

Potential Financial Incentives for Conservation Easements Under Georgia Law
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TO: Dan Weede
FROM: Joe Bolling, summer associate
DATE: June 7, 2007
RE: Conservation Easements

QUESTION PRESENTED

Under Georgia law, what is a conservation easement and what are the potential financial incentives for a property owner?

DISCUSSION

Conservation easements are an increasingly popular method used to protect green space and water quality in Georgia. In addition to the environmental advantages of a conservation easement, a property owner may also benefit financially from compensation paid for the easement or tax credits/deductions offered for a qualified donation. This memo provides an overview of the relevant Georgia statute covering conservation easements, as well as a discussion of potential financial benefits available to land owners.

1. What is a Conservation Easement?

A conservation easement is a contract between a landowner and a qualified “holder,” where the owner gives up certain rights associated with the property in order to preserve it for conservation purposes. See Georgia Land Conservation Program, *Conservation Easements Frequently Asked Questions*, [hereinafter GLCP FAQ] [attached as Appendix A]. In Georgia, conservation easements are established by The Georgia Uniform Conservation Easement Act,

codified under O.C.G.A. §§ 44-10-1 to -8. For this statute to apply, the easement must be established for a conservation purpose and held by a qualified organization. Qualified holders include authorized “governmental bodies” and charitable conservation organizations, primarily consisting of land trusts. O.C.G.A. § 44-10-2(2). Examples of valid conservation purposes include: “[1] retaining or protecting natural, scenic, or open-space values of real property; [2] assuring its availability for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; [3] or preserving the historical, architectural, archeological, or cultural aspects of real property.” O.C.G.A. § 44-10-2(1).

While the Georgia code authorizes conservation easements, the specific easement agreement, or deed of conservation easement, establishes permissible and prohibited uses of the land. In this agreement, the landowner will give up certain associated rights, such as the right to develop or subdivide the property. The agreement will often include details concerning the condition and use of the property, as well as a land management plan that describes future responsibilities. GLCP FAQ, supra at 1. An example of a deed of conservation easement is attached as Appendix C, following this memo. The holder is generally responsible for enforcing the terms of the easement, but that duty can be assigned to a qualified third party O.C.G.A. § 44-10-2(3). Conservation easements may be limited in duration, but most of the related tax benefits require a permanent grant. If the agreement does not specify a time frame, the easement will be considered permanent. O.C.G.A. § 44-10-3(c).

Before any rights or duties are transferred, the potential holder of a conservation easement must accept it and this acceptance must be recorded. O.C.G.A. § 44-10-3(b). The parties can record the easement in the superior court of the county where the land is located. O.C.G.A. § 44-10-8. Even after acceptance of the easement, the property owner may still be responsible for the

condition of the land and liable for injuries, as the ownership or enforcement rights of the holder do not necessarily subject it to liability. O.C.G.A. § 44-10-3(e).

Assuming the easement in question fits under these sections of the Georgia code, a landowner would still need to meet the individual requirements to qualify for any related financial benefits.

2. Financial Incentives

Financial benefits associated with conservation easements depend on the acquisition method. Initially, the landowner must decide whether to sell or donate the conservation easement. Although limited funds exist, certain governmental and conservation organizations may be willing to purchase the easement, depending on the location and condition of the land. If the owner sells the conservation easement, compensation will be paid, but the income tax benefits discussed below will not apply. If instead the owner donates the property and meets the other requirements, he/she may qualify for state and federal income tax benefits.

A. State Income Tax Incentives

Under the Georgia Conservation Tax Credit Program (GCTCP), property owners may receive credit toward their state income taxes by donating a permanent conservation easement to a qualified organization and meeting all other program requirements. The maximum tax credit available is the lesser of 25% of the fair market value of the donation or \$250,000 for individuals and \$500,000 for corporations. The value of the donation is determined by the tax assessor in the county where the land is located. See Georgia Department of Natural Resources, *Georgia Conservation Tax Credit Program Frequently Asked Questions* [hereinafter GCTCP FAQ] [attached as Appendix B].

Before receiving any credit, however, the Georgia Department of Natural Resources must certify the conservation easement. To qualify for certification, the property owner must submit a detailed application, but first should at least meet certain minimum requirements. According to the Department of Natural Resources, “(1)the landowner must...donate a permanent conservation easement on the property, (2)the donation must be accepted by the [applicable governmental body] or bona fide charitable non-profit organization defined as a ‘qualified organization’..., and (3)the property...must meet one or more of the ten conservation purposes listed in Chapter 22, Title 36 of the Georgia Code.” GCTCP FAQ, supra, at 1. In making its decision, the Department also considers other aspects of the property, such as “size, condition, configuration, and location as well as the terms of the donation and long term management plan developed for the property.” Id. The application requires detailed documentation regarding the conservation easement, including a copy of the easement agreement containing certain required provisions, a survey of the land, and other applicable information. The landowner also has the option of completing a shorter, pre-certification application prior to submitting the full version. The pre-certification application will be reviewed within 60 days, compared to a 90-day review for the full version. Both the pre-certification and certification applications can be found at http://www.gadnr.org/pdf/GCTCP_application.pdf.

C. Federal Income Tax Incentives

Georgia property owners may also receive a federal income tax deduction by donating a permanent conservation easement to a qualified organization, as defined in the Internal Revenue Code. I.R.C. § 170(h). If the taxpayer donates the easement between 2006 and 2007, he/she can deduct up to 50% of adjusted gross income, and any excess can be carried over for fifteen years following the year of the donation. GLCP FAQ, supra, at 3. However, this rate is only temporary,

and unless Congress renews it, donations made after 2007 will result in a maximum deduction of 30% of adjusted gross income, with excess carried over for five years. Id.

