

# **A Landowner's Guide Conservation Easements for Natural Resource Protection**

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The Georgia Environmental Policy Institute is a nonprofit organization that offers legal and technical assistance to citizens, communities and government agencies to help develop proactive ways to protect and improve the environment. GEPI works directly with communities and through a number of special projects, including the Georgia Land Trust Service Center, which offers administrative assistance to Georgia land trusts and maintains current information about land trusts in the state and throughout the U.S. For additional information about other resource papers and services provided by GEPI and the Georgia Land Trust Service Center, call, write or e-mail.

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## **TABLE OF CONTENTS**

- [A LANDOWNER'S OPTIONS](#)
  - [WHAT IS A CONSERVATION EASEMENT?](#)
  - [THE ROLE OF LAND TRUSTS](#)
  - [THE ROLE OF GOVERNMENT](#)
  - [HOW IS AN EASEMENT CREATED?](#)
  - [POTENTIAL TAX BENEFITS](#)
  - [MORTGAGES](#)
  - [PUBLIC ACCESS AND LIABILITY](#)
  - [A POWERFUL TOOL FOR PRIVATE CONSERVATION](#)
  - [SOURCES FOR ADDITIONAL INFORMATION](#)
  - [GEORGIA UNIFORM CONSERVATION EASEMENT ACT](#)
  - [SAMPLE CONSERVATION EASEMENT](#)
- 

## ***A Landowner's Options***

As a landowner, you have the power to protect the future of your land. You can ensure that the natural beauty and resources of your land will not be destroyed by development and will continue to be available for future generations. You can do this without selling your land and without giving up your right and your family's right to use and enjoy it.

Private land can be protected permanently in several different ways. You may wish to explore a number of different conservation options before choosing the one that is most beneficial for you, your family and your land. This resource paper describes the most widely-used method of protection for private land in the United States today: the conservation easement.

Landowners across Georgia are using conservation easements to protect the future of riverfront land, wildlife habitat, farmland, woods and creeks, productive forests, scenic vistas, historic sites, urban gardens, and many other types of land and natural resources.

Conservation easements are popular for a number of reasons. The land is permanently protected, ownership and management of the land remain in private hands, and use of the land in traditional ways generally can continue. A conservation easement is a very flexible tool that makes it possible to design conservation plans to fit the particular needs of individual landowners. In addition, a conservation easement may make a landowner eligible for significant savings on income, estate and property taxes. The most important reason for choosing a conservation easement, however, should be your desire to protect the future of your land.

This resource paper explains what a conservation easement is, how one is created, and how it can benefit a landowner. It explains the important role of land trusts in creating and monitoring conservation easements, and discusses how they can help a landowner. Specific examples show how conservation easements can help reduce taxes for private landowners, and illustrate some of

the many different ways conservation easements already are being used in Georgia to protect the natural resources of private land.

If you would like to know more about conservation easements after reading this paper, contact the Georgia Land Trust Service Center, 380 Meigs Street, Athens, GA 30601; phone 706-546-7507; e-mail: [gepi@ix.netcom.com](mailto:gepi@ix.netcom.com).

## ***What is a Conservation Easement?***

A conservation easement is a voluntary legal agreement between a landowner and another party that restricts the development of a tract of land. If permanent, held by a qualified easement holder and for valid conservation purposes, the conservation easement is recognized by the U.S. Internal Revenue Service (IRS) and the landowner may qualify for certain tax incentives. The requirements for a conservation easement approved by the IRS are described below.

**The agreement is voluntary.** No one can force a landowner to enter into a conservation easement agreement. The landowner exercises his or her private property rights when signing a conservation easement agreement. A conservation easement may be either donated or sold by a landowner to an easement holder.

**The agreement is legally binding.** It is recorded as a Deed of Conservation Easement in the office of the clerk of the Superior Court in the county in which the land is located. The agreement is binding on both present and future owners of the property. Both the landowner and the qualified easement holder must be in a position to enforce the terms of the agreement if it becomes necessary to do so. This recognizes the easement holder's responsibility for periodic inspection of the property with the landowner.

**The agreement is permanent.** A conservation easement must be permanent in order to qualify for the income and estate tax benefits provided by the Internal Revenue Code and Georgia law. If a conservation easement is valid for a set period of time only, for instance, ten years, the landowner may be eligible for certain property tax benefits but is not eligible for federal and state income and estate tax benefits.

**The easement is held by a qualified easement holder.** A qualified easement holder is either a government entity or a land trust. While any government entity can hold an easement, those most likely to hold conservation easements in Georgia include city and county governments, the Georgia Department of Natural Resources, and the U.S. Fish and Wildlife Service. A land trust is a private, nonprofit corporation whose goals include acquiring and holding land and interests in land for conservation purposes. More information about land trusts and their role in conservation easements is provided in the next section of this paper.

**A conservation easement restricts development of the land.** Ownership of land includes a number of legally recognized rights, including the rights to subdivide, sell, farm, cut timber and build. The heart of a conservation easement is the landowner's voluntary agreement to give up one or more of these rights in order to protect a resource or conservation value.

For example, a landowner might agree:

to prohibit the construction of any structures or roads,

to prohibit any subdivision of the parcel,

to restrict land disturbance and chemical application in a river floodplain,

or

to prohibit dredging in a wetland.

