

**SIGNAL MOUNTAIN PROPERTIES**

THIS INSTRUMENT WAS PREPARED BY:

Miranda Christy  
Stites & Harbison PLLC  
401 Commerce Street, Suite 800  
Nashville, Tennessee 37219

**CONSERVATION EASEMENT**

**THIS CONSERVATION EASEMENT (“Easement”)** is hereby quitclaimed on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ subject to the provisions herein contained, by **TOWN OF SIGNAL MOUNTAIN (“Grantor”)** to **THE LAND TRUST FOR TENNESSEE, INC.**, a Tennessee nonprofit corporation (**“Grantee”**), for the purpose of forever conserving the Conservation Values of the Property (both as hereinafter defined).

**W I T N E S S E T H:**

Grantor is a “public body” within the meaning of the Conservation Easement Act of 1981, Tenn. Code Ann. § 66-9-301 *et. seq.*, as specifically defined by Tenn. Code Ann. § 66-9-303 and is the sole owner in fee simple of certain real property located in Hamilton County, Tennessee, consisting of approximately three hundred forty-two (342) acres, comprised of twelve (12) separate tracts and more particularly described in Exhibit A and Exhibit B attached to and incorporated herein by this reference (the **“Property”**).

The granting of this Easement is intended to comply with the requirements of The Conservation Easement Act of 1981, Tennessee Code Annotated (**“T.C.A.”**) § 66-9-301, *et seq.*, as amended, which permits the creation of conservation easements. Specifically, the Easement’s “limitations and affirmative obligations are intended to preserve, maintain or enhance the present condition, use or natural beauty of the land, the open-space value, the air or water quality, the agricultural, forest, recreational, geological, biological, historic, architectural, archaeological, cultural or scenic resources of” the Property.

The forest, open space, watershed protection, wildlife habitat, scenic and recreational values of the Property is collectively referred to herein as the **“Conservation Values”** of the Property.

The Grantor intends that the Conservation Values of the Property be preserved and maintained, and Grantor intends to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.

The granting of this Easement will also serve the following “conservation purposes” as such term is defined in Section 170(h)(4)(A) of the Internal Revenue Code of 1986, as amended (the **“Code”**):

The preservation of open space, including farmland and forest land, pursuant to the following clearly delineated governmental conservation and preservation policies, yielding a significant public benefit:

-- The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. §§ 4201, *et seq.*, whose purpose is “to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that

Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, local government and private programs and policies to protect farmland”; and

-- The Agricultural, Forest and Open Space Land Act of 1976 as set forth in T.C.A. § 67-5-1001, *et seq.*, which states in § 67-5-1002 that “The general assembly finds that: . . . (2) [t]he preservation of open space in or near urban areas contributes to . . . the conservation of natural resources, water, air, and wildlife . . . [and] preservation of land in an open condition for the general welfare” . . . and “(3) Many prime agricultural and forest lands in Tennessee . . . are being permanently lost for any agricultural purposes and that these lands constitute important economic, physical, social and esthetic assets to the surrounding lands and to the people of Tennessee;” and

-- The Conservation Easement Act of 1981, T.C.A. § 66-9-301, *et seq.*, as amended, which permits the creation of conservation easements.

-- The Chattanooga-Hamilton County Comprehensive Plan 2030, adopted by the Chattanooga City Council and the Hamilton County Commission, which states a goal to “protect, conserve and wisely manage the natural resources of Hamilton County” with a policy to “continue planning efforts that respect a healthy balance of environmental quality and economic growth,” and a policy to “encourage responsible development that maintains the quality and integrity of existing natural resources.”

Grantee is a tax-exempt nonprofit organization and a qualified organization under §§ 501(c)(3) and 170(h), respectively, of the Internal Revenue Code, which possesses the power and capacity to hold an interest in real property, is charitable in nature within the meaning of Section 501 (c) (3) and Section 509 (a) (1) or (a) (2) of the Internal Revenue Code, and is a qualified “Holder” under T.C.A. § 66-9-303(3)(B), whose primary purpose is the preservation, protection or enhancement of land in its natural, scenic, agricultural, forested and/or open space condition, and Grantee accepts the responsibility of enforcing the terms of this Easement and upholding its conservation purposes forever.

The purpose of this Easement is to protect the Property which is owned by the taxpayers of the Grantor and contains wetlands, riparian areas, flowing waters, open space and forest land which contains or supports significant wildlife habitat within the boundaries of the public body. The Property is primarily recreational land, open space, and forest land and contains or supports significant wildlife habitat. The Property possesses scenic natural beauty and is located in the midst of an area of increasing development and subdivision of land for residential and commercial purposes. The Property is adjacent to numerous subdivisions including Carriage Hills, Signal Mountain Palisades and North Palisades. The University of Tennessee Center for Business and Economic Research projects Hamilton County to grow by 14.4% between 2000 and 2025 and the city of Signal Mountain (where the Property is located) is estimated to grow by 10%.

