

October 10, 2005

FILE COPY

RECEIVED

OCT 12 2005

HAZ. SITES RESPONSE PROG.

Ms. Antonia Beavers
Georgia Environmental Protection Division
Hazardous Waste Management Branch
Suite 1462
2 Martin Luther King, Jr. Drive, S.E.
Atlanta, Georgia 30334

Re: Northside Drive Landfill
HSI Site No. 10222

Dear Ms. Beavers:

Enclosed for your file is a copy of the filed and recorded First Amendment to Conservation Easement. Please call me know if you have any questions.

Very truly yours,

Joan B. Sasine

Joan B. Sasine
Special Assistant Attorney General

JBS:cl
Enclosure(s)

cc: Denise Whiting-Pack, Esq. (w/encl.)
Mr. Mike McNeeley (w/encl.)
Ms. Leona Miles (w/encl.)

FILE
10222

Deed Book 41036 Pg 232
Filed and Recorded Oct-05-2005 09:55am
2005-0342210
Real Estate Transfer Tax \$0.00
Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia

[ABOVE SPACE RESERVED FOR RECORDING DATA]

AFTER RECORDING, RETURN TO:

Joan B. Sasine, Esq.
Powell Goldstein LLP
Fourteenth Floor
1201 West Peachtree Street
Atlanta, Georgia 30309-3488

FIRST AMENDMENT TO CONSERVATION EASEMENT

THIS FIRST AMENDMENT TO CONSERVATION EASEMENT (this "First Amendment") is made as of this 20th day of September, 2005, by and among the GEORGIA DEPARTMENT OF ECONOMIC DEVELOPMENT (formerly known as the Georgia Department of Industry, Trade and Tourism), on behalf of the STATE OF GEORGIA (hereinafter referred to as "Grantor"), and the GEORGIA WORLD CONGRESS CENTER AUTHORITY, an instrumentality of the State of Georgia and a public corporation (hereinafter referred to as "Holder"), and the STATE OF GEORGIA, DEPARTMENT OF NATURAL RESOURCES, a Department of the Executive Branch of the State Government of the State of Georgia, acting by and through its Environmental Protection Division (hereinafter referred to as "Enforcement Agent").

WITNESSETH THAT:

WHEREAS, Grantor, Holder and Enforcement Agent executed that certain Conservation Easement, dated February 16, 2004, recorded at Deed Book 37106, Page 7, Fulton County, Georgia, Clerk of the Superior Court Real Estate Records on February 24, 2004 (the "Conservation Easement"), a copy of which is attached hereto as Exhibit 1 and by this referenced incorporated herein; and

WHEREAS, Grantor agreed, *inter alia*, to perform certain acts of monitoring and maintenance with respect to the Property pursuant to Exhibit "B" of the Conservation Easement (the "Monitoring and Maintenance Plan"); and

WHEREAS, Grantor, Holder and Enforcement Agent each agree to amend the Conservation Easement in accordance with the terms and conditions of this First Amendment.

NOW, THEREFORE, for and in consideration of the foregoing premises, the sum of TEN and NO/100 DOLLARS (\$10.00), and the covenants, representations, warranties, and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Definitions. All capitalized terms not defined herein shall have the respective meanings ascribed thereto in the Conservation Easement.
2. Amendment of the Monitoring and Maintenance Plan. The Monitoring and Maintenance Plan is hereby amended by deleting the Monitoring and Maintenance Plan in its entirety and substituting, in lieu thereof, Exhibit 2 attached hereto and incorporated herein by this reference.
3. Miscellaneous. Except as expressly modified hereby, the Conservation Easement shall remain in full force and effect. This First Amendment may be executed in multiple counterparts, and together such counterparts shall constitute one complete instrument. This First Amendment shall become effective upon a facsimile receipt of the counterparts executed by all parties hereto.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, each of the parties hereto has caused this First Amendment to be executed, sealed and delivered by its duly authorized representative, all effective as of the day and year first written above.