While agreeing to give up certain rights, a landowner can specify other rights he or she wishes to keep, as long as they do not, under any condition, impair the resource or conservation value the easement seeks to protect. For example, a landowner might specifically retain the right:

to sell, lease, assign and use the property;

to restrict public access;

to maintain the land for agricultural use, subject to specified best management practices;

to manage for timber, including timber harvesting, subject to best management practices;

or

to construct additional dwellings on specified sites.

**The easement has a valid conservation purpose.** This means that the easement holder must be satisfied that protection of the land or resources is justified for conservation reasons. Different land trusts and government entities have different requirements that must be satisfied. A general description of valid conservation purposes - and one that must be satisfied to be eligible for tax benefits - is provided by the Internal Revenue Code (Section 170(h)(4)(A)), which defines conservation purposes as the preservation of land areas for:

outdoor recreation by, or the education of, the general public;

the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystems;

the preservation of open space (including farmland and forest land) yielding significant public benefit for the scenic enjoyment of the general public, or pursuant to a clearly delineated federal, state or local governmental conservation policy; or

the preservation of historically important land area or buildings.

A riverfront landowner in Madison County placed a conservation easement on 41 acres of land along the Broad River. The easement protects water quality in the river and preserves important wildlife habitat.

A family in North Georgia used a conservation easement to protect permanently a 159-acre wildflower glen in the mountains near Hiawassee.

In the Red Hills region of Southwest Georgia, a landowner used a conservation easement to protect the future of longleaf pine habitat on forested land, while retaining the right to continue selective timber harvesting and quail hunting.

By including 22 acres of floodplain along the Chattahoochee River in Gwinnett County in a conservation easement, a developer permanently protected the natural scenic beauty of the river corridor and, at the same time, enhanced the marketability of his adjacent house lots.

In Marietta, a conservation easement protects the outside face of a historic factory, while allowing the interior to be converted to loft apartments.

## ***The Role of Land Trusts***

Most conservation easements in Georgia involve the participation of a land trust. These nonprofit organizations have been established for the specific purpose of protecting land. The IRS recognizes them as publicly-supported charitable organizations. More than 1,100 land trusts in the United States protect over four million acres of farms, wetlands, wildlife habitat, urban gardens and parks, forests, watersheds, coastlines, river corridors, aquifer recharge areas and trails.

A land trust is considered a qualified easement holder, and land trusts are good sources of information for private landowners who wish to explore the possibility of a conservation easement for their land. Though local, state and federal government agencies may purchase and accept donations of conservation easements, land trusts play the most critical role in working with landowners to protect conservation lands. Many landowners are more comfortable donating land to a private, nonprofit organization than to a unit of government, especially if the land trust is locally based. Land trusts often can step in to negotiate easements and raise funds for their purchase more quickly than a public agency. Land trusts also may act as intermediaries for public agencies in land transactions. Often they alert local and state governments about critical situations in which action can be taken to protect endangered land, and work with government agencies, towns and

counties to develop protection plans.

Most conservation easements in Georgia are **donated** by a landowner to a land trust. A land trust also may purchase an easement, usually for a price considerably lower than the market value of the land. In either case, a landowner may be eligible for tax benefits that reflect the donation or the loss of potential income.

Over half of the land trusts in the United States are run by volunteers. Land trust annual budgets range from under \$10,000 to over \$1 million. Many are local in scope, though there also are state, multi-state and national land trusts. Approximately 70 percent of land and easement purchases by land trusts are funded by membership and individual donations. Other funds are contributed by government agencies, foundations and corporations. When land trusts borrow money to purchase land, they must repay the loans through fund-raising or through land sales to buyers for conservation purposes, such as land sales to local, state or federal conservation agencies.

At the time this resource paper was prepared, there were 36 land trusts in Georgia. Most of these were founded in the 1990s as a result of the growing popularity of the easement approach to resource protection. The Georgia Land Trust Service Center in Athens maintains an up-to-date list of land trusts in the state and some additional information about them.

The Red Hills Conservation Program in Southwest Georgia was created to protect the natural, historical, cultural and scenic features of Georgia's Red Hills Region, while still providing for consumptive use of wildlife and forest resources. A typical easement with this land trust specifies that timber practices such as selective harvesting and uneven-age management may continue.

The Oconee River Land Trust in Athens is helping the local government and the state to establish a greenway along the river. Conservation easements held by this land trust will require that the public be allowed access to pedestrian trails in certain areas.

The Broad River Watershed Association in Northeast Georgia has worked with local landowners and government officials to increase public awareness of the need to protect land in this area. One hundred fifty-nine acres along the Broad River now are protected by conservation easements, and land use planning by local governments acknowledges the need to protect the river and the natural resources in its watershed.

## ***The Role of Government***

Many government agencies work closely with private land trusts, developers and landowners to promote the use of conservation easements. Several local governments in Georgia, as in other states, hold conservation easements on land considered important to the community for recreation, scenic values, natural resource protection or other public benefits.

State and county governments in Georgia provide critical support to local land trusts by recognizing them, and the resources they seek to protect, in the local and regional land use plans required by the Georgia Planning Act. For example, Madison County's comprehensive land use plan acknowledges the importance of preserving the ecological health of the Broad River and its tributaries, and acknowledges the role of the Broad River Watershed Association in protecting this valuable resource.

Other governmental policies that support efforts to protect land and natural resources include state designation of Regionally Important Resources, local zoning practices that recognize the importance of rural land and greenspace, and tax valuation for conservation uses. The IRS relies on these and other factors to evaluate whether a particular easement satisfies a conservation policy.