The Property possesses outstanding scenic qualities that will provide a significant benefit to and scenic enjoyment for the general public, and can be viewed from multiple roads including Signal Mountain Road/Highway 27, Signal Mountain Boulevard, Palisades Drive, and Green Gorge Road, all public rights of way. The Property contains 3,990 feet of frontage on Signal Mountain Road/Highway 27; 4,330 feet of frontage on Green Gorge Road; 4,300 feet of frontage on Ravine Road; 1,600 feet of frontage on Palisades Drive; 1,300 feet of frontage on North

Palisades Drive; 1,250 feet of frontage on Shoal Creek Road; 850 feet of frontage on Norvell Drive; 700 feet of frontage on Wilder Drive; 680 feet of frontage on Mississippi Avenue; 675 feet of frontage on Druid Drive; 560 feet of frontage on Signal Mountain Boulevard; and 300 feet of frontage on Ohio Avenue. The Property has a combined total of 3.9 miles of road frontage.

The Property lies adjacent to Signal Mountain Golf and Country Club, but no portion of the golf course shall be subject to this Easement.

The Property is currently maintained by Grantor as a series of nature parks for the enjoyment of the general public. As such, the open space character of the Property, its recreational and passive park attributes, and the view of the Property from public rights of way, provides a substantial benefit to the general public. There are several hiking trails on the Property that are open to the public.

The Property contains approximately 6,900 feet of Shoal Creek, 6,900 feet of Middle Creek, and 1,900 feet of Bee Branch. Shoal Creek and Middle Creek both drain into the Tennessee River less than ½ miles from the Property. The Tennessee River is highly used for recreational boating, fishing and swimming, as well as a source of drinking water for local communities, including the city of Chattanooga. The Property is located in the Nickajack Lake watershed.

The Property contains or supports significant wildlife habitat. In general, forested and riparian areas provide important wildlife habitat for native Tennessee species. The large-flowered skullcap (*Scutellaria montana*), listed as threatened by the State of Tennessee and the United States of America, has four known occurrences on the Property and ten more occurrences within two (2) miles of the Property. The Cumberland rose gentian (*Sabatia capitata*), bog oat-grass (*Danthonia epilis*), American ginseng (*Panax quinquefolius*), and Menge's fame-flower (*Talinum mengesii*), all listed as a species of special concern, threatened or endangered by the State of Tennessee, have been identified less than two (2) miles from the Property. A heron rookery has also been located less than two (2) miles from the Property.

The Tennessee Heritage Conservation Trust Act: A Preliminary Assessment of Need (December 2006) (the "**Heritage Trust Assessment**") was produced by the Tennessee Department of Environment and Conservation and the Tennessee Wildlife Resources Agency to provide guidance to the Tennessee Heritage Conservation Trust Board as it carries out the mandate set forth in T.C.A. §11-7 to assist the State of Tennessee in permanently conserving and preserving tracts of land for the purposes of promoting tourism and recreation; protecting, conserving and restoring the State's physical, cultural, archeological, historical and environmental resources; and preserving working landscapes. Middle Creek Golf Course Area of Interest (AOI) is located within the Property and was rated as having "very high importance (B2)". Edwards Point Sandstone Outcrops AOI is adjacent to the Property with a small portion contained within the Property.

The Tennessee Forest Resource Assessment and Strategy (June 2010) (the "**Forest Resource Assessment**") was produced by the Tennessee Department of Agriculture's Division of Forestry to address forest-related conditions, trends, threats and opportunities in Tennessee. The goal of the Forest Resource Assessment is to identify the highest priority areas where forest resource professionals and stakeholders can implement the most efficient and effective response

to issues in those areas. The Property is located within an area designated as a Priority Area for Forest Legacy and Riparian Forest Buffer Establishment (needed for the Tennessee River) in the Forest Resource Assessment.

The open space use of the Property is consistent with public and private programs for conservation and protection of open space for nearby properties. The Property is adjacent to Prentice Cooper State Forest and Wildlife Management Area and the Tennessee River Gorge Trust properties on Edwards Point. The Property is within five (5) miles of the Colby Property and ten (10) miles of Southeastern Green Works and Standifer Gap Marsh, all protected by conservation easements held by the Grantee. The Property is also within ten (10) miles of the North Chickamauga Creek Wildlife Management Area, North Chickamauga Creek Gorge State Natural Area, Falling Water Falls State Natural Area, Cummings Cove-Aetna Mountain Wildlife Management Area, Chickamauga & Chattanooga National Military Park, Booker T. Washington State Park, and several county and city parks including Enterprise South Nature Park and Greenway Farm.

The forest, open space, watershed protection, wildlife habitat, scenic and recreational characteristics of the Property, and its current use and state of improvement, are described in a Present Conditions Report prepared by Grantee with the cooperation of Grantor and acknowledged by both to be complete and accurate as of the date of this Easement (the **“Report”**). The Report will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Easement. However, the Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use or condition.

Grantor has agreed to convey to Grantee a conservation easement in the Property for the purpose of assuring that, under the perpetual stewardship of Grantee, the forest, open space, watershed protection, wildlife habitat, scenic, and recreational values of the Property will be conserved and maintained forever and that the uses of the Property that are inconsistent with these conservation purposes will be prevented.

The current use of the Property is consistent with the conservation purposes of this Easement.

Grantor owns the entire fee simple interest in the Property, including the entire mineral estate, subject to those easements or covenants as may affect the Property.