Signed, sealed and delivered in the presence of: **GRANTOR:**

Barbara S. Housley

Unofficial Witness

Print Name: Barbara S. Housley

Dale Aiken

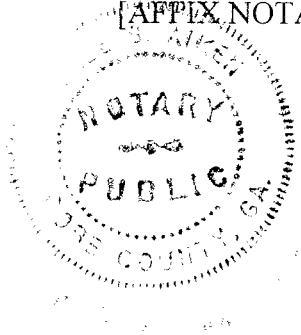
Notary Public

Print Name: Dale Aiken

Commission Expiration Date:

September 26, 2008

[AFFIX NOTARIAL SEAL]



DEPARTMENT OF INDUSTRY, TRADE AND TOURISM, ON BEHALF OF THE STATE OF GEORGIA

By: [Signature]

Dan Graveline, Executive Director of the Georgia World Congress Center acting on behalf of and in his capacity as Agent for the Georgia Department of Economic Development (formerly known as the Georgia Department of Industry, Trade and Tourism)

Address: 285 Andrew Young International Blvd NW
Atlanta, GA. 30313

[SIGNATURES CONTINUED ON NEXT PAGE]

Signed, sealed and delivered in the presence of:

Barbara S. Housley

Unofficial Witness

Print Name: Barbara S. Housley

Dale Aiken

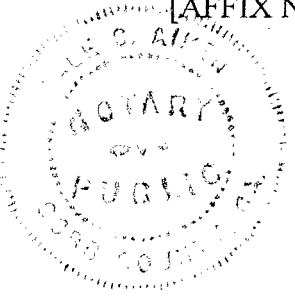
Notary Public

Print Name: Dale Aiken

Commission Expiration Date:

September 26, 2008

[AFFIX NOTARIAL SEAL]



HOLDER:

GEORGIA WORLD CONGRESS CENTER
AUTHORITY

By: [Signature]

Dan Graveline, Executive Director

Address: 285 Andrew Young International Blvd

Atlanta, GA 30313

[SIGNATURES CONTINUED ON NEXT PAGE]

Signed, sealed and delivered in the presence of:

ENFORCEMENT AGENT:

GEORGIA ENVIRONMENTAL PROTECTION
DIVISION

Dorothy S. Kirkland

Unofficial Witness

Print Name: Dorothy S. Kirkland

By: [Signature]

Its: Director

Yolanda P. Fanning

Notary Public

Print Name: Yolanda P. Fanning

Address: _____

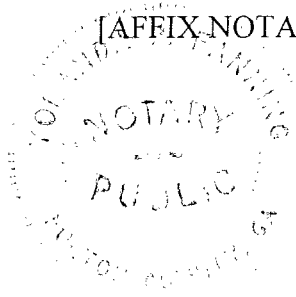
Notary Public

Fulton County Georgia

Commission Expiration Date: _____

My Comm. Expires Oct. 15, 2005

[AFFIX NOTARIAL SEAL]



[END OF SIGNATURES]

Deed Book 37106 Pg 7
Filed and Recorded Feb-24-2004 12:03pm
2004-0076090
Real Estate Transfer Tax \$0.00
Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia
I HAVE BEEN THE CLERK OF SUPERIOR COURT FOR THE COUNTY OF FULTON, GEORGIA, SINCE 1991

[Space above this line for recorder's office]

After recording, return to:

Joan B. Sasine, Esq.
Powell, Goldstein, Frazer & Murphy LLP
191 Peachtree Street, 16th Floor
Atlanta, Georgia 30303

