

This Instrument Prepared By:
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Knoxville, Tennessee 37901
865-824-1900

MAP 134 GP PARCEL 39.00
N/C SPLIT CB
CARA BOONE
ASSESSOR OF PROPERTY
OVERTON COUNTY
LIVINGSTON, TN 38570

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

ASSESSOR OF PROPERTY
PUTNAM COUNTY
MAP 74 GR PAR 1.02
COMPLETE PART OF

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

**Grantee is a "Person Entitled to
Redeem." See Section 8.2**

DEED OF CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS DEED OF CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS ("Easement") is made and effective as of the 17 day of December, 2018, by Lakeview Farms, I.L.C., a Tennessee 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 One Thousand Sixty-Seven and 73/100 (1,067.73) acres of real property, more or less, located partly in Overton County and partly in Putnam County, Tennessee, 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 ("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, Overton and Putnam Counties, Tennessee, and the people of, and visitors to, the State of Tennessee, including visitors to the Alpine Mountain Wildlife Management Area, Jackson Swamp Wildlife Management Area, Standing Stone State Forest and State Park, Window Cliffs State Natural Area, Cummins Falls State Park, Burgess Falls State Park and State Natural Area, and other parks and natural areas in and around Overton and Putnam Counties, Tennessee, and which further local, state,

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and national goals to conserve scenery, open space, wildlife, and wildlife habitat for the enjoyment of future generations; and

WHEREAS, the Property remains substantially undeveloped, 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 within The Nature Conservancy's priority conservation area called Alpine Mountain, a matrix landscape with sandstone glades and barrens. Areas of the Property's open flat sandstone rock could harbor the endangered elf orpine (*Diamorpha smallii*) and other rare barrens species; and

WHEREAS, the Property has over 1,000 acres of scenic open-space farmlands and forest abutting the well-traveled Tennessee Highway 62 as well as Muddy Pond Road, in a region that attracts much tourism for its beauty, local sorghum mills, and general stores. This easement would contribute to preserving the exceptionally rural character of the region; and

WHEREAS, four of the nineteen soil types found on the Property, totaling 40% of its area, are considered by the U.S. Department of Agriculture to be Prime Farmland. According to the USDA, the protection of designated Prime Farmland soils is of major importance in meeting the nation's needs for food and fiber. Keeping the Property under easement, and thereby limiting development, will preserve these prime farmland soils for agricultural purposes for the public's benefit. This is strongly encouraged by the U. S. Department of Agriculture given that about 2% of Tennessee farmland is converted to developed land every decade; and

WHEREAS, the importance of the region's landscape is supported by the large number of acres of preserved land in its proximity. This includes Catoosa Wildlife Management Area, Big South Fork National River & Recreation Area, Bridgestone/Firestone Centennial Wilderness Wildlife Management Area, and Obed Wild and Scenic River totaling over 180,000 acres. Many other close-by non-governmental easements also comprise several thousands of acres; and

WHEREAS, the Tennessee Forest Legacy Program deems the Property's forests as being among important private forest lands that are threatened by conversion to non-forest uses and are in need of protection; and

WHEREAS, the Property is within priority areas adjacent to Karst (limestone cave) habitats according to the Tennessee State Wildlife Action Plan; and

WHEREAS, the U.S. Fish and Wildlife Service's Information for Planning and Consultation cites 4 federally-listed endangered and threatened federally managed species that could be impacted by activities on the Property: one mussel, the Cumberland

Bean Pearly Mussel (*Villosa trabalis*); and three bats: the Gray Bat (*Myotis grisescens*), the Indiana Bat (*Myotis sodalis*), and the Northern Long-Eared Bat (*Myotis septentrionalis*). The USFWS also cites six Neotropical migratory birds and the presence of freshwater forested/shrub and riverine wetlands; and

