

STATE OF SOUTH CAROLINA
COUNTY OF _____

CONSERVATION EASEMENT
AND ACCEPTANCE

THIS INDENTURE, is made this _____ day of _____, 19____, by and between _____ ("Grantor(s)", of _____, South Carolina, and _____, ("Holder(s)", of _____, South Carolina.

WHEREAS, Grantor is the owner in fee simple of certain real property [*"real property" includes surface waters and wetlands, any interest in submerged lands, uplands, associated riparian/littoral rights*] located in _____ County, South Carolina, more particularly described [*description of tract must include: 1) acreage, and 2) reference the surveyed plat(s) required below*] ("Protected Property");

WHEREAS, Grantor desires to convey to the Holder a conservation easement placing certain limitations and affirmative obligations on the Protected Property for the protection of wetlands, scenic, resource, environmental, and other values, and in order that the Protected Property shall remain substantially in its natural condition forever;

WHEREAS, Holder is qualified to hold a conservation easement, and is either
(a) a governmental body empowered to hold an interest in real property under the laws of this State or the United States; or
(b) a charitable, not-for-profit or educational corporation, association, or trust [insert where entitled to Federal income tax deduction: , *qualified under § 501(c)(3) and § 170(h) of the Internal Revenue Code*], the purposes or powers of which include one or more of the purposes (a) - (e) listed below;

WHEREAS, the purposes of this Conservation Easement include, without limitation, one or more of the following:

- (a) retaining or protecting natural, scenic, or open-space aspects of real property;
- (b) ensuring the availability of real property for recreational, educational, or open-space use;
- (c) protecting natural resources;
- (d) maintaining or enhancing air or water quality;
- (e) preserving the historical, architectural, archaeological, or cultural aspects of real property;

WHEREAS, Grantor and Holder agree that third-party rights of enforcement shall be held by the U.S. Army Corps of Engineers, Charleston District and the S.C. Department of Health and Environmental Control ("Third-Parties," to include any successor agencies), and may be exercised through the appropriate enforcement agencies of the United States and the State of South Carolina, and that these rights are in addition to, and do not limit, the rights of enforcement under Department of the Army Permit No. _____, or any permit or certification issued by the Third-Parties;

[Insert for approved mitigation banks: WHEREAS, the Protected Property has been approved by the Third-Parties for use as a mitigation bank, to be known as _____ Mitigation Bank;]

WHEREAS, the term “natural condition” shall mean the condition of the Protected Property at the time of this grant, and shall be evidenced in part by a surveyed plat of the Protected Property showing all relevant property lines, all existing man-made improvements and features, and major, distinct natural features such as waters of the United States, shall be recorded in the RMC office for each county in which the Protected Property is situated prior to the recording of this Conservation Easement, and is recorded at [insert book and page references, county and date of recording]. The natural condition of the Protected Property may also be evidenced by:

- (a) a current aerial photograph of the Protected Property at an appropriate scale taken as close as possible to the date the donation is made;
- (b) on-site photographs taken at appropriate locations on the Protected Property, including of major natural features; *and*,
- (c) [etc. - insert any additional documentation which may be used to evidence the natural condition of the Protected Property]

NOW THEREFORE, for the foregoing consideration, and in further consideration of the restrictions, rights, and agreements herein, Grantor hereby conveys to Holder a conservation easement over the Protected Property consisting of the following:

A. RESTRICTIONS

These Restrictions shall run with the land and be binding on Grantor’s heirs, successors, administrators, assigns, lessees, or other occupiers and users, and are subject to the Reserved Rights which follow.

1. **General**. There shall be no filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials; and, no alteration of the topography in any manner.
2. **Waters and Wetlands**. In addition to the General restrictions above, there shall be no draining, dredging, damming or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters; and, no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended.
3. **Trees/Vegetation**. There shall be no clearing, burning, cutting or destroying of trees or vegetation, except as expressly authorized in the Reserved Rights; there shall be no planting or introduction of non-native or exotic species of trees or vegetation.
4. **Uses**. No agricultural, industrial, or commercial activity shall be undertaken or allowed.

