

PREPARED BY:

Atlantic Coast Conservancy, Inc.
72 South Main Street
Jasper, Georgia 30143

RECORD AND RETURN TO:

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State of Alabama
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DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (this "Easement") is granted this 30th day of December, 2015, by MATTERHORN PROPERTY HOLDINGS, LLC, an Alabama limited liability company, having an address at 912 Edenton Street, Birmingham, Alabama 35242 ("Grantor"), to and for the benefit of ATLANTIC COAST CONSERVANCY, INC. a nonprofit Georgia corporation, having an address at 72 South Main Street, Jasper, Georgia 30143 (the "Conservancy") (with Grantor and the Conservancy sometimes being referred to, individually as a "Party" and, collectively, the "Parties").

RECITALS

WHEREAS, it is expressly understood that this Easement is being freely entered into, and that each Party has had an opportunity to have this instrument, and all associated documents, reviewed by an attorney of his, her, or its choosing; and

WHEREAS, it is expressly understood by the Parties that the donation of this Easement gives rise to a property right, immediately vested in the Conservancy, and that this Easement has a fair market value that is at least equal to the proportionate value that this Easement bears on the date hereof to the fair market value of the Property (as defined below) as a whole on the date hereof; and

WHEREAS, Grantor is the sole owner in fee simple of 174.88 acres of certain real property located off Matterhorn Farm Road in Wilsonville, Alabama 35186 partially constituting tax parcels #16 7 36 0 000 004.001, #16 7 35 0 000 008.000, and #16 7 36 3 000 002.000 in Shelby County, Alabama, as is more particularly described in **Exhibit "A"** (the "Property") hereof; and

WHEREAS, the Property in its present state has not been developed and possesses significant wildlife, forest, agricultural, scenic vistas, open space, aquatic, and plant habitat features. The Property has no dwellings with one improved access road, and is predominantly composed of agricultural lands on flat Southern Limestone/Dolemite Valleys and Rolling Hills subregion lands of the Ridge & Valley ecoregion leading to 1) two first-order freshwater streams

(unnamed tributaries of Fourmile Creek) with associated riparian areas, 2) freshwater emergent wetland areas, and 4) palustrine wetlands (collectively, and together with the preceding sentence, the "Conservation Values") that are of great importance to the Conservancy, the people of Shelby County, and the people of the State of Alabama and are worthy of preservation; and

WHEREAS, the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, meets the conservation purpose of Section 170(h)(4)(A)(ii) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, Fourmile Creek and its unnamed tributaries, which transect the Property for a linear distance of 4,252 feet (1,296 meters), are situated in the Lower Coosa River Basin. These streams are located in south central Alabama (USGS Hydrologic Unit Code (HUC) 03150107), and are designated as "supporting" under the U.S. Environmental Protection Agency (EPA) 305(b) listing (<http://www.adem.state.al.us/programs/water/waterquality.cnt>). The "supporting" designation denotes that a particular waterway is capable of providing some or all applicable uses: providing drinking water supplies, supporting aquatic life, allowing fish and shellfish consumption, suitable for primary and secondary contact recreation usages (e.g., swimming and boating), and agricultural uses. Alabama's Best Management Practices for Forestry (2007) puts forth that "in no cases should stream management zone be less than 35 feet from a definable bank". Shelby County Planning Regulations are in accordance with the state minimum standards. Current scientific research (Hilty & Merelender 2004, Semlitsch & Bodie 2003, Jones et al. 1999) concludes that the level of protection now mandated by the State of Alabama and Shelby County may be inadequate. In order to provide the necessary protection of the critical riparian habitat for all species, the protective riparian buffer should be much greater than 35 feet (Semlitsch & Bodie 2003); and

WHEREAS, improving water quality is identified as a conservation action that will benefit Alabama's rivers, streams and freshwater ecosystems in the Southern Limestone/Dolemite Valleys and Rolling Hills subregion of the Ridge & Valley ecoregion in the *Conserving Alabama's Wildlife; A Comprehensive Strategy* (CWCS). The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, within the meaning of Section 170(h)(4)(A)(ii) of the Code promotes the CWCS by providing for permanently protected high priority habitat on private land. The CWCS was promulgated by the Alabama Department of Conservation and Natural Resources (ADCNR), Division of Wildlife and Freshwater Fishes, and conservation partners including the U.S. Fish and Wildlife Service (USFWS) to protect the biological diversity of Alabama; and

WHEREAS, the Lower Coosa River Basin is identified as a high priority watershed in the Southern Limestone/Dolemite Valleys and Rolling Hills subregion of the Ridge & Valley ecoregion in CWCS. The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, within the meaning of Section 170(h)(4)(A)(ii) of the Code, promotes the CWCS by providing for permanently protected high priority habitat on private land; and

WHEREAS, this Easement will establish a 100 foot (30.48 meter) riparian buffer Resource Protection Area (as defined in Section 8) around the entire course transect of

Fourmile Creek and its unnamed tributaries. These natural buffers will almost triple the protection now mandated by the State of Alabama and Shelby County, and will only permit 1) best management agricultural practices, and 2) low-impact outdoor recreation, education, nature observation, and scientific studies; and

WHEREAS, greatly increasing protection measures of the State of Alabama and Shelby County will accomplish various environmental goals and will yield a “significant public benefit” under Treasury Regulation Section 1.170A-14(d)(4)(iv); and

WHEREAS, the preservation of open space (including farmland and forest land) where such preservation is pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit meets the conservation purpose of Section 170(h)(4)(A)(iii)(II) of the Code; and

WHEREAS, wetlands among a large terrestrial ecosystem provide a key role in amphibian productivity and maintaining community dynamics by coupling aquatic habitats with those adjacent terrestrial habitats via transfer of biomass and energy (Gibbons *et al* 2006, Harper *et al* 2008, Semlitsch & Bodie 1998); and

WHEREAS, freshwater emergent wetlands are found across the country but are especially prevalent in agricultural areas. Many freshwater emergent wetlands/meadows were formerly forested wetlands that were cleared for pastures or cropland, and are maintained in an open condition. Common plants of wet meadows include various sedges, rushes, grasses like bluejoint and reed canary grass, and flowering herbaceous plants including Joe-Pye-weeds, thoroughworts, goldenrods, asters, and many others. Some wet meadows possess very diverse plant communities, although many are virtually pure stands of grasses or sedges; and

WHEREAS, this Easement will establish a Resource Protection Area (as defined in Section 8) around the perimeter of the freshwater emergent wetland areas. These natural buffers will only permit best management agricultural practices, low-impact outdoor recreation, education, nature observation, and scientific studies; and

WHEREAS, the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, meets the conservation purpose of Section 170(h)(4)(A)(ii) of the Code; and

WHEREAS, palustrine wetlands includes all non-tidal wetlands that are dominated by trees and shrubs; and

WHEREAS, this Easement will establish a Resource Protection Area (as defined in Section 8) around the perimeter of the palustrine wetland area. This natural buffers will only permit low-impact outdoor recreation, education, nature observation, and scientific studies; and

WHEREAS, the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, meets the conservation purpose of Section 170(h)(4)(A)(ii) of the Code; and

WHEREAS, the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”) is the federal agency that works hand-in-hand with the American people to conserve natural resources on private lands. The allowed farming/forestry practices, which are the principal uses of the Property, shall be consistent with sound agricultural practices and a current NRCS conservation plan or its equivalent, as prepared by the USDA, or similar agency, or professionally trained individual, are all in an effort to conserve productive farming soils; and

WHEREAS, the economic health of the State of Alabama is closely linked to its agricultural lands which not only produce food products, fuel, timber, and other products, but also provide much of Alabama’s scenic beauty upon which the State’s tourism and recreational industries rely; and

WHEREAS, this Easement will establish an Agricultural Area (as defined in Section 8) protection zone that will generally exclude or control the construction of buildings and improvements except those necessary for agriculture and agricultural-related practices, and will preserve agricultural production of prime Alabama soils as identified by the USDA NRCS; and

WHEREAS, the preservation of the property will yield a “significant public benefit” under Treasury Regulation Section 1.170A-14(d)(4)(iv) due to the consistency of the proposed open space use with public programs (whether Federal, state or local) for conservation in the region, including programs for outdoor recreation; irrigation or water supply protection; water quality maintenance or enhancement; flood prevention and control; erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area; and

WHEREAS, the preservation of open space (including farmland and forestland) where such preservation is pursuant to a clearly delineated Federal, State, or local government conservation policy and will yield a significant public benefit meets the conservation purpose of Section 170(h)(4)(A)(iii)(II) of the Code; and

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features (the “Baseline Documentation Report”), dated on the 30th day of December, 2015, and the Parties agree accurately represents the Property at the time of the grant of this Easement, and is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, this Easement constitutes a “qualified real property interest” as defined in Section 170(h)(2)(C) of the Code and a “conservation easement” within the meaning of Alabama Code § 35-18-1, *et seq.*; and

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

WHEREAS, the Conservancy agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values for the benefit of this generation and the generations to come; and

WHEREAS, the Conservancy has received and there remain in full force and effect a determination letter from the Internal Revenue Service, dated September 23, 2010, a copy of which has been provided to Grantor, to the effect that the Conservancy is a "publicly-supported" organization described in Section 509(a)(2) and Section 170(b)(1)(A)(viii) of the Code, and is not a private foundation within the meaning of Section 509(a) of the Code; and

WHEREAS, the Conservancy is: 1) a publicly supported, nonprofit organization, created primarily for the conservation of the environment, is tax exempt within the meaning of Section 501(c)(3), Section 509(a)(2) and Section 170(b)(1)(A)(viii) of the Code; 2) a "qualified organization" within the meaning of Section 170(h)(3) of the Code and Treasury Regulations Section 1.170A-14(c); and 3) a "holder" under the State of Alabama under the Uniform Conservation Easement Act (Alabama Code § 35-18-1, *et seq.*); and

WHEREAS, the State of Alabama has recognized the importance of private efforts toward the preservation of natural systems in its Uniform Conservation Easement Act (Alabama Code § 35-18-1, *et seq.*).

NOW, THEREFORE, Grantor, as an absolute charitable gift and for no monetary consideration, but only in consideration of the covenants, mutual agreements, conditions, and promises herein contained, does unconditionally and irrevocably hereby grant and convey unto the Conservancy, its successors and assigns, forever, a conservation easement as defined in the Alabama Code § 35-18-1, *et seq.*, which expressly authorizes the conveyance herein contained, Grantor hereby grants and conveys an absolute charitable gift with no monetary consideration to the Conservancy and its successors and assigns, a perpetual and irrevocable conservation easement consisting of the rights and restrictions enumerated in this Easement, upon, over and across the Property. The Conservancy, by its execution hereof, accepts the foregoing grant of this Easement, and the recordation of this Deed shall constitute a "recordation of the acceptance" by the Conservancy within the meaning of Code of Alabama § 35-18-2(b). Upon the recordation hereof, the Conservancy shall be entitled to enforce this Easement pursuant to Code of Alabama § 35-18-3 (without intending that the existence of this Conservation Easement be dependent on the continuing existence of such laws):

1. Grant. Grantor, as an absolute charitable gift and for no monetary consideration, but only for the consideration of the covenants, mutual agreements, conditions, and promises herein contained, the receipt and sufficiency of which are hereby acknowledged, does unconditionally and irrevocably hereby grant and convey unto the Conservancy, its successors and assigns, forever, a perpetual and irrevocable conservation easement, upon, over, and across the Property consisting of the rights and restrictions enumerated in the Easement. This Easement shall run with the land, shall constitute a binding servitude upon the Property, and shall be subject to prior

reservations, easements, encumbrances and exceptions of record. The grant of this Easement gives rise to a property right, immediately vested in the Conservancy. For the avoidance of doubt and notwithstanding anything to the contrary in this Easement, the restrictions imposed by this Easement (1) shall remain on the Property forever and in perpetuity, and (2) are binding on all current and future owners and occupants of the Property.

