

**DEEP FORD  
CONSERVATION  
EASEMENT  
DOCUMENT**

December 27, 2001

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Prepared by George Asimos, Esquire

Lake Toxaway - 66 +/- acres

CONSERVATION EASEMENT  
AND  
DECLARATION OF RESTRICTIONS AND COVENANTS

THIS CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS ("Conservation Easement") made December 27, 2001 by and between LAKE TOXAWAY COMPANY, INC. ("Owner"), a North Carolina corporation having an address of Post Office Box 70, Lake Toxaway, NC 28747 ("Owner"), and NORTH AMERICAN LAND TRUST ("Trust"), a Pennsylvania non-profit corporation having an address of Post Office Box 1578, Chadds Ford, PA 19317,

WITNESSETH THAT:

WHEREAS, Owner is the owner of certain real property in Hogback Township, Transylvania County, North Carolina that consists of 66.194 acres, more or less, (hereinafter called the "Property") as most recently described in deeds granted to Owner and recorded by the Register of Deeds at Plat file 9, Slides 495 & 496 and which is more particularly described by metes and bounds and by survey plan in Exhibit "A" attached hereto and incorporated herein, it being understood and agreed that the two areas of approximately two acres each labeled as "Building Envelopes" on Exhibit "A" are not included within the "Property"; and

WHEREAS, Trust is a non-profit corporation, having a tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), which has been established as a public charity for the purpose of preserving and conserving natural habitats and environmentally sensitive areas and for other charitable, scientific and educational purposes and which is a "qualified organization" under Section 170(h)(3) of the Code; and

WHEREAS, preservation of the Property shall serve the following purposes, (the "Conservation Purposes"):

Preservation of the Property as a relatively natural habitat of fish, wildlife, or plants or similar ecosystem; and

Preservation of the Property as open space which provides scenic enjoyment to the general public and yields a significant public benefit; and

Preservation of the Property as open space which, if preserved, will advance a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit; and

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WHEREAS, the ecological and scenic significance of the Property and the Conservation Purposes has been established in the reports, plans, photographs, documentation, and exhibits prepared by North American Land Trust (collectively called the "Baseline Documentation"):

The Property is a relatively natural area in which a significant wildlife population and stable plant community and similar ecosystems exist, including stream habitat for native trout;

The Property consists of unique, environmentally sensitive land area including mature forests and watershed lands for the Deep Ford Falls stream, a tributary to Lake Toxaway;

The Property consists of valuable scenic and open-space vistas that can be seen from a National Forest;

The Property lies in the vicinity of, and contributes to the ecology of, nearby lands owned by the United States Forest Service known as Panther Town Valley Wildlife Sanctuary and serves as a natural buffer area for other protected lands;

The Property is contiguous to lands previously protected by Conservation Easements;

The Property contains wetland areas that protect the water quality of Deep Ford Falls stream and the watershed of Lake Toxaway; and

WHEREAS, Owner and Trust desire to perpetually conserve the natural, scientific, educational, open space, scenic and historical resources of the Property to accomplish the Conservation Purposes; and

WHEREAS, Owner intends to grant the easement and impose the restrictive covenants on the Property as set forth in this Conservation Easement to accomplish the Conservation Purposes; and

WHEREAS, Owner and Trust intend that this document be a "conservation agreement" as defined in Chapter 121, Article 4, Section 121-34 g g of the General Statutes of North Carolina, known as the Historic Preservation and Conservation Agreement Act (the "Act").

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, conditions, restrictions, and promises contained in this Conservation Easement, and intending to be legally bound hereby, Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Trust, its successors and assigns, the easements, covenants, prohibitions and restrictions set forth in this Conservation Easement, in perpetuity, to accomplish the Conservation Purposes. Trust hereby accepts the grant of such easements and agrees to hold

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such easements exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in this Conservation Easement.

#### ARTICLE 1. GRANT OF EASEMENTS

Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Trust, its successors and assigns, a perpetual easement in gross over the Property for the purpose of preserving and protecting the Conservation Purposes and enforcing the restrictive covenants set forth below. In addition, Owner hereby grants and conveys unto Trust, its successors and assigns, the easement and right of Trust and its agents to enter upon and inspect the Property, with access over and across the Property if necessary, for compliance with this Conservation Easement at any time and from time to time, provided that Owner is first given notice of any such visit, at least seven (7) days in advance, except in cases of suspected or known violations of this Conservation Easement.

#### ARTICLE 2. OWNER'S DECLARATION OF COVENANTS AND RESTRICTIONS

Owner, for itself and its successors and assigns, covenants and declares that the Property shall be, and hereby is, bound by and made subject to the following covenants and restrictions in perpetuity, subject to and excepting only the Reserved Rights set forth in Article 3 of this Conservation Easement:

- 2.1. The Property shall not be used for any residential, commercial, institutional, or industrial purpose or purposes. Among the uses prohibited by the preceding sentence are, without limiting the meaning or interpretation of the preceding sentence: (1) manufacture or assembly of any products, goods, equipment, chemicals, materials or substances of any kind or nature whatsoever; (2) sale of any products, goods equipment, chemicals, materials, substances or services of any kind or nature whatsoever; (3) storage of any products, goods, equipment, chemicals, materials or substances of any kind or nature, except if stored for use upon the Property in connection with activities not prohibited by this Conservation Easement; (4) removal of ground water for sale or for use off of the Property or for use for activities not permitted by this Conservation Easement; and (5) offices for persons involved in the sale, manufacture or assembly of goods or services or for the performance of services
- 2.2. There shall not be constructed, cut, created or placed on the Property any road, driveway, cartway, path or other means or right of passage across or upon the Property if the same is to be used, nor may any road, driveway, cartway, path or other means or right of passage located on the Property be used, for access to any use (whether or not upon the Property) which is prohibited by this Conservation Easement.

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- 2.3. No Structure (hereinafter defined) of any kind shall be built, erected, installed, placed, affixed or assembled within or upon the Property or upon any trees or other natural features upon the Property. "Structure" shall mean any assembly of material forming a construction for occupancy or use for any purpose and erected upon or attached to the ground including, for example but not to limit the foregoing definition, the following: building, platform, shed, bin, shelter, dam, dike, tower, tank, antenna, and bulkhead.
- 2.4. No cutting of live timber or removal or destruction of live trees shall be permitted upon or within the Property.
- 2.5. No signs, billboards or outdoor advertising structures shall be placed, erected or maintained within the Property.
- 2.6. There shall be no filling, excavating, dredging, surface mining, drilling, or any removal of topsoil, sand, gravel, rock, peat, minerals or other materials, upon or from the Property.
- 2.7. There shall be no dumping of ashes, trash, garbage, or any other unsightly or offensive materials at any place on, under or within the Property.
- 2.8. There shall be no material change in the topography of the Property in any manner.
- 2.9. There shall be no dredging, channelizing or other manipulation of natural water courses or any water courses existing within the Property as of the date of this Conservation Easement.
- 2.10. All activity on the Property shall be conducted in accordance with soil conservation practices as then established or recommended by the Natural Resources Conservation Service of the United States Department of Agriculture or any successor governmental office or organization performing the same function within the United States government, as approved by the Trust.
- 2.11. There shall be no introduction of plant or animal species within the Property except those native or historic to the area in which the Property is located.
- 2.12. The Property may not be used as open space for purposes of obtaining or qualifying for governmental approval of any subdivision or development on lands outside the boundaries of the Property nor, without limitation of the foregoing, may the Property be used in the calculation of the amount or density of housing units or other construction or development on lands outside the boundaries of the Property.
- 2.13. Owner shall notify Trust prior to taking any action which may adversely affect any of the Conservation Purposes.

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- 2.14. The parties recognize that this Conservation Easement cannot address every circumstance that may arise in the future, and the parties agree that the purpose of this Conservation Easement is to preserve the Property predominantly in its present condition, and to protect or enhance the Property's environmental systems. Without limiting the preceding covenants and restrictions, any use or activity which is not reserved in Article 3 below and which is inconsistent with the Conservation Purposes or which materially threatens the Conservation Purposes is prohibited.
- 2.15. The prohibitions and restrictions in this Conservation Easement shall be considered cumulative. No prohibition or restriction contained herein shall be interpreted as a limitation on the meaning, effect, interpretation or enforceability of another prohibitive or restrictive provision.

#### ARTICLE 3. RESERVED RIGHTS

Owner reserves for Owner and Owner's successors and assigns who may now or hereafter be owner of all or part of the Property the rights set forth in this Article 3 (the "Reserved Rights"). Owner and Trust intend that these Reserved Rights and the activities and uses which are described below as the Reserved Rights are narrow exceptions to the prohibitions and restrictions set forth in Article 2 and, hence, subject to review and approval by the Trust in accordance with this Article, may be conducted as described below notwithstanding the prohibitions and restrictions of Article 2 without adversely affecting the Conservation Purposes.

- 3.1. Structures may be erected and maintained upon the Property as follows:
- 3.1.1. Fences, including fences designed to exclude deer from the Property, and underground utilities for service to the Structures allowed on the Property.
  - 3.1.2. An access driveway for the purpose of access to and from each of the two areas labeled as "Building Envelopes" on Exhibit "A", which must be approved in advance by Trust, provided that each such access driveway does not exceed twelve feet in width (except for short lengths of pavement widening for "pull over lanes" for approaching vehicles) and is located and constructed so as to minimize the necessity of tree removal and maintain the existing forest canopy.
  - 3.1.3. Ponds, covered picnic pavilions (not exceeding an aggregate of 500 square feet of covered area for all pavilions), a shed or sheds for storage of maintenance equipment and materials solely related to maintenance of the Property (not exceeding an aggregate of 1,000 square feet of covered area for all sheds), and underground utilities to serve the aforesaid facilities.

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- 3.1.4. Structures necessary for drainage control of the Property provided that such Structures are designed for the purpose of preserving wetland areas, if any, existing as of the date of this Conservation Easement.
- 3.1.5. Owner may construct raised walkways or pedestrian bridges for access to any or all of the land within the Property for any purpose not prohibited by this Conservation Easement, subject to the following limitations and conditions: (a) it can be demonstrated to Trust that it is not feasible to use any existing walkway, trail or bridge or to improve any existing walkway, trail or bridge for such access purpose; (b) construction of the raised walkway or bridge shall not, as determined by the Trust in its reasonable judgment, produce any material adverse affect on any of the Conservation Purposes; and (c) Owner shall comply with all other covenants and restrictions of this Conservation Easement.
- 3.1.6. If there is any Structure existing on the Property on the date of this Conservation Easement which would not be permitted to be erected or installed on the Property under these Reserved Rights then any such existing Structure may, nevertheless, be repaired or restored to the condition and dimensions in which the Structure existed on date of this Conservation Easement.
- 3.2. Owner shall have the right to install walking trails the surface of which will be either unimproved or improved with pervious material.
- 3.3. Owner may install double track trails for limited vehicular access to the areas of the Property otherwise inaccessible by vehicle for use in maintenance, emergency access, and other permitted uses of the Property provided that: the surface of such trails shall remain pervious (such as dirt or gravel); such trails shall be located, to the extent possible, in the path of forestry roads or other trails existing on the date of this Conservation Easement and; such trails shall be otherwise installed in a manner to avoid unnecessary tree removal, land disturbance and soil erosion.
- 3.4. Cutting of timber or removal or destruction of trees shall be permitted upon or within the Property under the following conditions:
- 3.4.1. Clearing and restoring vegetative cover that has been damaged or disturbed by forces of nature or otherwise.
- 3.4.2. Selectively thinning or harvesting trees, but only if done in accordance with the good forest management practices and according to a plan, approved by Trust in advance of any thinning or harvesting, the purpose of which is to preserve the health of existing forested areas.

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- 3.4.3. Removal of trees to the minimum extent necessary to exercise the Reserved Rights.
- 3.4.4. Selectively removing and trimming trees for the purpose of enhancing the scenic view from either of the Building Envelopes shown on Exhibit "A" in accordance with a plan determined in advance by the Trust to be consistent with the Conservation Purposes, provided further that in no event shall mature canopy trees of over sixty (60) feet in height be removed without approval of the Trust in its discretion.
- 3.5. Owner may install a reasonable number of regulatory or directional signs including, for example but not for limitation of the foregoing, "no trespassing" signs, "no gunning" signs, or "no hunting" signs and signs for any of the following purposes:
- 3.5.1. stating the common name of the Property, the names and addresses of the occupants or both;
- 3.5.2. advertising or directing participants to an activity permitted under the provisions of this Conservation Easement;
- 3.5.3. identifying the interest of Owner or Trust in the Property; and
- 3.5.4. educating the public as to the ecology of the area.
- 3.6. Dredging, channelizing or other manipulation of previously-altered natural or manmade water courses within the Property may be conducted if necessary to maintain wetlands, if any, existing on the Property or to restore wetlands previously existing on the Property, if any, provided all necessary government approvals are obtained.
- 3.7. The right of Owner to drill and maintain a well or wells with necessary appurtenances, and to withdraw water from the Property, for service to a residential use located within either or both of the Building Envelopes shown on Exhibit "A"; provided, that this Reserved Right shall only be exercised if the following conditions are first satisfied:
- 3.7.1. Owner shall demonstrate to Trust's satisfaction, in the reasonable exercise of its judgment, that it is not possible, for reasons beyond Owner's control, for Owner to install the well and appurtenances within the Building Envelope shown on Exhibit "A" for which the water is to be used.
- 3.7.2. The well or wells and all above-ground appurtenances shall occupy an aggregate area of no more than 500 square feet.



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- 3.7.3. All appurtenances shall be below ground, to the extent feasible.
- 3.7.4. The installation and maintenance of the well or wells and appurtenances, including underground transmission lines, shall not require the removal of any live trees having a diameter of greater than 10" at a point four feet above ground level.
- 3.7.5. No building shall be constructed to house equipment or operate the well.
- 3.8. The right of Owner to use the Property for the underground disposal of waste water for service to a residential use located within either or both of the Building Envelopes shown on Exhibit "A"; provided, that this Reserved Right shall only be exercised if the following conditions are first satisfied:
  - 3.8.1. Owner shall demonstrate to Trust's satisfaction, in the reasonable exercise of its discretion, that it is not possible, for reasons beyond Owner's control, to utilize for such waste water disposal purpose an area that is within the Building Envelope to be served.
  - 3.8.2. Wastewater shall be from residential sources only.
  - 3.8.3. Trust determines that the design of the system of waste water treatment, the location of the area of disposal, and the standards of design, treatment, waste water quality, waste water quantity, loading, maintenance, operation and other relevant features of the proposed system are sufficient, whether or not consistent with or sufficient to satisfy governmental requirements, to prevent any surface or ground water contamination, damage to or degradation of habitat for flora or fauna or adverse effect on any of the Conservation Purposes or Conservation Values.
  - 3.8.4. The installation and maintenance of the waste water disposal system and appurtenances, including underground transmission lines, shall not require the removal of any live trees having a diameter of greater than 10" at a point four feet above ground level.
- 3.9. Owner shall notify Trust in writing before exercising any Reserved Right unless such Reserved Right is being exercised at the date of this Conservation Easement and is described in the Baseline Documentation, including amendments to the Baseline Documentation approved by the Trust.
- 3.10. None of the Reserved Rights described in Section 3.3, 3.6, 3.7 or 3.8 or in paragraph 3.1.2, 3.1.3., 3.1.4., 3.1.5., 3.4.2., 3.4.3 or 3.4.4. above may be exercised without first satisfying the following conditions and requirements:

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- 3.10.1. Owner shall notify Trust in writing before exercising any of such Reserved Rights.
- 3.10.2. The Trust must be satisfied, as evidenced by its prior written approval of the Owner's proposed exercise of a Reserved Right, that any use or activity done in the exercise of the Reserved Right will have no material adverse effect on the Conservation Purposes or on the significant environmental features of the Conservation Area described in the Baseline Documentation.
- 3.11. Trust's prior written approval of the exercise of Reserved Rights shall be obtained, conditionally obtained or declined according to the procedure provided in this Section. At least ninety (90) days before Owner begins, or allows, any exercise of Reserved Rights on the Conservation Area Owner must notify Trust in writing of Owner's intentions to do so. Such notice must include plans depicting, in such detail as Trust requests, the construction or other use or activity, and location thereof, which Owner intends to undertake. Trust may request additional information or details not provided by Owner regarding Owner's proposed exercise of Reserved Rights as Trust reasonably believes necessary to determine compliance with this Article. Trust shall have sixty (60) days from receipt of the notice or, if later, any additional information regarding the proposed use or activity requested by Trust, in which to make one of the of the following determinations:
  - 3.11.1. Approve the Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by the Owner. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right solely in accordance with the notice and other information submitted to Trust; which covenant shall be enforceable by Trust as fully as if set forth in this Conservation Easement.
  - 3.11.2. Approve the Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by the Owner but subject, however, to such qualifications and conditions as Trust may impose in its notice of approval. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right, if at all, only in accordance with the notice and other information submitted to Trust, as modified or supplemented by the qualifications and conditions that Trust imposed; which covenant shall be enforceable by Trust as fully as if set forth in this Conservation Easement.
  - 3.11.3. Decline to grant approval of Owner's proposed exercise of a Reserved Right on the basis of the notice and other materials submitted.
- 3.12. Unless a longer period is expressly provided in writing by the Trust, any activity involving the exercise of any of the Reserved Rights approved by the Trust as aforesaid shall be completed within five years after the Trust's written

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determination of approval of the activity. If such approved activity has not been completed within such five year period then Owner must reapply for approval by the Trust according to the procedure set forth in this Article. Owner may request Trust's approval of a period longer than five years and so long as such request is not, in the Trust's sole judgment, inconsistent with the Conservation Purposes, such approval shall not be unreasonably withheld.

