

AFTER RECORDING, RETURN TO
MCGEE & OXFORD
105 NORTH MAIN STREET
SUITE 3
JASPER, GA 30143

PICKENS COUNTY FILED FOR RECORD ON
THE 27th DAY OF Dec 2001
9:45 AM. RECORDED THIS 20th DAY OF
Jan 2002 BOOK NO. 435 PAGE 782-802
JOYCE CANTRELL CSC

782

Big Canoe/Main Gate

**CONSERVATION EASEMENT
AND
DECLARATION OF RESTRICTIONS AND COVENANTS**

THIS CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS ("Conservation Easement") made December 21, 2001 by and between **BIG CANOE COMPANY, LLC** ("Owner"), a Georgia limited liability company, having an address of 10591 Big Canoe, 54 Wolfscratch Village Circle, Big Canoe, GA 30143, and **NORTH AMERICAN LAND TRUST** ("Trust"), a Pennsylvania non-profit corporation having an address of Post Office Box 1578, Chadds Ford, PA 19317,

WITNESSETH THAT:

WHEREAS, Owner is the owner of certain real property in Pickens County, Georgia currently known as "Main Gate Neighborhood" that consists of approximately 28.59 acres (hereinafter called the "Property") being a portion of the land most recently conveyed and described in deeds granted to Owner and recorded in the office for the recording of deeds in Pickens County at Book 282, page 724 and also being described in the Exhibit "A" and Exhibit "B" both of which are attached hereto and incorporated herein; and

WHEREAS, Trust is a non-profit corporation, having a tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), which has been established as a public charity for the purpose of preserving and conserving natural habitats and environmentally sensitive areas and for other charitable, scientific and educational purposes and which is a "qualified organization" under Section 170(h)(3) of the Code; and

WHEREAS, preservation of the Property shall serve the following purposes, (the "Conservation Purposes"):

Preservation of the Property as a relatively natural habitat of fish, wildlife, or plants or similar ecosystem; and

Preservation of the Property as open space which provides scenic enjoyment to the general public and yields a significant public benefit; and

Preservation of the Property as open space which, if preserved, will advance a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit; and

WHEREAS, the ecological and scenic significance of the Property and the Conservation Purposes have been established in the reports, plans, accompanying photographs, documentation, and exhibits, including the plans prepared by Conservation Advisors, Inc. (collectively called the "Baseline Documentation") which describe the following significant ecological and scenic features, among others:

The Property is a relatively natural area in which contains significant habitat and abundant food sources for wild turkey, red and gray fox, flying squirrel, bobcat, red-tailed hawk and great horned owl as well as other species;

The Property consists of unique, environmentally sensitive watershed lands; and

The Property consists of valuable scenic and open-space vistas; and

WHEREAS, Owner and Trust desire to perpetually conserve the natural, scientific, educational, open space, scenic and historical resources of the Property to accomplish the Conservation Purposes; and

WHEREAS, Owner intends at some time in the future to convey title to the Property to the Big Canoe Property Owners Association, Inc., a Georgia corporation or similar organization that may be from time to time formed or created; and

WHEREAS, Owner intends to grant the easement and impose the restrictive covenants on the Property as set forth in this Conservation Easement to accomplish the Conservation Purposes; and

WHEREAS, Owner and Trust intend that this document be a "conservation agreement" as defined in Georgia Uniform Conservation Easement Act of 1992, as amended (the "Act").

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, conditions, restrictions, and promises contained in this Conservation Easement, and intending to be legally bound hereby, Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Trust, its successors and assigns, the easements, covenants, prohibitions and restrictions set forth in this Conservation Easement, in perpetuity, to accomplish the Conservation Purposes. Trust hereby accepts the grant of such easements and agrees to hold such easements exclusively for the Conservation Purposes and to enforce the terms of the restrictive covenants set forth in this Conservation Easement.

ARTICLE 1. GRANT OF EASEMENTS

Owner hereby voluntarily, unconditionally and absolutely grants and conveys unto Trust, its successors and assigns, a perpetual easement in gross over the Property for the purpose of

787

preserving and protecting the Conservation Purposes and enforcing the restrictive covenants set forth below. In addition, Owner hereby grants and conveys unto Trust, its successors and assigns, the easement and right of Trust and its agents to enter upon and inspect the Property, with access over and across the Property if necessary, for compliance with this Conservation Easement at any time and from time to time, provided that Owner is first given notice of any such visit, at least seven (7) days in advance, except in cases of suspected or known violations of this Conservation Easement.

