

TO: Mayor and Council
FROM: Cecil G. McLendon, Jr., Assistant City Attorney
DATE: July 31, 2012
ITEM: Donation Agreement regarding Lost Corner Park

Background:

At the time of the initial acquisition of the Lost Corner Park property, the donor retained two one acre parcels contiguous to the park and fronting on Brandon Mill Road. At this time, the estate of the donor has transferred the two one acre parcels to the Trust for Public Land and the Trust is now prepared to transfer the properties to the City.

Discussion:

Attached hereto is a proposed Donation Agreement between the City and the Trust for Public Land outlining the terms of the transfer of the two properties.

Significantly, though the property is being donated to the City, the Trust for Public Land has asked that the City pay the sum of \$10,000.00 to defray their costs regarding the transfer.

In addition, the two properties will be subject to identical use and conservation restrictions as the existing park parcel. Generally, those restrictions require a passive park use which would forbid uses such as playgrounds, ball fields or other active recreation, as well as limiting the ability to add improvements to the properties.

Otherwise, the proposed Donation Agreement contemplates a rather standard real estate transaction.

Alternatives:

Accept or not accept the donation of the properties.

Financial Impact:

Costs would include: (1) \$10,000.00 payment to the Trust for Public Land, (2) costs of the real estate transaction, and (3) any reduction in tax base from dedication of property for public purposes.

Attachments:

Proposed Donation Agreement.

*City
Attorney*

DONATION AGREEMENT

This Agreement made as of _____, 2012 by and between **THE TRUST FOR PUBLIC LAND**, nonprofit California public benefit corporation, d/b/a The Trust for Public Land (Inc.) ("Donor" or "TPL"), and the **CITY OF SANDY SPRINGS, GEORGIA**, a municipal corporation organized under the laws of the State of Georgia ("Donee" or 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
Email: debra.edelson@tpl.org

With a copy to:

Peter Fodor, Esq.
THE TRUST FOR PUBLIC LAND
306 Monroe Street
Tallahassee, Florida 32301
Telephone: 850-222-7911, ext. 29
Telecopier: 850-222-8909
Email: pete.fodor@tpl.org

CITY:

CITY OF SANDY SPRINGS
7840 Roswell Road
Building 500
Sandy Springs, GA 30350
Attention: City Manager
Telephone: 770/730-5600
Telecopier: 770/730-1420

With a copy to:

CITY OF SANDY SPRINGS
7840 Roswell Road
Building 500
Sandy Springs, GA 30350
Attention: City Attorney
Telephone: 770/730-5600
Telecopier: 770/730-1420

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 owns in fee simple those certain tracts or parcels of land located in Land Lot 85 of the 17th District, Fulton County, Sandy Springs, Georgia consisting of 2 acres, more or less, being more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to from time to time as the "Property").

E. The City desires to acquire the Property from TPL, 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 donate the Property to the City for such purpose, on the terms and conditions more particularly set forth herein.

F. In consideration of TPL's donation of the Property to the City, 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. Donation of the Subject Property. For and in consideration of the payment by Donee to Donor of Ten Dollars (\$10.00), the receipt and sufficiency of which are hereby acknowledged, the mutual covenants and promises contained in this Agreement, and in acknowledgment of Donor's material reliance on this Agreement and Donor's expenditure of significant funds and effort in connection herewith, Donor agrees to grant and convey to Donee, and Donee agrees to accept the donation by conveyance from Donor, of the Subject Property on the terms and conditions set forth in this Agreement.

2. Due Diligence Inspection.

(a) **Due Diligence Documents.** Donor will provide to the City copies of all existing due diligence documents that relate to the subject property. Donee will be responsible for acquiring any updated due diligence, if desired. The documents and items referenced in this subsection 2(a) and delivered by Donor to the City with respect to the Subject Property shall be collectively referred to herein as the "Due Diligence Documents".

(b) **City's Due Diligence Review.** Prior to the date hereof, the City has (i) reviewed and approved the Due Diligence Documents, and (ii) conducted any inspections or investigations of the Subject Property that the City deems necessary, and found the results of such inspections to be satisfactory.

(c) **Sale "As Is"**. TPL makes no representations to the City regarding the condition of the Subject Property. If the City does not terminate this Agreement pursuant to Section 2(b) above, the City agrees to accept the Subject 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 Subject Property.

