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by

Presenter: J. Bryan Echols

Presenter's Title: Attorney

Presenter's Office: Stites & Harbison PLLC

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GRANTS OF CONSERVATION EASEMENTS BY MUNICIPALITIES

1. Introduction. This presentation will discuss the circumstances and issues involved when a municipality is considering the placement of a conservation easement on property owned by that municipality. Rather than an attempt to describe settled law, this presentation will focus on the questions that should be asked by the municipality and its counsel. The answers to those questions will be largely dependent on local conditions and political considerations, statutory authority and the nature of the entities that will serve as holders of the easements. This presentation does not purport to represent a survey of applicable authorities.

2. The Nature of Conservation Easements. A conservation easement is a form of restriction on land, the goal of which is to preserve certain attributes of the land for the future. Conservation easements are typically negative and in gross, and are not appurtenant to any benefited property. Conservation easements are usually perpetual, although they can be for a term of years. Such restrictions are traditionally disfavored at common law, and as a result conservation easements are authorized under specific statutes in each state.

In Tennessee, the authorizing statute is Tennessee Code Annotated Sections 66-9-301 et seq. (1981). This statute describes a conservation easement as "a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations on the owner of the servient estate, the owner's heirs, and assigns with respect to the use and management of the servient land, structures or features thereon, and/or activities conducted thereon . . . ." T.C.A. § 66-9-303(1)(B). The statute goes on to provide that no "conservation easement shall be held unenforceable because of privity of estate or contract or lack of benefit to any other land, whether or not appurtenant to the servient land." T.C.A. § 66-9-306.

Conservation easements do not interfere with title to the land, which may be freely conveyed, leased, or mortgaged, all subject to the terms of the easement. Easements do not impose a duty of allowing public access, but do provide some public benefit.

3. The Purpose of Conservation Easements. Conservation easements are typically imposed for the purpose of preserving land in it agricultural, natural, open space or historic condition, sometimes referred to as the "conservation values" of the land. The Tennessee statute says that easements 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 servient estate." T.C.A. § 66-9-303(1)(B).

Conservation easements are designed to achieve particular goals for the specific land, and the terms of the easements change with those goals. An easement designed to preserve agriculture will differ from one that seeks to preserve a wild forest in pristine

condition. An easement may provide fairly specific conditions and even affirmative obligations if a plant or wildlife habitat is an important conservation goal. Easement preserving historic resources will provide more specific guidance about architecture or other visual elements.

4. Tax Aspects of Conservation Easements. Tax benefits are important considerations for many, but not all, conservation easements. Those considerations include a reduction in value of the underlying land resulting from the restrictions imposed by an easement. This may result in lower property tax appraisals and lower values for estate taxation. For example, in middle Tennessee, agricultural land may be valued at $5,000 per acre while that same land, if available for development for residential or commercial purposes, may be valued at $50,000 per acre.

In addition to the impact of lower values on current property tax and future estate liability, the landowner may be entitled to tax deductions for current charitable donations resulting from the donation of an easement. The value of this charitable donation is based on the value of the land before the imposition of the conservation easement and the value of the land after the easement. Meeting the requirements of the Treasury regulations applicable to these deductions is a prime consideration in the drafting and substance of conservation easements in many cases.

5. Holders of Conservation Easements. Most statutes, as well as the IRS regulations, prescribe qualified holders of conservation easements. These typically include a public body or governmental entity or a private nonprofit organization. Land trusts are frequently the nonprofit organizations that hold and enforce conservation easements. These are private organizations whose charter is the preservation of land resources and who accomplish this goal by purchasing or accepting donations of conservation easements, and by providing stewardship of the land through monitoring and enforcement of the easements.

Not all conservation easements are donated. There are programs that use public funds for the purchase of conservation easements at all levels of government, including federal programs. Purchased conservation easements are held by both land trusts and governmental entities. Many municipalities are holders and enforcers of conservation easements.

6. Conveyances of Conservation Easements by Municipalities and Other Governments. More unusual than the acceptance of conservation easements by municipalities and other governments are the occasions on which a government entity conveys a conservation easement to another government entity or to a private entity such as a land trust. The remainder of this presentation will discuss the circumstances in which such a transfer may be appropriate, the authority of a government entity to do so, and some considerations associated with such transfers.

7. Circumstances Supporting a Conservation Easement. There are two ways in which a municipality may be involved in the conveyance of a conservation easement. The first, which is indirect, involves the grant of a conservation easement immediately prior to a conveyance of land to a municipality or other government entity. The second involves a grant directly from that public entity to another government or private entity,

which will serve as holder of the easement with enforcement rights under the easement. In both situations, the following circumstances may result in such a restriction being accepted by the municipality:

(a) Where the grant of land to the municipality is conditioned on the land being encumbered by the conservation easement. This is usually the case where a private individual or group is donating land to the public entity, but wants to assure that the land is not later developed or converted to another use, whether as a result of a conveyance to a third party or by the municipality itself. These concerns are motivated by examples of a municipality converting park land or other conserved property to economic development or other industrial or public purposes. It is not clear that this happens in practice as much as its is feared, but a perception exists that fuels these concerns.

(b) Where a foundation or other group is willing to provide funding to improve or preserve land currently held by a municipality, but conditions the funding on the granting of a conservation easement. The concerns here mirror the concerns expressed above.

(c) Where the political will of the community leadership includes a desire to permanently conserve land against future policy changes. This may involve the establishment of a conserved area or property that the current leadership believes should be permanently protected. This might include historic properties or those with other unique attributes.

(d) Where there is a concern that a separate governmental or private entity with eminent domain powers, such as a utility provider, would condemn a property for other uses. In such a case, a municipality might convey property to a state entity that would not be subject to the eminent domain power of the third party.

Examples of conservation easements on city-owned property are attached. One is from a nonprofit corporation to a state entity on property that was then conveyed to a city for park use. The other was a direct conveyance of an easement on park property owned by a county government to a private land trust, the purpose of which was to ensure protection of the park.

It is perhaps a matter of public distrust with political decision-makers or heightened concern over conservation practices, but there appears to be more interest in an enforcement mechanism for conserved land that does not rest with political bodies.

8. Propriety of Government Grants of Conservation Easements. There is some concern about the wisdom and authority of governments to grant conservation easements on government-owned property. While government bodies, including municipalities, are normally permitted to dispose of, lease, and encumber government-owned land, certain attributes of conservation easements heighten concern over these issues.

(a) There are concerns about the perpetual nature of conservation easements. These concerns include the wisdom of foreclosing future options and the notion of restricting future government bodies from taking a different course regarding government resources.

(b) There are also concerns over the wisdom of placing enforcement authority in the hands of private bodies such as land trusts. Rather than look to the greater interest of government, such bodies will have a focus only on preservation.

(c) There are also legitimate questions as to the authority of governments to grant conservation easements. An opinion of the Office of Legal Counsel of the Department of Justice, which is attached, has concluded that agencies of the federal government do not have the authority to grant conservation easements, distinguishing conservation easements from other types of easements and encumbrances.

There are also, however, explicit grants of authority for government entities to grant conservation easements. For example, South Carolina provides that a "conservation easement may be conveyed to a holder without consideration by any local governmental body, including a county, municipality, and other political subdivision, if the conveyance is authorized by the elected members of the governmental body that owns the property to be burdened by the easement." South Carolina Code of Laws § 27-8-30(E)(1).

Tennessee law provides that a "public body may designate a conservation easement in any real property in which it has an interest, if such property is listed on the National Register or the Tennessee Register, in order to provide protection to and assist in the preservation and protection of such property." T.C.A. § 66-9-305(c). Such express authorities may be deemed limited, however, to the conditions described in the statutory language.

In the absence of express authority, there may be implicit authority under the charter or other statutory authority granted to a municipality, county or other government body. General grants of authority frequently provide the power to acquire, sell, lease, mortgage, or otherwise dispose of real property, and estates therein, for any municipal purpose. Such a broad grant of power can be read as consistent with the grant of a conservation easement, particularly in conjunction with a finding by the legislative body of a specific purpose.

Given the increasing popularity of conservation easements as a preservation tool, future court decisions and legislative enactments will likely provide more specific guidance with regard to the authority of governmental entities to convey these interests in public land.

9. Other Consideration for Municipal Grants of Conservation Easements. If a determination is made by a municipality to accept property encumbered by a conservation easement or to directly grant a conservation easement in municipal property, other matters should be considered:

(a) Affirmative duties should be minimized, and in each case should be conditioned on adequate funding for such matters.

(b) Restrictions should be tailored for the protection of specific conservation values. Uses that do not conflict with such values should be retained.

(c) In most cases, no indemnity can be provided under applicable law. Normally, conservation easements contain provisions under which landowners agree to indemnify and hold harmless the holder of the easement from liability arising from tort, environmental or taxes. Likewise, agreements with respect to payment to holders of attorney fees and other costs of enforcement may be limited by state or other law.

(d) Provisions on apportionment of condemnation awards, normal in conservations easements and set forth in IRS regulations, should not apply or should be revised to reflect state law.

(e) Provisions that forever disclaim, waive or convey development rights may require revision if the governmental entity has the ability to transfer development rights applicable to the property.

(f) A term of years with provisions for extension or renewal may be more appropriate for grants of conservation easements. This alleviates the concern over the perpetual and permanent nature of conservation easements.

(g) Although some state laws that provide authority for conservation easements provide for alternate enforcement mechanisms, more explicit provisions may be necessary. If third party enforcers are permitted, it may be appropriate for a private organization to hold enforcement authority in the event a state entity does not choose to enforce the provisions of an easement. Alternatively, provisions for enforcement by the state Attorney General, if not already set forth in state law, may be needed.

(h) Normal legislative approval procedures for conveyance of interests in real property must be followed for the validity of any easement, in addition to statutory requirements for valid conservation easements.

10. Future Developments. It appears likely that grants of conservation easements by municipalities will be increasingly popular. Such grants require a careful consideration of local authority for granting such interest, a tailoring of the easements to achieve clearly delineated objectives, and enforcement processes that are both effective and limited in light of legal principles applicable to municipal governments.

AUTHORITY TO GRANT CONSERVATION EASEMENTS UNDER 40 U.S.C. § 319.

Federal agencies do not have authority to grant conservation easements in federal property under 40 U.S.C. § 319.

January 19, 1993

**MEMORANDUM FOR THE GENERAL COUNSEL
DEPARTMENT OF COMMERCE**

You have requested the opinion of the Department of Justice on whether the Secretary of Commerce has authority under 40 U.S.C. § 319 to convey to the City of Boulder, Colorado, a "conservation easement" in federal property under the control of the Department of Commerce.(1) The grant of this property interest would guarantee "the perpetual preservation of open space . . . and maximum aesthetic and environmental limitations on future construction" on the site.(2) We understand that your Office has tentatively concluded that the Department of Commerce "may not possess such authority" and has notified the city attorney for Boulder of that view.(3)

Consistent with the tentative opinion of your office, we conclude that § 319 does not provide authority to grant a conservation easement. We believe that § 319 authorizes only the conveyance of property interests that were recognized by courts as valid and customary easements under the common law existing when the statute was enacted. Although the so-called scenic or conservation easement first developed as a land use device prior to enactment of § 319, it was not then recognized as a valid or customary easement in the vast majority of jurisdictions. In the absence of any indication that Congress intended § 319 to include conservation easements, we conclude that the Department of Commerce is not authorized under § 319 to convey such an easement.

Section 319 provides in part:

> Whenever a State or political subdivision or agency thereof or any person makes application for the grant of an easement in, over, or upon real property of the United States for a right-of-way or other purpose, the executive agency having control of such real property may grant to the applicant, on behalf of the United States, such easement as the head of such agency determines will not be adverse to the interests of the United States, subject to such reservations, exceptions, limitations, benefits, burdens, terms, or conditions . . . as the head of the agency deems necessary to protect the interests of the United States. Such grant may be made without consideration, or with monetary or other consideration, including any interest in real property.

40 U.S.C. § 319. Section 319 speaks of "easement[s] . . . for a right of way or other purpose," but is silent as to what "other purpose[s]" are permitted. The statute is thus arguably ambiguous as to the meaning to be given "easement": whether Congress intended that "easement" should be given its traditional, common-law meaning or be interpreted in light of continuing legal developments.

We believe, however, that Congress intended to incorporate the common-law

definition of easement into the statute.[4] We reach this conclusion by employing the "traditional tools of statutory construction," INS v. Cardoza-Fonseca, 480 U.S. 421, 446 (1987), to determine the "meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law." West Virginia Univ. Hosps., Inc. v. Casey, 499 U.S. 83, 100 (1991) (citing 2 J. Sutherland, Statutory Construction § 5201 (3d Horack ed. 1943)); see also infra p. and note 14.

