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DATE: 12/28/2009 11:22:51 AM
INST # 2009073116 RCPT# 604658

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

THIS GRANT OF CONSERVATION EASEMENT is made this 28th day of December, 2009, by Lawton Beach Holdings LLC, (hereinafter "**Grantor**"), having an address of 14 Juniper Hilton Head, SC 29928, in favor of the Beaufort County Open Land Trust (hereinafter "**Grantee**"), having an address of 820 Bay Street, Beaufort, SC.

WHEREAS, **Grantor** is the sole owner in fee simple of certain real property containing approximately Thirty (30) acres more or less, in Beaufort County, South Carolina, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter the "Protected Property"); and

WHEREAS, the Protected Property is located in close proximity to other conservation easements held by the Beaufort County Open Land Trust and the Town of Hilton Head and helps to form a significant conservation area on Hilton Head Island that protects the recreational and scenic nature of the beachfront and the values of the community.

WHEREAS, The Protected Property is adjacent to and provides a buffer for the dune system and beachfront ecology; this section of the beach is accreting due to the fact that a lot of the native vegetation has been left to grow thus contributing to the preservation of the scenic and ecological character of the area, and

WHEREAS, the Protected Property is situated on the Atlantic Ocean, and is prominently visible by the public from the water, having over 1,000 feet of ocean frontage providing scenic views of ocean, dune, beach and recreational users; and

WHEREAS, the Protected Property has a diversity of relatively natural habitats including marshlands, sandy areas, mixed upland forests, open beach and open water, all of which can support a variety of floral and faunal species, including spartina grasses and sea oats which help build dune systems and prevent erosion, native shrubs like sparkleberry, horse sugar, and red bay, larger trees include pine, live oak, scrub oak, and palmettos, and

WHEREAS, the Protected Property provides 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 animals, including habitat for sea turtles to lay their eggs in the dunes with each nest is marked for protection, and the brown pelican 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, shore birds to include sandpipers, egrets, herons, pelicans and waterfowl, and also including feeding, breeding and resting areas for native small and large game and non-game mammals; including deer, rabbits, dune rats, possums, raccoons, and bobcats, and larger bird species to include bald eagles, osprey, hawks, hummingbirds, cedar wax wings, painted buntings, cardinals, blue jays, robins, and doves, and

WHEREAS, in particular, the Protected Property in its existing relatively *natural condition* contributes very little nonpoint source pollution to ocean and adjacent waterways due to the low percentage of impervious surface that reduces sources of pollution and nutrient loading; and

WHEREAS, the Protection of beachfront habitat and dune systems as is included in the Protected Property is considered a public priority by the beachfront management laws and regulations of the Town of Hilton Head, The State of South Carolina and the United States Government and this easement is executed pursuant to such clearly delineated governmental policies, and;

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, **Grantor** 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, **Grantor** intends to preserve and protect the Conservation Values in perpetuity; and

WHEREAS, **Grantor** is 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, **Grantor** 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"). **Grantor** 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 **Grantor** 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 Lowcountry 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 **Grantor** 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"). **Grantor** 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 **Grantor**; 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.** Grantor hereby conveys the following rights to the Grantee:

(A) **Right of Access.** To have visual access to the Protected Property from the public beach 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. Grantee shall allow Grantor reasonable notice prior to entering the property;

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

(D) **Right to Require Restoration.** To require Grantor or third parties to restore such Conservation Values as established in the baseline report that may be damaged by any uses or activities prohibited by this Easement, or any activity or use inconsistent with the Purposes;

(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 Grantor 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 Grantor 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, Grantor and Grantee agree that those bold-faced terms that appear throughout this Easement shall be defined as follows:

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Approval shall be defined as the prior written consent of the **Grantee** to permit **Grantor** 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 **Grantor** 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**. Approval shall not be required for activities allowed under this easement.

Baseline Documentation is a report on file at the offices of the **Grantee** documenting the condition of the property, including structures and similar information at time of execution. Any structure, amenity or other item in existence at time of execution of this conservation easement shall be considered accepted and in compliance with the terms of this conservation easement.

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.

Grantor 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. Gravel as used in driveways as normally practiced in Beaufort County shall not be considered an impervious surface.

Notice shall be defined as a written communication, prior to undertaking a permitted activity, as defined in Paragraph 19.

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

Setback Line shall be defined as the edge of a waterway which is either (1) the critical line as defined by S.C Office of Ocean and Coastal Resource Management, (2) the ordinary high water mark as defined by the Army Corps of Engineers, (3) a comparable defining line as defined by successor entities of the above named agencies, or (4) a specified platted line on a recorded survey, if referenced in Paragraph 5(C). The appropriate Setback Line in each instance shall be designated by **Grantee** in the Baseline Documentation.