5. **Structures.** There shall be no construction, erection, or placement of buildings, billboards, or any other structures, nor any additions to existing structures.
6. **New Roads.** There shall be no construction of new roads, trails or walkways without the prior written approval of the Holder and Third-Parties, including of the manner in which they are constructed.
7. **Utilities.** There shall be no construction or placement of utilities or related facilities without the prior written approval of Holder and Third-Parties.
8. **Pest Control.** There shall be no application of pesticides or biological controls, including for problem vegetation, without prior written approval from the Holder and Third-Parties.
9. **Other Prohibitions.** Any other use of, or activity on, the Protected Property which is or may become inconsistent with the purposes of this grant, the preservation of the Protected Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.
- [10. *Additional, case-specific restrictions may need to be inserted*]

B. GRANTOR'S RESERVED RIGHTS

Notwithstanding the foregoing Restrictions, Grantor reserves for Grantor, its heirs, successors, administrators, and assigns the following Reserved Rights, which may be exercised upon providing prior written notice to Holder and to Third-Parties, except where expressly provided otherwise:

1. **Landscape Management.** Landscaping by the Grantor to prevent severe erosion or damage to the Protected Property or portions thereof, or significant detriment to existing or permitted uses, is allowed, provided that such landscaping is generally consistent with preserving the natural condition of the Protected Property.
2. **Forest Management.** Harvesting and management of timber by Grantor is limited to the extent necessary to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects or infectious organisms. Such timber harvest and management shall be carried out in accordance with Best Management Practices approved by the South Carolina Forestry Commission or successor agency, as amended.
3. **Recreation.** Grantor reserves the right to engage in any outdoor, non-commercial recreational activities, including hunting (excluding planting or burning) and fishing, with cumulatively very small impacts, and which are consistent with the continuing natural condition of the Protected Property. No written notice required.
4. **Mineral Interests.** Grantor specifically reserves a qualified mineral interest (as defined in § 170(h)(6) of the Internal Revenue Code) in subsurface oil, gas or other minerals and the

right to access such minerals. However, there shall be no extraction or removal of, or exploration for, minerals by any surface mining method, nor by any method which results in subsidence or which otherwise interferes with the continuing natural condition of the Protected Property.

5. **Road Maintenance.** Grantor reserves the right to maintain existing roads, trails or walkways. Maintenance shall be limited to: removal or pruning of dead or hazardous vegetation; application of permeable materials (e.g., sand, gravel, crushed) necessary to correct or impede erosion; grading; replacement of culverts, water control structures, or bridges; and, maintenance of roadside ditches.

6. **Other Reserved Rights.** Grantor reserves the right to engage in all acts or uses not prohibited by the Restrictions, and which are not inconsistent with the conservation purposes of this grant, the preservation of the Protected Property substantially in its natural condition, and the protection of its environmental systems.

[Insert for approved mitigation banks: 7. Grantor reserves the sole and unrestricted right to sell credits or other entitlements or interests in the Protected Property in order to perfect and carry out the purpose of a mitigation bank.]

[8. Additional, case-specific reservations may be listed, e.g., fire or wildlife management plans.]

C. GENERAL PROVISIONS

The following General Provisions shall be binding upon, and inure to the benefit of, the Grantor, Holder and Third-Parties, and the heirs, successors, administrators, assigns, lessees, licensees and agents of each:

1. **Rights of Access and Entry.** Holder and Third-Parties shall have the right to enter and go upon the Protected Property for purposes of inspection, and to take actions necessary to verify compliance with the Restrictions. Holder shall also have the rights of visual access and view, and to enter and go upon the Protected Property for purposes of making scientific or educational observations and studies, and taking samples, in such a manner as will not disturb the quiet enjoyment of the Protected Property by Grantor. No right of access or entry by the general public to any portion of the Protected Property is conveyed by this Conservation Easement.