Section 319 was enacted in 1962. See Act of Oct. 23, 1962, Pub. L. No. 87-852, § 1, 76 Stat. 1129, 1129. The legislative history of § 319 demonstrates that the General Services Administration ("GSA") proposed the section to Congress because GSA had determined that the "[e]ffective and efficient administration of the real property of the United States require[d] that executive agencies have authority to grant easements." H.R. Rep. No. 87-1044, at 2 (1961); see also S. Rep. No. 87-1364, at 2 (1962). GSA advised that the then-existing procedures for granting easements -- which for most agencies required a determination that the property rights in question were both in excess of the needs of the agency having control of the land and surplus to the needs of the federal government -- were "unsatisfactory and unnecessarily cumbersome" and needed to be "simplified." S. Rep. No. 87-1364, at 2; see 108 Cong. Rec. 1591 (1962) (remarks of Rep. McFall); H.R. Rep. No. 87-1044, at 2.[5]

Section 319 was patterned after specific easement-granting authority that was already vested in the Attorney General, the Secretaries of the military departments, and the head of the Veterans' Administration. See S. Rep. No. 87-1364, at 2; H.R. Rep. No. 87-1044, at 2. The earliest of those provisions gave the Attorney General power to convey "easements in and rights-of-way over" federal lands under his control, whenever "advantageous to the Government." Act of May 9, 1941, ch. 94, 55 Stat. 183 (1941) (codified at 43 U.S.C. § 931a).[6] The Attorney General sought this authority to address difficulties encountered in the development of sites for federal prisons. The Bureau of Prisons needed to restrict public access to certain local roads running through sites acquired for prisons, but some local officials would agree to such closures only if the federal government "grant[ed] an easement along the outside boundaries of the site[s] for the relocation of the roads." H.R. Rep. No. 77-393, at 1-2 (1941); see 87 Cong. Rec. 3257 (1941) (remarks of Rep. Sumners). The Director of the Bureau of Prisons explained that it was necessary to "be able to grant such easements promptly in order to take advantage of agreements made with State authorities. The delay which would ensue should each case have to be submitted to Congress for special authorization would jeopardize the interests of the Government." H.R. Rep. No. 77-393, at 2.

Although § 319 gives agency heads broad discretion in certain areas, we do not believe that Congress intended it to be construed to allow an agency to expand or alter the legal concept of "easement" as it was understood by Congress at the time of enactment. We have previously opined that § 319 "must be interpreted as authorizing [agencies] to grant easements only for those purposes for which easements have been traditionally permitted at common law." Memorandum for Allie B. Latimer, General Counsel, GSA, from Douglas W. Kmiec, Deputy Assistant Attorney General, Office of Legal Counsel at 4 (June 19, 1986) ("Kmiec Memorandum"). We explained that:

> section 319 was intended to empower all agencies to grant easements over their property for any purpose for which easements could be granted. We do not believe, however, that either the

> statute or the legislative history can be read . . . as authorizing agencies to grant easements for any purpose whatsoever, even for purposes for which easements have never been recognized. In particular, nothing suggests that Congress intended to preempt and expand the common law of easements with the enactment of section 319.

Id. at 3-4 (footnote omitted). By "the common law of easements" we meant the American law of easements prevailing at the time of enactment of § 319. See id. at 4 & n.6 (listing the traditional common-law easements) (citing Restatement of Property § 450 (1944) ("Restatement") and 3 Herbert T. Tiffany, The Law of Real Property §§ 763-775, 839 (3d ed. 1939) (cataloguing the traditional easements)).

In 1962, an easement had a particular common-law meaning that was well settled. Because § 319 contains no alternative definition of the term, firmly established canons of construction compel the conclusion that Congress adopted the "established common law meaning" of the term easement recognized by courts at the time. Chapman v. United States, 500 U.S. 453, 462 (1991).(7) Therefore, government agencies are not free to convey interests in federal property that go beyond the easements commonly recognized at common law in 1962.

"An easement is an interest in land in the possession of another," that, among other things, "entitles the owner of such interest to a limited use or enjoyment of the land in which the interest exists." Restatement § 450. In this case, it is helpful to distinguish between different types of traditional easements. First, an easement may be "affirmative," entitling the owner of the interest to enter upon and use the servient land (for example, a right-of-way), or "negative," enabling the easement owner to prevent the possessor of the land from doing acts upon the land that he would otherwise be privileged to do (such as obstructing the light available to the easement owner). Id. §§ 451-452; see 4 Richard R. Powell, The Law of Real Property § 34.02[2][c], at 34-16 to 34-17 (rev. ed. 1997). Second, a traditional easement is either "appurtenant," benefiting the owner of an adjacent parcel of land (called the "dominant tenement"), or "in gross," benefiting another regardless of whether he owns or possesses other land. Restatement §§ 453-454; 4 Powell, supra, § 34.02 [2][d], at 34-17 to 34-22.

The "conservation easement" at issue is negative and in gross. Conservation easements are negative in character because they prevent the owner of the burdened estate from developing the land, typically in any way that would alter its existing natural, open, scenic, or ecological condition. See Gerald Korngold, Privately Held Conservation Servitudes: A Policy Analysis in the Context of in Gross Real Covenants and Easements, 63 Texas L. Rev. 433, 435 (1984); Jeffrey A. Blackie, Note, Conservation Easements and the Doctrine of Changed Conditions, 40 Hastings L.J. 1187, 1193 (1989). Often, the benefit of the conservation easement will be in gross. See Restatement (Third) of Property (Servitudes) § 2.6 reporter's note, at 71 (Tentative Draft No. 1, 1989) ("Draft Restatement"). The property interest sought by the City of Boulder is expressly defined under Colorado statute as a "Conservation easement in gross." 16A Colo. Rev. Stat. § 38-30.5-102 (1982).

Traditionally, courts recognized very few types of negative easements. See Unif. Conservation Easement Act § 4 cmt., 12 U.L.A. 70, 76 (Supp. 1992).(8) Common law allowed only four: light, air, support of buildings, and flow of artificial streams. Dukeminier

& Krier, supra, at 964; John J. Costonis, The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks, 85 Harv. L. Rev. 574, 613 (1972). Prior to the enactment of § 319, American courts had added to this short list only expressly granted "easements of view," which prevent a servient landowner from obstructing the view enjoyed by the owner of a dominant tenement. See, e.g., Petersen v. Friedman, 328 P.2d 264, 266 (Cal. Dist. Ct. App. 1958); Northio Theatres Corp. v. 226 Main St. Hotel Corp., 231 S.W.2d 65, 67 (Ky. 1950); McCarthy v. City of Minneapolis, 281 N.W. 759, 761 (Minn. 1938); see also Dukeminier & Krier, supra, at 1003.(9) Moreover, the benefit of a traditional negative easement could not be in gross. See 2 American Law of Property § 8.12 (A. James Casner ed., 1952); see also Costonis, 85 Harv. L. Rev. at 613-14.(10)

For these and other reasons, commentators have concluded that conservation easements do not fall within the sphere of traditional easements. As one commentator has explained:

> Traditionally, the law of real covenants (enforced either as covenants-at-law or as equitable servitudes) has been seen as distinct from that of easements. Courts have viewed easements as valuable and protected property rights, while treating real covenants with suspicion and subjecting them to greater barriers against enforcement. . . .
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> . . . [A]ssuming there is validity to the traditional dichotomy between real covenants and easements, conservation servitudes more closely resemble real covenants than easements and hence should not be labeled and treated as easements. Although conservation servitudes are negative restrictions, they do not resemble any of the four traditional types of negative easements. Like real covenants, conservation servitudes are "promises respecting the use of land."

Korngold, 63 Texas L. Rev. at 436-37 (footnotes omitted); see also Note, Open Space Procurement Under Colorado's Scenic Easement Law, 60 U. Colo. L. Rev. 383, 395 (1989) ("Conservation easements, often held in gross by remote charitable organizations, might receive little judicial protection under a common law that traditionally disfavors such restrictions on land use.").

Although the use of "scenic" or "conservation" servitudes to achieve open space or other land preservation goals first developed prior to the enactment of § 319, (11) those innovative forms of servitudes had not gained wide acceptance in the courts by 1962, and certainly such interests were not considered "easements" in the traditional sense. See, e.g., Jan Z. Krasnowiecki & James C.N. Paul, The Preservation of Open Space in Metropolitan Areas, 110 U. Pa. L. Rev. 179, 194 (1961) ("[T]he type of interest needed to accomplish open-space preservation is so unlike any easement and so like most restrictive covenants that one can expect the courts to treat them as covenants."). Under the common law, these interests, if recognized as property interests at all, would most likely have been classified as servitudes or real covenants rather than negative easements. See Costonis, 85 Harv. L. Rev. at 614-15 ("Characterizing a preservation restriction as an equitable servitude offers a more

promising route [to recognition] than either [as a negative easement or real covenant]. Equitable servitudes are not restricted to four specific types of negative easements. . . . No privity of estate other than that provided by the agreement need exist."); see also 4 Powell, supra, § 34.11[3] at 34-158 ("Tulk v. Moxhay, [2. Phil. 774, 41 Eng. Rep. 1143 (Ch. 1848)] the case generally considered as establishing the doctrine of equitable servitudes, really involved [what is now being referred to as] a scenic easement.").

Indeed, it was because of the reluctance of courts to recognize this new form of property interest that many states in the 1970s and 1980s adopted conservation easement statutes, including the Colorado statute that would govern the conveyance sought by the City of Boulder.(12)

Although recent developments in the American law of property tend to blur the distinctions between negative easements and other forms of servitudes such as restrictive covenants and equitable servitudes, see Draft Restatement, at xxv-xxvi, and suggest that benefits in gross may someday be freely permitted for all servitudes, see id. § 2.6 & cmt. d, the traditional distinctions were still much in force in 1962. Accordingly, we conclude that by authorizing agencies in § 319 to convey only "easement[s]," Congress did not intend to permit an agency to encumber federal property with a nontraditional form of restrictive equitable servitude like a "conservation easement."(13)

As we stated earlier, the Supreme Court has instructed that we construe arguably ambiguous terms "to contain that permissible meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law."(14) As the Court explained in United Sav. Ass'n:

> viewed in the isolated context of [a particular section of a statute], the phrase [at issue] could reasonably be given the meaning petitioner asserts. Statutory construction, however, is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.

484 U.S. at 371 (citations omitted). We therefore examine congressional intent as it is expressed in other statutes governing the management and disposal of excess federal property, see 40 U.S.C. §§ 483, 484, 488, 490, as well as in the other subsections of 40 U.S.C. § 319. That examination provides further support for our conclusion that Congress did not intend § 319 to apply to the type of conservation easements at issue here.

With few exceptions, the management and disposal of federal government property remains a matter entrusted to the Administrator of GSA by the Federal Property and Administration Services Act of 1949, ch. 288, 63 Stat. 377 (1949) (codified as amended in scattered sections of Titles 40, 41, 44 & 50 of the United States Code). The purpose of the statute is to provide for the efficient operation of federal government property, buildings and works. 40 U.S.C. §§ 471, 483. With respect to an agency's surplus property, the Administrator must follow certain procedures in the disposal or transfer of such property to maximize the benefit to the federal government as a whole. 40 U.S.C. §§ 483-490. Under these procedures, property must be reallocated within the federal government if possible prior to being transferred or conveyed to private parties. 40 U.S.C. § 483(a)(1). The

Administrator also has nearly exclusive control over the leasing of federal government property. 40 U.S.C. § 490(a)(13). Absent independent authority, no agency may lease or otherwise encumber federal government property without GSA approval.(15)

In sum, the statutory scheme of 40 U.S.C. §§ 483-490 entrusts to the Administrator of GSA authority over the use and disposition of surplus federal property, and the transfer of substantial control over such property to private parties is disfavored. Although § 319, as proposed by GSA, is an exception to the scheme outlined in 40 U.S.C. §§ 483-490, there is no reason to believe that GSA proposed or that Congress intended to undercut or repeal by implication large portions of the more general scheme.(16) Section 319 was intended only as a limited exception to the existing law to expedite relatively limited types of grants. See Kmiec Memorandum at 3-4.(17) According to its principal sponsor in the House of Representatives, § 319 was proposed by GSA as "a simplified way" to grant easements over federal land without going through the "unnecessarily cumbersome" requirement of having the land declared surplus to the needs of the United States. 108 Cong. Rec. 1591 (statement of Rep. McFall). It was not intended to displace any other law. Id.

