



BP0024506

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT is made this 10 day of November, 2008, by Charlotte H. Tilton, Solomon Legare Hay, III, Cynthia H. Johnson and William Caldwell Hay (hereinafter "**Grantor**"), having an address at 46 Romney 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 (generally hereinafter the "Code") and not a private foundation under Code §509, with a business address at 485 East Bay Street, Charleston, SC 29403.

WHEREAS, **Grantor** is the sole owner in fee simple of certain real property known as "Legareville" containing approximately ninety eight (98) acres (TMS #s 321-00-00-002 and 321-00-00-003), 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 lies within the Sea Islands Initiative of the CAWS Basin Focus Area, featuring diverse ecosystems and a wealth of wildlife, all of which is the focus of a consortium of state and federal agencies, conservation groups and private landowners working to protect and enhance the region's natural resources and traditional recreational and agricultural uses; and

WHEREAS, the Protected Property, located on Johns Island, is in close proximity to other protected lands, including Bryan Dairy, 853 acres protected by Lowcountry Open Land Trust located approximately 1.75 miles down Legareville Road, as well as 14 other protected properties on Johns Island, totaling approximately 1,320 acres, and 44 protected properties on Wadmalaw Island, totaling over 5,200 acres; and

WHEREAS, the Protected Property is situated on and prominently visible by the public from Abbapoola Creek, having approximately 2,200 feet of creek frontage, as well as approximately 800 feet of frontage off of Alligator Creek, providing scenic views of marsh, maritime forest and open fields, and is also situated on and prominently visible by the public from Legareville Road, having approximately 3,400 feet of road frontage providing scenic views of agricultural fields.

WHEREAS, the Protected Property has a diversity of relatively natural habitats including *Spartina* marsh, maritime forest, open fields, mixed upland forest, forested wetlands, and upland ponds, which can support a variety of floral and faunal species; and

WHEREAS, in particular, the Protected Property in its existing relatively natural condition contributes very little nonpoint source pollution to the creeks and waterways of Abbapoola Creek and Alligator Creek due to the vegetated buffers surrounding all watercourses, forested and non-forested wetlands that provide for nutrient uptake and sediment deposition, as well as the low percentage of impervious surface that reduces sources of pollution and nutrient loading; and

WHEREAS, the Protected Property has been historically managed for agricultural and rural residential uses; and

WHEREAS, the Protected Property possesses significant ecological and natural resources, water quality protection, open space and scenic value (collectively the "Conservation Values") of great importance to **Grantor**, to **Grantee** and to the people of South Carolina and this nation; and

WHEREAS, the specific Conservation Values 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 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 grant and is intended to serve as an objective point of reference from which to monitor compliance with the terms of this grant; and

WHEREAS, **Grantor** believes that with the careful use of conservation easements, the 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 subsequent use and enjoyment; and

WHEREAS, **Grantor** intends to preserve and protect the Conservation Values 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 a conservation 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 as described in SC Code §27-8-20, also recognizes and authorizes **Grantee** to hold conservation easements; 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 as "a relatively natural habitat of fish, wildlife or plants or similar ecosystem" as that phrase is used in Code §170(h)(4)(A)(ii), "open space (including farmland and forest land)" as that phrase is used in Code §170(h)(4)(A)(iii) and in the regulations promulgated thereunder by the United States Department of the Treasury (hereinafter "Treasury Regulations"). **Grantor** and **Grantee** agree these purposes can be accomplished by placing voluntary 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 whose purposes and powers include one or more of the purposes set forth in SC Code §27-8-20(1) authorizing **Grantee** to be a holder of conservation easements as provided for by the Act; and, **Grantee** is a publicly supported, tax-exempt, nonprofit corporation organized and operated under Code §501(c)(3) and not a private foundation under Code §509 dedicated to the preservation of the irreplaceable natural and historical resources of the South Carolina Lowcountry landscape by protecting significant lands, waters and vistas;

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

1. Purposes. The purposes of this Easement (hereinafter the "Purposes") are as follows:

(A) To protect and preserve the Conservation Values; and

(B) To prevent any use or activity that will significantly impair the Conservation Values, subject to the rights and privileges reserved below by **Grantor**; and

(C) To allow the continuation of historic and traditional uses and activities as well as limited new uses that would not significantly impair or degrade the Conservation Values.