To qualify for a federal income tax deduction, the property owner must donate a permanent easement to a qualified organization, for conservation purposes. I.R.C. § 170(h)(1). Qualified organizations include certain section 501(c)(3) non-profit organizations, designated governmental groups and other related organizations described in the code. I.R.C. § 170(h)(3). Qualified conservation purposes include:

[1] the preservation of land areas for outdoor recreation by, or the education of, the general public, [2] the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, [3]the preservation of open space (including farmland and forest land) where such preservation is – for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or [4]the preservation of an historically important land area or a certified historical structure

I.R.C. § 170(h)(4).

If the landowner qualifies for the federal income tax deduction, the value of a donated conservation easement is determined by an appraisal of the property both before and after the donation. For more detailed information on the tax benefits, appraisal process, and recommendations, please see a memo in the Alston + Bird system prepared by Jack Sawyer, regarding conservation easements.

D. Other Potential Tax Benefits

In addition to state and federal income tax benefits, a reduction in property taxes is also a possibility with the sale or donation of a conservation easement. GLCP FAQ, supra, at 3. Although not guaranteed, a conservation easement can reduce the overall value of the property and

result in lower property taxes for the landowner. This determination, however, is made by the county tax assessor. Id.

Finally, by donating a conservation easement, the landowner may also be able to reduce estate tax obligations. Id.

CONCLUSION

Conservation easements provide a valuable method for landowners to preserve the natural, scenic quality of the land. By giving up certain rights to the property, the owner may benefit both from the environmental preservation of the land and the financial incentives related to conservation easements. An initial challenge for the land owner, however, may be finding an organization with the capacity to serve as a holder. As conservation easements grow in popularity, it appears that more groups are working to increase the opportunities. The appendices to this memo contain contact information for organizations that can help start the process.

APPENDIX A

Source: *Georgia Land Conservation Program*, available at http://www.gadnr.org/glcp/Files_PDF/Conservation_Easements_FAQ.pdf



Conservation Easements *Frequently Asked Questions*

What is a Conservation Easement?

- A conservation easement is a binding legal contract between a landowner and a qualified entity (a local, state, or federal jurisdiction or a nonprofit organization recognized under Section 501 (c)3 of the Internal Revenue Code) to ensure that lands are maintained in a conservation use state. The easement ensures protection of the conservation values of a property while the owner retains ownership and use;
- Specific property rights are typically removed or limited and conveyed to the easement holder. Rights commonly transferred include building construction, subdivision, mining and timber harvest limits. Remaining rights are retained by the property owner and typically include recreation use, use of existing buildings, and agricultural and forest uses;
- Conservation easements are authorized by state statute (In Georgia, *The Georgia Uniform Conservation Easement Act, OCGA §§ 44-10-1 to 8*). Conservation easements are different from common law easements that are typically intended to benefit an adjacent property under common law. Conservation easements benefit the public at large, and not simply one parcel of land;
- Property with a conservation easement on it can be conveyed, bought, and sold, but the terms of the easement are transferred to the new owner. The IRS and the State of Georgia recognize and allow charitable contributions and tax credits for perpetual easements meeting conservation purposes;
- Conservation easements require a baseline document which provides a detailed description of the condition of the land at the time of the easement and usually include a land management plan developed with the assistance of the easement holder and/or natural resource professionals such as ecologists, wetlands biologists, and foresters.

What are qualifying conservation purposes under IRS regulations?

- Preservation of land areas of outdoor recreation for use by, or the education of, the general public;
- The protection of relatively natural habitats of fish, wildlife, or plants, or similar ecosystems;
- The preservation of open space – including farmland and forestland – for the scenic enjoyment of the general public, or pursuant to a clearly delineated governmental conservation policy; in either case, such open-space preservation must yield a significant public benefit;
The preservation of a historically important land area or a certified historic structure.

When does a Conservation Easement work best?

- When a landowner wants to retain ownership of their property, but has a long-term conservation objective for the land;
- When the property owner has a strong desire and commitment to see their land kept in its natural state;
- When traditional and historic land uses and management of the property are compatible with conservation;
- When the owner lives on the property or frequently visits;
- When the holder of the conservation easement is a reputable and well established land trust or government entity;
- When the property is relatively large (larger than 100 acres, though there is no minimum requirement).

Who can hold Conservation Easements in Georgia?

- There are about 50 land trusts operating in Georgia qualified to hold conservation easements and recognized by the IRS under Section 501 (c)3 of the Internal Revenue Code;
- At least 5 state or federal agencies and some counties also hold conservation easements in Georgia;
- There are currently some 380 properties and 131,000 acres of land under conservation easements in Georgia;
- Conservation easement holders have the right and responsibility to monitor and enforce easement terms.

What are the potential tax benefits of Conservation Easements?

- **State of Georgia Income Tax Credit:** In 2006, House Bill 1107, known as the Georgia Conservation Tax Credit Program, was passed by the General Assembly and signed by Governor Perdue. Donations of land or conservation easements meeting state conservation purposes qualifies donors for a state income tax credit up to the lesser of \$250K (individual), \$500K (corporation) or 25% of the value of the donation. The donor has 6 years to use the tax credit for qualifying lands;

- **Federal Income Tax:** If the donation or bargain-sale of fee title or a conservation easement meets the IRS requirements for a charitable contribution, it is deductible for Federal income tax purposes, up to 50% of the donors Adjusted Gross Income (AGI) over 16 years or until the amount of the donation is used up. Qualifying farmers or ranchers (people who derive more than half of their gross income from farming or ranching) can deduct up to 100% of their AGI. These limits are an increase enacted in August of 2006 and are valid for deductions made in taxable years between January 1, 2006 and December 31, 2007, after which the deductions revert to the previous limits of 30% of AGI and a 6 year carryover, unless Congress acts to extend the period again;
- **Estate Taxes:** Donating conservation land or a conservation easement may reduce the value of an estate, and thereby reduce or eliminate estate taxes.
- **Local Property Taxes:** Real estate tax assessments are based on the property's value as determined by the local assessor. In theory, the assessed value of property will be reduced by a conservation easement, but this principle has had mixed results in Georgia due to each county having its own interpretation of how a property will be assessed. Check with your local tax assessor's office to determine if an easement will benefit you with respect to local property taxes.

