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ANGELA WATSON
CLERK OF SUPERIOR
COURT
OCONEE COUNTY

STATE OF GEORGIA
COUNTY OF OCONEE.

CONSERVATION EASEMENT AGREEMENT

This Conservation Easement Agreement (herein "Easement") is made this _____ day of _____, 2006, by and between Oconee Coldwater Creek, LLC, a Georgia limited liability company, (hereinafter referred to as "Grantor") and Oconee Coldwater Creek Homeowners Association, Inc., a Georgia non-profit corporation, (hereinafter referred to as "Grantee" or "Homeowners Association") as TRUSTEE to hold this Conservation Easement in trust for the benefit of the owners of various lots within Coldwater Creek Subdivision and for the benefit of the citizens of Oconee County, Georgia.

RECITALS

WHEREAS, Grantor owns in fee simple certain real property located in Oconee County, Georgia described as follows:

All that tract or parcel of land situate, lying and being in the 221st District, G. M. of Oconee County, Georgia, being known and designated as "Greenspace 12.616 acres" as more particularly shown on a plat of survey entitled, "Final Plat for: Coldwater Creek - Phase Two Pebblebrook & Coldwater Creek - Block B", by Woods & Chastain Surveyors, Inc., dated April 6, 2006, recorded in Plat Book 30, page 363-366 in the Office of the Clerk of the Superior Court of Oconee County, Georgia, subject to the 60 foot easement for ingress, egress and utilities shown thereon.

Said real property described above being hereinafter referred to as the "Property"; and

WHEREAS, the Property possesses natural, scenic, and open space values (collectively "conservation values") of great importance to Grantor, the various owners of lots within Coldwater Creek Subdivision, and the people of Oconee County; and

WHEREAS, Grantor is willing to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting to the use of the land of the Property, on the terms and conditions and for the purposes hereinafter set forth, and Grantee, as Trustee, is willing to accept such conservation Easement; and

WHEREAS, Grantor, the various owners of lots within Coldwater Creek Subdivision, and the

people of Oconee County, Georgia recognize the conservation value of the Property in its present state as open space where such preservation is for the scenic enjoyment of the various owners of lots within Coldwater Creek Subdivision, and for the protection of the open space values in perpetuity; and

WHEREAS, the provisions of the Oconee County Zoning Regulations pertaining Master Planned Developments, the "Ordinance" sets forth the requirements for such open space; and

WHEREAS, it is the intent of the Grantor that the Property be preserved in perpetuity for preservation of open space which shall specifically include, but not be limited to, the scenic enjoyment of the various owners of lots within Coldwater Creek Subdivision consistent with the intent of preservation principles;

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth and for the sum of Ten and No/100s ($10.00) Dollars, Grantor hereby unconditionally and irrevocably grants and conveys unto Grantee, as TRUSTEE, its successors and assigns, forever and in perpetuity a non-exclusive Conservation Easement (the "Easement") of the nature and character and to the extent hereinafter set forth, over the Property, together with the non-exclusive right to preserve and protect the conservation values of the Property. Grantee, by its execution hereof, accepts the foregoing grant of the Easement in Trust, and the recordation of this instrument shall constitute a "recordation of the acceptance" by Grantee, as Trustee.

ARTICLE I. PURPOSE

It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its natural, scenic, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values or interests of the Property. Grantor intends that this Easement will confine the use of the Property to such activities as are not inconsistent with the purpose of this Easement.

ARTICLE II. DURATION OF EASEMENT

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

ARTICLE III. RIGHTS OF GRANTEE

Grantee, as Trustee, is granted the right to engage in, or permit or invite others to engage in use of the Property for scenic, educational, and recreational uses that are not expressly prohibited herein and are not inconsistent with the purposes of this Easement.