ARTICLE 2. OWNER'S DECLARATION OF COVENANTS AND RESTRICTIONS

Owner, for itself and its successors and assigns, covenants and declares that the Property shall be, and hereby is, bound by and made subject to the following covenants and restrictions in perpetuity, subject to and excepting only the Reserved Rights set forth in Article 3 of this Conservation Easement:

- 2.1. The Property shall not be used for a residence or for any commercial, institutional, industrial or agricultural purpose or purposes. Among the uses prohibited by the preceding sentence are, without limiting the meaning or interpretation of the preceding sentence: (1) construction or occupancy of any dwellings; (2) manufacture or assembly of any products, goods, equipment, chemicals, materials or substances of any kind or nature whatsoever; (3) sale of any products, goods, equipment, chemicals, materials, substances or services of any kind or nature whatsoever; (4) storage of any products, goods, equipment, chemicals, materials or substances of any kind or nature, except if stored for use upon the Property in connection with activities not prohibited by this Conservation Easement; and (5) offices for persons involved in the sale, manufacture or assembly of goods or services or for the performance of services.
- 2.2. There shall be no removal of ground or surface water from the Property. No ground or surface water from the Property shall be removed, collected, impounded, stored, transported, diverted or otherwise used for any purpose or use prohibited by this Conservation Easement.
- 2.3. There shall not be constructed, cut, created or placed on the Property any road, driveway, cartway, path or other means or right of passage across or upon the Property if the same is to be used, nor may any road, driveway, cartway, path or other means or right of passage located on the Property be used, for access to any use (whether or not upon the Property) which is prohibited by this Conservation Easement.
- 2.4. No Structure (hereinafter defined) of any kind shall be built, erected, installed, placed, affixed or assembled within or upon the Property or upon any trees or other natural features upon the Property. "Structure" shall mean any assembly of

material forming a construction for occupancy or use for any purpose and erected upon or attached to the ground including, for example but not to limit the foregoing definition, the following: building, platform, shed, bin, shelter, dam, dike, tower, tank, antenna, and bulkhead.

- 2.5. No cutting of live timber or removal or destruction of live trees shall be permitted upon or within the Property.
- 2.6. No signs, billboards or outdoor advertising structures shall be placed, erected or maintained within the Property.
- 2.7. There shall be no filling, excavating, dredging, surface mining, drilling, or any removal of topsoil, sand, gravel, rock, peat, minerals or other materials, upon or from the Property.
- 2.8. There shall be no dumping of ashes, trash, garbage, or any other unsightly or offensive materials at any place on, under or within the Property.
- 2.9. There shall be no material change in the topography of the Property in any manner.
- 2.10. There shall be no dredging, channelizing or other manipulation of natural watercourses or any watercourses existing within the Property as of the date of this Conservation Easement.
- 2.11. All activity on the Property shall be conducted in accordance with soil conservation practices as then established or recommended by the Natural Resources Conservation Service of the United States Department of Agriculture or any successor governmental office or organization performing the same function within the United States government, as approved by the Trust.
- 2.12. There shall be no livestock grazing in the Property.
- 2.13. There shall be no introduction of plant or animal species within the Property except those native to the area in which the Property is located.
- 2.14. The Property may not be used as open space for purposes of obtaining or qualifying for governmental approval of any subdivision or development on lands outside the boundaries of the Property nor, without limitation of the foregoing, may the Property be used in the calculation of the amount or density of housing units or other construction or development on lands outside the boundaries of the Property.
- 2.15. Owner shall notify Trust prior to taking any action that may adversely affect any of the Conservation Purposes.

776

- 2.16. The parties recognize that this Conservation Easement cannot address every circumstance that may arise in the future, and the parties agree that the purpose of this Conservation Easement is to preserve the Property predominantly in its present condition, and to protect or enhance the Property's environmental systems. Without limiting the preceding covenants and restrictions, any use or activity which is not reserved in Article 3 below and which is inconsistent with the Conservation Purposes or which materially threatens the Conservation Purposes is prohibited.
- 2.17. The prohibitions and restrictions in this Conservation Easement shall be considered cumulative. No prohibition or restriction contained herein shall be interpreted as a limitation on the meaning, effect, interpretation or enforceability of another prohibitive or restrictive provision.

ARTICLE 3. RESERVED RIGHTS

Owner reserves for Owner and Owner's successors and assigns who may now or hereafter be owner of all or part of the Property the rights set forth in this Article 3 (the "Reserved Rights"). Donor and Trust intend that these Reserved Rights and the activities and uses which are described below as the Reserved Rights are narrow exceptions to the prohibitions and restrictions set forth in Article 2 and, hence, may be conducted as described below notwithstanding the prohibitions and restrictions of Article 2 without adversely effecting the Conservation Purposes.

3.1. Structures may be erected upon the Property as follows:

- 3.1.1. The right of Owner to construct and maintain structures typically used for the entrance to a recreational nature trail, fences, gates, interpretive trails, walkways, trail markers, decorative landscape and historic structures, bridges for trail use, bollards, camp shelters (not exceeding an aggregate of 1000 square feet of ground coverage for all shelters) and non permanent, movable items used for outdoor nature education and related recreation such as barbecue grills and portable toilets, including the rights to do the following for the construction of trails or walkways for such purpose: prune dead or hazardous vegetation affecting any such trail or walkway; install or apply materials necessary to correct or impede erosion; grade earth to maintain a passable condition or to control or impede erosions; and install or replace culverts, water control structures and bridges. Such trails or walkways shall be subject to and the use thereof may be conditioned upon compliance with, rules and regulations established from time to time by Trust in order to preserve and protect the Conservation Values and the Conservation Purposes.
- 3.1.2. The right of Owner to construct and maintain Structures necessary for drainage and erosion control of the Property provided that such Structures

are designed for the purpose of preserving wetland areas and streams, if any, existing as of the date of this Conservation Easement.