- 3.13. Owner shall be free to make further requests for approval of the exercise of Reserved Rights; provided, however, that Trust may decline to accept repetitive submissions not materially modified from prior submissions not accepted by Trust.
- 3.14. Trust may condition consideration of a proposal for exercise of Reserved Rights upon the deposit of a sum of money with Trust to secure payment of Trust's reasonable costs of review. The time period for Trust's consideration of the Owner's request shall not run until such deposit is made.
- 3.15. Owner shall be responsible, as a condition of the right to exercise the Reserved Rights, for payment of the Trust's reasonable costs and expenses, including legal and consultant fees, associated with review of the Owner's request for approval.
- 3.16. No assurance is given that any of the above Reserved Rights may be exercised, in such manner as Owner might propose, without having an adverse effect on the Conservation Purposes or other significant ecological values of the Conservation Area. The foregoing procedure is established for the purpose of making that determination. The Reserved Rights may not be exercised unless and until Trust is satisfied that the exercise of the Reserved Right for which approval is sought, and in the manner proposed by the Owner, can be done without an adverse effect on the Conservation Purposes or other significant ecological values of the Conservation Area. Owner hereby waives, for Owner, and Owner's heirs, successors, legal representatives, and assigns, to the fullest extent allowed by law, any and all right to seek or recover damages from Trust in any litigation or other legal action arising from a dispute over Trust's exercise of its rights, obligations or interpretations under this Article 3 and agrees that the sole remedy or legal right to seek redress arising from any decision of the Trust pursuant to this Article 3 shall be to seek a declaratory judgment or other legal declaration by a court of competent jurisdiction as to the rights of Owner hereunder.

#### ARTICLE 4. TRUST'S COVENANTS

- 4.1. Trust shall use its best efforts to enforce both the rights granted to it and the restrictions imposed upon the Property under this Conservation Easement.

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- 4.2. If at any time Trust or any successor or assignee is unable to enforce this Conservation Easement in full or fails to do so, or if Trust or any successor or assignee ceases to exist or ceases to be a "qualified organization" (as defined in the Code) and if, within a reasonable period of time after the occurrence of any of these events, Trust or any successor or assignee fails to assign all of its rights and responsibilities under this Conservation Easement to a "qualified organization" and "holder", then the rights and responsibilities under this Conservation Easement shall become vested in and fall upon another qualified organization in accordance with a cy pres proceeding in any court of competent jurisdiction.
- 4.3. Notwithstanding the foregoing or anything else in this Conservation Easement to the contrary, Trust and its successors and assigns shall have the right to assign, either wholly or partially, its right, title and interest hereunder provided that the assignee is a "qualified organization" under the Code and provided that the assignee shall hold the Conservation Easement exclusively for the Conservation Purposes. The term "Trust" as used in this Conservation Easement shall mean the above-named Trust and any of its successors and assigns during such period as any such entity is the holder of the rights granted to the Trust in this Conservation Easement.

#### ARTICLE 5. REMEDIES AND ENFORCEMENT

- 5.1. Trust shall have the right to enforce by proceedings at law or in equity each and every one of the covenants and restrictions set forth in this Conservation Easement. The foregoing shall not limit any of the rights or remedies available to Trust as specifically set forth in any law or in this Conservation Easement.
- 5.2. Without limitation of any other rights of Trust in this Conservation Easement, Trust's right of enforcement of this Conservation Easement shall include the right to seek specific performance by Owner of the restoration of the Property to its original condition as established in the Baseline Documentation or to its condition prior to any activity that violates this Conservation Easement or as otherwise may be necessary to remedy any violation of any easement, covenant, prohibition or restriction in this Conservation Easement, as Trust may elect.
- 5.3. If Owner fails to pay taxes or other governmental assessments which may become a lien on the Property, Trust may, but shall have no obligation to, pay such taxes or assessments or any part thereof upon ten (10) days after sending written notice to Owner, according to any bill, statement, or estimate procured from the appropriate public office. Payment made by Trust shall become a lien on the Property in favor of Trust upon payment by Trust and shall bear interest until Trust is paid by Owner at the rate of eighteen percent (18%) per annum or at the highest rate of interest per annum as is allowed by applicable law, whichever is greater.

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- 5.4. The covenants and restrictions granted to Trust under this Conservation Easement may only be enforced by the Trust and its respective successors and assigns and no third party beneficiary rights, including but not limited to third party rights of enforcement, are created hereby.
- 5.5. In the event that Trust acts, after notice to Owner, to enforce this Conservation Easement or any obligation hereunder, all reasonable expenses incurred by Trust shall be charged to and paid by the Owner, including reasonable attorneys' fees regardless of whether an action or proceeding is commenced. All such expenses, together with costs of collection (including reasonable attorneys' fees) if the Owner is determined by a court to have violated this Conservation Easement, shall be recoverable by Trust and be liens upon the Property, and collection thereof may be enforced by foreclosure and sale of the Property, notwithstanding anything to the contrary, this Conservation Easement shall not merge with any interest in the Property upon such sale and title shall be transferred subject hereto in accordance with the laws of the state in which the Property is located.
- 5.6. Should the Owner or anyone acting by, through, under or on behalf of Owner, commence litigation against Trust to enforce any rights hereunder or to dispute any actions or inaction of the Trust, to enforce any alleged duty or obligation of Trust hereunder or to seek damages or specific performance against the Trust then unless the Trust is finally determined by a court of competent jurisdiction, beyond right of appeal, to have acted in bad faith and contrary to the terms of this Conservation Easement, then the party commencing such litigation shall reimburse the Trust on demand for all costs and expenses, including attorneys fees, reasonably incurred by Trust in its defense in such litigation.
- 5.7. The failure of Trust to exercise any of its rights under this Conservation Easement on any occasion shall not be deemed a waiver of said rights and Trust retains the right in perpetuity to require full compliance by Owner of the covenants and restrictions in this Conservation Easement.
- 5.8. Trust's remedies described in this Article shall be cumulative and concurrent and shall be in addition to all remedies now or hereafter available or existing at law or in equity.

#### ARTICLE 6. GENERAL PROVISIONS

- 6.1. This Conservation Easement gives rise to a real property right and interest immediately vested in Trust. For purposes of this Conservation Easement, the fair market value of Trust's right and interest shall be equal to the difference between (a) the fair market value of the Property as if not burdened by this Conservation

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Easement and (b) the fair market value of the Property burdened by this Conservation Easement.

- 6.2. The parties recognize the environmental, scenic, and natural values of the Property and have the common purpose of preserving these values. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Conservation Purposes and the policies and purposes of Trust. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the Conservation Purposes that would render the provision valid should be favored over any interpretation that would render it invalid. If any provision of this Conservation Easement is determined by final judgment of a court having competent jurisdiction to be invalid, such determination shall not have the effect of rendering the remaining provisions of this Conservation Easement invalid. The parties intend that this Conservation Easement, which is by nature and character primarily prohibitive (in that the Owner has restricted and limited the rights inherent in ownership of the Property), shall be construed at all times and by all parties to effectuate the Conservation Purposes.
- 6.3. Owner covenants and agrees to indemnify, defend and hold harmless Trust, its directors, officers and employees from and against any loss, cost (including reasonable attorneys' fees), liability, penalty, fine, and damage, of any kind or nature whatsoever, which Trust or any of its directors, officers or employees may suffer or incur and which is commenced or threatened against Trust or any of its directors, officers or employees arising from violation of any law involving the Property, any breach of covenants and restrictions in this Conservation Easement, taxes and assessment upon the Property, any death or injury to any person occurring on or about the Property or any loss or damage to any property occurring on or about the Property; provided, however, that Owner shall have no obligation to indemnify Trust against loss, cost, liability, claim, penalty, fine or damage which results solely from Trust's own acts which are finally determined by a court to have been the result of gross negligence or willful misconduct of the Trust or which results entirely from an event or condition arising after Owner is no longer the legal or equitable owner, or in possession, of the Property or any part thereof. Without limitation of anything herein to the contrary, Owner shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operations, upkeep, and maintenance of the Property, including the general liability insurance coverage and compliance with law.
- 6.4. Owner shall continue to pay all taxes, levies and assessments and other governmental or municipal charges that may become a lien on the Property, including any taxes or levies imposed to make those payments.
- 6.5. When a change in conditions gives rise to the extinguishment of this Conservation Easement or a material term or provision hereof by judicial proceeding Trust, on

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any subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds of sale equal to the greater of: (a) the Fair Market Value of this Conservation Easement (hereinafter defined) on or about the date of this Conservation Easement; (b) Trust's Proportionate Share (hereinafter defined) of the proceeds of sale, exchange or involuntary conversion of the Property; and (c) the full proceeds of this Conservation Easement sale, exchange or involuntary conversion, without regard to contrary terms of this Conservation Easement, if state law provides that Trust is entitled to the full proceeds. "Fair Market Value of this Conservation Easement" shall mean the difference between (i) the fair market value of the Property as if not burdened by this Conservation Easement and (ii) the fair market value of the Property burdened by this Conservation Easement. "Trust's Proportionate Share" shall mean the fraction derived from (x) the Fair Market Value of this Conservation Easement on or about the date hereof, as a numerator, and (y) the fair market value of the Property if not burdened by this Conservation Easement, on or about the date hereof, as a denominator. "Proceeds of sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of, the Property minus the actual bona fide expenses of such transaction and an amount attributable to the improvements constructed upon the Property pursuant to the Reserved Rights hereunder, if any. All such proceeds received by Trust shall be used in a manner consistent with the purposes of this grant.

- 6.6. Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Owner and Trust shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by the Owner and Trust, including reasonable attorneys' fees, in any such action shall be paid out of the recovered proceeds. Trust shall be entitled to Trust's Proportionate Share of the recovered proceeds and shall use such proceeds in a manner consistent with the purposes of this grant. The respective rights of the Owner and Trust set forth in Section 6.5 and this Section 6.6 shall be in addition to and not in limitation of, any rights they may have in common law with respect to a modification or termination of this Conservation Easement by reason of changed conditions or the exercise of powers of eminent domain as aforesaid.
- 6.7. Owner and Trust recognize that circumstances could arise which would justify the modification of certain of the restrictions contained in this Conservation Easement. To this end, Trust and the legal owner or owners of the portion of the Property which is the subject of the amendment at the time of amendment, may, if they agree in their sole discretion, to amend this Conservation Easement in a manner which is not inconsistent with the Conservation Purposes; provided, however, that Trust shall not agree to any amendment hereto that would result in this



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Conservation Easement failing to qualify as a "Conservation Easement" under the Act or as a qualified conservation contribution under Section 170(h) of the Internal Revenue Code and applicable regulations.

- 6.8. This Conservation Easement and all of the covenants, indemnifications, releases, easements and restrictions set forth in this Conservation Easement shall run with the land and be binding upon Owner and Owner's successors and assigns, unless otherwise expressly provided in this Conservation Easement. The term "Owner" used in this Conservation Easement shall mean and include the above-named Owner and any of Owner's successors or assigns that are the legal owners of the Property or any part thereof. The term "Trust" used in this Conservation Easement shall mean and include the above-named Trust and of its successors and assigns, it being understood and agreed that any assignee of the rights of Trust hereunder must be a "qualified organization" as defined in Section 170 (h) of the Code, as amended, and shall carry out the obligations of Trust and the intent of this Conservation Easement.
- 6.9. Owner shall be and remain liable for any breach or violation of this Conservation Easement only if such breach or violation occurs during such time as Owner is the legal owner of the Property.
- 6.10. All mortgages, deeds of trust and other liens or encumbrances upon all or any part of the Property that either come into existence or are recorded in the place for the recording of such liens or encumbrances after the date of this Conservation Easement will be subject to and subordinate to this Conservation Easement.
- 6.11. Nothing in this Conservation Easement shall limit the right of Owner, its successors or assigns to grant or convey the Property, provided that any such grant or conveyance shall be under and subject to this Conservation Easement. Owner shall notify Trust in writing of any sale, transfer, lease or other disposition of the Property or any part thereof, whether by operation of law or otherwise, at least 30 days after such disposition, such notice shall include a copy of the deed, lease, or other declaration of transfer, the date of transfer, and the name or names and addresses for notices of the transferee.
- 6.12. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability of Trust to exercise physical or managerial control over day-to-day operations of the Property, or any of the Owner's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- 6.13. Notwithstanding provisions hereof to the contrary, if any, Owner shall be solely responsible for complying with all federal, state and local laws and regulations in



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connection with the conduct of any use of the Property or the erection of any Structure permitted hereunder, and Owner shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.

- 6.14. All notices required of Owner under the terms of this Conservation Easement, and all requests for the consent or approval of Trust, shall be in writing shall be deemed to have been given when either served personally or sent by certified mail, with return receipt requested and postage prepaid, addressed to Trust at the address set forth on the first page of this Conservation Easement or such other address provided by notice from Trust or Owner to the other for the purpose.
- 6.15. Trust makes no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to Owner or any other person or entity under United States or any state, local or other tax law to be derived from the donation of this Conservation Easement or other transaction associated with the donation of this Conservation Easement. This donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. Trust makes no warranty, representation or other assurance regarding the value of this Conservation Easement or of the Property. As to all of the foregoing, Owner is relying upon Owner's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon Trust or any legal counsel, accountant, financial advisor, appraiser or other consultant of Trust. In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs affecting Owner or Owner's successors or assigns or other similar matter then Trust shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by Trust in responding or replying thereto.
- 6.16. This Conservation Easement is intended to a "conservation agreement" as defined in the Act.
- 6.17. By signing this Conservation Easement, Owner acknowledges, warrants and represents to Trust that:
- 6.17.1. Owner has received and fully reviewed the Baseline Documentation in its entirety.
- 6.17.2. The Baseline Documentation includes, among other things:
- i) The appropriate survey maps showing the property line and other contiguous or nearby protected areas.
  - ii) A map of the area drawn to scale showing all existing

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man-made improvements or incursions (such as roads, buildings, fences or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas).

- iii) Aerial photographs of the Property at an appropriate scale taken as close as possible to the date the donation is made.
- iv) On-site photographs taken at appropriate locations on the Property.


- 6.17.3. The Baseline Documentation is an accurate representation of the condition of the Property.
- 6.17.4. Owner has been represented by counsel of Owner's selection, and fully understands that Owner is hereby permanently relinquishing property rights which would otherwise permit the Owner to have a fuller use and enjoyment of the Property.
- 6.17.5. The undersigned individual or individuals signing as or on behalf of the Owner has all legal authority to enter into this Conservation Easement and perform all of the obligations of the Owner hereunder, as the binding act of the Owner.
- 6.17.6. Owner is seized of the Property in fee simple title. Owner has the right to grant and convey this Conservation Easement. The Property is free and clear of any and all liens and encumbrances except liens for taxes not yet due and payable and mortgage or deed of trust liens that are subordinate to this Conservation Easement by virtue of the executed form of Joinder and Consent of Mortgagee attached hereto and incorporated herein.

TO HAVE AND TO HOLD the easements and rights set forth in this Conservation Easement unto Trust, its successors and assigns, for its own use and benefit forever.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Owners and Trust have executed this Conservation Easement as of the day and year first above written:

CQCC01 000551

LAKE TOXAWAY COMPANY, INC.

