

After filing, please return to:  
Oconee River Land Trust  
675 Pulaski St., #2300  
Athens, Georgia 30601

Cross reference to that certain  
Limited Warranty Deed  
dated December 17, 2014, and  
recorded December 19, 2014,  
in Deed Book 37, Pages 343-348,  
Oglethorpe County, Georgia Records

STATE OF GEORGIA  
COUNTY OF Oglethorpe

### DEED OF CONSERVATION EASEMENT

**THIS DEED OF CONSERVATION EASEMENT** (hereinafter "Conservation Easement") is made this 24<sup>th</sup> day of Oct, 2019, by and between **Whitetail Ridge, LLC**, a Georgia limited liability company formed under the laws of Georgia (hereinafter "Grantor"), and the **Oconee River Land Trust, Inc.**, a Georgia nonprofit corporation (hereinafter "Grantee").

### WITNESSETH

**WHEREAS**, Grantor owns in fee simple certain real property located in Oglethorpe County, Georgia, comprising approximately 111.38 acres more or less, and being more particularly described in Exhibit A, attached hereto and incorporated herein, (hereinafter the "Property"); and

**WHEREAS**, the Property borders the South Fork of the Broad River and contains other streams, and is made up of a matrix of hardwood forests and pine forests with scattered wildlife openings, granite outcrops, and wetlands, and thus possesses significant open space, forested, hydrologic, and natural attributes; and

**WHEREAS**, the permanent protection of the Property by this Conservation Easement will further and serve a number of important conservation purposes, (collectively, "Conservation Purposes"), including:

1. The protection of water quality is a conservation purpose recognized by the State of Georgia as providing significant public benefit. Furthermore, the Property is located in the Broad River Watershed, segments of which have been designated by the Georgia Department of Natural Resources as a high priority watershed due to their importance in protecting or restoring aquatic species diversity, natural flow regimes, and other conservation activities as defined in the Georgia State Wildlife Action Plan ("SWAP"), final report dated September 2015. This Conservation Easement promotes this conservation purpose as the protected Property borders the South Fork of the Broad River for 3,627 feet and another stream flows for 1,473 feet through the Property, and the Conservation Easement (i) limits the development on, and disturbances to, the Property; and (ii) establishes a riparian buffer where disturbances to the soil and vegetation are limited, thus minimizing and naturally filtering any runoff of storm water and sediment and thereby providing for the protection of water quality and aquatic habitats (See the GCTCP at O.C.G.A. §48-7-29.12(a)(2)(A) and Ga. R. & Regs. 391-1-6-.03(5)(a)).
2. The protection of wildlife habitat consistent with state wildlife conservation policies is a conservation purpose recognized by the State of Georgia as providing significant public benefit. The Property contains a number of relatively natural habitats, including Mesic Hardwood Forests, Bottomland Hardwood Forest, Granite Outcrops, Beaver Ponds; Freshwater Marshes, Rivers, and Streams, which are classified as high priority by the State of Georgia due to their importance in protecting or restoring biodiversity, preserving functional ecosystems, and other conservation efforts as defined in the SWAP, and this Conservation Easement ensures the protection of these high priority habitats by limiting disturbances to these areas (See the GCTCP at O.C.G.A. §48-7-29.12 and Ga. R. & Regs. 391-1-6-.03(5)(b)).
3. The "preservation of open space (including farmland and forest land) where such preservation is pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit," a conservation purpose provided for by §170(h)(4)(A)(iii)(II) of the Internal Revenue Code of 1986, *as amended* ("IRC"), is furthered by this Conservation Easement as follows:
  - a. The State of Georgia has clearly delineated conservation policies and programs that recognize the significant public benefit associated with the preservation of open space of various kinds.
  - b. The State of Georgia, recognizing the public benefit of protecting certain habitats and natural resources, has created the GCTCP in which a state income tax credit is awarded to qualifying conservation easements that further state-designated conservation purposes.
  - c. This Conservation Easement serves the following conservation purposes, which are recognized by the GCTCP as giving rise to several significant public benefits: (i) the protection of high priority habitats, including Mesic Hardwood Forests, Bottomland Hardwood Forest, Granite Outcrops, Beaver Ponds; Freshwater

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Marshes, Rivers, and Streams, which preserve various critical Georgia ecosystems that support a diversity of wildlife and provide habitat connectivity; and (ii) the protection of streams, wetlands, and buffers to these features, which preserves water quality and quantity necessary to support in-stream species and enhance public drinking water.

4. The “protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem...,” is a conservation purpose provided for by IRC §170(h)(4)(A)(ii). This Conservation Easement furthers this conservation purpose as the varied and critical high-quality natural habitats found on the Property and further described in the Baseline Documentation Report defined below and incorporated herein will remain intact, undisturbed, undeveloped, and of continued benefit to the public and.