- 3.1.3. If there are certain Structures existing on the Property on the date of this Conservation Easement which would not be permitted to be erected or installed on the Property under these Reserved Rights then notwithstanding the restrictions in this Conservation Easement, such existing Structures may, nevertheless, be repaired or restored to the condition and dimensions in which the Structure existed on date of this Conservation Easement.
- 3.2. Cutting of timber or removal or destruction of trees shall be permitted upon or within the Property under the following conditions:
 - 3.2.1. Clearing and restoring vegetative cover that has been damaged or disturbed by forces of nature or otherwise.
 - 3.2.2. Selectively thinning or harvesting trees, but only if done in accordance with the good forest management practices and according to a plan approved by the Trust in advance of any tree removal the purpose of which is to preserve existing forested areas or existing meadow areas.
 - 3.2.3. The right of Owner to thin and remove early successional species using good meadow or forest management practices.
- 3.3. Owner may install a reasonable number of signs of the following types:
 - 3.3.1. regulatory and informational signs including, for example but not for limitation of the foregoing, "no trespassing" signs, "no gunning" signs, or "no hunting" signs;
 - 3.3.2. signs stating the common name of the Property, the names and addresses of the occupants or both;
 - 3.3.3. signs advertising an activity, or giving direction or relevant information to persons participating in an activity, permitted under the provisions of this Conservation Easement;
 - 3.3.4. signs identifying the interest of Owner or Trust in the Property; and
 - 3.3.5. signs educating the public as to the ecology, other permitted activities or the Conservation Values on the Property.
- 3.4. Dredging, channelizing or other manipulation of previously-altered natural or manmade water courses within the Property may be conducted if necessary to

788

maintain wetlands, if any, existing on the Property or to restore wetlands previously existing on the Property, if any, provided all necessary government approvals are obtained.

- 3.5. The right to maintain in passable condition the roads, trails or walkways within the Property. Included within this right of maintenance, without limitation, are: the right to prune dead or hazardous vegetation affecting any such road, trail or walkway; the right to install or apply materials necessary to correct or impede erosion; grading of earth to maintain a passable condition or to control or impede erosion; replacement of existing culverts, water control structures and bridges; and maintenance of roadside ditches.
- 3.6. None of the Reserved Rights described in Section 3.4 or in paragraphs 3.1.1, 3.1.2 or 3.2.2 may be exercised without first satisfying the following conditions and requirements:
 - 3.6.1. Owner shall notify Trust in writing before exercising any Reserved Rights that are not being exercised at the date of this Conservation Easement.
 - 3.6.2. The Trust must be satisfied, as evidenced by its prior written approval of the Owner's proposed exercise of a Reserved Right, that any use or activity done in the exercise of the Reserved Right will have no material adverse effect on the Conservation Purposes or on the significant environmental features of the Property described in the Baseline Documentation.
- 3.7. Trust's prior written approval of the exercise of Reserved Rights shall be obtained, conditionally obtained or declined according to the procedure provided in this Section. At least forty five (45) days before Owner begins, or allows, any exercise of Reserved Rights on the Property Owner must notify Trust in writing of Owner's intentions to do so. Such notice must include plans depicting, in such detail as Trust requests, the construction or other use or activity, and location thereof, which Owner intends to undertake. Trust may request additional information or details not provided by Owner regarding Owner's proposed exercise of Reserved Rights as Trust reasonably believes necessary to determine compliance with this Article. Trust shall have thirty (30) days from receipt of the notice or, if later, any additional information regarding the proposed use or activity requested by Trust, in which to make one of the of the following determinations:
 - 3.7.1. Approve the Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by the Owner. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right solely in accordance with the notice and other information submitted to Trust; which covenant shall be enforceable by Trust as fully as if set forth in this Conservation Easement.

