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CONSERVATION EASEMENT TO BEAUFORT COUNTY AND BEAUFORT
COUNTY OPEN LAND TRUST

BEAUFORT COUNTY SC - ROD

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6/15/07

STATE OF SOUTH CAROLINA)

)

COUNTY OF BEAUFORT)

GRANT OF AGRICULTURAL CONSERVATION EASEMENT

This Grant of Agricultural Conservation Easement is entered into this 28th day of June, 2007, by and between The Trust for Public Land, a California non-profit corporation, d/b/a The Trust for Public Land (Inc.), having an address of 21 Burns Lane, Suite 200, Charleston, SC 29401 ("TPL"), in favor of Beaufort County, a political subdivision of the State of South Carolina (the "County") and The Beaufort County Open Land Trust ("BCOLT"), Post Office Box 75, Beaufort, SC 29901 (collectively referred to as "Co-Grantees" and "Co-Holders").

SECTION I - RECITALS

1. TPL is the owner of a Conservation Easement on certain real property on St. Helena Island, Beaufort County, South Carolina, being more particularly described in Exhibit "A" incorporated by this reference, consisting of 92 acres more or less, having acquired the Conservation Easement from the fee owner, Scott Hill LP ("Fee Owner") (hereinafter the "Protected Property" or the "Property").

2. The Protected Property consists mostly of productive agricultural and forest lands, and the primary purpose of this Easement is to protect the agricultural and forestry viability of the Protected Property in perpetuity;

3. Except for homesteads, barns, and other structures and activities typically associated with agriculture and forestry, the Protected Property has not been developed. It is in the best interest of the People of the State of South Carolina that the Protected Property be preserved for agricultural, forestry and similar uses, or otherwise be conserved by preserving and protecting its unique ecological and/or cultural qualities, otherwise known as "Conservation Values." Conservation Values typically associated with agricultural and forestry properties include natural and scenic; historical, archeological and cultural values; and other significant but less quantifiable values associated with maintaining open spaces for future generations. Conservation Values specifically identified for this Protected Property include, but are not limited to, the following:

- a. Preservation of agricultural lands in Beaufort County
- b. Maintenance of open space values of St. Helena Island.

Approved for Recording

[Signature]

Beaufort County Staff Attorney

Date:

June 28, 07

- c. Conservation of relatively natural habitat for migratory birds and other wildlife.
 - d. Protection of prime and locally important soils.
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- 4. The preservation of the Protected Property for agriculture, forestry and similar uses or otherwise conserving it by preserving and protecting its Conservation Values is in keeping with State and Federal land conservation laws and policies.
 - 5. BCOLT is a publicly supported, tax-exempt, non-profit conservation organization qualified under Section 501(c)(3) and 170(h)(3) of the Internal Revenue Code, whose primary mission is the preservation of open space and agricultural and forest lands.
 - 6. The Conservation Values of the Protected Property were inventoried by Sandhill Research and Education Center during a Baseline Study, an Executive Summary of which is incorporated by reference and attached as "Exhibit B." The Baseline Study consists of environmental reports, maps, photographs, and other documents that establish the baseline condition of the Protected Property at the time this Easement was executed.
 - 7. Fee Owner and Grantees agree that the Protected Property will be preserved for agriculture, forestry or similar uses or otherwise be conserved to preserve and protect its Conservation Values in perpetuity, thereby furthering the conservation and the preservation goals of the State and Federal land conservation policies and provide scenic and open spaces for the enjoyment and benefit of the People of the State of South Carolina for generations to come.

SECTION II - CONSIDERATION FOR EASEMENT

For THREE HUNDRED SIXTY THOUSAND AND 00/00 DOLLARS (\$360,000.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to Section 27-8-10, et seq., of the Code of Laws of South Carolina (1976), as amended, TPL grants, conveys, bargains and sells a perpetual, irrevocable, non-exclusive conservation easement ("Conservation Easement") to Grantees, as Co-Holders, over, across and through the Protected Property for purposes set forth in this Conservation Easement, and Grantees accept the Conservation Easement. The recordation of this Conservation Easement shall constitute a "recordation of the acceptance" by Grantees. Upon the recordation of this Conservation Easement, Grantees shall be entitled to enforce this Easement.

