



Recording Date: 09/22/2011

Instrument: 19

Book: 8017 Page: 199-220

FILED-RECORDED
RMC / ROD

2011 Sep 22 AM 10:49:27

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 27.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds



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DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
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FILED/RECORDED
September 22, 2011
DORCHESTER COUNTY
REGISTER OF DEEDS

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

21' THIS GRANT OF CONSERVATION EASEMENT is made this 13th day of September 2011, by the Eric Zellner Revocable Trust (hereinafter "**Grantor**"), having an address of 295 O'Sullivan Lane Lane, Summerville, SC 29485, in favor of Lord Berkeley Conservation Trust (hereinafter "**Grantee**") of 223 E. Main Street, Moncks Corner, SC 29461.

WHEREAS, **Grantor** is the sole owner in fee simple of The Laurels a historic site of certain real property containing approximately One Hundred and Seven and eleven one hundredths (107.11) acres, in Dorchester County, South Carolina, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference identified the hereinafter as the "Protected Property" on the attached Baseline Document; and

WHEREAS, the Protected Property is located in close proximity to other conservation easements held by conservation oriented groups and helps to form a significant conservation area on Ashley River that protects the rural nature and ecological values of the community.

WHEREAS, the Protected Property is situated on Ashley River and prominently visible by the public from Ashley River, having over one half (½) mile of River frontage providing scenic views of forest, open fields, wetlands, and River and river views; and

WHEREAS, the Protected Property has a diversity of relatively natural habitats including evergreen upland forest, forested and non-forested wetlands including vast expanses of intact River bottoms, mixed upland forest, upland planted pine, open fields and open water, all of which can support a variety of floral and faunal species; and

WHEREAS, the Protected Property contains forested and non-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.

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, colonial shorebirds, and waterfowl, and also including feeding, breeding and resting areas for native small and large game and non-game mammals; and

WHEREAS, Ashley River has been recognized as one of the most historical areas in the Southeastern United States by virtue of designating a State Scenic Highway and the protection of land adjacent and buffering its shores, such as the protected property is the most effective way to ensure scenic integrity is protected.

1 Lord Berkeley Conservation Trust
223 East Main Street Suite B
Moncks Corner, SC 29461

WHEREAS, in particular, the Protected Property in its existing relatively natural condition contributes very little nonpoint source pollution to the adjacent Rivers and waterways due to the marsh wetlands surrounding all watercourses 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 is included in the Ashley River Historic Corridor which is on the National Register of Historic Places kept by the United States Secretary of the Interior, and

WHEREAS the protected property is adjacent to and provides a scenic buffer to Colonial Dorchester State Historic Site and the development of the protected property would forever mar the historic interpretation of the Historic Site owned by the People of South Carolina

WHEREAS, the Protected Property possesses significant ecological and natural resources, water quality protection, open space and scenic value, and historic or cultural values (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, 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, Grantors 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, Grantors intend to preserve and protect the Conservation Values in perpetuity; and

WHEREAS, Grantors are 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, **Grantors** 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 “an historically important land area or a certified historic structure” as that phrase is used in Code §170(h)(4)(A)(iv) 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 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 Piedmont 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 **Grantors** 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”). **Grantors** 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 **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.

2. **Rights of Grantee.** Grantors hereby convey 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. In addition, Owner hereby grants and conveys unto Trust, its successors and assigns, the easement and right of Trust and its agents to enter upon and inspect the Property, with access over and across the Property if necessary, for compliance with this Conservation Easement at any time and from time to time, provided that Owner is first given notice of any such visit, at least seven (7) days in advance, except in cases of suspected or known violations of this Conservation Easement.

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

(D) **Right to Require Restoration.** To require Grantors 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 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 §§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 Grantors 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, Grantors 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, raising cattle for sale, animal husbandry, mariculture, raising and harvesting

of shellfish, 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 or any type of large-scale operation where animals are confined.

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 **Grantors** 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 **Grantors** 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, weather vanes, and solar panels.

