

This Instrument Prepared By:
Mark Jendrek
P.O. Box 549
Knoxville, Tennessee 37901
865-824-1900

**Notice of Conveyance
Required. See Section 12.2**

**Transfer Payment Required at
Conveyance. See Section 12.4**

BK/PG: WD203/1287-1337

16003231

51 PGS:AL-EASEMENT

ANNETTE BATCH: 41181

12/22/2016 - 09:41 AM

VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	255.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	257.00

STATE OF TENNESSEE, HUMPHREYS COUNTY
JANET H. CROWELL
REGISTER OF DEEDS

DEED OF CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS CONSERVATION EASEMENT ("Easement") is made as of the 22
day of December, 2016, by Crockett 941, LLC, a Delaware limited liability
company ("Grantor"), in favor of Foothills Land Conservancy, a Tennessee non-profit
corporation ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of approximately Nine Hundred
Forty-One and 76/100 (941.76) acres of real property, more or less, in two (2) adjacent
parcels located in Humphreys County, Tennessee, certain portions of which, the
Inholdings (as defined below), are excluded from the Conservation Easement (as defined
below), and all of which is more particularly described on Exhibit A-1, and shown on
Exhibit A-2, both of which are attached hereto and incorporated by this reference
(excluding the Inholdings, "Property"); and

WHEREAS, Grantor certifies that the Property possesses certain ecological,
natural, scenic, open space, and wildlife habitat values, more specifically set forth below
(collectively, "Conservation Values"), of great importance to Grantor, the citizens and
residents of, and visitors to, Humphreys County, Tennessee, and the people of, and
visitors to, the State of Tennessee, including visitors to the Nathan Bedford Forrest State
Park, Johnsonville State Historical Park, Dry Branch State Class II Natural-Scientific
State Natural Area, Mousetail Landing State Park, Natchez Trace State Park, the Land
Between the Lakes, and the other parks and natural areas in and around Humphreys
County, Tennessee, and which further local, state, and national goals to conserve scenery
and wildlife for the enjoyment of future generations; and

WHEREAS, the Property remains substantially undeveloped and is ecologically well-balanced, and includes a variety of mature trees, creeks, and streams, all of which provide habitat for a number of species of wildlife; therefore, preservation of the Property is desirable for conservation and ecological reasons as well as for aesthetic reasons; and

WHEREAS, the Property is an undeveloped, forested property and contains high integrity examples of the White Oak-Mixed Oak Dry-Mesic Alkaline Forest (G4G5); and

WHEREAS, the Property contains at least 153 species of vascular plants including several associated with barrens such as southern prairie aster, Wildenow's croton, post oak, and Maryland senna; and

WHEREAS, the Property contains habitat for over 10 Greatest Conservation Need species identified in the 2015 Tennessee State Wildlife Action Plan, including Wood Thrush, Louisiana Waterthrush, Yellow-breasted Chat, Prairie Warbler, Timber Rattlesnake, and Eastern Box Turtle; and

WHEREAS, the Property lies in close proximity to a 52-acre conservation easement held by the Natural Resources Conservation Service, a 205-acre conservation easement held by the Nature Conservancy, and a 54-acre conservation easement held by The Land Trust for Tennessee; and

WHEREAS, the Property is contiguous with approximately 3,000 acres of conservation easement lands held by Grantee, including the Little Pumpkin Creek South, Little Pumpkin Creek North, and Ginn conservation properties, forming nearly 4,000 acres of contiguous conservation land; and

WHEREAS, the Tennessee State Wildlife Action Plan (2015) ranks nearly the entire Property as high or very high priority for the conservation of terrestrial, downstream aquatic, and nearby karst habitats; and

WHEREAS, the Property contains approximately 3.5 miles of intermittent streams including tributaries to Grandmother Branch and Barren Hollow Branch according to the USGS National Hydrography Dataset. Streams on the Property drain into the Duck River, which is ranked as a high conservation priority by the Tennessee State Wildlife Action Plan 2015. According to the U.S. Geological Survey, the Duck River is one of three hot spots for fish and mussel diversity in the entire world and is generally considered to be the richest river in varieties of freshwater animals on the North American continent; and

WHEREAS, the Nature Conservancy's *Resilient Sites for Terrestrial Conservation in the Southeast Region Assessment* (2014) ranked the entire Property as "Above Average" or "Slightly Above Average" for its resilience to climate change, based on the diversity of microhabitats and climatic gradients available on the Property, and habitat connectivity in the landscape, indicating the Property is a strategic priority for biodiversity conservation in the face of climate change; and

WHEREAS, the entire Property lies within the Duck River Terrestrial Conservation Site, a significant ecological area prioritized for conservation actions, identified in The Nature Conservancy's 2001 Ecoregional Assessment for the Interior Low Plateau; and

WHEREAS, the specific Conservation Values of the Property are further documented in an inventory of relevant features of the Property, which is on file at the offices of Grantee, a partial listing of which is attached hereto as Exhibit B and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that, Grantor certifies and the parties agree, provide, collectively, an accurate representation of the Property at the time of this grant, and which is intended to serve as an objective, though non-exclusive, information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by prohibiting those land uses on the Property that impair, interfere, or are inconsistent with those Conservation Values; and

WHEREAS, Grantor further intends, as the owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly supported, tax-exempt nonprofit organization and is a qualified organization under Sections 501(c)(3), 170(b)(1)(A)(vi) and 170(h), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder ("Internal Revenue Code"), whose primary purpose is to preserve land, water, air, wildlife, scenic qualities, and open space by implementing programs for, without limitation, protecting unique or rare natural areas, water front, stream corridors, and watersheds; and

WHEREAS, Grantee has a commitment to protect the Conservation Values of the Property and has the resources to enforce conservation restrictions; and

WHEREAS, preservation of the Property shall serve the following purposes ("Conservation Purposes"):

- (a) Preservation of the viewshed for the scenic enjoyment of the general public, which will yield a significant public benefit;
- (b) Protection of a relatively natural habitat for fish, wildlife, plants, and the ecosystems in which they function;
- (c) Preservation of open space for the scenic enjoyment of the general public, and pursuant to a clearly delineated government

conservation policy which provides significant public benefit from both open space (including farm land and forest land) and agricultural use; and

WHEREAS, Grantor and Grantee desire to perpetually conserve the natural, scientific, educational, open space, and scenic resources of the Property to accomplish the Conservation Purposes; and

WHEREAS, Grantor intends to grant the conservation easement ("Conservation Easement") and impose the restrictive covenants on the Property as set forth in this Easement to accomplish the Conservation Purposes;

NOW, THEREFORE, as an absolute charitable gift with no monetary consideration, but in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the sufficiency of which is hereby acknowledged, and pursuant to the laws of Tennessee and in particular the Tennessee Conservation Easement Act of 1981, Tennessee Code Annotated Section 66-9-301 et seq., and the Tennessee Agricultural, Forestry and Open Space Land Act of 1976, Tennessee Code Annotated Section 67-5-1001 et seq., Grantor hereby voluntarily, unconditionally, and absolutely declares the restrictions set forth herein and grants and conveys to Grantee the Conservation Easement, in gross, in perpetuity, on, in, and over the Property, of the nature and character and to the extent hereinafter set forth, together with covenants running with the land, in perpetuity, to accomplish the Conservation Purposes. Grantee hereby accepts the grant of the Conservation Easement and agrees to hold the Conservation Easement exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in this Easement. The execution, delivery, and recordation of this Easement creates a property right vesting immediately in Grantee.

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever in its current natural, scenic, and undeveloped condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property or the Conservation Purposes of this Easement, subject only to the terms and provisions set forth herein. Grantor intends that this Easement will allow the use of the Property for such activities that are not inconsistent with the purposes of this Easement, including, without limitation, those involving permitted agricultural uses, forest management and protection, fire management and control, wildlife habitat improvement, and other permitted recreational uses that are not inconsistent with the purposes of this Easement.
2. **Rights of Grantee.** To accomplish the purposes of this Easement, the following rights are hereby conveyed to Grantee:
 - (a) To preserve and protect the Conservation Values of the Property and enforce the Conservation Purposes of this Easement;

- (b) To enter on the Property at all reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with the terms of this Easement; provided, however, that, except in cases where Grantee determines that immediate entry is required in order to prevent, terminate, or mitigate a violation of this Easement, or where entry is required to inspect the Property if a violation of the terms of this Easement is alleged or believed to have occurred, such entry shall be on prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and enjoyment of the Property;
- (c) To prevent any activity on or use of the Property that is inconsistent with the Conservation Purposes of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth herein;
- (d) To use whatever technology or technological devices might be available from time to time to monitor and accomplish the purposes of this Easement, including, without limitation, still photography; audio and video recording and monitoring; aerial imaging, including, without limitation, still, audio, and video recording, archived, and real-time; and any other aid in monitoring which may yet be invented, discovered, or made available, all of which are intended to be used for the purpose of assuring compliance by Grantor with the provisions of this Easement;
- (e) To require the implementation of varying management practices for different areas of the Property to the extent necessary or reasonable, in Grantee's sole discretion, for the preservation of the Conservation Values of the Property, and for the enforcement of the Conservation Purposes of this Easement; and
- (f) To engage consultants, agents, and other third parties to assist Grantee in carrying out the rights of Grantee provided in this Easement.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, subject to those reserved rights set forth in **Section 4** or elsewhere herein:

3.1 Subdivision. The Property may not be divided, partitioned, or subdivided. The terms "Subdivided" and "Subdivision" shall include a long-term lease or other use of the Property that creates the characteristics of a subdivision of the Property as determined in the sole discretion of Grantee; provided, however, given that the Property consists of two (2) distinct, adjacent tracts of land, this **Section 3.1** shall not prohibit the sale or other conveyance of

one of those two tracts separate and apart from the sale or conveyance of the other;

- 3.2 Commercial Development.** Any commercial or industrial use other than those relating to agriculture, silviculture, education, scientific research, de minimis recreational activity, or other customary rural enterprise, is prohibited;
- 3.3 Topography.** The filling, excavating, dredging, surface mining, drilling, or any removal of topsoil, sand, gravel, shale, rock, peat, minerals, or other materials, on or from the Property. To the extent Grantor owns the mineral rights with respect to the Property, also prohibited is the exploration for, or development and extraction of, minerals and hydrocarbons by any mining method or any other method that, in the reasonable discretion of Grantee, would significantly impair or interfere with the Conservation Values of the Property or the Conservation Purposes of this Easement; provided, however, minimal filling, excavating, and dredging shall be permitted as may be necessary for creekfront and waterfront stabilization, wildlife habitat rehabilitation, grading and/or rerouting roads and travelways to the extent doing so enhances and/or further protects the Conservation Values of the Property, and rehabilitation and pond maintenance as may be provided in **Section 4** of this Easement. No surface mining of any kind shall be permitted; all surface mining is strictly prohibited;
- 3.4 Dumping; Underground Tanks.** The storage or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, or any placement of underground storage tanks in, on, or under the Property, other than water tanks used for the purpose of establishing a water reserve for fire fighting purposes, so long as the area disturbed for such permitted placement is revegetated and restored to its natural condition promptly after completion of the work. There shall be no changing of the topography through the disposal of soil, spoil, or other substance or material such as landfill or dredging spoils, nor shall activities that could cause erosion or siltation on the Property be conducted on the Property or on adjacent property, if owned by Grantor;
- 3.5 Construction.** The placement or construction of any buildings, structures, communication towers or antennae, and related facilities or other improvements of any kind, other than as may be described in **Section 4** of this Easement;
- 3.6 Access.** Access by the public at large, except with the express permission of Grantor or pursuant to a written agreement with an agency of the State of Tennessee so long as the provisions of such agreement do not compromise,

in Grantee's sole discretion, the Conservation Values of the Property or the Conservation Purposes of this Easement;