**NOW, THEREFORE**, for the reasons given, and the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby donates, grants, remises, releases and forever quitclaims to Grantee, its successors and assigns, and Grantee accepts, a conservation easement on the Property, in perpetuity, in order to conserve and retain the Property forever predominantly in its agricultural, scenic, and/or open space condition in accordance with the terms of this Easement; and Grantor donates, grants, assigns, remises, releases and forever quitclaims to Grantee, its successors and assigns, the right to take appropriate legal action in law or equity to enjoin, prohibit and remedy any violation of the terms of the easement created by this Easement and to enter the Property at reasonable times to observe and document the state of preservation and to prevent any violation of the terms of this Easement.

1. Purpose. It is the purpose of this Easement to assure that the Property will be conserved and retained forever predominantly in its natural, scenic, agricultural and/or open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will generally confine, except as otherwise specifically permitted herein, the use of the Property to such activities, including without limitation farming, as are not inconsistent with the purpose and terms of this Easement.

2. Implementation. This Easement shall be implemented by limiting and restricting the development and use of the Property in accordance with its provisions as provided throughout. No permanent or temporary structures or other buildings or improvements shall hereafter be constructed, placed or maintained on the Property except as specifically provided herein.

3. Definitions. As used in this Easement, the term “**Grantor**” includes the original Grantor, its successors and assigns, all future owners of any legal or equitable interest in all or any portions of the Property, and any party entitled to the possession or use of all or any part thereof; and the term “**Grantee**” includes the original Grantee and its successors and assigns.

4. Prohibited Acts. Grantor shall not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the terms of this Easement and the restrictions and obligations set forth herein.

5. Grantee’s Permission. Grantor shall notify Grantee of any proposed construction or other activity which will be conducted on the Property and which, pursuant to the terms of this Easement, requires notice to Grantee or Grantee’s permission or approval. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder. Grantee shall have thirty (30) days to respond in writing after it receives all required documentation for the proposed construction or activity. If Grantee fails to respond in writing to Grantor’s first request within thirty (30) days after it receives all required documentation for the proposed construction or activity, Grantor may give Grantee a subsequent written notice that Grantor has not received a response from Grantee with respect to such request. If Grantee fails to respond in writing to such subsequent written notice within thirty (30) days after Grantee receives such subsequent written notice, Grantee’s consent to the proposed construction or activity shall be deemed to have been given.

6. Construction, Maintenance and Repair of Buildings, Structures and Other Improvements. If the consent of Grantee is required for the construction of any structure or the taking of any other action on the Property, Grantor shall notify Grantee of such proposed construction or activity and provide a plan and description of the structures to be constructed, along with their location, or such other description of the activity; whereupon Grantee shall determine if such proposed construction or activity complies with the terms of this Easement and if it does, it shall give its written consent thereto. Grantor shall not begin any construction or activity without the prior written consent of Grantee, which consent shall not be withheld by Grantee if the construction or activity complies with the terms and intent of this Easement. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee’s sole discretion and good faith, determines that the proposed action will not substantially diminish or impair the Conservation Values of the Property.

(a) General Restriction. The construction of any building, structure or other improvement on the Property, except those existing on the date of this Easement and those permitted by this Section 6 or other provisions of this Easement, is prohibited.

(b) Permitted Structures. The following structures are permitted on the Property:

(i) Recreational Structures. Grantor may maintain, construct, repair and replace or demolish recreational structures (each a “**Recreational Structure**”) on the Property to include visitor, wildlife and/or nature center buildings, pavilions, shelters for storm protection, restrooms, and other similar recreational structures in support of recreational and educational activity, so long as such construction does not adversely affect the existing Conservation Values of the Property. Grantor shall obtain Grantee’s prior written permission, in accordance with Section 5 of this Easement, to construct, install, or erect any such Recreational Structure. Any such Recreational Structure shall be located on Tract 1 as identified by Exhibit A attached to and incorporated herein by this reference, and shall be located above 1600’ in elevation . No Recreational Structure may be constructed within the Buffer Zone, as hereinafter defined.

(ii) Backpacking Shelters. Grantor may construct up to three (3) primitive backpacking shelters to be located on Tract 1 or Tract 2 as identified on Exhibit A attached hereto. The shelters shall be lean-to type structures with a maximum of three (3) sides. Prior to construction of a shelter, Grantor shall obtain Grantee’s prior written permission, in accordance with Section 5 of this Easement.

(iii) Primitive Toilets. Grantor may construct up to five (5) primitive toilets to be located on Tract 1 or Tract 2 as identified by Exhibit A. The primitive toilets shall not have utility service of any kind. Prior to construction of a primitive toilet, Grantor shall obtain Grantee’s prior written permission, in accordance with Section 5 of this Easement.

(iv) Other Recreational Improvements. Grantor may construct or install park benches, informational kiosks, barbecue pits, grills, or other similar recreational improvements on any tract comprising the Property, which improvements shall have a minimal impact on the Conservation Values described herein. Provided that, recreational improvements that will adversely affect the Conservation Values described herein, including without limitation golf courses, athletic fields and paved airstrips, are strictly prohibited.