What are the typical costs associated with placing a Conservation Easement on property, even when the easement is donated?

- Good, experienced tax and legal advice;
- Appraisal costs;
- Title search fees and title insurance premiums;
- Survey expenses (if needed);
- Provision of a stewardship endowment for the holder of the easement.

Who should I contact if I want to pursue a Conservation Easement on my property?

- You can call the Georgia Land Conservation Program (GLCP) at 404-584-1101, or 404-463-5715. They can answer your basic questions about conservation easements and may be able to refer you to possible easement holders such as a local land trust in your area or a public agency;
- You should contact your tax advisor, real estate attorney, or accountant for good advice and information about the easement process and possible tax benefits of placing a conservation easement on your property

APPENDIX B

Source: Georgia Department of Natural Resources, available at http://www.gadnr.org/pdf/GCTCP_FAQ.pdf

Georgia Conservation Tax Credit Program Frequently Asked Questions

What are the minimum requirements for eligibility under the Georgia Conservation Tax Credit Program (GCTCP)?

Individual and corporate owners of real property in Georgia are eligible to participate in the program. In order to be eligible to receive the state income tax credit:

- 1) The landowner must donate the property in fee simple, or donate a permanent conservation easement on the property;
- 2) The donation must be accepted by the state, county, municipal, consolidated government, or a bona fide charitable nonprofit organization defined as a “qualified organization” under this program; and
- 3) The property in question must meet one or more of the ten Conservation Purposes listed in Chapter 22, Title 36 of the Georgia Code. These Conservation Purposes are listed at the end of this document and on the GCTCP application form.

What other factors are taken into consideration by the Georgia Department of Natural Resources (Department) in deciding whether or not to certify a donation?

In addition to the eligibility requirements listed above, the Department considers the characteristics of the property, including its size, condition, configuration, and location, as well as the terms of the donation and the long-term management plan developed for the property. These factors influence the ability of the landowner or managing entity to maintain the site’s Conservation Purposes over time. In order to provide certification under this program, the Department must be confident that the property will provide long-term conservation benefits.

What types of land are not eligible for certification under this program? The following types of land are not eligible for certification under the GCTCP:

- 1) Land that is already protected from development under local ordinances (e.g., stream buffers or scenic setbacks)
- 2) Land that is set aside in order to increase building density levels (e.g., dedicated “greenspace” within conservation subdivisions or cluster developments)
- 3) Land that is planned for or used for golf courses, soccer fields, softball fields, or other types of intensively managed recreational uses.

Are there circumstances in which a government entity (state, county, or municipal) will not accept a property proposed for donation?

Yes, some local governments may not be staffed to handle the process or have the necessary policies and procedures in place. Also, the property may not meet their conservation and greenspace goals due to its configuration, size, condition, or location.

The State of Georgia will only accept a donation of land (fee-simple or conservation easement) if the property is of statewide significance and can be managed to protect and maintain its values in perpetuity. In addition, emphasis is placed on sites that can provide opportunities for public recreation, education, or scientific research.

Are there circumstances in which a private conservation organization will not accept a property proposed for donation?

Yes. The property in question may not be compatible with the organization's mission or objectives, or may be judged problematic for any number of other reasons. Private non-profit organizations that accept conservation easements must annually monitor and report the status of the easement to the Department, so these organizations must assess the conservation value of the proposed donation in relation to available staff resources.

Is there a minimum or maximum number of acres that must be donated before the property becomes eligible for this program?

There is no minimum size requirement for donated property under this program. Instead, suitability for certification is based on an assessment of the contribution of the donation to one or more of the Conservation Purposes listed in the Act. This assessment takes into account the location, size, configuration, condition, and other characteristics of the site. All other factors being equal, larger sites generally provide more conservation benefits and are more easily managed to maintain viability over time. However, some small sites can provide significant conservation benefits as well. While there is no minimum size to be considered under this program, the size of the tract may influence the willingness of a qualified organization to accept the donation. Similarly, while there is no upper limit on the number of acres that can be donated, there is a limit to the financial incentive that can accrue through this particular state program. That limit is \$250,000 for individuals and \$500,000 for corporations (or 25 % of the assessed fair market value of the donation, whichever is less).

Does certification under this program provide automatic eligibility for other financial incentive programs supporting conservation uses?

No, but much of the documentation required for certification under GCTCP is the same as that required for other programs providing federal tax deductions, property tax relief, or other financial incentives. Please check with the Georgia Land Trust Service Center (706-546-7507) or the Department (770-918-6411) for information on other programs that provide financial incentives for land conservation.

Is there an appeal process if the landowner's property is deemed ineligible for certification under this program?

Yes, the enabling legislation for this program provides that a final determination by the Department with respect to the suitability of a donated property for conservation purposes is subject to review and appeal under terms of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

I cannot afford everything required for the application. Will DNR offer help if the land is considered suitable for conservation purposes?

The Department does not have funds available to reimburse landowners for the cost of surveys and other documentation needed for the certification application. However, the Department and cooperating organizations can provide information and technical assistance to landowners to help them understand and evaluate their conservation options.

Can the Department provide me with an estimate of the income tax credit that would result from a conservation donation?

No, the Department is responsible for determining the eligibility and suitability of a site for certification under this program. The Department does not determine or estimate the monetary value of a donation or the resulting state income tax credit. Many of the cooperating qualified organizations can provide guidance on what to expect in terms of financial benefits from a conservation donation under this program.

Who is responsible for determining the value of the state income tax credit?

The state income tax credit is based on the monetary value of the donation. This value is determined by the tax assessor's office of the county in which the donated property is located. A county tax assessor's office may elect to accept property appraisals from independent third-party appraisers hired by the landowner or qualified organization.

Will the Department provide a list of "qualified organizations" that can create a conservation plan and/or hold and monitor conservation easements?

Yes, the Department will maintain and make available to landowners a list of organizations that are qualified to participate in this program. This list will be mailed to landowners upon request.