- 3.7 Hunting.** Hunting on or from the Property, except by permission of Grantor. This may in no way be interpreted to support any activity resembling a commercial hunting preserve;
- 3.8 Motorized Vehicle Use.** No All Terrain Vehicles or similar self-powered vehicles are allowed on the Property except as used by Grantor and/or Grantee, and then only for the purpose of maintaining and monitoring the Property;
- 3.9 Signs.** The placement of any commercial signs or billboards on the Property except those small, relatively unobtrusive signs, the placement, number, and design of which do not significantly diminish the scenic character of the Property, may be displayed to state the name and address of the Property and the names of persons living on the Property, to advertise the Property for sale or rent, to post the Property to control unauthorized entry, to provide notice that the Property is protected property, to identify Grantee as the holder of an interest in the Property, to identify a significant distinction of the Property, such as a Century Farm or National Register of Historic Places, or as may be required by the pre-existing uses of the Property;
- 3.10 Introduced Species.** The intentional introduction of any exotic or invasive plant species on the Property;
- 3.11 Surface Water; Ground Water.** The pollution, contamination, or alteration of surface water, natural water courses, lakes, ponds, marshes, ground or subsurface water, or any water on or near the Property, except such alteration as may be described below in **Section 4**, or as may be legally permitted for irrigation or for use in ponds. No ground or surface water from the Property shall be removed, collected, impounded, stored, transported, diverted, or otherwise used for any purpose or use outside the boundaries of the Property without the express written consent of Grantee, which consent may be granted or withheld in Grantee's sole discretion;
- 3.12 Timber.** The cutting of any trees other than pursuant to a forest management plan approved by Grantee, and in accordance with both the Grantee Guidelines (as defined below) and the Best Management Practices as published by the Tennessee Division of Forestry, all as more particularly described in **Section 4** of this Easement; provided, however, the cutting down or removal of dead, diseased, or storm-damaged trees that may pose a threat to life or property on the Property, trees to be removed for wildfire control purposes as determined by the Tennessee Division of Forestry, or that may be required in order to maintain views, or for use as personal

firewood, shall be permitted; provided further, however, the provisions of this **Section 3.12** shall not be used or allowed for the purpose of avoiding compliance with the Forest Management provisions set forth in **Section 4** of this Easement; the allowances in this **Section 3.12** are intended to be minimal in scope;

- 3.13 Management Areas.** While the entire Property is subject to management for the preservation of the Conservation Values of the Property, there are variations of management techniques for different areas of the Property. Notwithstanding any other provision of this Easement, there shall be no timber cutting, timber harvesting, clearing or removal of vegetation, clearing or removal of leaf litter or other natural detritus, or any other activity that may have an adverse impact on the Conservation Values of the Property or the Conservation Purposes of this Easement in any area identified and designated by Grantee, either at the time of the conveyance of this Easement, or any time in the future, as a "Management Area B." Such areas include, but are not limited to, areas with significant Conservation Values with respect to relatively natural habitat for fish, wildlife, or plants or similar ecosystems and include, with or without specific designation by Grantee, any area within 100 feet, or such other distance as may be required by (a) the Grantee Guidelines or (b) the specific terrain, of any cave, cave opening, or cave entrance; wetlands; any area evidencing aquatic or wetland-based plant species; creeks; streams; and blue-line streams. The same constraints apply to any area designated by Grantee as a "Management Area C" with the exception of the 100-foot buffer area, which will not apply to any area designated by Grantee as a Management Area C. Notwithstanding the above, in the event Grantee makes a written determination that certain forest management or other activities within a Management Area B or a Management Area C would enhance the Conservation Values of the Property or would further protect the Conservation Purposes of this Easement, subject to any and all Grantee requirements, such forest management or other activities, as outlined in writing by Grantee, shall be permitted within a Management Area B and/or within a Management Area C;
- 3.14 Density.** No portion of the protected property may be used to satisfy land area requirements for other property not subject to this Conservation Easement for purposes of calculating building density, lot coverage, or open space under otherwise applicable laws, regulations, or ordinances controlling land use. No development rights that have been encumbered or extinguished by the Easement may be transferred to any other property; and
- 3.15 Any Use Inconsistent with Purpose.** The parties recognize that this Easement cannot address every circumstance that may arise. The parties

agree on the Conservation Values of the Property and the Conservation Purposes of this Easement, and that those Conservation Values and the Conservation Purposes of this Easement are paramount to any other use of the Property. The Property will be retained forever in its natural, scenic, and undeveloped condition, and will be used in a manner so as to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, its wildlife habitat, and/or natural resources. Any use or activity which is inconsistent with, or materially threatens, the Conservation Values of the Property or the Conservation Purposes of this Easement is prohibited.

All activity on the Property shall be conducted so as to avoid the occurrence of soil erosion and sedimentation of streams or other water courses. Without limitation of the foregoing, Grantor and Grantee shall, in identifying practices that will prevent soil erosion and sedimentation, refer to the soil conservation practices as then established or recommended by the Natural Resources Conservation Service of the United States Department of Agriculture or any successor governmental office or organization performing the same function within the United States government, as approved in advance by Grantee.

4. **Reserved Rights.** Grantor reserves to itself and to its successors and assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and that are not inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, and specifically subject to all other provisions of this Easement, the following rights are expressly reserved (collectively, "Reserved Rights"):

4.1 **Reside.** The right to reside on the Property in perpetuity within the areas described in **Section 4** of this Easement;

4.2 **Convey and Pledge.** The right to sell, donate, mortgage, lease, bequeath, or otherwise convey the Property, provided such conveyance is subject to the terms of this Conservation Easement, written notice is provided to Grantee, and the Transfer Payment (as defined below) is paid to Grantee, all in accordance with the provisions of **Section 12** of this Easement. The Property consists of two (2) distinct, adjacent tracts of land. Grantor reserves the right to sell or convey either of those tracts separate and apart from the sale or conveyance of the other, and any such sale or conveyance shall not constitute a "subdivision" of the Property as prohibited by the provisions of **Section 3.1** of this Easement;

4.3 **Public Park.** The right to designate the Property, or specific portions thereof, as a public nature park or refuge for low impact activities such as hiking and nature study subject to the prior, written approval of Grantee,

and further subject to a written agreement with an agency of the State of Tennessee, so long as the provisions of such agreement do not compromise the Conservation Values of the Property or the Conservation Purposes of this Easement in the sole discretion of Grantee;

4.4 Inholdings.

- (a) Described on Exhibit A, and graphically depicted on Exhibit C, are two (2) 2-acre tracts both of which are within the metes and bounds area encumbered by this Easement, but which, pursuant to Exhibit A, are specifically excluded from the Property subject to this Easement and the constraints and restrictions of this Easement. Each of these tracts, identified on Exhibit A as Inholdings 1 and 2 (collectively, "Inholdings" and, generically, each is referred to, individually, as an "Inholding"), may be completely surrounded by the Property, and may require an ingress, egress, and utility easement over the Property in order to enjoy the use and benefit of the Inholdings. Access to each Inholding is on a currently established, maintained travelway or road. Grantor has, pursuant to Exhibit A, reserved an ingress/egress and/or utility easement over and across the Property to each of the Inholdings (individually, an "Inholding Access Easement"), the parameters of which are subject to this Easement. Grantor hereby agrees that prior to accessing any Inholding for any purpose other than to view it in its natural, undisturbed state, Grantor shall provide any and all plans, concepts, drawings, and a detailed, written description of the use to which any given Inholding will be put, together with any and all structures which will be constructed on such Inholding (individually, "Inholding Use"), which may not adversely affect, in Grantee's sole discretion, the Conservation Values of the Property or the Conservation Purposes of this Easement. In the event the Inholding Use adversely affects, in Grantee's sole discretion, the Conservation Values of the Property or the Conservation Purposes of this Easement, Grantee may withhold its consent to Grantor's use of the Inholding Access Easement. There will be a rebuttable presumption that a single dwelling unit or residential-type unit, together with non-dwelling accessory structures of an agricultural nature, such as barns, sheds, or stables, the combined square footage of which shall not exceed Fifteen Thousand (15,000), and the height above ground level of which shall not exceed thirty (30) feet, shall be permitted, subject to Grantee's express written consent. In the event Grantee withholds consent, Grantee shall provide a detailed discussion of the reasons therefor, including what Grantee has identified as adversely affecting the Conservation Values of the Property or the Conservation Purposes of this Easement. Grantor may make such

modifications as are necessary in the Grantor's plans and resubmit same to Grantee for Grantee's further review;

- (b) There shall be no construction activity whatsoever on the Property, including the disturbance of soil for the purpose of creating an Inholding Access Easement, nor removal of any trees on the Property for the foregoing purposes unless and until, in addition to the requirements set forth immediately above, each of the following conditions is satisfied:
- (i) The location and dimensions of any new road, travelway, or driveway, which shall not exceed Twenty-two (22) feet in width, to serve any given Inholding, together with the Inholding Use for that particular Inholding, shall be reviewed and approved by Grantee. The location and dimension of each road, travelway, and driveway, and the Inholding Use must not, in Grantee's discretion, result in any adverse impact on any of the Conservation Values of the Property or the Conservation Purposes of this Easement;
 - (ii) The location of any new road, travelway, or driveway and the location and nature of any new utility facilities shall be identified and surveyed by Grantor, and such survey information shall be provided to Grantee for Grantee's review and approval in the form Grantee requires, at the sole expense of Grantor, before Grantee's approval is granted;
 - (iii) Grantor, and not Grantee, shall bear all responsibility for obtaining permits or other approvals of any state, county, or municipal government for the location and construction of any permitted structure or structures on any given Inholding, including, without limitation, any dwelling, utility facility, road, travelway, driveway, or other structure, the character and location of which are subject to review by and approval of Grantee pursuant to this **Section 4**;
 - (iv) The description of each utility easement area and any new road, travelway, or driveway as reviewed and approved by Grantee and as built by Grantor shall be set forth in the applicable annual monitoring report and will be included with the baseline documentation; and
 - (v) All of Grantee's expenses incurred in the review, approval, and oversight of the Reserved Rights set forth in this **Section 4.4**, as well as the costs of surveying required herein shall be

paid by Grantor. Grantee may require a deposit of its estimated expenses before granting any approval or reviewing any surveys or other submissions by Grantor;