Feedlot shall be defined as any confined area or facility for feeding animals within which the land is not grazed or cropped at least annually (except small pens and corrals for temporarily holding and feeding individual or small groups of animals), 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 **Grantors** and **Grantee**, which outlines **Forest Management Practices** on the Protected Property.

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.

Grantors 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 storm water 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 a **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 a written policy of the 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 Piedmont, not including any structure used as a permanent or temporary dwelling for human beings.

Residential Structure shall be defined as **Main Houses** and **Secondary Houses**.

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 (shall be designated by Grantee in the Baseline Documentation).

Significant Tree shall be defined as any hardwood tree having a diameter at breast height of sixteen (16) inches or greater.

Subdivided Tract shall be defined as a separate transferable parcel of land having a unique identity according to Dorchester 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 on Protected Property. There shall be no limitations on the property outside that area referred to as the Protected Property on the baseline documentation. Within the Protected Property, Grantor reserves all the rights, uses and activities (collectively, the "Reserved Rights") inherent in fee simple ownership, including but in no way limited to those rights specifically expressed in subparagraphs A through K of this paragraph, 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.

(A) Fences. Grantors has the right to maintain, repair, and/or replace fences on the Protected Property, and the right to construct, maintain, repair and replace fences around Subdivided Tracts, provided that such construction, maintenance, repair, and/or replacement does not violate the Purpose of this Easement.

(B) Hunting, Fishing, and Shooting Sports. Grantors retains the right for Grantors, Grantors' family members, partners, invitees, licensees, and lessees to hunt and fish on the Protected Property (including those that lease or purchase hunting and/or fishing rights seasonally); the right to construct, maintain, repair, replace, and relocate duck blinds, deer and turkey stands, gates, and wildlife observation platforms; the right of Grantors, Grantors' family members, partners, invitees, licensees, and lessees to participate in shooting sports thereon;

(C) Leases. Grantors retains the right to lease or grant other less-than-fee interests in all or a portion of the Protected Property for any use permitted to the Grantors under this Easement, with income therefrom reserved to Grantors, provided that such lease or other interest is consistent with and subject to the terms of this Easement and is not of a nature or terms as to constitute an impermissible subdivision of the Protected Property.

(D) Landfill. Grantors retain the right to have a landfill not to exceed an aggregate one (1) acre, for the dumping of refuse and garbage generated solely and exclusively by activities on the Protected Property. Such disposal of refuse and garbage shall be conducted in a reasonably sanitary manner, provided that there shall be no dumping or deposit of toxic or hazardous substances or wastes. The location and design of the landfills shall be subject to Grantee's prior written approval, and such approval shall not be unreasonably withheld. This right is limited to the extent required for the interests conveyed by this Easement to qualify as a qualified conservation contribution under the Code.

(E) Agriculture; Animal Husbandry. Grantors retains the right to engage in not-for-profit and for-profit agricultural, farming and aquacultural activities provided the same is conducted in a manner consistent with the Purpose of this Easement, and the right to locate, construct, and maintain watering facilities and ponds. Permitted agricultural activity must be consistent with the maintenance and enhancement of soil composition, structure, and

productivity, and may not result in pollution or degradation of any waters or have a detrimental effect upon fish or wildlife, their natural habitat, or upon the natural ecosystem and its process. The Grantors retains the right to place and encumber the property with agricultural easements as may be necessary from time to time to meet its agricultural objectives. The Grantors reserves the right to participate in any conservation-directed agricultural contracts, programs, or leases offered by any private entity or governmental entity – including, but not limited to, the United States Department of Agriculture, the United States Department of Interior, the State, or any branch thereof – and to enter into the Conservation Reserve Program, Wetlands Reserve Program, or any other state or federal program existing now, or created in the future, for any activity or use permitted in this Easement. The right to engage in for-profit and not-for-profit raising and marketing of cows, horses and other domesticated animals on the Protected Property, provided, the same is conducted in a manner consistent with the Purpose of this Easement.