CONSERVATION EASEMENT

by and between

GEORGIA DEPARTMENT OF INDUSTRY, TRADE AND TOURISM,
on behalf of the
STATE OF GEORGIA,

GEORGIA WORLD CONGRESS CENTER AUTHORITY,

and the

STATE OF GEORGIA, DEPARTMENT OF NATURAL RESOURCES

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT Agreement (hereinafter referred to as "Agreement" or "Conservation Easement") is made this 16th day of February 2004, by and between GEORGIA DEPARTMENT OF INDUSTRY, TRADE AND TOURISM, on behalf of the STATE OF GEORGIA (hereinafter referred to as "Grantor"), and GEORGIA WORLD CONGRESS CENTER AUTHORITY an instrumentality of the State of Georgia and a public corporation (hereinafter referred to as "Holder"), and the STATE OF GEORGIA, DEPARTMENT OF NATURAL RESOURCES, a Department of the Executive Branch of the State Government of the State of Georgia, acting by and through its Environmental Protection Division (hereinafter referred to as "Enforcement Agent").

WITNESSETH THAT:

WHEREAS, Grantor is the owner in fee simple of that certain real property located in the City of Atlanta, Fulton County, Georgia, identified as Tax Parcel No. 14-0082-0006-12-1 and more particularly described on Exhibit A attached hereto and by this reference incorporated herein, hereinafter the "Property";

WHEREAS, the Property is impacted by "hazardous substances" as defined under the Georgia Hazardous Site Response Act, O.C.G.A. §12-8-90, *et seq.*, and, the Property is part of the site that, due to a release or releases of hazardous substances exceeding a reportable quantity, is listed on the Hazardous Site Inventory ("HSI") as HSI No. 10222 and has been designated as needing corrective action by the Director of the Georgia Environmental Protection Division;

WHEREAS, such corrective action has been undertaken and the State of Georgia, Custody in the Department of Industry, Trade and Tourism (hereinafter referred to as "DITT") acquired the Property after being granted a limitation on liability pursuant to O.C.G.A. 12-8-207 for environmental releases;

WHEREAS, such limitation of liability requires that the Property be subject to certain restrictions and the Grantor be subject to certain obligations;

WHEREAS, pursuant to O.C.G.A. § 44-10-1 *et. seq.* Holder desires to obtain a non-possessory interest in and impose limitations on the Property for the purpose of protecting public health and safety, the environment, and the natural resources by restricting, controlling, or otherwise limiting the use of the Property and impose affirmative obligations by providing for maintenance of engineering and institutional controls at the Property; and

WHEREAS, Enforcement Agent is willing to accept its obligations to enforce the terms of the Agreement; however, such acceptance shall not in any way be interpreted to constitute any waiver of, or limitation on, any regulatory or enforcement authority vested in Enforcement Agent pursuant to the laws and regulations of the State of Georgia or the United States of America.

NOW THEREFORE, Grantor, for and in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, and other good and valuable consideration, the

sufficiency of which is hereby acknowledged, has bargained, sold, granted and conveyed and by these presents does bargain sell, grant and convey onto Holder, forever and in perpetuity, and Holder hereby accepts, a Conservation Easement in, on, under, over, through and across the Property and to the extent set forth in this Agreement which easement rights shall include the right to enter the Property to inspect, monitor and enforce as well as the right of ingress and egress over adjoining land of Grantor as may be necessary to accomplish the purposes for which this Conservation Easement is granted.

ARTICLE I. PURPOSE

The purpose of this Conservation Easement is to protect public health and safety and the environment, and the natural resources by maintaining through permanent restrictions upon the use of the Property and providing that engineering and institutional controls required herein are maintained in perpetuity. This Agreement is an essential component for compliance with the Type 5 risk reduction standards at the Property to prohibit activities on the Property that may interfere with the corrective action, operation, maintenance, long-term monitoring, or other measures necessary to insure the integrity of the corrective action pursuant to Rule 391-3-19-.07(10) of Georgia Rules for Hazardous Site Response, as promulgated under the authority of the Georgia Hazardous Site Response Act, O.C.G.A. 12-8-90, *et seq.*