- (c) In the event Grantor, or any holder of any possessory or other interest in any Inholding, does not strictly comply with the provisions of the approved Inholding Use at any time, in Grantee's discretion, in addition to all other remedies set forth herein or at law or in equity, and if the failure to comply on the part of Grantor or on the part of any holder of any possessory or other interest in any Inholding continues beyond the 60-day notice and cure provision described in **Section 6.2** of this Easement, Grantee shall have the unilateral authority to terminate the Inholding Access Easement by recordation of a document to that effect in the Register of Deeds Office for Humphreys County, Tennessee, and, upon such recordation, Grantor, or the holder of any possessory or other interest in such Inholding, shall be legally prohibited from accessing such Inholding, without the necessity of Grantee bringing any legal, administrative, or other formal proceeding; provided, however, nothing in this **Section 4.4(c)** shall have the effect of precluding or over-riding the provisions of **Section 6.4** of this Easement;
- (d) Grantor, as the donor of this Easement, and as the current holder of title to the Inholdings, acknowledges that the preservation of the Conservation Values of the Property and the Conservation Purposes of this Easement are paramount to the interest of the holder of any interest in any Inholding, and consents and agrees, on Grantor's behalf and on behalf of any of Grantor's successors and assigns, that the access to and, therefore, the use of any Inholding shall be terminated by Grantee's unilateral action in the event Grantee, in Grantee's discretion, determines that the continued access to or use of any Inholding will have an adverse impact on the Conservation Values of the Property or the Conservation Purposes of this Easement;

4.5 Agricultural Structures. No accessory structure built or to be built within an Inholding pursuant to **Section 4.4**, such as a barn or shed, shall be used as a living or dwelling site. No such structure shall have a septic system or other wastewater disposal system. The specific location and size of all such structures, which is subject to the express, written approval of Grantee, shall not adversely affect the Conservation Values of the Property nor the Conservation Purposes of this Easement, in the sole discretion of Grantee;

4.6 Utilities. The right to provide utilities to the residential dwelling described herein and any other permitted structure; provided, however, that while

such utilities need not be underground, Grantee shall use its best efforts to locate any aboveground utilities in the least obtrusive location, at a minimum, staying as close as possible to roads, driveways, or other access or maintenance travelways;

4.7 Additional Agricultural Use. Any low-impact agricultural use shall be allowed on the Property with prior notification to, and the written approval of, Grantee provided no existing Conservation Values of the Property are compromised, and further provided the Conservation Purposes of this Easement are not violated or compromised;

4.8 Forest Management. Grantor retains the right to conduct forest management activities by tried and proven forestry methods designed to enhance the quality of the forest. Forest management activities must be conducted in accordance with:

- (i) a Forest Management Plan ("Plan");
- (ii) a Timber Sale Contract ("Contract");
- (iii) a Road Plan ("Road Plan"); and
- (iv) a Harvest Notice ("Notice");

(collectively, "Forest Management Documents") all of which must be in writing and approved by Grantee, in advance (as more specifically set forth below), all of which are more particularly described below, and all of which must comply with:

- (v) the terms, conditions, and provisions of this Easement;
- (vi) specific guidelines adopted by Grantee's Board of Directors, a copy of which was provided prior to the execution and delivery of this Easement ("Grantee Guidelines"), and which may be amended from time-to-time, and which, to the extent they are inconsistent with BMPs (as defined below), shall control;
- (vii) the Tennessee Division of Forestry Best Management Practices Guidelines ("BMPs"), as outlined in the Forestry Best Management Practices Manual in existence as of the date of this Easement or as may be amended from time-to-time by the Tennessee Division of Forestry; and

- (viii) any and all other applicable county, state, and federal forestry laws, rules, and regulations as they may apply to Grantor's specific timber management activities;

Items (v), (vi), (vii), and (viii), above, are collectively referred to as the "Requirements."

Grantee shall review the Forest Management Documents for consistency with the Requirements as well as with the purposes and with the terms, provisions, and conditions of this Easement. If Grantee is required to engage a forestry consultant to review any or all of the Forest Management Documents, Grantor agrees to reimburse Grantee for the costs, expenses, and fees incurred by Grantee in such review. If Grantee determines that any portion of any of the Forest Management Documents is inconsistent with the purposes, terms, provisions, and conditions of this Easement, does not comply with the Requirements, or that any forest management activities contemplated by the Plan could result in a violation of this Easement, Grantee will provide written comments to Grantor identifying and explaining such inconsistencies. Neither Grantee's right to provide comments, nor its actual comments, shall constitute a waiver of the terms of this Easement.

- (a) **Forest Management Plan.** Grantor must submit the Plan to Grantee for review at least ninety (90) days prior to the commencement of any forest management activities. The Plan must consider and be consistent with the Requirements and with the terms of this Easement, and shall be prepared as follows:

- (i) **Plan Preparation.** The Plan must be prepared or approved and acknowledged by (a) the Tennessee Division of Forestry, (b) a forester who has received a degree from an accredited school of forestry located in the United States, (c) a student or students currently enrolled in an accredited school of forestry located in the United States who are working under the direct supervision of a qualified faculty member of such school, or (d) such other qualified person approved in advance and in writing by Grantee. Said Plan shall have been prepared and/or reviewed and updated not more than three (3) years prior to the date it is presented to Grantee for review, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to said date. Otherwise, periodic amendments and updates to the Plan are encouraged but not required.

- (ii) **Content of Plan.** The Plan shall include, at a minimum, the following information, together with maps and charts to support and illustrate the required documentation:
- (a) Grantor's long-term management goals and objectives;
 - (b) Descriptions, mapped locations, and management considerations for:
 - Forest stands (community type, species, age, size, history, condition);
 - Soils;
 - Known unique plant or animal communities and any ecologically sensitive and/or important areas;
 - Known archaeological, cultural, or historic sites;
 - Surface waters, including springs, streams, seeps, ponds, and wetlands; and
 - Existing man-made improvements and features including all roads, buildings, fences, etc.
 - (c) Proposed timber harvest intent, silvicultural treatments, schedules; and
 - (d) Other forest management practices, activities, and schedules.

The Plan is intended to be broad in scope and to contemplate the long-range management of forested areas on the Property.

- (b) **Timber Sale Contract.** No forest management activities shall take place on the Property other than pursuant to the terms and conditions of the Contract between Grantor and the timber purchaser, which must be approved, in advance, by Grantee. Grantor must provide Grantee with a proposed Contract no less than ninety (90) days prior to any timber management activities, setting forth, at a minimum, the following:
- (i) Marking and cutting limitations of each sale area, the size and location of each sale area, a description of each sale area, the type of cutting for each such area (such as "clear

cut" or "seed cut" or "select cut" etc.), the species and estimated yield of each species for each sale area;

- (ii) Any constraints on harvesting;
 - (iii) Details regarding liability and worker's compensation insurance required to be carried by the timber purchaser;
 - (iv) A requirement that Grantee be named as an additional insured on all such policies;
 - (v) An indemnification and hold harmless provision for the benefit of Grantee by the timber purchaser for any liability imposed on Grantee arising out of or related to forest management activities;
 - (vi) A provision regarding damage to any property of Grantor, and specifically prohibiting any logging or timber harvesting outside the areas described in the marking and cutting limitations section; and
 - (vii) An expiration date for the Contract by which (a) harvesting will be complete or, whether complete or not, will terminate under the current Contract, (b) all equipment will be removed from the Property, (c) all roads will have been recovered and/or rehabilitated, and (d) that all timber standing on any area within the marking and cutting limitations areas will again become the property of Grantor.
- (c) **Forest Roads.** Grantor shall have the right to construct new forest management roads and associated improvements such as bridges, culverts, and other related improvements in aid of forest management activities, in consultation with Grantee, all of which must be approved by Grantee prior to the commencement of any forest management activities on the Property ("Road Plan"). The proposed Road Plan shall be provided to Grantee for review no less than thirty (30) days prior to any forest management activities, subject to the following:
- (i) Grantor and/or Grantor's consulting forester, must contact Grantee prior to developing the Road Plan;
 - (ii) Grantor retains the right to maintain and repair existing forest management roads and associated bridges and culverts

(collectively, "Existing Roads") so long as such maintenance and repair, and the Existing Roads themselves, do not have an adverse impact on the Conservation Values of the Property or the Conservation Purposes of this Easement. In the event Grantee determines that the Existing Roads do have such an adverse impact, Grantee shall have the right to prohibit the use of some or all of the Existing Roads;

- (iii) Grantor shall have the further right to improve existing forest management roads and associated structures and to construct new forest management roads and associated improvements, in active consultation with Grantee, provided that said improvements, new roads, and associated improvements satisfy the Requirements, and that
 - (A) additional roads or road improvements are necessary to provide reasonable forest management access to the Property;
 - (B) provision is made for the adequate and proper closure and revegetation of skid roads and landings; and
 - (C) Grantor secures Grantee's prior written consent to the design, layout, location, and construction techniques with respect to all additional roads, road improvements, and any associated improvements.
- (d) **Harvest Notice; Contractor Requirements.** The following conditions apply to the commencement of any forestry activity on the Property:
 - (i) All forest management activities must be in compliance with the Plan, the Contract, and the Road Plan, and be approved, in advance, by Grantee, as is more fully described in this **Section 4.8**;
 - (ii) Grantor shall provide Grantee with a written notice ("Notice") at least seven (7) days prior to commencement of any forest management activities, and in no event less than thirty (30) days after Grantee's approval of the Plan, the Contract, and the Road Plan;
 - (iii) The Notice shall include the name of the forester supervising the activity as well as the identification of the person or entity actually conducting the activity, and shall include:

- (A) a general description of the scope of the activity (size and location of area (including maps));
 - (B) prescribed silvicultural treatments that may be employed;
 - (C) the location and a description of all ingress, egress, and access routes, including the specific location of any stream crossings, and the location of landings and skid roads, and haul roads, all of which must be consistent with the Plan, the Contract, and the Road Plan, as approved by Grantee;
- (iv) Forestry activities shall be conducted within the constraints of the Plan, the Contract, the Road Plan, and the Notice under a written contract with a professional logger, which contract must include a non-refundable performance bond naming Grantor and Grantee as co-payees in an amount mutually agreed by Grantor and Grantee, and shall be expressly subject to the terms, conditions, and provisions of this Easement; and
- (v) Grantee shall have the right to object to any portion or provision of the Notice and shall promptly notify Grantor of any objectionable provisions. In the event Grantee does object to any portion or provision of the Notice, Grantor shall not commence any forest management activities unless and until Grantee provides written approval of the Notice or withdraws Grantee's objection or objections to the Notice.

On completion of said harvest activities, Grantor shall close and water-bar all landings and skid roads, and provide a timely notice of completion to Grantee.