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, and at reasonable times, in order to monitor compliance with the Easement and to further document natural and manmade features 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 Purposes;

(D) **Right to Require Restoration.** To require Grantor or third parties 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 Purposes; and

(E) **Right of Discretionary Consent.** If, owing to unforeseen circumstances, any of the uses or activities prohibited under this Easement are deemed desirable by both the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to such limitations as it deems necessary or desirable and provided that:

I. The activities will not adversely affect the qualification of this Easement as a “qualified conservation easement” under any applicable laws, including §§170(h) and 2031(c) of the Code or the Act.

II. The activities 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.

III. The activities will not adversely affect the Conservation Values.

IV. In no case shall the Grantee or Grantor have the right or power to agree to any activities that would result in the termination of this Easement.

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 products on the Protected Property, including crop production, floriculture, silviculture and horticulture, in a manner that preserves the long-term productivity of the soil.

Agricultural Structure shall be defined as any building designed or used in the conduct of permitted **Agricultural Activities**, not including any structure used as a dwelling for human beings.

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 Purposes of this Conservation Easement. **Approval** shall not be unreasonably withheld by the Grantee.

Building Height shall be measured, for the purposes of any permitted structure, from the ground 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.

Forest Management Practices shall be defined as the production, improvement and maintenance of forest lands for timber production, wildlife management, aesthetics or any other purpose. **Forest Management Practices** include silviculture 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, thinning, reforestation, 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, or their) personal representatives, heirs, successors, assigns, and subsequent owners.

Impervious Surface shall be defined as a hard surface area which either prevents or retards the entry of water into the soil mantle at a rate lower than that present under natural conditions prior to development. Impervious surfaces include, but are not limited to, roof tops, walkways, patios and decking, enclosed and unenclosed porches, driveways, parking lots, or storage areas, concrete or asphalt paving, swimming pools, or other surfaces which similarly impede the natural infiltration of surface and stormwater runoff.

Main House shall be defined as a detached, single-family dwelling constituting the primary residential use of, and to be occupied by the owner or permitted lessee of, the Protected Property or the **Subdivided Tract**.

Notice shall be defined as a written communication, prior to undertaking a permitted activity, as defined in Paragraph 19.

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).

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 dwelling for human beings.

Residential Structure shall be defined as **Main House(s)** and the **Secondary House(s)**.

Secondary House shall be defined as a single-family dwelling to be located adjacent to, or in close proximity to, and to be held under the same ownership as and controlled by the owner or permitted lessee of the **Main House** and intended for the use of guests, friends, family members or employees of the owner or permitted lessee of the **Main House**.

Setback Line shall be defined as the edge of a waterway which is either (1) the critical line as defined by S.C Office of Ocean and Coastal Resource Management, (2) the ordinary high water mark as defined by the Army Corps of Engineers, (3) a comparable defining line as defined by successor entities of the above named agencies, or (4) a specified platted line on a recorded survey, if referenced in Paragraph 5(C).

Significant Tree shall be defined as any live oak, magnolia, or palmetto tree having a diameter at breast height of twenty (20) inches or greater.

Subdivided Tract shall be defined as a separate transferable parcel of land having a unique identity according to Charleston County records.

Subdivision shall be defined as the 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, including railings and roofs.

4. **Reserved Rights.** **Grantor** reserves all the rights, uses and activities (collectively, the “Reserved Rights”) inherent in fee simple ownership of the Protected Property, subject to the specific Restrictions and Limitations of Paragraph 5, which are included to accomplish the Purposes enumerated in Paragraph 1. All Reserved Rights shall apply to the Protected Property in its entirety. 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 Purposes.