ARTICLE IV. RIGHTS OF OCONEE COUNTY

Grantor hereby grants to Oconee County, a body politic and corporate and political subdivision of the State of Georgia, the following rights in and to the Property, subject however to the terms of Article V:

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;

C. To prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

ARTICLE V. PROHIBITED, RESTRICTED ACTIVITIES AND SPECIFIC REQUIRED ACTION

Except as to matters required by the Ordinance and approved plans for the development of the subdivision, any activity on, or use of, the Property inconsistent with the purposes of this Easement is prohibited; development that would significantly impair or interfere with the conservation values of the Property is prohibited; and the following activities and uses are expressly prohibited:

A. Prohibition on Industrial and Commercial Use. Industrial, commercial and manufacturing activities, including but not limited to, commercial agriculture and horticulture use and livestock production, are prohibited.

B. Subdivision. Subdivision or partitioning of the Property for any purpose is prohibited, except for the provision of utility easements as may be required by Oconee County and except for a 60 foot easement for ingress, egress and utilities shown on the above referenced plat.

C. Construction. The construction or placement of structures of any kind or of improvements, is prohibited, except for the construction, placement and maintenance of a structure aiding in the conservation use and value of the Property, which, if any, shall be done so as to minimize the impact on surrounding vegetation, and shall be done in accordance with all local and state building regulations and constructed with materials in keeping with the surrounding features of the Property.

D. Dumping. Disposal of soil, trash, ashes, grass clippings, garbage, waste, construction debris, abandoned vehicles, appliances, machinery, hazardous substances, sewage, or other materials on the Property is prohibited. The installation of underground storage tanks is prohibited.

E. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining, drilling, or removal of topsoil, sand, gravel, rock peat, minerals or other materials; and no change in the topography of the land in any manner.

F. Water Quality and Drainage Patterns. There shall be no pollution, alteration, depletion or extraction of surface water or natural water courses, subsurface water or any other water bodies. Notwithstanding the foregoing, there shall be no activities conducted on the Property or an adjacent property if owned by Grantee which would be detrimental to water purity or which would significantly alter natural water levels, drainage, sedimentation and/or flow in or over the Property or to the steam, or cause soil degradation or erosion. Disruption of natural drainage patterns and creation of artificial

drainage patters is prohibited, including, but not limited to: construction of check dams and other impoundments, except as may be required by Oconee County or by other governmental authority and except as shown on the above reference plat. Any disruption of natural drainage patterns or creation of storm water control devices done as required by Oconee County shall be at the sole cost and expense of Grantee and shall be constructed so as to minimize the impact on surrounding vegetation, and shall be done in accordance with Best Management Practices as set out in the Field Manual for Erosion and Sediment Control for Land Disturbing Activities issued by the Georgia Soil and Water Conservation Commission, as the same may be in effect at such time. Nothing herein shall be construed to affect the Grantor's ability to install the various drainage facilities shown on the above reference plat.

G. Road Construction. The construction of new roads is prohibited, except for the construction of firebreaks and fire roads built by the Georgia Forestry Commission in an emergency situation and as shown on the above referenced plat. including, without limitation any construction within the 60 foot easement shown on said plat.

H. Timber Harvesting. Except as necessary to comply with the Ordinance and plans approved by Oconee County, harvesting, trimming, harming or removal of plants on the Property is prohibited. Firewood removal is prohibited. This prohibition does not include the removal of trees or limbs that fall across any pedestrian trail for maintenance purposes or the removal of trees for control of disease or insect damage or infestation.

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

J. Commercial Recreation. All but *de minimus* commercial recreation is prohibited.

ARTICLE VI. MEDIATION

A. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of the Easement and Grantee agrees not to proceed with, or allow, 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 restriction 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 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). Cost. 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 VII. NOTICE AND APPROVAL

A. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantee to notify Grantor or Oconee County prior to undertaking certain permitted activities, as provided in herein, is to afford Grantor and/or Oconee County an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required Grantee shall notify Grantor and Oconee County in writing not less than thirty (30) days prior to the date Grantee 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 Grantor and/or Oconee County to make an informed judgment as to its consistency with the purpose of this Easement.

B. Grantor's/Oconee County's Approval. Where Grantor's and/or Oconee County's approval is/are required, as set forth herein, Grantor and/or Oconee County shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantee's written request. The approval may be withheld only upon a reasonable determination by Grantor and/or Oconee County that the action as proposed would be inconsistent with the purpose of this Easement.

