

This Instrument Prepared By:
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865-824-1900

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

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

BK/PG: RB82/893-940	
15001218	
48 PGS:AL-CONSERVATION EASEMENT	
APRIL BATCH: 16428	
12/29/2015 - 02:49:45 PM	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	240.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	242.00
STATE OF TENNESSEE, VAN BUREN COUNTY	
APRIL SHOCKLEY	
REGISTER OF DEEDS	

DEED OF CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS CONSERVATION EASEMENT ("Easement") is made as of the 29 day of December, 2015, by **Benton Hills, LLC**, a Delaware limited liability company ("Grantor"), in favor of **Foothills Land Conservancy**, a Tennessee non-profit corporation ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of approximately Six Hundred Fifty-One and 27/100 (651.27) acres of real property in Van Buren County, Tennessee, more particularly described on **Exhibit A** 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, Van Buren County, Tennessee, and the people of, and visitors to, the State of Tennessee, including visitors to the Fall Creek Falls State Park, Savage Gulf II Scientific Natural Area, South Cumberland State Recreation Area, and other parks and natural areas on the Cumberland Plateau, and which further local, state, and national goals to conserve scenery and wildlife for the enjoyment of future generations; and

WHEREAS, Grantor certifies that the Property possesses ecological, natural, scenic, and other conservation values in its present state as a significant natural area; 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, and shares a common boundary for almost one mile with the historic Trail of Tears, the route of the Cherokee on their march to be relocated in Oklahoma; therefore, preservation of the Property is desirable for historical, conservation, and ecological reasons as well as for aesthetic reasons; and

WHEREAS, the Property is mainly open space and forested land, comprising approximately 651 acres, thus meeting the definitions of "forest land" or "open space land" under The Agricultural, Forest, and Open Space Land Act of 1976. As such, it is to be given special treatment pursuant to such Act. The Property is mainly devoid of development and classified as "woodland 2" by the Tennessee State Property Assessor, comprising mostly of Soil Class A and some Soil Class P. The undeveloped nature of the land provides scenic viewshed and represents significant wildlife habitat and corridors for breeding, foraging, and migration; and

WHEREAS, the Property, which is situated in Van Buren County, has many scenic qualities and is near to Tennessee State Highway 111, a north-south highway in East and Middle Tennessee. The Property is also near Tennessee State Route 8 and Rocky River Road. The Property represents a large, undeveloped tract of land in a developing area of Tennessee. The Property is within 15 miles of McMinnville, the county seat of Warren County, and 50 miles from Chattanooga, the fourth-largest city in Tennessee; and

WHEREAS, the Property is traversed by the Rocky River, Green Sea Branch, and other tributaries and is near to the Baltimore Branch and Big Branch of the Rocky River, as well as Studer Lake. The Property is located in the Cumberland Plateau, a geological region noted for its waterways and rich terrestrial and aquatic biodiversity; and

WHEREAS, according to The Nature Conservancy, the Cumberland Plateau "is the world's longest hardwood-forested plateau and is widely considered one of the most biologically rich regions on Earth, rivaling the biodiversity of tropical rainforests." Because of this and the fact that the region is becoming more and more developed, the state of Tennessee and The Nature Conservancy have made conservation of the Cumberland Plateau a priority; and

WHEREAS, there are several creeks, streams, and waterways on and around the Property, which lies within the Caney Fork River watershed. The Caney Fork River watershed covers 1,771 square miles, and is the location of many scenic recreation areas. The watershed contains low to moderate gradient streams with productive, nutrient-rich waters, resulting in algae, rooted vegetation, and, in some areas, high densities of fish. The watershed also contains many springs and spring-associated flora and fauna, as well as numerous waterfalls, cascades, and timberlands. Due to siltation and contaminants in many of its streams and rivers, waterways in this area are in need of protection and management to ensure the health of the watershed; and

WHEREAS, creeks and waterways found on the Property include the Rocky River and several unnamed tributaries. The Property is very near to the headwaters of the

Rocky River, which was added to the Nationwide Rivers Inventory in 1982. Protection of the Property with a conservation easement would ensure the protection and health of the important waterways found on or near to it, and would improve the health of the Caney Fork River watershed as a whole; and

WHEREAS, the Rocky River, which traverses the Property, was also classified in the Tennessee Department of Environment and Conservation's Tennessee Rivers Assessment Report of 1998 as being of regional significance for natural, scenic values, being of local significance for recreational boating purposes, and having a good to excellent fishery, and excellent to poor water quality, depending on the section. Important tributaries of the Rocky River include Samples Fork, Rocky Branch, Harper Branch, Sycamore Branch, Dyer Gulch Creek, and Pine Branch; and

WHEREAS, the Rocky River is noted in the Nationwide Rivers Inventory, which is compiled by the National Park Service. The Inventory lists free-flowing rivers that are believed to possess one or more "outstandingly remarkable" natural or cultural values. A segment of the Rocky River from Center Hill Lake to just above TN Route 8, which comprises the sections of the Rocky River that traverse the Property, is noted as being a particularly scenic stream with significant karst outcroppings. The Rocky River is listed as having Outstandingly Remarkable Values (ORVs) in the categories of Scenery, Recreation, Geology, Fish, and Wildlife. Norton Springs, located 10 miles upriver from the section that traverses the Property, is also noted as being of national significance on the Inventory; and

WHEREAS, the Nationwide Rivers Inventory notes waterways that have significant scenic, recreation, geologic, fish, and wildlife values, and, pursuant to a 1979 Presidential Directive, all federal agencies must seek to avoid or mitigate actions that would adversely affect one or more NRI segments. With the placement of an easement on the Property, this section of the Rocky River, and the surrounding natural area, would be protected from development and other potential stresses; and

WHEREAS, the Tennessee Department of Environment and Conservation has listed the Rocky River, and many of its named and unnamed tributaries and headwaters, including some of those situated on the Property, on its list of Known Exceptional Tennessee Waters and Outstanding Natural Resource Waters. These sections of the Rocky River and its headwaters and tributaries are included on the aforementioned list because of some of the rare or threatened species found in and around this waterway; and

WHEREAS, two important branches of the Rocky River, Green Sea Branch and Baltimore Branch, diverge just off the Property. Creeks and waterways near the Property include Samples Fork, which was classified in the Tennessee Department of Environment and Conservation's Tennessee Rivers Assessment Report of 1998 as being of "statewide or greater significance" for Natural, Scenic Qualities and as having water quality that does not support its designated uses. Another creek near the Property, Laurel

Creek, was also noted in the Tennessee Rivers Assessment Report of 1998 and was classified as being of "regional significance" for Natural, Scenic Qualities, having a "good fishery," and having water quality that "fully supports its designated uses. Protection of lands like the Property from the pressures of development and exploitation would help to improve and protect water quality of streams in the area; and

WHEREAS, other creeks, streams, and waterways within a one-mile radius of the Property include Longrock Branch, Mill Branch, Harper Branch, Big Sandy Branch, Little Sandy Branch, Spring Creek, Little He Creek, and Big He Creek, among others. The Cumberland Plateau is known for its many waterways and rich aquatic biodiversity. Preservation of the Property in its relatively natural, undeveloped state would contribute to the protection and conservation of these natural resources; and

WHEREAS, the Tennessee Natural Heritage Program has listed 179 rare species and three rare ecological systems found within the Caney Fork River watershed. Of these rare species, 62 are invertebrate animals, eight are nonvascular plants, 79 are vascular plants, and 30 are vertebrate animals. Twenty-four of the noted animal species are aquatic, and would greatly benefit from the protection of the important waterways on and around the property, as well as the protection of the natural character of the surrounding lands. Many of these species, particularly freshwater mussel species, have declined as a result of their high sensitivity to development and the siltation that often results from such development; and

WHEREAS, the Rocky River contains one of only five known populations of the Bluemask Jewel Darter (*Etheostoma akatulo*), a species that has been listed as Endangered by both state and federal governments since 1993, and is considered extremely rare and critically imperiled on a global and statewide level. Existing threats to the Bluemask Jewel Darter's survival include habitat destruction from gravel dredging, pesticides in runoff and groundwater from plant nurseries, siltation from gravel mining, agricultural runoff, other land-disturbing activities, and acidic mine drainage from headwater streams. Preservation of the Property in its undeveloped state, including the protection of the headwaters of the Rocky River found on the Property, would encourage the survival of this, and other, sensitive aquatic species; and

WHEREAS, another invertebrate aquatic species found near the Property is the Pristine Crayfish (*Cambarus pristinus*), listed as Endangered by the state of Tennessee, and considered very rare and imperiled on both the state and global levels. The Pristine Crayfish, which is only found in Tennessee, has known habitat within four (4) miles of the Property, and the University of Tennessee's Cumberland Habitat Conservation Plan has called for surveys to be completed in many area waterways, including the Rocky River. The Pristine Crayfish, like many aquatic species, is significantly affected by the siltation that occurs with agriculture and silviculture. Protection of the Rocky River, its headwaters and tributaries, as well as the establishment of buffer zones along its banks, would benefit the species and ensures its survival; and

WHEREAS, other plant species listed as Endangered by the state of Tennessee and known to thrive alongside the Rocky River include Short-leaved Panic Grass (*Panicum curtifolium*) and White Fringeless Orchid (*Platanthera integrilabia*). Short-leaved Panic Grass, populations of which are found within four (4) miles of the Property, is considered “widespread, abundant, and apparently secure globally, but with cause for longterm concern,” although it is considered “extremely rare and critically imperiled within the state, with five or fewer occurrences, or very few remaining individuals, or because of some special condition where the species is particularly vulnerable to extinction”; and

WHEREAS, the White Fringeless Orchid, also found along the Rocky River, according to the Tennessee Natural Heritage Program, is also considered to be Commercially Exploited by the federal government. The USDA Forest Service notes that the White Fringeless Orchid is rare throughout its range and is a candidate for federal listing, and lists habitat alteration (“through alteration of hydrology”) as the main threat to the species; and