It is true that § 319 is broader than the authority specifically given to the Secretaries of the military departments, see 10 U.S.C. §§ 2668-2669, because the latter is limited to the granting of easements for specifically enumerated rights-of-way, such as pipelines and roadways, whereas § 319 allows the conveyance of an easement for a right-of-way "or other purpose." 40 U.S.C. § 319. See H.R. Rep. No. 87-1044, at 2; S. Rep. No. 87-1364, at 2.(18) However, this shows only that Congress intended § 319 to authorize agencies to grant easements for purposes other than rights-of-way; it does not suggest that Congress intended to confer granting authority for interests other than easements (as the term was understood in 1962).(19)

Consistent with this interpretation, the only example of an easement specified in § 319 is a right-of-way over federal property. In fact, in a brief exchange between the principal floor sponsor in the House, Representative McFall, and Representative Gross on whether the original bill should be placed on the unanimous consent calender, Representative McFall stated that he thought the bill was "confined to the granting of an easement for right-of-way purposes." 108 Cong. Rec. 1591 (emphasis added). When asked to provide examples of the types of easements that could be conferred pursuant to the bill, Representative McFall only offered the example of a right-of-way over federal property and specifically rejected other interpretations of the bill. Id. Satisfied by Representative McFall's assurances that § 319 would not change existing laws governing the use and disposal of federal property except to allow the grant of relatively limited types of easements, Representative Gross withdrew his reservation to allow the bill to be placed on the unanimous consent calender. Id.(20)

Compared to easements that confer rights-of-way, it is obvious that the scope of private control over federal property made possible by the grant of a conservation "easement" would be much more extensive. We have previously opined that an agreement referred to as an "easement" that amounts in substance to a lease of federal property is beyond the scope of § 319. See Kmiec Memorandum at 5-9. We explained that traditional easements are characterized by the "`requirement that the easement involve only a limited use or enjoyment of the servient tenement.'" Id. at 5 (quoting 4 Powell, supra, § 34.02[1], at 34-10 (rev. ed. 1997)); see also Restatement § 471, cmts. d and e. For this reason, we

concluded that the purported easement at issue in the Kmiec Memorandum was not valid. Kmiec Memorandum at 9.

The type of conservation easement discussed in your request and the types of conservation easements authorized under the Colorado statute do not appear to be limited in scope or constrained by definition. The Colorado statute enforces the seemingly unlimited "right in the owner of the easement to prohibit or require a limitation upon or an obligation to perform acts on or with respect to a land or water area or air space above the land or water . . . appropriate to the retaining or maintaining of such land, water, or airspace . . . in a natural, scenic, or open condition." 16A Colo. Rev. Stat. § 38-30.5-102 (1982).

Thus, the scope of restrictions that may be placed on the agency's use of its land under the Colorado conservation easement statute are limited only by the imagination of the drafters of the granting instrument, § 38-30.5-103(4), and the requirement that such use restrictions be "appropriate" to the preservation of land in "a natural, scenic, or open condition," § 38-30.5-102. Moreover, the Colorado statute expressly provides that the remedies available for a breach of a conservation easement are not limited by traditional remedies at law or equity, but also include damages for "the loss of scenic, aesthetic, and environmental values." § 38-30.5-108(3). It is clear that many types of leases would involve fewer limitations on an agency's use of its surplus land than some types of conservation easements.[21] In short, we do not believe that the type of conservation easement authorized by Colorado law is the type of limited easement that is covered by § 319.

Finally, we have reconsidered the legislative history of § 319, and conclude that the purposes underlying the enactment of § 319 seem to have significantly less force in the context of open space preservation. As discussed above, the principal purpose behind § 319 was to promote the "effective administration" of federal property by allowing agencies to respond quickly to the demands of local interests that may present a relatively minor impediment to the completion of a federal land development project. Where, on the other hand, the local interest wishes to secure the perpetual preservation of federal land by preventing further development, and the agency is willing to accommodate such a desire, there would ordinarily be little need for a quick conveyance of a conservation easement by the agency. If the agency determines that such preservation is consistent with the interests of the United States, the agency may follow existing procedures for the disposal of excess property, see 40 U.S.C. §§ 483, 484, 488, 490, or may seek special legislative approval from Congress for such a conveyance.

DOUGLAS R. COX
Principal Deputy
Assistant Attorney General
Office of Legal Counsel

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[1]Letter for Barry M. Hartman, Acting Assistant Attorney General, Environment and Natural Resources Division, from Wendell L. Willkie, II, General Counsel, Department of Commerce (Apr. 8, 1992). Mr. Hartman referred your request to us. The Environment and Natural Resources Division has reviewed this memorandum and concurs in its conclusions.

[2]See Memorandum for Wendell L. Willkie, II, General Counsel, Department of Commerce,

from Barbara S. Fredericks, Assistant General Counsel for Administration, Department of Commerce at 1 (Apr. 6, 1992) ("Fredericks Memorandum").

[3]This issue arose out of negotiations between officials of the Department of Commerce and the City of Boulder concerning the future development of 205 acres occupied by the Department's National Institute of Standards and Technology. The Department was considering entering into a contractual agreement that would limit future construction on the site and preserve some of its open space. See Fredericks Memorandum at 1. The city, however, wished to become the grantee of a "conservation easement" under Colorado law. Id.; see 16A Colo. Rev. Stat. § 38-30.5-102 (1982).

[4]Accordingly, there is on this question no statutory ambiguity to be resolved by the administering agency, and any different interpretation of § 319 would fail at "step one" of the test established by Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984).

[5]The Senate Committee on Public Works reported that § 319 would "improve the present Government procedures for granting of easements." S. Rep. No. 87-1364, at 3. The committee stated:

> At present these procedures are unrealistic and result in undue delay to both the Federal Government and those dealing with it. Enactment of this bill will provide effective procedures in dealing with requests for easements, necessary to effective cooperation by the Federal Government in a variety of local and Federal building programs.

Id.

[6]See also Act of Aug. 10, 1956, ch. 1041, 70A Stat. 1, 150-51 (1956) (codified as amended at 10 U.S.C. §§ 2668-2669) (if not "against the public interest," Secretary of a military department may grant "easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department" for specifically enumerated purposes, including railroad tracks, pipelines, and roads); Act of Sept. 2, 1958, Pub. L. No. 85-857, § 5014, 72 Stat. 1105, 1254 (codified as amended at 38 U.S.C. § 8124) (Secretary of Veterans Affairs given authority similar to Attorney General's).

[7]See also Molzof v. United States, 502 U.S. 301, 306-07 (1992) (construing term "punitive damages" according to its "widely accepted common-law meaning . . . when the [statute] was drafted and enacted" based on "cardinal rule of statutory construction" that when Congress uses a legal term of art, it "`presumably knows and adopts . . . the meaning its use will convey to the judicial mind unless otherwise instructed'") (quoting Morissette v. United States, 342 U.S. 246, 263 (1952)); Bowen v. Massachusetts, 487 U.S. 879, 896-97 (1988) (applying "the well-settled presumption that Congress understands the state of existing law when it legislates" to give the statutory term "money damages" the meaning "used in the common law for centuries") (emphasis added); Edwards v. Aguillard, 482 U.S. 578, 598 (1987) ("`A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.'") (Powell, J., concurring) (emphasis added) (quoting Perrin v. United States, 444 U.S. 37, 42 (1979), which examined "the ordinary meaning of the term `bribery' at the time Congress

enacted the statute [in question] in 1961"); Lukhard v. Reed, 481 U.S. 368, 386 (1987) (also quoting Perrin regarding the "fundamental canon of statutory construction . . . that, unless otherwise defined, words will be given their ordinary, contemporary, common meaning" in construing the word "income" in a statute).

[8]Negative easements were traditionally disfavored because they restricted the free use and marketability of land. See Jesse Dukeminier & James E. Krier, Property 962 (1981); Note, 40 Hastings L.J. at 1199.

[9]Although we have not been asked to address whether the grant of an easement of view would be valid under § 319, we note that an easement of view is quite distinct from a conservation easement. In those jurisdictions where an easement of view is valid, the limits on development that it imposes are quite similar to those imposed by an easement of light or air. Surface development and development of the servient tenement's natural resources are normally not restricted at all, because construction on the servient tenement is permitted so long as it does not block the protected line of sight or view over the servient tenement from the dominant tenement. See, e.g., Petersen, 328 P.2d at 265-66. The easement of view is commonly drafted as a building height limit. Id. In contrast to an easement of view, the so-called conservation easement at issue here would appear to prevent any development of the government land, including surface development, natural resources development, and all types of construction. Fredericks Memorandum at 1.

[10]Rather than adding to the list of negative easements, American courts (following the lead of the English common law) achieved some of the purposes that might have been served through use of negative easements by expanding the recognition of a different property interest, the "equitable servitude," which is a promise respecting the use of land (similar to a real covenant) that is equitably enforceable. See Dukeminier & Krier, supra, at 964, 966-67, 1003.

[11]See William A. Whyte, Securing Open Space for Urban America: Conservation Easements 11-14 (Urban Land Inst. Bull. No. 36, 1959). In the 1950s and before, governments, including the federal government, occasionally used their powers of eminent domain to acquire scenic "easements" in property adjoining parklands or highways. See id.; see also 4 Powell, supra, § 34.11[3], at 34-60 to 34-61. The first "Scenic Easement Deed Act," enabling local governments to accept grants of scenic easements, was passed in California in 1959. See Thomas S. Barrett & Putnam Livermore, The Conservation Easement in California 11 (1983).

[12]See 1976 Colo. Sess. Laws 750, § 1 (codified at 16A Colo. Rev. Stat. § 38-30.5-101 (1982)) ("The general assembly finds and declares that it is in the public interest to define conservation easements in gross, since such easements have not been defined by the judiciary."); see also Unif. Conservation Easement Act § 4(3), 12 U.L.A. 70, 76 (Supp. 1992) (providing that a conservation easement will be valid under the uniform act even though "it is not of a character that has been recognized traditionally at common law"); supra, note 8.

[13]Our conclusion would be the same even if we disregarded the "fundamental canon of statutory construction . . . that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning," Perrin v. United States, 444 U.S. 37, 42

(1979), and assumed that Congress intended the meaning of the term "easement" in § 319 to evolve with the common law. The use of the word "easement" in the term "conservation easement," a term that does not occur in § 319, is of slight legal significance. The relevant question in our analysis is whether the eventual recognition and enforcement of conservation easements -- in states where they are recognized and enforced -- were an outgrowth of the traditional law of easements or whether conservation easements developed independently of the common law doctrine.

We have already explained that a conservation easement is closer to a restrictive equitable servitude than any type of common law easement. Even more important, however, conservation easements have come to be recognized in a body of statutory law that developed independently of the common law of easements. Thus, even if Congress intended for the meaning of the term "easement" in § 319 to evolve with the common law (and expressed such intent in the statute), there is still ample reason to conclude that a so called "conservation easement" is not a development of the common law of easements. This conclusion further supports our view that a conservation easement cannot properly be interpreted as an easement within the meaning of § 319.

[14]West Virginia Univ. Hosps., Inc. v. Casey, 499 U.S. 83, 100 (1991); see also Patterson v. Shumate, 504 U.S. 753, 758, 762-63 (1992) (explaining that an ambiguous statutory term should be considered "together with the rest" of the statute); K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (1988) (in discerning the meaning of a statute, "the court must look to . . . the language and design of the statute as a whole"); United Sav. Ass'n v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 371 (1988) (instructing that ambiguous phrases should be examined in the context of "the remainder of the statutory scheme"); cf. Chisom v. Roemer, 501 U.S. 380, 417 (1991) (Scalia, J., dissenting) ("Our highest responsibility in the field of statutory construction is to read the laws in a consistent way . . . .").

[15]Id.; see also Reorg. Plan No. 18 of 1950, reprinted in 15 Fed. Reg. 3177 (1950) ("All functions with respect to acquiring space in buildings by lease, and all functions with respect to assigning and reassigning space in buildings for use by agencies . . . are hereby transferred from the respective agencies in which such functions are now vested to the Administrator of General Services.").

[16]Subsection 319c expressly provides that the authority to convey such easements created in § 319 is not conferred with respect to the vast majority of federal land. See 40 U.S.C. § 319c (excluding the public lands, including the national forests, fish and wildlife preserves, and certain other land under the control of the Secretary of the Interior as well as certain Indian trust property from the definition of "real property of the United States" as used in § 319).

[17]The Senate Committee on Public Works stated that "easements might be desired for power transmission lines, pipelines, water lines, roads, and other public utilities or public service facilities, which serve a highly useful purpose, and that if the head of the executive agency determines that such easement is not adverse to the interests of the United States, it should be granted." S. Rep. No. 87-1364, at 3.

[18]See also Letter for Sam Rayburn, Speaker of the House of Representatives, from John L. Moore, Administrator of GSA (June 12, 1961), reprinted in H.R. Rep. No. 87-1044, at 4 and

Sen. Rep. No. 87-1364, at 5. The letter explained the draft bill submitted by GSA:

Rather than limit the grant of such easements to enumerated purposes, as is done in 10 U.S.C. 2668 and 2669, it is felt advisable to permit the head of the executive agency having control of property to grant the easement for such purpose as he deems advisable so long as the interests of the United States will not be adversely affected.

[19]In addition to rights-of-way, other rights recognized as easements when § 319 was enacted include: watercourses, percolating waters, spring waters, grants of water power, artificial watercourses, surface waters and drains, support of land and buildings, party walls, partition fences, pews, light and air, and burial rights. See 3 Tiffany, supra, at §§ 763-775.

[20]Although the text of § 319 plainly authorizes the grant of an easement for a right-of-way or "other purpose," the exchange between Representatives Gross and McFall is evidence that at least some members of Congress thought such other purposes were rather limited.