5. **Restrictions and Limitations.** **Grantor** will not perform or permit or will perform or permit, as specified below, the following acts or uses (hereinafter the “Prohibited Uses”) on, over or under the Protected Property:

(A) **Subdivision.** The Protected Property is currently composed of two (2) tracts, which are Charleston County TMS #s 321-00-00-002 containing 66.12 acres more or less, and 321-00-00-003 containing 32.08 acres more or less. There shall be no **Subdivision** of the existing Charleston County TMS #321-00-00-003. **Subdivision** of the existing Charleston County TMS #321-00-00-002 is limited to the reconfiguration and division into a maximum of three (3) **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**. 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 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 forty thousand (40,000) 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) **Main Houses**.

IV. **Related Outbuildings and Agricultural Structures** shall be permitted, provided that the square footage of all **Impervious Surfaces** 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) Three (3) new docks providing access to Abbapoola Creek or its tributaries, or Alligator Creek and its tributaries, may be constructed, maintained, repaired, improved, or replaced, provided they shall be restricted to primarily natural or non-reflective materials, each be limited to one (1) walkway no more than four (4) feet wide, and each limited to one (1) fixed pierhead and one (1) floating platform with a maximum of four hundred (400) square feet in the aggregate.

(b) Four (4) new docks providing access to interior ponds may be constructed, maintained, repaired, improved, or replaced.

(c) **Grantor** shall not construct as a part of any dock providing access to Abbapoola Creek or its tributaries, or Alligator Creek and its tributaries, any fixed or permanent **Superstructures**, boatlifts, or any lighting that remains constantly illuminated or that automatically becomes illuminated in darkness.

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

VII. Boat Ramp. There shall be no boat ramps on the Protected Property.

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

(C) Buffers. Buffer Area, as shown in Exhibit "B", shall be subject to the following restrictions:

Abbapoola and Alligator Creeks Buffer. In order to provide a vegetated buffer between the Protected Property and the adjacent waterways, there shall be no **Impervious Surface, Agricultural Activities**, new roads, structures (other than permitted docks) nor alteration to the topography or hydrology within seventy five (75) feet of the **Setback Line** adjacent to the Abbapoola Creek and its tributaries and the tributary to Alligator Creek. There shall be no alteration to the vegetation, except as necessary to engage in limited **Forest Management Practices** and to create scenic vistas associated with **Residential Structures**, provided there shall be no clearcutting and no activities that endanger the health or survival of **Significant Trees** without **Approval**, and to maintain open fields existing within the buffer at the time of this Easement.

(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, 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** shall not be considered commercial uses.

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

Fuel storage tanks are limited to above ground liquid fuel storage tanks and/or underground gas fuel (not liquid) storage tanks to serve the allowed uses in Paragraph 5, subject to all applicable federal, state, and local laws and regulations.

Notwithstanding the above, **Grantor** and **Grantee** acknowledge the existing unrecorded powerline easement along Legareville Road in favor of Berkeley Electric Cooperative, which currently has an active powerline within it that crosses the Protected Property to serve other properties.

(G) Roads. Roads shall be limited to those required to facilitate the uses permitted by this Easement, provided **Grantor** shall use existing roads wherever possible and provided there shall be no paving of any road with

non-permeable materials. Maintenance of roads and roadside ditches shall be limited to standard practices for non-paved roads.

Notwithstanding the above, **Grantor** and **Grantee** acknowledge the existing non-exclusive easement and right-of-way for private road (extension of Legareville Road to the end of Legareville peninsula) recorded in Book N96 at Page 230 in the RMC Office for Charleston County, which currently serves multiple landowners for residential purposes.

(H) Landscaping. Landscaping shall be limited to the management of vegetation associated with the uses provided for in Paragraph 5, including but not limited to, mowing, pruning, trimming, and gardening.

(I) Signs. Signs shall be limited to a maximum of eight (8) square feet in size. Signs shall be placed so as to minimally impact the scenic view as seen from the Abbapoola Creek, Alligator Creek or Legareville Road.

(J) Archeological and Paleontological Digs; Artifacts and Fossils. 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.

(K) Significant Trees. There shall be no activities that endanger the health or survival of **Significant Trees** without **Approval**

(L) Agricultural Uses. **Agricultural Activities** are restricted to the scientifically based 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 Purposes.