2. Purpose. It is the exclusive purpose (the “Purpose”) of this Easement to protect the Conservation Values in perpetuity and ensure that the Property will remain forever predominantly in its natural condition and to prevent any use of the Property that will impair or interfere with the Conservation Values as set forth in this Easement. Grantor intends that this Easement will confine the use of the Property to such activities including, without limitation, those involving recreational use of the Property as are consistent with the Purpose of this Easement.

2.1 Climate Change. In granting this Easement, Grantor and the Conservancy acknowledge the findings of the Intergovernmental Panel on Climate Change (IPCC) that the warming of the Earth’s climate system is unequivocal, and that climate changes caused by global warming have already begun. Grantor and the Conservancy agree that the occurrence of any climate change-caused impacts to the Property will not impair the validity of this Easement and shall not alone be considered grounds for the release, termination, or other extinguishment of this Easement whether in whole or in part.

2.2. Natural Acts. In granting this Easement, Grantor and the Conservancy mutually agree that nothing contained in this Easement shall be construed to entitle the Conservancy to bring any action against Grantor for any injury to/change in the Property resulting from natural causes beyond Grantor’s control, including, but not limited to, fire, flood, storm, natural earth movements, or other natural events (collectively “Natural Causes”), or from any prudent action taken by Grantor in an emergency to prevent, abate, or mitigate significant injury or change to the Property resulting from such Natural Causes.

3. Baseline Documentation Report. The Parties acknowledge that the Baseline Documentation Report has been prepared by a person familiar with conservation easements, the Property, and the environs. The Baseline Documentation Report has been reviewed and approved by the Conservancy and Grantor as an accurate representation of the biological and physical condition of the Property at the time of the grant of this Easement. Grantor has retained a copy of the Baseline Documentation Report for its records and a copy of the Baseline Documentation Report is on file with the Conservancy.

4. Rights of the Conservancy. To accomplish the Purpose of this Easement, the Grantor conveys the following rights to the Conservancy:

4.1 the right to preserve and protect the Conservation Values in perpetuity; and

4.2 the right to enter upon the Property at reasonable times, to inspect the Property thoroughly, to monitor Grantor’s compliance with and otherwise enforce the Purpose of the Easement; provided that such entry shall be upon seventy-two (72) hours prior notice to Grantor,

except that no such notice shall be required in the event of an emergency or if the Conservancy reasonably believes that immediate entry upon the Property is essential to prevent or mitigate a violation of this Easement. The Conservancy shall not unreasonably interfere with Grantor's or Grantor's guests' and invitees' use and quiet enjoyment of the Property; and

4.3 the right to prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement, or which may have an adverse impact on the Conservation Values, and to require the restoration of such areas or features of the Property that are damaged by any inconsistent activity or use with the exception of Natural Causes including the right to restore the Property to its condition as of the date hereof; and

4.4 the right to be notified in writing by Grantor, its heirs, successors, transferees or assigns, upon the exercising of the reserved rights as set forth in Section 6 and in Treasury Regulation 1.170A-14(g)(5)(ii); and

4.5 any other rights that the Parties may approve that are consistent with the Purpose of this Easement and the Conservation Values (e.g. undertaking enhancement projects, identifying additional conservation values, or conducting non-intrusive scientific studies).

5. Prohibited Uses. Prohibited uses of the Property are specifically described in Subsections 5.1 through 5.18. Notwithstanding anything herein to the contrary, any activity on or use of the Property that is inconsistent with the Purpose of the Easement is prohibited.

5.1 the change, disturbance, alteration, or impairment of the relatively natural habitat for plants, wildlife, or similar ecosystems within and upon the Property, except as expressly provided herein; and

5.2 the construction and/or placement of any building structures, permanent camping accommodations, mobile homes, or billboards, except as expressly provided herein in the Acceptable Development Areas and the Agricultural Area as defined below; and

5.3 the conveyance of easements, rights-of-ways, the paving or grading of roadways or the construction of any roadways, except as expressly provided herein in the Acceptable Development Areas and the Agricultural Area as defined below; and

5.4 the removal, destruction, or cutting of native vegetation, except as provided herein; and

5.5 the introduction of non-native plants and/or animal species unless in accordance with applicable laws, a current NRCS conservation plan, a Ten Year Agricultural Management Plan (as defined below) or its equivalent, and in a manner consistent with sound environmental conservation practices and current scientific literature ; and

5.6 the use of herbicides or pesticides other than for the control of noxious weeds and/or pests in accordance with applicable laws, a current NRCS conservation plan, a Ten Year

Agricultural Management Plan (as defined below) or its equivalent, and in a manner consistent with sound environmental conservation practices and current scientific literature; and

5.7 the exploration by Grantor, its heirs, successors, transferees or assigns, for or extraction of minerals, oil, gas, or other hydrocarbons, soils, sands, gravel, rock, or other materials on or below the surface of the Property. Notwithstanding anything in the Easement to the contrary, Grantor, its heirs, successors, transferees or assigns shall not transfer, lease or otherwise separate the minerals, oil, gas, or other hydrocarbons, soils, sands, gravel, rock, field stone, or other materials from the Property or otherwise conduct any activity that could conflict with or cause the violation of Treasury Regulations Section 1.170A-14(g)(4)(i); and

5.8 the accumulation, dumping or other disposal of trash, garbage, or other offensive refuse on the Property other than the collection and disposal of natural byproducts on the Property (including tree limbs and organic household compost materials) except as in accordance with applicable laws and regulations; and

5.9 the manipulation, diversion, or other alteration of stream(s); and

5.10 the degradation, pollution, or drainage of any surface or sub-surface waters; and

5.11 any use that would increase or substantially add to the risk of erosion as determined by historical and current scientific literature; and

5.12 any change in the topography of the Property through the placement therein of soil, landfill, dredging spoils, or other material except as incidental and necessary to the activities permitted herein in the Acceptable Development Areas and the Agricultural Area; and

5.13 more than *de minimis* use for any recreational activity constituting commercial recreational activity within the meaning of Section 2031(c) of the Code; and

5.14 the transfer, encumbrance, lease, sale, or other separation of the water rights except as necessary and appropriate for the present and future occupation of human, faunal and vegetational populations on the Property; and

5.15 the erection, construction, installation, relocation or use of a communication facility, a telecommunications facility, a network element or any other telecommunications facility, equipment or material that may be used for telecommunications or to provide such services; except for low capacity personal services; and

5.16 the erection, construction, installation, relocation or use of utility lines or substations not necessary and directly related to uses of the Property permitted in this Easement; and

5.17 the erection, construction, installation, relocation or use of any lighting which interferes with wildlife on the Property; and

5.18 the division, subdivision, or *de facto* subdivision of the Property into two or more parcels of land or separate interests.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns of the Property (each of which shall be “Grantor” within the meaning of this paragraph), all rights accruing from its ownership of the Property, as such ownership shall be limited by the grant of this Easement, 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 Purpose of this Easement, including without limitation the rights and permitted uses set forth below.

6.1 *Hunting.* Hunting, trapping and predator control, in a manner consistent with federal, state and local laws, are permitted on the Property. The Parties agree and acknowledge that controlled hunting may be desirable to maintain sustainable wildlife populations consistent with the condition of the habitat.

6.2 *Public Outdoor Recreational and Educational Activities.* Grantor reserves the right to conduct public outdoor recreational activities, and educational activities related to such uses, including events to which members of the public are invited, that are subordinate to and directly supportive of the use of the Property for habitat and range management and enhancement activities and are consistent with the protection of the Conservation Values. Such activities may include but are not limited to:

- (a) outdoor recreational activities;
- (b) endangered species research and programs;
- (c) habitat and range management and enhancement;
- (d) natural resource conservation management;
- (e) air, water, and soil quality monitoring, research, and programs;
- (f) soil conservation and restoration;
- (g) conducting field trips, seminars, and workshops programs related to the Conservation Values;
- (h) the right to authorize the use of the Property by others for public outdoor recreational activities, and educational activities related to such uses, consistent with the Purpose of this Easement and the provisions of this Section 6.2.

7. Forest Carbon Services. Grantor shall hold, market, and transfer any and all rights related to forest carbon, including but not limited to mitigation credits and offsets, now present or existing in the future, and the right to report such mitigation credits or offsets to any relevant public or private regulatory/oversight body or registry whether pursuant to a voluntary system or one

created by local, federal, or international law or regulation, which rights arise from or are generated by or from the Property on or after the date of this Easement (collectively the “Forest Carbon Services”). The Forest Carbon Services retained hereunder shall specifically include, but shall not be limited to, the right to hold, reserve, report, market, or retire any greenhouse gas mitigation credits or offsets that may be generated upon the Property, and other types of mitigation credits or offsets that arise from the production of forest carbon. Grantor shall have the absolute discretion in determining the purchaser(s) and/or recipient(s) of any Forest Carbon Services and the consideration for such forest carbon services shall inure to the sole benefit of Grantor.

8. Permitted Uses. Permitted uses of the Property vary depending on where on the Property this use occurs as specifically indicated below. The Property is divided into three (3) principal areas all of which are depicted in the Easement Map in *Section XI* of the Baseline Documentation Report and generally described below:

Acceptable Development Areas (also referred to as an “ADA”) – The area in which 1) single-family dwelling and their associated structures, and 2) agricultural access roads may be placed to the extent listed below. A total of two (2) Acceptable Development Areas will exist on the entire Property: 1) the Acceptable Development Area – Reserved Homesite, and 2) the Acceptable Development Area – Agricultural Access Road(s).

- The Acceptable Development Area – Reserved Homesite will consist of a circle with a radius of 118 feet (36 meters) that encompasses a total area of approximately one acre (4,046 meters²). There will be a maximum total of one (1) reserved homestead on the entire property with the location specifically identified in *Section XI* of the Baseline Documentation Report.
- The Acceptable Development Area – Agricultural Access Road(s) will consist of a linear buffer of approximately 30 feet (9.14 meters) extending from any existing or future agricultural access road. The linear buffer will originate from the centerline of any existing or future agricultural access road and will extend 15 feet (4.57 meters) to either side.