[21]There are obviously many differences between a lease and a conservation easement, particularly with regard to the possessory interests involved, but there might be little difference with respect to the non-owner's degree of control over the federal agency's use of the land that is subject to the lease or conservation easement. We adhere to the view that Congress did not intend in the passage of § 319 to create a distinction between GSA's authority to direct and supervise leases on federal property and its authority to supervise conveyances referred to as easements that amount to a significant relinquishment of federal control over such property. /p>

Executive Summary

Berlin Pond is a natural resource of significant value to central Vermont. The pond serves as the primary public water supply for the City of Montpelier and portions of the town of Berlin. It is a designated Vermont Audubon Society "important birding area." Recreation trails used by Central Vermont residents weave throughout the watershed. Berlin Pond remains one of the few water bodies of its size in Vermont with a totally undeveloped shoreline. For these reasons, Berlin Pond and its watershed are both unique and important.

Today's residents of Montpelier have been fortunate to inherit a legacy of land conservation in the watershed. In 1884, the City began a series of land purchases around the pond, and, despite the fact that 79% of the watershed remains privately owned, the City is fortunate that the watershed remains relatively undeveloped. Studies of other potential water sources in the region have been unable to identify any water sources of comparable quality and capacity to that provided by Berlin Pond. The City demonstrated its commitment to Berlin Pond as its primary water supply with the construction of the $11.5 million water treatment plant in 1998.

Berlin Pond and its watershed are not immune to growing development throughout central Vermont. Development in the watershed presents an increasing threat to the use of the pond as a water supply. Use of pesticides, fertilizers and road salt, the construction of more septic tanks with leach fields, and the possibility for fuel oil spills by trucks making deliveries to residential homes are potential threats associated with development. The Source Protection plan identified 297 existing potential sources of contamination in 2001. Future development in the Berlin Pond watershed can only degrade the City of Montpelier's water supply.

The Montpelier Conservation Commission, in partnership with the Berlin Conservation Commission, the Vermont Land Trust, and other conservation organizations has been proactive in its efforts to permanently conserve additional land in the watershed. Building on a history of success conserving land at little or no cost to the City (such as North Branch River Park, and Irish Hill in the Berlin Pond watershed), this consortium now seeks to conserve additional land in the Berlin Pond watershed through the purchase of land or development rights from willing landowners.

To achieve broader protection of the Berlin Pond water supply, the City of Montpelier can leverage further land conservation in the watershed by offering to donate development rights on the City-owned land around the pond. Placing a conservation easement on the City-owned land will create a strong incentive for raising the funds necessary to conserve an additional acreage of strategically chosen land in the watershed. According to the City's legal counsel, the City has the authority to grant a conservation easement on its lands to a third party, as long the City's authority to manage these lands for water supply purposes is not restricted, and the City receives a public benefit that is equal or greater in value than what the City tenders for conservation.

The City of Montpelier faces a critical juncture in its use of Berlin Pond as a water supply. For over 120 years, residents of Montpelier have benefited from the potable water flowing from this undeveloped watershed. The Montpelier Commission firmly believes it is essential at this time for the benefit of this and future generations to conserve additional land in the watershed.

THIS INSTRUMENT WAS PREPARED BY:
J. Bryan Echols
Stites & Harbison, PLLC
424 Church Street, Suite 1800
Nashville, Tennessee 37219

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT ("**Easement**") is hereby quitclaimed on this 3rd day of June, 2004 subject to the provisions herein contained, by **THE HERITAGE FOUNDATION OF FRANKLIN AND WILLIAMSON COUNTY**, a Tennessee not-for-profit corporation ("**Grantor**") to **THE LAND TRUST FOR TENNESSEE, INC.**, a Tennessee not-for-profit corporation ("**Grantee**"), for the purpose of permanently conserving the open space character, educational value, wildlife habitat, and scenic qualities of the Property (as defined herein).

W I T N E S S E T H:

Grantor is the sole owner in fee simple of certain real property described in Exhibit A, attached to and incorporated herein by this reference (the "**Property**").

The placement of a conservation easement on the Property will serve to preserve an historic site recognized on the National Register of Historic Places maintained by the United State Park Service of the Department of the Interior known as Roper's Knob, a hill that is significantly higher than the surrounding terrain. The Roper's Knob site was nationally registered in the year 2000. During the Civil War the top of Roper's Knob, which is enveloped by the Property, was modified into a fortified Federal signal station for Union troops in 1863 and was a key communication link between Nashville and Murfreesboro. The signal station had two circular entrenchments enclosing the upper portion of the knob and an interior blockhouse at the apex. The blockhouse measured forty-two feet side to side with heavy timber fortification and earthworks, which is large compared to the average blockhouse that was 18-by-30 feet. Grantor sold to the State of Tennessee the approximately twenty-one acres that included the extant Civil War earthworks, but retained the remaining historically significant acreage of the Property.

The Property is home to a natural habitat of wildlife and plants and provides outstanding scenic qualities that can be enjoyed by the general public. The Property is intended to be conveyed to the City of Franklin for designation as a park to be used by the general public for education and passive recreation such as picnicking, hiking, nature study, and bird watching.

The location of the Property and the Roper's Knob site causes them to serve as a forested backdrop to Franklin's historic downtown area and the Property can be viewed by the public traveling on Franklin Road, Cool Springs Boulevard and Mack Hatcher Parkway, each a major thoroughfare. Roper's Knob and the Property also serve as an overlook onto Tennessee's Antebellum Trail, a ninety-mile looped trail of historic antebellum homes in middle Tennessee. The Property provides the general public with relief against the urban sprawl that is occurring in and around Williamson County, Tennessee, one of the fastest growing counties in the State of Tennessee. The Property is located in a growth area of the City of Franklin within several miles of access to Interstate 65 and within a five to ten minute drive of all residential services and local

employment centers and is immediately adjacent to existing medium density residential subdivision developments.

The historic significance and scenic characteristics of the Property, 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 open space character, educational value, wildlife habitat, historic significance and scenic values of the Property will be conserved and maintained permanently and that the uses of the Property that are inconsistent with these conservation purposes will be prevented or corrected.

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 the Roper's Knob nationally registered historic site;

-- The preservation of the Property for passive outdoors recreation and the education of the general public. The Property is adjacent to state-owned property that is being preserved for the welfare of the citizens of Tennessee. The Grantor's intention is that the Property will be conveyed to the City of Franklin and designated as a public park and thereafter open to the general public for education and passive recreation such as picnicking, hiking, nature study, and bird watching. The Grantor intends the park, together with the Roper's Knob area owned by the State of Tennessee, to collectively serve as an "outdoor museum" with identification plaques for the education of the general public;

-- The preservation of a natural habitat of wildlife and plants. The Property supports the survival of a natural habitat and ecosystem that has been threatened by intense residential development. The Property acts to maintain an important habitat for a wide variety of birds, terrestrial mammals, and plants indigenous to the area;

-- The preservation of the opportunity for the general public to enjoy scenic vistas of the surrounding scenic countryside that may be enjoyed due to the Property's elevated topography; and

-- The preservation of open space for scenic enjoyment of the general public from Franklin Road, Cool Springs Boulevard and Mack Hatcher Parkway.

The preservation of open space and conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation and preservation policies:

-- The Agricultural, Forest and Open Space Land Act of 1976 as set forth in Tennessee Code Annotated § 67-5-1001, et seq., which states in § 67-5-1002 that "The general

assembly finds that: . . . (1) The existence of much agricultural, forest and open space land is threatened by pressure from urbanization, scattered residential and commercial development, and the system of property taxation. . . . ; (2) The preservation of open space in or near urban areas contributes to: (A) The use, enjoyment and economic value of surrounding residential, commercial, industrial or public use lands; (B) The conservation of natural resources, water, air, and wildlife; (C) The planning and preservation of land in an open condition for the general welfare; (D) A relief from the monotony of continued urban sprawl; and (E) An opportunity for the study and enjoyment of natural areas by urban and suburban residents who might not otherwise have access to such amenities;" and

-- The Conservation Easement Act of 1981, Tennessee Code Annotated § 66-9-301, et seq., which permits the creation of conservation easements.

The open space character, educational value, wildlife habitat, scenic views and historical significance of the Property are 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 the Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.

Grantee is a tax-exempt nonprofit organization and a qualified organization under §§ 501(c)(3) and 170(h), respectively, of the Code, 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 permanently.

Grantor and Grantee intend to create with this Easement a "qualified conservation contribution" as defined in § 170(h) of the Code and a "qualified conservation easement" as defined in § 2031(c) of the Code.

Grantor owns the entire fee simple interest in the Property, including the entire mineral estate.

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 permanently predominantly in its 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, except for uses consistent with those of a passive park open to members of the general public, the Property will be conserved and retained permanently predominantly in its natural, scenic, 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 passive recreational uses, as are not inconsistent with the purpose and terms of this Easement.

2. Implementation

This Conservation 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 Conservation Easement, the terms "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. Grantor also 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 Act of God or other event over which they 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.

5. Construction, Maintenance and Repair of Buildings, Structures and Other Improvements.

(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 Paragraph 5, are prohibited. Provided that there is no significant material adverse effect on or impact to the Conservation Values, the following structures are permitted with the advance review and written approval of Grantee:

(i) Recreational Structures – A limited number of shelters for individual picnic tables, park benches, and other similar improvements in support of passive recreational structures may be built on the Property. The number of such improvements shall be limited consistent with the purposes of the Property.

(ii) Fences – New fences may be built on the Property for purposes of reasonable and customary management of the passive recreational uses, without any further permission of Grantee, provided that such fences shall be compatible in design with the rustic character of the Property.

(iii) 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 describing the historic significance of the Property and small signs describing plants, trees or animals to be found on the Property may be placed on the Property. A sign designating the Property as a park and describing the trails to be found on the Property may be located on the Entrance Area, as hereinafter defined.

(iv) Trails – Trails to be 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:

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

(b) trails shall be limited to approximately ten thousand (10,000) linear feet in the aggregate;

(c) trail surfaces may not be paved or composed of impervious surfaces. Trail layout should be limited in width to accommodate single file hiking, yet allow adequate room for hikers to pass. All of the trails are to remain isolated, well away from houses on adjoining property;

(d) trails shall be located, designed and maintained to preserve and protect the fragile soil conditions on the Property; and

(e) trails shall meet applicable governmental regulations and good conservation practices.

Grantor and Grantee recognize that the soil conditions on the Property are fragile and that trails must be limited in scope and carefully placed in recognition of these considerations. Without limiting the scope of any approval right provided to Grantor elsewhere in this Easement, Grantee shall have the right, subject to the requirements of Section 5(c) of this Easement, to approve the trail plan, including without limitation review of the foregoing elements, prior to the construction of any trail.

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.

(v) Paving and Road Construction - No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or other impervious paving material. Notwithstanding the foregoing:

(a) an unpaved road reasonably required to afford access for maintenance and use of the Property as a park may be constructed on the Property, provided that such road or roads shall be placed within the area of the ingress egress easement described in that certain Warranty Deed dated

September 30, 1996 and recorded in Book 1448, page 152, Register's Office for Williamson County, Tennessee.

(b) a parking and amenity area not to exceed one (1) acre in size (the "**Entrance Area**") may be established at the entrance of the Property for use by the general public, provided that Grantor shall exercise reasonable oversight to prevent parking outside the Entrance Area. Grantor may also establish restroom facilities in the Entrance Area, the design and appearance of which shall be subject to the advance written approval of Grantee. Grantor may construct gates or other improvements on the Entrance Area necessary to control access to the Property.

(b) Grantee's Permission – If the consent of Grantee is required for the construction of any structure or improvement on the Property, Grantor shall notify Grantee of such proposed construction and provide a plan and description of the structures or improvements to be constructed, along with their location; whereupon Grantee shall determine if such proposed construction complies with the terms of this Easement and if it does, it shall give its written consent thereto. Grantor shall not begin construction without the prior written consent of Grantee, which consent shall not be withheld by Grantee if the construction complies with the terms and intent of this Easement. Grantee shall grant permission or approval to the Grantor only where the Grantee, acting in the Grantee's sole discretion and good faith, determines that the proposed action will not substantially diminish or impair the Conservation Values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder. Grantee shall have thirty (30) days to respond after it receives all required documentation for the proposed construction, and if it fails to respond to Grantor within such time period, its consent to the proposed construction shall be deemed to have been granted.

6. Subdivision

The subdivision of the Property is expressly prohibited.

7. 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.

8. Tree Cutting

Notwithstanding the other provisions of this Easement, no use of the Property shall require the clearing of any more trees than are necessary for the reasonable construction of permitted structures or to enhance passive recreational uses. Trees may be cut to control insects and disease, to prevent personal injury and property damage, and as otherwise permitted herein. Any commercial timber growing and harvesting on the Property shall be prohibited. Trees may be removed to control or prevent fire.

9. 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

9. Recreational and Educational Purposes.

Grantor retains the right to use the Property for lawful passive recreational uses, including, but not limited to, hiking, picnicking, nature study, and bird watching. Active uses, including without limitation ball fields, recreation centers, playground equipment and other uses associated with urban parks, are prohibited.

