

When recorded return to:

City of Milton  
Attn: City Clerk  
2006 Heritage Walk  
Milton, GA 30004

## CONSERVATION EASEMENT

**THIS DEED OF CONSERVATION EASEMENT** ("Easement") is made by \_\_\_\_\_ having an address at \_\_\_\_\_, Milton GA 30004 ("Grantor"), in favor of City of Milton, Georgia, a political subdivision of Georgia ("Grantee") (collectively, the "Parties").

### **SECTION 1. Recitals**

**WHEREAS**, Grantor is the sole owner in fee simple of \_\_\_\_\_ acres of real property located in the City of Milton, Georgia (the "City"), more particularly described in Exhibit A and shown in Exhibit B, which exhibits are attached hereto and incorporated by this reference (the "Protected Property"); and

**WHEREAS**, Grantee is a municipal governmental agency established, among other things, for the purpose of promoting the preservation of environmentally valuable and sensitive lands, recreation lands, agricultural lands, lands of historic or cultural importance, and open space for charitable, scientific, educational and aesthetic purposes; and

**WHEREAS**, the Protected Property qualifies as a TDR sending site under provisions of the Zoning Ordinance for the City of Milton, Georgia, including Chapter 64, Article XIX, Section 1.7 and Chapter 64, Article XX, Section 1.7; and

**WHEREAS**, the Protected Property contains natural and/or agricultural features whose preservation would implement Milton's goals for maintaining significant environmental areas, rural character and open space; and

**WHEREAS**, Grantor, as owner of the Protected Property, has the right to identify, protect, and preserve the natural and/or agricultural features of the Protected Property; and

**WHEREAS**, the City of Milton Code of Ordinances authorizes the transfer of development rights ("TDR") from "sending sites", such as the Protected Property, that contain public benefits such that the preservation of that benefit by transferring development rights, in the form of density credits, to another site is in the public interest; and

**WHEREAS**, development rights are transferred from sending sites through the conversion to density credits and documented in a TDR certificate, a process which requires the recording of a TDR conservation easement on the sending site property to indicate the development limitations on the property pursuant to Section 1.7.4 of Chapter 64, Article XIX and Section 1.7.4 of Chapter 64, Article XX of the City of Milton Code of Ordinances, and subsequent ordinances that the City may adopt pertaining to TDR sending sites; and

**WHEREAS**, on \_\_\_\_\_, Grantor submitted an application to designate the Protected Property as a "sending site" and to obtain density credits for transfer from the Protected Property to qualified receiving sites ("TDR Application"), and

**WHEREAS**, the TDR Application materials submitted by Grantor are on file with the City of Milton Community Development Department and are incorporated herein by reference as if set forth in full; and

**WHEREAS**, Grantor represents that the TDR Application materials reflect existing conditions on the Protected Property as of the date this Conservation Easement is executed, as well as the Grantor's intentions concerning future development, if any, to occur on the Protected Property; and

**WHEREAS**, the Property in its present state is not developed and possesses significant open space, forested area, wildlife, and habitat features (collectively the "Conservation Values"). In particular, said Conservation Values include:

1. The preservation of the Rural Viewshed pursuant to the City of Milton 2030 Comprehensive Plan (Plan). The property is located along a main road (\_\_\_\_\_) that has been designated in the Plan for the preservation of its Rural Viewshed, that is, its pasture and forests that can be seen from the road. The property provides an opportunity to maintain the rural image and identity of the City.
2. The preservation of the lake and riparian buffers, mixed deciduous hardwood forest, gradients above 15%, and frontage along an unnamed tributary of Cooper Sandy Creek

**WHEREAS**, the City has determined that the Protected Property qualifies as a sending site under Section 1.7.2 of Chapter 64, Article XIX and Section 1.7.2 of Chapter 64, Article XX of the City of Milton Code of Ordinances ("Sending Site"); and

**WHEREAS**, the City has determined that the Protected Property is entitled to a total of \_\_\_\_\_ development rights/density credits available for transfer ("Development Rights") from the Protected Property to qualified receiving sites as of the date of execution of this Conservation Easement; and

**WHEREAS**, Grantor now desires to protect, maintain, and preserve the natural and/or agricultural features of the property by granting a perpetual conservation easement on the Protected Property on the terms set forth herein; and

**WHEREAS**, Grantee agrees by accepting this Easement to honor the intentions of Grantor as stated in this Easement and to preserve and protect in perpetuity the natural and/or agricultural features of the Protected Property for the benefit of this generation and the generations to come.