WHEREAS, another species of rare or threatened plant found within one (1) mile of the Property is Eggert’s Sunflower (*Helianthus eggertii*), which prefers barrens and roadsides as habitat. Eggert’s Sunflower is considered a species “of Special Concern” by the Tennessee Department of Environment and Conservation. This designation is reserved for “any species or subspecies of plant that is uncommon in Tennessee, or has unique or highly specific habitat requirements or scientific value and therefore requires careful monitoring of its status.” Eggert’s Sunflower was previously listed as Endangered, because the few remaining populations were threatened by development, agriculture, herbicides, and fire suppression. At the time of listing in 1997, there were 34 known sites for Eggert’s Sunflower. When delisted in 2005, there were 287 known sites, many of which were protected by cooperative management agreements. While the species is no longer listed by the federal government, it is recognized as being sensitive to the pressures of development and therefore remains a species of Special Concern. It is also considered “rare and uncommon in its range” on both a state and global level. Continued protection of this species and its habitat, as well as the many other rare and threatened species in the area, would ensure their survival in the long term; and

WHEREAS, the Tennessee Natural Heritage Program found over six rare or threatened plant and animal species within four miles of the Property, including three plant species and three animal species. More three rare or threatened plant and animal species are found within one mile of the Property. One species found within one mile of the Property is the Barking Treefrog (*Hyla gratiosa*), the largest treefrog in the Southeast, which is considered rare and uncommon in its range in Tennessee and has been “Deemed in need of management” by the state of Tennessee; and

WHEREAS, plant species noted by the Tennessee Natural Heritage Program as being within four miles of the Property include Early St. Johnswort (*Hypericum*

nudiflorum), also considered a species “of Special Concern” and “very rare and imperiled” in the state of Tennessee; and

WHEREAS, many vertebrate species would also benefit from the protection of the Property. The Gray Myotis (*Myotis grisescens*) is a federally-listed endangered species found within four miles of the Property that relies on forested areas for migration, foraging, and roosting. This and all local bat species are in danger because of white nose syndrome (WNS), a fungal infection that has decimated bat populations throughout the Southeast. The forested nature of the Property provides relatively natural habitat for this local species; and

WHEREAS, the Property is located in an area rich with natural, historical, or recreational parks and sites. While some of these areas, such as caves, are closed off to visitors, many still come to the area to benefit from its natural beauty and scenic qualities. Fall Creek Falls State Park, less than 10 miles from the Property, is a very popular area for tourists from throughout the southeast. Southern Living Magazine ranked Fall Creek Falls State Park as the best state park in the Southeast, and it is one of the most visited Natural-Scientific Areas in Tennessee. Fall Creek Falls was identified by the Tennessee Department of Environment and Conservation as a Class II Natural-Scientific State Natural Area. The Park itself is nearly 20,000 acres, and includes 34 miles of hiking trails, 228 campsites, and 345-acre Fall Creek Falls Lake; and

WHEREAS, Savage Gulf Class II Natural-Scientific State Natural Area, part of South Cumberland State Park, is also located within 10 miles of the Property. The 15,590-acre Natural Area, which TDEC considers “one of Tennessee’s most scenic wilderness areas,” is also considered a National Natural Landmark. Known for its gorges, impressive waterfalls, and a natural feature called the Stone Door, Savage Gulf attracts visitors every year for hiking and camping. Famous for its springtime wildflower display, Savage Gulf State Natural Area contains sections of the Collins River that are part of the Tennessee Department of Environment and Conservation’s Scenic Rivers Program. The Property is also within 10 miles of the South Cumberland State Recreation Area, a 21,649-acre state recreation area, that is a popular destination for hiking, biking, camping, picnicking, fishing, rock climbing, caving, and visiting historic ruins. The Property would serve as another relatively natural and undeveloped area along the Cumberland Plateau, serving as natural habitat for wildlife, and providing a natural corridor for breeding, foraging, and migration; and

WHEREAS, Hubbard’s Cave, the Nature Conservancy’s “foremost cave preserve” (nature.org), is found within 15 miles of the Property. This State Natural Area is comprised of the cave and 50 surrounding acres. The cave has three forks, one of which is of geological interest, being 50 feet high with impressive gypsum formations. Another fork is the largest hibernaculum of Gray Myotis in Tennessee. Over 100,000 individuals (Nature Conservancy estimates that these numbers are closer to 500,000), as well as many other individuals of at least seven other species have been observed at Hubbard’s Cave. No other cave in North America has a higher diversity of bat species, and the total

winter population of Hubbard's Cave is one of the highest in the world, once reaching a total of 4,000,000 individuals. Many other cave obligates also depend on Hubbard's Cave for habitat. Hubbard's Cave is also known for its historic value, containing evidence of Civil War-era saltpeter mines as well as traces of prehistoric human habitation; and

WHEREAS, Big Bone Cave, 10 miles from the Property, is a National Natural Landmark, as declared by the U.S. Department of the Interior, and is the sixth longest mapped cave in Tennessee. It is well known as a historic site of War of 1812- and Civil War-era saltpeter mines, as well as the site of the discovery of many fossils, for example, the skeleton of the giant ground sloth (*Megalonyx jeffersonii*) is the only specimen ever discovered with a complete pelvis; and

WHEREAS, two other relatively natural areas, Virgin Falls Pocket Wilderness Area and Rock Island State Park, are located within 20 and 15 miles of the Property, respectively. The Property would serve as another relatively natural and undeveloped area along the Cumberland Plateau, serving as natural habitat for wildlife, and providing a natural corridor for breeding, foraging, and migration; and

WHEREAS, the northern boundary of the Property is bordered by a section of the Northern Route of the Trail of Tears, as noted by the Tennessee Department of Environment and Conservation – Division of Archaeology. This section of the Trail of Tears was part of the overland route used by eleven Cherokee removal parties who opposed the removal treaty in 1838, as well as some earlier voluntary removal groups. After Pleasant Hill Cemetery, the Trail is a footpath until crossing Mill Branch, after which the exact route becomes conjectural but becomes a foot and jeep trail again after crossing Rocky River Road. It passes the aforementioned Cumberland Plateau Observatory, and continues toward Warren County. This section of the Trail of Tears is also believed to have been the site of an encampment of B. B. Cannon's voluntary removal detachment in October 1837. The historic importance of this section of land cannot be overstated, and the conservation of the surrounding lands in their natural state serves not only to preserve the natural beauty of the area, but also as a memorial of the estimated 4,000 Cherokees who died as a result of the removal; and

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

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

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

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

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

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

- (a) Preservation of the viewshed for the scenic enjoyment of the general public, which will yield a significant public benefit;
- (b) Protection of a relatively natural habitat for fish, wildlife, plants, and the ecosystems in which they function;
- (c) Preservation of open space for the scenic enjoyment of the general public, and pursuant to a clearly delineated government conservation policy which provides significant public benefit from both open space (including farm land and forest land) and agricultural use; and
- (d) Preservation of a historically-significant land area; 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 easement and impose the restrictive covenants on the Property as set forth in this Easement to accomplish the Conservation Purposes;

NOW, THEREFORE, as an absolute charitable gift with no monetary consideration, but in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, the sufficiency of which is hereby acknowledged, and pursuant to the laws of Tennessee and in particular the Tennessee

Conservation Easement Act of 1981, Tennessee Code Annotated Section 66-9-301 et seq., and the Tennessee Agricultural, Forestry and Open Space Land Act of 1976, Tennessee Code Annotated Section 67-5-1002 et seq., Grantor hereby voluntarily, unconditionally, and absolutely declares the restrictions set forth herein and grants and conveys to Grantee a 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 Easement and agrees to hold the Easement exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in this Easement. The execution, delivery, and recordation of this Easement creates a property right vesting immediately in Grantee.

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever in its current natural, scenic, and undeveloped condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property or the Conservation Purposes of this Easement, subject only to the terms and provisions set forth herein. Grantor intends that this Easement will allow the use of the Property for such activities that are not inconsistent with the purposes of this Easement, including, without limitation, those involving permitted agricultural uses, forest management and protection, fire management and control, wildlife habitat improvement, and other permitted recreational uses that are not inconsistent with the purposes of this Easement.
2. **Rights of Grantee.** To accomplish the purposes of this Easement, the following rights are conveyed to Grantee by this Easement:
 - (a) To preserve and protect the Conservation Values of the Property and enforce the Conservation Purposes of this Easement;
 - (b) To enter upon 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 to prevent, terminate, or mitigate a violation of this Easement, or where entry is required to inspect the Property if a violation of the terms of this Easement is alleged or believed to have occurred, such entry shall be on prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and enjoyment of the Property;
 - (c) To prevent any activity on or use of the Property that is inconsistent with the Conservation Purposes of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth herein;

- (d) To use whatever technology or technological devices might be available from time to time to monitor and accomplish the purposes of this Easement, including, without limitation, still photography; audio and video recording and monitoring; aerial imaging, including, without limitation, still, audio, and video recording, archived, and real-time; and any other aid in monitoring which may yet be invented, discovered, or made available, all of which are intended to be used for the purpose of assuring compliance by Grantor with the provisions of this Easement; and
- (e) To engage consultants, agents, and other third parties to assist Grantee in carrying out the rights of Grantee provided in this Easement.

