

Berkeley County  
Cynthia B. Forte  
Register of Deeds  
Moncks Corner 294616120

00089151 Vol: 6218 Pg: 1



53 2006 00089151

Instrument Number: 2006- 00089151

As

Recorded On: December 20, 2006

Easement

Parties: EVENING POST PUBLISHING COMPANY

To

NATURE CONSERVANCY

Billable Pages: 19

Recorded By: BUIST LAW FIRM

Num Of Pages: 24

Comment:

**\*\* Examined and Charged as Follows: \*\***

Easement	29.00
Recording Charge:	29.00

**\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\***

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

**File Information:**

**Record and Return To:**

Document Number: 2006- 00089151	BUIST LAW FIRM
Receipt Number: 93667	P.O. BOX 999
Recorded Date/Time: December 20, 2006 12:24:00P	CHARLESTON SC 29402
Book-Vol/Pg: Bk-R VI-6218 Pg-1	
Cashier / Station: H Sexton / Cash Station 2	



*Cynthia B. Forte*

Cynthia B Forte - Register of Deeds

Note: This Conservation Easement has been drafted by the Conservancy as an accommodation to the Grantor. The Conservancy does not represent the interests of the Grantor. The Conservancy strongly advises the Grantor to review this document with the Grantor's attorney.

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CONSERVATION EASEMENT

STATE OF SOUTH CAROLINA §  
COUNTY OF BERKELEY §

GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement ("Conservation Easement") is made on this 18<sup>th</sup> day of December, 2006, by EVENING POST PUBLISHING COMPANY, with an address of 134 Columbus Street, Charleston, South Carolina, 29403 ("Grantor"), and THE NATURE CONSERVANCY, a non-profit corporation organized and existing under the laws of the District of Columbia, with a local address of South Carolina Field Office, Post Office Box 5475, Columbia, South Carolina 29250, ("Grantee").

RECITALS:

- A. The Grantor is the sole owner in fee simple of the property ("Property") legally described in Exhibit A, attached hereto and incorporated by this reference, which consists of approximately 770 acres located near the Town of Jamestown, Berkeley County, State of South Carolina and is generally known as the Wee Nee Tract.
- B. The Property is a significant natural area that qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder; specifically the Property is habitat for migratory and resident songbirds, waterfowl, and colonial wading birds. Preservation of the Property is pursuant to federal, state and local governmental conservation policy and will yield a significant public benefit, specifically it has been included in the Santee

River Focus Area of the North American Waterfowl Management Plan as designated by the State of South Carolina.

C. The characteristics of the Property, its current use and state of improvement, are described in a report entitled Baseline Report of Francis Marion (WeeNee), dated November 10, 2006 prepared by Grantee for the Grantor. The Grantor worked with the Grantee to ensure that the report is a complete and accurate description of the Property as of the date of this Conservation Easement. It will be used by the Grantor and Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, the Baseline Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

D. The Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Property in perpetuity, and the State of South Carolina has authorized the creation of Conservation Easements pursuant to the South Carolina Code, Sections 27-8-10, et. seq. and Grantor and Grantee wish to avail themselves of the provisions of that law as well as the provisions of the United States Internal Revenue Service Code of 1986, as amended ("I.R.C."), Section 170(h) concerning qualified conservation contributions.

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, scenic condition; to protect native plants, animals, or plant communities on the Property; to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property described above, while allowing for traditional uses on the Property that are expressly permitted in this Easement and defined herein.

Specifically, this Conservation Easement will a) protect riverine and non-riverine forested natural wetlands and associated upland communities providing habitat for migratory and resident

songbirds, waterfowl, colonial wading birds and other native wildlife species, b) buffer aquatic resources and protect the water quality of the Santee River from incompatible land use, c) buffer and augment similar habitat on the adjacent lands of the Francis Marion National Forest and the WeeTee State Forest located across the Santee River from the Property, and d) encourage the transition of the dense loblolly stands on the Property to a more open forest condition dominated by older age class timber that will enhance biodiversity values on the Property.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes 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 terms and purposes of this Conservation Easement is prohibited, unless it is specifically allowed below. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are expressly allowed or which are expressly prohibited.

2.1 Subdivision. The Property may not be divided, subdivided or partitioned, or conveyed or pledged for a debt except in its current configuration as an entity.

2.2 Transfer. Grantor shall have the right to sell, give, mortgage, lease, or otherwise convey the Property subject to the terms of this Conservation Easement.

