

35.00 Bmsm

BOOK 973 PAGE 175

*See 3.5  
Prohibition  
V. mining  
+  
OK Carat*

THE PROVISIONS OF THIS DECLARATION ARE  
SUBJECT TO ARBITRATION PURSUANT TO  
SOUTH CAROLINA UNIFORM ARBITRATION ACT

**DEED OF CONSERVATION EASEMENT  
FOR SOUTH MULBERRY PLANTATION  
BERKELEY COUNTY, S.C.**

Grantor: S. Parker Gilbert and Gail A. Gilbert

Grantee: The Lord Berkeley Conservation Trust

90511.0

FILED-RECORDED  
Dec 3 3 38 PM '95  
REC'D  
BERK  
SOS

|      |   |    |
|------|---|----|
| 6.2  | Public Access .....   | 11 |
| 6.3  | Transfers .....   | 11 |
| 6.4  | Grantee Approvals .....   | 12 |
| 6.5  | Notice of Breach .....  | 12 |
| 6.6  | Severability .....  | 12 |
| 6.7  | Perpetuity .....  | 12 |
| 6.8  | Assignment in Connection with Transfer of Title of the Property. .... | 12 |
| 6.9  | Assignment by Grantee .....   | 13 |
| 6.10 | Percentage Interest of Grantee, .....                                 | 14 |
| 6.11 | Judicial Extinguishment, .....  | 14 |
| 6.12 | Eminent Domain, .....   | 14 |
| 6.13 | Arbitration, .....  | 15 |
| 6.14 | Enforcement Rights, .....   | 15 |
| 6.15 | Amendments, .....   | 16 |
| 6.16 | Warranty of Title, .....  | 16 |
| 6.17 | Controlling Law, .....  | 17 |
| 6.18 | Liberal Construction, .....   | 17 |
| 6.19 | Severability, .....   | 17 |
| 6.20 | Entire Agreement, .....   | 17 |
| 6.21 | Successors, .....   | 17 |
| 6.22 | Notices, .....  | 17 |
| 6.23 | Filing, .....   | 18 |
| 6.24 | Habendum Clause, .....  | 18 |
| 6.25 | Counterparts, .....   | 18 |

Exhibits:

|           |                          |
|-----------|--------------------------|
| Exhibit A | Legal Description        |
| Exhibit B | Forest Management Policy |

TABLE OF CONTENTS  
SOUTH MULBERRY CONSERVATION EASEMENT

|      |  |    |
|------|--|----|
| 1.   | PURPOSE .....  | 4  |
| 2.   | RIGHTS OF GRANTEE .....                                | 4  |
| 2.1  | Inconsistent Activity .....                            | 4  |
| 2.2  | Right of Entry .....                                   | 4  |
| 3.   | GRANTEE'S AFFIRMATIVE COVENANTS AND RESTRICTIONS ..... | 5  |
| 3.1  | Uses .....   | 5  |
| 3.2  | Structures .....                                       | 5  |
| 3.3  | Roads .....  | 5  |
| 3.4  | Subdivision .....                                      | 5  |
| 3.5  | Topography and Minerals .....                          | 5  |
| 3.6  | Refuse and USTs .....                                  | 6  |
| 3.7  | Wetlands .....   | 6  |
| 3.8  | Advertising .....                                      | 6  |
| 3.9  | Timber .....   | 6  |
| 3.10 | Exotics .....  | 6  |
| 3.11 | Use Inconsistent with Purpose .....                    | 6  |
| 4.   | RESERVED RIGHTS .....                                  | 7  |
| 4.1  | Consistent Uses .....                                  | 7  |
| 4.2  | Structures .....                                       | 7  |
| 4.3  | Roads .....  | 7  |
| 4.4  | Wells and Septic Fields .....                          | 8  |
| 4.5  | Docks .....  | 8  |
| 4.6  | Landfill and Borrow Pit .....                          | 8  |
| 4.7  | Impoundments and Ponds .....                           | 9  |
| 4.8  | Timber Harvesting .....                                | 9  |
| 4.9  | Agriculture and Related Activities .....               | 9  |
| 4.10 | Utilities .....  | 10 |
| 4.11 | Posting Property .....                                 | 10 |
| 4.12 | Clearing and Vegetation .....                          | 10 |
| 4.13 | Easements .....  | 10 |
| 4.14 | Leases .....   | 11 |
| 5.   | EFFECTIVE DATE .....                                   | 11 |
| 6.   | GENERAL COVENANTS .....                                | 11 |
| 6.1  | Cost of Ownership .....                                | 11 |