ARTICLE II. DEFINITIONS

- A. "Hazardous Substances" shall have the same meaning as under HSRA, as hereinafter defined.
- B. "HSRA" shall mean the Hazardous Site Response Act, O.C.G.A. § 12-8-90, *et seq.*
- C. "Rules" shall mean the Rules for Hazardous Site Response, Chapter 391-3-19, as promulgated by the Board pursuant to the authority granted therein by O.C.G.A. 12-8-93, *et seq.*
- D. "Grantor" as used herein shall include DITT, on behalf of the State of Georgia, Atlanta, Georgia, and its successors and assigns, and any other person or entity which may hereafter hold an interest in the Property, and any person or entity which acquires all or a part of the Property; provided, however, notwithstanding anything herein to the contrary, the obligations of DITT, on behalf of the State of Georgia, under this Agreement shall terminate in all respects at such time as DITT, on behalf of the State of Georgia, conveys title or otherwise transfers its possessory rights and possessory interest in the Property, or any portion of the Property, to any person or entity.

ARTICLE III. DURATION

The conservation easement created by this Agreement shall be perpetual in duration and the requirements and restrictions of this Conservation Easement are appurtenant to and run with the land, and shall be binding and enforceable against all owners of the Property including but not limited to lessees, and any trustee appointed to manage the Property. This Conservation Easement and all of the rights, interest and obligations herein shall remain in full force and

effect, in accordance with O.C.G.A. §44-5-60(c), unless and until the Director of the Environmental Protection Division ("Director") determines that the Property meets Type 1, 2, 3, or 4 risk reduction standards as defined in §391-3-19-.07 of the Rules and removes the Property from the Hazardous Site Inventory pursuant to §391-3-19-.05(4)(b) of the Rules at which time this Conservation Easement will automatically terminate without further action by the parties. Upon the Director's concurrence pursuant to §391-3-19-.06(6)(b) and removal of the Property from the HSI pursuant to §391-3-19-.05(4)(b), the Director shall provide notice to the Grantor, whereupon the Grantor may file any additional affidavit authorized pursuant to the Rules.

ARTICLE IV. RESTRICTIONS ON USE AND AFFIRMATIVE OBLIGATIONS

A. Grantor shall restrict the use of the Property to non-residential uses as defined in Section 391-3-19-.02(2)(i) of the Rules, as in effect at the time of this Agreement, which are incorporated herein by reference.

B. Grantor shall maintain the integrity of the institutional and engineering controls installed at the Property in the manner set forth in the Monitoring and Maintenance ("M & M") Plan, attached hereto and incorporated herein by reference as Exhibit "B."

C. Grantor shall delineate the restricted area by installing and maintaining permanent markers on four sides of the Property which shall have lettering of no less than half an inch in size containing the language on Exhibit "C," attached hereto and incorporated herein by this reference. Grantee shall maintain integrity of such markers.

D. Grantor shall notify Holder and Enforcement Agent in writing of the transfer of title in any portion of the Property no later than thirty (30) days after any such transfer has occurred provided that a failure of Grantor to do so will not impair the effectiveness of such transfer or the validity of the title acquired by the transferee.

E. Grantor shall provide a written report to the Holder and Enforcement Agent on July 1 of each year, certifying that the Property is in compliance with this Agreement.

F. Grantor shall record this Agreement in the real property records maintained by the Clerk of the Fulton County Superior Court and provide a copy with recordation information to the City of Atlanta, Fulton County, Holder, and Enforcement Agent.

ARTICLE V. GRANTOR'S USE

Any and all uses of the Property and any improvements thereon by the Grantor and conveyance of any and all interests in the Property and any improvements thereon shall be subject to and shall comply with the requirements and restrictions of this Agreement.