Federal funding also may be available for the purchase of some conservation easements. The Intermodal Surface Transportation Efficiency Act (ISTEA), and its successor, the Transportation Equity Act (TEA21), provide funding for acquisition and development of trail corridors and scenic easements, and preservation of abandoned railway corridors. The Land and Water Conservation Fund Act of 1965 provides grants to state and local governments for acquisition of land and easements for land or water areas. Under the Federal Wetlands Reserve Program, the Department of Agriculture may buy conservation easements from farmers who permanently restore wetlands.

The town of Alpharetta, Georgia, holds conservation easements on wetlands in the Big Creek watershed, as the result of legal action brought by the U.S. Environmental Protection Agency against a development company that filled in wetlands without authorization. The development company was required to purchase wetlands within the watershed and protect them in perpetuity with a conservation easement.

## ***How Is an Easement Created?***

Conservation easements can be designed to fit a wide variety of different situations. They are flexible tools that can tailor a plan reflecting the wishes of the land owner, the unique natural features of the property, and the goals of the land trust or other easement holder. While the process depends in large part on the requirements of each situation, in general the following steps

will be necessary. Since private landowners are most likely to work with a land trust in developing a conservation easement, this paper usually refers to potential easement holders as land trusts. If the easement holder is a government entity, the process is generally the same.

**Make initial contact between a landowner and a land trust.** A landowner interested in exploring the possibility of a conservation easement may contact a land trust in the area where the land is located, the Georgia Land Trust Service Center or the Georgia Department of Natural Resources. Any of these sources can offer additional information and help in identifying a potential easement holder.

**Evaluate the land.** The land trust must determine if the land and the owner's wishes for the land meet the requirements of a "valid conservation purpose" and if they are compatible with the goals of the land trust.

**Design a conservation plan for the land.** Working closely with the landowner, the land trust will tailor a conservation plan that reflects the wishes of the landowner, the natural characteristics of the land and the goals of the land trust.

**Draw up and sign a conservation easement agreement.** The landowner should obtain professional legal and financial advice and assistance before completing the agreement.

The length of time required to design, negotiate and complete a conservation easement agreement depends on many factors, including the nature of the land, the type of protection desired, and the rights a landowner wishes to retain. A sample conservation easement is included in the supplemental materials section of this paper.

## ***Potential Tax Benefits***

A conservation easement may provide financial benefits for a landowner in the form of tax savings. It is important to understand that the potential savings usually are not sufficient by themselves to justify a conservation easement agreement. The most important benefit enjoyed by a landowner is the knowledge that the future of his or her land is permanently protected. Tax savings should be considered a supplemental benefit, not the primary reason for entering the agreement.

**When a landowner donates** a permanent conservation easement to a land trust, and the easement is for conservation purposes recognized by the IRS, the landowner may deduct the value of the easement from federal and state income taxes. The value of an easement is the difference between the fair market value of the land without the restriction and the fair market value after the restriction. This value must be determined by a qualified appraiser if it exceeds \$5000. The



appraiser also must consider the impact of the easement on adjacent land owned by the donor or his immediate family and subtract the value of any enhancement to these lands from the easement's value. The landowner can deduct up to 30 percent of his adjusted gross income over a period of six years until the value of the easement is exhausted if the property is a long-term capital gain asset, that is, one that has been held for investment purposes for at least twelve months.

**When a landowner sells** land or a conservation easement to a land trust for a bargain price, he will receive some cash for the property as well as a tax deduction reflecting the difference between the property sale price and its fair market value.

Donors who overvalue their easements may be penalized by the IRS, as may the appraiser. The IRS requires that baseline data be compiled to establish the condition of the property at the time of the gift. These data must be accompanied by a statement asserting their accuracy, signed by the landowner and a representative of the land trust or government entity.

**High estate taxes**, which have forced the sale of many treasured family lands, may be similarly decreased through the use of conservation easements satisfying the Internal Revenue Code. If a property owner restricts the use of his or her property through a conservation easement prior to his death, the estate tax is assessed on the restricted value of the property. When the landowner bequeaths a conservation easement to a land trust in his or her will, the value of the easement is deducted from the estate.

**Property taxes** may decrease as well, because restricting various development rights may diminish the fair market value of the land. The public benefits resulting from the resource protection afforded by the easements should substantially outweigh the costs in terms of decreased revenue to the local government. Easements that restrict land-disturbing activities and chemical handling on a river bank, for example, may result in decreased costs for drinking water treatment and increased revenues generated by recreational users. Easements protecting agricultural use of a tract of land help to assure the viability of agriculture-dependent businesses in the community. Easements protecting open space and scenic views may result in increased property values on adjacent land.

To find out more about IRS requirements for deductions related to conservation easements, appraisals of easements, and other tax-related questions, see the section in this paper titled Sources for Additional Information. Some specific examples of tax savings resulting from the donation of a conservation easement appear in the Supplemental Material section.

## ***Mortgages***

In the case of land subject to a pre-existing mortgage, the lender must agree to subordinate its rights in the property to the rights of the easement holder to ensure that the easement is not extinguished in the event of foreclosure. Subordination should not be a problem if the value of a house or other improvement on the land is sufficient to cover the mortgage obligation.

## ***Public Access and Liability***

Conservation easements do not require a landowner to allow public access unless the easement is for public outdoor recreation, public education or, in some cases, for scenic enjoyment. The use of conservation easement land by the general public is one of the items that is negotiated by the land owner and the easement holder.

