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After filing, please return to:  
Oconee River Land Trust  
380 Meigs Street, Athens, Georgia 30601

Cross reference to that certain  
Limited Warranty Deed dated  
\_\_\_\_\_, \_\_\_\_\_, and recorded  
\_\_\_\_\_, \_\_\_\_\_, in Deed Book  
\_\_\_\_\_, Pages \_\_\_\_\_,  
Jones County, Georgia Records

STATE OF GEORGIA  
COUNTY OF JONES

### DEED OF CONSERVATION EASEMENT

**THIS DEED OF CONSERVATION EASEMENT** (hereinafter "Conservation Easement") is made this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between **Little Creek Two, LLC**, a Georgia limited liability company formed under the laws of Georgia (hereinafter "Grantor") and the Oconee River Land Trust, Inc., a Georgia nonprofit corporation (hereinafter "Grantee").

#### RECITALS

#### WITNESSETH

**WHEREAS**, Grantor owns in fee simple certain real property located in Jones County, Georgia, comprising approximately 449.15 acres more or less, and being more particularly described in Exhibit "A", attached hereto and incorporated herein, and more particularly depicted on the "Map of Conservation Easement" which is attached hereto as Exhibit "B" and incorporated herein (hereinafter the "Property"); and

**WHEREAS**, the Property, which is located adjacent to Georgia Highway 49, consists of a mosaic of planted pine for commercial forestry purposes, forest openings, mixed hardwood pine forests, hardwood bottomland forests, and permanent and intermittent streams with intact vegetated buffers; and

**WHEREAS**, permanently protecting the Property with approximately 280 acres of active forestry land will provide for the maintenance of prime forestry land, an important conservation

purpose recognized by the State of Georgia's Conservation Tax Credit Program (GCTCP) as providing significant public benefit and therefore worthy of protection. (See O.C.G.A. 48-7-29 and Conservation Tax Credit Regulations Chapter 391-1-6-.03(4)(d)); and

**WHEREAS**, the Property shall be managed according to a professionally prepared Management Plan and according to the current Best Management Practices as defined by the Georgia Soil and Water Conservation Commission and/or the Georgia Forestry Commission or successor agencies; and

**WHEREAS**, permanently protecting the Property will ensure the protection of stable forested riparian buffers of a minimum of one hundred feet along Little Creek, a stream in the Oconee River watershed, thereby protecting and enhancing the water quality of the stream and the Oconee River, and protecting riparian buffers and water quality are conservation purposes recognized by the State of Georgia's Conservation Tax Credit Program (GCTCP) as providing significant public benefit and worthy of protection (See O.C.G.A. 48-7-29 and Conservation Tax Credit Regulations Chapter 391-1-6-.03(4)(a)); and

**WHEREAS**, The Property contains a number of high priority habitats recognized by the GCTCP and the Georgia Comprehensive Wildlife Conservation Strategy ("GCWCS") as providing significant public benefit and worthy of protection, including Bottomland Hardwood Forests, and Streams, (O.C.G.A. 12-6A-2(5)(E) and Conservation Tax Credit Regulations Chapter 391-1-6-.03(4)(c) and State Wildlife Action Plan, final report dated August 31, 2005, p. 98-99); and

**WHEREAS**, permanently protecting the Property will ensure "the preservation of open space (including farmland and forest land) where such preservation is... pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit", within the meaning of § 170(h)(4)(A)(iii)(II) of the Internal Revenue Code of 1986, *as amended* ("the Code") as follows:

- a. The Conservation Easement will promote a number of conservation purposes recognized by the State of Georgia in the GCTCP as worthy of protection and resulting in significant public benefits, including the protection of streams, wetlands, riparian buffers, habitats, and forestry land as set forth in the GCTCP and described above, and the GCTP provides for a state income tax credit for qualifying conservation easements in order to encourage the protection of these conservation purposes.
- b. The Georgia Conservation Tax Assessment, O.C.G.A. § 48-5-7.4, recognizes the public benefit of agricultural and forested property by reducing the property tax burden on property with these uses, and the Property is currently enrolled in the program following approval by the Jones County Board of Tax Assessors. This Conservation Easement allows continued forestry activities on the Property in designated areas.

**WHEREAS**, this Conservation Easement, by ensuring that the varied and critical natural habitats as identified on Exhibit B, and including bottomland hardwood forests and riparian buffers will remain undisturbed and intact, will therefore provide for "the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem..." as set forth in IRC 170(h)(4)(A)(ii); and

**WHEREAS**, Grantor intends that the multiple conservation purposes protected on the Property will not negatively impact each other and that uses inconsistent with these purposes will not be permitted; and

**WHEREAS**, the Property in its protected state will ensure the preservation of significant conservation purposes and values, including commercial forestry, various wildlife and plant habitats, riparian resources and open space values (collectively “Conservation Values”) of great importance to the people of Jones County, the State of Georgia, and the United States, and thus is worthy of perpetual protection; and

**WHEREAS**, preventing the development and disturbance of the Property will ensure that the high quality Conservation Values found on the Property will not be disturbed and will continue to benefit the public; and

**WHEREAS**, the Conservation Values are more particularly documented in the Conservation Easement Baseline Documentation Report, dated \_\_\_\_\_, 2013, prepared by Grantee, which consists of reports, maps, photographs and other documentation regarding the present condition, uses and Conservation Values of the Property as of the effective date of this Conservation Easement, as required by Treasury Regulations §1.170A-14(g)(5), and that said Report is incorporated herein by this reference, and is intended to serve as an objective, though non-exclusive basis for monitoring compliance with the terms and conditions of this Conservation Easement; and

**WHEREAS**, Grantor intends that the Conservation Values of the Property be preserved and maintained by restricting and/or limiting those certain land uses on the Property set forth in more detail herein, and further, Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

