

A RESOLUTION TO AUTHORIZE THE PURCHASE BY THE CITY OF SANDY SPRINGS OF THOSE CERTAIN TRACTS OR PARCELS OF LAND LOCATED IN LAND LOTS 85 AND 128 OF THE 17TH DISTRICT, FULTON COUNTY, GEORGIA, CONSISTING OF 22 ACRES, COMMONLY REFERRED TO AS "LOST CORNERS PRESERVE" AND TO TAKE ANY AND ALL ACTION REQUIRED TO BE TAKEN TO APPLY FOR GRANT FUNDING AND TO EFFECTUATE THE CLOSING ON LOST CORNERS PRESERVE

WHEREAS, at a duly called meeting of the City Council of the City of Sandy Springs, held on the 17th day of June, 2008, the following resolution was introduced and adopted.

WHEREAS, the Trust for Public Land (Inc.) ("TPL") presently holds an option to purchase those certain tracts or parcels of land located in Land Lots 85 and 128 of the 17th District, Fulton County, Georgia, consisting of approximately 22 acres, more or less, commonly referred to as the "Lost Corners Preserve", as indicated on Exhibit A attached hereto and incorporated by this reference, subject to a life estate reserved in favor of the long term resident of a home on Lost Corners Preserve; and

WHEREAS, the City desires to acquire Lost Corners Preserve from TPL in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) (the "Purchase Price"), which shall help achieve the City's goal of adding public park lands that are perpetually protected for and dedicated to such use, all to improve the quality of life of the City's residents; and

WHEREAS, TPL desires to convey Lost Corners Preserve to the City for such purpose, on the terms and conditions more particularly set forth in that certain Purchase and Sale Agreement (the "Sale Agreement"), in substantially the form attached hereto as Exhibit B; and

WHEREAS, in connection with the acquisition of Lost Corners Preserve and in addition to the Purchase Price to be paid by the City to acquire a fee title interest in Lost Corners Preserve, the City has applied to the Georgia Land Conservation Council ("GLCC") for a grant from the Georgia Land Conservation Trust Fund in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "Grant Award"). The Grant Award will be remitted to TPL at the time the City purchases Lost Corners Preserve from TPL and shall serve to reimburse TPL for a portion of the purchase price paid by TPL for Lost Corners Preserve, it having been determined that this land has a high conservation value; and

WHEREAS, at a duly called meeting of GLCC, the proposed project (the "Project") described in the City's application to GLCC was approved; and

WHEREAS, GLCC has arranged for the Georgia Environmental Facilities Authority to provide the City with the Grant Award, contingent upon the due execution by the City of that certain Agreement (the "Agreement"), in substantially the form attached hereto as Exhibit C;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Sandy Springs as follows:

(a) that the acquisition of Lost Corners Preserve from TPL in an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) is hereby authorized and approved; and

(b) that the application for and acceptance of the Grant Award by the City and the remittance of the Grant Award by the City to TPL at closing, subject to and conditioned upon the City's receipt of same from the Georgia Land Conservation Trust Fund, is hereby authorized and approved; and

(c) that the execution, delivery, receipt and due performance of the Sale Agreement in substantially the form attached hereto as Exhibit B, the Agreement in substantially the form attached hereto as Exhibit C, and any other certificates or documents as may be required to be executed, delivered, or received in connection with the acquisition of Lost Corners Preserve are hereby authorized in order to carry out, give effect to, and consummate the transactions contemplated by the Sale Agreement and the Agreement; and

(d) that the following persons are hereby designated and authorized to execute and deliver, and to attest, respectively, the Sale Agreement and the Agreement and to do all things necessary and proper to consummate the transactions contemplated by the Sale Agreement and the Agreement.

Eva Galambos
(Name of Person to Execute Documents)

Mayor Eva Galambos
(Title)

Christina Rowland
(Name of Person to Attest Documents)

City Clerk
(Title)

(e) that this resolution supersedes the resolution adopted by City Council on May 20, 2008 regarding the same subject matter.

APPROVED AND ADOPTED this 17th day of June, 2008.

Approved:

Eva Galambos
Eva Galambos, Mayor

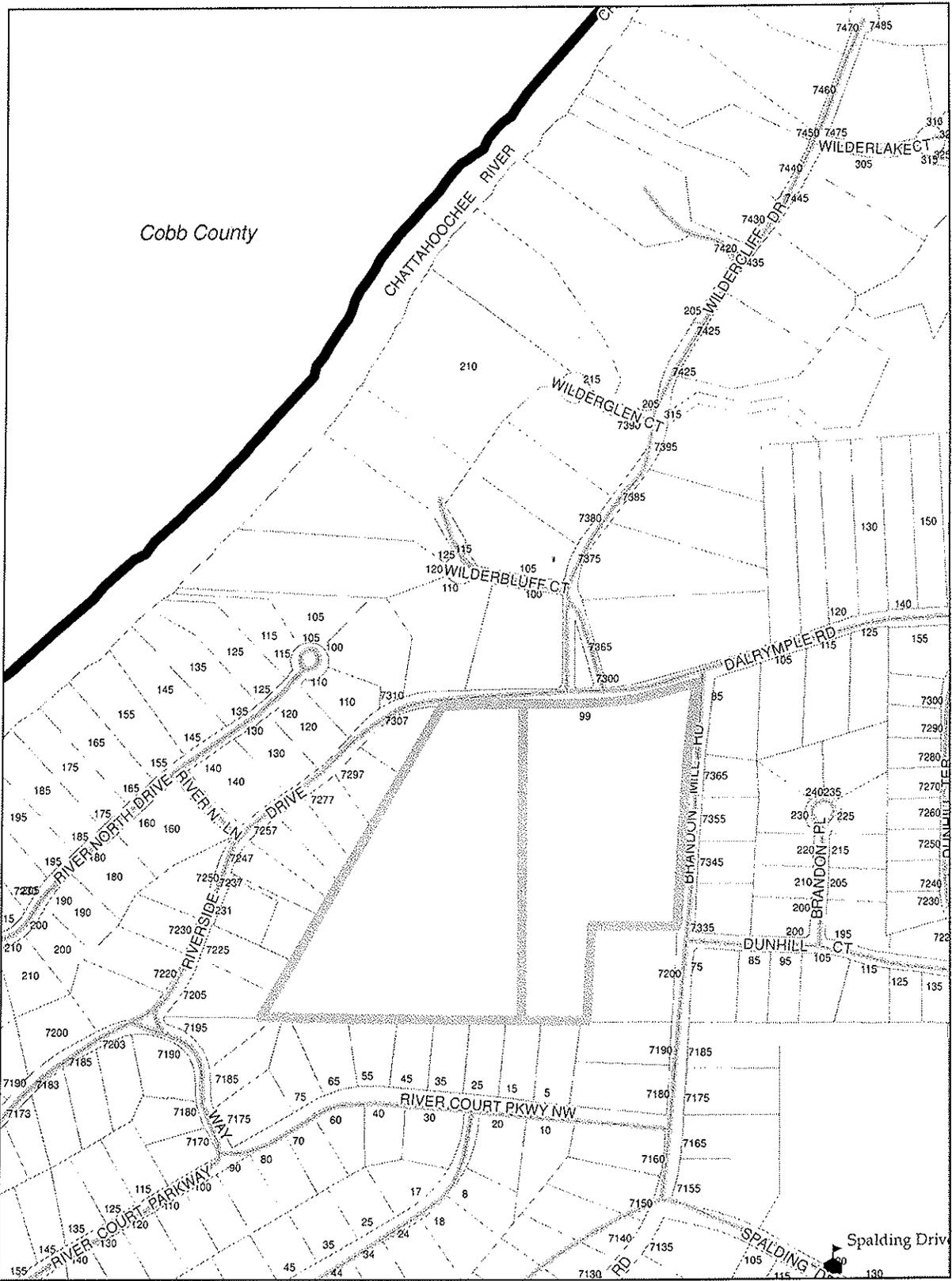
Attest:

Michael Casey
Michael Casey, City Clerk
(Seal)



EXHIBIT A

MAP OF MILES PROPERTY



Cobb County

CHATTAHOOCHEE RIVER

WILDERLAKE CT

WILDERGLEN CT

WILDERBLUFF CT

DALRYMPLE RD

RIVER NORTH DRIVE

RIVER LN

RIVERSIDE DRIVE

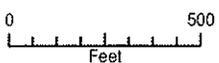
DUNHILL CT

BRANDON PL

RIVER COURT PKWY NW

DUNHILL CT

SPALDING DR



This map has been compiled from the most accurate source data from Fulton County and the City of Sandy Springs. However, this map is for informational purposes only and is not to be interpreted as a legal document. The City assumes no legal responsibility for the information shown on this map. For inquiries, please contact the City of Sandy Springs. Copyright © 2006 City of Sandy Springs, GA 30350. All rights reserved. Maps may be reproduced or transmitted for personal and informational purposes, but not for commercial use. No part of this work may be reproduced or transmitted for commercial purposes, in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system, except as expressly permitted in writing by the City of Sandy Springs. Requests should be made to the City of Sandy Springs GIS at (770) 730-5600 or george.val@sandyspringsga.org File \\Spalding\departments\GIS\Projects\Operations\2007_03-29_99Dalrymple

EXHIBIT B

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT

This Agreement made as of April ____, 2008, by and between **THE TRUST FOR PUBLIC LAND**, a nonprofit California public benefit corporation, d/b/a The Trust for Public Land (Inc.) ("TPL"), and the **CITY OF SANDY SPRINGS, GEORGIA**, a municipal corporation organized under the laws of the State of Georgia (the "City").

RECITALS

A. The addresses and telephone numbers of the parties to this Agreement are as follows. Telephone numbers are included for information only.

TPL:

THE TRUST FOR PUBLIC LAND
600 West Peachtree Street NW, Suite 1840
Atlanta GA 30308
Attention: Debra Edelson
Telephone: 404/873-7306 ext. 227
Telecopier: 404/875-9099

With a copy to:

Karen W. Fuerst, Esq.
THE TRUST FOR PUBLIC LAND
600 West Peachtree Street NW, Suite 1840
Atlanta GA 30308
Telephone: 404/873-7306 ext. 228
Telecopier: 404/875-9099

CITY:

CITY OF SANDY SPRINGS
7840 Roswell Road
Building 500
Sandy Springs, GA 30350

Attention: Steve Rapson
Telephone: 770-730-5600
Telecopier: 770-393-0244

With a copy to:

Wendell K. Willard, Esq.
Two Ravinia Drive
Suite 1630
Atlanta, Georgia 30346

Telephone: 770-481-7100
Telecopier: 770-481-7111

B. TPL is a charitable nonprofit corporation whose primary purposes include the acquisition and preservation of land as parks and natural spaces for the public benefit.