SECTION III - TERMS AND CONDITIONS

- 1. **Purpose.** The primary purpose of this Easement is to protect the agricultural and forestry viability of the Property in perpetuity. No activity that significantly impairs the actual or potential use of the Property for agriculture or timber production is permitted. To the extent that the preservation and protection of Conservation Values associated with the Property is consistent with preserving and protecting its agricultural and forestry viability, it is also the purpose of this Easement to protect those Conservation Values, and

no activity which may significantly impair those additional Conservation Values of the Property is permitted.

2. **Rights of Grantees.** The following rights are conveyed to Grantees:

- a. to preserve and protect the agricultural and forestry viability of the Property;
- b. to preserve and protect the Conservation Values of the Property;
- c. to enter the Property at reasonable times to monitor and enforce the terms of this Easement; provided entry is made with prior notice to Fee Owner, and Grantees do not unreasonably interfere with Fee Owner's use and quiet enjoyment of the Property; and
- d. to prevent any activity or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of areas or features that may be damaged by any inconsistent activity or use.

The County and BCOLT agree that BCOLT, which has the available expertise, shall initially have the primary responsibility for the monitoring, management and enforcement of this Easement. The County will assume these responsibilities only if BCOLT fails to properly monitor, manage or enforce this Easement.

3. **Limitation on Uses of the Property by Fee Owner.** Fee owner may use the Property for any and all purposes that do not violate the terms and conditions of this Easement or the intent of this Conservation Easement. However, except as may be specifically provided in other sections of this Easement, the following activities and uses are strictly prohibited:

- a. other than as conducted in connection with agricultural and forestry uses or other construction projects that are permitted hereunder, changing, disturbing, altering or impairing the natural and scenic features;
- b. any commercial, residential or industrial use other than explicitly permitted herein;
- c. constructing buildings and structures and permanently placing trailers and mobile homes other than explicitly permitted herein;
- d. exploration and/or extraction of oil, gas, hydrocarbons, soils or other minerals and materials;
- e. dumping or disposing of trash, garbage or other refuse of any nature;
- f. any use or activity that presents a risk of causing significant soil erosion or water pollution including but not limited to excavating, land filling, dredging, and mining. However, excavation necessary for the construction of any improvements expressly permitted herein is authorized, provided the impact to soils is minimized.
- g. any signs or billboards except as may be desirable or necessary for the agricultural, forestry, conservation, or recreational uses of the Property, provided such signs do not significantly impair or interfere with its Conservation Values.
- h. extending utility systems, except such systems may be extended at reasonable locations so long as they are constructed to serve improvements on the Property.
- i. any construction of new roads; except the repair, improvement and maintenance of

existing road and trails depicted in Baseline Study and construction of new driveways to serve as access to the permitted residential uses is permitted.

j. installation of radio and wireless communication towers and antennas, and similar structures.

k. subdividing the Property into smaller legally recognized units other than explicitly permitted herein.

l. changing, disturbing, altering or otherwise impairing natural habitat within 150 feet of the OCRM critical line.

m. constructing impervious surfaces that in total exceed 4% of Property, or 2% of each of the two subdivided parcels (as herein after described). Impervious surface coverage shall include all future structures, roads, parking facilities and other impervious surfaces, as well as any temporary structures even if the soil surface is not disturbed, including, but not limited to, plastic greenhouses and farm structures with or without a floor; however, excepted from this limit on impervious surface is (a) the construction of two driveways (one per subdivided parcel) to serve as access for permitted residential constructions and (b) the agricultural buildings existing as of the date of this Conservation Easement.

4. Fee Owner's Reserved Rights to Use the Property for Agricultural and Forestry.

Fee Owner retains the right to use the Property for agricultural purposes and forestry purposes. Agricultural and forestry areas are depicted in the Baseline Study.

Agricultural and forestry operations uses may be performed in accordance with the following terms and goals, and in a manner that will not significantly impair the Conservation Values of the Property.