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

- 3.1 Subdivision.** The Property may not be divided, partitioned, or subdivided other than as may be set forth in **Section 4** of this Easement. The term "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 other than those relating to agriculture, silviculture, education, scientific research, de minimis recreational activity, or other customary rural enterprise is prohibited;
- 3.3 Topography.** The filling, excavating, dredging, surface mining, drilling, or any removal of topsoil, sand, gravel, shale, rock, peat, minerals, or other materials, to or from the Property. To the extent Grantor owns the mineral rights with respect to the Property, also prohibited is the exploration for, or development and extraction of, minerals and hydrocarbons by any mining method or any other method that, in the reasonable discretion of Grantee, would significantly impair or interfere with the Conservation Values of the Property or the Conservation Purposes of this Easement; provided, however, minimal filling, excavating, and dredging shall be permitted as may be necessary for creekfront and waterfront stabilization and rehabilitation and pond maintenance as may be provided in **Section 4** of this Easement. No surface mining of any kind, particularly any surface mining in violation of Internal Revenue Code Section 170(h)(5), shall be permitted;
- 3.4 Dumping.** The storage or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, or any placement of

underground storage tanks in, on, or under the Property, other than water tanks used for the purpose of establishing a water reserve for fire fighting purposes, so long as the area disturbed for such permitted placement is revegetated and restored to its natural condition promptly after completion of the work. There shall be no changing of the topography through the disposal of soil, spoil, or other substance or material such as land fill or dredging spoils, nor shall activities that could cause erosion or siltation on the Property be conducted on the Property or on adjacent property, if owned by Grantors;

- 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 described in **Section 4** of this Easement;
- 3.6 Access.** Access by the public at large, except with the express permission of Grantor or pursuant to a written agreement with an agency of the State of Tennessee so long as the provisions of such agreement do not compromise, in Grantee's sole discretion, the Conservation Values of the Property or the Conservation Purposes of this Easement;
- 3.7 Hunting.** Hunting on or from the Property, except by permission of Grantor. This may in no way be interpreted to support any activity resembling a commercial hunting preserve;
- 3.8 Motorized Vehicle Use.** No All Terrain Vehicles or similar self-powered vehicles are allowed on the Property except as used by Grantor and/or Grantee, and then only for the purpose of maintaining and monitoring the Property;
- 3.9 Signs.** The placement of any commercial signs or billboards on the Property except those small, relatively unobtrusive signs, the placement, number, and design of which do not significantly diminish the scenic character of the Property, may be displayed to state the name and address of the Property and the names of persons living on the Property, to advertise the Property for sale or rent, to post the Property to control unauthorized entry, to provide notice that this is protected property, to identify Grantee as the holder of an interest in the Property, to identify a significant distinction of the Property, such as a Century Farm or National Register of Historic Places, or as may be required by the pre-existing uses of the property;
- 3.10 Introduced Species.** The intentional introduction of any exotic or invasive plant species on the Property;

- 3.11 Surface Water; Ground Water.** The pollution, contamination, or alteration of surface water, natural water courses, lakes, ponds, marshes, ground or subsurface water, or any water on or near the Property, except such alteration as may be described below in **Section 4**, or as may be legally permitted for irrigation or for use in ponds. No ground or surface water from the Property shall be removed, collected, impounded, stored, transported, diverted, or otherwise used for any purpose or use outside the boundaries of the Property without the express written consent of Grantee in its sole discretion;
- 3.12 Timber.** The cutting of any trees other than pursuant to a forest management plan approved by the Tennessee Division of Forestry, and in accordance with the Best Management Practices as published by the Tennessee Division of Forestry, all as more particularly described in **Section 4** of this Easement; provided, however, the cutting down or removal of dead, diseased, or storm-damaged trees, 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 to maintain views, or for use as personal firewood, shall be permitted;
- 3.13 Management Areas.** While the entire Property is subject to management for the preservation of the Conservation Values of the Property, there are variations of management techniques for different areas of the Property. Notwithstanding any other provision of this Easement, there shall be no timber cutting, timber harvesting, clearing or removal of vegetation, clearing or removal of leaf litter or other natural detritus, or any other activity that may have an adverse effect on the Conservation Values of the Property or the Conservation Purposes of this Easement in any area identified by Grantee, either at the time of the conveyance of this Easement, or any time in the future, as a "Management Area B;" provided, however, with the prior express, written consent of Grantee, certain activities which will have the effect of improving the Conservation Values of the Property, in Grantee's sole discretion, may be permitted in Management Areas B. Such areas include, but are not limited to, areas with significant Conservation Values with respect to relatively natural habitat for fish, wildlife, or plants or similar ecosystems and include, with or without designation by Grantee, any area within 200 feet of any cave or cave opening, wetlands, creeks, streams, and/or blue-line streams;
- 3.14 Density.** No portion of the protected property may be used to satisfy land area requirements for other property not subject to this Conservation Easement for purposes of calculating building density, lot coverage, or open space under otherwise applicable laws, regulations, or ordinances controlling land use. No development rights that have been encumbered or

extinguished by the Easement may be transferred to any other property;
and

- 3.15 Any Use Inconsistent with Purpose.** The parties recognize that this Easement cannot address every circumstance that may arise. The parties agree on the Conservation Values of the Property and the Conservation Purposes of this Easement, and that those Conservation Values and the Conservation Purposes of this Easement are paramount to any other use of the Property. The property will be retained forever in its natural, scenic, and undeveloped condition, and will be used in a manner so as to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, its wildlife habitat, and/or natural resources. Any use or activity which is inconsistent with, or materially threatens, the Conservation Values of the Property or the Conservation Purposes of this Easement is prohibited.

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

- 4. Reserved Rights.** Grantor reserves to itself and to its successors and assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, and subject to all other provisions of this Easement, the following rights are expressly reserved:
- 4.1 Reside.** The right to reside on the Property in perpetuity within the areas described in **Section 4** of this Easement;
- 4.2 Convey and Pledge.** The right to sell, donate, mortgage, lease, bequeath, or otherwise convey the Property, provided such conveyance is subject to the terms of this Conservation Easement and written notice is provided and the Transfer Fee is paid to Grantee in accordance with the provisions of **Section 12**;
- 4.3 Public Park.** The right to designate the Property as a public nature park or refuge for low impact activities such as hiking and nature study subject to the prior approval of Grantee, and further subject to a written agreement with an agency of the State of Tennessee, so long as the provisions of such

agreement do not compromise the Conservation Values of the Property or the Conservation Purposes of this Easement;

4.4 Subdivision. The Property may be subdivided into no more than four (4) tracts, subject to the prior written approval of Grantee, which tracts must follow, generally, the subdivision lines shown on Exhibit C, attached hereto, and which must not adversely affect the Conservation Values of the Property or the Conservation Purposes of this Easement. Consideration must be given, in any proposed subdivision of the Property, to the need for unfettered access from a public road to the subdivided tract under consideration for approval, as well as unfettered access from a public road to any remaining potentially subdivided tract or tracts. In the event Grantee fails to consent to any requested subdivision that, in the opinion of Grantor, otherwise satisfies the requirements of this Easement, Grantee shall provide written comments to Grantor detailing the basis for Grantee's withholding of consent within thirty (30) days of Grantor's request therefor;

4.5 Dwelling Structures. The right to construct, remodel, renovate, or replace four (4) residential dwellings on the Property, one such dwelling in each of the four 5-acre home sites (collectively, "Homesites" and individually, "Homesite"), the location of, and access to which are shown on the attached Exhibit C, and the legal descriptions of which are shown on Exhibit D. The size, design, and construction of such residential dwellings shall be subject to the express, written consent of Grantee, and must not have an adverse effect on the Conservation Values of the Property or the Conservation Purposes of this Easement; provided that no individual dwelling shall exceed 10,000 square feet of heated living area nor be greater than two (2) stories above ground in height, and further subject to the following:

- (a) There shall be no construction nor removal of any trees on the Property for the foregoing purposes until each of the following conditions is satisfied:
 - (i) The location and dimensions of any new road, travelway, or driveway to serve a Homesite shall be reviewed and must be approved by Grantee. The location and dimension of each road, travelway, and/or driveway must not, in Grantee's sole discretion, result in any material adverse effect on any of the Conservation Purposes of this Easement or the Conservation Values of the Property;
 - (ii) The location of any new road, travelway, or driveway and any new utility facilities shall be identified and surveyed by

Grantor and such survey information shall be provided to Grantee in the form Grantee requires, at the sole expense of Grantor, prior to Grantee's review;

- (iii) Grantee must approve, in writing, prior to any recordation and prior to the commencement of any work, all of Grantor's plans and concepts for the location and construction of any structure within any Homesite area as well as the location and nature of any road, travelway, driveway, easement, and utility facility;
 - (iv) Grantor, and not Grantee, shall bear all responsibility for obtaining permits or other approval and recordation of any state, county, or municipal government for the location and construction of any Homesite area, dwelling, utility facility, road, travelway, driveway, or other Structure the location of which is to be reviewed by Grantee under this **Section 4**;
 - (v) The description of each utility easement area and any new road, travelway, or driveway, as reviewed and as approved by Grantee, shall be re-surveyed following completion, and a set of "as built" drawings will be furnished to Grantee and shall be added to the monitoring reports and kept with the Baseline Document Report for this Easement; and
 - (vi) All of Grantee's expenses incurred in the review, approval, and oversight of the Reserved Rights in this **Section 4** as well as the costs and expenses thereof, shall be paid, in full, by Grantor prior to undertaking any construction, including clearing of the areas. Grantee may require a deposit of its estimated expenses before granting any approval or reviewing any surveys or other submissions by Grantor;
- (b) At such time as any Homesite is selected by Grantor and approved by Grantee, the monitoring reports for the Baseline Documentation Report shall include such Homesite and the access and utility easement serving such Homesite;

Notwithstanding the establishment of any or all of the Homesites, those Homesites shall remain subject to all of the provisions of this Easement.