**WHEREAS**, Grantor intends that the multiple Conservation Purposes protected on the Property will not negatively impact each other and that uses inconsistent with these purposes will not be permitted; and

**WHEREAS**, the Conservation Purposes are more particularly documented in the Conservation Easement baseline documentation report (“Baseline Documentation Report”), dated September 9, 2019, and prepared by Grantee, which consists of reports, maps, photographs, and other documentation regarding the present condition, uses, and Conservation Purposes of the Property as of the effective date of this Conservation Easement, as required by Treasury Regulations, §1.170A-14(g)(5); the Baseline Documentation Report is incorporated herein by this reference, and is intended to serve as an objective, though non-exclusive, basis for monitoring compliance with the terms and conditions of this Conservation Easement; and

**WHEREAS**, Grantor intends that the Conservation Purposes of the Property be preserved and maintained by restricting and limiting those certain land uses on the Property set forth in more detail herein, and further, Grantor intends to convey to Grantee the right to preserve and protect the Conservation Purposes of the Property in perpetuity; and

**WHEREAS**, Grantee is (i) a publicly supported, nonprofit organization, created primarily for the conservation of the environment, and is tax exempt within the meaning of §501(c)(3) and §170(b)(1)(A)(vi) of the IRC; (ii) a “qualified organization” within the meaning of §170(h) of the IRC and §1.170A-14(c) of the Treasury Regulations; and (iii) a “holder” within the meaning of O.C.G.A. §44-10-1, *et seq.*, and, as such, is qualified to accept, hold, and administer conservation easements by the laws of the State of Georgia; Grantee’s primary purpose is the preservation and protection of land in its scenic, forested, and open space condition within the State of Georgia; and

**NOW, THEREFORE**, as an absolute charitable gift without payment of monetary consideration by Grantee to Grantor, but in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, and pursuant to O.C.G.A. §44-10-1, *et seq.*, which expressly authorizes the conveyance herein contained, Grantor hereby unconditionally and irrevocably grants and conveys unto Grantee, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth over the Property, including the right to preserve and protect the

Conservation Purposes of the Property. Grantee, by its execution hereof, accepts the foregoing grant of this Conservation Easement, and the recordation of this instrument shall constitute a "recordation of the acceptance" by Grantee within the meaning of O.C.G.A. §44-10-3(b).

## ARTICLES OF AGREEMENT

### ARTICLE 1. PURPOSE

It is the exclusive purpose of this Conservation Easement to assure that the Property will be retained forever in its predominantly relatively natural, forested, open, and relatively undeveloped condition, and to preserve and protect the Conservation Purposes of the Property, including the water quality of streams and wetlands, and a variety of significant natural habitats, including granite outcrops (collectively, the "Purpose"). Grantor will limit the use of the Property to activities that are consistent with the Purpose of this Conservation Easement and will prevent any use of the Property that will impair or interfere with the Conservation Purposes of the Property.

### ARTICLE 2. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, constitutes a real property interest, runs with the land, and is enforceable by Grantee against Grantor, its successors, assigns, lessees, agents, and licensees.

### ARTICLE 3. RIGHTS OF GRANTEE

To accomplish the Purpose, the following rights are conveyed to Grantee by this Conservation Easement:

- A. To preserve and protect the Conservation Purposes of the Property pursuant to the terms hereof;
- B. To enter upon the Property at reasonable times in order to monitor compliance with, and otherwise enforce the terms of this Conservation Easement in accordance with Article 9, except that Grantee may enter the Property at any time in cases where Grantee determines in its reasonable discretion that immediate entry is required to prevent, terminate, or mitigate an existing or imminent violation of this Conservation Easement which would significantly damage the Conservation Purposes of the Property;
- C. To prevent any activity on, or use of, the Property, that is inconsistent with the Purpose of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use to their condition as of the date of this Conservation Easement; and
- D. To post signs and other boundary markers within this Conservation Easement identifying the boundary of lands subject to this Conservation Easement, provided such signs are professionally prepared.

#### ARTICLE 4. RESERVED RIGHTS OF GRANTOR

Except as limited in this Conservation Easement, Grantor reserves all rights as fee owner of the Property; provided, however, that Grantor shall notify Grantee in writing, as required by Treasury Regulations, §1.170A-14(g)(5)(ii), prior to the exercise of any reserved or permitted right hereunder that may adversely impact the Conservation Purposes. Without limiting the generality of the foregoing, the following rights are expressly reserved unto the Grantor and are expressly permitted; provided, however, that notwithstanding any other provision of this Conservation Easement, the rights set forth in this Article shall only be exercised to the extent that they do not destroy or impair the Conservation Purposes and are not inconsistent with the Purpose of this Conservation Easement:

##### A. Vegetation Management.

1. Except as provided below, Grantor reserves the right to plant non-invasive, native species and remove exotic species, according to a restoration plan that has been approved by Grantee in accordance with the approval procedures in Article 7 herein, in order to (i) enhance vegetated habitat; (ii) protect the water quality of the streams and wetlands; and (iii) increase the Property's plant diversity. Any disturbed area shall be restored and re-vegetated so as to minimize sediment runoff and erosion.
2. The planting of invasive species listed in Category 1, Category 1 Alert, or Category 2 of the "List of Non-Native Invasive Plants in Georgia," published by the Georgia Exotic Pest Council or successor agency, is prohibited.
3. Grantor reserves the right to remove dead, insect-infested, and diseased trees if said trees pose a threat to human safety or to the health of the stand as a whole. In the event that more than single tree removal is required, then Grantor shall obtain Grantee approval of any clearing activity as provided in Article 7.
4. In order to support and encourage wildlife diversity on the Property, Grantor reserves the right to maintain the existing wildlife openings and food plots, as identified on Exhibit B, so long as such use does not cause or lead to erosion and sediment runoff.