The goals are:

- maintenance of soil productivity;
- protection of water quality, wetlands, and riparian zones;
- conservation of native plant and animal species and their habitat;
- conservation of scenic quality;
- protection of unique or fragile natural areas. Said unique/fragile natural areas are depicted in the Baseline Study. Harvesting and Agricultural activities will be avoided in these areas.

a. **Agricultural Uses.** Agricultural and agricultural uses mean the production, processing, storage or retail marketing of crops, livestock, and livestock products. Crops, livestock and livestock products include, but are not limited to:

- crops commonly found in the community surrounding the Property;
- field crops, including corn, wheat, oats, rye, barley, hay, potatoes, cotton, tobacco, herbs and dry beans;
- fruits, including apples, peaches, grapes, cherries, nuts and berries;
- vegetables, including lettuce, tomatoes, snap beans, cabbage, carrots, beets, onions,

mushrooms, and soybeans;

-horticultural specialties, including sod, seeds, nursery stock, ornamental shrubs, ornamental trees, Christmas trees and flowers;

-livestock and livestock products, including dairy cattle, beef cattle, sheep, swine, goats, horses, poultry, fur bearing animals, bees, milk and other dairy products, eggs and furs.

-Confined feeding operations, such as broiler houses, hog lots, intense dairy operations are prohibited.

b. Land Management Plan Any agricultural operations shall be performed in accordance with a written Land Management Plan, prepared for Fee Owner by a Registered Professional Natural Resource Manager approved by Grantees. The Land Management Plan shall be consistent with best management practices as then defined by USDA-Natural Resource Conservation Services or similar organization. The Land Management Plan shall be reviewed and updated at least every five years. The Fee Owner will provide the initial Land Management Plan to Grantees within 90 days after execution of this Easement any updates as needed but not longer than every five years thereafter.

c. Forestry Uses At least sixty (60) days prior to harvesting timber, Fee Owner shall have prepared a Timber Harvest Plan. The Timber Harvest Plan must be prepared by a Registered Forester approved by the Grantees. Once the Register Forester prepares the Timber Harvest Plan, Fee Owner will provide Grantees with a copy of the plan and certify in writing that plan is in compliance with the terms, purposes and goals of this Easement. Forestry operations on the Property shall be carried out in accordance with all applicable local, state and federal laws and regulations, and in accordance with then current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices", or similar successor publications.

5. Fee Owner's Reserved Rights of Limited Subdivision, Construction, Repairs, and Improvements. Subject to the prior notice to and approval of Grantees, Fee Owner retains the right to subdivide the Property and construct a limited number of new buildings and structures as follows:

- a. Subdivision and Residences. Fee Owner may subdivide the Property into two separate tracts that can be separately conveyed, both tracts continuing to be subject to the provisions of this Conservation Easement, and specifically the transfer provisions of Paragraph 23 hereof. The subdivision of the Property in to two tracts shall be along that line formed by the currently existing canal that separates the Property into two tracts; the tract west of the canal consisting of approximately 30 acres and the tract east of the canal consisting of approximately 62 acres. Other than this one permitted subdivision into two tracts, no further subdivisions of either tract is permitted. Fee Owner and its successors or assigns may construct one single family home on each of the two subdivided tracts of the Property together with smaller auxiliary buildings, such as a garage, greenhouse, or shed. The footprint of each home and permitted auxiliary buildings shall be limited to one-half acre. The location of each home, utilities, driveways and

other improvements associated with each home may be at Fee Owner's or its successor's or assign's discretion, provided that such improvements are not located within the 150 foot buffer area from the OCRM critical line. In addition, all new construction must be approved in advance by the Grantees and comply with impervious surfaces restrictions of this Easement. Any construction, repairs or improvements shall be done in a manner as to minimize damage to the environment and the Conservation Values of the Property and shall be done and approved in accordance with all zoning, governmental and permitting standards.

- b. **Agricultural and Forestry Buildings and Structures.** Fee Owner, its successors and assigns, may build and construct new buildings and structures for agricultural and forestry uses. New buildings and structures must be used primarily for agricultural and forestry purposes, and their location must be approved in advance by the Grantees. All provided that the total amount of impervious surfaces on the Property do not exceed 4% of Property (2% of each subdivided tract).
- c. **Fences.** Existing fences may be repaired and replaced, and new fences may be built, for purposes of reasonable and customary management of livestock and wildlife.
- d. **Roads.** Existing roads, identified in the Baseline Study may be maintained and repaired. No new hard surface roads are authorized, other than driveways to provide access to each of the permitted residential units. Paths and trails necessary for agricultural and forestry ingress and egress are authorized provided the impact to prime, unique, and important soils and other Conservation Values is minimized.
- e. **Construction Standards.** Any construction, repairs or improvements shall be done in a manner as to minimize damage to the environment and the Conservation Values of the Property, and shall be done and approved in accordance with all zoning, governmental and permitting standards. Silt fences shall be placed so as to minimize run-off and any excess dirt from any excavation shall be removed from the Property. Any construction shall be completed within one (1) year of its initiation. All construction debris shall be cleared and the Property shall be restored to its pre-construction appearance within a reasonable time period following completion of construction."