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

- (i) To construct and maintain a maximum of one (1) new, single family residential dwelling, one (1) new caretaker's house, and one (1) new guesthouse on the Property. The permitted new residential dwelling and guesthouse shall not exceed a collective total of 5,000 square feet of heated floor space in size, and each shall be no taller than 45 feet when

measured from the ground. The permitted new caretaker's house is not to exceed 2,000 square feet of heated floor space in size and is to be no taller than 45 feet when measured from the ground. The new dwellings and guesthouse must be of traditional Lowcountry design and built of materials that blend with the surrounding natural landscape. Outdoor lighting shall be placed and shielded so as to minimize the impact on surrounding areas. Appurtenant to the allowed single family dwelling, Grantor shall have the right to develop and maintain ornamental yards, gardens and patios designed to serve the occupants of the dwelling, provided the total area of such yards, gardens and patios will cover no more than one acre.

- (ii) To construct and maintain driveways and associated culverts, access roads, roadside ditches and walkways necessary to accommodate the improvements and their use as set forth above, provided such improvements are constructed 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. Clearing of roads and walkways shall be performed in a manner in keeping with the Purposes of this Conservation Easement, as set forth in paragraph 1 herein.
- (iii) To construct and maintain sheds, barns, stables and other accessory buildings which are customary to a private residence to provide needed services for the permitted structures and to construct and maintain fences within the Property. The collective square footage of the floor space of all accessory buildings is not to exceed 5,000 square feet. Such sheds and other accessory buildings may not be used as dwelling units. In addition, ancillary residential recreational facilities, such as a swimming pool, may be constructed in the immediate vicinity of the allowed single family residential dwelling; provided that the collective square footage of the

footprints for the impervious surfaces related to such recreational facilities shall not exceed 3,000 square feet.

- (iv) To drill and maintain wells and install and maintain septic tanks for each residence constructed on the Property in accordance with this Conservation Easement, together with other necessary utilities to serve these structures, provided such improvements, including septic drain fields, are constructed in accordance with local, state and federal laws.
- (v) All improvements allowed above, including driveways, yards, gardens and patios, must be setback a minimum of one hundred feet (100') from the southern edge of the bottomland forest bordering the Santee River and a minimum of one hundred feet (100') from the edge of any other natural wetland located on the Property.
- (vi) Grantor shall also have the right to construct, repair and maintain a total of no more than one (1) new dock (with or without railings), including a pierhead (covered or uncovered), boatlift and floating dock. The pierhead is not to exceed 200 square feet in size, and the floating dock is not to exceed 200 square feet in size. Grantor may not moor any boats for use as additional residences on this dock or on any other portion of the Property. Grantor may also construct an access road to the permitted new dock, provided said roads are constructed of a permeable material. All new dock construction is to be done using natural-looking materials to the fullest extent practical and should blend into the surrounding natural environment. Any lighting on the dock lighting shall be placed and shielded so as to minimize the impact on surrounding areas. Grantor may not moor any boats for use as additional residences on the dock or on any other portion of the Property.
- (vii) To construct, repair and maintain one (1) observation tower with a deck on the Property. The maximum height from the ground to the deck of the

tower is not to exceed 25 feet. The deck is not to exceed 40 square feet in size. The deck may have handrails, but is to be uncovered.

- (viii) To construct, repair and maintain duck blinds, deer stands and other similar hunting structures which are small in size and number and which have a low impact on the habitat of the Property and do not materially impair the conservation values of the Property.
- (ix) Grantor shall have the right to maintain, remodel, and repair the permitted new structures, and in the event of their destruction, to reconstruct any such improvements with another of similar size, function, capacity, location and material.

*Grantee's Consent.* Prior to beginning construction of allowed improvements [other than the hunting structures permitted by Paragraph 2.2(viii)] Grantor shall submit site plans to the Grantee for its review. The plans shall be sufficiently detailed to allow the Grantee to fully evaluate the construction's conformance to this Conservation Easement. No construction of the improvements may take place until the Grantee reviews and approves the plans. The plans will be deemed approved unless the Grantee objects in writing, within thirty (30) 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 forty-five (45) 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 methods of resolving their dispute.

*Prohibition of Other Construction.* No other structures or improvements may be placed or constructed on or above the Property except as expressly permitted by this Conservation Easement. No additional docks or landings shall be constructed from the Property.

2.4 Existing Improvements. Grantor shall have the right to maintain, remodel, and repair existing structures, water tanks, fences, corrals, water wells, dams, ponds, utilities, roads, roadside ditches 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.

