

NORTH CAROLINA GENERAL WARRANTY DEED

Revenue: Exempt (G.S. §105-228.28)
Macon County PIN#: 6595-31-6042

Prepared by and return to:
John F. Henning, Jr.
A Licensed NC Attorney
Campbell Shatley, PLLC
674 Merrimon Avenue, Suite 210
Asheville, NC 28804

No title examination was performed by the preparer of this instrument.

THIS DEED, made and entered into this the 1st day of April, 2019, by the TOWN OF FRANKLIN, a body politic and corporate of the State of North Carolina, Grantor; and NIKWASI INITIATIVE, a nonprofit corporation formed under the laws of the state of North Carolina, having a principal mailing address of P.O. Box 2197, Franklin, NC 28744, Grantee;

WITNESSETH:

WHEREAS, the Grantor is the owner of that property described herein below, being commonly known as the Nikwasi historical and archeological site, having been entered in the National Registry of Historic Places on November 26, 1980 (NRHP reference no. 80004598) (the "Property");

WHEREAS, the Grantor was conveyed title to the Property by the deed described below for the express purpose that the Property and the mound located thereon be preserved for the public and for posterity, that for such purpose the said deed provides that Property "shall be kept as it now stands and

shall not be excavated, explored, altered, or impaired in any way or used for any commercial purpose, and shall be kept as a monument to the early history of Macon County,” subject to which limitations the Town was “authorized and empowered to exercise such control over the [Property] as it might do over other public property belonging to it,” including the execution of any deed, lease or other contract for the Property not interfering with these purposes;

WHEREAS, the Grantor is authorized pursuant to G.S. §§160A-266(b) to dispose of real property of any value by private negotiation and sale where (i) the real property conveyed is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relation to other such property, and (ii) the real property is to be conveyed to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance, and (iii) a preservation agreement or conservation agreement as defined in G.S. §121-35 is placed in the deed conveying said property to the nonprofit or trust;

WHEREAS, pursuant to G.S. § 160A-266(b), the grantee of such property shall only dispose of or use the said real property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and where appropriate, secure rights of public access;

WHEREAS, the Grantee is a nonprofit corporation duly constituted pursuant to Article 55A of the North Carolina General Statutes, organized according to its Articles of Incorporation filed with the North Carolina Secretary of State with the purpose of “preserving the sense of place of the Nikwasi Mound, and expanding the understanding of the mound and the surrounding area through improved access, interpretation and education activities,” and using “engaged partnerships [to] focus on developing cultural interpretations resources for the nationally significant cultural corridor from Cherokee to Franklin and to the headwaters of the Little Tennessee River, and encouraging sustainable

economic growth of the entire corridor area”; and

WHEREAS, the Grantee was granted 501(c)(3) status as a public charity, pursuant to which (and in addition to the Grantee’s Articles of Incorporation) the Grantee’s assets are irrevocably devoted to public, charitable purposes and may not accrue to the benefit of or be transferred to any private person or entity;

WHEREAS, due to the foregoing, the Grantor finds that the Grantee is qualified, sufficient and suitable grantee to hold title to the Property pursuant to applicable law for the purposes set forth in this instrument;

WHEREAS, the Grantee, by duly authorized execution of this instrument by its co-chairs, agrees to be bound by the terms, restrictions, reservations, easements, and covenants herein, including without limitation those set forth in Exhibit A, attached hereto and made a part hereof as though fully set forth herein;

WITNESSETH that the Grantor, in consideration Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency is acknowledged, hereby grants, bargains, sells, transfers and conveys and by these presents does transfer and convey to the Grantee, its successors and assigns, in fee simple, all of that tract or parcel of land in Macon County, State of North Carolina, being more particularly described as follows:

Being all of the property, easements, privileges and appurtenances described in that deed dated October 7, 1946 from W. Roy Carpenter to the Town of Franklin, recorded in the Office of the Register of Deeds for Macon County in Deed Book O-5, page 203, and being further described therein as follows:

“BEGINNING at an iron stake on the Northwest margin of the right of way of State Highway No. 23, said iron stake being situated North 53 degrees 56 minutes West 21 feet from an iron pin driven by the edge of the concrete, said iron pin being witnessed by three marks chiseled in the highway each six inches from said iron pin; runs from the point of beginning North 53 degrees 56 minutes West 130 feet to an iron stake near the edge of the pavement of the old road; thence North No degrees 40 minutes East 100 feet to an iron stake near the edge of the pavement of the old road; then North 17 degrees 55 minutes East

49.8 feet to an iron stake situated near the edge of the pavement of the old road; then North 42 degrees 44 minutes East 51.8 feet to an iron stake situated near the edge of the pavement of the old road; then South 53 degrees 56 minutes East 197.7 feet to an iron stake situated in the Northwest margin of the right of way of Highway No. 23; thence along the Northwest margin of the highway right of way South 36 degrees 04 minutes West 186 feet to the BEGINNING.”

The Grantor hereby reserves unto itself a nonexclusive permanent easement, for the construction, repair, maintenance, and replacement of a public sidewalk, and for the use thereof by the general public, where the said sidewalk is presently constructed along the southern margin of East Main Street. The Grantor further reserves unto itself an easement ten feet (10’) for the construction, repair, maintenance, and replacement of utility lines and facilities, and easement being bounded on the southern side by the sidewalk as presently constructed.

This conveyance is made subject to easements of record for existing roadways and public utilities.

This conveyance is further made upon the express condition that the Property shall be used only for the purposes expressed herein, subject to the terms and conditions set forth in this instrument and in Exhibit A. In the event that the Property is no longer so used, the Property shall revert to the Grantor, together with all improvements hereinafter constructed thereon, subject to the Permitted Financing defined below.

Grantee covenants with the Grantor that title to the Property and all portions thereof shall be held exclusively by the Grantee for the purposes expressed herein, and may be transferred only upon the express prior written consent of the Grantor. Grantor hereby reserves unto itself the option, prior to any transfer of the Property, to require the Grantee to convey the Property to the Grantor at no cost to the Grantor (the “Right of First Refusal”).

In the event that Grantee or any other duly approved future transferee of the Property shall 1) become unable to carry on business in the state of North Carolina, whether through voluntary or administrative dissolution, 2) declare or file for bankruptcy, 3) become insolvent, or 4) due to any other cause or operation of law fail or become unable to carry out the purposes expressed herein, the Property shall revert to the Grantor, together with all improvements hereinafter constructed thereon. The reversion shall be automatic, but Grantor shall file a document with the Macon County Register of Deeds evidencing the reversion.

TO HAVE AND TO HOLD the parcel of property described herein and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee that the Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is free and clear of encumbrances, and that the Grantor will warrant and defend the title against all lawful claims by all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has caused these presents to be signed in its name by its Mayor, and attested to by its Town Clerk, and its official seal to be affixed, the day and year first above written.

[The remainder of this page intentionally left blank.]

TOWN OF FRANKLIN

By: _____ (SEAL)

Robert S. Scott, Mayor

Attest

Travis Tallent, Town Clerk

(OFFICIAL SEAL)

STATE OF NORTH CAROLINA
COUNTY OF MACON

I, _____, a Notary Public, of the aforesaid County and State, hereby certify that Robert S. Scott, with whom I am personally acquainted, first being duly sworn by me, says that he is the duly elected Mayor of the Town of Franklin and Travis Tallent is the duly appointed Town Clerk, the Grantor described in and which executed the foregoing instrument, and that he knows the official seal of said Town; that the seal affixed to the foregoing instrument is the official seal and the name of the Town was subscribed thereto by its duly authorized Mayor and that said Mayor and Town Clerk subscribed their names thereto and said common seal was affixed, all by authorization of the Town Council, and that instrument is the act and deed of the Town of Franklin.

Witness my hand and NOTARIAL SEAL, this the _____ day of April, 2018.

