

10-*R*-1200

(Do Not Write Above This Line)

A RESOLUTION
BY CITY UTILITIES COMMITTEE

A RESOLUTION AUTHORIZING
THE MAYOR TO ACCEPT A
DONATION OF A CONSERVATION
EASEMENT AT 2901 RIDGEWOOD
CIRCLE; TO EXECUTE ALL
APPROPRIATE LEGAL
DOCUMENTS AND INSTRUMENTS
FOR AN EASEMENT
ACQUISITION; AND FOR OTHER
PURPOSES.

ADOPTED BY

SUBSTITUTE JUL 06 2010
COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred _____
 Referred To: _____
 Date Referred _____
 Referred To: _____
 Date Referred _____
 Referred To: _____

First Reading

Committee _____
 Date _____
 Chair _____
 Referred To _____

City Utilities
 Date *7/6/2010*
 Chair *Robert D. Clark*
 Action _____
 Fav, Adv, Hold (see rev. side) _____
 Other *by substitute*
 Members _____

Hand Signed
 Members _____
 Refer To _____

Committee

Date _____
 Chair _____
 Action _____
 Fav, Adv, Hold (see rev. side) _____
 Other _____
 Members _____

Refer To

Committee

Date _____
 Chair _____
 Action _____
 Fav, Adv, Hold (see rev. side) _____
 Other _____
 Members _____

Refer To

FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd
- 3rd
- Consent
- V Vote
- RC Vote

CERTIFIED

CERTIFIED
 JUL 06 2010
 ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
 JUL 06 2010
Ronald D. Johnson
 MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED
 JUL 4 2010
[Signature]
 MAYOR



CITY COUNCIL
ATLANTA, GEORGIA

10-R-1200

**A SUBSTITUTE RESOLUTION
BY CITY UTILITIES COMMITTEE**

**A RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A
DONATION OF A CONSERVATION EASEMENT AT 2901
RIDGEWOOD CIRCLE; TO EXECUTE ALL APPROPRIATE LEGAL
DOCUMENTS AND INSTRUMENTS FOR AN EASEMENT
ACQUISITION; AND FOR OTHER PURPOSES.**

WHEREAS, the City of Atlanta (“City”) was required to spend Twenty-Five Million Dollars to acquire and protect targeted streamside properties in perpetuity pursuant to the 1998 CSO Consent Decree (“Consent Decree”); and

WHEREAS, the City established the Greenway Acquisition Project to the comply with the Consent Decree requirements, which project was completed in 2007; and

WHEREAS, a certain property, having a current address of 2901 Ridgewood Circle, Atlanta, Georgia (“Property”) is located immediately adjacent to property purchased by the City of Atlanta under the Greenway Acquisition Project and along a segment of Nancy Creek that was identified under the Greenway Acquisition Project as a high priority area for protection; and

WHEREAS, the current owners of the Property desire to donate and the City desires to accept the donation of a conservation easement on a portion of the Property, which includes approximately 3 acres of floodplain along Nancy Creek;

WHEREAS, the conservation easement shall include the development rights of the Property, which shall be maintained in a natural, undisturbed state for the purpose of protecting water quality in the adjacent streams and rivers; and

WHEREAS, the ownership of the Property shall remain with the current property owner and all maintenance of the Property, under the terms of the conservation easement agreement, will be the responsibility of the property owner.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor or his designee is authorized to accept the donation of a conservation easement on a portion of the Property to include approximately 3 acres of floodplain along Nancy Creek; further, to execute easement documents, and any such other instruments necessary to accomplish acceptance of the conservation easement described herein without further authorization from City Council.

BE IT FURTHER RESOLVED, that the conservation easement shall include development rights of the Property, which shall be maintained in a natural, undisturbed state for the purpose of protecting water quality in the adjacent streams and rivers.



BE IT FURTHER RESOLVED, that the ownership of the Property shall remain with the current property owner and all maintenance of the Property, under the terms of the conservation easement agreement, will be the responsibility of the property owner.

BE IT FURTHER RESOLVED, that the City Attorney, or designee, is authorized to prepare all necessary documents and instruments in an acceptable form and to record all documents in the records of the County in which the property affected lies.

BE IT FINALLY RESOLVED, that all resolutions or parts of resolutions in conflict with this are waived to the extent of the conflict.

