

**PREPARED BY,
RECORD AND RETURN TO:**

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DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (this "Easement") is granted this 29th day of December, 2016, by DESOTO HOLDINGS, LLC, an Alabama limited liability company, having an address at 912 Edenton Street, Birmingham, Alabama 35242 ("Grantor"), to and for the benefit of the ATLANTIC COAST CONSERVANCY, INC. a Georgia nonprofit 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").

(Grantor and Conservancy are sometimes referred to herein individually as a "Party" and collectively, the "Parties"; the terms "Grantor" and "Conservancy" shall include the singular and the plural, and the successors and assigns of Grantor and Conservancy, and the provisions of this Easement shall be binding upon and inure to the benefit of Grantor, Conservancy and their heirs, successors and assigns.)

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 146.63 acres of certain real property located off Alabama State Route 76/Klein Road and Tanyard Road/Shelby County Road 449 in Harpersville, Alabama 35078 partially constituting tax parcel #17 5 15 0 000 001.003 in Shelby County, Alabama, as is more particularly described in **Exhibit "A"** (the "Property") hereof; and

WHEREAS, the Property in its present state is undeveloped and possesses significant agricultural, scenic vistas, open space, and aquatic habitat features to include hydric soils, converted wetlands associated with Old Glade Swamp, and water quality enhancement and protection. The Property has no dwellings or structures, and is predominantly composed of agricultural lands on flat Southern Limestone/Dolemite Valleys and Low Rolling Hills subregion lands of the Ridge & Valley ecoregion leading two first-order freshwater streams (Walthall Branch and its unnamed tributary) (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, Walthall Branch and its unnamed tributary, which transect the Property for a linear distance of approximately 1,778 feet (541 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 "not supporting" under the U.S. Environmental Protection Agency (EPA) 305(b) listing (<http://www.adem.state.al.us/programs/water/waterquality.cnt>). The "not supporting" designation denotes that a particular waterway is incapable 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". 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 Low Rolling Hills subregion lands 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 USFWS, in conjunction with ADCNR and the Geological Survey of Alabama have selected watersheds and river segments in the five Hydrologic Unit Code – 4 subregions in Alabama to focus conservation activities for managing, protecting, restoring,

and recovering populations of rare fishes, mussels, snails, and crayfishes. These Strategic Habitat Units (“SHUs”) and Strategic River Reach Units (“SRRUs”) include a substantial part of Alabama’s remaining high-quality rivers and streams and reflect the variety of small stream to large river habitats occupied by these species historically and/or currently; and

WHEREAS, the SHUs were selected based on best available information about the essential habitat components required by these aquatic species including: (1) geomorphically stable stream and river channels; (2) stream flow regimes that support normal behavior, growth, and survival of the animals; (3) acceptable water-quality conditions necessary for normal behavior, growth, and viability of all life stages of the animals; (4) a diversity of channel substrate types, with minimal amounts of fine sediment and filamentous algae; (5) for mussels, the presence of fish hosts with adequate living, foraging, and spawning areas; and (6) few or no competitive or predaceous nonnative species. The SRRUs were selected based on the historical and/or current presence of rare species and include river reaches where species restoration and recovery actions are planned for the future or are already underway; and

WHEREAS, the purpose of designating SHUs and SRRUs is to facilitate and coordinate watershed management and restoration efforts as well as to focus funding to address habitat and water quality issues. All of the SHUs currently support one or multiple federally listed species and/or critical habitat designated by the USFWS; and

WHEREAS, the unnamed tributary of Walthall Branch and Old Glade Swamp are located directly adjacent to the Yellowleaf Creek SHU; and

WHEREAS, the Lower Coosa River Basin is identified as a high priority watershed in the Southern Limestone/Dolemite Valleys and Low Rolling Hills subregion of the Ridge & Valley ecoregion in CWCS; 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 Walthall Branch and its unnamed tributary as it emanates from Old Glade Swamp. These natural buffers will almost triple the protection now mandated by the State of Alabama and Shelby County, and will only permit 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, 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 Property (400-420 feet approx. elev.) provides scenic views from Alabama State Route 76/Klein Road (416-418 feet approx. elev.) which forms the southern boundary of the Property for a linear distance of approximately 1,039 feet (316 meters); and

WHEREAS, the Property (400-420 feet approx. elev.) provides scenic views from Shelby County Road 449/Tanyard Road (416-418 feet approx. elev.) which forms the western boundary of the Property for a linear distance of approximately 4,269 feet (1,301 meters); and

WHEREAS, maintaining the Property as provided herein allows scenic enjoyment for the general public; and