C. The City is authorized to acquire lands for use as public parks in perpetuity.

D. TPL presently holds an option to purchase those certain tracts or parcels of land located in Land Lots 85 and 128 of the 17th District, Fulton County, Georgia consisting of 24 acres, more or less, being more particularly described in Exhibit "A" and shown on Exhibit "A-1," both of which are attached hereto and incorporated herein by this reference, subject to a life estate reserved in favor of the long term resident of a home on the property (hereinafter referred to from time to time as the "Property").

E. The City desires to acquire the Property from TPL, and has reserved sufficient public funding for the purchase of the Property, which shall help achieve the City's goal of adding public park lands that are perpetually protected for and dedicated to such use, all to improve the quality of life of Sandy Springs residents. TPL desires to convey the Property to the City for such purpose, on the terms and conditions more particularly set forth herein.

F. In consideration of TPL's conveyance of the Property to the City at below appraised fair market value (and at a price less than TPL paid for same), the City has agreed that the ultimate use of the Property which is the subject of this Agreement shall be public recreational and open space use limited to such passive recreational uses as follows: The uses permitted of "conservation land" as provided by the terms of the Georgia Land Conservation Act, O.C.G.A. § 36-22-1, *et seq.* For purposes hereof, the "passive" use to which the parties desire the Property shall be dedicated shall be an expansive concept, and is intended to include, without limitation, the use of the Property solely for one or more of the following park uses, as appropriate given site conditions, the location of the Property, and other attributes considered in sound park planning practice: passive recreation, such as walking, hiking, picnicking, nature appreciation and education and the like, together with such associated auxiliary improvements, such as parking facilities and restrooms, as may be desirable to enhance the public's use and enjoyment of the Property as a passive park. It is the parties' mutual intent that the Property shall not be used for active recreational purposes, which include but are not limited to such uses as ball fields, tennis courts, basketball courts, swimming pools (indoor or outdoor), gymnasiums and/or similar recreational facilities (and associated auxiliary improvements).

THE PARTIES AGREE AS FOLLOWS:

1. **Conveyance.** In consideration of an earnest money payment by the City to TPL in the amount of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TPL agrees to sell the Property and the City agrees to buy the Property on the terms and conditions set forth in this Agreement.

2. **Due Diligence Inspection.**

(a) **Due Diligence Documents.** On or before **May 15, 2008**, TPL will provide (or has provided) to the City: (i) a title insurance commitment from Chicago Title Insurance Company as prepared by Trinity Title Insurance Agency, Inc., for TPL's acquisition of the Property, which commitment will be accompanied by copies of documents evidencing the exceptions to coverage reflected therein; (ii) a current appraisal of the Property prepared by Carr, Lawson, Cantrell & Associates; (iii) a copy of a current Phase I Site Assessment of the Property prepared by Peachtree Environmental, Inc.; and (iv) a current, draft survey of the Property prepared for the City, TPL and Chicago Title Insurance Company by Frontline Surveying, Inc. (the "Survey"). The plat of Survey will show the boundaries and state the acreage of the Property, rounded to the nearest one-hundredth (1/100th) of an acre. The Survey shall conclusively determine as between TPL and the City the exact acreage and legal description of the Property to be included in the quitclaim deed to be delivered by TPL to the City at the Closing (as herein defined), and, upon written approval by both TPL and the City, shall automatically be expressly incorporated into this Agreement by reference.

The documents and items referenced in this paragraph and delivered by TPL to the City with respect to the Property shall be collectively referred to herein as the "Due Diligence Documents".

(b) **City's Due Diligence Review.** On or before the *first to occur of* (i) the date that is ten (10) business days after the date on which the City has received all of the Due Diligence Documents, or (ii) **May 30, 2008**, the City shall (A) review the Due Diligence Documents, (B) conduct any inspections or investigations of the Property that the City deems necessary, and (C) notify TPL in writing of any objections the City may have to the condition of the Property including, but not limited to, any objections related to the Due Diligence Documents. The City acknowledges that **TIME IS OF THE ESSENCE** for purposes of its compliance with these deadlines, since TPL, under its pending option to acquire the Property, must notify the present owner of the Property of any objections to matters of due diligence shortly after such dates. Upon receipt of notice of any such objections, TPL will use reasonable efforts to cure, or cause the present owners of the Property to cure, such objections on or before the Closing hereunder. If such objections are not cured by the time of Closing, the City or TPL may terminate this Agreement by written notice delivered prior to the Closing, and, except as otherwise provided herein, neither party shall have any further obligations hereunder with respect thereto. Failure by the City to object to any matters by the controlling date as determined by the first sentence of this subsection shall be deemed acceptance of the Property as is, including, without limitation, subject to any matters set forth in the Due Diligence Documents. Notwithstanding the foregoing, if TPL does not deliver any item of Due Diligence Documents to the City by May 15, 2008, the City shall have five (5) business days after its receipt of such item to review and comment on same.