Notary Public
(NOTARIAL SEAL)

My Commission Expires:

NIKWASI INITIATIVE

By: _____ (SEAL)
Barbara McRae, Co-Chair

By: _____ (SEAL)
Juanita Wilson, Co-Chair

Attest

Hope Huskey, Secretary

STATE OF NORTH CAROLINA
COUNTY OF MACON

I, _____, a Notary Public, of the aforesaid County and State, hereby certify that Barbara McRae and Juanita Wilson, with whom I am personally acquainted, first being duly sworn by me, say that they are the duly appointed Co-Chairs of Nikwasi Initiative, a North Carolina nonprofit corporation, and acknowledged the due execution of the forgoing instrument by them on behalf and as the act of the said corporation, attested by the said corporation's secretary, the said corporation intending to be fully bound thereby.

Witness my hand and NOTARIAL SEAL, this the _____ day of April, 2018.

Notary Public
(NOTARIAL SEAL)

My Commission Expires:

Exhibit A

Attached to and made a part of that deed dated April 1, 2019 by and between the Town of Franklin and Nikwasi Initiative.

PRESERVATION AGREEMENT

1. Integration and Construction. The terms and conditions of this Preservation Agreement (the "Agreement") are integrated into the deed referenced above as though fully set out therein. This Agreement is intended by the parties and shall be construed to fulfill the requirement contained in G.S. §160A-266(b) of an integrated preservation agreement as defined in G.S. §121-35. The terms used in this Agreement shall have the same meaning as they have in the deed to which the Agreement is attached, unless the context clearly requires a different meaning.

2. Grantee's Corporate Status. At all times, the Grantee shall maintain its corporate character as currently constituted, being a North Carolina nonprofit corporation with designated public charity status under Section 501(c)(3) of the Internal Revenue Code as amended. The Grantee's bylaws shall require as currently adopted, equal representation from the Town of Franklin, County of Macon, Eastern Band of Cherokee Indians, and Mainspring Conservation Trust on the Grantee's Board of Directors. The Grantee shall not amend its bylaws regarding representation without the prior written permission of the Town.

3. Enforcement. These covenants shall be enforced solely by Town of Franklin and administered solely by the Grantee, their respective successors in interest or assigns; and in all subsequent conveyances of Property (if permitted, subject to the terms of the instrument conveying it), the parties, their successors in interest or assigns shall retain the respective rights and responsibilities provided in this Agreement. In the event that the Grantee, or its successors in interest by corporate merger cease to exist, then in such event the Grantee shall assign all of its rights and interests in these easements, covenants, and conditions subject to such duties and obligations which it assumes hereby to a non-profit corporation of responsibility which exists for substantially the same reasons as the Town itself (as described hereinabove). Any corporate assignee shall be approved by the Town before any transfer is effected, and if no such corporation be agreeable or available for such assignment then, under such circumstances the Town may require the reconveyance of the Property to the Town or its assigns.

4. Maintenance. The Grantee covenants and agrees to continuously maintain, repair, and administer the Property in accordance with the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties (1992) so as to preserve the historical integrity of features, materials, appearances, workmanship and environment of the Property. Maintenance shall be continuously provided. Said standards are attached hereto and incorporated in these covenants by reference.

5. Prior Approval Required for Modifications. Unless prior written approval by the Town Council of the Town is obtained, no alteration, physical or structural change or addition to the Property shall be made. Such approval shall not be unreasonably withheld.

- (a) Unless the plans and exterior designs for such structure or addition have been approved in advance in writing by the Town, no addition or additional structure shall be constructed or permitted to be built upon the Property. The Town in reviewing the plans and designs for any addition or additional structure shall consider the following criteria: exterior building materials; height; fenestration; roof shapes, forms, and materials; surface textures; expression of architectural detailing; scale; relationship of any additions to the main structure; general form and proportion of structures; orientation to street; setback; spacing of buildings, defined as the distance between adjacent buildings; lot coverage; use of local or regional architectural traditions; and effect on archeological resources. Contemporary designs for additions or additional structures shall not be discouraged when such

alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, color, material and character of the property and its environment.