WHEREAS, the preservation of the Property in the manner described above will yield a “significant public benefit” under Treasury Regulation Section 1.170A-14(d)(4)(iv) due to the likelihood that development of the Property would lead to, or contribute to, the degradation of the scenic, natural, or historic character of the area; and

WHEREAS, the preservation of open space (including farmland and forestland) where such preservation is for the scenic enjoyment for the general public and will yield a significant benefit meets the conservation purpose of Section 170(h)(4)(A)(iii)(I) of the Code; and

WHEREAS, the specific Conservation Values are documented in an inventory of relevant features of the Property, dated on the 29th day of December, 2016 and are summarized in **Exhibit "B"** (the "Baseline Documentation Report") hereof, which the Parties agree it accurately represents the Property at the time of this grant, and which 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 remains 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, and 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 for the 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 Easement 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 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 this 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, or 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 a 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 and is attached as “**Exhibit B**”.

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

4.1 the right to preserve and protect the Conservation Values and the Purpose of this Easement 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 this 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 or the Purpose of this Easement, and to require the restoration of such areas or features of the Property that may be damaged by any 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 Sections 5.1 through 5.18. In addition, any activity on or use of the Property that is inconsistent with the Purpose of this 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 in the Acceptable Development Area, Resource Protections Area, and Agricultural Area as defined below; 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 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 in the Acceptable Development Areas and the Agricultural Area as defined below; 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 this 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 Area, Resource Protection Area, and 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 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 in Sections 7 and 8.

6.1 *Hunting and Fishing.* Hunting, fishing, 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 and restocking of fish may be desirable to maintain sustainable wildlife populations consistent with the condition of the habitat.

6.2 *Streambank/Wetland Mitigation.* Grantor reserves the right to: (i) construct wetlands mitigation projects, pursuant to the requirements under the United States Army Corps of Engineers (USACE), the Clean Water Act or similar state or federal programs; (ii) maintain, monitor, and, if necessary, modify and reconstruct the mitigation areas as approved in writing by the USACE; (iii) remove vegetation by hand and mechanical means, and with use of herbicides (subject to Section 5.6), provided no other Conservation Values protected by this Easement are harmed, all in accordance with federal, state, and local laws, regulations and ordinances; and (iv) plant and nurture native plant species, as necessary to ensure the success of the mitigation bank or project. Grantor may stockpile and use on the Property, subject to the restrictions of Section 5.12 above, gravel, sand, soils, and similar materials that are produced as a by-product of wetland mitigation and may remove and sell any such surplus byproduct materials without violating commercial use restrictions of this Easement. Grantor shall hold, market, and transfer any and all rights related to streambank/wetland mitigation,

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.

6.3 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 workshop programs related to the Conservation Values;
- (h) alternative energy sources, including solar energy and the construction of solar panels;
- (i) 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 6.3.

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 Conservation Easement Map in *Section XI* of the Baseline Documentation Report and generally described below:

Acceptable Development Area (also referred to as "ADA") – The area in which agricultural access roads may be placed to the extent listed below. A total of one (1) Acceptable Development Area will exist on the entire Property: 1) the Acceptable Development Area – Agricultural Access Road.

- The Acceptable Development Area – Agricultural Access Road will consist of a linear buffer of approximately 30 feet (9.14 meters), and will originate from the centerline of the existing agricultural access road, as specifically identified in *Section XI* of the Baseline Documentation Report, and will extend 15 feet (4.57 meters) to either side.

Resource Protection Area (also referred to herein as "RPA") – The area which contains unique or special natural features including, but not limited to, forests, 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 one (1) Resource Protection Area will exist on the entire Property: 1) the Resource Protection Area – Walthall Branch.

- The Resource Protection Area – Walthall Branch will consist of linear buffers of approximately 200 feet (60.96 meters). These linear buffers will originate from the approximate center of Walthall Branch and its unnamed tributary, 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 respective aquatic feature.

Agricultural Area (also referred to herein as "AA") – The remainder of the Property, after excluding the Acceptable Development Area and the Resource Protection Area 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, 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; and
- 2) Pesticides and/or herbicides may be used only in a manner set forth in Section 5 (entitled "Prohibited Uses"), consistent with their labeling, and in compliance

with all federal, state, and local regulations, including those related to licensing and/or certification of applicators; and

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; and

4) All such activities shall be designed to maintain soil productivity and prevent soil erosion to protect water quality and wetlands; and

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; and

6) Land application of domestic septic effluent and/or municipal, commercial or industrial sewage sludge or liquids generated from such sources is prohibited; and

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 or the Purpose of this Easement, 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 – Agricultural Access Road. Without prior written 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 Conservation Easement Map, Section XI of the Baseline Documentation Report, as ADA – Agricultural Access Road. 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. 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 area that is disturbed by activity pursuant to such temporary easements and permission to access any area of the Property in connection with such permissions must be revegetated and restored to a natural condition

promptly after completion of access to ensure that such activity does not substantially diminish or impair the Conservation Values.