THE PROVISIONS OF THIS DECLARATION ARE  
SUBJECT TO ARBITRATION PURSUANT TO  
SOUTH CAROLINA UNIFORM ARBITRATION ACT

**DEED OF CONSERVATION EASEMENT**  
**(FOR SOUTH MULBERRY PLANTATION, BERKELEY COUNTY, S.C.)**

THIS GRANT DEED OF CONSERVATION EASEMENT is made as of the 27<sup>th</sup> day of November, 1996 by S. PARKER GILBERT and GAIL A. GILBERT (the "Grantor") whose address is 61 Foster Crossing, South Hampton, New York 11968, in favor of THE LORD BERKELEY CONSERVATION TRUST ("Grantee"), a non-profit charitable corporation incorporated under the laws of South Carolina, whose address is 204 W. Main Street, Moncks Corner, SC 29431.

WHEREAS, Grantor is the sole owner in fee simple of certain unencumbered real property on the Cooper River, in Berkeley County, South Carolina, known as South Mulberry Plantation, consisting of 675.8 acres of highland and 225 acres of ricefields, more or less, more particularly described in Exhibit A attached hereto and incorporated herein by this referenced (the "Property"); and

WHEREAS, the Property possesses significant natural, ecological, wildlife, habitat, tidal wetlands and open space values (collectively, "conservation values") of great importance to Grantor, to Grantee, and to the people of this nation; and

WHEREAS, the current open space uses and wildlife and habitat management of the Property, under Grantor's direction, have promoted the conservation values of the Property; and

SOUTH  
MULBERRY

675.8  
acres

675  
225  
900

WHEREAS, the Property is located in the vicinity of other property that is preserved as open space, forest land, and habitat, and development of the Property would adversely impact the conservation qualities of that protected nearby property; and

WHEREAS, because of their extreme importance to migratory waterfowl, the Property and the area have been designated as deserving of protection under the North American Waterfowl Management Plan, the Emergency Wetlands Resources Act of 1986, and numerous additional federal and state conservation policies; and

WHEREAS, the specific conservation values of the Property are documented in a report to be kept on file at the offices of Grantee and incorporated herein by this reference, which documentation ("Baseline Documentation") the parties agree provides an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor believes that with the intelligent and careful use of conservation easements, the resources, habitat, beauty, and unique ecological character of the Property and the Cooper River can be protected in a manner that permits continuing private ownership of land and its continuing use and enjoyment; and

WHEREAS, Grantor represents that the Property is free and clear of any liens and represents that, as owner of the Property, Grantor has access to the Property and has good right to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity;

WHEREAS, Grantee is a publicly-supported, tax-exempt, non-profit organization whose primary purpose is to preserve and conserve natural areas for aesthetic, scientific, charitable, and educational purposes and the Grantee is a "qualified conservation organization," as that term is

defined in Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations, thereunder (the "Code"); and

WHEREAS, Sections 27-8-10 ~~et seq~~ of the South Carolina Code of laws of 1976, as amended, permit the creation of conservation easements for the purposes of, *inter alia*, retaining land or water areas predominantly in their natural, scenic, open or wooded condition or as suitable habitat for fish, plants, or wildlife; and

WHEREAS, Grantor and Grantee recognize the natural, scenic, and special character of the Property, and have the common purpose of the conservation and protection in perpetuity of the Property as "a relatively natural habitat of fish, wildlife or plants or similar ecosystem," as that phrase is used in Public Law 96-541, 26 U.S.C. 170(h)(4)(A)(ii), by placing voluntary restrictions upon the use of the Property and by providing for the transfer from Grantor to Grantee of affirmative rights for the protection of the Property, intending the grant of such restrictions to qualify as a "qualified conservation contribution" as that term is defined under Section 170(h)(2)(C) of the Code; and

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to Section 170(h) of the Code and the laws of the State of South Carolina, in particular Chapter 8, Title 27 of the Code of Laws of the State of South Carolina, as amended, Grantor hereby voluntarily grants and conveys to Grantee and its successors and permitted assigns a conservation easement (the "Easement") in perpetuity over the Property of the nature and character and to the extent hereinafter set forth. Grantor herein declares that the Property shall be held, transferred, sold, conveyed, used, 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 burden the Property in perpetuity.

