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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT (hereinafter "Easement") is made this 7th day of December, 2012, by John P. Barnwell and Caroline C. Sinkler, Successor Co-Trustees under The Huger Sinkler, Jr. Exempt Trust under the will of Huger Sinkler, and beneficiaries of Exempt Trust: Frances M. Sinkler, Frances Sinkler Murphy, Alida Sinkler Barnwell, and Caroline C. Sinkler, and John P. Barnwell and Caroline C. Sinkler, Successor Co-Trustees under The Huger Sinkler, Jr. Non-Exempt Trust under the will of Huger Sinkler, and beneficiaries of Non-Exempt Trust: Frances Sinkler Murphy, Alida Sinkler Barnwell, and Caroline C. Sinkler (hereinafter "**Grantor**"), having an address at 134 Columbus Street, Charleston, SC 29403, in favor of the Lowcountry Open Land Trust, Inc. (hereinafter "**Grantee**"), a South Carolina charitable corporation and a publicly supported corporation organized and operated under §501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code") and not a private foundation under Code §509, with a business address at 80 Alexander Street, Charleston, SC 29403.

WHEREAS, **Grantor** is the sole owner in fee simple of certain real property known as "Rosebank Marsh Tract II" containing approximately sixty eight (68) acres (TMS # 198-00-00-023), in Charleston County, South Carolina, more particularly described in Exhibits "A" and "B" attached hereto and incorporated herein by this reference (hereinafter the "Protected Property"); and

WHEREAS, the Protected Property possesses significant ecological and natural resources, water quality protection, open space and scenic value of great importance to **Grantor**, to **Grantee** and to the people of South Carolina and this nation, the protection of which will yield significant public benefit; and

WHEREAS, the conservation of the Protected Property will yield significant public benefits, as evidenced by its designation as a "Buffer Critical Area" ["area adjacent to and potentially important to the integrity and viability of core areas" ("area containing high densities of priority habitats for conservation management and protection")] by South Carolina conservation partners in the 1999 South Carolina Landscape Mapping Project; and

WHEREAS, the Protected Property lies within the more than 800,000 acres of the Cooper, Ashley, Wando, and Sea Islands (CAWS) Basin Focus Area, featuring diverse ecosystems and a wealth of wildlife, all of which is the focus of a consortium of private landowners, conservation groups, and federal and state agencies, working to protect and enhance the region's natural resources and traditional agricultural and recreational uses; and

WHEREAS, the CAWS Basin Focus Area of South Carolina has suffered a noticeable loss in recent years of critical ecosystems, scenic property, island hummocks and small islands, wetlands, natural forests, wildlife habitat, prime farm land and timber land, and other natural resources from increasing industrial, commercial and residential development; and

WHEREAS, the Protected Property is in the designated rural area of Charleston County and limiting development on the Protected Property furthers the goals of the Charleston County Comprehensive Plan. In addition, the Protected Property is protected pursuant to the Charleston County Comprehensive Greenbelt Plan, a clearly delineated county conservation policy adopted in June 2006, and qualifies within the Comprehensive Greenbelt Plan as a rural Greenbelt land and is within a designated high priority "Resource Management Area" (area that generally encompasses undeveloped land used for timber production, wildlife habitat, recreational and commercial fishing, and limited agriculture, as well as important habitat for nongame and endangered species). The Protected Property provides significant public benefits including the protection of adjacent Lowcountry Wetlands, as designated by the Charleston County Comprehensive Greenbelt Plan as an area of land targeted for conservation in order to enhance water quality for Charleston County, fish and wildlife productivity, and to prevent disturbance to areas that provide critical floodwater storage and filtration. The conservation of the Protected Property was approved by the Charleston County Greenbelt Bank Board and Charleston County Council for public funds to carry out its protection and to help meet the goals of protection listed under the Plan; and

WHEREAS, the Protected Property is located on Wadmalaw Island, an island containing approximately 46 protected properties totaling over 5,300 acres, comprising nearly twenty five percent of the upland, and all protected by Lowcountry Open Land Trust, thus contributes to the extensive network of protected lands; and

WHEREAS, more specifically, the Protected Property is located adjacent to another protected land, Rosebank Estates Lot VIII, 22 acres, and is in close proximity to other protected lands including Dupree Farm I, 77 acres, Rosebank Plantation I, II, and III, 70 acres, and Racket Hall, 244 acres, all protected by Lowcountry Open Land Trust; and

WHEREAS, the adjacency of the Protected Property to other protected lands and its part in a greater network of protected lands on Wadmalaw Island enhances its open space and habitat values, being an important link in the protective wildlife corridor created by these surrounding lands and contributing to the overall traditional rural landscape of Wadmalaw Island; and

WHEREAS, the Protected Property is situated on and prominently visible by the public from Bohicket Creek, having approximately 1,500 feet of scenic water frontage; and

WHEREAS, the Protected Property has a diversity of relatively natural habitats including upland pine forest, upland hardwood forest, and mixed upland forest, all of which can support a variety of floral and faunal species; and

WHEREAS, the Protected Property provides a diversity, quality, and combination of natural habitat significant to wildlife habitat functions including feeding, nesting and roosting areas for migratory songbirds and ground-nesting birds, and feeding, breeding and resting areas for native small game and non-game mammals; and

WHEREAS, more specifically, the Protected Property contains habitat with the potential to support threatened or endangered species and species of concern which have known or highly possible occurrences in Charleston County including but not limited to Bachman's Sparrow (*Aimophila aestivalis*), Star-nosed Mole (*Condylura cristata*), Rafinesque's Big-eared Bat (*Corynorhinus rafinesquii*), Swallow-tailed Kite (*Elanoides forficuatus*), Bald Eagle (*Haliaeetus leucocephalus*), Southern Hognose Snake (*Heterodon simus*), Swainson's Warbler (*Limnothylpis swainsonii*), Southeastern Bat (*Myotis austroriparius*), Eastern Woodrat (*Neotoma floridana*), Eastern Fox Squirrel (*Sciurus niger*); and

WHEREAS, all of the above fauna in the list of threatened or endangered species and species of concern are listed as priority species for the South Carolina State Comprehensive Wildlife Conservation Plan; and

WHEREAS, the Protected Property in its existing natural condition contributes very little nonpoint source pollution to Bohicket Creek due to the amount of vegetation present and the limited amount of impervious surface that reduces sources of pollution and nutrient loading, and by its border of *Spartina* marsh wetlands. Salt marshes rank among the most productive ecosystems on earth and perform many valuable functions. They provide nursery ground for numerous commercially and recreationally important species, serve as filters to remove sediments and toxins from the water, break down many pollutants into less harmful forms, act as buffers for the mainland by slowing and absorbing storm surges, thereby reducing erosion of the coastline, and also provide scenic vistas; and

WHEREAS, the Protected Property is adjacent to and drains into Bohicket Creek, which is classified by South Carolina Department of Health and Environmental Control as an "Outstanding Resource Water", a water which constitutes "an outstanding recreation or ecological resource"; and

WHEREAS, the protection of this property is pursuant to the SC right-to-farm law, South Carolina Code Ann. (1976, as amended) (hereinafter the "SC Code") §27-8-10, *et. seq.* (SC Code §46-45-10) which states in part "The policy of the State is to conserve, protect, and encourage the development and improvement of its agricultural land and facilities for the production of food and other agricultural products"; and

