

conservation easement



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SAML. CORDLE, JR.
Clerk Superior Court, CHATTOOGA County, Ga.
R# 00569 Pg 0365-0390

This instrument prepared
by and Return to:
Katherine Eddins
Georgia Land Trust, Inc.
226 Old Ladiga Road
Piedmont, Alabama 36272

STATE OF GEORGIA
COUNTY OF CHATTOOGA

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (herein referred to as this "Conservation Easement") is made this 7 day of December, 2009, by and between Creekside Falls, LLC, its successors and assigns, having an address at 460 New Rosedale Road, Armuchee, Georgia 30105 ("Grantor"), in favor of GEORGIA LAND TRUST, INC., its successors and assigns, a Georgia nonprofit corporation, having an address at 428 Bull Street, Suite 210, Savannah, Georgia 31401 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Chattooga County, Georgia more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference, 281.77 acres more or less (the "Property"); and

WHEREAS, the Property in its present state has not been developed and possesses significant natural, aesthetic, watershed, wildlife, forest, open space and plant habitat features (collectively the "Conservation Values"). In particular, said Conservation Values include:

The GCWCS, promulgated by the Georgia Department of Natural Resources and conservation partners including the US Fish and Wildlife Service, was designed to protect the biological diversity of Georgia. The following high priority habitats, as identified by the GCWCS, occur on the Property and are protected by this Conservation Easement: (i) Caves, Rock Shelters, Talus Slopes. These provide a variety of microhabitats for GCWCS high priority animal species; (ii) High Gradient First- and Second-Order Streams. Allgood Creek and its tributaries traverse the Property. As is characteristic of the Property, these small, clear, cold, tumbling streams with bedrock riffles and sandy pool, are typically found at higher elevations and upper ends of steep

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ravines and slopes. (iii) Mesic Hardwood Forests. The Property's mesic forest areas contain a diverse canopy of hardwood species, of particular importance to migratory bird species, many of which are in decline across their range. According to the GCWCS, "The long-term health of populations of priority birds including Acadian Flycatcher, Wood Thrush, and Yellow-throated Warbler will depend on maintenance and management of remnant forest stands of mature forest and restoration efforts." Moreover, at-risk plant and animal species known to be associated with this habitat type include Deepwoods Horsebalm, Whorles Horse-balm, Whiteleaf Sunflower, American Ginseng, Webster's Salamander, Miccosukee Gooseberry, Bay Starvine, Relict Trillium, Southern Nodding Trillium and Lobed Barren-Strawberry. (iv) Oak Woodlands. These are an uncommon subxeric vegetation type found at higher elevations, and on the Property are dominated by Southern and Northern Red Oak, Post Oak, Scarlet Oak, and Chesnut Oak. The understory is dominated by Azaleas, Laurels, Rhododendrons, Huckleberry, Elderberry and Blue Ridge Blueberry. (v) Pine-Oak Woodlands and Forest. These are relatively open subxeric to xeric forest areas, are dominated by shortleaf pine, Virginia pine, and post and blackjack oak. (vi) Sandstone Barrens and Outcrops. This edaphic habitat type found on the Property includes sandstone boulders and outcrops and scoured sandstone ledges near the streams. The Property's Sandstone Outcrops support healthy lichen population and the Property's outcrop shrub layer is largely composed of Flame Azaleas, Shinner's Pink Azaleas, Mountain Laurels, Rhododrons, Huckleberry's and Blue Ridge Blueberry. A more comprehensive discussion of these high priority habitats and the species they support is included in the Baseline Documentation Report.

The protection of the Property provides for the preservation of certain open space (including farmland and forest land) within the meaning of § 170(h)(4)(A)(iii)(II) of the Code. Protection of the Property as open space, with soils appropriate for certain agricultural activities, promotes the following governmental policies: Georgia Uniform Conservation Easement Act [GA Code Sec. 44-10-1 et seq.]; Georgia Tax Credit Law [GA Code Sec. 48-7-29.12]; Conservation Use Assessment for Agricultural or Timberland [GA Code Sec. 48-5-7.4]; The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. Section 4201, et seq; The Farm and Ranchland Protection Program and yields significant public benefit.

Protection of the Property also provides for the preservation of open space for the scenic enjoyment of the general public within the meaning of § 170(h)(4)(A)(iii)(I) of the Code. As people in the adjoining neighborhood walk or drive through the Property, they can enjoy its scenic views. Also, as people drive along public roads near the Property, they can enjoy the scenic views provided by the Property's mountainous areas, including views of mature forests, grasslands and rock outcrops.