  
Attest: George Asimov  
Secretary

By: R. A. Heinrich Jr.  
Name: R. A. Heinrich Jr.  
Title: President

NORTH AMERICAN LAND TRUST  
a non-profit corporation

Attest: George Asimov  
George Asimov  
Secretary

By: Andrew L. Johnson  
Andrew L. Johnson  
Vice President  


000031 000552

STATE OF :  
COUNTY OF :

On this, the 27 day of December, 2001, before me, a Notary Public in and for the State of North Carolina, Thomas Bates, the undersigned officer, personally appeared R. D. Drinitz, Jr. who acknowledged himself to be the President of LAKE TOXAWAY COMPANY, INC., a corporation, and that he as such President, being authorized to do so, executed the foregoing Conservation Easement for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Kisha W. Landwehr  
Notary Public  
My commission expires: 7/21/2002

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STATE OF : PENNSYLVANIA  
 COUNTY OF : CHESTER

On this, the 26 day of DECEMBER, 2001, before me, a Notary Public in and for the State of PENNSYLVANIA, STEVEN W. CARTER, the undersigned officer, personally appeared ANDREW L. JOHNSON who acknowledged himself to be the Vice President of NORTH AMERICAN LAND TRUST, a corporation, and that he as such officer being authorized to do so, executed the foregoing Conservation Easement for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Steven W. Carter  
 Notary Public  
 My commission expires: 12/19/05

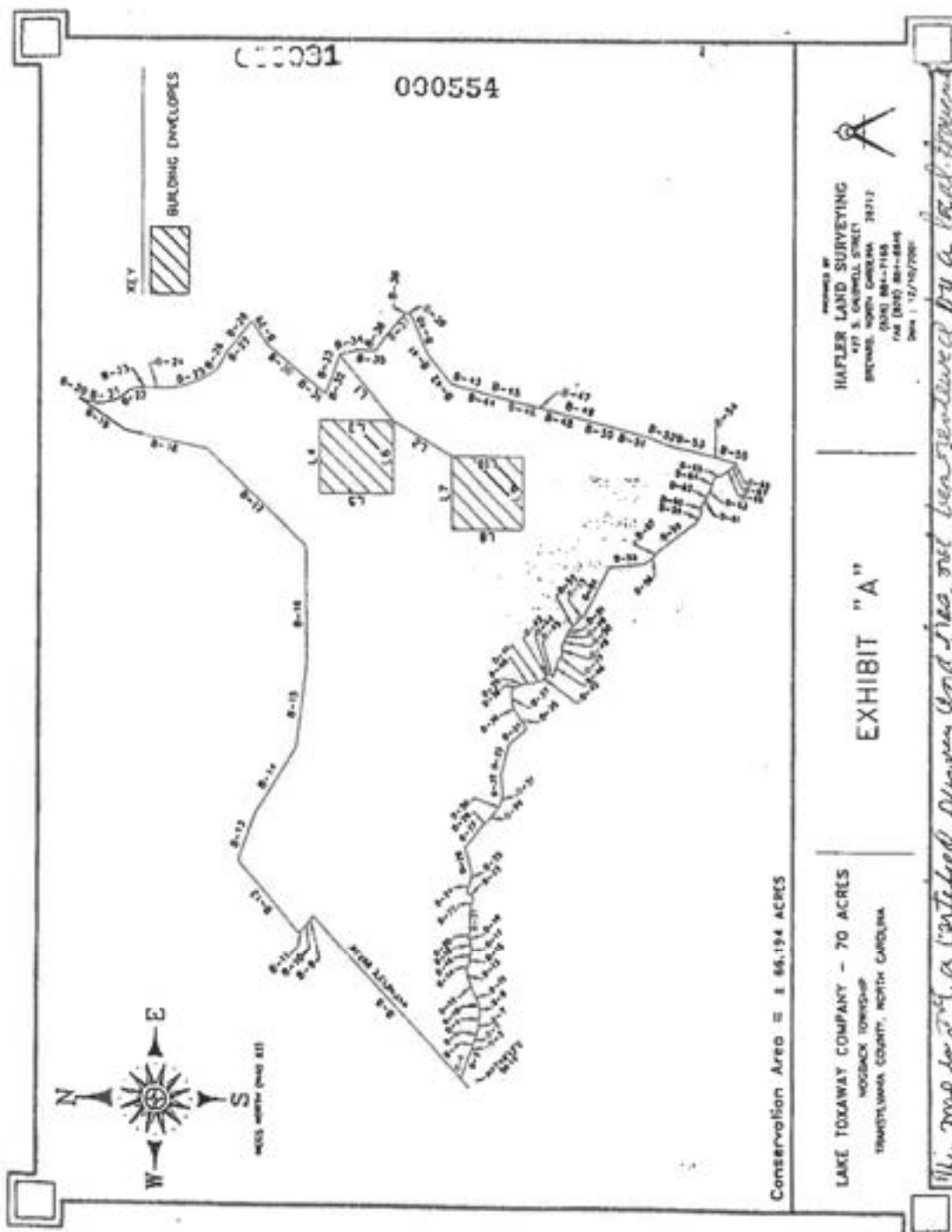
Notary Seal  
 Steven W. Carter, Notary Public  
 Pocopson Twp., Chester County  
 My Commission Expires Dec. 19, 2005  
 Member, Pennsylvania Association of Notaries

STATE OF NORTH CAROLINA TRANSYLVANIA COUNTY  
 The foregoing certificate of Steven W. Carter  
 a Notary Public ( ) of the  
 State and County designated, is (are) certified to  
 be correct.  
 This 27 day of December, 2001

Vicki L. Edwards  
 Register of Deeds

Filed for registration on the 27 day of December  
 2001 at 2:35 o'clock PM and registered and  
 verified on the 27 day of December, 2001  
 in Book No. 81 of page 934  
Vicki L. Edwards  
 Register of Deeds, Transylvania County

By: D'Ann McCall  
 Deputy



HAFLER LAND SURVEYING  
417 S. GUNWELL STREET  
BIRMINGHAM, NORTH CAROLINA 28312  
(910) 884-1168  
FAX (910) 884-8848  
Date: 12/15/2001

# EXHIBIT "A"

LAKE TOXAWAY COMPANY - 70 ACRES  
HOGBACK TOWNSHIP  
TRANSYLVANIA COUNTY, NORTH CAROLINA

Conservation Area = 86.194 ACRES

*This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.*

0000021 0000555

LINE TABLE

Course	Bearing	Distance
D-1	S 70°25'42" E	87.87
D-2	S 71°02'34" E	25.75
D-3	S 64°17'41" E	19.37
D-4	S 60°13'53" E	15.36
D-5	S 64°55'08" E	21.14
D-6	S 70°54'53" E	28.96
D-7	S 68°24'16" E	27.55
D-8	S 84°54'52" E	28.85
D-9	N 89°10'06" E	28.77
D-10	N 87°18'34" E	37.96
D-11	N 67°01'49" E	53.39
D-12	N 68°01'50" E	51.27
D-13	N 78°13'15" E	43.03
D-14	N 78°20'30" E	31.53
D-15	N 89°27'53" E	36.75
D-16	S 81°21'30" E	17.29
D-17	S 89°54'28" E	24.60
D-18	N 80°23'41" E	24.03
D-19	N 80°24'12" E	21.36
D-20	S 68°02'50" E	58.95
D-21	S 89°02'13" E	101.09
D-22	S 70°00'09" E	41.16
D-23	N 73°06'18" E	36.00
D-24	S 73°52'55" E	49.88
D-25	N 74°54'28" E	59.88
D-26	S 78°29'32" E	118.02
D-27	S 26°21'01" E	117.77
D-28	S 28°42'43" E	65.80
D-29	S 34°04'47" E	25.53
D-30	S 37°22'01" E	49.28
D-31	S 81°12'12" E	74.17
D-32	N 84°46'49" E	126.38
D-33	S 78°57'48" E	101.48
D-34	S 47°32'44" E	56.74
D-35	N 54°18'23" E	38.24
D-36	N 83°38'45" E	43.01
D-37	N 85°47'28" E	41.81
D-38	S 74°09'17" E	10.00
D-39	S 35°12'20" E	29.88
D-40	N 04°40'19" E	76.24
D-41	N 54°18'37" E	29.74
D-42	S 13°02'43" E	29.74
D-43	N 82°41'38" E	63.01
D-44	S 74°09'17" E	13.91

LINE TABLE

Course	Bearing	Distance
D-45	N 43°48'13" E	535.00
D-46	N 52°14'52" E	31.84
D-47	N 50°54'53" E	79.37
D-48	N 72°08'42" E	23.11
D-49	N 72°08'42" E	287.58
D-50	N 72°08'42" E	20.44
D-51	N 72°08'42" E	20.44
D-52	N 72°08'42" E	20.44
D-53	N 72°08'42" E	20.44
D-54	N 72°08'42" E	20.44
D-55	N 72°08'42" E	20.44
D-56	N 72°08'42" E	20.44
D-57	N 72°08'42" E	20.44
D-58	N 72°08'42" E	20.44
D-59	N 72°08'42" E	20.44
D-60	N 72°08'42" E	20.44
D-61	N 72°08'42" E	20.44
D-62	N 72°08'42" E	20.44
D-63	N 72°08'42" E	20.44
D-64	N 72°08'42" E	20.44
D-65	N 72°08'42" E	20.44
D-66	N 72°08'42" E	20.44
D-67	N 72°08'42" E	20.44
D-68	N 72°08'42" E	20.44
D-69	N 72°08'42" E	20.44
D-70	N 72°08'42" E	20.44
D-71	N 72°08'42" E	20.44
D-72	N 72°08'42" E	20.44
D-73	N 72°08'42" E	20.44
D-74	N 72°08'42" E	20.44
D-75	N 72°08'42" E	20.44
D-76	N 72°08'42" E	20.44
D-77	N 72°08'42" E	20.44
D-78	N 72°08'42" E	20.44
D-79	N 72°08'42" E	20.44
D-80	N 72°08'42" E	20.44
D-81	N 72°08'42" E	20.44
D-82	N 72°08'42" E	20.44
D-83	N 72°08'42" E	20.44
D-84	N 72°08'42" E	20.44
D-85	N 72°08'42" E	20.44
D-86	N 72°08'42" E	20.44
D-87	N 72°08'42" E	20.44
D-88	N 72°08'42" E	20.44
D-89	N 72°08'42" E	20.44
D-90	N 72°08'42" E	20.44
D-91	N 72°08'42" E	20.44
D-92	N 72°08'42" E	20.44
D-93	N 72°08'42" E	20.44
D-94	N 72°08'42" E	20.44
D-95	N 72°08'42" E	20.44
D-96	N 72°08'42" E	20.44
D-97	N 72°08'42" E	20.44
D-98	N 72°08'42" E	20.44
D-99	N 72°08'42" E	20.44
D-100	N 72°08'42" E	20.44

LAKE TOXAWAY COMPANY - 70 ACRES  
HOBACK TOWNSHIP  
TRANSylvania COUNTY, NORTH CAROLINA

EXHIBIT "A"

PREPARED BY  
HAYLER LAND SURVEYING  
437 S. COLUMBIA STREET  
PINEVILLE, NORTH CAROLINA 28137  
(704) 884-7147  
FAX (704) 884-2616  
Date: 11/10/2001

*This map is not a certified survey and is not been approved by a local government agency in compliance with any applicable land development regulations.*

**FALLS RIDGE  
CONSERVATION  
EASEMENT  
DOCUMENT**

December 27, 2001



Filed for registration on the 27 day of Dec.  
20 01 at 11:30 o'clock 1 M. and registered and  
verified on the 27 day of Dec. 20 01  
In Book No: 81 of page 474

Prepared by: George Asimos, Esquire

Register of Deeds, Transylvania County Felts

**CONSERVATION EASEMENT  
AND  
DECLARATION OF RESTRICTIONS AND COVENANTS**

**THIS CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS** ("Conservation Easement") made December 27, 2001 by and between **JAMES W. FELTS and KATIE McKERNAN FELTS** ("Owner"), husband and wife, having an address of 2504 Alton Road, Atlanta, GA 30305 and **NORTH AMERICAN LAND TRUST** ("Trust"), a Pennsylvania non-profit corporation having an address of Post Office Box 1578, Chadds Ford, PA 19317,

**WITNESSETH THAT:**

**WHEREAS**, Owner is the owner of certain real property in Transylvania County, North Carolina that consists of approximately 82.88 acres, more or less, (hereinafter called the "Property") and being a portion of the land most recently described in deed granted to Owner and recorded on December 27, 2001 by the Register of Deeds at Plat file 9, Slide 495,496 and which is more particularly described by metes and bounds in Exhibit "A" attached hereto and depicted and identified on the plan attached hereto as Exhibit "B"; and

**WHEREAS**, Trust is a non-profit corporation, having a tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), which has been established as a public charity for the purpose of preserving and conserving natural habitats and environmentally sensitive areas and for other charitable, scientific and educational purposes and which is a "qualified organization" under Section 170(h)(3) of the Code; and

**WHEREAS**, preservation of the Property shall serve the following purposes, (the "Conservation Purposes"):

Preservation of the Property as a relatively natural habitat of fish, wildlife, or plants or similar ecosystem; and

Preservation of the Property as open space which provides scenic enjoyment to the general public and yields a significant public benefit; and

Preservation of the Property as open space which, if preserved, will advance a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit; and

**WHEREAS**, the ecological, scenic, and historical significance of the Property and the Conservation Purposes has been established in the reports, plans, photographs, documentation, and exhibits prepared by North American Land Trust (collectively called the "Baseline Documentation") which concludes that, among other things:

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The Property is a relatively natural area in which a significant wildlife population and stable plant community and similar ecosystems exists;

The Property consists of unique, environmentally sensitive land area including mature forests and watershed lands for the Deep Ford Falls, a tributary to Lake Toxaway;

The Property consists of valuable scenic and open-space vistas that can be seen from a national forest and from an abutting public road known as "NC Hwy 64";

The Property lies in the vicinity of, and contributes to the ecology of, lands owned by the United States Forest Service known as Panther Town Valley Wildlife Sanctuary and serves as a natural buffer area for other protected lands;

The Property is contiguous to lands previously protected by Conservation Easements; and

**WHEREAS**, Owner and Trust desire to perpetually conserve the natural, scientific, educational, open space, scenic and historical resources of the Property to accomplish the Conservation Purposes; and

**WHEREAS**, Owner intends to grant the easement and impose the restrictive covenants on the Property as set forth in this Conservation Easement to accomplish the Conservation Purposes; and

**WHEREAS**, Owner and Trust intend that this document be a "conservation agreement" as defined in Chapter 121, Article 4, Section 121-34 et seq. of the General Statutes of North Carolina, known as the Historic Preservation and Conservation Agreement Act (the "Act").

**NOW, THEREFORE**, for and in consideration of the mutual covenants, terms, conditions, restrictions, and promises contained in this Conservation Easement, and intending to be legally bound hereby, Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Trust, its successors and assigns, the easements, covenants, prohibitions and restrictions set forth in this Conservation Easement, in perpetuity, to accomplish the Conservation Purposes. Trust hereby accepts the grant of such easements and agrees to hold such easements exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in this Conservation Easement.

#### **ARTICLE 1. GRANT OF EASEMENTS**

Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Trust, its successors and assigns, a perpetual easement in gross over the Property for the purpose of preserving and protecting the Conservation Purposes and enforcing the restrictive covenants set

forth below. In addition, Owner hereby grants and conveys unto Trust, its successors and assigns, the easement and right of Trust and its agents to enter upon and inspect the Property, with access over and across the Property if necessary, for compliance with this Conservation Easement at any time and from time to time, provided that Owner is first given notice of any such visit, at least seven (7) days in advance, except in cases of suspected or known violations of this Conservation Easement.

## **ARTICLE 2. OWNER'S DECLARATION OF COVENANTS AND RESTRICTIONS**

Owner, for itself and its successors and assigns, covenants and declares that the Property shall be, and hereby is, bound by and made subject to the following covenants and restrictions in perpetuity, subject to and excepting only the Reserved Rights set forth in Article 3 of this Conservation Easement:

- 2.1. The Property shall not be used for any residential, commercial, institutional, or industrial purpose or purposes. Among the uses prohibited by the preceding sentence are, without limiting the meaning or interpretation of the preceding sentence: (1) manufacture or assembly of any products, goods, equipment, chemicals, materials or substances of any kind or nature whatsoever; (2) sale of any products, goods, equipment, chemicals, materials, substances or services of any kind or nature whatsoever; (3) storage of any products, goods, equipment, chemicals, materials or substances of any kind or nature, except if stored for use upon the Property in connection with activities not prohibited by this Conservation Easement; (4) removal of ground water for sale or for use off of the Property or for use for activities not permitted by this Conservation Easement; and (5) offices for persons involved in the sale, manufacture or assembly of goods or services or for the performance of services
- 2.2. There shall not be constructed, cut, created or placed on the Property any road, driveway, cartway, path or other means or right of passage across or upon the Property if the same is to be used, nor may any road, driveway, cartway, path or other means or right of passage located on the Property be used, for access to any use (whether or not upon the Property) which is prohibited by this Conservation Easement.
- 2.3. No Structure (hereinafter defined) of any kind shall be built, erected, installed, placed, affixed or assembled within or upon the Property or upon any trees or other natural features upon the Property. "Structure" shall mean any assembly of material forming a construction for occupancy or use for any purpose and erected upon or attached to the ground including, for example but not to limit the foregoing definition, the following: building, platform, shed, bin, shelter, dam, dike, tower, tank, antenna, and bulkhead.
- 2.4. No cutting of live timber or removal or destruction of live trees shall be permitted upon or within the Property.
- 2.5. No signs, billboards or outdoor advertising structures shall be placed, erected or maintained within the Property.

- 2.6. There shall be no filling, excavating, dredging, surface mining, drilling, or any removal of topsoil, sand, gravel, rock, peat, minerals or other materials, upon or from the Property.
- 2.7. There shall be no dumping of ashes, trash, garbage, or any other unsightly or offensive materials at any place on, under or within the Property.
- 2.8. There shall be no material change in the topography of the Property in any manner.
- 2.9. There shall be no dredging, channelizing or other manipulation of natural water courses or any water courses existing within the Property as of the date of this Conservation Easement.
- 2.10. All activity on the Property shall be conducted in accordance with soil conservation practices as then established or recommended by the Natural Resources Conservation Service of the United States Department of Agriculture or any successor governmental office or organization performing the same function within the United States government, as approved by the Trust.
- 2.11. There shall be no introduction of plant or animal species within the Property except those native or historic to the area in which the Property is located.
- 2.12. The Property may not be used as open space for purposes of obtaining or qualifying for governmental approval of any subdivision or development on lands outside the boundaries of the Property nor, without limitation of the foregoing, may the Property be used in the calculation of the amount or density of housing units or other construction or development on lands outside the boundaries of the Property.
- 2.13. Owner shall notify Trust prior to taking any action which may adversely affect any of the Conservation Purposes.
- 2.14. The parties recognize that this Conservation Easement cannot address every circumstance that may arise in the future, and the parties agree that the purpose of this Conservation Easement is to preserve the Property predominantly in its present condition, and to protect or enhance the Property's environmental systems. Without limiting the preceding covenants and restrictions, any use or activity which is not reserved in Article 3 below and which is inconsistent with the Conservation Purposes or which materially threatens the Conservation Purposes is prohibited.
- 2.15. The prohibitions and restrictions in this Conservation Easement shall be considered cumulative. No prohibition or restriction contained herein shall be interpreted as a limitation on the meaning, effect, interpretation or enforceability of another prohibitive or restrictive provision.

### ARTICLE 3. RESERVED RIGHTS

Owner reserves for Owner and Owner's successors and assigns who may now or hereafter be owner of all or part of the Property the rights set forth in this Article 3 (the "Reserved Rights"). Owner and Trust intend that these Reserved Rights and the activities and uses which are described below as the Reserved Rights are narrow exceptions to the prohibitions and restrictions set forth in Article 2 and, hence, subject to review and approval by the Trust in accordance with this Article, may be conducted as described below notwithstanding the prohibitions and restrictions of Article 2 without adversely affecting the Conservation Purposes.