(F) Agrichemicals. Grantors retains the right to use agrichemicals, including, but not limited to, fertilizers, biocides, herbicides, and rodenticides, but only in those amounts and with that frequency of application constituting the minimum necessary to accomplish reasonable agricultural and residential activities permitted by the terms of this Easement and in accordance with label instructions. Notwithstanding the foregoing sentence, no use of agrichemicals will be made if such use would result in (i) unlawful contamination of any source of water or (ii) any significant impairment of any natural ecosystem or process on the Protected Property.

(G) Borrow Pits. Grantors retains the right to have two (2) borrow pits, not to exceed an aggregate of three (3) acres, to provide required fill material for non-commercial use solely and exclusively on the Protected Property, such as for repairing roads, and not for the purpose of resale. This right, and any right to extract or remove minerals, is limited to the extent required under Section 170(h) (5) (B) of the Code for the interest conveyed by this Easement to qualify as a qualified conservation contribution.

(H) Paths and Trails. Grantors retains the right to construct and maintain footpaths, equestrian trails, boardwalks, tent camping sites and wildlife observations platforms, along with appropriate signage for education, directions or safety.

(I) Campsites. Grantors retains the right to construct educational and recreational group camping sites, platforms, tents and canvas or similar material walled structures.

(J) Ecological Research. Grantors retains the right to install forest or other ecological research equipment, experimental areas, perform studies in wetlands, pine plantations and natural or planted forests of hardwood or mixed species that could include, but is not limited to, weed control, fertilization, installation of weather stations, installation of towers for raising instrumentation above the canopy, and excavation of root systems.

(K) Consistent Uses. Grantors have the right to engage in any an all acts or uses not expressly prohibited herein that are not inconsistent with the Purposes of this Easement.

5. **Restrictions and Limitations.** Grantors 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 one (1) tract. The Protected Property may not be subdivided.

(B) **Structural Limitations.** The construction, enlargement and replacement of **Residential Structures** and all other structures are subject to the following limitations:

I. **No Outbuilding, or Agricultural Structure** shall exceed forty (40) feet in **Building Height**.

II. **No Residential Structures** shall be constructed on the Protected Property.

III. **Related Outbuildings and Agricultural Structures** shall be permitted, on the Protected Property.

IV. No structure on the Protected Property shall be used as a temporary or permanent dwelling for human beings.

V. **Docks.** (b) **Grantors** may construct one (1) dock providing access to Ashley River, provided that the location and the design of such dock is approved by the Grantee and the South Carolina State Park Service in order to ensure the view shed of Colonial Dorchester State Historic Site is protected.

Neither **Grantors** nor **Grantors'** 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 Ashley River or a tributary of the River, except as expressly permitted, herein.

VII. **Towers.** There shall be no towers on the Protected Property.

Notwithstanding the above, **Grantors** retains the right to construct, maintain, and improve wildlife observation towers (and/or shooting range towers) not to exceed twenty-five (25) feet in height.

(C) **Buffers.** Buffer Area(s), as shown in Exhibit "B" which shall be signed by all Parties, which shall be subject to the following restrictions:

Buffer. In order to provide an aesthetic and ecological transition zone between permitted structures and waterways, there shall be no **Impervious Surface**, structures (other than fencing and gates, permitted docks or boat ramp), nor new roads on that

portion of the Protected Property within one hundred (100) feet of Ashley River, and its tributaries, provided that pine trees may be removed by the Grantor, and hardwood trees may only be removed in accordance with South Carolina Best Management Practices.

Notwithstanding the above, Grantors reserves the right to cut any tree, in accordance with applicable county, state, and federal regulations, when it is necessary to salvage timber damaged by natural causes, when cutting is necessary to prevent further such damage or personal injury, or when a permitted structure is in danger.

(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, other than home-based business, Agricultural Activity and those uses specifically permitted under this Section 5, 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.

(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.

(G) 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 except as may be required by governmental authority. Maintenance of roads and roadside ditches shall be limited to standard practices for non-paved roads. One Access may be provided to Ashley River Road to allow for access to the Protected Property and other properties owned by grantor at the time of this conservation easement.