1. PURPOSE. It is the purpose of this Easement to assure that the Property will be retained forever predominantly in its natural, scenic, and open space condition for conservation purposes and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property, the wildlife habitat on the Property, and the Property's natural resources and associated ecosystems.

2. RIGHTS OF GRANTEE. Grantor hereby grants the following rights to Grantee:

2.1 Inconsistent Activity. To prevent Grantor or third persons (whether or not claiming by, through, or under Grantor) from conducting any activity on, or use of, the Property that is inconsistent with the purpose of this Easement and to require of Grantor or third persons the restoration of such areas or features of the Property that may be damaged by any Inconsistent activity or use;

2.2 Right of Entry. The right of the Grantee, in a reasonable manner and at reasonable times, to enter the Property for the purposes of inspecting the Property to determine compliance herewith; to enforce by proceedings at law or in equity the covenants hereinafter set forth including, but not limited to, the right to require the restoration of the Property to its condition existing prior to any breach of this Easement, provided the Grantee shall give prior notice to the Grantor which is reasonable under the then existing circumstances. The Grantee and its successors or assigns do not waive or forfeit the right to take such action as may be necessary to insure compliance with the covenants and purposes of this grant by any failure to act prior to the time such action is taken. Nothing herein shall be construed to entitle any proceeding against grantor for any

changes to the Property due to causes beyond the Grantor's control such as changes caused by fire, floods, storm, or wrongful acts of third persons.

3. GRANTEE'S AFFIRMATIVE COVENANTS AND RESTRICTIONS. Except as provided for in Section 6 below, and subject to the Reserved Rights in Section 4, the Grantor, his heirs, successors and assigns shall comply with all of the following covenants and restrictions:

3.1 Uses. There shall be no commercial or industrial activity undertaken or allowed; nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with commercial or industrial activity.

3.2 Structures. There shall be no construction or placing of a transmission or receiving tower, energy facility, docks, residences, bridges, piers or other temporary or permanent structures on or above the Property. There shall be no mobile homes or trailers placed on the Property.

3.3 Roads. There shall be no building of any new permanent roads.

3.4 Subdivision. The Grantor shall not subdivide the Property. Although the legal description of the Property may describe more than one tract of land which could be sold separately, the Grantor covenants and agrees that all of the Property shall be held by the same owner or owners. The Grantor will not indirectly further subdivide the property through the creation of a horizontal property regime, long terms leases or other similar means.

3.5 Topography and Minerals. There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, hydrocarbons, natural deposits, gravel, rock, peat, minerals or other materials.



3.6 Refuse and USTs. No portion of the Property shall be used for sanitary landfill, for the installation of any underground storage tanks or for the dumping or storing of refuse, trash, rubbish, junk or other waste materials.

3.7 Wetlands. There shall be no dredging, construction of ponds, groins, or dikes, nor any manipulation of natural water courses unless the Grantee shall give its prior written consent.

3.8 Advertising. There shall be no construction or placing of advertising signs, billboards, or any advertising materials on any of the Property unless the Grantee shall give its prior written consent.

3.9 Timber. There shall be no cutting of timber except in conformance with the Forest Management Policy attached hereto as Exhibit B, as amended from time to time by the parties.

3.10 Exotics. There shall be no introduction of exotic plant or animal species except those traditionally and prevalently used as of or prior to the date hereof for wildlife food planting or for agricultural planting traditional to the low country unless the Grantee shall give its prior written consent.

3.11 Use Inconsistent with Purpose. The parties recognize that this Conservation Easement cannot address every circumstance that may arise in the future. Any use or activity not expressly reserved in Section 4 which is inconsistent with the Purpose of this Easement, as defined in Section 1, or which materially threatens the Purpose of this Easement is prohibited. In the event that there is a dispute between the Grantor and the Grantee as to whether or not an activity or use is prohibited under this Section, the parties shall arbitrate the matter in accordance with the provisions of Section 6.13.

4. RESERVED RIGHTS. Notwithstanding the affirmative Grantee rights contained in Section 2 and the restrictions contained in Section 3, the Grantor reserves the right to engage in the following uses and activities for himself, his heirs and assigns which if in conflict with any other provision of this Easement shall control;

4.1 Consistent Uses. The Grantor reserves the right to engage in all acts or uses not expressly prohibited herein that are not inconsistent with the purpose of this Easement.

4.2 Structures.

(a) The Grantor reserves the right to maintain, improve, and replace the existing structures located on the Property. ✓

(b) The Grantor reserves the right to construct two (2) single-family residential houses not exceeding 7,000 square feet of heated space, together with related recreational facilities such as a swimming pool and tennis courts, greenhouses and such barns, sheds, dog runs and other auxiliary buildings as are normal to a private plantation in the Low Country.

(c) No new building shall exceed 40 feet in height. No new structure shall be constructed closer than 100 feet to any river or stream. Construction must meet all local and state building codes.

4.3 Roads. The Grantor reserves the right to maintain and replace the existing roads in substantially the same location. Maintenance of roads shall be limited to scraping and crowning, removal of dead vegetation, necessary pruning or removal of hazardous trees and plants, application of permeable materials (e.g. sand, gravel, crushed stone) necessary to correct erosion, placement of culverts, water control structures, and bridges, and maintenance of roadside ditches. The Grantor reserves the right to build new roads of a character comparable to the existing roads to the new ✓

structures permitted by Section 4.2. The Grantor reserves the right to widen existing roads for utility rights-of-way and for the removal of timber. Improvements made to such roads and rights of way shall be done in a manner so as to create the least possible disturbance to the conservation values of the Property, and shall be constructed using only permeable material.

4.4 Wells and Septic Fields. The Grantor reserves the right to construct septic fields for any permitted new or existing structures on the Property. Any septic drain field must be located a minimum distance of 100 feet from any wetlands, tidal waters or perennial streams, or in accordance with existing government regulations, whichever is the greater distance. The Grantor reserves the right to erect windmills and solar panels and to drill wells in connection with activities permitted within the Property, including the replacement of existing wells.

4.5 Docks. The Grantor reserves the right to construct and maintain one dock and attached floating docks on the ricefield canal which connect with the Cooper River; provided, however the dock head shall not exceed 600 Square feet in size and the floating docks shall not exceed 400 square feet in size.

4.6 Landfill and Borrow Pit. The Grantor reserves the right to have two areas for a normal plantation dump, for the dumping of refuse and garbage generated solely and exclusively by activities on the Property, to be conducted in a reasonably sanitary manner, provided that there shall be no dumping or deposit of toxic or hazardous substances. The Grantor reserves the right to have two borrow pits to provide required fill material for normal plantation use, such as the strengthening of dikes, improving roads, and so forth for uses solely and exclusively on the Property; provided that the borrow pits are not visible from the residential structures or the river and are sited in an environmental responsible location.

See 3.5  
No removal  
of soil

4.7 Impoundments and Ponds. The Grantor reserves the right to repair, replace, create or maintain existing or new wetland impoundments or control systems, said impoundments being recognized by both the Grantor and the Grantee as beneficial to waterfowl and other wetland dependent plants and animals, all subject to state and federal rules and regulations. The Grantor reserves the right to engage in normal wetland management practices within the impoundment areas, including periodic controlled burns and periodic draining. Within the existing impoundments and ponds, internal ditching, dredging and diking will be allowed, subject to existing state and federal regulations and permit procedures. In order to maintain such managed wetlands for waterfowl and other wetland-dependent plants and animals, these controlled areas shall be managed primarily for waterfowl, but may also be managed for other species. The Grantor reserves the right to create ponds, reservoirs and irrigation systems for the purposes of agriculture, fire protection and wildlife habitat enhancement.

4.8 Timber Harvesting. The Grantor reserves the right to plant and harvest timber in accordance with the Forest Management Policy attached hereto as Exhibit B, as amended by the parties from time to time. The Grantor reserves the right to construct any new roads which are reasonably required for the removal of timber.

4.9 Agriculture and Related Activities. The Grantor reserves the right to engage in for-profit and not-for-profit agricultural, farming, husbandry, livestock equestrian, maricultural, aquacultural and silvicultural enterprises, provided that same is conducted in a manner not inconsistent with the aims and purposes of the Conservation Easement and do not violate any specific prohibitions or restrictions contained herein.

4.10 Utilities. The Grantor reserves the right to grant utility easements and to install utility facilities which are necessary or convenient to the permitted uses of the Property with the prior consent of the Grantee, which consent shall not be unreasonably withheld.

4.11 Posting Property. The Grantor reserves the right to post the Property against trespassing and hunting.

4.12 Clearing and Vegetation. The Grantor reserves the right to create, maintain and cultivate agricultural areas and wildlife food plots. The Grantor reserves the right to control burn or clear or cut vegetation to protect the vistas of the existing or new structures on the Property. The Grantor reserves the right to cut and remove grass or other vegetation, and, to the extent customary, to perform routine maintenance, landscaping, and upkeep, consistent with the purpose of this Easement, immediately around any permitted buildings on the Property. The Grantor reserves the right to engage in selective cutting, control burning, or clearing of trees, or vegetation and mowing, control burning, or clearing of existing fields for waterfowl habitat enhancement and protection, fire protection, unpaved trail and road maintenance, tick and mosquito control (subject to federal and state regulations), preservation of vistas, or otherwise to preserve the present condition of the Property. Notwithstanding any provision to the contrary contained herein, the Grantor reserves the right to cut trees and other vegetation growing within the controlled ricefields.

4.13 Easements. The Grantor reserves the right to grant easements or rights of passage across or upon the Property if the right of passage is used exclusively by an adjacent property owner and is used in conjunction with residential, farming, timbering, agricultural, maricultural or silvicultural activities.

4.14 Leases. The Grantor reserves the right to lease, or grant other less-than-fee interests in, all or a portion of the Property for any use, including any commercial use permitted to Grantor under this Easement, including but not limited to the uses specified in this Section 4, 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 a impermissible subdivision of the Property.

5. EFFECTIVE DATE. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this DEED OF CONSERVATION EASEMENT is filed in the official land records of the R.M.C. Office for Berkeley County, South Carolina.

6. GENERAL COVENANTS

6.1 Cost of Ownership. The Grantor, for himself and for his heirs, successors and assigns, agrees to pay any real estate taxes or assessments levied by competent authority on the Property. The Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance upkeep or maintenance of the Property except as expressly provided herein.

6.2 Public Access. No right of access to the general public to any portion of the Property is conveyed by this Conservation Easement.

6.3 Transfers. The Grantor agrees that the terms, conditions, restrictions, and purposes of this grant will be inserted by them in any subsequent deed, or other legal instrument by which the Grantor divest themselves of either the fee simple, or his possessory interest in all or portions of the Property, and that the Grantor will immediately notify the Grantee, its successors or assigns, of any such conveyance.

6.4 Grantee Approvals. The Grantee shall provide the Grantor with a single, common response to all notices or requests for approval within forty-five (45) days of receipt of such notice or request.

6.5 Notice of Breach. In the event that a breach of these restrictions and covenants set forth in the General Covenants by the Grantor or by a third party acting at the direction or under the control of the Grantor comes to the attention of the Grantee, the Grantee shall have the right to notify the Grantor in writing of such a breach. The Grantor shall have thirty (30) days after receipt of such notice to undertake actions including restoration of the Property that are reasonably calculated to correct swiftly the conditions constituting such a breach. If the Grantor fail to take such corrective action, the Grantee may at its discretion undertake such actions, including appropriate legal proceedings, as are reasonably necessary to effect such corrections; and the cost of such corrections, including the Grantee's expenses, court costs, and legal fees shall be paid by the Grantor or the third parties, provided it is determined that the Grantor or third parties acting at the direction or under the control of the Grantor is responsible for the breach.

6.6 Severability. In the event any provision of this grant is determined by the appropriate court to be void and unenforceable, all remaining terms shall remain valid and binding.

6.7 Perpetuity. The burdens of this Conservation Easement shall run with the Property and shall be enforceable against the Grantor and all future owners and tenants in perpetuity. The benefits shall be in gross and assignable but only to an eligible donee as defined in Internal Revenue Code Section 1.170A-14(e)(1) as that section may be amended from time to time.

6.8 Assignment in Connection with Transfer of Title of the Property. Grantor and Grantee herein agree that should Grantee come to own all or a portion of the fee interest subject to this

Easement, (i) the Grantee, as successor in title to Grantor, shall observe and be bound by the obligations of Grantor and the restrictions imposed upon the Property by this Easement, as provided in Section 6.8, (ii) this Easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement, and (iii) the Grantee, as promptly as practicable shall assign the Grantee's interests in this Easement of record to another holder in conformity with the requirements of Section 6.9. The instrument of assignment shall refer to the provisions of this section and shall contain confirmatory language suitable to reimpose this Easement to the extent, if any, necessary to continue it in force.

6.9 Assignment by Grantee. The benefits of this Easement shall be in gross and shall not be assignable by the Grantee, except (i) if as a condition of any assignment, the Grantee requires that the purpose of this Easement continues to be carried out, and (ii) if the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under South Carolina law as an eligible one to receive this Easement directly. In the event that the Grantee ceases to exist or exists but no longer as a tax exempt non-profit organization, qualified under Sections 501(c)(3) and 179(h)(3) of the Internal Revenue Code of 1986, as amended, then this Easement shall automatically become vested in a tax exempt non-profit organization designated by the then owner of the Property which has experience in holding similar conservation easements. In the event that the then owner of the Property shall fail to designate such a substitute organization, the Grantee's rights shall be assigned to Wetlands America Trust, Inc. (One Waterfowl Way, Memphis, TN 38120-2351). Any attempted assignment by Grantee of the benefits of this Easement contrary to the terms hereof shall be invalid but shall not operate to extinguish this Easement.



6.10 Percentage Interest of Grantee. For purposes of Sections 6.11 and 6.12, the Grantee's interest in the Property shall be determined in accordance with the then existing federal regulations relating to conservation easements which qualify as charitable gifts.

6.11 Judicial Extinguishment. If a subsequent, unexpected change in the conditions of the Property or the surrounding property make impossible or impractical the continued use of the Property for conservation purposes, the restrictions shall be extinguished by judicial proceeding and all the Grantee's proceeds from a subsequent sale or exchange of the Property shall be used in a manner consistent with the conservation purposes of this grant.

6.12 Eminent Domain. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. The net proceeds (including, for purposes of this subsection) proceeds from any lawful sale of the property unencumbered by the restrictions hereunder, but excluding the value attributed to any improvements constructed by Grantor after the date of the grant, which value shall belong solely to Grantor) shall be distributed among the Grantor and the Grantee in shares in proportion to the fair market value of their interests in the Property on the date of execution of this Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein. The Grantor shall be responsible for all of the costs of taking appropriate action; however, such expenditures of the Grantor shall be reimbursed first from any net proceeds prior to any pro rata distribution.

6.13 **Arbitration.** In the event of a disagreement between the Grantor or the Grantee as to whether or not i) a use or activity violates Section 3.11; or ii) the Grantor have acted in a manner inconsistent with the review standard set forth herein in the exercise of any discretionary power reserved by the Grantor, such as not approving certain requests made by the Grantee; or iii) the Grantee has acted in a manner inconsistent with the review standard set forth herein in the exercise of any discretionary power granted to the Grantee, such as not approving certain requests made by the Grantor (collectively "Arbitration Issues"), the Arbitration Issue shall be resolved by a committee made up of three individuals who have reasonable experience with conservation easements and land uses of similar properties. One individual shall be selected by the Grantee, one individual shall be selected by the Grantor, and the other individual shall be selected by the two individuals selected by the Grantee and the Grantor. The committee shall determine by majority vote the Arbitration Issue. The determination of the committee shall be binding upon the Grantee and the Grantor. Only Arbitration Issues shall be subject to the South Carolina Uniform Arbitration Act. In the event that a dispute includes issues in addition to an Arbitration Issue, the matter shall not be subject to arbitration.

6.14 **Enforcement Rights.** The Grantee, its successors or assigns, do not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement and purposes of this grant by any prior failure to act. Nothing herein shall be construed to entitle the Grantee to institute any proceedings against Grantor for any changes to the Property due to causes beyond the Grantor's control such as changes caused by fire, floods, storm or unauthorized wrongful acts of third persons. The Grantor agrees to reimburse the Grantee for all costs and expenses, including reasonable attorneys fees, incurred by the Grantee in connection with a breach by the

Grantor of the terms of this Conservation Easement. The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for enforcement of this Conservation Easement.