3. Closing.

Closing for the Subject Property shall occur on or before September 28, 2012, at a time and place mutually agreeable to the parties (the "Closing"). The parties agree that the Closing of the donation of the Subject Property may close by mail. TPL shall deliver to the City at the Closing a limited warranty deed to the Subject Property, meeting the requirements as to title of Section 5 below, and substantially in the form attached hereto as **Exhibit "B"** and incorporated herein by reference. Possession of the Subject Property shall pass to the City at the time of the Closing. The parties will execute and deliver to each other at Closing any and all other documents as are customarily exchanged at land conveyance closings, including, without limitation, a closing statement in form reasonably acceptable to both parties.

4. Title. TPL agrees to use reasonable efforts to remove any title exceptions to which the City may object to 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.

5. 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 for 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.

The City of Sandy Springs shall remit ten thousand dollars (\$10,000.00) at closing to the Donor to cover the costs of Donor's efforts in obtaining, holding and conveying the subject lands to the Donee.

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

6. 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 the Subject Property in fee simple, subject to the Permitted Title Exceptions.

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.

7. City's Representations. The City hereby represents and warrants to TPL that it has full power and authority to enter into this Agreement and perform its duties and obligations hereunder, 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.

8. Access to the Subject Property. During the term hereof, the City to have access to the Subject Property at all reasonable hours, through its representatives, agents and employees, for the purpose of inspecting the Subject Property and causing any necessary appraisals, Hazardous Materials audits, surveys and other inspections to be made. 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 Subject Property for the purpose of making the inspections provided for herein.

9. 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.

10. 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 fax 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.

11. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the parties with respect to the Subject 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.

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

13. 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.

14. 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.

15. 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.

16. Attorney's Fees. In the event of any litigation, including appellate proceedings, arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing party.

17. 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.

18. Assignability. The City may not assign its interests under this Agreement without the written consent of TPL, which may be withheld by TPL in its sole discretion.

19. Time of Essence. Time is of the essence of this Agreement.

20. 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.

21. 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.

22. 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 City courthouse and/or major public services to be closed or suspended in TPL's or the City's locale ("Disaster"). This Section 22 is to be liberally construed so as to save the transaction and to avoid defaults.

23. 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 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. Notwithstanding the above, the Parties agree that one compliant plaque on the contiguous Lost

Corner Park Property will meet the requirements of the paragraph. A second plaque, recognizing the major donors to the effort, will be provided by The Trust for Public Land, and installed by the City in a prominent location proximate to the residence.

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.

DONOR:

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

By: _____
Name: Curt Soper
Title: State Director, Georgia Office

[CORPORATE SEAL]

DONEE:

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

By: _____
Name:
Title: Mayor

Attest: _____
Name:
Title: City Clerk

Date: _____, 2012

[SEAL]

Approved as to Form:

City Attorney

Exhibit "A"

Legal Description

Tract 2

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 85 of the 17th District, City of Sandy Springs, Fulton County, Georgia, and being more particularly described as follows:

Commencing at an iron pin located at the Southwesterly intersection of Brandon Mill Road (50 foot right of way) and Riverside Drive (variable right of way); thence along the westerly right of way of Brandon Mill Road South 03 degrees 26 minutes 56 seconds West, a distance of 425.83 feet to a ½-inch rebar set and the POINT OF BEGINNING; thence continue along the westerly right of way of Brandon Mill Road South 03 degrees 26 minutes 56 seconds West, a distance of 209.00 feet to a ½-inch rebar set; thence leaving said right of way North 89 degrees 48 minutes 26 seconds West, a distance of 209.00 feet to a ½-inch rebar set; thence North 03 degrees, 26 minutes, 56 seconds East, a distance of 209.00 feet to a ½-inch rebar set; thence South 89 degrees 48 minutes 26 seconds East, a distance of 209.00 feet to a ½-inch rebar set on the westerly right of way of Brandon Mill Road and the Point of Beginning.

Said Tract 2 Contains 43,610 square feet or 1.00 acre, more or less, as shown on that certain ALTA/ASCM Survey for The Trust for Public Land, et al. prepared by Thomas Edward Peay, Jr., G.R.L.S. #2402 of Frontline Surveying and Mapping, Inc. dated March 25, 2008 and last revised July 21, 2008.