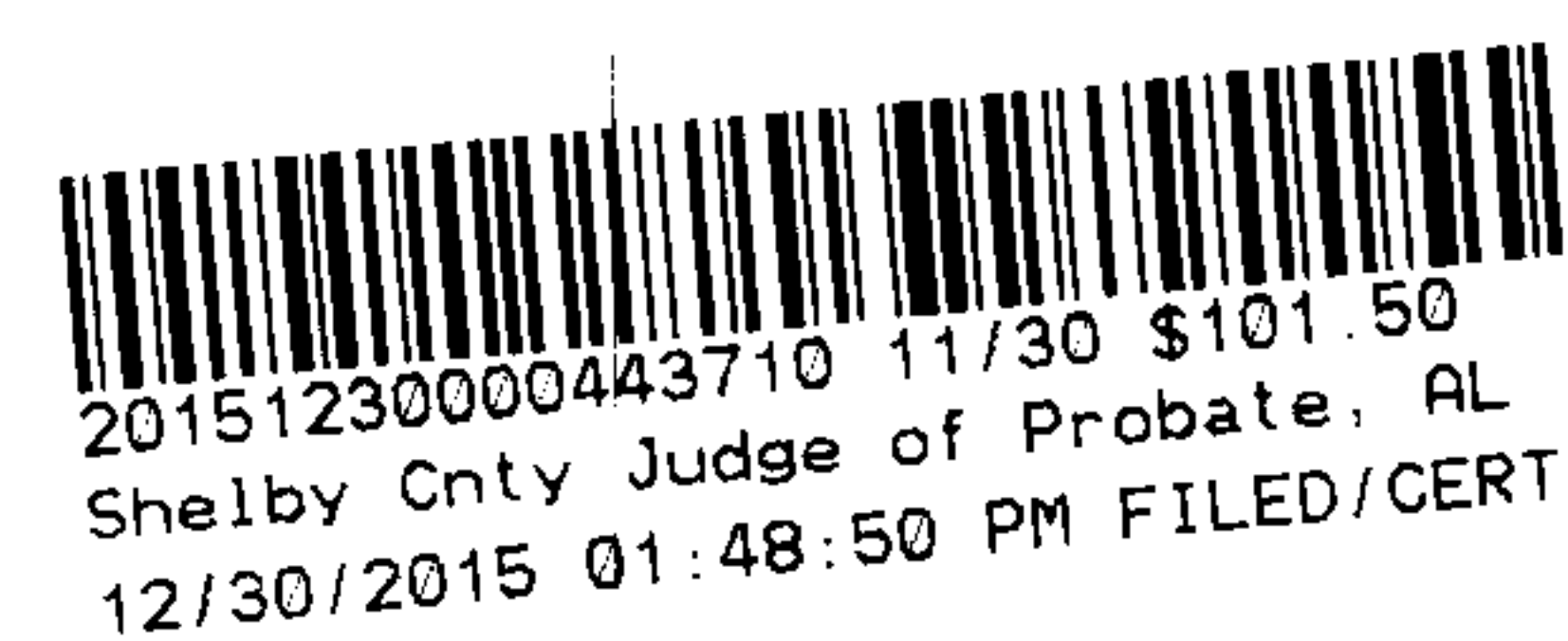
Resource Protection Areas (also referred to herein as an “RPA”) – The areas which contain unique or special natural features including, but not limited to, streams, wetlands or steep slopes and their supporting buffer lands, and in which this Easement excludes the construction or placement of permanent or temporary buildings and anthropogenic perturbations (manmade disturbances). A total of three (3) Resource Protection Areas will exist on the entire Property: 1) the Resource Protection Area – Fourmile Creek, 2) the Resource Protection Area – Emergent Wetlands, and 3) the Resource Protection Area – Palustrine Wetland.

- The Resource Protection Area –Fourmile Creek will consist of a linear buffer of approximately 200 feet (60.96 meters). The linear buffer will originate from the approximate center of the Fourmile Creek and its unnamed tributaries, as specifically identified in *Section XI* of the Baseline Documentation Report, and will extend for 100 feet (30.48 meters) towards either side of the aquatic feature.

- The Resource Protection Area – Emergent Wetlands will consist of a polygon that will encompass each respective emergent wetland areas, as specifically identified in *Section XI* of the Baseline Documentation Report.
- The Resource Protection Area – Palustrine Wetland will consist of a polygon that will encompass the palustrine wetland area, as specifically identified in *Section XI* of the Baseline Documentation Report.

Agricultural Area (also referred to herein as "AA") – The remainder of the Property, after excluding the Acceptable Development Areas and the Resource Protection Areas, that may be used for, but not limited to, crops, horticulture, grazing, animal husbandry, trees, carbon sequestration for carbon offset, and agricultural plantings for wildlife are allowed, may be continued and expanded and shall be considered consistent with the Purpose of this Easement, provided that the same are conducted in a manner not inconsistent with this Easement and provided further that:

- 1) Under no circumstances shall there be industrial or factory-type livestock operations or animal husbandry characterized by the continuous confinement of livestock in tightly confined environments for the purpose of raising, feeding and fattening for market on the Property; and no slaughtering facility or poultry, dairy or hog operation shall be allowed;
- 2) Pesticides and/or herbicides may be used only in a manner consistent with their labeling and in compliance with all federal, state, and local regulations, including those related to licensing and/or certification of applicators;
- 3) All permitted agricultural activities shall be conducted in accordance with any pertinent local or state regulations or guidelines covering such activities and Best Management Practices of the State of Alabama and applicable federal, state and local laws;
- 4) All such activities shall be designed to maintain soil productivity and prevent soil erosion to protect water quality and wetlands;
- 5) Any change in agricultural use or activity to a use not traditionally used on the Property shall be subject to the prior written approval of the Conservancy, which approval shall not be unreasonably withheld;
- 6) Land application of domestic septic effluent and/or municipal, commercial or industrial sewage sludge or liquids generated from such sources is prohibited;
- 7) All farming operations not being utilized as of the date of this Easement shall be conducted in a manner consistent with a farm conservation plan prepared by the USDA, NRCS, or its successor, or by another qualified conservation professional. This plan shall be updated periodically and in any event at the time



the basic type of agricultural operation on the Property changes or at the time ownership of the Property changes.

8.1 *Acceptable Development Areas*. Notwithstanding anything herein which may be interpreted to the contrary, (1) no development is permitted if such use or activity will materially impair or interfere with the Conservation Values, and (2) the ADA boundaries shall not be modified. The following activities are permitted within each Acceptable Development Area to the extent indicated provided that, unless otherwise noted, Grantor notifies the Conservancy in writing no later than thirty (30) working days prior to exercising the prescribed permitted uses.

8.1.A Acceptable Development Area – Reserved Homesite. With prior written notice to the Conservancy, Grantor may construct, maintain, repair, remove, enlarge, or replace one (1) single-family residential main structure and its improvements within the area shown in the Easement Map, *Section XI* of the Baseline Documentation Report, as Acceptable Development Area – Reserved Homesite. There will be a total of one (1) reserved homesite on the entire property. Said reserved homesite, accessory buildings and improvements shall be located completely within the corresponding ADA – Reserved Homesite. Accessory buildings and improvements associated with the residence may include garages, carports and storage sheds. The foregoing permissions include, to the extent necessary, temporary easements and permission to access any area of the Property in connection with such permissions. Any temporary easements and permission to access any area of the Property in connection with such permissions which is disturbed by activity must be revegetated and restored to a natural condition promptly after completion of access to ensure that the location of such activity does not substantially diminish or impair the Conservation Values.

8.1.A.i Building Restrictions. With prior written notice to the Conservancy, Grantor may construct, maintain, repair or replace one (1) single-family dwelling within the area depicted in the Easement Map, *Section XI* of the Baseline Documentation Report, as ADA – Reserved Homesite. Accessory buildings and improvements associated with the residence may include garages, carports and storage sheds. The foregoing permissions include, to the extent necessary, temporary easements and permission to access any area of the Property in connection with such permissions. Any temporary easements and permission to access any area of the Property in connection with such permissions which is disturbed by activity must be revegetated and restored to a natural condition promptly after completion of access to ensure that the location of such activity does not substantially diminish or impair the Conservation Values.

8.1.A.ii Fences. Without prior written permission from or notice to the Conservancy, Grantor may construct new fences, or maintain, repair or replace existing fences, and new fences may be constructed, maintained, repaired or installed, anywhere within the respective ADA – Reserved Homesite.

8.1.A.iii Access Road. Without prior written permission from or notice to the Conservancy, Grantor may construct, pave, maintain, improve, repair, remove, or replace one (1) access road within the respective ADA – Reserved Homesite. The foregoing permissions include, to the extent necessary, temporary easements and permission to

access any area of the Property in connection with such permissions. Any temporary easements and permission to access any area of the Property in connection with such permissions which is disturbed by activity must be revegetated and restored to a natural condition promptly after completion of access to ensure that the location of such activity does not substantially diminish or impair the Conservation Values.

8.1.A.iv Subsistence Garden. Without prior written permission from or notice to the Conservancy, Grantor may construct, maintain, repair or replace one (1) subsistence garden within the respective ADA – Reserved Homesite. Said garden may be used for *de minimis* agricultural-related commercial activities.

8.1.B Acceptable Development Area – Agricultural Access Road(s). Without permission from or notice to the Conservancy, Grantor may maintain, improve, repair, remove, enlarge or replace any agricultural access roads within the area shown in the Easement Map, Section XI of the Baseline Documentation Report, as ADA – Agricultural Access Road(s). No portion of the agricultural access road shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material except for steep slope areas that may require additional hardening of the surface to reduce erosion. Said improvements shall be located completely within the corresponding ADA – Agricultural Access Road(s). The foregoing permissions include, to the extent necessary, temporary easements and permission to access any area of the Property in connection with such permissions. Any temporary easements and permission to access any area of the Property in connection with such permissions which is disturbed by activity must be revegetated and restored to a natural condition promptly after completion of access to ensure that the location of such activity does not substantially diminish or impair the Conservation Values.

8.2 *Resource Protection Areas*. The following activities are permitted within the Resource Protection Areas to the extent indicated.

8.2.A Recreation and Educational Usages. Without prior written permission from or notice to the Conservancy, Grantor may use area(s) shown in the Easement Map, *Section XI* of the Baseline Documentation Report, as Resource Protection Areas for low-impact outdoor recreation, education, nature observation, and scientific study, so long as these activities preserve the value of the Resource Protection Areas as wildlife habitat, riparian buffer, and aquatic ecosystem.

8.2.B Fences. Without prior written permission from or notice to the Conservancy, Grantor may maintain, preserve, improve, repair, remove, or replace existing fences in the area shown in the Easement Map, Section XI of the Baseline Documentation Report, as Resource Protection Areas, for purposes of preventing trespass on the Property. With prior written notice to the Conservancy, Grantor may construct new fences in the Conservation Easement Map, Section XI of the Baseline Documentation Report, as Resource Protection Areas, for the purpose of exclusion of cattle from sensitive areas.

8.2.C Water Resources. Without prior notice to the Conservancy, Grantor may utilize and maintain water sources, courses, and bodies within the area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Resource Protection Areas, so long as such usages and activities are carried out in accordance with sound agricultural practices and in

accordance with local, state and federal laws. Under no circumstances will any wetlands in the Resource Protection Area – Palustrine Wetland be drained or substantially altered.

8.2.D Control of Exotic Species. Without prior written notice to the Conservancy, Grantor may manage the area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as the Resource Protection Areas for intrusion of exotic species provided that all such cuttings and vegetation management shall be conducted in a manner that minimizes damage to the Property, preserves the value of the respective Resource Protection Area as wildlife habitat, aquatic ecosystem, and preserves the Conservation Values. The foregoing permissions include, to the extent necessary, temporary easements and permission to access any area of the Property in connection with such permissions. Any temporary easements and permission to access any area of the Property in connection with such permissions which is disturbed by activity must be revegetated and restored to a natural condition promptly after completion of access to ensure that the location of such activity does not substantially diminish or impair the Conservation Values.

8.2.E Trails. Without prior written permission from or notice to the Conservancy, Grantor may establish and maintain a foot trail anywhere in the Resource Protection Areas to be used for outdoor recreation and education.

8.2.E.i Trail. The trail may include steps and railings and other trail surface structures as well as bridges and culverts for traversing wet areas.

8.2.E.ii Trail Width. The trail may not exceed 10 feet (3.048 meters) in width.

8.2.E.iii Trail Covering. The trail may be covered, if at all, by wood chips, gravel, or any other porous surface so as not to enhance stormwater runoff into the wetland/stream.

8.2.E.iv Trail Signs. The trail may include signs to mark the trail; to provide information regarding applicable times, place, and manner restrictions; for interpretive purposes, and to indicate the interest of Grantor and the Conservancy.