6.15 Amendments. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Section 170(h) of the Code or the laws of the State of South Carolina. Any such amendment shall be consistent with the purpose of this Easement, shall not affect its perpetual duration, shall not permit additional residential development on the Property other than residential development permitted by this Easement on its effective date, and shall not permit any impairment of the significant conservation values of the Property. Any such amendment shall be recorded in the official land records of the R.M.C. Office for Berkeley County, South Carolina. Nothing in this Section shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

6.16 Warranty of Title. Grantor hereby warrants and represents that the Grantor is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement, that the Property is free and clear of any mortgages, judgments liens or other similar liens which are superior in priority to this Conservation Easement and that the Grantee and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

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

6.18 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purposes of Grantee. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

6.19 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.

6.20 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 6.15.

6.21 Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

6.22 Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served

personally, or sent by registered or certified mail, return receipt requested, postage prepaid, or by national overnight delivery service, addressed as follows:

To Grantor: S. Parker and Gail A. Gilbert  
812 Park Avenue  
New York, NY 10021

With a copy to: Susan M. Smythe, Esq.  
Bulst, Moore, Smythe & McGee, P.A.  
P.O. Box 999  
5 Exchange Street  
Charleston, S.C. 29402

To Grantee: The Lord Berkeley Conservation Trust  
223 N. Live Oak Drive  
Moncks Corner, SC 29431

With a copy to: Coy Johnston  
Wetlands America Trust, Inc.  
100 South Main Street, Suite "L"  
Summerville, SC 29483

or to such other address as the above parties from time to time shall designate by written notice to the others.

6.23 Filing. Grantee shall file this instrument in timely fashion in the official land records of the R.M.C. Office for Berkeley County, South Carolina, and may re-file it at any time as may be required to preserve its rights in this Easement.

6.24 Habendum Clause. TO HAVE AND TO HOLD this Conservation Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, either in possession or expectancy, for the proper use and benefit of the Grantee, its successors and assigns, forever.

6.25 Counterparts. This Conservation Easement may be executed in multiple counterparts.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Deed  
of Conservation Easement this 29<sup>th</sup> day of November, 1996.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

GRANTOR:

[Signature]

[Signature]  
S. Parker Gilbert

[Signature]

[Signature]  
Gail A. Gilbert

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw  
the within named S. Parker Gilbert and Gail A. Gilbert, sign, seal and as their act and deed, deliver  
the within written instrument, and that (s)he with the other witness named above witnessed the  
execution thereof.

[Signature]  
(Signature of Witness)

SWORN to before me this 29<sup>th</sup>  
day of November, 1996.

[Signature] (SEAL)  
Notary Public for South Carolina

My Commission Expires: June 30, 2000

Continuation of Signature Page For  
Deed of Conservation Easement  
South Mulberry Plantation, Berkeley County, S.C.

GRANTEE: Robert H. Hutton  
THE LORD BERKELEY CONSERVATION  
TRUST

Robert H. Hutton  
State M. Smyth

By: Robert H. Hutton  
Its: President

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named officer, sign, seal and as the act and deed of The Lord Berkeley Conservation Trust, deliver the within written instrument, and that (s)he with the other witness named above witnessed the execution thereof.

State M. Smyth  
(Signature of Witness)

SWORN to before me this 29th  
day of November, 1996.