WHEREAS, the protection of this property is pursuant to the SC agricultural use exemption (SC Code §12-43-220) which provides a preferential tax exemption for agricultural land in order for such lands to remain in productive agricultural uses; and

WHEREAS, the preservation of open space (including farm and forest land) is recognized by the Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. 4201, *et seq.*, whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to ensure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland"; and

WHEREAS, the specific Conservation Values, as detailed in the Recitals above and outlined in Paragraph 1 below, are summarized hereunder and documented in a report on file at the **Grantee's** office and incorporated herein by this reference (hereinafter the "Baseline Documentation"), which consists of maps, reports and photographs (including 2006 NAPP Photos, 2011 NAIP Photos and on-site photographs taken by a representative of the **Grantee**), and the parties agree that the Baseline Documentation provides, collectively, an accurate representation of the Protected Property at the time of this Easement and is intended to serve as an objective point of reference from which **Grantee** shall monitor and enforce compliance with the terms of this Easement; and

WHEREAS, **Grantor** believes that through this Easement, the natural resources, habitat, beauty and unique ecological character of the Protected Property can be protected in a manner that permits continuing private ownership of land and its continued use and enjoyment; and

WHEREAS, **Grantor** intends to preserve and protect the Conservation Values, as detailed in the Recitals above and outlined in Paragraph 1 below, in perpetuity; and

WHEREAS, **Grantor** is willing to forego forever the right to fully exploit the financial potential of the Protected Property by encumbering the Protected Property with this Easement; and

WHEREAS, by act of the General Assembly of the State of South Carolina, as enacted in South Carolina Code Ann. (1976, as amended) (hereinafter the "SC Code") §27-8-10, et. seq. (The South Carolina Conservation Easement Act of 1991) (hereinafter the "Act"), South Carolina recognizes and authorizes the creation of conservation restrictions and easements; and

WHEREAS, this Easement contains the conservation purposes pursuant to the Act, as outlined therein and stated below:

- (A) "retaining or protecting natural, scenic, or open-space aspects of real property";
- (B) "ensuring the availability of real property for agricultural, forest, recreational, educational, or open-space use";
- (C) "protecting natural resources";
- (D) "maintaining or enhancing air or water quality"; and

WHEREAS, **Grantor** and **Grantee** recognize the natural, scenic, aesthetic, and special character and opportunity for enhancement of the Protected Property, and have the common purpose of the conservation and protection in perpetuity of the Protected Property pursuant to Code §170(h) and in the regulations promulgated thereunder by the United States Department of the Treasury (hereinafter "Treasury Regulations") as follows:

(I) Protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem within the meaning of Code §170(h)(4)(A)(ii) which will yield a significant public benefit, including the protection of habitats and water quality and the public benefits described in the recitals to this Easement; and

(II) Preservation of open space (including farmland and forest land) within the meaning of Code §170(h)(4)(A)(iii)(I) for the scenic enjoyment of the general public which will yield a significant

public benefit, including the opportunities for scenic enjoyment and the public benefits described in the recitals to this Easement; and

(III) Preservation of open space (including farmland and forest land) within the meaning of Code §170(h)(4)(A)(iii)(II) pursuant to clearly delineated Federal, state, or local governmental conservation policies which will yield a significant public benefit, including the policies and public benefits described in the recitals to this Easement; and

WHEREAS, **Grantor** and **Grantee** agree these purposes can be accomplished by voluntarily placing restrictions upon the use of the Protected Property and by providing for the transfer from the **Grantor** to the **Grantee** of affirmative rights for the protection of the Protected Property so as to be considered a "qualified conservation contribution" as such term is defined in Code §170(h) and the Treasury Regulations promulgated thereunder; and

WHEREAS, the **Grantee** is a corporation of which its purposes and powers include one or more of the purposes set forth in SC Code §27-8-20(1); and **Grantee** is a holder of conservation easements as conservation easements are defined by the Act; and, **Grantee** is a publicly supported, tax-exempt, nonprofit corporation organized and operated under Code §501(c)(3) dedicated to the preservation of the irreplaceable natural and historical resources of the South Carolina Lowcountry landscape by protecting significant lands, waters and vistas and is not a private foundation under Code §509;

NOW, THEREFORE, in consideration of the above and in further consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to §§170(h) and 2031(c) of the Code and pursuant to the laws of the State of South Carolina, the **Grantor** hereby voluntarily grants and conveys to **Grantee** this Easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth. **Grantor** herein declares that the Protected Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, and restrictions hereinafter set forth, which covenants, conditions, and restrictions shall be deemed to run with the land in perpetuity and to be a burden on the Protected Property in perpetuity.

1. **Purpose.** The purpose of this Easement (hereinafter the "Purpose") is to protect the Conservation Values (detailed in the Recitals above and outlined below) and to preserve the Protected Property for the continuation of historic and traditional uses and activities, as well as other limited uses, provided no such uses significantly impair or degrade the Conservation Values. The Conservation Values of the Protected Property include the following:

- 1) Open space for agriculture and/or forestry use,
- 2) Relatively natural habitat and biological diversity,
- 3) Preservation or enhancement of downstream water quality in Bohicket Creek, a state recognized Outstanding Resource Water,
- 4) Scenic views of the Protected Property from Bohicket Creek.

The protection of these Conservation Values by stewardship, enforcement, and monitoring in perpetuity is set forth in this Easement.

This Purpose is to ensure that the Protected Property will be retained in perpetuity predominantly in its relatively natural and scenic condition for conservation purposes and to prevent any use of the Protected Property that would significantly impair or interfere with the Conservation Values of the Protected Property, while allowing for limited low-impact rural residential, recreational, agricultural, forestry and other open-space uses of the Protected Property that are compatible with and not destructive of those Conservation Values. It is the intent of the parties that Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Protected Property that is inconsistent with the Purpose of this Easement. Grantor understands that nothing in this Easement relieves Grantor of any obligation or restriction on the use of the Protected Property imposed by law.

2. **Rights of Grantee.** Grantor hereby conveys the following rights to the Grantee:

(A) **Right of Visual Access.** To have visual access to the Protected Property, provided that such right shall not be construed to permit general public access over or upon the Protected Property;

(B) **Right to Monitor.** To enter upon the Protected Property in a reasonable manner, at reasonable times, with reasonable notice, in order to monitor compliance with this Easement and to further document natural and manmade features of the Protected Property. The Grantee shall limit entry to annual visits (after completion of the Baseline Documentation) unless the Grantee has reason to believe there is a violation of the terms of this Easement. Grantee shall not unreasonably interfere with Grantor's quiet use and enjoyment of the Protected Property;

(C) **Right to Prevent Inconsistent Uses.** To prevent Grantor or third parties from conducting any activity or use inconsistent with the Purpose;

(D) **Right to Require Restoration.** To require Grantor to restore such Conservation Values that may be damaged by any uses or activities prohibited by this Easement, or any activity or use inconsistent with the Purpose to include third party activities.