(c) Parking Areas. Grantor may establish paved, gravel or dirt parking areas required for public access on Tract 1, Tract 2, Tract 3, Tract 4 and Tract 5 as identified by Exhibit A. Grantor may construct gates or other improvements to control access to the Property. Grantor shall obtain Grantee’s prior written permission, in accordance with Section 5 of this Easement, to establish any parking area.

(d) Trails. Trails used solely for enhancing the exposure of the Property to the public in its natural and scenic condition may be established on the Property; provided, however that:

(i) No such trail, structure or other improvement shall be located so as to materially diminish the Conservation Values of the Property;

(ii) Trail surfaces may not be paved or composed of impervious surfaces, except where required by the Americans with Disabilities Act (ADA) standards. Except as needed for emergency access and trail maintenance, trail layout should be limited in width to accommodate single file hiking, yet allow adequate room for hikers to pass; and

(iii) Trails shall meet applicable governmental regulations and best conservation practices.

Notwithstanding the foregoing, this Easement shall not prohibit Grantor, its successors and assigns, from complying in good faith with any current or future law, statute or regulation of general applicability requiring a particular design of such trails to accommodate disabled access by the public.

(e) Signage. No billboard or advertising material or other sign structure shall be erected or placed on the Property, provided, however, that limited and appropriate educational plaques and small signs describing plants, trees or animals to be found on the Property may be placed thereon. Additionally, trail markers and signage may be placed on the Property so long as in the reasonable opinion of the Grantee, the type and kind of signage or marker, the size thereof, and the location thereof do not adversely affect the Conservation Values of the Property.

(f) Fences. Existing fences may be repaired and replaced, and new fences may be built, anywhere on the Property for purposes of reasonable and customary management of wildlife and access control, without any further permission of Grantee.

(g) Clearing of Trees. Notwithstanding the other provisions of this Easement, neither the replacement nor the construction of any Recreational Structure or trail shall require the clearing and removal of any more trees than necessary for the reasonable construction of such Recreational Structure or trail. Any clearing of trees shall comply with Section 9 of this Easement.

(h) Energy Producing Structures. Nothing in the Easement shall be deemed to prohibit the establishment on the Property of alternative energy sources, including without limitation equipment for the generation of solar power, wind power or hydroelectric power (collectively, "**Energy Production Facilities**"), subject to the following limitations:

(i) Energy Production Facilities may be located in any area designated in this Easement for the placement or construction of current or future structures, however described, without the consent of Grantee, and may be located in other areas of the Property with the prior written consent of Grantee.

(ii) Notwithstanding the foregoing, the construction, use, maintenance, repair and replacement of wind turbines for the generation of wind energy anywhere on the Property shall be permitted only upon prior written approval of Grantee. When considering whether to issue such approval, Grantee shall consider the Conservation Values of the Property, including the overall aesthetic impacts of the proposed turbine(s) in the context of the surrounding landscape and the environmental impacts.

(iii) All energy production plans, construction and distribution contracts and other agreements must be made expressly subordinate to this Easement.

(iv) No Energy Production Facility, or housings, wires, conduits or other equipment servicing such Energy Production Facility, may be materially and substantially destructive of the Conservation Values of this Easement.

7. Utility Services and Septic System. Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced, and Grantor may run utilities or grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved provided, however, that such fields should be maintained in a natural visual condition to the maximum extent possible and may not, in any event, detract from the Conservation Values of the Easement. Existing utilities may be serviced, maintained or removed. Prior to the commencement of installation of any such utility, Grantor shall seek to obtain Grantee's written permission in accordance with Section 5 of this Easement.

8. Water Sources. Subject to the provisions of Section 12 of this Easement, and provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing off the Property, Grantor maintains the right to use, maintain, establish, construct and improve water sources, water courses, or water bodies within the Property for the uses permitted by this Easement. Nothing herein shall be interpreted or construed as prohibiting Grantor from implementing, constructing, installing, and maintaining stream mitigation improvements on the Property which are necessary for the protection of the health, safety and welfare of the citizens of the public body. Grantor owns the water rights to the Property and shall not transfer, encumber, lease, sell or otherwise sever such water rights from title to the Property itself.

9. Forestry Activities. There shall be no removal, harvesting, destruction or cutting of trees, on the Property. Notwithstanding the foregoing, Grantor shall be permitted to:

- (a) Cut non-native noxious or invasive trees, shrubs or other vegetation,
- (b) Remove, harvest or cut dead and diseased trees,
- (c) Remove trees that pose a threat of personal injury or property damage,
- (d) Cut trees to create firebreaks,

(e) Cut vegetation in order to maintain a scenic view, with Grantee's prior written permission,

(f) Cut and clear trees, shrubs and other vegetation in connection with the construction, repair, maintenance or rebuilding of a Recreational Structure as permitted in Section 6 (b), or the trail system as permitted in Section 6(d), or the other activities and uses permitted under this Easement.

(g) The removal of timber shall in any event comply with the provisions of Section 13 of this Easement regarding the Buffer Zone, as hereinafter defined.

