

STATE OF SOUTH CAROLINA )  
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COUNTY OF DORCHESTER )  
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COUNTY OF BERKELEY )

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT (hereinafter "Easement") is made this 15<sup>th</sup> day of July, 2016, by Lumber, Land & Timber, LLC (hereinafter "**Grantor**"), having an address at 4199 Hwy 165, Yorges Island, SC 29449, in favor of the Lowcountry Land Trust, Inc. (hereinafter "**Grantee**"), a South Carolina charitable corporation and a publicly supported corporation organized and operated under §501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code") and not a private foundation under Code §509, with a business address at 43 Wentworth Street, Charleston, SC 29401.

WHEREAS, **Grantor** is the sole owner in fee simple of certain real property known as "Cypress Swamp" containing approximately two hundred and forty nine (249) acres, TMS #s 192-00-00-026, 192-00-00-062, 192-00-00-024, in Berkeley County, South Carolina, and TMS #099-00-00-083.000 in Dorchester County, South Carolina, more particularly described in Exhibits "A" and "B" attached hereto and incorporated herein by this reference (hereinafter the "Protected Property"); and

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

WHEREAS, the South Carolina Conservation Bank (SCCB) was formed with a mission to "improve the quality of life in South Carolina through the conservation of significant natural resource lands, wetlands, historical properties, and archeological sites". The permanent protection of the Protected Property meets most of the SCCB objectives including "protect significant natural resource areas and wildlife habitats", "protect water quality", "maintain the State's forest lands", "protect and enhance the State's natural beauty", "preserve traditional uses such as hunting, fishing, and other types of outdoor recreation" and "to encourage cooperation and innovative partnerships among landowners, state agencies, municipalities, and non-profit organizations" and was approved by the SCCB Board for public funding to support its protection; and

WHEREAS, the Dorchester County Conservation Commission (DCCC) was formed with a mission to "conserve and preserve the County's significant natural and historic resources, with an emphasis on protecting water quality, farms and forests, wildlife habitat, scenic views, natural areas, and historic buildings/sites." The permanent protection of the Protected Property meets many of the DCCC criteria and was approved by Dorchester County for public funding to support its protections; and

WHEREAS, the Protected Property is located within a "Greenbelt" and within a "Restricted Rural Area" as designated in the Future Land Use Map of the 2008 Dorchester County Comprehensive Plan; thus, the restrictions and limitations set forth within this Easement for the Protected Property are pursuant to the foundations and goals set forth within the Comprehensive Plan; and

WHEREAS, the Protected Property is designated as a "Constrained Residential Growth" area in the 2010 Berkeley County Comprehensive Plan, an area that should remain rural in character and develop at low densities with high proportions of open space to conserve agricultural land, historically significant areas, and other natural features; thus, the restrictions and limitations set forth within this Easement for the Protected Property are pursuant to the goals, policies and strategies within the 2010 Berkeley County Comprehensive Plan, more specifically but not limited to "protection of agriculture and farmlands, including timberlands, from development pressures"; and

WHEREAS, the Protected Property is not located in very close proximity to other protected lands, but is in an area with further conservation potential, and sits just outside an "urban growth boundary" for the Charleston-Berkeley-Dorchester tri-county region surrounding the Charleston metropolitan area. This "urban growth boundary"



is consistent with the Berkeley County Principal Growth Area in the Berkeley County 2010 Comprehensive Plan, as well as the Dorchester Boundary Future Land Use designations in the Dorchester County 2008 Comprehensive Plan. The conservation of the Protected Property helps reinforce this "urban growth boundary" by becoming a link in the potential chain of conserved lands around the boundary. The "urban growth boundary" runs down Cypress Swamp and along a portion of the Ashley River. The closest protected properties are located approximately 15 miles downstream, and the Lowcountry Land Trust is focused on protecting properties within this corridor and continuing to reinforce the "urban growth boundary" around the Charleston metropolitan area; and

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

WHEREAS, the Protected Property lies primarily within the nearly 1.7 million acres of the Ashepoo, Combahee, and Edisto (ACE) Basin Focus Area (as delineated by the Atlantic Coast Joint Venture) featuring diverse ecosystems and a wealth of wildlife, all of which is the focus of a consortium of private landowners, conservation groups, and federal and state agencies, working to protect and enhance the region's natural resources and traditional agricultural and recreational uses; and

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

WHEREAS, the Protected Property is located on Cypress Swamp, which leads into the Ashley River and is within the South Carolina Coastal Watershed (as designated by US Environmental Protection Agency), and ultimately drains, into Charleston Harbor and the Atlantic Ocean; and

WHEREAS, the Protected Property is situated on and prominently visible by the public from Interstate 26, having approximately 2,000 feet of scenic frontage along both sides of the Interstate; and

WHEREAS, the Protected Property in its existing natural condition contributes very little, if any, nonpoint source pollution to the Cypress Swamp and Ashley River watersheds due to the amount and quality of vegetation present, the limited amount of impervious surface, and the presence of forested wetlands which function to improve water quality by providing for nutrient uptake and sediment deposition from runoff draining from upstream lands, and also provide many wildlife habitat components such as breeding grounds, nesting sites and other critical habitat for a variety of fish and wildlife species as well as the unique habitat requirements of many threatened and endangered plants and animals; and

WHEREAS, the Protected Property has a diversity of relatively natural habitats including forested wetlands and non-forested wetlands, as well as transitional zones to surrounding upland, all of which can support a variety of floral and faunal species; and

WHEREAS, the Protected Property provides a diversity, quality, and combination of natural habitats significant to wildlife habitat functions including feeding, nesting and roosting areas for migratory songbirds, ground-nesting birds and other avian species, and also including feeding, breeding and resting areas for native small and large game and non-game mammals, as well as amphibians and reptiles; and

WHEREAS, the Protected Property contains habitat with the potential to support threatened or endangered species and species of concern which have known or highly possible occurrences in Dorchester County or Berkeley County including but not limited to the Spotted turtle (*Clemmys guttata*), Star-nosed mole (*Condylura cristata*), Southeastern bat (*Myotis austroriparius*), Eastern woodrat (*Neotoma floridana floridana*), Black swamp snake (*Seminatrix antillarum*), Upland chorus frog (*Pseudacris feriarum*), Swallow-tailed kite (*Elanoides forficatus*), Swainson's warbler (*Limnothlypis swainsonii*), and Rafinesque's big-eared bat (*Corynorhinus rafinesquii*); and

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

WHEREAS, the specific Conservation Values, as detailed in the Recitals above and outlined in Paragraph 1 below, are summarized hereunder and documented in a report on file at the **Grantee's** office and incorporated herein by this reference (hereinafter the "Baseline Documentation"), which consists of maps, reports and photographs (including 2006 NAPP Photos, 2015 NAIP Photos and on-site photographs taken by a representative of the **Grantee**), and the parties agree that the Baseline Documentation provides, collectively, an accurate representation of the Protected Property at the time of this Easement and is intended to serve as an objective point of reference from which **Grantee** shall monitor and enforce compliance with the terms of this Easement; and

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

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

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

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

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

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

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

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

(II) Preservation of open space (including farmland and forest land) within the meaning of Code §170(h)(4)(A)(iii)(I) for the scenic enjoyment of the general public which will yield a significant public benefit, including the opportunities for scenic enjoyment and the public benefits described in the recitals to this Easement; and

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

WHEREAS, **Grantor** and **Grantee** agree these purposes can be accomplished by voluntarily placing perpetual restrictions upon the use of the Protected Property and by providing for the transfer from the **Grantor** to



the **Grantee** of affirmative rights for the protection of the Protected Property so as to be considered a "qualified conservation contribution" as such term is defined in Code §170(h) and the Treasury Regulations promulgated thereunder; and

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

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

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

- 1) Relatively natural habitat and biological diversity,
- 2) Preservation or enhancement of downstream water quality, in particular Cypress Swamp and Ashley River,
- 3) Scenic views of the Protected Property from Interstate 26.

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

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

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

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

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

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

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

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

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

**Agricultural Structure** shall be defined as any building designed to be used or currently used in conjunction with permitted **Agricultural Activities** or **Forest Management Practices**, 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 permitted through Discretionary Consent as described in Paragraph 9. The rationale for requiring the **Grantor** to receive **Approval** is to afford **Grantee** an adequate opportunity to evaluate the activities in question to confirm if they are designed and will be carried out in a manner that is not inconsistent with the Purpose of this Easement. **Approval** shall not be unreasonably withheld by the **Grantee**. **Approval** does not relieve **Grantor** of the obligation to obtain all other necessary permits, consents and approvals.

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

**Designated Building Area** shall be defined as those two (2) areas, each no larger than approximately fifteen (15) acres in size, designated for the siting of all **Impervious Surface** and structures (other than wildlife observation towers or boardwalks which are both permitted outside these areas), the location and configuration of which shall be at the **Grantor's** discretion.

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

**Forest Management Plan** shall be defined as a written plan subject to periodic updates, on file with the **Grantee** and agreed upon by both **Grantor** and **Grantee**, which outlines **Forest Management Practices** on the Protected Property. The **Forest Management Plan** shall be compatible with the terms of this Easement and shall not significantly impair or degrade any of the Conservation Values of the Protected Property at the property level.

**Forest Management Practices** shall be defined as the production, improvement and maintenance of forest lands to protect the Conservation Values of this Easement listed in Paragraph 1.

**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.