WHEREAS, the Property proved to be biologically diverse with 97 species of plants, three mammals and 23 birds. The latter includes 13 species of Neotropical migrants whose conservation is being supported by the Neotropical Migratory Bird Conservation Act of 2000; and

WHEREAS, the Property supports the bald eagle (*Haliaeetus leucocephalus*) which was seen hunting waterfowl over the man-made lake on Little Piney Creek. This once endangered species has responded well to conservation efforts, but is still considered a rare species in need of management by the Tennessee Department of Environment and Conservation; and

WHEREAS, the Property's habitats support wintering and resident wildlife species including white-tailed deer, wild boar, ring-necked duck, and sandhill crane the signs and presence of which were observed during our inventory of species visits; and

WHEREAS, the region surrounding the Property has experienced marked growth in development pressure. The average acreage per housing unit was >80 acres for over six miles from the property, but is currently down to 20-30 acres and is projected to decrease to 10-20 acres or less by 2030. Preservation of open space through the terms of this Easement will curb this development and preserve the regions character and biodiversity; and

WHEREAS, the specific Conservation Values of the Property are further and more completely documented in an inventory of relevant features of the Property, which is on file at the offices of Grantee ("Baseline Documentation Report"), and which consists of reports, maps, photographs, and other documentation that, Grantor certifies, 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 pursuant to 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, waterfront, stream corridors, and watersheds; and

WHEREAS, Grantee has a commitment to protect the Conservation Values of the Property and has the resources to enforce the restrictions set forth in this Easement; and

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

- (a) Preservation of open space (including farmland and forest land) 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; and
- (c) Preservation of open space (including farmland and forest land) pursuant to a clearly delineated government conservation policy which will yield a significant public benefit; 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 the State 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 set forth in this Easement, and to enforce the terms of the restrictive covenants set forth herein. The

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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 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 use reasonable efforts so as to 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, which are non-exclusive, any other remedy at law or in equity being equally available to Grantee;
 - (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, the use of drones; and any other aid in monitoring which may yet be invented, discovered, or

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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 Grantor'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, including, without limitation, the right on the part of such consultants, agents, and other third parties to go on the Property as required or permitted by 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:

- 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;
- 3.2 Commercial Development.** Any commercial or industrial use or development of the Property or on the Property including, without limitation, the extraction of any sand, sand-related products, or minerals from under or on the property by any means or method;
- 3.3 Topography.** The filling, excavating, dredging, surface mining, deep 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, including any rights to mine, quarry, or otherwise extract sand and sand-related products, also prohibited is the exploration for, or development and extraction of, minerals and hydrocarbons, including sand and sand-related products, by any method whatsoever including, without limitation, mining or extraction from a site or location off the Property. With the prior express written consent of Grantee, 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

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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 above ground or 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, which is subject to review and approval of Grantee pursuant to the provisions of this Easement, 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 any 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 (approved by Grantee) so long as (a) 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, and (b) any such agreement is approved, in advance, by Grantee pursuant to the provisions 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 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 or animal 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 in **Section 4** of this Easement, 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 prior 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 BMPs (as defined below), 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 by Grantor 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, because of varying conditions of the Property, there are variations of management techniques for different areas of the Property. 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; provided, however, in the event Grantee makes a written determination that certain forest management or other activities within a Management Area B 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, may be permitted within a Management Area B; provided further, however, any use of the Property that is actually taking place within a Management Area B as of the date of this Easement and is (i) disclosed to Grantee by Grantor, or (ii) known by Grantee prior to the date of this Easement ("Prior Use"), shall be permitted to continue so long as such Prior Use is not changed, altered, modified, expanded, or in any other way varied so as to have an adverse impact on the Conservation Values of the Property or the Conservation Purposes of this Easement;

