

PREPARED BY/RETURN TO:
Allen Stahl & Kilbourne, PLLC,
20 Town Mtn. Road, Suite 100
Asheville, NC 28801

GRANT OF ACCESS
EASEMENT AGREEMENT
AND RIGHT OF FIRST REFUSAL

THIS GRANT OF ACCESS EASEMENT (the "Easement"), entered into this 12 day of Apr: 1, 2016, between **EAGLE'S NEST FOUNDATION**, whose address is 43 Hart Road, Pisgah Forest, NC 28768 (the "Grantor") and **HELEN WAITE**, whose address is PO Box 404, Penrose, NC 28766 (the "Grantee")(collectively the "Parties").

WHEREAS, Grantor is the owner of real property situated in Transylvania County, North Carolina, being more particularly described in Plat File 16, Page 871 Transylvania County Registry (PIN#9506-95-9719) (the "Grantor's Property"); and

WHEREAS, Grantee is the owner of certain property contiguous to a portion of the Grantor's Property which is more particularly described as the 4.272 acre tract of land shown as Tract "A" on Plat File 11, Page 503 Transylvania County Registry (PIN#9516-05-7616), and the 1 acre +/- tract of land described in Deed Book 383, Page 15 Transylvania County Registry (PIN#9516-05-9194) (the "Grantee's Property"); and

WHEREAS, Grantor desires to grant to Grantee a perpetual non-exclusive easement for vehicular and pedestrian egress and ingress over and across a portion of the Grantor's Property as more particularly described on the attached Exhibit "A" (the "Easement Area"); and

WHEREAS, Grantor and Grantee desire to enter into this Grant of Access Easement, all as more particularly set forth herein.

NOW, THEREFORE, for and in consideration of the premises hereof, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Recitals**. The above Recitals are true and correct and are hereby incorporated by reference herein.
2. **Grant of Ingress and Egress Easement**. Grantor hereby grants, conveys, and confirms to Grantee, its successors and assigns, and their invitees and guests, a perpetual, non-exclusive easement for vehicular and pedestrian ingress and egress, over, across and through the Easement Area. Grantee acknowledges that the Easement Area is its exclusive means of ingress and egress to its property and agrees that it shall not access other roads, tracks, paths, or trails on

Grantor's Property. Grantor does not guaranty passable conditions over the Easement Area in conditions of flooding, snow, or other unusual events.

3. **Maintenance.** Grantor, and their successors and/or assigns, shall be responsible for the maintenance of the Easement Area. Grantee acknowledges that there is an annual road maintenance fee imposed on all third parties that use portions of the Easement Area to access their respective properties. The amount of the current annual road maintenance fee is Two Hundred Fifteen Dollars (\$215.00), which is subject to annual adjustment by Grantor, based upon the anticipated maintenance required for an upcoming year. The annual adjustment shall not be unreasonable in amount. Notwithstanding the foregoing, Grantee and Grantor agree that they will be responsible to pay for the cost to repair any damage or unusual wear to the Easement Area caused by any vehicles operated by the respective parties or any of their agents and/or invitees, traveling upon the Easement Area.

Should Grantor fail to maintain the Easement Area, or should Grantee and/or Grantor fail to pay for repairs made to the Easement Area that were caused by Grantee and/or Grantor and/or their respective agents, or should Grantee fail to pay the annual road maintenance fee, then the non-defaulting party shall be entitled to deliver written notice thereof to the defaulting party specifying the maintenance or repair to be performed, or detailing what payment is due, and requesting that the defaulting party perform the required maintenance or repair to the Easement Area, or remit said payment. If within thirty (30) days after receipt of such notice the defaulting party fails to commence and thereafter diligently complete the requested maintenance or repair, or remit payment due, then the non-defaulting party shall be entitled to perform any required maintenance and/or make such repairs. After completing any such maintenance or repairs to the Easement Area, the non-defaulting party shall be entitled to reimbursement from defaulting party for their respective percentage share of the cost of such maintenance or repairs. Such cost shall be reimbursed by defaulting party, or payment for repairs or fees due, to the non-defaulting party within thirty (30) days following written request therefor. Any sums remaining unpaid after said thirty (30) day period, together with interest calculated at the prime rate set forth in the *Wall Street Journal* from time to time, may be secured by a lien on the defaulting party's property and may be perfected in accordance with the laws of the State of North Carolina.