These Conservation Values are in accordance with § 170(h) of the Code and are shown in the Baseline Documentation Report; and

WHEREAS, this Conservation Easement constitutes a "real property interest" as established in § 170(h) of the Code; and

WHEREAS, said Conservation Values are of great importance to Grantor, the people of Chattooga County, the people of the State of Georgia, and the public in general, and are worthy of preservation; and

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WHEREAS, protection of the Property by conservation easement is legally enabled by the Georgia Uniform Conservation Easement Act, GA. CODE ANN. §§ 44-10-1, et seq.; and

WHEREAS, the protection of the Property in substantially its present state will clearly enhance and preserve the Conservation Values; and

WHEREAS, the Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee and referred to as the "Baseline Documentation Report," which is incorporated herewith as **Exhibit "B,"** but is not recorded in full due to its length, which consists of a collection of reports, maps, photographs, and other documentation that both parties agree provide, collectively, an accurate representation of the Property at the time of this Conservation Easement and that is intended to serve as an objective information baseline for monitoring compliance with the terms of this Conservation Easement; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns existing at the time of this Conservation Easement; and

WHEREAS, Grantor further intends to convey to Grantee the right to preserve and protect the Conservation Values of the Property, in perpetuity, in substantially its present state as existing at the time of the Conservation Easement; and

WHEREAS, by this Conservation Easement, Grantor and Grantee mutually intend that the Property be preserved in perpetuity in substantially its present state as existing at the time of this Conservation Easement, thereby furthering the Purpose of this Conservation Easement and the Conservation Values of the Property set forth herein, and yielding a significant public benefit; and

WHEREAS, Grantee is a non-profit, publicly-funded, tax-exempt, qualified organization under §§ 501(c)(3) and 509(a)(2) of the Code. Grantee is a domestic non-profit corporation, registered with the Georgia Secretary of State. Grantee is authorized by the laws of the State of Georgia to accept, and is willing to accept, conservation easements for the purpose of preserving and protecting natural, scenic, educational, recreational, or open-space values of real property, and Grantee has the resources and commitment to preserve those values. Grantee has adopted, by Resolution of its Board of Directors, the Land Trust Alliance's *Land Trust Standards and Practices*, published in 2004. Grantee is a "qualified organization" and "eligible donee" within the meaning of § 170(h)(3) of the Code and is a "holder" within the meaning of GA. CODE ANN. § 44-10-2(2); and

WHEREAS, Grantee agrees, by accepting this Conservation Easement, to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come;

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NOW, THEREFORE, as an absolute charitable gift of no monetary consideration but in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors, and assigns, forever in perpetuity, this Conservation Easement of the nature and character hereafter set forth together with the right to preserve and protect the Conservation Values of the Property. Pursuant to GA. CODE ANN. §§ 44-10-1 *et seq.*, which expressly authorizes the conveyance herein contained, Grantor has freely and voluntarily granted, bargained, aliened, conveyed and confirmed, and by these presents does freely and voluntarily grant, bargain, alien, convey, and confirm, unto Grantee and its successors and assigns, a perpetual, irrevocable Conservation Easement over, across, and through the Property for the Purpose hereinafter set forth. Grantee, by its execution hereof, accepts the foregoing grant of the Conservation Easement, and the recordation of this Conservation Easement shall constitute a "recordation of the acceptance" by Grantee within the meaning of GA. CODE ANN. § 44-10-3(b). Upon the recordation hereof, Grantee shall be entitled to enforce the Conservation Easement pursuant to GA. CODE ANN. § 44-10-4.

1. Purpose. It is the Purpose of this Conservation Easement (hereafter "Purpose") to assure that the Property will be retained forever predominantly in its present scenic, aesthetic, relatively natural, forested, and relatively undeveloped condition, and with its Conservation Values intact, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, as defined herein and in the Baseline Documentation Report. Grantor intends that this Conservation Easement will confine the use of the Property to such activities as are consistent with the Purpose of this Conservation Easement.

2. Rights of Grantee. To accomplish the Purpose of this Conservation Easement the following rights are conveyed to Grantee by the Grantor:

(a) Generally. To preserve and protect the Conservation Values of the Property.

(b) Monitoring. To enter upon the Property at reasonable times in order to monitor and defend Grantor's compliance with and otherwise enforce the terms of this Conservation Easement. Grantee's entry shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property and shall be upon prior reasonable notice to Grantor, except in emergency cases where the Grantee reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Conservation Easement.

(c) Conservation. To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Paragraph 7 hereof.

3. Use Limitations. Any activity on, or use of, the Property which is inconsistent with the Purpose of this Conservation Easement is prohibited. The Property shall be restricted from any development or any use other than those defined in Paragraph 4 below and those improvements existing as of the date hereof as documented by the Baseline Documentation

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Report. It is mutually agreed and understood, however, that this Conservation Easement permits Grantor and its successors-in-interest to use the Property for all purposes, present and future, not inconsistent with the Purpose of this Conservation Easement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Generally. The change, disturbance, alteration, or impairment of the natural, scenic, and aesthetic features of the Property is prohibited, except as expressly provided herein.