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

8.2.A Streambank/Wetlands Restoration. With prior written notice to the Conservancy, Grantor and the USACE may have the right, but not the obligation, to use area(s) shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Resource Protection Area, to engage in streambank/wetland restoration and other earthworks, planting of native vegetation and trees, and redirecting of streams or other water bodies. Grantor shall be responsible for obtaining all permits necessary for engaging in such activities. All such entries shall be by existing access roads on the property of the Grantor. Should access be required across areas where access roads do not exist, Conservancy may access such restoration sites across other lands of the Grantor as necessary to accomplish the Purpose of this Easement. Any area that is disturbed by activity pursuant to such temporary easements and permission to access any area of the Property in connection with such permissions must be revegetated and restored to a natural condition promptly after completion of access to ensure that such activity does not substantially diminish or impair the Conservation Values.

8.2.A.i Monitoring and Research. With prior written notice to the Conservancy, Grantor may have the right, but not the obligation, to monitor the plant and wildlife populations, plant communities and natural habitats in the streambank/wetlands restoration area, to actively protect and manage them, if necessary, to ensure their continued presence and viability in the streambank/wetlands restoration area. Grantor agrees that all monitoring activity, natural resource inventory and assessment work or other natural resource research, conducted by Grantor or Grantor's assignees, shall be reported to the Conservancy.

8.2.A.ii Management of Exotics and Invasive Species. With prior written notice to the Conservancy, Grantor may have the right, but not the obligation, to control, manage or destroy exotic non-native species or invasive species of plants and animals that threaten the Conservation Values of the streambank/wetlands restoration area.

8.2.B Recreation and Educational Usages. 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 for low-impact outdoor recreation, education, nature observation, and scientific study, so long as these activities preserve the value of the Resource Protection Area as wildlife habitat, riparian buffer, and aquatic ecosystem.

8.2.C 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 Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Resource Protection Area, 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 Area, for the purpose of exclusion of livestock from sensitive areas.

8.2.D 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 Area, 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.

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 Area 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.

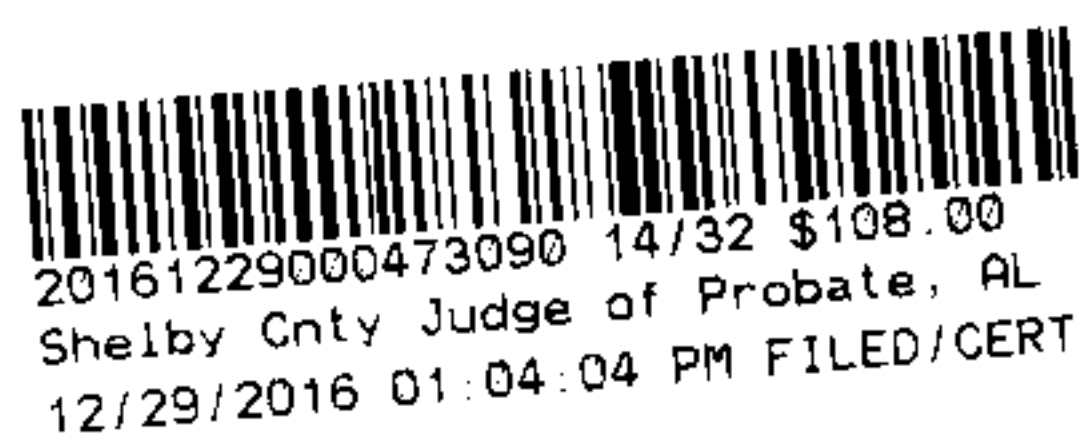
8.2.E.ii Trail Width. The trail may not exceed 10 feet (3.048 meters) in width.

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. 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 Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Resource Protection Area 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 area that is disturbed by activity pursuant to such temporary easements and permission to access any area of the Property in connection with such permissions must be revegetated and restored to a natural condition promptly after completion of access to ensure that such activity does not substantially diminish or impair the Conservation Values.

8.2.G Concrete Road Bridge/Creek Crossing. With prior notice to the Conservancy, Grantor may maintain, repair, remove, or replace one (1) existing concrete road bridge/creek crossing within the area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as Resource Protection Area – Walthall Branch so long as these activities preserve the value of the Resource Protection Area as wildlife habitat, riparian buffer and aquatic ecosystem. The foregoing permissions include, to the extent necessary, temporary easements and permission to access any area of the Property in connection with such permissions, including, without



limitation, construction, repair, and maintenance of the structure and appurtenances for permitted subservient utilities. 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.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 Area.