- 4.6 Agricultural Structure.** No accessory structure built or to be built within an Inholding pursuant to **Section 4.5**, such as a barn or shed, shall be used as a living or dwelling site. No such structure shall have a septic system or other wastewater disposal system. The specific location and size of all such

structures, which is subject to the express, written approval of Grantee, shall not adversely affect the Conservation Values of the Property nor the Conservation Purposes of this Easement, in the discretion of Grantee;

- 4.7 Utilities.** The right to provide utilities to the residential dwellings described herein and any other permitted structure; provided, however, that while such utilities need not be underground, Grantee shall use its best efforts to locate any aboveground utilities in the least obtrusive location, at a minimum, staying as close as possible to roads, driveways, or other access or maintenance travelways;
- 4.8 Additional Agricultural Use.** Any low-impact agricultural use shall be allowed on the Property, provided no existing Conservation Values of the Property are compromised, and further provided the Conservation Purposes of this Easement are not violated or compromised;
- 4.9 Forest Management and Commercial Forestry.** Grantor retains the right to conduct forest management and commercial forestry activities by tried and proven forestry methods designed to allow for a sustained yield of forest products. Forest management and commercial forestry activities must be conducted in accordance with:
- (i) a written Forest Management Plan approved by Grantee (“Plan”),
 - (ii) the Tennessee Division of Forestry Best Management Practices Guidelines, 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
 - (iii) other applicable county, state, and federal forestry laws and regulations as they may apply to Grantor’s specific timber management activities.
- (a) **Forest Management Plan.** Prior to commencement of harvesting or other forest management activities, the Plan is required. The Plan must be consistent with the terms of the Conservation Easement. The requirements of the Plan include those listed in subparagraphs i-iii below.
- (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 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 not more than three (3) years prior to the date any commercial forestry activity is expected to commence, 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) **Grantee Review.** The Plan shall be provided to Grantee prior to conducting any such Commercial Forestry activities on the Property. Grantee shall review the Plan for consistency with the purposes and terms of this Conservation Easement, and Grantor must obtain Grantee's approval of the Plan. If Grantee is required to engage a forestry consultant to review the Plan, Grantor agrees to reimburse Grantee for the costs, expenses, and fees incurred by Grantee in such review. If Grantee determines that any portion of the Plan is inconsistent with the terms of this Conservation Easement or that resulting forest management activities could result in a violation of this Conservation Easement, Grantee will provide written comments to Grantor identifying and explaining such inconsistencies that may result in a violation of this Conservation Easement. Neither Grantee's right to provide comments, nor its actual comments, shall constitute a waiver of the terms of this Conservation Easement.

(iii) **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;
- 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 (such as roads, buildings, fences);
- (c) Proposed timber harvest intent, silvicultural treatments, schedules; and
- (d) Other forest management practices, activities, and schedules.
- (b) **Forest Roads.** Grantor retains the right to maintain, repair, and replace existing forest management roads and associated bridges and culverts, together with the right to construct new forest management roads and associated improvements, provided that said roads and associated improvements fulfill the following requirements: (a) additional roads or road improvements are necessary to provide reasonable forest management access to the Property, and (b) such construction is in compliance with the Tennessee Best Management Practices Guidelines in existence as of the date of this Easement.
- (c) **Notice of Harvest and Contractor Requirements.** The following conditions apply to the commercial forestry rights reserved by Grantor:
- (i) Grantor shall provide Grantee with a written notice of harvest (“Harvest Notice”) at least thirty (30) days prior to commencement of Commercial Forestry harvesting activities;
 - (ii) The Harvest Notice shall include the name of the forester supervising the harvest and the logger(s), and shall include a general description of the scope of harvest activity (size and location of area to be logged (including maps)); prescribed silvicultural treatments which may be employed; and major access routes including haul roads, landings, and stream crossings;
 - (iii) Timber harvesting shall be conducted within the constraints of the Plan under a written contract with a 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 of this Easement; and

- (iv) upon completion of said harvesting activities, including any restoration work required by applicable law, the forest management plan, and/or the logging contract, Grantor shall provide a timely notice of completion to Grantee.

Notwithstanding any other provision of this Easement, there shall be no timber cutting or harvesting in any area identified by Grantee, either at the time of the conveyance of this Easement or any time in the future, as a Management Area B. Such areas include, but are not limited to, areas with significant Conservation Values with respect to relatively natural habitat for fish, wildlife, or plants or similar ecosystems and include, with or without designation by Grantee, any area within 200 feet of any cave or cave opening, wetlands, creeks, streams, and/or blue-line streams.

- (d) **Non-Commercial Timber Harvest.** Notwithstanding any other provision in this Grant, specifically excepting those provisions regarding Management Areas B, Grantor retains the right, without seeking the Grantee's prior review, to remove damaged, diseased, or dead trees, to remove trees in connection with the construction activities permitted under **Section 4** that have been approved by Grantee, to remove trees in connection with the agricultural activities permitted herein, to remove trees that present a hazard to persons or property, or to remove trees for the cutting of firewood, posts, and poles for personal or farm uses;

4.10 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 and to use governmentally-approved chemical agents for the control of plants and insects with regard to residential lawn and landscaping, provided such actions shall be consistent with and in compliance with all applicable federal, state, and local laws and manufacturer's guidelines; provided, however, if the use of any such chemical agents will have an adverse effect on any of the Conservation Values of the Property, the use of such agents shall be prohibited. Any such herbicides or pesticides shall be the least toxic necessary to accomplish the task at hand;

4.11 Signs. The right to display signs showing the location and address of the Property and its facilities and signs indicating that the Property is available for sale or rent, for purposes of public access, if applicable, or as may be useful to support permitted educational, scientific, and recreational activities, as well as any sign indicating that the Property is protected property subject to this Easement;

- 4.12 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 here to **Section 2** of this Easement and Grantee's entry and monitoring rights as set forth therein;
- 4.13 Scientific Activity.** The right, with prior approval of Grantee, to permit or allow the Property to be used for scientific research by a member of the faculty of any accredited college or university or by a student or a group of students working under the direct supervision of such a faculty member so long as such research activities do not adversely affect the Conservation Values of the Property or the Conservation Purposes of this Easement;
- 4.14 Ponds, Banks, and Frontage.** The right to maintain the existing ponds on the property in their current condition or as may be modified consistent with recommendations from any appropriate state or federal agency, which modifications are subject to the express written consent of Grantee. The right, with prior approval by Grantee, to construct and maintain one or more additional ponds as may be determined appropriate for horses or livestock or to maintain or enhance the physical stability and natural features of the current or any new ponds by ecologically appropriate methods as established or recommended by National Resource Conservation Service or any qualified organization performing the same function and approved by Grantee. The right to rehabilitate and restore any and all creek, stream, and river banks and frontage areas, subject to the express written consent of Grantee, in compliance with all local, state, and federal water quality and other laws, rules, and regulations;
- 4.15 Feed Plots; Wildlife Observation.** The right to establish one or more feed plots on the Property in accordance with a Wildlife Management Plan devised in conjunction with and approved by the Tennessee Wildlife Resource Agency, or any other similar state or federal agency, the number and total acreage of which is subject to the express, written consent of Grantee, and the right to construct wildlife observation structures, in number and location subject to the express, written consent of Grantee, all of which must not adversely affect the Conservation Values of the Property or the Conservation Purposes of this Easement;
- 4.16 Leases and Other Interests.** The right to lease or to grant others less than fee-simple interests in the Property for any use permitted Grantor, subject to Grantee's prior written approval, provided that such lease or other interest in the Property is subject to and consistent with the provisions of this Easement, and does not constitute an impermissible subdivision of the Property, and further provided the use contemplated by such lease or other

interest in the Property does not adversely affect the Conservation Values of the Property or the Conservation Purposes of this Easement; and

4.17 Other Uses. Grantor may, or may permit others to, engage in or perform any other actions or activities that are not expressly prohibited herein, and which do not compromise the Conservation Values or adversely affect the Conservation Purposes of this Easement.

In connection with any reserved right of Grantor to install and maintain roads and/or driveways for vehicular access to the areas of the Property on which the existing and additional structures and related ancillary improvements are and may be constructed pursuant and subject to the terms and conditions of this Easement, with such roadways 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 and/or driveways shall be located, to the extent possible, in the path of forestry roads existing on the date of this Easement; (ii) the width of the area cleared for such roadways and/or driveways shall not exceed that which is necessary for two lanes of vehicular traffic and the installation of underground utilities; (iii) such roadways and/or driveways shall be otherwise installed in a manner to avoid unnecessary tree removal and land disturbance; (iv) if such roadways 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 control erosion, and shall be of design and location approved, in advance, by Grantee; and (v) Grantee has approved the proposed roadways and/or driveways and access to the adjacent lands based on the foregoing requirements.

Notwithstanding any other provision of this **Section 4**, the activities enumerated herein shall be prohibited to the extent any such activity or activities adversely affect the Conservation Values of the Property or the Conservation Purposes of this Easement.

No assurance is given that any of the above reserved rights may be exercised in such manner as Grantor might propose without having an adverse effect on the Conservation Purposes of this Easement, the Conservation Values of the Property, or other significant ecological values of the Property. The procedure set forth herein is established for the purpose of making that determination. The reserved rights in this Easement may not be exercised unless and until Grantee is satisfied that the exercise of the reserved right in the manner proposed by Grantor, can be undertaken without an adverse effect on the Conservation Purposes of this Easement, the Conservation Values of the Property, or other significant ecological values of the Property. Grantor hereby waives, for Grantor and Grantor's heirs, executors, successors, and assigns, to the fullest extent allowed by law, any and all right to seek or recover damages from Grantee in any litigation or other legal action arising from a dispute over Grantee's exercise of its rights, obligations, or

interpretations under this **Section 4** or any other Section of this Easement and Grantor agrees that the sole remedy or legal right to seek redress arising from any adverse decision of Grantee shall be to seek a declaratory judgment or other legal declaration by a court of competent jurisdiction as to the rights of Grantor hereunder. Grantor and Grantee agree that it is their intent that the rights reserved by Grantor in this Easement conform to the requirements of 26 C.F.R. Section 1.170A-14, and any rights so reserved by Grantor shall be limited to the extent such rights do not conform with 26 C.F.R. Section 1.170A-14. Grantor may not exercise any of its rights reserved under this Easement, including those rights reserved in this **Section 4**, in such a manner to adversely impact the Conservation Values of the Property or the Conservation Purposes of this Easement. Notwithstanding any other provision of this Easement, Grantor shall notify Grantee, in writing, before exercising any of Grantor's reserved rights under **Section 4** of this Easement which may have an adverse impact on the Conservation Values of the Property or the Conservation Purposes of this Easement. If Grantee determines that any specific exercise by Grantor of any of its reserved rights under this Easement may have an adverse impact on the Conservation Values of the Property or the Conservation Purposes of this Easement, Grantee may withhold its approval of such action.