If the property being considered for donation includes structures that are in use, such as a home, barn, or storage building, will the property owner be permitted to continue such use after a conservation easement is placed on the property?

Yes, depending on the terms of the conservation easement that is developed by the landowner and the qualified organization. Generally, conservation easements allow continuation of existing uses, including the use of buildings. However, the landowner may wish to structure the easement to reduce the future use of some buildings or areas; that decision is entirely up to the landowner.

Easements that are developed specifically to protect historic buildings and other structures may include specific conditions relating to the use, maintenance, and rehabilitation of these structures. For more information on this type of easement, contact the Historic Preservation Division of Georgia DNR at 404-656-2840.

If my land has significant natural resources as well as historic features and structures, can I include permanent protection for all of these resources in one conservation easement?

Yes, in many cases easements can serve multiple conservation purposes. For example, an easement protecting agricultural land may include aspects of a historic preservation easement to protect historic structures, scenic features and cultural sites. For more information, refer to Exhibit B of the GCTCP application form.

Is a conservation easement that allows future development eligible for consideration under this program?

Yes, however, the amount of future development allowed under the easement will determine the suitability of the site for certification, the willingness of a qualified organization to accept the donation, and the amount of income tax credit provided by the donation. In general, conservation easements that place few restrictions on future development will not be considered suitable for certification.

Certain types of “development” are not considered problematic for most sites. These include construction of walking trails, kiosks, or boardwalks, minor improvement of roads, and replacement or repair of existing structures (other than replacement or modification of historically significant structures). On the other hand, draining wetlands, building artificial levees, damming streams, converting native vegetation, and constructing new roads or buildings are types of alterations that may significantly impact the conservation value of a property. The types of reserved uses and amount of development allowed must be clearly defined in the conservation easement and accompanying management plan.

Is a conservation easement that allows future subdivision of property eligible for consideration under this program?

Allowing future subdivision of a property is considered detrimental to the conservation values of the property and is strongly discouraged. As with development, the amount of subdivision allowed under the easement will determine the suitability of the site for certification, the willingness of a qualified organization to accept the donation, and the amount of income tax credit provided by the donation.

Does donation of a conservation easement or restrictive covenant require the landowner to provide public access?

While conservation easements can include provisions for public access and use, most do not. There is no requirement in this program that the landowner include public access as a component of the donated conservation easement.

For properties held by a qualified organization and protected by a permanent restrictive covenant, the situation is different. Under Georgia law (O.C.G.A. 44-5-13), permanent restrictive covenants are those that include provisions for public use. Restrictive covenants that do not provide public access and use are not permanent, and are therefore ineligible for certification under this program.

What is pre-certification, and how does it differ from certification?

Under the GCTCP, the Department can only provide certification after the donation has been completed. This means that the donor and recipient must have executed and recorded all appropriate documents for the land transaction before the Department makes the final determination on a property's suitability for certification. Many prospective donors want some degree of assurance that their conservation donation will meet the standards for certification before completing the transaction and applying for certification.

Pre-certification is an optional intermediate step that allows the landowner to consult with the Department staff to reduce the level of uncertainty concerning certification. By providing information about the property and the terms of the donation prior to the completion of the property transaction, the landowner gives the Department an opportunity to review the proposed donation and provide an estimate of the likelihood that it will meet the standards for certification. This also gives the Department staff an opportunity to advise the landowner on the various components of a successful conservation project and to make certain that the landowner knows about all available conservation options.

After reviewing the pre-certification application, the Department will provide a letter to the landowner indicating whether or not the proposed donation is likely to meet all requirements for certification. Please keep in mind that this preliminary determination is not binding on the landowner, the recipient organization, or the Department. However, the more complete and detailed the application package is, the more confidently the Department can determine the likelihood of meeting the certification requirements.

How do I apply for pre-certification or certification?

There is one application form that is used for both pre-certification and certification. It can be downloaded at http://www.gadnr.org/documents/conservation_tax_credit.html, or you may request a printed copy by calling 770-918-6411.

When will I hear from the Department on my application?

The Department will review all complete pre-certification application packages and respond to the applicant within 60 days. The Department will review all complete certification application packages and respond within 90 days. The review period for certification applications is longer due to the amount of background work involved (including document review and site visits). Applicants who send in an incomplete application package will be notified by the Department and given an opportunity to provide the required information within 30 days. After 30 days, incomplete applications will be returned to the applicant.

Eligible Conservation Purposes

The following conservation purposes are considered eligible for certification under the Georgia Conservation Tax Credit Program. The descriptions of lands that support these conservation purposes are provided for illustrative purposes, and are not intended to represent an exhaustive list of eligible lands under this program, nor can they be interpreted to represent, affect, or control the Department’s determination on any particular application.

- A. Water quality, protection for rivers, streams, and lakes: Land that protects water quality, in addition to the protection of natural buffers described in (E), can include properties adjacent to rivers, lakes and streams that filter pollutants and decrease sediment loads, as well as maintaining natural water temperature regimes.

- B. Flood protection: Land that provides flood protection includes natural land or water features that help protect adjacent or downstream properties by reducing or ameliorating the impacts of floods. Examples include undeveloped floodplains, sloughs, oxbow lakes, bluffs, and natural river levees.

- C. Wetlands protection: Land that consists primarily of wetlands either verified by the Corps of Engineers as jurisdictional wetlands or ecologically significant isolated wetlands, and upland areas adjacent to wetlands that provide a vegetated buffer.

- D. Reduction of erosion through protection of steep slopes, areas with erodible soils, and stream banks: Land with high erosion potential due to steep slopes or soil types that if conserved would reduce erosion and protect water quality.

- E. Protection of riparian buffers and other areas that serve as natural habitat and corridors for native plant and animal species: Includes intact riparian buffers along rivers and streams, as well as non-riparian areas, that provide significant conservation value as wildlife corridors and habitat for native plants and animals.