##### B. Special Natural Areas.

1. There are Mesic Hardwood Forests, Bottomland Hardwood Forests, Granite Outcrops, Beaver Ponds; Freshwater Marshes, Rivers, and Streams, as well as Riparian Buffers and Granite Buffers defined below, and other areas with transitioning vegetation on the Property and these areas are designated as Special Natural Areas ("SNAs"), as shown on the "Conservation Easement Map," which is attached hereto as Exhibit B and incorporated herein, and shall be afforded additional protection because they are examples of significant and fragile natural communities.
2. The SNAs shall include Riparian Buffers which are defined as that portion of the Property that extends two hundred (200) feet from the bank of any river, and stream, or from the edge of any jurisdictional wetland, as delineated by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act, 33 U.S.C. §1251, *et seq.* .
3. Except as provided herein, there shall be no clearing or disturbances in or to the SNAs, including no harvesting or cutting of trees or other vegetation, and no soil disturbances including, but not limited to, food plots, wildlife openings, and agricultural uses.

4. The SNAs shall include a Granite Buffer, which is defined as that portion of the Property that extends one hundred (100) feet around each granite outcrop as measured from the edge of the exposed rock.
5. Grantor reserves the right to restore and enhance the health and diversity of the SNA subject to a restoration plan that has been approved by Grantee in accordance with the approval procedures in Article 7 herein. The restoration goals of these areas, which shall be set forth in the restoration plan, shall be to (i) maintain and enhance the health, diversity, integrity, and quality of the natural habitats; (ii) prevent erosion; and (iii) protect the Conservation Purposes. In addition to setting out these goals, the restoration plan shall set out the methods for achieving these goals. Any restoration action within the SNAs must not adversely impact any buffers, streams, granite outcrops, and wetlands.
6. Restoration activities may include, without limitation, the removal of (i) exotic or non-native species and plants; (ii) diseased trees and other vegetation specified with Grantee's prior written consent; and (iii) damage caused by storms, insects, acts of God, disease, fire, unauthorized acts of third-parties, and other causes beyond the reasonable control of Grantor.
7. In addition to the activities listed above, restoration activities may include the planting of native, non-invasive species in order to restore natural habitat and thinning or removing pine trees in order to promote the ecological diversity and health of the forest.
8. Trails are permitted in the SNAs, as provided below, except that trails in or on the exposed granite outcrops are prohibited, and trails located within the granite outcrop's one hundred (100) foot buffer shall be limited to pedestrian use only. Use of said trails in the SNAs shall not cause or contribute to erosion and sediment runoff and shall minimize impact to the Conservation Purposes. Trails shall avoid impacting rare and endangered plant species.
9. New or additional roads are prohibited in the SNAs, except that Grantor may construct unpaved roads as part of an approved restoration plan provided, however, that no roads may be placed in or on the granite outcrops.
10. Grantor reserves the right to create and maintain the existing open habitat or food plots in the locations identified as "Wildlife Openings", for the benefit of wildlife, including birds, and to provide a diversity of habitats. These wildlife openings shall be created and maintained so as to prevent erosion and sediment runoff.

#### **C. Roads.**

1. Grantor reserves the right to maintain and repair the existing unpaved roads as shown in Exhibit B, which are to be used for (i) access to the Property; (ii) vehicular, pedestrian, bicycle, and equestrian use, so long as such uses do not cause or contribute to erosion and sediment runoff and the roads are maintained according to then current Best Management Practices, as defined by the GSWCC, the Georgia Forestry Commission, or successor agencies. The right to maintain includes the right to grade, apply gravel, install drainage culverts, and other improvements intended to minimize sediment and storm water runoff, with Grantee approval, so as to prevent impact to wetlands and other Conservation Purposes.
2. The width of the area impacted by maintaining roads and road improvements, including, but not limited to, the road bed, shoulders, and drainage structures, shall not exceed twenty (20) feet.

3. Grantor reserves the right to construct, maintain, repair, remove, or replace a driveway to the approved residences as set forth in Paragraph E of this Article. The location of the driveway must be approved by the Grantee as provided for in Article 7, and the driveway shall not cross streams and wetlands on the Property. The total width of cleared area for the driveway, including shoulder and drainage ditches, shall be no wider than fifteen (15) feet, and may be paved subject to the Grantee's approval, as provided in Article 7.
4. Prior to the construction of any roads and driveways, Grantor must provide notice to Grantee of the proposed construction as provided in Article 7. All construction activities must minimize (i) the impact on adjacent vegetation; (ii) sediment and storm water runoff; and (iii) the impact on the Conservation Purposes, streams, and wetlands of the Property. All construction activity will comply with then current BMPs as established by relevant state and federal agencies.