3. **Definitions.** For the purposes of this Easement, Grantor and Grantee agree that those bold-faced terms that appear throughout this Easement shall be defined as follows:

Agricultural Activities shall be defined as activities directly related to the production of plant or animal products on the Protected Property, including crop production, animal husbandry, floriculture and horticulture, in a manner that preserves the long-term productivity of the soil. Permitted activities shall not include **Feedlots**, intensive livestock production facilities nor any type of large-scale operation where animals are confined. Notwithstanding the above, aquaculture and/or mariculture activities must have **Approval**.

Agricultural Structure shall be defined as any building designed or used in conjunction with permitted **Agricultural Activities** or **Forest Management Practices**, not including any structure used as a **Residential Structure**.

Approval shall be defined as the prior written consent of the Grantee to permit Grantor to exercise certain rights described in Paragraphs 4 and 5, or to undertake any activity otherwise prohibited by this Easement. The rationale for requiring the Grantor to receive **Approval** prior to undertaking certain permitted and all prohibited activities is to afford Grantee an adequate opportunity to evaluate the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the Purpose of this Easement. **Approval** shall not be unreasonably withheld by the Grantee. **Approval** does not relieve Grantor of the obligation to obtain all other necessary permits, consents and approvals.

Building Height shall be measured, for the purposes of any permitted structure, from ground elevation or the legal building elevation within a Federal Emergency Management Agency (or successor agency) flood zone, whichever is greater, to the top of the highest structural component, excluding chimneys, antennas and weather vanes.

Feedlot shall be defined as any confined area or facility for feeding livestock for commercial purposes, or within which the land is not grazed or cropped at least annually, or which is used to receive livestock that have been raised off the Protected Property for feeding and fattening for market.

Forest Management Plan shall be defined as a written plan subject to periodic updates, on file with the Grantee and agreed upon by both Grantor and Grantee, which outlines **Forest Management Practices** on the Protected Property.

Forest Management Practices shall be defined as the production, improvement and maintenance of forest lands for timber production and commercial harvesting, wildlife management, aesthetics or any other purpose. **Forest Management Practices** include silvicultural practices, which are used to control the establishment, growth, composition, health, quality and utilization of forestlands for multiple-use purposes and include, but are not limited to, harvesting, thinning, reforestation, competition control, prescribed fire or fire breaks.

Grantee shall be defined as the above-named §501(c)(3) South Carolina charitable corporation, designated as the holder of this Easement, and its successors and assigns.

Grantor shall be defined as the original donor of this Easement and his (or her, their or its) personal representatives, heirs, successors, assigns, and subsequent owners of record.

Impervious Surface shall be defined as a hard surface area which either prevents or significantly retards the entry of water into the soil mantle at a rate lower than that present under natural conditions prior to development. Impervious surfaces can include, but are not limited to, roof tops, walkways, patios and decking, enclosed and unenclosed porches, paved driveways, paved parking lots, covered storage areas, concrete or asphalt paving, swimming pools, or other surfaces which similarly impede the natural infiltration of surface and stormwater runoff. **Impervious Surface** specifically excludes ground surfaces covered with sand, gravel, shell sand, crushed stone, or other similar traditional permeable materials. The use, installation, and/or introduction of new products and/or technologies for pervious surfaces (those surfaces which allow for the direct percolation of water into the soil surface), requires prior **Approval** from the **Grantee**. **Approval** will be case by case and all requests for the use, installation and/or introduction of such new products and/or technologies must be accompanied by the appropriate research, data and information on the material for **Grantee** to accurately evaluate the proposed product and/or technology.

Notice shall be defined as a written communication, not a request for **Approval**, prior to undertaking a permitted activity, as defined in Paragraph 21.

Policy on Pond Enlargement and Construction shall be defined as the written policy of the Lowcountry Open Land Trust (**Grantee**), which may from time to time be amended and/or modified, pursuant to which **Approval** is either granted or denied for the enlargement and construction of pond(s); provided, however, any pond enlargement and construction shall not be inconsistent with any provision of this Easement and shall be consistent with the Purpose of this Easement.

Related Outbuilding shall be defined as any auxiliary structure customarily used as an accessory to a private **Residential Structure** in the South Carolina Lowcountry, not including any structure used as a permanent or temporary **Residential Structure**.

Residential Structure shall be defined as any dwelling having sleeping quarters, sanitary facilities, and cooking facilities, which constitutes temporary or permanent residential use or occupancy on the Protected Property by the **Grantor**, permitted lessee, and guests or employees of the **Grantor** or permitted lessee.

Significant Tree shall be defined as any cypress, live oak, magnolia, or palmetto tree having a diameter at breast height of eighteen (18) inches or greater.

Subdivided Tract shall be defined as a legally divided, transferable parcel of land having a unique tax identification number according to Charleston County real property tax records.

Subdivision shall be defined as the permitted creation of a **Subdivided Tract** after the date of this Easement.

Superstructures shall be defined as any structure that extends above the level of the walkway, pierhead or float of a dock. **Superstructures** may include, but are not limited to, railings, roofs, benches, and counters.

Water Line shall be defined as the edge of a waterway or waterbody which is either the critical line as defined by S.C Office of Ocean and Coastal Resource Management or, if no critical line has been established, the mean high water line as defined by the Army Corps of Engineers or established by a surveyor. If the critical line or the mean high water line cannot be established or are no longer used to define the edge of a waterway or waterbody, then the comparable defining line as defined by successor entities of the above named agencies shall be used.

4. **Reserved Rights.** Grantor reserves all the rights, uses and activities (collectively, the "Reserved Rights") inherent in fee simple ownership of the Protected Property in its entirety, subject to the specific Restrictions and Limitations of Paragraph 5, which are included to accomplish the Purpose of this Easement stated in Paragraph 1. In addition, the exercise of all Reserved Rights shall be in full accordance with all applicable local, state and federal laws and regulations, as well as in accordance with the Purpose of this Easement stated in Paragraph 1.

5. **Restrictions and Limitations.** Grantor will not perform or permit or will perform or permit, as specified below, the following acts or uses on, over or under the Protected Property:

(A) **Subdivision.** The Protected Property is currently composed of one (1) tract, which is Charleston County TMS #s 198-00-00-023. **Subdivision** is limited to the reconfiguration and division of the Protected Property into a maximum of two (2) **Subdivided Tracts**. The configuration of each such **Subdivided Tract** shall be at the Grantor's discretion. Grantor shall allocate Reserved Rights among such **Subdivided Tracts** at the time of each **Subdivision** with such allocation being specifically described and noted in the deed transferring ownership of any **Subdivided Tract**. Grantor shall give Notice to Grantee of any **Subdivision** or reconfiguration of a **Subdivided Tract**. Following a reconfiguration of a **Subdivided Tract**, the Grantor may, at any time, abandon or modify such reconfiguration and reconfigure the Protected Property into two (2) or fewer **Subdivided Tracts**. The Grantor shall not indirectly subdivide all or any part of the Protected Property through the allocation of property rights among partners, shareholders or members of any successor entity, the creation of a horizontal property regime, leasing or any other means.

(B) **Structural Limitations.** The construction, enlargement, removal and replacement of **Residential Structures** and all other structures are subject to the following limitations:

I. **Total Impervious Surface** on the Protected Property shall not exceed a maximum of thirty thousand (30,000) square feet in the aggregate.

II. **No Residential Structure, Related Outbuilding, or Agricultural Structure** shall exceed thirty-five (35) feet in **Building Height**.