6. **Other Reserved Rights of Fee Owner.** In addition to the rights to use the Property as set forth above, Fee Owner retains the right to the following uses:

- a. **Activities by Large Organized Groups.** Fee Owner may allow large groups to conduct organized activities on the Property provided such activities do not significantly impair the Conservation Values of the Property. Such activities include, but are not limited to concerts, scout jamborees, revival meetings, and corporate training outings. Fee Owner

will restrict any such uses that may impair the Conservation Values and require all such groups utilizing the Property to restore the Property to the condition that existed prior to such use.

b. Hunting and Fishing. Fee Owner retains all hunting and fishing rights and privileges.

7. **Prior Notice to Grantees of Certain Actions.** Any notice requirement set forth herein is to afford Grantees an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Conservation Easement. Whenever notice is required, Fee Owner shall notify Grantees in writing not less than sixty (60) days prior to the date Fee Owner intends to undertake the activity. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantees to make an informed judgment as to its consistency with the purpose of this Easement.

8. **Grantees' Approval.** Where Grantees' approval is required, Grantees shall either grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written notice. Grantees' approval may only be withheld if it is determined that the activity is inconsistent with purpose of the Conservation Easement.

9. **Mediation.** If a dispute arises between the parties concerning any proposed use or activity on the Property, Fee Owner agrees not to proceed with the use or activity pending resolution of the dispute, and the parties shall first seek resolution through mediation. Both Fee Owner and Grantees will select the mediator. If Fee Owner and Grantees cannot agree on a mediator, their proposed mediators will appoint a third mediator who will mediate the dispute. Mediation is not required if Grantees determine there has been a breach by Fee Owner of the terms of this Easement.

10. **Grantees' Remedies.** If Grantees determine that Fee Owner is in breach (violation) of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to Fee Owner of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Fee Owner fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantees, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fail to begin curing such violation within the thirty (30) day period, or fail to continue diligently to cure such violation until finally cured, Grantees 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 or injury to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Fee Owner's liability therefore, Grantees, in their respective discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantees, in their respective discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantees may pursue its remedies under this Paragraph without prior notice to Fee Owner or without

waiting for the period provided for cure to expire. Grantees' rights under this Paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Fee Owner agrees that Grantees' remedies at law for any violation of the terms of this Easement are inadequate and that Grantees shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantees 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. Grantees' 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.

11. **Costs of Enforcement.** Any costs incurred by Grantees in enforcing the terms of this Easement against Fee Owner, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Fee Owner's violation of the terms of this Easement shall be borne by Fee Owner. If Fee Owner prevails in any action to enforce the terms of this Easement against Grantees, Fee Owner's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantees.

12. **Grantees' Discretion.** Enforcement of the terms of this Easement shall be at the discretion of Grantees, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Fee Owner shall not be deemed or construed to be a waiver by Grantees of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantees' rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Fee Owner shall impair such right or remedy or be construed as a waiver.

13. **Waiver of Certain Defenses.** Fee Owner waives any defense of laches, estoppel, or prescription.

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

15. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

16. **Costs and Liabilities.** Fee Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Fee Owner shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Fee Owner.

17. **Taxes.** Fee Owner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantees with satisfactory evidence of payment

upon request; provided, however, that to the extent that the granting of the Conservation Easement shall entitle Fee Owner to a revaluation or other tax relief, Grantees agree to cooperate fully and promptly with Fee Owner in securing the benefits of the same as such; provided, further, that Fee Owner shall have no liability for the payment of Taxes, if any, levied upon or assessed against the Conservation Easement. Grantees are authorized but in no event obligated to make or advance any payment of taxes, upon three (3) days' prior written notice to Fee Owner, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Fee Owner at the lesser of five percentage points over the prime rate of interest or the maximum rate allowed by law.

18. **Hold Harmless.** Fee Owner shall hold harmless, indemnify, and defend the Grantees and their members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them ("Indemnified Party") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Party.