- F. Protection of prime agricultural and forestry lands: Prime agricultural land is land that currently is in agricultural uses other than forestry, and is managed in a manner consistent with a conservation plan prepared in consultation with the Natural Resources Conservation Service (NRCS) of the US Department of Agriculture and approved by the local conservation district. The conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide (FOTG) and 7 C.F.R. Part 12 that are in effect as of the date of conveyance. The Applicant may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS FOTG standards and specifications. Prime forestry land is land in an undeveloped condition where forestry use provides a high quality water supply, clean air, improved timber, and wildlife habitat for a variety of game and non-game species, and may also provide recreational or scenic benefits.

- G. Protection of cultural sites, heritage corridors, and archaeological and historic resources: Land that contains Archaeological and Historic Resources (listed in or eligible for listing in the Georgia Register of Historic Places); land that contains places of national and/or state

significance where natural, cultural, historic, and scenic resources combine to form a cohesive, distinctive landscape arising from patterns of human activity shaped by geography.

- H. Scenic protection: Land that contains significant scenic resources, including designated statewide resources such as scenic rivers, scenic highways or Georgia by-ways.

- I. Provision of recreation in the form of boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, and similar outdoor activities: Land that is suitable for low-intensity or dispersed recreational uses such as boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, and similar outdoor activities. Land intended for active uses such as golf, soccer, baseball, construction of lakes, etc. is not eligible.

- J. Connection of existing or planned areas contributing to the goals set out in this paragraph: Land that provides connectivity to existing conservation lands or is in close proximity to other designated statewide resources such as scenic rivers, scenic highways or Georgia by-ways, state or national parks, natural areas, wildlife management areas, wilderness areas, national natural landmarks, or properties listed on the Georgia Register of Historic Places.

APPENDIX C

Pindar's Georgia Real Estate Law And Procedure With Forms
Current through the 2007 Update

Daniel F. Hinkel[[FNa0](#)]

Part V. Title Practice
Chapter 28. Forms
H. Forms Of Legal Proceedings

§ 28-86. Deed of conservation easement[[FN1](#)]

DEED OF CONSERVATION EASEMENT

THIS INDENTURE is made and entered into this _____ day of _____, by and between _____, a _____ (“Grantor”), having an address at _____, and a _____ [nonprofit] corporation (“Grantee”), having an office at _____.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of that certain real property (the “Property”) located in _____ County, Georgia, more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof [NOTE: The following language may be added if aerial photographs or other visual means would be useful in defining the Property: “, and as more particularly depicted on Exhibit /‘B’ attached hereto and by this reference made a part hereof”] [GENERAL NOTE: This form contemplates that the “Property” is the real estate intended to be subjected to the **Conservation Easement**, which may be all or merely a portion of Grantor’s property at the subject location]; and

WHEREAS, the Property in its present state [OPTION: has not been subjected to development or other exploitation and] possesses significant natural, scenic, aesthetic, [OPTIONS: [agricultural,] [geological,] [historical,] [architectural,] [archeological,] [cultural,] [watershed,] [wildlife,] [forest,] [recreational,]] scientific, educational, and plant habitat and open-space features and ecological [OPTIONS: [air-quality] [water-quality]] values (collectively, the “Open Space Values”); and

WHEREAS, the preservation of the Property in its present state will clearly enhance the Open Space Values; and

WHEREAS, the Open Space Values are documented in an inventory of relevant features of the Property, dated _____, more particularly described in Exhibit “C” attached hereto and by this reference made a part hereof (collectively, the “Baseline Data”), which consists of [OPTIONS: United States Geological Survey survey maps, reports, maps, photographs, aerial photographs] and other documentation which Grantor and Grantee agree will provide, collectively, an accurate representation of the condition of the Property as of the date hereof, and which is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Indenture; and

WHEREAS, the Open Space Values are of great importance to Grantor, Grantee, the people of the State of Georgia and the general public, and are worthy of preservation and conservation; and

WHEREAS, Grantee is a [nonprofit] corporation, one of whose purposes is to preserve and conserve areas such as the Property in order to preserve the Open Space Values; and

WHEREAS, Grantee is a “qualified organization” within the meaning of [Section 170\(h\) of the Internal Revenue Code](#) of 1986, as amended (the “Code”); and

[OPTIONS: [WHEREAS, Grantee is a qualified “holder” within the meaning of [O.C.G.A. § 44-10-2\(2\)](#) (GCA § 85-1407); and]

[WHEREAS, Grantor wishes to grant to Grantee a “third-party right of enforcement” within the meaning of [O.C.G.A. § 44-10-2\(3\)](#) (GCA § 85-1407); and]

WHEREAS, by this Indenture, Grantor and Grantee mutually intend that the Property be preserved in perpetuity in [OPTION: substantially] its existing state, thereby furthering the conservation and protection of a “relatively natural habitat of fish, wildlife, or plants or similar ecosystem” (as used in Section 170(h) of the Code), and the preservation of open space for the scenic enjoyment of the general public, which preservation will yield a significant public benefit; and

WHEREAS, Grantor also wishes to preserve the Open Space Values by providing for the continuation of only those uses on the Property that have proven historically compatible with the Open Space Values; and

WHEREAS, Grantor, as owner of the Property, wishes to convey to Grantee a nonpossessory interest in the Property to preserve and protect the Open Space Values of the Property in perpetuity, and Grantee wishes to accept such conveyance from Grantor, in order to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Open Space Values of the Property for the benefit of this generation and generations to come, but only upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) in hand paid at or before the sealing of these presents, the mutual intentions expressed in the foregoing recitals, the mutual covenants, terms, conditions and restrictions herein contained and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and pursuant to [O.C.G.A. § 44-10-1](#) et seq. (GCA § 85-1406 et seq.), which expressly authorizes the conveyance herein contained, Grantor has freely and voluntarily granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does freely and voluntarily grant, bargain, sell, alien, convey and confirm, unto Grantee and its successors and assigns, a perpetual [NOTE: If duration is to be other than perpetual, revisions will be required here and elsewhere in this document. Also, note that a court may modify or terminate a **conservation easement** pursuant to [O.C.G.A. § 44-10-4\(c\)](#) (GCA § 85-1409).], irrevocable, non-exclusive **conservation easement** (the “**Conservation Easement**”) over, across and through the Property for the purposes hereinafter set forth. Grantee, by its execution hereof, accepts the foregoing grant of the **Conservation Easement**, and the recordation of this Indenture shall constitute a “recordation of the acceptance” by Grantee within the meaning of [O.C.G.A. § 44-10-3\(b\)](#) (GCA § 85-1408). Upon the recordation hereof, Grantee shall be entitled to enforce the **Conservation Easement** pursuant to [O.C.G.A. § 44-10-4](#) (GCA § 85-1409).