Notwithstanding any other provision of this Easement, there shall be no timber cutting or other forestry activities in any area identified and designated by Grantee, either at the time of the conveyance of this Easement or any time in the future, as a Management Area B. Such areas include, but are not limited to, areas with significant Conservation Values with respect to relatively natural habitat for fish, wildlife, or plants or similar ecosystems and include, with or without designation by Grantee, any area within 100 feet, or such other distance as may be required by (a) the Grantee Guidelines or (b) the specific terrain, of any cave, cave opening, or cave entrance; wetlands; any area evidencing aquatic or wetland-based plant

species; creeks; streams; and blue-line streams. The same constraints apply to any area designated by Grantee as a "Management Area C" with the exception of the 100-foot buffer area, which will not apply to any area designated by Grantee as a Management Area C. Notwithstanding the above, in the event Grantee makes a determination that certain forest management activities within a Management Area B or a Management Area C would enhance the Conservation Values of the Property or would further protect the Conservation Purposes of this Easement, subject to any and all Grantee requirements, such forest management activities, as outlined in writing by Grantee, shall be permitted within a Management Area B and/or within a Management Area C.

- 4.9 Chemical Agents.** The right to use governmentally-approved chemical agents in the control of non-indigenous plant species and invasive plant species (whether indigenous or non-indigenous) and otherwise hazardous plants, provided, however, such actions shall be consistent with and in compliance with all applicable federal, state, and local laws and manufacturer's guidelines; provided further, however, if the use of any such chemical agents will have an adverse impact on any of the Conservation Values of the Property, the use of such agents shall be prohibited. Any such herbicides or pesticides shall be the least toxic necessary to accomplish the task at hand;
- 4.10 Signs.** The right to display signs showing the location and address of the Property and its facilities and signs indicating that the Property is available for sale or rent, for purposes of public access, if applicable, or as may be useful to support permitted educational, scientific, and recreational activities, as well as any sign indicating that the Property is protected property subject to this Easement;
- 4.11 Public Access.** The right to allow public access with permission for low-impact, nature-related activities such as hiking, nature study, picnicking, and other de minimis recreational activity; provided, however, no member of the public shall have any expectation of privacy while on the Property. Reference is made to **Section 2** of this Easement and Grantee's entry and monitoring rights as set forth therein;
- 4.12 Scientific Activity.** The right, with prior approval of Grantee, to permit or allow the Property to be used for scientific research by a member of the faculty of any accredited college or university or by a student or a group of students working under the direct supervision of such a faculty member so long as such research activities do not adversely affect the Conservation Values of the Property or the Conservation Purposes of this Easement;

- 4.13 Ponds, Banks, and Frontage.** The right to maintain the existing ponds on the Property in their current condition or as may be modified consistent with recommendations from any appropriate state or federal agency, which modifications are subject to the express written consent of Grantee. The right, with prior approval by Grantee, to construct and maintain one or more additional ponds as may be determined appropriate for horses or livestock or to maintain or enhance the physical stability and natural features of the current or any new ponds by ecologically appropriate methods as established or recommended by National Resource Conservation Service or any qualified organization performing the same function and approved by Grantee. The right to rehabilitate and restore any and all creek, stream, and river banks and frontage areas, subject to the express written consent of Grantee, in compliance with all local, state, and federal water quality and other laws, rules, and regulations;
- 4.14 Hunting.** Hunting shall be permitted on the Property only with the express, written consent of Grantor. This, in no way, is intended to permit a commercial hunting operation or "game preserve" on the Property;
- 4.15 Feed Plots; Wildlife Observation.** The right to establish one or more feed plots on the Property in accordance with a Wildlife Management Plan devised in conjunction with and approved by the Tennessee Wildlife Resource Agency, or any other similar state or federal agency, the number and total acreage of which is subject to the express, written consent of Grantee, and the right to construct wildlife observation structures, in number and location subject to the express, written consent of Grantee, all of which must not adversely affect the Conservation Values of the Property or the Conservation Purposes of this Easement;
- 4.16 Leases and Other Interests.** The right to lease or to grant others less than fee-simple interests in the Property for any use permitted Grantor, subject to Grantee's prior written approval, provided that such lease or other interest in the Property is subject to and consistent with the provisions of this Easement, and does not constitute an impermissible subdivision of the Property, and further provided the use contemplated by such lease or other interest in the Property does not adversely affect the Conservation Values of the Property or the Conservation Purposes of this Easement; and
- 4.17 Other Uses.** Grantor may, or may permit others to, engage in or perform any other actions or activities that are not expressly prohibited herein, and which do not compromise the Conservation Values of the Property or adversely affect the Conservation Purposes of this Easement.

In connection with any reserved right of Grantor to install and maintain roads, travelways, and/or driveways for vehicular access to the areas of the Property on which the existing, if any, and additional structures and related ancillary improvements are and/or may be constructed pursuant and subject to the terms and conditions of this Easement, with such roadways, travelways, and/or driveways to provide for ingress and egress across the Property to such locations and to the adjacent properties, such right shall be subject to the following requirements and conditions: (i) such roadways, travelways, and/or driveways shall be located, to the extent possible, in the path of forestry roads or other travelways existing on the date of this Easement; (ii) the width of the area cleared for such roadways, travelways, and/or driveways shall not exceed that which is necessary for two lanes of vehicular traffic and the installation of underground utilities; (iii) all newly constructed roadways, travelways, and/or driveways, or any roadways, travelways, and/or driveways that are rebuilt or reconstructed shall be constructed only of pervious materials; (iv) such roadways, travelways, and/or driveways shall otherwise be installed in a manner to avoid unnecessary tree removal and land disturbance; (v) if such roadways, travelways, and/or driveways require any grading or change in topography, then such grading shall blend into the natural topography of the Property as much as reasonably possible, shall be constructed so as to control erosion, and shall be of design and location approved, in advance, by Grantee; and (vi) Grantee has approved the proposed roadways, travelways, and/or driveways and access to the adjacent lands based on the foregoing requirements. Notwithstanding any other provision of this **Section 4**, the activities enumerated herein shall be prohibited to the extent any such activity or activities adversely affect the Conservation Values of the Property or the Conservation Purposes of this Easement.

No assurance is given that any of the above reserved rights may be exercised in such manner as Grantor might propose without having an adverse impact on the Conservation Purposes of this Easement, the Conservation Values of the Property, or other significant ecological values of the Property. The procedure set forth herein is established for the purpose of making that determination. The reserved rights in this Easement may not be exercised unless and until Grantee is satisfied that the exercise of the reserved right in the manner proposed by Grantor, can be undertaken without an adverse impact on the Conservation Purposes of this Easement, the Conservation Values of the Property, or other significant ecological values of the Property. Grantor hereby waives, for Grantor and Grantor's heirs, executors, successors, and assigns, to the fullest extent allowed by law, any and all right to seek or recover damages from Grantee in any litigation or other legal action arising from a dispute over Grantee's exercise of its rights, obligations, or interpretations under this **Section 4** or any other Section of this Easement and Grantor agrees that the sole remedy or legal right to seek redress arising from any adverse decision of Grantee shall be to seek a declaratory judgment or other legal declaration by a court of competent jurisdiction as to the rights of Grantor hereunder. Grantor and Grantee agree that it is their intent that the rights

reserved by Grantor in this Easement conform to the requirements of 26 C.F.R. Section 1.170A-14, and any rights so reserved by Grantor shall be limited to the extent such rights do not conform with 26 C.F.R. Section 1.170A-14. Grantor may not exercise any of its rights reserved under this Easement, including those rights reserved in this **Section 4**, in such a manner to adversely impact the Conservation Values of the Property or the Conservation Purposes of this Easement. Notwithstanding any other provision of this Easement, Grantor shall notify Grantee, in writing, before exercising any of Grantor's reserved rights under **Section 4** of this Easement that may have an adverse impact on the Conservation Values of the Property or the Conservation Purposes of this Easement. If Grantee determines that any specific exercise by Grantor of any of its reserved rights under this Easement may have an adverse impact on the Conservation Values of the Property or the Conservation Purposes of this Easement, Grantee may withhold its approval of such action.

5. Notice and Approval.

5.1 Notice of Intention to Undertake Certain Permitted Action Pursuant to Section 4. The purpose of requiring Grantor to notify Grantee prior to undertaking any of the activities described in **Section 4** is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever Grantor intends to exercise any right reserved in **Section 4**, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is expressly required hereunder. The notice shall describe the nature, scope, design, location, timetable, and any other material aspects of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Easement.

5.2 Grantee's Approval. Grantee shall grant or withhold its approval in writing within thirty (30) days of actual receipt of Grantor's written request therefor. Grantee's approval may be withheld only on a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Easement, would be inconsistent with the restrictions set forth in this Easement, would adversely affect the Conservation Values of the Property, or would adversely affect the Conservation Purposes of this Easement. In the event Grantee has not replied in writing to Grantor's request within such thirty (30) day period (or such other applicable time period as may be expressly required hereunder), Grantor's request will be deemed denied.

6. Grantee's Remedies.

6.1 Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened,

Grantee shall give written notice of such violation to Grantor and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan to which Grantor and Grantee have agreed in writing. In the event Grantor and Grantee, both operating in good faith, cannot agree to such plan, another organization that is qualified under Section 179(h) of the Internal Revenue Code and 26 C.F.R. Section 1.170A-14 to acquire and hold conservation easements, which organization holds at least 20 conservation easements in the same general area as Grantee, shall prepare the plan of restoration.

- 6.2 Injunctive Relief.** If Grantor fails to cure the violation within sixty (60) calendar days after receipt of notice thereof from Grantee or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, if Grantor fails to begin curing such violation within the sixty (60) day period, or if Grantor fails to diligently pursue the cure to completion, in addition to exercising any other remedy set forth in this Easement, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary restraining order, temporary or permanent injunction, and/or, in Grantee's discretion, to require the restoration of the Property to its condition at the time of the donation of this Easement as set forth in 26 C.F.R. Section 1.170A-14(g)(5)(ii). The parties agree that any bond to be posted by Grantee in pursuit of such a remedy shall be no more than Five Hundred Dollars (\$500).
- 6.3 Damages.** If there is a violation of any of the provisions of this Easement, Grantee shall notify Grantor by written instrument, and Grantor shall promptly cure the violation by (a) ceasing the activity giving rise to the violation, (b) restoring the Property to its condition before the violation, or (c) both, as the case may be. Grantee shall have the right, but not the obligation, to pursue legal actions or proceedings at law and/or in equity to enforce the conservation restrictions, including the right to cause such violation to be cured, and if a court of competent jurisdiction determines that a violation has occurred hereunder, the then-current owner shall reimburse Grantee, as applicable, for all reasonable expenses incurred, including legal fees and attorney fees, whether in or out of court, and the cost of legal proceedings brought to cure the violation or to collect such reimbursement. Additionally, if Grantor violates this Easement in such a manner as to cause damage to, extract, or remove any trees, mineral resources, pond, wetland, stream, or other natural resource protected by this Easement, including a violation resulting from failure to obtain Grantee's approval, Grantee shall be entitled to payment of damages in the

amount of the value of the protected natural resource in addition to all other remedies and damages set forth herein. Grantee may seek payment and recovery of such damages by any means available. The value of the protected natural resource shall be established as the greater of (i) the market value of the resource or (ii) the cost of immediate restoration of the Property and all resources to their condition prior to the violation. If such immediate restoration is not reasonably possible then the market value of the resource shall be the amount of damages. If the resource does not have readily determinable market value then the amount of damages shall be the amount which a court of competent jurisdiction may determine, taking into account the importance of the resource to the fulfillment of the Conservation Purposes.

