

U.S. et al. v. Beazer East, Inc.
Consent Decree Appendix B
Conservation Easement

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

THIS GRANT OF CONSERVATION EASEMENT (hereinafter "Easement") is made this _____ day of _____, 2018, by the National Trust for Historic Preservation in the United States (hereinafter "**Grantor**"), having an address at The Watergate Office Building, 2600 Virginia Avenue, NW Suite 1100, Washington, DC 20037, in favor of the Lowcountry Land Trust, Inc. (hereinafter "**Grantee**"), a South Carolina charitable corporation and a publicly supported corporation organized and operated under §501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code") and not a private foundation under Code §509, with a business address at 43 Wentworth Street, Charleston, SC 29401.

WHEREAS, **Grantor** is the sole owner in fee simple of certain real property known as the "Drayton Hall Marsh Tracts" containing approximately one hundred and four (104) acres (TMS #s 406-00-00-011, 406-00-00-039, and 406-00-00-040), more particularly described in Exhibits "A" and "B" attached hereto and incorporated herein by this reference, in Charleston County, South Carolina (collectively, the "**Protected Property**" as hereinafter defined); and

WHEREAS, the **Protected Property** possesses significant ecological and natural resources, open space and scenic value, and historic or cultural values of great importance to **Grantor**, to **Grantee** and to the people of South Carolina and this nation, the protection of which will yield significant public benefit; and

WHEREAS, the **Protected Property** lies within the more than 800,000 acres of the Cooper, Ashley, Wando, and Sea Islands ("CAWS") Basin Focus Area, featuring diverse ecosystems and a wealth of wildlife, all of which is the focus of a consortium of private landowners, conservation groups, and federal and state agencies, working to protect and enhance the region's natural resources and traditional agricultural and recreational uses; and

WHEREAS, the **Protected Property** lies more specifically within the Ashley River Initiative of the CAWS Basin Focus Area, which contains many historic plantation sites which are largely undeveloped and harbor important natural habitats including tidal, managed, and forested wetlands, as well as upland forests and agricultural areas, and also contain important historical and archeological sites; and

WHEREAS, the CAWS Focus Area of South Carolina, and the Ashley River Corridor in particular, has in recent years suffered a tremendous loss of critical ecosystems, scenic property, wetlands, natural forests, wildlife habitat, prime farm land and timber land, and other natural resources from increased industrial, commercial and residential development; and

WHEREAS, the **Protected Property** lies within the Ashley River Historic District, a 13-mile long registered historic district along the Ashley River and Ashley River Road, a region of unique natural beauty and rich history, listed in the National Register of Historic Places, and was designated one of the "11 Most Endangered Historic Places in America" by the **Grantor** in 1995; and

WHEREAS, the **Protected Property** has frontage along the Ashley River, which was designated a South Carolina Scenic River in June 1998, pursuant to S.C. Code Ann. 49-29-230(5), making it the first State Scenic River established in the Lowcountry due to its unique combination of natural resource value as a relatively undisturbed tidal ecosystem with a large diversity of natural habitats, and its historical significance, having numerous historic sites of regional and national importance; and

WHEREAS, the protection of the **Protected Property** through this Easement is consistent with the Ashley Scenic River Management Plan dated January 2003 which outlines the common vision of the community for future management of the river and its resources within the context of the South Carolina Scenic Rivers Program; and

WHEREAS, in 1974, **Grantor** purchased Drayton Hall, a National Historic Landmark and a National Trust Historic Site located at 3380 Ashley River Road, Charleston, SC 29414 (“**Drayton Hall**”) and across the Ashley River from the **Protected Property**. Drayton Hall is one of the finest surviving colonial houses in America, the oldest surviving example of Georgian Palladian architecture in the United States and one of the only pre-Revolutionary houses that remain in close to original condition today. The house and grounds of Drayton Hall encompass approximately one hundred twenty-five (125) acres on the west bank of the Ashley River including scenic river frontage of over 1,470 feet. Drayton Hall accommodates approximately sixty thousand (60,000) visitors annually. The **Protected Property**, on the eastern side of the Ashley River, was a part of the former holdings of the Drayton family that had come under different ownership. In order to protect the scenic views of the Ashley River looking eastward from Drayton Hall and to protect the cultural integrity and historic viewshed, **Grantor** launched its successful “Land Across the River” campaign to purchase the **Protected Property** in 1994; and