10. Trash

Grantor shall exercise all reasonable and diligent actions, including without limitation regularly scheduled trash collection and removal, required for the prevention of and removal of accumulated trash, discarded food and other refuse.

11. Rights Retained by Grantor

Subject to interpretation under Paragraph 18, 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. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to lease or to sell or otherwise transfer the Property to anyone they choose, in accordance with terms of this Easement.

12. 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, or in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:

(a) Taxes - Grantor shall continue to be solely responsible for payment of all taxes and 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 or this Easement. Grantee shall have no obligation for the upkeep or maintenance of the Property. Without limiting the foregoing, Grantor acknowledges and agrees that the Property has very fragile soil conditions. The Property shall be maintained in a first quality manner and in accordance with best management and conservation practices. All plantings on, and soil, water, flora and fauna management of, the Property shall be conducted in accordance with a conservation plan developed in collaboration by the Grantor and Grantee that addresses soil and water conservation, pest management, nutrient management, promotion of natural plantings and habitat protection. Grantor and Grantee shall update the plan periodically as necessary.

(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 these payments, as well as for reasonable attorneys' fees and other expenses of defending itself, unless Grantee or any of its agents have committed a deliberate act that is determined by a court to be the sole cause of the injury or damage. 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 a deliberate 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 themselves.

13. Enforcement

Grantee shall have the right to prevent and correct violations of the terms of this Easement. With reasonable advance notice to Grantor, Grantee may enter the Property for the purpose of inspecting for violations or for compliance with the terms of this Easement. 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 open space character, agricultural productivity, scenic qualities or Conservation Values of the Property, Grantee shall give Grantor written notice of the violation and thirty (30) days to correct it, 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. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. In addition to injunctive remedies, the Grantee shall have the right to seek the following remedies against the Grantor or any other person legally responsible in the event that a court finds that a violation of this Easement exists or has occurred: (a) monetary damages, including damages for the loss of the Conservation Values protected by the Easement; (b) restoration of the Property to its condition existing prior to such violation, including the removal of offending structures; and (c) any other remedies available at law or in equity.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the open space character, agricultural productivity, scenic qualities or Conservation Values of the Property, Grantee may pursue its remedies under this Paragraph 13 without prior notice to Grantor or without waiting for the period provided for the cure to expire.

Waiver of any violation or breach of this Easement shall not operate as a waiver of any future or continuing violation or breach. Failure to enforce any term or provision of this Easement shall not operate thereafter as a waiver of such term or provision.

In the event that Grantee brings suit to enforce the terms of this Easement, the prevailing party in such litigation shall be entitled to recover all reasonable costs incurred in such litigation, including reasonable attorney's fees.

14. Transfer of Easement

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 Paragraph 14, Grantee shall not otherwise transfer the conservation easement or the rights and obligations hereunder.

Upon such transfer pursuant to this Paragraph 14, 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.

15. 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. The failure of the Grantor to so notify the Grantee shall not impair the Grantor's right to transfer the Property.

16. Effectiveness of Easement; Amendments

This Easement shall be enforceable against third parties from and after the time it is recorded with the Register's Office of Williamson County, Tennessee. 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 as to third parties from and after the time that such amendment is recorded with the Register's Office of Williamson County, Tennessee.

17. Termination of Easement

The parties hereto stipulate and agree that this Easement is a real property interest which immediately vests in Grantee, and which Grantor and Grantee stipulate to have a fair market value that shall be determined by multiplying the fair market value of the Property unencumbered by the Easement, by a ratio of the value of the easement as of the date hereof to the value of the Property as of the date hereof without deduction for the value of the Easement. The ratio of the value of the Easement to the value of the Property unencumbered by this easement shall remain constant and shall be used in determining what amount of proceeds Grantee shall receive should this Easement be terminated or extinguished for any reason. 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.

If the Easement is terminated and the Property is sold or taken for public use, then, as required by § 1.170A-14(g)(6) of the Treasury Regulations, Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the fair market value of the Easement to the fair market value of the Property unencumbered by the Easement, as these values are determined as set forth above on the date of this Easement. Grantee shall use the proceeds consistently with the conservation purposes of this Easement.

18. 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 or paragraph 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.

19. Perpetual Duration

This 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.

20. Notices

Any notices required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, 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: The Heritage Foundation of Franklin and Williamson County
P.O. Box 723
Franklin, Tennessee 37065

To Grantee: The Land Trust for Tennessee, Inc.
209 10th Avenue South, Suite 530
P. O. Box 23473
Nashville, Tennessee 37202

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.

21. Environmental Matters

Grantor has no actual knowledge of a material release or threatened release of hazardous substances or wastes on the Property during Grantor's ownership of the Property, or the Property's use as a landfill or dump, and hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys'

fees, arising from or connected with any release of hazardous waste, use of the Property as a landfill or dump, or violation of any federal, state or local environmental laws. Notwithstanding the foregoing, Grantor shall have no obligation to defend or indemnify the 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.

22. 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.

23. 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.

24. 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.

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

[COUNTERPART EXECUTION PAGES FOLLOW]

CONSERVATION EASEMENT

COUNTERPART EXECUTION PAGE

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

THE HERITAGE FOUNDATION OF FRANKLIN AND WILLIAMSON COUNTY, a Tennessee not-for-profit corporation

By: _____

Print Name: EDDIE MARTIN

Title: PRESIDENT

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

Before me, MELINDA A. GRAY, a Notary Public of said County and State, personally appeared EDDIE MARTIN, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be President (or other officer authorized to execute the instrument) of THE HERITAGE FOUNDATION OF FRANKLIN AND WILLIAMSON COUNTY, the within named bargainor, a Tennessee not-for-profit corporation, and that he as such President executed the foregoing instrument for the purposes therein contained, by personally signing the name of the corporation by himself as President.

Witness my hand and seal, at Office in Franklin, Tennessee this 2nd day of June, 2004.

MELINDA A. GRAY
NOTARY PUBLIC AT LARGE
DAVIDSON COUNTY, TENN.

My Commission Expires:

_____
Notary Public

My Commission Expires: 7-24-04

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.

THE LAND TRUST FOR TENNESSEE, INC., a Tennessee not-for-profit corporation

By: Jean Clinton Nelson

Print Name: Jean Clinton Nelson

Title: President & Executive Director

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

Before me, MELINDA A. GRAY, a Notary Public of said County and State, personally appeared JEAN CLINTON NELSON, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be President and Executive Director (or other officer authorized to execute the instrument) of THE LAND TRUST FOR TENNESSEE, INC., the within named bargainor, a Tennessee not-for-profit corporation, and that she as such Executive Director and President executed the foregoing instrument for the purposes therein contained, by personally signing the name of the corporation by herself as Executive Director and President.

Witness my hand and seal, at Office in FRANKLIN, TENNESSEE this 3rd day of June, 2004.

Melinda A. Gray
Notary Public

My Commission Expires: 7-24-04

MELINDA A. GRAY
NOTARY PUBLIC AT LARGE
DAVIDSON COUNTY, TENN.

My Commission Expires JULY 24, 2004

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

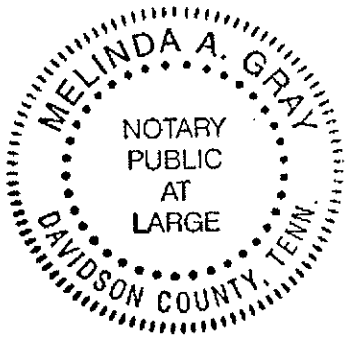
The actual consideration for this transfer is **NONE**.

AFFIANT

Subscribed and sworn to before me on this 3rd day of June, 2004.

Notary Public

My Commission Expires: 7-24-04



My Commission Expires JULY 24, 2004

EXHIBIT A

All those tracts or parcels of land located in Williamson County, Tennessee being more particularly described as follows:

Tract 1:

Beginning at an iron pin located in the westerly right-of-way of the Mack Hatcher Parkway; said pin being N 30° 58' 35" E a distance of 255.74 feet from the northeast corner of the William Peach property (Deed Book 539, Page 319) and being the southeast corner of the herein described land; thence with a new line as follows: N 65° 37' 04" W a distance of 1439.41 feet to an iron pin; N 33° 42' 16" E a distance of 594.00 feet to an iron pin; S 72° 36' 23" E a distance of 681.00 feet to an iron pin; S 29° 01' 52" E a distance of 668.96 feet to an iron pin; S 79° 15' 42" E a distance of 100.00 feet to an iron pin located in the westerly right-of-way of the Mack Hatcher Parkway; thence with the westerly right-of-way of the Mack Hatcher Parkway as follows: S 10° 44' 18" W a distance of 192.11 feet to a concrete monument; S 30° 58' 35" W a distance of 107.91 feet to the point of beginning, containing 17.00 acres more or less, according to a survey performed by Ronny G. Brown Surveying, RLS No. 763, Franklin, Tennessee, dated April 20, 1995.

BEING the same property conveyed to James F. Chavers by Deed from Services Management, Inc. a Tennessee Corporation, of record in Book 1370, page 702, Register's Office for Williamson County, Tennessee.

Tract 2:

Beginning at an iron pin located the northwest corner of the Cadet Homes Subdivision (Plat Book 4, page 35); said pin being the southeast corner of the Sherrell Figuers property and being the southwest corner of the herein described land; thence with Figuers' line, N 9° 04' 35" E, a distance of 592.94 feet to an iron pin located in the southerly line of the Franklin Associates, Ltd., property; thence with Franklin Associates, Ltd.'s line as follows: S 86° 21' 38" E, a distance of 371.24 feet to an iron pin; N 28° 15' 00' E, a distance of 494.51 feet to an iron pin; thence with a new line as follows: S 75° 24' 47" E, a distance of 420.98 feet to an iron pin; S 65° 37' 04" E, a distance of 1,439.41 feet to an iron pin located in the westerly right-of-way of the Mack Hatcher Parkway; thence with the westerly right-of-way of the Mack Hatcher Parkway, S 30° 58' 35" W, a distance of 255.74 feet to an iron pin located at the northeast corner of the William Peach property; thence with Peach's line as follows: N 63° 00' 44" W, a distance of 170.00 feet to an iron pin; N 74° 08' 41" W, a distance of 146.97 feet to an iron pin, S 81° 27' 07" W, a distance of 116.00 feet to an iron post; S 5° 14' 27" W, a distance of 176.29 feet to an iron pin located at the northeast corner of the William Ingle property; thence with Ingle's line as follows: N 82° 12' 47" W, a distance of 605.33 feet to an iron pin; S 7° 48' 12" W, a distance of 644.71 feet to an iron pin located in the northerly line of the Cadet Homes Subdivision; thence with the northerly line of the Cadet Homes Subdivision, westerly with a curve concave to the south, having a radius of 2255.00 feet, a distance of 1,315.80 feet (LC=N 64° 42' 57" W, 1,297.21 feet) to the point of beginning, containing 39.78 acres more or less, according to a survey performed by Ronny G. Brown Surveying, RLS No. 763, Franklin, Tennessee, dated April 20, 1995.

Being part of the same property conveyed to Services Management, Inc. by quitclaim deed from David H. Langhans, Trustee, of record in Book 1197, page 947, Register's Office for Williamson County, Tennessee.

Less and except the following described property which is included in the property described above but excluded from this conveyance:

LAND IN THE NINTH CIVIL DISTRICT OF WILLIAMSON COUNTY, TENNESSEE, BEING BOUNDED ON THE WEST, NORTH, AND EAST BY GRANTOR., AS OF RECORD IN DEED BOOK 1370, PAGE 704, AND 706, ALSO ON THE EAST BY WILLIAM S. PEACH, AND WIFE EMILY S. PEACH, AS OF RECORD IN DEED BOOK 539, PAGE 319, AND ON THE SOUTH BY WILLIAM R. INGLE, AND WIFE JANET C. INGLE, AS OF RECORD IN DEED BOOK 588, PAGE 950, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT AN IRON ROD SET, SAID POINT LYING NORTH 584,345.9953, EAST 1,719,453.5024, ON THE TENNESSEE STATE PLANE COORDINATE SYSTEM, NAD 1983 (1990), ALSO LYING AT A CORNER OF INGLE IN THE WEST PROPERTY LINE OF PEACH, AND ALSO BEING THE SOUTHEASTERLY CORNER OF THE PROPERTY DESCRIBED HEREIN: THENCE WITH INGLE'S NORTH PROPERTY LINE NORTH 82 DEGREES 16 MINUTES 37 SECONDS WEST, 606.33 FEET TO AN EXISTING IRON ROD; THENCE WITH A SEVERANCE LINE FOR THE FOLLOWING FOUR CALLS;

NORTH 10 DEGREES 47 MINUTES 40 SECONDS WEST, 821.00 FEET TO AN IRON ROD SET;
NORTH 33 DEGREES 42 MINUTES 16 SECONDS EAST, 594.00 FEET TO AN IRON ROD SET;
SOUTH 72 DEGREES 36 MINUTES 23 SECONDS EAST, 681.00 FEET TO AN IRON ROD SET;
SOUTH 11 DEGREES 43 MINUTES 32 SECONDS WEST, 1024.42 FEET TO AN EXISTING STEEL POST AT A CORNER COMMON WITH PEACH;
THENCE WITH PEACH'S WEST LINE SOUTH 05 DEGREES 26 MINUTES 08 SECONDS WEST, 176.29 FEET TO THE POINT OF BEGINNING AND CONTAINING 22.147 ACRES.