Tract 3

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 85 of the 17th District, City of Sandy Springs, Fulton County, Georgia, and being more particularly described as follows:

Commencing at an iron pin located at the Southwesterly intersection of Brandon Mill Road (50 foot right of way) and Riverside Drive (variable right of way); thence along the westerly right of way of Brandon Mill Road South 03 degrees 26 minutes 56 seconds West, a distance of 634.83 feet to a ½-inch rebar set and the POINT OF BEGINNING; thence continue along the westerly right of way of Brandon Mill Road South 03 degrees 26 minutes 56 seconds West, a distance of 156.00 feet to a ½-inch rebar set; thence leaving said right of way North 89 degrees 48 minutes 35 seconds West, a distance of 281.28 feet to a ½-inch rebar set; thence North 03 degrees, 33 minutes, 08 seconds East, a distance of 156.00 feet to a ½-inch rebar set; thence South 89 degrees 48 minutes 26 seconds East, a distance of 281.00 feet to a ½-inch rebar set on the westerly right of way of Brandon Mill Road and the Point of Beginning.

Said Tract 3 contains 43,785 square feet, or 1.01 acres, more or less, as shown on that certain ALTA/ASCM Survey for The Trust for Public Land, et al. prepared by Thomas Edward Peay, Jr., G.R.L.S. #2402 of Frontline Surveying and Mapping, Inc. dated March 25, 2008 and last revised July 21, 2008.

Exhibit "B"

Form of Limited Warranty Deed

After recording return to:

STATE OF GEORGIA

COUNTY OF FULTON

LIMITED WARRANTY DEED

THIS INDENTURE, made as of the ____th day of _____, 2012, between **THE TRUST FOR PUBLIC LAND**, a nonprofit California public benefit corporation d/b/a The Trust for Public Land (Inc.), (hereinafter referred to as “GRANTOR“), and the **CITY OF SANDY SPRINGS, GEORGIA**, a municipal corporation organized under the laws of the State of Georgia (hereinafter referred to as “GRANTEE“).

W I T N E S S E T H:

THAT GRANTOR, for and in consideration of this sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said GRANTEE, all those tracts or parcels of land lying and

being in Land Lot 85 of the 17th District, City of Sandy Springs, Fulton County, Georgia, and being more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"). TO HAVE AND TO HOLD, the Property, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said GRANTEE forever in Fee Simple; subject to the matters (hereafter referred to as "Permitted Exceptions") set forth on Exhibit "B" attached hereto and by this reference incorporated herein, as well as the Passive Park Property Restriction hereinbelow set forth.

FURTHERMORE, it is the GRANTOR's and GRANTEE's mutual intent that the Property shall be perpetually protected for and dedicated to public park use, all for the benefit of, and to improve the quality of life of, residents of the City of Sandy Springs. GRANTOR desires to convey the Property to the City for such purpose, on the terms and conditions more particularly set forth herein;

ACCORDINGLY, the Property is hereby conveyed by GRANTOR to GRANTEE subject to the covenant and use restriction that it shall be used in perpetuity as park property ("Passive Park Property Restriction," as herein below defined), which for purposes hereof, shall include, but shall not be limited to, the uses permitted of "permanently protected land" comprised of "conservation land" as provided by the terms of the Georgia Land Conservation Act, O.C.G.A. § 12-6A-1, et seq. ("Greenspace Property"). Further, as required by the Georgia Land Conservation Act and the rules and regulations promulgated thereunder, the Property shall be and hereby is perpetually restricted, as indicated herein, so as to maintain the conservation values of the Property in accordance with the goals for conservation land outlined in the Georgia Land Conservation Act (as amended), which

include natural habitats, wetlands, forests, wildlife, scenic, cultural, historic, agricultural and ecological values which qualify the Property as a scenic, natural and/or rural area that has not been subject to significant development and/or 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. The GRANTEE shall seek to preserve any native plants, animals, or plant communities of the Property, including but not limited to species designated as protected by the Georgia Department of Natural Resources or the U.S. Fish and Wildlife Service. In addition to the restrictions imposed in the foregoing provisions of this paragraph, the "Passive Park Property Restriction" to which the Property is hereby subjected shall restrict the use of the Property solely to 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, bicycling on designated trails, 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.. No other uses (e.g., dog parks, active recreation, such as ball fields, tennis courts, basketball courts, playgrounds, swimming pools (indoor or outdoor), gymnasiums and/or similar recreational facilities or improvements) or buildings (commercial, industrial, residential or municipal (e.g. fire stations, police stations, libraries or recreation centers)) shall be permitted on the Property. The foregoing Passive Park Property Restriction and covenant is imposed with the consent and acquiescence of the GRANTEE, and is imposed in favor of and for the benefit of the Property so held by the GRANTEE for the use of the public, and thus is intended to be and shall be perpetual in accordance with the provisions of O.C.G.A. § 44-5-60 (c). Since the foregoing

Passive Property Restriction is for the benefit of the public, any member(s) of the general public who use and enjoy the Property from time to time shall have the right to take any action necessary at law or in equity to enforce the Passive Park Property Restriction contained herein.

