


**FIRST AMENDMENT TO  
CONSERVATION EASEMENT**

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Shelby Cnty Judge of Probate, AL  
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THIS FIRST AMENDMENT TO CONSERVATION EASEMENT (this "First Amendment") is made and entered into as of the 25<sup>th</sup> day of MARCH, 2009, by and between The W. Earl Richards Revocable Trust, an Alabama trust (the "Richards Trust") with an address of 2140 Eleventh Avenue South, Suite 402, Birmingham, Alabama 35205 and TP 40, LLC, an Alabama limited liability company ("TP 40") with an address of 2000 Morris Avenue, Suite 1200, Birmingham, Alabama 35203 (the Richards Trust and TP 40 collectively referred to as "Owner"), and Southeast Regional Land Conservancy, Inc. ("SRLC"), a North Carolina non-profit corporation, with its principal business address at 6111 Peachtree-Dunwoody Road, Building E, Suite 102, Atlanta, Georgia 30328.

**WITNESSETH:**

WHEREAS, the parties to this First Amendment entered into that certain Conservation Easement dated as of December 21, 2007 (the "Easement"), which Easement was recorded as instrument number 20071228000580840 in the Shelby County, Alabama Probate Registry; and

WHEREAS, the purpose of the Easement is to provide for the dedication of the Conservation Area (as defined in the Easement) in perpetuity to conserve the natural, scenic, aesthetic, educational, recreational and special character of the Conservation Area, and "the preservation of open space, including farmland and forestland, where such preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit" as those phrases are used in Public Law 96-541, 26 U.S.C. 170(h)(4)(A)(ii) and (iii), as amended and in regulations promulgated thereunder, by placing voluntary restrictions upon the use of the Conservation Area and by providing for the transfer from Owner to SRLC of affirmative rights for the protection of the Conservation Area; and

WHEREAS, the provisions of Article VI, Section E of the Easement provide that the Owner and SRLC may agree to amendments to the Easement which are not inconsistent with the Conservation Values (as defined in the Easement) or the purposes of the Easement; and

WHEREAS, the Owner and SRLC wish to amend the Easement to: (1) remove a portion of the Conservation Area from the Easement of approximately one (1) acre to allow Owner to grant a required easement of ingress and egress to adjoining landowners which cannot be subordinated to the Easement, in order to cure a defect in the existing ingress and egress easement unknown at the time the Easement was recorded and which threatens protection of the remaining Conservation Area; and (2) to increase the size of the Conservation Area by approximately one (1) acre by including one parcel (designated as "Out Parcel 1" in Exhibit A of the Easement) within the Conservation Area that was previously excepted from the Conservation Area; and

WHEREAS, the parties executing this First Amendment are all of the parties whose execution is required for this First Amendment to be effective.



NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree to amend the Easement as follows:

1. Recitals; Capitalized Terms. The recitals set forth above are incorporated herein by this reference. All capitalized terms not otherwise defined in this First Amendment shall have the meanings given to them in the Easement.

2. Removal of Property From Easement. The real property more particularly described on Exhibit C and Exhibit D hereto as "Ingress and Egress Easement" and as these descriptions pertain to the real property contained with the Easement, is hereby released from grant of easement as described in the Easement and shall not further be burdened by any of the obligations, requirements, covenants or restrictions set forth in the Easement. The "Easement Property" as defined in the Easement shall not include said Ingress and Egress Easement from and after the date hereof.

3. Grant of Easement Over "Out Parcel 1" The real property consisting of approximately one (1) acre and more particularly described on Exhibit A of the Easement as "Out Parcel 1", ("Out Parcel") is hereby made a part of the Conservation Area. Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto SRLC, its successors and assigns, a perpetual easement in gross over said Out Parcels for the purpose of preserving and protecting the Conservation Values of Out Parcel, and Owner further agrees that said Out Parcel is hereby subject to the Easement and all conditions, obligations, requirements, covenants and restrictions therein.

4. Amendment to Recital "B" of the Easement. In order to provide for the exclusion of Ingress and Egress Easement and inclusion of Out Parcels in the Conservation Area, Recital "B" of the Easement is hereby deleted in its entirety and replaced with the following:

"B. Owner intends that all of the Property described on Exhibit A less and except only that portion of the "Ingress and Egress Easement" contained within the Property and as described on Exhibit C and Exhibit D hereto be conserved, maintained and preserved as conservation area (the "Conservation Area"). A true and accurate depiction of the location of the Property and the Conservation Area is set forth on the boundary survey map attached hereto and incorporated herein as Exhibit B."