ARTICLE VI. RIGHTS OF ENFORCEMENT

A. Enforcement Agent and Holder may enter the Property for purposes of inspecting, monitoring and enforcing the institutional and engineering controls as identified in the M & M Plan. Enforcement Agent and Holder may enter areas of the Property accessible by the general

public at any time for such inspections. Enforcement Agent and Holder may enter other non-public area for such inspections only upon providing notice no later than seventy-two (72) hours before entering, unless such notice is waived by Grantor. The right of entry is limited to those areas of the Property reasonably necessary for such inspections and such entry shall not unreasonably interfere with any ongoing business located in such areas. To the extent necessary for the enforcement of this provision, the parties hereto assent to the assignment of Holder's obligations to the Enforcement Agent and their respective agents, representative, employees, and contractors.

B. Upon the discovery of a breach of any of the restrictions or obligations contained herein the discovering party shall provide notice to all other parties to this Agreement pursuant to Article VII.J no later than five (5) days after such discovery occurred and failure to do so will not constitute a waiver of any aggrieved party's rights hereunder.

C. Upon breach of any restriction or obligation contained herein and failure of the Grantor to act to remedy such breach no later than ten (10) days after receipt notice of such breach as set forth in Article VI.B, Enforcement Agent, Holder, or both may undertake any of the following:

- (1) Enter the Property and pursue such legal and equitable remedies against the owner of the portion of the Property where such breach exists to abate the breach and restore the portion of the Property where such breach exists to compliance with this Agreement; if the Enforcement Agent must act, the Enforcement Agent may pursue rights of enforcement within its statutory authority, to include the seeking of civil penalties; or
- (2) Enter the Property and perform activities necessary to restore the portion of the Property where such breach exists to compliance with this Agreement.

D. If the Holder becomes unwilling or unable to perform, or is ineffective in performing its obligations under this Agreement, whether by voluntary admission by Holder or by determination of the Enforcement Agent, the Enforcement Agent shall temporarily acquire, by notice to the Holder without the necessity of any further legal action, and assume the obligations of the Holder under this Agreement, until a new Holder is appointed by unanimous agreement of the Enforcement Agent and Grantor. Any admission or determination under this paragraph shall be rendered in writing to all parties to this Agreement. The appointment of a new Holder shall be documented by a written and recorded addendum to this Agreement.

E. Should the Holder become a subsequent Grantor, the Holder rights as a Holder created herein shall automatically terminate without the necessity of any further action by any party hereto and the easement rights shall automatically, without the necessity of action by any party hereto, vest in the Enforcement Agent until such time as conveyed by instrument of equal dignity to a subsequent Holder. Notice of the Holder's acquisition of the title to the Property shall be provided to the Enforcement Agent in accordance with Paragraph VII.J.

ARTICLE VII. GENERAL PROVISIONS

A. **Controlling Law.** The laws and regulations of the State of Georgia shall govern the interpretation and performance of this Agreement.

B. **Headings.** The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

C. **Control.** Nothing in this Agreement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability of the Holder or Enforcement Agent to exercise physical or managerial control of the day to day operations of the Property, or of any of the Grantor's activities upon the Property, or to otherwise become an operator with respect to the Property.

D. **Assignment of Rights and Obligations.** Grantor may not convey title to the Property to third parties without the consent of the Holder and Enforcement Agent; such written consent shall not be unreasonably withheld. The Holder and the Enforcement Agent may not assign their respective obligations under this Agreement to third parties without the written consent of all other parties to this Agreement; such written consent shall not be unreasonably withheld.

E. **Effect of Assumption of Obligations by or Assignment of Obligations to Third Party.** No assumption or assignment of any obligation under this Agreement shall be effective to relieve any Grantor of its obligations hereunder, except where such assumption or assignment is the result of the transfer of a Grantor's possessory rights and possessory interest to the subject Property (or portion thereof).

F. **Effect of Breach by Grantor.** Subject to the limitations set forth in Paragraphs VII. D and E above, the failure of any owner of the Property, or its successor, to honor an obligation or restriction hereunder shall not relieve any other owner of the Property or its successor from the obligations or restrictions hereunder applicable to the Property.