2.5 Existing Uses. Grantor shall have the right to undertake or continue any activity or use of the Property not prohibited by this Conservation Easement.

2.6 Agricultural Use. Grantor shall have the right to i) breed, raise, pasture and house domestic or farm animals in existing fields, pastures and other clearings permitted by this Conservation Easement and in allowed improvements, ii) plant, raise and harvest crops in existing or allowed fields and waterfowl impoundments on the Property, pastures and other clearings permitted by this Conservation Easement and iii) perform primary processing, provide storage and engage in the sale, including direct sales to the public, of crops and products harvested and produced principally on the Property. Grantor may not establish or maintain any commercial feedlot 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. Existing fields are defined for the purpose of this Easement as those fields maintained as open fields at the time of recordation of this Conservation Easement, as identified in the Baseline Report. Except as expressly permitted herein, there shall be no additional clearing of land to add to the



area of the existing fields. When existing fields cease to be used for agricultural purposes or maintained as open fields, they shall be allowed to revert to natural habitat and/or restored to natural habitat through re-vegetation of native plant species. With thirty (30) days prior written notice to Grantee, Grantor shall have the right to clear forty (40) additional acres for agricultural use or pasture, provided, said areas are setback a minimum of one hundred feet (100') from the southern edge of the bottomland forest bordering the Santee River, and a minimum of one hundred feet (100') from the edge of any other natural wetland located on the Property.

2.7 Grazing. No level of grazing may be allowed that would result in an unreasonable deterioration of the pastures or other conservation values of the Property.

2.8 Commercial Pine Straw Raking. Grantor shall have the right to rake pine straw for commercial sale and use, provided that it does not impair the conservation values of the Property.

2.9 Forest Management. Grantor shall have the right to harvest timber from the Property for commercial purposes 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. The Forest Management Plan will encourage sound forest management practices that will enhance biodiversity values on the Property and protect natural natural wetlands. Specifically, the Forest Management Plan will direct the transition from current dense loblolly pine stands to more open forest conditions, characterized by multiple age class timber dominated by older growth timber of at least forty (40) years of age and an open understory cover conducive to restoration of a diverse herbaceous ground cover. Grantor shall provide thirty (30) days advance written notice of any timber sale planned for the Property. Any forestry or silvicultural practice shall conform to Best Management Practices established by the South Carolina Forestry Commission, or any successor organization or commission. In addition, prescribed fire will be reinstated to the fullest extent practicable to enhance biodiversity values. Any commercial timber harvesting shall be subject to the buffer restrictions contained in Section 2.14 Wetland Buffers.

2.10 Recreational Uses. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Property for commercial purposes, including, without limitation, hunting, fishing, hiking, trapping, camping, the Sporting Clays course described below and horseback riding, that require no surface alteration or other development of the land, except as otherwise permitted by this Conservation Easement. Grantor has the right to lease all or a portion of the Property for hunting. Grantor has the right to conduct hunts for profit, provided Grantor complies with all applicable laws. With the Grantee's written consent as to location, the Grantor has the right to construct a recreational Sporting Clays course on the Property. The Sporting Clays course shall be placed so as to have a minimal impact on the Property, and so as not to impair its conservation values. Any trees shall be removed only in accordance with the Timber Harvest Section of this Conservation Easement. The Sporting Clays course shall be designed so that no projectile is deposited in any natural wetland. Structures used to shelter target throwers or other accessories shall not be made permanent structures, and shall be constructed of materials that blend with the surrounding habitat. The location and size of the Sporting Clays course shall be subject to prior approval by the Grantee, and such approval shall not be unreasonably withheld.

2.11 Wildlife Management. To maintain wildlife numbers and diversity, Grantor shall be entitled to maintain existing and permitted fields and open space through mechanical means or grazing and to establish wildlife food plots with plant species commonly used for that purpose in the area. Provided, however, any new wildlife food plots will be located in compliance with the provisions of Section 2.14 Wetland Buffers and the aggregate of the dispersed wildlife food plots do not exceed 20 acres in the aggregate.

2.12 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 Conservation Easement. With thirty (30) days written notice to Grantee, Grantor may create upland

waterfowl impoundments not to exceed twenty (20) acres in aggregate size, provided, said areas are located in compliance with the provisions of Section 2.14 Wetland Buffers.