5. Statement Regarding Conservation Values. The parties hereby acknowledge and agree that the amendments to the Easement as described in this First Amendment are not inconsistent with the Conservation Values or the purposes of the Easement.


6. Covenants Running with the Land. The benefit and burdens of the obligations of each covenant set forth in this First Amendment shall run with the title to the Property and the Conservation Area and shall bind or benefit the owners thereof, their respective heirs, successors, successors-in-title, legal representatives and assigns.

7. Effect. Terms and provisions of the Easement that are not expressly modified by this First Amendment shall remain in full force and effect. All of the provisions of the Easement affected by this First Amendment shall be deemed amended, whether or not actually specified herein, if such amendment is clearly necessary to effectuate the intent of the parties hereto. The Easement, as modified hereby, is hereby ratified and approved in all respects.

8. Final Agreement. This First Amendment and the Easement, as amended by this First Amendment, represent the final agreement between the Owner and SRLC regarding the subject matter hereof and may not be contradicted by evidence of prior, subsequent or contemporaneous oral agreements of the parties. No amendment or modification hereto shall be valid and binding unless expressed in writing and executed by both parties hereto.

9. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but one and the same instrument.

*[Signature Page Immediately Following]*

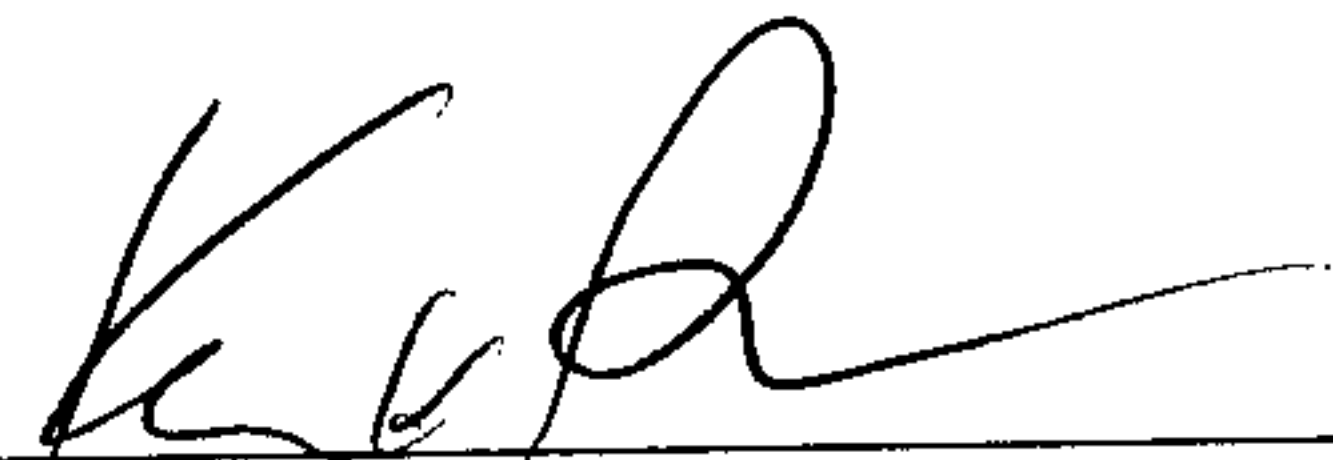
  
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IN WITNESS WHEREOF, the parties hereto have set their hands and seals and caused these presents to be executed in their respective names by authority duly given, and their corporate seal affixed, the day and year above written.

