

FILED
SUPERIOR COURT
JACKSON COUNTY, GA
2006 SEP 27 AM 11:38

CAMIE W. THOMAS
DEED BOOK 450 PAGE 290-
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After recording, please return to:
Bass Tract, LLC
PO Box 632
Bogart, GA 30615

STATE OF GEORGIA
COUNTY OF JACKSON

CONSERVATION EASEMENT AGREEMENT

This Conservation Easement Agreement (herein "Easement") is made this day of August 2006, by and between Bass Tract, LLC a Georgia limited liability company, whose address is 1180 Cleveland Road Bogart, GA 30622 (hereinafter referred to as "Grantor") and Cardinal Lake Homeowners Association, a Georgia non-profit corporation, whose address is 1091 Founders Blvd, Ste A Athens, GA 30606 (hereinafter referred to as "Grantee" or "Homeowners Association") as Holder of this easement for the benefit of the owners of various lots within Cardinal Lake Subdivision and for the benefit of the citizens of Jackson County, Georgia, and JACKSON COUNTY, GEORGIA, as Co-Signor with third party enforcement rights.

RECITALS

WHEREAS, Grantor owns in fee simple certain real property located in Jackson County, Georgia described as follows:

SEE EXHIBIT "A"

WHEREAS, Grantor has designated a portion of the above-described real property as open space for perpetual protection, being 13.16 acres of land being more particularly described as open space provided on that certain plat of survey entitled "Cardinal Lake," dated February 24, 2006, recorded at Deed Book 68, Page 42 of the Jackson County, Georgia Deed Records, being prepared by Kevin Ringo, Georgia Registered Land

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**ARTICLE I.
PURPOSE**

It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its natural, scenic, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values or interests of the Property. Grantor intends that this Easement will confine the use of the Property to such activities as are not inconsistent with the purpose of this Easement.

**ARTICLE II.
DURATION OF EASEMENT**

This Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by Grantee and/or Jackson County against Grantor, and Grantor and/or Jackson County against Grantee, their representative, successors and assigns, lessees, agents and licensees.

**ARTICLE III.
RIGHTS OF GRANTEE**

Grantee, as Holder, and/or Jackson County, as Co-Signor, are granted the rights to engage in, or permit or invite others to engage in use of the Property for scenic, educational, and recreational uses that are not expressly prohibited herein and are not inconsistent with the purposes of this Easement. Grantee shall have all rights of enforcement and enforcement powers and procedures.

**ARTICLE IV.
RIGHTS OF JACKSON COUNTY**

Jackson County is a third party vested with all rights of enforcement, and Jackson County may implement the rights of enforcement in regard to either Grantor/Owner or Grantee/Holder, as appropriate. Grantor hereby grants to Jackson County, a body politic and corporate and political subdivision of the State of Georgia, the following rights in and to the Property, subject however to the terms of Article V:

- A. To preserve and protect the conservation values of the Property;
- B. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement. Entry shall be made in the least disruptive manner and Jackson County shall be responsible for the remediation of any damage caused by its entry;
- C. To enter upon the Property at reasonable times in order to monitor and inspect that earthen dam located on the property. Said entry shall be made from the nearest point of access to the dam and shall be made on foot, or, if by vehicle or other machinery, via that route as designated by the Grantor upon receipt of notice from Jackson County;

D. To prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

ARTICLE V.

PROHIBITED, RESTRICTED ACTIVITIES AND SPECIFIC REQUIRED ACTION

Any activity on, or use of, the Property inconsistent with the purposes of this Easement is prohibited. The property is subject to the Declaration of Restrictions for Cardinal Lake dated _____, __, 2006, as recorded in Deed Book __, Page __, Jackson County, Georgia Public Records; however if there is any conflict between this easement and the declaration of Restrictions for Cardinal lake, the provisions of this Easement shall control. Development that would significantly impair or interfere with the conservation values of the Property is prohibited. The following activities and uses are expressly prohibited:

A. Prohibition on Industrial and Commercial Use. Industrial, commercial and manufacturing activities, including but not limited to, commercial agriculture and horticulture use and livestock production, are prohibited.