- 3.14 Density.** No portion of the 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 pursuant to otherwise applicable federal, state, and local laws, rules, regulations, ordinances, or requirements controlling land use (collectively, "Land Use Laws"). No development rights that have been encumbered or extinguished by the Easement may be transferred or applied 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 further agree 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 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 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 prohibited by this Easement and that are not inconsistent with the Conservation Values of the Property or the Conservation Purposes of this Easement. Specifically subject to all other provisions of this Easement, the following rights are reserved (collectively, "Reserved Rights"):
- 4.1 **Reside.** The right to reside on the Property in perpetuity within the areas described in this **Section 4**;
- 4.2 **Convey and Pledge.** The right to sell, donate, mortgage, pledge, 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. Any such sale or other conveyance shall have no effect on the application of the provisions of this Easement, which provisions shall remain in full force and effect;
- 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 (approved by Grantee), so long as the provisions of such agreement do not compromise the Conservation Values of the Property or the Conservation Purposes of this Easement as determined in the sole discretion of Grantee;
- 4.4 **Existing Structures.** The right to reconstruct, remodel, renovate, or replace any or all of the residential dwellings or ancillary structures currently existing on the Property as of the date of this Easement, so long as any reconstruction, remodeling, renovation, or replacement of any given structure is within the same "footprint" for said structure as of the date of this Easement, and provided that prior to the commencement of any such reconstruction, remodeling, renovation, or replacement, Grantor must secure the express, written consent of Grantee, and further provided that any such activity shall not have an adverse impact on the Conservation

Values of the Property or the Conservation Purposes of this Easement. No structure that is not being used as a residential dwelling as of the date of this Easement shall subsequently be used as a residential dwelling, nor shall any structure that is not being used as a residential dwelling as of the date of this Easement have a sewer connection, septic system, or other wastewater disposal system attached or installed;

4.5 Utilities. The right to provide utilities to the residential dwellings described herein and to any other permitted structure; provided, however, that while such utilities need not be underground, Grantor shall use its best efforts to locate any aboveground utilities in the least obtrusive location, at a minimum, staying as close as possible to already existing roads, driveways, or other access or maintenance travelways. This **Section 4.5** is not to be construed to permit any sewer connection, septic system, or other wastewater disposal system to be attached to or installed with any structure on the Property other than those being used as residential dwellings as of the date of this Easement;

4.6 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;

4.7 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 ("Harvest 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"), 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, regulations, ordinances, and requirements 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, 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 timber harvesting 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 harvesting 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 or loss payee, as applicable, on all such policies;
 - (v) An indemnification and hold harmless provision for the benefit of Grantee by the timber purchaser and Grantor 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 and travelways 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 timber harvesting 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 4.7**;

- (ii) Grantor shall provide Grantee with a written notice ("Harvest Notice") at least seven (7) days prior to commencement of any timber harvesting 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 Harvest 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 and practices that may be employed; and
 - (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 Harvest 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 Harvest Notice and shall promptly notify Grantor of any objectionable provisions. In the event Grantee does object to any portion or provision of the Harvest Notice, Grantor shall not commence any timber harvesting activities unless and until Grantee provides written approval of the Harvest Notice or withdraws Grantee's objection or objections to the Harvest Notice.

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

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 at 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; provided, however, in the event Grantee makes a written determination that certain forest management or other activities within a Management Area B 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, may be permitted within a Management Area B;

- 4.8 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, rules, regulations, ordinances, and requirements, and with manufacturer's guidelines, and, notwithstanding any such laws, rules, regulations, ordinances, requirements, and manufacturer's guidelines, must be in compliance with the best environmental practices then prevailing for conservation; 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 or the Conservation Purposes of this Easement, 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;
- 4.9 Signs.** The right to display small, relatively unobtrusive signs showing the location and address of the Property and its facilities as well as 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;
- 4.10 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;

