

## DEED OF CONSERVATION EASEMENT

STATE OF GEORGIA  
COUNTY OF COBB

THIS DEED OF CONSERVATION EASEMENT (herein "Conservation Easement") is made this 16 day of, July ,2020, by and between Grand Communities, LLC whose address is 3940 Olympic Blvd., Suite 400, Erlanger, KY 41018 (hereinafter "Grantor") and City of Power Springs, Georgia, a Political Subdivision of the State of Georgia, with an address of 4484 Marietta St. Powder Springs, GA 30127 (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 Cobb County, Georgia, being .06 acres, more or less, and more particularly shown and described in Exhibit A attached hereto and shown on the Conservation Easement Exhibit B attached hereto (.06 acres hereinafter "Conservation Easement Area").

C. *Intentionally left blank.*

D. Grantor is willing to grant a perpetual Conservation Easement over the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B", thereby restricting and limiting the use of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" (and contiguous water areas of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B"), on the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement.

E. Grantor and Grantee recognize the conservation value of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" in its present state and have a mutual desire to afford protection thereto. Both Grantor and Grantee recognize that a perpetual conservation easement is desirable for the following purpose(s): the protection of natural resources and preservation of open space, more specifically the limitation of land disturbance and decreasing the percentage of impervious surface within a planned residential community and conservation of land for recreation or aesthetic and environmental enrichment.

**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 Deed of Conservation Easement of the nature and character and to the extent hereinafter set forth, over the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" Property more particularly described in Exhibit A and B together with the right to preserve and protect the conservation values of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" Property.

To achieve the conservation purposes, the following conditions and restrictions are set forth:

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

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

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

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

A. To preserve and protect the conservation values of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B"Property; and

B. To enter upon the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement.

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

Any activity on, or use of, the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" which violates this Conservation Easement, whether building, grading, excavating, trenching, damming, dumping, is prohibited. Development that would significantly impair or interfere with the conservation values of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" Property is prohibited.

#### **ARTICLE IV. RESERVED RIGHTS**

As fee simple owner of the Conservation Easement Area, Grantor reserves to himself, and to his personal representatives, heirs, successors, and assigns, any and all rights not specifically granted in this Conservation Easement regarding the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" Property, including the right to engage in, or permit or invite others to engage in all uses of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" Property that are not expressly prohibited herein.

#### **ARTICLE V. GRANTEE'S REMEDIES**

If Grantee determines that a violation of the terms of this Easement has occurred, Grantee shall give written notice to the Grantor of such and give at least 90 calendar days for correction.. If any violation remains uncured after such 90 calendar day period, Grantee may seek judicial enforcement of the Easement, and such written notification.. Each party shall bear its

own costs in enforcing this Easement.

## ARTICLE VI. EXHIBITS, DOCUMENTATION AND TITLE

**A. Legal Description.** Exhibit A, Legal Description of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer Property, to include the metes and bounds and Exhibit B, Pictorial Representation of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer Property, are attached hereto and made a part hereof by reference.

**B. Title.** The Grantors covenant and represent that the Grantor is the sole owner of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" 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 to the ownership, operation, and maintenance of the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" Property, including real estate taxes.

**B. Hold Harmless.** Grantor and Grantee each hereby releases and agrees to hold harmless, indemnify, and defend the other 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 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B", 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 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B"; (3) the presence or release in, on, from, or about the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B", 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 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. 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.

**C. 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.

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

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

**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 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B". 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.

**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 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B" 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.

**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.**

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 and Grantee, t h e i r personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the 25' State Undisturbed Buffer and 50' City of Powder Springs Undisturbed Buffer as depicted in Exhibit "B".

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.

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GRANTOR:

Grand Communities LLC

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

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

TITLE: \_\_\_\_\_

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

TITLE: \_\_\_\_\_

Witness:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

(Corporate Seal)

GRANTEE:

City of Powder Springs, Georgia

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

\_\_\_\_\_

Witness: \_\_\_\_\_

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NOTARY PUBLIC

(Notary Seal)

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

\_\_\_\_\_  
(SEAL)