**WHEREAS**, Grantee is a publicly supported, tax-exempt nonprofit organization and a “qualified organization” within the meaning of Sections 501(c)(3) and 170(h), of the Internal Revenue Code, and is qualified to accept, hold and administer conservation easements by the laws of the State of Georgia, and whose primary purpose is the preservation and protection of land in its scenic, forested, and open space condition in the Oconee River Watershed and other watersheds within the State of Georgia; and

**NOW, THEREFORE**, as an absolute gift without payment of monetary consideration by Grantee to Grantor, but in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, and pursuant to O.C.G.A. §44-10-1 *et seq.* which expressly authorizes the conveyance herein contained, Grantor hereby unconditionally and irrevocably grants and conveys unto Grantee forever and in perpetuity a conservation easement of the nature and character and to the extent hereinafter set forth over the Property, and Grantee, by its execution hereof, accepts the foregoing grant of this Conservation Easement, and the recordation of this instrument shall constitute a “recordation of the acceptance” by Grantee within the meaning of O.C.G.A. §44-10-3(b).

## **ARTICLES OF AGREEMENT**

### **ARTICLE I. PURPOSE**

It is the purpose of this Conservation Easement to assure that the Property will retain forever its predominantly relatively natural, forested, open space and relatively undeveloped condition, and to preserve and protect the Conservation Values of the Property, including productive forestry resources, riparian resources, and a variety of wildlife habitats, and to prevent any use of the

Property that will impair or interfere with the Conservation Values of the Property (collectively, the “Purposes”).

## **ARTICLE II. DURATION OF EASEMENT**

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by Grantee against Grantor.

## **ARTICLE III. RIGHTS OF GRANTEE**

To accomplish the Purposes the following rights are conveyed to Grantee by this Conservation Easement:

- A. To preserve and protect the Conservation Values of the Property pursuant to the terms hereof;
- B. To enter upon the Property at reasonable times and upon prior reasonable notice in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement in accordance with Article VIII; except in cases where Grantee determines in its reasonable discretion that immediate entry is required to prevent, terminate, or mitigate an existing or imminent violation of this Conservation Easement which would significantly damage the Conservation Values of the Property, and Grantee shall not in any case unreasonably interfere with Grantor’s use and quiet enjoyment of the Property.
- C. To prevent any activity on or use of the Protected Property that is inconsistent with the Purpose of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use; and
- D. To post signs and other boundary markers within the Conservation Easement Area identifying the boundary of lands subject to this Conservation Easement, provided such signs are no larger than 8 inches in height by 8 inches in width and professionally prepared.

## **ARTICLE IV. RESERVED RIGHTS OF GRANTOR**

Except as limited in this Conservation Easement, Grantor reserves all rights as fee owner of the Property, provided, however that Grantor shall notify Grantee in writing as required by C.F.R. §1.170A-14(g)(5)(ii) prior to the exercise of any reserved or permitted right hereunder if the exercise thereof may be reasonable expected to have an adverse impact on the Conservation Values. Without limiting the generality of the foregoing, and notwithstanding the terms of Article V, the following rights are expressly reserved unto the Grantor:

### **A. General Vegetation Management.**

- 1. Vegetation management is defined as activities that affect or disturb the vegetative cover of the Property, including but not limited to planting, removing, mowing, and prescribed burning.
- 2. Except as provided in Paragraphs B of this Article, Grantor reserves the right to plant non-invasive native species and remove exotic species, including, but not limited to, privet, bamboo, as long as any disturbed area is restored and re-vegetated so as to minimize sediment run-off and erosion, in order to enhance vegetated habitat, protect the water quality of the streams and wetlands, and increase the Property’s plant diversity. No invasive exotic

- plant species that appear in Category 1, Category 1 Alert or Category 2 on the Georgia Exotic Pest Plant Council Invasive Plant List shall be planted on the Property.
3. Herbicides and pesticides shall only be applied according to the manufacturer's instructions and in compliance with all local, state and federal regulations covering their safe application and disposal in order to protect the Property's wildlife and water quality. Grantor is prohibited from applying herbicides and pesticides within one hundred (100) feet of any stream, spring, wetland and from allowing these from entering the water bodies on the property. All herbicides and pesticides application shall be done in accordance with the manufacturer's instructions as well as in accordance with then existing best management practices and all local, State and Federal laws.
  4. Grantor reserves the right to remove dead, insect-infested and/or diseased trees if said trees pose a threat to human safety or to the health of the stand as a whole. In the event that there is no forest management plan as set forth below in affect and more than single tree removal is required, then Grantor shall obtain Grantee approval of any clearing activity as set forth in Article VII.
  5. Grantor reserves the right to create and maintain open habitats for the benefit of wildlife, including birds. These wildlife openings shall be created and maintained according to the Forest Management Plan as set forth below. The area impacted by the food plots shall not exceed a ratio of ten (10) acres per one hundred (100) acres. Grantor may choose to conduct skeet or sport shooting in a location approved by Grantee as provided for in Article VII. Any approved skeet area, not to exceed 10 acres of cleared area, must be located outside the riparian buffers and SNAs provided for below.
  6. There are Bottomland Hardwood Forests, streams and Riparian Buffers on the Property, as identified in Exhibit B as Special Natural Areas ("SNA"). The SNAs are afforded special protection because they are examples of (i) high-quality terrestrial and aquatic natural communities. The management goal of these areas shall be to maintain and enhance the health and quality of the forest and the streams. There shall be no timber harvesting of hardwoods in these areas. For the maintenance and improvement of the health of the hardwood forest, Grantor reserves the right to cut, burn, or remove only (i) exotic or non-native species and plants, (ii) vegetation specified with Grantee's prior written consent, and (iii) damage caused by storms, insects and other animals, acts of God, disease, fire, unauthorized acts of third-parties and other causes beyond the reasonable control of Grantor. Grantor also reserves the right to replant and restore the hardwood forest using native, non-invasive species.