(M) Equestrian Activities. The right to engage in any equestrian activity including but not limited to the breeding, fencing, riding, pasturing, stabling and selling of horses.

(N) Pond(s). Enlargement of the existing Ponds [three (3) Ponds as documented in the Baseline Documentation Report] and construction of new Pond(s) shall be limited in size to two (2) acres in the aggregate, shall be subject to prior written **Approval** from the **Grantee** and shall be in compliance with all applicable local, state and federal statutes and regulations. The extraction and sale of soil, sand, gravel or other materials produced in connection with the enlargement or construction of Pond(s) is strictly prohibited, as in accordance with Paragraph 5(P) Mining and Paragraph 5(E) Commercial Uses. **Approval** shall be given in the sole discretion of the **Grantee** in accordance with the **Grantee's Policy on Pond Enlargement and Construction** and all proposed activities must comply with the Purposes as outlined in Paragraph 1.

(O) 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.

(P) 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 and that, following the mining activity, the site is returned to, or as closely as possible to, its previous state.

(Q) Topography and Hydrology. There shall be no alteration of the topography or hydrology, unless otherwise provided for in Paragraph 5.

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

(S) Adverse or Inconsistent Uses. There shall be no other use or activity that is inconsistent with the Purposes.

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 Purposes, 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 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** may pursue its legal and equitable remedies under this Paragraph without prior notice to **Grantor** or without waiting for the period provided for cure to expire.

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. **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 and 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 **Grantor's** cost of the suit (which includes reasonable attorney's fees) shall be borne by **Grantee**.

9. 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.

10. **Grantor's Environmental Warranty.** The **Grantor** warrants that it has no knowledge of a release or threatened release of hazardous substances 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.

11. **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 by third parties, 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.

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

13. **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 the maintenance of general liability insurance coverage.

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 the activities of the indemnifying party on the Protected Property.

14. **Transfer Fee.** There shall be assessed by the **Grantee** a transfer fee equal to one-half of one (0.5) percent of the sales price or other consideration paid in connection with the transfer of any interest other than the sale of timber or timber rights in such Protected Property, which transfer fee shall be paid to the **Grantee** at the time of the transfer. This sum shall be placed in **Grantee's** stewardship fund, or such similarly named successor fund, to finance **Grantee's** efforts to uphold its duties and responsibilities under the Easement on the Protected Property as well as on **Grantee's** other protected properties. In the event of non-payment of such transfer fee, **Grantee** shall have the right to file a lien for such unpaid transfer fees 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. Any transfer subsequent to the conveyance of this Easement without consideration or to a spouse, a lineal descendant, a spouse of a lineal descendant (collectively, "Immediate Family Members"), or to an entity at least 50% of the equity interest of which is owned by an Immediate Family Member or to a trust whose presumptive beneficiaries are the **Grantor** or an Immediate Family Member, or to a charitable organization which is tax exempt under 501(c)(3), 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 **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**. The holder(s) of any rights under the Right of First Refusal and Right of First Offer dated October 10, 2001, and recorded in the RMC Office for Charleston County in Book V384 at Page 028, as modified by Modification of Right of First Refusal and Right of First Offer dated October 8, 2008, and recorded in the RMC Office for Charleston County in Book 0015 at Page 016, shall be exempt from the assessment of transfer fees created in this Easement during the full term of such Right of First Refusal and Right of First Offer, as modified and amended.

15. Extinguishment, Condemnation and Fair Market Value. If circumstances arise in the future that render all of the Purposes 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 Sec.1.170A-14(g)(6) of the IRS regulations, the **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 grant and allowed under the Conservation Easement, which amount shall be reserved to **Grantor**, equal to the ratio of the appraised value of the Conservation 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.

For the purpose of the above Paragraphs, the parties hereto stipulate that the Easement and 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 the conservation purposes of this grant. 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.

16. 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 easement” 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 purposes of this Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be constructed on the Protected Property other than development or improvements permitted by this Easement on its effective date, and shall not permit any impairment of the Conservation Values. **Grantor** and **Grantee** agree to a 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.