THE ABOVE DESCRIPTIONS ARE ACCORDING TO A SURVEY BY JIMMY W. SPRINGER, RLS NO. 825, 622 WEST IRIS, NASHVILLE, TN. 37204, DATED JULY 17, 1996, REVISED AUGUST 19, 1996.

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04025517

EASEMENT	
06/04/2004	03:33 PM
BATCH	21018
MTG TAX	0.00
TRN TAX	0.00
REC FEE	80.00
DP FEE	2.00
REG FEE	0.00
TOTAL	82.00

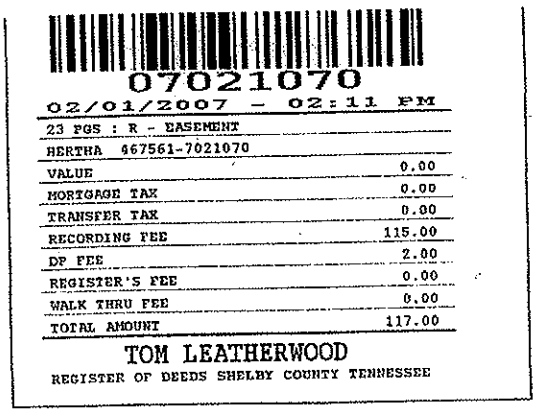
STATE OF TENNESSEE, WILLIAMSON COUNTY

SADIE WADE
REGISTER OF DEEDS

Tom Leatherwood

Shelby County Register

As evidenced by the instrument number shown below, this document has been recorded as a permanent record in the archives of the Office of the Shelby County Register.



07021070

02/01/2007 - 02:11 PM

23 PGS : R - EASEMENT	
BERTHA 467561-7021070	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	115.00
DP FEE	2.00
REGISTER'S FEE	0.00
WALK THRU FEE	0.00
TOTAL AMOUNT	117.00

TOM LEATHERWOOD

REGISTER OF DEEDS SHELBY COUNTY TENNESSEE

160 N. Main St., Suite 519 ~ Memphis, Tennessee 38103 ~ (901) 545-4366
http://register.shelby.tn.us

GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement ("Grant") is made by the County of Shelby, Tennessee ("County") and the Shelby County Agricenter Commission ("Agricenter") (collectively, "Grantors") as of the _____ day of January, 2007, and shall become effective upon being properly recorded in the office of the Shelby County Register ("Effective Date") pursuant to the Conservation Easement Act of 1981, Tenn. Code Ann. 66-9-301 et seq., as amended, and the common law.

Section I - Recitals

Grantors are "public bodies" as defined in Tenn. Code Ann. 66-9-303(5).

County is the owner of the property designated on Exhibit A hereto as "County Property." Agricenter was established by the Tennessee General Assembly, and is the recipient of a grant of the property designated on Exhibit A hereto as "Agricenter Property," said property having been granted to Agricenter pursuant to resolution of the Board of County Commissioners of the County subject to reversion to the County under certain circumstances. All of the property described on Exhibit A, including that designated as "County Property" and that designated as "Agricenter Property," is hereinafter collectively referred to as the "Property."

For purposes of this Grant, four areas of the Property ("Tiers" 1 through 4) have been designated, as reflected and described on Exhibit B hereto.

The Property has significant conservation, natural, scenic, recreational, agricultural, scientific and parkland resources and values in the fields, forests, open spaces, vistas, wetlands, ponds, lakes, and streams on the Property, which resources and values are worthy of protection, maintenance, preservation, and enhancement for the benefit of the people of Tennessee. Grantors deem that it is in the public interest to grant a conservation easement with respect to the Property as herein provided and that the public will gain a substantial benefit by the granting of the conservation easement.

For the purpose of protecting, maintaining, preserving, and enhancing the conservation, natural, scenic, recreational, agricultural, scientific and parkland resources and values of the Property and providing for its use in keeping with such protection, maintenance, preservation and enhancement, Grantors desire to grant a conservation easement with respect to the Property, subject to the terms and conditions hereinafter provided. Grantors acknowledge receipt of good, valuable, and sufficient considerations for this Grant.

The Land Trust for Tennessee, Inc., a Tennessee nonprofit corporation ("Grantee"), has received from the Internal Revenue Service an exemption under 501(c)(3) of the Internal Revenue Code, and is therefore an "exempt organization" as defined in Tennessee Code Ann. 66-9-303(2).

Grantors deem Grantee to be qualified and to be an appropriate entity to receive and enforce the conservation easement herein granted.

Grantee desires to accept this Easement, subject to the terms and conditions hereinafter provided.

Section II - Grant and Agreements

NOW THEREFORE, for the benefit of the people of Tennessee, Grantors agree as follows:

1. Grant. Grantors grant to Grantee a conservation easement ("Easement") on, over, under, and across the Property for the purposes of protecting, maintaining, preserving, and enhancing the conservation, natural, scenic, agricultural, scientific, recreational, and parkland resources and values of the Property, including without limitation the fields, forests, open spaces, vistas, wetlands, lakes, ponds, and streams of the Property, the biological and ecological integrity and value of the Property, and the use of the Property by the public as an urban park, in keeping with such protection, maintenance, preservation, enhancement, and for other purposes incidental, necessary, and appropriate to the foregoing, such grant being subject to the terms and conditions hereinafter provided.

Included in the Property is property designated as the Lucius Burch Natural Area ("LBNA") by the State of Tennessee. The parties agree that any and all use of the LBNA pursuant to the terms of this Easement shall be consistent with T.C.A. 11-14-101 et seq., as it may hereafter be amended, and all rules and regulations promulgated thereunder, that control the use of the LBNA.

Excluded from the provisions of this Easement is the road right of way property as designated on Exhibit A-1.

Also excluded from the provisions of this Easement is property designated as "Area 10," that is to be reserved for governmental and government-related uses pursuant to a plan to be adopted by the Board of County Commissioners of Shelby County, Tennessee. This Area is described on Exhibit A-2 attached hereto.

2. Declaration of Restriction. Grantors and Grantee declare and agree that the uses of the Property shall be restricted and limited to the uses permitted under this Easement. Such restrictions and limitations shall run with the land and apply to any successive owners of the Property, or any portion thereof, and Grantors shall do all things necessary to ensure that this is the case.

3. Master Plan. It is understood and agreed by Grantors and the Grantee that a Master Plan is to be developed, subject to the provisions of Paragraph 18 herein, for the Property through a planning process to be initiated by the County in the future. Grantors and Grantee agree that Grantee shall become a party to the planning process for said Master Plan, which upon completion shall become incorporated into this Easement as though set out fully herein. Grantors and Grantee hereby declare and agree that, until the completion of said Master Plan and its adoption by the County, or until December 31, 2008, whichever occurs first, no permanent buildings, structures, or infrastructure shall be constructed or placed upon the Property, and no permanent changes shall be made in the topography of the land, except those specific buildings and structures described in Exhibit A-3, it being the intention of the parties that there be a

moratorium on the construction or placement of such buildings, structures, or infrastructure, and on change in the topography of the land, other than those described in Exhibit A-3, until said Master Plan has been adopted or such December 31, 2008 deadline occurs. It is understood and agreed that the Master Plan may increase, but may not decrease, the prohibitions and restrictions on the uses permitted under in this Easement.

If during the moratorium period, a party proposes construction which was not anticipated on the date of this Grant, which is not included on Exhibit A-3, and which is in keeping with the uses and purposes of this Grant, said party may propose an amendment to Exhibit A-3 to permit such construction. The parties will in good faith negotiate the amendment, and consent to the amendment will not be unreasonably withheld, conditioned, or delayed.

4. Permitted Uses. The following uses of the Property are permitted, reserved, and retained, subject to the moratorium set forth in the preceding paragraph, and subject to any restrictions or prohibitions set forth in the Master Plan, and to any restrictions or prohibitions set forth in the 1981 Private Act of the Tennessee Legislature creating the Agricenter Commission (Chapter 141 of the Private Acts of 1981), the 1981 Resolution of the Shelby County Commission adopting and approving said Act, and the 1982 Resolution of the Shelby County Commission granting the property to the Agricenter:

a. pedestrian, bicycle, skating, and equestrian trails and paths, paved and unpaved, and equestrian operations;

b. nature trails, boardwalks and wildlife observation areas and improvements;

c. gardens;

d. recreational sports and uses consistent with the purposes and uses herein provided and in accordance with the approved Master Plan;

e. pavilions, picnic areas, and playgrounds;

f. agronomy and horticulture uses, including but not limited to farming, educational, aquaculture, and nursery uses;

g. scientific purposes, including agricultural, archeological and environmental sciences, which have no material adverse impact on the Property and the uses herein provided and are consistent with the purposes of this grant;

h. dog exercise and training;

i. boating activities consistent with the purposes and uses herein provided; only small electric motors or trolling motors are acceptable; gas powered motors, jet skis, etc. are prohibited;

j. fishing;

k. development and enhancement of wildlife habitat;

l. development and enhancement of forests (including without limitation reforestation), fields, vistas, and open spaces;

m. access by designees of Grantors to the Property at all times in connection with the uses permitted hereunder;

n. short term events not inconsistent with the uses and purposes herein provided, including without limitation outdoor festivals; collection of fees normally associated with the use of park facilities; special events, educational, agronomy and horticultural uses; and food, drink, and merchandise sales incidental to permitted uses. Permanent concessions of permitted uses may be permitted to have food, drink or merchandise sales but with size or quantification limitation on these types of incidental sales to permanent uses;

o. animal control as may be necessary to control property damage, to protect the Property, and/or to protect the health, safety, and welfare of the public;

p. direction, location, and use signs consistent with the purposes and incidental to the uses herein provided;

q. classes, demonstrations, projects, and other educational uses to promote and teach environmental protection and conservation;

r. retreat and/or camping facilities that are compatible with the rustic and natural setting of the Property, and in accordance with the Master Plan;

s. existing and currently planned uses of the Property or in accordance with the approved Master Plan and prior written approval of Grantee, which approval shall not be unreasonably withheld, conditioned or delayed;

t. maintenance, repair, removal, rearrangement, reconfiguration, renovation, relocation, and reconstruction of existing buildings, structures, facilities, sewer and/or utility lines, and other improvements; and

u. a carousel or historic rollercoaster, in a location to be mutually approved by Grantors and Grantee.

The following additional uses are permitted in the areas designated as Tier 2, Tier 3 and Tier 4 on Exhibit B, attached hereto, subject to the same conditions set forth above (i.e., the moratorium, the prohibitions or restrictions of the Master Plan, and the restrictions and prohibitions set forth in the Private Act and Resolutions referred to above):

Tier 2: Agricenter Campus Area

a. Continuation of construction of any buildings now under construction and construction of additional buildings, structures, facilities, sewer and/or utility lines, and other improvements related to agriculture; and

b. Use, maintenance, repair and replacement of roads and parking areas and construction of new roads.

Tier 3: Agricenter Crop and Recreation Area

a. Construction of ancillary buildings, barns, silos, storage structures, facilities, sewer and/or utility lines, and other improvements;

b. Maintenance, repair, and replacement of roads and parking areas and construction of new roads;

c. A demonstration area for animal husbandry science;

d. Hiking and biking trails, lakes and ponds, and other recreational uses for the public now existing and further additional recreational uses..

Tier 4: Show Place Arena Area

a. Restaurant; catering facility;

b. Showplace arena including indoor arena, enclosed warm-up arena, outdoor covered arena, and outdoor uncovered arena;

c. Six barns (two of which are located on the Agricenter property);

d. Parking area; and

e. Such other commercial uses as may be added as a result of the Master Plan.

Each Grantor reserves the right to adopt rules and regulations with respect to the permitted uses of its property consistent with the uses permitted and purposes provided herein and with respect to protecting the health and safety of the public and consistent with the Master Plan. Each Grantor also reserves and retains the right to move, remove, rearrange, reconfigure, renovate, relocate, and reconstruct facilities, improvements, and features of its property from time to time consistent with uses and purposes herein stated and consistent with the Master Plan.