4. **Restrictive Covenants and Conditions.** The Grantee acknowledges and agrees that the Easement Area traverses land that Grantor uses intensively for educational programs with young people. Grantee agrees to respect and protect the Grantor's Property and the safety and security of its program participants and staff. Therefore, and in consideration thereof, Grantee covenants and agrees as follows:

- A. Grantee will direct regular deliveries (e.g., FedEX, UPS, USPS) to a drop box outside the Grantor's Property or to a specific location on Grantor's Property, designated by Grantor and readily accessible to delivery vehicles;
- B. Grantee will not discharge weapons and/or fireworks onto the Grantor's Property;

- C. All pets of Grantee must remain off of the Grantor's Property, except that Grantee shall be allowed to walk pets on a leash across the easement to the public road;
- D. Grantee agrees to comply with the posted speed limit (or 10 m.p.h., whichever is greater) when traveling over the Easement Area;
- E. Grantee shall maintain the confidentiality of gate codes or other security mechanisms that may be shared with Grantee but are used by Grantor to restrict access to Grantor's property;
- F. Grantee's Property may be subdivided, but is restricted to a maximum of resulting two parcels and any resulting subdivision or parcel shall also be encumbered by the terms of this Easement;
- G. Grantee's Property shall be used for single family residential purposes only;
- H. Grantee shall not use the Grantee's Property for multi-family purposes or construct any multi-family dwellings.

5. **Right of First Refusal.** Grantee covenants that it shall not sell, offer to sell, accept any offer to buy, or convey all or any portion of the Grantee's Property unless and until Grantee shall first send a written notice to Grantor offering Grantor the opportunity to purchase Grantee's Property upon the same terms agreed to by the offeror, which notice shall include, without limitation, the name and address of the offeror, the sale price, and other pertinent contract terms. Grantor shall have seven (7) days after receipt of such notice to send written notice to Grantee that it is electing to purchase Grantee's Property upon the identical terms and conditions set forth in the notice.

No sale or conveyance of title of all or any portion of Grantee's Property shall be effective, unless and until Grantor shall have first received notice as above provided and shall have waived in writing its right of first refusal or shall have allowed the seven (7) day period to expire without exercising its right. Grantor's right of first refusal shall run with the land and shall continue each time Grantee's Property is sold, unless and until Grantor or its successor in interest becomes the owner of Grantee's Property, at which time this Easement shall automatically terminate.

As a specific exception to the Right of First Refusal outlined herein, should Grantee transfer the real property by deed, bequest, etc. to any issue, or any sibling, or any issue of her siblings, or any family trust, family corporation, or family limited liability company in which Grantee or one or more of those persons are the principal interest holders, such transfer shall not be subject to the Right of First Refusal, whether or not such transfer is a fair-market or less or more than fair-market price transaction. However, in the event of such transfer or transfers, those receiving property interests from Grantee in such transfers shall take their interests subject to the operation of the Right of First Refusal when they should thereafter transfer such property interests to others, though this exception thereto shall continue to apply.

Grantee, on behalf of themselves, their heirs and assigns, specifically waives the thirty (30) year statutory time limit on preemptive rights contained in N.C.G.S. §41-29

6. **Injunctive Relief and Specific Performance.** Each of the Parties shall be entitled to injunctive relief for any violation of the terms, covenants, and conditions, contained in this Agreement. Furthermore, the Parties shall be entitled to specific performance of any term or provision of this Agreement.

7. **Duration.** The Easement hereby granted, created and declared shall be perpetual and may not be changed, amended, modified, canceled or terminated except by an instrument in writing, executed by the then owners of the respective Properties and any future subdivisions thereof and all mortgagees of all or any portion thereof.

8. **No Public Rights Created.** This Easement shall be reserved solely to and for the benefit of Grantee, and/or their successors or assigns, and shall be held by Grantee, and/or their successors or assigns, to the extent provided herein. The rights, privileges and benefits of said Easement is not intended nor shall be construed as creating any rights in or for the benefit of the general public.