5. Notice and Approval.

5.1 Notice of Intention to Undertake Certain Permitted Action Pursuant to Section 4. The purpose of requiring Grantor to notify Grantee prior to undertaking any of the activities described in **Section 4**, is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required pursuant to **Section 4**, including when notice is not specifically required by the terms of the Reserved right, but is, nevertheless, required by the general language of **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. The notice shall describe the nature, scope, design, location, timetable, and any other material aspects of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Easement.

5.2 Grantee's Approval. Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon a determination by Grantee that the action as proposed would be inconsistent with the purposes of this Easement, would be inconsistent with the restrictions set forth in this Easement, would adversely affect the Conservation Values of the Property, or would adversely affect the Conservation Purposes of this Easement. In the event Grantee has not replied in writing to Grantor's

request within such thirty (30) day period, Grantor's request will be deemed denied.

6. Grantee's Remedies.

- 6.1 Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice of such violation to Grantor and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan to which Grantor and Grantee have agreed in writing. In the event Grantor and Grantee, both operating in good faith, cannot agree to such plan, another organization that is qualified under Section 179(h) of the Internal Revenue Code and 26 C.F.R. Section 1.170A-14 to acquire and hold conservation easements, which organization holds at least 20 conservation easements in the same general area as Grantee, shall prepare the plan of restoration.
- 6.2 Injunctive Relief.** If Grantor fails to cure the violation within sixty (60) calendar days after receipt of notice thereof from Grantee or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, if Grantor fails to begin curing such violation within the sixty (60) day period, or if Grantor fails to diligently pursue the cure to completion, 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 to require the restoration of the Property to the condition that existed prior to any such injury. The parties agree that any bond to be posted by Grantee in pursuit of such a remedy shall be no more than One Hundred Dollars (\$100).
- 6.3 Damages.** If there is a violation of any of the provisions of this Easement, Grantee shall notify Grantor by written instrument, and Grantor shall promptly cure the violation by (a) ceasing the activity giving rise to the violation, (b) restoring the Property to its condition before the violation, or (c) both, as the case may be. Grantee shall have the right, but not the obligation, to pursue legal actions or proceedings at law and/or in equity to enforce the conservation restrictions, including the right to cause such violation to be cured, and if a court of competent jurisdiction determines that a violation has occurred hereunder, the then-current owner shall reimburse Grantee, as applicable, for all reasonable expenses incurred, including legal fees and attorney fees, whether in or out of court, and the cost of legal proceedings brought to cure the violation or to collect such

reimbursement. Additionally, if Grantor violates this Easement in such a manner as to cause damage to, extract, or remove any trees, mineral resources, pond, wetland, stream, or other natural resource protected by this Easement, including a violation resulting from failure to obtain Grantee's approval, Grantee shall be entitled to payment of damages in the amount of the value of the protected natural resource in addition to all other remedies and damages set forth herein. Grantee may seek payment and recovery of such damages by any means available. The value of the protected natural resource shall be established as the greater of (i) the market value of the resource or (ii) the cost of immediate restoration of the Property and all resources to their condition prior to the violation. If such immediate restoration is not reasonably possible then the market value of the resource shall be the amount of damages. If the resource does not have readily determinable market value then the amount of damages shall be the amount which a court of competent jurisdiction may determine, taking into account the importance of the resource to the fulfillment of the Conservation Purposes.

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

with actual malice in bringing such enforcement action, in which case Grantee shall be liable to Grantor only for Grantor's costs, fees, and expenses, including reasonable attorney fees, actually incurred in defending such a suit.

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

6.11 No Third Party Rights of Enforcement. This Easement may only be enforced by Grantor and Grantee and no third party beneficiary rights, rights of enforcement, or other rights are created or intended to be created or granted by this Easement in or to any other person or entity, any person or entity that was once a "Grantor" but is no longer an owner of the Property, the public generally, or any governmental authority except to the limited extent necessary to undertake an action under **Section 11** or as required by statute (and only to the extent such statute cannot be waived by agreement of Grantee and Grantor).

6.12 Natural Events Not a Violation. Notwithstanding any other provision of this Easement, Grantee shall not bring any action seeking to enforce the provisions of this Easement against Grantor, nor shall this Easement be considered to have been violated by Grantor, as a result of any damage to the Property that would be considered a violation of this Easement if such damage was the result of a natural event such as an earthquake, flood, wind, lightning, or other storm event, including those events commonly referred to as "acts of God," nor as a result of any emergency measures reasonably taken by Grantor to abate or mitigate significant injury to the Property as a result of any such natural event.

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, and Environmental Compliance.**

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

8.2 Taxes. Each owner of any portion of the fee interest in 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 fifteen (15) days of

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 attorney fees, shall be immediately due and payable to Grantee by Grantor, and shall bear interest at the highest rate permitted by law until fully paid. In the event the Property, or any portion thereof, is sold at a delinquent tax sale, Grantee shall have all redemption rights provided in the Tennessee Code Annotated to a fee simple owner of the Property, as if Grantee was fee simple owner of the Property.

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

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

- (a) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, exists or has been released, generated, treated, stored,

used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

- (b) There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;
- (c) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- (d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property;
- (e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, and Grantor is not aware of any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and
- (f) The Baseline Documentation includes, among other things:
 - Owner Acknowledgment of Condition.
 - Purpose and Summary of Easement Conditions.
 - Natural Features of the Property.
 - Environmental Conditions of the Property.
 - Narrative description of the significant ecological and other Conservation Values and characteristics of the Property.
 - Topographic map of the Property.
 - Photographs of current site conditions on the Property.

The Baseline Documentation is an accurate representation of the condition of the Property.

8.5 Remediation. If, at any time, there occurs, or has occurred, a release by Grantor in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or

threatening to human health or the environment, Grantor agrees to, promptly and with all due haste, take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

- 8.6 Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an "operator" with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and Tennessee Code Annotated Section 68-212-101 et seq., or any other state or federal law regarding liability for hazardous wastes, toxic substances, pollution, or other, similar matters.
- 8.7 Hold Harmless.** If Grantee is required by a court of competent jurisdiction to pay damages resulting from personal injury, property damage, hazardous waste contamination, or hazardous materials usage that occurs on the Property, Grantor shall promptly indemnify and reimburse Grantee for these payments, as well as for reasonable attorney fees and other expenses incurred by Grantee in connection therewith, unless Grantee or its agents or contractors are grossly negligent or have committed a deliberate act that is determined by a court of competent jurisdiction to be a cause of the injury or damage.
- 8.8 Indemnification.** Grantor covenants and agrees to indemnify, defend, reimburse, and hold Grantee, its directors, officers, agents, contractors, counsel, and employees harmless from, for, and against any Loss (defined below) to the extent such Loss arose from an Indemnified Cause (defined below). A "Loss" shall mean any loss, cost, liability, penalty, fine, or damage of any kind or nature whatsoever which Grantee or any of its directors, officers, contractors, agents, counsel, or employees may reasonably be concluded to have suffered, paid, or incurred, or for which demand for payment has been made. The term "cost" shall include, but shall not be limited to, reasonable attorney fees, witness and court fees, and expert fees, whether as witnesses or consultants. An "Indemnified Cause" shall mean any of the following: the violation or alleged violation of any law in, on or involving the Property, by Grantor or anyone acting by, for, through, or under the direction of Grantor, including but not limited to any tenant, contractor, agent, licensee, or invitee of Grantor; any breach of covenants and restrictions in this Easement by Grantor or anyone acting by, for, through, or under the direction of Grantor, including but not limited to any tenant, contractor, agent, licensee, or invitee of Grantor; any tax or assessment upon the Property or upon this Easement or the rights it represents or that it grants to Grantee; any death or injury to any person

occurring on or about the Property; any lien or attempts to enforce a lien asserted against the Property; the costs of performing any work on the Property; any loss or damage to any property on or about the Property; any dispute involving Grantor and Grantee regarding the interpretation or enforcement of this Easement as to which the interpretation or enforcement of Grantee is upheld; or any lawsuit (regardless of whether initiated by Grantor or Grantee) or governmental administrative or law enforcement action which is commenced or threatened against Grantee or any of its directors, officers, agents, 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 which arises entirely and solely from events which occurred after such person is no longer the legal or equitable owner of the Property or any part thereof and is no longer in possession of the Property or any part thereof it being agreed and understood that all subsequent owners of the Property shall have and assume such indemnification, defense, reimbursement, and hold harmless obligations by the act of taking title to the Property.

9. Extinguishment and Condemnation.

- 9.1 Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, the Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of this Easement, or proportionate part thereof, as determined in accordance with **Section 9.2** or 26 C.F.R. Section 1.170A-14, if different.
- 9.2 Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of **Section 9.1**, the parties stipulate to have a fair market value determined by multiplying (a) the fair market value of the Property unencumbered by this Easement (minus any increase in value after the date of this grant attributable to improvements) by (b) a fraction, the numerator of which is the value of this Easement at the time of the grant and the denominator of which is the value of the Property without deduction of the value of this Easement at the time of this grant. (The values at the time of this grant are or shall be those values used for this grant, pursuant to Section 170(h) of the Internal Revenue Code. For the purposes of this Section, the ratio of the value of this Easement to

the value of the Property unencumbered by this Easement shall remain constant.) It is intended that this **Section 9.2** be interpreted to adhere to and be consistent with 26 C.F.R. Section 1.170A-14(g)(6)(ii).

- 9.3 Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid by each party out of the respective amounts recovered. Grantee's share of the amount recovered shall be determined by multiplying the total amount recovered by the ratio set forth in **Section 9.2**.
- 9.4 Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this **Section 9** in a manner consistent with Grantee's Conservation Purposes, which are exemplified by this grant.
- 10. Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code and 26 C.F.R. Section 1.170A-14 (or any successor provision then applicable), and authorized to acquire and hold conservation easements under the Tennessee Conservation Easement Act of 1981, Tennessee Code Annotated Section 66-9-301, 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 grant 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.
- 11. Successor Grantee.** If, at any time, Grantee shall be unwilling or unable to continue as grantee hereunder, including, but not limited to, if Grantee ceases to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code and 26 C.F.R. Section 1.170A-14, or to be authorized to acquire and hold conservation easements under the Tennessee Conservation Easement Act of 1981, Tennessee Code Annotated Section 66-9-301, then Grantor and Grantee shall mutually agree on a qualified successor Grantee, and if Grantor and Grantee cannot agree on a qualified successor Grantee, the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to applicable Tennessee law and consistent with the requirements for an assignment pursuant to **Section 10**.