10. Mining. The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method whatsoever, is prohibited, except that Grantor shall have the right to grade and extract soil, sand, gravel or rock from the Property on a limited basis, solely for and/or in connection with the recreational operations being conducted on the Property or matters of public safety, without the necessity of obtaining the prior written consent of Grantee thereto. The mineral rights to the Property or any portion thereof shall not be separated or conveyed separate from the surface rights.

11. Road and Park Road Construction. Although no public roads shall be constructed on the Property, park roads may hereafter be constructed on the Property where needed to conduct operations or for security, maintenance or emergency access on the Property. Roads on the Property shall not be paved or concreted or consist of other non-permeable surfaces, but may be graveled. Such roads hereafter constructed on the Property shall not substantially diminish or impair the Conservation Values of the Property as compared to those conditions existing on the date of this Easement. Prior to the commencement of construction of any such road, Grantor shall seek to obtain Grantee's written permission in accordance with Section 5 of this Easement.

12. Buffer Zone. There is hereby established on the Property a riparian buffer zone (the "**Buffer Zone**") consisting of an area thirty feet (30') from the top of the banks of Middle Creek, Bee Branch and Shoal Creek, as such banks may be altered from time to time. In order to preserve water quality and wildlife habitat, Grantor shall allow the Buffer Zone to remain in or return to its natural and undisturbed state, but may make such improvements as will improve the banks, watercourses or water quality within the Buffer Zone. The clearing of land or the alteration of banks within the Buffer Zone shall be accomplished only after the written consent of Grantee has been obtained pursuant to the provisions of Section 5 of this Easement. No Recreational Structure may be built within the Buffer Zone. Nothing in this Section shall be deemed to prevent water crossings as necessary for permitted park roads and trails.

13. Recreational and Educational Purposes. Grantor retains the right to use the Property for lawful low-impact recreational uses not involving permanent improvements or structures, including, but not limited to, hiking, biking, picnicking, tours, nature study, interpretation and other educational programs, bird watching, and other customary public park uses related to preservation and appreciation of the Property and its natural, scenic and/or open space attributes; provided, however that such uses may not include any use inconsistent with the natural, scenic and open space character of the Property including by way of example and not limitation, school, library, tennis, golf, swimming pool, public safety, public office building, commercial or industrial uses.

14. Subdivision. Regardless of whether the Property is currently composed of one (1) or more contiguous or noncontiguous tax parcels, the Property shall be considered as one parcel for the purposes of this Easement and shall be retained in common ownership as though a single legal parcel. The subdivision of the Property, whether by physical or legal process, is prohibited. Any such subdivision of the Property, recording of a subdivision plan, partition of the Property, or any attempt to divide the Property without permission of the Grantee is prohibited. Without limiting the foregoing, the term “subdivision” shall not be limited by any statutory definition that limits the concept of subdivision. Subject to the foregoing, the Property may be transferred, encumbered, mortgaged or conveyed, or leased in whole or in part, and the provisions of this Easement shall continue to encumber the Property. Nothing in this Section shall be construed to prohibit the leasing of all or a portion of the Property, subject to the restrictions of this Easement.

15. Development Rights. Except as specifically reserved or permitted in this Easement, Grantor hereby grants, remises, releases and forever quitclaims to Grantee all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described.

16. Trash. The dumping or accumulation of any kind of trash or refuse on the Property, other than agricultural-related trash and refuse produced on the Property, which must be disposed of in accordance with prudent agricultural practices and shall not be kept in an unsanitary condition or other way that materially diminishes the Conservation Values of the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and byproducts on the Property, so long as it is done in accordance with all applicable government laws and regulations. Any residential or other trash or refuse shall not be accumulated or dumped on the Property but must be disposed of in accordance with applicable government laws and regulations.

17. Rights Retained by Grantor.

(a) As owner of the Property, Grantor retains the right to perform any act not specifically prohibited or limited by this Easement or granted to Grantee hereunder including the ability to enforce any laws generally applicable within the public body. Grantor’s ownership rights shall continue to include, but are not limited to, the right to exclude any member of the public from trespassing on the Property, the right to lease, sell, encumber or otherwise transfer the Property, and to grant easements over and through the Property to anyone Grantor chooses, provided that any such action shall be in accordance with terms of this Easement. The terms of this Easement do not replace, abrogate or otherwise set aside any local, state, or federal laws, requirements, or restrictions imposing limitations on the use of the Property.

(b) Rights to Forest Carbon. Grantors retained rights shall include, but not be limited to, the following rights with respect to ownership of “Forest Carbon” and Carbon Offset Credits.

(i) Forest Carbon. The 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 conservation 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. The 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 the Grantor.

(ii) Title to Carbon Offset Credits. The Grantor (i.e., project developer): hereby retains, owns, and holds legal title to and all beneficial ownership rights to the following (the “Project Reductions”): (i) any removal, limitation, reduction, avoidance, sequestration or mitigation of any greenhouse gas associated with the Property and (ii) any right, interest, credit, entitlement, benefit or allowance to emit (present or future) arising from or associated with any of the foregoing, including without limitation the exclusive right to be issued any carbon offset credits such as California Compliance Offsets (CCOs) or Climate Reserve Tonnes (CRTs) by a third party entity such as the State of California, the California Air Resources Board, the Climate Action Reserve, or other carbon offset registry.