(c) **Sale "As Is".** TPL makes no representations to the City regarding the condition of the Property. If the City does not terminate this Agreement pursuant to Section 2(b) above, the City agrees to accept the Property "as is," in its then condition, subject to all reasonable use, wear and tear, and deterioration of any kind in, of, or to the Property.

3. **Closing.**

Closing for the Property shall occur on or before *the first to occur of* (a) three (3) business days after TPL acquires the Property from its current owner, or (b) September 26, 2008, at a time and place mutually agreeable to the parties (the "Closing"). The parties agree that the Closing of the Property may close by mail. TPL shall deliver to the City at the Closing a limited warranty deed to the Property including the record legal description, meeting the requirements as to title of Section 5 below and a quitclaim deed to the Property using the new survey description. Possession of the Property shall pass to the City at the time of the Closing.

4. **Conveyance Terms.**

a) **Purchase Price.** TPL shall convey to the City and the City shall acquire from TPL the Property for a purchase price equal to Four Hundred Sixteen Thousand and no/100 Dollars (\$416,000.00) (the "Purchase Price").

b) Method of Payment. The Purchase Price shall be payable at the Closing by wire transfer of immediately available federal funds.

c) Use Restrictions. The City agrees that the ultimate use of the Property which is the subject of this Agreement shall be public recreational and open space use limited to such passive recreational uses as follows: The uses permitted of "conservation land" as provided by the terms of the Georgia Land Conservation Act, O.C.G.A. § 36-22-1, *et seq.* For purposes hereof, the "passive" use to which the parties desire the Property shall be dedicated shall be an expansive concept, and is intended to include, without limitation, the use of the Property solely for one or more of the following park uses, as appropriate given site conditions, the location of the Property, and other attributes considered in sound park planning practice: passive recreation, such as walking, hiking, picnicking, nature appreciation and education and the like, together with such associated auxiliary improvements, such as parking facilities and restrooms, as may be desirable to enhance the public's use and enjoyment of the Property as a passive park. It is the parties' mutual intent that the Property shall not be used for active recreational purposes, which include but are not limited to such uses as ball fields, tennis courts, basketball courts, swimming pools (indoor or outdoor), gymnasiums and/or similar recreational facilities (and associated auxiliary improvements).

5. Title. TPL agrees to use reasonable efforts to remove any title exceptions to which the City has objected pursuant to Section 2(b) above and shall have until the date of the Closing to do so. In any event, TPL is required to satisfy and discharge all monetary liens and encumbrances (except any statutory liens for nondelinquent real property taxes) affecting the Property and TPL shall furnish whatever documents or evidence will be required by the title insurance company in order to delete the standard exceptions on or before Closing.

If TPL fails to satisfy all of the stated title objections by the date set for either Closing, the City may at its option:

a) waive the title objections and proceed to close; or

b) terminate this Agreement, and, except as expressly provided to the contrary herein, TPL and the City shall have no further rights, obligations or duties hereunder.

6. Closing Expenses and Prorations. TPL shall pay transfer or documentary taxes on the deed of conveyance to the City, if any. The City shall pay the cost of title examination, preparation of the title insurance commitment, the owner's title insurance premium, and all other costs associated with the preparation and delivery of the owner's title insurance policy for the City's acquisition of the Property, if such policy is obtained, and the recording fee for the deed of conveyance, if any. Real property taxes and assessments ("Tax" or "Taxes") for the current year shall be prorated as of Closing, treating the City as owner as of the date of TPL's acquisition of the Property. TPL shall provide to the City the most recent real property tax bill(s) for the Property. Taxes shall be prorated based on the current year's Tax, if known. If Closing occurs at a date when the current year's Taxes are not yet fixed, and the current year's assessment is available, Taxes will be prorated based upon such assessment and the prior year's millage. If the current year's assessment is not available, Taxes will be prorated based on the prior year's Tax. However, any Tax proration based on an estimate shall be adjusted promptly, at the request of either party, upon receipt of the current year's tax bill, and a statement to that effect shall be included in the closing statement.

Other fees and charges shall be allocated in accordance with the laws of the State of Georgia and the customary practice of the City of Sandy Springs and Fulton County. All other expenses, including, without limitation, attorneys' fees, shall be paid by the party incurring the same.

7. **TPL's Representations and Warranties.** TPL represents and warrants to the City that:

a) TPL has the right, power and authority to enter into this Agreement;

b) TPL owns, or will own by the time of Closing, the Property in fee simple subject to the encumbrances set forth in TPL's owner's title policy.

c) TPL is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code. TPL's Taxpayer Identification Number is 23-7222333.

d) the Purchase Price for the Property shall not be more than the purchase price TPL pays for the Property from the present owner thereof, pursuant to the terms of TPL's pending option agreement to acquire the Property, as same may be amended from time to time.

8. **City's Representations.** The City hereby represents and warrants to TPL that it has full power and authority to enter into this Agreement and the person signing this Agreement for the City has full power and authority to sign for the City and to bind it to this Agreement.

9. **Access to the Property.** Between the Effective Date (as herein defined) of this Agreement and the Closing date, the City shall have access to the Property at all reasonable hours, through its representatives, agents and employees, for the purpose of inspecting the Property and causing any necessary appraisals, Hazardous Materials audits, surveys and other inspections to be made, provided always that the City shall not interfere with the rights of any owner, lessees or licensees of the Property, and shall coordinate its site visits through TPL, so as to allow TPL to provide advance notice of such site visit(s) to the current owner of the Property. The City agrees to be responsible for any damages to property or persons it may cause as a result of the City's or its agents' presence on the Property for the purpose of making the inspections provided for herein.