III. **Residential Structures** shall be limited to four (4) such structures.

IV. **Related Outbuildings and Agricultural Structures** shall be permitted, provided that the square footage of all **Impervious Surface** on the Protected Property does not exceed the allowance stated in Paragraph 5(B)(I).

V. Other than permitted **Residential Structures**, no other structure on the Protected Property shall be used as a temporary or permanent dwelling for human beings.

VI. **Docks.**

(a) Two (2) new docks providing access to the adjacent tributary of Bohicket Creek may be constructed, maintained, repaired, improved, removed or replaced, provided they shall be

limited to primarily natural or non-reflective materials, each limited to one (1) walkway no more than four (4) feet wide, and each limited to one (1) fixed pierhead with a maximum of two hundred (200) square feet.

(b) There shall be no other docks on Bohicket Creek or its tributaries.

(c) Two (2) new docks providing access to permitted interior ponds may be constructed, maintained, repaired, improved, removed or replaced.

(d) **Grantor** shall not construct as a part of any dock providing access to the adjacent tributary of Bohicket Creek any fixed or permanent **Superstructures** or boatlifts. In addition, any lighting associated with any such dock(s) that remains constantly illuminated or that automatically becomes illuminated in darkness is prohibited, and any lighting associated with any such dock(s) must employ an opaque shield so as to direct light upon the dock and its immediate surrounding area and to preclude direct visibility of the light source from outside of such immediate area. The purpose of this provision is to allow lighting of the dock for safety and security and to minimize the impact of dock lighting on the relatively natural and scenic views of the Protected Property.

Neither **Grantor** nor **Grantor's** agents, shall make application for any permit or construct any improvements on the Protected Property or allow any third party to make application for any permit or construct any improvements on the Protected Property or allow access from the Protected Property to any improvements which would result in a violation of any provisions of this Easement, including, but not limited to, the construction of any docks within the deemed extension of the property lines extending to Bohicket Creek or its tributaries except as expressly permitted, herein.

VII. Boat Ramp. There shall be no boat-launching ramp(s) providing access to Bohicket Creek or its tributaries.

VIII. Towers. There shall be no towers on the Protected Property, including, but not limited to, radio, microwave, broadcast, communication and cellular towers.

Notwithstanding the above, **Grantor** retains the right to construct, maintain, improve, repair and replace wildlife observation towers (and/or shooting range towers); such towers in excess of twenty five (25) feet in height shall not be visible from off the Protected Property when viewed from ground elevation.

(C) Waterfront Buffer. The Buffer Area, as shown in Exhibit "B" and in the Baseline Documentation, shall be subject to the following restrictions:

In order to protect the scenic view and to provide an ecological transition zone along the adjacent public waterways, there shall be no **Impervious Surface, Agricultural Activities**, structures (other than fencing and gates, and any docks permitted within this Easement), new roads (other than those necessary to access the docks permitted within this Easement), nor alteration to the topography or hydrology on that portion of the Protected Property within one hundred (100) feet of the **Water Line** adjacent to Bohicket Creek and its tributaries. **Grantor** reserves the right to engage in limited **Forest Management Practices**, provided there shall be no clearcutting and no activities that endanger the health or survival of **Significant Trees** without **Approval**. **Grantor** reserves the right to maintain existing open fields.

Notwithstanding the above, **Grantor** reserves the right to cut any tree, in accordance with applicable governmental laws and regulations, when it is necessary to salvage timber damaged by natural causes, when cutting is necessary to prevent further such damage or personal injury, or when a permitted structure is in danger.

(D) Industrial Uses. There shall be no industrial uses, activities, or structures. No right of passage across or upon the Protected Property shall be allowed or granted if that right of passage is used in conjunction with any industrial uses or activities.

(E) Commercial Uses. There shall be no commercial uses, activities or structures, other than home-based business, without prior **Approval** by the **Grantee**. No right of passage across or upon the Protected Property shall be allowed or granted if that right of passage is used in conjunction with any commercial uses or activities not permitted in this Easement. For the purposes of this Easement, **Agricultural Activities, Forest Management Practices** and the leasing of hunting, trapping and fishing rights shall not be considered commercial uses. However, to qualify this Easement for treatment under §2031(c)(8)(B) of the Code, any use of the Protected Property for more than a de minimus use for a commercial recreational activity is prohibited.

(F) Services. Construction of water wells, septic systems, and utility services, is limited to serve the allowed uses in Paragraph 4, subject to the Restrictions and Limitations of Paragraph 5, and subject to all applicable governmental laws and regulations.

Fuel storage tanks are limited to aboveground or underground gaseous (not liquid) fuel storage tanks and/or aboveground liquid fuel storage tanks to serve the allowed uses in Paragraph 4, subject to the Restrictions and Limitations of Paragraph 5, subject to all applicable governmental laws and regulations.

Grantor and Grantee acknowledge the existing 35' drainage easement as shown on that plat in Plat Book EF at Pages 250 and 251, as well as on that plat in Plat Book EK at Pages 846 and 847.

(G) Roads. Roads shall be limited to those required to facilitate the uses permitted by this Easement, provided there shall be no road constructed or covered with **Impervious Surface**. Maintenance of roads and roadside ditches shall be limited to standard practices for non-paved roads. Roads temporarily constructed or widened to allow for permitted **Forest Management Practices** shall be allowed to return to their former size and state after this use.

(H) Landscaping. Landscaping shall be limited to the management of vegetation associated with the uses allowed by this Easement, including but not limited to, mowing, pruning, trimming, and gardening. Structural elements of landscaping, including but not limited to walkways and patios, shall be subject to **Impervious Surface** restrictions and limitations as outlined in this Easement.

(I) Lighting. There shall be no exterior lighting of which the light source is visible from off the Protected Property at ground level; lights shall employ an opaque shield so as to prevent direct visibility of the light source from off the Protected Property. The purpose of this provision is to allow lighting on the property for safety and security and to minimize the impact of lighting on the relatively natural and scenic views of the Protected Property.

(J) Signs. Signs visible from off of the Protected Property shall be limited to a maximum of eight (8) square feet in size, individually. Signs shall be placed so as to minimally impact the scenic view as seen from any public roadway or waterway.

(K) Archeological and Paleontological Excavations; Artifacts and Fossils. **Grantor** shall give **Notice** to **Grantee** prior to undertaking archeological or paleontological excavation. Any archeological or paleontological site shall, upon completion of any excavation, be returned to, or as close as possible to, its previous state, unless the site is to be maintained in an excavated condition for interpretive purposes related to education. All artifacts or fossils located on the Protected Property must be preserved and retained on the Protected Property or contributed to a recognized and accredited museum or educational institution. The sale of artifacts or fossils is prohibited.

(L) Forestry Uses. A **Forest Management Plan** is required for the Protected Property when deemed appropriate by the **Grantee**, and Forestry Uses are limited to those **Forest Management Practices** defined in the **Forest Management Plan**. Notwithstanding the above, **Grantor** reserves the right to cut any tree, in accordance with applicable governmental laws and regulations, when it is necessary to salvage timber damaged by natural

causes, when cutting is necessary to prevent further such damage or personal injury, or when a permitted structure is in danger.

(M) Significant Trees. There shall be no activities other than prescribed burning that endanger the health or survival of **Significant Trees** without **Approval**.