WHEREAS, this Easement furthers perpetual protection of the **Protected Property**, a requirement of the **DARP/EA for the Koppers Superfund Site** (as hereinafter defined) directed by the **Natural Resource Trustees** (as hereinafter defined), a consortium of federal and state agency representatives (the “Trustees”), for the purpose of mitigating the Natural Resources Damage claim against Koppers Company/Beazer East, Inc. (“**Beazer**” as hereinafter defined) for injury to the natural resources in the Ashley River due to hazardous waste contamination at the **Koppers Co, Inc. (Charleston Plant) Superfund Site** located on the Ashley River in Charleston, South Carolina; and

WHEREAS, the protection of the **Conservation Values** (as hereinafter defined) of the **Protected Property** will yield significant public benefits, as evidenced by its designation as a “Core Critical Area” (“area containing high densities of priority habitats for conservation management and protection”) by South Carolina conservation partners in the 1999 South Carolina Landscape Mapping Project; and

WHEREAS, the **Protected Property** will provide significant public benefits for the people of Charleston County as it is designated as a “Rural Priority Area” and “Resource Management Area”, which are specifically targeted areas for conservation under the Charleston County Comprehensive Greenbelt Plan, and is within a proposed riparian buffer zone under this plan; and

WHEREAS, the **Protected Property** is in proximity to other permanently protected lands including: Middleton Marsh I, approximately 81 acres and Lewis Tract, approximately 20 acres, both located upstream on the Ashley River, a portion of Millbrook Plantation, approximately 18 acres located upstream and across the Ashley River, and Ashley River Marshes 1-7, approximately 1,121 acres located downstream on Ashley River, all protected by Grantee; Carter Tract at Millbrook Plantation, approximately 1,432 acres, Hanahan Tract, approximately 1,056 acres, Poplar Grove, approximately 4,300 acres, and Uxbridge, approximately 700 acres, and Middleton Place Woodlands, approximately 5,800 acres, all protected by Wetlands America Trust, Inc.; Ashley River Road Buffers #1-5, approximately 11 acres, and Millbrook Plantation Farm, approximately 141 acres, both protected by Grantee; Charlestowne Landing, approximately 350 acres, managed and permanently protected by South Carolina Department of Parks and Tourism; Drayton Hall, approximately 125 acres protected by ownership by the Grantor; Drayton Hall Ashley River Road Buffer, approximately 15 acres protected by Grantor; Mateeba Estates Road Buffer, approximately 4 acres, Mateeba Estates Boat Landing, approximately 5 acres, protected by Grantee; and Old Dorchester State Park, approximately 189 acres protected by the South Carolina Department of Parks, Recreation and Tourism (“PRT”); and the portion of protected lands directly south of Drayton Hall proper, approximately 520 acres owned, managed and permanently protected by South Carolina PRT; and

WHEREAS, the **Protected Property** is situated on and prominently visible by the public from the Ashley River, having approximately 4,600 feet of primarily marshland river frontage with forested uplands; and

WHEREAS, the **Protected Property** has relatively natural habitats, comprised primarily of marshland and mixed upland forest, which support a variety of floral and faunal species; and

WHEREAS, in particular, the **Protected Property** in its existing relatively natural condition contributes very little nonpoint source pollution to the Ashley River due to the significant extent of native vegetation present as well as the absence of **Impervious Surface** that, taken together, reduces sources of pollution and nutrient loading; and

WHEREAS, the **Protected Property** contains passerine wetlands, prime habitat for migratory songbirds, colonial wading birds, and associated amphibian and reptile species; 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, and also including feeding, breeding and resting areas for native small and large game and non-game mammals; and

WHEREAS, the **Protected Property** contains habitat with the potential to support species listed as priority species in the South Carolina State Comprehensive Wildlife Conservation Plan which have known or highly possible occurrences in Charleston County including but not limited to the northern cricket frog (*Acris crepitans*), frosted flatwoods salamander (*Ambystoma cingulatum*), eastern tiger salamander (*Ambystoma tigrinum*), spotted turtle (*Clemmys guttata*), star-nosed mole (*Condylura cristata*), Rafinesque's big-eared bat (*Corynorhinus rafinesquii*), black-throated green warbler (*Dendroica virens*), swallow-tailed kite (*Elanoides forficatus forficatus*), bald eagle (*Haliaeetus leucocephalus*), southeastern bat (*Myotis austroriparius*), eastern woodrat (*Neotoma floridana floridana*), eastern fox squirrel (*Sciurus niger*), and black swamp snake (*Seminatrix pygaea*); and

WHEREAS, it is anticipated that the **Restoration Project** (as hereinafter defined) conducted by **Beazer** and required by the **Natural Resource Trustees** will reestablish the historical hydrology of the intertidal saltmarsh area, thus enhancing the ecological services provided by the marsh habitats on the **Protected Property**.

WHEREAS, the specific **Conservation Values** are documented in a report on file at the **Grantee's** office and incorporated herein by this reference ("**Baseline Documentation Report**" as hereinafter defined), which consists of maps, reports and photographs (including 2006 NAPP Photos, 2011 NAIP Photos and on-site photographs taken by a representative of the **Grantee**), and the parties agree that the **Baseline Documentation Report** provides, collectively, an accurate representation of the **Protected Property** at the time of this Easement and is intended to serve as an objective point of reference from which **Grantee** shall monitor and enforce compliance with the terms of this Easement; and

WHEREAS, **Grantor** believes that through this Easement, the natural resources, habitat, beauty and unique ecological and historic character of the **Protected Property** can be protected in a manner that permits continuing private ownership of land and its continued use and enjoyment; and

WHEREAS, **Grantor** intends to preserve and protect the **Marsh Preserve** (as hereinafter defined) and 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 this Easement as specified herein; 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

WHEREAS, this Easement contains certain conservation purposes pursuant to the Act, as outlined therein and stated below:

- (A) "retaining or protecting natural, scenic, or open-space aspects of real property";
- (B) "ensuring the availability of real property for agricultural, forest, recreational, educational, or open-space use";
- (C) "protecting natural resources";
- (D) "maintaining or enhancing air or water quality";
- (E) "preserving the historical, architectural, archaeological, or cultural aspects of real property".

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** consistent with the Internal Revenue Code (the "Code") §170(h)

and in the regulations promulgated thereunder by the United States Department of the Treasury (hereinafter “Treasury Regulations”), except for the compensation received by **Grantor**, as follows:

(I) Protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem within the meaning of Code §170(h)(4)(A)(ii) which will yield a significant public benefit, including the protection of habitats and water quality and the public benefits described in the recitals to this Easement; and

(II) Preservation of open space (including farmland and forest land) within the meaning of Code §170(h)(4)(A)(iii)(I) for the scenic enjoyment of the general public which will yield a significant public benefit, including the opportunities for scenic enjoyment and the public benefits described in the recitals to this Easement; and

(III) Preservation of open space (including farmland and forest land) within the meaning of Code §170(h)(4)(A)(iii)(II) pursuant to clearly delineated Federal, state, or local governmental conservation policies which will yield a significant public benefit, including the policies and public benefits described in the recitals to this Easement; and

(IV) Preservation of a historically important land area within the meaning of Code §170(h)(4)(A)(iv) which will yield significant public benefit, including the area(s) and public benefits described in the recitals to this Easement.

WHEREAS, **Grantor** and **Grantee** agree these purposes can be accomplished by voluntarily placing perpetual 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 consistent with the requirements of 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 of which its purposes and powers include one or more of the purposes set forth in SC Code §27-8-20(1); and **Grantee** is a holder of conservation easements as conservation easements are defined by the Act; and, **Grantee** is a publicly supported, tax-exempt, nonprofit corporation organized and operated under Code §501(c)(3) dedicated to the preservation of the irreplaceable natural and historical resources of the South Carolina Lowcountry landscape by protecting significant lands, waters and vistas and is not a private foundation under Code §509;

NOW, THEREFORE, in consideration of the above and a monetary payment from **Beazer** to the **Grantor**, and in further consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to §§170(h) and 2031(c) of the Code and pursuant to the laws of the State of South Carolina, the **Grantor** hereby voluntarily grants and conveys to **Grantee** this Easement in perpetuity over the **Protected Property** of the nature and character and to the extent hereinafter set forth. **Grantor** herein declares that the **Protected Property** shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, and restrictions hereinafter set forth, which covenants, conditions, and restrictions shall be deemed to run with the land in perpetuity and to be a burden on the **Protected Property in perpetuity**.