2.13 Destruction of Diseased or Exotic Plants. Grantor shall have the right to cut and remove diseased or exotic trees, shrubs, or plants and to cut firebreaks and to harvest timber for firewood to be used on the Property and for lumber to maintain allowed structures and improvements. Grantor shall also have the right to cut and remove trees, shrubs or plants to accommodate the activities expressly permitted under this Easement.

2.14 Wetland Buffers. Those portions of the Property lying within one hundred feet (100') of the southern edge of the bottomland forest borderline the Santee River and within one hundred feet (100') from the edge of any other natural wetland located on the Property shall not be disturbed, except to allow the following:

- (i) the construction of the dock and access roads to the dock, as allowed above,
- (ii) the removal of diseased or exotic plants,
- (iii) the maintenance of existing roads that border and run through the bottomland forest,
- (iv) the maintenance for wildlife management of the existing fields, as allowed above,
- (v) selective thinning of plants to allow filtered views from the permitted residences,
- (vi) prescribed fire and
- (vii) silvicultural practices that will enhance forest biodiversity within designated natural wetland buffers.

2.15 Predator Control. Subject to all applicable federal, state and local laws, 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.

2.16 Roads and Trails. Grantor may construct roads and trails with permeable surfaces to accommodate the activities allowed under this Conservation Easement; however, they should be designed to enhance the edge effect for wildlife, to provide brood-rearing habitat, and for habitat diversification in general. Ditches and swales necessary for the construction and maintenance of these roads are allowed.

2.17 Hydrology. Grantor may create upland waterfowl impoundments as set forth in Section 2.12 above.

2.18 Archaeological Investigation. Grantor may conduct archaeological research on the Property provided that: (1) Grantor gives prior notice to Grantee and obtains necessary approval from the appropriate state or federal agency and Grantee; and (2) any such disturbance and investigation is performed in such a manner as to minimize any adverse impact on the Purposes of this Conservation Easement, as set forth in paragraph 1 herein.

2.19 Home Businesses. Any business that is conducted by, and in the home of, a person residing on the Property, is allowed provided that the traffic generated by the home business does not adversely impact the Purposes of this Conservation Easement.

2.20 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.

2.21 Miscellaneous. Except as expressly allowed by this Conservation Easement or as necessary to accommodate the activities allowed by this Conservation Easement, the following activities are prohibited on the Property:

- (i) Excavating, ditching, draining, dredging, mining or drilling;
- (ii) Depositing soil, gravel or other materials;
- (iii) Changing the topography;
- (iv) Storage or dumping of trash, garbage, or other unsightly or offensive materials, hazardous waste or toxic substances;
- (v) Polluting surface waters, natural water courses, lakes, ponds, marshes, subsurface water or any other water body;
- (vi) Altering the natural water level or flow in and over the Property;
- (vii) Extracting water;

- (viii) Removal, harvesting, destruction or cutting of native trees, shrubs and plants;
- (ix) Introduction of non-native plants and animals; and
- (x) Any commercial or industrial use.

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

3.1 Right to Enforce. The right to preserve and protect the conservation values of the Property and enforce the terms of this Conservation Easement as provided in Section 7.

3.2 Right of Entry. The right of Grantee's staff (including contractors and associated natural resource management professionals as needed) to enter the Property at reasonable times after prior written notice to Grantor, for the purpose of inspecting the Property to determine if Grantor is complying with the covenants and purposes of this Conservation Easement. Prior written notice is not required if Grantee is entering upon the Property because of an ongoing or imminent violation that could, in the sole discretion of Grantee, substantially diminish or impair the conservation values of the Property, as described in Section 6 herein.

4. **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. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Among other things, this shall apply to:

- (a) *Taxes* - The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.
- (b) *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. Grantor shall

keep the Grantee's interest in the Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor.

(c) *Insurance* - The Grantor agrees to maintain adequate comprehensive general liability insurance coverage on the Property.

5. **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.

6. **ENFORCEMENT.** To enforce the terms of this Conservation Easement, Grantee shall give notice of the violation of the Conservation Easement to the Grantor by certified mail, return receipt requested. In such notice the Grantee shall request the Grantor to correct the violation, to take action to stop ongoing or future violations, and to restore the Property to its condition at the time of the conveyance of this Conservation Easement. Grantor agrees that the Baseline Report (also known as an Easement Documentation Report) shall be deemed to provide objective information concerning the Property's condition at the time of this grant. Failure by the Grantor to abate the violation and take such other corrective action as may be requested by the Grantee within sixty (60) days after receipt of such notice (the "cure period") shall entitle the Grantee to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the Property to its condition at the time of the conveyance of this Conservation Easement; to enjoin the non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from the non-compliance. Such damages, when recovered, may be applied by the Grantee, in its sole discretion, to corrective action on the Property. If the court determines that the Grantor has failed to comply with this Conservation Easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys fees, in addition to any other payments ordered by such court.