12. Subsequent Transfers.

- 12.1 Incorporation of Easement.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.
- 12.2 Notice; Subordination of Subsequent Encumbrances.** Grantor agrees to give written notice to Grantee of the transfer of any interest in the Property at least thirty (30) calendar days prior to the date of such transfer. Any mortgagee must subordinate its rights in the Property to Grantee to enforce the Conservation Purposes of this Easement.
- 12.3 Successors Bound.** Any and all successors to Grantor's interest in the Property shall be bound by the provisions of this Easement.
- 12.4 Transfer Fee.** In consideration of the perpetual obligations assumed by Grantee in this Easement, the costs and expenses of which are unpredictable, including, but not limited to, the obligation to travel to and inspect the Property at least annually for compliance with the terms of this Easement, communicate with present and future owners, respond to questions and other matters, and maintain financial resources for the enforcement of compliance when necessary in fulfillment of Grantee's obligation to be a Qualified Organization under 26 CFR §1.170A-14(c)(1), and in consideration of Grantor's desire to support Grantee in its charitable mission with respect to the Property and other properties in which Grantee may have accepted conservation easement restrictions, Grantor agrees for itself, its heirs, successors, and assigns, that there shall be paid to Grantee the Transfer Payment (defined below) at the time of each Qualifying Transfer (defined below) in the manner set forth in this **Section 12.4**.
- (a) The "Transfer Payment" amount shall be a sum equal to one percent (1.0%) of the Purchase Price (defined below) of the Property, or part thereof; the improvements on the Property; and all other land, improvements, and other property included in the Qualifying Transfer;
 - (b) "Qualifying Transfer" shall mean the conveyance of legal title to the Property, or any part thereof; the improvements on the Property; and any other land, improvements, and other property conveyed by the same deed of conveyance and/or any other instrument of transfer by which the Property, or part thereof, is conveyed; provided, however, a Qualifying Transfer shall not include the first transfer following the recordation of this Easement;

- (c) The "Purchase Price" shall be the sum of all of the following given as consideration for a Qualifying Transfer: (a) payment of money, (b) transfer of real or personal property or other tangible consideration, (c) purchase money indebtedness, and (d) the assumption of indebtedness. Grantor shall be obligated to provide to Grantee a true and correct copy of the agreement of sale pertaining to the Qualifying Transfer, the Settlement Statement or Closing Statement, and/or other documents verifying the Purchase Price to the reasonable satisfaction of Grantee;
- (d) In the event of a Qualifying Transfer in which all or part of the consideration is in the form of real or personal property rather than the payment of money, purchase money indebtedness, or assumption of indebtedness, the Purchase Price shall include an amount equal to the fair market value of such real or personal property given in consideration or as partial consideration for the Qualifying Transfer as determined by a qualified appraiser approved by Grantee in its reasonable discretion. Appraisals used in the valuation of real or personal property as a component of the Purchase Price shall be based on the guidelines and ethical standards of the Appraisal Institute, as then in effect, for the type of property involved. Grantor and Grantee may, however, if they so elect in their discretion, without obligation to do so, accept an alternate method of establishing the value of such real or personal property, including by contemporaneous agreement;
- (e) The amount of the Purchase Price shall not include that portion of a Qualifying Transfer that is a gift, devise, bequest, or other transfer not involving consideration by the payment of money, transfer of real or personal property, purchase money indebtedness, or assumption of indebtedness;
- (f) The Transfer Payment shall not be applicable to a Qualifying Transfer into a corporation, limited liability company, or general or limited partnership in which Grantor receives all of the shares or interests of the transferee entity as consideration and receives no other consideration;
- (g) The obligation for payment of the Transfer Fee 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 Fee, 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 highest rate permitted by law until fully paid, and (b) constitute, together with accrued interest, to the extent permitted by law, a lien on the Property in favor of Grantee until fully paid, provided that such lien shall not be superior to any purchase money mortgage or deed of trust that was executed, recorded, and otherwise validly established against the Property prior to the date of the Qualifying Transfer;
- (i) Grantor shall be liable, and Grantee agrees to reimburse Grantor for, all reasonable attorney fees and other costs and expenses of collection incurred by Grantee in the enforcement of the provisions of this **Section 12.4**. This obligation is binding on Grantee, its heirs, successors, and assigns; and
- (j) Notwithstanding any other provision of this Easement, neither the validity of this **Section 12** nor compliance with or enforcement of this **Section 12** shall have any bearing or effect whatsoever on the validity and/or enforceability of any other provision of this Easement.

13. Estoppel Certificates. Upon request by Grantor, Grantee shall, within twenty (20) days, execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to such compliance as of Grantee's most recent complete inspection. Grantor and Grantee acknowledge that the size, shape, and configuration of the Property boundaries, together with the topography of not only the areas of the Property boundaries but of the entire Property are such that Grantee's acknowledgment of Grantor's compliance with the provisions of this Easement at a time other than as of Grantee's most recent complete inspection will necessitate a significant expenditure of time and money. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's cost and expense, and so deliver such certification document within a reasonable period of time following Grantee's receipt of Grantor's written request therefor, and Grantor shall promptly reimburse Grantee for Grantee's costs, fees, and expenses incurred in connection with such inspection and generation of the certification document.

14. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and be either served personally; sent by first class mail, postage prepaid, certified, return

receipt requested; or by nationally recognized overnight courier (such as FedEx or UPS) addressed as follows:

To Grantor: Benton Hills, LLC
c/o Benton MN, LLC
34 Old Ivy Road, Suite 200
Atlanta, Georgia 30342

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

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

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

16. General Provisions.

16.1 Controlling Law; Forum and Venue of Disputes. The interpretation and performance of this Easement shall be governed by the laws of the State of Tennessee without regard to its choice of law provisions. Notwithstanding the physical location of the real property described on **Exhibit A**, and notwithstanding the citizenship, residence, domicile, or situs of Grantor, Grantor agrees that the sole and exclusive forum for the resolution of any dispute arising under or in any way related to this Easement, and the only court of "competent jurisdiction" for purposes of this Easement, shall be the Chancery Court for the State of Tennessee sitting in Blount County, Tennessee, or, if all other jurisdictional requirements are satisfied, the United States District Court for the Eastern District of Tennessee, Northern Division, sitting in Knoxville, Tennessee. By signing below, the parties, for themselves and for their heirs, executors, successors, and assigns, (a) submit to the personal jurisdiction of such courts for the purpose of any action arising under or in any way related to this Easement,

(b) agree that they will not challenge such grant of Personal Jurisdiction, nor challenge the venue established by this **Section 16.1**, and (c) agree that in the event any action is brought or commenced in any court or forum other than that which is set forth in this **Section 16.1**, the tender of (i) a true and correct copy of this instrument or (ii) a certified copy of the recorded Easement to such court shall be a full and complete defense to such action.

- 16.2 Liberal Construction.** Notwithstanding the general rules of construction of documents, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Tennessee Conservation Easement Act of 1981, Tennessee Code Annotated Section 66-9-301 (the "Tennessee Act"), and to qualify as a qualified conservation contribution under 26 C.F.R. Section 1.170A-14 (the "U.S. Act"). The Tennessee Act and the U.S. Act are sometimes referred to herein collectively as the "Act." If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. This Easement is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their heirs, executors, successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter.
- 16.3 Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remaining provisions of this Easement, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- 16.4 No Authorized Violation of Law.** Nothing contained in this Easement shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms of this instrument, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.
- 16.5 Possible Grantee Default.** To the extent that any action taken by Grantee pursuant to this Easement gives rise to a claim of breach of contract, Grantor and Grantee agree that the sole remedy on the part of Grantor

shall be reimbursement of actual direct, out-of-pocket expenses (including reasonable attorney fees) reasonably incurred by Grantor as a result of such breach and that Grantor shall not have any right to indirect, consequential, or monetary damages in excess of such actual, direct, and reasonable out-of-pocket expenses (including reasonable attorney fees).

- 16.6 Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with **Section 10**.
- 16.7 No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 16.8 Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding on, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the Property in perpetuity. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its heirs, successors, and assigns, and the above named Grantee and its successors and assigns.
- 16.9 Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate on transfer of the party's interest in the Easement or Property; provided, however, liability for any acts or omissions occurring prior to any transfer shall survive such transfer.
- 16.10 Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect on construction or interpretation.
- 16.11 Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 16.12 Merger.** In the event that Grantee becomes the holder of the underlying fee interest in the Property, no merger of the fee and this Easement shall take place, it being the specific intent of the parties hereto that, notwithstanding the operation of Tennessee common law, but pursuant to the provisions of Tennessee Code Annotated Section 66-9-304(a), as it exists on the date this Easement is recorded, this Easement remain an

encumbrance on the Property regardless of the commonality of ownership of the fee and this Easement unless this Easement is conveyed by specific written instrument to the holder of the fee.

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

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

16.15 Contemporaneous Written Acknowledgment. By Grantee's signature below, this Section constitutes that Contemporaneous Written Acknowledgment of the contribution by the donee organization, in this case, Grantee, required by 26 USC § 170(f)(8) with respect to the property interest conveyed to Grantee by this Easement. The property interest conveyed is the 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 this Easement by Grantor.

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

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

[Signature Pages Follow]

The remainder of this page is intentionally left blank.

Grantor Signature Page

GRANTOR:

Benton Hills, LLC

By: Benton MN, LLC
Its: Manager

Benton MN, LLC

By: *Lawrence C. Turner*
Lawrence C. Turner, Manager

STATE OF North Carolina

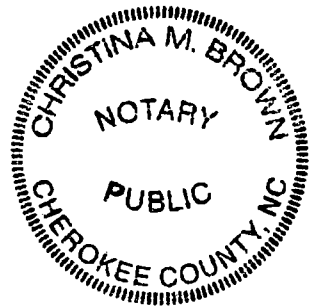
COUNTY OF Cherokee

Before me, the undersigned, a notary public of the state and county aforesaid, personally appeared **Lawrence C. Turner**, 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 **Benton MN, LLC**, a Delaware limited liability company, the Manager of **Benton Hills, LLC**, a Delaware limited liability company, 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 22nd day of December, 2015.