**SECTION 2. Conveyance, Consideration and Perpetual Duration**

For the reasons stated above, as part of the City's TDR sending site provisions, and in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, and good and valuable consideration, the receipt, sufficiency, and adequacy of which is hereby acknowledged, Grantor hereby voluntarily grants, conveys and warrants to

Grantee a conservation easement over the Protected Property, consisting of certain rights in the Protected Property as defined in this Easement, subject only to the terms and restrictions contained in this Easement and to title matters of record as of the effective date of this Easement.

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

**SECTION 3. Purpose**

The purpose of this Easement (the "Purpose") is to protect the natural or agricultural features whose retention would implement Milton's goals for maintaining significant environmental areas, rural character and open space by ensuring that the natural or agricultural features of the Property will be retained forever.

**SECTION 4. Development Rights**

The City has issued \_\_\_\_\_TDRs associated with the Protected Property.

**SECTION 5. Rights Conveyed to Grantee**

To accomplish the Purpose, the following rights are provided to Grantee by this Easement:

- A. The right to preserve and protect in perpetuity the natural and agricultural features of the Protected Property.
- B. The right to enter the Protected Property at reasonable times in order to monitor Grantor's compliance with and to enforce the terms of this Easement, provided that such entry shall be conducted with a minimum of 10 calendar-day written notice. Such visit shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property. No right of access by the general public to the Protected Property is authorized by this Easement without the Grantor's prior consent.
- C. The right to enforce the terms of this Easement and the right to prevent any activity on or use of the Protected Property that is inconsistent with the Purpose, and the right to require the restoration of the Protected Property as necessary to fulfill the Purpose of this Easement.
- D. No other rights are granted to Grantee other than those listed in subsections A. through C. of this Section 5.

**SECTION 6. Prohibited Uses and Activities**

Any activity or use of the Protected Property that is inconsistent with the Purpose of this Easement is prohibited, including but not limited to, the following:

- A. Grantor shall not use the Development Rights now or hereafter associated with the Protected Property, except those, if any, reserved in connection with Grantor's Reserved

Rights set forth in Section 7 of this Easement. Grantor and Grantee agree that such Development Rights are removed from the Protected Property and may not be used or transferred to any other portion of the Protected Property as it now or hereafter may be bounded or described. The Development Rights of the Protected Property may, however, be transferred to other property pursuant to the Transfer of Development Rights program or a successor program authorized by the City as currently adopted or hereafter amended. Notwithstanding anything to the contrary contained herein in this Easement, in the event Grantee (including its successors and assigns) ever terminates or materially modifies or limits its ordinance so as to defeat the Purpose as defined herein above and as set forth in Section 1.7.4 of Chapter 64, Article XIX and Section 1.7.4 of Chapter 64, Article XX of the City of Milton Code of Ordinances, Grantor shall have the right to terminate this Easement by providing written notice of the exercise of this right to Grantee along with the tendering of an equivalent number of TDRs as the number of TDRs issued in conjunction with this Easement as described in Section 4, above. The specific TDRs tendered by Grantor need not have been originally issued with respect to the Easement, provided that the TDRs were issued by Grantee.

B. Grantor shall not undertake any division, subdivision, or partitioning of the Protected Property, whether by physical or legal process, which includes, but is not limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Protected Property is divided into lots or in which title to different portions of the Protected Property are not held in unified ownership ("Land Division") unless such Land Division allocates any Reserved Development Rights reserved to Grantor as set forth in Section 7, if any, between the divided parcels of Protected Property in a manner consistent with the terms of this Easement. This Easement shall continue to encumber all portions of the Protected Property whether or not the Protected Property is held in unified ownership.

C. Grantor shall not construct any buildings, dwellings, structures, or other improvements of any kind on the Protected Property, except as may be set forth in Section 7 of this Easement.

D. Grantor shall not use the Protected Property for any purpose not allowed in the AG-1 zoning district if the property is located therein, or for a purpose not allowed in the T2 zone if in the Crabapple Overlay District or Deerfield Overlay District.

E. Grantor shall not explore for, or develop and extract, minerals, soil, sand, gravel, rock, peat, sod or hydrocarbons on or below the surface of the Protected Property in a manner detrimental to the preservation and protection of the natural and/or agricultural features of the Protected Property.