2. **Enforcement.** In the event of a breach of the Restrictions by Grantor or another party, the Holder or one of the Third-Parties must notify the Grantor in writing of the breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to swiftly correct the conditions constituting the breach. If the Grantor fails to take such corrective action within thirty (30) days, or fails to complete the necessary corrective action, the Holder and/or the Third-Parties may undertake such actions, including legal proceedings, as are necessary to effect such corrective action. Among other relief, Holder and/or Third-Parties shall be entitled to a complete restoration for any breach of the Restrictions. Breaches of General Provisions of this Conservation Easement shall be actionable without

notice. The costs of a breach, correction or restoration, including the Holder's expenses, court costs, and attorneys' fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of the Holder and/or Third-Parties, and no omission or delay in acting shall constitute a waiver of any enforcement right. These enforcement rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, or under any applicable permit or certification.

3. **Events Beyond Grantor's Control.** Nothing herein shall be construed to authorize the Holder or Third-Parties to institute any proceedings against Grantor for any changes to the Protected Property caused by acts of God or circumstances beyond the Grantor's control such as earthquake, fire, flood, storm, war, civil disturbance, strike, the unauthorized acts of third persons, or similar causes.

4. **Obligations of Ownership.** Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Protected Property. Grantor shall keep the Protected Property free of any liens or other encumbrances for obligations incurred by Grantor. Holder shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Protected Property, except as expressly provided herein. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits which may apply to the exercise of the Reserved Rights.

5. **Extinguishment.** In the event that changed conditions render impossible the continued use of the Protected Property for the conservation purposes, this Conservation Easement may only be extinguished, in whole or in part, by judicial proceeding.

6. **Eminent Domain.** Whenever all or part of the Protected Property is taken in the exercise of eminent domain so as to substantially abrogate the Restrictions imposed by this Conservation Easement, the Grantor and Holder shall join in appropriate actions at the time of such taking to recover the full value of the taking, and all incidental and direct damages due to the taking.

7. **Proceeds.** This Conservation Easement constitutes a real property interest immediately vested in Holder. In the event that all or a portion of this Protected Property is sold, exchanged, or involuntarily converted following an extinguishment or the exercise of eminent domain, Holder shall be entitled to the fair market value of this Conservation Easement. The parties stipulate that the fair market value of this Conservation Easement shall be determined by multiplying the fair market value of the Protected Property unencumbered by this Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of this easement at the time of this grant to the value of the Protected Property (without deduction for the value of this Conservation Easement) at the time of this grant. The values at the time of this grant shall be the values used, or which would have been used, to calculate a deduction for federal income tax purposes, pursuant to Section 170(h) of the Internal Revenue Code (whether eligible or ineligible for such a deduction). Holder shall use its share of the proceeds in a manner consistent with the purposes of this Conservation Easement.

8. **Notification.** Any notice, request for approval, or other communication required under this Conservation Easement shall be sent by registered or certified mail, postage prepaid, to the

following addresses (or such address as may be hereafter specified by notice pursuant to this paragraph):

To Grantor: _____ To Holder: _____

To Third-Parties: _____

9. **Assignment.** This Conservation Easement is transferable, but only to a qualified holder under S.C. Code Title 7, Chapter 8 [insert where entitled to Federal income tax deduction: *and § 170(h) of the Internal Revenue Code*]. As a condition of such transfer, the transferee shall agree to all of the restrictions, rights, and provisions herein, and to continue to carry out the purposes of this Conservation Easement. Assignments shall be accomplished by amendment of this Conservation Easement under paragraph 12.