Christina M. Brown
Notary Public

My commission expires: June 22, 2015



Grantee Signature Page

GRANTEE:

Foothills Land Conservancy

By: William C. Clabough, E.D.
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, 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 28 day of December, 2015.

[Signature]
Notary Public

My Commission Expires: 11/12/18

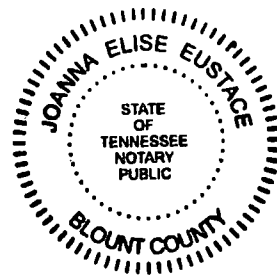


EXHIBIT A
Property Description

SITUATE in the 4th Civil District of Van Buren County, Tennessee, located off State Highway 111 and on the Trail of Tears Road and the Rocky River Road, reference RB 39, Page 463, in the Register of Deeds Office for Van Buren County, Tennessee, and reference CLT Map 84, Parcel 88.00, which this property is a part of, and being more particularly described as follows:

Beginning at a point in the center of The Trail of Tears being the northeastern corner of this described parcel; thence leaving the said road and going with the remainder of the Rocky River TN, LLC property S 08°53'53" W 149.23 feet; thence S 00°21'29" W 240.81 feet; thence S 04°46'47" E 311.20 feet; thence S 23°59'41" W 3057.26 feet; thence S 21°01'32" W 178.21 feet; thence S 39°35'25" W 214.48 feet; thence S 34°27'33" W 234.65 feet; thence S 64°47'55" W 81.61 feet; thence S 61°38'57" W 260.90 feet; thence N 84°45'14" W 421.79 feet to a point in a creek; thence generally following the meanders of the creek (calls for the creek and Rocky River being derived from the USGS topographic map and have not been field verified) S 45°34'43" W 218.28 feet; thence N 88°33'18" W 239.57 feet; thence S 70°33'36" W 210.79 feet; thence N 87°08'15" W 195.12 feet; thence S 76°49'39" W 564.39 feet; thence N 74°54'30" W 179.63 feet; thence N 86°39'58" W 201.06 feet; thence S 71°49'19" W 137.42 feet; thence N 81°28'09" W 78.82 feet; thence N 33°45'30" W 112.88 feet to a point in the Rocky River; thence leaving the creek and generally following the meanders of the Rocky River S 32°36'40" W 232.28 feet; thence S 01°50'51" E 174.08 feet; thence S 11°49'17" W 493.13 feet; thence S 18°26'06" W 266.22 feet; thence S 09°51'57" E 131.02 feet; thence S 69°08'44" E 126.12 feet; thence leaving the Rocky River and continuing with the remainder of the Rocky River TN, LLC property S 01°11'26" E 864.73 feet; thence S 50°30'41" E 1530.90 feet; thence S 67°33'19" W 158.84 feet; thence S 46°07'22" W 210.92 feet; thence S 03°15'18" W 203.62 feet; thence S 23°56'32" E 193.41 feet; thence S 23°24'02" E 158.32 feet; thence S 09°59'17" E 98.53 feet; thence S 04°41'09" E 167.97 feet; thence S 03°38'21" W 107.30 feet; thence S 25°02'56" W 225.01 feet; thence S 32°56'19" W 113.47 feet; thence S 39°34'27" W 62.23 feet; thence S 44°40'44" W 56.63 feet; thence S 50°41'13" W 58.24 feet; thence S 58°19'53" W 37.70 feet; thence S 64°30'57" W 209.40 feet; thence S 59°50'07" W 130.76 feet; thence S 53°33'07" W 187.36 feet; thence S 49°29'12" W 108.22 feet; thence S 40°51'38" W 403.96 feet; thence S 36°26'54" W 230.15 feet; thence S 39°28'28" W 107.11 feet; thence S 36°11'04" W 192.48 feet; thence S 39°03'36" W 341.30 feet; thence S 34°36'26" W 296.91 feet; thence N 72°45'50" W 545.29 feet; thence S 62°54'37" W 340.81 feet; thence S 80°13'02" W 208.97 feet to a point in the eastern right-of-way of the Rocky River Road; thence leaving Dixon and going with the said road right-of-way N 17°56'43" W 208.64 feet; thence N 28°49'44" W 102.45 feet; thence leaving Rocky River Road and going again with the remainder of the Rocky River TN, LLC property N 52°02'16" E

2050.47 feet; thence N 37°06'07" E 455.59 feet; thence N 13°17'30" W 1239.56 feet; thence N 47°00'15" W 1312.00 feet; thence leaving Rock River TN, LLC and running with a painted line N 05°01'59" E 2475.63 feet; thence N 02°14'08" E 4577.31 feet to a point in the center of The Trail of Tears; thence generally following the meanders of The Trail of Tears S 62°36'48" E 468.98 feet; thence S 75°49'43" E 112.32 feet; thence S 84°15'59" E 201.09 feet; thence N 83°57'58" E 120.47 feet; thence N 75°23'19" E 478.42 feet; thence N 84°37'37" E 428.71 feet; thence S 86°37'41" E 313.99 feet; thence S 75°51'13" E 210.84 feet; thence S 70°41'33" E 613.85 feet; thence S 70°40'37" E 441.48 feet; thence S 77°00'40" E 64.32 feet; thence S 84°49'37" E 48.74 feet; thence S 84°49'37" E 61.63 feet; thence S 84°49'37" E 170.11 feet; thence N 85°33'57" E 263.91 feet; thence N 75°36'50" E 165.17 feet; thence N 69°54'31" E 531.17 feet; thence S 84°20'11" E 150.27 feet; thence S 76°44'23" E 380.67 feet; thence S 84°30'42" E 277.57 feet to the **beginning** being 651.27 acres as surveyed by Christopher M. Vick Tennessee R.L.S. No. 2164 on 02 November 2015.

BEING the same property conveyed to the Grantor herein by instruments of record in Book RB82, Page 473, and in Book RB82, Page 699, in the Register of Deeds Office for Van Buren County, Tennessee.

THE PREPARER OF THIS INSTRUMENT MAKES NO REPRESENTATION REGARDING THE ACCURACY OF THE PROPERTY DESCRIPTION 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 B
Baseline Documentation Excerpt

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

TABLE OF CONTENTS

Background Information

Owner Acknowledgment of Conditions

Ownership Information

Property Description

Parcel Maps and Property Data

Purpose and Summary of Easement Provisions

Significance of the Property

The Foothills Land Conservancy Corporate Mission

Tennessee Agricultural, Forestry and Open Space Resource Preservation Act

Tennessee Conservation Easement Act of 1981

Foothills Land Conservancy Board of Directors Resolution Accepting Conservation

Easement with signatures of President and Secretary

Minutes of Board Meeting

Recitals

Legal Condition

Conservation Easement with Property Description (Deed)

Natural Resource Features

Conservation Values

General Features

Geology

Soils

Land Use Information

Man-made Features

Flora and Fauna Reports

TDEC Report

Casual Species List

Tennessee Division of Archeology Letter on Archeology Database

Photographs of Current Site Conditions

Aerial Maps of Photopoints

Keys to Photographs

Photographs

Maps

Aerial Photograph with Boundaries

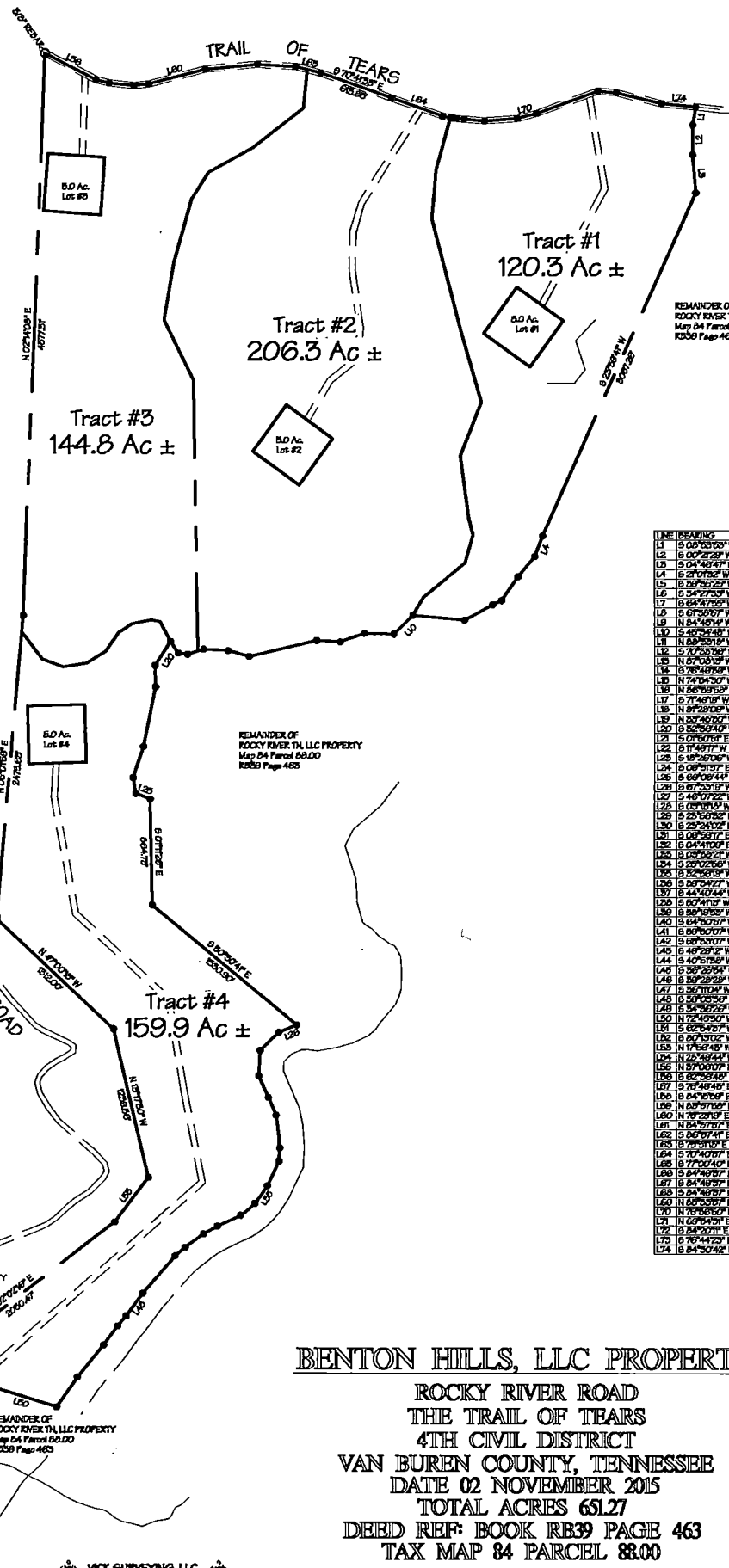
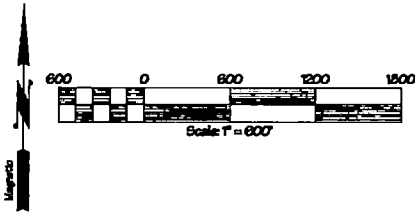
State and County Views