B. Subdivision. Subdivision or partitioning of the Property for any purpose is prohibited, except for the provision of utility easements as may be required by Jackson County.

C. Construction. The construction or placement of structures of any kind or of improvements, is prohibited, except for the construction, placement and maintenance of a structure aiding in the conservation use and value of the Property, which, if any, shall be done so as to minimize the impact on surrounding vegetation, and shall be done in accordance with all local and state building regulations and constructed with materials in keeping with the surrounding features of the Property.

D. Dumping Disposal of soil, trash, ashes, grass clippings, garbage, waste, construction debris, abandoned vehicles, appliances, machinery, hazardous substances, sewage, or other materials on the Property is prohibited. The installation of underground storage tanks is prohibited.

E. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining, drilling, or removal of topsoil, sand, gravel, rock peat, minerals or other materials; and no change in the topography of the land in any manner.

F. Water Quality and Drainage Patterns. There shall be no pollution, alteration, depletion or extraction of surface water or natural water courses, subsurface water or any other water bodies, except for the withdrawal of well water, if any. Notwithstanding the foregoing, there shall be no activities conducted on the Property or an adjacent property if owned by Grantee which would be detrimental to water purity or which would significantly alter natural water levels, drainage, sedimentation and/or flow in or over the Property or to the stream, or

cause soil degradation or erosion, Disruption of natural drainage patterns and creation of artificial drainage patters is prohibited, including, but not limited to: construction of check dams and other impoundments, except as may be required by Jackson County or any other governmental authority. Any disruption of natural drainage patterns or creation of storm water control devices done as required by Jackson County shall be at the sole cost and expense of Grantee and shall be constructed so as to minimize the impact on surrounding vegetation, and shall be done in accordance with Best Management Practices as set out in the Field Manual for Erosion and Sediment Control for Land Disturbing Activities issued by the Georgia Soil and Water Conservation Commission, as the same may be in effect at such time.

G. Road Construction. The construction of new roads is prohibited, except for the construction of firebreaks and fire roads built by the Georgia Forestry Commission in an emergency situation.

H. Timber Harvesting. Harvesting, trimming, harming or removal of plants on the Property is prohibited. Firewood removal is prohibited. This prohibition does not include the removal of trees or limbs that fall across any pedestrian trail for maintenance purposes or the removal of trees for control of disease or insect damage or infestation.

I. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural, scenic and aesthetic features is prohibited.

J. Commercial Recreation. Commercial recreation is prohibited.

ARTICLE VI. MEDIATION

A. Mediation. If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of the Easement, and the parties agree not to proceed with, or allow, 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. Within ten (10) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

(1). Purpose. The purpose of the mediation is to (a) promote discussion between the parties, (b) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions, or restriction of this Easement.

(2). Participation. The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

(3). Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

(4). Time Period. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

(5). Cost. The costs of the mediator shall be borne equally by Grantor and Grantee; the parties shall bear their own expenses, including attorneys' fees, individually.

This article applies only as between Grantor and Grantee and does not apply to or bind Jackson County in any way.

ARTICLE VII. NOTICE AND APPROVAL

A. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring the parties to notify one another and Jackson County prior to undertaking certain permitted activities, as provided in herein, is to afford each other and/or Jackson County an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required the party conducting the activity shall notify the other party and Jackson County in writing not less than thirty (30) days prior to the date that party intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the other party and/or Jackson County to make an informed judgment as to its consistency with the purpose of this Easement.

B. Approval. Where approval is required, as set forth herein, the party from whom approval is sought and/or Jackson County shall grant or withhold its approval in writing within thirty (30) days of receipt of the party intending to conduct the activity's written request. The approval may be withheld only upon a reasonable determination by the party from whom approval is sought and/or Jackson County that the action as proposed would be inconsistent with the purpose of this Easement. Any determination by Jackson County shall be presumed correct.

**ARTICLE VIII.
REMEDIES**

Jackson County is a third party vested with all rights of enforcement, and Jackson County may implement the rights of enforcement in regard to either Grantor/Owner or Grantee/Holder, as appropriate.