19. **Extinguishment.** If circumstances arise in the future such as 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. The amount of the proceeds to which Grantees shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property contemporaneously with, or subsequent to, such termination or extinguishment, shall be determined, unless otherwise provided by South Carolina law at the time, in accordance with Paragraph 20 below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Easement.

20. **Proceeds.** This Easement constitutes a real property interest immediately vested in Grantees, which, for the purposes of this Paragraph 20, the parties stipulate to have a current fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this Easement attributable to improvements) by the ratio of the value of the Easement at the time of this Easement to the value of the Property, without deduction for the value of the Easement, at the time of this Easement, according to that certain Property Appraisal Report, on file at BCOLT's office and prepared by Holstein Appraisals dated March 6, 2007 for the Fee Owner. The values at the time of this Easement shall be those values used to calculate the fair market purchase price of this Easement. For the purposes of this Paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant. To the extent proceeds are received by Grantees hereunder, the County shall be entitled to retain all proceeds since the County has provided the funding for the acquisition.

21. **Condemnation.** If the Easement is taken, in whole or in part, by exercise of the

power of eminent domain (it being understood that any such exercise with respect to the Easement shall be with the express written consent of both Fee Owner and Grantees, in derogation of the South Carolina Statute), Grantees shall be entitled to compensation in accordance with applicable law and this Paragraph 21, and Fee Owner and Grantees agree to join in all necessary and appropriate actions to recover the full value of such condemnation, including all incidental damages. To the extent that proceeds are received by Grantees hereunder, the County shall be entitled to retain all proceeds since the County has provided the funding for the acquisition.

22. **Assignment.** The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable and that such benefits and the rights and obligations that accompany same may be transferred or assigned only to a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code (or any successor section) and the regulations promulgated thereunder, which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code. In the event that an assignment is necessary under the terms described below, Grantees shall transfer its rights to select a successor organization. The terms of the transfer or assignment will be such that the transferee or assignee will be required (1) to continue to carry out in perpetuity the Purposes that the Easement was originally intended to advance, set forth herein, and (2) to acknowledge and agree to enforce the terms and conditions of this Easement as Grantee. Grantees covenant and agree that they will not transfer this Easement unless both Grantees are no longer capable of carrying out the purposes of the Grantees as recited herein and unless Grantees are in imminent threat of ceasing to exist for the purposes for which each was created.

23. **Subsequent Transfers and Transfer Fee.** Fee Owner agrees to incorporate the terms of this Easement in any other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Fee Owner further agrees to give written notice to Grantees of the transfer of any interest at least sixty (60) days prior to the date of such transfer. The failure of Fee Owner to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way. There shall be assessed by the Grantees, and collected from all purchasers of the Property, a transfer fee equal to one (1) percent of the sales price or other consideration paid in connection with the transfer of any interest in such Property, which transfer fee shall be paid to the Grantees at the time of the transfer. This sum shall be placed in a stewardship fund, or such similarly named successor fund, to finance Grantees' efforts to uphold its duties and responsibilities under the Easement on the Property. In the event of non-payment of such transfer fee, Grantees shall have the right to file a lien for such unpaid transfer fees which shall be a lien on the Property but which lien shall be subordinate to this Easement and to the lien of any first mortgage on the Property. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of South Carolina. Grantees may require the Fee Owner 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. Any transfer subsequent to the conveyance of this Easement without consideration shall be exempt from the assessment of such transfer fee.

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 received at the time of such transfer. Market value shall be determined by agreement of the Fee Owner and the Grantees, or in the absence of such agreement, by an MAI appraiser selected by the Grantees, whose appraisal fee shall be paid by the Grantees. (Any transfer to Beaufort County Open Land Trust shall be exempt from the assessment of such transfer fee.)

24. **Estoppel Certificates.** Upon request by Grantees, Fee Owner shall within twenty (20) days execute and deliver to Grantees any document, including an estoppel certificate, which certifies Fee Owner's compliance with any obligation of Fee Owner contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantees.