10. **Failure of Holder.** If at any time Holder is unable or fails to enforce this Conservation Easement, or if Holder ceases to be a qualified holder under S.C. Code Title 27, Chapter 8 [insert where entitled to Federal income tax deduction: *and § 170(h) of the Internal Revenue Code*], and if within a reasonable period of time after the occurrence of one of these events the Holder fails to make an assignment pursuant to paragraph 9, then the Holder's interest shall become vested in another qualified holder in accordance with an appropriate (*e.g., cy pres*) proceeding in a court of competent jurisdiction.

11. **Subsequent Transfer.** Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument which transfers any interest in all or a portion of the Protected Property. Grantor agrees to provide written notice of such transfer at least thirty (30) days prior to the date of transfer. The failure of Grantor to comply with this paragraph shall not impair the validity or enforceability of this Conservation Easement.

12. **Amendment.** This Conservation Easement may be amended, but only in a writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Holder under any applicable laws, including S.C. Code Title 27, Chapter 8 [insert where entitled to Federal income tax deduction: *and § 170(h) of the Internal Revenue Code*], and is consistent with the conservation purposes of this grant.

13. **Severability.** Should any separable part of this Conservation Easement be found void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.

14. **Warranty.** Grantor warrants that it owns the Protected Property in fee simple, and that Grantor either owns all interests in the Protected Property which may be impaired by the granting of this Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Protected Property which have not been expressly

subordinated to this Conservation Easement. Grantor further warrants that Holder shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

IN WITNESS WHEREOF, Grantor and Holder have executed this Conservation Easement, and the Third-Parties have approved this Conservation Easement, on the date written above. By its execution and acceptance of this Conservation Easement, Holder accepts the third-party rights of enforcement herein.

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**Execution by Grantor**

IN THE PRESENCE OF: [Name of GRANTOR]

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Its: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

**PROBATE**

**COUNTY OF \_\_\_\_\_**

PERSONALLY appeared before me \_\_\_\_\_, the undersigned witness, and made oath that he/she saw the within named \_\_\_\_\_ [by \_\_\_\_\_, its \_\_\_\_\_,] sign, seal and as his/her/its act and deed, deliver the within named Conservation Easement; and that he/she with the other witness named above witnessed the execution thereof.

\_\_\_\_\_  
*[type name of witness under signature line]*

SWORN to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: \_\_\_\_\_

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Execution by Holder

IN THE PRESENCE OF: [Name of HOLDER]

_____ By: _____

_____ Its: _____

ATTEST:

By: _____

Its: _____

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF _____

PERSONALLY appeared before me _____, the undersigned witness, and made oath that he/she saw the within named _____ [, by _____ , *its* _____ ,] sign, seal and as its act and deed, deliver the within named Conservation Easement; and that he/she with the other witness named above witnessed the execution thereof.

[*type name of witness under signature line*]

SWORN to and subscribed before me
this ____ day of _____ , 19____.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

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**Approval by Third-Party**

U.S. Army Corps of Engineers,  
Charleston District,

By: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF SOUTH CAROLINA**

**PROBATE**

**COUNTY OF** \_\_\_\_\_

PERSONALLY appeared before me \_\_\_\_\_, the undersigned witness, and made oath that he/she saw the within named \_\_\_\_\_ [, by \_\_\_\_\_ , *its* \_\_\_\_\_ ,] sign, seal and as his/her/its act and deed, deliver the within named Conservation Easement; and that he/she with the other witness named above witnessed the execution thereof.

\_\_\_\_\_  
[*type name of witness under signature line*]

SWORN to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_ , 19\_\_\_\_.

\_\_\_\_\_

NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: \_\_\_\_\_

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Approval by Third-Party

S.C. Department of Health and
Environmental Control

By: _____

Title: _____

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF _____

PERSONALLY appeared before me _____, the undersigned witness, and made oath that *he/she* saw the within named _____ [, *by* _____ , *its* _____ ,] sign, seal and as *his/her/its* act and deed, deliver the within named Conservation Easement; and that *he/she* with the other witness named above witnessed the execution thereof.

[*type name of witness under signature line*]

SWORN to and subscribed before me
this ____ day of _____, 19____.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____