## **B. Forest Management.**

1. Forest Management is defined as activities that affect the species quantity and quality of the trees on the Property, including herbicide application, site preparation, planting, prescribed burning, growth, thinning and harvest of trees, and such activities result or are intended to result in the sale, trade, or other removal of forest products from the Property.
2. Grantor reserves the right to conduct commercial forest management as defined above in the areas designated on Exhibit B as "Pine Plantation", conducted in accordance with a written Forest Management Plan prepared by a Professional Forester registered in the State of Georgia or other qualified natural resource specialist to achieve compliance with the terms of this Conservation Easement and then current Best Management Practices as defined by the Georgia Soil and Water Conservation Commission and/or the Georgia Forestry Commission or successor agencies and comply with all applicable local, state and federal laws and regulations.

3. The Forest Management Plan must be prepared prior to any management activities or harvesting and shall be provided to the Grantee. The Grantee shall have thirty (30) days from the receipt of the Forest Management Plan to review and either approve or notify the Grantor of any deficiencies in the Plan that relate to protecting the Conservation Values of the Property. The Grantee's approval may be withheld only upon a reasonable determination by the Grantee that the proposed actions would be inconsistent with the purposes of this Conservation Easement and/or inconsistent with the forest management goals set forth below.
4. Grantor shall also provide Grantee with a written notice of harvest at least thirty (30) days prior to commencement of harvesting activities. The notice shall include the location of the harvest, contemplated dates, and a summary of the planned activities and disturbances. Timber harvesting shall be supervised by a professional forester registered in the State of Georgia.
5. The goals of Forest Management Plan shall include: maintenance of soil productivity, maintenance or improvement of the overall quality of forest products produced on the Property, protection of the water quality of the streams and wetlands, including the maintenance of a 100 feet Riparian Buffer as defined below, conservation of the scenic and aesthetic quality of the Property, and maintenance and enhancement of wildlife habitat and the production of wildlife.
6. Grantor will maintain a Riparian Buffer that is defined as any portion of the Property that lies (i) with the greater distance of either the area depicted as the "Riparian Buffer" on the map attached hereto as Exhibit B or within one hundred (100) feet of the bank of any perennial, intermittent, or ephemeral stream, river, pond or jurisdictional wetland as delineated by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, 33 U.S.C. §1344, as amended.
7. In the Riparian Buffer, harvesting of timber and other soil and vegetation disturbing activities are prohibited, except that Grantor may remove diseased trees and invasive exotics species from the Riparian Buffer with Grantee's approval.
8. As part of the Forest Management Plan, Grantor may construct firebreaks in accordance with state Best Management Practices in use at the time the breaks are constructed. The firebreaks shall be constructed so as to prevent erosion and allow for proper drainage.
9. In order to prevent erosion, skid trails, trails and roads constructed as a necessary component of timber harvesting must be constructed so as to provide proper drainage. After harvesting efforts are completed, these trails and roads must be seeded with native vegetation.
10. Grantor reserves the right to construct equipment sheds as provided for in the Forest Management Plan. The total area of all new construction shall not exceed in one percent of the Property's acreage. A structure's area shall be measured by the area of the structure's foundation or base of the building.
11. Grantor reserves the right to cease commercial forestry operations at any time and to resume them any time thereafter. In the event of the cessation of commercial forestry, the vegetation shall be managed as set forth above in Article IV.

### **C. Roads.**

1. Existing roads are shown on Exhibit C "Man Made Structures/Roads Map", attached hereto and incorporated herein, and are expressly permitted. Grantor reserves the right to maintain and construct unpaved woods road, no wider than twenty-five (25) feet in width of cleared areas which are to be used for access to the Property, vehicular, pedestrian, bike and equestrian use, and for forest management activities, so long as this use does not result in

erosion and sediment run-off and the roads are constructed according to then current best management practices as defined by the Georgia Soil and Water Conservation Commission and/or the Georgia Forestry Commission or successor agencies.

2. Prior to the construction of any roads, Grantor must provide notice to Grantee of the proposed construction as provided in Article VII. All construction activities must minimize impact on adjacent vegetation and will minimize sediment and storm water run-off, and otherwise minimize the impact on the conservation values, streams and wetlands of the Property. All construction activity will comply with any existing Best Management Practices as established by relevant state and federal agencies, as well as local, state and federal law.

#### **D. Structures.**

1. Structures include any building or facility, whether residential, commercial or recreational, residential, commercial, or recreational, including but not limited to any building, house, garage, barn, shed, outbuilding, tower, pavilion, tree stand, or lean-to, but does not include Utilities or Roads. There are currently structures associated with hunting on the Property. These existing structures are specifically permitted. Except as specifically permitted herein, placement, installation or construction of any temporary or permanent buildings, structures, facilities or other improvements on the Property are prohibited.
2. New structures. Grantor reserves the right to construct, maintain, and replace permanent and temporary structures associated with forest and land management activities as provided for the Forest Management Plan discussed above so long as sediment run off is prevented and any disturbed areas are restored so as to prevent erosion. The total area of all new construction shall not exceed in one percent of the Property's acreage. A structure's area shall be measured by the area of the structure's foundation or base of the building.
3. Grantor reserves the right to construct, place and maintain temporary structures such as viewing platforms, picnic shelters or tables, hunting stands, blinds and other temporary hunting equipment upon the Property, provided the construction of such structures and equipment do not cause sediment runoff.
4. Prior to any construction, Grantor must provide notice to Grantee of the proposed construction as provided in Article VII. All construction activities must minimize impact on adjacent vegetation and will minimize sediment and storm water run-off, and otherwise minimize the impact on the conservation values, streams and wetlands of the Property. All construction activity will comply with any existing Best Management Practices as established by relevant state and federal agencies, as well as local, state and federal law.