A true copy,

A handwritten signature in black ink, appearing to read "Lisa A. [unclear]".

Deputy Clerk

ADOPTED by the Atlanta City Council
APPROVED by Mayor Kasim Reed

JUL 06, 2010
JUL 14, 2010



This Deed was prepared by: _____

Address: _____

State of Georgia
City of Atlanta

**CITY OF ATLANTA
DEPARTMENT OF WATERSHED MANAGEMENT**

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this _____ day of month, year, by Ray Michaels having an address at 2901 Ridgewood Circle, Atlanta, Georgia_30327 ("Grantors"), in favor of the City of Atlanta a political subdivision of the State of Georgia having an address at 68 Mitchell Street, S.W. Atlanta, Georgia 30303 ("Grantees").

WITNESSETH:

WHEREAS, Grantors are the sole owners in fee simple of certain real property in Atlanta, Georgia, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the property possesses water quality and habitat values (collectively, "Conservation Values") of great importance to Grantees, the people of the City of Atlanta and the people of the State of Georgia; and

WHEREAS, the City of Atlanta wishes protect areas along major tributaries of the Chattahoochee River to reduce erosion and/or non-point source pollution loads from entering the Chattahoochee River; and the Property is located along a stream segment that was designated as a high priority for property acquisition in the City of Atlanta Greenway Acquisition Plan and is adjacent to Greenway conservation easement held by the City of Atlanta.

WHEREAS, the specific Conservation Values of the Property are further documented in an inventory of relevant features of the Property, dated _____, attached hereto as Exhibit B and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantors intend that the Conservation Values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair the stream protection values of the property.



WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantees the right to preserve and protect the conservation values of the Property in perpetuity;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Georgia and in particular the Uniform Conservation Easement Act, Grantors hereby voluntarily grant and convey to Grantees a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. **Purpose and Duration.** It is the purpose of this Easement to assure that the Property will be retained forever in its natural and/or restored condition and to prevent any use of the property that will impair or interfere with the Conservation Values of the Property. Grantors intend that this Easement will confine the use of the Property to such activities, including, without limitation, those involving _____, as are not inconsistent with the purpose of this Easement.

This easement is perpetual or the longest term possible under Georgia law.

2. **Rights of Grantors.** Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement to be exercised in a manner and scope consistent with that which they have heretofore been exercised. Without limiting the generality of the foregoing, and subject to the terms of Paragraphs 3 & 4, the following rights are expressly reserved.
 - a. To reside on the Property.
 - b. To engage in and permit others to engage in private noncommercial recreational uses of the Property, including, without limitation, hunting and fishing, that require no surface alteration or other development of the land. No right of public access by the general public to any portion of the Property is conveyed by this easement. (NOTE: this section could be modified where a public access easement is also granted). Recreational uses shall not include the use of motorized vehicles including motorcycles, all-terrain or off-road vehicles, aircraft, jet skis, or motorized boats.
 - c. To sell, lease, give, mortgage or otherwise convey the Property, provided such conveyance is subject to the terms of this Conservation Easement and written notice is provided to the Grantees.
 - d. With prior approval of the Grantees, the following improvements to the Property are permitted:



(1) The maintenance, renovation or replacement of existing agricultural, residential, and related buildings, structures, and improvements in substantially their present location as shown on Exhibit B or as placed or constructed under Subparagraphs (2), (3), and (4) below; provided that any renovation or replacement of an existing building, structure, or improvement may not substantially alter its character or function or increase its present height, or the land surface area it occupies.

(2) The placement or construction, after prior approval by Grantee, of boat docks, pedestrian trails, outdoor classrooms, or recreational facilities, provided that no more than 10% of the land surface area is disturbed, and that such facilities are designed and constructed in accordance with the design and construction standards established in the Greenway Acquisition Plan (section 8.0)

e. The placement or construction of restoration projects provided that such facilities are designed and constructed in accordance with the Design and Construction Standards established in the Greenway Acquisition Plan (Section 6.0).

f. The installation, repair, replacement, or maintenance of utility systems or extension of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities. This section should not be interpreted to automatically grant a utility easement to Grantee(s).