#### **D. Structures.**

1. Structures include any building or facility, whether residential, commercial, or recreational, including, but not limited to, any house, garage, barn, shed, outbuilding, tower, and pavilion. Except as specifically permitted herein, placement, installation, or construction of any temporary or permanent buildings, structures, facilities, or other improvements on the Property is prohibited.
2. The existing former rock quarries, identified as "Quarry" on Exhibit B, may not be enlarged, excavated, or otherwise disturbed. Minerals and rock may not be extracted or removed from the quarries.
3. The two existing sheds, identified as "Shed" on Exhibit B, may be maintained, repaired, or replaced with nonresidential storage structures such as sheds or barns. The two existing cranes, identified as "Crane" on Exhibit B may not be repaired or replaced. Grantor reserves the right to remove the cranes.
4. Grantor reserves the right to create two (2) Residential Envelopes ("RE"), one no greater than two (2) acres in area, and the second no greater than one (1) acre in area, as shown in Exhibit B. Grantor reserves the right to construct, maintain, repair, remove, and replace one residential dwelling within each RE. Grantor may also construct, maintain, repair, remove, and replace support structures associated with residential use within the REs, such as garages, sheds, pools, and gardens, and conduct residential landscaping in the REs.
5. Prior to any construction within the REs, Grantor must provide notice to Grantee of the proposed construction as provided in Article 7. Said notice shall include a survey of the RE prepared by a registered surveyor. Prior to construction, the boundaries of the RE shall be marked on the ground.
6. All construction, maintenance, and repair activities for all permitted structures must minimize (i) the impact on adjacent vegetation; (ii) sediment and storm water runoff; and (iii) the impact on the Conservation Purposes, streams, and wetlands of the Property. All construction activity will comply with any then current BMPs as established by the relevant local, state, and federal agencies.
7. The total area of the foundations of all permanent structures of any kind shall not exceed one percent (1%) of the Property's acreage. The area of the foundation or base of the structure shall constitute the area of the structure for purposes of this paragraph.
8. Grantor reserves the right to construct, place, and maintain temporary structures that can be removed, such as picnic tables, hunting stands, blinds, and other temporary hunting

structures, upon the Property, provided that construction of such structures does not cause or contribute to erosion and sediment runoff and provided that no temporary structure is located on or within the granite outcrops as identified on Exhibit B.

9. Grantor reserves the right to install the following types of signs (i) educational; (ii) information or direction; (iii) no trespass and public safety warnings, (iv) those that identify the Property as owned by Grantor and/or protected by a conservation easement held by Grantee; (v) political and for sale/rent; so long as any signs do not negatively impact the Conservation Purposes. The construction and placement of billboards, commercial advertisements or other signs are specifically prohibited.

**E. Trails.**

1. Grantor reserves the right to construct and maintain permeable pedestrian, equestrian, and bicycle trails on the Property for non-motorized recreational and educational purposes so long as such use does not cause or contribute to erosion and sediment runoff. Trail location shall not impact rare and endangered species. The cleared width of the trails shall not exceed five (5) feet. Construction and maintenance of trails shall be done so as to (i) minimize disturbance to surrounding vegetation; and (ii) not cause or contribute to erosion and sediment runoff.
2. At least thirty (30) days prior to any trail construction activity, Grantor shall provide Grantee with written notice of such construction as provided in Article 7.
3. Grantor reserves the right to place picnic tables and benches along trails.

**F. Fences.** Grantor reserves the right to install, maintain, or replace fences consistent with the Purpose of this Conservation Easement that shall not impede the passage of wildlife, except that if residential gardens or agricultural uses are permitted in this Conservation Easement, then the fences may inhibit the passage of wildlife.

**G. Lighting.** Grantor reserves the right to install and construct only shielded outdoor lighting that directs the light downwards may be used on the Property in order to minimize sky glow and the effect of outdoor light on wildlife and vegetation.

**H. Utilities.** Grantor reserves the right to construct, maintain, and replace utilities, including power, water, septic systems, and communication, to support approved structures or uses on the Property. The existing substation, identified as "Substation" on Exhibit B, may be maintained, repaired, and replaced. Prior to any clearing or construction activity, Grantor shall obtain Grantee's approval of the location of any additional utilities, as provided in Article 7, and shall notify Grantee, as provided in Article 7, before actual construction begins. All utility location, construction, and maintenance shall be done so as to minimize the impact on the Conservation Purposes, and shall not impact the SNAs.

**I. Education.** Grantor reserves the right to use the Property for the scientific and environmental education of the public, provided that the Conservation Purposes protected by this Conservation Easement are not diminished.

**J. Recreational Uses.** Grantor reserves the right to use the Property for recreational purposes, including, but not limited to, bird watching, hunting, fishing, swimming, equestrian use,

bicycling, hiking, and the use of off-road and all-terrain vehicles, provided that such uses do not (i) impair the Conservation Purposes; (ii) create a permanent track; and (iii) cause or contribute to erosion and sediment runoff.