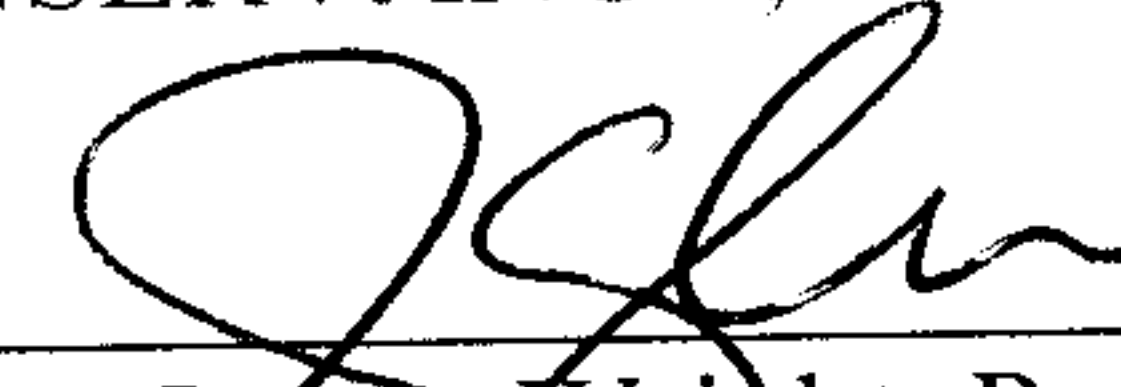
**OWNER:**

TP 40, LLC

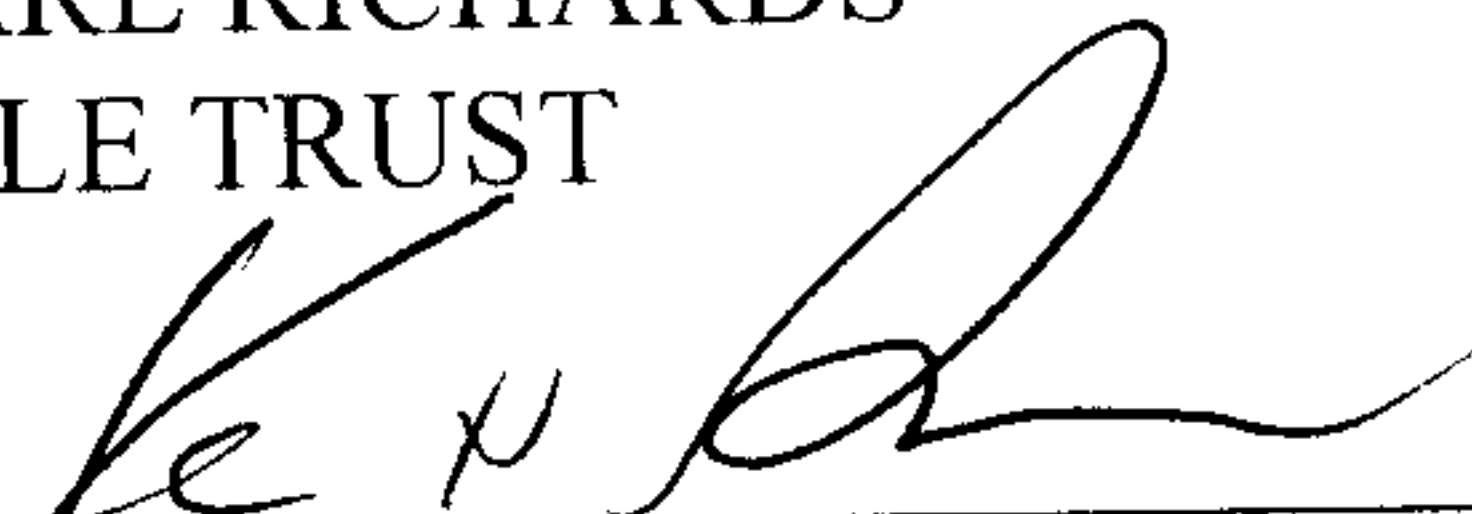
By:   
Kenneth H. Polk, Manager

**SRLC:**

SOUTHEAST REGIONAL LAND  
CONSERVANCY, INC.

By:   
James Wright, President

THE W. EARL RICHARDS  
REVOCABLE TRUST

By:   
Kenneth H. Polk, Trustee

STATE OF Alabama )  
COUNTY OF Jefferson )

I, Jessie L Hill, a Notary Public in and for said County and State do hereby certify that Kenneth H. Polk personally appeared before me this day and duly acknowledged that (i) he is the Manager of TP 40, LLC, an Alabama limited liability company, and (ii) that by authority duly given and as the act of TP 40, LLC, the foregoing instrument was signed.

WITNESS my hand and notarial seal, this 26 day of March, 2009.

Jessie L Hill  
Notary Public  
My commission expires: 8-15-10

**My Commission Expires 8-15-2010**

STATE OF GEORGIA )  
COUNTY OF FULTON )

I, Holly McMahon, a Notary Public in and for said County and State do hereby certify that James Wright personally appeared before me this day and duly acknowledged that he is the President of Southeast Regional Land Conservancy, Inc., a North Carolina corporation, and that by authority duly given and as the act of Southeast Regional Land Conservancy, Inc., the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal, this 25 day of March, 2009.