(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 placed so as to minimally impact the scenic view as seen from any public roadway or waterway.

(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, it's 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, except for sale of items of a financial nature, such as coins or gold or silver bars or other forms of current or historical legal tender.

(K) Forestry Uses. Forestry Uses are limited to those **Forest Management Practices** defined in the **Forest Management Plan** that follow Best Management Practices as promulgated by the South Carolina Forestry Commission. Notwithstanding the above, **Grantors** reserves the right to cut any tree, in accordance with applicable county, state, and federal regulations, when it is necessary to salvage timber damaged by natural causes, when cutting is necessary to prevent further such damage or personal injury, or when a permitted structure is in danger.

(L) Agricultural Uses. **Agricultural Activities** are restricted to the scientifically based practices, currently in use at the time of the implementation of such activities, recommended by the South Carolina Cooperative Extension Service, the United States Natural Resources Conservation Service, their successors or other entities. **Grantors** 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) Pond(s). Enlargement of existing Pond(s) and construction of new Pond(s) shall be limited in size to one (1) acres in the aggregate, and shall be in compliance with all applicable local, state and federal statutes and regulations. The 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(Q) Mining and Paragraph 5(F) Commercial Uses. All proposed activities must comply with the Purposes as outlined in Paragraph 1.

(N) Impoundment(s). **Grantors** 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 all applicable local, state and federal statutes and regulations. Impoundments are recognized by the **Grantors** and **Grantee** as beneficial to waterfowl and other wetland dependent plants and animals.

(O) Mining. Mining and recovery of any oil, gas or minerals is permitted, provided, they are restricted to extraction methods in accordance with Code §170(h) (5) (B) prohibiting surface mining and the requirement that, following the mining activity, the site is returned to, or as closely as possible to, it's previous state.

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

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

6. Third Party Activities. The **Grantors** 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 **Grantors** 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 Grantors are in violation of the terms of this Easement or that a violation is threatened, the Grantee shall notify the Grantors 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 Grantors 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 Grantors 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 Grantors 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 Grantors' 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 but reasonable 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 Grantors 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. Grantors 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 Grantors, including without limitation, costs of suit and reasonable attorneys' fees, and any reasonable costs of restoration necessitated by Grantors' violation of the terms of this Easement,

shall be borne by **Grantors**. If **Grantors** prevails in any action to enforce the terms of this Easement, any costs incurred by **Grantors**, including **Grantors**' 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 **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.

10. **Grantors' Environmental Warranty.** The **Grantors** 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 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 Protected Property resulting from causes beyond **Grantors'** control, including, without limitation, trespass by third parties, fire, hurricane, 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 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.** **Grantors** 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. **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 **Grantors**, 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, **Grantors** 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.

15. 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, **Grantors** 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. **Grantors** and **Grantee** agree to a reasonable consideration of any such proposed amendment, however, neither **Grantors** nor **Grantee** shall be bound to agree to any amendment. Any such amendment shall be recorded in the official land records of Dorchester County, South Carolina.

16. 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 another like minded conservation organization. The **Grantee** shall not assign this Easement to a governmental entity without the prior written consent of the **Grantors** except as provided in this paragraph.

17. **Transfers.** Grantors agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which Grantors transfers any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. The Grantors 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 Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

18. **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 or leasehold interests in such Protected Property other than the sale of timber or timber rights, and hunting leases 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. There is specifically excepted from this requirement a first transfer of any interest or leasehold interest in the Property and any interfamily transfers. The payments as required under this provision are to begin with the second transfer of any interest or leasehold interest.

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, and copies of deeds or other such evidence. Any transfer subsequent to the conveyance of this Easement without consideration or to a spouse, a lineal ancestor, a lineal descendant, a spouse of a lineal ancestor or lineal descendent (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.