The following specific improvements: _____ h. The following specific uses are also explicitly permitted: _____

3. **Rights of Grantees.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- (a) To preserve and protect the Conservation Values of the Property.
- (b) To review activities which involve the disturbance of land or vegetation, prior to such disturbance taking place. Grantors shall notify Grantee in writing not less than thirty days prior to the date Grantors intend to undertake the activity in question. Grantee shall grant or withhold its approval in writing within thirty days of receipt of Grantor's written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.
- (c) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Paragraph 6; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this



Easement, such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property. In the event Grantor elects to maintain gated, locked access to and through the property, Grantor agrees to provide Grantee with keys for such locks; and

- (d) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require of the Grantors the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Paragraph 6.

4. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) The legal or de facto division, subdivision, or partitioning of the Property for any purpose, except as may be required by law for the uses permitted in Paragraph 2;
- (b) Any commercial or industrial use of or activity on the Property other than those permitted under Paragraph 2 or Subparagraph 4(l);
- (c) The placement, construction, or maintenance of any buildings, structures, or other improvements of any kind (including, without limitation, fences, roads, parking lots, and utility lines and related facilities) other than those permitted elsewhere in this document;
- (d) Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod; archaeological investigation; except as may be required in the course of any activity expressly permitted herein or, after notice to the appropriate state agency and with the prior approval of Grantees; provided that construction materials, such as rock, dirt, sand, and gravel, may be taken for use in connection with permitted activities on the Property only from locations approved by Grantees;
- (e) Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of any surfaces or subsurface waters;
- (f) Any new or additional use that substantially increases pollution or that would substantially interfere with the preservation of the property;
- (g) The pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies; nor shall activities be conducted on the Protected Property or on adjacent property, if owned by Grantor, that would be detrimental to water purity or that could alter the natural water level or flow in or over the Protected Property. Specifically, there



should be no alteration or manipulation of Wetlands without express written approval of the Grantees and the U.S. Army Corps of Engineers, when such wetlands fall in their jurisdiction.

- (h) The pruning, cutting down, or other destruction or removal of trees or other vegetation described in Exhibit B, except as necessary in accordance with the Land Management Guidelines established in the Greenway Acquisition Plan (Section 11.0) or as otherwise permitted under Paragraph 2 above;
- (i) The use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides except as a component of a restoration project as allowed in Land Management Guidelines established in the Greenway Acquisition Plan (Section 11.0) , or the use of devices commonly known as “bug-zappers”;
- (j) The processing, storage, dumping, burning, burying, or other disposal of wastes, refuse, and debris including household, gardening, construction, and hazardous materials on the Property;
- (k) The placement of any signs or billboards on the Property, except that signs whose placement, number, and design do not significantly diminish the scenic character of the Property may be displayed to state the name and address of the Property and the names of persons living on the Property, to advertise or regulate on-site activities permitted pursuant to Paragraph 2, including historic property markers and interpretive signage, to advertise the Property for sale or rent, and to post the Property to control unauthorized entry or use; and
- (l) The exploration for, or development and extraction of minerals and hydrocarbons by any surface mining method or any other method that would significantly impair or interfere with the conservation values of the Property. Prior to engaging in any mineral exploration, development, or extraction by any method not otherwise prohibited by this paragraph, Grantors must notify Grantees and submit a plan for Grantees approval that provides for minimizing the adverse effects of the operation on the Conservation Values of the Property. In addition to such other measures as may be required to protect the Conservation Values of the Property, the plan must provide for: (1) preserving the quantity and quality of all surface and ground water; (2) concealing all facilities or otherwise locating them so as to be compatible with existing topography and landscape to the greatest practicable extent; and (3) restoring any altered physical features of the land to their original state.
- (m) The operation of wheeled or tracked equipment, except as specifically authorized by the City of Atlanta according to the alternatives analysis process in the Greenway Acquisition Plan. Operation of wheeled or tracked equipment are



allowed as part of an approved maintenance activity or an emergency operation.

(n) The purposeful introduction of exotic plants or species.

5. **Amendment.** If circumstances arise under which an amendment to this Easement would be appropriate, Grantors and Grantees are free to jointly amend this Easement; provided that any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Fulton County, Georgia; under no circumstances will Grantee be required to agree to amend the easement.