25. **Notices.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other hereunder shall be in writing and either served personally or sent by nationally-recognized, overnight courier service or U.S. registered or certified mail, postage prepaid, return receipt requested, addressed as follows (or to such other address(es) as may be specified by any such party to the other hereunder by written notice delivered in accordance with this Paragraph 25:

To Fee Owner:

Scott Hill LP
PO Box 191
St. Helena Island, SC 29920

To Grantee:

BEAUFORT COUNTY
Beaufort County Administrator
P.O. Drawer 1228
Beaufort, SC 29901-1228
Phone (843) 470-2501
FAX (843) 470-2751

BEAUFORT COUNTY OPEN LAND TRUST
810 King Street
Beaufort, South Carolina 29901
Attn: Cindy Basden

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery, if personally served or if delivered by nationally recognized, overnight courier service, or on the date indicated on the return receipt, if sent by U.S. registered or certified mail as described above. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice given on the date of mailing.

26. **Recordation.** Fee Owner and Grantees agree that this Easement shall be promptly recorded in the Office of the Clerk of Court of Beaufort County, South Carolina.

27. **Amendment**. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Fee Owner and Grantees are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Conservation Easement or the status of Grantees under any applicable laws, including Official Code of South Carolina or Section 170(h) of the Internal Revenue Code of 1954, as amended, and any amendment shall be consistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Beaufort County, South Carolina.

28. **General Provisions**

a. **Controlling Law**. The laws of the State of South Carolina shall govern the interpretation and performance of this Easement.

b. **Liberal Construction**. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Official Code of South Carolina. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. **Severability**. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. **Entire Easement**. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Paragraph 27.

e. **No Forfeiture**. Nothing contained herein will result in a forfeiture or reversion of Fee Owner's title in any respect.

f. **Joint Obligation**. The obligations imposed by this Easement upon Fee Owner shall be joint and several.

g. **Successors and Assigns: Covenants, Etc. Run With Land**. The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, and shall continue as an easement and servitude running with the Property in perpetuity and enforceable against Fee Owner and all present and future owners, tenants and other holders of any interest in the Property. The benefits herein conferred upon Grantees shall be in gross and assignable by Grantees, but only in accordance with Paragraph 22 above. The terms "Fee Owner" and "Grantees", when used herein, shall be deemed to refer to Fee Owner or Grantees, as the case may be, and their personal representatives, heirs, executors, administrators, successors and assigns.

h. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in this Easement or Property pursuant to the terms of Paragraphs 22 and 23 hereof, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

k. Fee Owner's Representations and Warranties Except for title to lots 52 and 38, which title is clouded, Fee Owner hereby represents and warrants that it is seized of the balance of the Property in fee simple and has good right to grant and convey the Easement, that the Property is free and clear of any and all encumbrances, except as revealed to Grantees, and that Grantees and their respective successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Easement. Fee Owner represents that it and its predecessor in interest have paid taxes and openly used the two lots with clouded title for more than forty continuous years and can support a claim for adverse possession of such lots.

l. Baseline Documentation. Grantees acknowledge, by their acceptance of the Easement, that Fee Owner's historical and present uses of the Property are compatible with the purposes of the Easement. In order to establish a present condition of the Conservation Values so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof, Grantees has prepared or caused to be prepared the Baseline Documentation. The Baseline Documentation shall be used to assist in establishing the condition of the Property as of the date of this Easement. Fee Owner and Grantees acknowledge and agree that, in the event that a controversy arises with respect to the nature and extent of Fee Owner's historical and present use or the physical condition of the Property subject to the Easement as of the date hereof, the parties may look beyond the Baseline Documentation, if necessary, to other relevant or material documents, surveys, reports and other evidence showing conditions at the time of execution of this Easement to assist in the resolution of the controversy.

TO HAVE AND TO HOLD this Easement unto Grantees and their respective successors and assigns, together with all and singular the rights, members and appurtenances thereof to the same being, belonging or in anywise appertaining, to the only proper use and benefit of Grantees forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall not only be binding upon Fee Owner but also its personal representatives, heirs, executors, administrators, successors and assigns, and shall continue as an easement and servitude running in perpetuity with the Property.

IN WITNESS WHEREOF TPL and Grantees have set their hands and seals on the day and year first above written.

Signed, Sealed and Delivered in our presence:

WITNESS

T. Bendle Jr.
Thomas A. Bendle, Jr.
Bernadene A. Giles
Bernadene A. Giles

TPL:

The Trust for Public Land, A
California non-profit corporation

By: Slade Gleaton
Slade Gleaton
South Carolina State Director

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Bernadene A. Giles, a Notary Public in and for the said County in said State, hereby certify that Slade Gleaton, South Carolina State Director of The Trust for Public Land, a California non-profit corporation, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, with full authority, executed the same voluntarily on the day the same bears date on behalf of the corporation.