G. **Non-Waiver.** Failure by any party to complain of any action, non-action or breach of any other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by any party of any right arising from any breach of any other party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future.

H. **Successors.** In accordance with the terms herein, the covenants, terms, obligations and restrictions of this Agreement shall be binding upon and injure to the benefit of the parties hereto and to their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The terms Holder and Enforcement Agent, wherever used herein, and any pronouns used in the place thereof, shall include respectively the

appropriate above-named Holder and Enforcement Agent and their respective successors and assigns.

I. **No Forfeiture.** Nothing contained herein shall result in a forfeiture or reversion of Grantor's title in the Property in any respect.

J. **Notice.** Notice under this Agreement shall occur by delivery of written notice by regular United States Postage to the party receiving such notice at the address set forth in this document. Notice under Article IV.D shall include the address for notification to the new owner of the portion of the Property so conveyed.

K. **Property Notice.** This Property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the Property owner or the Georgia Environmental Protection Division for further information concerning this Property. This notice is provided in compliance with the Georgia Hazardous Site Response Act.


L. **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect in a final ruling or judgment of a court of competent jurisdiction from which no appeal has been or can be taken, the remainder of the provisions shall not be affected thereby and each term, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

M. **Entire Agreement.** This Agreement, including all referenced attachments or exhibits, sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, understandings or agreements relating to the Agreement, all of which are merged herein. Any modifications to this Agreement, including changes to referenced attachments or exhibits, shall be in writing and recorded in the same manner as this Agreement.

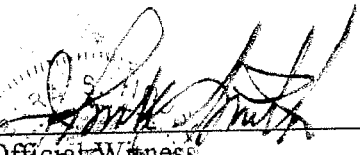
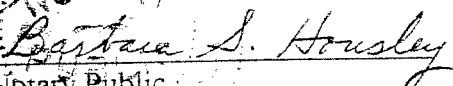
IN WITNESS WHEREOF, the parties hereunto have set their hands and seals and cause these presents to be executed in their respective names by authority duly given and the respective seals affixed on the date and year above written.

[SIGNATURE PAGES ATTACHED]

DEPARTMENT OF INDUSTRY, TRADE AND
TOURISM, ON BEHALF OF THE STATE OF GEORGIA


By 
Dan Graveline, Executive Director of the
Georgia World Congress Center acting on
behalf of and in his capacity as Agent for the
Department of Industry, Trade and Tourism

Address: 205 INTERNATIONAL BLVD NW
ATLANTA, GA. 30333

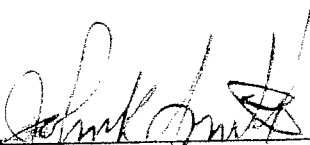

Official Witness

Notary Public
My Commission expires:
Notary Public, Dekalb County, Georgia
My Commission Expires Aug. 30, 2004
Notary Public, Dekalb County, Georgia
My Commission Expires Aug. 30, 2004

[SIGNATURE PAGES ATTACHED]

GEORGIA WORLD CONGRESS CENTER
AUTHORITY

By: 
Dan Graveline, Executive Director

Address: 225 INTERNATIONAL BLVD NW
ATLANTA, GA. 30313


Official Witness

Barbara S. Housley
Notary Public

My Commission Expires:

Notary Public, Dekalb County, Georgia
My Commission Expires Aug. 30, 2004

[SIGNATURE PAGES ATTACHED]

GEORGIA ENVIRONMENTAL PROTECTION
DIVISION

By: Candace

Its: _____

Address: _____

Louise L. Mathis
Official Witness

John R. Rasmussen
Notary Public

My Commission Expires: MY COMMISSION EXPIRES 2/28/06

::ODMA\PCDOCS\ATL\728282\1

EXHIBIT A

[See 1 attached page]