17. Assignment. The benefits of this Easement shall not be assignable by the **Grantee**, except (i) if as a condition of any assignment, 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 Purposes 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. 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.

18. 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.

19. Communication. All **Notices**, demands, requests, consents, **Approvals**, offers, statements, and other instruments or communications required or permitted to be given hereunder (individually or collectively

“Correspondence”) shall be deemed sufficiently given or rendered only if in writing delivered personally, sent by a nationally recognized overnight courier or sent by United States Postal Service first class certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Grantor :	Charlotte H. Tilton, et al. 46 Romney Street Charleston, SC 29403
If to Grantor ’s Attorney:	John E. Romanosky, Jr., Esq. 53 Broad Street Charleston, SC 29401
If to Grantee :	Lowcountry Open Land Trust, Inc. 485 East Bay 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 Section 19 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.

20. **Recordation.** **Grantee** shall record this instrument in timely fashion in the RMC 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.

21. **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 Office for Charleston County, South Carolina, after all required signatures have been affixed hereto.

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

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

24. **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.

25. **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 Section, Subsection, 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 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 good 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 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 multiple 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:

Lisa Shealy
Legare Hay

Lisa Shealy
Legare Hay

Lisa Shealy
Barbara G Holmes

Lisa Shealy
Barbara G Holmes

GRANTOR:

Charlotte H. Tilton by [Signature]
Her attorney in fact

[Signature]
Solomon Legare Hay, III

Cynthia H. Johnson by [Signature]
Her attorney in fact

William Caldwell Hay by [Signature]
His attorney in fact

STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged this 10th day of November, 2008, 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.

[Signature]
(Signature of Notary)

Notary Public for the State of South Carolina

My commission expires: 9-12-17

WITNESSES:

Barbara G. Holmes
Lisa Shealy
Barbara G. Holmes
Lisa Shealy

GRANTEE:

LOWCOUNTRY OPEN LAND TRUST, INC.

By: [Signature]

Its: Secretary

And: [Signature]

Its: Treasurer

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Charleston)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged this 10th day of November, 2008, 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.

Nancy C. Dewitt
 (Signature of Notary)
 Notary Public for the State of South Carolina
 My commission expires: January 28, 2014

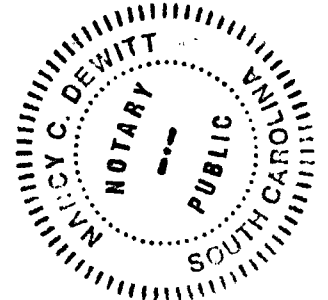


EXHIBIT A

Legal Description and Derivation of Protected Property

PARCEL I: All that piece, parcel or tract of land, situate, lying and being on Johns Island, Charleston County, South Carolina, shown and designated as "PART A OF TRACT 1 ZONED AG-8 CHARLOTTE H. TILTON, ET AL, TMS # 321-00-00-001, TMS 321-00-00-002, 2,880, 336 SQ. FT. (TOTAL), 66.12 AC. (TOTAL) NORTHERN PART OF HARRISON TRACT, SEE REFERENCE 6" on a plat by E.M. Seabrook, Jr., Inc., dated June 24, 2008, entitled "LEGAREVILLE AREA OF JOHNS ISLAND CHARLESTON COUNTY, S.C. PLAT OF A RESUBDIVISION OF TMS 321-00-00-001, 321-00-00-002 and TMS 321-00-00-003 CONTAINING 98.20 ACRES SHOWING PROPERTY LINE TO BE ABANDONED OWNED BY CHARLOTTE H. TILTON, SOLOMON L. HAY, III, CYNTHIA HAY JOHNSON AND WILLIAM CALDWELL HAY", said plat being recorded in the RMC office for Charleston County in Plat Book EL at page 663.