Give under my hand this _____ day of June, A.D., 2007.

Bernadene A. Giles

Notary Public

My Commission Expires: 2/23/09

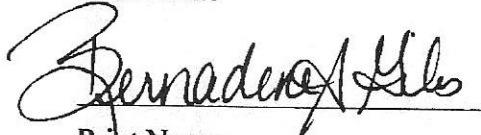
GRANTEES:

Beaufort County Open Land Trust

WITNESS

By: 

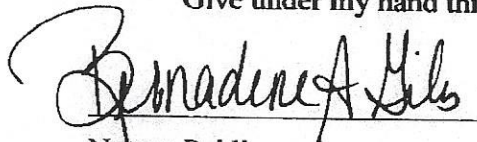

Print Name


Print Name
BERNADENE A. GILES

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, BERNADENE A. GILES, a Notary Public in and for the said County in said State, hereby certify that EARLE E. ALLEN, whose name is signed to the foregoing conveyance, as TREASURER of the Beaufort County Open Land Trust, a South Carolina non-profit corporation, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance and with full authority, he executed the same voluntarily on the day the same bears date on behalf of the corporation.

Give under my hand this 27th day of June, A.D., 2007.


Notary Public

My Commission Expires: 2/23/09

Beaufort County,
a political subdivision
of the State of South Carolina

By: 

Name: Gary T. Kubic
Title: Beaufort County Administrator
Post Office Box 1228
Beaufort, SC 29902
843-470-2501

Date: 7/2, 2007

Approved as to form:

By: 

Kelly J. Golden
Beaufort County Attorney
Post Office Box 1228
Beaufort, SC 29902
843-470-5380

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Cheryl Harris, a Notary Public in and for the said County in said State, hereby certify that Gary T. Kubic, County Administrator for Beaufort County, a political subdivision of the State of South Carolina, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument and with full authority, he being duly authorized executed the same voluntarily on the day the same bears date, on behalf of said Beaufort County.

Give under my hand this 2nd day of July, A.D., 2007.



Notary Public

My Commission Expires:

Exhibit A
Description of Property

That certain tract or parcel of land containing 90.89 acres more or less and more particularly shown on that certain plat entitled "Boundary Survey Prepared for The Trust for Public Land, Lots 40, 38, 43, 44 and a Portion of Lots 25, 26, 27, 41, 45, 54, 53 & 52, Section 2, Township 2S-1W, St. Helena Island, Beaufort County, South Carolina", prepared by Davis S. Youmans, RLS 9765, dated April 20, 2007 and recorded with Beaufort County Registry of Deeds on even date herewith. Said Property is located near the intersection of Scott Hill Road and Lands End Road on St. Helena Island. The Property can also be identified by its Tax Map Code: R300 029 000 0161.

Exhibit "B"

Executive Summary of Baseline Report

Name of Property: Jones Farm

Current Owner: Scott Hill, LP, a South Carolina limited partnership
P.O. Box 191
St. Helena, South Carolina

Easement Size (approximate acreage): 92 acres

Location of Protected Property: St. Helena Island, Beaufort County, South Carolina.

Special Retained Rights:

The right to use the property for agricultural, silvicultural and aquacultural uses
The subdivision of the Property in to two tracts shall be along that line formed by the currently existing canal that separates the Property into two tracts; the tract west of the canal consisting of approximately 30 acres and the tract east of the canal consisting of approximately 62 acres. Other than this one permitted subdivision into two tracts, no further subdivisions of either tract is permitted. Grantor and its successors or assigns may construct one single family home on each of the two subdivided tracts of the Property together with smaller auxiliary buildings, such as a garage, greenhouse, or shed. The footprint of each home and permitted auxiliary buildings shall be limited to one-half acre. The location of each home, utilities, driveways and other improvements associated with each home may be at Grantor's or its successor's or assign's discretion, provided that such improvements are not located within the 150 foot buffer area from the OCRM critical line.