Significant Tree shall be defined as any live oak or magnolia tree having a diameter at breast height of six (6) inches or greater.

Subdivided Tract shall be defined as a separate transferable parcel of land having a unique identity according to Beaufort 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.** 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.** Grantor has the right to maintain fences existing at the time of execution of this document, and to construct other fences in compliance with the ordinances and law of the Town of Hilton Head.

(B) **Landfill.** There shall be no landfills or debris piles on the Protected Property.

(C) **Paths and Trails.** Grantor retains the right to construct and maintain footpaths, trails, boardwalks, provided that the use of carpeting and materials are not allowed on walkways.

(E) **Ecological Research.** Grantor retains the right to install forest, species or other ecological research equipment, experimental areas, perform studies in wetlands or coastal management that could include, but is not limited to, weed control, fertilization, installation of weather stations, installation of towers for raising instrumentation above the canopy, erosion control and excavation of root systems.

(F) **Consistent Uses.** Grantor has 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.** Grantor 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. **Subdivision** of the tract is prohibited.

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

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

II. Docks. No docks, boat ramps or landings shall be allowed on the protected property. Neither **Grantor** nor **Grantor's** 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 the construction of any docks within the deemed extension of the property lines.

III. Towers. There shall be no towers on the Protected Property.

(C) Industrial Uses. There shall be no industrial uses, activities, or structures on the protected property. 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.

(D) Commercial Uses. There shall be no commercial uses, activities or structures on the protected property. 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.

(E) Roads and Parking. Roads shall be limited to those required to facilitate emergency access and vehicles. Only Elderberry Road and street end/walkway shall be used for emergency vehicle, public maintenance trucks, and Beach Services vehicles for access to the beach in South Forest Beach. Reasonable changes or realignment to existing roads is allowable as long as such change does not impact the conservation values of the property. No public parking facilities shall be constructed on the Protected Property or access ways, however Grantor may pave roads and use such right of ways for drainage.

(F) Landscaping. Landscaping shall be limited to the management of vegetation as allowed in the ordinances of the Town of Hilton Head, but shall specifically allow traditional activities, including but not limited to, mowing, pruning, trimming, and gardening.

(G) Signs. Signs shall be placed so as to minimally impact the scenic view as seen from any public roadway, waterway or the beach, provided that such signs shall not exceed two (2) square feet.

(H) Significant Trees. There shall be no activities that endanger the health or survival of **Significant Trees** without **Approval**

(I) Impoundment(s). **Grantor** may create or improve water control structures for landscaping purposes with the approval of the Grantee, subject to all applicable local, state and federal statutes and regulations.

(J) Mining. Mining and recovery of any oil, gas, natural gas or minerals is prohibited in accordance with Code §170(h) (5) (B) prohibiting surface mining.

(K) Topography and Hydrology. There shall be no alteration of the topography or hydrology.

(L) 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 **Grantor** 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 **Grantor** 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 **Grantor** is in violation of the terms of this Easement or that a violation is threatened, the **Grantee** shall notify the **Grantor** 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 **Grantor** 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 **Grantor** 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 **Grantor** 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 **Grantor's** 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 **Grantor** or without waiting for the period provided for cure to expire.

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Grantee's rights under this Paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement. **Grantor** 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 **Grantor**, including without limitation, costs of suit and reasonable attorneys' fees, and any reasonable costs of restoration necessitated by **Grantor's** violation of the terms of this Easement, shall be borne by **Grantor**. If **Grantor** prevails in any action to enforce the terms of this Easement, any costs incurred by **Grantor**, including **Grantor's** 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 **Grantor** 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.

10. Grantor's Environmental Warranty. The **Grantor** warrants that it has no knowledge of a release or threatened release of hazardous substances or wastes on the Protected.

11. 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 Protected Property resulting from causes beyond **Grantor's** control, including, without limitation, trespass by third parties, fire, hurricane, 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 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. **Grantor** retains all responsibilities and shall bear all costs related to the ownership, operation, upkeep and maintenance of the Protected Property, and shall maintain general liability insurance coverage.

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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. Grantors shall maintain liability insurance for items on the Protected Property at the time of execution of this easement, provided that such items are clearly identified in the baseline report.

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 **Grantor**, 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, **Grantor** 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, **Grantor** 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. **Grantor** and **Grantee** agree to a reasonable consideration of any such proposed amendment, however, neither **Grantor** nor **Grantee** shall be

bound to agree to any amendment. Any such amendment shall be recorded in the official land records of Beaufort 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 Beaufort County, South Carolina. The **Grantee** shall not assign this Easement to a governmental entity or otherwise eligible **Grantee** without the prior written consent of the **Grantor** except as provided in this paragraph, which shall not be unreasonably withheld.