- (b) No part of the Property may be removed or demolished without the prior written approval of the Town, including without limitation structures or features of the Property that are in existence at the time of this instrument's creation or later approved for addition to the Property.
- (c) No portion of the Property may be subdivided.
- (d) Express written approval of the Town is required for removal of any living plants, shrubbery or trees from the Property, unless immediate removal is necessary for the protection of any persons coming onto the Property or of the general public; or for the prevention or treatment of disease; or for the protection and safety of the or other permanent improvements on the Property. This subsection shall not apply to the regular removal of noxious or invasive weeds or other plants.

6. **Covenant to Obey Public Laws.** The Grantee shall abide by all federal, state, and local laws and ordinances regulating the rehabilitation, maintenance and use of the Property.

7. **Inspection.** Representatives of the Town shall have the right to enter the Property at reasonable times, after giving reasonable notice, for the purpose of inspecting the grounds and any permitted buildings to determine if there is compliance by the Grantee with the terms of these covenants.

8. **Public Access.** The general public shall have access to the Property, subject only to reasonable rules of access which may address, without limitation, hours of operation and preservation of the Property, which rules may be adopted by the Grantee with prior approval of the Town. Such rules must be administered in a nondiscriminatory fashion Nothing shall be erected or allowed to grow on the Property which would impair the visibility of the property and the buildings from the street level or other public rights of way.

9. **Extinguishment.** The Grantee and the Town recognize that an unexpected change in the conditions surrounding the Property may make impossible or impractical the continued use of the Property for conservation purposes and necessitate the extinguishment of this Historic Preservation Agreement. Such an extinguishment must comply with the following requirements:

- (a) The extinguishment must be the result of a final judicial proceeding.
- (b) The Town shall be entitled to share in the net proceeds resulting from the extinguishment in an amount in accordance with the then applicable regulations of the Internal Revenue Service of the U. S. Department of the Treasury.
- (c) The Town agrees to apply all of the portion of the net proceeds it receives to the preservation and conservation of other property or buildings having historical or architectural significance to the people of the State of North Carolina.
- (d) Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantor of any portion of the Property after the extinguishment.

10. **Remedies.** In the event of a violation of covenants contained in this Agreement, the Town then shall have an option to require the reconveyance of the Property at no cost to the Town, provided that it shall

give the Grantee written notice of the nature of the violation and the Grantee shall not have corrected same within the ninety (90) days next following the giving of said notice. Provided further, that nothing in this Agreement shall be construed to limit the terms of the deed to which this Agreement is attached and made part; any violation of such terms resulting in immediate reversion of title to the Property shall not be limited hereby.

11. Causes of Action; No Waiver. In the event of a violation of these covenants and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to the Town. No failure on the part of the Town to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Town shall discharge or invalidate such covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of the Town to enforce the same in the event of a subsequent breach or default. In any case where a court finds that a violation has occurred, the court may require the Grantee to reimburse the Town for all expenses incurred in stopping, preventing and correcting the violation, including but not limited to reasonable attorney's fees.

12. Insurance. The Grantee shall keep the Property insured under a comprehensive general liability policy that names the Town as an additional insured and that protects the Grantee and the Town against claims for personal injury, death and property damage. The Grantee shall insure any permitted buildings upon the Property against damage by fire or other catastrophe. If a permitted structure is damaged by fire or other catastrophe to an extent not exceeding fifty percent (50%) of the insurable value of those portions of the building, then insurance proceeds shall be used to rebuild those portions of the Property.

13. Duration of Covenants. The Grantee does hereby covenant to carry out the duties specified herein, and these restrictions shall be covenants and restrictions running with the land, which the Grantee, its permitted successors and assigns, covenant and agree, in the event the Property is permitted to be transferred, will be inserted in the deed or other instrument conveying or disposing of the Property. Except as otherwise provided herein, the covenants and restrictions set forth above shall run in perpetuity.