F. Grantor shall not engage in any use or activity on the Protected Property that causes or is likely to cause material soil degradation or erosion detrimental to the preservation and protection of the natural and/or agricultural features of the Protected Property.

G. Grantor shall not dispose of or store rubbish, garbage, debris, vehicles, abandoned equipment, parts thereof, or any hazardous waste or material on the Protected Property detrimental to the preservation and protection of the natural and/or agricultural features of the Protected Property.

**SECTION 7. Reserved Rights of Grantor**

Grantor may engage, or allow others to engage in, uses and activities of the Protected Property that are not inconsistent with the Purpose of this Easement to preserve and protect the natural and/or agricultural features of the Protected Property, and are permitted in the AG-1 zoning district. However, regardless of future zoning code changes, no more than, \_\_\_ ( ) residential dwelling unit shall be permitted on the Protected Property and only if that dwelling unit can be located on the Protected Property in compliance with all applicable regulations. For the avoidance of doubt, nothing contained in this Easement shall limit the size or height of any such dwelling unit other than being constructed in accordance with the applicable rules and regulations at the time of construction. In addition to the foregoing and without limitation thereof, Grantor shall also be permitted to construct and maintain ancillary features and components associated with any such dwelling unit, including, without limitation, a separate multi-vehicle garage (and residential apartment located over any such garage), a barn, stables, storage shed, swimming pool, outdoor kitchen, wooden and rail fences. All structures shall reasonably avoid any material impacts to the scenic views, and materially avoid impacting natural resource areas including gradients over 15%. In conjunction with this permanent limitation on development, the Grantee shall issue the Grantor \_\_\_\_\_ transferable development rights (TDRs) with serial numbers \_\_\_\_\_ through \_\_\_\_\_. These TDRs are only transferable for use on receiving sites designated by the City and only in compliance with all applicable regulation of the City.

**SECTION 8. Notice of Intent to Undertake Certain Potentially Inconsistent Activities**

Whenever Grantor plans to undertake the following uses or activities on the Protected Property, which might be inconsistent with the terms of this Easement depending on the manner in which they are carried out, Grantor will notify Grantee in writing not less than 30 days prior to the date that Grantor intends for the new activity or use to begin: (A) any Land Division of the Protected Property (Section 6.B); and (B) any extraction of minerals, soil, sand, gravel, rock, peat, sod or hydrocarbons on or below the surface of the Protected Property (Section 6.E). The notice shall describe the nature, scope, design, location, timetable and other material aspects of the proposed use to permit Grantee to make an informed judgment as to its consistency with the terms and Purpose of this Easement. Grantee may withhold its approval only upon a reasonable determination by Grantee that the use or activity as proposed would be inconsistent with the Purpose of this Easement.

**SECTION 9. Enforcement**

If Grantee becomes aware of a violation or threatened violation of this Easement by Grantor, Grantee shall provide Grantor written notice of such violation or threatened violation. Such notice shall demand that Grantor cure the violation or threatened violation within 45 days or other time period as agreed to by the Parties. Where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, such notice may include a demand to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

If corrective measures are not taken, Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement: (a) to enjoin the violation by temporary or permanent injunction; (b) to require the restoration of the Protected Property to the condition that existed prior to any such injury (normal wear and tear excepted); and (c) to recover damages for violation of the terms of this Easement or injury to the natural character protected by this Easement. In any suit, action, or proceeding to enforce or interpret this Easement, the substantially prevailing party in any such suit, action or proceeding will be entitled to recover from the non-prevailing party at all costs and expenses incurred therein, including reasonable attorneys' fees and costs of litigation, including the fees of experts and consultants, and all such costs and expenses will be included in any judgement secured by such prevailing party.

No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right to Grantee to enforce the same in the event of a subsequent breach or default.

## **SECTION 10. Costs, Liabilities, Taxes, Environmental Compliance, and Indemnification**

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 Protected Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approval 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 prevent the perfection of any liens against the Protected Property that are not subordinate to this Easement arising out of any work performed for, material furnished to, or obligation incurred by Grantor.

B. Taxes. Grantor shall pay all taxes levied against the Protected Property by government authority as they become due, and shall furnish Grantee with satisfactory evidence of payment within thirty (30) days of any such written request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of taxes upon five (5) 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 the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

C. Representations and Warranties. Grantor represents and warrants (but without investigation) and to Grantor's knowledge:

1. There are no apparent or latent defects in or on the Protected Property;
2. Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;
3. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials, or wastes that are or are

designated as, hazardous, toxic, dangerous, or harmful or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance.