1. **Purpose.** The Purpose of this Easement is to ensure that the **Protected Property** will be retained in perpetuity predominantly in its relatively natural and scenic condition, as improved by the **Restoration Project** (as hereinafter defined), and to prohibit uses of the **Protected Property** that would significantly impair or interfere with the **Conservation Values** of the **Protected Property**, or substantially impair the **Restoration Project** required by the **Natural Resource Trustees**, while reserving to **Grantor** all uses not expressly prohibited by this Easement, including, without limitation, limited low-impact educational, recreational, agricultural, forestry, and other open-space uses of the **Protected Property** that are compatible with and not destructive of the **Conservation Values** or the **Restoration Project**, and all educational uses involving the history, ecology, conservation, historic preservation and archeology of the region. **Grantor** understands that nothing in this Easement relieves **Grantor** of any obligation or restriction on the use of the **Protected Property** imposed by law. The protection of these **Conservation Values** by stewardship, enforcement, and monitoring in perpetuity is set forth in this Easement.

2. **Rights of Grantee.** Grantor hereby conveys the following rights to the Grantee:

(A) **Right of Visual Access.** To have visual access to the **Protected Property**, 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, at reasonable times, with at least five (5) business days' prior notice, in order to monitor compliance with this Easement and to further document natural and manmade features of the **Protected Property**. The Grantee shall limit entry to annual visits (after completion of the **Baseline Documentation Report**) unless the Grantee has reason to believe there is a violation of the terms of this Easement. Grantee shall not unreasonably interfere with Grantor's quiet use and enjoyment of the **Protected Property**;

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

(D) **Right to Require Restoration.** To require Grantor to restore such **Conservation Values** that may be damaged by any uses or activities prohibited by this Easement conducted by or on behalf of Grantor, or any activity or use inconsistent with the Purpose to include third party activities conducted by or on behalf of the Grantor. Provided, however, this right of Grantee shall not include a requirement that Grantor restore or maintain any impairment of the **Restoration Project** required by the **Natural Resource Trustees** or any impairment of **Conservation Values** resulting from activities described in Paragraph 12 below.

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:

Agricultural Activities shall be defined as activities outside of the **Marsh Preserve** directly related to the production of plant or animal products on the **Protected Property**, including crop production, animal husbandry, floriculture and horticulture, in a manner that preserves the long-term productivity of the soil, and protects water quality in the Ashley River and adjacent marshes, including the Marsh Preserve. Permitted **Agricultural Activities** shall not include **Feedlots**, intensive livestock production facilities nor any type of large-scale operation where animals are confined. Notwithstanding the above, aquaculture and/or mariculture activities must have **Approval**.

Agricultural Structure shall be defined as any building designed to be used or currently used in conjunction with permitted **Agricultural Activities** or **Forest Management Practices**, not including any structure used as a dwelling for human beings.

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 permitted through Discretionary Consent as described in Paragraph 9. The rationale for requiring the Grantor to receive **Approval** is to afford Grantee an adequate opportunity to evaluate the proposed activities to confirm if they are designed and will be carried out in a manner that is not inconsistent with the Purpose of this Easement. **Approval** shall not be unreasonably withheld by the Grantee. **Approval** does not relieve Grantor of the obligation to obtain all other necessary permits, consents and approvals.

Ashley River Buffer shall be defined as that portion of the **Protected Property** outside of the **Marsh Preserve** but within three hundred (300) feet of the **Water Line** adjacent to the Ashley River and its tributaries and as further described in Exhibit "B" hereto and in the **Baseline Documentation Report**.

