

Easement Act of 1991 as amended, South Carolina Code Sections 27-8-10, et. seq. and Grantor and Grantee wish to avail themselves of the provisions of that law.

NOW, THEREFORE, the Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an absolute and unconditional gift, hereby gives, grants, bargains, sells and conveys unto the Grantee a Conservation Easement in perpetuity over the Property of the nature and character as follows:

1. **PURPOSE.** The purpose of this Conservation Easement is to ensure that the Property will be retained forever predominantly in its natural and scenic condition; to protect native plants, animals, or plant communities on the Property; and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property described above and to assure the availability of the Property for traditional uses that are compatible with the conservation values of the Property, such as limited residential construction, selective timber harvesting and farming of existing pastures and fields, wildlife observation and hunting and other uses as set forth herein.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the terms and provisions of this Conservation Easement. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control. Grantor understands that nothing in this Conservation Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

2. **PROPERTY USES.** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are expressly prohibited or which are expressly allowed. Grantor and Grantee have determined that the allowed activities do not impair the conservation values of the Property. Additional retained rights of Grantor are set forth in Paragraph 3 below.

2.1 Subdivision. The Grantor may subdivide or resubdivide the Property, at the Grantor's option, into a maximum of three (3) parcels. The size, shape, configuration and location of each subdivided parcel shall be subject to the approval of the Grantee, which approval shall not be unreasonably withheld. The Property may not be further divided, subdivided or partitioned.

2.2 Development. With the written approval of Grantee as set forth below, Grantor shall have the right to develop improvements on the Property as follows:

(i) To construct two (2) single family residential dwellings, one dwelling to be located adjacent to Russell Creek and one dwelling to be located adjacent to North Creek. Grantor may excavate dirt from a site on the Property in order to build a mound on which to construct such dwellings. Each such dwellings shall not exceed

5,000 square feet of heated floor space in size and each shall be no taller than fifty (50') feet when measured from the ground or the previous level of the ground before the mound described above is constructed, to the topmost portion of the roof of each such dwelling. To serve the owners of each residential dwelling and their guests, each dwelling may have a swimming pool, tennis court, barn and dock (including boatlift and floating dock) constructed as an appurtenance thereto. Each barn may include an apartment which may be used for residential purposes, not to exceed 1,500 square feet of heated floor space in size. The docks and other structures described herein may be constructed prior to construction of the appurtenant residential dwellings.

(ii) In addition to the foregoing residential dwellings and appurtenant structures, Grantor may construct on the Property a building designed to be used as a residence or as a lodge or inn for transient guests who are visiting the Property to enjoy recreational activities compatible with the conservation values of the Property. Grantor may excavate dirt from a site on the Property in order to build a mound on which to construct such building. The building shall be no larger than 6,500 square feet of heated floor space and no taller than fifty (50') feet when measured from the ground or the previous level of the ground before the mound described above is constructed, to the topmost portion of the roof. To serve the owners of the structure or their guests, a swimming, tennis court and barn may be constructed near the building, and a dock (including boatlift and floating dock) may be constructed as an appurtenance thereto. The barn may include an apartment which may be used for residential purposes, not to exceed 1,500 square feet of heated floor space in size. The dock and other structures described herein may be constructed prior to the appurtenant main residence, lodge or inn.

(iii) To construct driveways, access roads and walkways, wells, and underground utilities necessary to accommodate the improvements and their use as set forth above, provided such improvements are done in accordance with local, state and federal laws. All access roads and walkways shall be of a permeable material, unless otherwise required by governmental authorities having jurisdiction over the subdivision of the Property.

(iv) To construct sheds and other accessory buildings to provide needed services for the permitted structures or to complement the architectural design and plan of the Property. Except as otherwise provided herein, such sheds and other accessory buildings may not be used as dwelling units.

(v) Grantor shall have the right to drill wells and install septic tanks for each building constructed on the Property in accordance with this Easement, together with other necessary utilities to serve these structures.

Grantee's Consent. Prior to beginning construction of allowed improvements Grantor shall submit architectural (if appropriate) and site plans to the Grantee for its review and approval. The plans shall be sufficiently detailed to allow Grantee to fully evaluate the impact of the construction of the improvements on the conservation values of the Property. No construction of the improvements may take place until Grantee approves the plans. The plans will be deemed approved unless the Grantee objects in writing, within forty-five (45) days of receipt of complete plans, setting forth with specificity the Grantee's grounds for objections. Grantee agrees that if the new construction is consistent with the terms and provisions of this Conservation Easement, Grantee's approval shall not be unreasonably withheld.