10. **Remedies Upon Default.** In the event that the City defaults in the performance of any of its obligations under this Agreement, TPL shall, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against the City. If TPL fails to convey to the City, the City shall have the right of specific performance against TPL.

11. **Notices.** All notices, demands, requests or other communications permitted or required by this Agreement shall be in writing and shall be deemed to have been duly given if delivered by hand by the date called for under this Agreement, by nationally-recognized, overnight express delivery service or by electronic transfer with prompt telephone confirmation, to the addresses set forth in Recital A.

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery, except fax notices shall be deemed effectively received when

sent or, if sent after 5:00 p.m. eastern time, shall be deemed received at 9:00 a.m. eastern standard time on the first business day following actual receipt by the addressee. If any notice mailed is properly addressed or transmitted but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of sending.

12. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements between the parties with respect to the Property and other matters contained herein and constitutes the sole and entire agreement and understanding between TPL and the City with respect to the transaction contemplated hereby. This Agreement shall not be modified or amended except by an instrument in writing signed by or on behalf of both parties.

13. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.

14. **Effective Date.** As used herein, the terms "date of this Agreement," "date hereof," "effective date of this Agreement," or "Effective Date," shall mean the date on which a fully-executed copy of this Agreement is delivered by the last of the parties to execute this Agreement to the other party hereto.

15. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument. Legible fax copies and photocopies of documents signed by either party are deemed to be equivalent to originals.

16. **Parties Bound.** All of the terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

17. **Attorneys' Fees.** In the event of any litigation, including appellate proceedings, arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing party.

18. **Headings; Rules of Construction.** The headings used in this Agreement are for convenience of reference only and shall not operate or be construed to alter or affect the meaning of any of the provisions hereof. All references herein to the singular shall include the plural, and vice versa. The parties agree that this Agreement is the result of negotiation by the parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against either party because of authorship.

19. **Assignability.** The City may not assign its interests under this Agreement without the written consent of TPL.

20. **Time of Essence.** **TIME IS OF THE ESSENCE OF THIS AGREEMENT.**

21. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision of this Agreement be for any reason unenforceable, the balance shall nonetheless remain in full force and effect, but without giving effect to such provision.

22. **No Waiver.** Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

23. **Miscellaneous.** In the event that any of the deadlines set forth herein end on a Saturday, Sunday or legal holiday, such deadline shall be extended automatically to the next business day that is not a Saturday, Sunday or legal holiday. The term "business days" as may be used herein shall mean all days that are not on a Saturday, Sunday or legal holiday. Notwithstanding any other term of this Agreement, all dates for the performance of obligations of the parties shall be extended automatically for a reasonable time period if any event, including but not limited to, natural disasters, strikes, civil disorder, war, national or local days of mourning, cause the county courthouse and/or major public services to be closed or suspended in TPL's or the City's locale ("Disaster"). This Section 23 is to be liberally construed so as to save the transaction and to avoid defaults.

24. **Contingency.** The parties agree that TPL's performance of its obligations to convey the Property to the City is contingent upon TPL's closing on the acquisition of the Property pursuant to its pending option agreement to acquire same, as said agreement may be amended from time to time.

25. **Name of Park; Plaque.** In consideration of the generosity of the current owner of the Property that has made this potential new park land transaction possible, and at the request of said owner, the City agrees that within a reasonable period of time (not to exceed six [6] months) after the life estate in the property reserved in favor of the current resident thereof ends, and the City is vested with its remainder interest in the Property, the City, at its sole cost and expense, shall erect or cause to be erected on the Property a plaque establishing that the Property is to be known as "Lost Corner" park or nature preserve. The City acknowledges that this name is in accordance with the wishes of the current owner of the Property, without whose generosity the conservation of the Property would not be possible. If requested by said current owner, the plaque shall also mention the name of said party and such other details of history as may be relayed by said party to TPL, and, in turn, to the City. Said plaque shall also recognize the efforts and role, and include the respective logos of, The Trust for Public Land and the Sandy Springs Conservancy in helping to create the park. The design and content of the plaque shall be provided by the City to TPL and the Sandy Springs Conservancy for review and approval (such review and approval not to be unreasonably withheld or delayed) prior to its being finalized.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed under seal by its duly authorized signatory(ies) on the date set forth below.

TPL:

THE TRUST FOR PUBLIC LAND,
a nonprofit California public benefit
corporation d/b/a
The Trust for Public Land, (Inc.)