#### **E. Trails.**

1. Grantor reserves the right to construct and maintain permeable pedestrian, equestrian, and/or bicycle trails on the Property for non-motorized, noncommercial recreational and educational purposes. The trails shall be no wider than eight (8) feet in cleared width. Construction and maintenance of trails shall be done so as to minimize disturbance to surrounding vegetation, shall not create erosion and sediment runoff, and shall take into account the topography of the Property, with no portion of the Trail running perpendicular (90) to the contour. Water diversions should be installed where appropriate to prevent serious erosion.
2. At least thirty (30) days prior to any trail construction activity, Grantor shall provide Grantee with written notice of such construction, which notice shall include a description of the

proposed activity, including the proposed location, size, and construction schedule, with the centerline of the proposed trail clearly marked with flagging on the ground.

3. Grantor reserves the right to place picnic tables and benches along trails.

**F. Fences.** Grantor reserves the right to install, maintain, or replace any fences, from time to time, as is customary on the Property consistent with the Purpose of this Conservation Easement, except that such fences shall not impede the passage of wildlife.

**G. Lighting.** Only shielded outdoor lighting that directs the light downwards may be used on the Property.

**H. Education.** Grantor reserves the right to use the Property for the scientific and environmental education of the public, provided that the conservation values protected by this Conservation Easement are not diminished.

**I. Recreational Uses.** Grantor reserves the right to use the Property for recreational purposes, including but not limited to bird watching, bird propagation, hunting, fishing, swimming, equestrian use, bicycling, and hiking, provided that such uses are not otherwise in violation of this Conservation Easement and that all recreational uses shall be conducted in accordance with all federal, state and local laws. All terrain vehicle use shall be limited to currently existing roads and new roads permitted by this Conservation Easement, except that all terrain vehicles may be used off the road for game retrieval.

**J. Ponds.**

1. Grantor reserves the right to construct and maintain one pond no greater than five (5) acres in surface area. The location of the pond shall be approved by Grantee as provided in Article VII. Construction and maintenance of the pond shall be done in accordance with all local, state and federal laws, and shall minimize the impact on adjacent vegetation, and shall not result in sediment runoff into streams. Grantor reserves the right to construct a dock on the pond and use the pond for recreational activities as well as wildlife viewing. Permitted maintenance activities include the right to dredge and prevent noxious plant growth, so long as these maintenance activities are in accordance with all state and local laws.

## **ARTICLE V. PROHIBITED AND RESTRICTED ACTIVITIES**

Except for the rights expressly reserved by Grantor in Sections IV, any activity on, or use of, the Property inconsistent with the Purposes or that would significantly and adversely impair or interfere with the Conservation Values of the Property is prohibited. Furthermore, the Property shall be subject to the following restrictions:

**A. Disturbance of Natural Features.** Grantor shall not change, disturb, alter, or impair any of the natural, scenic, and aesthetic features of the Property, except as permitted pursuant to Article IV.

**B. Motorized Vehicles.** Motorized vehicles on the Property, including off road vehicles such as all terrain vehicles, are prohibited, except as set forth in Article IV.

**C. Industrial and Agricultural Use.** Industrial, manufacturing and agricultural uses are prohibited except as provided in Article IV.

- D. Commercial Use.** Commercial activities, unless associated with the commercial timbering activities as provided for in Article IV, are prohibited, except that the Grantor may sell or transfer mitigation rights in connection with wetlands and other mitigation efforts so long as there is no negative impact on the Conservation Values.
- E. Subdivision.** Legal subdivision or partitioning of the Property for any purpose is prohibited.
- F. Signage.** Display of billboards, advertisements or signs is prohibited on or over the Property, except the posting of no trespassing signs, no hunting signs and signs identifying (i) lands subject to the Conservation Easement, (ii) the Grantor as owner of the Property and (iii) signs identifying the participation of the landowner in state or county programs.
- G. Construction.** Construction and placement of structures, impervious surfaces or improvements of any kind, not otherwise permitted in this Conservation Easement, are prohibited.
- H. Dumping.** Disposal of soil, trash, ashes, garbage, waste, construction debris, abandoned vehicles, appliances, machinery, hazardous substances, or sewage on the Property is prohibited, provided that logging debris piles and compost piles are permitted. The installation of underground storage tanks is prohibited.
- I. Mineral Use, Excavation, Dredging.** Exploration for, or the filling, excavating, dredging, mining, drilling; or extraction of soil, sand, gravel, rock, peat, oil, hydrocarbons, natural gas, or minerals located on or below the surface of the Property, or using any method that disturbs the surface of the land is prohibited. Grantor shall not transfer, lease or otherwise separate the minerals or mineral rights from the Property.
- J. Water Quality and Drainage Patterns.** Except as provided for in Article IV, there shall be no pollution, alteration, depletion or extraction of surface water or natural water courses, subsurface water or any other water bodies on or within the Property, nor shall there be any manipulation, diversion, or other alteration of wetlands or stream(s) specifically including the restoration of streambanks and wetlands for mitigation offset and mitigation banking, and nor shall activities be conducted on the Property that would be detrimental to water quality or that could alter the natural water level or flow in or over the Property.
- K. Road Construction.** The construction of additional roads within the Property is prohibited, except as set forth in Article IV.
- L. Commercial Recreation.** Recreational uses such as hunting, hiking, horseback riding, fishing, biking are permitted so long as these uses do not impair the Conservation Values of the Property and do not cause soil erosion and sediment runoff and so long as this use does not constitute more than “*de minimus* commercial recreation” as that term is defined at §IRS 2031(c) and regulations promulgated thereunder.
- M. Utilities.** Utilities are defined as any device or structure related to the production or conveyance of energy, water, sewage, or electronic information including but not limited to cables, pipes, pumps, towers, poles, transmission lines, transmitters, or receivers. Grantor reserves the right to construct additional utilities to support approved structures or uses on the Property. Prior to any

clearing or construction activity, Grantor shall obtain Grantee's approval of the location of any additional utility devices or structures as provided in Article VII and shall notify Grantee as provided in Article VII before actual construction begins. Any utility construction shall be done in accordance with all local, state, and federal laws and requirements, and must minimize impact on the Property's Conservation Values.