In most cases, when an easement does provide for public access for recreation or other purposes, the Georgia Recreational Property Act will protect the property owner against liability. This act shields the landowner from liability for injuries to persons who use the land for recreational purposes without charge unless the landowner willfully or maliciously fails to guard against or warn of a dangerous condition, use, structure or activity. Georgia's Uniform Conservation Easement Act similarly protects the land trust holding the easement from liability.

## ***A Powerful Tool for Private Land Conservation***

Georgia's abundance of natural land - including farmland, forests, wetlands, coastal areas, mountainsides, woods, creeks, rivers and rolling hills - is disappearing as development spreads. But a great deal of valuable land and natural resources remains in the hands of individual landowners who care for the land and would prefer to see it protected. The conservation easement gives landowners a powerful tool that makes protection of land a practical reality. With a conservation easement, land remains privately owned and managed, and families can continue to live on their land and enjoy it.

As a landowner, you can help to ensure that future generations will enjoy the same natural beauty, richness and diversity that always have defined our state. Your land does not have to be spectacular, unusual or pristine to qualify for a conservation easement. There is a need to preserve land and natural resources of many different types, and any interested landowner should not hesitate to contact a land trust and explore the possibilities.

If you have wished for a way to protect the integrity and natural resources of your land for future generations, a conservation easement may make this possible for you. To find out more, contact a land trust in your area, or the Georgia Land Trust Service Center, 380 Meigs Street, Athens, GA 30601; phone 706-546-7507; e-mail: [gepi@ix.netcom.com](mailto:gepi@ix.netcom.com).

## ***Sources for Additional Information***

### **Potential Tax Benefits**

*Federal Tax Law of Conservation Easements and Second Supplement to the Federal Tax Law of Conservation Easements*, by Steve Small. These two books discuss technical details on relevant federal tax law. Both are available from the Land Trust Alliance, 1319 F Street, NW, Suite 501, Washington, DC 20004-1106, phone 202-638-4725.

*Preserving Family Lands* and *Preserving Family Lands, Book II*, by Steve Small. Written for landowners who are in danger of losing land they love because of high taxes, these two books offer information on a wide variety of planning tools that may help a private landowner. Both volumes are available from the Landowner Planning Center, P.O. Box 4508, Boston, MA 02101-4508, phone 617-357-1644.

*Tax Incentives for the Georgia Land Owner: A Step-by-Step Guide to Ad Valorem Taxation for Timber and Current Use Valuation for Agricultural and Forestry Lands, Environmentally Sensitive Areas (and) Residential Transitional Property*. Georgia's laws governing potential property tax savings for conserved lands are convoluted and difficult to understand without a guide. Fortunately, some helpful guides do exist. This one is the most comprehensive. It is available for \$1 from the Cooperative Extension Service Business Office, 203 Conner Hall, College of Agricultural and Environmental Sciences, University of Georgia, Athens, GA 30602, phone 706-542-8999. Ask for bulletin number 1089.

### **Land Trusts and Government Agencies**

American Farmland Trust, 1920 N Street NW, Suite 400, Washington, DC 20036, phone 202-659-5170. Provides technical assistance in preserving lands of historical, agricultural and environmental significance, and accepts easements on agricultural land through its Farm Legacy Program.

American Greenways Program, The Conservation Fund, 1800 North Kent Street, Suite 1120, Arlington, VA 22209, phone 703-525-6300. Provides technical assistance and small grants for selected greenway projects.

Conservation and Environmental Protection Division, STOP 0513, U.S. Department of Agriculture,

1400 Independence Ave., SW, Washington DC 20250-0513, phone 202-720-6221. Provides more information about the Federal Wetlands Reserve Program.

Georgia Department of Natural Resources. Parks, Recreation and Historic Sites Division, 205 Butler Street, Suite 1352-E, Atlanta, GA 30334, phone 404-656-6530. Assists local governments in the acquisition and preservation of public recreation lands by providing technical and financial assistance; coordinates rail-trail conversions; promotes regional trail systems; and coordinates local organizations and state and federal agencies on trail issues.

Georgia Land Trust Service Center, 380 Meigs St., Athens, GA 30601, phone 706-546-7507. Assists Georgia's land trust community through networking, training, public education, referrals and funding.

Georgia Trails and Greenway Coordinator, 404-656-6530 or <[www.serb.com/bike/georgia](http://www.serb.com/bike/georgia)> For more information about programs related to trail corridors and scenic easements.

The Hyperion Society, University of California, Hastings College of the Law, 200 McAllister Street, San Francisco, CA 94102, phone 415-565-4857. Publishes "The Back Forty," a bimonthly journal covering legal issues pertaining to land trusts.

Land Trust Alliance, 1319 F Street NW, Suite 501, Washington, DC 20004, phone 202-638-4725. A clearinghouse for information on land trusts across the nation.

The Nature Conservancy of Georgia, 1330 W. Peachtree St., NW, Suite 410, Atlanta, GA 30309, phone 404-873-6946. Acquires or helps others acquire conservation easements to protect lands with special natural resource value.

Rivers and Trails Conservation Assistance Program, National Park Service Planning and Federal Programs Division, 100 Alabama Street, Building 1924, Atlanta, GA 30303, phone 404-562-3175. Provides technical assistance to state and local governments, land trusts and landowners in the preparation of river conservation and trail plans; inventories and evaluates river and trail corridors.

Trust for Public Land, 1447 Peachtree Street NE, Suite 601, Atlanta, GA 30309, phone 404-873-7306. Provides technical assistance to land trusts on issues ranging from incorporation to negotiating easements, and to agencies, organizations and individuals developing trail and greenway projects.

