

GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement ("Grant") is made by the City of Memphis, Tennessee ("Grantor"), as of the _____ day of _____, 2010, pursuant to the Conservation Easement Act of 1981, Tenn. Code Ann. 66-9-301 et seq., as amended, and the common law.

Section I - Recitals

Grantor is a "public body" as defined in Tenn. Code Ann. 66-9-303(5).

Grantor is the owner of the property designated as the Overton Park forest on Exhibit A hereto, that is hereinafter referred to as the "Property."

The Property consists of two areas, Area A which consists of 125 acres of forest and so designated on Exhibit A, which is managed and maintained for the benefit of Grantor by the Division of Park Services of the city of Memphis, and Area B, which consists of 17 acres of forest and so designated on Exhibit A, which is managed and maintained by Memphis Zoological Society ("MZS"), a Tennessee not-for-profit corporation, which Grantor has appointed, by contract, to be the manager of Area B of the Property. ¹

The Property has significant conservation, natural, scenic, recreational, scientific and parkland resources and values in the forests on the Property, which resources and values are worthy of protection, maintenance, preservation, and enhancement for the benefit of the people of Memphis, Tennessee. Grantor deems that it is in the public interest to grant a conservation easement with respect to the Property as herein provided and that the public will gain a substantial benefit by the granting of the conservation easement.

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

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

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

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

¹ Perhaps the Conservation Easement should include the greensward as Area C ?

Section II - Grant and Agreements

NOW THEREFORE, for the benefit of the people of Memphis, Tennessee, Grantor agrees as follows:

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

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

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

3. Permitted Uses. The following uses of the Property are permitted, reserved, and retained, subject to any restrictions or prohibitions set forth in this Easement:

- a. pedestrian, trails and paths, paved and unpaved;
- b. nature trails, boardwalks and wildlife observation areas and improvements;
- c. agronomy and horticulture uses, including but not limited to farming, educational, aquaculture, and nursery uses, which have no material adverse impact on the Property and the uses herein provided and are consistent with the purposes of this grant;
- d. scientific purposes, including agricultural, archeological and environmental sciences, which have no material adverse impact on the Property and the uses herein provided and are consistent with the purposes of this grant;
- e. development and enhancement of wildlife habitat;
- f. development and enhancement of forests (including without limitation reforestation),

- g. access by designees of Grantor to the Property at all times in connection with the uses permitted hereunder;
- h. short term events not inconsistent with the uses and purposes herein provided, including without limitation collection of fees normally associated with the use of park facilities; special events, educational uses; and food, drink, and merchandise sales incidental to permitted uses.
- i. animal control as may be necessary to control property damage, to protect the Property, and/or to protect the health, safety, and welfare of the public;
- j. direction, location, and use signs consistent with the purposes and incidental to the uses herein provided;
- k. classes, demonstrations, projects, and other educational uses to promote and teach environmental protection and conservation;
- l. flood water detention and control;²
- m. existing and currently planned uses of the Property or in accordance with the prior written approval of Grantee, which approval shall not be unreasonably withheld, conditioned or delayed; and
- n. maintenance, repair, removal, rearrangement, reconfiguration, renovation, relocation, and reconstruction of existing buildings, structures, facilities, sewer and/or utility lines, and other improvements.

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

4. Additional Permitted Uses – Area B. Grantor hereby confirms that MZS has the right to use Area B of the Property as a part of the Memphis Zoo, contained within the boundaries of the Memphis Zoo, and to control, limit, and charge for admission of the public to Area B of the Property, all subject to this Easement and the Management Agreement by and between Grantor and MZS (and all renewals, amendments, and replacements of said Management Agreement). Any valid termination of said Management Agreement shall also effect a termination of any rights and duties that MZS may have under this Easement. In addition to the permitted uses described in Section 3 above, MZS shall be permitted to develop and maintain its proposed Chicksaw Bluffs exhibit in Area B, said exhibit to be a part of the Memphis Zoo and contained within the perimeter fence of the Memphis Zoo. That exhibit shall have no buildings or improvements other than walkways, benches, and similar facilities for the safe use and enjoyment of Area B by visitors to the Memphis Zoo, educational signs and similar guidance, camping facilities, and other such improvements as are consistent with this Easement

² This needs to include appropriate conditions and limitations.

or permitted with the consent of Grantor and Grantee. MZS will develop plans for its proposed use of Area B, which plans are subject to the approval of Grantor and Grantee before any material construction is commenced, which approval shall not be unreasonably withheld, delayed or conditioned. MZS has signed this Easement to indicate its agreement to the terms hereof.

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

- a. electromagnetic transmission lines and towers, other than those permitted under existing leases as such leases may be extended or renewed, without adding additional lines or towers; provided that additional antenna may be added to the existing tower and transmission lines for operation of the Property;
- b. use of motorized vehicles on the unpaved paths and trails of the Property except for maintenance and operation of the Property;
- c. commercial, industrial, residential, or other real estate development;
- d. manufacturing and industrial uses;
- e. commercial mining activities;
- f. residential uses or hotel/motel uses, excluding temporary shelter in case of emergency or disaster;
- g. subdivision of the Property;
- h. dumping of garbage, trash, or building materials, provided, however, that this prohibition shall not apply to (i) lawful temporary disposal of waste resulting from daily operations of the Property (dumpsters, etc.) or (ii) lawful temporary disposal of products as part of a recycling or recovery operation established for the purpose of environmental preservation and protection of the Property;
- i. public or private facilities except those which implement and facilitate the purposes and uses herein provided;
- j. commercial advertising, except for temporary signs for marketing of special events and concessions on the Property or in Overton Park;
- k. roads and parking areas other than existing roads and parking areas and future roads and parking areas permitted by Grantee;
- l. activities which cause significant erosion or pollution; and
- m. any other uses or activities inconsistent with the purposes and uses herein provided.

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

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

7. Duration. The duration of the conservation easement herein granted shall be perpetual. The easement shall run with the land. This Easement shall be binding on the successors and assigns of the parties and shall inure to the benefit of the successors and permitted assigns of the parties.

8. Construction. This Easement shall be liberally construed in favor of protecting, maintaining, preserving, and enhancing the conservation, natural, scenic, recreational, scientific and parkland resources and values of the Property. Captions shall not be used in interpreting this Grant. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement and that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

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

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

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

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

As of the date of this Easement, Grantor is self insured as to both casualty and liability insurance with respect to the Property. If and when Grantor shall carry casualty insurance with respect to the Property, Grantor shall insure the Property in accordance with Grantor's insurance standards applicable from time to time to Grantor's other facilities. If and when Grantor shall carry public liability insurance with respect to the Property, Grantor shall maintain such insurance in accordance with Grantor's liability insurance standards applicable from time to time to Grantor's other facilities, and Grantee and MZS shall be named as additional insureds under such liability insurance policies. Grantor will provide Grantee and MZS proof of the insurance required by this paragraph.

MZS shall keep any improvements it owns on Area B of the Property insured for their full replacement value. The proceeds of insurance on improvements on the Property insured by MZS shall be used for repair and restoration of such improvements. MZS shall carry and maintain public liability insurance with respect to Area B of the Property, with limits in accordance with commercially reasonable business practices. Grantee and Grantor shall be named as additional insureds under such liability insurance policies. MZS will provide Grantee and Grantor proof of the insurance required by this paragraph.

15. Default, Right to Cure. If any party shall default under this Grant, the party in default shall have 30 days after receipt of notice of the default to cure the default, or if such default cannot reasonably be cured within said 30 days, the party in default shall have such additional time as is reasonably necessary to cure the default provided that the party in default begins to cure the default within said 30 days and diligently pursues to completion the curing of

the default. No remedy shall be exercised with respect to such default unless and until the default is not cured as herein provided.

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

Grantor:

with a copy to:

Grantee:

MZS:

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

17. Extinguishment. If circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

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

GRANTEE:

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

By: _____

Print Name: _____

Title: _____

GRANTOR:

CITY OF MEMPHIS, TENNESSEE

By: _____
A C Wharton, Jr., Mayor

MEMPHIS ZOOLOGICAL SOCIETY

By: _____
Charles A. Brady, President

Approved as to Form:

By: _____
City Attorney

Other City Approvals:

By: _____
Director, Division of Park Services

By: _____
City Real Estate Manager

**STATE OF TENNESSEE
COUNTY OF SHELBY**

Before me, the undersigned, a Notary Public within and for said State and County, duly commissioned and qualified, personally appeared **CHARLES A. BRADY** with whom I am personally acquainted, and who upon oath acknowledged himself to be the **President of Memphis Zoological Society**, the within named bargainer, and that he as such **President**, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Memphis Zoological Society by himself as such **President**.

WITNESS my hand and Notarial Seal, at office in Memphis, in the County aforesaid, this _____ day of _____, 2010.

Notary Public

MY COMMISSION EXPIRES:

**STATE OF TENNESSEE
COUNTY OF SHELBY**

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

WITNESS my hand and Notarial Seal, at office in Memphis, in the Grantor aforesaid, this _____ day of _____, 2010.

Notary Public

MY COMMISSION EXPIRES:

STATE OF TENNESSEE)
)
COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public in and for said State and County, _____, with whom I am personally acquainted, and who acknowledged that _____ executed the within instrument for the purposes therein contained, and who further acknowledged that _____ is the _____ of the maker, **The Land Trust for Tennessee, Inc.**, and is authorized by the maker to execute this instrument on behalf of the maker.

WITNESS my hand, at _____, Tennessee, this ____ day of _____, 2010.

Notary Public

My Commission Expires