## **ARTICLE VI. PUBLIC ACCESS**

This Conservation Easement does not create or convey a right of access by the general public to the Property. Grantor may, however, permit low-impact, non-commercial public use of the Property provided that such use is not prohibited herein or in conflict with the requirements of IRC §2031(c).

## **ARTICLE VII. NOTICE AND APPROVAL**

- A. Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an timely opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purposes of this Conservation Easement. Therefore, when notice is required, Grantor shall notify Grantee in Writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. Said notice shall describe the nature, scope, design, location and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Conservation Easement.
- B. Grantee's Approval.** Where Grantee's approval is required, Grantee shall either deny or grant its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantor's written request shall describe the nature, scope and location and any other material aspect of the proposed activity for which Grantor seeks approval. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the Purposes of this Conservation Easement. Failure to respond within the required thirty (30) days shall be deemed equivalent to Grantee's approval of Grantor's request.

## **ARTICLE VIII. MEDIATION**

- A. Mediation.** If a dispute arises between the Grantor and Grantee (the "Parties") concerning the consistency of any proposed use or activity with the Purposes of this Conservation Easement, and Grantor agrees not to proceed with the use or activity pending the resolution of the dispute, either Party may refer the dispute to mediation by request made in writing to the other. Within twenty (20) days of the receipt of such a request, the Parties shall select a single trained and impartial mediator. If the Parties are unable to agree on the selection of a single mediator, then the Parties shall within forty-five (45) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator. The venue for the mediation shall be located in Gray-Jones County, Georgia, or such other location mutually agreed to by the Parties. Mediation shall then proceed in accordance with the following guidelines:
1. Purpose. The purpose of the mediation is to (i) promote discussion between the Parties; (ii) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the Parties to develop proposals that will enable them to arrive at a

mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Conservation Easement.

2. **Participation.** The mediator may meet with the Parties and their counsel jointly or *ex parte*. The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the Parties with settlement authority will attend mediation sessions as requested by the mediator.
3. **Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective counsel. The mediator shall not be subject to subpoena by any Party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a Party.
4. **Time Period.** Neither Party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.
5. **Costs.** The costs of the mediator shall be borne equally by the Parties, but each Party shall bear its own expenses, including attorneys' fees, individually.

#### **ARTICLE IX. GRANTEE'S REMEDIES**

- A. Notice of Violation; Corrective Action.** If Grantee is aware that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure or abate such violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purposes of this Conservation Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- B. Remedies.** If Grantor fails to cause discontinuance, abatement or such other corrective action of a violation as may be requested by Grantee within thirty (30) days after receipt of notice thereof from Grantee (or, under circumstances where the corrective action cannot reasonably be completed within such thirty (30) day period, Grantor fails to begin such corrective action within the thirty (30) day period, Grantor fails to continue diligently to perform such corrective action within the thirty (30) day period, or Grantor fails to continue diligently to perform such corrective action until completion), Grantee, after seven (7) days written notice to Grantor, may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation by temporary or permanent injunction, to require the restoration of the Property to substantially the same condition that existed prior to any such violation, and/or seek the recovery of damages arising from such non-compliance (including, without limitation, damages for the loss of scenic, aesthetic, or environmental values). Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- C. Emergency Enforcement.** If Grantee, in its reasonably exercised discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Article without prior notice to Grantor or without waiting for the period provided for cure to expire.

- D. Scope of Relief.** Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement may be inadequate and that Grantee shall be entitled to seek injunctive relief described in paragraph VIII(B), both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement. Grantee's remedies described in this Article shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- E. Costs of Enforcement.** If a court or other decision-maker chosen by mutual consent of the parties determines that any provision of this Conservation Easement has been breached by Grantor, Grantor will reimburse Grantees for any reasonable costs of enforcement, including without limitation, costs of suit and reasonable attorneys' fees, monitoring fees, any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement, the value of any lost Conservation Values, any other payments ordered by such court or decision-maker. If Grantor prevails in any action to enforce the terms of this Conservation Easement, Grantor retains the right to seek reimbursement from Grantee for all reasonable attorneys' fees and other legal costs associated with Grantor's defense against Grantee's unsuccessful enforcement action.
- F. Forbearance.** Enforcement of the terms of this Conservation easement shall be at the discretion of Grantee and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- G. Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.
- H. Acts Beyond Grantor's Control.** Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, insect infestation, disease, airborne or waterborne pollutants introduced by third parties, or from any prudent action taken by any person under emergency conditions to prevent, abate, or mitigate significant injury to any person or the Property resulting from such causes. In the event the terms of this Conservation Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevents, Grantor agrees at Grantee's option to join in any suit or to assign its right of action to Grantee, for the purposes of pursuing enforcement action against the responsible parties.

## **ARTICLE X. GRANTOR RESPONSIBILITIES**

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, protection, upkeep, and maintenance of the Property. Grantee shall have no obligation for the upkeep and maintenance of the Property pursuant to protecting its Conservation Values.

## **ARTICLE XI. GRANTOR REPRESENTATIONS, WARRANTIES, INDEMNIFICATION**

- A. Title.** Grantor hereby represents and warrants that Grantor has good and marketable title to the Property in fee simple and has the right to grant and convey this Conservation Easement, that the Property is free and clear of any and all encumbrances, or, if the Property is subject to any mortgage or security deed, such mortgage or security deed has been subordinated to this Conservation Easement, and that Grantee and its successors and assigns shall have the use and enjoyment of all the benefits derived from and arising out of this Conservation Easement. Grantor hereby warrants and shall forever defend title to the Property against the claims of all persons whomsoever.
- B. Representations and Warranties.** Grantor represents and warrants that to the best of its knowledge:
1. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;
  2. There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws;
  3. Grantor and the Property are in compliance with all federal, state, and local laws, applicable to the Property and its uses;
  4. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and no civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use; no facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
  5. No person has retained a qualified mineral interest in the Property of a nature that would disqualify this Conservation Easement for purposes of Treasury Regulations §1.170A-14(g)(4).
- C. Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or to the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required by applicable law.
- D. Control.** Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an owner or operator with respect to the Property within the

meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), and Georgia’s hazardous waste statutes.