- 4.11 Scientific Activity.** The right, with prior written 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 impact the Conservation Values of the Property or the Conservation Purposes of this Easement;
- 4.12 Ponds; Banks; Frontage.** The right to maintain any pond or ponds on the Property in the current condition or as may be modified consistent with recommendations from any appropriate state or federal agency, which modification(s) is/are subject to the prior written consent of Grantee; the right to enhance the physical stability and natural features of the current pond or ponds by ecologically appropriate methods as established or recommended by the Natural Resource Conservation Service, or any qualified organization performing the same function, and approved in advance, in writing, by Grantee; the right to rehabilitate and restore any and all creek, stream, river bank, and frontage areas, subject to the prior written consent of Grantee, in compliance with all local, state, and federal water quality and other laws, rules, regulations, ordinances, and requirements; provided, however, no such modification, enhancement, rehabilitation, or restoration may have an adverse impact on the Conservation Values of the Property or the Conservation Purposes of this Easement;
- 4.13 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;
- 4.14 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 impact the Conservation Values of the Property or the Conservation Purposes of this Easement;
- 4.15 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 impact the Conservation Values of the Property or the Conservation Purposes of this Easement; and

4.16 Other Uses. Grantor may, or may permit others to, engage in or perform any other actions or activities that are not prohibited herein, and which do not compromise the Conservation Values of the Property or adversely impact 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 Property as of 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 writing, 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. Following the construction of any roadway, travelway, or driveway, Grantee shall cause an "as built" survey of such roadway, travelway, or driveway to be prepared by a Registered Land Surveyor, and shall provide a scaled copy of such survey to Grantee which shall become a supplement to the Baseline Documentation Report. Notwithstanding any other provision of this **Section 4**, the activities enumerated herein shall be prohibited to the extent any such activity or activities adversely impact the Conservation Values of the Property or the Conservation Purposes of this Easement.

No Reserved Right, or any other right described in **Section 4** of this Easement, may be exercised unless and until Grantee is satisfied that the exercise of such 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. The procedure set forth herein is established for the purpose of making that determination. 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 (defined below) 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 that may 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, in Grantee's sole discretion, 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 Action Permitted Pursuant to Section 4. The purpose of requiring Grantor to notify Grantee prior to undertaking any of the activities described in **Section 4** of this Easement is to afford Grantee an adequate opportunity to review the proposed activities to ensure that they are designed and carried out in a manner that is not inconsistent with the terms, conditions, and purposes 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 terms, conditions, and 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 on a determination by Grantee that the action as proposed would be inconsistent with the terms, conditions, and purposes of this Easement, would be inconsistent with the restrictions set forth in this Easement, would adversely impact the Conservation Values of the Property, would adversely impact the Conservation Purposes of this Easement, or would adversely impact any other significant ecological values of the Property. 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 pursuant to Section 170(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 (or some substantially significant number) conservation easements in the same general area as Grantee, shall prepare the plan of restoration, at Grantor's sole cost and expense.

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 terms of this Easement, including, without limitation, the protection of the Conservation Values of the Property and the Conservation Purposes of this Easement, 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 of the Property 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 (y) the market value of the resource or (z) 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 of this Easement.
- 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 or the Conservation Purposes of this Easement, Grantee may pursue its remedies under this **Section 6** without prior notice to Grantor or without waiting for the expiration of any 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** of this Easement, 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, 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 (including attorney 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 (including reasonable attorney fees), and expenses 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, including Grantor, 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, including Grantor, for any "invasion of privacy" claim or any other or similar claim arising as a consequence, intended or unintended, of, or related to, 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** of this Easement 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; Liabilities. Grantor retains all responsibilities and shall bear all costs, expenses, 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, rules, 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. To the extent any such lien is recorded or asserted against the Property, Grantor shall have such lien discharged and/or released, in full, within thirty (30) calendar days of the assertion of such lien.