(b) Residential, Commercial, or Industrial Uses. Any residential, commercial, or industrial uses of, or activity on, the Property are prohibited, except as follows: (i) such activities as can be conducted in existing and permitted structures described in Paragraph 4 hereof, (ii) agriculture and forestry as described herein, (iii) the leasing of hunting, fishing, hiking, horseback riding rights and (iv) recreational access to and uses of the Property as described herein.

(c) Subdivision. The Property may not be divided into more than two parcels, the smallest of which will not be less than 100 acres, each subject to the terms and conditions of this Conservation Easement. However, neither the Grantor nor the Grantee intend to restrict the conveyance of parcels smaller than the whole for purposes that do not negatively affect the Conservation Values, such as the adjustment of boundaries or consolidation of parcels, so long as such conveyances (i) are accomplished via deed and recorded pursuant to state conveyancing regulations; (ii) are agreed to in writing by the Grantee; and (iii) are subject to the terms and conditions of the Conservation Easement and specifically thereby restricted from any development other than as stated in Paragraph 4 of the Conservation Easement.

(d) Improvements. The construction or maintenance on the Property of any buildings, structures (including mobile homes), or other improvements is prohibited, except as described in Paragraph 4 and as otherwise expressly permitted herein.

(e) Minerals. The exploration for, or extraction of, oil, gas or other minerals, hydrocarbons, soils or other materials on or below the surface of the Property is prohibited.

(f) Garbage. The dumping or other disposal of trash and garbage whatsoever on the Property, except for biodegradable material generated on the Property is prohibited.

(g) Soil Erosion and Water Pollution. Any use or activity that causes or presents a risk of causing soil erosion or significant water pollution including without limitation excavation, land filling, dredging, and mining, except as described in Paragraph 4 and as otherwise expressly permitted herein.

(h) Signs. Display of billboards, signs, or advertisements is prohibited on or over the Property, except for the posting of no trespassing signs, signs identifying the Conservation Values of the Property, and/or identifying the Grantor as owner of the Property, directional signs, informational signs advertising on-site permitted activities, or signs advertising the Property for sale or rent, provided that these signs are no larger than 25 square feet.

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(i) Utilities. The construction or extension of utility systems is prohibited, except in the following situations: (i) utilities constructed to serve the existing buildings and improvements on the Property, or (ii) utilities constructed to serve the buildings and improvements which may be constructed in compliance with the terms of Paragraph 4 hereof.

(j) Roads. Any construction of permanent roads on the Property, or widening of the now-existing roads on the Property (shown on the Man-Made Features Map of the Baseline Documentation Report) is prohibited, except for the repair and maintenance of the now existing roads and trails; construction of a road, primarily of permeable surfaces to provide access to the permitted pond; construction of woods roads and firebreaks for agricultural purposes allowed herein; or the construction of residential driveways built to serve buildings that are permitted in accordance with Paragraph 4 hereof.

(k) Antennas, Radio Towers, Etc. No commercial antennas, radio towers or the like shall be installed on Property. Small private communication antennas and dishes may be used for radio and television communication on the Property and may be powered by alternative power sources such as solar panels or a small wind generator, so long as they do not significantly interfere with the Conservation Values stated herein.

(l) Special Natural Area (SNA). There are Creeks, waterfalls, caves and several high priority forest types on the Property, depicted as the "Special Natural Area" on the Special Natural Area Map of the Baseline Documentation Report. These areas are afforded special protection because they are examples of (i) high-quality terrestrial and aquatic natural communities; (ii) habitat for rare species of plants and animals; or (iii) significant geological and geomorphological features and archaeological sites. There shall be no agricultural activities—including commercial timber harvesting, maintenance of wildlife foodplots, or other agriculture—or construction of improvements in the SNA. Exceptions to this are as follows: (i) Grantor may construct residential driveways and utilities to serve any single-family residential dwellings that may be permitted under this Conservation Easement in the vicinity of any SNA. (ii) Grantor is permitted to maintain the existing roads and trails within the SNA. (iii) Grantor may construct and maintain footpaths for walking within the SNA, provided that such paths are not in locations or in sufficient number to adversely impact or impair the Conservation Values of the Property. (iv) Grantor reserves the right to remove dead or diseased trees in accordance with 4(b)(iii) below. Salvage cutting in the Special Natural Area shall be limited to only that timber actually damaged by the natural disaster or insect or disease outbreak.

4. Reserved Rights. Grantor reserves to itself, and to its successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the Purpose of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) Public Health and Safety, Erosion. Grantor reserves the right to take action reasonably necessary to prevent erosion on the Property or to protect public health or safety.

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(b) Agriculture. The Grantor reserves the following rights to use the Property for "Agriculture" as more particularly described and defined in this subsection:

(i) Goals. Agriculture shall be performed in a manner that will not significantly impair or interfere with the Conservation Values of the Property, as hereinafter specified, and in accordance with the following goals: sustainability of soil, air and water quality; maintenance of soil productivity; protection of Special Natural Area; sustainability and improvement of forest health; and conservation of native plant and animal species.