- 6.4 Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this **Section 6** without prior notice to Grantor or without waiting for the expiration of the cure period.
- 6.5 Scope of Relief.** Grantee's rights under this **Section 6** apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are, or may be, inadequate and that Grantee shall be entitled to the injunctive relief described in **Section 6.2**, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this **Section 6** shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity or as may be set forth in this Easement.
- 6.6 Costs of Enforcement.** All reasonable, actual costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, actual costs and expenses of suit, actual, reasonable attorney fees (with or without suit), and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs, fees, and expenses. In no event shall Grantee be liable to Grantor for any costs, fees, or expenses brought in the course of an enforcement action unless it is conclusively determined that Grantee acted with actual malice in bringing such enforcement action, in which case Grantee shall be liable to Grantor only for Grantor's costs, fees, and expenses, including reasonable attorney fees, actually incurred in defending such a suit.

- 6.7 Forbearance.** Forbearance by Grantee to exercise any of its rights under this Easement in the event of any violation of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such provision or of any subsequent breach of the same or any other provision of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy on the occurrence of any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- 6.8 Waiver of Certain Defenses.** Grantor hereby waives any defenses of laches, estoppel, prescription, statute of limitations, or any period of limitations of actions.
- 6.9 Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, vandalism or illegal acts, fire, flood, storm, natural earth movement, or acts of God, or from any prudent action taken by Grantor in good faith under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- 6.10 Rights and Remedies in Relation to Third Parties.** As the owner of a real property interest under this Easement, Grantee shall have the right, without limitation of any rights herein as against Grantor, to assert and enforce any of the rights and remedies in this Easement against any person or entity other than Grantor that engages in any activity on the Property that constitutes a violation of any of the covenants or restrictions of this Easement, whether such person or entity enters on the Property as a tenant, guest, or invitee of Grantor, by an act of trespass, or by any claim of right, and Grantor shall cooperate with Grantee by joining in any action or proceeding commenced by Grantee for such purpose. No trespasser or any other person on the Property with or without Grantor's express permission shall have any expectation of privacy while on the Property, and Grantee shall not be liable to any such trespasser or person on the Property for any "invasion of privacy" claim or any other or similar claim arising as a consequence, intended or unintended, of Grantee's activities in monitoring the Property and enforcing the provisions of this Easement.
- 6.11 No Third Party Rights of Enforcement.** This Easement may only be enforced by Grantor and Grantee and no third party beneficiary rights, rights of enforcement, or other rights are created or intended to be created or granted by this Easement in or to any other person or entity, any person or entity that was once a "Grantor" but is no longer an owner of the Property, the public generally, or any governmental authority except to the

limited extent necessary to undertake an action under **Section 11** or as required by statute (and only to the extent such statute cannot be waived by agreement of Grantee and Grantor).

7. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement, other than as may be specifically set forth herein.

8. **Costs, Liabilities, Taxes, Environmental Compliance.**

8.1 **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of policies of adequate, in Grantee's reasonable discretion, liability insurance coverage, and Grantor shall cause Grantee to be named as an additional insured on all such policies. Grantor shall provide to Grantee, at least annually, certificates evidencing such insurance. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, ordinances, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by, Grantor.

8.2 **Taxes.** Each owner of any portion of the fee interest Property shall pay all taxes and assessments lawfully assessed against such portion of the Property owned by such owner, and shall provide to Grantee receipted tax bills or other evidence satisfactory to Grantee within thirty (30) days of any written request therefor. Grantee shall have the right to pay any lawful taxes and assessments in order to prevent a "delinquent tax sale" or other lien foreclosure of the Property or any portion thereof, and the entire amount paid by Grantee, together with all costs and expenses, fines, interest, and penalties, including reasonable attorney fees, shall be immediately due and payable to Grantee by Grantor, and shall bear interest at the highest rate permitted by law until fully paid. In the event the Property, or any portion thereof, is sold at a delinquent tax sale, Grantee shall have all redemption rights provided in the Tennessee Code Annotated to a fee simple owner of the Property, as if Grantee was the fee simple owner of the Property.

8.3 **Availability or Amount of Tax Benefits.** Neither Grantee nor any of Grantee's officers, directors, employees, agents, or counsel makes any warranty, representation, claim, or other assurance, or provides any advice regarding the availability, amount, or effect of any deduction, credit, or other benefit to Grantor or any other person or entity to be derived from

the donation of this Easement or other transaction associated with the donation of this Easement under United States or any state, local, or other tax law. This donation is not conditioned on the availability or amount of any such deduction, credit, or other benefit. Neither Grantee nor any of Grantee's officers, directors, employees, agents, or counsel makes any warranty, representation, or other assurance, or provides any advice regarding the value of this Easement or of the Property. As to all of the foregoing, Grantor acknowledges that Grantor is relying on Grantor's own legal counsel, accountant, financial advisor, appraiser, tax, or other consultant not on Grantee or any legal counsel, accountant, financial advisor, appraiser, or other consultant, employee, or agent of Grantee. In the event of any audit or other inquiry of a governmental authority into the effect of this donation on the taxation or financial affairs involving Grantor or Grantor's successors or assigns or any other similar matter, then Grantee shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever, including attorney fees, incurred by Grantee in responding or replying thereto, or participating therein.

8.4 Representations and Warranties of Grantor; Environmental Compliance. Grantor certifies, represents, and warrants that, after reasonable investigation and to the best of its knowledge:

- (a) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;
- (b) There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property other than in full compliance with applicable federal, state, and local laws, regulations, and requirements;
- (c) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- (d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property;

- (e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, and Grantor is not aware of any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and
- (f) The Baseline Documentation includes, among other things:
- Owner Acknowledgment of Condition.
 - Purpose and Summary of Easement Conditions.
 - Natural Features of the Property.
 - Environmental Conditions of the Property.
 - Narrative description of the significant ecological and other Conservation Values and characteristics of the Property.
 - Topographic map of the Property.
 - Photographs of current site conditions on the Property.

The Baseline Documentation is an accurate representation of the condition of the Property at the time of the execution, delivery, and recordation of this Easement.

8.5 Environmental Compliance; Remediation. If, at any time, there occurs, or has occurred, a release by Grantor in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to, promptly and with all due haste, take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

8.6 Environmental Compliance; No Grantee Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an "operator" with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and Tennessee Code Annotated Section 68-212-101 et seq., or any other state or federal law regarding liability for hazardous wastes, toxic substances, pollution, or other, similar matters.

- 8.7 Indemnity and Hold Harmless.** If Grantee is required by a court of competent jurisdiction to pay damages resulting from personal injury, property damage, hazardous waste contamination, or hazardous materials usage that occurs on the Property, Grantor shall promptly indemnify and reimburse Grantee for these payments, as well as for reasonable attorney fees and other expenses incurred by Grantee in connection therewith, unless Grantee or its agents or contractors are grossly negligent or have committed a deliberate act that is determined by a court of competent jurisdiction to be a cause of the injury or damage.
- 8.8 Indemnification.** Grantor covenants and agrees to indemnify, defend, reimburse, and hold Grantee, its directors, officers, agents, contractors, counsel, and employees harmless from, for, and against any Loss (defined below) to the extent such Loss arose from an Indemnified Cause (defined below). A "Loss" shall mean any loss, cost, liability, penalty, fine, or damage of any kind or nature whatsoever that Grantee or any of its directors, officers, contractors, agents, counsel, or employees may reasonably be concluded to have suffered, paid, or incurred, or for which demand for payment has been made. The term "cost" shall include, but shall not be limited to, reasonable attorney fees, witness and court fees, and expert fees, whether as witnesses or consultants. An "Indemnified Cause" shall mean any of the following: the violation or alleged violation of any law in, on or involving the Property, by Grantor or anyone acting by, for, through, or under the direction of Grantor, including but not limited to any tenant, contractor, agent, licensee, or invitee of Grantor; any breach of covenants and restrictions in this Easement by Grantor or anyone acting by, for, through, or under the direction of Grantor, including but not limited to any tenant, contractor, agent, licensee, or invitee of Grantor; any tax or assessment on the Property or on this Easement or the rights it represents or that it grants to Grantee; any death or injury to any person occurring on or about the Property; any lien or attempts to enforce a lien asserted against the Property; the costs of performing any work on the Property; any loss or damage to any property on or about the Property; any dispute involving Grantor and Grantee regarding the interpretation or enforcement of this Easement as to which the interpretation or enforcement of Grantee is upheld; or any lawsuit (regardless of whether initiated by Grantor or Grantee) or governmental administrative or law enforcement action which is commenced or threatened against Grantee or any of its directors, officers, agents, counsel, or employees or to which any of the foregoing are made a party or called as a witness; but the term "Indemnified Cause" shall not include any cause which results from Grantee's own acts which are finally determined by a court of competent jurisdiction to have been the result of bad faith or willful misconduct of Grantee. It is further agreed that no person shall have an indemnification obligation or liability under this **Section 8.8** as to any Indemnified Cause that arises entirely and solely

from events which occurred after such person is no longer the legal or equitable owner of the Property or any part thereof and is no longer in possession of the Property or any part thereof, it being agreed and understood that all subsequent owners of the Property shall have and assume such indemnification, defense, reimbursement, and hold harmless obligations by the act of taking title to the Property.

9. Extinguishment and Condemnation.

9.1 Extinguishment. If circumstances arise in the future that render the purposes of this Easement impossible or impractical to accomplish, this Easement can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction, and Grantee shall be entitled to a portion of the proceeds from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment ("Conversion Proceeds") at least equal to the proportionate value of the perpetual conservation restriction as set forth in **Section 9.2**, below, multiplied by the total amount of the Conversion Proceeds, unless Tennessee law provides that Grantor is entitled to the full amount of the Conversion Proceeds without regard to the terms of this Easement. Grantee shall use all such proceeds in a manner consistent with the purposes of this Easement.

9.2 Proceeds. The Conservation Easement constitutes a real property interest ("Interest") immediately vested in Grantee. For the purposes of this paragraph, and pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii), Grantor and Grantee stipulate that this Interest shall have a fair market value that is equal to the proportionate value that the Conservation Easement at the time of the grant of the Conservation Easement bears to the value of the Property as a whole at the time of the grant of the Conservation Easement. For the purposes of this paragraph, the ratio of the value of the Conservation Easement to the value of the Property as a whole shall remain constant. It is intended that this paragraph be interpreted to adhere to and be consistent with Treasury Regulation § 1.170A-14(g)(6)(ii).