1. *General Purpose.* It is the general purpose of the **Conservation Easement** to assure that the Property will be retained forever in its present natural, scenic, open and undisturbed condition [OPTION: If desired, revise the foregoing descriptive terms consistent with the second “WHEREAS” clause above.] and to prevent any use of the property that will significantly impair or interfere with the Open Space Values of the Property, as generally defined in the Baseline Data.

2. *Rights of Grantee.* To accomplish the purpose of the **Conservation Easement**, the following rights are conveyed to Grantee by this Indenture:

- A. To preserve and protect the Open Space Values of the Property.
- B. To enter upon the Property at reasonable times and upon reasonable prior notice in order to monitor Grantor's compliance with and otherwise enforce the terms of the **Conservation Easement**, provided that such entry shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
- C. To prevent any activity on, or use of, the Property that is [OPTION: materially] inconsistent with the purposes of the **Conservation Easement**, and to require the restoration of such areas or features of the Property as may be damaged by any such inconsistent activity or use.

3. *Prohibited Uses.* Any activity on, or use of, the Property [OPTION: materially] inconsistent with the purpose of the **Conservation Easement** is prohibited. The Property shall be maintained in its natural and wild state and restricted from any development with buildings or otherwise [OPTION: (except for those improvements existing on the Property on the date hereof)], or any use other than as natural fields and forest lands and as a sanctuary for wildlife and wild plants. It is mutually agreed and understood, however, that the **Conservation Easement** permits Grantor and its successors-in-interest

to use the Property for all purposes, present and future, not inconsistent with the **Conservation Easement**. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

A. The change, disturbance, alteration or impairment of the natural, scenic, agricultural and aesthetic features of the Property, except as expressly provided herein.

B. Any residential, commercial or industrial use of, or activity on, the Property.

C. The construction or maintenance on the Property of any buildings, [OPTIONS: trailers, mobile homes,] structures or other improvements, other than requisite fencing and as otherwise expressly permitted herein.

D. The exploration for, or extraction of, oil, gas or other minerals, hydrocarbons, soils or other materials on or below the surface of the Property.

E. The dumping or other disposal of trash, garbage or other refuse of any nature whatsoever on the Property.

F. Any use or activity that causes or presents a [OPTION: substantial] risk of causing soil erosion [NOTE: This can be broadened by specifically mentioning excavation, landfilling, dredging, mining, etc.].

[OPTION: G. The cutting of merchantable timber, except as necessary to maximize wildlife production, to control or prevent imminent hazard, disease or fire, or except the appropriate thinning of such timber as is consistent with sound forestry management practices, based upon a forestry management plan prepared by a certified forester and submitted to Grantee for approval at least thirty (30) days prior to the initiation of any cutting or thinning, which approval shall not be unreasonably withheld [OPTION: or delayed].]

H. The construction, maintenance, or erection of any sign or billboards on the Property, except for the posting of no-hunting and no-trespassing signs.

I. The construction or extension of utility systems [OPTION: “, except that such systems may be constructed at reasonable locations so long as they are underground and” [OPTION: insert other qualifications, as desired]].

[NOTE: Other possible insertions include limitations (or further limitations) on: cutting of vegetation; right of passage; animals; new roads/widening of existing roads; operation of vehicles; hunting (except to thin animal population); or water management.]

4. *Reserved Rights.* Grantor reserves to itself and its personal representatives, heirs, executors, administrators, successors and assigns the rights of entry and use and all other rights accruing from its and their ownership of the Property not inconsistent with the purposes of the **Conservation Easement**. Without limiting the generality of the foregoing, the following rights are expressly reserved:

A. The right to take action necessary to prevent erosion on the Property or to protect public health or safety.

B. The right to lease or to give, sell, assign or otherwise transfer the Property or any portion thereof by operation of law or by **deed**, in each case subject and subordinate to this Indenture.

[OPTION: C. The right to plant and cultivate game food plots, maintain game feeders and to engage in lawful hunting and harvesting of game on the Property, and to engage in limited game and timber maintenance and management, including burning, mowing and chopping of the understory vegetation and appropriate timber thinning consistent with sound game and wildlife management and forestry management practices, based upon the forestry management plan referred to in Paragraph 3.G. above.]

D. Except as expressly provided herein, grantor retains exclusive access to and use of the Property.

E. Except as limited in this Indenture, Grantor reserves all rights as fee owner of the Property, including, without limitation, the right to use the Property for all purposes not inconsistent herewith; *provided, however*, that Grantor shall notify Grantee in writing, and Grantee shall have the right of consent, in each case as more particularly provided in Paragraph 6 below, prior to the exercise of any reserved right hereunder if the exercise thereof may reasonably be expected to have an adverse impact on the conservation purposes of this Indenture; and provided further, that Grantor hereby acknowledges that, pursuant to [O.C.G.A. § 44-10-4\(b\)](#) (GCA § 85-1409), Grantee is a necessary party in any proceeding of or before any governmental agency which may result in a license, permit or order for any demolition, alteration or construction on the Property.

[NOTE: Other issues to be considered are access to property; new roads/road widenings; new utilities.]