(c) Mitigation Programs. Subject to Land Trust’s prior written consent, the right to participate in, and retain any income received therefrom, any current or future programs with state or federal agencies or private entities intended to provide incentive or compensation for the restoration or relocation of rare, imperiled, threatened, or endangered species or communities on the Property in a manner designed to restore historic natural systems, or for other environmental preservation or enhancement efforts (including, for example, wetland mitigation, carbon credit, and similar programs), provided such program is consistent with the Purpose of this Easement and enhances the Conservation Values.

18. Responsibilities of Grantor and Grantee Not Affected. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, except for the intentional or grossly negligent acts or omissions of Grantee and its employees, officers, agents, and contractors which solely cause any personal injury, property damages, or death to any person on the Property. Any liability of Grantee shall not in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:

(a) Taxes. Since Grantor is a public body and is not subject to taxation there are currently no taxes or assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

(b) Upkeep and Maintenance. Grantor shall continue to be ~~solely~~ responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) Liability and Indemnification. If Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property, Grantor shall indemnify and reimburse Grantee for such payments up to the limits of liability established by the Tennessee Governmental Tort Liability Act at Tenn. Code Ann. § 29-20-101, *et. seq.*, as such may exist from time to time, from any and all claims which may result from the negligent acts or omissions of any employees of Grantor related to the maintenance or operation of the Property. If Grantor is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property as a result of an intentional or grossly negligent act of Grantee or any of its agents that is determined by a court to be the sole cause of the injury or damage, Grantee shall indemnify and reimburse Grantor for these payments, as well as for reasonable attorneys' fees and other expenses of defending Grantor.

19. Enforcement.

(a) Grantee shall have the right to prevent and correct violations of the terms of this Easement pursuant to the terms of this Section 19. Grantee may enter the Property for the purpose of inspecting for violations or for compliance with the terms of this Easement, provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property. If at any time Grantee finds what it believes is a violation, it may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee shall give Grantor written notice in accordance with Section 26 of this Easement of the violation and thirty (30) days to correct such violation, before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring Grantor to restore the Property to its condition prior to the violation. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time.

(b) If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 19 without prior notice to Grantor or without waiting for the period provided for the cure to expire. In such case, Grantee shall use reasonable efforts to notify Grantor of such circumstances and proposed action, but the failure to provide such notice shall not limit Grantee's rights under this paragraph.

(c) Forbearance by Grantee to exercise any of 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 Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this

Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(d) In addition to injunctive relief, Grantee shall be entitled to seek the following remedy in the event of a violation, which remedies shall be in addition to all remedies now or hereafter existing at law or in equity:

(i) Grantor may be required to restore the Property to its condition existing prior to any violation of the terms of this Conservation Easement including the removal of any offending structures after notice by Grantee;

(ii) Grantor may be required to pay for all necessary costs of court authorized by the Tennessee Rules of Civil Procedure for any intentional or grossly negligent violations that result in civil litigation that may be awarded by the Court only to the extent allowed under Tennessee law.

(e) Grantor expressly authorizes Grantee to enforce this Easement and the restrictions and obligations set forth herein in the manner described below. However, unless otherwise specified herein, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any acts of nature or other event over which Grantor had no control. Grantor understands that nothing in this Easement relieves Grantor of any obligation or restriction on the use of the Property imposed by law.

20. Transfer of Easement.

(a) If Grantee dissolves, ceases to exist, is unable or unwilling to carry out its responsibilities under this Easement, or no longer qualifies under § 170(h) of the Code, then it shall have the right to transfer the conservation easement created by this Easement, and the rights and obligations created hereunder, to any public agency or private nonprofit organization that, at the time of transfer, is a “**qualified organization**” under § 170(h) of the Code, but only if the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ever dissolves, ceases to exist, or no longer qualifies under § 170(h) of the Code and a transfer has not been made pursuant to the foregoing sentence, a court with jurisdiction shall transfer this conservation easement, and the rights and obligations created hereunder, to another qualified organization having similar purposes that agrees to assume the responsibility. Except as permitted under this Section 20, Grantee shall not otherwise transfer the conservation easement or the rights and obligations hereunder.

(b) Upon such transfer pursuant to this Section 20, all records, plans and documents with respect to the conservation easement and the Property in Grantee’s possession shall be provided to such qualified transferee organization to help provide it with an understanding of the Property, the operations thereon, and the conservation easement.

21. Transfer of Property. Any time the Property itself, any part thereof, or any interest therein, is transferred by Grantor to any third party, Grantor shall notify Grantee in writing thirty (30) days prior to such transfer, and the document of conveyance shall expressly refer to this

Easement and recite that the Property is subject to this Easement. The failure of Grantor to so notify Grantee shall not impair Grantor's right to transfer the Property. After such transfer, the transferring party shall thereafter have no rights or interest in this Easement, and shall have no liability for any violations of this Easement occurring after the effective date of such transfer, but such transfer shall not affect the continued obligation of any party for matters arising prior to such transfer.