4. Grantor has not disposed of any hazardous substances off-site, nor have they disposed of substances at sites designated or proposed to be designated as federal Superfund (42 U.S.C. § 9601 et seq.) or state Model Toxics Control Act (RCW 70.105D.010 et seq.) ("MTCA") sites; and

5. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor by government agencies or third parties arising out of alleged violations of environmental laws, and Grantor has not received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

D. Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Protected 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 or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary under applicable law to assure its containment and remediation, including any cleanup that may be required under applicable law, unless the release was caused by Grantee, in which case Grantee should be responsible for remediation in accordance with all applicable laws.

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 Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended "CERCLA" and MTCA.

F. Grantor's Indemnification. Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its officials, members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (Collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' 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 Protected Property that is not a consequence of any activity of any of the indemnified Parties undertaken under the rights granted to Grantee under this Easement;

2. Violations or alleged violations of, or other failure to comply with, any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or

dangerous substances or materials, including, without limitation, CERCLA and MTCA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Protected Property, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified Parties on the Protected Property;

3. The presence or release in, on, from, or about the Protected 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 of hazardous, toxic or dangerous 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;

4. The obligations, covenants, representations and warranties specified in subsections A, B, C, and D of this section.

**SECTION 11. Sale of the Protected Property**

Grantor agrees for itself, its heirs, successors and assigns, to notify Grantee in writing of the names and addresses of any party to whom the Protected Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated.

If the Protected Property is sold or otherwise conveyed, Grantor agrees to use reasonable efforts to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest, and describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property. The failure of Grantor to perform any act required by this subsection will not impair the validity of this Easement or limit its enforceability in any way.

**SECTION 12. Amendment**

This Easement may be amended by agreement of the Parties; however, any such amendment must be consistent with the Purpose of this Easement and the provisions of the City of Milton TDR Program (or any such successor thereto), the Georgia Code of Ordinances, and must be recorded in the official records of Fulton County, Georgia, and any other jurisdiction in which such recording is required.

**SECTION 13. Notices**

Any notice, approval or communication that either Party is required to send under this Easement must be given in writing to the following addresses:

To Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



To Grantee: City of Milton  
Attention: \_\_\_\_\_  
2006 Heritage Walk  
Milton, GA 30004

or to such other address as either party designates by written notice to the other.

**SECTION 14. General Provisions**

A. Recordation. Grantee will record this Easement in a timely fashion in the official records of Fulton County, Georgia, and may re-record it at any time as may be required to preserve its rights in this Easement.

B. Controlling Law and Interpretation. The interpretation and performance of this Easement is governed by the laws of the State of Georgia. Any general rule of construction to the contrary notwithstanding, this Easement will be liberally construed in favor of the grant to effect the Purpose of this Easement, the policies and purpose of the TDR Program and the policy and purposes of Chapter 64, Article XIX, Section 1.7 and Chapter 64, Article XX, Section 1.7 of the City of Milton, Georgia Code of Ordinances. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid will be favored over any interpretation that would render it invalid.

C. Severability—Entire Agreement-No Forfeiture. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement and the application of such provision to any other persons or in any other circumstances shall remain valid. This instrument sets forth the entire agreement of the Parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement.

D. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to Grantee's judicially appointed successor or an organization qualified as a "holder" pursuant to O.C.G.A. § 44-10-2. Any assignment shall not include the transfer of any development rights that have been sold. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance 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.

E. Counterparts. The Parties may execute this instrument in two or more counterparts, which will 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.

F. Effective Date. The effective date of this Easement is the date of recording in the records of the City of Milton, Georgia.

**SECTION 15. Attachments**

- A. Legal Description of Protected Property Subject to Easement.
- B. Site Map(s)

**TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.**

GRANTOR: \_\_\_\_\_  
 BY: \_\_\_\_\_  
 Name: \_\_\_\_\_

WITNESSES:  
 \_\_\_\_\_  
 \_\_\_\_\_

Sworn to and Subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

GRANTEE:

**CITY OF MILTON, GEORGIA**

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

Name: \_\_\_\_\_

Title \_\_\_\_\_

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

Sworn to and Subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**E X H I B I T A**

**Legal Description of Property Subject to Easement**

**EXHIBIT B**

**Site Map of Property Subject to Easement**