By its acceptance of this Deed, the GRANTEE acknowledges and agrees that the Property shall at all times be used and developed as parkland consistent with the foregoing Passive Park Property Restriction.

AND THE SAID GRANTOR, subject to the Permitted Exceptions and the Passive Park Property Restriction, will warrant and forever defend the right and title to the above described property unto the said GRANTEE against the claims of all persons owning, holding or claiming by, through and under the GRANTOR.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the GRANTOR has signed and sealed this Limited Warranty Deed, the day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

GRANTOR:

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

By: _____

Name: Curt Soper

Title: State Director, Georgia

Attest: _____

Name: Lucy Banks

Title: Assistant Secretary

[CORPORATE SEAL]

Exhibit "A"

Legal Description

Tract 2

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 85 of the 17th District, City of Sandy Springs, Fulton County, Georgia, and being more particularly described as follows:

Commencing at an iron pin located at the Southwesterly intersection of Brandon Mill Road (50 foot right of way) and Riverside Drive (variable right of way); thence along the westerly right of way of Brandon Mill Road South 03 degrees 26 minutes 56 seconds West, a distance of 425.83 feet to a ½-inch rebar set and the POINT OF BEGINNING; thence continue along the westerly right of way of Brandon Mill Road South 03 degrees 26 minutes 56 seconds West, a distance of 209.00 feet to a ½-inch rebar set; thence leaving said right of way North 89 degrees 48 minutes 26 seconds West, a distance of 209.00 feet to a ½-inch rebar set; thence North 03 degrees, 26 minutes, 56 seconds East, a distance of 209.00 feet to a ½-inch rebar set; thence South 89 degrees 48 minutes 26 seconds East, a distance of 209.00 feet to a ½-inch rebar set on the westerly right of way of Brandon Mill Road and the Point of Beginning.

Said Tract 2 Contains 43,610 square feet or 1.00 acre, more or less, as shown on that certain ALTA/ASCM Survey for The Trust for Public Land, et al. prepared by Thomas Edward Peay, Jr., G.R.L.S. #2402 of Frontline Surveying and Mapping, Inc. dated March 25, 2008 and last revised July 21, 2008.

Tract 3

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Said Tract 3 contains 43,785 square feet, or 1.01 acres, more or less, as shown on that certain ALTA/ASCM Survey for The Trust for Public Land, et al. prepared by Thomas Edward Peay, Jr., G.R.L.S. #2402 of Frontline Surveying and Mapping, Inc. dated March 25, 2008 and last revised July 21, 2008.

Exhibit "B"

Permitted Exceptions

1. All taxes for the year 2008, and subsequent years, not yet due and payable.

4. Permit from Mrs. Nancy H. Miles to Georgia Power Company, dated May 5, 1967, filed August 14, 1967, recorded in Deed Book 4777, page 207, aforesaid records.

6. Rights of ingress and egress to the cemetery abutting the southerly portion of the subject property, as depicted on the plat showing property of Albert E. Thornton and Hughes Spalding recorded as an attachment to the Warranty Deed from Mrs. Nannie H. Miles and Fred H. Miles to Hughes Spalding, dated November 18, 1925, filed November 19, 1925, recorded in Deed Book 953, page 559, aforesaid records.

6. Rights of upper and lower riparian owners in and to the waters of creek(s) crossing or adjoining the subject property, and the natural flow thereof, free from diminution or pollution.

8. Matters of survey as shown on the ALTA/ACSM Survey for The Trust for Public Land, the City of Sandy Springs, Georgia and Chicago Title Insurance Company, prepared by Frontline Surveying & Mapping, Inc., Thomas Edward Peay, Jr., Georgia R.L.S. No. 2402, dated March 25, 2008, last revised July 21, 2008: