

15  
2.1 PG  
Holland

## CONSERVATION AGREEMENT

THIS GRANT OF EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, hereinafter referred to as the "Easement" made this 22th day of December in the year of our Lord Two Thousand Three (2003).

BETWEEN, BULL POINT LLC, a South Carolina limited liability company, having an address of P. O. 2419, Beaufort, South Carolina 29901, party of the first part, hereinafter called "Grantor",

AND

THE PALMETTO CONSERVATION FOUNDATION, a corporation of the State of South Carolina qualified to do business in South Carolina, party of the second part, having an address of 1314 Lincoln Street, Suite 213, Columbia, South Carolina 29201-3154, hereinafter called "Grantee",

### WITNESSETH;

WHEREAS, Grantor is the owner of certain tracts of ground located in Beaufort County, State of South Carolina, containing 5.90 acres of land, more or less, which includes the following four (4) easement parcels:

- A. BULL POINT PARK, containing 2.09 acres, more or less,
- B. MAGNOLIA ISLAND, containing 2.6 acres, more or less,
- C. HUSPAH LANDING, containing 0.75 acres.
- D. CEMETERY, containing .46 acres

BEAUFORT COUNTY SC - ROD

BK 01889 PGS 2334-2348

FILE NUM 2003100588

12/24/2003 12:14:11 PM

REC'D BY P. GREENE ROTH 208544

RECORDING FEES 21.00

WHEREAS, the parcel areas are shown on and described on Exhibit A attached hereto and incorporated herein hereinafter called the "Property";

WHEREAS, the Property possesses natural, scenic, open space, agricultural, historic, forest, and water resource values (collectively, "Conservation Values") worthy of conservation protection and of great importance to the Grantor and the people of Beaufort County and the people of South Carolina; and

WHEREAS, such Conservation Values are briefly described below and are more specifically documented in a natural resources inventory dated December 22, 2003, on file at the office of Grantee and incorporated by this reference ("Baseline Documentation") which consists of reports, maps, photographs, and other documentation that Grantor and Grantee agree provides an accurate representation of the Property at the time of this Easement and which will serve as an objective information baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, the building on Parcel "A" consists of a 19th century structure recognized as being of such historic significance as to be preserved in its present restored state; and

WHEREAS, the Property's open space consist of approximately five (5) acres of woodland; and

WHEREAS, the Property includes high water table soils, wetlands, and 1,380 feet on Huspah Creek; and

WHEREAS, a botanical survey of the Property's identified plant species and maritime live oaks in the age range of 400 years, which is designated as rare and uncommon in Beaufort County, South Carolina;

and

WHEREAS, the woodlands, creek corridor, and wetlands on the Property constitutes a relatively natural ecosystem in a substantially undisturbed state, harboring a diversity of plants and animals in a broad range of habitats for a property of its size; and

WHEREAS, preservation of the Property in accordance with the County's Comprehensive Plan which states goals and purposes of preserving and protecting open space, sensitive natural resources and features, and historic structures; and

WHEREAS, the Property is in close proximity of other lands permanently protected by conservation easements with other non-profit or governmental organizations, and preservation of the Properties will result in an expanded area of protected open space; and

WHEREAS, the preservation of the property furthers a policy of waterfront conservation established by the South Carolina Department of Parks, Recreation and Tourism as promoted in the 2002 S.C. Outdoor Recreation Plan and the guidelines for Land and Water Conservation Funding.

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by this Easement in perpetuity, and that the continuation of current land uses including, without limitation, residential and agricultural uses existing at the time of this Easement, shall not be permitted to impair or interfere with those values; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

WHEREAS, Grantee is a publicly-supported, tax-exempt non-profit organization, qualified under Section 501(c)3 and 170(h) of the Internal Revenue Code, whose primary purpose is the identification, preservation, management, and research of natural, historic, and scenic resources, with particular emphasis on the protection and management of water resources; and

WHEREAS, Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property from soil erosion, water pollution, and other man-induced disturbance for the benefit of this generation and generations to come.

NOW THEREFORE, for and in consideration of the above and the mutual covenants, terms, conditions, restrictions, and promises herein contained, and pursuant to the law of State of South Carolina, and in particular Sections 27-8-10, *et seq.*, and for the further consideration of the sum of Five Dollars (\$5.00), lawful money of the United States of America, in hand paid by Grantee to Grantor, the receipt of which is hereby acknowledged, Grantor, intending to be legally bound, hereby voluntarily, unconditionally and absolutely grants and conveys unto Grantee, its successors and assigns, an Easement in Gross and a Declaration of Restrictive Covenants, in perpetuity, over the Property of the nature and character and to the extent hereinafter set forth.

# 1. PURPOSE

It is the purpose of this Easement to assure that the Property will be retained forever in its natural, scenic, historical, open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those involving outdoor community recreation and education as are not inconsistent with the purpose of this Easement. Grantee hereby accepts the Easement and agrees to hold it exclusively for such purpose.

# 2. RIGHTS OF GRANTEE

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- (a) To preserve and protect the Conservation Values of the Property;
- (b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement; provided that, except in case where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

# 3. PROHIBITED OR RESTRICTED USES

Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following restrictions are hereby imposed and shall apply forever to the use and enjoyment of the Property:

A. Commercial and Industrial Uses. No industrial or commercial activities shall be conducted or permitted on the Property:

B. Signs. No signs, billboards, or outdoor advertising structures shall be placed, erected, or maintained on the Property other than a reasonable number of signs, each of which shall not to exceed eight (8) square feet, for the following purposes:

- (i) To advertise or regulate on-site activities permitted or not prohibited by this Easement; and
- (ii) To post the Property to control unauthorized entry or use.

Provided, however, this sub-paragraph B shall not limit the right of Grantee to display on the Property, at its discretion, such signs as it may customarily use to identify lands under conservation easement to Grantee and the terms of such easement.

C. Quarrying and Excavation. No quarrying, excavation, depositing, or removal of rocks, minerals, gravel, sand, soil, or other similar materials from the Property shall occur, except in connection with an activity or construction permitted herein.

D. Groundwater. No mining or removal of groundwater from the Property shall occur, except as may be required to serve agricultural, horticultural, and residential uses permitted by this Easement.

E. Dumping. No dumping, depositing, or abandoning, discharging, or release of any gaseous, liquid, or solid wastes, junk, or debris (specifically including hazardous or toxic materials) of whatever nature on, in, over, or under the ground or into surface or ground water of the Property shall occur, except as permitted by law and only for the following purposes:

- (i) Sanitary sewage effluent from Improvements existing in the Property at the time of this Easement;
- (ii) Sanitary sewage effluent from structures or Improvements permitted hereunder;

F. Tree Cutting. No cutting or removal of trees and/or woodland under-story vegetation within woodlands except under the following conditions:

- (i) To cut and remove, without prior notice to Grantee, nonnative invasive species, such as Ailanthus, Norway maple, multi-flora rose, or oriental bittersweet, and trees or under-story vegetation which are dead, diseased, or dangerous;
- (ii) To cut and remove trees and under-story vegetation, with the prior approval of Grantee, for the clearing and maintenance of a reasonable number of pervious trails; and
- (iii) To cut and remove trees and under-story vegetation for other purposes after the prior review and written approval of Grantee.

#### 4. RESERVED RIGHTS

Grantor reserves to themselves, and to their personal representative, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing and subject to the prior written approval of Grantee, the following rights are expressly reserved:

A. Existing Improvements. To repair, remodel, reconstruct, remove, replace, effect reasonable additions to and maintain the Improvements now existing on the Property and identified as the following:

(i) **William Bull Park**

- 1. To designate and install additional safe parking with pervious surfaces on the Park with the ability to construct outside oyster roast facilities and other barbeque facilities..

(ii) **Huspah Landing**

- 1. To install shed for storage of boat safety equipment.

B. Permitted Additional Non-residential Improvements. To construct, repair, remodel, reconstruct, remove, replace, effect reasonable additions to, and maintain the following additional non-residential Improvements on the Property, in addition to the existing Improvements identified in paragraphs 4. A. above:

- (i) Accessory Structures;
- (ii) Recreational Facilities;
- (iii) Utilities; and
- (iv) Fences.

## 5. REQUIREMENTS FOR GRANTEE APPROVAL OF IMPROVEMENTS

A. Improvements. A plan of any proposed Improvement permitted under paragraph 4, with the exception of fences, shall be submitted to Grantee for review and written approval prior to the construction of said Improvement on the Property. Such plan shall include, where applicable:

- (i) Architectural drawings and maps showing the proposed Improvement's location, Height, dimensions, floor plan, and Gross Floor Area;
- (ii) The location and a written narrative of all sewage and stormwater management facilities and erosion control measures;
- (iii) Existing elevation contours and any proposed changes in grade;
- (iv) Existing vegetation and any proposed vegetation removal and the location of any required landscaping; and
- (v) The location of carbonate geologic areas and any carbonate features based upon field surveys and/or published data, including by way of example, but not limited to sinkholes, ghost lakes, depressions, pinnacles, fissures, lineaments, faults, springs, surface or subsurface streams.

Grantee reserves the right to request additional information and/or studies and testing of the carbonate geology as it may deem reasonably necessary to adequately review and assess the proposed Improvement and its potential hazardous impact upon the carbonate geology.

B. Landscape Requirements. Grantee may require Grantor to submit for review and written approval a landscape plan, which when implemented, will reduce the visual impact of any proposed Improvement permitted under paragraph 4 herein, upon the scenic character of the landscape from public roadways. Landscaping measures need not completely conceal the Improvement, but should serve to break up its visual mass during both summer and winter. A variety of native plant species shall be used predominately. The baseline documentation includes an Environmental Landscape Design of William Bull Park dated April 30, 2003 which should be installed in the future.

## 6. SUBDIVISION OF PROPERTY

A. Subdivision Approval. No subdivision and/or residential development of the Property shall occur.

## 7. GRANTOR'S DUTY TO NOTIFY

Grantor, prior to performing or permitting any construction or activity described in Paragraph 4 or 5 in this Easement which requires prior written approval of Grantee, hereby agrees to submit to Grantee, for review and approval, the required information in writing. Grantee agrees in such cases to review Grantor's proposal and to acknowledge, execute, and deliver to Grantor a written instrument granting approval or stating the reason for denial within ninety (90) days of receipt of such written request and the required information from Grantor. In the event that Grantee fails to respond to Grantor's written request within ninety (90) days, approval shall be deemed granted on the ninetieth (90th) day after submission of the request, so long as the activity in question is not contrary to any express restriction in the Easement. Following approval of the proposal, Grantor, their successors and assigns, shall have five (5) years from the date of approval to complete approved actions. If the construction of a previously approved Improvement is not completed within five (5) years, Grantor must re-submit the request to Grantee, for review and approval, according to the procedures described herein.

## 8. DISCRETIONARY CONSENT AND AMENDMENTS

Grantee recognizes that circumstances could arise which could justify the modification or waiver of certain prohibitions or restrictions contained in this Easement. To this end, Grantee shall have the right, in its sole discretion, to temporarily waive a restriction or permit an activity restricted or prohibited herein, and Grantee and Grantor shall mutually have the right, in their sole discretion, to agree to amendments to this Easement. Any such waiver or amendment must be consistent with the Purpose of this Easement and shall not result in an increase in the number of Residences permitted herein. Grantee shall have no right or power to agree to any waiver or amendment of this Easement or permit any activity restricted or prohibited by this Easement that would result in this Easement failing to qualify as a valid conservation easement under Section 170(h) of the Internal Revenue Code of 1986, as amended, (hereinafter the "Code"), or to allow any residential, commercial or industrial Improvements or any commercial or industrial activities not provided for by this Easement.

## 9. NOTICE

All notices, consents, approvals, or other communication hereunder shall be in writing and shall be deemed properly given if either served personally, sent by a nationally recognized overnight carrier, or sent by first class mail, postage prepaid, and addressed to the appropriate party or successor in interest at the addresses listed at the beginning of this Easement or to such other address as either party from time to time shall designate by written notice to the other.

## 10. PROHIBITION OF PUBLIC ACCESS

Nothing herein shall be construed as a grant to the general public, or to a person or persons other than Grantee, of the right to enter upon any part of the Property. Grantor reserves unto themselves and their successors in title to the Property, all rights, privileges, powers, and immunities, including the right of exclusive possession and enjoyment, subject only to the terms and covenants of this Easement.

Grantor, at his sole discretion, may allow the use of property for educational, recreational, charitable and other civic purposes.

## 11. GRANTEE'S REMEDIES

A. Notice of Violations; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, whether by Grantor or by a third party, Grantee shall notify Grantor in writing of such violation and demand corrective action sufficient to cure the violation. Where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, the Grantor shall restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

B. Injunctive Relief. If Grantor fails to cure the violation within thirty (30) days after receipt of such notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails 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, and to require the restoration of the Property to the condition that existed prior to any such injury.

C. Damages. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

D. Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstance require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this paragraph 12 without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. Scope of Relief. Grantee's rights under this paragraph 12 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph 12.B., 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 necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies under this paragraph 12 shall be cumulative and shall be in addition to all remedies now or hereinafter existing at law or in equity.

F. Cost of Enforcement. All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, staff administrative costs, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs.

G. Forbearance. Forbearance by Grantee to exercise its right under this Easement in the event of any breach of any term of this Easement by Grantors or a third party shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

H. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

I. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from cause beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

## 12. COSTS, LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

A. Costs, Legal Requirements, and Liabilities. Grantor retains 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 liability insurance coverage. Grantor remains solely

responsible for obtaining any applicable governmental permits and approvals for any construction, subdivision, or other activity or use permitted by this Easement, and all such construction, subdivision, or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

B. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever descriptions 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.

C. Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of their knowledge:

(i) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, other than licensed agricultural chemicals, exists or has been released, generated, treated, stored, used, disposed of, deposited abandoned, or transported in, on, from, or across the Property;

(ii) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property.

D. Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

E. Control. Nothing in this Easement shall be construed to giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Responses, Compensation, and Liability Act of 1980, as amended, ("CERCLA"). Grantee shall be under no obligation to pay taxes or assessments on or due for the Property.

F. Hold Harmless. Grantor, and each subsequent owner of the Property, hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and their heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liability, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgements, 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 violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulations, or requirements, including, without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, or any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement



as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soils, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties.

### 13. CHANGE IN ECONOMIC CONDITION

The fact that any use of the Property that is expressly prohibited by the terms of this Easement may become more economically valuable than uses permitted by the terms of this Easement, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by this Easement, has been considered by Grantor in granting this Easement. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor, their successors or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

### 14. STIPULATED VALUE OF GRANTEE'S INTEREST

A. Grantor acknowledges that this Easement constitutes a real property interest in the Property immediately vested in Grantee, and that such interest has a fair market value. For purposes of allocating net proceeds in an extinguishment of all or part of this Easement pursuant to paragraph 16 below, the share of Grantee's interest shall not be less than the percentage that the fair market value of this Easement on the date hereof bears to the fair market value of the Property prior to considering the effects of this Easement (hereinafter called the "Easement Percentage").

The values for calculating the Easement Percentage shall be based upon a Qualified Appraisal, as defined in 26 C.F.R. 1.170 A-13(c)(3), obtained by Grantor for federal income tax purposes. Upon receipt of such Qualified Appraisal, Grantor shall provide a copy of the Qualified Appraisal to Grantee. In the event that Grantor does not claim a charitable gift deduction and, therefore, does not obtain a Qualified Appraisal, the Easement Percentage shall be twenty (20%) percent.

B. Grantor and Grantee, and any successors in interests, shall exhaust all reasonable legal remedies in order to preserve and protect the purpose of this Easement. Grantor shall cooperate with Grantee in Grantee's performance of its obligations.

C. In the event that all or part of this Easement is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the conservation goals imposed by this Easement, Grantor and Grantee shall join in appropriate action at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All reasonable expenses incurred by Grantor and Grantee in an effort to prevent a taking or in an effort to recover the full value of a taking shall be shared on an equal basis out of any recovered proceeds except in the event that (i) Grantor and Grantee agree in writing to an alternative means for sharing such expenses, or (ii) all or part of this Easement is extinguished as a result of a judicial proceeding brought by or on behalf of Grantor which, in that event, then all expenses shall be paid by Grantor.

## 15. EXTINGUISHMENT OF EASEMENT AND DISTRIBUTION OF NET PROCEEDS

A. In the event that all or part of the property interests subject to this Easement are involuntarily extinguished by (i) an action in eminent domain, (ii) other judicial proceedings, or (iii) settlement is reached between Grantor, Grantee, and condemner under threat of condemnation, and Grantor joins with Grantee. Grantee's share of any proceeds recovered from any compensation in eminent domain or judicial proceedings or from the first lawful sale of the Property, after the restrictions within this Easement have been extinguished, shall equal the Easement Percentage, provided that a larger percentage has not been stipulated by agreement between Grantee and Grantor.

B. In the event that all or part of the property interests subject to this Easement are extinguished by (i) an action in eminent domain, (ii) other judicial proceedings, or (iii) settlement is reached between Grantor, Grantee, and condemner under threat of condemnation, where such action is brought by or on behalf of Grantor or where Grantor does not join with Grantee. The value of the interests so taken shall be determined by an Qualified Appraisal performed at the time of the extinguishment. The net proceeds recovered from any compensation in eminent domain or judicial proceedings or from the first lawful sale of the Property after the restrictions within this Easement have been extinguished, shall be distributed between Grantor and Grantee in accordance with the findings of a Qualified Appraisal by a Qualified Appraiser, as defined in 26 C.F.R. 1.170 A-13(c)(5), of the interests taken. Provided, however, that in no event shall Grantee's share of said net proceeds be less than the Easement Percentage.

C. Grantee shall use its share of any net proceeds recovered, as described in this paragraph 16, exclusively for the protection or acquisition of interests in land for conservation purposes, which are exemplified by this grant.

## 16. SUCCESSORS IN INTEREST

Except where the context requires otherwise, the term "Grantor" and "Grantee", as used in this instrument, and any pronouns used in place thereof, shall mean and include, respectively, Grantor and its personal representatives, heirs, successors in title, and assigns, and Grantee and its successors and assigns.

## 17. SUBSEQUENT TRANSFERS

Grantor hereby agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or any portion of the Property, including, without limitation, any leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

## 18. STATEMENT OF COMPLIANCE

Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including a written statement of compliance, which certifies, to the best of Grantee's knowledge, that Grantor is in compliance with any obligation of Grantor contained in this Easement or otherwise, or that Grantor is not in compliance with the terms and conditions of this Easement, stating what violations of this Easement exist. Such statement of compliance shall be

limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantee's expense, within thirty (30) days of receipt of Grantor's written request therefor.

#### 19. LIMITATION OF GRANTOR LIABILITY

Grantor, and each subsequent owner of the Property, shall have no personal liability for the observance or performance of the covenants and obligations of Grantor hereunder after such party has conveyed his, her, its, or their interest in the Property, provided that the provisions of paragraphs 18 and 19, above, have been fulfilled and all obligations thereunder discharged.

#### 20. FAILURE OF GRANTEE TO ENFORCE

If at any time any organization, agency, or person having rights or duties hereunder as Grantee shall fail to enforce the restrictions set forth in this Easement, Grantor shall have the right to bring suit against Grantee for specific performance.

#### 21. TRANSFER OF GRANTEE'S INTEREST

A. Grantee and its successors and assigns shall have the right to assign either wholly or partially its right, title, and interest hereunder only to an organization able to enforce the restrictions contained herein which has purposes similar to those of Grantee, and which encompasses the purposes set forth in this Easement. Such an organization must at the time of the assignment be a qualified organization within the meaning of Section 170(h)(3) of the Code, and one which is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code. Any transfer or assignment of benefits by Grantee, its successors or assigns, must require the transferee or assignee to carry out the purpose of this Easement.

B. In the event Grantee shall cease to exist or to be a qualified organization as described in subparagraph 22.A., above, its rights and duties hereunder shall become vested in and fall upon one of the following named entities, or such other qualified organization as may then be determined, to the extent such entity shall evidence acceptance of and agree to fully enforce same.

C. Upon the occurrence of any transfer or assignment of this Easement, Grantee shall also transfer to the transferee or assignee the original amount of any endowment funds received by Grantee from Grantor to support Grantee's obligation to monitor and enforce of this Easement, and the transferee shall hold such funds for such purposes and be subject to the provisions of this subparagraph 22.C.

#### 22. INTENT OF CONTRIBUTION

It is intended that this Easement shall constitute a "Qualified Conservation Contribution" within the meaning of Section 170(h)(1) of the Code and the provisions hereof shall be construed and applied accordingly.

#### 23. EASEMENT IN PERPETUITY

The provisions hereof shall inure to and be binding upon the heirs, executors, administrators, devisees, successors, and assigns, as the case may be, of the parties hereto and shall be covenants running with the land in perpetuity.

## 24. SEVERABILITY

This Easement shall be construed in its entirety, however, in the event that 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, and 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.

## 25. GOVERNMENTAL REGULATIONS

The provisions set forth in this Easement is are over, above, and in addition to those set forth in any ordinances, regulations, or laws of Beaufort County, State of South Carolina, and the United States, and any agencies or authorities thereof, and the most restrictive provision, whether it be by this Easement or by a government ordinance, regulation, or law, shall control.

## 26. ACKNOWLEDGEMENTS

A. Grantor has received and fully reviewed the Baseline Documentation and attests that it is a true, correct and complete summary of the Conservation Values of the Property and is an accurate representation of the Property as of the date of this Easement.

B. Grantor attests that they are the sole owner of the Property and that the Property is not subject to a mortgage or lien as of the date of this Easement.

IN WITNESS WHEREOF, and again stating their intention to be legally bound hereby, the said parties have hereunto set their hands and respective seals on the day and year first above written.

Bayle S. Reese  
WITNESS  
Augy R. W. Smith  
WITNESS

GRANTOR: BULL POINT, LLC

By: Stancel E. Kirbland, Sr.  
Managing Member

Bayle S. Reese  
WITNESS  
Augy R. W. Smith  
WITNESS

GRANTEE:  
THE PALMETTO CONSERVATION  
FOUNDATION

By: Herbert C. Dugg

GIVEN under my hand and seal of office, the day and year aforesaid.

Robert L. Wolmig  
Notary Public

My Commission expires: 12-20-10

STATE OF SOUTH CAROLINA     )  
                                                   ) ss.  
 COUNTY OF RICHLAND         )

BE IT REMEMBERED that on this 22th day of December, 2003, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Kenneth C. Driggers, Executive Director of The Palmetto Conservation Foundation a corporation existing under the laws of the State of South Carolina, party to this Agreement, and acknowledge this Indenture to be his act and deed and the act and deed of said corporation; that the signature of the Executive Director thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by the Board of Directors of said corporation.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Betty L. Welton  
 Notary Public

My Commission expires: 12-20-10

**DESCRIPTION OF PROPERTY****Tract A****Magnolia Island**

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in Sheldon Township, Garden's Corner, Beaufort County, near Beaufort, South Carolina, and being shown

**Tract B****William Bull Park**

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in Sheldon Township, Garden's Corner, Beaufort County, near Beaufort, South Carolina, and being shown as Tree and Topographical Survey for William Bull Park, dated December 16, 2003, prepared by Andrews Engineering Company, Inc., containing 2.093 acres and also shown on plat prepared by David Gasque, R.L.S., dated November 8, 1995, last revised August 28, 2000 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on September 5, 2000 in Plat Book 75 at Page 180. Said plat being incorporated herein and made a part hereof by reference for a more complete description.

**Tract C****Cemetery Lot – Lot 67**

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Sheldon Township, Garden's Corner, Beaufort County, near Beaufort, South Carolina, and being shown on a plat prepared by Gasque & Associates, Inc. dated September 23, 1999 containing .28 acres (cemetery) and .74 (open space/boat ramp).

**Tract D****Boat Ramp**

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Sheldon Township, Garden's Corner, Beaufort County, near Beaufort, South Carolina, and being shown on a plat prepared by Gasque & Associates, Inc. dated September 23, 1999 containing .28 acres (cemetery) and .74 (open space/boat ramp).