22. Effectiveness of Easement; Amendments. This Easement shall be effective upon execution and enforceable against third parties from and after the time it is recorded with the Register's Office of the county in which the Property is located. This Easement may be amended only with the written consent of Grantee and Grantor. Any such amendment shall be consistent with the purposes as stated hereinabove and shall comply with § 170(h) of the Code. Additionally, any such amendment shall be effective and enforceable as to third parties from and after the time that such amendment is recorded with the Register's Office of the county in which the Property is located.

23. Termination of Easement. If condemnation of a part of the Property or of the entire Property by a public authority renders it impossible to fulfill any of these conservation purposes, as determined by Grantee, in the exercise of its discretion, the Easement may be terminated through condemnation proceedings.

24. Interpretation; Captions; Severability. This Easement shall be interpreted under the laws of the State of Tennessee, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes. The captions in this Easement are for reference purposes only and shall not define, limit or expand the meaning or application of any term, paragraph or section contained herein. This Easement is severable, such that the invalidity, illegality or unenforceability of any term or provision contained herein shall not affect the validity, legality or enforceability of the other provisions in this Easement.

25. Perpetual Duration. The Easement shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to Grantor or Grantee shall also apply to their respective agents, heirs, personal and legal representatives, assigns and all other successors as their interests may appear.

26. Notices. Any notices required by this Easement shall be in writing and shall be personally delivered or sent by overnight courier, such as Federal Express, or first class mail, return receipt requested, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

To Grantor: Town of Signal Mountain  
1111 Ridgeway Avenue  
Signal Mountain, TN 37377

With a copy to: Phillip A. Noblett  
Town Attorney  
100 East 11th Street, Suite 200  
Chattanooga, TN 37402

To Grantee: The Land Trust for Tennessee, Inc.  
209 10<sup>th</sup> Avenue South, Suite 511  
Nashville, Tennessee 37203

With a copy to: Stites & Harbison PLLC  
401 Commerce Street, Suite 800  
Nashville, Tennessee 37219  
Attention: Miranda Christy, Esq.

In the event that a party to this Easement shall transfer such party's interest in the Property or under this Easement by conveyance, distribution, operation of law or otherwise, the transferee of such interest shall provide the nontransferring party with written notice of the change of address to which notice is to be sent hereunder. Notice shall be deemed to be received upon delivery to recipient, as evidenced by return receipt, overnight courier confirmation, or signed hand delivery confirmation or refusal to accept a proper delivery attempt.

27. Environmental Matters. Grantor has no actual knowledge of a material release or threatened release of hazardous substances or wastes on the Property in violation of federal, state or local laws, statutes, regulations or ordinances, or the Property's use as a landfill or dump and Grantor shall indemnify and reimburse Grantee for such payments up to the limits of liability established by the Tennessee Governmental Tort Liability Act at Tenn. Code Ann. § 29-20-101, *et. seq.*, as such may exist from time to time, from any and all claims which may result from the negligent acts or omissions of any employees of Grantor related to the maintenance or operation of the Property. Grantor shall have no obligation to defend or indemnify Grantee against litigation, claims, demands, penalties, damages, or attorneys' fees arising out of or with respect to releases of hazardous substances or wastes caused by Grantee or any of its agents.

28. Subordination; Liens. No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for borrowing, provided that any deed of trust, mortgage or lien arising from such a borrowing shall be subordinate to this Easement. On the date of this Easement and of its recording in the Register's Office for the county in which the Property is located, the Property and the Easement shall be free of or superior in priority to any deed of trust, mortgage or lien.

29. Acceptance. As evidenced by the signature of Grantee's duly authorized officer affixed hereto, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Easement.

30. Counterpart Execution. This Easement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

31. Conveyance. This Easement and the conservation easement herein described are quitclaimed subject to such limitations, covenants and restrictions as may affect the Property, but the parties hereto specifically agree to comply with all of the terms and provisions herein contained.

32. Causes Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

33. Amendments. Grantor and Grantee may jointly amend this Easement in writing. Proposed amendments will not be considered unless in the reasonable discretion of Grantee such changes will not have any material adverse effect on the Conservation Values. If such determination is made jointly by the parties, Grantee agrees to sign any and all documents necessary to give effect to any amendment.

**[COUNTERPART EXECUTION PAGES FOLLOW]**



**CONSERVATION EASEMENT**  
**COUNTERPART EXECUTION PAGE**

IN WITNESS WHEREOF, the undersigned, intending to legally bind itself, has executed this Easement as of the date first written above.

**GRANTEE:**

THE LAND TRUST FOR TENNESSEE,  
INC., a Tennessee nonprofit corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TENNESSEE )

COUNTY OF \_\_\_\_\_)

Personally appeared before me, \_\_\_\_\_, a Notary Public in and for said State and County, \_\_\_\_\_, with whom I am personally acquainted, and who acknowledged that \_\_\_\_\_ executed the within instrument for the purposes therein contained, and who further acknowledged that \_\_\_\_\_ is the \_\_\_\_\_ of the maker, THE LAND TRUST FOR TENNESSEE, INC., and is authorized by the maker to execute this instrument on behalf of the maker.

Witness my hand and seal, at Office in \_\_\_\_\_, Tennessee, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF TENNESSEE            )  
  )  
COUNTY OF \_\_\_\_\_)

The actual consideration for this transfer is **NONE**.