9.3 Condemnation. If the Conservation Easement is taken, in whole or in part, by exercise of the power of eminent domain, the amount of the proceeds to which Grantee shall be entitled shall be determined by multiplying the total amount recovered as a result of the condemnation by the ratio set forth in **Section 9.2**, above, unless Tennessee law provides that Grantor is entitled to the full amount of the proceeds resulting from the condemnation without regard to the terms of this Easement.

9.4 Application of Proceeds. Grantee shall use any proceeds received under the circumstances described in this **Section 9** in a manner consistent with the Conservation Purposes of this Easement.

10. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code and 26 C.F.R. Section 1.170A-14 (or any successor provision then applicable), and authorized to acquire and hold conservation easements under the Tennessee Conservation Easement Act of 1981, Tennessee Code Annotated Section 66-9-301 et seq., or any successor provision then applicable or the laws of the United States. As a condition of such transfer, Grantee shall require that the Conservation Purposes that this Easement is intended to advance continue to be carried out, and the transferee has a commitment to protect the Conservation Purposes and the resources to enforce this Easement. Grantee agrees to give written notice to Grantor of any assignment at least one hundred and twenty (120) days prior to the date of such assignment. Any attempted transfer by Grantee, or any successor to Grantee, of all or any portion of this Easement contrary to the terms hereof shall be invalid, but shall not operate to extinguish this Easement. Any subsequent transfer of this Easement by a successor to Grantee shall also be subject to the provisions of this **Section 10**.

11. Successor Grantee. If, at any time, Grantee shall be unwilling or unable to continue as grantee hereunder, including, but not limited to, if Grantee ceases to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code and 26 C.F.R. Section 1.170A-14, or to be authorized to acquire and hold conservation easements under the Tennessee Conservation Easement Act of 1981, Tennessee Code Annotated Section 66-9-301 et seq., then Grantor and Grantee shall mutually agree on a qualified successor to Grantee, and if Grantor and Grantee cannot agree on a qualified successor to Grantee, the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to applicable Tennessee law and consistent with the requirements for an assignment pursuant to **Section 10**.

12. Subsequent Transfers.

12.1 Incorporation of Easement. Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

12.2 Notice; Subordination of Subsequent Encumbrances. Grantor agrees to give written notice to Grantee of the transfer of any interest in the Property at least thirty (30) calendar days prior to the date of such transfer. Any

mortgagee must subordinate its rights in the Property to Grantee to enforce the Conservation Purposes of this Easement.

12.3 Successors Bound. Any and all successors to Grantor's interest in the Property shall be bound by the provisions of this Easement.

12.4 Transfer Payment. In consideration of the perpetual obligations assumed by Grantee in this Easement, the costs and expenses of which are unpredictable, including, but not limited to, the obligation to travel to and inspect the Property at least annually for compliance with the terms of this Easement, communicate with present and future owners, respond to questions and other matters, and maintain financial resources for the enforcement of compliance when necessary in fulfillment of Grantee's obligation to be a Qualified Organization under 26 C.F.R. §1.170A-14(c)(1), and in consideration of Grantor's desire to support Grantee in its charitable mission with respect to the Property and other properties in which Grantee may have accepted conservation easement restrictions, Grantor agrees for itself, its heirs, successors, and assigns, that there shall be paid to Grantee the Transfer Payment (defined below) at the time of each Qualifying Transfer (defined below) in the manner set forth in this **Section 12.4**.

- (a) The "Transfer Payment" amount shall be a sum equal to one percent (1.0%) of the Purchase Price (defined below) of the Property, or part thereof; the improvements on the Property; and all other land, improvements, and other property included in the Qualifying Transfer;
- (b) "Qualifying Transfer" shall mean the conveyance of legal title to the Property, or any part thereof; the improvements on the Property; and any other land, improvements, and other property conveyed by the same deed of conveyance and/or any other instrument of transfer by which the Property, or part thereof, is conveyed; provided, however, a Qualifying Transfer shall not include the first transfer following the recordation of this Easement;
- (c) The "Purchase Price" shall be the sum of all of the following given as consideration for a Qualifying Transfer: (a) payment of money, (b) transfer of real or personal property or other tangible consideration, (c) purchase money indebtedness, and (d) the assumption of indebtedness. Grantor shall be obligated to provide to Grantee a true and correct copy of the agreement of sale pertaining to the Qualifying Transfer, the settlement statement or closing statement, and/or other documents verifying the Purchase Price to the reasonable satisfaction of Grantee;

- (d) In the event of a Qualifying Transfer in which all or part of the consideration is in the form of real or personal property rather than the payment of money, purchase money indebtedness, or assumption of indebtedness, the Purchase Price shall include an amount equal to the fair market value of such real or personal property given in consideration or as partial consideration for the Qualifying Transfer as determined by a qualified appraiser approved by Grantee in its reasonable discretion. Appraisals used in the valuation of real or personal property as a component of the Purchase Price shall be based on the guidelines and ethical standards of the Appraisal Institute, as then in effect, for the type of property involved. Grantor and Grantee may, however, if they so elect in their discretion, without obligation to do so, accept an alternate method of establishing the value of such real or personal property, including by contemporaneous agreement;
- (e) The amount of the Purchase Price shall not include that portion of a Qualifying Transfer that is a gift, devise, bequest, or other transfer not involving consideration by the payment of money, transfer of real or personal property, purchase money indebtedness, or assumption of indebtedness;
- (f) The Transfer Payment shall not be applicable to a Qualifying Transfer into a corporation, limited liability company, or general or limited partnership in which Grantor receives all of the shares or interests of the transferee entity as consideration and receives no other consideration;
- (g) The obligation for payment of the Transfer Payment shall be binding on Grantor in the Qualifying Transfer and on the purchaser or grantee that is the transferee in the Qualifying Transfer, all of whom shall be jointly and severally liable for the payment of the Transfer Payment, and also shall be binding on their respective heirs, successors, and assigns, and shall run with the land and constitute a lien on the Property until paid;
- (h) The Transfer Payment shall be paid to Grantee at or before the time of transfer of legal title. The amount of any Transfer Payment not paid by the time required herein shall (a) accrue interest payable to Grantee at the rate of interest for judgments in Tennessee, currently set at 10%, until fully paid, and (b) constitute, together with accrued interest, to the extent permitted by law, a lien on the Property in favor of Grantee until fully paid, provided that such lien shall not be superior to any purchase money mortgage or deed of trust that was

executed, recorded, and otherwise validly established against the Property prior to the date of the Qualifying Transfer;

- (i) Grantor shall be liable, and Grantee agrees to reimburse Grantor for, all reasonable attorney fees and other costs and expenses of collection incurred by Grantee in the enforcement of the provisions of this **Section 12.4**. This obligation is binding on Grantee, its heirs, successors, and assigns;
- (j) Notwithstanding any other provision of this Easement, neither the validity of this **Section 12.4** nor compliance with or enforcement of this **Section 12.4** shall have any bearing or effect whatsoever on the validity and/or enforceability of any other provision of this Easement; and
- (k) Notwithstanding any other provision of this Easement, in the event Grantee or any entity related to or affiliated with Grantee ever holds fee simple title to the Property, the provisions of this **Section 12.4** shall not apply to any transfer by Grantee or any entity related to or affiliated with Grantee.

13. Estoppel Certificates. On request by Grantor, Grantee shall, within twenty (20) calendar days, execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge with no duty of inquiry beyond what is set forth in this **Section 13**, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to such compliance as of Grantee's most recent complete inspection. Grantor and Grantee acknowledge that the size, shape, and configuration of the Property boundaries, together with the topography of not only the areas of the Property boundaries but of the entire Property are such that Grantee's acknowledgment of Grantor's compliance with the provisions of this Easement at a time other than as of Grantee's most recent complete inspection will necessitate a significant expenditure of time and money. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's cost and expense, and so deliver such certification document within a reasonable period of time following Grantee's receipt of Grantor's written request therefor, and Grantor shall promptly reimburse Grantee for Grantee's costs, fees, and expenses incurred in connection with such inspection and generation of the certification document.

14. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and be either served personally; sent by first class mail, postage prepaid, certified, return receipt requested; or by nationally recognized overnight courier (such as FedEx or UPS) with fees paid for "next business day delivery" addressed as follows:

To Grantor: Jason Free
Lake Mountain Management, LLC
KW Building
200 East 2nd Avenue
Rome, Georgia 30161

To Grantee: Foothills Land Conservancy
373 Ellis Avenue
Maryville, Tennessee 37804
Attn: Executive Director

or to such other address as either party from time to time shall designate by written notice to the other as may be designated, in writing, by any successor-in-interest to Grantor. Notice shall be effective, whether actually received or not (a) if personally delivered, on the date of personal delivery; (b) if by mail, on the earlier of (i) the date the return receipt is signed or (ii) that date which is three (3) business days following the date of mailing, which must be evidenced by obtaining a mailing receipt obtained from the United States Postal Service at the time of mailing; or (c) if by overnight courier, on the earlier of (i) that date which is two (2) business days following timely deposit with the overnight courier, or (ii) the date the on which the notice is signed by the recipient on delivery.

15. **Recordation.** Grantee shall record this instrument in timely fashion in the official records of Humphreys County, Tennessee, and may re-record it at any time as may be required to preserve Grantee's rights in this Easement.

16. **General Provisions.**

16.1 Controlling Law; Forum and Venue of Disputes. The interpretation and performance of this Easement shall be governed by the laws of the State of Tennessee without regard to its choice of law provisions. Notwithstanding the physical location of the real property described on Exhibit A, and notwithstanding the citizenship, residence, domicile, or situs of Grantor, Grantor agrees that the sole and exclusive forum for the resolution of any dispute arising under or in any way related to this Easement, and the only court of "competent jurisdiction" for purposes of this Easement, shall be the Chancery Court for the State of Tennessee sitting in Blount County, Tennessee, or, if all other jurisdictional requirements are satisfied, the United States District Court for the Eastern District of Tennessee, Northern Division, sitting in Knoxville, Tennessee. By signing below, the parties, for themselves and for their heirs, executors, successors, and assigns, (a) submit to the personal jurisdiction of such courts for the purpose of any action arising under or in any way related to this Easement, (b) agree that they will not challenge such grant of personal jurisdiction,

nor challenge the venue established by this **Section 16.1**, and (c) agree that in the event any action is brought or commenced in any court or forum other than that which is set forth in this **Section 16.1**, the tender of (i) a true and correct copy of this instrument or (ii) a certified copy of the recorded Easement to such court shall be a full and complete defense to such action.

16.2 Liberal Construction. Notwithstanding the general rules of construction of documents, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purpose of Tennessee Conservation Easement Act of 1981, Tennessee Code Annotated Section 66-9-301 et seq. (the "Tennessee Act"), and to qualify as a qualified conservation contribution under 26 C.F.R. Section 1.170A-14 (the "U.S. Act"). The Tennessee Act and the U.S. Act are sometimes referred to herein collectively as the "Act." If any provision of this instrument is found to be ambiguous, it shall be interpreted in such a manner as to protect the Conservation Values of the Property and the Conservation Purposes of this Easement. Further, if any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Neither party shall be deemed to have drafted this Easement for purposes of the general rules of construction of documents. This Easement is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their heirs, executors, successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter.