8.2.F Hunting Stands and Platforms. Hunting Stands and Platforms. Without prior written permission from or notice to the Conservancy, Grantor may establish and maintain hunting stands and platforms within the area shown in the Easement Map, *Section XI* of the Baseline Documentation Report, as Resource Protection Areas provided that such accessories are erected and maintained in a manner that minimizes damage to the Property, preserves the value of the Resource Protection Area as wildlife habitat, riparian buffer and aquatic ecosystem, and preserves the Conservation Values. The foregoing permissions include, to the extent necessary, temporary easements and permission to access any area of the Property in connection with such permissions. Any temporary easements and permission to access any area of the Property in connection with such permissions which is disturbed by activity must be revegetated and restored to a natural condition promptly after completion of access to ensure that the location of such activity does not substantially diminish or impair the Conservation Values.

8.2.G Cutting and Clearing Trees. Without prior written permission from or notice to the Conservancy, Grantor may use area(s) shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Resource Protection Area – Emergent Wetlands, to 1) remove trees and limbs which are fallen, dead, diseased or dangerous; and (2) selectively cut dead or dying trees for firewood to be used on the premises, limited to preserve the Conservation Values. Under no circumstances will any trees harvesting occur in the Resource Protection Area – Palustrine Wetland.

8.2.H Carbon Credits. Grantor shall retain all rights, benefits, privileges and credits related to carbon sequestration in the above ground and below ground biomass, and the soil of the Resource Protection Areas.

8.3 Agricultural Area. With prior written notice to the Conservancy, Grantor may produce crops, livestock, trees, carbon sequestration for carbon offset, and conduct farm operations which includes but is not limited to the right to establish, reestablish, maintain, and use cultivated forests, fields, orchards, and pastures within the area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Agricultural Area. These farming/forestry practices, which are the principal uses of the Property, shall be consistent with sound agricultural practices and a current NRCS conservation plan or its equivalent, as prepared by the USDA or similar agency or professionally trained individual.

8.3.A Agricultural Management. With prior written notice to the Conservancy, Grantor reserves the right to conduct agricultural activities in the Agricultural Area subject to federal, state, and local regulations, the specific terms and conditions of the Easement, and shall be conducted in accordance with the following provisions.

8.3.A.i Ten Year Agricultural Management Plan. All agricultural activities shall be conducted in accordance with a written plan (the “Plan”) for areas in which agriculture is contemplated. The Plan 1) shall be prepared prior to any agricultural activities, 2) shall be approved by the Conservancy, and 3) shall be reviewed and updated at least every ten years by a licensed agricultural professional or its equivalent. The Plan shall include at a minimum the following:

- 1) goals and objectives of the landowner, consistent with the terms of the Easement; and
- 2) identification of the natural and physical features of the Property along with existing agricultural access roads, wetlands, and water bodies; and
- 3) a description of contemplated agricultural activities, indicating proposed ingress/egress for all areas to be utilized; and
- 4) a description of recommended erosion control measures to be employed; and

- 5) a description of foreseeable situations in which chemical application will be recommended, including the type, amount, method of application, and recommended limitations to protect water quality; and
- 6) a description of agricultural techniques and treatments to be employed to avoid adverse impact to the specific conservation values identified in the prescriptions hereinabove; and
- 7) a description of reclamation and revegetation practices to be employed upon completion of agricultural operations to ensure soil stabilization and to maintain the scenic qualities of the Property; and
- 8) a description of a compatible burn regimen designed specifically to foster and perpetuate the native dry prairie and isolated freshwater marsh habitats.

8.3.B Agricultural Buildings and Improvements. With prior written permission from the Conservancy, Grantor may create, maintain, improve, repair, remove, enlarge or replace rustic structures to assist with the agricultural operation within the area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Agricultural Area provided that all such structures must be designed and situated to blend with natural surrounding and complement the natural and scenic features of the landscape, and preserves the agricultural production of prime Alabama soils. The foregoing permissions include, to the extent necessary, temporary easements and permission to access any area of the Property in connection with such permissions. Any temporary easements and permission to access any area of the Property in connection with such permissions which is disturbed by activity must be revegetated and restored to a natural condition promptly after completion of access to ensure that the location of such activity does not substantially diminish or impair the Conservation Values.

8.3.C Fences. With prior written notice to the Conservancy, Grantor may construct new fences, or maintain, preserve, improve, repair, remove, enlarge or replace existing fences anywhere in the area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Agricultural Area, for purposes of exclusion/inclusion on the Property.

8.3.D All-Terrain Vehicles. Without prior written permission from or notice to the Conservancy, Grantor may use, or permit the use of all-terrain vehicles on the access roads now existing on the Property, or in the future those developed on the Property (pursuant to the Plan developed and approved pursuant to paragraph 8.3A.i), provided that:

- 1) such roads are used by others exclusively in accordance with the Plan;
- 2) the permission afforded by Grantor consists of short-term license to use the road system for a period not to exceed twelve (12) months, and is not a longer term license, right-of-way, easement or other permanent legal interest;
- 3) Grantor shall remain responsible for any such license's compliance with this Easement.

8.3.D.i All-Terrain Vehicle Access. Without prior written permission from or notice to the Conservancy, Grantor may permit the temporary use of all-terrain vehicles for agricultural and recreational purposes anywhere within the area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Agricultural Area.

8.3.F Hunting Stands and Platforms. Without prior written permission from or notice to the Conservancy, Grantor may establish and maintain hunting stands and platforms within the area shown in the Easement Map, *Section XI* of the Baseline Documentation Report, as Agricultural Area provided that such accessories are erected and maintained in a manner that minimizes damage to the Property, and preserves the agricultural production of prime Alabama soils. The foregoing permissions include, to the extent necessary, temporary easements and permission to access any area of the Property in connection with such permissions. Any temporary easements and permission to access any area of the Property in connection with such permissions which is disturbed by activity must be revegetated and restored to a natural condition promptly after completion of access to ensure that the location of such activity does not substantially diminish or impair the Conservation Values.

8.3.G Wildlife Habitat Restoration and Management. With prior written notice to the Conservancy, Grantor may use the area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Agricultural Area, to restore, develop and manage habitat to provide food, cover, and water for wildlife, per a NRCS conservation plan or its equivalent.

8.3.H Carbon Credits. Grantor shall retain all rights, benefits, privileges and credits related to carbon sequestration in the above ground and below ground biomass, and the soil of the Agricultural Area.

8.3.I Recreation and Educational Usages. Without prior written permission from or notice to the Conservancy, Grantor may use area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Agricultural Area for low-impact outdoor recreation, education, nature observation and scientific study, so long as these activities preserve the agricultural production of prime Alabama soils.

9. Access. Nothing contained herein shall be construed as affording the public access to any portion of the Property, although the Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is consistent with the terms of this Easement.

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

10.1 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, to the Grantor's knowledge, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property, except for

fuels customarily used or transported in connection with camping, recreational or construction activities on the Property;

10.2 There are not now any 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;

10.3 Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

10.4 There is no pending or threatened litigation in any way affecting, involving, or relating to the Property;

10.5 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, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders;

10.6 Grantor warrants that Grantor has good and sufficient title to the Property, that Grantor has good right, full power and lawful authority to grant and convey this Easement, that any mortgages or liens on the Property are and shall remain subordinate to the terms of the Easement, and Grantor hereby promises to warrant and forever defend the title to the Easement against all and every person or persons lawfully claiming by, through or under Grantor, the whole or any part thereof, except for rights-of-way, easements, restrictions, covenants and mineral reservations of record, which are acceptable to the Conservancy at the time of execution of this Easement.

11. Notice of Intention to Undertake Certain Permitted Actions. Unless otherwise stated therein, Grantor will notify the Conservancy of its intention to engage in an activity reserved in Section 8 of this Easement. Notwithstanding anything herein to the contrary, the Grantor is required to notify the Conservancy prior to exercising any reserved right as required under a literal reading of Treasury Regulation Section 1.170A-14(g)(5)(ii). Except as otherwise stated herein, any such notice must be given at least sixty (60) days before the commencement of the activity. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Conservancy to make an informed judgment as to its consistency with the Purpose of this Easement. Continuation of existing or previously approved practices and uses, upkeep, completion, and repair of existing structures, roads and trails shall not require notice.

12. The Conservancy's Approval. The Conservancy shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's written request therefore under Section 11 of this Deed. Conservancy's approval may be withheld only upon a reasonable determination by Conservancy that the action as proposed would be inconsistent with the Purpose of this Easement and impair the Conservation Values associated with the Property.

13. Conservancy's Remedies: Enforcement. The Conservancy shall have the right to prevent and correct or require correction of violations of the terms and Purpose of this Easement. The Conservancy may enter the Property for the purpose of inspecting for violations in accordance with Subsection 4.2 above. If the Conservancy finds what it believes is a violation, or a threat of a violation of the terms or the Purpose of this Easement, the Conservancy shall notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall immediately discontinue any activity that could increase or expand the alleged violation and shall either: (1) restore the Property as best as possible to its condition prior to the violation in accordance with a plan approved by the Conservancy; or (2) provide a written explanation to the Conservancy of the reason why the alleged violation should be permitted. If the Conservancy is not satisfied with Grantor's written explanation, both Parties agree to meet as soon as possible to resolve the difference. If a resolution of this difference cannot be achieved at the meeting, both Parties agree to meet with a mutually acceptable mediator in an attempt to resolve the dispute pursuant to Subsection 13.1 below.

Should Grantor not immediately discontinue any activity that could increase or expand the alleged violation; or should mediation fail to resolve the dispute within sixty (60) days of the Conservancy's written notice to Grantor of the alleged violation, or by such other date as the Parties may mutually agree, the Conservancy may take appropriate legal action pursuant to the Subsections below. The Conservancy's remedies described in this Easement shall be cumulative and shall be in addition to all remedies now and hereafter existing at law or in equity, including the right to recover any damages for loss of scenic or environmental Conservation Values. The failure of the Conservancy to discover a violation or to take immediate legal action does not and should not bar the Conservancy from exercising the right of enforcement at any later date.

13.1 Mediation. If a dispute arises between the Parties concerning the consistency of any proposed use or activity with the Purpose of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either Party may refer the dispute to mediation by request made in writing upon the other. Within ten (10) days of the receipt of such request, the Parties shall select a single trained and impartial mediator with experience in conservation easements and other land preservation tools. If the Parties are unable to agree on the selection of a single mediator, then the Parties shall each select a trained and impartial mediator with experience in conservation easements and other land preservation tools, and those two mediators shall select a similarly skilled mediator who shall alone mediate the dispute. Mediation shall proceed in accordance with the following guidelines:

13.1.A Purpose. The purpose of the mediation is to: (1) promote discussion between the Parties; (2) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (3) assist the Parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Easement.

13.1.B Participation. The mediator may meet with the Parties and their counsel jointly or *ex parte*. The Parties agree that they will participate in the mediation process in good faith and

expeditiously, attending all sessions scheduled by the mediator. Representatives of the Parties with settlement authority will attend mediation sessions as required by the mediator.

13.1.C Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective counsel. The mediator shall not be subject to subpoena by any Party in any subsequent litigation. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceedings or construed as an admission of a Party.

13.1.D Time Period. Neither Party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute. The Parties shall each bear 50% of the mediator's fees.