\_\_\_\_\_  
Affiant

Subscribed and sworn to before me on this  
\_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

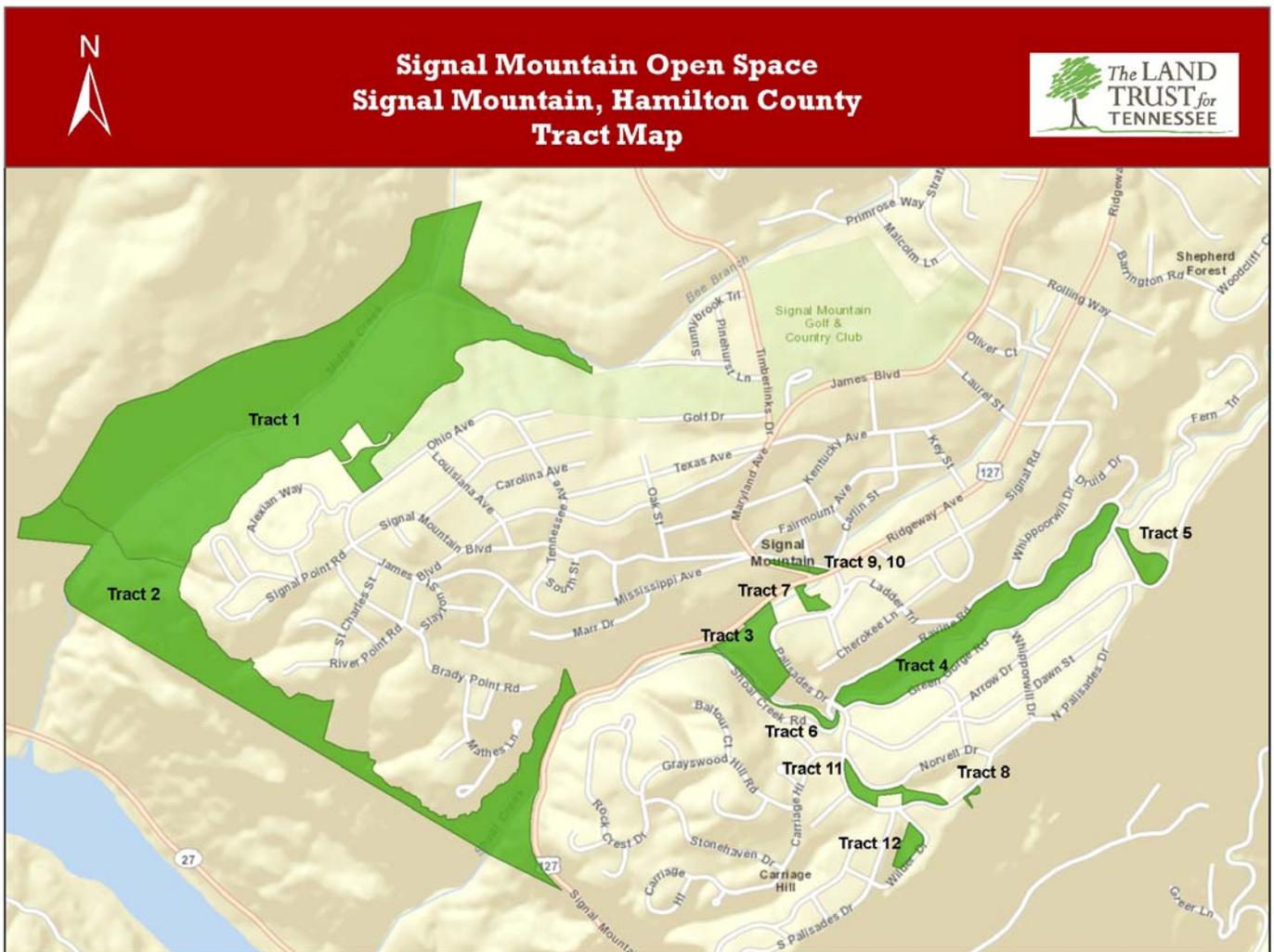
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### LIST AND MAP OF TRACTS

- Tract 1.** Rainbow Lake – Map 107 Parcel 005
- Tract 2.** Bluff Property – Map 107 Parcel 006
- Tract 3.** Land between Shoal Creek, 127 and Palisades – Map 107M B003
- Tract 4.** Green Gorge (Patten Park) – Map 108P Parcel B016
- Tract 5.** Dogwood Park - Map 108J Parcel B009
- Tract 6.** Land NE of Shoal Creek – Map 107M Parcel B002
- Tract 7.** Lot below CVS – Map 107M Parcel B008
- Tract 8.** Overlook Park – Map 117A Parcel E011.01, Map 117A Parcel E015
- Tract 9.** CE James Park – Map 107L Parcel J009
- Tract 10.** Lena Givens Park – Map 107L Parcel J010
- Tract 11.** Ravine between Norvell & Palisades – Map 117A Parcel D014.01
- Tract 12.** Ravine between Wilder & S. Palisades – Map 117A Parcel C002



Property boundaries are approximate. Created by Sarah O'Rear, Land Trust Staff, 2014

**EXHIBIT B**

PROPERTY DESCRIPTION