8.3 Agricultural Area. With prior written notice to the Conservancy, Grantor may produce crops, livestock, trees, carbon sequestration for carbon offset, alternative energy (wind & solar), 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 this 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 this 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.

8.3.B Streambank/Wetlands Restoration. With prior written notice to the Conservancy, Grantor and the USACE may have the right, but not the obligation, to use area(s) shown in the Conservation Easement Map, Section XI of the Baseline Documentation Report, as Agricultural Area(s), to engage in streambank/wetland restoration and other earthworks, planting of native vegetation and trees, and redirecting of streams or other water bodies. Grantor shall be responsible for obtaining all permits necessary for engaging in such activities. All such entries shall be by existing access roads on the property of the Grantor. Should access be required across areas where access roads do not exist, the Conservancy may access such restoration sites across other lands of the Grantor as necessary to accomplish the purposes of this Easement. Any area that is disturbed by activity pursuant to such temporary easements and permission to access any area of the Property in connection with such permissions must be revegetated and restored to a natural condition promptly after completion of access to ensure that such activity does not substantially diminish or impair the Conservation Values.

8.3.B.i Monitoring and Research. With prior written notice to the Conservancy, Grantor may have the right, but not the obligation, to monitor the plant and wildlife populations, plant communities and natural habitats in the streambank/wetlands restoration area, to actively protect and manage them, if necessary, to ensure their continued presence and viability in the streambank/wetlands restoration area. Grantor agrees that all monitoring activity, natural resource inventory and assessment work or other natural resource research, conducted by Grantor or Grantor's assignees, shall be reported to Conservancy.

8.3.B.ii Management of Exotics and Invasive Species. With prior written notice to the Conservancy, Grantor may have the right, but not the obligation, to control, manage or destroy exotic non-native species or invasive species of plants and animals that threaten the Conservation Values of the streambank/wetlands restoration area.

8.3.C Agricultural Buildings and Improvements. With prior written permission from the Conservancy, Grantor may construct, 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 area that is disturbed by activity pursuant to such temporary easements and permission to access any area of the Property in connection with such permissions

must be revegetated and restored to a natural condition promptly after completion of access to ensure that such activity does not substantially diminish or impair the Conservation Values.

8.3.D 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.E 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 Section 8.3.A.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.E.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 non-commercial 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 Conservation 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 area that is disturbed by activity pursuant to such temporary easements and permission to access any area of the Property in connection with such permissions must be revegetated and restored to a natural condition promptly after completion of access to ensure that 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 Alternative Energy. With prior written notice to the Conservancy, other improvements, including, but not limited to, facilities for generation and transmission of renewable electrical power, such as windmills and/or solar arrays, may be constructed anywhere in the area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as *Agricultural Area*, provided that prior to commencing construction on any alternative energy generation, Grantor shall obtain all the permits and approvals required by federal, state, and local governments for such construction and the prior written approval of the Conservancy. The foregoing permissions include, to the extent necessary, temporary easements and permission to access any area of the Property in connection with such permissions, including, without limitation, construction, repair, and maintenance of the structure and appurtenances permitted subservient utilities. Any area that is disturbed by activity pursuant to such temporary easements and permission to access any area of the Property in connection with such permissions must be revegetated and restored to a natural condition promptly after completion of access to ensure that such activity does not substantially diminish or impair the Conservation Values or the Purpose of this Easement. Grantor shall be permitted to employ or sell all such generated electrical power.

8.3.H.i Building Restrictions. In connection with the foregoing, all such new alternative energy-related structures must have, in the aggregate, a total ground coverage limitation not to exceed 20 acres (871,200 ft²) which represents less than 10% of the arable lands, and may be constructed anywhere in the area shown in the Conservation Easement Map, *Section XI* of the Baseline Documentation Report, as *Agricultural Area*, providing that any incidental surplus energy generated by such energy facilities may be sold for use off the Property (including in the form of credits to Grantor's utility service); provided, however, that nothing herein shall authorize or permit the construction of new electrical transmission lines, towers, or associated facilities for purposes of such sell-back of surplus energy or otherwise. Commercial overhead transmission lines are prohibited on the Property.

8.3.I 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.J 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 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 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 this Easement, and Grantor hereby promises to warrant and forever defend the title to this 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, 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 thirty (30) 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 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 thirty (30) days of receipt of Grantor's written request therefore under Sections 6 and 8 of this Easement. 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 Section 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) begin restoring 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 Section 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 Sections 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 this 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 this 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 Section 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 this 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 this 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.* 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, which may be under Grantor's homeowner's policy. 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. Grantor 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 Section 10.1 through Section 10.6.