13.2 *Injunctive Relief*. The Conservancy may bring action at law or in equity, *ex parte* as necessary, in a court of competent jurisdiction, to enforce the terms of the Easement and to enjoin by temporary or permanent injunction a violation, including to require or cause the restoration of the Property to the condition that existed prior to the violation, under the following circumstances:

13.2.A If Grantor, after receipt of a notice of violation from the Conservancy, fails immediately to discontinue any activity that could increase or expand alleged violation; or

13.2.B If Grantor, after receipt of a notice of violation from the Conservancy, fails within ten (10) days either to provide a written explanation to the Conservancy of the reason why the alleged violation should be permitted or begin restoring the Property as best as possible to its condition prior to the violation; or

13.2.C If Grantor, after commencing to restore the Property to its condition prior to a violation, fails to diligently cure the violation within a reasonable amount of time.

13.3 *Damages*. The Conservancy shall be entitled to recover damages for violations of the terms of this Easement or injury to the Conservation Values, including, without limitation, damages for the loss of scenic, aesthetic, or environmental purposes. Without limiting Grantor's liability, the Conservancy, in its sole discretion, may apply damages recovered to the cost of undertaking any corrective action on the Property.

13.4 *Emergency Enforcement*. If the Conservancy reasonably believes an ongoing or threatened imminent activity violates the Easement, the Conservancy may, in its sole discretion, take immediate legal action as set forth in this Section 13 without prior notice to Grantor and without waiting for the period provided for cure to expire.

13.5 *Scope of Relief*. The Conservancy's rights under this Section 13 apply equally in the event of actual or threatened violations of the terms of this Easement. Grantor agrees that the Conservancy's remedies at law for any violation of the terms of this Easement are inadequate

and that the Conservancy shall be entitled to the injunctive relief described in Subsection 13.2, both prohibitive and mandatory, in addition to such other relief to which the Conservancy may be entitled, including specific performance of the terms of the Easement. The Conservancy's remedies described in this Section 13 shall be cumulative and shall be in addition to all remedies now and hereafter existing at law or in equity.

13.6 Cost of Enforcement. All reasonable costs incurred by the Conservancy in enforcing the terms of this Easement against Grantor including, without limitation, costs and expenses of suit and reasonable attorney's 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.

13.7 The Conservancy's Discretion. Enforcement of the terms of this Easement shall be at the sole discretion of the Conservancy, and any forbearance by the Conservancy to exercise its rights under the Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by the Conservancy of such term or subsequent breach of the same or any other term of this Easement or of any of the Conservancy's rights under this Easement. No delay or omission by the Conservancy in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

13.8 Acts Beyond Grantor's Control. As provided in Section 2.2, nothing contained in this Easement shall be construed to entitle the Conservancy to bring any action against Grantor for any injury to or change in the Property resulting from Natural Causes, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property or person(s) resulting from such Natural Causes. Grantor is not responsible for acts of third parties who are out of Grantor's control, except that Grantor is responsible for guests and other third parties authorized by Grantor to access the Property.

14. Costs, Liabilities, Taxes, and Environmental Compliance.

14.1. 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 adequate insurance coverage. On reasonable request, Grantor will furnish a certificate of insurance or a copy of the insurance policy evidencing such insurance.

14.2 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Easement, and shall furnish the Conservancy with satisfactory evidence of payment upon request.

14.3 Remediation. If, at any time, there occurs, or has occurred, a release 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, soil, or in any way harmful or threatening to human

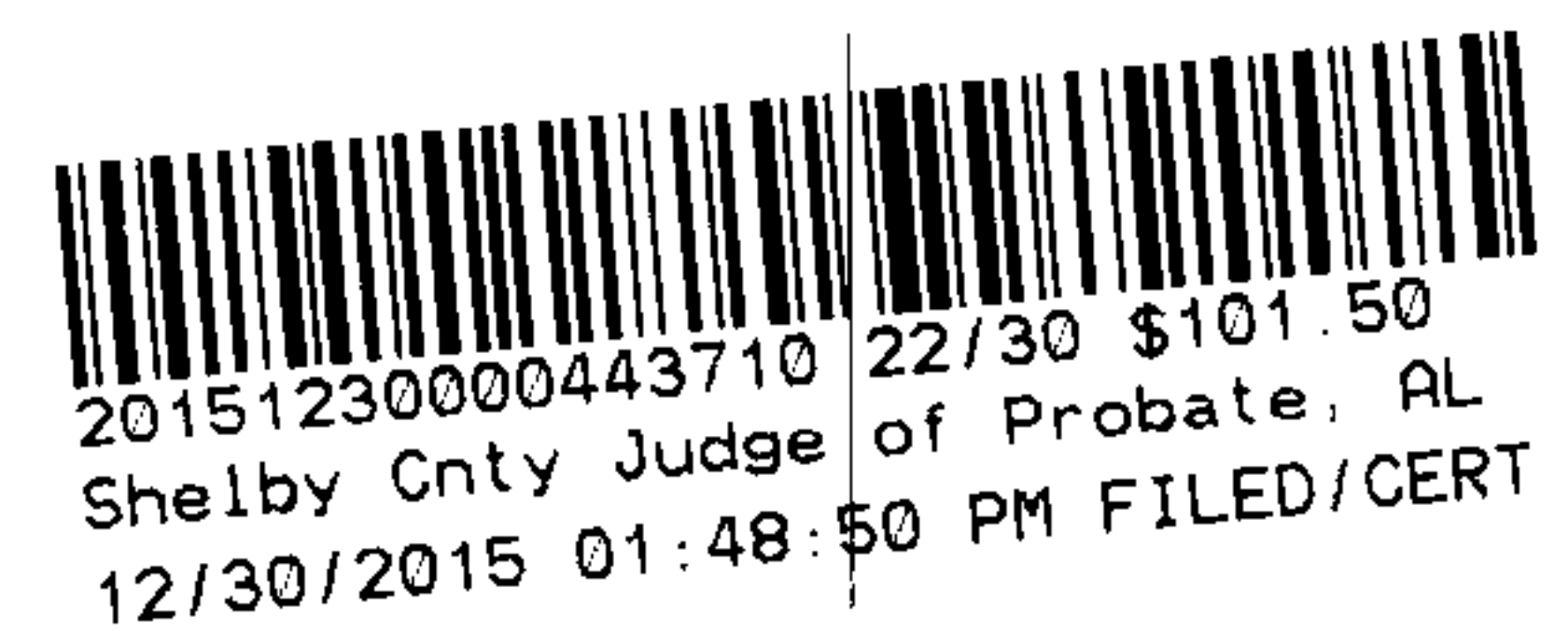
health or the environment, Grantor agrees to take all steps necessary to ensure its containment and remediation, including cleanup that may be required, unless the release was caused by the Conservancy, in which case the Conservancy shall be responsible therefore.

14.4 *Control*. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Conservancy to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's permissible 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 (the "CERCLA"), and any Alabama state law counterpart.

14.5 *Hold Harmless*. The Grantor as such term is defined below, shall hold harmless, indemnify, and defend Conservancy and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any Property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence, intentional misconduct, or knowing violation of the law or this Easement, of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any federal, state, or local law, regulation, requirement, including, without limitation, the CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release of hazardous or toxic substances in, on, from, under or about the Property at any time, 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, unless solely caused by any of the Indemnified Parties; (4) tax benefits or consequences of any kind which result or do not result from entering into this Easement; and (5) the obligations, covenants, representations and warranties of Subsection 10.1 through Subsection 10.6.

15. Extinguishment and Condemnation.

15.1 *Extinguishment*. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which the Conservancy shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment (herein collectively "Extinguishment") shall be determined to be at least equal to the perpetual Easement's proportionate value unless otherwise provided by Alabama law at the time, in accordance with Subsection 15.2 below. The Conservancy shall use all such proceeds in a manner consistent with the Purpose of this Easement.



15.2 Proceeds. This Easement constitutes a real property interest immediately vested in Conservancy. For the purposes of this Subsection and pursuant to Treasury Regulation 1.170A-14(g)(6)(ii), the Parties stipulate that this Easement shall have at the time of Extinguishment a fair market value determined by multiplying the then fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The value at the time of this grant shall be the donation value used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code. Grantor shall within ninety (90) days of this grant provide to the Conservancy copies of all appraisals seeking to establish the value of the donated Easement at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

15.3 Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, the Conservancy shall be entitled to compensation from the condemning authority in accordance with applicable law.

15.4 Application of Proceeds. The Conservancy shall use any proceeds received under the circumstances described in this Section 15 in a manner consistent with the Purpose of this Easement.

16. Assignment. This Easement is transferable, but the Conservancy may assign its rights and obligations under this Easement only to a "qualified organization" that is deemed to be so qualified at the time of transfer under Section 170(h) of the Code. As a condition precedent to such transfer, the Conservancy shall require its successors and assigns to enter into a specific written agreement to be bound by this Easement, which written agreement shall state that the Purpose this Easement is intended to advance shall continue to be carried out by such transferee. The Conservancy shall provide Grantor at least sixty (60) days advance notice of any assignments, so that Grantor can determine whether the proposed assignee satisfies the criteria of this Section 16. Grantor's prior written consent to assignment is necessary to make the assignment effective, and the Conservancy shall not assign its rights hereunder without Grantor's prior written consent.

17. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement 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. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

18. Notices. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other regarding the specifics of the Easement shall be in writing and either served personally or sent by first class mail, postage prepaid, or electronic correspondence (email) addressed as follows:

To Grantor: Matterhorn Property Holdings, LLC
912 Edenton Street
Birmingham, Alabama 35242
email: blewisbcc@bellsouth.net

To Conservancy: Atlantic Coast Conservancy, Inc.
Attn: Dr. Robert Keller, Chief Executive Officer
72 South Main Street
Jasper, Georgia 30143
email: rkeller@atlanticcoastconservancy.org


With a copy to: Phil M. Landrum, III
Landrum & Landrum Attorneys
95 Stegall Drive
Jasper, Georgia 30143
email: phil@landrumandlandrum.com

or to such other address or email address as either Party from time to time shall designate by written notice to the other.

19. Recordation. Conservancy shall record this instrument in a timely fashion in the official records of Shelby County, Alabama and may re-record it at any time as may be required to preserve its rights in this Easement. Grantor will pay any recordation charges.

20. Subordination. If at the time of conveyance of this Easement, the Property is subject to a Deed to Secure Debt, the holder of which has agreed by separate instrument, a copy of which is attached hereto as **Exhibit "B"** to subordinate its rights in the Property to the extent necessary to permit the Conservancy to enforce the Purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by exercise of any rights of the Deed to Secure Debt.

21. Future Technology. No use shall be made of the Property, and no activity thereon shall be permitted that is, or is likely, to become inconsistent with the Purpose of this Easement. Grantor and Conservancy acknowledge that, in view of the perpetual nature of this Easement and the predicted climate changes due to global warming, they are unable to foresee all potential land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purpose of this Easement. The Conservancy therefore, in its reasonable discretion in accord with then current scientific research and findings disseminated by the Intergovernmental Panel on Climate Change (IPCC) or its equivalent, may determine whether (a) proposed uses or proposed improvements not contemplated by or addressed in the Easement, or (b) alterations in existing uses or structures, are consistent with the Purpose of this Easement.


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22. General Provisions.

22.1 *Exhibits.* The following exhibits are attached to and incorporated by reference into this Easement. Exhibit A: Property Legal Description, Exhibit B: Subordination Document (if necessary).

22.2 *Definitions.* The terms "Grantor" and "Conservancy," wherever used herein, and any pronouns used in place of those terms, shall be deemed to include, respectively, Grantor and its heirs, personal representatives, executors, administrators, successors and assigns, and the Conservancy, its successors and assigns.

22.3 *Controlling Law.* The interpretation and performance of this Easement shall be governed by the laws of the State of Alabama.