Special Restrictions:

Significant change to, disturbance of, alteration of, or impairment of the natural, scenic, and aesthetic features;

Any commercial or industrial use or any new residential use, except as specifically set forth in the Easement

Constructing any buildings and structures, except as specifically set forth in the Easement
Exploration and/or extraction of oil, gas, hydrocarbons, soils or other minerals and materials; provided, however, the deepening and/or renovation of existing ditches and canals to maintain drainage shall be a permitted use hereunder;

Dumping or disposing of trash, garbage or other refuse of any nature;

Any use or activity that presents a risk of causing significant soil erosion or water pollution including but not limited to excavating, land filling, dredging, and mining; provided, however, that excavation necessary for the construction of any improvements expressly permitted herein is authorized, provided the adverse impact to soils is minimized.

Any signs or billboards except as may be desirable or necessary for the agricultural, forestry, conservation, or recreational uses of the protected property, provided such signs do not significantly impair or interfere with its conservation values.

Any construction of new roads; except the repair, improvement and maintenance of existing road and trails depicted in Baseline Study and construction of new driveways to serve as access to the permitted residential uses is permitted.

Any installation of radio and wireless communication towers and antennas, and similar structures.

Any changing, disturbing, altering or otherwise impairing natural habitat within 150 feet of the OCRM critical line.

Extending utility systems, except such systems may be extended at reasonable locations so long as they are constructed to serve improvements on the protected property.

Concise Summary Statement of Easement Purposes:

The primary purpose of this Easement is to protect the agricultural and forestry viability of the Property in perpetuity. No activity that significantly impairs the actual or potential use of the Property for agriculture or timber production is permitted.

Property is located on St. Helena Island, Beaufort County, South Carolina. It is approximately 1.5 miles to the east of the Beaufort River and 6.5 miles north of the Atlantic Ocean.

Property is on the USGS Quadrangle: St. Phillips Island and Parris Island, South Carolina.

Condition of Property

Boundary Description: The property contains 90.89 acres more or less and is more particularly shown on that certain plat entitled "Boundary Survey Prepared for The Trust for Public Land, Lots 40, 38, 43, 44 and a Portion of Lots 25, 26, 27, 41, 45, 54, 53 & 52, Section 2, Township 2S-1W, St. Helena Island, Beaufort County, South Carolina", prepared by Davis S. Youmans, RLS 9765, dated April 20, 2007 and recorded with Beaufort County Registry of Deeds on even date herewith. Said Property is located near the intersection of Scott Hill Road and Lands End Road on St. Helena Island. The Property can also be identified by its Tax Map Code: R300 029 000 0161.

Land Use and Current Use: The property contains two types of forested uplands, Upland Mixed Forests and Pine Plantations. These woodlands offer an abundance of hard and soft mast for various wildlife species. The pine plantings are in varying degrees of age and management. The density of pine plantations, especially when young, excludes sunlight and results in a heavy mulch layer. Because of this, these stands contain little understory or herbaceous vegetation. As the pines age and are thinned, a more diverse forest will develop. The property also has Bottomlands Hardwoods much of which is comprised of Sweet Gum in a young canopy. Although Sweet Gum does not provide large value in regards to mast, the density of this forest is important as a refuge and cover for numerous animals. Several old fields are scattered across this tract. The fields are mostly filled with weedy species. There is also a pond located at the southeastern portion of the property and two large irrigation ditches transect the property.

Improvements: There are a few structures on the property located within the fields, consisting of a mobile home and some sheds.

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF TRUE CONSIDERATION
COUNTY OF BEAUFORT)

PERSONALLY appeared before me Thomas A. Bendle, Jr. who, being duly sworn, deposes and says that the following is a true and correct statement concerning the consideration for the conveyance set out hereinbelow:

GRANTOR: The Trust for Public Land, a California not for profit corporation

GRANTEE: BEAUFORT COUNTY AND THE BEAUFORT COUNTY OPEN LAND TRUST

DATE OF CONSERVATION EASEMENT: June 28, 2007

Recorded in Records Book 2594 at Page 970

CONSIDERATION: \$360,000.00

TMP: 300-29-161

STATE DOCUMENT TAX EXEMPTION: This transfer is exempt from the Documentary Tax Stamp fees required by the State of South Carolina in accordance with Section 12-24-40, subparagraph 2.

Thomas A. Bendle Jr.

SWORN to before me this
5TH day of July, 2007

Reunaden A. Miles
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2/23/09