16.3 Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remaining provisions of this Easement, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

16.4 No Authorized Violation of Law. Nothing contained in this Easement shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms of this instrument, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

- 16.5 Possible Grantee Default.** To the extent that any action taken by Grantee pursuant to this Easement gives rise to a claim of breach of contract, Grantor and Grantee agree that the sole remedy on the part of Grantor shall be reimbursement of actual direct out-of-pocket expenses (including reasonable attorney fees) reasonably incurred by Grantor as a result of such breach and that Grantor shall not have any right to indirect, consequential, or monetary damages in excess of such actual, direct, and reasonable out-of-pocket expenses (including reasonable attorney fees).
- 16.6 Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding.
- 16.7 No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 16.8 Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding on, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the Property in perpetuity. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its heirs, successors, and assigns, and the above named Grantee and its successors and assigns.
- 16.9 Termination of Rights and Obligations.** A party's rights and obligations under this Easement shall terminate on the transfer of the party's interest in the Conservation Easement or Property; provided, however, liability for any acts or omissions occurring prior to any such transfer shall survive such transfer.
- 16.10 Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect on construction or interpretation.
- 16.11 Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 16.12 Merger.** In the event that Grantee becomes the holder of the underlying fee interest in the Property, no merger of the fee and the Conservation

Easement shall take place, it being the specific intent of the parties hereto that, notwithstanding the operation of Tennessee common law, but pursuant to the provisions of Tennessee Code Annotated Section 66-9-304(a), as it exists on the date this Easement is recorded, this Easement remain an encumbrance on the Property regardless of the commonality of ownership of the fee and the Conservation Easement unless this Easement is conveyed by specific written instrument to the holder of the fee.

16.13 Changes in the Law. Because the Conservation Easement is intended to continue in perpetuity, and because the law, whether federal, state, or local, whether a statute, common law, regulation, rule, or ordinance, is dynamic and is constantly changing, it is appropriate to assert that it is the intent of Grantor and Grantee to comply with all federal, state, and local laws, regulations, rules, and ordinances, including common law, as the same may change from time to time, in the establishment and continuation of this Easement, and to further assert that it is Grantor's over-riding desire that the Property remain subject to constraints set forth in this Easement regardless of any change in the law.

16.14 Recitals Incorporated. The recitals set forth above are incorporated in, and form a part of, this Easement.

16.15 Contemporaneous Written Acknowledgment. By Grantee's signature below, this Section constitutes that Contemporaneous Written Acknowledgment of the contribution by the donee organization, in this case, Grantee, required by 26 USC § 170(f)(8) with respect to the property interest conveyed to Grantee by this Easement. The property interest conveyed is the Conservation Easement described in, and evidenced by, this document, and a proper legal description of the property encumbered by this Easement is attached hereto as an exhibit. No goods or services were provided by Grantee as consideration, in whole or in part, for the grant of the Conservation Easement by Grantor.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have entered into this instrument as of the day and year first above written.

[Signature Pages Follow]

The remainder of this page is intentionally left blank.

Grantor Signature Page

GRANTOR:

Crockett 941, LLC

By: Lake Mountain Management, LLC
Its: Manager

Lake Mountain Management, LLC

By: [Signature]
Jason Free, Manager

STATE OF Georgia

COUNTY OF Floyd

Before me, the undersigned, a notary public of the state and county aforesaid, personally appeared **Jason Free**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, swore to and acknowledged himself to be the Manager/Authorized Signatory of **Lake Mountain Management, LLC**, a Georgia limited liability company, the Manager of **Crockett 941, LLC**, a Delaware limited liability company, the within named bargainor, and that he as such Manager/Authorized Signatory executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Manager/Authorized Signatory.

WITNESS my hand at office this 20th day of December, 2016.

[Signature]
Notary Public

My commission expires: 9/24/2017

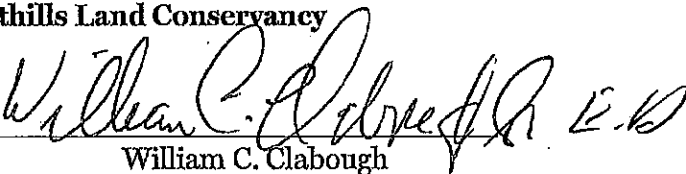


Grantee Signature Page

GRANTEE:

Foothills Land Conservancy

By:


William C. Clabough
Executive Director

STATE OF TENNESSEE

COUNTY OF Blount

Before me, the undersigned, a notary public of the state and county aforesaid, personally appeared **William C. Clabough**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, swore to and acknowledged himself to be the Executive Director of **Foothills Land Conservancy**, a Tennessee non-profit corporation, the within named bargainor, and that he as such Executive Director executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Executive Director.

WITNESS my hand at office this 21 day of December, 2016.


Notary Public

My Commission Expires: 11/12/18

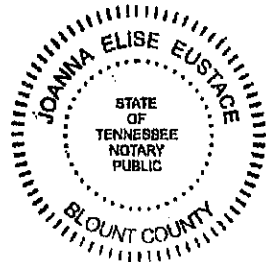


EXHIBIT A-1

Crockett 941, LLC Property Description

LYING and being situated in the Fifth (5th) Civil District of Humphreys County, Tennessee, about 21 miles south from Waverly, Tennessee, south of Interstate 40, near Bucksport and being a portion of the division of the lands of Buffalo Valley Resources, Inc., consisting of two (2) tracts, and being more particularly described as follows:

TRACT 1 (formerly Tracts 45, 46 & 50):

BEGINNING on an iron pin at Holt's northeast corner; thence with Holt's east line South 02° 28' East 165.18 ft.; thence South 05° 46' West 1278.84 ft., being Holt's southeast corner; thence North 84° 11' West 1373.36 ft. to an 18" oak, being Holt's southwest corner; thence severing Buffalo Valley Resources, Inc. South 16° 21' West 3647.92 ft. to an iron pin, being the southwest corner of the tract herein described; thence South 83° 26' East 5916.84 ft. to an iron pin; thence severing Buffalo Valley Resources, Inc. South 83° 15' East 1405.05 ft. to an iron pin; thence North 03° 59' East 598.37 ft. to an iron pin in the south margin of a 50 ft. access road; thence with said access road North 50° 56' West 22.15 ft.; thence North 36° 24' West 274.47 ft.; thence North 48° 04' West 257.25 ft.; thence North 60° 41' West 289.81 ft.; thence North 50° 13' West 92.26 ft.; thence North 26° 20' West 144.65 ft.; thence North 44° 18' West 72.37 ft.; thence North 59° 53' West 138.71 ft.; thence North 47° 39' West 101.24 ft.; thence North 08° 41' West 292.77 ft.; thence North 15° 58' East 151.24 ft.; thence North 29° 25' East 124.61 ft.; thence North 42° 28' East 113.31 ft. to an iron pin; thence leaving said road and severing the land of Buffalo Valley Resources, Inc. North 85° 53' West 628.82 ft. to an iron pin; thence North 05° 03' East 1722.11 ft. to an iron pin; thence North 04° 52' East 1661.42 ft. to an iron pin; thence North 77° 27' West 3833.18 ft. to an iron pin in the east margin of a 50 ft. access road; thence with said road South 17° 09' West 223.83 ft.; thence South 30° 48' East 146.87 ft.; thence South 11° 16' West 131 ft.; thence South 34° 02' West 112.85 ft.; thence South 46° 06' West 116.94 ft. to a point in Holt's north line; thence with Holt South 69° 07' East 329.46 ft. to the **Beginning**, containing 657.09 acres more or less as shown by a survey of Tom B. Thaxton, Cookeville, Tennessee, Tennessee Registered Land Surveyor, No. 105, dated July 23, 1993.

There is a 150 ft. T.V.A. Easement across the above described tract as recorded in Deed Book 79, page 297, 299 Register's Office, Humphreys County, Tennessee.

TRACT 2 (formerly Tracts 56 & 57):

BEGINNING at an iron stake at the southeast corner of the original BVR tract, being the southwest corner of Brown and the southeast corner of the herein

described; thence severing the land of Buffalo Valley Resources, Inc. North 77° 07' West 1577.96 ft. to an iron pin in the east margin of a 50 ft. access road; thence with the east margin of said road the following calls and distances: North 53° 55' West 142.56 ft.; North 74° 42' West 106.61 ft.; South 85° 02' West 172.26 ft.; North 83° 01' West 56.11 ft.; North 74° 10' West 142.14 ft.; North 32° 14' West 189.73 ft.; North 47° 47' West 114.85 ft.; North 57° 51' West 135.09 ft.; North 70° 35' West 62.15 ft.; South 88° 00' West 180.81 ft.; North 83° 49' West 68.25 ft.; North 61° 48' West 198.57 ft.; North 66° 36' West 160.23 ft.; North 55° 12' West 34.28 ft.; North 50° 56' West 13.92 ft.; North 36° 24' West 273.20 ft.; North 48° 04' West 267.89 ft.; North 60° 41' West 290.77 ft.; North 50° 13' West 77.10 ft.; North 26° 20' West 141.97 ft.; North 44° 18' West 87.11 ft.; North 59° 53' West 140.19 ft.; North 47° 39' West 78.20 ft.; North 08° 41' West 264.16 ft.; North 15° 58' East 134.41 ft.; North 29° 25' East 112.99 ft.; North 42° 28' East 105.85 ft.; North 46° 27' East 75.13 ft.; North 44° 01' East 196.05 ft.; North 35° 16' East 126.19 ft.; North 53° 08' East 130.99 ft.; North 60° 39' East 96.57 ft.; North 68° 28' East 403.24 ft.; North 55° 33' East 445.96 ft.; North 73° 38' East 194.63 ft.; North 77° 08' East 163.34 ft.; North 80° 23' East 221.67 ft.; North 69° 05' East 238.24 ft.; North 59° 44' East 176.92 ft.; North 38° 00' East 114.94 ft.; North 17° 24' East 373.75 ft. to an iron pin; thence severing the land of Buffalo Valley Resources, Inc. South 85° 10' East 2127.09 ft. to a point in the west line of Wright; thence with Wright and Brown South 07° 17' West 3905.49 ft. to the **Beginning**, containing 284.67 acres more or less as shown by a survey of Tom B. Thaxton, Cookeville, Tennessee, Tennessee Registered Land Surveyor, No. 105, dated July 23, 1993.

ROAD TRACT:

There is located adjacent to the property hereinabove described a portion of a 50 ft. wide access road.

There is conveyed herewith 25 feet of the width of the access road which is adjacent to and extends from the boundary of the property hereinabove described and which runs for a distance equal to the length of the boundary of the tract adjacent to the access road. It is the intent of this conveyance for the boundary of the above described tract to be measured from the center line of the access road.

This conveyance is made subject to an easement of ingress and egress for the benefit of the owners of all properties whose boundaries also adjoin the access road.