5. *Grantee's Remedies.* If Grantee determines that Grantor is in violation of the terms of this Indenture or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Property, resulting from any use or activity inconsistent with the purpose of this Indenture, to restore the portion of the Property so injured. If Grantor fails to cure such violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30)-day period, fail to begin curing such violation within the thirty (30)-day period, or fail to continue diligently such cure thereafter until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Indenture, including, without limitation, to enjoin the violation, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Open Space Values of the Property, Grantee may pursue its remedies under this Paragraph 5 upon written notice to Grantor, but without waiting for the period provided for cure to expire. Grantee's rights under this Paragraph 5 apply equally in the event of either actual or threatened violations of the terms of this Indenture, and Grantor agrees that Grantee shall be entitled to the injunctive relief described above in this Paragraph 5, both prohibitive and mandatory, in addition to the other remedies provided for herein, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Paragraph 5 shall be cumulative and shall be in addition to all other remedies now or hereafter existing at law or in equity, subject always, however, to any obligation upon Grantee to give notice or an opportunity to cure, or both, pursuant hereto.

5.1. *Grantee's Discretion.* Enforcement of the terms of this Indenture shall be at the discretion of Grantee, and any forbearance by Grantee in the exercise of its rights under this Indenture in the event of any breach of any term hereof 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 Indenture or of any of Grantee's rights hereunder. 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.

5.2. *Waiver of Certain Defenses.* Grantor hereby waives any defense of laches, estoppel or prescription.

5.3. *Acts Beyond Grantor's Control.* Nothing contained in this Indenture shall be construed to entitle Grantee to bring any action against grantor or to suggest that Grantor would have any liability for any injury to or change in the property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement, other acts of God, natural or man-made disasters, unauthorized acts of third parties or other damage beyond Grantor's control, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

6. *Notice of Intention to Undertake Certain Permitted Actions.* The purpose of requiring Grantor to notify Grantee prior to undertaking any activity of the nature contemplated by the proviso contained in Paragraph 4.E. above is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in the manner consistent with the purposes of this Indenture. Whenever such notice is required, Grantor shall notify Grantee, in writing, not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable 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 purposes of this Indenture.

6.1. *Grantee's Approval.* Grantee shall grant or withhold its approval, in writing, within sixty (60) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld only upon reasonable determination by Grantee that the action, as proposed, would be inconsistent with the purposes of this Indenture.

6.2. *Arbitration.* If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purposes of this Indenture, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made, in writing, upon the other. Within thirty (30) days of the receipt of such a request by the receiving party, the parties shall endeavor to select a single arbitrator to hear the matter. If the parties

are unable to agree on the selection of a single arbitrator within such thirty (30)-day period for any reason whatsoever, then each party shall, within five (5) days thereafter, name one (1) arbitrator, and the two (2) arbitrators thus selected shall select a third arbitrator within ten (10) days after the date of the appointment of the second arbitrator; *provided, however*, that if either party fails to select an arbitrator, or if the two (2) arbitrators selected by the parties fail to select the third arbitrator within ten (10) days after the appointment of the second arbitrator, then, in each such instance, either party may apply to the Superior Court in and for _____ County, Georgia for the appointment of the second or third arbitrator, or both, as the case may be.

7. *Costs and Liabilities.* Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership of the Property, including, without limitation, the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

7.1. *Hold Harmless.* Grantor agrees to indemnify and hold harmless Grantee and its officers, directors, employees and agents against all claims for damage or destruction of property or death or injury to persons arising from the negligent acts of Grantor and its employees and agents, and shall, insofar as is possible, after a good-faith effort by Grantor, name Grantee as an additional insured on Grantor's liability policy.

7.2. *Taxes.* Grantor shall pay, before delinquency, all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property by any competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of, this Indenture, and shall furnish Grantee with satisfactory evidence of payment upon request; *provided, however*, that to the extent that the granting of the **Conservation Easement** shall entitle Grantor to a revaluation or other tax relief as contemplated by [O.C.G.A. § 44-10-8](#) (GCA § 85-1410.3), Grantee agrees to cooperate fully and promptly with Grantor in securing the benefits of the same as such; *provided, further*, that Grantor shall have no liability for the payment of taxes, if any, levied upon or assessed against the **Conservation Easement**.

8. *Extinguishment.* If circumstances arise in the future such as render the purpose of this Indenture impossible to accomplish, the **Conservation Easement** can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction pursuant to [O.C.G.A. § 44-10-4\(c\)](#) (GCA § 85-1409). The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange or involuntary conversion of all or any portion of the Property (including, without limitation, that pursuant to Paragraph 8.2 below), contemporaneously with or subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by applicable law at the time, in accordance with Paragraph 8.1 below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Indenture.

[OPTION: 8.1. *Proceeds.* The **Conservation Easement** constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Paragraph 8, the parties stipulate to have a current fair market value equal to the value used to calculate the deduction for Federal income tax purposes allowable by reason of the grant of the **Conservation Easement** by Grantor, pursuant to Section 170(h) of the Code, of \$ _____ [, according to [insert reference to appraisal or other source of valuation]]. The remaining current fair market value of the Property, separate from but after being encumbered by the **Conservation Easement**, is \$ _____ [, according to [insert reference to appraisal or other source of valuation]]. For the purposes of this Paragraph 8.1, the ratio of the value of the **Conservation Easement** to the value of the Property retained by Grantor shall remain constant.]

8.2. *Condemnation.* If the **Conservation Easement** is taken, in whole or in part, by exercise of the power of eminent domain (it being understood that any such exercise with respect to the **Conservation Easement** shall be with the express written consent of both Grantor and Grantee, in derogation of [O.C.G.A. § 44-10-3\(a\)](#) (GCA § 85-1408)), Grantee shall be entitled to compensation in accordance with applicable law and this Paragraph 8, and Grantor and Grantee agree to join in all necessary and appropriate actions to recover the full value of such condemnation, including all incidental damages.