## **Conservation Easements**

*The Conservation Easement Handbook* . Published by the Land Trust Alliance, 1319 F Street NW, Suite 501, Washington DC 20004-1106, phone 202-638-4725.

*Model Conservation Easement and Historic Preservation Easement.* Published by the Land Trust Alliance, 1319 F Street NW, Suite 501, Washington, DC 20004-1106, phone 202-638-4725.

*Questions on Potential Landowner Liability for Recreational Use in Georgia.* A Georgia Environmental Policy Institute Resource Paper. By Ronnie Abellera under the supervision of Laurie Fowler, J.D., L.L.M. Available from the Georgia Environmental Policy Institute, 380 Meigs Street, Athens, GA 30601, phone 706-546-7507, email [gepi@ix.netcom.com](mailto:gepi@ix.netcom.com).

## ***Supplemental Material***

### **Land Trusts in Georgia**

*New land trusts may have been established since this resource paper was published. Contact the Georgia Land Trust Service Center for a complete, up-to-date list. Call 706-546-7507 for a copy.*

### **Potential Tax Savings - Some Georgia Examples**

The following examples are provided to illustrate how conservation easements can help in some specific tax situations. Landowners should keep in mind that the primary reason for entering into a conservation easement agreement should be a desire to protect the land permanently from development. The financial incentives that may be available should be regarded as supplementary benefits.

Landowners who wish to know the tax consequences of a conservation easement on their land should consult with a knowledgeable tax advisor. Each situation represents a unique combination of factors that cannot be reflected in a general example.

For comparison, two of the following examples illustrate savings provided by other conservation strategies - the Preferential Assessment Program for Agricultural and Forestry Property, and the Conservation Use Covenant.

### **Income Taxes**

A landowner in the Georgia Piedmont owns 47 acres of land along a river. He loves the land and wants to protect it by donating a permanent conservation easement to a local land trust, requiring

that the land be kept in a natural state. A qualified professional appraiser appraises the fair market value of the land at \$143,160 before the conservation easement and \$95,440 after the easement. The difference between the two values is \$47,720, which represents the value of the donation to the land trust. Federal tax law allows the landowner to deduct this donation from his adjusted gross income, up to 30 percent of his adjusted gross income, with a five-year carry-over provision for excess contributions. For his particular adjusted gross income, tax bracket and other variables, this landowner is able to realize a total income tax savings (federal and state) of \$15,129. This means that he is able to recoup from income taxes alone about one third of the value of the donated easement.

## **Estate Taxes**

A widow living in the Georgia Piedmont owns 600 acres of land valued at \$4000 an acre. The fair market value of the land is \$2,400,000. Her other assets (jewelry, stocks, family silver, automobile, etc.) total \$100,000. When she dies, her taxable estate is worth \$2,500,000. Federal and state governments require that the estate tax be paid within nine months of her death. Depending on certain variable factors, the estate tax due will be approximately \$800,000 - \$1,000,000. If her heirs do not have this much money, they may be forced to sell the land in order to pay the estate taxes. Because this must be done within nine months, they may have to sell the land at a bargain price and have little choice about a buyer. They will lose money, lose the land, and the land may very well be developed.

The widow can avoid this loss by placing a conservation easement on her land that restricts its use to its traditional farming, timber growing and grazing uses. This conservation easement could result in a reduction of \$1 million in the value of her land, leaving a taxable estate at her death of \$1,500,000. The estate taxes due in this case would be approximately \$363,000 - a substantial reduction from \$800,000 - \$1,000,000.

It should be noted that these calculated figures are only illustrative of the estate tax savings resulting from a conservation easement. Through a provision of the Taxpayers Relief Act of 1997, the maximum value of an estate that can be excluded from taxation is being increased in phased increments over the next several years. As a result, heirs of an estate, such as the ones in this example, will actually pay less estate tax than before adoption of the Act.

## **Property Taxes**

The tax levy (or millage rate) in the county in which the widow lives is 27.26 mills. (One mill is one-thousandth of one U.S. dollar.) The assessed value of land is 40% of the fair market value. So the tax on \$2,400,000 worth of land in this county is \$26,169.60 ( $\$2,400,000 \times 0.40 \times 0.02726 = \$26,169.60$ ). The restrictions of a conservation easement would reduce the property value. If the county tax assessor re-evaluates the property and reduces its value to \$1,400,000, the tax rate with a conservation easement would be \$15,265.60 ( $\$1,400,000 \times 0.40 \times 0.02726 = \$15,265.60$ ).

It is important to note that the county tax assessor may come to a different conclusion about the

value of the land under a conservation easement than the qualified appraiser hired by the landowner.

## **Property Taxes - Agricultural Preferential**

A landowner in Morgan County owns forested land with a fair market value of \$61,256. The county's millage rate is 21.83 mills, making the tax rate on this land \$534.88 ( $\$61,256 \times 0.40 \times 0.02183$ ). The landowner decides to sign up for the Preferential Assessment Program for Agricultural and Forestry Property (GA Laws 1983, p. 1850, Section 3). Under this program, the value of the land for tax purposes becomes 75 percent of the fair market value. This figure is then used in the calculation of a new tax rate, and the tax becomes \$401.17, representing a 25 percent reduction from the fair market value tax ( $\$61,256 \times 0.75 \times 0.40 \times 0.02183 = \$401.17$ ).