#### 3.1. Structures may be erected upon the Property as follows:

- 3.1.1. Private access drives for the purpose of access, ingress and egress to and from residences which may be hereafter constructed on lands adjacent to the Property that are owned by the Owner as of the date of this Conservation Easement, provided that the width, length, location, and number of access drives and the manner of erosion control, storm water management and tree clearing shall be subject to review and approval by the Trust so as to minimize land disturbance and tree removal and to maintain the existing forest canopy. Without limiting the foregoing or any other covenants or restrictions in this Conservation Easement, Owner shall be fully responsible for compliance with any governmental regulations in regard to such access drive design and construction and Trust's review and approval shall be independent of such government regulation and shall not be construed to imply or certify compliance with governmental regulations.
- 3.1.2. The right of Owner to construct and maintain fences, including fences designed to exclude deer from the Property, and underground utilities for service to the Structures allowed on the Property.
- 3.1.3. Facilities normally used in connection with supplying utilities (including well water supply) to, removing sanitary sewage effluent from and controlling storm water runoff from the Structures on the Property and the improvements permitted under the terms of this Conservation Easement.
- 3.1.4. The right of Owner to construct and maintain ponds, walking trails, pedestrian bridges, covered picnic pavilions (not exceeding an aggregate of 1000 square feet of covered area for all pavilions), a shed or sheds for storage of maintenance equipment and materials solely related to maintenance of the Property (not exceeding an aggregate of 500 square feet of covered area for all sheds), and underground utilities to serve the aforesaid facilities. Owner may also install double track trails for limited vehicular access to the areas of the Property otherwise inaccessible by vehicle for use in maintenance, emergency access, and other permitted uses of the Property provided that: the surface of



such trails shall remain pervious (such as dirt or gravel); such trails shall be located, to the extent possible, in the path of forestry roads existing on the date of this Conservation Easement and; such trails shall be otherwise installed in a manner to avoid unnecessary tree removal and land disturbance.

- 3.1.5. The right of Owner to construct and maintain Structures necessary for drainage control of the Property provided that such Structures are designed for the purpose of preserving wetland areas, if any, existing as of the date of this Conservation Easement.
- 3.1.6. If there is any Structure existing on the Property on the date of this Conservation Easement which would not be permitted to be erected or installed on the Property under these Reserved Rights then any such existing Structure may, nevertheless, be repaired or restored to the condition and dimensions in which the Structure existed on date of this Conservation Easement.
- 3.2. Cutting of timber or removal or destruction of trees shall be permitted upon or within the Property under the following conditions:
  - 3.2.1. Clearing and restoring vegetative cover that has been damaged or disturbed by forces of nature or otherwise.
  - 3.2.2. Selectively thinning or harvesting trees, but only if done in accordance with the good forest management practices and according to a plan the purpose of which is to preserve existing forested areas.
  - 3.2.3. Selectively removing trees for the purpose of view shed enhancement in accordance with a plan determined in advance by the Trust to be consistent with the Conservation Purposes, provided that no mature canopy trees of over sixty (60) feet in height shall be removed without approval of the Trust in its discretion.
  - 3.2.4. Removal of trees to the minimum extent necessary to exercise the Reserved Rights.
- 3.3. Owner may install a reasonable number of regulatory or directional signs including, for example but not for limitation of the foregoing, "no trespassing" signs, "no gunning" signs, or "no hunting" signs and signs for any of the following purposes:
  - 3.3.1. stating the common name of the Property, the names and addresses of the occupants or both;
  - 3.3.2. advertising or directing participants to an activity permitted under the provisions of this Conservation Easement;

- 3.3.3. identifying the interest of Owner or Trust in the Property; and
- 3.3.4. educating the public as to the ecology of the area.
- 3.4. Dredging, channelizing or other manipulation of previously-altered natural or manmade water courses within the Property may be conducted if necessary to maintain wetlands, if any, existing on the Property or to restore wetlands previously existing on the Property, if any, provided all necessary government approvals are obtained.
- 3.5. The right to install, to the limited extent necessary, utility lines and appurtenances across the Property in order to provide service to the Structures and uses that may in the future exist or be conducted within the Property in accordance with this Conservation Easement or within the land adjacent to Property that is owned by Owner as of the date of this Conservation Easement.
- 3.6. Owner shall notify Trust in writing before exercising any Reserved Right unless such Reserved Right is being exercised at the date of this Conservation Easement and is described in the Baseline Documentation, including amendments to the Baseline Documentation approved by the Trust.
- 3.7. None of the Reserved Rights described in Section 3.4 or 3.5 or in Paragraph 3.1.1, 3.1.3, 3.1.4., 3.1.5., 3.2.2, 3.2.3, or 3.2.4 above may be exercised without first satisfying the following conditions and requirements:
  - 3.7.1. Owner shall notify Trust in writing before exercising any of such Reserved Rights.
  - 3.7.2. The Trust must be satisfied, as evidenced by its prior written approval of the Owner's proposed exercise of a Reserved Right, that any use or activity done in the exercise of the Reserved Right will have no material adverse effect on the Conservation Purposes or on the significant environmental features of the Conservation Area described in the Baseline Documentation.
- 3.8. Trust's prior written approval of the exercise of Reserved Rights shall be obtained, conditionally obtained or declined according to the procedure provided in this Section. At least ninety (90) days before Owner begins, or allows, any exercise of Reserved Rights on the Conservation Area Owner must notify Trust in writing of Owner's intentions to do so. Such notice must include plans depicting, in such detail as Trust requests, the construction or other use or activity, and location thereof, which Owner intends to undertake. Trust may request additional information or details not provided by Owner regarding Owner's proposed exercise of Reserved Rights as Trust reasonably believes necessary to determine compliance with this Article. Trust shall have sixty (60) days from receipt of the notice or, if later, any additional information regarding the proposed use or activity requested by Trust, in which to make one of the of the following determinations:

- 3.8.1. Approve the Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by the Owner. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right solely in accordance with the notice and other information submitted to Trust; which covenant shall be enforceable by Trust as fully as if set forth in this Conservation Easement.
- 3.8.2. Approve the Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by the Owner but subject, however, to such qualifications and conditions as Trust may impose in its notice of approval. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right, if at all, only in accordance with the notice and other information submitted to Trust, as modified or supplemented by the qualifications and conditions that Trust imposed; which covenant shall be enforceable by Trust as fully as if set forth in this Conservation Easement.
- 3.8.3. Decline to grant approval of Owner's proposed exercise of a Reserved Right on the basis of the notice and other materials submitted.
- 3.9. Unless a longer period is expressly provided in writing by the Trust, any activity involving the exercise of any of the Reserved Rights approved by the Trust as aforesaid shall be completed within five years after the Trust's written determination of approval of the activity. If such approved activity has not been completed within such five year period then Owner must reapply for approval by the Trust according to the procedure set forth in this Article. Owner may request Trust's approval of a period longer than five years and so long as such request is not, in the Trust's sole judgment, inconsistent with the Conservation Purposes, such approval shall not be unreasonably withheld.
- 3.10. Owner shall be free to make further requests for approval of the exercise of Reserved Rights; provided, however, that Trust may decline to accept repetitive submissions not materially modified from prior submissions not accepted by Trust.
- 3.11. Trust may condition consideration of a proposal for exercise of Reserved Rights upon the deposit of a sum of money with Trust to secure payment of Trust's reasonable costs of review. The time period for Trust's consideration of the Owner's request shall not run until such deposit is made.
- 3.12. Owner shall be responsible, as a condition of the right to exercise the Reserved Rights, for payment of the Trust's reasonable costs and expenses, including legal and consultant fees, associated with review of the Owner's request for approval.
- 3.13. No assurance is given that any of the above Reserved Rights may be exercised in such manner as Owner might propose without having an adverse effect on the Conservation Purposes or other significant ecological values of the Conservation Area. The foregoing procedure is established for the purpose of making that determination. The Reserved Rights may not be exercised unless and until Trust is satisfied that the



exercise of the Reserved Right for which approval is sought, and in the manner proposed by the Owner, can be done without an adverse effect on the Conservation Purposes or other significant ecological values of the Conservation Area. Owner hereby waives, for Owner, and Owner's heirs, successors, legal representatives, and assigns, to the fullest extent allowed by law, any and all right to seek or recover damages from Trust in any litigation or other legal action arising from a dispute over Trust's exercise of its rights, obligations or interpretations under this Article 3 and agrees that the sole remedy or legal right to seek redress arising from any decision of the Trust pursuant to this Article 3 shall be to seek a declaratory judgment or other legal declaration by a court of competent jurisdiction as to the rights of Owner hereunder.

#### ARTICLE 4. TRUST'S COVENANTS

- 4.1. Trust shall use its best efforts to enforce both the rights granted to it and the restrictions imposed upon the Property under this Conservation Easement.
- 4.2. If at any time Trust or any successor or assignee is unable to enforce this Conservation Easement in full or fails to do so, or if Trust or any successor or assignee ceases to exist or ceases to be a "qualified organization" (as defined in the Code) and if, within a reasonable period of time after the occurrence of any of these events, Trust or any successor or assignee fails to assign all of its rights and responsibilities under this Conservation Easement to a "qualified organization" and "holder", then the rights and responsibilities under this Conservation Easement shall become vested in and fall upon another qualified organization in accordance with a cy pres proceeding in any court of competent jurisdiction.
- 4.3. Notwithstanding the foregoing or anything else in this Conservation Easement to the contrary, Trust and its successors and assigns shall have the right to assign, either wholly or partially, its right, title and interest hereunder provided that the assignee is a "qualified organization" under the Code and provided that the assignee shall hold the Conservation Easement exclusively for the Conservation Purposes. The term "Trust" as used in this Conservation Easement shall mean the above-named Trust and any of its successors and assigns during such period as any such entity is the holder of the rights granted to the Trust in this Conservation Easement.

#### ARTICLE 5. REMEDIES AND ENFORCEMENT

- 5.1. Trust shall have the right to enforce by proceedings at law or in equity each and every one of the covenants and restrictions set forth in this Conservation Easement. The foregoing shall not limit any of the rights or remedies available to Trust as specifically set forth in any law or in this Conservation Easement.

- 5.2. Without limitation of any other rights of Trust in this Conservation Easement, Trust's right of enforcement of this Conservation Easement shall include the right to seek specific performance by Owner of the restoration of the Property to its original condition as established in the Baseline Documentation or to its condition prior to any activity that violates this Conservation Easement or as otherwise may be necessary to remedy any violation of any easement, covenant, prohibition or restriction in this Conservation Easement, as Trust may elect.
- 5.3. If Owner fails to pay taxes or other governmental assessments which may become a lien on the Property, Trust may, but shall have no obligation to, pay such taxes or assessments or any part thereof upon ten (10) days after sending written notice to Owner, according to any bill, statement, or estimate procured from the appropriate public office. Payment made by Trust shall become a lien on the Property in favor of Trust upon payment by Trust and shall bear interest until Trust is paid by Owner at the rate of eighteen percent (18%) per annum or at the highest rate of interest per annum as is allowed by applicable law, whichever is greater.
- 5.4. The covenants and restrictions granted to Trust under this Conservation Easement may only be enforced by the Trust and its respective successors and assigns and no third party beneficiary rights, including but not limited to third party rights of enforcement, are created hereby.
- 5.5. In the event that Trust acts, after notice to Owner, to enforce this Conservation Easement or any obligation hereunder, all reasonable expenses incurred by Trust shall be charged to and paid by the Owner, including reasonable attorneys' fees regardless of whether an action or proceeding is commenced. All such expenses, together with costs of collection (including reasonable attorneys' fees) if the Owner is determined by a court to have violated this Conservation Easement, shall be recoverable by Trust and be liens upon the Property, and collection thereof may be enforced by foreclosure and sale of the Property, notwithstanding anything to the contrary, this Conservation Easement shall not merge with any interest in the Property upon such sale and title shall be transferred subject hereto in accordance with the laws of the state in which the Property is located.
- 5.6. Should the Owner or anyone acting by, through, under or on behalf of Owner, commence litigation against Trust to enforce any rights hereunder or to dispute any actions or inaction of the Trust, to enforce any alleged duty or obligation of Trust hereunder or to seek damages or specific performance against the Trust then unless the Trust is finally determined by a court of competent jurisdiction, beyond right of appeal, to have acted in bad faith and contrary to the terms of this Conservation Easement, then the party commencing such litigation shall reimburse the Trust on demand for all costs and expenses, including attorneys fees, reasonably incurred by Trust in its defense in such litigation.

- 5.7. The failure of Trust to exercise any of its rights under this Conservation Easement on any occasion shall not be deemed a waiver of said rights and Trust retains the right in perpetuity to require full compliance by Owner of the covenants and restrictions in this Conservation Easement.
- 5.8. Trust's remedies described in this Article shall be cumulative and concurrent and shall be in addition to all remedies now or hereafter available or existing at law or in equity.

#### ARTICLE 6. GENERAL PROVISIONS

- 6.1. This Conservation Easement gives rise to a real property right and interest immediately vested in Trust. For purposes of this Conservation Easement, the fair market value of Trust's right and interest shall be equal to the difference between (a) the fair market value of the Property as if not burdened by this Conservation Easement and (b) the fair market value of the Property burdened by this Conservation Easement.
- 6.2. The parties recognize the environmental, scenic, and natural values of the Property and have the common purpose of preserving these values. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Conservation Purposes and the policies and purposes of Trust. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the Conservation Purposes that would render the provision valid should be favored over any interpretation that would render it invalid. If any provision of this Conservation Easement is determined by final judgment of a court having competent jurisdiction to be invalid, such determination shall not have the effect of rendering the remaining provisions of this Conservation Easement invalid. The parties intend that this Conservation Easement, which is by nature and character primarily prohibitive (in that the Owner has restricted and limited the rights inherent in ownership of the Property), shall be construed at all times and by all parties to effectuate the Conservation Purposes.
- 6.3. Owner covenants and agrees to indemnify, defend and hold harmless Trust, its directors, officers and employees from and against any loss, cost (including reasonable attorneys' fees), liability, penalty, fine, and damage, of any kind or nature whatsoever, which Trust or any of its directors, officers or employees may suffer or incur and which is commenced or threatened against Trust or any of its directors, officers or employees arising from violation of any law involving the Property, any breach of covenants and restrictions in this Conservation Easement, taxes and assessment upon the Property, any death or injury to any person occurring on or about the Property or any loss or damage to any property occurring on or about the Property; provided, however, that Owner shall have no obligation to indemnify Trust against loss, cost, liability, claim, penalty, fine or damage which results solely from Trust's own acts which are finally determined by a court to have been the result of gross negligence or willful misconduct of the Trust or which results entirely from an event or condition

arising after Owner is no longer the legal or equitable owner, or in possession, of the Property or any part thereof. Without limitation of anything herein to the contrary, Owner shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operations, upkeep, and maintenance of the Property, including the general liability insurance coverage and compliance with law.

- 6.4. Owner shall continue to pay all taxes, levies and assessments and other governmental or municipal charges that may become a lien on the Property, including any taxes or levies imposed to make those payments.
- 6.5. When a change in conditions gives rise to the extinguishment of this Conservation Easement or a material term or provision hereof by judicial proceeding Trust, on any subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds of sale equal to the greater of: (a) the Fair Market Value of this Conservation Easement (hereinafter defined) on or about the date of this Conservation Easement; (b) Trust's Proportionate Share (hereinafter defined) of the proceeds of sale, exchange or involuntary conversion of the Property; and (c) the full proceeds of this Conservation Easement sale, exchange or involuntary conversion, without regard to contrary terms of this Conservation Easement, if state law provides that Trust is entitled to the full proceeds. "Fair Market Value of this Conservation Easement" shall mean the difference between (i) the fair market value of the Property as if not burdened by this Conservation Easement and (ii) the fair market value of the Property burdened by this Conservation Easement. "Trust's Proportionate Share" shall mean the fraction derived from (x) the Fair Market Value of this Conservation Easement on or about the date hereof, as a numerator, and (y) the fair market value of the Property if not burdened by this Conservation Easement, on or about the date hereof, as a denominator. "Proceeds of sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of, the Property minus the actual bona fide expenses of such transaction and an amount attributable to the improvements constructed upon the Property pursuant to the Reserved Rights hereunder, if any. All such proceeds received by Trust shall be used in a manner consistent with the purposes of this grant.
- 6.6. Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Owner and Trust shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by the Owner and Trust, including reasonable attorneys' fees, in any such action shall be paid out of the recovered proceeds. Trust shall be entitled to Trust's Proportionate Share of the recovered proceeds and shall use such proceeds in a manner consistent with the purposes of this grant. The respective rights of the Owner and Trust set forth in Section 6.5 and this Section 6.6 shall be in addition to and not in limitation of, any rights they may have in common law with respect to a modification or termination of

this Conservation Easement by reason of changed conditions or the exercise of powers of eminent domain as aforesaid.

- 6.7. Owner and Trust recognize that circumstances could arise which would justify the modification of certain of the restrictions contained in this Conservation Easement. To this end, Trust and the legal owner or owners of the portion of the Property which is the subject of the amendment at the time of amendment, may, if they agree in their sole discretion, to amend this Conservation Easement in a manner which is not inconsistent with the Conservation Purposes; provided, however, that Trust shall not agree to any amendment hereto that would result in this Conservation Easement failing to qualify as a "Conservation Easement" under the Act or as a qualified conservation contribution under Section 170(h) of the Internal Revenue Code and applicable regulations.
- 6.8. This Conservation Easement and all of the covenants, indemnifications, releases, easements and restrictions set forth in this Conservation Easement shall run with the land and be binding upon Owner and Owner's successors and assigns, unless otherwise expressly provided in this Conservation Easement. The term "Owner" used in this Conservation Easement shall mean and include the above-named Owner and any of Owner's successors or assigns that are the legal owners of the Property or any part thereof. The term "Trust" used in this Conservation Easement shall mean and include the above-named Trust and of its successors and assigns, it being understood and agreed that any assignee of the rights of Trust hereunder must be a "qualified organization" as defined in Section 170 (h) of the Code, as amended, and shall carry out the obligations of Trust and the intent of this Conservation Easement.
- 6.9. Owner shall be and remain liable for any breach or violation of this Conservation Easement only if such breach or violation occurs during such time as Owner is the legal owner of the Property.
- 6.10. All mortgages, deeds of trust and other liens or encumbrances upon all or any part of the Property that either come into existence or are recorded in the place for the recording of such liens or encumbrances after the date of this Conservation Easement will be subject to and subordinate to this Conservation Easement.
- 6.11. Nothing in this Conservation Easement shall limit the right of Owner, its successors or assigns to grant or convey the Property, provided that any such grant or conveyance shall be under and subject to this Conservation Easement. Owner shall notify Trust in writing of any sale, transfer, lease or other disposition of the Property or any part thereof, whether by operation of law or otherwise, at least 30 days after such disposition, such notice shall include a copy of the deed, lease, or other declaration of transfer, the date of transfer, and the name or names and addresses for notices of the transferee.