Holly McMahon  
Notary Public  
My commission expires: 7/30/12

**HOLLY L. McMAHAN**  
**NOTARY PUBLIC - GEORGIA**  
**FULTON COUNTY**  
MY COMMISSION EXPIRES 07/30/2012




**EXHIBIT C**  
**LEGAL DESCRIPTION**  
**FOR**  
**AN INGRESS AND EGRESS EASEMENT**

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A centerline description for Sixty foot wide Ingress and Egress Easement situated in the South Half of the Southwest Quarter of Section 23 and in the Southeast Quarter of the Southeast Quarter of Section 22, all in Township 18 South, Range 1 East, Shelby County, Alabama.

Commencing at a found rebar and cap marking the Northwest corner of the Southwest Quarter of the Southwest Quarter of Section 23, Township 18 South, Range 1 East, Shelby County, Alabama and run in an Easterly direction along the North line of the Southwest Quarter of the Southwest Quarter of Section 23 for 1347.85 feet to a found 1" rebar marking the Northeast corner of the Southwest Quarter of the Southwest Quarter of Section 23; thence continue along an extension of the last described course for 681.61 feet to a point lying on the Northwestern right-of-way of Twin Pines Road; thence deflect  $150^{\circ}11'19''$  and run to the right in a Southwesterly direction along said right-of-way for 28.15 feet to and for the POINT OF BEGINNING of the herein described Ingress and Egress Easement, side lines of said Easement lying 30.00 feet either side and parallel to the following described centerline and extending Easterly to intersect the Northwestern right-of-way of Twin Pines Road; thence leaving said right-of-way deflect  $27^{\circ}11'05''$  and run to the right in a Southwesterly direction for 394.37 feet to the point of curvature of a curve to the left having a radius of 180.00 feet and a central angle of  $35^{\circ}23'35''$ ; thence run in a Southwesterly direction along the arc of said curve for 111.19 feet to the point of tangency; thence run tangent to the last described curve in a Southwesterly direction for 87.47 feet to the point of curvature of a curve to the right having a radius of 250.00 feet and a central angle of  $59^{\circ}17'06''$ ; thence run in a Southwesterly to Northwesterly direction along the arc of said curve for 258.68 feet to the point of tangency; thence tangent to the last described curve run Northwesterly for 174.69 feet to the point of curvature of a curve to the left having a radius of 180.00 feet and a central angle of  $59^{\circ}37'44''$ ; thence run in a Northwesterly to Southwesterly direction along the arc of said curve for 187.33 feet to the point of tangency; thence tangent to the last described curve run Southwesterly for 14.59 feet to the point of curvature of a curve to the right having a radius of 180.00 feet and a central angle of  $24^{\circ}45'20''$ ; thence run in a Southwesterly direction along the arc of said curve for 77.77 feet to the point of tangency; thence tangent to the last described curve run Southwesterly for 116.82 feet to the point of curvature of a curve to the right having a radius of 180.00 feet and a central angle of  $32^{\circ}14'57''$ ; thence run in a Southwesterly to Northwesterly direction along the arc of said curve for 101.31 feet to the point of tangency; thence tangent to the last described curve run Northwesterly for 325.65 feet to the point of curvature of a curve to the left having a radius of 180.00 feet and a central angle of  $111^{\circ}52'51''$ ; thence run in a Northwesterly to Southeasterly direction along the arc of said curve for 351.48 feet to the point of tangency; thence tangent to the last described curve run Southeasterly for 109.60 feet to the point of curvature of a curve to the right having a radius of 180.00 feet and a central angle of  $13^{\circ}36'21''$ ; thence run in a Southeasterly to Southwesterly direction along the arc of said curve for 42.74 feet to the point of tangency; thence tangent to the last described curve run Southwesterly for 294.49 feet to the point of curvature of a curve to the right having a radius of 180.00 feet and a central angle of  $03^{\circ}19'53''$ ; thence run in a Southwesterly direction along the arc of said curve for 10.47 feet to

the point of tangency; thence tangent to the last described curve run Southwesterly for 181.87 feet to the point of curvature of a curve to the left having a radius of 180.00 feet an a central angle of  $22^{\circ}11'20''$ ; thence tangent to the last described curve run Southwesterly for 163.54 feet to the POINT OF ENDING of said Ingress and Egress Easement, side lines of said easement end perpendicular to the centerline point of ending. Containing 4.23 acres more or less.

  
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## EXHIBIT D