(ii) Permitted Agriculture. Except as restricted or prohibited herein, Grantor reserves the right to use areas outside of the Special Natural Area and within the "Agriculture Envelope," as depicted on the Agriculture Envelope Map of the Baseline Documentation Report, for agriculture. Agriculture will be sustainable—meaning resource-conserving and environmentally sound. Agriculture includes, but is not limited to, the following: small-scale breeding, raising, training, care and sale of domestic farm animals such as livestock, horses, poultry, and waterfowl; hay production; and small-scale raising, cultivation, and harvesting of farm crops, garden plants, and trees—including fruit tree and nut tree orchards. The small scale of the permitted agricultural activities is intended to serve Grantor's personal needs or for small-scale sale, such as at a local farmer's market. Such agricultural shall not significantly impair or interfere with the Conservation Values of the Property. In particular, domestic farm animals allowed herein will be managed to prevent significant soil erosion or water pollution, will be kept out of the Special Natural Area, and will not be kept in sufficient number to significantly impair or interfere with the Conservation Values.

(A) Prohibited Agriculture. Activities prohibited include, but are not limited to, a commercial dairy, commercial sod farm, and commercial orchard, nursery, slaughtering house, game fencing, game farming, zoo, and sod farming. The production of domestic farm animals shall be conducted on a traditional scale such as characterized uses of farms of this size in Georgia in the past and shall not be conducted as industrial or factory-type agricultural operations or by the continuous confinement of domestic farm animals or fish in tightly confined environments for the purpose of raising, feeding, and fattening for market, such as chicken houses, pig lots, feed lots, slaughter houses, or commercial aquaculture. "Animal Feeding Operations" (AFOs) as that term is used by the U.S. Environmental Protection Agency are expressly prohibited, including "Concentrated Animal Feeding Operation" of any size. For reference, see 40 C.F.R. § 122.23 (2003).

(iii) Special Natural Area. The Property contains a Special Natural Area, as depicted on the Special Natural Area Map of the Baseline

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Documentation Report. In this area, agriculture is prohibited. However, for the maintenance and improvement of the health of the Special Natural Area, Grantor reserves the right to cut, burn, or remove from the Special Natural Area only (i) nuisance exotic or non-native species and plants, (ii) vegetation specified with Grantee's prior written consent, and (iii) damage caused by storms, insects and other animals, acts of God, disease, fire, unauthorized acts of third-parties and other causes beyond the reasonable control of Grantor.

(iv) Wildlife Food Plots. The agricultural rights reserved by Grantor include the right to cultivate wildlife food plots within the "Agricultural Envelope" as depicted on the Agricultural Envelope Map of the Baseline Documentation Report.

(v) Compliance with Laws & Best Management Practices. Agriculture shall be carried out in accordance with all applicable local, state and federal laws and regulations. Furthermore, agricultural shall be carried out in accordance with the then-current, scientifically-based practices, including best management practices, generally recommended by the State of Georgia Cooperative Extension, the United States Natural Resource Conservation Service, or other government, private, or nonprofit natural resource conservation and management agencies then active.

(c) Recreational Activities. Grantor reserves the right of its members, guests and invitees to engage in outdoor recreational activities, including to hunting, fishing, camping, trapping, hiking, and horse-back riding. This Property will not be used as a commercial all terrain vehicle (ATV) facility. All Terrain Vehicles will be permitted so long as they are not operated in a manner so as to cause significant erosion, soil loss, or compromise the ecological integrity of the Property.

(d) Education and Promotion. Grantor reserves the right to conduct workshops, seminars, tours, educational research and related programs and activities on the Property for the purpose of promoting the scientific, ecological, environmental, wildlife, scenic, aesthetic, or similar Conservation Values of the Property in accordance with the Purpose of this Conservation Easement.

(e) Improvements. Grantor reserves the right to have a limited number of improvements and buildings, in a location and number, and pursuant to conditions, as follows:

(i) New Single Family Residential Dwellings. Grantor retains the right to construct no more than 2 single-family residential dwellings, together with reasonable appurtenances typically associated with single-family residential dwellings, such as garages, barns and sheds. The lots related to said single-family residential dwellings shall not exceed 1 acre each. Said lots shall be located within the "Building Envelope(s)" depicted on the Building Envelope Map of the Baseline Documentation Report, which map (and the GPS coordinates of the Envelopes) is attached to the legal description of the Property attached as Exhibit

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A hereto, and is incorporated herein by reference. Grantor reserves the right to construct roads to serve said structures. Furthermore, Grantor reserves the right to construct utilities, such as electrical lines, septic systems and wells, to serve the buildings and improvements permitted herein.

(ii) Existing Structures. At the time of the conveyance of this Conservation Easement, the following structures exist on the Property: 1 single family residential dwelling and 1 horse barn and equipment shed. The lot size of each is 1 acre. The location of these structures is identified on the Man-Made Features Map of the Baseline Documentation Report, which map (and the GPS coordinates of the Envelopes) is attached to the legal description of the Property attached as Exhibit A hereto, and is incorporated herein by reference.