(N) Agricultural Uses. **Agricultural Activities** are restricted to the recommended or accepted practices, currently in use at the time of implementation, recommended by the South Carolina Cooperative Extension Service, the United States Natural Resources Conservation Service, their successors or other entities mutually acceptable to the **Grantor** and **Grantee**. **Grantor** and **Grantee** recognize that changes in agricultural technologies, including accepted management practices, may result in an evolution of **Agricultural Activities**. Such evolution shall be permitted so long as it is consistent with the Purpose.

(O) Pond(s). Enlargement of existing pond(s) and construction of new pond(s) shall be limited in size to four (4) acres in the aggregate, shall be subject to prior **Approval** from the **Grantee**, in accordance with the **Grantee's Policy on Pond Enlargement and Construction**, and shall be in compliance with the Purpose as stated in Paragraph 1 and with all applicable local, state and federal statutes and regulations. The sale of extracted soil, sand, gravel or other materials produced in connection with the enlargement or construction of pond(s), or any other permitted or non-permitted use, is strictly prohibited in accordance with Paragraph 5(E) Commercial Uses and Paragraph 5(Q) Mining.

(P) Impoundment(s). **Grantor** reserves the right to create, improve, repair, replace or maintain new or existing and/or historic wetland impoundments, green tree reservoirs, dikes, ditches and water control structures, subject to **Approval** and all applicable local, state and federal statutes and regulations. Impoundments are recognized by the **Grantor** and **Grantee** as beneficial to waterfowl and other wetland dependent plants and animals.

(Q) Mining. Mining and recovery of any oil, gas or minerals are restricted to extraction methods in accordance with Code §170(h)(5)(B) prohibiting surface mining provided that, following the mining activity, the site is returned to, or as closely as possible to, its previous state.

(R) Topography and Hydrology. There shall be no adverse material alteration of the topography or hydrology, unless otherwise provided for in Paragraphs 4 or 5.

(S) Refuse. There shall be no placing of refuse on the Protected Property of vehicle bodies or parts, or junk not generated on the Protected Property

(T) Adverse or Inconsistent Uses. There shall be no other use or activity that is inconsistent with the Purpose of this Easement as stated in Paragraph 1.

6. Third Party Activities. The **Grantor** shall keep the **Grantee** reasonably informed as to activities being conducted on the Protected Property which are within the scope of this Easement and as to the identity of any third parties who are conducting or managing such activities. The **Grantor** shall ensure that all third parties who are conducting activities relating to permitted uses of the Protected Property are fully and properly informed as to the restrictions and covenants contained within this Easement which relate to such uses, including without limitation, the provisions of this Paragraph and of Paragraphs 4 and 5.

7. Grantee's Remedies. If **Grantee** determines that **Grantor** is in violation of the terms of this Easement or that a violation is threatened, the **Grantee** shall notify the **Grantor** of the violation (hereinafter, "First Notice") and request voluntary compliance. In the event that voluntary compliance is not agreed upon within ninety (90) days of receipt of First Notice, the **Grantee** shall give written notice to **Grantor** of such violation (hereinafter, "Second Notice") and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, to restore the portion of the Protected Property so injured.

If **Grantor** fails to cure the violation within sixty (60) days after receipt of Second Notice thereof from **Grantee** (or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, if **Grantor** shall fail to begin curing such violation within said sixty (60) day period, or shall fail to continue diligently to cure such violation until finally cured), **Grantee** may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of the Conservation Values, and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting **Grantor's** liability therefore, **Grantee**, in its sole discretion, may either apply any damages recovered to the cost of undertaking any corrective action on the Protected Property or may apply any damages recovered towards activities relating to monitoring and enforcing compliance with the terms of this Easement and other similar conservation easements.

If **Grantee**, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, **Grantee** shall give immediate notice of the circumstances to **Grantor**, as described in Paragraph 21, and may immediately pursue its legal and equitable remedies under this Paragraph without waiting for the period provided for cure to expire. **Grantor** agrees that if such emergency arises, **Grantee** may obtain injunctive relief without the necessity of posting a bond.

Grantee's rights under this Paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement. **Grantor** agrees that if **Grantee's** remedies at law for any violation of the terms of this Easement are inadequate, the **Grantee** shall be entitled to seek the injunctive relief described in this Paragraph, both prohibitive and mandatory in addition to such other relief to which **Grantee** may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, and without the necessity of posting a bond. **Grantee's** remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

8. **Costs of Enforcement.** If **Grantee** prevails in any action to enforce the terms of this Easement, any costs incurred by **Grantee** in enforcing the terms of this Easement against **Grantor**, including without limitation, costs of suit (which includes reasonable attorneys' fees), and any reasonable costs of restoration necessitated by **Grantor's** violation of the terms of this Easement, shall be borne by **Grantor**. If **Grantor** prevails in any action to enforce the terms of this Easement, any costs incurred by **Grantor**, including without limitation **Grantor's** cost of the suit (which includes reasonable attorneys' fees) shall be borne by **Grantee**.

9. **Discretionary Consent.** If, owing to unforeseen or changed circumstances, any of the uses or activities prohibited under this Easement are deemed desirable by both **Grantor** and **Grantee**, **Grantee** may, in its sole discretion, give **Approval** for such uses or activities, subject to such limitations as it deems necessary or desirable and provided that **Grantee** may give **Approval** only if **Grantee** determines that such activities (i) are consistent with the Purpose of this Easement, (ii) will not adversely affect the qualification of this Easement as a "qualified conservation contribution" under any applicable laws, including §§170(h) and 2031(c) of the Code or the Act, and (iii) will not adversely affect the "tax exempt" status of the **Grantee** under any applicable laws, including §501(c)(3) of the Code and Treasury Regulations promulgated thereunder. Furthermore, **Grantee** and **Grantor** have no right or power to agree to any use or activity that would result in the termination or extinguishment of this Easement.

10. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the reasonable discretion of the **Grantee**, and any forbearance by **Grantee** to exercise its rights under this Easement in the event of any breach of any terms of this 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 Easement or of any of **Grantee's** rights under this 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.

11. **Grantor's Environmental Warranty.** The **Grantor** warrants that it has no knowledge of the existence or storage of hazardous substances, pollutants, or wastes on the Protected Property or a release or threatened release of hazardous substances, pollutants or wastes on the Protected Property and promises to defend

and indemnify the **Grantee** against all litigation, claims, demands, penalties, and damages, including reasonable attorney's fees, arising from breach of this warranty.

12. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle **Grantee** to bring any action against **Grantor** for any injury to or change in the Protected Property resulting from causes beyond **Grantor's** control, including, without limitation, trespass, fire, hurricane, flood, storm and earth movement, or from any prudent action taken by **Grantor** under emergency conditions to prevent, abate or mitigate significant injury to the Protected Property resulting from such causes.

13. **Access.** No right of public access to any portion of the Protected Property is conveyed by this Easement, except as expressly provided herein.

14. **Costs, Liabilities, and Taxes.** **Grantor** retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including, but not limited to, clean up or remediation costs due to chemical contamination and payment of taxes. Furthermore, if the **Grantor** maintains general liability insurance coverage for the Protected Property, **Grantor** will be responsible for such costs.

Each party agrees to release, hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of wrongful or negligent activities of the indemnifying party on the Protected Property.