6.1 Emergency Enforcement. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the

conservation values of the Property, the Grantee may pursue its remedies under this paragraph without prior notice to the Grantor or without waiting for the cure period to expire.

6.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act or delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement.

6.3 Violations Due to Causes Beyond Grantor's Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by the unauthorized wrongful acts of third persons, the Grantor agrees, upon request by the Grantee, to assign its right of action to the Grantee, to join in any suit, or to appoint the Grantee its attorney-in-fact for the purposes of pursuing enforcement action, all at the election of the Grantee.

6.4 Standing. By virtue of Grantee's acquisition of rights under this Conservation Easement, it shall be entitled, at its option, to standing before appropriate courts of law to pursue remedies or other matters which are necessary or incidental to the protection of the property which is subject to this Conservation Easement.

7. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this easement are in gross and assignable in whole but not in part. 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 which is approved in writing by the Grantee, such approval not to be unreasonably withheld, 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, a court with jurisdiction shall transfer this

Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility.

8. **TRANSFER OF PROPERTY.** Any time the Property, 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 prior to the 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 Conservation Easement or of the transfer or limit their enforceability in any way.

9. **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 1992 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.

10. **TERMINATION OF EASEMENT.** The Grantor hereby agrees that at the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real property right, immediately vested in the Grantee. When a change in conditions takes place which makes impossible or impractical any continued protection of the Property for conservation purposes, and the restrictions contained herein are extinguished by judicial proceeding, then as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Property, shall be entitled to a percentage of the gross sale proceeds (minus any amount attributable to new improvements allowed under this Conservation Easement made as of the date of the sale, exchange or conversion, which amount shall be reserved to Grantor) equal to the ratio of the appraised value



of this Conservation Easement to the unrestricted fair market value of the Property, as of the date this Conservation Easement was granted. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in and defined under P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder.

11. **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, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests, and Grantee's proceeds shall be used as specified above. All expenses incurred by the Grantor and the Grantee in such action shall be paid out of the recovered proceeds.

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 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 solely as a result of, or solely arising out of, the negligent or reckless activities of the other party on the Property that causes personal injury to another person or physical damage to 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 liens, mortgages, judgments or other

encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement; and that there is no pending or threatened litigation in anyway affecting, involving or relating to the Property. 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 or by facsimile, to Grantor and Grantee, respectively, at the following addresses or fax numbers, unless a party has been notified by the other of a change of address.

To Grantor:

Pierre Manigault  
134 Columbus Street  
Charleston, SC 29403  
Fax:

To the Grantee:

Attorney Southern Resource Office  
The Nature Conservancy  
6114 Fayetteville Road, Suite 109  
Durham, NC 27713-8548  
Fax: (919) 484-7357

16. **ENVIRONMENTAL CONDITION.** The Grantor covenants and represents that no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Property. Grantor has no knowledge of any underground storage tanks located on the property. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability to Grantee to exercise physical or managerial control over the day-to-day

operations of the Property, or any of Grantors' activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and any corresponding state statute.

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.** 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 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 Berkeley County Registry of Deeds, South Carolina.

23. **DISCLOSURE.** This Conservation Easement has been drafted by the Grantee as an accommodation to the Grantor. The Grantee does not represent the interests of the Grantor and makes no representation as to whether this Conservation Easement is in the proper form to assure the Grantor a charitable deduction in the event the Grantor claims a charitable gift deduction on its federal or state income tax returns. The Grantee has advised the Grantor to have the document reviewed by the Grantor's attorney, and the Grantor has had ample opportunity to do so.

24. **SUBORDINATION.** Grantee agrees that it will subordinate this Conservation Easement to a more restrictive easement for the preservation of wetlands, timberlands, soils, clean water, or any other Purpose of this Conservation Easement, so long as such easement is consistent with the terms of this Conservation Easement and promotes and protects the conservation values defined in this Easement.

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

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands and seals on the date first written above.