22.4 *Liberal Construction.* Any general rule of construction to the contrary notwithstanding, this Easement shall be reasonably construed in favor of the grant to affect the Purpose of this Easement and the policy and purpose of Alabama law. 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.

22.5 *Severability.* If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision 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.

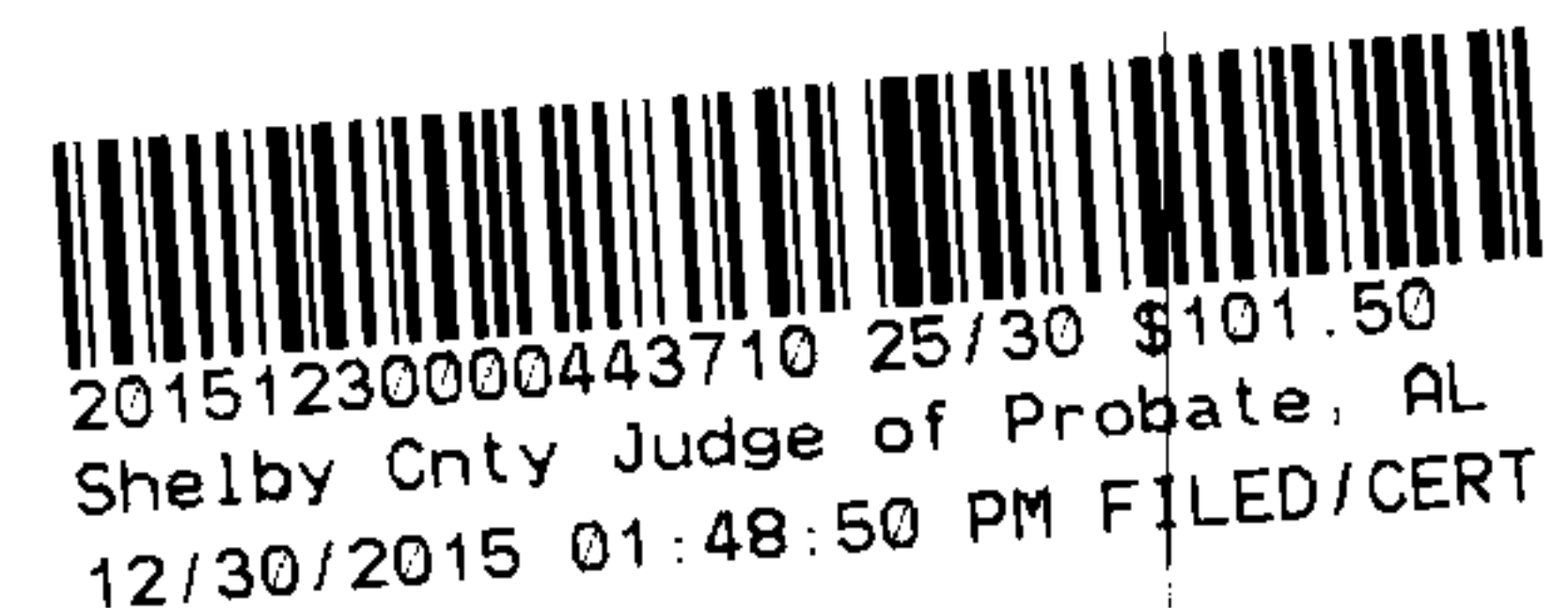
22.6 *Entire Agreement.* This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

22.7 *No Forfeiture.* Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

22.8 *Joint Obligation.* The obligation imposed by this Easement upon Grantor shall be joint and several (in the event that there is more than one Grantor).

22.9 *Successors.* The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, 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 in perpetuity with the Property.

22.10 *Termination of Rights and Obligations.* Except as otherwise provided herein, a Party's rights and obligations under this Easement terminate upon transfer of the Party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.



22.11 *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 upon construction or interpretations.

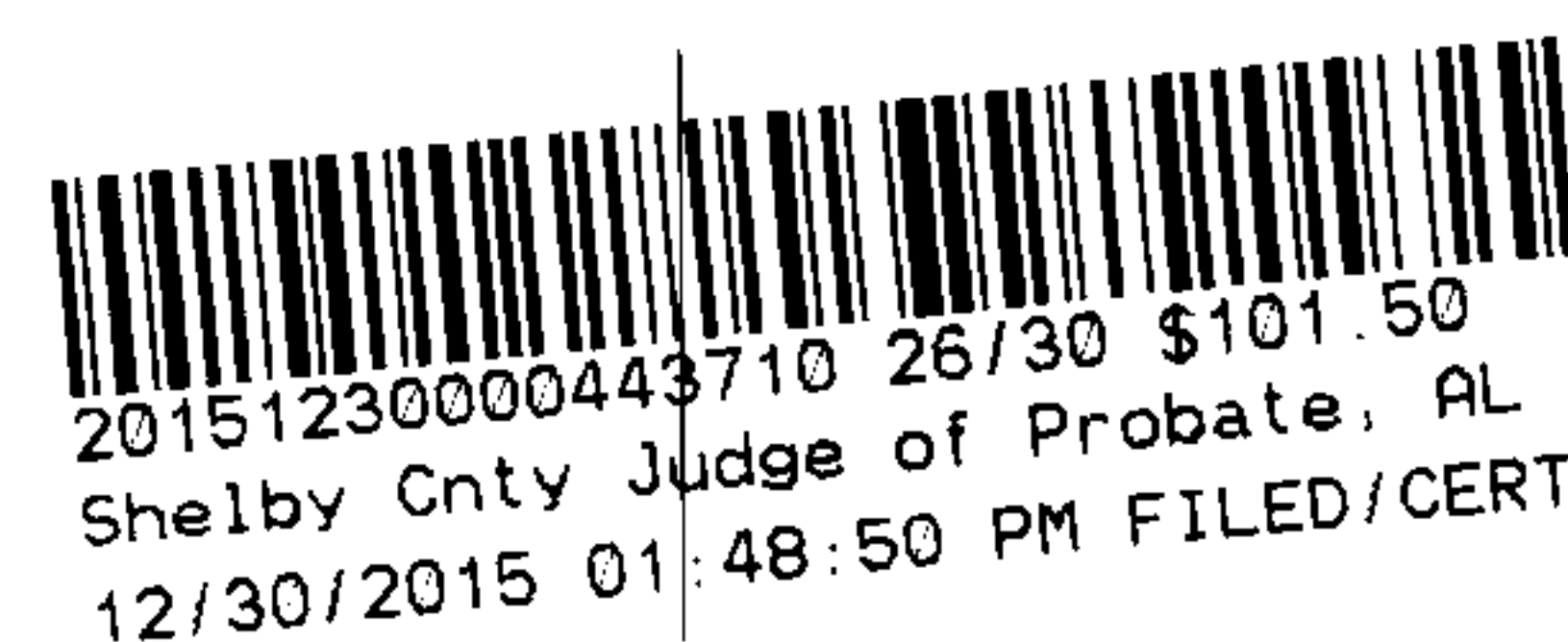
22.12 *Counterparts*. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties; each counterpart shall be deemed an original instrument as against any Party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

22.13 *No Extinguishment Through Merger*. No deed, transfer, or assignment of any fee title interest in the Property to the Conservancy or any successor holder of this Easement shall be effective if it will result in the merger of this Easement with the fee title interest in the Property. The provisions of this Section 22.13 are intended to prevent such merger. The provisions of this Section 22.13 shall apply, and shall be construed to apply, to the Conservancy as holder, and to any successor holder organizations.

22.14 *Executory Limitation*. If the Conservancy dissolves, ceases to exist, is unable or unwilling to carry out its responsibilities under this Easement, or no longer qualifies 1) under Section 170(h) of the Code, or 2) is no longer authorized to acquire and hold conservation easements under Alabama law, then the Conservancy shall have the right, subject to the provisions of Section 16 herein, to transfer the conservation easement created by this Easement, and the rights and obligations hereunder, to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code, but only if the agency or organization expressly agrees to assume the responsibility imposed on the Conservancy by this Easement. If the Conservancy dissolves, ceases to exist, is unable or unwilling to carry out its responsibilities under this Easement, or no longer qualifies 1) under Section 170(h) of the Code, or 2) as authorized to acquire and hold conservation easements under Alabama law, and a transfer has not been made pursuant to the foregoing sentence, then the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to applicable Alabama state law and consistent with the applicable requirements for an assignment pursuant to Section 16.

23. Legal, Tax, and Other Advice. Grantor represents that it has consulted Grantor's attorney, accountant, and other appropriate experts for advice relating to this Easement and any potential tax benefits that may inure the Grantor in connection with this Easement. Grantor warrants, represents and agrees that the Conservancy has made no warranty or representation relating to 1) the value of the Property or the methodology or techniques used or useful in ascertaining or appraising the value of the Property (either before or after the granting of this Easement), 2) any entitlement to tax benefits by Grantor or the amount of any such benefits, or 3) whether the conveyance by Grantor of this Easement constitutes a "qualified conservation contribution" as defined in Section 170(h) of the Code.

24. No Goods or Services. Grantor and the Conservancy acknowledge that no goods or services or other consideration have been provided by the Conservancy to the Grantor as consideration for this Easement, and the Conservancy will provide Grantor with a separate letter so stating, pursuant to the requirements of Section 170(f)(8) of the Code.



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

IN WITNESS WHEREOF Grantor and the Conservancy have executed this Easement as of the date first written above.

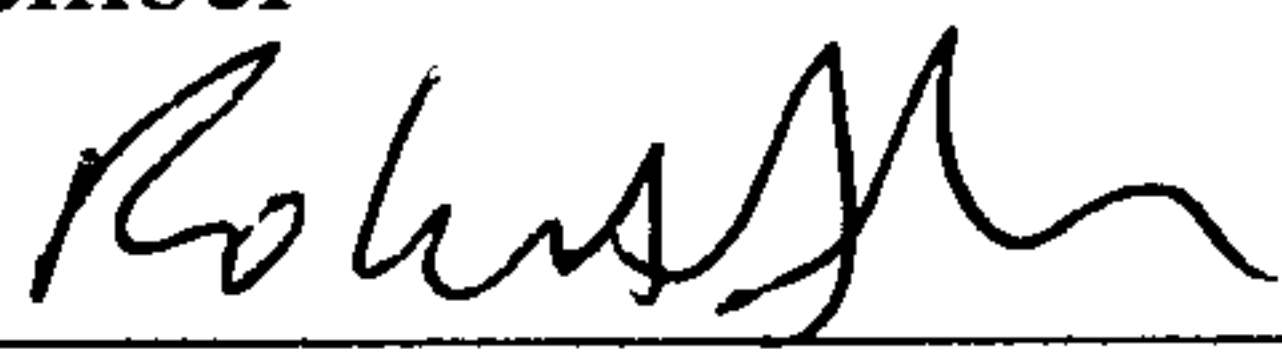
GRANTOR:

Matterhorn Property Holdings, LLC,
an Alabama limited liability company

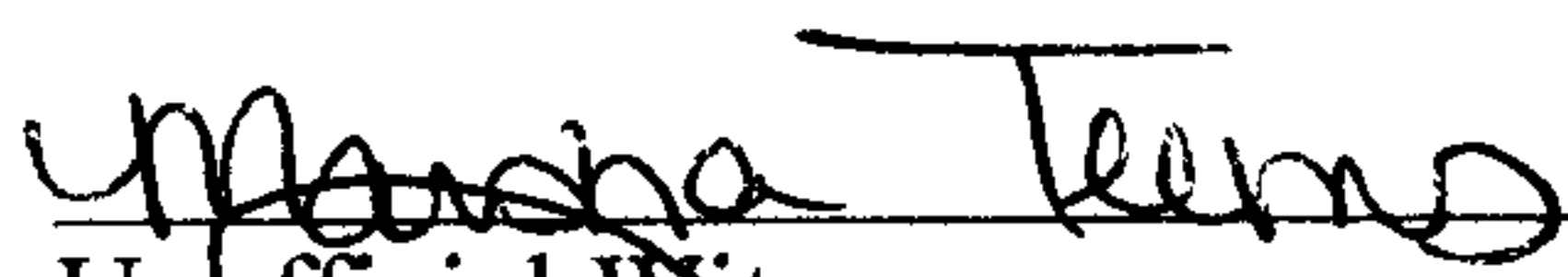
By: Matterhorn Property Investors LLC,
a Georgia limited liability company,
Its Manager

By: SRM Shelby Manager LLC,
a Georgia limited liability company,
Its Manager

By: Strategic Red Mountain, LLC,
a Georgia limited liability company,
Its Sole Member

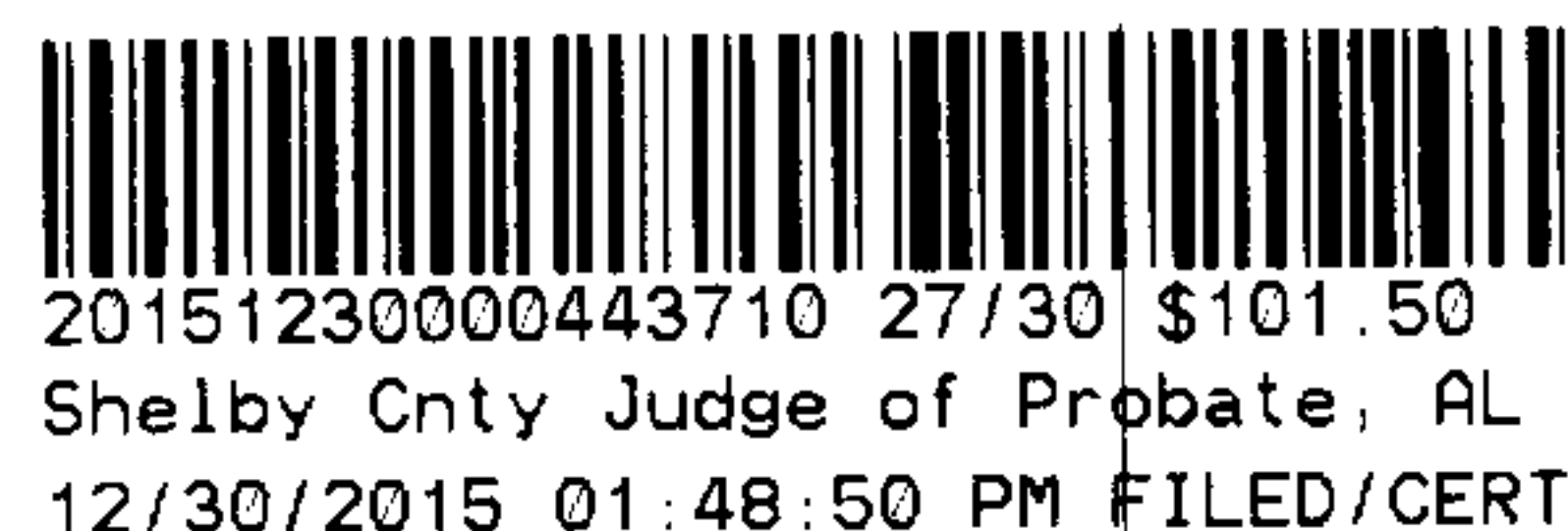
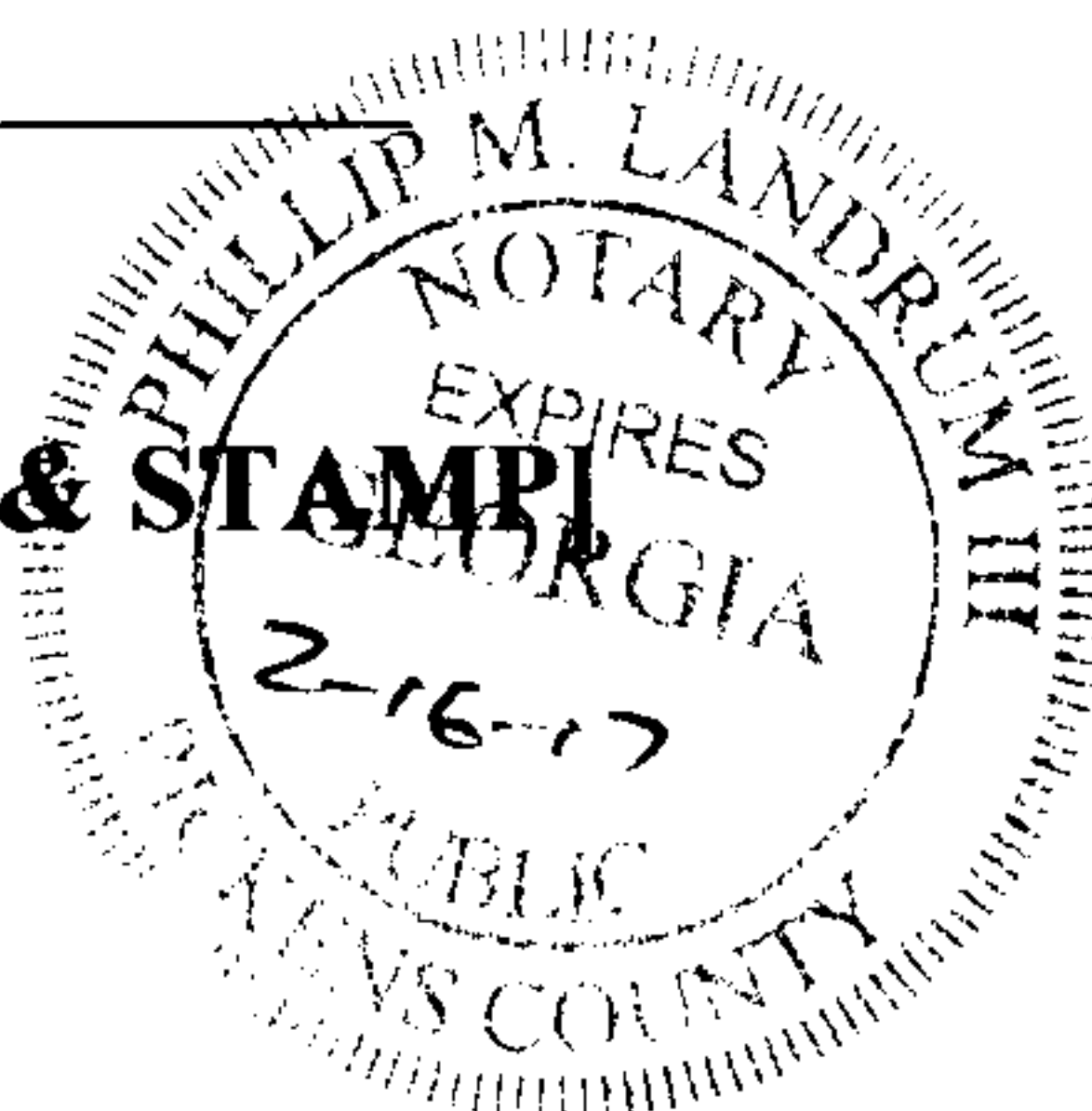
By: 
Robert Lewis,
Its Manager

Signed, sealed and delivered in the presence of:


Unofficial Witness


Notary Public

[AFFIX NOTARIAL SEAL & STAMP]

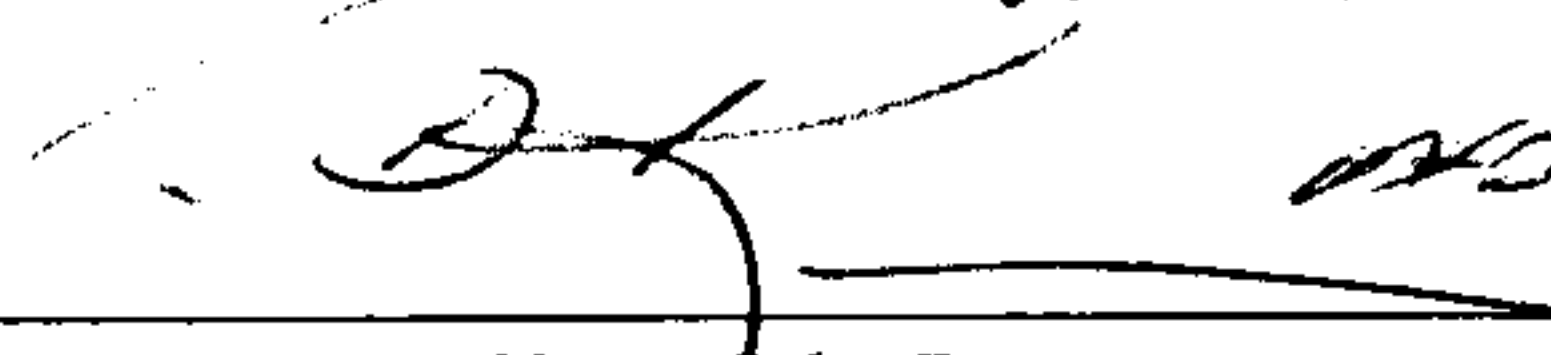


TO HAVE AND TO HOLD unto the Conservancy, its successors, and assigns forever.


IN WITNESS WHEREOF Grantor and the Conservancy have executed the Deed of Conservation Easement as of the date first written above.


CONSERVANCY:

Atlantic Coast Conservancy, Inc., a nonprofit Georgia corporation

By: 
Robert D. Keller, Ph.D,
Its Chief Executive Officer,

Signed, sealed and delivered in the presence of:


Unofficial Witness


Notary Public

[AFFIX NOTARIAL SEAL & STAMP]