- 3.7.2. Approve the Owner's proposed exercise of a Reserved Right in accordance with the materials submitted by the Owner but subject, however, to such qualifications and conditions as Trust may impose in its notice of approval. Approval on such terms shall constitute a covenant by Owner to exercise the Reserved Right, if at all, only in accordance with the notice and other information submitted to Trust, as modified or supplemented by the qualifications and conditions that Trust imposed; which covenant shall be enforceable by Trust as fully as if set forth in this Conservation Easement.
 - 3.7.3. Decline to grant approval of Owner's proposed exercise of a Reserved Right on the basis of the notice and other materials submitted.
 - 3.8. Unless a longer period is expressly provided in writing by the Trust, any activity involving the exercise of any of the Reserved Rights approved by the Trust as aforesaid shall be completed within five years after the Trust's written determination of approval of the activity. If such approved activity has not been completed within such five-year period then Owner must reapply for approval by the Trust according to the procedure set forth in this Article. Owner may request Trust's approval of a period longer than five years and so long as such request is not, in the Trust's sole judgment, inconsistent with the Conservation Purposes, such approval shall not be unreasonably withheld.
 - 3.9. Owner shall be free to make further requests for approval of the exercise of Reserved Rights; provided, however, that Trust may decline to accept repetitive submissions not materially modified from prior submissions not accepted by Trust.
 - 3.10. Trust may condition consideration of a proposal for exercise of Reserved Rights upon the deposit of a sum of money based on a budget submitted by the Trust, with Trust to secure payment of Trust's reasonable costs of review. The time period for Trust's consideration of the Owner's request shall not run until such deposit is made.
 - 3.11. Owner shall be responsible, as a condition of the right to exercise the Reserved Rights, for payment of the Trust's reasonable costs and expenses based on a budget submitted by the Trust, including legal and consultant fees, associated with review of the Owner's request for approval.
 - 3.12. No assurance is given that any of the above Reserved Rights for which approval has been required may be exercised, in such manner as Owner might propose, without adversely affecting the Conservation Purposes or other significant ecological values of the Property. The foregoing procedure is established for the purpose of making that determination. The Reserved Rights for which approval is required as aforesaid may not be exercised unless and until Trust is satisfied that the exercise of

790

the Reserved Right for which approval is sought, and in the manner proposed by the Owner, can be done without an adverse effect on the Conservation Purposes or other significant ecological values of the Property, however, in reviewing any request to exercise a Reserved right, Trust shall act reasonably in making a determination with regard to compliance. Owner hereby waives, for Owner, and Owner's heirs, successors, legal representatives, and assigns, to the fullest extent allowed by law, any and all right to seek or recover damages from Trust in any litigation or other legal action arising from a dispute over Trust's exercise of its rights, obligations or interpretations under this Article 3 and agrees that the sole remedy or legal right to seek redress arising from any decision of the Trust pursuant to this Article 3 shall be to seek a declaratory judgment or other legal declaration by a court of competent jurisdiction as to the rights of Owner hereunder.

ARTICLE 4. TRUST'S COVENANTS

- 4.1. Trust shall use its best efforts to enforce both the rights granted to it and the restrictions imposed upon the Property under this Conservation Easement.
- 4.2. If at any time Trust or any successor or assignee is unable to enforce this Conservation Easement in full or fails to do so, or if Trust or any successor or assignee ceases to exist or ceases to be a "qualified organization" (as defined in the Code) and if, within a reasonable period of time after the occurrence of any of these events, Trust or any successor or assignee fails to assign all of its rights and responsibilities under this Conservation Easement to a "qualified organization" and "holder", then the rights and responsibilities under this Conservation Easement shall become vested in and fall upon another qualified organization in accordance with a cy pres proceeding in any court of competent jurisdiction.
- 4.3. Notwithstanding the foregoing or anything else in this Conservation Easement to the contrary, Trust and its successors and assigns shall have the right to assign, either wholly or partially, its right, title and interest hereunder provided that the assignee is a "qualified organization" under the Code and provided that the assignee shall hold the Conservation Easement exclusively for the Conservation Purposes. The term "Trust" as used in this Conservation Easement shall mean the above-named Trust and any of its successors and assigns during such period as any such entity is the holder of the rights granted to the Trust in this Conservation Easement.

ARTICLE 5. REMEDIES AND ENFORCEMENT

- 5.1. Trust shall have the right to enforce by proceedings at law or in equity each and every one of the covenants and restrictions set forth in this Conservation Easement. The foregoing shall not limit any of the rights or remedies available to Trust as specifically set forth in any law or in this Conservation Easement.