**E. Indemnification.** Grantor hereby releases and shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively “Indemnified Parties”) from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with: (i) the Property, including the violation or alleged violation of, or other failure to comply with, any federal, state, or local law, regulation, rule, requirement, or ordinance, including, without limitation, CERCLA and Georgia hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; and (ii) Grantor’s breach of any representation, warranty, covenant or provision of this Conservation Easement, including the failure of title to the Property.

## **ARTICLE XII. EXTINGUISHMENT AND CONDEMNATION**

**A. Extinguishment.** This Conservation Easement can only be extinguished or terminated in whole or part by judicial proceedings only in a court of competent jurisdiction upon a finding that a subsequent unexpected change in conditions has made the continued use of the Property for conservation purposes impossible or impractical. Grantee shall be entitled to a share of any proceeds of any subsequent sale, exchange, or involuntary conversion of the Property or any portion thereof, according to Grantee’s proportional interest in the Property as determined as determined as of the date of this grant in accordance with Treasury Regulations §1.170-A-(g)(6)(ii) and as set forth in Article XII(C).

**B. Condemnation.** If all or any portion of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation subject to the prior written consent of Grantee, Grantor and Grantee shall be entitled to compensation in accordance with all applicable law and this Conservation Easement, and Grantor and Grantee agree to join in all necessary and appropriate actions to recover the full value of such compensation, including all incidental damages. Grantee’s portion of the amount recovered shall be determined by multiplying that amount by the ratio set forth in Article XII(C).

**C. Valuation.** This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Article, the parties stipulate to have a fair market value as of the date of this grant determined by multiplying (1) the fair market value of the Property at the time of the condemnation or extinguishment unencumbered by the Conservation Easement, minus any increase in value after the date of this grant attributable to improvements made by Grantor by (2) The ratio where the numerator is the value of the conservation easement at the time of this grant and the denominator is the value of the Property, unencumbered by this conservation easement, at the time of this grant. For the purpose of this paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant.

**D. Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this Article in a manner consistent with the conservation purposes set forth herein, which are exemplified by this grant.

### **ARTICLE XIII. ASSIGNMENT**

This Conservation Easement is transferable with the consent of the Grantor which shall not be unreasonably withheld, but Grantee may assign its rights and obligations under this Conservation Easement only to a Qualified Organization authorized to acquire and hold conservation easements as provided by Treasury Regulations §1.170A-14 (c)(1) and O.C.G.A. §44-10-1 *et seq.* As a condition of such transfer, Grantee shall require that the Conservation Values and Purpose that this Conservation Easement is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least twenty (20) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

### **ARTICLE XIV. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Conservation Easement; provided that no amendment shall be made that will adversely affect the qualification for this Conservation Easement for the tax benefits available or the status of Grantee under any applicable laws, including IRS Code §§170(h) and §501(c)(3), and O.C.G.A. §44-10-1 *et seq.* Any such amendment shall be consistent with the Purpose of this Conservation Easement, shall not affect its perpetual duration, and shall not result in any diminution of protection of the Conservation Values and shall result in equal or greater protection of the Conservation Values. Grantee shall have sole discretion as to whether to approve any proposed amendment. If Grantor obtains a Georgia conservation tax credit, then, as required, the proposed amendment must be approved by the Georgia Department of Natural Resources. Any amendment shall be recorded in the official public records of Jones County, Georgia.

### **ARTICLE XV. SUBSEQUENT TRANSFERS**

**A. Transfer.** Grantor agrees to incorporate the terms of this Conservation Easement by reference in any subsequent deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer, and to provide the name and address of the new Grantor. The failure of Grantor to perform any act required by this Article shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

**B. Merger.** Grantor and Grantee agree that should Grantee, or any successor in interest to Grantee, come to own all or a portion of the fee interest in the Property subject to this Conservation Easement, Grantor shall observe and be bound by the obligations and the restrictions imposed upon the Property by this Conservation Easement; this Conservation Easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement; and said owner as promptly as possible shall assign the Grantee interest in the Conservation Easement of record to another holder in conformity with

the requirements of a "qualified organization" under Section 170(h) of the Code or a Federal, state or local governmental agency or other entity, and in compliance with O.C.G.A. §44-10-2, §44-10-3 and §44-10-4.

- C. Documentation of Present Status.** Upon written request by Grantor, Grantee shall have thirty (30) days to execute and deliver to Grantor any document, including an estoppel certificate, that certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Easement. Such documentation shall describe the condition of the Property, as known by Grantee, as of the date of Grantee's most recent inspection. If Grantor requests more current status information, then Grantee shall conduct an inspection and provide said information at Grantor's sole expense within forty-five (45) days following receipt of Grantor's request.

## **ARTICLE XVI. NOTICES**

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by commercial courier service or first class mail, postage prepaid, return receipt requested, addressed as follows:

To Grantor: Little Creek Two, LLC  
P.O. Box 2292  
Gray, GA 31032

To Grantee: Oconee River Land Trust, Inc.  
380 Meigs St.  
Athens, Georgia 30601

## **ARTICLE XVII. RECORDATION**

Grantee shall record this instrument in timely fashion in the official records of Jones County, Georgia, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

## **ARTICLE XVIII. GENERAL PROVISIONS**

- A. Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Georgia.
- B. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in order to accomplish the Purposes of this Conservation Easement and the policy and purpose of O.C.G.A. §44-10-1 et seq. If any provision in this instrument is found to be ambiguous, then an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Severability.** If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