15. **Transfer Fee.** There shall be assessed by the **Grantee** a transfer fee equal to one (1) percent of the sales price or other consideration paid in connection with the transfer of any freehold or fee simple interest in the Protected Property, including but not limited to any conveyance by warranty deed, limited warranty deed, or quitclaim deed, sale, mortgage foreclosure, or conveyance in lieu of foreclosure. The transfer fee shall be paid to the **Grantee** on the date of the closing of the transfer.

Exemptions from assessment of transfer fee:

- (A) The sale of timber rights or products produced from permitted **Forest Management Practices** and/or permitted **Agricultural Activities** of such Protected Property.
- (B) Any transfer subsequent to the conveyance of this Easement:
 - I. Without consideration, or
 - II. To a spouse, a lineal descendant, an ancestor or ancestors, a spouse of a lineal descendent (collectively, "Immediate Family Members"), or
 - III. To or from a trust whose beneficiaries or presumptive beneficiaries are the **Grantor** or an Immediate Family Member, or both, or
 - IV. To an entity at least 50% of the equity interest of which is owned by **Grantor** or an Immediate Family Member, or
 - V. If the **Grantor** of this Easement is a corporation, limited liability company or a partnership, to an owner/partner/member of such entity or to an Immediate Family Member thereof, or
 - VI. To a charitable organization which is tax exempt under §501(c)(3), or
 - VII. Any transfer under a will, or
 - VIII. Any transfer implemented or effected by court order, except foreclosure, or
 - IX. Any transfer that corrects, modifies, or confirms a transfer previously made.
- (C) If a creditor purchases the Protected Property at a foreclosure sale or takes title to the Property in lieu of foreclosure, the transfer fee shall be due and paid at the time the creditor takes title. The transfer fee shall be based on the total bid for the Protected Property if purchased at a foreclosure sale or on the amount of the accrued indebtedness if the creditor accepts a deed in lieu of foreclosure. An additional transfer fee shall be due if the creditor who takes title through foreclosure or a deed in lieu of foreclosure sells the Protected Property for an amount higher than

the amount subject to the transfer fee at the time the creditor took title; the additional transfer fee due shall be based on the additional amount alone, not the entire sales price. Creditor for purposes of this Paragraph shall include an assignee of the creditor who purchases the Protected Property at a foreclosure sale or takes a deed in lieu of foreclosure.

An exchange of properties pursuant to Code §1031, or similar statute, shall be deemed to be for consideration based on the market value of the property plus boot, if applicable, received at the time of such transfer. Market value of the Protected Property shall be determined by agreement of the **Grantor** and the **Grantee**, or in the absence of such agreement by a Member Appraisal Institute (MAI) appraiser selected by the **Grantee**, whose appraisal fee shall be paid by the **Grantee**.

In the event of non-payment of such transfer fee, **Grantee** shall have the right to file a lien for such unpaid transfer fee which shall be a lien on the Protected Property but which lien shall be subordinate to this Easement and to the lien of any first mortgage on the Protected Property. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of South Carolina. **Grantee** may require the **Grantor** and/or any subsequent purchaser to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds or other such evidence.

16. Extinguishment, Condemnation and Fair Market Value. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, then, as required by §1.170A-14(g)(6) of the Treasury Regulations, **Grantee** in the event of any sale, exchange, or involuntary conversion of the Protected Property is entitled to a percentage of the gross sale proceeds, minus any amount attributable to the value of improvements made after the date of this Easement and allowed under this Easement, which amount shall be reserved to **Grantor**, equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Protected Property established as of the date donated.

If all or a part of the Protected Property is taken by exercise of the power of eminent domain, **Grantor** and **Grantee** shall be respectively entitled to compensation in accordance with applicable law and as provided in this Paragraph. **Grantor** and **Grantee** shall divide the net proceeds after the payment of all expenses of the condemnation (minus any amount attributable to the value of improvements made after the date of grant of this Easement and allowed under this Easement, which amount shall be reserved to **Grantor**) in accordance to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Protected Property established as of the date donated.

For the purpose of the above Paragraphs, the parties hereto stipulate that the value of this Easement and the value of the restricted fee interest in the Protected Property each represent a percentage interest in the fair market value of the Protected Property. The percentage interests shall be determined by the ratio of the value of the Easement to the value of the Protected Property, without reduction for the value of the Easement. All such proceeds received by **Grantee** shall be used in a manner consistent with **Grantee's** mission. This provision is not intended to violate the provision required by Code §170(h)(2)(C) that requires the Easement to be granted in perpetuity.

17. Limitations on Amendment. If unforeseen circumstances arise, including any change or modification to state or federal laws or regulations especially as they relate to the Code, under which an amendment to, or modification of, this Easement would be appropriate to clarify any ambiguities or to maintain or enhance the Conservation Values, **Grantor** and **Grantee** may, by mutual written agreement, jointly amend this Easement; provided that no amendment shall be allowed that will adversely affect the eligibility of this Easement as a "qualified conservation contribution" under any applicable laws, including §§170(h) and 2031(c) of the Code. No amendment shall be allowed which would adversely affect the "tax exempt" status of the **Grantee** under any applicable laws, including §501(c)(3) of the Code and Treasury Regulations promulgated thereunder. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, shall not permit additional development or improvements that would interfere with the essential scenic quality of the land (if applicable) or with any governmental conservation policy that is being furthered by this Easement donation (if applicable) and as stated in §1.170A-14(d)(4)(v) of the Treasury Regulations, shall not permit any impairment of

the Conservation Values, and shall be in accordance with the Grantee's Policy on Amending and Restating Conservation Easements on file with the **Grantee**. **Grantor** and **Grantee** agree to reasonable consideration of any such proposed amendment, however, neither **Grantor** nor **Grantee** shall be bound to agree to any amendment. Any such amendment shall be recorded in the official land records of Charleston County, South Carolina.

18. **Assignment.** The benefits of this Easement shall not be assignable by the **Grantee**, except if as a condition of any assignment, (i) the **Grantee** requires that the terms and conditions of this Easement continue to be carried out in full as provided herein, (ii) the assignee has a commitment to protect the Purpose and the resources to enforce the restrictions contained herein, and (iii) if the assignee, at the time of assignment, qualifies under §170(h) of the Code, and applicable Treasury Regulations promulgated thereunder, and under State of South Carolina law as an eligible donee to receive this Easement directly. Any assignment shall be in accordance with the **Grantee's** Policy on Assigning or Becoming a Secondary Conservation Easement Holder and Accepting Transfers or Transferring Conservation Easements on file with the **Grantee**. In the event that **Grantee** ceases to exist or exists but no longer as a tax-exempt, nonprofit corporation, qualified under §§501(c)(3) and 170(h)(3) and not a private foundation under §509(a) of the Code, then this Easement shall be assigned to a tax-exempt, nonprofit organization, qualified under §§501(c)(3) and 170(h)(3) and not a private foundation under §509(a) of the Code, which has a mission of protecting open lands or natural resources in the South Carolina Lowcountry.