WITNESS:

GRANTOR:

EVENING POST PUBLISHING COMPANY

Michael B. Prout

By: Flora Manigault (SEAL)

John H. Smyth

Its: Chairman

GRANTEE:

THE NATURE CONSERVANCY

Ann M. Farland

Inacy Brigg

Daniel W. Guy, Jr. (SEAL)

By: Daniel W. Guy, Jr.

Its: Assistant Secretary

STATE OF SOUTH CAROLINA §

COUNTY OF CHARLESTON §

This instrument was acknowledged before me on the 18<sup>th</sup> day of December, 2006, by Devre Mangualt, Chairman of EVENING POST PUBLISHING COMPANY, on behalf of said corporation.

Sheela M. Smyt (SEAL)

NOTARY PUBLIC

My commission expires:

10/13/2016

STATE OF NORTH CAROLINA §

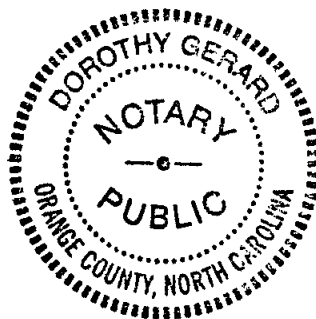
COUNTY OF DURHAM §

This instrument was acknowledged before me on the 15<sup>th</sup> day of December, 2006, by Daniel W. Guy, Jr., Assistant Secretary of THE NATURE CONSERVANCY, on behalf of said corporation.

Dorothy Gerard (SEAL)  
NOTARY PUBLIC Dorothy Gerard

My commission expires:

2-10-2007



## EXHIBIT "A"

## TRACT 1:

All that piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Berkeley, State of South Carolina, measuring and containing a total area of 769.649 acres, more or less, and shown and designated on a certain plat entitled, "BOUNDARY SURVEY OF WEE NEE TRACT FOR INTERNATIONAL PAPER REALTY CORPORATION ST. JAMES PARISH BERKELEY CO., SOUTH CAROLINA" dated April 7, 2004, last revised July 9, 2004, prepared by Survey Technology, Inc., Les H. Bodkin, III, PLS No. 14182, and recorded in Plat Cabinet Q, Page 260-A, in the Office of the Register of Deeds for Berkeley County, South Carolina, with the said tract of land having such buttings, boundings, and measurements, more or less, as will appear by reference to the said plat which is incorporated herein by reference.

TMS No. 074-00-01-044

## TRACT 2:

All of the Grantor's right, title and interest in and to ALL that piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Berkeley, State of South Carolina, measuring and containing a total area of 1.032 acres, more or less, and shown and designated as "1.032 Ac. To Be Dedicated To The Public" on a certain plat entitled "BOUNDARY SURVEY OF WEE NEE TRACT FOR INTERNATIONAL PAPER REALTY CORPORATION ST. JAMES PARISH BERKELEY CO SOUTH CAROLINA" dated April 7, 2004, last revised July 9, 2004, prepared by Survey Technology, Inc., Les H. Bodkin, III, P.L.S. No. 14182, and recorded in Plat Cabinet Q, at Page 260-A, in the Office of the Register of Deeds for Berkeley County, South Carolina, with the said tract of land having such buttings, boundings and measurements, more or less, as will appear by reference to the said plat which is incorporated herein by reference.

## TRACT 3:

All of the Grantor's right, title and interest in and to ALL that piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Berkeley, State of South Carolina, and lying between the center line of the Santee River and the northern boundary line of the above described tract of 769.649 acres identified as "Top Bank Santee River" on a certain plat entitled "BOUNDARY SURVEY OF WEE NEE TRACT FOR INTERNATIONAL PAPER REALTY CORPORATION ST. JAMES PARISH BERKELEY CO SOUTH CAROLINA" dated April 7, 2004, last revised July

9, 2004, prepared by Survey Technology, Inc., Les H. Bodkin, III, P.L.S. No. 14182, and recorded in Plat Cabinet Q, at Page 260-A, in the Office of the Register of Deeds for Berkeley County, South Carolina, with the said tract of land having such buttings, boundings and measurements, more or less, as will appear by reference to the said plat which is incorporated herein by reference.

TRACT 4:

All of the Grantor's right, title and interest in and to ALL that piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Berkeley, State of South Carolina, and lying between the northwestern boundary line of above described tract of 769.649 acres identified as "Top Bank Savannah Creek" on the aforementioned Plat by Les H. Bodkin, III, P.L.S. and the centerline of Savannah Creek.

TMS: 074-00-01-044 (for all of the above)