USGS Quadrangle Map

Watershed Map
Stream Health Map
Wetlands Map
Flood Hazard Map
Soils Map
Prime Agricultural Soils Map
Sub-surface Geology Map
Land Use Map
Conservation Management Areas Map
Survey Map with Homesites
GPS Tracks of Site Visits
Directions to Property, with map
Preparers' Qualifications
Exhibits

- A. Conservation Easement
- B. Management Recommendations
- C. Forestry Management Plan

EXHIBIT C
Drawing Depicting
Suggested Subdivision Boundaries,
Permitted Building Sites, and
Approximate Location of
Permitted Access to Those Sites
(Drawing must be attached immediately behind this page)



LEGEND
 ○ 5/8" REBAR (found)

LINE	BEARING	DISTANCE
L1	S 05°25'38" W	145.25
L2	S 00°23'28" W	240.21
L3	S 04°40'47" E	312.27
L4	S 21°07'52" E	175.27
L5	S 34°42'22" W	244.45
L6	S 54°27'33" W	254.69
L7	S 64°47'55" W	51.81
L8	S 69°30'17" W	260.93
L9	N 84°40'14" W	42.79
L10	S 49°34'48" W	219.29
L11	N 89°03'01" W	236.87
L12	S 70°35'56" W	210.79
L13	N 07°03'01" W	198.12
L14	S 76°48'58" W	564.25
L15	N 74°02'01" W	175.63
L16	N 06°03'19" W	201.03
L17	S 77°49'18" W	127.42
L18	N 89°39'38" W	75.32
L19	N 30°46'00" W	112.86
L20	S 85°30'40" W	282.29
L21	S 07°03'01" E	144.25
L22	S 17°40'17" W	488.10
L23	S 19°26'06" W	266.22
L24	S 09°31'57" E	131.02
L25	S 69°03'44" E	128.12
L26	S 07°30'19" W	168.84
L27	S 44°07'22" W	210.82
L28	S 08°01'01" W	202.82
L29	S 25°35'52" E	188.41
L30	S 29°34'02" E	164.92
L31	S 08°58'18" E	88.58
L32	S 04°41'09" E	167.97
L33	S 03°39'52" W	107.50
L34	S 28°02'56" W	226.01
L35	S 32°49'38" W	185.41
L36	S 30°24'27" W	62.79
L37	S 44°40'44" W	56.89
L38	S 02°41'01" W	84.24
L39	S 30°18'50" W	97.42
L40	S 64°10'07" W	208.40
L41	S 06°00'07" W	130.79
L42	S 09°30'07" W	107.26
L43	S 48°29'12" W	138.22
L44	S 40°51'58" W	428.96
L45	S 35°25'54" W	263.81
L46	S 33°22'22" W	107.11
L47	S 30°11'04" W	132.49
L48	S 33°35'58" W	141.50
L49	S 34°30'22" W	236.91
L50	N 72°49'50" W	146.23
L51	S 02°56'07" W	340.21
L52	S 00°10'02" W	203.97
L53	N 17°52'48" W	203.84
L54	N 75°49'34" W	122.49
L55	N 57°42'57" E	469.61
L56	S 02°36'40" E	469.80
L57	S 76°48'48" E	122.82
L58	S 04°10'01" E	201.45
L59	N 89°37'05" E	120.47
L60	N 70°22'19" E	475.42
L61	N 04°26'57" E	422.71
L62	S 06°07'41" E	215.95
L63	S 79°51'12" E	210.84
L64	S 70°40'57" E	444.65
L65	S 77°02'04" E	84.24
L66	S 84°46'07" E	48.74
L67	S 84°46'07" E	81.82
L68	S 84°46'07" E	73.11
L69	N 03°33'57" E	263.91
L70	N 76°06'50" E	183.17
L71	N 09°44'51" E	135.17
L72	S 84°20'11" E	150.27
L73	S 76°44'22" E	300.87
L74	S 84°50'42" E	277.97

Note: Every document of record reviewed and considered as a part of this survey is noted hereon. This survey is prepared from the current deed of record and does not represent a title search or a guarantee of title and is subject to any state of facts that a current accurate title search will reveal.

This is a boundary line survey. There is absolutely no certification made as to the existence or non-existence of the following: wetlands; easements or rights-of-way unless otherwise noted hereon; sub-surface utilities or streams; above ground utilities other than those which are clearly shown and labeled as such hereon; buildings, structures, ponds, lakes or streams other than those which are clearly shown and labeled as such hereon; flood areas or designated flood zones unless otherwise noted; or any and all other land features that could be deemed topographic.

Note: The plat drawn hereon is subject to regulatory authority and is subject to change according to physical evidence. (i.e. burrhead, painted lines, roads, lakes, ponds, initials of ownership, etc.)

Note: This property may be subject to utility ingress/egress and/or right-of-way.

I hereby certify that this is a category II survey and that the ratio of precision of the unadjusted survey is at minimum 1/7500 as shown hereon and has been performed in compliance with current Tennessee Minimum Standards of Practice.

Drawn by: CHN File No: 07-212c1 651.27 Ac Benton Hills, LLC Out Sale

VICK SURVEYING, LLC
 2772 Hidden Cove Road, Cookeville, TN 38512-1226

BENTON HILLS, LLC PROPERTY
 ROCKY RIVER ROAD
 THE TRAIL OF TEARS
 4TH CIVIL DISTRICT
 VAN BUREN COUNTY, TENNESSEE
 DATE 02 NOVEMBER 2015
 TOTAL ACRES 651.27
 DEED REF: BOOK RB39 PAGE 463
 TAX MAP 84 PARCEL 88.00

EXHIBIT D
Legal Descriptions for Homesites

The following is a legal description of the four permitted homesites described in **Section 4** of this Easement.

SITUATE in the 4th Civil District of Van Buren County, Tennessee, located near State Highway 111 and near the Trail of Tears Road and near Rocky River Road, reference RB 39, Page 463, in the Register of Deeds Office for Van Buren County, Tennessee, and reference CLT Map 84, Parcel 88.00, which this property is a part of, and being more particularly described as follows:

Homesite No. 1:

Beginning at the northernmost corner of this described parcel being located S 44°44'25" W 2063.26 feet from the point of beginning of the tract described in **Exhibit A**, above; thence going with the remainder of the Rocky River TN, LLC property S 54°06'13" E 466.69 feet; thence S 35°53'47" W 466.69 feet; thence N 54°06'13" W 466.69 feet; thence N 35°53'47" E 466.69 feet to the **beginning** being 5.00 acres as surveyed by Christopher M. Vick Tennessee R.L.S. No. 2164 on 02 November 2015.

Homesite No. 2:

Beginning at the northernmost corner of this described parcel being located S 53°58'13" W 4124.78 feet from the point of beginning of the tract described in **Exhibit A**, above; thence going with the remainder of the Rocky River TN, LLC property S 54°06'13" E 466.69 feet; thence S 35°53'47" W 466.69 feet; thence N 54°06'13" W 466.69 feet; thence N 35°53'47" E 466.69 feet to the **beginning** being 5.00 acres as surveyed by Christopher M. Vick Tennessee R.L.S. No. 2164 on 02 November 2015.

Homesite No. 3:

Beginning at the northernmost corner of this described parcel being located S 85°53'22" W 5298.50 feet from the point of beginning of the tract described in **Exhibit A**, above; thence going with the remainder of the Rocky River TN, LLC property S 85°47'24" E 466.69 feet; thence S 04°12'36" W 466.69 feet; thence N 85°47'24" W 466.69 feet; thence N 04°12'36" E 466.69 feet to the **beginning**

being 5.00 acres as surveyed by Christopher M. Vick Tennessee R.L.S. No. 2164 on 02 November 2015.

Homesite No. 4:

Beginning at the northernmost corner of this described parcel being located S 45°41'26" W 6964.83 feet from the point of beginning of the tract described in **Exhibit A**, above; thence going with the remainder of the Rocky River TN, LLC property S 01°28'46" E 466.69 feet; thence S 88°31'14" W 466.69 feet; thence N 01°28'46" W 466.69 feet; thence N 88°31'14" E 466.69 feet to the **beginning** being 5.00 acres as surveyed by Christopher M. Vick Tennessee R.L.S. No. 2164 on 02 November 2015.

Note: An ingress/egress and/or utility easement, in the approximate location shown on **Exhibit C**, and the description and use of which is subject to Grantee's written consent, as is more particularly set forth in **Section 4** of this Easement, is reserved to Homesites 1, 2, 3, and 4.

ALL BEING part of the same property conveyed to the Grantor herein by instruments of record in Book RB82, Page 473, and in Book RB82, Page 699, in the Register of Deeds Office for Van Buren County, Tennessee.