5. Prohibited Uses. Except as expressly permitted in other Tiers, the following uses of the Property are prohibited:

a. stadiums; arenas; race tracks for animals or motor vehicles; commercial uses other than those specifically permitted by this Easement, provided

that the existing horse show place arena on the Property may be located elsewhere on the Property as determined by the approved Master Plan;

b. electromagnetic transmission lines and towers, other than those permitted under existing leases as such leases may be extended or renewed, without adding additional lines or towers; provided that additional antenna may be added to the existing tower and transmission lines for operation of the Property;

c. use of motorized vehicles on the unpaved paths and trails of the Property except for maintenance and operation of the Property;

d. commercial, industrial, residential, or other real estate development;

e. manufacturing and industrial uses, excluding the mulch facility on the County property;

f. commercial mining activities, except those related to lead recovery and removal on the former firearms range site on Tier 1;

g. residential uses or hotel/motel uses, excluding temporary shelter in case of emergency or disaster;

h. subdivision of the Property;

i. dumping of garbage, trash, or building materials, provided, however, that this prohibition shall not apply to (i) lawful temporary disposal of waste resulting from daily operations of the Property (dumpsters, etc.) or (ii) lawful temporary disposal of products as part of a recycling or recovery operation established for the purpose of environmental preservation and protection (mulch recycling, cardboard recycling, etc.)

j. public or private facilities except those which implement and facilitate the purposes and uses herein provided;

k. zoos;

l. permanent fairgrounds;

m. billboards;

n. commercial advertising, except for temporary signs for marketing of special events and concessions and except for the existing signs on the Agricenter property;

o. schools;

p. colleges, except for the existing Southwest Tennessee Community College facilities on the Agricenter property;

q. structures used primarily for exhibitions and performances except for one amphitheater and outdoor exhibition facilities consistent with park purposes and uses herein provided;

r. roads and parking areas other than existing roads and parking areas and future roads and parking areas permitted by the Master Plan;

s. activities which cause significant erosion or pollution;

t. other uses inconsistent with the Master Plan; and

u. any other activities inconsistent with the purposes and uses herein provided.

6. Right of Entry and Enforcement. Grantee, its agents, and independent contractors shall have the right of entry and access to the Property at all times to make such inspections and investigations as Grantee deems appropriate and to enforce this Grant. Grantee may enforce this Easement by action at law or by injunction or other proceedings in equity. No delay of or forbearance in enforcement of Grantee's rights and remedies under this Easement shall be deemed a waiver of such rights and remedies or preclude Grantee from exercising any of its rights and remedies. Defenses of laches and estoppel based on delay in enforcing rights and remedies are waived. If Grantee is successful in enforcing its rights and remedies under this Easement in a proceeding at law or equity, Grantee shall have the right to recover from the government of Shelby County, Tennessee, its reasonable costs and expenses actually incurred including reasonable attorney's fees, irrespective of whether the need for such enforcement is caused by Grantors or a third party. In the event that Grantee or Grantee's assigns fail to enforce the provisions of this Easement or at the invitation of the Grantee, the Attorney General of the State of Tennessee may enforce the provisions of this Easement by any action at law or in equity.

In the event there is a dispute between Grantor and Grantee whether or not an activity or use is permitted or prohibited, the parties will arbitrate the dispute to a committee of 3 individuals who have significant experience with land use and conservation easements. One individual shall be selected by the Grantor, one individual by the Grantee, and the third selected by those two individuals. The three individuals will determine the dispute by majority vote, following the rules of the American Arbitration Association. The decision of the arbitration committee shall be binding or nonbinding by agreement between Grantee and Grantor prior to selection of the arbitration committee.

7. Duration. The duration of the Conservation Easement herein granted shall be perpetual, provided that Grantors may terminate this Grant to become effective on the date of any fiftieth anniversary of this Grant. Grantors shall give notice as provided in Paragraph 17 herein. This Grant shall run with the land. This Grant shall be binding on the successors and assigns of the parties and shall inure to the benefit of the successors and permitted assigns of the parties.

8. Construction. This Easement shall be liberally construed in favor of protecting, maintaining, preserving, and enhancing the conservation, natural, scenic, recreational, agricultural, scientific and parkland resources and values of the Property. Captions shall not be

used in interpreting this Grant. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement and that would render the provision valid shall be favored over any interpretation that would render it invalid.

9. Severability. If any provision of this Easement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the other provisions of this Grant, which other provisions shall be enforced to the full extent permitted by law.

10. Hazardous Materials. Each Grantor agrees that it will comply with all applicable laws with respect to any hazardous or toxic substances, materials, wastes, or other substances regulated by law now located on its property. County will comply with all applicable laws with respect to the landfill and firearms range on the County property. Nothing in this paragraph shall impair Grantors' right to pursue third parties with respect to violations of environmental laws caused by such third parties. Grantee shall have no responsibility with respect to such substances, materials, waste, landfill, and firearms range.

11. Assignment by Grantee. Grantee may assign its rights and interests under this Easement to another organization which is an exempt organization as defined in Tenn. Code Ann. 66-9-303(2), which has the power and authority to hold the conservation easement herein granted subject to the provisions of this Grant, which is a state or nationally recognized conservation organization, or other similar organization accredited to hold conservation easements by the Land Trust Alliance or other successor organization of similar stature, which is approved in writing by Grantors, and which accepts the assignment. If Grantee ceases to be an exempt organization, it will assign its rights and interests under this Easement to an exempt organization approved by Grantors. Grantors will not unreasonably withhold its consent to assignment.

12. Assignment by Grantors. Grantors may assign their rights, privileges, and interests under and as reserved and retained in this Easement (including without limitation all rights of approval, determination, and regulation as to purposes and uses) to an assignee using and operating the Property, provided that such assignment shall be made expressly subject to this Easement, and Grantors agree to take all steps necessary to enforce the provisions of this Easement against any such assignee.

13. Eminent Domain. If any of the Property shall be taken under the power of eminent domain, the entire award shall be the sole property of the County.

14. Maintenance and Insurance. Each Grantor shall continue to maintain its respective property and the improvements thereon in good order, condition, and repair, and in compliance with applicable laws.

As of the date of this Easement, County is self insured as to both casualty and liability insurance with respect to the Property. If and when County shall carry casualty insurance with respect to the improvements, County shall insure the improvements for their full replacement value in accordance with County's insurance standards applicable from time to time to County's facilities. The proceeds of casualty insurance shall be used for repair and restoration of

improvements on the County property. If and when County shall carry public liability insurance with respect to the County property, County shall maintain such insurance in accordance with County's liability insurance standards applicable from time to time to County's facilities, and Grantee and Agricenter shall be named as additional insureds under such liability insurance policies. Grantors will provide Grantee and Agricenter proof of the insurance required by this paragraph.

The Agricenter shall keep the contents of the improvements on Agricenter property insured for their full replacement value. The proceeds of insurance on improvements on the Agricenter Property insured by the County shall be used for repair and restoration of such improvements. The Agricenter shall carry and maintain public liability insurance with respect to the Agricenter property. Initial limits of such liability insurance shall be $1,000,000.00 per incident, $2,000,000.00 aggregate, and thereafter the limits shall be in accordance with commercially reasonable business practices. Grantee and County shall be named as additional insureds under such liability insurance policies. Agricenter will provide Grantee and County proof of the insurance required by this paragraph.

15. Default, Right to Cure. If either party shall default under this Grant, the party in default shall have 30 days after receipt of notice of the default to cure the default, or if such default cannot reasonably be cured within said 30 days, the party in default shall have such additional time as is reasonably necessary to cure the default provided that the party in default begins to cure the default within said 30 days and diligently pursues to completion the curing of the default. No remedy shall be exercised with respect to such default unless and until the default is not cured as herein provided.

16. Notices. All notices required or permitted under this Easement shall be in writing and shall be given by hand delivery or by certified mail, return receipt requested, addressed to the parties as follows:

Grantors: Shelby County, Tennessee
160 N. Main Street, Suite 850
Memphis, Tennessee 38103
Attention: Chief Administrative Officer

Shelby County Agricenter Commission
7777 Walnut Grove Road
Memphis, Tennessee 38120
Attention: Chairman of the Commission

with a copy to: County Attorney
160 N. Main Street, Suite 660
Memphis, Tennessee 38103

Grantee: The Land Trust for Tennessee, Inc.
209 10th Avenue South, Suite 530
Nashville, Tennessee 38203
Attention: Executive Director

A party may change its notice address by notice as above provided.

17. Termination. Should circumstances arise that render the purposes of this Grant impossible to accomplish, this Grant may be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction, subject to the provisions of Paragraph 18 herein. In addition, Grantors reserve the right to terminate this Grant at the end of each fifty-year term, said terms being measured from the Effective Date hereof, and upon notice to the Grantee of intent to terminate no later than ten (10) years before the end of each fifty-year term. Said notice shall be delivered to the Grantee within a one year period beginning on the first day and ending on the last day of such respective fortieth year period. Said notice shall be effective only if in writing and delivered either (i) in person to the parties' respective authorized agent or (ii) by First Class U.S. Mail or (iii) by overnight courier with tracking capabilities to the addresses provided herein, or to such other person or address as either party may designate in writing and deliver as herein provided. Should Grantors fail to provide timely notice of intent to terminate as herein provided, this Grant shall automatically renew for an additional fifty-year term.

18. Interpretation. Nothing in this Grant or the Master Plan shall be interpreted or intended to be utilized to interfere with the rights and duties granted to the Agricenter Commission pursuant to Chapter 141 of the Private Act of 1981, nor shall this Grant, or any provisions herein, be construed or interpreted as in any way modifying or exceeding the provisions of any law with respect to the use of the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Conservation Easement to be duly executed and delivered by their respective officials thereunto duly authorized as of the date first written above.

GRANTEE:

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

By: Jean C. Nelson

Print Name: Jean C. Nelson

Title: President and Executive Director

GRANTORS:

SHELBY COUNTY, TENNESSEE

By: _____
A C Wharton, Jr., County Mayor

SHELBY COUNTY AGRICENTER COMMISSION

By: _____
Hamilton Smythe, III, Chairman

Approved as to Form:

By: _____
Brian Kuhn, County Attorney

Other County Approvals:

By: _____
Michael Oakes, P.E.
County Engineer

By: _____
Bill Goss
County Real Estate Manager

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, personally appeared **HAMILTON SMYTHE, III**, with whom I am personally acquainted, and who upon oath acknowledged himself to be the **Chairman of the Shelby County Agricenter Commission**, the within named bargainor, and that he as such **Chairman**, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the **Shelby County Agricenter Commission** by himself as such **Chairman**.

WITNESS my hand and Notarial Seal, at office in Memphis, in the County aforesaid, this 9th day of January, 2007.

Paula M. Lewis
Notary Public

MY COMMISSION EXPIRES:

PAULA M. LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF SHELBY
MY COMM. EXP. JUNE 15, 2010

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, personally appeared **A C WHARTON, JR., Mayor of Shelby County, Tennessee**, with whom I am personally acquainted, and who upon oath acknowledged himself to be the **Mayor of Shelby County, Tennessee**, the within named bargainor, one of the counties of the State of Tennessee, and that he as such Mayor of said county, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of **Shelby County, Tennessee**, by himself as such **Mayor** of said **Shelby County, Tennessee.**

WITNESS my hand and Notarial Seal, at office in Memphis, in the County aforesaid, this 16 day of January, 2007.

Paula M. Lewis
Notary Public

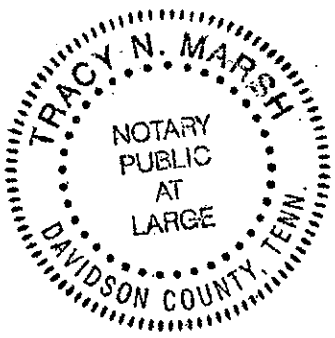
MY COMMISSION EXPIRES:

PAULA M. LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF SHELBY
MY COMM. EXP. JUNE 15, 2010

STATE OF TENNESSEE)
)
COUNTY OF Davidson)

Personally appeared before me, the undersigned, a Notary Public in and for said State and County, Jean C. Nelson, with whom I am personally acquainted, and who acknowledged that She executed the within instrument for the purposes therein contained, and who further acknowledged that She is the President + Exec. Director 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, at Nashville, Tennessee, this 4th day of January, 2007.



