

SPACE ABOVE USED FOR RECORDING INFORMATION

RETURN TO: SSS
MOORE INGRAM JOHNSON & STEELE, LLP
EMERSON OVERLOOK
326 ROSWELL STREET
MARIETTA, GA 30060

**DEED OF CONSERVATION EASEMENT
UNIT III**

STATE OF GEORGIA

COUNTY OF COBB

THIS CONSERVATION EASEMENT (herein "Conservation Easement") is made this ____ day of _____, 2018, by and between Kerley Family Homes, LLC , whose address is 750 Chastain Corner, Marietta, Ga 30066 (hereinafter "Grantor") and City of Powder Springs, Georgia, a Political Subdivision of the State of Georgia, with an address of 4488 Pineview Drive, Powder Springs, GA 3017 (hereinafter "Grantee").

RECITALS

A. Grantee is a governmental body empowered to hold an interest in real property under the laws of the State of Georgia.

B. Grantor owns in fee simple certain real property in the City of Powder Springs, Georgia, located in Land Lot 660, 661, 672 & 673, 19th District, 2nd Section, City of Powder Springs, Cobb County, Georgia, more particularly shown on that certain Conservation Easement Plat for Villages at West Cobb (F.K.A. Silverbrooke V) dated July 30, 2018 prepared by Centerline Surveying and Land Planning, Inc., said plat being attached hereto as Exhibit "A" and made a part hereof by reference, hereinafter "Protected Property".

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

NOW, THEREFORE, as an absolute gift of no monetary consideration but in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantor hereby unconditionally and irrevocably grants and conveys unto Grantee, its successors and assigns, forever

and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Protected Property more particularly described in Exhibit A, Legal Description of the Protected Property, together with the right to preserve and protect the conservation values of the Protected Property.

Grantor intends that this Conservation Easement will confine the uses of the Protected Property to such activities with the purposes of this Conservation Easement.

PURPOSE

Grantor and Grantee recognize the conservation value of the Protected Property in its present state and have a mutual desire to afford protection thereto. Both Grantor and Grantee recognize that the conservation value intended to be protected by this Conservation Easement is the protection of natural resources and preservation of open space, constructed wetlands and flood plan areas in their natural state pursuant to the requirements of Chapter 50 of the Official Code of Cobb County, Georgia.

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an assignable 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. So long as there are any builders building on lots located in Silverbrooke Subdivision, located adjacent to the Protected Property, Grantor shall give said builders notice of any assignment.

ARTICLE II. RIGHTS OF GRANTEE

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

- 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 compliance with and otherwise enforce the terms of this Easement.
- C. Grantee shall have the right to enforce by proceedings at law or in equity the covenants hereinafter set forth, including, but not limited to, the right to require the restoration of the Protected Property to its conditions at the time of the grant of this Conservation Easement. Nothing herein shall be construed to entitle the Grantor to institute any proceedings against Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm or unauthorized wrongful acts of third persons.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

- A. All parties hereto shall comply with all federal, state and local guidelines for flood plains, wetlands, state waters and streams as well as with all Upper Chattahoochee Riverkeeper requirements and oversight.
- B. Any activity on, or use of, the Protected Property inconsistent with the purposes of this Conservation Easement, whether building, grading, excavating, trenching, damming, dumping, etc., is prohibited excepting only any necessary installation

of materials and equipment or maintenance, repair, or replacement thereof with respect to the reserved rights specified in Article IV below.

- C. No motorized equipment or vehicles shall be allowed on the Property, except any use which may be necessary with respect to the reserved rights specified in Article IV below.
- D. There shall be no removal, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any vegetation, nor any disturbance of change in the natural habitat in any manner on the Protected Property.

ARTICLE IV. RESERVED RIGHTS

- A. Grantor reserves to himself, and to his personal representatives, heirs, successors, and assigns, all rights accruing from his ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Easement.
- B. Grantor specifically reserves the right to use the Protected Property for drainage purposes. Should any such installation, maintenance, repair or replacement with respect to any existing passive amenities or drainage facilities occur, the Protected Property shall thereafter be restored to the original state as much as is practicable.
- C. Without limiting the generality of the foregoing, Grantor specifically reserves the rights listed on Exhibit "B" attached hereto and by this reference made a part hereof.

ARTICLE V. GRANTEE'S REMEDIES

If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall have the option of giving written notice to the Grantor of such and give a reasonable time for correction, if necessary. "Reasonable time" shall be in the sole discretion of Grantee. This option shall not preclude Grantee's right to seek judicial enforcement of the Easement, and such written notification and opportunity to correct shall not be a prerequisite to judicial enforcement. All costs incurred by Grantee in enforcing this Easement, including reasonable attorney's fees, shall be borne by Grantor, unless Grantor ultimately prevails when in such event each party shall bear its own costs.

ARTICLE VI. EXHIBITS, DOCUMENTATION AND TITLE

A. Legal Description. Exhibit "A" is a pictorial representation of the Protected Property and is attached hereto and made a part hereof by reference.

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

ARTICLE VII. COSTS, LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

A. Costs, Legal Requirements, and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including taxes and any costs of remediation.

B. Hold Harmless. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, or requirement, including, without limitation, CERCLA and state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the 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 as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of Grantor contained herein.

ARTICLE VIII. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the state of Georgia including the Georgia Uniform Conservation Easement Act.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of the Georgia Uniform Conservation Easement Act. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

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

E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of

Grantor's title in any respect.

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

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

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

ARTICLE IX. DEDUCTIBILITY FOR TAX PURPOSES

Grantor acknowledges that no one on behalf of Grantee has made any representations, express or implied, as to the deductibility of this Conservation Easement under federal, state, or local law or as to any of the tax benefits or burdens which may be borne by the Grantor hereby. Grantor acknowledges that he has had the opportunity to seek legal counsel or the advice of a tax professional prior to the execution hereof and will hold harmless the Grantee for any tax ramifications incurred hereby.

ARTICLE X. SPECIAL STIPULATIONS

The special stipulations attached hereto as Exhibit "B" are specifically made a part hereof by reference.

ARTICLE XI; GREENSPACE

Grantee intends for this land to be permanently protected Greenspace under the Georgia Greenspace Community Program. The State of Georgia is also a third party beneficiary under this Conservation Easement and if the property is used for anything other than Greenspace Property, the State of Georgia has a right to require that the property be returned to the use as provided under the Georgia Community Greenspace Act (OCGA §36-22-4 et. seq.). The easement is intended for the benefit of the public in perpetuity under O.C.G.A. §44-5-60.

TO HAVE AND TO HOLD unto the City of Powder Springs, Georgia, a political subdivision of the State of Georgia, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, his personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

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

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

GRANTOR:

Kerley Family Homes, LLC

Kerley Family Homes LLC (SEAL)

BY: [Signature]

TITLE: CEO

ATTEST: Dana Wiggins, CPA

TITLE: Assistant Controller

Witness: [Signature]

[Signature]
NOTARY PUBLIC



GRANTEE:

CITY OF POWDER SPRINGS, GEORGIA

BY: _____

MAYOR, CITY OF POWDER SPRINGS, GEORGIA

ATTEST: _____

CITY CLERK, CITY OF POWDER SPRINGS, GEORGIA

EXHIBIT "A"
CONSERVATION EASEMENT PLAT

EXHIBIT "B"
SPECIAL STIPULATIONS

NONE