15. Vesting of Real Property Interest and Allocation of Proceeds Following Judicial Extinguishment or Condemnation. The donation of this Easement gives rise to a property right, immediately vested in the Conservancy, which 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 a whole at that time. Such proportionate value shall remain constant.

It is the intention of the Parties that no change in conditions surrounding the Property, including for example, but without limitation, changes in the use of properties adjoining or in the vicinity of the Property, will at any time or in any event result in the extinguishment of any of the terms and restrictions set forth in this Easement (the Purpose of this Easement).

Notwithstanding the foregoing intention, in order to ensure compliance with 26 CFR 1.170A-14(g)(6), if a sudden and unexpected change in conditions surrounding the Property make impossible or impractical the continued use of the Property for conservation purposes as described herein, and as a result of such change, gives rise to the extinguishment of this Easement by judicial proceedings, the Conservancy, on a subsequent sale or exchange of all or part of the Property, shall be entitled to a portion of the proceeds of such sale or exchange at least equal to the proportionate value that the perpetual conservation easement granted hereunder bears to the value of the Property as a whole on the date hereof unless state law provides that the Grantor is entitled to the full proceeds for such judicial conversion without regard to the terms of this Easement. Such portion of the proceeds allocable to the Conservancy shall be used by the Conservancy in a manner consistent with the Purpose of this Easement as set forth herein.

This Section shall also apply whenever all or part of the Property is taken by the exercise of eminent domain by judicial proceedings the same as any other extinguishment by judicial proceedings otherwise described in this Section. Grantor and the Conservancy shall join in appropriate actions at the time of such taking by eminent domain to recover the full value of the taking and all incidental or direct damages resulting from such taking.

This Section shall be construed to cause this Easement to conform to the requirements of 26 CFR §1.170A-14(g)(6), it being the specific intention of the parties that the conservation purposes protected in this Easement shall be treated as being protected in perpetuity in accordance with 26 CFR §1.170A-14(g)(6).

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 Section 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 this 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: Desoto 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

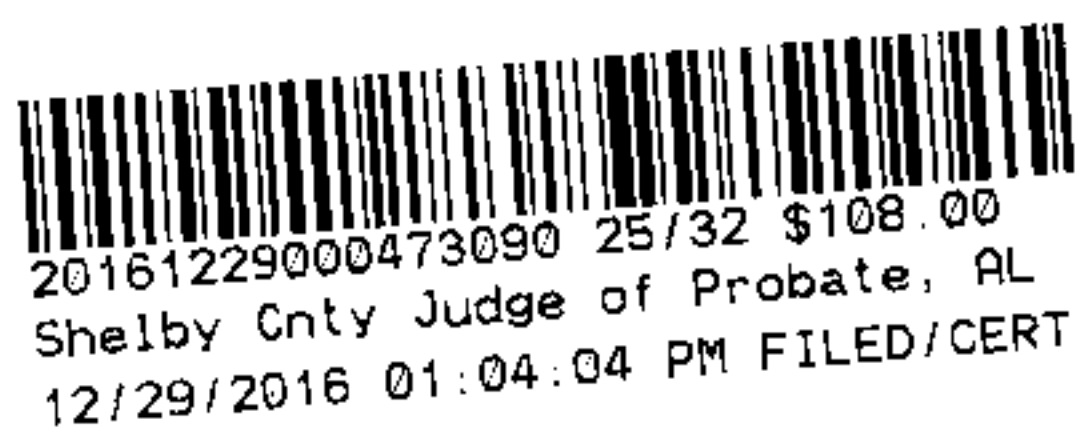
With a copy to: Phil M. Landrum, III
Landrum & Landrum Attorneys
95 Stegall Drive
Jasper, Georgia 30143
email: phil@landrumandlandrum.com

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

19. Recordation. The 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 "C"** 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 this



Easement, or (b) alterations in existing uses or structures, are consistent with the Purpose of this Easement.

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: Baseline Documentation Report, Exhibit C: 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 this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this 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 this

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 organization.

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 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 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 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.


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Shelby Cnty Judge of Probate, AL
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TO HAVE AND TO HOLD unto the Conservancy, its successors, and assigns forever.

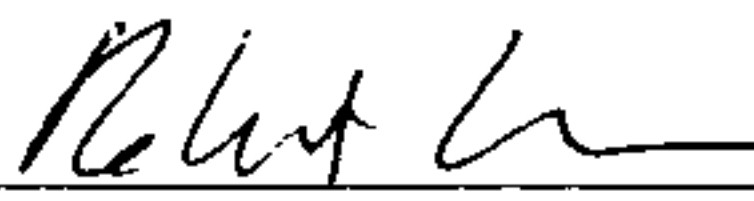
IN WITNESS WHEREOF Grantor and the Conservancy have executed this Easement as of the date first written above.