There is also conveyed herewith an easement of ingress and egress along and upon the access road which is described as follows:

BEGINNING at a point in the center of a 50 ft. access road in the south margin of Interstate 40, said point being North 83° 03' West 25.03 ft. from an iron pin, said pin being Wright's northwest corner; thence with the

center of a 50 ft. access road the following calls and distances: South 03° 57' West 210.60 ft.; South 22° 33' West 201.44 ft.; South 11° 51' West 404.33 ft.; South 07° 05' West 80.71 ft.; South 19° 41' West 380.88 ft.; South 18° 23' West 346.12 ft.; South 32° 33' West 324.46 ft.; South 53° 51' West 263.77 ft.; South 40° 18' West 126.54 ft.; South 71° 39' West 120.78 ft.; South 47° 18' West 137 ft.; South 20° 32' West 144.35 ft.; South 27° 11' West 325.82 ft.; South 17° 24' West 435.01 ft.; South 38° West 105.60 ft.; South 59° 44' West 170.07 ft.; South 69° 05' West 233.72 ft.; South 80° 23' West 219.91 ft.; South 77° 08' West 164.81 ft.; South 73° 38' West 199.37 ft.; South 55° 33' West 447.11 ft.; South 68° 28' West 402.12 ft.; South 60° 39' West 99.92 ft.; South 53° 08' West 136.56 ft.; South 35° 16' West 128.21 ft. South 44° 01' West 193.60 ft.; South 46° 27' West 75.46 ft.; South 42° 28' West 109.58 ft.; South 29° 25' West 118.80 ft.; South 15° 58' West 142.82 ft.; South 08° 41' East 278.46 ft.; South 47° 39' East 89.72 ft.; South 59° 53' East 139.45 ft.; South 44° 18' East 79.74 ft.; South 26° 20' East 143.31 ft.; South 50° 13' East 84.68 ft.; South 60° 41' East 290.29 ft.; South 48° 04' East 262.57 ft.; South 36° 24' East 277.99 ft.; South 55° 12' East 51.75 ft.; South 66° 36' East 161.68 ft.; South 61° 48' East 202.38 ft.; South 83° 49' East 74.90 ft.; North 88° 00' East 177.87 ft.; South 70° 35' East 54.63 ft.; South 57° 51' East 130.10 ft.; South 47° 47' East 109.24 ft.; South 32° 14' East 195.90 ft.; South 74° 10' East 153.66 ft.; South 83° 01' East 60.66 ft.; North 85° 02' East 170.41 ft.; South 74° 42' East 97.56 ft.; South 53° 55' East 139.51 ft.; South 60° 55' East 103.12 ft.; South 47° 12' East 68 ft.; South 45° 19' East 226 ft.; South 34° 21' East 64.98 ft.; South 19° 01' East 104.37 ft.; South 03° 33' West 70.46 ft.; South 07° 23' West 264.78 ft.; South 10° 30' West 135.99 ft.; South 57° 53' West 84.71 ft.; South 43° 40' West 46.21 ft.; South 62° 49' West 34.28 ft.; South 71° 31' West 74.47 ft.; South 80° 51' West 60.22 ft.; South 88° 05' West 68.79 ft.; North 87° 15' West 77.34 ft.; North 76° 31' West 74.66 ft.; North 80° 31' West 36.70 ft.; South 61° 15' West 48.08 ft.; South 39° 15' West 95.59 ft.; South 82° 15' West 71.29 ft.; North 87° 46' West 69.56 ft.; South 65° 01' West 65.76 ft.; South 75° 06' West 152.51 ft.; North 81° 24' West 84.09 ft.; North 53° 55' West 88.96 ft.; North 75° 49' West 81.37 ft.; South 44° 31' West 80.80 ft.; South 26° 10' West 117.86 ft.; South 51° 42' West 49.45 ft.; South 66° 29' West 42.86 ft.; South 87° 07' West 69.47 ft.; South 53° 27' West 75.66 ft.; South 72° 56' West 106.17 ft.; South 64° 06' West 108.26 ft.; North 85° 49' West 86.75 ft.; North 71° 42' West 76.17 ft.; North 55° 35' West 70.35 ft.; North 52° 31' West 95.34 ft.; South 79° 33' West 141.07 ft.; South 01° 55' East 84.28 ft.; South 48° 22' East 160.68 ft.; South 43° 17' East 63.45 ft.; South 20° 17' West 41.43 ft.; South 58° 48' West 117.38 ft.; South 37° 39' West 118.96 ft.; South 38° 15' West 100.11 ft.; South 44° 20' West 155.13 ft.; South 37° 00' West 100.02 ft.; South 46° 08' West 87.17 ft.; South 55° 08' West 94.62 ft.; South 75° 08' West 112.92 ft.; South 05° 31' West 143.37 ft. to a point in the center of said 50 ft. access road. There is a 25 ft. strip of land lying of each side of the above described centerline for a 50 ft. access road.

The Road Tract is a private roadway to be used in common with all other landowners whose property abuts thereon. No landowner shall obstruct or hinder the free passage thereon by any other landowner or such landowner's authorized users. Each owner of the roadway shall have the right to improve the roadway but may not require any other owner to participate therein or to share in the cost thereof.

This conveyance is made subject to all easements for roads and utilities on the property.

BEING the same property conveyed to the Grantor by instrument of record in Book WD203, Page 1027, in the Register of Deeds Office for Humphreys County, Tennessee.

SUBSUMED within the legal description set forth above, but specifically **EXCLUDED** from this Easement, are the following two (2) parcels of land, each of which consists of approximately two (2) acres. These two (2) Inholdings are graphically depicted on Exhibit C to this Easement, and are more particularly described as follows:

Inholding 1:

TO FIND THE POINT OF BEGINNING start at an iron pin at Holt's northeast corner; thence with Holt's east line South 02° 28' East 165.18 ft.; thence South 05° 46' West 1278.84 ft., being Holt's southeast corner; thence North 84° 11' West 1373.36 ft. to an 18" oak, being Holt's southwest corner; thence severing Buffalo Valley Resources, Inc. South 16° 21' West 3647.92 ft. to an iron pin, being the southwest corner of the tract herein described; thence South 83° 26' East 5916.84 ft. to an iron pin; thence severing Buffalo Valley Resources, Inc. South 83° 15' East 1405.05 ft. to an iron pin; thence North 03° 59' East 598.37 ft. to an iron pin in the south margin of a 50 ft. access road; thence with said access road North 50° 56' West 22.15 ft.; thence North 36° 24' West 274.47 ft.; thence North 48° 04' West 257.25 ft.; thence North 60° 41' West 289.81 ft.; thence North 50° 13' West 92.26 ft.; thence North 26° 20' West 144.65 ft.; thence North 44° 18' West 72.37 ft.; thence North 59° 53' West 138.71 ft.; thence North 47° 39' West 101.24 ft.; thence North 08° 41' West 292.77 ft.; thence North 15° 58' East 151.24 ft.; thence North 29° 25' East 124.61 ft.; thence North 42° 28' East 113.31 ft. to an iron pin; thence leaving said road and severing the land of Buffalo Valley Resources, Inc. North 85° 53' West 628.82 ft. to an iron pin; thence North 05° 03' East 1722.11 ft. to an iron pin; thence South 18° 06' 58" West 1170.24 ft. to a point, **THE POINT OF BEGINNING**, thence South 24° 01' 31" West 308.15 ft.; thence North 86° 43' 06" West 281.37 ft.; thence North 36° 52' 13" East 169.66 ft.; thence North 27° 06' 21" East 208.72 ft.; thence North 44° 39' 54" East 110.10 ft.; thence South 44° 28' 55" East 188.49 ft. to the **POINT OF BEGINNING**, containing 2.00 acres more or less as shown by a

drawing by Darrel R. McBride, Tennessee, Tennessee Registered Land Surveyor, No. 1463, dated October 28, 2016.

Inholding 2:

TO FIND THE POINT OF BEGINNING, start at an iron stake at the southeast corner of the original BVR tract, being the southwest corner of Brown and the southeast corner of the herein described; thence North 66° 56'22" West 2375.39 ft. to a point at the centerpoint of a circular tract, thence Due North for a distance of 166.53' to a calculated point in the circumference of said circular tract, the **POINT OF BEGINNING**, thence from said POB with the edge of said circle, in a clockwise direction, a circle having a circumference of 1,046.32' to the said Point of Beginning, said circular tract having an area of approximately 2.00 acres more or less as shown by a drawing by Darrel R. McBride, Tennessee, Tennessee Registered Land Surveyor, No. 1463, dated October 28, 2016.

Note: Ingress/egress and/or utility easements, the location, description, and use of which is subject to Grantee's written consent, as is more particularly set forth in **Section 4** of this Easement, are reserved to the above described Inholdings.

ACCESS to the Inholdings is subject to the provisions of **Section 4** of this Easement, and, in terms of an "on the ground" route, is generally intended to be the shortest and most direct route over and across the Property from the nearest public road to each respective Inholding.

THE PREPARER OF THIS INSTRUMENT MAKES NO REPRESENTATION REGARDING THE ACCURACY OF THE PROPERTY DESCRIPTIONS SET FORTH ABOVE, NOR DOES THE PREPARER OF THIS INSTRUMENT MAKE ANY REPRESENTATION REGARDING THE STATE OF TITLE TO THE PROPERTY, THE DESCRIPTION HAVING BEEN PREPARED BY OTHERS, AND NO TITLE WORK HAVING BEEN PERFORMED BY SUCH PREPARER.

EXHIBIT A-2

Crockett 941, LLC
Drawing of the Property
(Drawing is attached immediately behind this page)

EXHIBIT B

Crockett 941, LLC Baseline Documentation Excerpt

Below is the table of contents of the Baseline Documentation Report of this Easement which report is incorporated herein by reference. A copy of the report is on file in Grantee's offices.

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- Owner Acknowledgment of Conditions

- Ownership Information

- Property Description--Parcel Maps and Property Data

- Purpose and Summary of Easement Provisions

- Significance of the Property

 - The Foothills Land Conservancy Corporate Mission

 - Tennessee Agricultural, Forestry and Open Space Resource Preservation Act

 - Tennessee Conservation Easement Act of 1981

- Foothills Land Conservancy Board of Directors Resolution Accepting Conservation

 - Easement with signatures of President and Secretary

 - Minutes of Board Meeting

Recitals

Legal Condition

- Conservation Easement with Property Description (Deed)

Conservation Values

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- Open Space

- Geology

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- Tennessee Natural Heritage Database Report on Listed Species

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- Tennessee Division of Archeology Letter on Archeology Database

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- Photo point map

- Photographs

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- Aerial Photograph with Boundaries

- State Map

- County Map

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Wetlands, Streams, and Watershed Map
Soils Map with Descriptions and Prime Agricultural Soils
Sub-surface Geology and Legend
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Survey of Deed with Homesite Locations
Conservation Management Areas Map
Anthropogenic Features Map
Protected Areas & Ecoregional Plan Map
Tennessee State Wildlife Action Plan Map
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EXHIBIT C

Crockett 941, LLC

Drawing Depicting Inholdings

(Drawing is attached immediately behind this page)