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 Grantors:
 Eric or Diana Zellner
 295 O'Sullivan Lane
 Summerville, SC 29485

If to Grantee:
 Lord Berkeley Conservatio Trust
 P.O. Box 918
 Moncks Corner, SC 29408

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 Dorchester 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.** Grantors and Grantee intend that the restrictions arising hereunder take effect on the day and year this Easement is recorded in the RMC Office for Dorchester 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. **Liens.** At the time of conveyance of this Easement, the Property is subject to a Mortgage or Deed of Trust, the holder of which has agreed, by separate instrument, a copy of which is attached hereto as Exhibit ___, to subordinate its rights in the Property to the extent necessary to permit the Trust to enforce the purposes of this Easement in perpetuity and to prevent any

modification or extinguishment of this Easement Deed by the exercise of any rights of the Deed of Trust holder. No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided however, that all subsequent liens shall be subservient to the conditions of this easement.

26. Baseline Documentation. Grantee acknowledges, by its acceptance of the Easement, that Grantors' historical and present uses of the Property are compatible with the Purposes of the Easement. To establish a present condition of the Conservation Values so as to be able to properly monitor future uses of the Property and insure compliance with the terms hereof, Grantee has prepared or caused to be prepared the Baseline Documentation. The Baseline Documentation shall be used to assist in establishing the condition of the Property as of the date of this Easement. The Baseline Documentation shall be appended to this Conservation Easement by re-recording the Conservation Easement along with the Baseline Documentation attached as Exhibit "B". The Grantee reserves the right to supplement and record notice of the supplemental Baseline Documentation prior to January 1, 2011. Grantors and Grantee acknowledge and agree that in the event a controversy arises with respect to the nature and extent of Grantors' historical and present use of the physical condition of the Property subject to the Easement as of the date hereof, the parties may look beyond the Baseline Documentation, if necessary, to other relevant or material documents, surveys, reports, and other evidence showing conditions at the time of execution of this Easement to assist in the resolution of the controversy.

27. 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.

GRANTORS HEREBY WARRANTS and represents that, except for land lying below the mean high water mark, as to which title is not warranted, the Grantors are 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, Grantors and Grantee have set their hands to multiple duplicate original copies of this Easement under seal on the day and year first above written.

WITNESSES:

GRANTORS:

Gary C. LeCroy

Eric Zellner
Land Owner

Bryan J. Jones

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF BERKELEY)

The foregoing instrument was acknowledged this 13 day of September, 2011, before me the undersigned Notary, and I do hereby certify that the above named Eric Zellner personally appeared before me and acknowledged the due execution of the foregoing instrument.

Roseann Bishop
(Signature of Notary)

Notary Public for the State of South Carolina

My commission expires: March 29, 2021

WITNESSES:

GRANTEE:

Gary C. LeRoy
[Signature]

By: J. Paul Hine
 Lord Berkeley Conservation Trust
 Its: President

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
 COUNTY OF BERKELEY)

The foregoing instrument was acknowledged this 13 day of September, 2011, 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.

Roseann Bishop (Signature of Notary)
 Notary Public for the State of South Carolina
 My commission expires: March 29, 2021

EXHIBIT A**Property Description**

That One Hundred and Seven and eleven one hundredths (107.11) acres as indentified in the attached plat as "Conservation Easement Area" dated June 6, 2011 and labeled "Map Showing A Conservation Easement" prepared for Eric and Diana Zellner located on Ashley River Road in Dorchester County, South Carolina.

This being a portion of all that certain piece, parcel or tract of land known as "The Laurels" lying being and situate on the northeastern side of Ashley River Road (being S.C. Highway #61 and having a 66' Right of Way), near the city of Summerville, in Dorchester County, South Carolina, being described as T.M.S. No. 161-00-00-018 and containing 277.038 acres according to a boundary survey by Frank D. Baker, SCPLS #16807 of General Engineering dated December 20,2000 and being more particularly described to said plat.

DERIVATION: Deed from The Laurels Limited Partnership to Mary Anna Sullivan, Shannon Abigail S. Massalon, Susan S. Collins and Mary Beth S. Benedict dated May 16, 2000 and recorded May 19, 2000, in Book 2428, page 203, Dorchester County, South Carolina Public Records.

Dorchester County Tax Map No 161-00-00-018

