

15-2207

GRANT OF ROAD EASEMENT

VOL. 1124 PAGE 477

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TYLER §

That **CROWN PINE TIMBER 1, L.P.**, a Delaware limited partnership authorized to transact business in the State of Texas and with an office in Angelina County, Texas (the "Grantor"), for and in consideration of TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration to it paid by the Grantee herein named, the receipt and sufficiency of which are hereby acknowledged, has, subject to the terms and provisions hereinafter specified, GRANTED AND CONVEYED, and by these presents does, subject to said terms and provisions hereinafter specified, GRANT AND CONVEY unto **NEW WAVERLY VENTURES, LTD. CO.** (the "Grantee"), a non-exclusive road easement and road right-of-way more particularly described as follows, to-wit:

BEING a thirty (30') foot wide road easement and road right-of-way, being fifteen (15') feet on each side of the centerline which is more particularly described on the Exhibit "A" attached hereto and made a part hereof for all purposes the same as if copied herein verbatim (sometimes hereinafter simply referred to as the "Easement").

This Grant of Road Easement is subject to all liens, leases, easements, servitudes, rights-of-way, prescriptive rights, oil, gas and mineral leases, reservations, conveyances and any and all other matters of record or apparent on the Easement area. It is distinctively understood and agreed that Grantor, by this grant, grants no greater rights than it is permitted to grant in view of any such liens, easements, leases, servitudes, rights-of-way, oil, gas and mineral leases, reservations, conveyances and any and all other grants and encumbrances that may affect the Easement area.

The following terms and provisions are applicable to this grant of the Easement hereinabove described and Grantee, by acceptance of this Grant of Road Easement, acknowledges and accepts all such terms, provisions and conditions:

(1) Grantor hereby specifically reserves to itself, its successors and assigns, the full, free and perpetual right and privilege, in common with Grantee, to use the Easement by foot, vehicular and animal traffic and for any and all other purposes desired by Grantor. Furthermore, it is understood that Grantor may, without incurring any liability to Grantee for the restoration of the surface or otherwise, use the Easement for purposes of transporting logs and logging equipment and other types of equipment by any type of vehicles.

(2) It is expressly understood and agreed that Grantee shall not pave or otherwise improve the Easement area without the prior written permission of Grantor, and any such paving or improving shall be made solely at the expense and risk of Grantee and upon the express understanding that Grantor shall have the right to use the paved and/or improved Easement for any purposes above mentioned, or otherwise, without incurring any obligation, responsibility or liability to restore the surface of the Easement area.

(3) Should Grantee fail to comply with any of the provisions of this Grant of Road Easement, Grantor shall have the right to terminate this Grant of Road Easement in the manner herein specified. Except as otherwise provided for herein, Grantor will give Grantee written notice of such non-compliance and, should Grantee not comply and cure such non-compliance within thirty (30) days from and after the date of the giving of such notice of non-compliance, Grantor shall have the right to elect to immediately terminate this Grant of Road Easement by subsequent written notice to Grantee of such termination. Upon the giving of said subsequent written notice of termination by Grantor to Grantee, this Grant of Road Easement shall

immediately terminate, the Grantee shall have no further rights arising out of, or having to do with, this Grant of Road Easement and the Grantee's right to utilize the Easement shall immediately terminate.

(4) Grantor hereby reserves and shall have the right to the salvage of all timber on the Easement. Grantee must notify Grantor in writing at least thirty (30) days before Grantee desires to begin any road construction operations so that Grantor will have an opportunity to remove such timber. In the event Grantor has not cut, felled and removed the merchantable timber before Grantee begins such operations, then Grantee may cut and fell such timber. All such merchantable timber shall be cut in full length logs and stacked along the Easement at convenient locations for salvage by Grantor. Grantee shall keep Grantor informed of the timber cut and of the places where it is stacked.

(5) The Easement hereby granted by Grantor to Grantee is not exclusive, the Grantor retaining the right for itself, its employees, representatives, independent contractors, lessees, invitees, successors and assigns to utilize and traverse said Easement in any manner desired.