6. **Grantee's Remedies.**

6.1 **Mediation.** If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Grantors agree not to proceed with 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.

6.2 **Notice of Violation; Corrective Action.** If Grantees determine that a violation of the terms of this Easement has occurred or is threatened, Grantees shall give written notice to Grantors 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 Grantees.

6.3 **Injunctive Relief.** If Grantors fail to cure the violation within 30 days after receipt of notice thereof from Grantees, or under circumstances where the violation cannot reasonably be cured within a 30 day period, fail to continue diligently to cure such violation within the thirty day period, or fail to continue diligently to cure such violation until finally cured, Grantees 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.

6.4 **Damages.** Grantees shall be entitled to recover damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantees, in their sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantees may at their sole discretion impose punitive damages for violations on this Easement.

6.5 **Emergency Enforcement.** If Grantees', in their sole discretion, determine that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantees may pursue their remedies under this



Section 6 without prior notice to Grantors or without waiting for the period provided for cure to expire.

- 6.6 **Scope of Relief.** Grantees' rights under this Section 6 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantors agree that Grantees' remedies at law for any violation of the terms of this Easement are inadequate and the Grantees' shall be entitled to the injunctive relief described in Paragraph 6.3, both prohibitive and mandatory, in addition to such other relief to which Grantees' 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. Grantees' remedies described in this Section 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 6.7 **Costs of Enforcement.** All reasonable costs incurred by Grantees' in enforcing the terms of this Easement against Grantors, including, without limitation, costs and expenses of suit and reasonable attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear its own costs.
- 6.8 **Forbearance.** Forbearance by Grantees' to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantees' of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantees' rights under this Easement. No delay or omission by Grantees' in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
- 6.9 **Waiver of Certain Defenses.** Grantors hereby waive any defense of laches, estoppel, or prescription.
- 6.10 **Acts Beyond Grantors' Control.** Nothing contained in this Easement shall be construed to entitle Grantees' to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from causes beyond Grantors control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
7. **Costs, Liabilities, Taxes, and Environmental Compliance.**
- 7.1 **Costs, Legal Requirements, and Liabilities.** Grantors retain 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. Grantors remain solely responsible for obtaining any applicable



governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.

- 7.2 **Taxes.** Grantors 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 Easement, and shall furnish Grantees with satisfactory evidence of payment upon request.
- 7.3 **Title.** The Grantors covenant and represent that the Grantors are the sole owners and are seized of the Protected Property in fee simple and have good right to grant and convey this Conservation Easement; that the Protected Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that the Grantees shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.
- 7.4 **Subordination.** At the time of conveyance of this Easement, the Property is subject to a mortgage, deed of trust, security interest, or a reservation of surface or subsurface property interest or leases, the holder(s) of which has agreed by separate instrument, a copy of which is attached hereto as Exhibit D and incorporated by this reference, to subordinate its right in the rights in the Property to the extent necessary to permit the Grantee to enforce the purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the interest holder.
- 7.5 **Hazardous Waste.** The Grantors covenant, represent, and warrant to the Grantees that no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited on or in the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.
- 7.6 **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantees 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 operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").
- 7.7 **Hold Harmless.** Grantors hereby release and agree to hold harmless, indemnify, and defend Grantees and their 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, judgements, 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 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, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; and (3) the presence or release in, on, from, or about the 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.

8. **Transfer, Assignment, Extinguishment, and Condemnation**

8.1 **Parties Subject to Easement.** The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantors but also their lessees, agents, personal representatives, successors and assigns, and all other successors to Grantors in interest and shall continue as a servitude running in perpetuity with the Protected Property.

8.2 **Subsequent Transfers.** Grantors agree to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to Grantees of the transfer of any interest at least thirty days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

8.3 **Merger.** The Grantors and the Grantees agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Protected Property.

8.4 **Assignment.** This Easement is transferable, but Grantees may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easement under the Uniform Conservation Easement Act (or any successor provision then applicable) or the laws of the United States. As a condition of such transfer, Grantees shall require that the conservation purpose that this grant is intended to advance continue to be carried out. This easement may only be transferred with the express written permission of the City of Atlanta. Grantees agree to give written notice to Grantors of an assignment at least thirty days prior to the date of such assignment. The failure of Grantees to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.



