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DEED OF CONSERVATION EASEMENT

Jay C. Stephenson

STATE OF GEORGIA
COUNTY OF COBB

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

THIS CONSERVATION EASEMENT (herein "Conservation Easement") is made this 16th day of December, 2004, by and between Gipson/ East-West, LLC whose address is 7 Piedmont Center, Suite 150, Atlanta, Georgia 30305 (hereinafter "Grantor") and Cobb County, Georgia, a Political Subdivision of the State of Georgia, with an address of 100 Cherokee Street, Marietta, Georgia 30090 (hereinafter "Grantee").

RECITALS

- A. Grantee is a governmental body empowered to hold an interest in real property under the laws of the State of Georgia.
- B. Grantor owns in fee simple certain real property in Cobb County, Georgia, being 5.5095 acres, more or less, and more particularly shown and described in Exhibit "EX-1" attached hereto, hereinafter "Property".
- C. Grantor is willing to grant a perpetual Conservation Easement over the Property, thereby restricting and limiting the use of the land on the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement.
- D. Grantor and Grantee recognize the conservation value of the Property in its present state and have a mutual desire to afford protection thereto. Both Grantor and Grantee recognize that a perpetual conservation easement is desirable for the following purpose(s); the protection of natural resources and preservation of open space, more specifically the protection of water quality.

NOW, THEREFORE, as an absolute gift of no monetary consideration but in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantor hereby unconditionally and irrevocably grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Property more particularly described in Exhibit A, Legal Description of the Property, together with the right to preserve and protect the conservation values of the Property.

To achieve the conservation purposes, the following conditions and restrictions are set forth:

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an assignable easement in gross, runs with the land, and is enforceable by Grantee against Grantor, his personal representatives, heirs, successors and assigns, lessees, agents and licensees.

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ARTICLE II. RIGHTS OF GRANTEE

To accomplish the purposes of this Easement the following rights are conveyed to Grantee by this easement:

- A. To preserve and protect the conservation values of the Property; and
- B. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Easement, whether building, grading, excavating, trenching, damming, dumping, etc., is prohibited excepting only any necessary installation of materials and equipment or maintenance, repair, or replacement thereof with respect to the utility and sanitary sewer easements as shown on the attached Exhibit "EX-1". Should any such installation, maintenance, repair or replacement with respect to the utility and sanitary sewer easements occur, the Property shall thereafter be restored to its original state as much as is practicable. Development that would significantly impair or interfere with the conservation values of the Property is prohibited.

The above notwithstanding, the Grantor hereby reserves the right to install, modify and maintain the storm drainage facilities located within or to be located within the Property. The storm drainage facilities include but are not limited to the storm water detention facility, the retaining walls delineating the facility, the fences and guardrails associated with the facility and all pipes, junction boxes, headwalls, and outlet structures associated with the storm drainage facility. Grantor also reserves the right to maintain, repair and install utility and sanitary sewer services located within the Property or to be located within the Property in the future, provided such utilities and sanitary sewer services do not significantly impair or interfere with the conservation values of the Property. Furthermore, Grantee acknowledges the existence of the Colonial Pipeline and its associated easements on the Property, located as shown on Exhibit "EX-1".

ARTICLE IV. RESERVED RIGHTS

Grantor reserves to himself, and to his personal representatives, heirs, successors, and assigns, all rights accruing from his ownership of the Property, including the right to engage in, or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Easement.

ARTICLE V. GRANTEE'S REMEDIES

If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall, prior to exercising any other remedies, give written notice to the Grantor of such and give a reasonable time for correction, if necessary. "Reasonable time" shall be in the sole discretion of Grantee. This option shall not preclude Grantee's right to seek judicial enforcement of the Easement, and such written notification and opportunity to correct shall not be a prerequisite to judicial enforcement. All costs incurred by Grantee in enforcing this Easement, including reasonable attorney's fees, shall be borne by Grantor, unless Grantor ultimately prevails when in such event each party shall bear its own costs.

ARTICLE VI. EXHIBITS, DOCUMENTATION AND TITLE

- A. **Legal Description.** Exhibit A, Legal Description of the Property, to include the metes and bounds and Exhibit EX-1, Pictorial Representation of the Conservation Easement Area, are attached hereto and made a part hereof by reference.
- B. **Title.** Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that the Property is free and clear of any and all encumbrances except as noted in this Article; and Grantor covenants that the Grantee shall have the use of and enjoyment of all of the benefits derived from and arising out of the aforesaid Conservation Easement.
- C. **Encumbrances.** The Grantee acknowledges that Sun Life Assurance Company of Canada (U.S.), has a Deed to Secure Debt on the Property.

ARTICLE VII. COSTS, LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

- A. **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including taxes and any costs of remediation.
- B. **Hold Harmless.** Grantor hereby releases and agrees to 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: (1) 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 arising from the negligence of Grantor; (2) the violation or alleged

violation of, or other failure to comply with, any state, federal or local law, regulation, or requirement, including, without limitation, CERCLA and state hazardous waste statutes by Grantor; (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise 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 the actions of Grantor; and (4) the obligations, covenants, representations, and warranties of Grantor contained herein.