GRANTOR:

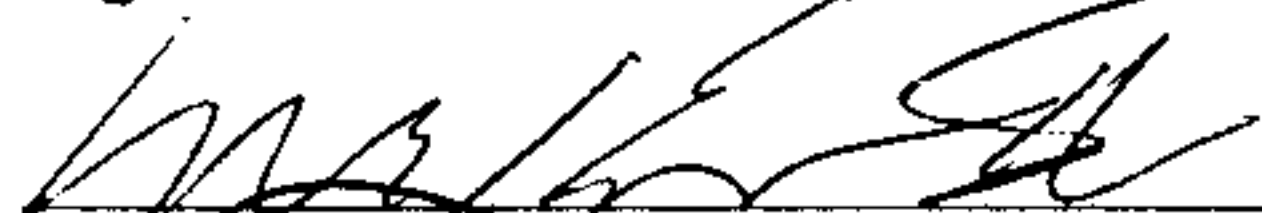
DeSoto Holdings, LLC,
an Alabama limited liability company

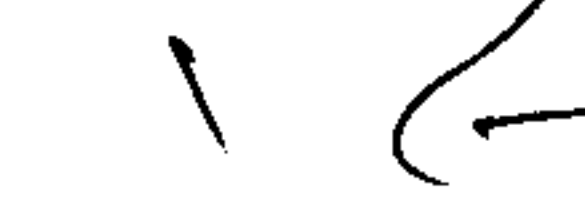
By: DeSoto Investors, LLC,
a Georgia limited liability company,
Its Manager

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

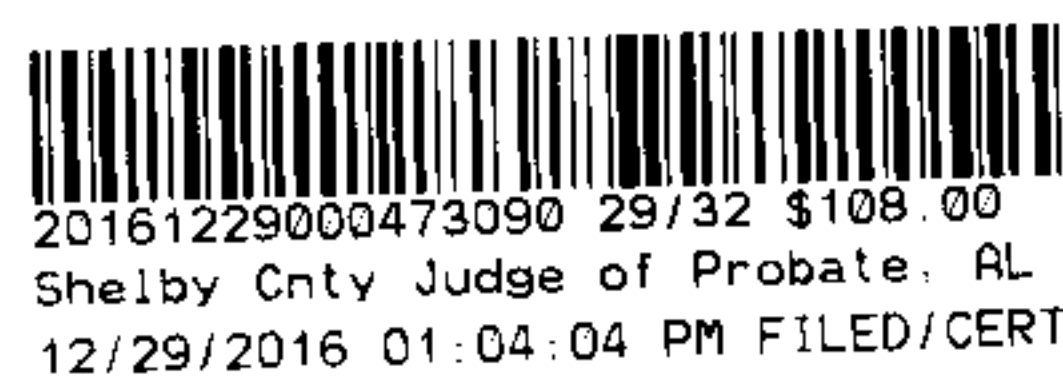
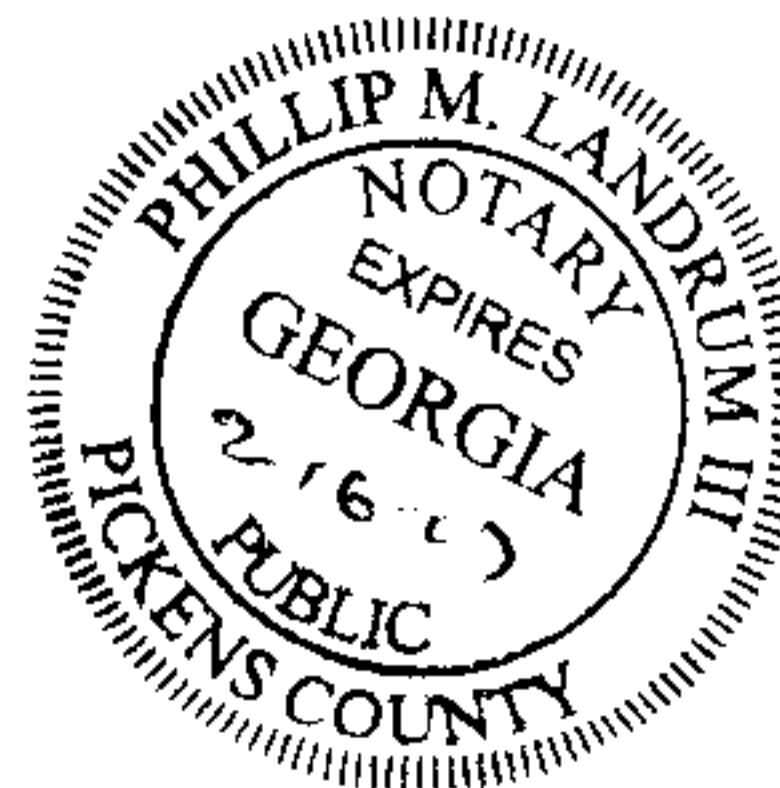
By: 
Robert Lewis,
Its Manager