- 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 then-applicable rate of interest for judgments in Tennessee, currently set at 10%, 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 were the fee simple owner of the Property; Grantee shall be considered a "Person Entitled to Redeem" as that term is defined in Tennessee Code Annotated Section 67-5-2701, et seq.
- 8.3 Availability or Amount of Tax Benefits.** Neither Grantee nor any of Grantee's officers, directors, employees, agents, or counsel makes any assertion, 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 pursuant to any federal, 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 assertion, 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, and not on Grantee or any legal counsel, accountant, financial advisor, appraiser, or other consultant, employee, or agent of or counsel to Grantee. In the event of any audit or other inquiry of a governmental authority into the impact of this donation on the taxation or financial

affairs of Grantor or Grantor's successors, assigns, or affiliates or any other similar matter, then Grantee shall be reimbursed and indemnified by Grantor 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, rule, regulation, ordinance, 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 above ground or underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no above ground or underground storage tanks have been removed from the Property other than in full compliance with applicable federal, state, and local laws, rules, regulations, ordinances, and requirements;
- (c) Grantor and the Property are in compliance with all federal, state, and local laws, rules, regulations, ordinances, and requirements as may be applicable to the Property and/or its uses;
- (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, rule, regulation, ordinance, or requirement as may be applicable to the Property and/or its uses, 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 Report 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 Report is a true, correct, and 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, under, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, rule, regulation, ordinance, 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, to the full and complete satisfaction of any and all federal, state, and local agencies or authorities and to the full and complete satisfaction of Grantee.
- 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" or other potentially responsible or responsible party 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 the 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, claim, or damage of any kind or nature whatsoever, including attorney fees, 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 any covenant and/or restriction 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; 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, contractors, 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 a subsequent unexpected change in the conditions surrounding the Property make impossible or impractical the continued

use of the Property for conservation purposes, 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 Conservation 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, and an eligible donee, at the time of transfer pursuant to 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 pursuant to 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, unless the circumstances of such assignment are such that the 120-day notice is not possible or practical. Any transfer by Grantee, or any successor to Grantee, of all or any portion of this Easement 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 pursuant to 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 pursuant to 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, which must be a qualified organization, and an eligible donee, at the time of transfer pursuant to 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 pursuant to 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, 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** of this Easement.

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 pursuant to 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 any portion or part thereof, including, without limitation, the improvements on the Property;
- (b) "Qualifying Transfer" shall mean the conveyance of legal title to the Property, or any portion or part thereof, including, without limitation, the improvements on the Property; 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 the following given as consideration for a Qualifying Transfer: (a) payment of money, (b) the value of any real property or personal property (tangible or intangible) or other tangible consideration, (c) the amount of any purchase money indebtedness, and (d) the amount of any assumed 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 then-applicable 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 Grantor agrees to reimburse Grantee 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 Grantor, its heirs, successors, and assigns;
- (j) 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) 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 thirty (30) calendar days, execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to 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 which 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. Notice. 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 prepaid for "next business day delivery" addressed as follows:

To Grantor: Lakeview Farms, LLC
1140 West Main Street
Livingston, Tennessee 38570
Attn: Millard V. Oakley

To Grantee: Foothills Land Conservancy
3402 Andy Harris Road
Rockford, Tennessee 37853
Attn: Executive Director

or to such other address as either party from time to time shall designate by written notice to the other. 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 four (4) business days following the date of mailing, which must be evidenced by 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 with fees prepaid for "next business day delivery," or (ii) the date on which the notice is signed by the recipient on delivery.