- 5.2. Without limitation of any other rights of Trust in this Conservation Easement, Trust's right of enforcement of this Conservation Easement shall include the right to seek specific performance by Owner of the restoration of the Property to its original condition as established in the Baseline Documentation or to its condition prior to any activity that violates this Conservation Easement or as otherwise may be necessary to remedy any violation of any easement, covenant, prohibition or restriction in this Conservation Easement, as Trust may elect.
- 5.3. If Owner fails to pay taxes or other governmental assessments which may become a lien on the Property, Trust may, but shall have no obligation to, pay such taxes or assessments or any part thereof upon ten (10) days after sending written notice to Owner, according to any bill, statement, or estimate procured from the appropriate public office. Payment made by Trust shall become a lien on the Property in favor of Trust upon payment by Trust and shall bear interest until Trust is paid by Owner at the rate of eighteen percent (18%) per annum or at the highest rate of interest per annum as is allowed by applicable law, whichever is greater.
- 5.4. This Conservation Easement may only be enforced by the parties hereto, and their respective successors and assigns, and no third party beneficiary rights, including but not limited to third party rights of enforcement, are created hereby.
- 5.5. In the event that Trust acts, after notice to Owner, to enforce this Conservation Easement or any obligation hereunder, all reasonable expenses incurred by Trust shall be charged to and paid by the Owner, including reasonable attorneys' fees regardless of whether an action or proceeding is commenced. All such expenses, together with costs of collection (including reasonable attorneys' fees if the Owner is determined by a court to have violated this Conservation Easement), shall be recoverable by Trust and be liens upon the Property, and collection thereof may be enforced by foreclosure and sale of the Property, notwithstanding anything to the contrary, this Conservation Easement shall not merge with any interest in the Property upon such sale and title shall be transferred subject hereto in accordance with the laws of the State of Georgia.
- 5.6. Should the Owner or anyone acting by, through, under or on behalf of Owner, commence litigation against Trust to enforce any rights hereunder or to dispute any actions or inaction of the Trust, to enforce any alleged duty or obligation of Trust hereunder or to seek damages or specific performance against the Trust then, if Trust prevails in such litigation beyond right of appeal, Owner shall reimburse the Trust on demand for all costs and expenses, including attorneys fees, reasonably incurred by Trust in its defense in such litigation.
- 5.7. The failure of Trust to exercise any of its rights under this Conservation Easement on any occasion shall not be deemed a waiver of said rights and Trust retains the

792

right in perpetuity to require full compliance by Owner of the covenants and restrictions in this Conservation Easement.

- 5.8. Trust's remedies described in this Article shall be cumulative and concurrent and shall be in addition to all remedies now or hereafter available or existing at law or in equity.

ARTICLE 6. GENERAL PROVISIONS

- 6.1. This Conservation Easement gives rise to a real property right and interest immediately vested in Trust. For purposes of this Conservation Easement, the fair market value of Trust's right and interest shall be equal to the difference between (a) the fair market value of the Property as if not burdened by this Conservation Easement and (b) the fair market value of the Property burdened by this Conservation Easement.
- 6.2. The parties recognize the environmental, scenic, and natural values of the Property and have the common purpose of preserving these values. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Conservation Purposes and the policies and purposes of Trust. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the Conservation Purposes that would render the provision valid should be favored over any interpretation that would render it invalid. If any provision of this Conservation Easement is determined by final judgment of a court having competent jurisdiction to be invalid, such determination shall not have the effect of rendering the remaining provisions of this Conservation Easement invalid. The parties intend that this Conservation Easement, which is by nature and character primarily prohibitive (in that the Owner has restricted and limited the rights inherent in ownership of the Property), shall be construed at all times and by all parties to effectuate the Conservation Purposes.
- 6.3. Owner covenants and agrees to indemnify, defend, reimburse, and hold harmless Trust, its directors, officers and employees from, for and against any loss, cost (including but not limited to reasonable attorneys' fees and witness and court fees and costs from any lawsuit or governmental administrative or law enforcement action which is commenced or threatened against Trust or any of its directors, officers or employees or to which any of the foregoing are made a party or called as a witness), liability, penalty, fine, and damage, of any kind or nature whatsoever, which Trust or any of its directors, officers or employees may suffer or incur and which arises from any of the following: the violation or alleged violation of any law in, upon or involving the Property; any breach of covenants and restrictions in this Conservation Easement; any tax or assessment upon the Property; any death or injury to any person occurring on or about the Property; any lien or attempts to enforce a lien asserted against the Property; the costs of performing any work on

the Property; any loss or damage to any property on or about the Property; any dispute regarding the interpretation or enforcement of this Conservation Easement; or any lawsuit (even if initiated by Owner or Trust) or governmental administrative or law enforcement action which is commenced or threatened against Trust or any of its directors, officers or employees or to which any of the foregoing are made a party or called as a witness. Notwithstanding the foregoing, Owner shall have no obligation to indemnify, defend or reimburse Trust or hold Trust harmless Trust against loss, cost, liability, claim, penalty, fine or damage which results solely from Trust's own acts which are finally determined by a court to have been the result of bad faith, gross negligence or willful misconduct of the Trust. Further, an Owner under this Conservation Easement shall have no liability or obligation hereunder for indemnification, defense, reimbursement or holding Trust harmless from loss, cost, liability, claim, penalty, fine or damage arising entirely and solely from events which occurred after such person is no longer the legal or equitable owner of the Property or any part thereof and is no longer in possession of the Property or any part thereof (it being understood that one or more subsequent Owners shall have such indemnification, defense, reimbursement, and holding harmless obligation). Without limitation of anything herein to the contrary, Owner shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operations, upkeep, and maintenance of the Property, including the general liability insurance coverage and obligation to comply with applicable law.