Signed, sealed and delivered in the presence of:


Unofficial Witness


Notary Public

[AFFIX NOTARIAL SEAL & STAMP]

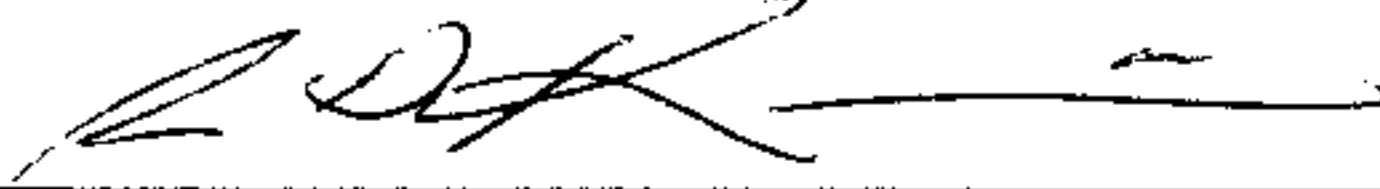


TO HAVE AND TO HOLD unto the Conservancy, its successors, and assigns forever.


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 Georgia nonprofit corporation

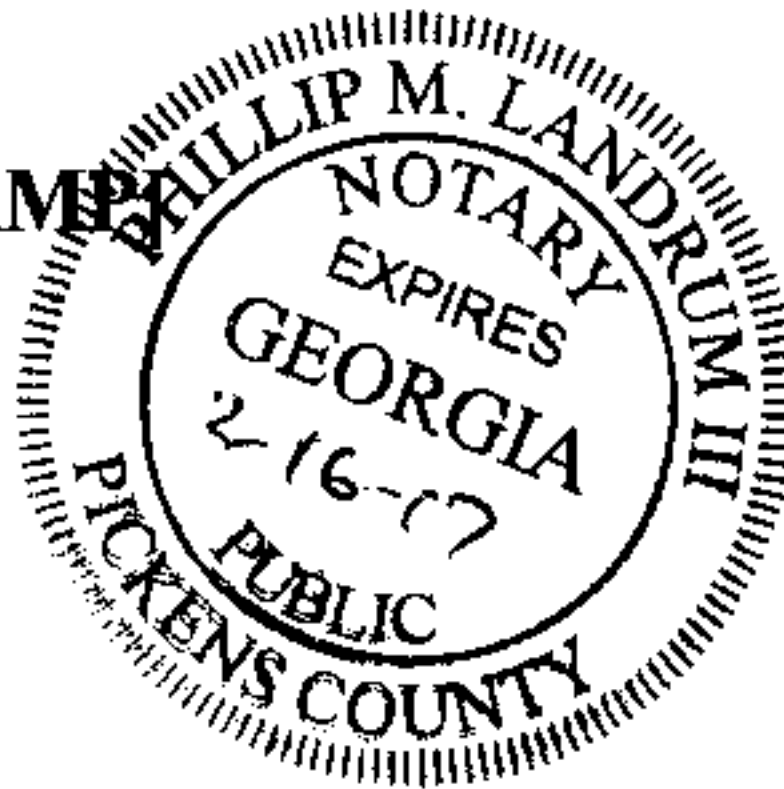
By: 
Robert D. Keller, Ph.D,
Its Chief Executive Officer

Signed, sealed and delivered in the presence of:


Unofficial Witness


Notary Public

[AFFIX NOTARIAL SEAL & STAMP]





20161229000473090 30/32 \$108.00
Shelby Cnty Judge of Probate, AL
12/29/2016 01:04:04 PM FILED/CERT