Baseline Documentation Report shall be defined as the maps, reports and photographs (including 2006 NAPP Photos, 2011 NAIP Photos and on-site photographs taken by a representative of the Grantee), which provide, collectively, an accurate representation of the **Protected Property** at the time of this Easement and is intended to serve as an objective point of reference from which Grantee shall monitor and enforce compliance with the terms of this Easement.

Beazer shall mean Koppers Co./Beazer East, Inc., and any of its successors and assigns to the requirements of the Consent Decree between Beazer East, Inc., and the **Natural Resource Trustees** resolving natural resource damages liability at the **Koppers Co., Inc. (Charleston Plant) Superfund Site** in Charleston, South Carolina.

Boardwalk shall be defined as a pedestrian walkway constructed of boards or planks elevated above water or tidal wetlands.

Boatshed shall be defined as a non-climate-controlled structure used for the storage of non-motorized boats and equipment.

Building Height shall be measured, for the purposes of any permitted structure, from ground elevation or the legal building elevation within a Federal Emergency Management Agency (or successor agency) flood zone, whichever is greater, to the top of the highest structural component, excluding chimneys, antennas and weather vanes.

Caretaker Residential Structure shall be defined as a dwelling having sleeping quarters, sanitary facilities, and cooking facilities which provides habitable accommodations for the management or security of the Protected Property by the **Grantor** or permitted lessee, but shall not be used as a permanent private residence.

Conservation Values shall be defined as and include: Open space outside of the **Marsh Preserve** for agriculture and/or forestry use; relatively natural habitat and biological diversity; preservation or enhancement of downstream water quality of the Ashley River; scenic views of the **Protected Property** from the Ashley River and from **Drayton Hall**.

DARP/EA for the Koppers Superfund Site shall mean the Damage Assessment and Restoration Plan/Environmental Assessment prepared pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and National Environmental Policy Act to identify and evaluate damages to natural resources at the **Koppers Co, Inc. (Charleston Plant) Superfund Site** as well as restoration alternatives intended to compensate the public for the damages, and to analyze the impacts to the human environment associated with the alternatives being considered for restoration of the damaged natural resources.

Education/Recreation Structure shall be defined as any structure designed or utilized for educational and/or recreational uses related to the non-profit use of the **Protected Property** as designated herein, or other uses subject to **Approval** including, but not limited to: pavilions, covered shelters, outdoor classrooms, picnic areas, kiosks, equipment sheds, and restroom facilities. **Education/Recreation Structure** shall not include any structure used as a permanent or temporary **Caretaker Residential Structure**.

Feedlot shall be defined as any confined area or facility for feeding livestock for commercial purposes, or within which the land is not grazed or cropped at least annually, or which is used to receive livestock that have been raised off the **Protected Property** for feeding and fattening for market.

Forest Management Plan shall be defined as a written plan subject to periodic updates mutually agreed to by the parties, to be on file with the **Grantee**, which outlines **Forest Management Practices** on the Protected Property.

Forest Management Practices shall be defined as the production, improvement and maintenance of forestlands for timber production and commercial harvesting, wildlife management, aesthetics or any other purpose. **Forest Management Practices** include silvicultural practices, which are used to control the establishment, growth, composition, health, quality and utilization of forestlands for multiple-use purposes and include, but are not limited to, harvesting, thinning, reforestation, competition control, prescribed fire or fire breaks.

Grantee shall be defined as the Lowcountry Land Trust, Inc., a §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 National Trust for Historic Preservation in the United States, the original donor of this Easement, and its personal representatives, heirs, successors, assigns, and subsequent owners of record.

Impervious Surface shall be defined as a hard surface area that either prevents or significantly retards the entry of water into the soil mantle at a rate lower than that present under natural conditions prior to development. Impervious surfaces can include, but are not limited to, roof tops, walkways, patios and decking, enclosed and unenclosed porches, paved driveways, paved parking lots, covered storage areas, concrete or asphalt paving, swimming pools, or other surfaces which similarly impede the natural infiltration of surface and stormwater runoff. **Impervious Surface** specifically excludes ground surfaces covered with sand, gravel, shell sand, crushed stone, or other similar traditional permeable materials. The use, installation, and/or introduction of new products and/or technologies for pervious surfaces (those surfaces which allow for the direct percolation of water into the soil surface), requires prior **Approval** from the **Grantee**. **Approval** will be case by case and all requests for the use, installation and/or introduction of such new products and/or technologies must be accompanied by the appropriate research, data and information on the material for **Grantee** to accurately evaluate the proposed product and/or technology.

