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Darlington County, SC
Scott B. Suggs Clerk of Court
BK 1048 PG 9468-9486

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this 15 day of May, 2007, by Segars Properties, a South Carolina general partnership and Albert L. Segars, Jr., Mary Segars, and Edward Kent Segars individually and as partners of Segars Properties (hereinafter referred to as "Grantors") in favor of the Black Creek Land Trust (hereinafter referred to as "Grantee"), a South Carolina charitable corporation and a publicly supported organization within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (hereinafter referred to as the "Code") and not a private foundation.

WHEREAS, the Grantors are the owners of a tract of land near the City of Hartsville, in Darlington County, South Carolina, containing approximately 533.88 acres, which tract is more particularly described on Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Protected Property");

WHEREAS, the Protected Property possesses prime agricultural soils;

WHEREAS, the Protected Property has approximately six miles of combined frontage along Beaverdam Creek and Black Creek, with both being high quality blackwater streams providing habitat for numerous aquatic species;

WHEREAS, the Protected Property has forested areas and wetlands which provide buffers along the said two creeks and which provide a relatively natural habitat for many species of native plants and animals;

WHEREAS, the Protected Property has scenic open space viewable by the general public from Highway 151 (a major four lane highway) and from Black Creek;

WHEREAS, the Protected Property has significant cultural and historical values to Darlington County because of the commercial and recreational activities which have occurred at the Segars Mill Pond site;

WHEREAS, the Protected Property is near to other important protected properties, including the Segars-McKinnon Heritage Preserve, Kalmia Gardens, and state and federal preserves;

WHEREAS, the purpose of this Conservation Easement is to protect the conservation values above enumerated in perpetuity, which conservation values are, or will be, documented in a report on file in the Grantee's office and incorporated herein by this reference (hereinafter referred to as the "Baseline Documentation Report"), which Report consists of maps, photographs, and reports and which Report Grantors and Grantee agree provides, or will provide, an accurate representation of the Protected Property at the time of this deed and which is intended to serve as an objective point of reference from which to monitor compliance with the terms of this deed;

This is a re-recording of instrument originally recorded 5/22/07, BK 1048, PP 7452-7470 to correct name of Mary Segars.

WHEREAS, Grantors believe that this Deed of Conservation Easement can result in the protection of the resources, habitat, beauty, historical and cultural resources, and unique ecological character of the Protected Property, while permitting private ownership and continued use and enjoyment of the Property by the Grantors and their descendants;

WHEREAS, the Grantors intend to preserve and protect the conservation values in perpetuity;

WHEREAS, the Grantors are willing to forego forever the right to exploit fully the financial potential of the Protected Property by encumbering the Protected Property with a conservation easement;

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;

WHEREAS, the preservation of open space (including farm and forest land) is recognized in the following governmental conservation policies:

A. The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. Section 4201, *et seq.*, whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to ensure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland";

B. South Carolina's right-to-farm law, as codified in S.C. Code Sections 46-45-10 to 70, which states in part "The policy of the State is to conserve, protect, and encourage the development and improvement of its agricultural land and facilities for the production of food and other agricultural products";

C. South Carolina Conservation Easement Act of 1991, S.C. Code Sections 27-8-10 to 80, the purposes of which include "ensuring the availability of real property for agricultural, forest, recreational, educational or open space use"; and

D. South Carolina's preferential tax laws for agricultural land, as found in S.C. Code Ann. Sections 12-43-220 to 260, as amended, provide for a preferential tax rate for agricultural land in order for it to remain in productive agricultural uses.

WHEREAS, Grantors and Grantee recognize the natural, scenic, historic and agricultural character of the Protected Property, and have the common purpose of the conservation and protection in perpetuity of the Protected Property as "open space (including farmland and forest land)" as that phrase is used in Section 170(h)(4)(A)(iii) of the Code and as a "relatively natural habitat" for many species of native plants and animals as that phrase is used in Section

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170(h)(4)(A)(ii) of the Code, and in the regulations promulgated thereunder by the United States Department of the Treasury (hereinafter "Treasury Regulations"). Grantors 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 Grantors 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 Section 170(h) of the Code 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 27-8-20(1) of the SC Code 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 Section 501(c)(3) of the Code and not a private foundation under Section 509 of the Code dedicated to the preservation of the irreplaceable natural and historical resources of the South Carolina landscape by protecting significant lands, waters and vistas;

NOW, THEREFORE, in consideration of the above, the sum of \$2,443,389.00, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Sections 170(h) and 2031(c) of the Code and the laws of the State of South Carolina, the Grantors hereby voluntarily grant and convey to Grantee, its successors and permitted assigns, a conservation easement in perpetuity and with respect to the Protected Property's nature and character and to the extent hereinafter set forth (hereinafter the "Easement"). Grantors herein declare 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.

- I. 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 the Grantors; 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.
- II. Rights of the Grantee. Grantors hereby convey the following rights to the Grantee:
- a. Rights 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;

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- b. Right to Monitor. To enter upon the Protected Property in a reasonable manner, and at reasonable times, and with reasonable notification, 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 Grantors, all subsequent owners or third persons from conducting any activity or use inconsistent with the Purposes;
- d. Right to Require Restoration. To require Grantors, all subsequent owners or third persons 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 Grantors 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 Sections 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 Section 501(c)(3) of the Code and Treasury Regulations promulgated thereunder.
 - iii. The activities will not diminish the Conservation Values.
 - iv. In no case shall the Grantee or Grantors have the right or power to agree to any activities that would result in the termination of this Easement.

III. Definitions. For the purposes of this Easement, Grantors and Grantee agree that those bold-faced terms that appear throughout Paragraph 5 shall be defined as follows:

Agricultural Activities shall be defined as activities directly related to the production and sale of plant or animal products produced on this Protected Property (including trees and timber) in a manner that preserves the long-term productivity of the Protected Property.

Agricultural Structure shall be defined as any building designed for 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 allow Grantors to undertake an activity otherwise prohibited by this Easement.

Feedlot shall be defined as any confined area or facility for feeding 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, which outlines **Forest Management Practices** on the Protected Property.

Forest Management Practices (FMP) shall be defined as the production, improvement and maintenance of forest lands for timber production, wildlife management, aesthetics or any other purpose. FMP include silviculture practices, which are used to control the establishment, growth, composition, health, quality and utilization of forestlands for multiple-use purposes, and may include thinning, reforestation or prescribed fire.

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 present under natural conditions prior to development. Impervious surfaces include but are not limited to roof tops, walkways, patios, driveways, parking lots or storage areas, some paving substances (such as concrete or asphalt), or other surfaces which similarly impede the natural infiltration of surface and storm water runoff.

Notice shall be defined as a written communication as defined in Paragraph XXI.

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

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

Waste Material shall be defined as municipal, commercial, or industrial sewage sludge or liquid generated from such sources, as well as hazardous or radioactive waste.

Wetland shall be defined as any area where the water table is above, at or near the surface of the land and has one of the following characteristics: 1) at least periodically, the land supports hydrophilic (water adapted) vegetation; 2) the substrate is predominantly undrained, hydric soil; or 3) the substrate is saturated with, or covered by, water for some time during the growing season of the average year.

IV. Reserved Rights and Responsibilities. Grantors reserve to themselves and to their personal representatives, heirs, successors, and assigns, all the rights, uses and activities (collectively, the “Reserved Rights”) inherent in fee simple ownership

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of the Protected Property, subject to the specific Restrictions and Limitations of Paragraph V below, which are included to accomplish the Purposes enumerated in Paragraph I. 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. Included among these rights and responsibilities are:

- a. Right to Privacy Grantors retain the right to privacy and the right to exclude any member of the public from trespassing on the Protected Property.
- b. Use of the Property Grantors retain the rights to use the Property for otherwise lawful and customary rural uses and enterprises or to permit others to use the Property for these purposes except as restricted or prohibited below.
- c. Hunting and Fishing. The Grantors retain the right to recreational use of the land including, but not limited to, hunting, trapping, or fishing by the Grantors and their families and guests and the further right to lease said recreational rights to third parties.

V. Prohibitions, Restrictions & Obligations. Grantors' uses of the Protected Property shall be subject to the prohibitions, restrictions, and conditions hereinbelow set forth:

- a. Agricultural Uses. **Agricultural activities** are restricted to the practices currently in use at the time of implementation, recommended by the Clemson Cooperative Extension Services, the US Natural Resources Conservation Services, or their successors or other entities mutually acceptable to the Grantors and Grantee. Grantors and Grantee recognize that changes in agricultural technologies, including accepted management practices, may result in an evolution of **Agricultural activities**. Such activities shall be permitted so long as it is consistent with the Conservation Purposes.
- b. Application of Waste Material: The land application, storage, and placement of **waste material** for agricultural purposes may be undertaken only in accordance with applicable law, in a manner consistent with this Easement, and after consultation with Grantee.
- c. Archaeological Digs. Any archaeological site shall, upon completion of any excavation, be returned to, or as close as possible to, its state at the time of the baseline survey, unless the site is to be maintained in an excavated condition for interpretive purposes related to education. All items located during archaeological digs must be preserved and retained on the Protected Property or contributed to a recognized and accredited

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museum or educational institution. The sale of artifacts from archaeological excavation is prohibited.

- d. Buffer. Along the edges of Black Creek and Beaverdam Creek, no cutting shall be allowed for fifty (50) feet from the center of said creeks and within the next fifty (50) feet clearcutting shall not be allowed nor shall the removal of the entire overstory of trees be allowed. Cutting within the second fifty feet shall be done upon notice to and in consultation with the Grantee.
- e. Commercial Uses. There shall be no commercial uses, activities or structures other than **Agricultural Activities** or certain recreational activity without the prior **Approval** by the Grantee. Commercial recreational activities which are compatible with the conservation purposes of this Easement, including but not limited to hunting, fishing, trapping, exhibits of plants or animals, study or observation of Nature, are permitted, except that the extent of these activities may not be more than "de minimis" as defined under Section 2031 (c)(8)(B) of the Code, nor impair the Conservation Values; provided, however, Grantors shall have the right to construct and operate a water powered grist mill to be located in the immediate vicinity of the spillway of the mill pond and to sell the products manufactured thereby.
- f. Feedlots. Permitted activities shall not include **Feedlots**, intensive livestock production facilities, nor any type of large scale operation where animals are confined in close quarters.
- g. Forestry Uses. Forestry Uses are limited to those **Forest Management Practices** defined in the **Forest Management Plan**, subject, however, to Subparagraph (d) above.
- h. Impervious Surfaces No **Impervious Surfaces** shall be installed or placed on the Protected Property with the exception that impervious surfaces shall be allowed on the three permitted subdivision tracts described below and in connection with the construction of a grist mill as provided in Subparagraph (e) above), and in connection with any permitted access roads to the said subdivision tracts and grist mill.
- i. Industrial Uses. There shall be no industrial uses, activities, or structures (except for a grist mill as provided in Subparagraph (e) above).
- j. Mining. Mining and recovery of any oil, gas, minerals, hydrocarbons, sand, clay, etc. are restricted to extraction methods in accordance with Section 170(h)(5)(b) of the Code and as permitted by Grantee. Surface mining shall be prohibited. Following any permitted mining activity, the site shall be returned to, or as closely as possible to, its previous state.

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- k. Recreational improvements such as hiking trails, wildlife observation towers, shooting stands, gazebos, and picnic sheds are permitted as long as the construction and placement of such structures do not adversely affect the conservation values. Under no circumstances shall there be constructed on the Protected Property athletic fields, golf courses or ranges, tracks for motorized vehicles, marinas, airstrips or helicopter pads.
- l. Refuse. No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, or radioactive, chemical, or hazardous waste, shall be placed, stored, or buried on the Protected Property.
- m. Roads. Roads shall be limited to those required to facilitate the uses permitted by this Easement, provided Grantors 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. Roads temporarily constructed or widened to allow for permitted **Forestry Management Practices** shall be allowed to return to their former size and state after this use.
- n. Services. Construction of water wells, septic systems, above ground fuel storage tank, underground gas storage tanks and utility services is limited to serve the allowed uses in Paragraph V subject to all applicable federal, state, and local laws and regulations.
- o. Signs. There shall be no permanent signs, billboards or other means of outdoor advertising on the property except with the approval of the Grantee; provided, however, that there shall be permitted:
- i. One (1) non-illuminated sign not to exceed eight (8) square feet indicating the name, use and/or ownership of the property.
- ii. Non-illuminated signs indicating aspects of historical or ecological significance of the Protected Property; standard signs to indicate "no trespassing" are permissible.
- iii. Signs advertising the Property for sale or rent.
- p. Maintenance of Millpond. Grantors shall have the right, at their sole expense and in consultation with the Grantee, to maintain the existing millpond, including the dam and spillway and to repair (or not repair), replace, etc. the same as may be necessary or advisable from time to time.
- q. Subdivision. Subdivision of the Protected Property is prohibited unless pursuant to the prior written consent of the Grantee after Grantee has determined that the subdivision is not detrimental to the conservation values of the Protected Property. Provided, however, subdivisions for the dwellings provided in Paragraph V(r) below shall be permitted.

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r. News Structures and Improvements. New buildings and other structures and improvements related to the existing agricultural enterprise and excluding structures for human habitation may be built with the advance prior written permission of Grantee. Grantee shall give such permission within a reasonable time, unless Grantee determines that the proposed building, structure, or improvement will diminish or impair the Conservation Values of the Property. Provided, however, three (3) additional single family residential dwellings may be constructed or placed on the Property. The land on which such dwellings may be placed shall not exceed one acre in size (not counting such access and utility easements as may be reasonably necessary). The location of said dwellings shall be determined in consultation with the Grantee. No manufactured homes shall be permitted. The sites for such residential structures may be subdivided from the Protected Property.

VI. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantors to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required, Grantors shall notify Grantee in writing not less than 30 days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement.

VII. Grantee's Approval. Where Grantee's approval is required Grantee shall grant or withhold its approval in writing within 60 days of receipt of Grantors' written request therefor. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

VIII. Enforcement. Grantee shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Deed. Grantee may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee shall immediately notify Grantors in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantors shall either (a) restore the Property to its condition prior to the violation or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. If the condition described in clause (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. When, in Grantee's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee may, at its discretion, take appropriate legal action. Grantors shall discontinue any activity which could increase or expand the alleged violation during the mediation process. Should

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mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may seek an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantors to restore the Property to its condition prior to the violation.

- IX. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in any action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee.
- X. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, 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 Grantors 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 Grantors shall impair such right or remedy or be construed as a waiver.
- XI. Extinguishment of Development Rights. Except as otherwise reserved to the Grantors in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property.
- XII. Acts Beyond Grantors' Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- XIII. Costs and Liabilities. Grantors retain 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. Grantors shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantors.
- XIV. Taxes. Grantors 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 Grantee with satisfactory evidence of payment upon request.

- XV. **Hold Harmless.** Grantors shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") 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: (1) 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 solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in Paragraph 9 herein; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this paragraph, hazardous or toxic substances shall mean any hazardous or toxic substance which is regulated under any federal, state or local law.
- XVI. **Extinguishment.** If future circumstances render all of the Purposes of this Conservation Easement impossible or impractical to accomplish, this Conservation Easement may be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction and only upon a finding that all of the Purposes of this Conservation Easement have become impossible or impractical to accomplish. In the event of a sale, exchange, or involuntary conversion of the property following such a judicial termination or extinguishment, any net proceeds arising from such sale, exchange, or involuntary conversion shall be apportioned and distributed as provided in Paragraph XVIII below. Grantee shall use all such proceeds it receives in a manner consistent with the Conservation Purposes of this Easement. This provision is not intended to violate the provision of Section 170(h)(2)(c) of the Code that requires Conservation Easements to be granted in perpetuity. In the event that there is a sale of timber following judicial extinguishment of the conservation easement or as a result of a condemnation or sale made under threat of condemnation, the net proceeds from the sale of timber from the fifty foot "no cut" Buffer Areas shall belong to the Grantee.
- XVII. **Condemnation.** If all or any portion of the Protected Property is taken by exercise, or threat of exercise, of the power of eminent domain, Grantor and Grantee shall be entitled to an apportionment and division of the net proceeds as provided in Paragraph XVIII below. Net Proceeds of any timber harvest in the fifty foot "no cut" Buffer Area shall belong exclusively to the Grantee. Grantee shall use all such proceeds it receives in a manner consistent with the Conservation Purposes of this Easement.
- XVIII. **Compensation Formula.** The parties hereby acknowledge that the donation of this Conservation Easement gives rise to a property right immediately vested in the Grantee, which for purposes of calculating proceeds from a sale or other disposition of the Protected Property as contemplated in this Paragraph shall have a value equal to a percentage (the "Proportionate Share") of the value of the Protected Property unencumbered by this Conservation Easement. The

Proportionate Share shall be determined by dividing the value of this Conservation Easement, calculated as of the date hereof, by the unencumbered value of the Protected Property, also calculated as of the date hereof. All values shall be those values as determined by the Grantor's qualified appraisal obtained for the purposes of complying with Treasury Regulation Section 1.170A-14. The Proportionate Share as so determined shall remain constant. In the event of a sale of the Protected Property following judicial extinguishment of the Conservation Easement or in the event that the Protected Property is taken by exercise, or threat of exercise, of the power of eminent domain, any net proceeds arising out of any sale, exchange, involuntary conversion, or condemnation (or sale under threat of condemnation) shall be apportioned and distributed between Grantor and Grantee as required under Treasury Regulation Section 1.170A-14(g)(c), with the Grantee's share of such net proceeds being known as its Proportionate Share as herein defined. Net Proceeds of any timber harvest in the fifty foot "no cut" Buffer Area shall belong exclusively to the Grantee.

XIX. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and (b) authorized to acquire and hold conservation easements under South Carolina law. As a condition of such transfer, Grantee shall require that the conservation purposes that this Easement is intended to advance continue to be carried out. Grantee shall have the right to assign its rights and obligations under this Easement to a different organization if Grantee ceases to exist or for any reason fails or refuses to enforce the terms and provisions of this Easement.

XX. Subsequent transfers. Grantors agree to incorporate the terms of this Easement in any deed or 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. Grantors further agree to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

XXI. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors: Albert L. Segars, Jr., Edward Kent Segars, Mary Segars Nance
528 Mill Pond Road
Hartsville, SC 29550

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To Grantee: Black Creek Land Trust
P. O. Box 647
Darlington, South Carolina 29540

or to such other address as either party from time to time shall designate by written notice to the other.

- XXII. Recording. Grantee shall record this instrument in timely fashion in the official records of Darlington County, South Carolina, and may re-record it at any time as may be required to preserve its rights in this Easement.
- XXIII. Grantors' Environmental Warranty. Grantors warrants that it has no actual knowledge of release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability or expense (including reasonable attorney's fees) arising from or with respect to any release of hazardous waste or violation of environmental laws.
- XXIV. Successors. Every provision of this Easement that applies to Grantors and Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and other successors in interest.
- XXV. Subsequent Liens on Property. No provisions of this Easement should be construed as impairing the ability of Grantors to use this Property as collateral for subsequent borrowing; provided that any such mortgages or other liens shall be subordinate to this Easement.
- XXVI. Subsequent Encumbrances. The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise or impair the Conservation Values of the Property is prohibited, except with the permission of Grantee.

XXVII. General Provisions.

- a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of South Carolina.
- 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. 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

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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 Agreement. 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.
- e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.
- f. Joint Obligation. The obligations imposed by this Easement upon Grantors shall be joint and several.
- g. Non-Merger. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Deed of Conservation Easement, unless the parties expressly state that they intend a merger of estates or interests to occur.
- h. Successors. 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 Property.
- i. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer. [Need to make clear that easement restriction runs with land.]
- j. 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.
- k. Amendment. If the circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantors and Grantee are free to jointly amend this instrument; provided that no amendment shall be allowed that will affect the qualifications of this instrument under any applicable laws. Any amendment must be consistent with the conservation purposes of this instrument and may not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of the County in which the Property is located.

AS
JOS
JA
MS
EJ

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantors and Grantee have executed this Deed of Conservation Easement on the day and year first above written.

WITNESS the following signatures and seals.

IN THE PRESENCE OF:

witness #1
witness #2
witness #3

[Signature]
Jennifer W. Truscha
As to Albert L. Segars, Jr.

[Signature]
Lea S. Saunders
As to Edward Kent Segars

[Signature]
Lea S. Segars
As to Mary Segars

witness #1
witness #2
witness #3

[Signature]
Jennifer W. Truscha
As to Albert L. Segars, Jr.

[Signature]
Lea S. Saunders
As to Edward Kent Segars

[Signature]
Lea S. Segars
As to Mary Segars

As
JSS
LB
M &
EAT

SEGARS PROPERTIES

BY [Signature] (SEAL)
Albert L. Segars, Jr.

BY [Signature] (SEAL)
Edward Kent Segars

BY [Signature] (SEAL)
Mary Segars

[Signature] (SEAL)
Albert L. Segars, Jr.

[Signature] (SEAL)
Edward Kent Segars

[Signature] (SEAL)
Mary Segars

IN THE PRESENCE OF:

Pam S. Buck
Laura S. Westbrook

BLACK CREEK LAND TRUST

BY Francine P. Beckman (SEAL)
Its President

ATTEST

[Signature] (SEAL)
Its Secretary

STATE OF SOUTH CAROLINA,

COUNTY OF BEAUFORT.

I, Jennifer W Frischen, do hereby certify that Albert L. Segars, Jr. as a partner of Segars Properties and individually personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this the 15th day of May, 2007.

Jennifer W Frischen (SEAL)
Notary Public for South Carolina
My commission expires: July 24, 2012

STATE OF SOUTH CAROLINA,

COUNTY OF DARLINGTON.

I, Albert L. James, IV, do hereby certify that Edward Kent Segars as a partner of Segars Properties and individually personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this the 15th day of May, 2007.

[Signature] (SEAL)
Notary Public for South Carolina
My commission expires: 3/29/11

AS
JLB
M
E

STATE OF SOUTH CAROLINA,

COUNTY OF DARLINGTON.

I, Albert L. James, III, do hereby certify that Mary Segars as a partner of Segars Properties and individually personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this the 15th day of May, 2007.

[Signature] (SEAL)
Notary Public for South Carolina
My commission expires: 3/29/11

STATE OF SOUTH CAROLINA,

COUNTY OF DARLINGTON.

I, Laura S. Westbrook, do hereby certify that Black Creek Land Trust by Francine P. Bachman as President and John Jay James, II as Secretary personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this the 16th day of May, 2007.

Laura S Westbrook (SEAL)
Notary Public for South Carolina
My commission expires: 4/20/10

ALS
JJD
LS
MS
EJS

Exhibit A

All of those three certain tracts of land designated as Tract 1, Tract 2 and Tract 3 on plat of survey prepared by Nesbitt Surveying Company, Inc. dated March 8, 2007. The said three tracts contain in aggregate 533.88 acres and have such shape, courses, distances and boundaries as are shown on the aforesaid plat of survey, a copy of which is recorded in Darlington County Plat Book 223 at page 09. According to the said survey the said three tracts are bounded generally as follows:

1. According to the said plat Tract 1 contains 202.11 acres is bounded on the North or Northwest in part by property of Lori H. Lynch, in part by property of Danny Ray Lynch, in part by property of Robert E. Lynch, in part by property of Gladys Muldrow, in part by Darlington County Tax Parcel 19-00-01-046, and in part by property of Kenny Segars; on the East or Northeast in part by property of Robert E. Lynch, in part by property of Gladys Muldrow, in part by Darlington County Tax Parcel 19-00-01-046, in part by the right of way Highway 151 and in part by property of Kenny Segars; on the South or Southeast in part by property of Robert E. Lynch, in part by property of Gladys Muldrow, in part by Darlington County Tax Parcel 19-00-01-046, in part by property of Kenny Segars, in part by property of Albert L. Segars, Jr., et al, in part by property of Colin Hungerpillar, in part by property of Linda D. Drayton, in part by property of Curry and Deborah Dawkins, in part by property of Howard Moore, in part by property of Jacqueline Segars, and in part by property of Wilma G. Berry; and on the West or Southwest by the run of Beaverdam Creek and by Darlington County Tax Parcel 20-00-01-034.
2. According to the said plat Tract 2 contains 329.88 acres and is bounded on the North in part by property of Darlington County (Tax Parcel 19-00-02-005) and in part by property of Carolina Power & Light Company; on the East by the run of Black Creek; on the Southeast by the right of way of New Market Road and by property of Carolina Power & Light Company; on the Southwest by property of Carolina Power & Light Company and by the right of way of Highway 151; and on the West by property of Lexus Development.
3. According to the said plat Tract 3 contains 1.89 acres and is bounded on the North by property of Don Destiato; on the East by property of Darlington County (Tax Parcel 19-00-02-005); on the South by the said property of Darlington County; and on the West by Darlington County Tax Parcel 18-00-02-026.

For a more particular description of the aforescribed Tract Nos. 1, 2 and 3 reference is made to the aforesaid plat.

The aforescribed properties are the same properties conveyed unto Segars Properties by deed of Mary Segars, Albert L. Segars, Jr. and Edward Kent Segars, with said deed being recorded March 7, 1985 in Darlington County Deed Book 884, at page 359 and being in part the same property conveyed unto Albert L. Segars, Jr., Edward Kent Segars and Mary Segars (then known as Mary S. Nance) by deed of Emily F. Segars, with said deed being recorded February 19, 1996 in Darlington County Deed Book D-121, at page 225.

The abovedescribed properties are Darlington County Tax Parcel Nos. 19-00-03-065 and ⁰²⁰~~19~~-00-03-013.

STATE OF SOUTH CAROLINA,
COUNTY OF DARLINGTON.

AFFIDAVIT

Date of Transfer of Title: May 15, 2007
Tax Map #0020-00-03-065

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 transferred **BY** Segars Properties, Albert L. Segars, Jr., Edward Kent Segars, and Mary Segars **TO** Black Creek Land Trust (conservation easement) **ON** May 15, 2007.
3. Check one of the following: **The DEED is**
 - (a) _____ subject to the deed 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) x **EXEMPT** from the deed recording fee because (Exemption # 8)
(Explanation if required) #12.
(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 \$ _____.
 - (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** x 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 **DEED** recording fee is computed as follows:
 - (a) _____ the amount listed in Item 4 above.
 - (b) _____ the amount listed in Item 5 above (no amount place zero).
 - (c) _____ 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. I understand that a person required to furnish this affidavit who wilfully 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 5th
day of May, 2007.

Jana S. Westbrook (SEAL)
Notary Public for South Carolina
My Commission Expires: 4/20/10

John Jay James, II
Grantor, Grantee, or Legal Representative
connected with this transaction

Print or Type Name Here
John Jay James, II