A. **Notice of Violation; Corrective Action.** If a party or Jackson County determines that a violation of the terms of this Easement has occurred or is threatened, that party or Jackson County shall give written notice to the offending party 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 the enforcing party and/or Jackson County.

B. **Injunctive Relief.** If the offending party fails to cure the violation within thirty (30) days after receipt of notice thereof, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the enforcing party and/or Jackson County 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.

C. **Damages.** The enforcing party and/or Jackson County shall be entitled to recover damages for violation of the terms of this Easement of injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting the liability of the offending party therefore, the enforcing party and/or Jackson County, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

D. **Emergency Enforcement.** If the enforcing party and/or Jackson County, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the enforcing party and/or Jackson County may pursue its remedies under this Article without prior notice to the offending party or without waiting for the period provided for cure to expire. Nothing in this Agreement shall be construed to limit the power of Jackson County to enforce this easement by and through any County Law Enforcement Agency.

E. **Scope of Relief.** The parties and/or Jackson County's rights under this Article apply equally in the event of either actual or threatened violations of the terms of this Easement. The parties agree the remedies at law for any violation of the terms of this Easement are inadequate and that parties shall be entitled to the injunctive relief described herein, both prohibitive and mandatory, in addition to such other relief to which the parties and/or Jackson County 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. The remedies described in this Article shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. **Costs of Enforcement.** All reasonable costs incurred by to enforce the terms of this Easement, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by violation of the terms of this Easement shall be borne by the offending party; provided, however, that if the offending party ultimately prevails in a judicial enforcement action each party shall bear its own costs.

G. **Forbearance.** Forbearance by a party and/or Jackson County to exercise its rights under this Easement in the event of any breach of any term of this Easement by an offending party shall not be deemed or construed to be a waiver by a party or Jackson County of such terms or of any subsequent breach of the same or any other term of this Easement or of any rights under this Easement. No delay or omission by a party or Jackson County in the exercise of any right or remedy upon any broach by a party shall impair such right or remedy or be construed as a waiver.

H. **Waiver of Certain Defenses.** The parties hereby waive any defense of laches, estoppel, or prescription.

I. **Acts Beyond Control of the Parties.** Nothing contained in this Easement shall be construed to entitle a party or Jackson County to bring any action against another party for any injury to or change in the Property resulting from causes beyond that party's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by a party under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

ARTICLE IX. PUBLIC ACCESS

Except as specifically provided otherwise herein, no right of access by the general public to any portion of the Property is conveyed by this Easement.

ARTICLE X. COSTS, LIABILITIES, AND TAXES

A. **Costs, Legal Requirements, and Liabilities.** Grantee shall bear all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. The Grantee shall keep the Grantor's interest free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Grantee.

B. Grantee hereby releases and agrees to hold harmless, indemnify and defend Grantor, Jackson County, and its members, directors, officers, employees, agents, and

Surveyor No. 2278, said plat of survey being incorporated herein, and made a part hereof by reference as Exhibit B, said open space being hereinafter referred to as the "Property";

WHEREAS, the Property possesses natural, scenic, and open space values (collectively "conservation values") of great importance to Grantor, the various owners of lots within Cardinal Lake, and the people of Jackson County; and

WHEREAS, Grantor is willing to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting to the use of the land of the Property, on the terms and conditions and for the purposes hereinafter set forth, and Grantee, as Holder, is willing to accept such conservation Easement; and

WHEREAS, Grantor, the various owners of lots within Cardinal Lake, and the people of Jackson County, Georgia recognize the conservation value of the Property in its present state as open space where such preservation is for the scenic enjoyment of the various owners of lots within Cardinal Lake, and members and guests of Grantor, and for the protection of the open space values in perpetuity; and

WHEREAS, Jackson County has enacted zoning regulations which set forth specifically that the intent of said ordinances is to preserve open space in perpetuity; and

WHEREAS, the subject property has been specifically identified by Jackson County as a type of property which is worthy of preservation and conservation; and

WHEREAS, the development of the subject property would degrade the scenic and natural character and quality of said Property; and