9. **No Barriers; Limitations on Use.** Except for Grantor's current gate system, and/or any future gate or security system(s) implemented by Grantor, all of which Grantee shall have access through, via codes or otherwise, no barriers, fences or other obstructions shall be permitted, erected or maintained by Grantor across the Easement Area (other than as may be necessary in the normal course of construction and/or maintenance). Specifically, each party hereby warrants to the other that neither party nor its agents shall take any action to prevent direct vehicular access over and across the Easement Area.

10. **Mortgagee Liability.** No mortgagee of a party's respective Property shall be liable for any claim, liability, damage or loss arising from the failure to perform or the performance by the owner of the other Property of its obligations hereunder, prior to the ownership by such mortgagee of a parties' Property, and any lien created by Paragraph 3 hereof shall be subordinate in all respects to the lien of any such mortgagee.

11. **Indemnity.** Each party hereby agrees to and shall indemnify and hold the other party harmless from and against any and all claims for injury or death of persons or damages to or loss of property, and costs, losses, expenses or liabilities related thereto (hereinafter referred to as "claims") arising out of or incurred in connection with the exercise of any rights granted hereunder by the other party and its agents, employees, invitees, customers, tenants, licensees, successors and assigns (hereinafter referred to as "related parties"), unless such claims shall have been caused by: (a) a breach of this Agreement by the other party, its successors or assigns, or (b) the gross negligence of the other party or its related parties. Each party shall be responsible for obtaining its own liability and property damage insurance.

12. **Eminent Domain.** Nothing in this Agreement shall be construed to give any party hereto an interest in any award or payment made to the other party in connection with any exercise

of eminent domain or transfer in lieu thereof affecting the other party's property or to give the public or any governmental authority any rights in property not obtained from the owner of such property. The award or payment attributable to the property of one party shall be payable only to the owners in fee thereof and no claim thereon shall be made by the owners of any adjoining property; provided, however, that such owners of adjoining property may file collateral claims with the condemning authority over and above the value of the land area and improvements so taken. It is further agreed that to the extent reasonably practicable, the owner of the fee of the portion of the property so condemned shall promptly repair and restore such property to the condition as it existed immediately prior to such condemnation or transfer, but only to the extent that the proceeds of the condemnation award to such party are sufficient to pay the cost of such restoration and repair.

13. **Severability.** If any provision of this Agreement is hereinafter expressly declared by a court of proper jurisdiction to be invalid or unenforceable, then such provision shall be canceled and severed from this Agreement, and the other provisions of this Agreement shall continue in full force and effect.

14. **Rights of Successors.** The benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, tenants, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

15. **Miscellaneous.** This instrument is to be governed and construed in accordance with the laws of the State of North Carolina. All actions to enforce the provisions hereunder shall be brought in the Superior Court for Transylvania County, North Carolina. In any legal or equitable proceedings for the enforcement of, or to restrain the violation of this Agreement or any provision contained herein, the non-prevailing party or parties shall pay the reasonable attorneys' fees and court costs of the prevailing party or parties in the amount as may be fixed by the Court in such proceedings.

16. **Notice.** Each notice provided for under this Agreement must comply with the requirements of this paragraph. Any notices provided for shall be in writing and shall have been delivered by hand or sent by overnight courier or mailed within the United States Postal Service certified or registered mail, return receipt requested, postage prepaid, addressed to the parties, as follows:

Grantor: Eagle's Nest Foundation
43 Hart Rd.
Pisgah Forest, NC 28768
Attn: Executive Director of the Foundation

Grantee: Helen Valentine Waite or current property owner
422 Sun Lodge Rd.
Pisgah Forest, NC 28768

17. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms and provisions hereof.

18. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals the day and year appearing below their respective signatures.

Signed, sealed and delivered
in the presence of:

GRANTOR:

EAGLE'S NEST FOUNDATION

By: Elizabeth K. Byrd

Print Name: Elizabeth K. Byrd

Its: President Board of Trustees

Date: 4/13/2021

Kimberly T. Rades

Print Name: Kimberly T. Rades

Franklin Kernes

Print Name: Franklin Kernes

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

The foregoing instrument was acknowledged before me this 13th day of April 2020, by Elizabeth K. Byrd as President Board of Trustees of EAGLE'S NEST FOUNDATION, on behalf of the organization. He/She is personally known to me or has produced Driver's License as identification, and who did take an oath.

Lisa P. Carter
Notary Public
Iredell County, NC
My Commission Expires September 06, 2025

Lisa P. Carter
Notary Public
Printed Name: Lisa P. Carter
My commission expires: 09/06/2025

GRANTEE:

Michael Marson
Print Name: Michael Marson

Helen Waite
Helen Waite

Ketia Goodson
Print Name: Ketia Goodson

STATE OF NC
COUNTY OF TRENTON

The foregoing instrument was acknowledged before me this 12 day of April 2020, by Helen Waite. She is personally known to me or has produced ncol 000002411617 v.p. 4/15/24 as identification and who did take an oath.

Damen LaForenza
Notary Public
Printed Name: Damen LaForenza
My commission expires 2/5/2022



EXHIBIT "A"

EASEMENT AREA

Being 10 feet on either side of the center of the existing gravel roadway, which begins at the northern intersection of Everett Road and travels in a southerly direction across the Grantor's Property between two existing bodies of water, extends into and through the existing gravel parking area, continues beyond the gravel parking area and terminates at the intersection with the existing gravel roadway that leads onto the Grantee's Property. Said gravel roadway being depicted on Plat File 16, Page 871, Transylvania County Registry.

JOINDER AND CONSENT
TO
GRANT OF ACCESS EASEMENT AGREEMENT

The undersigned, on behalf of FIRST CITIZENS BANK (the "Lender"), being the Owner and Holder of that certain Mortgage executed 8/10/2020, by EAGLE'S NEST FOUNDATION, recorded on 8-10-2020 in Official Records Book 933, Page 716; of the Public Records of Transylvania County, North Carolina (the "Security Document"), hereby joins in and consents to the recording of the Grant of Access Easement Agreement and agrees that the lien of the Mortgage shall be subordinate and subject to said Grant of Access Easement Agreement and all rights created thereunder.

IN WITNESS WHEREOF, the Lender has caused these presents to be executed by its undersigned officer thereunto duly authorized on this 6th day of April, 2020/2021.

Signed, sealed and delivered
in the presence of:

Print Name: _____

Print Name: _____

By: [Signature]

Print Name: RYAN P. CANNON

Title: SVP

STATE OF North Carolina
COUNTY OF HENDERSON

2021 SWORN TO AND SUBSCRIBED before me this 6th day of April,
2020 by Ryan P. Cannon, as Senior Vice President of
First Citizens Bank, on behalf of the Lender, who is personally
known to be the person described in and who executed the foregoing instrument or who produced
_____ as identification and who did take an oath.



Tamara H. Tapia
Notary Public
Printed Name: Tamara H. Tapia
My Commission Expires: May 19, 2021

JOINDER AND CONSENT
TO
GRANT OF ACCESS EASEMENT AGREEMENT

The undersigned, on behalf of FIRST CITIZENS BANK (the "Lender"), being the Owner and Holder of that certain Mortgage executed 12/11/2019, by EAGLE'S NEST FOUNDATION, recorded on 12/12/2019 in Official Records Book 904, Page 279, of the Public Records of Transylvania County, North Carolina (the "Security Document"), hereby joins in and consents to the recording of the Grant of Access Easement Agreement and agrees that the lien of the Mortgage shall be subordinate and subject to said Grant of Access Easement Agreement and all rights created thereunder.

IN WITNESS WHEREOF, the Lender has caused these presents to be executed by its undersigned officer thereunto duly authorized on this 6th day of April, 2020, 2021

Signed, sealed and delivered
in the presence of:

Print Name: _____

Print Name: _____

By: [Signature]
Print Name: RYAN P. CANNON
Title: SVP

STATE OF North Carolina
COUNTY OF HENDERSON

SWORN TO AND SUBSCRIBED before me this 6th day of April, 2020 by Ryan P. Cannon, as Senior Vice President of First Citizens Bank, on behalf of the Lender, who is personally known to be the person described in and who executed the foregoing instrument or who produced _____ as identification and who did take an oath.



Tamara H. Tapia
Notary Public
Printed Name: Tamara H. Tapia
My Commission Expires: May 19, 2021