15. Recordation. Grantee shall record this instrument in timely fashion in the Register of Deeds Office for Overton and Putnam Counties, 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, construction, 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-1**, and shown on **Exhibit A-2**, and notwithstanding the citizenship, residence, domicile, or situs of Grantor, Grantor, and any other party to this instrument or transaction, now or in the future, agrees that the sole and exclusive forum for the resolution of any dispute arising out of or in any way related to this Easement, and the only "Court of Competent Jurisdiction" for purposes of this Easement, other than as used in **Sections 8.7 and 9** 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 out of 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, and shall constitute grounds for an immediate dismissal of 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. ("Tennessee Act"), and to qualify as a qualified conservation contribution pursuant to 26 U.S.C. Section 170(h) and the regulations applicable thereto ("U.S. Act"). The Tennessee Act and the U.S. Act are sometimes referred to herein collectively as the "Acts." 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, and to comply with and be consistent with the Acts. Further, if any provision of 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, to the extent such interpretation will have the effect of protecting the Conservation Values of the Property and the Conservation Purposes of this Easement. 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 and in conformance with the Acts, but the invalidity of either of the Acts or any part thereof shall not impact 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, and shall remain in full force and effect.
- 16.4 No Authorized Violation of Law.** Nothing contained in this Easement shall be interpreted to authorize or permit Grantor to violate any federal, state, or local law, rule, regulation, ordinance, or requirement. In the event of any conflict between any such law, rule, regulation, ordinance, or requirement 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 law, rule, regulation, ordinance, or requirement.

- 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, and to the extent not already addressed by any other provision of this Easement, Grantor and Grantee agree that the sole remedy on the part of Grantor shall be reimbursement of actual direct out-of-pocket expenses reasonably incurred by Grantor as a result of such breach, as determined by a Court of Competent Jurisdiction, and that Grantor shall not have any right to any indirect, special, speculative, remote, punitive, exemplary, consequential, or monetary damages in excess of such actual, direct, and reasonable out-of-pocket expenses.
- 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, amendment, modification, 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 personal representatives, heirs, successors, and/or assigns, and the above named Grantee and its successors and/or assigns.
- 16.9 Termination of Rights and Obligations.** A party's rights, interest, 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 or accruing prior to any such transfer, or as may be otherwise set forth herein as surviving a 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 be considered, in the aggregate, to 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 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 shall 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 the constraints set forth in this Easement regardless of any change in the law.

16.14 Recitals and Exhibits Incorporated. The recitals set forth above and the exhibits attached hereto are incorporated into, and form a part of, this Easement.

16.15 Contemporaneous Written Acknowledgment. By Grantee's signature below, this **Section 16.15** constitutes that Contemporaneous Written Acknowledgment of the contribution by the donee organization, in this case, Grantee, required by 26 U.S.C. § 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.

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Grantor Signature Page

GRANTOR:

Lakeview Farms, LLC

By: Millard V. Oakley
Millard V. Oakley,
Manager

STATE OF TENNESSEE

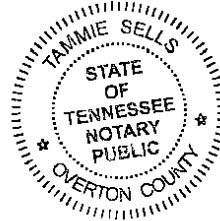
COUNTY OF Overton

Before me, the undersigned, a notary public of the state and county aforesaid, personally appeared **Millard V. Oakley**, 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 **Lakeview Farms, LLC**, a Tennessee limited liability company, the within named bargainer, 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 17th day of December, 2018.

Tammie Sells
Notary Public

My commission expires: 3-23-21



Grantee Signature Page

GRANTEE:

Foothills Land Conservancy

By: W. C. Clabough, E.P.
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 bargainer, 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 17 day of December, 2018.

[Signature]
Notary Public

My Commission Expires: 9/27/22

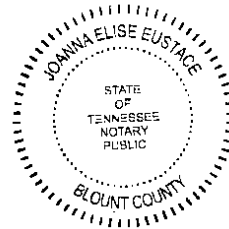


EXHIBIT A-1

**Lakeview Farms, LLC
Property Description**

SITUATE in the Fourteenth (14th) Civil District of Putman County and the Ninth (9th) Civil District of Overton County, Tennessee, and more particularly described as follows:

BEGINNING on an iron pin in the Northeast intersection of Tennessee Highway 62 and Cliff Springs Road; thence with the East margin of Cliff Springs Road the following calls and distances: (1) North 08 degrees 22 minutes West 1097.13 feet (2) North 07 degrees 56 minutes West 644.76 feet (3) North 05 degrees 27 minutes West 556.93 feet (4) North 15 degrees 27 minutes West 386.83 feet (5) North 13 degrees 07 minutes West 342.73 feet (6) North 07 degrees 06 minutes West 334.52 feet (7) North 03 degrees 43 minutes West 934.73 feet (8) North 05 degrees 28 minutes West 487.19 feet (9) North 12 degrees 47 minutes West 319.38 feet (10) North 22 degrees 56 minutes West 193.19 feet (11) North 39 degrees 22 minutes West 156.55 feet (12) North 67 degrees 35 minutes West 150.43 feet (13) North 82 degrees 48 minutes West 451.10 feet (14) North 85 degrees 23 minutes West 933.89 feet; thence leaving said road and severing the land of Nash North 08 degrees 09 minutes East 337.10 feet to a rock and an iron pin; thence South 87 degrees 17 minutes East 724.34 feet to an iron pin; thence North 31 degrees 15 minutes West 636.24 feet to a rock; thence North 87 degrees 12 minutes West 727.21 feet to a rock; thence North 31 degrees 41 minutes West 1345.27 feet to an iron pin, being a point in the South margin of Cliff Springs Road; thence with said road North 50 degrees 25 minutes East 567.68 feet; thence North 47 degrees 22 minutes East 509.16 feet; thence North 30 degrees 55 minutes East 72.59 feet to an iron pin, being Steel's Southwest corner; thence with Steele North 51 degrees 18 minutes East 753.66 feet to a rock, being a point in Wilson's South line; thence with Wilson's South line North 84 degrees 15 minutes East 1775.89 feet; thence South 34 degrees 25 minutes West 325.90 feet; thence South 61 degrees 33 minutes East 260.84 feet; thence North 35 degrees 03 minutes East 472.72 feet to a point in William's line; thence with William's South 82 degrees 44 minutes East 1629.41 feet to a rock; thence South 21 degrees 34 minutes West 1784.44 feet to an iron pin at a fence corner; thence with William's South line South 68 degrees 21 minutes East 2091.57 feet to a fence corner; thence North 21 degrees 31 minutes East 4169.10 feet to a rock; thence South 83 degrees 08 minutes East 727.80 feet to a rock in Parris Farms West line; thence with Parris Farms South 05 degrees 35 minutes West 8974.84 feet to a fence corner in the North margin of Tennessee Highway 62; thence with Tennessee Highway 62 South 85 degrees 39 minutes West 611.64 feet; thence around a curve an arc distance of 796.23 feet (Delta - 13 degrees 37 minutes, Radius 3350.35 feet, Tangent - 400 feet) to a point; thence South 72 degrees 02 minutes West 3186.11 feet to the **BEGINNING**, containing 1067.73 acres, more or less.

Exhibit A-1 Page 1 of 2

BEING the same property conveyed to Grantor by instrument of record in **Record Book 169, Page 510**, in the Register of Deeds Office for Overton County, Tennessee, and in **Record Book 966, Page 182**, in the Register of Deeds Office for Putnam County, Tennessee.

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-1 Page 2 of 2

EXHIBIT A-2

**Lakeview Farms, LLC
Drawing of the Property**

(Drawing is attached immediately behind this page)

Exhibit A -2 Page 1 of 2



Lakeview Farms, LLC Conservation Easement
-- Overton and Putnam Co, TN -- Boundary Map --

