

After recording, please return to:

Athens Land Trust
2109 W. Broad Street
Athens, Georgia 30606

Deed Doc: EASE
Recorded 12/17/2008 04:22PM
Gloria M. Wall, PT61 Number:
Clerk Superior Court, BARROW County, Ga.
Bk 01438 Pg 0386-0410
Receipt # 235993

STATE OF GEORGIA
COUNTY OF BARROW

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (hereinafter this "Conservation Easement") is made this 20 th day of November 2008, by Barrow Holdings, LLC, a Georgia limited liability company (hereinafter "Grantor"), in favor of **Athens Land Trust, Inc.**, a Georgia nonprofit corporation, (hereinafter referred to as "Grantee")

The designation Grantor and Grantee as used herein shall include said parties, their heirs, personal representatives, agents, successors, assigns, lessees and licensees, and shall include singular, plural, masculine, feminine or neuter usage as required by context.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property consisting of approximately 31.58 acres located in Barrow County, Georgia, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property includes a natural habitat for wildlife and plants, extensive wetlands and open space, and possesses scenic and open space values (altogether collectively referred to as the "Conservation Values") of great importance to Grantor, and to the people of the State of Georgia and the United States, and are worthy of preservation and conservation; and

WHEREAS, the lake on the Property is a source of drinking water for the city of Statham, GA, and the Property contains significant wetlands and/or riparian resources the preservation of which contributes to the protection and improvement of water quality, aquatic habitat, wildlife habitat and recreational opportunities; and

WHEREAS, the Property contains areas that are adjacent to other potential greenspace, the lake on the Property being a municipal water source for the city of Statham, the Property is prominently visible from and provides scenic enjoyment to the general public from State Route 316, a busy thoroughfare, and the Property is otherwise important to the general public in the area; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by permitting only those land uses on the Property that do not impair or interfere with the Conservation Values; and

WHEREAS, Grantor also intends to manage the Property in accordance with that certain Management Plan dated November 12, 2008 as amended from time to time ("the Management Plan"), prepared by Grantor and Grantee, which provides for improving the natural resources on the Property; and

WHEREAS, the grant of this Conservation Easement will also serve the following clearly-delineated Federal, State, and local governmental conservation policies and will yield a significant public benefit:

- (1) Soil and Water Conservation Districts Law, O.C.G.A. §§ 2-6-20, *et seq.*;
- (2) Conservation and Natural Resources, O.C.G.A. §§ 12-6A-1 *et seq.*;
- (3) Georgia Preferential Conservation Use Assessment and Taxation Law, O.C.G.A. § 48-5-7.4;
- (4) Conservation and Natural Resources, O.C.G.A. §§ 12-6A-1 *et seq.*;
- (5) Georgia Conservation Tax Credit Program, O.C.G.A. § 48-7-29.12; and

WHEREAS, Grantee is a nonprofit corporation, one of whose purposes is to preserve and conserve areas such as the Property, and the protection, preservation and protection of the Property is in line with its mission; and

WHEREAS, Grantee is a "qualified organization" (hereinafter a "Qualified Organization") within the meaning of Sections 170(h) and 501(c)(3), respectively, of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (hereinafter the "Code"); and

WHEREAS, Grantee is a qualified "holder" within the meaning of O.C.G.A. § 44-10-2(2); and

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

NOW, THEREFORE, as an absolute gift of no monetary consideration but in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Georgia and in particular O.C.G.A. § 44-10-1 *et seq.*, which expressly authorizes the conveyance herein contained, Grantor hereby voluntarily grants and conveys to Grantee a perpetual, irrevocable conservation easement over, across and through the Property, together with all unreserved development rights associated with the Property, of the nature and character and to the extent hereinafter set forth (this

"Conservation Easement"). Grantee, by its execution hereof, accepts the foregoing grant and the recordation of this Conservation Easement shall constitute a "recordation of the acceptance" by Grantee within the meaning of O.C.G.A. § 44-10-3.

ARTICLE I. PURPOSE

The general purpose of the Conservation Easement is to preserve and protect the Conservation Values of the Property and to maintain permanently the woodland, scenic, open space and natural character of the Property, including land and water resources; and to prevent any use of the Property that will impair or interfere with the Conservation Values or interests of the Property. Grantor intends that this Conservation Easement shall restrict the use of the Property to such activities, including those involving the use of the Property as open space, which is not inconsistent with the purposes of this Conservation Easement.

The specific Conservation Values of the Property are documented in an inventory of relevant features of the Property dated November 13, 2008, which is incorporated herein in its entirety by this reference (hereinafter referred to as the "Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the present condition and uses of the Property as it exists as of the date of this Conservation Easement and which is intended to serve as an objective, although a non-exclusive, information baseline for monitoring compliance with the terms of this Conservation Easement. The Baseline Documentation has been prepared in three originals which the parties agree to maintain and preserve. At least one of such originals of the Baseline Documentation will be maintained by Grantee in a secure location pursuant to its standard internal operating procedures and policies.