- 6.4. Owner shall continue to pay all taxes, levies and assessments and other governmental or municipal charges that may become a lien on the Property, including any taxes or levies imposed to make those payments.
- 6.5. It is the intention of the parties that no change in conditions, including for example but not for limitation of the foregoing changes in the use of properties adjoining or in the vicinity of the Property or Property, will at any time or in any event result in the extinguishment of any of the covenants, restrictions or easements contained in this Conservation Easement. If, however, notwithstanding the foregoing intention, a change in conditions gives rise to the extinguishment of this Conservation Easement or a material term or provision hereof by judicial proceeding Trust, on any subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a portion of the proceeds of sale equal to the greater of: (a) the Fair Market Value of this Conservation Easement (hereinafter defined) on or about the date of this Conservation Easement; (b) Trust's Proportionate Share (hereinafter defined) of the proceeds of sale, exchange or involuntary conversion of the Property; and (c) the full proceeds of this Conservation Easement sale, exchange or involuntary conversion, without regard to contrary terms of this Conservation Easement, if state law provides that Trust is entitled to the full proceeds. "Fair Market Value of this Conservation Easement" shall mean the difference between (i) the fair market value of the Property as if not burdened by this Conservation Easement and (ii) the fair market value of the Property burdened by this

774

Conservation Easement. "Trust's Proportionate Share" shall mean the fraction derived from (x) the Fair Market Value of this Conservation Easement on or about the date hereof, as a numerator, and (y) the fair market value of the Property if not burdened by this Conservation Easement, on or about the date hereof, as a denominator. "Proceeds of sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of, the Property minus the actual bona fide expenses of such transaction and an amount attributable to the improvements constructed upon the Property pursuant to the Reserved Rights hereunder, if any. All such proceeds received by Trust shall be used in a manner consistent with the purposes of this grant.

- 6.6. Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Owner and Trust shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by the Owner and Trust, including reasonable attorneys' fees, in any such action shall be paid out of the recovered proceeds. Trust shall be entitled to Trust's Proportionate Share of the recovered proceeds and shall use such proceeds in a manner consistent with the purposes of this grant. The respective rights of the Owner and Trust set forth in Section 6.5 and this Section 6.6 shall be in addition to and not in limitation of, any rights they may have in common law with respect to a modification or termination of this Conservation Easement by reason of changed conditions or the exercise of powers of eminent domain as aforesaid.
- 6.7. Owner and Trust recognize that circumstances could arise which would justify the modification of certain of the restrictions contained in this Conservation Easement. To this end, Trust and the legal owner or owners of the Property at the time of amendment shall mutually have the right, in their sole discretion, to agree to amendments to this Conservation Easement which are not inconsistent with the Conservation Purposes; provided, however, that Trust shall have no right or power to agree to any amendments hereto that would result in this Conservation Easement failing to qualify as a valid conservation agreement under the "Act" or as a qualified conservation contribution under Section 170(h) of the Internal Revenue Code and applicable regulations.
- 6.8. This Conservation Easement and all of the covenants, indemnifications, releases, easements and restrictions set forth in this Conservation Easement shall run with the land and be binding upon Owner and Owner's successors and assigns, unless otherwise expressly provided in this Conservation Easement. The term "Owner" used in this Conservation Easement shall mean and include the above-named Owner and any of Owner's successors or assigns that are the legal owners of the Property or any part thereof. The term "Trust" used in this Conservation Easement shall

mean and include the above-named Trust and of its successors and assigns, it being understood and agreed that any assignee of the rights of Trust hereunder must be a "qualified organization" as defined in Section 170 (h) of the Code, as amended, and shall carry out the obligations of Trust and the intent of this Conservation Easement.

- 6.9. Owner shall be and remain liable for any breach or violation of this Conservation Easement only if such breach or violation occurs during such time as Owner is the legal or equitable owner of the Property or any part thereof or is in possession of the Property or any part thereof.
- 6.10. All mortgages, deeds of trust and other liens or encumbrances upon all or any part of the Property which either come into existence or are recorded in the place for the recording of such liens or encumbrances after the date of this Conservation Easement will be subject to and subordinate to this Conservation Easement.
- 6.11. Nothing in this Conservation Easement shall limit the right of Owner, its successors or assigns to grant or convey the Property, provided that any such grant or conveyance shall be under and subject to this Conservation Easement. Owner shall notify Trust in writing of any sale, transfer, lease or other disposition of the Property or any part thereof, whether by operation of law or otherwise, at least 30 days after such disposition, such notice shall include a copy of the deed, lease, or other declaration of transfer, the date of transfer, and the name or names and addresses for notices of the transferee.
- 6.12. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability of Trust to exercise physical or managerial control over day-to-day operations of the Property, or any of the Owner's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- 6.13. Notwithstanding provisions hereof to the contrary, if any, Owner shall be solely responsible for complying with all federal, state and local laws and regulations in connection with the conduct of any use of the Property or the erection of any Structure permitted hereunder, and Owner shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.
- 6.14. All notices required of Owner under the terms of this Conservation Easement, and all requests for the consent or approval of Trust, shall be in writing shall be deemed to have been given when either served personally or sent by certified mail, with return receipt requested and postage prepaid, addressed to Trust at the address set

796

forth on the first page of this Conservation Easement or such other address provided by notice from Trust or Owner to the other for the purpose.