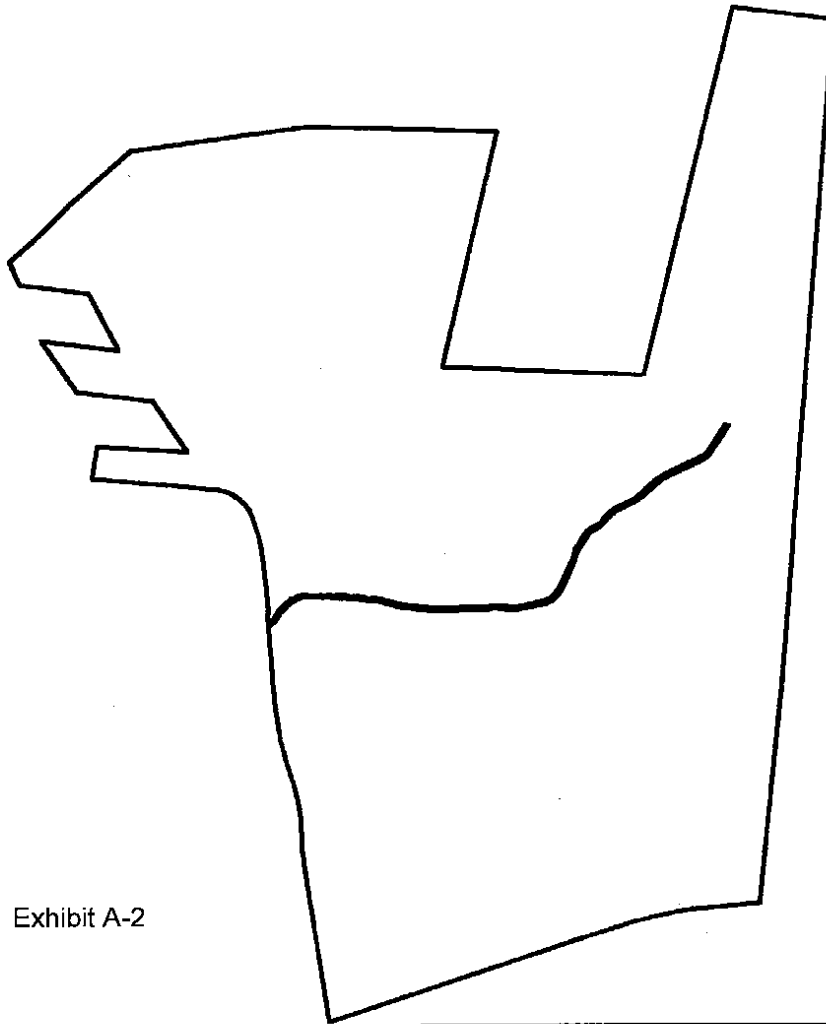
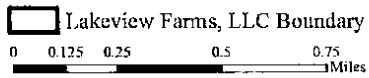


Exhibit A-2



This map was created by the Foothills Land Conservancy (FLC) for reference purposes only. The conservation easement boundary depicted herein is a representation and is not an actual easement boundary survey. It was compiled from the most authentic information available and is believed to be accurate. The FLC is not responsible for any errors or omissions contained herein.

Map prepared by Matthew Moore, 12/12/2018

AFFIDAVIT OF CONSIDERATION

STATE OF Tennessee

COUNTY OF Blount

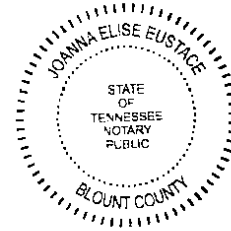
I hereby swear or affirm that the actual consideration for the conveyance set forth above is \$ -0-.

W.C. Cabrey Jr.
Affiant

Sworn to and subscribed before me, a Notary Public, the 17 day of December, 2018.

Joanna Elise Eustace
Notary Public

My Commission expires: 9/27/22



Harold Burris, Register
Putnam County
Rec #: 167266 Instrument #: 221097
Rec'd: 220.00 Recorded
State: 0.00 12/18/2018 at 10:12 AM
Clerk: 0.00 in Record Book
Other: 2.00 1095
Total: 222.00 Pgs 190-233

Kim Copland, Register
Overton County
Rec #: 42474 Instrument #: 57689
Rec'd: 220.00 Recorded
State: 0.00 12/17/2018 at 3:38 PM
Clerk: 0.00 in Record Book
Other: 2.00 200
Total: 222.00 Pgs 735-778