICLE V** **MISCELLANEOUS**

5.01. Beneficiaries and Agents.

- (a) The rights of the Grantee under this Agreement may be exercised by the Grantee and any of the contractors, agents and employees acting at the direction of the Grantee. This Agreement may be assigned under the same terms and conditions contained herein by the Grantee to another governmental entity or agency, or to another non-profit corporation whose mission includes creation and/or operation of trails or greenways, in each case with the prior consent from Grantor. Upon any assignment of this Agreement by the Grantee, all references in this Agreement to “the Grantee” shall thereafter be deemed to refer to the assignee.
- (b) The rights of Grantor under this Agreement may be exercised by Grantor and any of the contractors, agents and employees acting at the direction of Grantor. This Agreement may be assigned under the same terms and conditions contained herein by Grantor to another entity with the prior consent from the Grantee. Upon any assignment of this Agreement by Grantor, all references in this Agreement to “Grantor” shall thereafter be deemed to refer to the assignee.

5.02. Binding Agreement. This Agreement is a servitude running with the land binding upon the Grantor Property and, upon recordation in the in the Public Records, any subsequent owner of the Trail Easement Area shall be bound by its terms, whether or not the owner had actual notice of this Agreement, and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Agreement. Subject to such limitations (if any) on the Grantee’s right to assign as may be set forth in this Agreement, this Agreement binds and benefits Grantor and the Grantee, and their respective successors and assigns.

5.03. Governing Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of North Carolina.

5.04. Definition and Interpretation of Capitalized and Other Terms. In addition to those terms defined herein, the following terms, whenever used in this Agreement, are to be interpreted as follows:

- (a) “Person” means an individual, organization, trust, or other entity.
- (b) “Public Records” means the public records of the Office of the Register of Deeds for Burke County, North Carolina.
- (c) “Including” means “including, without limitation.”
- (d) “May” is permissive and implies no obligation; “must” or “shall” are obligatory.

5.05. Incorporation by Reference. Each exhibit or schedule referred to in this Agreement is incorporated into this Agreement by this reference.

5.06. Amendments; Waivers. No amendment or waiver of any provision of this Agreement or consent to any departure by a party from the terms of this Agreement is effective unless the amendment, waiver or consent is in writing and signed by an authorized signatory for the other party. A waiver or consent is effective only in the specific instance and for the specific purpose given. An amendment must be recorded in the Public Records.

5.07. Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Agreement invalid, illegal, or unenforceable in any respect.

5.08. Recordation. The Grantee may record this instrument in the Public Records at its expense.

5.09. Successors. Subject to the terms of Section 5.01, the covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Grantor Property.

5.10. Counterparts. This Agreement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

5.11. Entire Agreement. This is the entire agreement of Grantor and the Grantee pertaining to the subject matter of this Agreement. The terms of this Agreement supersede in full all statements and writings between Grantor, the Grantee, and others pertaining to the matters set forth in this Agreement.

5.12. Notices. Any notice, demand, request, or any other communication required, permitted, or desired to be given under this Agreement (collectively, “**Notice**”) shall be in writing and sent via national overnight courier company (such as UPS or FedEx) or by depositing the Notice with the United States Postal Service, certified or registered mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party (and marked to a particular individual’s or department’s attention if so indicated) as hereinafter provided. Each Notice shall be effective upon being delivered to the national overnight courier company or being deposited with the United States Postal Service, as the case may be, but the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof, as evidenced by the national overnight courier company’s records or by the return receipt of the United States Postal Service, as the case may be. Rejection or other refusal by the addressee to accept or the inability of the national overnight courier company or the United States Postal Service to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. The addresses of the Parties shall be as follows:

If to Grantor:                    Burke County Public Schools, Board of Education  
                                          Attention: Superintendent  
                                          PO Drawer 989  
                                          Morganton, NC 28680  
                                          E-mail: \_\_\_\_\_

If to the Grantee:                Town of Valdese  
                                          PO Box 339  
                                          Valdese, North Carolina 28690  
                                          Attention: \_\_\_\_\_  
                                          E-mail: \_\_\_\_\_

Any Party shall have the right from time to time to change the Party’s own address or individual or department’s attention to which Notices shall be sent or the address to which copies of Notices shall be sent and to specify up to two additional addresses to which copies of Notices shall be sent by giving the other Party at least ten (10) days’ prior written Notice thereof.

5.13. Consent/Approval. Except as provided otherwise herein, any consent or approval to be given hereunder shall not be effective unless the same shall be given in advance of the taking of the action for which consent or approval is requested and shall be in writing. Except as provided otherwise herein, any consent or approval requested of a Party may be withheld by that Party in its sole and absolute discretion.

5.14. Saturdays, Sundays, Legal Holidays. If the time period by which any right or obligation provided under this Agreement must be exercised or performed expires on a Saturday, Sunday, legal or bank holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day. Any reference to a “business day” or a number of “business days” in this Agreement shall mean every day or days other than Saturdays, Sundays, and all days observed by the federal or North Carolina state government as legal holidays and all days on which commercial banks in North Carolina are authorized by law to be

closed. Any reference to a “day” or a number of “days” (other than references to a “business day” or “business days”) shall mean a calendar day or calendar days.

5.15. Effective Date. The Effective Date of this Agreement shall be the date of the last Party to sign.

*Signatures and Acknowledgements Appear on Following Pages*

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have caused this Agreement to be executed as of the day and year first above written.

**BURKE COUNTY PUBLIC SCHOOLS  
BOARD OF EDUCATION,**  
a North Carolina school system

ATTEST:

(SEAL)

\_\_\_\_\_  
Wendi Craven, Board Chair

\_\_\_\_\_  
Dr. Mike Swan, Superintendent and Ex Officio Secretary

STATE OF NORTH CAROLINA  
COUNTY OF BURKE

I, \_\_\_\_\_ a Notary Public of said county and state, certify that Dr. Mike Swan personally came before me this day and acknowledged that he is the Superintendent and Ex Officio Secretary of the Burke County Public Schools Board of Education, a North Carolina School System, and that by authority duly given and as the act of the Burke County Public Schools Board of Education, the foregoing instrument was signed in its name and by its Board Chair, Wendi Craven, sealed with its corporate seal and attested by him as its Ex Officio Secretary.

WITNESS my hand and Notarial Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
☞ NOTARY SEAL

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have caused this Agreement to be executed as of the day and year first above written.

**THE TOWN OF VALDESE,**  
a North Carolina Municipal Corporation

ATTEST:

(SEAL)

\_\_\_\_\_  
\_\_\_\_\_, Mayor

\_\_\_\_\_  
Jessica Lail, Town Clerk

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ a Notary Public of said county and state, certify that Jessica Lail personally came before me this day and acknowledged that she is Town Clerk of the Town of Valdese, a North Carolina municipal corporation, and that by authority duly given and as the act of the Town Council of the Town of Valdese, the foregoing instrument was signed in its name and by its Mayor, \_\_\_\_\_, sealed with its corporate seal and attested by her as its Town Clerk.

WITNESS my hand and Notarial Seal, this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
☞ NOTARY SEAL

**CONSENT AND RELEASE OF INCONSISTENT TERMS TO  
TRAIL EASEMENT AGREEMENT**

Duke Power Company, as holder of these certain rights recorded in Book 351, Pages 236 of the Office of the Register of Deeds for Burke County, North Carolina which encumber the property shown in Plat Book 30, Pages 245-251 of the Register of Deeds for Burke County, North Carolina, and Crescent Resources, LLC, as the Grantor who imposed certain restrictions in Deed Book 1556, Page 91, as amended in Deed Book 1591, Page 193, Burke County Registry, do hereby consent to, approve and release all conditions or restrictions inconsistent with the terms of this Agreement and acknowledge the execution, delivery and recording of the foregoing Trail Easement Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination, this \_\_\_\_ day of \_\_\_\_\_, 2023.

**DUKE POWER COMPANY**

By: \_\_\_\_\_ (Seal)  
\_\_\_\_\_, President

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, State of North Carolina, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is the President of Duke Power Company, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: \_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination, this \_\_\_\_ day of \_\_\_\_\_, 2023.

**CRESCENT RESOURCES, LLC**

By: \_\_\_\_\_ (Seal)  
\_\_\_\_\_, Managing-Member

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, State of North Carolina, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is a Managing-Member of Crescent Resources, LLC, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: \_\_\_\_\_.

**EXHIBIT "A"**

**GRANTOR PROPERTY**

All that certain tract of land containing approximately 99.08 acres located in the Town of Valdese, Burke County, North Carolina as shown on plat recorded in Map Book 30, Pages 245-251 ("Plat"); AND BEING all or a portion of the land conveyed to CLT Development Corp. by deed from Crescent Resources, Inc. (presently known as Crescent Resources, LLC) (1/100<sup>th</sup>) recorded in Deed Book 832, Page 1121; and by deed to Carolina Centers, LLC from Crescent Resources, Inc. (presently known as Crescent Resources, LLC) and CLT Development Corp. recorded in Deed Book 832, Page 1126; rights and interest in Timber Deed in Deed Book 839, Page 1041; and by Deed to Crescent Resources, LLC from Carolina Centers, LLC recorded in Deed Book 1156, Page 86.

**EXHIBIT "B"**

**PERMANENT TRAIL EASEMENT**