By: _____
Name: _____
Title: _____

Attest: _____

Name: _____
Assistant Secretary

Date: _____, 2008

[CORPORATE SEAL]

CITY:

CITY OF SANDY SPRINGS,
a municipal corporation organized under the
laws of the State of Georgia

By: _____
Name: Eva Galambos
Title: Mayor

Attest: _____
Name: Christina Rowland
Title: City Clerk

Date: _____, 2008

[SEAL]

Approved as to Form:

City Attorney

Exhibit "A"

Legal Description

Exhibit "A-1"

Drawing/Map Showing Property

EXHIBIT C
AGREEMENT

«GRANTEE'S_NAME»
«Grant_Number»

STATE OF GEORGIA
GEORGIA ENVIRONMENTAL FACILITIES AUTHORITY
AGREEMENT FOR LAND CONSERVATION GRANT PROGRAM

THIS AGREEMENT (hereinafter referred to as this "Agreement") made by and between the Georgia Environmental Facilities Authority, (hereinafter referred to as the "Authority") an instrumentality of the State of Georgia and the administrative arm of the Georgia Land Conservation Council (hereinafter referred to as "Council") and «GRANTEE'S_NAME», a Local Government unit eligible under the Land Conservation Grant Program, (hereafter referred to as the "Local Government").

WHEREAS, pursuant to the Georgia Constitution, State funds may be granted to counties and municipalities within the state subject to the conditions and purposes specified by law; and

WHEREAS, pursuant to the Land Conservation Act, O.C.G.A. § 36-22-1 *et seq.*, (hereinafter referred to as the "Act"), the Authority has established the Georgia Land Conservation Trust Fund, (hereinafter referred to as "Trust Fund") from which funds shall be made available in each fiscal year for grants to cities and counties having an approved community land conservation project; having complied with state laws, regulations, contracts, and agreements; and having matching funds at a percentage of the total project cost; and

WHEREAS, the Local Government submitted to the Council that certain Georgia Land Conservation Program Application (hereinafter referred to as "Application") requesting a grant from the Trust Fund; and

WHEREAS, the Authority and the Department of Natural Resources (hereinafter referred to as the "Department"), acting in their statutory capacity as advisors, informed the Council that the project proposed in the Application (hereinafter referred to as "Project") met the statutory and regulatory requirements to receive funding and will perpetually protect the conservation values of the Property; and

WHEREAS, at a duly called meeting, the Council approved the Project as defined in the Local Government's application to the Georgia Land Conservation Council, as hereinafter defined and, pursuant to that approval, the Council has authorized the Authority to process the Grant Award, as hereinafter defined.

NOW THEREFORE, subject to the terms and conditions contained herein, the parties hereto agree as follows:

1. **GRANT AMOUNT:** Subject to and conditioned upon the terms of this Agreement, the Local Government is hereby awarded a grant in the amount of «Alpha_Amount» (\$«Numeric_Amount») (hereinafter referred to as "Grant Award").

2. **PURPOSE FOR GRANT:** The Local Government covenants to the Authority that upon receipt of the Grant Award, the Grant Award will be used for the sole and exclusive purpose of acquiring either a fee simple interest, a conservation easement or other restrictions in that certain real property identified in Exhibit "A", attached hereto and incorporated herein by reference (hereinafter referred to as "Property"). The Local Government further covenants that it will permanently protect the conservation values of the Property as indicated in the Application. The Local Government further covenants that it will impose, or cause to be imposed, of record on the Property as covenants running with the land the restrictions set forth in Exhibit "B", attached hereto and incorporated herein by reference (hereinafter referred to as "Restrictions").

3. **REPRESENTATIONS:** The Local Government hereby represents that:

(a) The Local Government is a public body corporate and politic duly created and validly existing under the laws of the State of Georgia and has all requisite power and authority to execute and deliver the Agreement and to perform its obligations there under; and

(b) The execution of this Agreement and the transaction for which the Grant Award will be made have been duly authorized; and

(c) The representations made in this Agreement and all exhibits hereto, including but not limited to the Application, do not contain any untrue statements and do not omit to state a material fact necessary to make the statements contained herein or therein not misleading.

4. **DUE DILIGENCE:** No later than five days prior to requesting disbursement of the Grant Award, as specified in Section 7 of this Agreement, the Local Government shall complete the due diligence listed below and submit the required documentation to the Authority for review and approval.

(a) APPRAISALS

The Local Government shall cause the Property to be appraised by an appraiser with an MAI certification and provide a copy of the appraisal to the Authority. At a minimum, the appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP). For Projects with land values that exceed \$250,000.00, two appraisals are required, one of which must be by an MAI appraiser.

(b) SURVEY

The Local Government shall provide the Authority with a plat of a boundary line survey in recordable form and certified by a Georgia licensed surveyor. If an acceptable survey is not available, then a metes and bounds legal description may be submitted and upon approval by the Authority will be used to satisfy this requirement.

(c) PHASE I ENVIRONMENTAL HAZARD ASSESSMENT

The Local Government shall provide the Authority with a Phase I Environmental Assessment in accordance with the American Society for Testing and Materials (ASTM) Standard E 1527-00 or ASTM Standard E 2247-02.

(d) TITLE REPORT

The Local Government shall provide the Authority with a copy of the Attorney Certificate of Title which the Local Government will use to obtain Title Insurance.

5. INSTRUMENTS OF CONVEYANCE: The instrument by which the Property is conveyed to the Local Government shall contain the language contained in Exhibit "B," which will restrict the use of the Property. The Local Government shall instruct the attorney (hereinafter referred to as "Closing Attorney") handling the real property closing (hereinafter referred to as "Property Closing") to include this language into the appropriate conveyance instrument and to prepare as an exhibit thereto, a memorandum of agreement (hereinafter referred to as "Memorandum of Agreement") which clearly reflects the Restrictions contained in the Application, all of which will be covenants running with the land. A copy of the final draft of the deed, conservation easement or other conveyance instrument and all exhibits thereto that will be used to convey the Property to the Local Government shall be submitted to the Authority for its approval. In the event of a conservation easement, no Memorandum of Agreement is required so long as the Restrictions are clearly delineated in the conservation easement instrument.