(iii) Maintenance of Existing and New Structures. Structures existing at the time of this Conservation Easement and all structures allowed herein may be repaired, improved and reasonably enlarged within their respective lots. However impermeable surfaces shall not exceed one percent (1%) of the size of the Property. Impervious surfaces include without limitation, the footprint of all existing and future buildings, structures and/or improvements, roofs, paved parking and road areas, and concrete pads. Structure footprints shall be measured along the outermost perimeter of such structures, at ground level or above, including any attached or associated decks, steps, porches or other enclosed or open-air attachments. Grantor reserves the right to maintain utilities constructed to serve buildings and improvements permitted herein.

(iv) Protection of Conservation Values. Structure placement and any construction performed shall be done in such a manner as to minimize interference with the environment and the Conservation Values, and shall be done and approved in accordance with all zoning, governmental, and permitting standards. Houses, roads, and utilities shall not be placed in locations which significantly interfere with the Conservation Values set forth herein. Silt fences shall be placed so as to minimize run-off. The Property shall be restored to its pre-construction appearance within a reasonable time period following completion of said construction.

(f) Lake/Pond. Grantor reserves the right to construct a dam to expand the existing pond, the final of which is not to exceed .5 acres within the "Pond Envelope" identified on the Building Envelope Map of the Baseline Documentation Report (which map and the GPS coordinates of the Envelopes is attached to the legal description for the Property attached as Exhibit A hereto, and is incorporated herein by reference). Grantor also reserves the right to construct a road, primarily of permeable surfaces, to access the said pond.

(g) Roads and Trails. Grantor reserves the right to maintain, using primarily permeable materials, roads and trails now existing on the Property. Existing roads and trails are depicted on the Man-Made Features Map of the Baseline Documentation Report. Grantor reserves the right to use roads and trails for all activities permitted under this Conservation

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Easement. Grantor reserves the right to construct and maintain footpaths for walking on the Property, provided that such paths are not in locations or in sufficient number to adversely impact or impair the Conservation Values of the Property. This Paragraph shall not be interpreted to permit any extraction or removal of surface materials inconsistent with § 170(h)(5) of the Code and the applicable Treasury Regulations.

(h) Leases. Grantor reserves the right to lease the Property for any use permitted to the Grantor under this Conservation Easement, provided that such lease is consistent with and subject to the terms of this Conservation Easement.

(i) Participation in Certain Ecological Programs. Grantor reserves the right to participate in, and retain revenue from, future conservation, preservation or mitigation programs involving ecological assets, including but not limited to, carbon sequestration credits, endangered species credits, water quality credits and ground water credits, on the Property, so long as such participation is consistent with the Purpose of this Conservation Easement.

(j) Grantor's Exclusive Access and Use. Except as expressly provided herein, Grantor retains exclusive access to and use of the Property.

(k) Grantor's Fee Ownership Rights. Except as limited in this Conservation Easement, 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.

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose of this Conservation Easement. Notice is required in the following situations:

- (i) Whenever Grantor plans for construction of a barn, and/ or pond or single-family residential dwelling.
- (ii) Whenever Grantor seeks to undertake an action that could cause significant impairment of, or significant interference with, the Conservation Values set forth herein;
- (iii) If Grantor receives notice of a condemnation action; or
- (iv) Prior to any sale or other transfer of the Property.

Whenever notice is required, Grantor shall notify Grantee in writing not less than forty-five (45) 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 Purpose of this Conservation Easement.

6. Grantee's Approval. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the Purpose of this Conservation Easement. If

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Grantor receives written proof that Grantee was duly notified (per Paragraph 23 below), and Grantee does not respond to the written request within the said 30 days, Grantee will be deemed to have approved the requested activity.

7. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement 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, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Conservation Easement, to restore the portion of the Property so injured. If Grantor fails to cure the 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, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation 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 Conservation Easement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, then Grantee may pursue its remedies under this section after its good faith efforts to provide emergency notice to Grantor and without waiting for the period provided for cure to expire. Grantee may seek to enjoin the violation by temporary or permanent injunction and to recover any damages to which it may be entitled upon violation of the terms of this Conservation Easement or injury to any Conservation Values herein protected, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's rights under this Paragraph apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

8. Mediation. If a dispute arises between the parties concerning any proposed use or activity on the Property, Grantor agrees not to proceed with the use or activity pending resolution of the dispute, and the parties shall first seek resolution through mediation. Both Grantor and Grantee will select the mediator. If Grantor and Grantee cannot agree on a mediator, their proposed mediators will appoint a third mediator who will mediate the dispute. Mediation is not required if Grantee determines there has been a breach by Grantor of the terms of this Conservation Easement or Grantee determines that immediate action is required to prevent or mitigate significant damage to the Conservation Values.

9. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the

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terms of this Conservation Easement shall be borne by Grantor, provided that Grantee prevails in any action to enforce the terms of this Conservation Easement. If Grantor prevails in any action to enforce the terms of this Conservation Easement, Grantor's cost of suit, including, without limitation, reasonable attorneys' fees, shall be borne by Grantee.

10. Grantee's Forbearance. Any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

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

12. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's reasonable control, including without limitation fire, flood, storm, and earth movement; acts of third parties; wildlife, insects and disease of plant; 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.

13. Access. No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

14. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

15. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by appropriate authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. However, to the extent that the granting of this Conservation Easement shall entitle Grantor to a revaluation or other tax relief, Grantee agrees to cooperate with Grantor in securing the benefits of same, provided that such cooperation shall be consistent with Georgia Land Trust Policy Letter #14 or successor policy. Grantee shall have no liability for the payment of Taxes, if any, levied upon or assessed against this Conservation Easement. Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, upon ten (10) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and, until paid by Grantor, the obligation created by such payment shall bear interest at the lesser of five percentage points over the prime rate of interest from time to time charged by the largest banking institution in Georgia or the maximum rate allowed by law.

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Grantee [Signature] Date 12/17/09

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16. **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively the "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of any of the Indemnified Parties; and (2) the existence or administration of this Conservation Easement, unless due to the negligence or willful misconduct of any of the Indemnified Parties.

17. **Extinguishment.** If circumstances arise in the future such as render the Purpose of this Conservation Easement impossible to accomplish, this 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 GA. CODE ANN. § 44-10-4(c). The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of any and all prior claims, shall be determined, unless otherwise provided by Georgia law at the time, in accordance with the Proceeds paragraph below. Grantee shall use all such proceeds in a manner consistent with the Purpose of this Conservation Easement.

18. **Condemnation.** If this Conservation Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law and the Proceeds paragraph below, 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.

19. **Proceeds.** This Conservation Easement constitutes a real property interest, immediately vested in Grantee. As required under Treas. Reg. § 1.170A-14(g)(6)(ii), the parties stipulate to have a current fair market value determined by multiplying the fair market value of the Property unencumbered by this Conservation Easement (minus any increase in value after the date of this Conservation Easement attributable to improvements) by the ratio of the value of the Conservation Easement at the time of this conveyance to the value of the Property at the time of this conveyance without deduction for the value of the Conservation Easement. The value of this Conservation Easement at the time of this conveyance, and the value of the Property at the time of this conveyance without deduction for the value of the Conservation Easement, shall be determined according to that certain Property Appraisal Report, on file at the office of the Grantee, prepared on behalf of Grantor to establish the value of the gift of this Conservation Easement. The values at the time of this Conservation Easement shall be those values used to calculate the deduction for federal income tax purposes pursuant to § 170(h) of the Code. For the purposes of this Paragraph, the ratio of the value of the Conservation Easement to the value of the Property unencumbered by the Conservation Easement shall remain constant.

20. **Assignment.** This Conservation Easement is transferable. Grantee may assign its rights and obligations under this Conservation Easement only to a qualified organization at the time of transfer under § 170(h)(3) of the Code (or any successor provision then applicable), and

Grantor [Signature] Date 12/17/09

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Grantee [Signature] Date 12/17/09

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the applicable regulations promulgated there under, and authorized to acquire and hold conservation easements under §§ 501(c)(3) and 170(h) of the Code (or any successor provision then applicable). Prior to such assignment, Grantee must notify Grantor of the proposed assignment and assignee. In the event that Grantee ceases to be a qualified holder of this Conservation Easement, this Conservation Easement may be assigned in accordance with this Paragraph. Grantor shall have reasonable approval authority over said proposed assignee, but said approval shall not be unreasonably withheld. As a condition precedent to any such transfer, Grantee shall require its successors and assigns to enter into a specific written agreement to be bound by this Conservation Easement, which written agreement shall state that the Purpose this 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.

21. Subsequent Transfers and Transfer Fee. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divest themselves of any interest in all or a portion of the Property, including without limitation a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way. There shall be assessed by the Grantee, and collected from all purchasers of the Property at the time of the transfer, a transfer fee equal to one percent (1%) of the sales price or other consideration paid in connection with the transfer of any interest in such Property. This sum shall be placed in Grantee's stewardship fund, or such similarly named successor fund, to finance Grantee's efforts to uphold its duties and responsibilities under this Conservation Easement on this Property as well as on Grantee's other protected properties. In the event of non-payment of such transfer fee, Grantee shall have the right to file a lien for such unpaid transfer fees which shall be a lien on the Property but such lien shall be subordinate to this Conservation Easement and to the lien of any first mortgage on the Property. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of Georgia. Grantee may require the Grantor and/or any subsequent purchaser to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds, or other such evidence. Subsequent to the conveyance of this Conservation Easement, any transfer without consideration shall be exempt from the assessment of such transfer fee. An exchange of properties pursuant to § 1031 of the Code, or similar statute, shall be deemed to be for consideration based on the market value of the Property received at the time of such transfer. Market value shall be determined by agreement of the Grantor and the Grantee, or in the absence of such agreement, by an MAI appraiser selected by the Grantee, whose appraisal fee shall be paid by the Grantee. Any transfer to Grantee shall be exempt from the assessment of such transfer fee.