PARCEL II: All that piece, parcel or tract of land, situate, lying and being on Johns Island, Charleston County, South Carolina, shown and designated as "TRACT C-2, CHARLOTTE H. TILTON, ET AL, TMS #321-00-00-003, 1,397,291 SQ. FT., 32.08 AC." on a plat by E.M. Seabrook, Jr., Inc., dated June 24, 2008, entitled "LEGAREVILLE AREA OF JOHNS ISLAND CHARLESTON COUNTY, S.C. PLAT OF A RESUBDIVISION OF TMS 321-00-00-001, 321-00-00-002 and TMS 321-00-00-003 CONTAINING 98.20 ACRES SHOWING PROPERTY LINE TO BE ABANDONED OWNED BY CHARLOTTE H. TILTON, SOLOMON L. HAY, III, CYNTHIA HAY JOHNSON AND WILLIAM CALDWELL HAY", said plat being recorded in the RMC office for Charleston County in Plat Book EL at page 663.

Being a portion of the property conveyed to Charlotte Hay Tilton a/k/a Charlotte H. Tilton, Cynthia Hay Johnson a/k/a Cynthia Hay Keith, Solomon Legare Hay, III, and William Caldwell Hay by the following deeds: (1) Deed from Patricia Trezvant Jones Hay dated October 9, 2001, recorded in Book T384 at page 091 in the RMC office for Charleston County; and (2) Deed from Mary H. Hay dated August 31, 1987, recorded in Book M168 at page 235 in the RMC office for Charleston County.

TMS #s 321-00-00-002 & 321-00-00-003

Grantee's Address: 485 East Bay Street
Charleston, SC 29403

Exhibit B

RMC BK 0024 Pg 506 : pg 16



Legend

-  Easement Boundary
-  Abbapoola and Alligator Creeks Buffer (75 ft.)



Legareville 2006 Orthophotograph

0 125 250 500 750 1,000 Feet



Lowcountry Open Land Trust
485 East Bay Street
Charleston, SC 29403
(843) 577-6510

Map produced by LOLT. Please refer to legal description, surveys & Chas. Co. TMS #s 321-00-00-002 & 321-00-00-003 for more boundary details.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Date of Transfer of Title
Closing Date: 12-10-08

RMC BK 0024 Pg 506 : pg 17 *

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being restricted by a conservation easement given by Solomon Legare Hay III, et al. in favor of Lowcountry Open Land Trust, Inc. on December 10, 2008.
3. Check one of the following: The GRANT OF CONVERSATION EASEMENT is
 - (a) ☒ subject to the recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) ☐ EXEMPT from the deed recording fee because (EXEMPTION #)
(Explanation if required):
☐ (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$277,500.00
 - (b) ☐ The fee is computed on the fair market value of the realty which is \$_____
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____
5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$_____.
6. The Recording Fee is computed as follows:
 - (a) \$ 277,500.00 the amount listed in item 4 above.
 - (b) \$ 0.00 the amount listed in item 5 above (no amount place zero).
 - (c) \$ 277,500.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Attorney.
8. Check if Property other than Real Property is being transferred on this Deed.
 - (a) ☐ Mobile Home
 - (b) ☐ Other
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this
10th day of December, 2008

Patricia D. McCurdy (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/7/2016

Hagood & Kerr, PA

By: Elizabeth W. Settle
Elizabeth W. Settle, Attorney at Law

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



RMC Bk 0024 Pg 506 : pg 18 *

Filed By:

JOHN ROMANOSKY JR.

53 BROAD ST.

CHARLESTON SC 29401

RECORDED

Date: December 11, 2008

Time: 10:04:52 AM

Book

0024

Page

506

DocType

Conserv/Esmt

Charlie Lybrand, Register
Charleston County, SC

MAKER:

TILTON CHARLOTTE ETAL

of Pages: 18

RECIPIENT:

LOWCOUNTRY OPEN LAND TR

Note:

Recording Fee \$ 10.00

State Fee \$ 721.50

County Fee \$ 305.25

Extra Pages \$ 13.00

Postage \$ -

Chattel \$ -

TOTAL \$ 1,049.75

Original Book:

Original Page:

AUDITOR STAMP HERE

PID VERIFIED BY ASSESSOR

REP _____

DATE _____

Drawer Drawer 2

Clerk SLW



0024
Book



506
Page



12/11/2008
Recorded Date



18
Pgs



Original Book



Original Page



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