8.5.

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 the whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantees 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 the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with Paragraph 8.6.

8.6 **Valuation.** This Easement constitutes a real property interest immediately vested in Grantees, which, for the purpose of Paragraphs 8.5 and 8.7, the parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purpose of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

8.7 **Condemnation.** Any condemnation of property subject to this easement shall be in accordance with Georgia condemnation law. 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, Grantors and Grantees shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantees in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantees' share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Paragraph 8.6.

8.8 **Application of Proceeds.** Grantees shall use any proceeds received under the circumstances described in this Section 8 in a manner consistent with its conservation purposes, which are exemplified by this grant, and in a manner consistent with the purposes of the Greenway Acquisition Plan.

9. **Estoppel Certificates.** Upon request by Grantors, Grantees shall within thirty days execute and deliver to Grantors, or to any party designated by Grantors, any document, including an estoppel certificate, which certifies, to the best of Grantees' knowledge, Grantor's compliance with any obligation of Grantors contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantees' most recent inspection. If Grantors request more current documentation, Grantees shall conduct an inspection, at Grantors' expense, within thirty days of receipt of Grantors' written request therefor.

10. **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 first class mail, postage prepaid, addressed as follows:

To Grantors: _____

To Grantees: City of Atlanta, Georgia
68 Mitchell Street, S.W.
Atlanta, Georgia 30303-3520

or to such other address as either party from time to time shall designate by written notice to the other.

11. **Recordation.** Grantees shall record this instrument in timely fashion in the official records of Fulton County, Georgia, and may re-record it at any time as may be required to preserve its rights in this Easement.

12. **General Provisions**

12.1 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Georgia.

12.2 **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 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 .

12.3 **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.

12.4 **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.

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

12.6 **Joint Obligation.** The obligations imposed by this Easement upon Grantors shall be joint and several.



12.7

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.

12.8 **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 not effect upon construction or interpretation.

12.9 **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 Grantees, their successors, and assigns forever.

IN WITNESS WHEREOF Grantors and Grantees have set their hands on the day and year first above written.

Grantors

City of Atlanta _____

by _____

its _____

Other Entity

by _____

its _____



SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement
- B. Baseline Documentation
- C. Subordination Agreement(s).

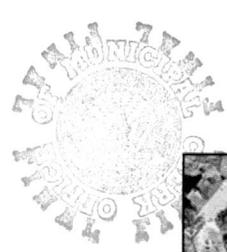




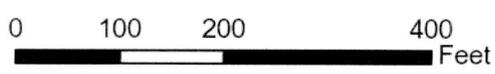
Examples:

- a. ***Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.***
- b. ***Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.***

This Legislative Request Form Was Prepared By: Andrew Walter 404 – 546-1253



2901 Ridgewood Cir. proposed conservation easement



RCS# 412
7/06/10
2:19 PM

Atlanta City Council

REGULAR SESSION

CONSENT I EXCEPT 10-O-1168,10-R-1228,10-R-1219

ADOPT

YEAS: 12
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 2

Y Smith	Y Archibong	Y Moore	B Bond
Y Hall	Y Wan	Y Martin	NV Watson
Y Young	Y Shook	Y Bottoms	B Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

		07-06-10
ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT	
1. 10-O-0468 2. 10-O-1147 3. 10-O-1150 4. 10-O-1184 5. 10-O-1235 6. 10-O-1237 7. 10-O-1241 8. 10-O-1063 9. 10-O-0936 10. 10-R-1215 11. 10-R-1216 12. 10-R-1217 13. 10-R-1200 14. 10-R-1201 15. 10-R-1232 16. 10-R-1211 17. 10-R-1212 18. 10-R-1213 19. 10-R-1236 20. 10-R-1249 21. 10-R-1202 22. 10-R-1231 23. 10-R-1234 24. 10-R-1240 25. 10-R-1186 26. 10-R-1187 27. 10-R-1188 28. 10-R-1189 29. 10-R-1190 30. 10-R-1191 31. 10-R-1192 32. 10-R-1193 33. 10-R-1194 34. 10-R-1195 35. 10-R-1196 36. 10-R-1222 37. 10-R-1223 38. 10-R-1224	39. 10-R-1197 40. 10-R-1198 41. 10-R-1199	