22. Estoppel Certificates. Upon request by either party, the other shall within twenty (20) days execute and deliver any document, including an estoppel certificate, which certifies compliance with any obligation contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement.

Grantor AB Date 12/17/07

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Grantee KE Date 12/17/09

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23. 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:

To Grantor: Creekside Falls, LLC
Attn: Reed Biggers
460 New Rosedale Road
Armuchee, Georgia 30105

To Grantee: Georgia Land Trust, Inc.
Attn: Executive Director
428 Bull Street, Suite 210
Savannah, Georgia 31401

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.

24. Recordation. Grantor and Grantee agree that this Conservation Easement shall be promptly recorded in the official records of Chattooga County, Georgia. Grantee also retains the right to re-record this Conservation Easement, and any amendments hereto, at any time as may be required to preserve its rights in this Conservation Easement.

25. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee are free to jointly amend this Conservation Easement, provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including GA. CODE ANN. §§ 44-10-1, et seq., or § 170(h) of the Code. Any amendment shall be consistent with the Purpose of this Conservation Easement, shall not affect its perpetual duration, and shall provide protection equal to or greater than this Conservation Easement. Any such amendment shall be recorded and cross referenced to this Conservation Easement in the official records of Chattooga County, Georgia.

25(a). *Special Amendment Notice Provision regarding acceptance under the Georgia Conservation Easement Tax Credit Program.* In the event that this Conservation Easement is accepted under the Georgia Conservation Tax Credit Program and Grantor receives tax credits associated with said acceptance, then Grantor shall notify the Department of Natural Resources ninety (90) days in advance of any potential amendment. According to the Georgia Department of Natural Resources policies in effect at the time of this Conservation Easement, the Department has ninety (90) days to comment on any requested amendment and has approval

Grantor RM Date 12/17/09

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Grantee IE Date 12/17/09

conservation easement

authority over said amendment. If Grantor does not participate in the Georgia Conservation Tax Credit Program, then this Notice Provision related to the Department of Natural Resources is not applicable or required.

26. Section 2031(c) Federal Estate Tax Exclusion. The Grantor and Grantee agree that the rights and activities reserved and permitted hereunder relating to recreational activities are consistent with the Conservation Purpose outlined in § 170(h) of the Code. The Grantor believes that such rights and activities do not constitute more than a "de minimis" use of the Property for "commercial recreational activities" as those terms are used in § 2031(c) of the Code. This finding notwithstanding, and in the event a contesting party questions this finding, and solely for the purpose of qualifying the Conservation Easement for the estate tax exclusion and any expansion thereof under § 2031(c) of the Code, or its successor provisions, the Grantor (including Grantor's estate, successors, and assigns) may elect in writing in recordable form to release and terminate otherwise reserved and permitted "commercial recreational activities" either *inter vivos* or, alternatively, *post mortem*, in accordance with § 2031(c), and to the extent permitted by said § 2031(c), if necessary to qualify for the Conservation Easement estate tax exclusion under § 2031(c). Any such election to be recorded in the public records of Chattooga County, Georgia.

27. Development Rights. Grantor and Grantee agree that all development rights, except those associated with the permitted residences and their legally permitted appurtenant structures as noted in Paragraph 4 above, that are now or hereafter allocated to, implied, reserved, or inherent in the Property are terminated and extinguished, and shall not be used on or transferred to any other property not within the Property or used for the purpose of calculating permissible lot yield of the Property or any other property.

28. General Provisions.

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Georgia.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Purpose of this Conservation Easement and the policy and purpose of GA. CODE ANN. §§ 44-10-1, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. In the event any provision of this Easement is determined by the appropriate court to be void and unenforceable, all remaining terms will remain valid and binding.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements, all of which are merged herein. No alteration or

Grantor NB Date 12/17/09

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Grantee KE Date 12/17/09

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variation of this instrument shall be valid or binding unless contained in an Amendment that complies with the provisions of this Conservation Easement.

(e) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) **Joint Obligation.** The obligations imposed by this Conservation Easement upon Grantor shall be joint and several.

(g) **Successors and Assigns; Covenants, Etc. Run With Land.** The covenants, terms, conditions and restrictions of this Conservation Easement 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 the Assignment provision of this Conservation Easement. 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.

(h) **Termination of Rights and Obligations.** A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest pursuant to the terms of this Conservation Easement, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(j) **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(k) **Grantor's Representations and Warranties.** Grantor hereby represents and warrants the following: that it is seized of the Property in fee simple and has the right to grant and convey this Conservation Easement; that the Property is free and clear of any and all encumbrances except for those listed in the title investigation report on file at the office of the Grantee and that any existing liens or mortgages have been subordinated to this Conservation Easement in the form attached hereto as Exhibit C; 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 this Conservation Easement.