## ARTICLE 5. PROHIBITED AND RESTRICTED ACTIVITIES

Except for the rights expressly reserved by Grantor in Article 4, any activity on, or use of, the Property inconsistent with the Purpose of this Conservation Easement, or that would significantly and adversely impair or interfere with the Conservation Purposes of the Property, is prohibited. Furthermore, the Property shall be subject to the following restrictions:

- A. Disturbance of Natural Features.** Grantor shall not change, disturb, alter, or impair any of the natural, scenic, and aesthetic features of the Property, except as permitted pursuant to Article 4.
- B. Motorized Vehicles.** Motorized vehicles on the Property are prohibited, except as set forth in Article 4.
- C. Industrial and Agricultural Use.** Industrial, manufacturing, and agricultural uses, except as provided in Article 4, are prohibited.
- D. Commercial Use.** Commercial activities are prohibited except those activities that (i) are expressly provided herein and are conducted so as to not impact the Conservation Purposes; or (ii) can be conducted within any permitted structures so long as such use does not negatively impact the Conservation Purposes.
- E. Subdivision.** Subdivision or partitioning of the Property for any purpose is prohibited.
- F. Signage.** Display of billboards, advertisements, or signs is prohibited on or over the Property, except that the following are permitted: (i) no trespass signs, no hunting signs, trail signs, educational signs, and signs that identify (a) the lands subject to this Conservation Easement, (b) the Grantor as owner of the Property, and (c) the participation of the landowner in state or county programs; and (ii) as provided in Article 3.
- G. Construction.** Except as permitted in Article 4 above, construction and placement of structures, impervious surfaces, or improvements of any kind is prohibited.
- H. Dumping.** The dumping or disposal of trash, garbage, or hazardous material on the Property is prohibited, except that biodegradable material generated on the Property may be permitted to remain there. The installation of underground storage tanks is prohibited.
- I. Mineral Use, Excavation, Dredging.** The exploration for, or the extraction of, oil, hydrocarbons, natural gas, minerals, soil, rock aggregate, or other materials located on or below the surface of the Property, or using any exploration or extraction method that disturbs the surface or subsurface of the land, is prohibited. Grantor shall not transfer, lease, or

otherwise separate the minerals or mineral rights from the Property. Excavation and land filling are prohibited except as necessary to carry out the provisions of Article 4.

- J. Water Quality and Drainage Patterns.** Except as provided for in Article 4, there shall be (i) no pollution, sedimentation, alteration, depletion, or extraction of surface water or natural water courses, subsurface water, or any other water bodies on or within the Property; (ii) no manipulation, diversion, or other alteration of wetlands or streams; and (iii) no activities conducted on the Property that would be detrimental to water quality or that could alter the natural water level or flow in or over the Property.
- K. Road Construction.** The construction of additional roads within the Property is prohibited, except as set forth in Article 4.
- L. Commercial Recreation.** Recreational uses, such as hunting, hiking, horseback riding, fishing, and biking, are permitted so long as (i) these uses do not impair the Conservation Purposes of the Property and do not cause soil erosion and sediment runoff; and (ii) such uses do not constitute more than “*de minimus* use for a commercial recreational activity” as that term is defined at IRC §2031(c)(8)(B) and regulations promulgated thereunder.

## ARTICLE 6. PUBLIC ACCESS

This Conservation Easement does not create or convey a right of access by the general public to the Property.

## ARTICLE 7. NOTICE AND APPROVAL

- A. Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking permitted activities is to afford Grantee a timely opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose of this Conservation Easement. Therefore, when notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the activity in question. Said notice shall describe the nature, scope, design, location, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Conservation Easement.
- B. Grantee’s Approval.** Where Grantee’s approval is required, Grantee shall either deny or grant its approval in writing within thirty (30) days of receipt of Grantor’s written request. Grantor’s written request shall describe the nature, scope, design, location, and any other material aspect of the proposed activity for which Grantor seeks approval. Grantee may only approve requests for actions that, in its sole discretion, it determines are consistent with the Purpose of this Conservation Easement.

## ARTICLE 8. MEDIATION

**A. Mediation.** If a dispute arises between the Grantor and Grantee (the “Parties” and each a “Party”) concerning the consistency of any proposed use or activity with the Purpose of this Conservation Easement, and Grantor agrees not to proceed with the use or activity pending the resolution of the dispute, either Party may refer the dispute to mediation by written request to the other Party. Within twenty (20) 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 forty-five (45) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator. The venue for the mediation shall be in a location mutually agreed to by the Parties. Mediation shall then proceed in accordance with the following guidelines:

1. **Purpose.** The purpose of the mediation is to (i) promote discussion between the Parties; (ii) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the Parties to develop proposals that 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 restrictions of this Conservation 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 the 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. **Costs.** The costs of the mediator shall be borne equally by the Parties, but each Party shall bear its own expenses, including attorneys’ fees, individually.