Mediation. If a dispute arises between the parties concerning the approval of the plans either party may refer the dispute to non-binding mediation by request made in writing to the other. Within thirty (30) days after the receipt of such a request, the parties shall select a single mediator to hear their contentions and to seek to resolve their differences. If the mediator has not been able to resolve the parties differences within ninety (90) days after his selection, then the parties may pursue other avenues to settle their dispute.

Prohibition of Other Construction. No other structures or improvements may be placed or constructed on the Property except as expressly permitted by this Conservation Easement. Furthermore, there shall be no constructing or placing of any airplane landing strip, utility lines, towers, or conduits, other than those necessary to serve the Property's improvements. No additional docks or landings shall be constructed from the Property. Outdoor lighting shall be placed and shielded so as to minimize the impact on surrounding areas.

2.3 Existing Improvements. Grantor shall have the right to maintain, remodel, and repair existing structures, docks, fences, water wells, utilities, and other improvements, and in the event of their destruction, to reconstruct any such existing improvements with another of similar size, function, capacity, location and material.

2.4 Timber Management. Grantor shall have the right to harvest timber from the Property pursuant to a Forest Management Plan, to be updated at least every ten (10) years, that is prepared by a registered professional forester and approved by Grantee and that is designed to ensure the maintenance of good quality growing stock of native timber with an emphasis on longleaf pine, while restoring the maritime forest, protecting soil stability, water quality and other conservation values of the Property, including without limitation, scenic, riparian and wildlife habitat values. The plan may accommodate the growing of other native tree species.

2.5 Agricultural. Grantor shall have the right to breed, raise, pasture and house domestic or farm animals in existing fields and pastures and allowed improvements. No level of grazing may be allowed that would result in an unreasonable deterioration of the

pastures or other conservation values of the Property. Grantor may not establish or maintain any commercial feed-lot on the Property which is defined for the purpose of this Easement as a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Property for feeding and fattening for market. Grantor shall have the right to farm existing fields, to plant and harvest trees on existing fields and to convert planted fields back to open fields for farming and agricultural uses.

2.6 Wildlife Management. In order to maintain wildlife numbers and diversity, Grantor shall be entitled to maintain existing fields through mechanical means or grazing and to establish wildlife food plots with plant species commonly used for that purpose in the area.

2.7 Wetland Impoundments. Subject to applicable governmental regulations, Grantor shall have the right to maintain, enhance and manage existing wetland impoundments for the purposes of providing habitat for alligators, waterfowl, colonial wading birds, shore birds and other native wildlife or for other purposes allowed by this Easement.

2.8 Home Businesses. Any business that is conducted by, and in the home of, a person residing on the Property, is allowed.

2.9 Recreational Uses. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Property, including, without limitation, hunting, fishing, hiking, trapping and horseback riding, that require no surface alteration or other development of the land, except as provided herein. Pursuit of wildlife by any form of motorized transportation is not allowed.

2.10 Excavation. Except as necessary to accommodate the activities expressly permitted under this Easement, there shall be no ditching, draining, diking, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials, mining, drilling or removal of minerals, nor any building of roads or change in the topography of the Property or disturbance in the soil in any manner. Grantor should be specifically authorized to construct any access roads to the structures permitted hereunder or any access roads required by local governmental entities in order to subdivide the Property in the manner permitted hereunder.

2.11 Destruction of Plants, Disturbance of Natural Habitat. Grantor shall have the right to cut and remove diseased or exotic trees, shrubs, or plants, and to cut firebreaks. Grantor shall also have the right to cut and remove trees, shrubs or plants to accommodate the activities expressly permitted under this Easement. There shall be no additional removal, harvesting, destruction or cutting of native trees, shrubs or plants. Except to accommodate the activities expressly permitted under this Easement, there shall be no planting of non-

native trees, shrubs or plants, plowing, introduction of non-native animals, or disturbance or change in the natural habitat in any manner.

2.12 Hydrology. Except as necessary to accommodate the activities expressly permitted under this Easement, there shall be no alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies on the Property. Grantor shall be allowed to create new ponds or lakes when excavating for the purposes set forth in this Easement.