Koppers Co, Inc. (Charleston Plant) Superfund Site shall mean the land encompassing approximately 102 acres, located south of Milford Street between King Street and Ashley River, in Charleston, Charleston County, South Carolina, and as described in the April 29, 1998 EPA Superfund Record of Decision.

Marsh Preserve shall mean that portion of the **Protected Property** where the **Restoration Project** shall take place to restore the natural tidal marsh habitat as required by the **Natural Resource Trustees**, encompassing approximately 70 acres and as further described in the **DARP/EA for the Koppers Superfund Site**, in Exhibit "B" hereto and in the **Baseline Documentation Report**.

Natural Resource Trustees shall mean the United States National Oceanic and Atmospheric Administration, the United States Fish and Wildlife Service, the South Carolina Department of Natural Resources and the South Carolina Department of Health and Environmental Control. Natural Resource Trustees are authorized under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq. (also known as the Clean Water Act or CWA), and other applicable federal or state laws, including Subpart G of the National Oil and Hazardous Substances Contingency Plan (NCP), at 40 C.F.R. §§ 300.600 through 300.615, and DOI's CERCLA NRDA regulations at 43 C.F.R. Part 11 (NRDA regulations) which provide guidance for this restoration planning process under CERCLA. Under these regulations, the Trustees are responsible for recovering damages for injury to natural resources caused by a release of hazardous substances.

Notice shall be defined as a written communication to include confirmed receipt, not a request for **Approval**, prior to undertaking a permitted activity, as defined in Paragraph 21.

Protected Property shall mean certain real property owned by **Grantor** in Charleston County, South Carolina, and comprising approximately one hundred and four (104) acres in three separate parcels (TMS #s 406-00-00-011, 406-00-00-039, and 406-00-00-040), more particularly described in Exhibits "A" and "B" attached hereto, and incorporated herein by this reference.

Request for Approval shall be defined as a written request by **Grantor** for **Approval** by **Grantee** of a defined activity proposed by the **Grantor**.

Restoration Project shall be defined as those specific marsh restoration and other mitigation activities required by the **Natural Resource Trustees** for the **DARP/EA for the Koppers Superfund Site**,

and further described in the **Statement of Work** (as hereinafter defined), that are to be conducted by **Beazer**. Work pursuant to the **Restoration Project** shall occur in the **Marsh Preserve**.

Statement of Work shall be defined as the written work plan titled “Drayton Hall Restoration Project Statement of Work”, and included as an appendix to a court-approved consent decree resolving **Beazer**’s potential liability to the **Natural Resource Trustees** for Natural Resource Damages at the **Koppers Co., Inc. (Charleston Plant) Superfund Site** in Charleston, South Carolina.

Significant Tree shall be defined as any cypress, live oak, magnolia or hickory or any tree having a diameter at breast height of twelve (12) inches or greater.

Subdivided Tract shall be defined as a legally divided, transferable parcel of land having a unique tax identification number according to Charleston County real property tax records.

Subdivision shall be defined as the permitted 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, specifically excluding railings. **Superstructures** may include, but are not limited to roofs, benches, tables, shelves and counters.

Water Line shall be defined as the edge of a waterway or waterbody which is either the critical line as defined by South Carolina Office of Ocean and Coastal Resource Management or, if no critical line has been established, the mean high water line as defined by the United States Army Corps of Engineers or established by a surveyor employing the regulatory standards then in effect for its determination. If the critical line or the mean high water line cannot be established or are no longer used to define the edge of a waterway or waterbody, then the comparable defining line as defined by successor entities of the above named agencies shall be used.

Wetlands shall be defined as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions,” as stated in the United States Army Corps of Engineers Wetlands Delineation Manual (1987, or as amended).