(l) **Environmental Representations.** Grantor covenants and represents that, to the best of its knowledge, no hazardous substance or toxic waste exists nor has been generated,

Grantor RLZ Date 12/17/06

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Grantee 16 Date 12/17/09

conservation easement

(l) Environmental Representations. Grantor covenants and represents that, to the best of its knowledge, no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Property, and that there are no underground storage tanks located on the Property.

(m) The individual signing below, signing on behalf of the Grantor, Creekside Falls, I.L.C, represent and warrants that he has the requisite authority to bind the entity on whose behalf he is signing.

(n) Baseline Documentation Report, Exhibit "B". In order to establish a present condition of the Conservation 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 Documentation Report dated November 17, 2009. Grantee acknowledges, by its acceptance of this Conservation Easement, that Grantor's historical and current uses of the Property as documented in the Baseline Documentation Report are compatible with the Purpose of this Conservation Easement and that the condition of the Property as of the date of this Conservation Easement is accurately depicted therein. 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 this Conservation Easement, the parties may look beyond the Baseline Documentation Report, if necessary, to other relevant or material documents, surveys, reports and other evidence showing conditions at the time of execution of this Conservation Easement to assist in the resolution of the controversy. Any characterization of the terms of this Conservation Easement contained in the Baseline Documentation Report shall not be interpreted so as to alter, amend, or otherwise modify this Conservation Easement. In any conflict or inconsistency between the terms of this Conservation Easement and the Baseline Documentation Report, the terms of this Conservation Easement shall prevail.

29. List of Attached Exhibits.

Exhibit A: A legal description of the Property.

Exhibit B: Baseline Documentation Report
The entire Baseline Documentation Report can be found on file at Grantee's office.

TO HAVE AND TO HOLD this 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 and benefit 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.

Grantor RJ Date 12/17/09

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Grantee KE Date 12/17/09

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IN WITNESS WHEREOF, the Grantor and the Grantee have executed and sealed this document the day and year written below.


Entered into this 17 day of December, 2009.

Grantor RV Date 12/17/09

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Grantee KG Date 12/17/09

conservation easement

GRANTOR: Creekside Falls, LLC	
By: <u>[Signature]</u> Reed Biggers	Date: <u>12/17/09</u>
Its: Managing Member	
Signed, sealed and delivered in the presence of:	
<u>[Signature]</u> Unofficial Witness <u>Sasha Holmes</u>	Date: <u>12/17/09</u>
<u>[Signature]</u> Notary Public <u>Christy Russell</u>	Date: <u>12/17/09</u>
STATE OF <u>Georgia</u> COUNTY OF <u>Floyd</u>	
My Commission Expires:	
 CHRISTY RUSSELL NOTARY PUBLIC FLOYD COUNTY, GEORGIA My Commission Expires 11-18-2017	
(Notary Seal)	

Grantor RM Date 12/17/09

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Grantee 1/4 Date 12/17/09

conservation easement

GRANTEE:

GEORGIA LAND TRUST, INC.
a Georgia non-profit corporationBy: [Signature] Date: 12/17/09
Name: Stephen A. Stutts
Board PresidentBy: [Signature] Date: 12/17/09
Name: Katherine Eddins
Board Secretary

Signed, sealed and delivered in the presence of:

[Signature] Date: 12/17/09
Unofficial Witness[Signature] Date: 12/17/2009
Notary Public, Jared WilliamsonSTATE OF Alabama
COUNTY OF At largeMy Commission Expires: 3/27/2012

(Notary Seal)

Grantor RLB Date 12/17/09Grantee [Signature] Date 12/17/09

SCHEDULE OF EXHIBITS

EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B: BASELINE DOCUMENTATION REPORT, TABLE OF CONTENTS

Grantor [Signature] Date 12/17/07

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Grantee [Signature] Date 12/17/07

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EXHIBIT "A"**LEGAL DESCRIPTION OF PROPERTY**

Including the Building Envelope Map and Pond Envelope Map, and a listing of the GPS coordinates for the Existing and Permitted Structures and Pond

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 130, 158, 159 and 166 of the 13th District, 4th Section Chattooga County, Georgia and being Tract A consisting of 22.82 acres; Tract B consisting of 10.95 acres; Tract C consisting of 16.72 acres; Tract E consisting of 205.58 acres and Tract F consisting of 25.70 acres for an aggregate of 281.77 acres according to a plat of survey for Reed Biggers by Campbell Surveying & Mapping, Inc., prepared K. C. Campbell GRLS No. 2256, dated December 2, 2007, recorded in Plat Book 12, pages 68 thru 70 in the Office of the Clerk of Superior Court of Chattooga County, Georgia, which plat by this reference is incorporated herein and made a part hereof.

Grantor [Signature] Date 12/17/07

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Grantee K Date 12/17/07