ARTICLE II. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. This Conservation Easement 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 III. RIGHTS OF GRANTEE

To accomplish the purpose of this Conservation Easement, the following rights are conveyed to Grantee:

- A. To preserve and protect the Conservation Values of the Property; and
- B. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Conservation Easement, including without limitation, the right to enter upon the Property to monitor compliance with the Management Plan and this Conservation Easement; provided that, except in case where Grantee determines that immediate entry is required to prevent, terminate or mitigate a violation of this Conservation Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not 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 purpose of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to this Conservation Easement; and

D. To display on the Property, at its discretion, such signs as it may customarily use to identify lands under conservation easement, the terms of this Conservation Easement and the Conservation Values being protected; and

ARTICLE IV. PROHIBITED USES

Any activity on or use of the Property materially inconsistent with the purpose of this Conservation Easement is prohibited. The Property shall be used in a manner consistent with land use patterns as of the date of this Conservation Easement, including those uses related to the use of the Property as open space. Without limiting the generality of the foregoing and except as pursuant to express reservations or as specifically permitted in Article V of this Conservation Easement, the following activities and uses on the Property are expressly prohibited:

- A. **Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural, scenic, and aesthetic features of the Property is prohibited.
- B. **Residential, Industrial, Institutional, and Commercial Use.** Residential, industrial, institutional and commercial activities are prohibited except as expressly permitted in Article V.
- C. **Vegetation.** There shall be no removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any vegetation, nor any disturbance or change in the natural habitat in any manner on the Property, except as may be required for activities or uses expressly permitted in Article V of this Conservation Easement. No plants listed as pests by Georgia Exotic Pest Plant Council may be introduced on the Property. All vegetation management shall follow the Management Plan for Property.
- D. **Agricultural and Horticultural Uses.** Commercial agricultural, silvicultural and horticultural use and commercial livestock production are prohibited.
- E. **Subdivision and Development.** There shall be no legal or *de facto* division, subdivision or partitioning of the Property for any purpose.
- F. **Mineral Use, Excavation, Dredging.** There shall be no filling, excavation, dredging, mining or drilling, no exploration for or removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land.
- G. **Dumping.** There shall be no processing, storage, dumping or disposal of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or any other materials.
- H. **Water Quality and Drainage Patterns.** There shall be no pollution, manipulation, alteration, disruption, depletion or extraction of surface water, natural water courses, subsurface water, wetlands, marshes or any other water bodies. Riparian buffers and wetlands management

zones shall be maintained for all surface waters, wetlands or other water bodies on the Property and shall meet or exceed standards accepted as best management practices by the Georgia Forestry Commission.

I. Lighting. No lights or lighting, outdoor or otherwise, may be installed, except as expressly permitted in Article V.

J. Utility Systems. The installation or expansion of new or existing utility systems, including without limitation, telecommunication facilities, microwave towers and similar structures, is prohibited, except as expressly permitted in Article V.

K. Improvements, Roads and Structures. There are currently no structures or improvements on the Property. Placement, installation or construction of any temporary or permanent buildings, structures or other improvement on the Property is prohibited, except as expressly permitted in Article V.

L. Tanks. Installation or construction of underground storage tanks or septic systems is prohibited, except as expressly permitted in Article V.

M. Recreational Uses. Except as otherwise expressly permitted by Article V, recreational activities are prohibited. Except as otherwise permitted by Article V or as required by applicable law, no motorized (gas, battery, or otherwise) vehicles, boats or bicycles, or horses shall be permitted within any portion of the Property.

ARTICLE V. PERMITTED USES

The following activities and uses are expressly reserved by Grantor and permitted by this Conservation Easement:

A. Residential, Industrial, Institutional, and Commercial Use. Grantor will retain the right for residential and commercial use in the 1.8 acre Building Envelope as identified in Exhibit D. The location is approximate and can be relocated with prior written approval of Grantee. The Building Envelope must be located outside of the 200 foot riparian buffers from the lake, streams and wetlands and not impact important vegetation areas or steep slopes. Commercial use may include the provision of conference facilities. All commercial use must have the prior written approval of Grantee. Approval of Grantee required by this paragraph shall not be unreasonably withheld, conditioned or delayed.

B. Improvements, Roads, and Structures. No new roads may be constructed or established, except a road to access the Building Envelope (the "Driveway"), or within the Building Envelope as reasonably required to support the conduct of permitted residential or commercial activities on the Property, or to access any dock. The Driveway, and all improvements including grading and clearing shall be no wider than 40 feet in width. The road to the dock shall be no wider than 10 feet in width (including clearing limits, 15 feet in width) and shall be pervious. The construction of the Driveway and the road to access the dock shall not interfere with the Conservation Values and are subject to the prior written approval of Grantee, which approval shall not be unreasonably withheld, conditioned or delayed.

The stream on the Property may be bridged through use of an "arched", "bottomless" or "non-embedded" culvert or a bridge span, or such other structure as approved by Grantee. These should be sized to span the bank full stage without any construction that would impede the flow of the water and disturb the natural stream bottom. The construction of any such structure shall follow the Management Plan, not interfere with the Conservation Values and be subject to the prior written approval of Grantee, which approval shall not be unreasonably withheld, conditioned or delayed.

Construction of a covered pavilion which shall have an area no greater than 200 square feet is allowed on the Property. The construction of the covered pavilion shall not interfere with the Conservation Values and is subject to the prior written approval of Grantee, which approval shall not be unreasonably withheld, conditioned or delayed.

Installation and construction of any temporary or permanent outbuildings, buildings, structures (excluding the pavilion), parking areas (including pervious areas) or other improvements on the Property is allowed provided that: (i) they shall be located exclusively in the Building Envelope as depicted in Exhibit D or otherwise approved by Grantee in accordance with Article V(A) (ii) they shall not interfere with the Conservation Values and be subject to the prior written approval of Grantee, which approval shall not be unreasonably withheld, conditioned or delayed; and (iii) the aggregate surface area of all impervious surfaces, roads (excluding the Driveway) and parking areas (including pervious areas), and buildings, or other improvements or structures, shall not exceed fifty (50%) of the total acreage of the Building Envelope.