## **Property Taxes - Conservation Use Covenant**

If the same Morgan County landowner signs up for a Conservation Use Covenant, the land is assessed quite differently. A Conservation Use Covenant is an agreement to protect qualifying agricultural, forest and environmentally sensitive land for a period of 10 years. The assessment is based on the productivity of the soils on the land and on how many acres of each soil type are included in the covenant. Each year, the Georgia Department of Revenue produces a table of values to be used in determining the value of each of these soil types. For example, land with one type of highly productive soil may be valued at \$322 per acre, while land with a less productive type of soil is valued at \$197 per acre. This new value of the land is the conservation use value. For the Morgan County landowner, the conservation use value totals \$22,617. The tax rate is calculated in the same way: the millage rate (0.02183) times the conservation use assessment (\$22,617) times 40% equals \$197.49. This represents a 63 percent reduction from the fair market value tax rate of \$534.88 for the property.

## ***Georgia Uniform Conservation Easement Act***

### **ARTICLE 1**

### **UNIFORM CONSERVATION EASEMENTS**

#### **44-10-1. Short title.**

This article shall be known and may be cited as the "Georgia Uniform Conservation Easement Act."

#### **44-10-2. Definitions.**

As used in this article, the term:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property; assuring its availability for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.

(2) "Holder" means:

(A) governmental body empowered to hold an interest in real property under the laws of this state or the United States; **or**

(B) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

**44-10-3. Creation or alteration of conservation easements; acceptance; duration; effect on existing rights and duties; limitation of liability.**

(a) Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except that a conservation easement may not be created or expanded by the exercise of the power of eminent domain.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

c) Except as provided in subsection (c) of Code Section 44-10-4, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

(e) The ownership or attempted enforcement of rights held by the holder of an easement shall not



subject such holder to any liability for any damage or injury that may be suffered by any person on the property or as a result of the condition of such property encumbered by a conservation easement.

**44-10-4. Actions affecting easements; parties; power of court to modify or terminate easement.**

(a) An action affecting a conservation easement may be brought by:

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement;

(3) A person having a third-party right of enforcement; or

(4) A person authorized by other law.

(b) The easement holder shall be 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.

(c) This article does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

**44-10-5. Validity of easement.>**

A conservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract.

#### **44-10-6. Interests covered by article; interests not invalidated by article.**

(a) This article applies to any interest created after July 1, 1992, which complies with this article, whether designated as a conservation or facade easement, or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise.

(b) This article applies to any interest created before July 1, 1992, if such interest would have been enforceable had such interest been created after July 1, 1992, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(c) This article does not invalidate any interest, whether designated as a conservation or preservation or facade easement or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

#### **44-10-7. Construction and application of article to effect uniformity of laws.**

This article shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of this article among states enacting it.

#### **44-10-8. Recordation of easements; revaluation of encumbered property; appeals.**

A conservation easement may be recorded in the office of the clerk of the superior court of the county where the land is located. Such recording shall be notice to the board of tax assessors of such county of the conveyance of the conservation easement and shall entitle the owner to a revaluation of the encumbered real property so as to reflect the existence of the encumbrance on the next succeeding tax digest of the county. Any owner who records a conservation easement and who is aggrieved by a revaluation or lack thereof under this Code section may appeal to the board or equalization and may appeal from the decision of the board of equalization in accordance with Code Section 48-5-311.

### **Sample Conservation Easement**

Every conservation easement is unique. Each agreement reflects the needs and interests of the

landowner, the objectives of the easement holder, and the nature of the land and its conservation values. The following example is provided to give a general idea of the kinds of issues that might be addressed and to show a sample format for an agreement. The identity of the landowner has been changed to protect his privacy. Otherwise, the easement agreement is real.

STATE OF GEORGIA

COUNTY OF MADISON

## **DEED OF CONSERVATION EASEMENT**

THIS CONSERVATION EASEMENT (herein "Conservation Easement") is made this \_\_\_\_ day of March 1997, by and between John Q. Doe whose address is 123 Anywhere Rd, Athens, Georgia 30606 (hereinafter "Grantor") and BROAD RIVER WATERSHED ASSOCIATION, INC., a Georgia nonprofit corporation, with an address of Box 661, Danielsville, Georgia 30633 (hereinafter "Grantee").

### **RECITALS**

A. Grantee is a nonprofit corporation established for the purpose of promoting the preservation of environmentally valuable and sensitive lands, recreational lands, agricultural lands, lands of historic or cultural importance, and open space in the Broad River Watershed and other watersheds within the State of Georgia for charitable, scientific, educational and aesthetic purposes.

B. Grantor owns in fee simple certain real property in Madison County, Georgia, being 111.579 acres, more or less, and more particularly shown and described in Exhibit A attached hereto, hereinafter "Property", consisting of Tract 1, 24.777 acres together with Tract 2, 0.555 acre, hereinafter "Secondary Conservation Area" and Tract 3, 86.252 acres together with Tract 4, a strip of land running to the center of the Broad River, hereinafter "Primary Conservation Area" as shown and described in Exhibit B attached hereto.

C. Grantor is willing to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting the use of the land and contiguous water areas of the Property, on the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement.

D. Grantor and Grantee recognize the conservation value of the Property in its present state, being adjacent to the Broad River and two tributaries, as a significant natural area which provides a "relatively natural habitat for fish, wildlife, or plants or similar ecosystems" as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, including habitat for deer, muskrat, raccoon, opossum, squirrel, beaver, red and gray fox, otter, a variety of birds including turkey, and numerous fish species including the robust redhorse, which is being reintroduced into the Broad

River under the direction of the U.S. Fish and Wildlife Service and the Georgia Department of Natural Resources.

E. Due in part to its location adjacent to the Broad River, one of the last free-flowing rivers, unimpounded and unchanneled, in the eastern Piedmont, Grantor and Grantee recognize the conservation and open space values of the property in its present state, the preservation of which (1) is pursuant to federal, state and local government policy as evidenced by:

(a) the designation of the Broad River and its tributaries, as Regionally Important Resources pursuant to the Georgia Planning Act of 1989 at O.C.G.A. 50-8-3 et. seq.

(b) the requirement that a Broad River corridor management plan be developed pursuant to O.C.G.A. 12-2-8(g) for the purpose of protecting the corridor, public water supply and wetlands;

(c) the recognition by the National Park Service in its 1982 Nationwide Rivers Inventory that 99 miles of the Broad River, including the segment adjacent to the Property, is pristine enough to qualify for consideration in the Federal Wild and Scenic Rivers System.

(d) the recommendation by the Georgia Department of Natural Resources in 1976 that a "Broad River Environmental Corridor" be created and the recognition of the Department of Natural Resources and the Georgia Natural Heritage program of the outstanding ecological and recreational importance of 175 miles of the Broad River system, including the segment adjacent to the Property;

(e) the recognition in the Madison County Comprehensive Plan and the Northeast Georgia Regional Plan currently under development, of the importance of preserving the ecological value of the Broad River and its tributaries and the Broad River Watershed Association's role in the protection of that ecological value;

(f) unanimous resolutions enacted in 1995 in support of the creation of a Broad River Heritage Trail by the Madison, Elbert, Franklin and Oglethorpe County Commissions;

and (2) the preservation of which will provide for the scenic enjoyment by the general public, as evidenced by:

(a) the large number of canoeists and rafters who float the Broad River to enjoy the scenery and wildlife;

(b) the fact that development of the Property adjacent to the river would impair the natural scenic character enjoyed by the public;

(c) the recent purchase of the Human tract, on the north side of the river from Grantor's property,

by the Georgia Department of Natural Resources for recreational and scenic preservation purposes;

and (3) the preservation of which will yield other significant public benefit including:

(a) preservation of the water quality of the Broad River through control of point and non-point source discharges;

(b) preservation of the scenic and natural landscape which attracts tourism and commerce to Madison County;

(c) continuation of the traditional use of the non-residential portion of the Property for hiking, nature study, and other passive recreational uses.

F. Grantee is a tax exempt public charity under Section 501(c)(3) and 509(a)(2) of the Internal Revenue Code, is authorized by the laws of the state of Georgia to accept, hold and administer conservation easements, possesses the authority to accept and is willing to accept this Conservation Easement under the terms and conditions hereinafter described, and is a "qualified organization" and an "eligible donee" within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder;

NOW, THEREFORE, as an absolute gift of no monetary consideration but in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantor hereby unconditionally and irrevocably grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Property more particularly described in Exhibit A together with the right to preserve and protect the conservation values of the Property.

The purposes of this Conservation Easement are to preserve and protect the conservation values of the Property and to maintain permanently the dominant woodland, scenic, open, and natural character of the Property, including land and water resources; to protect plants and animals and plant and animal communities on or affected by the property's management; and to prevent any use of the Property that will significantly impair or interfere with the conservation values or interests of the property. To achieve these purposes, the following conditions and restrictions are set forth:

## **ARTICLE I. DURATION OF EASEMENT**

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by Grantee against Grantor, his personal representatives, heirs, successors and assigns, lessees, agents and licensees.

## **ARTICLE II. RIGHTS OF GRANTEE**

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this easement:

A. To preserve and protect the conservation values of the Property;

B. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Article VI; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

C. To prevent any activity on or use of the Property that is inconsistent with the purposes 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 remedies set forth in Article VI.

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

Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Easement is prohibited. Development that would significantly impair or interfere with the conservation values of the Property is prohibited.

**A. Restrictions on the Property.** The following activities and uses are expressly prohibited.

**1. Industrial Use.** Industrial activities are prohibited.

**2. Signage.** Display of billboards, signs or advertisements is prohibited on or over the Property, except the posting of no trespassing signs, signs identifying the conservation values of the Property and/or identifying the Grantor as owner of the Property.

**3. Construction, Residential and Institutional Use.** Construction, Residential and Institutional Use is prohibited except within the Secondary Conservation Area of the property. Development of single family homes and/or an institutional facility for the study of natural systems may occur consistent with zoning restrictions and building codes established by Madison County. No building may exceed 40 feet in height. Reasonable means of access to the residential dwelling/s or educational facility may be provided, however no road nor right of way may be wider than thirty

(30) feet.

**4. Dumping.** Disposal of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or other materials on the property is prohibited.

**5. Mineral Use, Excavation, Dredging.** There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock peat, minerals or other materials; and no change in the topography of the land in any manner except incidental to the construction allowed herein.

**6. Water Quality and Drainage Patterns.** There shall be no pollution, alteration, depletion or extraction of surface water, natural water courses, subsurface water or any other water bodies except for the withdrawal of well water. Notwithstanding the foregoing, there shall be no activities conducted on the Property or on adjacent property if owned by Grantor which would be detrimental to water purity or which would alter natural water levels, drainage, sedimentation and/or flow in or over the Property or to the Broad River, or cause soil degradation or erosion. Disruption of natural drainage patterns and creation of artificial drainage patterns including but not limited to construction of check dams and other impoundments is prohibited.