Barbara H. Jones (SEAL)  
Notary Public for South Carolina

My Commission Expires: June 30, 2000

\_\_\_\_\_(L.S.)  
Notary Public for South Carolina

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

EXHIBIT A  
PROPERTY

All that certain piece, parcel or tract of land, together with the buildings and improvements thereon, a portion of South Mulberry Plantation, situate, lying and being in Tax District #5 (Formerly First St. Johns Tax District), Berkeley County, South Carolina, MEASURING AND CONTAINING Six Hundred Seventy-Five and eight-tenths (675.8) acres of high land and Two Hundred Twenty-Five (225) acres of Old Rice Fields, with metes, bounds, courses, distances, content and delineations as follows, to wit: Commencing at a point, designed as A on plat hereinafter referred to, adjacent to the right-of-way of SC Highway 8-791, thence S 88°32' E 40.09 chains along lands of North Mulberry Plantation to a point located by a concrete monument marked B on said plat hereinafter referred to; thence N 56°28'E a distance of 38.66 chains along lands of North Mulberry Plantation to a point located by a concrete monument marked C on plat hereinafter referred to; thence S 88°32'E a distance of 36.59 chains along lands of North Mulberry Plantation to a point located by a pine; thence N 86°15' E 20 chains, more or less, along lands of North Mulberry Plantation to a point; thence N 89°00" E a distance of 21.20 chains along lands of North Mulberry Plantation to a point; thence N 89° 45' E a distance of 49.47 chains along lands of North Mulberry Plantation to a point, located by a stone and marked D on plat hereinafter referred to, on the West bank of the Cooper River; thence in a generally South-southeasterly direction along the meanders of the Cooper River (high water mark being the line) to a point; thence the converse of S 84°05' E a distance of 46.0, more or less, chains along Tract B on plat hereinafter referred to, to a point located by an iron N; thence a continuation of the converse of S 84°05' E a distance of 94.88 chains along land of Tract B on said plat to a point located by an iron N; thence the converse of S 87°55' E a distance of 97.24 chains along lands of Tract B on said plat hereinafter referred to, to a point located by an iron N in the edge of SC Highway 8-791; thence N 3°30' E a distance of 23.64 chains to the point of beginning. Said tract of land is shown with more particularly on a map of a division of Mulberry Plantation property by Samuel M. Harper, R.L.S., dated February 5, 1975, being shown thereon as Tract A. Said plat is recorded in the RMC Office for Berkeley County, South Carolina in Plat Book V, at Page 147, and by this reference is made part and parcel of this description.

## ALSO

A perpetual, transmissible, assignable, non-exclusive easement appurtenant over the road shown on said plat traversing Tract B for the purposes of ingress and egress to and from South Carolina Highway 5-8-50 and the Property shown as Tract A on said plat, said road to be used jointly with the owners of Tract B and being the same easement reserved in the deed from George R. Herrin and Terry H. Andrews to P. O. Mead, III, et al, recorded in Book A-294, Page 105 and dated July 1, 1975.

SUBJECT to that certain flowage release agreement by and between James Foy Wilson and William Browder Flinn, trading as Wilson & Flinn, and South Carolina Public Service



EXHIBIT B  
FOREST MANAGEMENT POLICY

Description of Forested Acreage. (See documentation report for map and location of forest types)

General Restrictions.

A. All timber harvest and management shall be carried out in accordance with a timber harvest plan consistent with the provisions hereof prepared by a registered forester, such plan to be approved by Grantor and Grantee. The timber plan may be amended from time to time with the approval of Grantee. Such timber plan shall include the following:

1. All logging activity shall meet or exceed the Best Management Practices Guidelines (BMP's) for South Carolina as amended from time to time.
2. Live oaks (*Quercus Virginiana*) having 10" and greater diameter at breast height shall be protected from cutting and/or logging damage or damage of any kind.
3. No bedding or excessive rutting will be allowing.
4. Restrictions governing timber harvest methods shall not apply in areas where forest is damaged by ice, fire, wind, insects, infectious organisms, or other natural disasters.
5. Prescribed burning is allowed as conducted under the laws of the State of South Carolina. It is strongly recommended that fire lines be disked and not plowed in order to minimize the impact to the site.

III. PLANTED PINE (*Loblolly-Pinus taeda*)

- A. Regeneration may be achieved through natural or artificial means. Regeneration to longleaf is strongly recommended.
- B. Hardwood found on these sites may be cut or deadened (by injection or girdling) if necessary. This does not apply to live oak (*Quercus Virginiana*).
- C. Agriculture plots (wildlife openings) may be established provided these plots do not exceed fifteen percent in each one hundred acres of forested land.

IV. BOTTOMLAND HARDWOODS.

A. No commercial cutting shall be allowed, except in cases where cutting may be beneficial for wildlife habitat enhancement, provided that the prior written approval of Grantee is obtained. Any enhancement activities shall be in accordance with applicable state and federal wetlands laws and regulations.