- 6.12. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability of Trust to exercise physical or managerial control over day-to-day operations of the Property, or any of the Owner's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- 6.13. Notwithstanding provisions hereof to the contrary, if any, Owner shall be solely responsible for complying with all federal, state and local laws and regulations in connection with the conduct of any use of the Property or the erection of any Structure permitted hereunder, and Owner shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.
- 6.14. All notices required of Owner under the terms of this Conservation Easement, and all requests for the consent or approval of Trust, shall be in writing shall be deemed to have been given when either served personally or sent by certified mail, with return receipt requested and postage prepaid, addressed to Trust at the address set forth on the first page of this Conservation Easement or such other address provided by notice from Trust or Owner to the other for the purpose.
- 6.15. Trust makes no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to Owner or any other person or entity under United States or any state, local or other tax law to be derived from the donation of this Conservation Easement or other transaction associated with the donation of this Conservation Easement. This donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. Trust makes no warranty, representation or other assurance regarding the value of this Conservation Easement or of the Property. As to all of the foregoing, Owner is relying upon Owner's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon Trust or any legal counsel, accountant, financial advisor, appraiser or other consultant of Trust. In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs affecting Owner or Owner's successors or assigns or other similar matter then Trust shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by Trust in responding or replying thereto.
- 6.16. This Conservation Easement is intended to a "conservation agreement" as defined in the Act.
- 6.17. By signing this Conservation Easement, Owner acknowledges, warrants and represents to Trust that:
- 6.17.1 Owner has received and fully reviewed the Baseline Documentation in its entirety.

6.17.2. The Baseline Documentation includes, among other things:

- i) The appropriate survey maps showing the property line and other contiguous or nearby protected areas.
- ii) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas).
- iii) Aerial photographs of the Property at an appropriate scale taken as close as possible to the date the donation is made.
- iv) On-site photographs taken at appropriate locations on the Property.

6.17.3. The Baseline Documentation is an accurate representation of the condition of the Property.

6.17.4. Owner has been represented by counsel of Owner's selection, and fully understands that Owner is hereby permanently relinquishing property rights which would otherwise permit the Owner to have a fuller use and enjoyment of the Property.

6.17.5. The undersigned individual or individuals signing as or on behalf of the Owner has all legal authority to enter into this Conservation Easement and perform all of the obligations of the Owner hereunder, as the binding act of the Owner.

6.17.6. Owner is seized of the Property in fee simple title. Owner has the right to grant and convey this Conservation Easement. The Property is free and clear of any and all liens and encumbrances except liens for taxes not yet due and payable and mortgage or deed of trust liens that are subordinate to this Conservation Easement by virtue of the executed form of Joinder and Consent of Mortgagee attached hereto and incorporated herein.

**TO HAVE AND TO HOLD** the easements and rights set forth in this Conservation Easement unto Trust, its successors and assigns, for its own use and benefit forever.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Owners and Trust have executed this Conservation Easement as of the day and year first above written:

Witness:

Anne B. Ramsey

James W. Felts  
James W. Felts

Witness:

Rachel Middleton

Katie McKernan Felts  
Katie McKernan Felts

NORTH AMERICAN LAND TRUST  
a non-profit corporation

Attest:

George Asimos  
George Asimos  
Secretary

By:

Andrew L. Johnson  
Andrew L. Johnson  
Vice President



STATE OF North Carolina

COUNTY OF Transylvania

On this 27th day of December, 2001, before me, a Notary Public in and for the State of North Carolina, Anne G. Ramey, the undersigned officer, personally appeared JAMES W. FELTS who, being known to me or whose identity was satisfactorily proven, acknowledged that he executed the foregoing Conservation Easement and Declaration of Covenants and Restrictions for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Anne G. Ramey  
Notary Public

My commission expires: 1/10/05

STATE OF North Carolina

COUNTY OF Transylvania

On this 27th day of December, 2001, before me, a Notary Public in and for the State of North Carolina, Anne G. Ramey, the undersigned officer, personally appeared KATIE MCKERNAN FELTS who, being known to me or whose identity was satisfactorily proven, acknowledged that she executed the foregoing Conservation Easement and Declaration of Covenants and Restrictions for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Anne G. Ramey  
Notary Public

My commission expires: 1/10/05

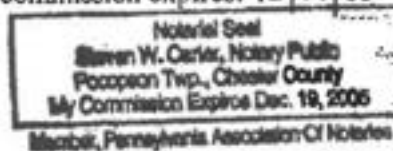
STATE OF : PENNSYLVANIA  
COUNTY OF : CHESTER

On this, the 26 day of DECEMBER, 2001, before me, a Notary Public in and for the State of PENNSYLVANIA, the undersigned officer, personally appeared ANDREW L. JOHNSON who acknowledged himself to be the VICE PRESIDENT of NORTH AMERICAN LAND TRUST, a corporation, and that he as such VICE PRESIDENT, being authorized to do so, executed the foregoing Conservation Easement for the purposes therein contained by signing the name of the corporation by himself as VICE PRESIDENT

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Seal)

Steven W. Carter  
Notary Public  
My commission expires: 12/19/05



LINE TABLE

Course	Bearing	Distance
D-39	S 35°12'30" E	10.00'
D-40	S 04°50'19" E	39.85'
D-41	S 16°54'45" E	48.75'
D-42	S 79°27'43" E	21.20'
D-43	S 25°39'05" W	8.10'
D-44	S 16°57'13" E	13.61'
D-45	S 28°21'07" W	15.86'
D-46	S 74°17'19" E	74.44'
D-47	S 42°01'32" E	21.63'
D-48	N 87°39'28" E	38.65'
D-49	S 67°05'04" E	35.25'
D-50	S 61°43'31" E	25.24'
D-51	S 86°10'49" E	7.23'
D-52	S 48°45'41" E	69.72'
D-53	S 16°14'46" E	13.38'
D-54	S 63°08'25" E	232.61'
D-55	S 05°55'27" E	140.56'
D-56	S 37°48'42" E	62.89'
D-57	N 63°46'52" E	6.42'
D-58	S 37°19'36" E	209.64'
D-59	S 60°53'31" E	32.39'
D-60	S 80°30'17" E	54.80'
D-61	S 28°50'16" E	18.91'
D-62	S 85°42'47" E	20.70'
D-63	S 57°58'34" E	25.96'
D-64	S 72°56'12" E	44.53'
D-65	S 23°27'21" E	52.32'
D-66	S 42°40'42" E	28.67'
D-67	S 33°37'54" E	20.45'
D-68	S 48°51'59" E	14.32'

LINE TABLE

Course	Bearing	Distance
B-2	N 42°28'28" E	105.32'
B-3	S 81°27'18" E	394.54'
B-4	N 4°04'46" E	629.34'
B-5	S 2°55'48" E	32.98'
B-6	S 8°12'22" E	53.48'
B-7	N 43°01'50" E	55.49'
B-55	S 3°25'26" E	55.49'
B-56	S 3°22'42" E	53.70'
B-57	Loc. 22C CC	A-C 59.94'
	Loc. 83.69'	CA 41.39'16"
	Ord. 50.72'54" E	55.44'
B-58	S 25°17'31" E	59.53'

JAMES W. FELTS &  
KATIE MCKERNAN FELTS

-COBACK -OWNERS-

TRANSWANA COUNTY, NORTH CAROLINA

## EXHIBIT "A"

PREPARED BY  
HAPLER LAND SURVEYING

437 S. CALDWELL STREET

BREVARD, NORTH CAROLINA 28712

(828) 854-1122

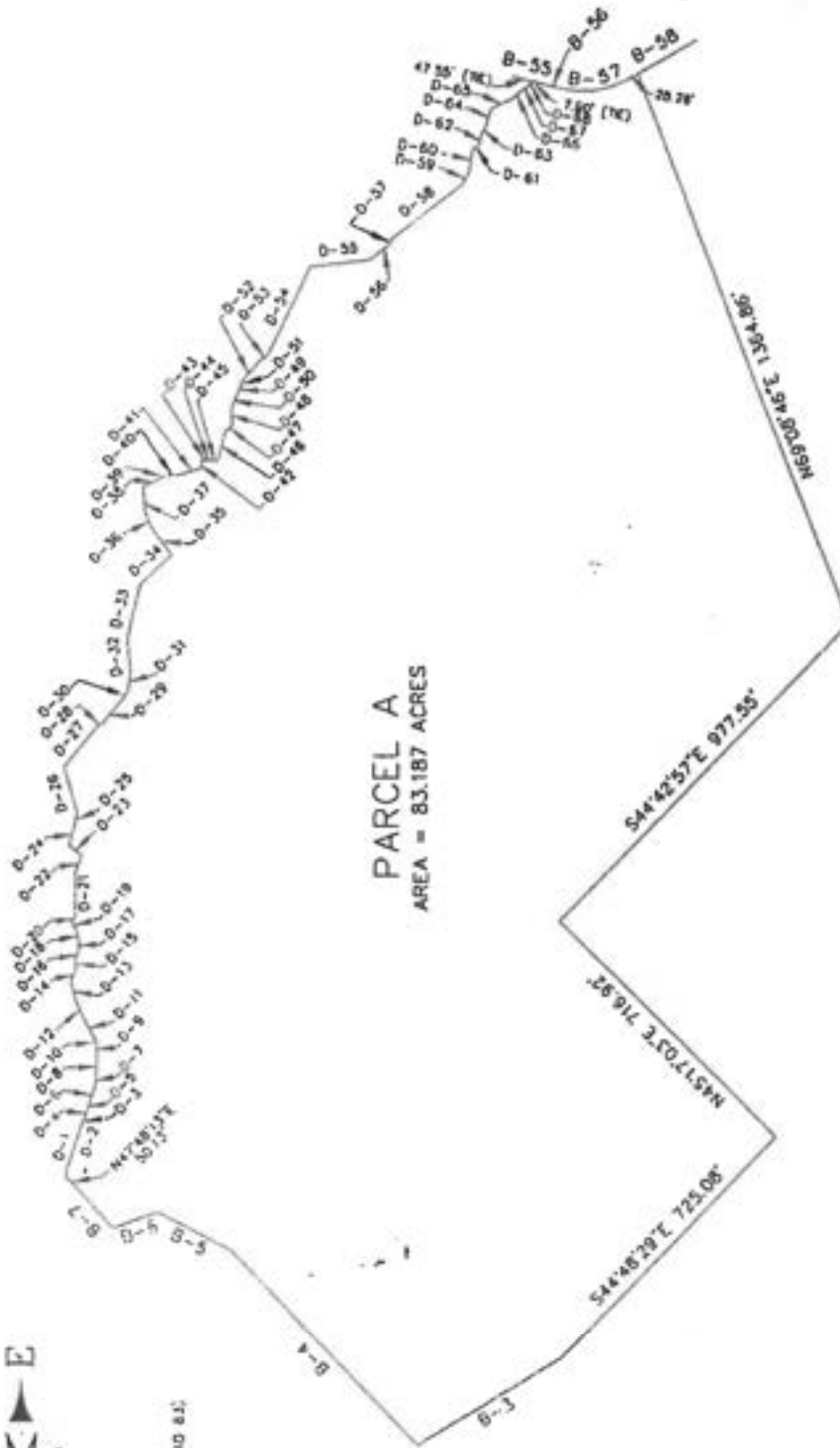
FAX (828) 884-8646

Date 12/12/2022





NCGS 10/1/11 (1/1/11 8:1)



PARCEL A  
AREA = 83.187 ACRES

Survey Calculated Acreage = ± 83.187 ACRES

JAMES W. FELTS &  
KATIE MCKERNAN FELTS  
-COWAN TOWNSHIP  
-RANKIN COUNTY, NORTH CAROLINA

EXHIBIT "B"

RECORDED AT  
HAFNER LAND SURVEYING  
427 S. CALDWELL ST.  
BREVARD, NORTH CAROLINA 28712  
(828) 884-7188  
FAX (828) 884-8846  
DATE: 11/11/2011



Official  
Receipt 01-008949

VICKIE EDWARDS  
TRANSLVANIA COUNTY COURTHOUSE  
REGISTER OF DEEDS

BREVARD, NC 28712

Page: 1

Date: 12/27/01  
Time: 16:33:21

LAKE TOXAWAY CO

Remarks:

Felts Book 81 Page 474	DEEDS	46.00
LTC-7 Book 81 Page 494	DEEDS	42.00
LTC-32 Book 81 Page 512	DEEDS	50.00
LTC-66 Book 81 Page 534	DEEDS	50.00

Total Due: 188.00  
Total Paid: 188.00  
Change Tendered: .00

188.00 Paid by 1 check(s)

IT HAS BEEN A PLEASURE TO ASSIST YOU.  
HAVE A NICE DAY!

88A-3162

**FALLS VALLEY  
CONSERVATION  
EASEMENT  
DOCUMENT**

December 30, 2005

2005017871  
TRANSLYVANIA CO, NC FEE \$71.00  
PRESENTED & RECORDED:  
12-30-2005 02:00:55 PM  
CINDY M OMBREY  
REGISTER OF DEEDS  
BY: TERESA D MORTON  
DEPUTY REGISTER OF DEEDS  
BK: DOC 326  
PG: 597-616

After recording please return to:  
North American Land Trust  
P.O. Box 467  
Chadds Ford, PA 19317

**CONSERVATION EASEMENT  
AND  
DECLARATION OF RESTRICTIONS AND COVENANTS**

*12-30-05 JCB*

**THIS CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS** ("Conservation Easement") made December 27, 2005 by and between **JAMES W. FELTS and KATIE McKERNAN FELTS** ("Owner"), husband and wife, having an address of 2504 Alton Road, Atlanta, GA 30305 and **NORTH AMERICAN LAND TRUST** ("Trust"), a Pennsylvania non-profit corporation having an address of Post Office Box 467, Chadds Ford, PA 19317,

**WITNESSETH THAT:**

**WHEREAS**, Owner is the owner of certain real property in Transylvania County, North Carolina that consists of approximately 40.739 acres, more or less, (hereinafter called the "Property") being a portion of the land most recently described in deed granted to Owner and recorded on December 27, 2001 by the Register of Deeds at Plat file 9, Slide 495 & 496; and

**WHEREAS**, the Property is more particularly described on a plan attached to and incorporated in this Conservation Easement as Exhibit "A" and.

**WHEREAS**, Trust is a non-profit corporation, having a tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), which has been established as a public charity for the purpose of preserving and conserving natural habitats and environmentally sensitive areas and for other charitable, scientific and educational purposes and which is a "qualified organization" under Section 170(h)(3) of the Code; and



**WHEREAS**, preservation of the Property shall serve the following purposes, (the "Conservation Purposes"):

Preservation of the Property as a relatively natural habitat of fish, wildlife, or plants or similar ecosystem; and

Preservation of the Property as open space which, if preserved, will advance a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit; and

**WHEREAS**, the ecological, scenic, and historical significance of the Property and the Conservation Purposes has been established in the reports, plans, photographs, documentation, and exhibits prepared by North American Land Trust (collectively called the "Baseline Documentation") which concludes that, among other things:

The Property is a relatively natural area in which a significant wildlife population and stable plant community and similar ecosystems exists;

The Property consists of unique, environmentally sensitive land area including mature forests and watershed lands for the Deep Ford Falls, a tributary to Lake Toxaway;

The Property lies in the vicinity of, and contributes to the ecology of, lands owned by the United States Forest Service known as Panther Town Valley Wildlife Sanctuary and serves as a natural buffer area for other protected lands;

The Property is contiguous to lands previously protected by Conservation Easements; and

**WHEREAS**, Owner and Trust desire to perpetually conserve the natural, scientific, educational, open space, scenic and historical resources of the Property to accomplish the Conservation Purposes; and

**WHEREAS**, Owner intends to grant the easement and impose the restrictive covenants on the Property as set forth in this Conservation Easement to accomplish the Conservation Purposes; and

**WHEREAS**, Owner and Trust intend that this document be a "conservation agreement" as defined in Chapter 121, Article 4, Section 121-34 et seq. of the General Statutes of North Carolina, known as the Historic Preservation and Conservation Agreement Act (the "Act").

**NOW, THEREFORE**, for and in consideration of the mutual covenants, terms, conditions, restrictions, and promises contained in this Conservation Easement, and intending to be legally bound hereby, Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Trust, its successors and assigns, the easements, covenants, prohibitions and restrictions set forth in this Conservation Easement, in perpetuity, to accomplish the Conservation Purposes. Trust hereby

accepts the grant of such easements and agrees to hold such easements exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in this Conservation Easement.

#### **ARTICLE 1. GRANT OF EASEMENTS**

Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Trust, its successors and assigns, a perpetual easement in gross over the Property for the purpose of preserving and protecting the Conservation Purposes and enforcing the restrictive covenants set forth below. In addition, Owner hereby grants and conveys unto Trust, its successors and assigns, the easement and right of Trust and its agents to enter upon and inspect the Property, with access over and across the Property if necessary, for compliance with this Conservation Easement at any time and from time to time, provided that Owner is first given notice of any such visit, at least seven (7) days in advance, except in cases of suspected or known violations of this Conservation Easement.

#### **ARTICLE 2. OWNER'S DECLARATION OF COVENANTS AND RESTRICTIONS**

Owner, for itself and its successors and assigns, covenants and declares that the Property shall be, and hereby is, bound by and made subject to the following covenants and restrictions in perpetuity, subject to and excepting only the Reserved Rights set forth in Article 3 of this Conservation Easement:

- 2.1. The Property shall not be used for any residential, commercial, institutional, or industrial purpose or purposes. Among the uses prohibited by the preceding sentence are, without limiting the meaning or interpretation of the preceding sentence: (1) manufacture or assembly of any products, goods, equipment, chemicals, materials or substances of any kind or nature whatsoever; (2) sale of any products, goods equipment, chemicals, materials, substances or services of any kind or nature whatsoever; (3) storage of any products, goods, equipment, chemicals, materials or substances of any kind or nature, except if stored for use upon the Property in connection with activities not prohibited by this Conservation Easement; (4) removal of ground water for sale or for use off of the Property or for use for activities not permitted by this Conservation Easement; and (5) offices for persons involved in the sale, manufacture or assembly of goods or services or for the performance of services.
- 2.2. There shall not be constructed, cut, created or placed on the Property any road, driveway, cartway, path or other means or right of passage across or upon the Property if the same is to be used, nor may any road, driveway, cartway, path or other means or right of passage located on the Property be used, for access to any use (whether or not upon the Property) which is prohibited by this Conservation Easement.
- 2.3. No Structure (hereinafter defined) of any kind shall be built, erected, installed, placed, affixed or assembled within or upon the Property or upon any trees or other natural features upon the Property. "Structure" shall mean any assembly of material forming a construction for occupancy or use for any purpose and erected upon or attached to the ground including, for example but not to limit the foregoing definition, the following: building, platform, shed, bin, shelter, dam, dike, tower, tank, antenna, and bulkhead.

- 2.4. No cutting of live timber or removal or destruction of live trees shall be permitted upon or within the Property.
- 2.5. No signs, billboards or outdoor advertising structures shall be placed, erected or maintained within the Property.
- 2.6. There shall be no filling, excavating, dredging, surface mining, drilling, or any removal of topsoil, sand, gravel, rock, peat, minerals or other materials, upon or from the Property.
- 2.7. There shall be no dumping of ashes, trash, garbage, or any other unsightly or offensive materials at any place on, under or within the Property.
- 2.8. There shall be no material change in the topography of the Property in any manner.
- 2.9. There shall be no dredging, channelizing or other manipulation of natural water courses or any water courses existing within the Property as of the date of this Conservation Easement.
- 2.10. All activity on the Property shall be conducted in accordance with soil conservation practices as then established or recommended by the Natural Resources Conservation Service of the United States Department of Agriculture or any successor governmental office or organization performing the same function within the United States government, as approved by the Trust.
- 2.11. There shall be no introduction of plant or animal species within the Property except those native or historic to the area in which the Property is located.
- 2.12. The Property may not be used as open space for purposes of obtaining or qualifying for governmental approval of any subdivision or development on lands outside the boundaries of the Property nor, without limitation of the foregoing, may the Property be used in the calculation of the amount or density of housing units or other construction or development on lands outside the boundaries of the Property.
- 2.13. As required by 26 C.F.R. § 1.170A-14(g)(5)(ii), Owner shall notify Holder in writing before exercising any Reserved Right that may impair the conservation interests associated with the Property.
- 2.14. The parties recognize that this Conservation Easement cannot address every circumstance that may arise in the future, and the parties agree that the purpose of this Conservation Easement is to preserve the Property predominantly in its present condition, and to protect or enhance the Property's environmental systems. Without limiting the preceding covenants and restrictions, any use or activity which is not reserved in Article 3 below and which is inconsistent with the Conservation Purposes or which materially threatens the Conservation Purposes is prohibited.

- 3.1.6. Owner may install double track trails for limited vehicular access to the areas of the Property otherwise inaccessible by vehicle for use in maintenance, emergency access, and other permitted uses of the Property provided that: the surface of such trails shall remain pervious (such as dirt or gravel); such trails shall be located, to the extent possible, in the path of forestry roads or other trails existing on the date of this Conservation Easement and; such trails shall be otherwise installed in a manner to avoid unnecessary tree removal, land disturbance and soil erosion.
- 3.1.7. Structures necessary for drainage control of the Property provided that such Structures are designed for the purpose of preserving wetland areas, if any, existing as of the date of this Conservation Easement.
- 3.1.8. Any structure existing on the Property on the date of this Conservation Easement which would not be permitted to be erected or installed on the Property under these Reserved Rights then any such existing Structure may, nevertheless, be repaired or restored to the condition and dimensions in which the Structure existed on date of this Conservation Easement.
- 3.2. Cutting of timber or removal or destruction of trees shall be permitted upon or within the Property under the following conditions:
  - 3.2.1. Clearing and restoring vegetative cover that has been damaged or disturbed by forces of nature or otherwise.
  - 3.2.2. Selectively thinning or harvesting trees, but only if done in accordance with the good forest management practices and according to a plan approved by Trust the purpose of which is to preserve existing forested areas.
  - 3.2.3. Selectively removing trees for the purpose of view shed enhancement in accordance with a plan determined in advance by the Trust to be consistent with the Conservation Purposes, provided that no mature canopy trees of over sixty (60) feet in height shall be removed without approval of the Trust in its discretion.
  - 3.2.4. Removal of trees to the minimum extent necessary to exercise the Reserved Rights.
- 3.3. Owner may install a reasonable number of regulatory or directional signs including, for example but not for limitation of the foregoing, "no trespassing" signs, "no gunning" signs, or "no hunting" signs and signs for any of the following purposes:
  - 3.3.1. stating the common name of the Property, the names and addresses of the occupants or both;

- 3.3.2. advertising or directing participants to an activity permitted under the provisions of this Conservation Easement;
- 3.3.3. identifying the interest of Owner or Trust in the Property; and
- 3.3.4. educating the public as to the ecology of the area.
- 3.4. Dredging, channelizing or other manipulation of previously-altered natural or manmade water courses within the Property may be conducted if necessary to maintain wetlands, if any, existing on the Property or to restore wetlands previously existing on the Property, if any, provided all necessary government approvals are obtained.
- 3.5. The right to install, to the limited extent necessary, utility lines and appurtenances across the Property in order to provide service to the Structures and uses that may in the future exist or be conducted within the Property in accordance with this Conservation Easement or within the land adjacent to Property that is owned by Owner as of the date of this Conservation Easement.
- 3.6. None of the Reserved Rights for which the approval of Trust is expressly required in this Article 3 may be exercised without first satisfying the following conditions and requirements:
  - 3.6.1. Owner shall notify Trust in writing before exercising any of such Reserved Rights.
  - 3.6.2. The Trust must be satisfied, as evidenced by its prior written approval of the Owner's proposed exercise of a Reserved Right for which Trust's approval is required, that any use or activity done in the exercise of the Reserved Right will have no material adverse affect on the Conservation Purposes or on the significant environmental features of the Property described in the Baseline Documentation.
- 3.7. Trust's prior written approval of the exercise of any Reserved Rights for which Trust's approval is required shall be obtained, conditionally obtained or declined according to the procedure provided in this Section. At least ninety (90) days before Owner begins, or allows, any exercise of such Reserved Right on the Property Owner must notify Trust in writing of Owner's intentions to do so. Such notice must include plans depicting, in such detail as Trust requests, the construction or other use or activity, and location thereof, which Owner intends to undertake. Trust may request additional information or details not provided by Owner regarding Owner's proposed exercise of such Reserved Right as Trust reasonably believes necessary to determine compliance with this Article. Trust shall have sixty (60) days from receipt of the notice or, if later, any additional information regarding the proposed use or activity requested by Trust, in which to make one of the following determinations:
  - 3.7.1. Approve the Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by the Owner. Approval on such terms shall constitute a

covenant by Owner to exercise the Reserved Right solely in accordance with the notice and other information submitted to Trust; which covenant shall be enforceable by Trust as fully as if set forth in this Conservation Easement.

- 3.7.2. Approve the Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by the Owner but subject, however, to such qualifications and conditions as Trust may impose in its notice of approval. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right, if at all, only in accordance with the notice and other information submitted to Trust, as modified or supplemented by the qualifications and conditions that Trust imposed; which covenant shall be enforceable by Trust as fully as if set forth in this Conservation Easement.
- 3.7.3. Decline to grant approval of Owner's proposed exercise of a Reserved Right on the basis of the notice and other materials submitted.
- 3.8. Unless a longer period is expressly provided in writing by the Trust, any activity involving the exercise of any Reserved Right for which Trust's approval is required approved by the Trust as aforesaid shall be completed within five years after the Trust's written determination of approval of the activity. If such approved activity has not been completed within such five year period then Owner must reapply for approval by the Trust according to the procedure set forth in this Article. Owner may request Trust's approval of a period longer than five years and so long as such request is not, in the Trust's sole judgment, inconsistent with the Conservation Purposes, such approval shall not be unreasonably withheld.
- 3.9. Owner shall be free to make further requests for approval of the exercise of Reserved Rights; provided, however, that Trust may decline to accept repetitive submissions not materially modified from prior submissions not accepted by Trust.
- 3.10. Trust may condition consideration of a proposal for exercise of Reserved Rights upon the deposit of a sum of money with Trust to secure payment of Trust's reasonable costs of review. The time period for Trust's consideration of the Owner's request shall not run until such deposit is made.
- 3.11. Owner shall be responsible, as a condition of the right to exercise the Reserved Rights, for payment of the Trust's reasonable costs and expenses, including legal and consultant fees, associated with review of the Owner's request for approval.
- 3.12. No assurance is given that any of the above Reserved Rights for which approval of Trust is expressly required may be exercised in such manner as Owner might propose without having an adverse affect on the Conservation Purposes or other significant ecological values of the Property. The foregoing procedure is established for the purpose of making that determination. Such Reserved Rights may not be exercised unless and until Trust is satisfied that the exercise of the Reserved Right for which approval is sought, and in the manner proposed by the Owner, can be done without an adverse affect on the Conservation Purposes or other significant ecological values of the Property. Owner



hereby waives, for Owner, and Owner's heirs, successors, legal representatives, and assigns, to the fullest extent allowed by law, any and all right to seek or recover damages from Trust in any litigation or other legal action arising from a dispute over Trust's exercise of its rights, obligations or interpretations under this Article 3 and agrees that the sole remedy or legal right to seek redress arising from any decision of the Trust pursuant to this Article 3 shall be to seek a declaratory judgment or other legal declaration by a court of competent jurisdiction as to the rights of Owner hereunder.

#### ARTICLE 4. TRUST'S COVENANTS

- 4.1. Trust shall use its best efforts to enforce both the rights granted to it and the restrictions imposed upon the Property under this Conservation Easement.
- 4.2. If at any time Trust or any successor or assignee is unable to enforce this Conservation Easement in full or fails to do so, or if Trust or any successor or assignee ceases to exist or ceases to be a "qualified organization" (as defined in the Code) and if, within a reasonable period of time after the occurrence of any of these events, Trust or any successor or assignee fails to assign all of its rights and responsibilities under this Conservation Easement to a "qualified organization" and "holder", then the rights and responsibilities under this Conservation Easement shall become vested in and fall upon another qualified organization in accordance with a cy pres proceeding in any court of competent jurisdiction.
- 4.3. Notwithstanding the foregoing or anything else in this Conservation Easement to the contrary, Trust and its successors and assigns shall have the right to assign, either wholly or partially, its right, title and interest hereunder provided that the assignee is a "qualified organization" under the Code and provided that the assignee shall hold the Conservation Easement exclusively for the Conservation Purposes. The term "Trust" as used in this Conservation Easement shall mean the above-named Trust and any of its successors and assigns during such period as any such entity is the holder of the rights granted to the Trust in this Conservation Easement.

#### ARTICLE 5. REMEDIES AND ENFORCEMENT

- 5.1. Trust shall have the right to enforce by proceedings at law or in equity each and every one of the covenants and restrictions set forth in this Conservation Easement. The foregoing shall not limit any of the rights or remedies available to Trust as specifically set forth in any law or in this Conservation Easement.
- 5.2. Without limitation of any other rights of Trust in this Conservation Easement, Trust's right of enforcement of this Conservation Easement shall include the right to seek specific performance by Owner of the restoration of the Property to its original condition as established in the Baseline Documentation or to its condition prior to any activity that violates this Conservation Easement or as otherwise may be necessary to remedy any



violation of any easement, covenant, prohibition or restriction in this Conservation Easement, as Trust may elect.

- 5.3. If Owner violates this Conservation Easement in such a manner as to cause damage to, extract or remove any trees, mineral resources, pond, wetland, stream, or other natural resource protected by this Conservation Easement, including violation resulting from failure to obtain Holder's approval, Holder shall be entitled to payment of damages in the amount of the value of the protected natural resource. Holder may seek payment and recovery of such damages by any means available at law. The value of the protected natural resource shall be the greater of (a) the market value of the resource or, (b) the cost of immediate restoration of the Property and all resources to its condition prior to the violation. If such immediate restoration is not reasonably possible then the market value of the resource shall be the amount of damages. If the resource does not have a readily determinable market value then the amount of damages shall be the amount which a court having jurisdiction may determine, taking into account the importance of the resource to the fulfillment of the Conservation Purposes.
- 5.4. If Owner fails to pay taxes or other governmental assessments which may become a lien on the Property, Trust may, but shall have no obligation to, pay such taxes or assessments or any part thereof upon ten (10) days after sending written notice to Owner, according to any bill, statement, or estimate procured from the appropriate public office. Payment made by Trust shall become a lien on the Property in favor of Trust upon payment by Trust and shall bear interest until Trust is paid by Owner at the rate of eighteen percent (18%) per annum or at the highest rate of interest per annum as is allowed by applicable law, whichever is greater.
- 5.5. The covenants and restrictions granted to Trust under this Conservation Easement may only be enforced by the Trust and its respective successors and assigns and no third party beneficiary rights, including but not limited to third party rights of enforcement, are created hereby.
- 5.6. In the event that Trust acts, after notice to Owner, to enforce this Conservation Easement or any obligation hereunder, all reasonable expenses incurred by Trust shall be charged to and paid by the Owner, including reasonable attorneys' fees regardless of whether an action or proceeding is commenced. All such expenses, together with costs of collection (including reasonable attorneys' fees) if the Owner is determined by a court to have violated this Conservation Easement, shall be recoverable by Trust and be liens upon the Property, and collection thereof may be enforced by foreclosure and sale of the Property, notwithstanding anything to the contrary, this Conservation Easement shall not merge with any interest in the Property upon such sale and title shall be transferred subject hereto in accordance with the laws of the state in which the Property is located.
- 5.7. Should the Owner or anyone acting by, through, under or on behalf of Owner, commence litigation against Trust to enforce any rights hereunder or to dispute any actions or inaction of the Trust, to enforce any alleged duty or obligation of Trust hereunder or to seek damages or specific performance against the Trust then unless the Trust is finally determined by a court of competent jurisdiction, beyond right of appeal, to have acted in

bad faith and contrary to the terms of this Conservation Easement, then the party commencing such litigation shall reimburse the Trust on demand for all costs and expenses, including attorneys fees, reasonably incurred by Trust in its defense in such litigation.

- 5.8. The failure of Trust to exercise any of its rights under this Conservation Easement on any occasion shall not be deemed a waiver of said rights and Trust retains the right in perpetuity to require full compliance by Owner of the covenants and restrictions in this Conservation Easement.
- 5.9. Trust's remedies described in this Article shall be cumulative and concurrent and shall be in addition to all remedies now or hereafter available or existing at law or in equity.

#### ARTICLE 6. GENERAL PROVISIONS

- 6.1. This Conservation Easement gives rise to a real property right and interest immediately vested in Trust. For purposes of this Conservation Easement, the fair market value of Trust's right and interest shall be equal to the difference between (a) the fair market value of the Property as if not burdened by this Conservation Easement and (b) the fair market value of the Property burdened by this Conservation Easement.
- 6.2. The parties recognize the environmental, scenic, and natural values of the Property and have the common purpose of preserving these values. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Conservation Purposes and the policies and purposes of Trust. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the Conservation Purposes that would render the provision valid should be favored over any interpretation that would render it invalid. If any provision of this Conservation Easement is determined by final judgment of a court having competent jurisdiction to be invalid, such determination shall not have the effect of rendering the remaining provisions of this Conservation Easement invalid. The parties intend that this Conservation Easement, which is by nature and character primarily prohibitive (in that the Owner has restricted and limited the rights inherent in ownership of the Property), shall be construed at all times and by all parties to effectuate the Conservation Purposes.
- 6.3. Owner covenants and agrees to indemnify, defend and hold harmless Trust, its directors, officers and employees from and against any loss, cost (including reasonable attorneys' fees), liability, penalty, fine, and damage, of any kind or nature whatsoever, which Trust or any of its directors, officers or employees may suffer or incur and which is commenced or threatened against Trust or any of its directors, officers or employees arising from violation of any law involving the Property, any breach of covenants and restrictions in this Conservation Easement, taxes and assessment upon the Property, any death or injury to any person occurring on or about the Property or any loss or damage to any property occurring on or about the Property; provided, however, that Owner shall have no obligation to indemnify Trust against loss, cost, liability, claim, penalty, fine or

damage which results solely from Trust's own acts which are finally determined by a court to have been the result of gross negligence or willful misconduct of the Trust or which results entirely from an event or condition arising after Owner is no longer the legal or equitable owner, or in possession, of the Property or any part thereof. Without limitation of anything herein to the contrary, Owner shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operations, upkeep, and maintenance of the Property, including the general liability insurance coverage and compliance with law.

- 6.4. Owner shall continue to pay all taxes, levies and assessments and other governmental or municipal charges that may become a lien on the Property, including any taxes or levies imposed to make those payments.
- 6.5. When a change in conditions gives rise to the extinguishment of this Conservation Easement or a material term or provision hereof by judicial proceeding Trust, on any subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds of sale equal to the greater of: (a) the Fair Market Value of this Conservation Easement (hereinafter defined) on or about the date of this Conservation Easement; (b) Trust's Proportionate Share (hereinafter defined) of the proceeds of sale, exchange or involuntary conversion of the Property; and (c) the full proceeds of this Conservation Easement sale, exchange or involuntary conversion, without regard to contrary terms of this Conservation Easement, if state law provides that Trust is entitled to the full proceeds. "Fair Market Value of this Conservation Easement" shall mean the difference between (i) the fair market value of the Property as if not burdened by this Conservation Easement and (ii) the fair market value of the Property burdened by this Conservation Easement. "Trust's Proportionate Share" shall mean the fraction derived from (x) the Fair Market Value of this Conservation Easement on or about the date hereof, as a numerator, and (y) the fair market value of the Property if not burdened by this Conservation Easement, on or about the date hereof, as a denominator. "Proceeds of sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of, the Property minus the actual bona fide expenses of such transaction and an amount attributable to the improvements constructed upon the Property pursuant to the Reserved Rights hereunder, if any. All such proceeds received by Trust shall be used in a manner consistent with the purposes of this grant.
- 6.6. Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Owner and Trust shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by the Owner and Trust, including reasonable attorneys' fees, in any such action shall be paid out of the recovered proceeds. Trust shall be entitled to Trust's Proportionate Share of the recovered proceeds and shall use such proceeds in a manner consistent with the purposes of this grant. The respective rights of the Owner and Trust set forth in Section 6.5 and this Section 6.6 shall be in addition to and not in limitation of, any rights they may have in common law with respect

to a modification or termination of this Conservation Easement by reason of changed conditions or the exercise of powers of eminent domain as aforesaid.

- 6.7. Owner and Trust recognize that circumstances could arise which would justify the modification of certain of the restrictions contained in this Conservation Easement. To this end, Trust and the legal owner or owners of the portion of the Property which is the subject of the amendment at the time of amendment, may, if they agree in their sole discretion, to amend this Conservation Easement in a manner which is not inconsistent with the Conservation Purposes; provided, however, that Trust shall not agree to any amendment hereto that would result in this Conservation Easement failing to qualify as a "Conservation Easement" under the Act or as a qualified conservation contribution under Section 170(h) of the Internal Revenue Code and applicable regulations.
- 6.8. This Conservation Easement and all of the covenants, indemnifications, releases, easements and restrictions set forth in this Conservation Easement shall run with the land and be binding upon Owner and Owner's successors and assigns, unless otherwise expressly provided in this Conservation Easement. The term "Owner" used in this Conservation Easement shall mean and include the above-named Owner and any of Owner's successors or assigns that are the legal owners of the Property or any part thereof. The term "Trust" used in this Conservation Easement shall mean and include the above-named Trust and of its successors and assigns, it being understood and agreed that any assignee of the rights of Trust hereunder must be a "qualified organization" as defined in Section 170 (h) of the Code, as amended, and shall carry out the obligations of Trust and the intent of this Conservation Easement.
- 6.9. Owner shall be and remain liable for any breach or violation of this Conservation Easement only if such breach or violation occurs during such time as Owner is the legal owner of the Property.
- 6.10. All mortgages, deeds of trust and other liens or encumbrances upon all or any part of the Property that either come into existence or are recorded in the place for the recording of such liens or encumbrances after the date of this Conservation Easement will be subject to and subordinate to this Conservation Easement.
- 6.11. Nothing in this Conservation Easement shall limit the right of Owner, its successors or assigns to grant or convey the Property, provided that any such grant or conveyance shall be under and subject to this Conservation Easement. Owner shall notify Trust in writing of any sale, transfer, lease or other disposition of the Property or any part thereof, whether by operation of law or otherwise, at least 30 days after such disposition, such notice shall include a copy of the deed, lease, or other declaration of transfer, the date of transfer, and the name or names and addresses for notices of the transferee.
- 6.12. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability of Trust to exercise physical or managerial control over day-to-day operations of the Property, or any of the Owner's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

- 6.13. Notwithstanding provisions hereof to the contrary, if any, Owner shall be solely responsible for complying with all federal, state and local laws and regulations in connection with the conduct of any use of the Property or the erection of any Structure permitted hereunder, and Owner shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.
- 6.14. All notices required of Owner under the terms of this Conservation Easement, and all requests for the consent or approval of Trust, shall be in writing shall be deemed to have been given when either served personally or sent by certified mail, with return receipt requested and postage prepaid, addressed to Trust at the address set forth on the first page of this Conservation Easement or such other address provided by notice from Trust or Owner to the other for the purpose.
- 6.15. Trust makes no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to Owner or any other person or entity under United States or any state, local or other tax law to be derived from the donation of this Conservation Easement or other transaction associated with the donation of this Conservation Easement. This donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. Trust makes no warranty, representation or other assurance regarding the value of this Conservation Easement or of the Property. As to all of the foregoing, Owner is relying upon Owner's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon Trust or any legal counsel, accountant, financial advisor, appraiser or other consultant of Trust. In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs affecting Owner or Owner's successors or assigns or other similar matter then Trust shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by Trust in responding or replying thereto.
- 6.16. This Conservation Easement is intended to a "conservation agreement" as defined in the Act.
- 6.17. By signing this Conservation Easement, Owner acknowledges, warrants and represents to Trust that:
- 6.17.1. Owner has received and fully reviewed the Baseline Documentation in its entirety.
- 6.17.2. The Baseline Documentation includes, among other things:
- i) The appropriate survey maps showing the property line and other contiguous or nearby protected areas.
  - ii) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads,

buildings, fences or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas).

- iii) Aerial photographs of the Property at an appropriate scale taken as close as possible to the date the donation is made.
  - iv) On-site photographs taken at appropriate locations on the Property.
- 6.17.3. The Baseline Documentation is an accurate representation of the condition of the Property.
- 6.17.4. Owner has been represented by counsel of Owner's selection, and fully understands that Owner is hereby permanently relinquishing property rights which would otherwise permit the Owner to have a fuller use and enjoyment of the Property.
- 6.17.5. The undersigned individual or individuals signing as or on behalf of the Owner has all legal authority to enter into this Conservation Easement and perform all of the obligations of the Owner hereunder, as the binding act of the Owner.
- 6.17.6. Owner is seized of the Property in fee simple title. Owner has the right to grant and convey this Conservation Easement. The Property is free and clear of any and all liens and encumbrances except liens for taxes not yet due and payable and mortgage or deed of trust liens that are subordinate to this Conservation Easement by virtue of the executed form of Joinder and Consent of Mortgagee attached hereto and incorporated herein.

**TO HAVE AND TO HOLD** the easements and rights set forth in this Conservation Easement unto Trust, its successors and assigns, for its own use and benefit forever.



IN WITNESS WHEREOF, and intending to be legally bound hereby, Owners and Trust  
have executed this Conservation Easement as of the day and year first above written:

Witness: Joshua Blanton

James W. Felts  
James W. Felts

Witness: Joshua Blanton

Katie McKernan Felts  
Katie McKernan Felts

Attest: George Asimov  
George Asimov  
Secretary

NORTH AMERICAN LAND TRUST  
a non-profit corporation

By: Andrew L. Johnson  
Andrew L. Johnson  
President





STATE OF

COUNTY OF

On this 28<sup>th</sup> day of December, 2005, before me, a Notary Public in and for the State of Georgia, Susan B. Kauffman, the undersigned officer, personally appeared JAMES W. FELTS who, being known to me or whose identity was satisfactorily proven, acknowledged that he executed the foregoing Conservation Easement and Declaration of Covenants and Restrictions for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Susan B. Kauffman  
Notary Public

My commission expires: May 1, 2007



STATE OF

COUNTY OF

On this 28<sup>th</sup> day of December, 2005, before me, a Notary Public in and for the State of Georgia, Susan B. Kauffman, the undersigned officer, personally appeared KATIE MCKERNAN FELTS who, being known to me or whose identity was satisfactorily proven, acknowledged that she executed the foregoing Conservation Easement and Declaration of Covenants and Restrictions for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Susan B. Kauffman  
Notary Public

My commission expires: May 1, 2007



STATE OF PENNSYLVANIA

COUNTY OF CHESTER

On this, the 27<sup>th</sup> day of December, 2005, before me, a Notary Public in and for the State of Pennsylvania, Karen M. Mazza, the undersigned officer, personally appeared Andrew L. Johnson who acknowledged himself to be the President of NORTH AMERICAN LAND TRUST, a Pennsylvania non-profit corporation, and that he as such office, being authorized to do so, executed the foregoing Conservation Easement for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

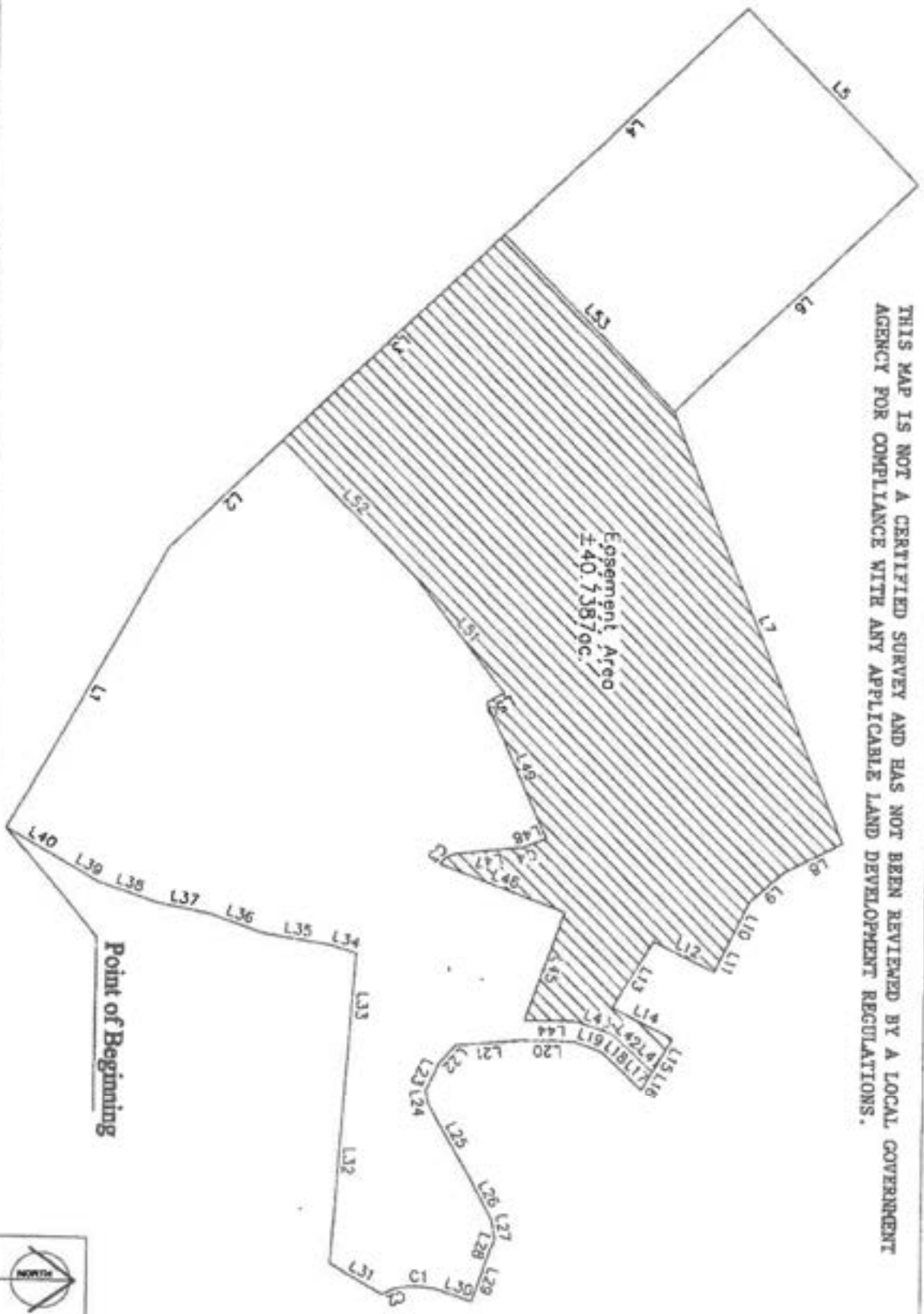
(Seal)

Karen M. Mazza  
Notary Public  
My commission expires: AUG. 22, 2006



Notarial Seal  
Karen M. Mazza, Notary Public  
Pennsbury Twp., Chester County  
My Commission Expires Aug. 22, 2006  
Member, Pennsylvania Association of Notaries

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



James W. Felts &  
Kaite McKernan Felts  
Hogback Township  
Transylvania County, North Carolina

Exhibit "A"  
Page 1 of 2

Scale  
120' = 1" D.L.

LINE TABLE

LINE	LENGTH	BEARING
L1	945.05	N61°48'22"V
L2	465.25	N44°39'12"V
L3	883.03	N44°39'12"V
L4	977.55	N44°39'12"V
L5	712.97	N45°20'48"E
L6	977.55	S44°39'12"E
L7	1358.70	S67°58'46"V
L8	189.53	S28°17'31"E
L9	136.63	S42°52'16"E
L10	137.94	S64°58'28"E
L11	93.21	S65°14'21"E
L12	200.00	S26°01'35"V
L13	233.92	S59°28'23"E
L14	200.00	N26°01'35"E
L15	116.03	S59°36'37"E
L16	61.44	S59°36'37"E
L17	92.48	S42°49'15"V
L18	70.00	S41°43'43"V
L19	85.00	S19°12'43"V
L20	150.00	S00°15'17"E
L21	190.10	S05°54'17"E
L22	70.00	S49°22'17"E
L23	90.20	S64°17'17"E
L24	40.00	N80°41'43"E
L25	252.22	N60°48'43"E
L26	143.24	N61°52'43"E
L27	60.19	N81°06'49"E
L28	50.00	S70°57'17"E
L29	149.95	S71°02'32"E
L30	93.49	S18°58'19"V

LINE TABLE

LINE	LENGTH	BEARING
L31	176.41	S30°11'07"V
L32	623.95	N85°16'01"V
L33	310.94	N86°16'01"V
L34	74.92	S17°37'37"V
L35	203.00	S08°32'19"V
L36	160.10	S19°08'29"V
L37	166.59	S11°05'26"V
L38	172.09	S18°32'39"V
L39	99.06	S30°50'24"V
L40	206.82	S30°50'24"V
L41	79.62	N42°49'15"E
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L50	56.63	S30°17'27"E
L51	425.87	N52°11'32"E
L52	551.60	N45°11'49"E
L53	712.97	S45°20'48"V

CURVE TABLE

CURVE	LENGTH	RADIUS	CHORD	CHORD DIRECTION
C1	113.45	240.00	112.40	S03°30'55"V
C2	60.35	140.00	59.88	S22°22'33"E
C3	60.65	67.50	58.63	S32°56'11"E
C4	27.16	112.50	27.09	N14°06'30"V

James W. Felts &amp;

Katie McKernan Felts

Hopkock Township  
Tennysville County, North Carolina

Exhibit "A-1"

Page 2 of 2

C:\msd\l

**FALLS VALLEY  
CONSERVATION  
EASEMENT  
DOCUMENT**

**AMENDMENT**

**May 16, 2008**

2008003037

TRANSLYVANIA CO, NC FEE \$41.00  
PRESENTED & RECORDED:  
05-16-2008 02:54:09 PM  
CINDY M OWNEY  
REGISTER OF DEEDS  
BY: BETH C SALES  
ASSISTANT  
BK: DOC 459  
PG: 138-147

Prepared by, and after recording please return to:  
North American Land Trust  
P.O. Box 467  
Chadds Ford, PA 19317

**AMENDMENT TO  
CONSERVATION EASEMENT  
AND  
DECLARATION OF RESTRICTIONS AND COVENANTS**

**THIS AMENDMENT TO CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS ("Amendment") made MAY 14, 2008 by and between JAMES W. FELTS and KATIE McKERNAN FELTS (together, "Owner"), and NORTH AMERICAN LAND TRUST ("Trust"), a Pennsylvania non-profit corporation,**

**WITNESSETH THAT:**

**WHEREAS**, Owner granted to Trust a certain Conservation Easement and Declaration of Restrictions and Covenants (the "Conservation Easement"), recorded at Book 326, page 597, in the Office of the Register of Deeds of Transylvania County, regarding certain real property (the "Property") in Transylvania County, North Carolina; and

**WHEREAS**, the Property was described in the Conservation Easement as 40.739 acres of land described on a plat that was attached as Exhibit "A" and incorporated in the Conservation Easement; and

**WHEREAS**, Owner desires to subdivide, from the Property, a 5.5 acre parcel of land described as "Parcel A3" on that certain Cover Sheet & Overall Site Map for a Subdivision Plat prepared for James W. Felts and Katie McKernan Felts by Halfer Land Surveying on May 1, 2008 and attached hereto as Exhibit "B" and incorporated herein; and

**WHEREAS**, Owner and Trust desire to subdivide the Property as aforesaid without amending the overall area of land protected by the Conservation Easement, and without altering or amending any other provision of the Conservation Easement; and

**WHEREAS**, the subdivision shall not impair the Conservation Purposes of the Conservation Easement; and

**WHEREAS**, Owner and Trust desire to amend the description of the Property to remove a certain 2.0 acre parcel, identified as "New 2.0 Acre Unrestricted Parcel" on Exhibit "B." and

**WHEREAS**, Owner and Trust desire to further amend the description of the Property to include a certain 2.0 acre parcel identified as "New 2.0 Acre Restricted Parcel" on Exhibit "B." and

**WHEREAS**, Trust has determined that extinguishing the Conservation Easement on the New 2.0 Acre Unrestricted Parcel and making the New 2.0 Acre Restricted Parcel subject to the Conservation Easement will not adversely affect the Conservation Purposes or Conservation Values; and

**WHEREAS**, Owner and Trust intend that this document be a "conservation agreement" as defined in Chapter 121, Article 4, Section 121-34 et seq. of the General Statutes of North Carolina, known as the Historic Preservation and Conservation Agreement Act (the "Act").