19. **No Extinguishment Through Merger.** **Grantor** and **Grantee** herein agree that should **Grantee** come to own all or a portion of the fee interest in the Protected Property, (i) **Grantee** as successor in title to **Grantor** shall observe and be bound by the obligations of **Grantor** and the restrictions imposed upon the Protected Property by this Easement; (ii) this Easement shall not be extinguished, in whole or in part, through the doctrine of merger in view of the public interest in its enforcement; and (iii) **Grantee** as promptly as practicable shall assign the **Grantee** interests in this Easement of record to another holder in conformity with the requirements of this Paragraph 19. Any instrument of assignment of this Easement or the rights conveyed herein shall refer to the provisions of this Paragraph 19, and shall contain language necessary to continue it in force. Further, no deed, transfer, or assignment shall be effective if it will result in merger, until a like conservation easement has been granted to avoid merger.

20. **Transfers.** **Grantor** agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which **Grantor** transfers any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. The **Grantor** shall give the **Grantee** Notice of any change of possession, ownership or control of the Protected Property within thirty (30) days of such change, including without limitation notice of any transfer, lease, or sale of all or a part of the Protected Property. The failure of **Grantor** to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

21. **Communication.** All **Notices**, demands, requests, consents, **Approvals**, and other similar communications required or permitted to be given hereunder (individually or collectively "Correspondence") shall be deemed sufficiently given or rendered only if in writing and sent by a nationally recognized overnight courier with delivery restricted to addressee or sent by United States Postal Service first class certified mail, postage prepaid, return receipt requested, documented by appropriate proof of delivery. If in the discretion of **Grantee** emergency circumstances exist that warrant immediate action, transmission of Correspondence may be made by hand courier, electronic mail or facsimile in addition to the means previously described in an effort to inform the **Grantor** immediately of such circumstances. Monitoring reports and communications that do not deal with formal requirements under the terms of this Easement may be communicated by United States Postal Service first class mail. All such Correspondence and communications shall be addressed as follows:

If to **Grantor**:

John P. Barnwell, et al.
134 Columbus Street
Charleston, SC 29403

If to **Grantor's** Attorney:

David M. Swanson
Haynsworth Sinkler Boyd, P.A.
134 Meeting Street
Charleston, SC 29401

If to Grantee:

Lowcountry Open Land Trust, Inc.
80 Alexander Street
Charleston, SC 29403
Attn: Executive Director

or to such other person or place as a party may designate by Correspondence as aforesaid. Correspondence by mail or overnight courier service shall be deemed given on the date of receipt as shown on the return receipt, or receipt or records of the courier service, as the case may be. In the event any such Correspondence is mailed via the United States Postal Service or shipped by overnight delivery service to a party in accordance with this Paragraph 21 and is returned to the sender as undeliverable, then such Correspondence shall be deemed to have been delivered or received on the third day following the deposit of such Correspondence in the United States Mail or the delivery of such Correspondence to the overnight delivery service. **Grantor** has the responsibility of promptly notifying **Grantee** of **Grantor's** current address and other contact information. **Grantor** shall promptly notify **Grantee** of (i) any changes of **Grantor's** address or other changes in **Grantor's** contact information, and (ii) the name, address, and contact information of any transferee of the Protected Property if **Grantor** conveys the Protected Property. Any communications or Correspondence by **Grantee** to or with **Grantor** sent to the last address provided by **Grantor** shall be deemed sufficient to provide notice to **Grantor**.

22. **Recordation.** **Grantor** or **Grantee** shall record this instrument in timely fashion in the RMC/ROD Office for Charleston County, South Carolina, and may re-record it at any time as may be required to preserve its rights in this Easement.

23. **Effective Date.** **Grantor** and **Grantee** intend that the restrictions arising hereunder take effect on the day and year this Easement is recorded in the RMC/ROD Office for Charleston County, South Carolina, after all required signatures have been affixed hereto.

24. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of South Carolina.

25. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of this Easement to uphold the Purpose as stated in Paragraph 1. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid should be favored over any interpretation that would render it invalid.

26. **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 shall not be affected thereby.

27. **Entire Agreement.** 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 Protected Property. All terms used in this Easement, regardless of the number or gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context or sense of this Easement, any Paragraph, Subparagraph, or clause herein may require as if such terms had been fully and properly written in such number or gender.

TO HAVE AND TO HOLD the Easement interests herein described unto **Grantee** forever.

By execution of this Easement, the **Grantee** accepts this Easement and the rights and obligations recited herein.

GRANTOR HEREBY WARRANTS and represents that the **Grantor** is seized of the Protected Property in fee simple and has the right to grant and convey this Easement, that the Protected Property is free and clear of any and all encumbrances, except existing easements of record and prescriptive easements, if any, and except for that

certain mortgage dated April 30, 2010, and recorded April 30, 2010, in Book 0119 at Page 854 in the RMC/ROD Office aforesaid which mortgage has been subordinated to this Easement and that the **Grantee** shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

IN WITNESS WHEREOF, **Grantor** and **Grantee** have set their hands to duplicate original copies of this Easement under seal on the day and year first above written.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

WITNESSES:

Elbert M. Hagerd
Fun Day

Elbert M. Hagerd
Fun Day

Elbert M. Hagerd
Fun Day

Elbert M. Hagerd
Fun Day

Elbert M. Hagerd
Fun Day

Elbert M. Hagerd
Fun Day

Elbert M. Hagerd
Fun Day

Elbert M. Hagerd
Fun Day

GRANTOR:

John P. Barnwell
John P. Barnwell, Successor Co-Trustee under The Huger Sinkler, Jr. Exempt Trust under the will of Huger Sinkler

Caroline C. Sinkler
Caroline C. Sinkler, Successor Co-Trustee under The Huger Sinkler, Jr. Exempt Trust under the will of Huger Sinkler

Frances M. Sinkler by her attorney in fact
Frances M. Sinkler, beneficiary of The Huger Sinkler, Jr. Exempt Trust under the will of Huger Sinkler, by her attorney in fact, Alida Sinkler Barnwell Alida Sinkler Barnwell

Frances Sinkler Murphy by her attorney in fact
Frances Sinkler Murphy, beneficiary of The Huger Sinkler, Jr. Exempt Trust under the will of Huger Sinkler, by her attorney in fact, Alida Sinkler Barnwell Alida Sinkler Barnwell

Alida Sinkler Barnwell
Alida Sinkler Barnwell, beneficiary of The Huger Sinkler, Jr. Exempt Trust under the will of Huger Sinkler

Caroline C. Sinkler
Caroline C. Sinkler, beneficiary of The Huger Sinkler, Jr. Exempt Trust under the will of Huger Sinkler

John P. Barnwell
John P. Barnwell, Successor Co-Trustee under The Huger Sinkler, Jr. Non-Exempt Trust under the will of Huger Sinkler

Caroline C. Sinkler
Caroline C. Sinkler, Successor Co-Trustee under The Huger Sinkler, Jr. Non-Exempt Trust under the will of Huger Sinkler

Elizabeth M. Huger
Francis Huger

Frances Sinkler Murphy by her attorney in fact
Frances Sinkler Murphy, beneficiary of The Huger Sinkler
Jr. Non-Exempt Trust under the will of Huger Sinkler, by her
attorney in fact, Alida Sinkler Barnwell Alida Sinkler Barnwell

Elizabeth M. Huger
Francis Huger

Alida Sinkler Barnwell
Alida Sinkler Barnwell, beneficiary of The Huger Sinkler,
Jr. Non-Exempt Trust under the will of Huger Sinkler

Elizabeth M. Huger
Francis Huger

Caroline C. Sinkler
Caroline C. Sinkler, beneficiary of The Huger Sinkler,
Jr. Non-Exempt Trust under the will of Huger Sinkler

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged this 7th day of December 2012, before me the undersigned Notary, and I do hereby certify that the above named **Grantor** personally appeared before me and acknowledged the due execution of the foregoing instrument.