ARTICLE VIII. GENERAL PROVISIONS

- A. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the state of Georgia including the Georgia Uniform Conservation Easement Act.
- B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement and the policy and purpose of the Georgia Uniform Conservation Easement Act. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this 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 sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, Understandings, or agreements relating to the 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. **Assignment by Grantor.** Notwithstanding any other provision hereof, Grantee's rights under this Easement Agreement may be assigned only to another governmental or non-profit entity that will utilize the such easement rights for the public good.
- G. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and his personal representatives,

heirs, successors, and assigns and the above-named Grantee and its successors and assigns.

- H. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon the transfer of the party's interest in the 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, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

ARTICLE IX. DUCTABILITY FOR TAX PURPOSES

Grantor acknowledges that no one on behalf of Grantee has made any representations, express or implied, as to the deductibility of this Conservation Easement under federal, state, or local law or as to any of the tax benefits or burdens which may be borne by the Grantor hereby. Grantor acknowledges that he has had the opportunity to seek legal counsel the advice of a tax professional prior to the execution hereof and will hold harmless the Grantee for any tax ramifications incurred hereby.

TO HAVE AND TO HOLD unto Cobb County, Georgia, a political subdivision of the State of Georgia, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, his personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

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

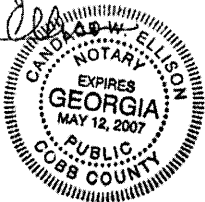
TO BE EFFECTIVE upon the date of recordation in the official records of Cobb County, Georgia.

IN WITNESS WHEREOF, the parties have hereunto executed and sealed this Declaration, as of the day and year first above written.

Signed, sealed and delivered
In the presence of:

Andrew Richardson
Witness

Candace W. Ellison
Notary Public



Signed, sealed and delivered
in the presence of:

Janis E. Burda
Witness

M. Melinda Moore
Notary Public
Notary Public, Fulton County, Georgia
My Commission Expires August 13, 2004



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GRANTEE:
COBB COUNTY, GEORGIA

By: [Signature]
CHAIRMAN, COBB COUNTY
BOARD OF COMMISSIONERS



Attest: [Signature]
COUNTY CLERK, COBB
COUNTY, GEORGIA

GRANTOR:
GIPSON/EAST-WEST, L.L.C.
a Georgia limited liability company

By: [Signature]
John H. Gipson, Manager

APPROVED
PERMINUTES OF
COBB COUNTY
BOARD OF COMMISSIONERS
12-14-04
[Signature]

CONSENT AND SUBORDINATION

Sun Life Assurance Company of Canada (U.S.), as the holder of that certain Security Deed dated _____, by and between Gipson/East-West, L.L.C., as Borrower, and Sun Life Assurance Company of Canada (U.S.), as Lender, recorded in Deed Book _____, Page _____, Cobb County, Georgia Records, hereby consents to the terms of this Conservation Easement, and subordinates and makes inferior said Security Deed to this Conservation Easement, as the same may hereafter be modified or amended in accordance with the terms hereof.

IN WITNESS WHEREOF, Sun Life Assurance Company of Canada (U.S.) has executed and sealed this Conservation Easement as of the _____ day of _____, 2004.

Signed, sealed and delivered
in the presence of:

SUN LIFE ASSURANCE
COMPANY OF CANADA (U.S.)
One Sun Life Executive Park
Wellesely Hills, MA 02481

Michelle Keller

Witness

[Signature]
Notary Public

By: *[Signature]*
Title: *Vice President*

By: *[Signature]*
Title: *Property Investments Officer*



EXHIBIT A

L E G A L D E S C R I P T I O N

CONSERVATION EASEMENT

All that tract or parcel of land lying and being in Land Lots 924, 925, 926 and 927 of the 19th District, 2nd Section, Cobb County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, commence at the northerly point of the southeasterly mitered intersection of the southerly right of way of the East West Connector (having a variable right of way) with the easterly right of way of Floyd Road (having a variable right of way); Thence 2572.69 feet along the southerly right of way of the East West Connector to a point, and the Point of Beginning.

Thence from said Point of Beginning and continuing along said southerly right of way along a curve to the left having a radius of 5819.58 feet for an arc length of 37.21 feet, being subtended by a chord of South 85° 10' 37" East, 37.21 feet to a point; thence Leaving said right of way South 01° 09' 25" West, 264.55 feet to a 1/2" rebar found; thence North 85° 11' 14" West, 35.00 feet to a 1/2" rebar found; thence South 18° 57' 12" West, 532.84 feet to a point; thence North 88° 50' 35" West, 724.45 feet to a 1/2" rebar found; thence North 01° 45' 55" East, 257.03 feet to a point; thence South 89° 08' 11" East, 520.74 feet to a point; thence South 88° 14' 39" East, 196.50 feet to a point; thence North 18° 57' 17" East, 441.16 feet to a point; thence North 43° 57' 17" East, 17.28 feet to a point; thence North 13° 57' 17" East, 83.76 feet to a point on the southerly right of way of the East West Connector, and The Point of Beginning.

Containing 239,996 square feet or 5.5095 acres of land, more or less, according to survey entitled "Conservation Easement for Gipson/East-West, L.L.C.", dated July 29, 2004, prepared by TerraMark Land Surveying, Inc., William C. Wohlford, Jr., Registered Land Surveyor No. 2577.