EXHIBIT "A"
DeSoto Holdings, LLC
LEGAL DESCRIPTION
Page 1 of 2

Commence at a 3" pipe in place being the Northeast corner of Section 15, Township 20 South, Range 2 East, Shelby County, Alabama; thence proceed South 00° 57' 58" West along the East boundary of said Section 15 for a distance of 3410.50 feet to a point on the Northerly right-of-way of Klein Road (Shelby County Road No. 76); thence proceed South 66° 38' 59" West along the Northerly right-of-way of said road for a distance of 466.72 feet; thence proceed North 22° 05' 33" West along the right-of-way of said road for a distance of 19.92 feet; thence proceed South 65° 50' 42" West along the Northerly right-of-way of said road for a distance of 447.12 feet; thence proceed South 68° 49' 20" West along the Northerly right-of-way of said road for a distance of 99.91 feet; thence proceed South 71° 36' 22" West along the Northerly right-of-way of said road for a distance of 100.11 feet; thence proceed South 75° 04' 17" West along the Northerly right-of-way of said road for a distance of 100.08 feet; thence proceed South 77° 50' 34" West along the Northerly right-of-way of said road for a distance of 73.08 feet; thence proceed South 78° 50' 28" West along the Northerly right-of-way of said road for a distance of 182.56 feet to the centerline of a creek; thence continue South 78° 50' 28" West along the Northerly right-of-way of said road for a distance of 54.85 feet to a ½" rebar in place; thence proceed North 12° 45' 18" East for a distance of 728.78 feet to a ½" rebar in place, said point being the **point of beginning**. From this beginning point proceed South 74° 31' 55" West for a distance of 1834.73 feet to a point on the Easterly right-of-way of Shelby County Road No. 449 (Tanyard Road); thence proceed North 14° 03' 58" West along the Easterly right-of-way of Shelby County Road No. 449 (Tanyard Road) for a distance of 3390.02 feet to the P. C. of a concave curve right having a delta angle of 14° 43' 26" and a radius of 856.26 feet; thence proceed Northwesterly along the curvature of said curve and along the Easterly right-of-way of said road for a chord bearing and distance of North 06° 42' 11" West, 219.44 feet to the P. T. of said curve; thence proceed North 00° 39' 36" East along the Easterly right-of-way of said road for a distance of 108.19 feet to its point of intersection with the North boundary of said Section 15; thence proceed North 88° 51' 45" East along the North boundary of said Section 15 and along a wire fence for a distance 1884.96 feet to the centerline of said creek; thence proceed South 11° 02' 45" East along the centerline of said creek for a distance of 1270.18 feet; thence proceed South 13° 13' 21" East along the centerline of said creek for a distance of 936.94 feet; thence proceed South 08° 11' 56" East along the centerline of said creek for a distance of 498.14 feet; thence proceed South 19° 19' 09" East along the centerline of said creek for a distance of 139.25 feet; thence proceed South 33° 50' 57" East along the centerline of said creek for a distance of 344.76 feet; thence proceed South 07° 12' 58" East along the centerline

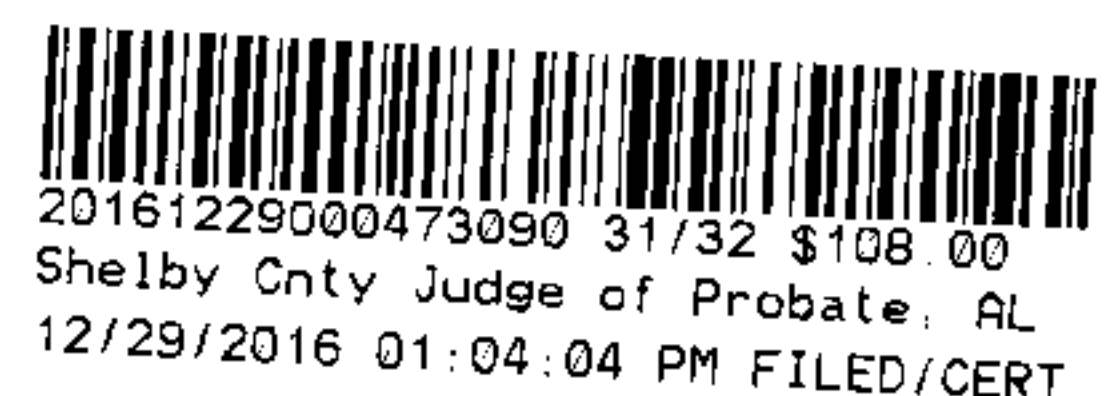


EXHIBIT "A"
DeSoto Holdings, LLC
LEGAL DESCRIPTION
Page 2 of 2

of said creek for a distance of 81.23 feet; thence proceed South 74° 31' 55" West for a distance of 46.73 feet to the point of beginning.

The above described land is located in the West one-half of the Northeast one-fourth, the East one-half of the Northwest one-fourth, the East one-half of the Southwest one-fourth, the Southwest one-fourth of the Southeast one-fourth and the North one-half of the Southeast one-fourth of Section 15, Township 20 South, Range 2 East, Shelby County, Alabama and contains 146.63 acres , as shown that that certain Boundary Survey dated October 12, 2016, last revised November 29, 2016, prepared for Merrell Bros Inc. by Ray and Gilliland, P. C. (Ala. Board Cert. No. CA-0114-LS), and bearing the seal of Christopher M. Ray, Alabama Registered Land Surveyor No. 26017.