Tracy N. Marsh
Notary Public
My Commission Expires: My Commission Expires July 21, 2007

EXHIBIT A

PROPERTY DESCRIPTION

"County Property"

BEGINNING at the intersection of the west right-of-way line of Germantown Parkway and the south right-of-way line of Walnut Grove Road; thence south along said west right-of-way line to the north top of bank of the Wolf River; thence with said north and northeasterly top of bank of the Wolf River to a point on the east line of the Brandon Family, LP property (Instrument Number HC 7038); thence N 06°08'17" E along said east line a distance of 529.49 feet to an angle point; thence N 38°15'51" W along said east line a distance of 245.57 feet to an angle point; thence N 46°44'09" E along said east line a distance of 124.00 feet to an angle point; thence N 27°45'51" W along said east line a distance of 83.00 feet to an angle point; thence N 01°29'09" E along said east line a distance of 111.00 feet to an angle point; thence N 31°00'51" W along said east line a distance of 185.00 feet to an angle point; thence N 03°14'09" E along said east line a distance of 175.00 feet to an angle point; thence N 39°45'51" W along said east line a distance of 230.00 feet to an angle point; thence S 69°59'09" W along the north line of said Brandon property a distance of 191.00 feet to a point on the west line; thence S 01°44'09" W along said west line of Brandon property a distance of 241.00 feet to an angle point; thence S 04°44'09" W along said west line a distance of 217.00 feet to an angle point; thence S 18°44'09" W along said west line a distance of 185.00 feet to an angle point; thence S 16°44'09" W along said west line a distance of 127.00 feet to an angle point; thence S 26°44'09" W along said west line a distance of 248.53 feet to a point on the north top of bank of the Wolf River; thence northwestwardly along said top of bank of the wolf river the following courses and distances; N 61°22'43" W a distance of 113.88 feet to a point; N 54°02'51" W a distance of 336.69 feet to a point; N 39°37'53" W a distance of 223.56 feet to a point; N 28°04'22" W a distance of 391.30 feet to a point; thence N 33°32'36" W a distance of 162.98 feet to a point on the east line of the Brandon family property (Instrument Number HC 7038); thence N 35°29'06"E along said east line a distance of 338.46 feet to an angle point; thence N 07°29'06" E along said east line a distance of 250.00 feet to an angle point; thence N 21°00'54" W along said east line a distance of 130.00 feet to an angle point; thence N 76°30'54" W along the north line of said Brandon property a distance of 260.00 feet to an angle point; thence N 60°00'54" W along said north line a distance of 210.00 feet to an angle point; thence S 57°29'06" W along said north line a distance of 408.91 feet to the top of bank of said wolf river; thence N 40°59'52" W a distance of 522.57 feet to an angle point; thence N 41°06'18" W a distance of 406.90 feet to an angle point; thence N 23°49'38" W a distance of 100.55 feet to an angle point; thence N 11°49'27" W a distance of 136.72 feet to an angle point; thence N 01°38'31" W a distance of 142.54 feet to a point on the south line of the CSX Railroad (100 foot ROW); thence N 81°49'23" E along said south line a distance of 670 feet, more or less, to the point; thence N 04°20'02" E crossing said CSX Railroad (100 foot ROW) to a found 1/2" iron pin in the north line of said CSX Railroad, said point also being on the east line of the Brandon family property (Instrument Number HC 7038), said point having Tennessee State Plane Coordinates of N 320530.8667 and E 810031.3384; thence N 04°20'02" E along said east line and along the east line of the Richard Pearce property (Instrument Number DK 6926) a distance of 2072.48 feet to

the northeast corner of said Pearce property; thence N 86°16'39" W along the north line of said Pearce property a distance of 830.34 feet to a point on the said south line of Interstate Highway 40; thence N 44°20'04" E along said south line a distance of 646.52 feet to an angle point; thence N 50°30'38" E along said south line a distance of 493 feet, more or less, to a point in the northwest corner of the federal correctional facility property; thence in a southeastwardly direction along the westerly property line of the federal correctional facility property to a point in the southerly right-of-way line of the said CSX Railroad; thence in an eastwardly direction along said southerly right-of-way line of said CSX Railroad to a point in the southwesterly right-of-way line of Raleigh-LaGrange Road; thence in a southeastwardly direction along the southwesterly right-of-way line of Raleigh-LaGrange Road to its intersection with the west right-of-way line of Germantown Parkway; thence in a southwardly direction along the west right-of-way line of Germantown Parkway to the POINT OF BEGINNING.

Less and Except that portion of the said CSX Railroad (100 foot ROW) contained within this description.

"Agricenter property"

BEGINNING at a point in the south line of Walnut Grove Road (160 feet wide), said point being 1274.81 feet west of the west line of Germantown Parkway (160 feet wide) and said point being the northwest corner of the Shelby Farms Equestrian Center; thence S 16°08'46" E along the west line of the Equestrian Center 727.93 feet to a monument; thence S 02°25'53" W continuing along the west line of the Equestrian Center 1149.38 feet to a monument set in a paved road; thence S 03°17'55" W continuing along the west line of the Equestrian Center along the centerline of said road 518.12 feet to a monument set in the centerline of an intersecting paved road, said point being the southwest corner of the Shelby Farms Equestrian Center; thence S 87°25'42" E along the south line of the Equestrian Center along the centerline of said road 559.09 feet to a monument set in the west line of Germantown Parkway; thence S 14°44'58" W along the west line of Germantown Parkway 2158.85 feet to a monument set in the north line of a power line easement; thence leaving said west line of Germantown Parkway S 60°28'32" W along the north line of said easement 310.02 feet to a monument; thence N 87°25'42" W 5627.20 feet to a monument set on the bank of a drainage ditch; thence N 33°29'14" W 174.81 feet, more or less, to a point in the east line of the 374.5806 acre mature bottomland hardwood/bald cypress forest property designated by the Tennessee General Assembly as the Shelby Farms Forest, known as the Lucius Burch Natural Area (southern forest); thence N 07°00'31" E 2238.00 feet, more or less, to a point, said point being the northeast corner of said Lucius Burch Natural Area; thence N 85°58'13" W along the north line of said Lucius Burch Natural Area 1832.32 feet, more or less, to a point; thence leaving said north line N 33°29'14" W 120.00 feet, more or less, to a monument set in the west edge of a silt levee; thence N 70°58'24" W 3593.12 feet to a monument set in a field; thence N 31 °50'38" W 184.46 feet to a point in the east line of the Walnut Grove Landfill; thence along said east line N 04°00'00" E 740.61 feet to an angle point; thence continuing along said east line N 09°00'00" W 450.00 feet to an angle point; thence continuing along said east line N 48°30'00" W 400.00 feet to a point in the north line of said Walnut Grove Landfill; thence along said north line S 81 °36'16" W 332.10 feet to a point; thence N 03°55'00" E 246.46 feet to a point in the south line of Walnut Grove Road (160 feet wide); thence with said south line of Walnut Grove Road S 84°13'16" E 11373.52 feet to a point of curvature; thence continuing along said south line on a curve to the right having a radius of

2247.83 feet a distance of 288.35 feet to a monument, said point being the POINT OF BEGINNING.

The Agricenter property includes Tier 2 which is the Agricenter campus and Tier 3 which is the property outside the campus.

The Tiers are shown on the map attached hereto as Exhibit B.

EXHIBIT A-1

ROAD RIGHT-OF- WAY PROPERTY

The following land is **EXCLUDED** from the provisions of this Conservation Easement:

1. Existing and future widening of designated public roads and rights-of-way including, but not limited to, Walnut Grove Road (160' R.O.W.), Mullins Station Road (108' R.O.W.), and Raleigh-LaGrange Road (108' R.O.W.).

2. Land for proposed "Parkway right-of-way" to be used for the Shelby Fam1S Parkway and Walnut Grove Road widening and improvement projects.

EXHIBIT A-2

AREA 10 PROPERTY DESCRIPTION

The following land is **EXCLUDED** from the provisions of this Conservation Easement:

"Area 10"

BEGINNING at a point in the southerly right-of-way line of the Louisville and Nashville Railroad, said point being located 1500 feet, more or less, west of the centerline of Whitten Road; thence S 13°42'00" W a distance of 710 feet, more or less, to a point; thence S 69°50'04" W a distance of 419.19 feet to a point of curvature; thence along a curve to the left, having a radius of 2710 feet, a distance of 2554.12 feet to a point of tangency; thence S 15°50'04" W a distance of 2119.19 feet to a point; thence N 83°09'56" W a distance of 148.41 feet to a point of curvature; thence along a curve to the right, having a radius of 3000 feet, a distance of 2199.11 feet to a point of tangency, said point being in east line of the 413.7512 acre mature bottomland hardwood/bald cypress forest property designated by the Tennessee General Assembly as the Shelby Farms Forest, known as the Lucius Burch Natural Area (northern forest); thence along said easterly line N 41°09'56" W a distance of 4648.41 feet to a point in the southerly line of the Louisville and Nashville Railroad right-of-way; thence in an eastwardly direction along said southerly line of the Louisville and Nashville Railroad right-of-way to the POINT OF BEGINNING.

EXHIBIT A-3

EXCEPTIONS TO MORATORIUM

On Tier I:

a. Lucius Burch Natural Area Gateway Project, if permitted by the State of Tennessee;
b. Visitors Center/Plough Park Sewer Extension;
c. Public Restroom Construction (Plough Park/Gate 12)
d. Renovation/Expansion of Plough Park for playground equipment; and
e. Shelby Farms Parkway.

On Tier 2:

Construction of improvements devoted exclusively to agriculture, which may include agricultural trade association offices but may not include manufacturing.

Office Space Expansion to Helena Chemical Co. office space - 7664 Moore Road

Agricenter East Pavilion - Clear span addition to main complex facility - 7777 Walnut Grove Road

Monsanto - storage area for equipment and cotton sample office - 7616 Moore Road

Equipment shed area for farm equipment for research vendors - 7518 Moore Road

TCI Landscape - office building adjacent to Quonset Hut - 7546 Moore Road
Farmers Market tent on south side of RV Park-7777 Walnut Grove Road

Parking area for Wildlife Observation Tower

On Tier 3:

Catch'em Lake Bait Shop, restrooms and pavilion area - 6913 Moore Road

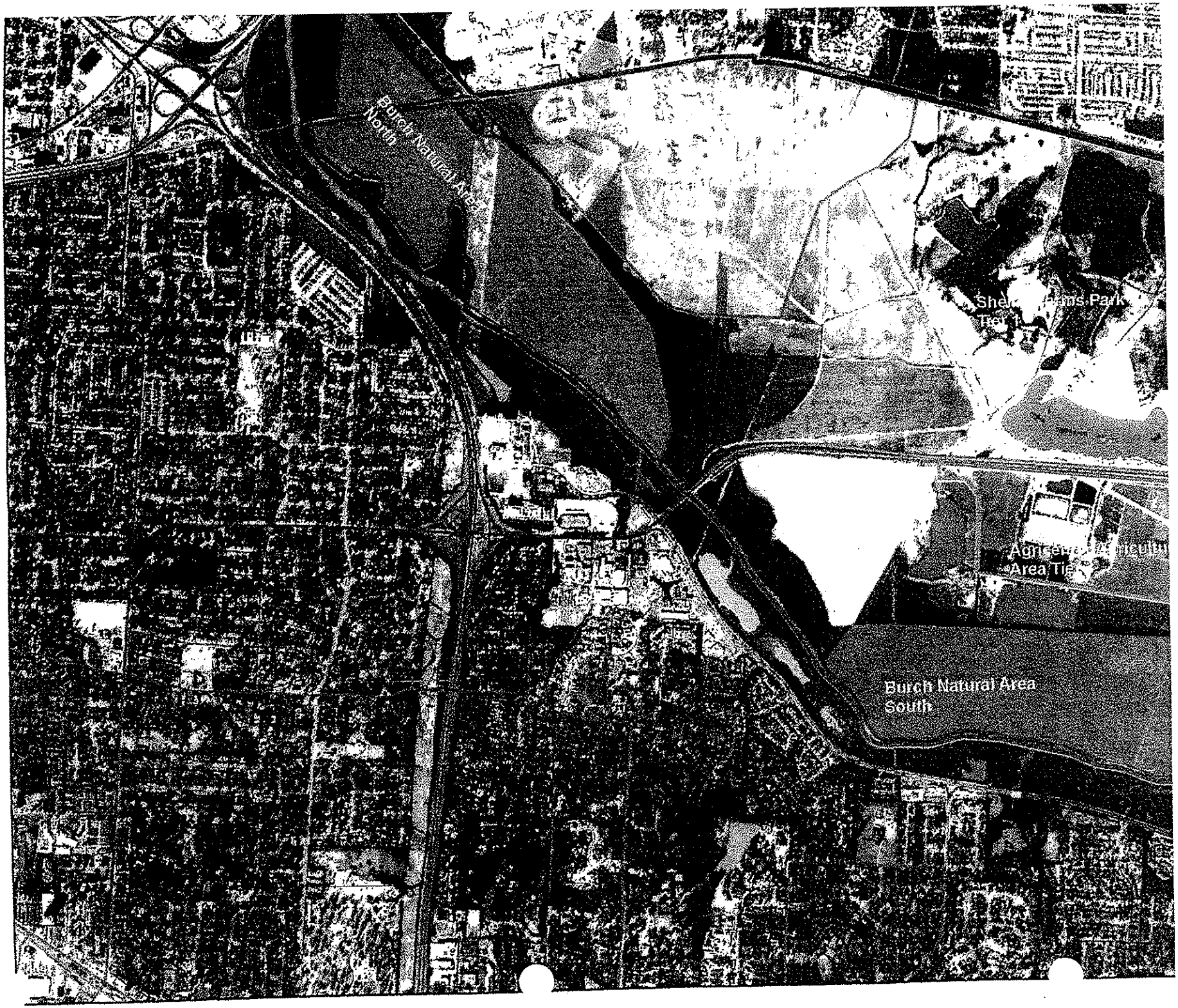
On Tier 4:

Buildings to accommodate shows of horse show associations.

Agricenter Show Place Arena restroom upgrades - 105 S. Germantown Parkway

EXHIBIT B

MAP OF TIERS


Burch Natural Area North
Burch Natural Area South