**B. Additional Restrictions On the Primary Conservation Area.** The Primary Conservation Area shall be maintained in its natural, scenic and open condition. The following activities and uses, in addition to those set forth in Section A above, are expressly prohibited within the Primary Conservation Area.

**1. Industrial, Commercial and Agricultural Use.** Industrial and commercial activities, including but not limited to commercial agricultural and horticultural use and livestock production, are prohibited.

**2. Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural, scenic, and aesthetic features is prohibited.

**3. Building, Road, Fence and Path Construction.** The construction of buildings, fences and roads are prohibited except for the construction of firebreaks and fire roads built by the Georgia Forestry Commission or the U.S. Forest Service in an emergency situation. Dirt foot paths may be constructed for hiking purposes.

**4. Silvicultural, Agricultural and Horticultural Use.** Silvicultural, agricultural and horticultural use is prohibited except Grantor may harvest timber which is dead or dying for use as firewood.

## **ARTICLE IV. RESERVED RIGHTS**

Grantor reserves to himself, and to his personal representatives, heirs, successors, and assigns, all rights accruing from his 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 purposes of this Easement.

## ARTICLE V. MEDIATION

**A. Mediation.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

**1. Purpose.** The purpose of the mediation is to (a) promote discussion between the parties; (b) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Easement.

**2. Participation.** The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

**3. Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

**4. Time Period.** Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

**5. Costs.** The costs of the mediator shall be borne equally by Grantor and Grantee; the parties shall bear their own expenses, including attorneys' fees, individually.

## ARTICLE VI. GRANTEE'S REMEDIES

**A. Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or 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 Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

**B. Injunctive Relief.** 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 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 Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

**C. Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. 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.

**D. Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this Article without prior notice to Grantors or without waiting for the period provided for cure to expire.

**E. Scope of Relief.** Grantee's rights under this Article apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 6.B, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Article shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**F. Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.

**G. Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this 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.

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

**I. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, 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.

## **ARTICLE VII. PUBLIC ACCESS**

The granting of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever. The public has the right of scenic enjoyment of the property from the Broad River, however.

## **ARTICLE VIII. EXHIBITS, DOCUMENTATION AND TITLE**

**A. Legal Description.** Exhibit A, Legal Description of the Property, and Exhibit B, Survey of the Property, are attached hereto and made a part hereof by reference.

**B. Easement Documentation Report.** The parties acknowledge that the Doe Property Conservation Planning Data Sheet dated March 1997, a copy of which is on file at the office of the Grantee, accurately establishes the uses, structures, conservation values and condition of the Property as of the date hereof.

**C. Title.** The Grantors covenant and represent that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that the Property is free and clear of any and all encumbrances; and Grantor covenants that the Grantee shall have the use of and enjoyment of all of the benefits derived from and arising out of the aforesaid Conservation Easement.

## **ARTICLE IX. COSTS, LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE**

**A. Costs, Legal Requirements, 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. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by

Grantor.

**B. Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

**C. Representations and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of his knowledge:

1. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the property;

2. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;

3. Grantor and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use;

4. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

5. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

**D. Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

**E. Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial

decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and Georgia's hazardous waste statutes.

**F. Hold Harmless.** Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (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 solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, or requirement, including, without limitation, CERCLA and state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of paragraphs 8.A. through 8.E.

## **ARTICLE X. EXTINGUISHMENT AND CONDEMNATION**

**A. Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. 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 subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with paragraph 9.B.

**B. Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 9.A., the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement at the time of this grant to the value of the Property.

**C. Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu of purchase

and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu of purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the equation set forth in paragraph 9.B.

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

## **ARTICLE XI. ASSIGNMENT**

This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under Georgia's Uniform Conservation Easement Act (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least twenty (20) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

## **ARTICLE XII. SUBSEQUENT TRANSFERS AND ZONING APPLICATIONS**

**A. Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer.

**B. Notice of Zoning Applications and Building Permits.** Grantor, for himself, his heirs, successors and assigns, further agrees to notify Grantee in writing of any request to obtain a building permit or to amend the zoning of the property at least twenty (20) days prior to the filing of such a request with the appropriate Madison County agencies. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

## **ARTICLE XIII. RECORDATION**

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

## **ARTICLE XIV. GENERAL PROVISIONS**

**A. Controlling Law.** The interpretation and performance of this 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 Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of the Uniform Conservation Easement Act. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

**D. Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

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

**F. Joint Obligation.** The obligations imposed by this Easement upon Grantor and his heirs, successors and assigns, shall be joint and several.

**G. Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and his personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

**H. Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, 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.

TO HAVE AND TO HOLD unto the Broad River Watershed Association, Inc., its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, his personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

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

TO BE EFFECTIVE upon the date of recordation in the official records of Madison County, Georgia.

GRANTOR:

\_\_\_\_\_

John Q. Doe

Witnesses:

\_\_\_\_\_

\_\_\_\_\_

NOTARY PUBLIC

GRANTEE:

BROAD RIVER WATERSHED ASSOCIATION, INC.

BY: \_\_\_\_\_

(Name), Chair

Board of Directors

Witnesses:

\_\_\_\_\_

\_\_\_\_\_

NOTARY PUBLIC

ATTEST: \_\_\_\_\_

(Name), Secretary

Board of Directors

Witnesses:

\_\_\_\_\_

\_\_\_\_\_

NOTARY PUBLIC

This instrument prepared by:

Laurie Fowler, Esq.



Georgia Land Trust Service Center

A Project of the Georgia Environmental Policy Institute

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Athens, Georgia 30601

706-546-7507

### **Acknowledgments**

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