- 6.15. Trust makes no warranty, representation or other assurance regarding the availability, amount or effect of any deduction, credit or other benefit to Owner or any other person or entity under United States or any state, local or other tax law to be derived from the donation of this Conservation Easement or other transaction associated with the donation of this Conservation Easement. This donation is not conditioned upon the availability or amount of any such deduction, credit or other benefit. Trust makes no warranty, representation or other assurance regarding the value of this Conservation Easement or of the Property. As to all of the foregoing, Owner is relying upon Owner's own legal counsel, accountant, financial advisor, appraiser or other consultant and not upon Trust or any legal counsel, accountant, financial advisor, appraiser or other consultant of Trust. In the event of any audit or other inquiry of a governmental authority into the effect of this donation upon the taxation or financial affairs affecting Owner or Owner's successors or assigns or other similar matter then Trust shall be reimbursed and indemnified for any cost or expense of any kind or nature whatsoever incurred by Trust in responding or replying thereto.
- 6.16. By signing this Conservation Easement, Owner acknowledges, warrants and represents to Trust that:
- 6.16.1. Owner has received and fully reviewed the Baseline Documentation in its entirety.
- 6.16.2. The Baseline Documentation includes, among other things: plan of the Property, photographs, topographical map, soils map, environmental conditions map, zoological report, and vegetation study.
- 6.16.3. The Baseline Documentation is an accurate representation of the condition of the Property.
- 6.16.4. Owner has been represented by counsel of Owner's selection, and fully understands that Owner is hereby permanently relinquishing property rights which would otherwise permit the Owner to have a fuller use and enjoyment of the Property.
- 6.16.5. The undersigned individual or individuals signing as or on behalf of the Owner has all legal authority to enter into this Conservation Easement and perform all of the obligations of the Owner hereunder, as the binding act of the Owner.

- 6.16.6. Owner is seized of the Property in fee simple title. Owner has the right to grant and convey this Conservation Easement. The Property is free and clear of any and all liens except liens for taxes not yet due and payable and mortgage or deed of trust liens that are subordinate to this Conservation Easement by virtue of the executed form of Joinder and Consent of Mortgagee attached hereto and incorporated herein.
- 6.16.7. The Property is or will be also under and subject to certain covenants and restrictions now of record and binding upon the Property held and enforceable by the Big Canoe Property Owners Association, Inc., a Georgia corporation.

TO HAVE AND TO HOLD the easements and rights set forth in this Conservation Easement unto Trust, its successors and assigns, for its own use and benefit forever.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Owner(s) and Trust have executed this Conservation Easement as of the day and year first above written:

**BIG CANOE COMPANY, LLC
BY MEMBER:
The Byrne Corporation of Georgia**

Witness:
Barbara Buchanan
Robin Meany

By: [Signature]
Name: WILLIAM J. BYRNE
Title: PRESIDENT

Attest: [Signature]
Name: Nancy C. [Signature]
Title: EXEC. V.P.

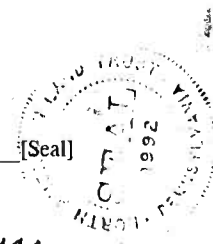
798

NORTH AMERICAN LAND TRUST
a non-profit corporation

Witness:

James Ryan
Patricia R. Wilcox

By: *Andrew L. Johnson* [Seal]
Andrew L. Johnson
Vice President



Attest: *George Asimos*
George Asimos
Secretary

STATE OF :
:
COUNTY OF :

On this, the 21st day of December 2001, before me, a Notary Public in and for the STATE of GEORGIA of _____, the undersigned officer, personally appeared WILLIAM J. BYRNE, who acknowledged himself to be the PRESIDENT of THE BYRNE CORPORATION OF GEORGIA, a corporation, and that he as such PRESIDENT, being authorized to do so, executed the foregoing Conservation Easement for the purposes therein contained by signing the name of the corporation by himself as PRESIDENT.

IN WITNESS WHEREOF, I hereunto set my hand and official seal

(Seal)

Christy P. Eubanks
Notary Public
My commission expires: May 21, 2003



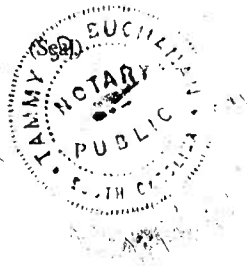
700

STATE OF South Carolina :

COUNTY OF Beaufort :