C. Removal of Vegetation. Controlled cutting or removal of trees to control or prevent disease, fire or hazard is permitted. Controlled pruning of dead or hazardous vegetation affecting the Driveway, views, Trails or raised walkways is permitted. View corridor management, vista pruning, removal of exotic or non-native vegetation and re-vegetation with native plants is permitted. Such activities shall be carried out in accordance with the Management Plan, as may be amended from time to time, and as approved by Grantee, such approval not to be unreasonably withheld, conditioned or delayed. Grantor shall maintain the natural, scenic and aesthetic features of the Property to the greatest extent practicable and meet or exceed standards accepted as best management practices by the Georgia Soil and Water Conservation Commission.

D. Vegetation. Grantor shall have the right to plant and landscape within the 1.8 acre Building Envelope on the Property, except for plants listed on the Georgia Exotic plant list which are known to spread aggressively and possibly create detriment to native habitat nearby. Any planting outside of the Building Envelope for the purpose of restoring native habitats and landscapes must be with native species and work must meet or exceed standards accepted as best management practices by the Georgia Soil and Water Conservation Commission shall be carried out in accordance with the Management Plan, as may be amended from time to time, and as approved by Grantee in writing, such approval not to be unreasonably withheld, conditioned or delayed.

- E. Signage.** Grantor and Grantee are allowed the posting of "No Trespassing" signs, "No Hunting" signs, signs identifying (i) lands under a conservation easement, (ii) the Conservation Values of the Property, and/or (iii) signs identifying the Grantor as owner of the Property. Any signs posted, other than the specific signage permitted hereunder, must be approved by Grantee prior to posting on the Property, such approval not to be unreasonably withheld, conditioned or delayed.
- F. Water Quality and Drainage Patterns.** Permitted activities shall include, but are not limited to, the right to (i) develop, restore and enhance water resources for wildlife improvement; (ii) maintain, replace, dredge the lake for water quality and wildlife preservation; (iii) conduct stream and wetlands restoration and mitigation; and (iv) undertake bank stabilization measures and erosion control necessary for drainage and erosion control to preserve wetland areas and streams. These works require the prior written approval of Grantee, which shall not be unreasonably withheld, conditioned or delayed.
- G. Utility Systems.** Grantor may use, maintain, modify, repair and improve existing utilities within the Building Envelope. Grantor may bore or drill wells for water to be used to support the permitted residential and commercial activities conducted on the Property. Any equipment required for the boring or drilling of wells must remain within the Driveway and the Building Envelope. Grantor may (i) construct new utility systems within the Building Envelope; (ii) connect to gas, electric, water and cable to the Building Envelope; (iii) connect to the Public Sewer System, both connections ideally along the driveway, so long as these are approved by Grantee in writing, such approval not be unreasonably withheld, conditioned or delayed, and do not interfere with the Conservation Values. Any such works shall be in accordance with the Management Plan.
- H. Lighting.** Grantor may install lights and lighting on permitted structures within the Building Envelope and along the Driveway, as reasonably required to support the conduct of permitted residential and commercial activities on the Property. All outdoor lighting must be minimal, low level, downward focused, "full-cut off" and be carried out in accordance with the Management Plan.
- I. Dock:** Grantor shall have the right to construct a dock on the lake on the Property, so long as the construction thereof does not interfere with the Conservation Values. The plans for the dock shall be approved by Grantee in writing, such approval not be unreasonably withheld, conditioned or delayed. Any necessary permits for the construction shall be obtained by Grantor.
- J. Tanks.** Installation, construction and maintenance of underground septic systems is permitted only within the 1.8 acre Building Envelope. Drain Fields for aforementioned systems must also be located within Building Envelope, unless a system is proposed that is determined not to impact Conservation Values and is approved in writing by Grantee, such approval not be unreasonably withheld, conditioned or delayed.
- K. Recreational Uses.** Except as otherwise prohibited herein, horseback riding, hiking, fishing, bird watching, swimming, canoeing and boating and similar types of recreational activities not involving any permanent structures or impervious surfaces, motorized vehicles or other motorized equipment are permitted. Use of motorized (gas, battery or otherwise) boats

shall be permitted only to the extent that such is in conformity with all rules, legislation, or ordinances applicable to the lake on the Property, provided that use of motorized boats in connection with commercial use on the Property shall be approved by Grantee in order that the Conservation Values of the Property be protected.

L. Fencing. Grantor may install any fences, from time to time, as is necessary to prevent trespassing onto the Property, or as required by local ordinance, as long as the fencing does not prevent wildlife from passing through, and is consistent with the purposes of this Conservation Easement. Any type of fencing is allowed within the Building Envelope.