2.13 Signage. No signs or billboards or other advertising displays are allowed on the Property, except that signs whose placement, number and design do not significantly diminish the scenic character of the Property may be displayed to state the name and address of the Property and the names of persons living on the Property, to advertise or regulate permitted on-site activities, to advertise the Property for sale or rent, and to post the Property to control unauthorized entry or use.

2.14 No Biocides. There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except as needed for routine agricultural and farming practices, except as needed around improvements on the Property and in existing agricultural fields, and except as approved by Grantee to control invasive species detrimental to the conservation values of the Property.

2.15 No Dumping. There shall be no storage or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste on the Property. Except as needed to service permitted improvements, there shall be no placement of underground storage tanks on the Property. There shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Property that could cause erosion or siltation on the Property, unless authorized herein.

2.16 No Pollution. There shall be no pollution, of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the Property that would be detrimental to water purity. Except for maintenance of the wetland impoundments no activities shall be conducted that could alter the natural water level or flow in or over the Property.

2.17 Predator Control. Grantor shall have the right to control, destroy, or trap predatory and problem animals which pose a material threat to livestock, domestic animals and/or humans by means and methods approved by Grantee. The method employed shall be selective and specific to individuals, rather than broadcast, nonselective techniques.

2.18 Commercial Development. Any commercial or industrial use of or activity on the Property, other than those relating to agriculture, silvaculture, recreational, home

businesses, lodging or as otherwise permitted by the provisions of this Easement, is prohibited.

3. **ADDITIONAL RIGHTS RETAINED BY GRANTOR.** Grantor retains the following additional rights:

3.1 Existing Uses. The right to undertake or continue any activity or use of the Property not prohibited by this Conservation Easement, including the right to maintain all existing improvements and roads. Prior to making any change in use of the Property, Grantor shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

3.2 Transfer. The right to sell, give, mortgage, lease, or otherwise convey the Property subject to the terms of this Conservation Easement.

4. **GRANTEE'S RIGHTS.** To accomplish the purpose of this Conservation Easement, the following rights are granted to Grantee by this Conservation Easement:

4.1 Right to Enforce. The right to enforce the terms of this Conservation Easement, in order to preserve and protect the conservation values of the Property.

4.2 Right of Entry. The right of Grantee's staff, contractors and associated natural resource management professionals to enter the Property after prior written notice to Grantor, for the purposes of: (a) inspecting the Property to determine if Grantor is complying with the covenants and purposes of this Conservation Easement; and (b) monitoring and research as described below and (c) management of exotic and invasive species as described below. Such right of entry shall not unreasonably interfere with Grantor's use of the Property.

4.3 Monitoring and Research. The right, but not the obligation, to monitor the plant and wildlife populations, plant communities and natural habitats on the Property. Grantor shall cooperate with Grantee in establishing, at no expense to Grantor, a written Monitoring and Research Plan to direct the monitoring of and research on plant and wildlife populations, plant communities and natural habitats on the Property. Grantor agrees that all monitoring activity, natural resource inventory and assessment work or other natural resource research, conducted by Grantor or others, shall be reported to Grantee.

4.4 Management of Exotics and Invasive Species. The right, but not the obligation, to control, manage or destroy exotic non-native species or invasive species of plants and animals that threaten the conservation values of the Property. Grantee will consult with Grantor prior to implementing management activities.

5. **RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or

other responsibility on the Grantor, or in any way to affect any existing obligation of the Grantor as owners of the Property. Among other things, this shall apply to:

5.1 Taxes - The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.

5.2 Upkeep and Maintenance - The Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

6. **ACCESS.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. However, the public has the right to view the Property from adjacent publicly accessible areas such as public roads and waterways

7. **ENFORCEMENT.** The Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement. With advance written notice the Grantee may enter the Property for the purpose of inspecting for violations. If the Grantee finds what is a violation, it may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could substantially diminish or impair the conservation values of the Property, the Grantee shall give the Grantor written notice of the violation and sixty (60) days to correct it (or to begin good faith efforts to correct in the event the violation is something which cannot be reasonably corrected in sixty days), before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring the Grantor to restore the Property to its condition prior to the violation. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

8. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this Easement are not divisible and are assignable in whole but not in part by Grantee. The Grantee shall have the right to transfer or assign this Conservation Easement to any private nonprofit organization that at the time of transfer, is a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code, and the organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, and the parties are unable to agree upon a substitute grantee, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility.