WHEREAS, it is the intent of the Grantor that the Property be preserved in perpetuity for preservation of open space which shall specifically include, but not be limited to, the scenic enjoyment of the various owners of lots within Cardinal Lake and members and guests of Grantor consistent with the intent of preservation principles;

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth and for the sum of Ten and No/100s (\$10.00) Dollars, Grantor hereby unconditionally and irrevocably grants and conveys unto Grantee, as HOLDER, its successors and assigns, forever and in perpetuity a non-exclusive Conservation Easement (the "Easement") of the nature and character and to the extent hereinafter set forth, over the Property, together with the non-exclusive right to preserve and protect the conservation values of the Property, and grants and conveys to Jackson County, co-signor, a third party right of enforcement. Grantee, by its execution hereof, accepts the foregoing grant of the Easement in Trust, and the recordation of this instrument shall constitute a "recordation of the acceptance" by Grantee, as Holder.

contractors and their heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including without limitation, reasonable attorneys' fees, arising from or in any way connected with 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.

C. Taxes. Grantee shall cause to be paid, 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 Grantor with satisfactory evidence of payment upon request.

ARTICLE XI. EXTINGUISHMENT AND CONDEMNATION

A. 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 whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee, as Holder, 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 stipulated fair market value of the Easement, or proportionate part thereof; as determined in accordance with paragraph XI(B).

B. Valuation. With regard specifically to the provisions of this Article XI, this Easement constitutes a limited non-exclusive real property interest immediately vested in Grantee, as Holder, which, for the purposes of paragraph XI(A), the parties stipulate to have a fair market value determined by reducing the (1) the fair market value of the Property unencumbered by the Easement by (2) the value of the Property encumbered by this Easement.

C. Condemnation. 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, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu of purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu of purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the equation set forth in paragraph XI(B).

D. Application of Proceeds. Grantor shall use any proceeds received under the circumstances described in this Article in a manner consistent with its conservation purposes.

E. Merger. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

ARTICLE XII. ASSIGNMENT

This Easement is transferable only upon the prior written consent of Grantor. As a condition of any such approved transfer, Grantor shall require that the conservation purpose that this Easement is intended to advance continue to be carried out by any assignee. Grantor may assign or convey its rights in the Property. Any such successor to Grantor must comply with the terms and conditions of this Easement.

ARTICLE XIII. 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 certified mail, addressed as follows:

To Grantor: Bass Tract, LLC
PO Box 632
Buford, GA 30515

To Grantee: Cardinal Lake Homeowners Association
1091 Founders Blvd Ste A
Athens, Georgia 30606

To Jackson County: 67 Athens Street
Jefferson, Georgia 30549

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery, if personally served or if delivered by nationally recognized, overnight courier service, or on the date indicated on the return receipt, if sent by U.S. certified mail as described above. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice given on the date of mailing.

ARTICLE XIV. RECORDATION

I. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties, each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

J. Amendment. This easement shall not be altered or terminated except with the express written permission of all entities having either a property right or enforcement right in the easement.

K. Captions. The captions in this Easement have been inserted solely for convenience of reference, are not a part of this Easement and shall have no effect upon construction or interpretation.

L. Grantor's Successors-In-Title. Grantor agrees that any conveyance of the Property by Grantor will be made expressly subject to the terms, conditions, restrictions, and purposes of this Easement and the same shall be inserted by Grantor in, or incorporated by reference in, any subsequent deed or other legal instrument by which Grantor divests itself of fee simple or any other interest in the Property or any portion thereof, and Grantor hereby agrees to notify Grantee or its successors or assigns of any such conveyance.

M. Grantor's Representations and Warranties. Grantor hereby represents and warrants that it is seized of the Property in fee simple and has good right to grant and convey the Conservation Easement, that the Property is free and clear of any and all encumbrances, and the Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of the Conservation Easement.

TO HAVE AND TO HOLD unto the Grantee, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, its successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

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

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

Signed, Sealed and Delivered
in our presence of

Witness

Carrie Heupel



Bass Tract, LLC, a Georgia Limited Liability Company by its three member/managers, to wit:

Spica, Inc.

By: *[Signature]* (seal)

Attest:

[Signature]
Flat Top, Inc.