M. Trails and Improvements. Construction and maintenance of Trails (without paving or impermeable surfaces) not to exceed 6' in width are permitted. Raised walkways to access the Trails are permitted so long as they do not exceed 6 feet in width. The construction of footbridges to traverse the stream is permitted. The placement of swings and benches is permitted. Furthermore, all Trails, footbridges and raised walkways shall be constructed and all swings and benches located so as to minimize adverse impacts to Conservation Values and minimize disturbance to surrounding vegetation. Such construction shall take into account the topography of the Property, with no portion of a Trail or raised walkway running perpendicular (90 degrees) to the nearest elevation contour. Notwithstanding the foregoing sentence, water diversions may be installed where appropriate to prevent serious erosion. Trails and raised walkways shall be located outside of any applicable federal, state, or local riparian buffer. The construction of all Trails, footbridges and raised walkways, and the location of any swings and benches is subject to the prior written approval of Grantee, which approval shall not be unreasonably withheld, conditioned or delayed.

N. Wildlife Habitat. Placement of nest boxes or other structures for wildlife habitat are permitted as long as consistent with the purposes of this Conservation Easement.

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

ARTICLE VI. TRANSFERABLE DEVELOPMENT RIGHTS

Grantor hereby grants to Grantee all transferable, cluster or other development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties hereto agree that any such rights are terminated and extinguished, and may not be used or transferred to any portion of the Property, or to any other property, nor used for the purpose of calculating permissible lot yield of the Property or any other property. All rights to develop or

use the Property that are prohibited by or inconsistent with this Conservation Easement are extinguished, and cannot be used to transfer development rights to other land owned by the Grantor or any other party, or to permit increased development density or increased natural resource use or extraction on other property.

ARTICLE VII. NOTICE AND APPROVAL REQUIREMENT OF INTENTION TO UNDERTAKE CERTAIN PERMITTED ACTIONS

The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Conservation Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Easement. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantor's written request. Failure by Grantee to respond in writing within said 45 day period shall be deemed approval. Grantee's approval may be withheld upon a reasonable determination by such Grantee that the action as proposed would be inconsistent with the purposes of this Conservation Easement.

ARTICLE VIII. ENFORCEMENT

A. Grantee Remedies. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee (a) may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation Easement, including without limitation, the value of any minerals, timber, open space, other resources, or Conservation Values removed or eliminated from the Property, and to require the restoration of the Property to the condition that existed prior to any such injury, and/or (b) have the right (but not the obligation) to enter upon the Property and perform any necessary work to cure such violation and to collect the documented costs of such work from Grantee. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee, in its sole discretion, may determine 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 Grantor. Grantee's rights under this Article apply

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

C. Enforcement Discretion. Enforcement of the terms of this Conservation Easement shall be at the discretion of Grantee, and any forbearance by Grantee of the exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed nor construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

D. Management Plan. The Grantor shall carry out all construction of utility projects and stream crossings, lighting placement, vegetation management including landscaping, planting, clearing for lake view, removal of exotic species, pruning and cutting of vegetation on the Property, as set out in this Conservation Easement, in a manner consistent with a Management Plan (referred to herein as the "Management Plan.) Grantor and Grantee shall establish the management plan by mutual agreement for the management of the Conservation Values of the Property. The Management Plan shall include conservation and management strategies for the Property, including, but not limited to, what conservation tools will be employed and what funding resources are available. The Management Plan shall be reviewed at least annually, and shall be revised when appropriate by mutual agreement of Grantor and Grantee. Grantee shall have the right to enter upon the Property, with advance notice to the Grantor, to monitor compliance with the Management Plan.

If the Grantor does not comply with the Management Plan, Grantee shall notify Grantor in writing of the Grantor's noncompliance. Grantee in its sole discretion may give the Grantor a reasonable amount of time, not to exceed twelve (12) months, to take corrective action. Grantor shall have three (3) months to appeal Grantee's notification of non-compliance, and Grantee's decision thereon shall be final.

ARTICLE IX. COSTS OF ENFORCEMENT

If a court having jurisdiction has determined that a violation of this Conservation Easement has occurred any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including without limitation, costs of suit and attorneys' fees, monitoring fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement and the value of any lost Conservation Values shall be borne by

Grantor. If Grantor prevails in any action to enforce the terms of this Conservation Easement, each party shall bear its own costs.

ARTICLE X. WAIVER OF CERTAIN DEFENSES

Grantor hereby waives any defense of laches, estoppel, or prescription.

ARTICLE XI. ACTS BEYOND GRANTOR'S CONTROL

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's 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. In the event the terms of this Conservation Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees, at either Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee, its attorney-in-fact for the purposes of pursuing enforcement action against the responsible parties.

ARTICLE XII. COSTS AND LIABILITIES

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage, as determined in Grantor's reasonable judgment. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantee shall have no obligation for the upkeep and maintenance of the Property.

ARTICLE XIII. APPROVAL FEES AND COSTS

Grantor understands and agrees that in many instances, changes or disturbances to the Property will require Grantee's approval under the terms of this Conservation Easement. Grantor further understands and agrees that in order to consider such potential changes or disturbances for approval will require substantial further effort and expense by Grantee. For this reason, Grantor understands and agrees as follows:

- A. to compensate Grantee for all reasonable fees and expenses incurred by Grantee in the approval process including, but not limited to, compensating Grantee for its internal staff time at Grantee's hourly rate at the time approval is requested. (At the time of execution such hourly rate is \$60.00.)
- B. that it shall be responsible for paying such fees and expenses regardless of whether Grantee grants or denies any requested approval.

- C. that failure to agree to or pay such fees and expenses shall be a violation of this Conservation Easement subject it to the Enforcement procedures set out herein in addition to any other liability for such breach.
- D. that these provisions cover any future action by Grantor that requires Grantee's approval under the terms of this Conservation Easement regardless of whether such is presently contemplated.

ARTICLE XIV. 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 Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. In the event either Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor shall reimburse Grantee within ten (10) days of Grantee's payment of such taxes or assessments.

ARTICLE XV. EXTINGUISHMENT AND PROCEEDS

- A. **Valuation.** If the easement is terminated and the Property is sold or is taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributed to new improvements made after the date of the conveyance, which amount shall be reserved to Grantor), equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement.
- B. **Extinguishment and Proceeds.** If circumstances arise in the future such as to render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. If this Easement is terminated and the Property subsequently is sold, exchanged, disposed of or taken by involuntary conversion or condemnation, 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 at least equal to the Easement Percentage, unless otherwise provided by Georgia law, less the value of any amount Grantor and Grantee attribute to as the value of new improvements made after the date of the conveyance, which sum shall be reserved to Grantor. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

C. **Condemnation.** If all or any portion of the Property is taken by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law and this Conservation Easement, and Grantor and Grantee agree to join in all necessary and appropriate actions to recover the full value of such compensation, including all incidental damages.

ARTICLE XVI. ASSIGNMENT, AMENDMENT AND CERTIFICATION

This Conservation Easement is transferable, but Grantee may assign its rights and obligations under this Conservation Easement only to an entity that is a Qualified Organization authorized to acquire and hold conservation easements under O.C.G.A. § 44-10-1 *et seq.* (or any successor provision then applicable) and that satisfies the requirements of §170(h)(3) of the Code (or successor provisions thereof.) As a condition of such transfer, Grantee shall require that the Conservation Values that this Conservation Easement is intended to advance continue to be carried out as required in Treasury Regulations §1.170A-14, as amended. Grantee agrees to give written notice to Grantor of an assignment of 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 Conservation Easement or limit its enforceability in any way.

If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee, or their successor or assigns, may subject to the approval process discussed below, amend this Conservation Easement; provided that no amendment shall be made that will adversely affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c) (3) of the Code and the Georgia Uniform Conservation Easement Act, O.C.G.A. § 44-10-1 *et seq.* Any such amendment shall be consistent with the purposes of this Conservation Easement, shall not affect its perpetual duration, and shall result in equal or greater protection of the Conservation Values on the Property. Nothing herein shall require Grantee to agree to any amendment, and Grantee shall obtain approval of the Georgia Land Conservation Council or its successor State of Georgia entity; for any amendments, which approval shall not be granted; if in the sole discretion of the State of Georgia, the proposed amendment adversely affects the Conservation Values of the Property. In the event no successor State of Georgia entity exists, the contact agency will be the State Properties Commission or the State of Georgia entity then responsible for the accounting of state property. Each reviewing entity shall have 90 days to comment on any requested amendment.

In the event the parties agree to submit this Easement for certification by the Georgia Conservation Tax Credit Program, Grantor and Grantee agree to comply with the requirements for certification, and this Easement, as amended, shall be further subject to the terms and requirements of such Program and certification.

ARTICLE XVII. SUBSEQUENT TRANSFERS; NO MERGER

Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which either Grantor divests himself or herself 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 thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Article shall not impair the validity of this Conservation Easement or limit its enforceability in any way. The Grantor and Grantee agree that it is the express intent of the parties that the provisions of this Conservation Easement remain in perpetuity, and no purchase or transfer of the fee interest in the Property to Grantee or any successor or assignee shall be deemed to terminate this Conservation Easement pursuant to the doctrine of merger or any other legal doctrine. The Grantor and Grantee agree not to take any action that would result in the vesting of the fee and this Conservation Easement in one holder.

ARTICLE XVIII. ESTOPPEL CERTIFICATES

Upon written request by Grantor and at Grantor's sole expense, Grantee shall within sixty (60) days of such request execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be requested by Grantor; provided that Grantor shall reimburse Grantee for all costs, including any update to the Baseline Documentation, incurred by Grantee and associated with Grantor's request.

ARTICLE XIX. MEDIATION

If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, the parties may agree to refer the dispute to mediation. Within thirty (30) days of the agreement to mediate such dispute, 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, 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:

A. 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 Conservation Easement.

B. 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.

C. 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.

D. 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.

E. Costs. The costs of the mediator shall be borne equally by Grantor and Grantee. Each party shall bear its own expenses, including attorneys' fees.

F. Venue. The venue for the mediation shall be located in Athens, Georgia or such other location mutually agreeable to Grantor and Grantee.

ARTICLE XX. GRANTOR REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

A. Title. Grantor hereby represents and warrants that Grantor has good and marketable title to the Property in fee simple and has the right to grant and convey this Conservation Easement, that the Property is free and clear of any and all encumbrances except as set forth on Exhibit C to this Conservation Easement, and that Grantee and their successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement. Grantor hereby warrants and shall forever defend title to the Property against the claims of all persons whomsoever. In the event of a failure of title, Grantor shall reimburse the Grantee for the fair market value of the Conservation Easement, less any proceeds received by the Grantee from title insurance.

B. Environmental Compliance. Grantor represents and warrants that to the best of his actual 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 in all material respects with all federal, state and local laws, regulations, and requirements applicable to the Property and its uses;

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 circumstance that Grantor might reasonably expect to form the bases for any such proceedings, investigations, notices, claims, demands, or orders.

C. 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, upon written request by Grantee, Grantor agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

D. Control. Nothing in this Conservation 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 owner or 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.

E. Indemnification. Grantor hereby releases and shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demand, orders, judgments, or administrative actions, including without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) the Property, including the violation or alleged violation of, or other failure to comply with, any state, federal or local law, rule, regulation, requirement or ordinance,

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; and (2) Grantor's breach of any representation, warranty, covenant or provision of this Conservation Easement, including the failure of title to the Property.

ARTICLE XXI. NOTICES

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by commercial courier service or first class mail, postage prepaid, return receipt requested, addressed as follows:

To Grantor: Dr. Jagdish Sheth
Barrow Holdings, LLC
1549 Clairmont Road
Suite 203
Decatur, GA 30033

with copy to: Jeff Woodard
Stites & Harbison, PLCC
303 Peachtree Street
Atlanta, Georgia 30308

To Grantee: Athens Land Trust, Inc.
2109 West Broad Street
Athens, Georgia 30606
Attention: Conservation Director

or to such other address as such parties from time to time shall designate by written notice to the others.

ARTICLE XXII. RECORDATION

Grantee shall record this instrument in timely fashion in the official records of the Clerk of the Superior Court of Barrow County, Georgia and may re-record it at any time as may be required to preserve their rights in this Conservation Easement.

ARTICLE XXIII. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Georgia and the United States.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the purposes of this Conservation Easement and the policy and purpose of O.C.G.A. § 44-10-1 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation 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 Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation 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 this Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Conservation 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 Obligations. If there is more than one Grantor, the obligations imposed by this Conservation Easement upon Grantor shall be joint and several.

G. Successors. The covenants, terms, conditions, and restrictions of this Conservation 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.

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

K. Legal Counsel. Each party represents to the other that each has independent legal advice, by counsel of his or her or its own selection, in the negotiation of this Conservation Easement. Each party understands the facts, and has been fully informed in regard to his or her

legal rights and obligations, and each has signed this Conservation Easement freely and voluntarily, intending to be bound by it.

L. Baseline Documentation. Grantee acknowledges, by their acceptance of this Conservation Easement, that Grantor's historical and present uses of the Property are compatible with the purposes of this Conservation Easement. To establish a present condition of the Conservation Values so as to be able to monitor future uses of the Property and assure compliance with the terms hereof, the Grantee has prepared or caused to be prepared the Baseline Documentation, as described in Article I, which is incorporated in its entirety herein by reference. Grantor and Grantee acknowledge and agree that the Baseline Documentation is an accurate representation of the present state of the Property. Grantor and Grantee acknowledge and agree that the Baseline Documentation shall be used to assist in establishing the condition of the Property as of the date of this Conservation Easement. Grantor and Grantee acknowledge and agree that, in the event that a controversy arises with respect to the nature and extent of Grantor's historical and present use or the physical condition of the Property subject to the Conservation Easement as of the date hereof, the parties may look beyond the Baseline Documentation, if necessary, to other relevant or material documents, surveys, reports and other evidence showing conditions at the time of execution of this Indenture to assist in the resolution of the controversy.

M. Time is of the Essence. Time is of the essence in this Conservation Easement.

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

IN WITNESS WHEREOF, Grantor has executed, sealed and delivered this Deed of Conservation Easement, and Grantee has caused those presents to be accepted and signed in its corporate name as of the day and year first above written.

Signed, sealed and delivered in the presence of

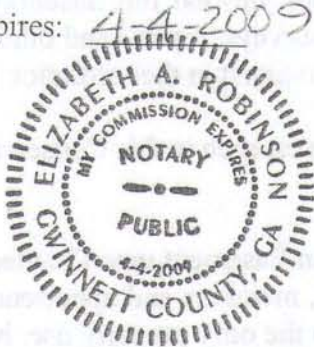
GRANTOR: BARRON HOLDINGS, LLC

Nancy Funk
Name: Nancy Funk
Unofficial Witness

JW (Seal)
NAME: JAGDISH N. SHETH
TITLE: MANAGING MEMBER

Name: Elizabeth A. Robinson
Notary Public
My Commission Expires: 4-4-2009

[Affix Notary Seal]



Signed, sealed and delivered in the presence of

Grantee:

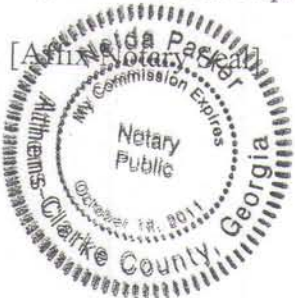
Athens Land Trust, Inc., a Georgia nonprofit corporation

SABRINA CVADRA
Name: SABRINA CVADRA
Unofficial Witness

By: A. Gregg Bayard
Name: A. Gregg Bayard
Title: Board Secretary

Nelda Parker
Name: Nelda Parker
Notary Public
My Commission Expires: 10-18-2011

[Corporate Seal]



SCHEDULE OF EXHIBITS

- Exhibit A Legal Description of the Property
- Exhibit B Survey
- Exhibit C Permitted Exceptions
- Exhibit D Building Envelope Location Map

Exhibit A
Legal Description of the Property

LEGAL DESCRIPTION OF CONSERVATION EASEMENT

ALL THAT TRACT of land lying and being in Land Lot 72 of the 3rd District Parcel 120 B, Barrow County, Georgia, located off of N. Hammond Drive labeled as Drainage Easement as shown on plat prepared by Bullard Land Planning, Inc. Dated October 9, 2008 and more particularly described as follows:

Conservation Easement

Commencing a point where the Westerly R/W of McCarty Road intersects the Southerly R/W of Hwy 316; thence 400.06 feet in a Northwesterly direction along said Southern R/W of Hwy 316 to the point of beginning; thence bearing S 23-30-15 W a distance of 60.68 feet ; thence bearing S 49-20-26 W a distance of 359.92 feet ; thence bearing N 40-39-07 W a distance of 235.00 feet ; thence bearing N 70-20-01 W a distance of 171.56 feet ; thence bearing S 49-20-26 W a distance of 320.00 feet ; thence bearing S 20-53-49 E a distance of 367.98 feet ; thence bearing S 49-20-26 W a distance of 768.83 feet ; thence bearing N 53-35-28 W a distance of 759.77 feet ; thence bearing N 26-59-47 E a distance of 1242.69 feet ; thence along a curve to the RIGHT, having a radius of 3710.72 feet, a delta angle of 7.264, and whose long chord bears S 73-54-41 E a distance of 470.11 feet ; thence bearing S 70-26-16 E a distance of 957.54 feet to the point of beginning. Said described tract containing 31.58 acres more or less.

Exhibit B
Survey

Survey dated March 14, 2008 for Barrow Holdings LLC prepared by Bullard Land Planning,
Registered Surveyor

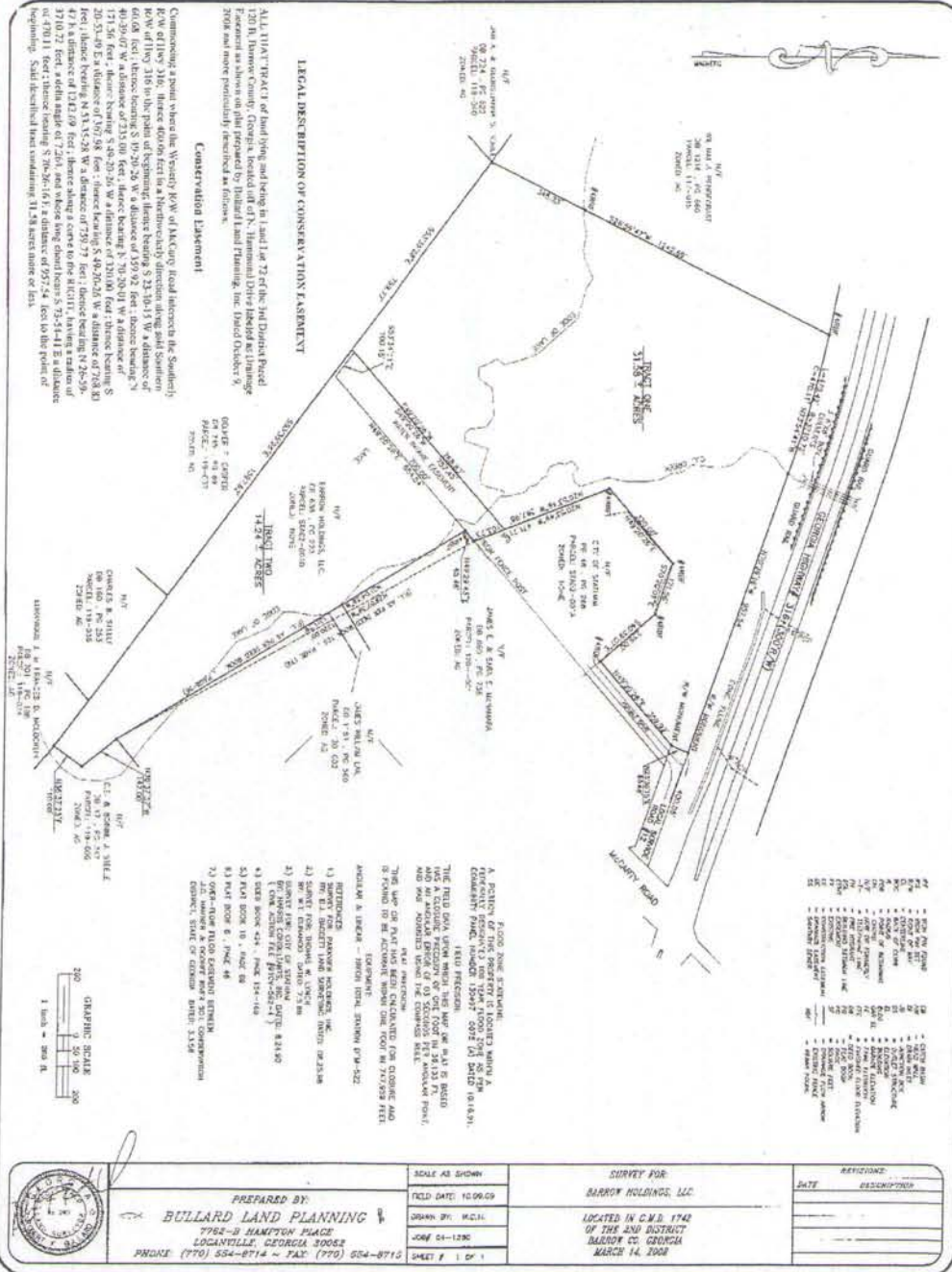
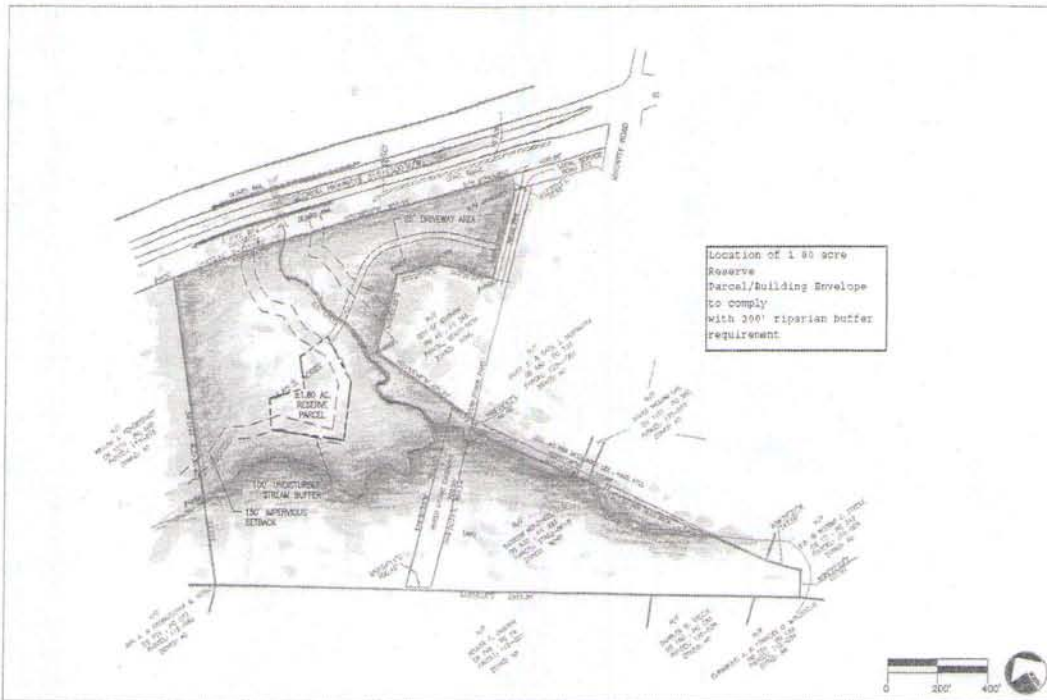


Exhibit C
Permitted Exceptions



Exhibit D



Location of 1.80 acre Reserve Parcel/Building Envelope to comply with 300' riparian buffer requirement

PAULSON MITCHELL
INCORPORATED

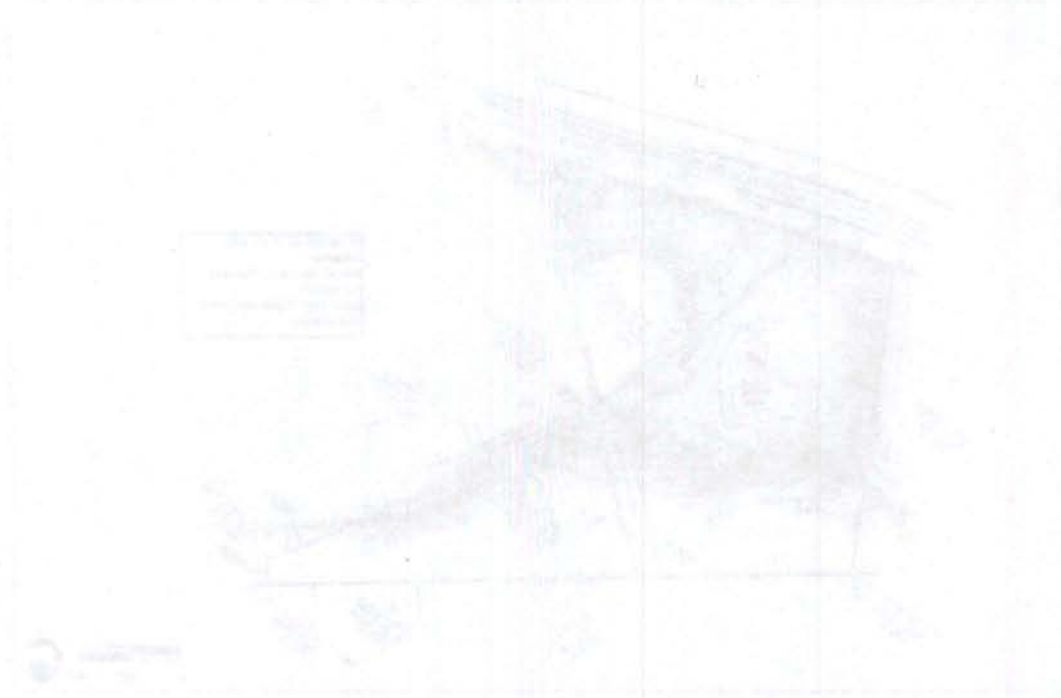
LAND PLANNING
ENGINEERING SURVEYING
LANDSCAPE ARCHITECTURE
254 Main Street
Bristol, Georgia 30613
Phone: 770.440.0881
Fax: 770.440.0882

SHEET TITLE:
CONSERVATION PLAN

PROJECT:
SHETH PRESERVE
CONSERVATION EASEMENT
74X PARCEL, SITE 0118
1742 G.M.D., 2ND DISTRICT
BARROW COUNTY, GA
P/E:
DR. JAGDISH SHETH

PROJECT NO:
2908218.72.dwg
DATE:
05.24.08

Figure 1



CONSTRUCTION PLAN

SECTION A-A