9. **TRANSFER OF PROPERTY.** Any time the Property, or any subdivided portion thereof, or any interest therein, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing within thirty (30) days of such transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement. The failure of Grantor to perform any act required by this Paragraph shall not impair the validity of this Easement or of the transfer or limit their enforceability in any way.

10. **AMENDMENT OF EASEMENT.** This Conservation Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the South Carolina Conservation Easement Act of 1991 as amended, or any regulations promulgated pursuant to that law. The Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement.

11. **TERMINATION OF EASEMENT.** If it is determined that conditions on or surrounding the Property have changed so much that it is impossible to fulfill the conservation purposes set forth above, a court with jurisdiction may, at the joint request of both the Grantor and Grantee, terminate this Conservation Easement.

If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings.

If the Easement is terminated through judicial action or condemnation and the Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. Grantee shall not be entitled to a percentage of any proceeds from such judicial sale or condemnation which are attributable to the value of improvements made after the date of this Easement. The Grantee shall use the proceeds consistently with the conservation purposes of this Conservation Easement.

12. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of South Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

13. **INDEMNIFICATION.** 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 other party on the Property.

14. **TITLE.** The Grantor covenants and represents that the Grantor is the sole owner and 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 and all mortgages, judgments, liens or other encumbrances which are superior in priority to this Conservation Easement, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement. Grantor makes no representation or warranty of title to that portion of the Property consisting of marshland or lands below the mean high water mark of abutting tidal waters.

15. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:

Jehossee Farm, LLC
c/o Richard C. Hagerty
5 Bedon's Alley
Charleston, SC 29401

To the Grantee:

Lisa Mattimoe
Southern Legal Department
The Nature Conservancy
P.O. Box 2267
Chapel Hill, NC 27515-2267

16. **ENVIRONMENTAL CONDITION.** The Grantor warrants that they have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.

17. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

18. **PARTIES.** Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

19. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, the Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

20. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

21. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinate to this Conservation Easement.

22. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the Seal of The Nature Conservancy and the signature of its authorized representative affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Charleston County Registry of Deeds.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto the Grantee, its successors and assigns, forever.

EX P 317PG885

EXHIBIT "A"

PROPERTY DESCRIPTION

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being on Little Edisto Island, Charleston County, South Carolina, known as Tract A containing 484.49 acres, more or less, including 191.03 acres highland, more or less, and 293.91 acres marshland and critical impoundments, more or less, as shown on a plat thereof entitled "PLAT OF THE SUBDIVISION OF A 543 AC. TRACT TO CREATE TRACT A (484.49 AC.) OWNED BY W. E. APPLGATE, III AND ARTHUR H. APPLGATE" prepared by Thomas & Hutton Engineering Co. and dated March 19, 1998, said Plat containing seven (7) sheets, and being duly recorded in the RMC Office for Charleston County in Plat Book EC, at Pages 463 through 469; the said Tract of land having such size, shape, dimensions, buttings and boundings as will by reference to said Plat more fully appear.

BEING the identical property conveyed to Jehossee Farm, LLC, by Deed dated May 5, 1998 and recorded on May 5, 1998, in the RMC Office for Charleston County in Book E-302, at Page 548.

TMS #032-00-00-011

317P6886

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

Date of Transfer of Title
(Closing date) 12/31 1998

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The ^{EASEMENT} property is being transferred BY VEHOSSEE FARM, LLC
TO THE NATURE CONSERVANCY ON 12/28/98
3. Check one of the following: *The DEED is*
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) X EXEMPT from the deed recording fee because (exemption# 1)
(Explanation If required) GIFT TO NON-PROFIT CORPORATION

(If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES__ or NO__ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
 - (a) _____ the amount listed in item 4 above
 - (b) _____ the amount listed in item 5 above (no amount place zero)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as : CLOSING ATTORNEY
8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

W. Foster Gaillard
Grantor, Grantee, or Legal Representative
connected with this transaction

W. FOSTER GAILLARD
Print or Type Name here

Sworn to before me this 31st
day of December 19 98
Nancy P. Hagner
Notary Public for South Carolina
My Commission Expires: 6-18-2006