- D. Entire Agreement.** This instrument and the documents incorporated herein by reference set forth the entire agreement of the parties with respect to the Conservation Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein.
- E. No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- D. Joint Obligation.** The obligations imposed by this Conservation Easement upon Grantor shall be joint and several.
- E. Successors.** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of Grantor and Grantee and shall continue as a servitude running in perpetuity with the Property. Except as expressly provided otherwise herein, the terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its personal representatives and heirs, and successors and assigns in interest in the Property after the date hereof, and the above-named Grantee and its personal representatives, heirs, successors and assigns.
- F. Termination of Rights and Obligations.** A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- G. Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- H. Counterparts.** The parties may execute this instrument in two or more counterparts, that shall be signed by both parties, and each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

#### **ARTICLE XIX. EXHIBITS; DOCUMENTATION**

- A. Exhibits.** Exhibit "A", Legal Description of the Property, is attached hereto and made a part hereof by reference. Exhibit "B", Map of Conservation Easement, is attached hereto and made a part hereof by reference. Exhibit "C", Man Made Structures /Roads Map, is attached hereto and made a part hereof by reference.
- B. Easement Documentation Report.** The parties acknowledge that the Baseline Documentation Report, dated \_\_\_\_\_, 2013, a copy of which is on file at the office of the Grantee, which was prepared by Grantee, executed by both Grantor and Grantee, and, to the best of Grantor's and Grantee's knowledge, accurately and completely describes the uses, structures, Conservation Values and condition of the Property as of the date hereof.

**TO HAVE AND TO HOLD** this Conservation Easement unto Grantee and its successors and assigns, together with all and singular rights, members and appurtenances thereof to the same being, belonging or in anywise appertaining, to the only property use, benefit and behoove of Grantee forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor and also his personal representatives, heirs, executors, administrators, successors and assigns, and shall continue as an easement and servitude running in perpetuity with the Property.

**SIGNATURE PAGE IMMEDIATELY FOLLOWS**

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals and caused these presents to be executed in their respective names by authority duly given, and their seals affixed, the day and year first above written.

Signed, sealed and delivered in the presence of

\_\_\_\_\_  
Name: \_\_\_\_\_  
Unofficial Witness

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

[Affix Notary Seal]

GRANTOR:  
Little Creek Two, LLC

By: \_\_\_\_\_  
Name:  
Title: Managing Member

Signed, sealed and delivered in the presence of

\_\_\_\_\_  
Name: \_\_\_\_\_  
Unofficial Witness

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

[Affix Notary Seal]

GRANTEE:  
Oconee River Land Trust, Inc., a Georgia nonprofit corporation

By: \_\_\_\_\_  
Name: Daniel Hope, III  
Title: Chair

[Corporate Seal]

Attest: \_\_\_\_\_  
Name: John S. Willis  
Title: Secretary



## EXHIBIT "A"

**TRACT 1:** All that tract or parcel of land lying and being in Land Lots 152, 153, 154, 160 and 161, 6<sup>th</sup> Land District, 359<sup>th</sup> G.M. District, Jones County, Georgia, containing 437.60 acres, more or less, as shown on a plat of survey prepared by Donald D. Brooks, R.L.S., dated March 3, 2005, recorded in the Office of the Clerk of the Superior Court of Jones County in Plat Book 18, Page 255, reference to which plat is hereby made for a more particular description of said property.

**TRACT 2:** All that tract or parcel of land situate, lying and being in Land Lot 161 of the 6<sup>th</sup> Land District, Jones County, Georgia, containing 11.55 acres and being more particularly described in that certain plat of survey prepared by Byron Farmer, RLS, and recorded at Plat Book 22, Page 27 in the records of the Clerk of Superior Court of Jones County, Georgia.

SAID PROPERTY is a portion of that property described in the Quit Claim Deed dated October 22, 1999 and filed October 27, 1999 in Deed Book 388, Page 601 in the records of the aforementioned Clerk's office.

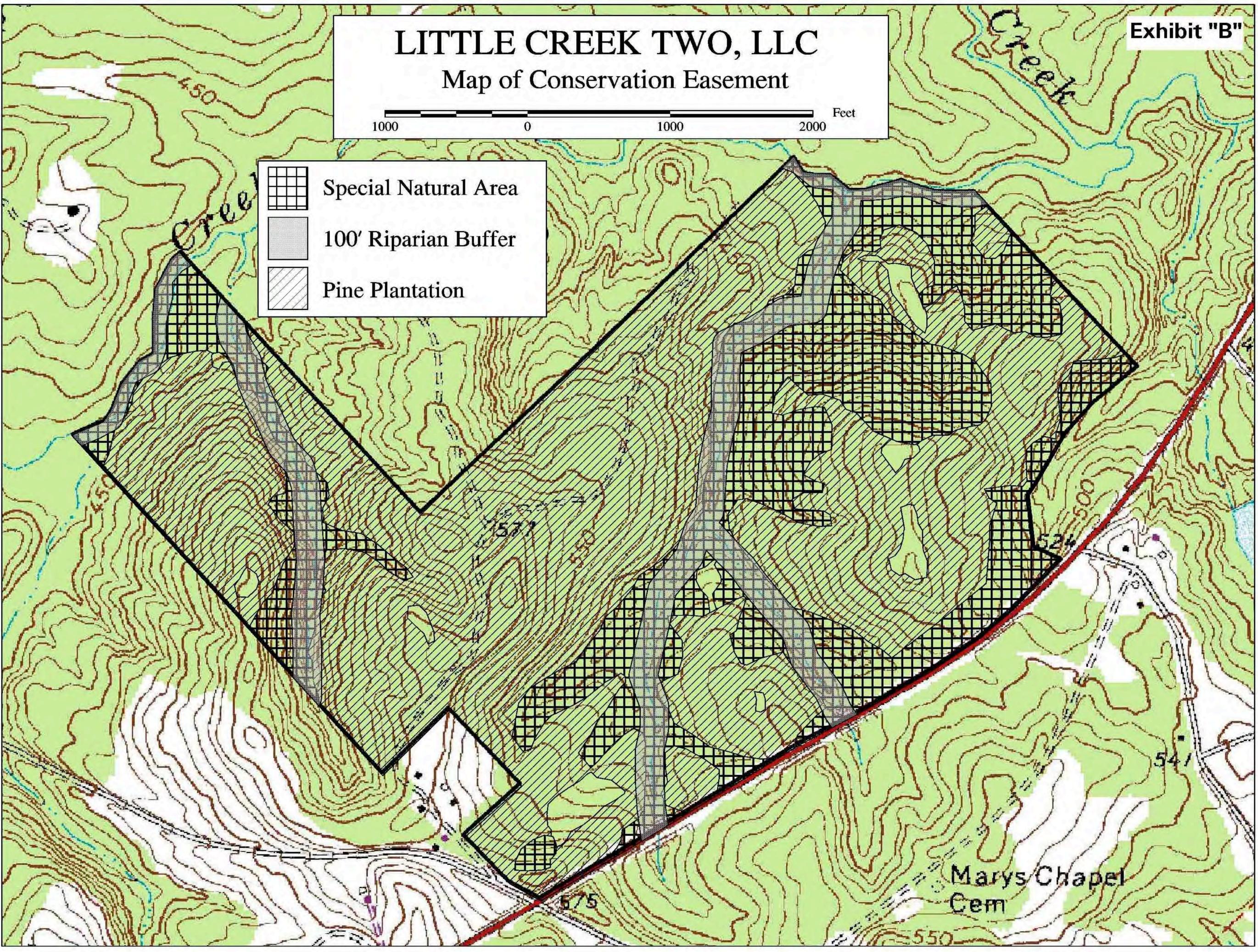
SAID PROPERTY herein conveyed is further described as James Lee Drive, Tract 1C on the Tax Assessor's property recorded card on file in the Tax Assessor's office of Jones County, Georgia as of the date of the conveyance.