(6) Prior to Grantee's entry upon the Easement, Grantee agrees that Grantee shall first obtain and maintain policies of insurance in a form satisfactory to Grantor and with companies maintaining an AM Best Rating of A-VII or better. Minimum amounts of insurance are subject to periodic adjustment but, as of the date of execution of this Grant of Road Easement by Grantor, said insurance shall be in the following minimum amounts:

- (i) Personal Automobile insurance of at least \$500,000.00; and
- (ii) Personal Liability/Umbrella Policy in an amount of at least \$500,000.00

Grantor will notify Grantee of any changes in the minimum amounts of insurance required to be maintained by Grantee and, upon such notice, the required minimum amounts will be adjusted accordingly. The failure of Grantee to provide and maintain the required minimum amounts of insurance may result in this Grant of Road Easement being terminated in accordance with the terms and provisions of Section 3, above.

(7) Grantor may not know what conditions exist upon the Easement and Grantor does not make any warranty or representation of any type, kind or character whatsoever as to conditions existing or that may hereafter exist upon the Easement or any improvements thereto. **GRANTEE, ITS EMPLOYEES, AGENTS, CONTRACTORS, INVITEES OR ANYONE ELSE GAINING ACCESS TO THE EASEMENT THROUGH GRANTEE UNDER THIS GRANT OF EASEMENT (COLLECTIVELY, THE "GRANTEE PERSONNEL"), ENTER UPON THE EASEMENT AT THEIR OWN RISK, AND SPECIFICALLY ACCEPT THE EASEMENT IN ITS THEN EXISTING CONDITION, AND UNCONDITIONALLY RELEASE, DISCHARGE AND FOREVER HOLD HARMLESS GRANTOR FROM ALL COSTS, EXPENSES, CLAIMS, CAUSES OF ACTION, SUITS, DAMAGES AND LIABILITIES OF EVERY KIND FOR WHICH GRANTOR MIGHT OTHERWISE BECOME LIABLE BY REASON OF ANY ACCIDENTS, OR INJURIES TO OR DEATH OF ANY PERSONS, INCLUDING GRANTEE AND GRANTEE PERSONNEL, OR DAMAGE TO PROPERTY, OR BOTH, IN ANY MANNER ARISING OR RESULTING FROM, CAUSED BY, CONNECTED WITH OR RELATED TO THE PRESENCE OF ANY SUCH PERSON OR PROPERTY UPON THE EASEMENT, REGARDLESS OF HOW, WHERE, OR WHEN SUCH INJURY, DEATH OR DAMAGE OCCURS, EVEN IF CAUSED BY THE NEGLIGENCE OF GRANTOR, OR DUE TO CONDITIONS ON OR**

DEFECTS IN THE EASEMENT, WHETHER OR NOT SUCH DEFECT OR CONDITION WAS KNOWN BY GRANTOR.

8.1. GRANTEE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR, ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, MEMBERS, MANAGERS, EMPLOYEES, REPRESENTATIVES AND AGENTS (ALL OF THE FOREGOING ARE HEREINAFTER, SEPARATELY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE"), FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LOSSES, DAMAGES, SUITS AND LIABILITIES OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS FEES (A) FOR DAMAGE TO ANY PROPERTY, OR FOR INJURIES TO OR SICKNESS OR DEATH OF ANY PERSON CAUSED BY, ARISING OUT OF OR RELATED, DIRECTLY OR INDIRECTLY, TO ANY USE OF THE EASEMENT BY GRANTEE OR ANY GRANTEE PERSONNEL, UNDER OR BY REASON OF THIS EASEMENT, AND (B) FOR DAMAGE TO ANY PROPERTY OF, OR FOR INJURIES TO OR SICKNESS OR DEATH OF, GRANTEE OR ANY GRANTEE PERSONNEL, FROM ANY CAUSE, WHICH DAMAGE, INJURY, SICKNESS OR DEATH OCCURS ON OR IN THE VICINITY OF THE EASEMENT OR ANY PREMISES OF INDEMNITEE. THIS INDEMNITY SHALL APPLY EVEN THOUGH ANY SUCH DAMAGE, INJURY, SICKNESS OR DEATH IS CAUSED IN WHOLE OR IN PART BY ANY DEFECT IN OR CONDITION OF THE EASEMENT OR ANY DEFECT IN OR CONDITION OF ANY PROPERTY, FACILITIES, EQUIPMENT, TOOLS OR OTHER ITEMS WHICH MAY BE PROVIDED BY INDEMNITEE, WHETHER OR NOT SUCH DEFECT OR CONDITION WAS KNOWN BY INDEMNITEE. THIS INDEMNITY SHALL APPLY REGARDLESS OF WHETHER OR NOT ANY SUCH DAMAGE, INJURY, SICKNESS OR DEATH IS CONTRIBUTED TO BY THE NEGLIGENCE OR FAULT OF INDEMNITEE, AND ALSO EVEN THOUGH INDEMNITEE IS STRICTLY LIABLE THEREFOR. FURTHERMORE, THIS INDEMNITY SHALL INCLUDE, BUT NOT BE LIMITED TO, NOT ONLY ANY CLAIM OR ACTION FOR DAMAGES ON ACCOUNT OF INJURY TO OR ILLNESS OR DEATH OF AN EMPLOYEE OF GRANTEE, GRANTEE PERSONNEL OR OF ANY OF THEIR SUBCONTRACTORS OF ANY TIER, WHICH IS BROUGHT BY SUCH EMPLOYEE, BUT SHALL ALSO INCLUDE ANY CLAIM OR ACTION BY THE REPRESENTATIVES OR BENEFICIARIES OF SUCH EMPLOYEE WHO IS DECEASED, OR BY THE WORKER'S COMPENSATION INSURANCE CARRIER OF GRANTEE OR OF ANY SUCH SUBCONTRACTORS FOR THE JOINT USE AND BENEFIT OF ITSELF AND SUCH EMPLOYEE OR SUCH REPRESENTATIVES OR BENEFICIARIES, AGAINST INDEMNITEE, AS PROVIDED BY APPLICABLE STATE WORKER'S COMPENSATION LAWS.

8.2. UNDER THE PROVISIONS OF THIS INDEMNITY GRANTEE IS AGREEING TO INDEMNIFY INDEMNITEE FROM INDEMNITEE'S OWN NEGLIGENCE OR FAULT, BUT EXCEPT FOR PREMISES LIABILITY THIS INDEMNITY SHALL NOT APPLY TO ANY SUCH DAMAGE, INJURY, SICKNESS OR DEATH, WHICH WAS CAUSED BY THE SOLE NEGLIGENCE OR SOLE FAULT OF INDEMNITEE AND WHICH WAS NOT CAUSED IN PART BY THE NEGLIGENCE OR FAULT OF GRANTEE OR OF ANY OTHER PERSON OR ENTITY.

8.3. IF REQUESTED TO DO SO BY INDEMNITEE, GRANTEE WILL ASSUME, WITHOUT EXPENSE TO THE INDEMNITEE, THE DEFENSE OF ANY SUCH CLAIMS OR ACTIONS AND WILL REIMBURSE INDEMNITEE FOR ALL EXPENSES (INCLUDING WITHOUT LIMITATION COURT COSTS AND ATTORNEY'S FEES) INCURRED IN

INVESTIGATING, HANDLING AND DEFENDING AGAINST ANY SUCH CLAIMS OR ACTIONS.

8.4. EXCEPT FOR THE EXCLUSION PROVIDED FOR IN THIS SECTION 8, GRANTEE'S WAIVERS, RELEASES AND INDEMNITIES UNDER THIS EASEMENT SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OF INDEMNITEE AND SHALL SURVIVE THE TERMINATION OF THIS EASEMENT.

(9) GRANTEE ACKNOWLEDGES AND AGREES THAT GRANTEE HAS, OR WILL HAVE, INSPECTED THE EASEMENT TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. GRANTEE ACKNOWLEDGES THAT IT IS FULLY RELYING ON GRANTEE'S INSPECTION OF THE EASEMENT AND NOT UPON ANY STATEMENTS, ORAL OR WRITTEN, WHICH MAY HAVE BEEN MADE BY GRANTOR OR ITS AFFILIATES. **AS A MATERIAL PART OF CONSIDERATION TO GRANTOR FOR THIS EASEMENT, GRANTEE HEREBY ACCEPTS THE EASEMENT IN ITS "AS IS" – "WHERE IS" CONDITION WITH ALL FAULTS, IF ANY, AND WITHOUT REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND IN CONNECTION WITH THIS EASEMENT, GRANTOR, ITS AFFILIATES AND THEIR OFFICERS, MANAGERS, MEMBERS, AGENTS, DIRECTORS, EMPLOYEES, PARTNERS, ATTORNEYS, CONTRACTORS AND REPRESENTATIVES HAVE MADE NO, AND SPECIFICALLY DISCLAIM, AND GRANTEE ACCEPTS SUCH DISCLAIMER, ANY AND ALL REPRESENTATIONS, GUARANTEES OR WARRANTIES, EXPRESS OF IMPLIED, OR ARISING BY OPERATION OF LAW, OF OR RELATING TO THE EASEMENT.

(10) In granting this Easement to Grantee, Grantor does not assume any responsibility whatsoever for the construction or continued maintenance of the Easement.

(11) Grantee acknowledges and agrees that Grantor is primarily in the timber industry/business and that Grantor will utilize the Easement in connection with logging, harvesting and other timber related activities pertaining to the cultivation, growing and harvesting of timber and, as such, Grantee acknowledges, understands and agrees that Grantee's utilization of the Easement shall not, at any time, interfere with Grantor's utilization of said Easement for such purposes or any other purposes whatsoever desired by Grantor.

(12) It is understood and agreed by and between the parties hereto that Grantee's need for the Easement is specifically for the purpose of providing Grantee with access to approximately 50 acres situated in the BBB & CRR CO Survey, Abstract No. 110 in Tyler County, Texas, which said property is more particularly described on the Exhibit "B" attached hereto, incorporated herein by reference and made a part hereof for all purposes the same as if copied herein verbatim. Grantee's right to assign this Easement is specifically limited to an assignment to any purchaser of any part or portion of Grantee's aforementioned 50 acres when this Easement is necessary to provide any such purchaser with access to that part or portion of said 50 acres being acquired by any such purchaser. It is absolutely understood and agreed that Grantee is prohibited from assigning this Easement to any other individual or entity, unless said individual or entity acquires a part or portion of the Grantee's aforementioned 50 acres and needs this Easement for access purposes to that part or portion of said 50 acres being purchased and acquired by such individual or entity. Furthermore, Grantee agrees that upon Grantee's assignment of this Easement to an individual or entity that acquires a part or portion of the Exhibit "B" property and that needs this Easement for access purposes to that part or portion of the Exhibit "B" property acquired by such individual or entity, Grantee will immediately

notify and inform Grantor of such assignment and provide Grantor with a copy of the assignment documentation. If Grantee fails to immediately provide this notice and a copy of the assignment documentation to Grantor, Grantee shall be in default and Grantor shall have the termination rights specified in Section 3, above.

(13) Notwithstanding anything in this Grant of Road Easement to the contrary, this Easement is absolutely non-assignable by Grantee; provided, however, this non-assignability prohibition shall not apply in situations covered by the preceding paragraph and which involves an assignment of the Easement to a purchaser of a part or portion of the Grantee's aforementioned 50 acres when such purchaser needs this Easement for access purposes to that part or portion of said 50 acres being acquired by such purchaser.

(14) It is understood and agreed that the purpose for which the Grantee, its permitted successors and assigns, may utilize this Easement is specifically limited to the utilization and maintenance of a road easement and road right-of-way for residential purposes, hunting, fishing, hiking, camping, access to a camp structure situated on the Grantee's property referenced in Section 12, above, and other recreational uses, excluding recreational uses involving motorized vehicles as the primary recreational activity rather than as incidental to other activities, on all of the terms and conditions herein specified, and no other purpose or purposes whatsoever. Grantee may not utilize the Easement for any (i) commercial purposes, including, not limited to, access to a RV Park, Bed and Breakfast, Four-Wheeler Park, Day Hunt Operation or any other type of commercial non-recreational use, or (ii) purposes of transporting logs, logging equipment or any other type of equipment by other vehicles (collectively, the "Prohibited Commercial Uses"). In the event Grantee desires to utilize the Easement for any such Prohibited Commercial Uses, Grantee understands and agrees that Grantee must contact Grantor, apply for, pay for and obtain from Grantor, on Grantor's then existing Permit form and subject to then existing requirements (including, but not limited to, insurance requirements), a Permit allowing Grantee to utilize the Easement for any such Prohibited Commercial Uses. Specifically, the Grantor is not granting nor giving the Grantee, its permitted successors and assigns, the right to install within the Easement area any electrical lines, telephone lines, water lines, gas lines, pipelines, and/or any other type of line or utility, any and all use of this Easement being specifically limited to road purposes.

(15) Grantee agrees to promptly repair any damages caused to the Easement resulting from Grantee's utilization of said Easement.

(16) Grantee agrees that, if there is already a gate across the Easement, this gate shall be kept closed and locked at all times, except when actually passing through the same. Alternatively, Grantee agrees that, if requested by Grantor, Grantee will install a gate across the Easement and keep said gate closed and locked at all times, except when actually passing through the same. Both Grantor and Grantee shall be entitled to place their locks on any such gate. If Grantee fails to install a gate once requested to do so, Grantor may install the gate, at Grantee's expense, and Grantee agrees to reimburse Grantor for any and all expenses incurred by Grantor in installing the gate.

(17) All notices required or permitted to be given hereunder, or given in regard to this Grant of Road Easement by one party to the other, shall be in writing and the same shall be given and be deemed to have been served, given and received (i) if delivered by hand, facsimile transmission or e-mail, when delivered in person or the transmission or the e-mail is received at the address, facsimile number or e-mail address set forth hereinafter for the party to whom notice is given, or (ii) if mailed, when placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the party at the address hereinafter specified. Any party may change its address, facsimile number or e-mail address for notices by giving five days advance written notice to the other party hereto in the manner provided for herein. Until changed in the manner provided herein, the parties' respective addresses, facsimile numbers and e-mail addresses for notices hereunder are as follows:

If to Grantor: Crown Pine Timber 1, L.P.
c/o Campbell Global, LLC
702 N. Temple Drive
Diboll, TX 75941
Attn: Asset Management
Telephone: 936-829-6300
Facsimile: 936-829-6310
E-mail: mjones@campbellglobal.com

With copy to: Crown Pine Timber 1, L.P.
c/o Campbell Global, LLC
One SW Columbia Street, Suite 1700
Portland, OR 97258
Attn: Asset Management
Telephone: 503-275-9675
Facsimile: 503-275-9667

If to Grantee: New Waverly Ventures, LTD. Co.
1600 Normal Park
Huntsville, TX 77340
Attn: Karen Stout
Telephone: 936-295-2500
Facsimile: 936-295-9574
E-mail: karen@homelandprop.com

With a copy to: _____

Attn: _____
Telephone: _____
Facsimile: _____
E-mail: _____

(18) Notwithstanding anything herein to the contrary, in the event that Grantee does not use this Easement for the purposes herein granted for a period of twelve (12) months, this Grant of Road Easement shall automatically terminate and all interest therein shall immediately revert to Grantor, its successors and assigns, without any further action on its part.

(19) This Grant of Road Easement may be modified or amended only by a written agreement signed by the Grantor and Grantee, or their respective permitted successors and assigns.

(20) No provisions of this Grant of Road Easement shall be construed against or interpreted to the disadvantage of any party hereto by any Court or governmental or jurisdictional authority by reason of such party having been deemed to have structured, written, drafted or dictated such provisions.

(21) This Grant of Road Easement shall be governed by, and construed in accordance with, the laws of the State of Texas. In addition, this Grant of Road Easement is performable in Angelina County, Texas and the parties agree that in the event of any dispute concerning this Grant of Road Easement, venue

for any cause of action arising out of, or having to do with, this Grant of Road Easement shall be, and is, in Angelina County, Texas; and

(22) This Grant of Road Easement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

TO HAVE AND TO HOLD the Easement unto Grantee, its heirs, executors, administrators, successors and permitted assigns forever; and Grantor does, subject to the terms, provisions and conditions hereinabove provided, hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Easement unto Grantee, its heirs, executors, administrators, successors and permitted assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, by, through or under Grantor, but not otherwise, and subject to the terms, provisions and conditions herein contained.

[SIGNATURE PAGES TO FOLLOW]