ARTICLE VIII. GRANTOR'S/OCONEE COUNTY'S REMEDIES

A. Notice of Violation; Corrective Action. If Grantor or Oconee County determines that a violation of the terms of this Easement has occurred or is threatened, Grantor or Oconee County shall give written notice to Grantee 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 Grantor.

B. Injunctive Relief. If Grantee fails to cure the violation within thirty (30) days after receipt

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of notice thereof, 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, Grantor and/or Oconee County 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. Grantor and/or Oconee County shall be entitled to recover damages for violation of the terms of this Easement of injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantee's liability therefor, Grantor and/or Oconee County, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

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

E. Scope of Relief. Grantor's and/or Oconee County's rights under this Article apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantee agrees the 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 herein, both prohibitive and mandatory, in addition to such other relief to which Grantor and/or Oconee County 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. The 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 to enforce the terms of this Easement against Grantee, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantee's violation of the terms of this Easement shall be borne by Grantee; provided, however, that if Grantee ultimately prevails in a judicial enforcement action each party shall bear its own costs.

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

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

I. Acts Beyond Grantee's Control. Nothing contained in this Easement shall be construed to entitle Grantor or Oconee County to bring any action against Grantee for any injury to or change in the

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Property resulting from causes beyond Grantee's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

ARTICLE IX. PUBLIC ACCESS

Except as specifically provided otherwise herein, no right of access by the general public to any portion of the Property is conveyed by this Easement.

ARTICLE X. COSTS, LIABILITIES, AND TAXES

A. Costs, Legal Requirements, and Liabilities. Grantee shall bear all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. The Grantee shall keep the Grantor's interest free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Grantee.

B. Grantee hereby releases and agrees to hold harmless, indemnify and defend Grantor and its members, directors, officers, employees, agents, and contractors and their 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 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.

C. Taxes. Grantee shall cause to be paid, 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 Grantor with satisfactory evidence of payment upon request.

ARTICLE XI. 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, as Trustee, 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 stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with paragraph XI(B).

B. Valuation. With regard specifically to the provisions of this Article XI, this Easement constitutes a limited non-exclusive real property interest immediately vested in Grantee, as Trustee, which, for the purposes of paragraph XI(A), the parties stipulate to have a fair market value determined by reducing the (1) the fair market value of the Property unencumbered by the Easement by (2) the value of the Property encumbered by this Easement.

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 XI(B).

D. Application of Proceeds. Grantor shall use any proceeds received under the circumstances described in this Article in a manner consistent with its conservation purposes.

E. Merger. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

ARTICLE XII. ASSIGNMENT

This Easement is transferable only upon the prior written consent of Grantor. As a condition of any such approved transfer, Grantor shall require that the conservation purpose that this Easement is intended to advance continue to be carried out by any assignee. Grantor may assign or convey its rights in the Property. Any such successor to Grantor must comply with the terms and conditions of this Easement and must be qualified to hold such easement under both State law and the Ordinance.

ARTICLE XIII. RECORDATION

Grantor shall record this instrument in timely fashion in the official records of Oconee 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. 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. 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 its successors and assigns, and the above-named Grantee and its successors and assigns.

G. 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.

H. 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.

I. 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 Grantee, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, its 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 causes 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 Oconee County, Georgia.

Signed, Sealed and Delivered
in our presence:

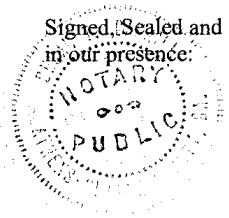
Witness

GRANTOR:
Oconee Coldwater Creek, LLC, a Georgia limited liability company

By: _____(SEAL)
Title: Manager

Notary Public

Signed, Sealed and Delivered
in our presence:



Witness

Notary Public

GRANTEE:
OCONEE COLDWATER CREEK HOMEOWNERS ASSOCIATION, INC., a Georgia non-profit corporation, as Trustee, in trust for the various owners of lots within Coldwater Creek Subdivision and the people of Oconee County, Georgia

By: _____(SEAL)
Title: President