6. ADDITIONAL CONDITIONS TO THE GRANT: In conjunction with the request outlined in Section 7 herein, the Local Government shall submit: (1) a certified copy of the resolution adopted by the Local Government's governing body, substantially in the form of Exhibit "D"; and (2) a signed opinion of counsel to the Local Government, substantially in the form of Exhibit "C".

7. REQUEST FOR FUNDS: Subject to the availability of funds for such purposes, the Authority will wire the Grant Award to the Closing Attorney. No later than seven (7) days prior to the scheduled date of the Property Closing, the Local Government will notify, or cause the Closing Attorney to notify, the Authority in writing of the name, address and wiring instructions for Closing Attorney. The Closing Attorney shall also provide the Authority with a closing statement which shall at a minimum indicate the other sources and amounts of funding that will be used for the acquisition of the Property and specifically identify, in either the Closing Statement or an attachment

thereto, the matching funds that are required for the Local Government to qualify for this Grant Award as indicated in Part 11 of the Application.

8. DISTRIBUTION OF FUNDS: Provided (i) the closing statement adequately reflects the sources and amounts of match funds; (ii) the commitment of the Grant Award to the acquisition of the Property is proper, as determined in the sole discretion of the Authority; (iii) all matters subject to the approval of the Authority have been duly approved by the Authority; and (iv) all other Grant Award terms and conditions of this Agreement have been met, the Authority will transmit the Grant Award by wire delivery to the escrow account of the Closing Attorney in trust for the Local Government, no sooner than forty-eight (48) hours and no later than twenty-four (24) hours before the actual closing date. If the Local Government designates a Closing Attorney without an established escrow account, the Grant Award will be disbursed as directed by Local Government.

9. POST CLOSING: The Local Government shall file or cause to be filed with the Clerk of the Superior Court of the county in which the Property is located, the conveyance instrument. With the exception of conservation easements, all instruments shall include as an exhibit the Memorandum of Agreement. No later than sixty (60) days after the Closing, Local Government shall cause a copy of the recorded instrument including the recording information, all exhibits thereto and a copy of the title insurance policy obtained by the Local Government to be forwarded to the Authority for recordation with the State Properties Commission.

10. RETURN OF GRANT AWARD: The Grant Award is not fungible with any other funds received by the Local Government from the Authority, any other State of Georgia entity or any other source and must be used exclusively for the purchase of the Property as approved by the Council based on the Application submitted by the Local Government. In the event the Property Closing does not occur on or before the thirtieth (30th) day after the Grant Award has been disbursed, the Local Government shall return or cause to be returned to the Authority the entire Grant Award. Likewise, in the event the Closing occurs but the entire Grant Award is not expended or committed to an eligible expense, the Local Government shall return or cause to be returned to the Authority, no later than thirty (30) days after the date of Closing, any unexpended or committed funds.

11. RECISSION OF GRANT AWARD: The commitment of the Authority to provide the Grant Award to the Local Government will expire on the one hundred and twentieth (120th) day after the date that the Agreement is executed by the Authority and Local Government.

12. MONITORING AND AUDITS: Upon request, the Local Government agrees to provide the Authority, its agents or State Auditor with any information the Authority deems necessary to monitor the use of the Grant Award. As required by standard accounting principals, the Local Government shall include the Grant Award in the audit, review or financial statement. The Local Government understands that any unresolved findings, whether based on an audit report, review or financial statement

shall preclude the Local Government from applying for and receiving any further grants from the Authority.

13. MISCELLANEOUS PROVISIONS

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

(b) The Restrictions shall be binding upon and shall inure to the benefit of the Authority and the Local Government and their respective heirs, legal representatives, successors, and assigns, but the Local Government may not assign or transfer any of its rights or obligations hereunder without the express prior written consent of the Authority.

(c) This Agreement may not be waived or amended except by a writing signed by authorized officers of the Authority and the Local Government.

(d) All notices, certificates, requests, demands, or other communications hereunder shall be sufficiently given and shall be deemed given upon receipt, by hand delivery, mail, overnight delivery, telecopy, or other electronic means, addressed as provided at the beginning of this Agreement. Any party to this Agreement may, by notice given to the other party, designate any additional or different addresses to which subsequent notices, certificates, or other communications shall be sent. For purposes of this Section, "electronic means" shall mean telecopy, E-mail or facsimile transmission or other similar electronic means of communication that produce evidence of transmission.

(e) This Agreement may be executed in one or more counterparts.

(f) All exhibits and attachments to this Agreement and the introductory whereas clauses are incorporated herein.

(g) In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(h) Time is of the essence of this Agreement

(i) This Agreement constitutes the entire agreement between the Local Government and the Authority with respect to the Grant and supersedes all prior agreements, negotiations, representations, or understandings between such parties with respect to such matters. Any changes to this Agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this _____ day of _____ 20____.