**NOW, THEREFORE**, for and in consideration of the mutual covenants, terms, conditions, restrictions, and promises contained herein, and intending to be legally bound hereby, Owner and Trust hereby agree as follows:

1. Capitalized terms used in this Amendment shall have the meaning ascribed to such terms in the Conservation Easement, unless otherwise defined herein.
2. The area of real property consisting of a total of 2.0 acres labeled as "New 2.0 Acre Restricted Parcel" on Exhibit "B" is hereby added to the Property under the Conservation Easement. Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Trust, its successors and assigns, the easements, covenants, prohibitions and restrictions set forth in the Conservation Easement, in perpetuity, in, on and upon the New 2.0 Acre Restricted Parcel as aforesaid, to accomplish the Conservation Purposes. Each and every term, covenant and condition in the Conservation Easement, including but not limited to all remedies and rights of enforcement available to Trust therein, shall apply to the New 2.0 Acre Restricted Parcel as fully as if such land was described as being within the Property at the time of the grant and recording of the Conservation Easement. Trust hereby accepts the grant of such easement, rights and restrictions and agrees to hold such easement, rights and restrictions exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in the Conservation Easement. Property as identified in the Conservation Easement shall now include the New 2.0 Acre Restricted Parcel as described by metes and bounds in Exhibit "A-1" attached hereto which shall replace Exhibit "A" to the Conservation Easement.
3. The area of real property consisting of 2.0 acres and that is labeled as "New 2.0 Acre Unrestricted Parcel" shown on Exhibit "B" and described by metes and bounds in Exhibit "C" is hereby removed from the Property and released from the easements, covenants, prohibitions, and restrictions set forth in the Conservation Easement. Property as identified in the Conservation Easement shall no longer include the New 2.0 Acre Unrestricted Parcel.



4. Trust consents to the subdivision of the "Parcel A3" from the Property as described by metes and bounds in Exhibit "C" shown on Exhibit "B".

5. Trust reaffirms its acceptance of the Conservation Easement and agrees to hold such easements, restrictions, and covenants in the amended Property exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in this Conservation Easement.

6. Owner reaffirms, without limitation, its warranty and representations set forth in Paragraph 6.17.6 of the Conservation Easement with respect to the Property as corrected herein.

7. This Amendment shall be recorded in the same place of public record in which this Conservation Easement was recorded.

8. This Amendment shall not modify or amend any provision of the Conservation Easement except as herein expressly stated.

9. This Amendment shall be governed by and construed under the law of the state of North Carolina.

**TO HAVE AND TO HOLD** the easements and rights created in this Amendment unto Trust, its successors and assigns, for its own use and benefit forever.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, and intending to be legally bound hereby, Owners and Trust  
have executed this Conservation Easement as of the day and year first above written:

Witness: [Signature]

Witness: [Signature]

[Signature]  
James W. Felts

[Signature]  
Katie McKernan Felts

NORTH AMERICAN LAND TRUST  
a non-profit corporation

Attest: [Signature]  
TREASURER

By: [Signature]  
Andrew L. Johnson  
President



STATE OF Georgia

COUNTY OF Cobb

On this 15<sup>th</sup> day of May, 2008, before me, a Notary Public in and for the State of Georgia, Barry Prewitt, the undersigned officer, personally appeared JAMES W. FELTS who, being known to me or whose identity was satisfactorily proven, acknowledged that he executed the foregoing Conservation Easement and Declaration of Covenants and Restrictions for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



STATE OF Georgia

COUNTY OF Cobb

BTP  
Notary Public

My commission expires: March 30, 2009

On this 15<sup>th</sup> day of May, 2008, before me, a Notary Public in and for the State of Georgia, Barry Prewitt, the undersigned officer, personally appeared KATIE MCKERNAN FELTS who, being known to me or whose identity was satisfactorily proven, acknowledged that she executed the foregoing Conservation Easement and Declaration of Covenants and Restrictions for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



BTP  
Notary Public

My commission expires: March 30, 2009

STATE OF PENNSYLVANIA :  
:   
COUNTY OF CHESTER :

On this, the 14<sup>th</sup> day of MAY, 2008, before me, a Notary Public in and for the State of Pennsylvania, Karen M. Mazza, the undersigned officer, personally appeared Andrew L. Johnson who acknowledged himself to be the President of NORTH AMERICAN LAND TRUST, a Pennsylvania non-profit corporation, and that he as such officer, being authorized to do so, executed the foregoing Conservation Easement for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Karen M. Mazza  
Notary Public  
My commission expires: AUG. 22, 2010

COMMONWEALTH OF PENNSYLVANIA  
Notary Seal  
Karen M. Mazza, Notary Public  
Pennsbury Twp., Chester County  
My Commission Expires Aug. 22, 2010  
Member, Pennsylvania Association of Notaries



**NOTES:**

- 1) CONSERVATION AREA = 40.739 Acres  
2) THIS DRAWING DOES NOT REPRESENT A FIELD SURVEY.

SHEET 1 of 2

This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

**HAFLER LAND SURVEYING**  
435 S. CALDWELL STREET  
BREWSTER, NORTH CAROLINA 28712  
(828) 884-7168  
FAX (828) 884-8646

EXHIBIT "A-1"

James W. Felts & Katie McKernan Felts  
HOGBACK TOWNSHIP  
TRANSYLVANIA COUNTY, NORTH CAROLINA

PARCEL BOUNDARY  
CALL TABLE

Course	Bearing	Distance
B1	N81°48'22"W	945.05'
B2	N44°39'12"W	2335.63'
B3	N45°20'48"E	712.97'
B4	S44°39'12"E	977.55'
B5	N87°58'42"E	1358.70'
B6	S38°17'31"E	189.53'
B7	S42°32'16"E	136.83'
B8	S64°56'28"E	137.94'
B9	S62°14'21"E	93.21'
B10	S38°01'35"W	200.00'
B11	S57°28'25"E	233.92'
B12	N26°01'35"E	200.00'
B13	S42°38'57"E	177.43'
B14	S42°48'15"W	92.48'
B15	S41°43'43"W	70.00'
B16	S19°12'43"W	85.00'
B17	S00°15'17"E	150.00'
B18	S05°54'17"E	190.10'
B19	S49°22'17"E	70.00'
B20	S44°17'17"E	90.30'
B21	N80°41'43"E	40.00'
B22	N60°48'43"E	252.23'
B23	N81°52'43"E	143.24'
B24	N81°06'49"E	80.18'
B25	S70°57'17"E	50.00'
B26	S71°02'32"E	140.35'
B27	S18°58'19"W	85.22'
B28	Rad: 240.00° Terc: 81.71° Chd: S04°33'08"W Rad: 140.00°	ARC 120.81° CA: 28°50'28" 119.54'
B29	Rad: 140.00° Terc: 30.85° Chd: S02°17'47"E	ARC 80.73° CA: 24°31'20" 60.20'
B30	S30°11'07"W	176.41'
B31	N08°18'01"W	934.30'
B32	S17°37'37"W	74.87'
B33	S06°32'19"W	203.00'
B34	S19°08'28"W	180.10'
B35	S11°02'26"W	182.19'
B36	S18°32'39"W	173.09'
B37	S30°50'34"W	303.88'

CONSERVATION EASEMENT  
CALL TABLE

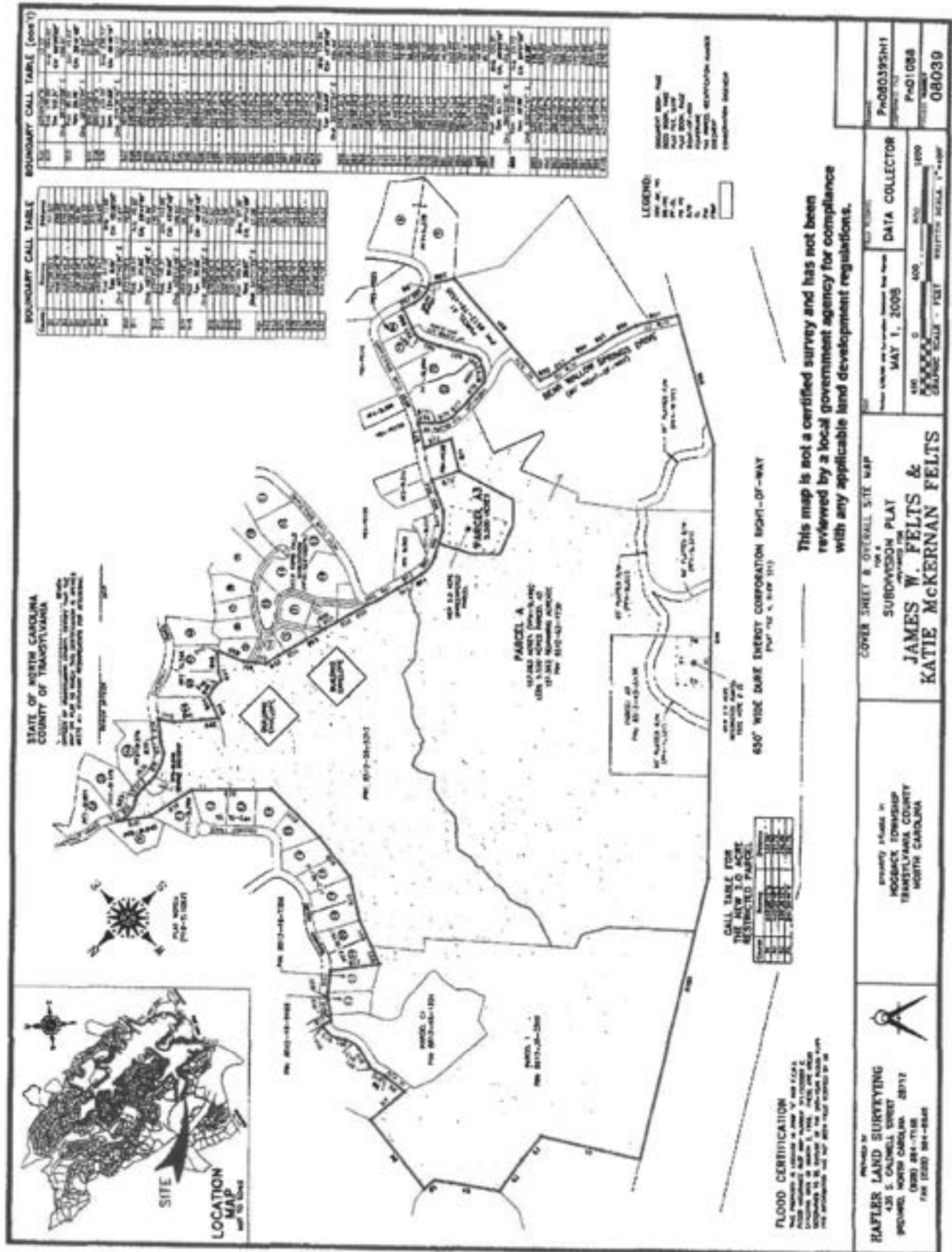
Course	Bearing	Distance
E1	N44°39'12"W	1325.09'
E2	N45°20'48"E	251.75'
E3	S44°39'12"E	346.08'
E4	N45°20'48"E	481.23'
E5	N87°58'42"E	1358.70'
E6	S38°17'31"E	189.53'
E7	S42°32'16"E	136.83'
E8	S64°56'28"E	137.94'
E9	S62°14'21"E	93.21'
E10	S38°01'35"W	200.00'
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E12	N26°01'35"E	200.00'
E13	S42°38'57"E	177.43'
E14	S42°48'15"W	92.48'
E15	S41°43'43"W	82.32'
E16	S19°12'43"W	107.24'
E17	S00°15'17"E	152.27'
E18	N71°07'43"E	345.81'
E19	S20°21'49"W	386.20'
E20	Rad: 87.50° Terc: 32.54° Chd: N32°58'11"W Rad: 112.50°	ARC 80.63° CA: 51°28'32" 174.03'
E21	N07°11'53"W	27.18'
E22	Terc: 13.84° Terc: 112.50° Chd: N14°06'30"W	ARC 13°49'49" CA: 27.08° 82.23'
E23	S21°01'48"W	438.17'
E24	S66°00'28"W	56.83'
E25	N30°17'27"W	425.67'
E26	S32°11'33"W	531.80'
E27	S45°11'48"W	255.32'
E28	S42°41'58"E	407.57'
E29	S58°51'38"W	230.23'
E30	N22°38'09"W	322.00'
E31	N26°08'53"E	139.80' (TBL)
E32	S21°35'04"E	

SHEET 2 of 2

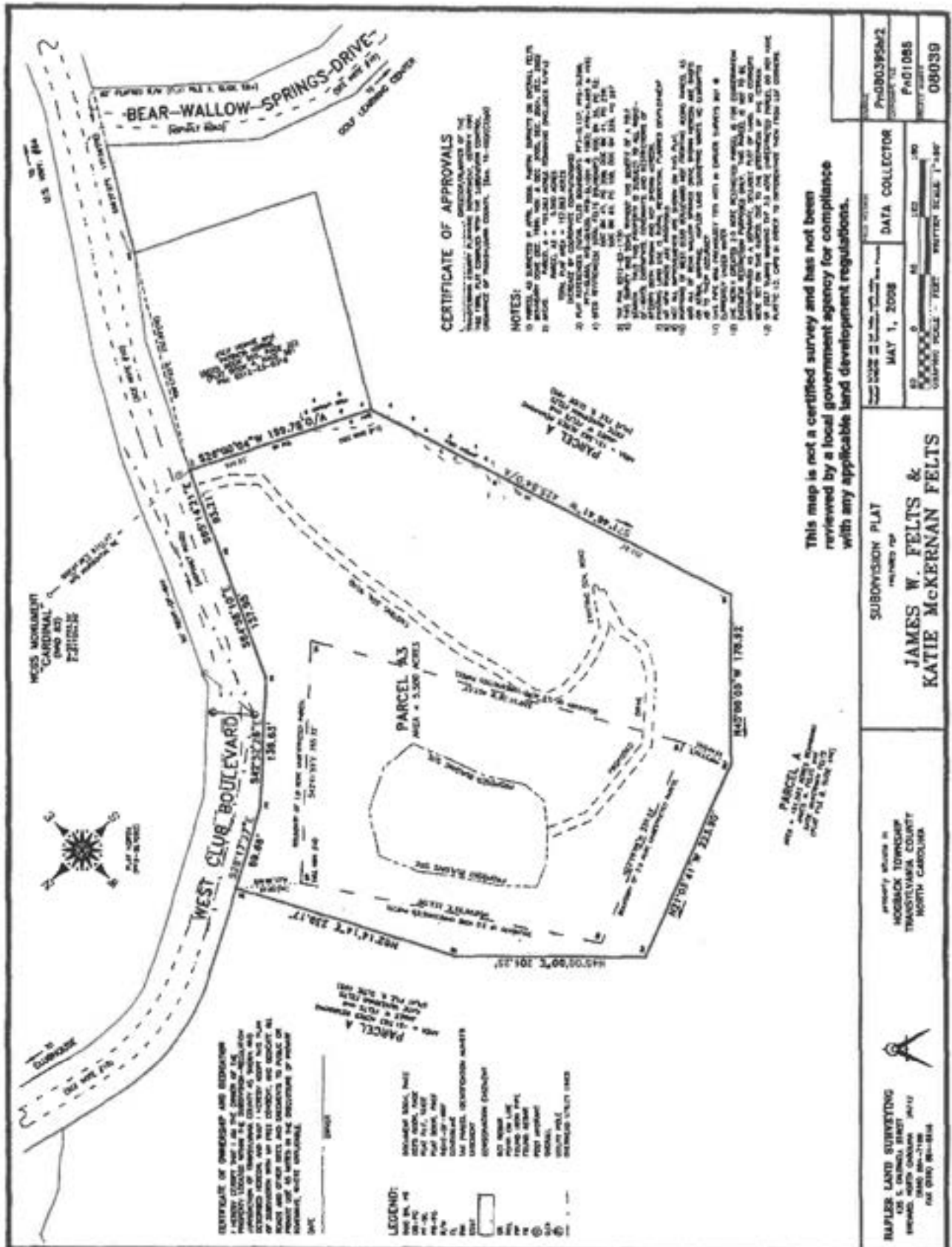
James W. Felts & Katie McKernan Felts  
HOGBACK TOWNSHIP  
TRANSYLVANIA COUNTY, NORTH CAROLINA

EXHIBIT "A-1"

PREPARED BY  
HATLER LAND SURVEYING  
435 S. CALDWELL STREET  
BREVARD, NORTH CAROLINA 28712  
(828) 894-7168  
FAX (828) 894-8845







LINE TABLE

LINE	LENGTH	BEARING
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C4	27.16	112.50	27.09	N14°06'50"V



James W. Felt &  
Katie McKernan Felt

Hopland Township  
Transylvania County, North Carolina

Exhibit "A-1"

Page 2 of 2

Date  
12/11/2014