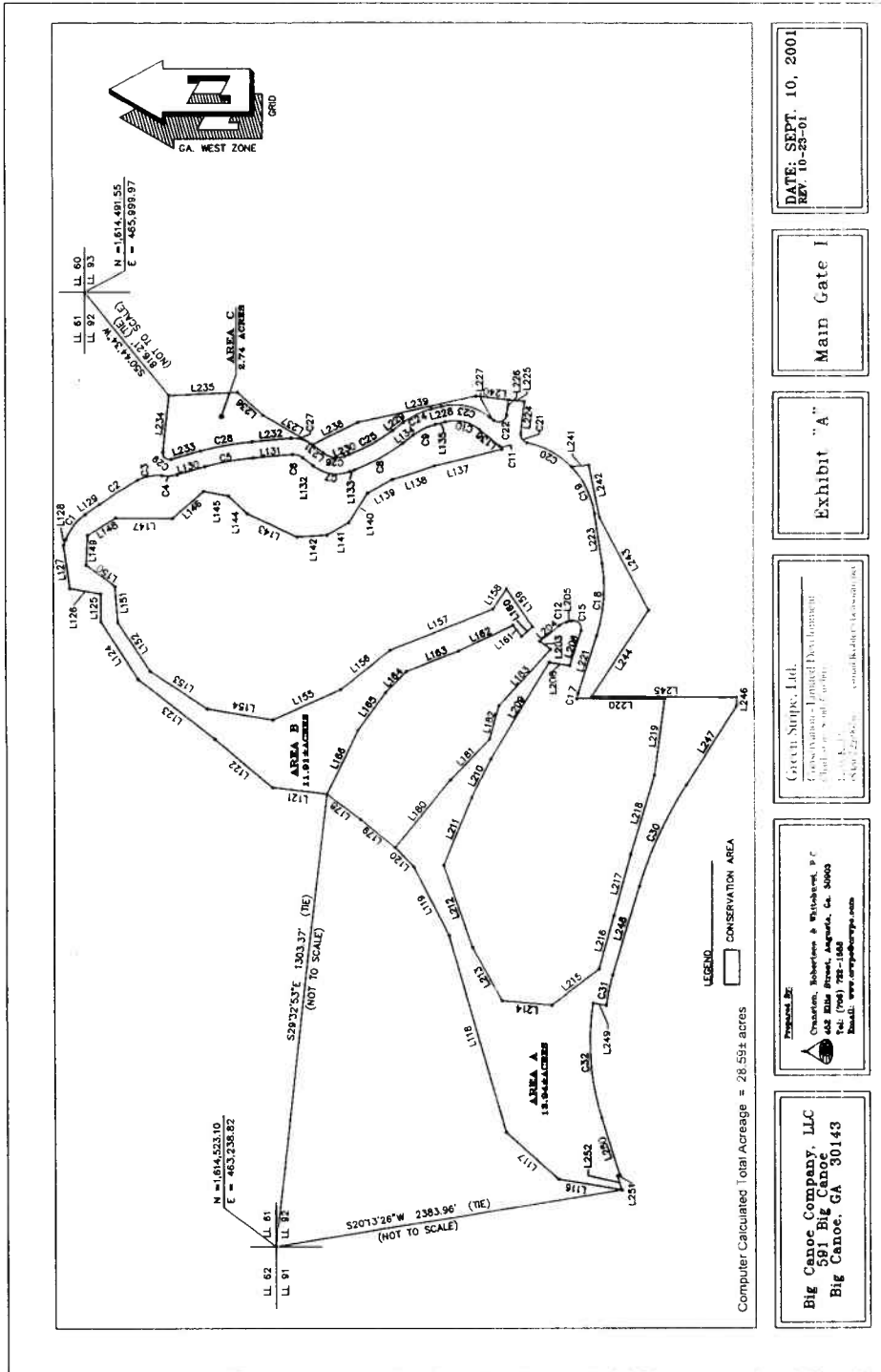
On this, the 19th day of December, 2001, before me, a Notary Public in and for the state of South Carolina, the undersigned officer, personally appeared ANDREW L. JOHNSON, who acknowledged himself to be the VICE PRESIDENT of NORTH AMERICAN LAND TRUST, a non-profit corporation, and that he as such VICE PRESIDENT, being authorized to do so, executed the foregoing Conservation Easement for the purposes therein contained by signing the name of the corporation by himself VICE PRESIDENT.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Tammy Jo Buchanan

Notary Public **TAMMY JO BUCHANAN**
My commission expires: **Notary Public, South Carolina**
My Commission Expires Apr. 12, 2006



DATE: SEPT 10, 2001
REV. 10-23-01

Main Gate I

Exhibit "A"

Circle Maps, Ltd.
Professional Land and Development
10000 S. 10th Street
Suite 100
Phoenix, AZ 85042
Tel: 602.279.9600
www.circlemaps.com

Prepared by:
Orion, Robertson & Whitworth, P.C.
455 Riva Street, Augusta, Ga. 30909
Tel: (706) 732-1800
Email: orion@orionrw.com

Big Canoe Company, LLC
501 Big Canoe Road
Big Canoe, GA 30143

Computer Calculated Total Acreage = 28.59± acres