9. *Assignment.* The **Conservation Easement** is transferable, but Grantee may assign its rights and obligations under this Indenture only to an organization that is a "qualified organization" at the time of

transfer under Section 170(h) of the Code or a Federal, state or local governmental agency or other entity, and the applicable regulations promulgated thereunder, and also authorized to acquire, hold and enforce **conservation easements** under [O.C.G.A. § 44-10-2](#) (GCA § 85-1407), [O.C.G.A. § 44-10-3](#) (GCA § 85-1408) and [O.C.G.A. § 44-10-4](#) (GCA § 85-1409). As a condition precedent to any such transfer, Grantee and its successors and assigns shall require a specific written assumption of and agreement to be bound by this Indenture from each transferee hereunder, which assumption shall state that the purposes that the **Conservation Easement** is intended to advance shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to Grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor.

10. *Notices.* Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other hereunder shall be in writing and either served personally or sent by nationally recognized, overnight courier service or U. S. registered or certified mail, postage prepaid, return receipt requested, addressed as follows (or to such other address(es) as may be specified by any such party to the other hereunder by written notice delivered in accordance with this Paragraph 10):

To Grantee:

Attention: _____

With a copy to: _____

Attention: _____

To Grantor: _____

Attention: _____

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery, if personally served or if delivered by nationally recognized, overnight courier service, or on the date indicated on the return receipt, if sent by U. S. registered or certified mail as described above. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice given on the date of mailing.

11. *General Provisions.*

A. *Controlling Law.* The interpretation and performance of this Indenture shall be governed by and construed in accordance with the laws of the State of Georgia.

B. *Liberal Construction.* Any general rule of construction to the contrary notwithstanding, this Indenture shall be liberally construed in favor of Grantee to effectuate the purposes hereof and the policy and purposes of [O.C.G.A. §§ 44-10-1](#) et seq. (GCA § § 85-1406 et seq.). If any provision of this Indenture is found to be ambiguous, an interpretation consistent with the purposes of this Indenture that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. *Severability.* If any provision of this Indenture, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Indenture or the application of such provision to persons or circumstances other than those as to which it is found to be valid, as the case may be, shall not be affected thereby.

D. *Entire Agreement.* This Indenture sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings and agreements relating thereto, 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.

F. *Successors and Assigns; Covenants, Etc. Run With Land.* The covenants, terms, conditions and restrictions of this Indenture shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, and shall continue as an easement and servitude running with the Property in perpetuity and enforceable against Grantor and all present and future owners, tenants and other holders of any interest in the Property. The benefits herein conferred upon Grantee shall be in gross and assignable by Grantee, but only in accordance with Paragraph 9 above. The terms "Grantor" and "Grantee," when used herein, shall be deemed to refer to Grantor or Grantee, as the case may be, and its personal

representatives, heirs, executors, administrators, successors and assigns.

G. *Termination of Rights and Obligations.* Each party's rights and obligations under this Indenture shall terminate upon the transfer of such party's interest in this Indenture pursuant to Paragraph 9 above or the Property, as the case may be, except that liability for the acts or omissions occurring prior to such transfer shall expressly survive such transfer.

H. *Captions.* The captions in this Indenture have been inserted solely for convenience of reference, are not a part of this Indenture and shall have no effect upon construction or interpretation.

I. *Grantor's Successors-In-Title.* Grantor agrees that any conveyance of the Property by Grantor will be made expressly subject to the terms, conditions, restrictions and purposes of this Indenture and the same shall be inserted by Grantor in, or incorporated by reference in, any subsequent deed or other legal instrument by which Grantor divests itself of fee simple or any other interest in the Property or any portion thereof, and Grantor hereby agrees to notify Grantee or its successors or assigns of any such conveyance.

J. *Grantor's Representations and Warranties.* Grantor hereby represents and warrants that it is seized of the Property in fee simple and has good right to grant and convey the **Conservation Easement**, that the Property is free and clear of any and all encumbrances, and that Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of the **Conservation Easement**.

K. *Recordation.* Grantor and Grantee agree that this Indenture [OPTION: [may] [shall]] be promptly recorded in the Office of the Clerk of the Superior Court of _____ County, Georgia [OPTION:;, at [Grantor's] [Grantee's] sole cost and expense].

12. *Baseline Data.* Grantee acknowledges, by its acceptance of the **Conservation Easement**, that Grantor's historical and present uses of the Property are compatible with the purposes of the **Conservation Easement**. In order to establish a present condition of the Open Space Values so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof, Grantee has prepared or caused to be prepared the Baseline Data. The Baseline Data shall be used to assist in establishing the condition of the Property as of the date of this Indenture. Grantor and Grantee acknowledge and agree that, in the event that a controversy arises with respect to the nature and extent of Grantor's historical and present use or the physical condition of the Property subject to the **Conservation Easement** as of the date hereof, the parties may look beyond the Baseline Data, if necessary, to other relevant or material documents, surveys, reports and other evidence showing conditions at the time of execution of this Indenture to assist in the resolution of the controversy.

TO HAVE AND TO HOLD the **Conservation Easement** unto Grantee and its successors and assigns, together with all and singular the rights, members and appurtenances thereof to the same being, belonging or in anywise appertaining, to the only proper use, benefit and behoof of Grantee forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall not only be binding upon Grantor but also its personal representatives, heirs, executors, administrators, successors and assigns, and shall continue as an easement and servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, each of Grantor and Grantee has caused its hand and seal to be hereunto affixed by its duly authorized signatory as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

GRANTOR:

[_____,
a _____ corporation

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

[CORPORATE SEAL]]

-or-

[_____] (SEAL)
[NAME OF GRANTOR]

-or-

[_____,
a _____ partnership
By: _____ (SEAL)
[NAME OF GENERAL PARTNER]]
GRANTEE: _____

a _____ [nonprofit] corporation
By: _____
Name: _____
Title: _____
Attest: _____
Name: _____
Title: _____

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public


My Commission Expires:

[NOTARIAL SEAL]

[CORPORATE SEAL]

Notes

West's Key Number Digest

West's Key Number Digest, [Easements](#)  [12](#)

Legal Encyclopedias

[C.J.S., Easements § 52, 57 to 59](#)

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