## ARTICLE 9. GRANTEE’S REMEDIES

**A. Notice of Violation; Corrective Action.** If Grantee knows or reasonably believes that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure or abate such violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Conservation Easement, to restore the portion of the Property so injured to the condition that existed as of the date of this Conservation Easement, in accordance with a plan approved by Grantee.

- B. Remedies.** If Grantor fails to cause discontinuance, abatement, or such other corrective action of a violation as may be requested by Grantee within thirty (30) days after receipt of notice thereof from Grantee (or, under circumstances where the corrective action cannot reasonably be completed within such thirty (30) day period, Grantor fails to begin such corrective action within the thirty (30) day period, Grantor fails to continue diligently to perform such corrective action within the thirty (30) day period, or Grantor fails to continue diligently to perform such corrective action until completion), Grantee, after seven (7) days written notice to Grantor, may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation by temporary or permanent injunction, to require the restoration of the Property to the condition that existed as of the date of this Conservation Easement, and/or to seek the recovery of damages arising from such non-compliance (including, without limitation, damages for the loss of scenic, aesthetic, or environmental values). Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- C. Emergency Enforcement.** If Grantee, in its reasonably exercised discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Purposes of the Property, Grantee may pursue its remedies under this Article without prior notice to Grantor and without waiting for the period provided for cure to expire.
- D. Scope of Relief.** Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement may be inadequate and that Grantee shall be entitled to seek injunctive relief described in Paragraph B of this Article, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement. Grantee's 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.
- E. Costs of Enforcement.** If a court or other decision-maker chosen by mutual consent of the Parties determines that any provision of this Conservation Easement has been breached by Grantor, Grantor will reimburse Grantee for any reasonable costs of enforcement, including, without limitation, costs of suit and reasonable attorneys' fees, monitoring fees, any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement, the value of any lost Conservation Purposes, and any other payments ordered by such court or decision-maker. If Grantor prevails in full in any action to enforce the terms of this Conservation Easement, each Party shall bear its own costs of suit, including, without limitation, reasonable attorneys' fees. Grantor shall not be responsible for the costs of a frivolous action, or an action brought in bad faith by the Grantee, as determined by a court of competent jurisdiction.
- F. Forbearance.** Enforcement of the terms of this Conservation Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term, or of any subsequent breach of the same or any other term of this Conservation Easement, or of any of

Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

- G. Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.
- H. Acts Beyond Grantor's Control.** Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement, insect infestation, disease, airborne or waterborne pollutants introduced by third parties, or from any prudent action taken by any person under emergency conditions to prevent, abate, or mitigate significant injury to any person or the Property resulting from such causes. In the event the terms of this Conservation Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees at Grantee's option to join in any suit or to assign its right of action to Grantee, for the purposes of pursuing enforcement action against the responsible parties.

#### **ARTICLE 10. GRANTOR REPRESENTATIONS, WARRANTIES, INDEMNIFICATION**

- A. Title.** Grantor hereby represents and warrants that Grantor has good and marketable title to the Property in fee simple and has the right to grant and convey this Conservation Easement, that the Property is free and clear of any and all encumbrances, or, if the Property is subject to any mortgage or security deed, such mortgage or security deed has been subordinated to this Conservation Easement, and that Grantee and its successors and assigns shall have the use and enjoyment of all the benefits derived from and arising out of this Conservation Easement. Grantor hereby warrants and shall forever defend title to the Property against the claims of all persons whomsoever.
- B. Representations and Warranties.** Grantor represents and warrants that to the best of its knowledge:
1. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property in violation of applicable law;
  2. There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws;
  3. Grantor and the Property are in compliance with all federal, state, and local laws applicable to the Property and its uses;
  4. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; no civil or criminal proceedings or investigations have been instigated at any time or are now pending; no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or

local law, regulation, or requirement applicable to the Property or its use; and there are no facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders; and

5. No person has retained a qualified mineral interest in the Property of a nature that would disqualify this Conservation Easement for purposes of Treasury Regulations, §1.170A-14(g)(4).
6. Grantee represents and warrants that:
  - a. It is a "qualified organization" as that term is used in Code §170(h) and defined in Treas. Reg. §1.170A-14(c)(1), and
  - b. It is an eligible donee, having a commitment to protect the Purposes of this Conservation Easement and the resources to enforce the restrictions of this Conservation Easement.

**C. Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or to the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required by applicable law.

**D. Control.** Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an owner or operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, *as amended* ("CERCLA"), and Georgia's hazardous waste statutes.

**E. Indemnification.** Grantor hereby acknowledges that Grantee has no possessory rights in the Property nor any right or responsibility to operate, control, or maintain the Property. Grantor releases and shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors, and the heirs, personal representatives, successors, and assigns of each of them (collectively, "Indemnified Parties"), from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (i) 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 causes, unless due to the negligent act of any of the Indemnified Parties; (ii) the violation or alleged violation of, or other failure to comply with, any federal, state, or local law, regulation, rule, requirement, or ordinance, including, without limitation, CERCLA and Georgia hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; and (iii) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined or classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused by any of the Indemnified Parties.