Barbara G. Holmes
(Signature of Notary)
Notary Public for the State of South Carolina
My commission expires: May 26, 2016

WITNESSES:

Ernest M. Hagerd
For Day
Ernest M. Hagerd
For Day

GRANTEE:

LOWCOUNTRY OPEN LAND TRUST, INC.

By:

J. Theke Young Jr.

Its:

Vice President

And:

Maed Marshall

Its:

Secretary

STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged this 7th day of December, 2012, before me the undersigned Notary, and I do hereby certify that the above named duly authorized officers of the Grantee personally appeared before me and acknowledged the due execution of the foregoing instrument.

Barbara G. Holmes

(Signature of Notary)

Notary Public for the State of South Carolina

My commission expires: May 26, 2016

EXHIBIT A

Legal Description and Derivation of Protected Property

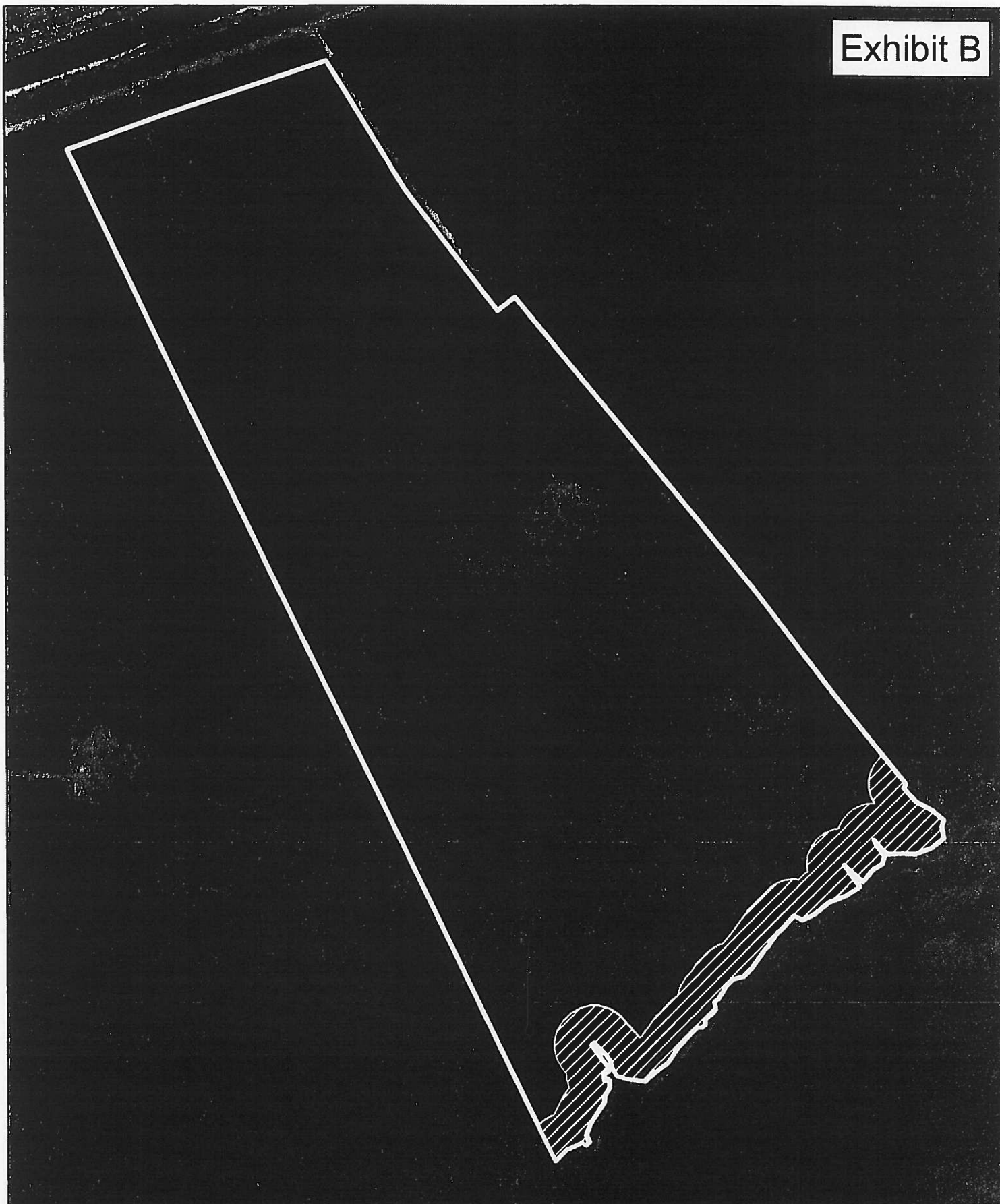
ALL that certain lot, piece or parcel of land, situate, lying and being on Wadmalaw Island, County of Charleston, State of South Carolina, and being shown as Lot 9, 68.29 Acres, as shown on that certain plat entitled: "Rosebank Estates, Wadmalaw Island, Charleston County, S.C. Plat of the Subdivision of a 136.58 Acre Portion of TMS 198-00-00-001 into Lot 9 Containing 68.29 Acres and into Lot 10 Containing 68.29 Acres and Owned by BB&T Trust as Trustee for the Estate of Huger Sinkler" dated December 6, 2006, Revised April 26, 2007, prepared by Lewis E. Seabrook, PE & LS No. 09860, which plat is recorded in the RMC Office for Charleston County in Plat Book EK at pages 846-847, (the "Plat"), and having such size, shape, dimensions, buttings and boundings as will appear by reference to said Plat.

Being a portion of the property conveyed by deed of Branch Banking and Trust, as Trustee of The Huger Sinkler, Jr. Exempt Trust under the Will of Huger Sinkler and Branch Banking and Trust, as Trustee of The Huger Sinkler, Jr. Non-Exempt Trust under the Will of Huger Sinkler to John P. Barnwell and Caroline C. Sinkler, as Successor Co-Trustees of The Huger Sinkler, Jr., Exempt Trust under the Will of Huger Sinkler, and John P. Barnwell and Caroline C. Sinkler, as Successor Co-Trustees of the Huger Sinkler, Jr., Non-Exempt Trust under the Will of Huger Sinkler, dated October 31, 2012, and recorded November 20, 2012, in Book 0292, Page 330, in the RMC Office for Charleston County.



TMS #198-00-00-023

Grantee's Address: 80 Alexander Street
Charleston, SC 29403

Exhibit B



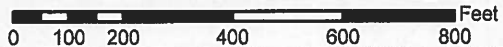
Legend

-  Easement Boundary
-  Waterfront Buffer (100 ft.)



Rosebank Marsh Tract II

2011 NAIP True Color Aerial Photograph



Lowcountry Open Land Trust
80 Alexander Street
Charleston, SC 29403
(843) 577-6510

Map produced by LOLT. Please refer to legal description, survey & Charleston County TMS # 198-00-00-023 for more boundary details.