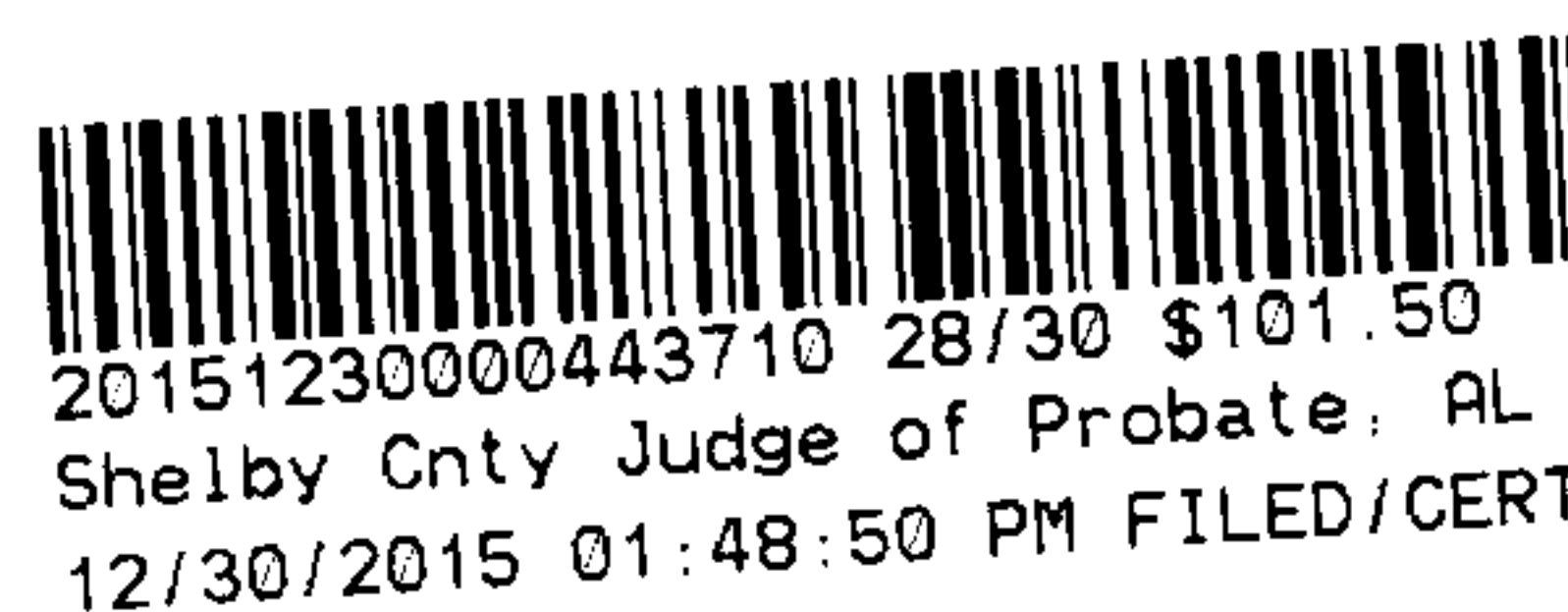
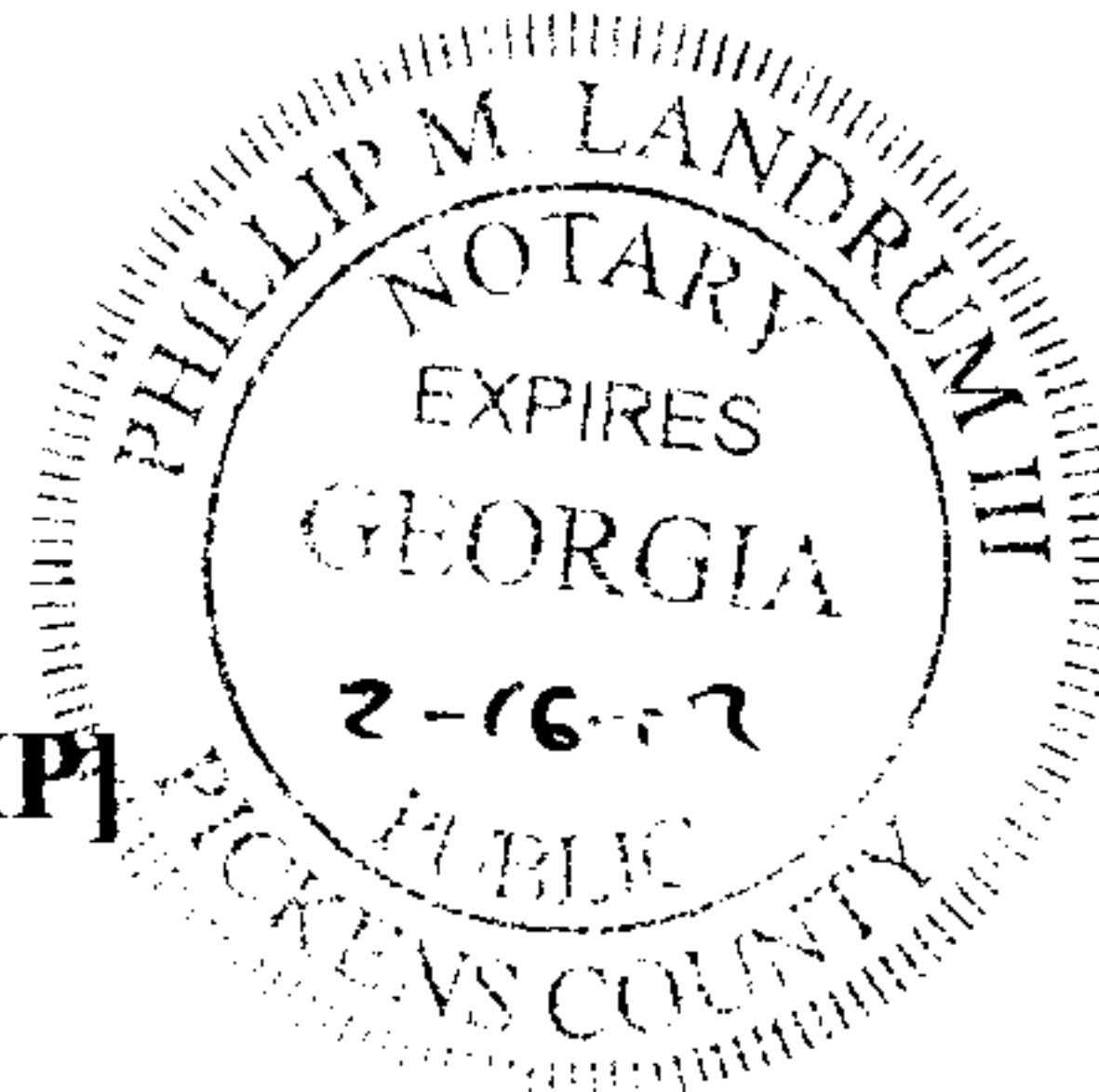


Exhibit "A"
Legal Description for Matterhorn Property Holdings, LLC
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Commence at a ½" capped rebar in place (Wheeler) being the Northwest corner of the Northwest one-fourth of the Northwest one-fourth of Section 36, Township 20 South, Range 1 East, Shelby County, Alabama, said point being the point of beginning. From this beginning point proceed North 87° 31' 38" East along the North boundary of said Northwest one-fourth of the Northwest one-fourth for a distance of 1335.03 feet to a ½" rebar in place being the Northeast corner of said quarter-quarter section; thence proceed South 00° 00' 18" East along the East boundary of said quarter-quarter section for a distance of 892.21 feet to a 4" pipe in place; thence proceed South 01° 13' 13" West along the East boundary of said quarter-quarter section for a distance of 330.50 feet to a 1" capped pipe in place being the Northeast corner of the Southwest one-fourth of the Northwest one-fourth of Section 36; thence proceed South 00° 21' 37" East along the East boundary of said Southwest one-fourth of the Northwest one-fourth for a distance 1283.19 feet to the Southeast corner of the Southwest one-fourth of the Northwest one-fourth; thence proceed South 89° 12' 41" West along the South boundary of said quarter-quarter section for a distance of 928.08 feet; thence proceed North 00° 08' 32" East for a distance of 1005.21 feet (set ½" rebar); thence proceed South 89° 48' 32" West for a distance of 2008.39 feet (set ½" rebar); thence proceed North 00° 34' 54" West for a distance of 808.10 feet (set ½" rebar); thence proceed North 89° 30' 01" East for a distance of 254.90 feet to a ½" rebar in place being located on the West boundary of the Northeast one-fourth of the Northeast one-fourth of said Section 35; thence proceed North 00° 11' 29" West along the West boundary of said quarter-quarter section for a distance of 632.33 feet to a ½" rebar in place being the Northwest corner of said Northeast one-fourth of the Northeast one-fourth; thence proceed North 89° 09' 37" East along the North boundary of the Northeast one-fourth of the Northeast one-fourth of said Section 35 for a distance of 1354.55 feet to the point of beginning.

The above described land is located in the Northwest one-fourth of the Northwest one-fourth and the Southwest one-fourth of the Northwest one-fourth Section 36 and the Southwest one-fourth of the Northeast one-fourth, the Northwest one-fourth of the Northeast one-fourth, the Southeast one-fourth of the Northeast one-fourth and the Northeast one-fourth of the Northeast one-fourth of Section 35, Township 20 South, Range 1 East, Shelby County, Alabama.

AND

Commence at a ½" capped rebar in place (Wheeler) being the Northwest corner of the Northwest one-fourth of the Northwest one-fourth of Section 36, Township 20 South, Range 1 East, Shelby County, Alabama; thence proceed North 87° 31' 38" East along the North boundary of said Northwest one-fourth of the Northwest one-fourth for a distance of 1335.03 feet to a ½" rebar in place being the Northeast corner of said quarter-quarter section; thence proceed South 00° 00' 18" East along the East boundary of said quarter-quarter section for a distance of 892.21 feet to a 4" pipe in place; thence proceed South 01° 13' 13" West along the East boundary of said quarter-quarter section for a distance of 330.50 feet to a 1" capped pipe in place being the



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Exhibit "A"
Legal Description for Matterhorn Property Holdings, LLC
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Northeast corner of the Southwest one-fourth of the Northwest one-fourth of Section 36; thence proceed South 00° 21' 37" East along the East boundary of said Southwest one-fourth of the Northwest one-fourth for a distance of 1283.19 feet to the Northeast corner of the Northwest one-fourth of the Southwest one-fourth said point being the point of beginning. From this beginning point proceed South 00° 21' 37" East along the East boundary of said quarter-quarter section for a distance of 1283.19 feet to a flat iron in place at fence intersection being the Southeast corner of the Northwest one-fourth of the Southwest one-fourth; thence proceed South 89° 12' 41" West along the South boundary of said quarter-quarter section for a distance of 1313.81 feet; thence proceed North 00° 20' 25" West for a distance of 60.0 feet (set ½" rebar); thence proceed South 89° 12' 41" West for a distance of 1252.33 feet (set ½" rebar); thence proceed North 00° 48' 07" West for a distance of 977.47 feet said point being located on the centerline of a 100' Alabama Power Company Transmission Line right-of-way; thence proceed South 75° 46' 32" East along the centerline of said right-of-way for a distance of 1002.82 feet (set ½" rebar); thence proceed North 80° 15' 18" East along the centerline of said right-of-way for a distance of 680.63 feet (set ½" rebar); thence proceed North 00° 08' 32" East for a distance of 399.55 feet (set ½" rebar); thence proceed North 89° 12' 41" East for a distance of 928.08 feet to the point of beginning.

The above described land is located in the Northwest one-fourth of the Southwest one-fourth Section 36 and the Northeast one-fourth of the Southeast one-fourth of Section 35, Township 20 South, Range 1 East, Shelby County, Alabama.

AND ALSO TOGETHER WITH A 60 FOOT INGRESS AND EGRESS AND UTILITIES EASEMENT BEING 30 feet in equal width on each side of the following described line: Commence at a ½" rebar in place being the Southeast corner of the Southwest one-fourth of the Southwest one-fourth of Section 36, Township 20 South, Range 1 East, Shelby County, Alabama; thence proceed North 00° 34' 21" East along a wire fence and along the East boundary of said quarter-quarter section for a distance of 1339.03 feet to a flat iron in place at fence intersection being the Northeast corner of said quarter-quarter section; thence proceed South 89° 12' 41" West along the North boundary of said quarter-quarter section for a distance of 1313.81 feet to the centerline of said easement and the point of beginning of said 60 foot easement. From this beginning point proceed South 10° 38' 36" East along the centerline of said easement for a distance of 141.57 feet; thence proceed South 01° 43' 11" East along the centerline of said easement for a distance of 72.66 feet; thence proceed South 06° 33' 06" West along the centerline of said easement for a distance of 133.78 feet; thence proceed South 02° 53' 22" West along the centerline of said easement for a distance of 205.47 feet; thence proceed South 00° 51' 40" West along the centerline of said easement for a distance of 665.10 feet; thence proceed South 00° 50' 28" East along the centerline of said easement for a distance of 97.75 feet to its point of intersection with the Northerly right-of-way of Shelby County Highway No. 48 and the termination of said easement.



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