**ARTICLE 11. EXTINGUISHMENT, CONDEMNATION, AND PROCEEDS**

- A. Extinguishment.** This Conservation Easement can only be extinguished or terminated in whole or part by judicial proceedings in a court of competent jurisdiction upon a finding that a subsequent unexpected change in conditions has made the continued use of the Property for conservation purposes impossible or impractical. Grantee shall be entitled to a share of any proceeds of any subsequent sale, exchange, or involuntary conversion of the Property or any portion thereof, according to Grantee's proportional interest in the Property as determined as of the date of this grant in accordance with Treasury Regulations, §1.170A-14(g)(6)(ii), and as set forth in Paragraph C of this Article.
- B. Condemnation.** If all or any portion of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation subject to the prior written consent of Grantee, Grantor and Grantee shall be entitled to compensation in accordance with all applicable law and this Conservation Easement, and Grantor and Grantee agree to join in all necessary and appropriate actions to recover the full value of such compensation, including all incidental damages. Grantee's portion of the amount recovered shall be determined by multiplying that amount by the proportionate value set forth in Paragraph C of this Article.
- C. Proceeds.** This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Article, the Parties stipulate to have a fair market value that is at least equal to the proportionate value that this perpetual Conservation Easement, as of the date hereof, bears to the value of the Property as a whole at that time. For the purpose of this paragraph, the proportionate value of the Grantee's property rights shall remain constant.
- D. Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this Article in a manner consistent with the Purpose, which is exemplified by this Conservation Easement.

**ARTICLE 12. ASSIGNMENT**

This Conservation Easement is transferable with the consent of the Grantor, which shall not be unreasonably withheld, but Grantee may assign its rights and obligations under this Conservation Easement only to a qualified organization authorized to acquire and hold conservation easements, as provided by Treasury Regulations, §1.170A-14(c)(1), and O.C.G.A. §44-10-1, *et seq.* As a condition of such transfer, Grantee shall require that the Conservation Purposes and Purpose that this Conservation Easement is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor of an assignment at least twenty (20) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Conservation Easement or limit its enforceability in any way.

**ARTICLE 13. RESERVED.****ARTICLE 14. SUBSEQUENT TRANSFERS**

- A. Transfer.** Grantor agrees to incorporate the terms of this Conservation Easement by reference in any subsequent deed or other legal instrument by which it transfers any interest in the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer, and to provide the name and address of the new Grantor. The failure of Grantor to perform any act required by this Article shall not impair the validity of this Conservation Easement or limit its enforceability in any way.
- B. Merger.** Grantor and Grantee agree that should Grantee, or any successor in interest to Grantee, come to own all or a portion of the fee interest in the Property subject to this Conservation Easement, said owner shall observe and be bound by the obligations and the restrictions imposed upon the Property by this Conservation Easement; this Conservation Easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement; and said owner as promptly as possible shall assign the Grantee interest in the Conservation Easement of record to another holder in conformity with the requirements of a qualified organization under §170(h) of the IRC or a federal, state, or local governmental agency or other entity, and in compliance with O.C.G.A. §44-10-2, §44-10-3, and §44-10-4.
- C. Documentation of Present Status.** Upon written request by Grantor, Grantee shall have thirty (30) days to execute and deliver to Grantor any document, including an estoppel certificate, that certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Easement. Such documentation shall describe the condition of the Property, as known by Grantee, as of the date of Grantee's most recent inspection. If Grantor requests more current status information, then Grantee shall conduct an inspection and provide said information at Grantor's sole expense within forty-five (45) days following receipt of Grantor's request.

**ARTICLE 15. 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 delivered personally or sent by commercial courier service or first-class mail, postage prepaid, return receipt requested, and addressed as follows:

To Grantor: Whitetail Ridge, LLC  
2700 Louisville Rd.  
Savannah, GA 31415

To Grantee: Oconee River Land Trust, Inc.  
675 Pulaski St., #2300  
Athens, Georgia 30601

## ARTICLE 16. RECORDATION

Grantee shall record this instrument in timely fashion in the official records of Oglethorpe County, Georgia, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

## ARTICLE 17. GENERAL PROVISIONS

- A. Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Georgia.
- B. Liberal Construction.** Notwithstanding any general rule of construction to the contrary, this Conservation Easement shall be liberally construed in order to accomplish the Purpose of this Conservation Easement and the policy and purpose of O.C.G.A. §44-10-1, *et seq.* If any provision in this instrument is found to be ambiguous, then an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over an interpretation that would render it invalid.
- C. Severability.** If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- D. Entire Agreement.** This instrument and the documents incorporated herein by reference set forth the entire agreement of the Parties with respect to this Conservation Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to this Conservation Easement, all of which are merged herein.
- E. No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- F. Joint Obligation.** The obligations imposed by this Conservation Easement upon Grantor shall be joint and several.
- G. Successors.** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, Grantor and Grantee and shall continue as a servitude running in perpetuity with the Property. Except as expressly provided otherwise herein, the terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its personal representatives and heirs, and successors and assigns in interest in the Property after the date hereof, and the above-named Grantee and its personal representatives, heirs, successors, and assigns.
- H. Termination of Rights and Obligation.** A Party's rights and obligations under this Conservation Easement terminate upon transfer of the Party's interest in this Conservation

Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

- I. Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- J. Counterparts.** The Parties may execute this instrument in two or more counterparts, that shall be signed by both Parties, and 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.