17. Transfers. **Grantor** agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which **Grantor** transfers any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. The **Grantor** 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 **Grantor** to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way. If the original **Grantor** should transfer this easement to another party, the original grantor shall cease to maintain liability for acts on the property or liability resulting from acts on the property.

18. 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 **Grantor**: Frances Worthy
14 Juniper
Hilton Head, SC 29928

If to **Grantee**: Beaufort County Open Land Trust
P.O. Box 70
Beaufort, SC 29902

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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.

19. Recordation. **Grantee** shall record this instrument in timely fashion in the RMC Office for Beaufort County, South Carolina, and may re-record it at any time as may be required to preserve its rights in this Easement.

20. Effective Date. **Grantor** and **Grantee** intend that the restrictions arising hereunder take effect on the day and year this Easement is recorded in the RMC Office for Beaufort County, South Carolina; after all required signatures have been affixed hereto.

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

22. 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.

23. 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.

24. Baseline Documentation. **Grantee** acknowledges, by its acceptance of the Easement, that **Grantor's** historical and present uses of the Property are compatible with the Purposes of the Easement and that all such uses shall be considered in compliance with the terms of this 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 December 30, 2009. **Grantor** and **Grantee** acknowledge and agree that in the event a controversy arises with respect to the nature and extent of **Grantor's** 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.

25. 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.

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

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WITNESSES:

Eric S. [Signature]
Bonnie [Signature]

GRANTOR:

Lawton Beach Holdings LLC

Malcolm L. Hunt [Signature]

Malcolm L. Hunt, Managing Partner

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston

ACKNOWLEDGMENT

The foregoing instrument was acknowledged this 18th day of December, 2009, before me the undersigned Notary, and I do hereby certify that the above named Malcolm Hunt. Personally appeared before me and acknowledged the due execution of the foregoing instrument.

Linda Lewis [Signature]
(Signature of Notary)

Notary Public for the State of South Carolina

My commission expires: NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires June 7, 2016

WITNESSES:

GRANTEE:

[Handwritten Signature]
[Handwritten Signature]

By: [Handwritten Signature]
Its: Executive Director, BOLT

STATE OF SOUTH CAROLINA)
COUNTY OF Beaufort) ACKNOWLEDGMENT

The foregoing instrument was acknowledged this 16 day of December 2009, 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.

[Handwritten Signature]

Notary Public for the State of South Carolina
My commission expires: 6-22-2014

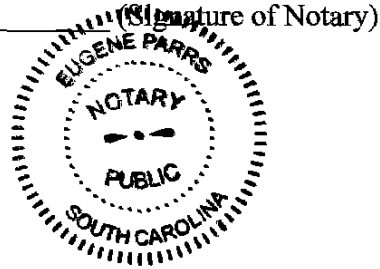


EXHIBIT A

EXHIBIT A

All that certain, piece parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, being that land located between the mean high water mark of the Atlantic Ocean and the front lot lines of the lots in the Subdivision known as Lawton Beach Subdivision No. 1, said parcel of land being described as beginning at the southeastern corner of the southern-most walkway as shown on said subdivision recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Plat book 9 at page 44, thence in a northeasterly direction for a distance of 2,625 feet, more or less, along the front lines of the lots fronting on the Atlantic ocean in Lawton Beach Subdivision No. 1 to the northeast corner of 1st Street as shown on the plat of said subdivision; thence S 26 degrees, 8 minutes E to the mean high water mark of the S Atlantic Ocean to a point S 27 degrees, 53 minutes E of the POINT OF BEGINNING; thence N 27 degrees, 53 minutes W to the POINT OF BEGINNING.

AND ALSO, all those certain pieces, parcel or strips of land including roads, walkways open spaces, rights of way, easements, parks, and any other lands located within the tract known as Lawton Beach Subdivision as more fully shown on the plats entitled "Lawton Beach Subdivision No. 1" recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 9 at page 44 and Block 6 Lawton beach Subdivision No. 1 Property of the Hilton Head Land Company", recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 10 at Page 41.

AND ALSO, and all other lands lying between the above-described property and the high water mark of the Atlantic Ocean.

LESS AND EXCEPT, that certain strip designated as Baynard Avenue and now known as South Forest Beach Drive and that certain 50 foot right of way designated as 1st Street.

Derivation: This being the same property conveyed to the Grantor herein by Deed of HHC Liquidation Corporation, et al., recorded in Book 522, Page 7 at the Beaufort County, South Carolina Register of Deeds.

This description prepared by Ken Driggers, P.O. Box 50294, Columbia SC 29250.