# LITTLE CREEK TWO, LLC

## Map of Conservation Easement

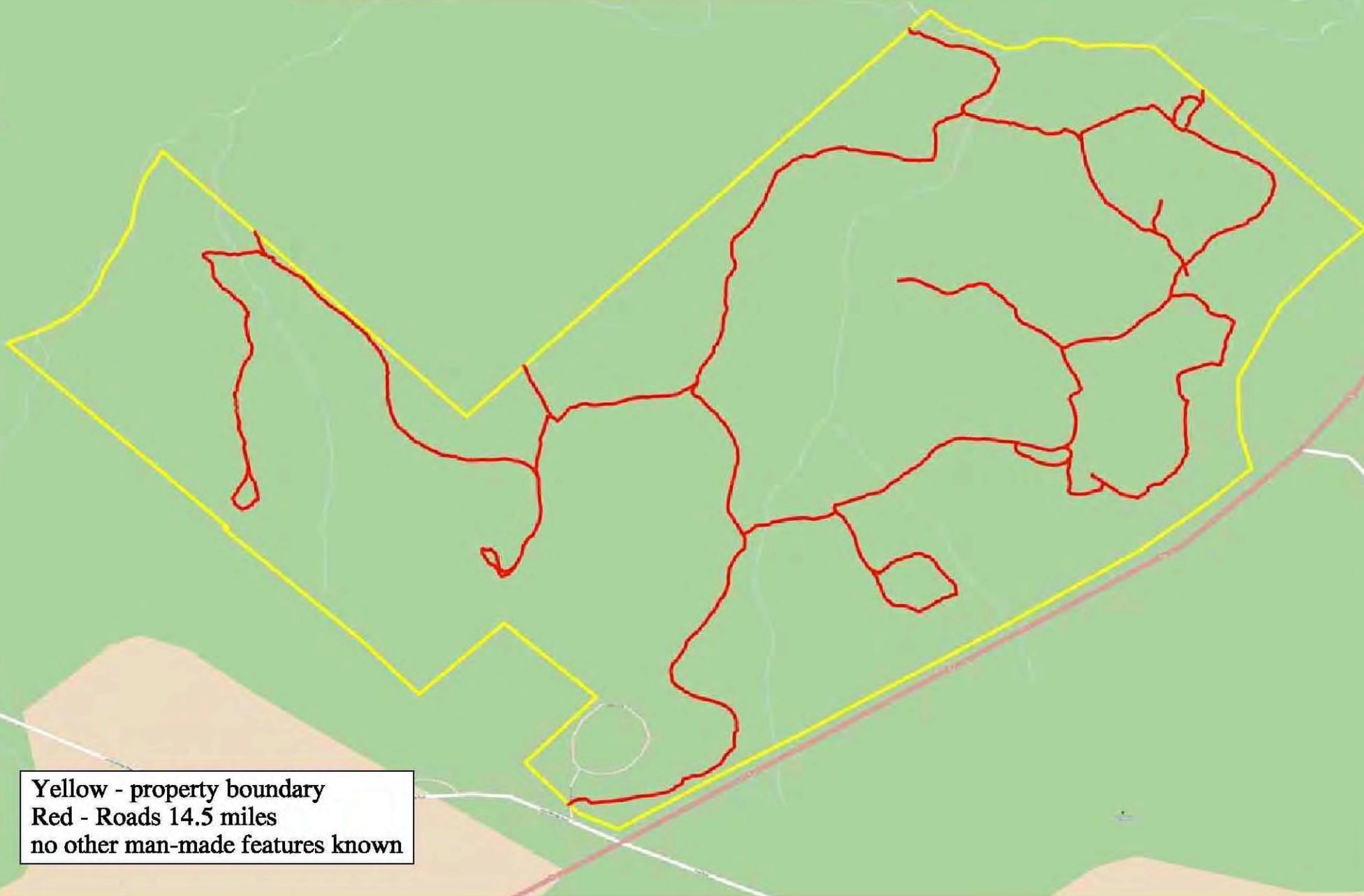


	Special Natural Area
	100' Riparian Buffer
	Pine Plantation



# LITTLE CREEK TWO, LLC

## Roads and Man-made Structures



Yellow - property boundary  
Red - Roads 14.5 miles  
no other man-made features known