#### ARTICLE 18. EXHIBITS; DOCUMENTATION

- i. Exhibits.** Exhibit "A", Legal Description of the Property, is attached hereto and made a part hereof by reference. Exhibit "B", Conservation Easement Map, is attached hereto and made a part hereof by reference.
- A. Baseline Documentation Report.** The Parties acknowledge that the Baseline Documentation Report, dated September 9, 2019, executed by both Grantor and Grantee, and a copy of which is on file at the office of Grantee, accurately and completely describes, to the best of Grantor's and Grantee's knowledge, the uses, structures, Conservation Purposes, and condition of the Property as of the date hereof. In the event that the terms of the Conservation Easement and the Baseline Documentation Report are in conflict or inconsistent, the terms of this Conservation Easement shall prevail.

**TO HAVE AND TO HOLD** this Conservation Easement unto Grantee and its successors and assigns, together with all and singular rights, members, and appurtenances thereof to the same being, belonging or in anywise appertaining, to the only proper use, benefit, and behoove of Grantee forever.

**SIGNATURE PAGE IMMEDIATELY FOLLOWS**

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

Signed, sealed, and delivered in the presence of

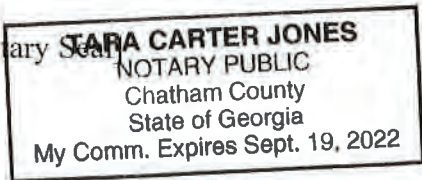
Alexis Lawson

Name: ALEXIS LAWSON  
Unofficial Witness

Tara C Jones

Name: Tara C Jones  
Notary Public  
My Commission Expires: 9-19-22

[Affix Notary Seal]



**GRANTOR: WHITETAIL RIDGE, LLC**  
a Georgia limited liability company

By: Land Investors, LLC  
a Georgia limited liability company, its  
Manager

By: Raymond J. DeMott  
Raymond J. DeMott, Manager

Signed, sealed, and delivered in the presence of

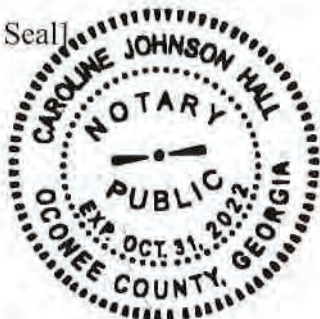
Steffrey Thompson

Name: Steffrey Thompson  
Unofficial Witness

Caroline Johnson Hall

Name: Caroline Johnson Hall  
Notary Public  
My Commission Expires: 10-31-22

[Affix Notary Seal]



**GRANTEE: OCONEE RIVER LAND TRUST, INC.,**  
a Georgia nonprofit corporation

By: John S. Willis  
Name: John S. Willis  
Title: Vice Chair

[Corporate Seal]

Attest: Roger Nielsen  
Name: Roger Nielsen  
Title: Secretary

RJD JW

**Exhibit A**  
**Legal Description**

**Tract 1: All that tract or parcel of land, with improvements thereon, situate, lying and being in the Glade District (237th) G.M. of Oglethorpe County, Georgia, containing 76.18 acres, more or less, and being formerly known as the Sara Witcher Homeplace, and being bounded now or formerly as follows: On the North by Mitchell lands; on the East by lands of G.A. Barron; and on the South by lands of King and Bush. Said property being better described in survey and plat of same made by W.A. Broach, R.S., dated September 18, 1948, and being recorded in Plat Book 2, Page 297, Oglethorpe County, Georgia, records, said plat being expressly by reference made a part of this description and conveyance.**

**This is the same tract or parcel of land conveyed to America Granite Quarries, Inc., by a warranty deed from Robert G. Moore, dated June 30, 1971, recorded in Deed Book 4-H, Pages 364-365 Oglethorpe County, Georgia, records, which deed is by reference made a part of this description.**

**Tract 2: All that tract or parcel of land, with improvements thereon, situate, lying and being in the Glade District (237th) G.M. of Oglethorpe County, Georgia, containing 35.2 acres, more or less, being bounded now or formerly as follows; On the Northeast by South Broad River; on the Southeast by property of West Virginia Pulp and Paper Company; on the South and Southwest by a 76.18 acre tract of land belonging to American Granite Quarries, Inc., on the west by other properties of Pope Lumber Company, and on the northwest by Broad River.**

**This is the same tract or parcel of land conveyed to American Granite Quarries, Inc., by a warranty deed from Pope Lumber Company, dated August 10, 1959, recorded in Deed Book 3-V, Page 127, Oglethorpe County, Georgia, records, which deed is by reference made a part of this description.**

# Exhibit B Conservation Easement Map