«GRANTEE'S_NAME»

By: _____

Name: «Contact Name»

Title: «Contact Title»

[Affix Seal Here]

Attest:

By: _____

Name: _____

Title: _____

**GEORGIA ENVIRONMENTAL
FACILITIES AUTHORITY**

By: _____

Chris Clark
Executive Director

[Affix Seal Here]

**EXHIBIT "A"
LEGAL DESCRIPTION**

Recipient: «GRANTEE'S_NAME»

Grant Number: «Grant_Number»

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EXHIBIT "B"

Recipient: «GRANTEE'S_NAME»

Grant Number: «Grant_Number»

INSTRUMENT OF CONVEYANCE REQUIRED LANGUAGE

FEE SIMPLE ACQUISITIONS

The following language shall be included in the instrument of conveyance

This property shall be and is perpetually restricted, as indicated herein, so as to maintain certain conservation values which include natural habitats, forests, wildlife, scenic, agricultural and other ecological values which qualify the property as a scenic, natural and rural area that has not been subject to significant development and as a significant natural area that provides a "relatively natural habitat for fish, wildlife, plants, or similar ecosystems" as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code. These restrictions are deemed to be covenants running in favor of or for the benefit of land and are being held for the use of the public. Therefore, pursuant to O.C.G.A. § 44-5-60 (c), these covenants shall run in perpetuity. The grantee shall seek to preserve any plants, animals, or plant communities of the property, including but not limited to species designated as protected by the Georgia Department of Natural Resources and the U.S. Fish and Wildlife Service.

CONSERVATION EASEMENTS

The following language shall be included in any instrument purporting to impose a conservation easement on the Project.

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

OTHER METHODS OF RESTRICTION

The Grantee shall contact the Georgia Land Conservation Council for language to be used in other methods of restriction.

E P A E

«GRANTEE'S_NAME»
«Grant_Number»
\$«Numeric_Amount»

EXHIBIT "C"
OPINION OF LOCAL GOVERNMENT 'S COUNSEL
(Please furnish this form on Attorney's Letterhead)

DATE

Land Conservation Fund
c/o Georgia Environmental Facilities Authority
Harris Tower, Suite 900
233 Peachtree Street, NE
Atlanta, Georgia 30303-1911

Ladies and Gentlemen:

As counsel for «Grantee's_Name» (the "Local Government"), I have examined duly executed originals of that certain Agreement (the "Agreement"), by and between the Local Government and Georgia Environmental Facilities Authority (the "Authority") for the grant being awarded to the local Government from the Land Conservation Trust Fund and such other documents, records, and proceedings as I have deemed relevant or material to render this opinion. Based upon such examination, I am of the opinion, as of the date hereof, that:

1. The Local Government is a public body corporate and politic, duly created and validly existing under the laws of the State of Georgia.
2. The Agreement has been duly authorized, executed, and delivered by the Local Government and are legal, valid, and binding obligations of the Local Government, enforceable in accordance with their terms.
3. To the best of my knowledge, the execution and delivery by the Local Government of the Agreement will not conflict with, breach, or violate any law, any order or judgment to which the Local Government is subject, or any contract to which the Local Government is a party.
4. The signatures of the officers of the Local Government that appear on the Agreement are true and genuine. I know such officers and know them to be the duly elected or appointed qualified incumbents of the offices of the Local Government set forth below their names.

With your permission, in rendering the opinions set forth herein, I have assumed the following, without any investigation or inquiry on my part:

- (i) that the Authority will be duly authorized to and will execute and deliver the Agreement; and
- (ii) that the Agreement will constitute the binding obligations of the Authority and that the Authority has all requisite power and authority to perform its obligations thereunder.

Very truly yours,

EXHIBIT "D"

EXTRACT OF MINUTES
RESOLUTION OF GOVERNING BODY

Recipient: «GRANTEE'S_NAME»

Grant Number: «Grant_Number»

At a duly called meeting of the governing body of the Local Government identified above (the "Local Government") held on the ____ day of _____, the following resolution was introduced and adopted.

WHEREAS, the governing body of the Local Government has applied to the Georgia Land Conservation Council ("Council") for a grant from the Georgia Land Conservation Trust Fund in an amount not to exceed \$«Numeric_Amount». These funds will be used to finance the costs associated with acquiring a fee title interest, conservation easement or other restrictions in or on the lands more particularly described in Exhibit "A," attached hereto and incorporated by this reference, (hereinafter referred to as "Property") it having been determined that this land has a high conservation value; and

WHEREAS, at a duly called meeting of the Council, the proposed project ("Project") described in the Local Government's application was approved.

WHEREAS, the Council has arranged for the Georgia Environmental Facilities Authority to provide Local Government with a Grant Award in the amount of \$«Numeric_Amount» ("Grant Award") contingent upon the due execution by the Local Government of that certain Agreement (the "Agreement"), the form of which has been presented to this meeting.

NOW, THEREFORE, BE IT RESOLVED that the terms and conditions included in the Agreement are in the best interests of the Local Government and will provide appropriate financing for the Project.

BE IT FURTHER RESOLVED that the forms, terms, and conditions and the execution, delivery, and performance of the Agreement are hereby approved and authorized and the following persons are hereby designated and authorized to execute and deliver, and to attest, respectively, the Agreement and to do all things necessary and proper to consummate the transactions contemplated by the Agreement.

(Name of Person to Execute Documents)

(Title)

(Name of Person to Attest Documents)

(Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect.

Dated: _____

Secretary/Clerk

(SEAL)

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