4. **Reserved Rights.** **Grantor** reserves all the rights, uses and activities on, over, or under the **Protected Property** that are not expressly prohibited by this Easement (collectively, the “Reserved Rights”), subject to the specific Restrictions and Limitations of Paragraph 5 (as applicable), including, without limitation, the following:

- (A) All rights, uses, and activities inherent in fee simple ownership of the **Protected Property** in its entirety;
- (B) The right to permit **Beazer** to undertake all those activities, actions and uses described in the **Statement of Work** or otherwise required to complete the **Restoration Project**;
- (C) The right to permit entry on the **Protected Property** by the **Natural Resource Trustees** or their designees to monitor the **Restoration Project**; and
- (D) The right to engage in low impact educational and outdoor recreational activities including hiking, wildlife observation, boating or other activities that do not impair the **Conservation Values** of the **Protected Property**.

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 Purpose of this Easement stated in Paragraph 1. No **Approval** shall be needed from **Grantee** for **Grantor** to exercise the Reserved Rights.

5. **Restrictions and Limitations.** **Grantor** will not perform or permit or will perform or permit, as specified below, the following acts or uses on, over or under the **Protected Property**:

(A) **Subdivision.** The **Protected Property** is currently composed of three (3) tracts, which are Charleston County TMS #s 406-00-00-011, 406-00-00-039 and 406-00-00-040. There shall be no further **Subdivision** of the **Protected Property**. Although the current legal description of the **Protected Property** describes more than one tract of land, which could be conveyed separately, the **Grantor** covenants and agrees that all of the **Protected Property** shall be held by the same owner as a single undivided tract of land. The property boundaries of the three (3) tracts may be reconfigured at the **Grantor's** discretion in a manner not to exceed three (3) separate tracts, however, the tracts shall be held by the same owner as a single undivided tract of land. The **Grantor** shall not indirectly or practically divide all or any part of the **Protected Property** through the allocation of property rights among partners, shareholders or members of any successor entity, the creation of a horizontal property regime, long-term leasing or any other means.

(B) **Structural Limitations.** The construction, enlargement, removal and replacement of **Education/Recreation Structure, Caretaker Residential Structure, Agricultural Structures** and all other structures shall be permitted, provided they are subject to the following limitations:

I. Total **Impervious Surface** on the **Protected Property** shall not exceed a maximum of nine thousand, four hundred (9,400) square feet in the aggregate.

II. No **Education/Recreation Structure, Caretaker Residential Structure** or **Agricultural Structure** shall exceed thirty-five (35) feet in **Building Height**.

III. The **Caretaker Residential Structure** shall be limited to one (1) such structure which shall not exceed one thousand (1,000) square feet.

IV. The **Boatshed** shall be limited to one (1) such structure as defined herein, shall not exceed six hundred (600) square feet, shall not exceed twenty (20) feet in **Building Height**, and shall not be climate controlled.

V. **Education/Recreation Structures** and **Agricultural Structures** shall be permitted, provided that the square footage of all **Impervious Surface** on the **Protected Property** does not exceed the allowance stated in Paragraph 5(B)(I).

VI. Other than the permitted **Caretaker Residential Structure**, no other structure on the **Protected Property** shall be used as a temporary or permanent dwelling for human beings.

VII. **Docks.**

(a) One (1) new dock providing access to the Ashley River or its tributaries may be constructed, maintained, repaired, improved, removed or replaced, provided it shall be limited to primarily natural or non-reflective materials, limited to one (1) walkway no more than six (6) feet wide, and limited to one (1) fixed pierhead with a maximum of one hundred sixty (160) square feet in the aggregate. The dock may also have one (1) drive-on or float-on type of floating dry dock limited to one hundred (100) square feet.

(b) **Grantor** shall not construct as a part of any dock providing access to the Ashley River or its tributaries any fixed or permanent **Superstructures** or boatlifts.

Neither **Grantor** nor **Grantor's** agents shall make application for any permit or construct any improvements on the **Protected Property** or allow any third party to make application for any permit or construct any improvements on the **Protected Property** or allow access from the **Protected Property** to any improvements which would result in a violation of any provisions of this Easement, including, but not limited to, the construction of any docks within the deemed extension of the property lines extending to the Ashley River except as expressly permitted, herein.

VIII. Boat Ramp. No boat-launching ramp(s) providing access to the Ashley River are permitted.

IX. Ashley River Marsh Pier. A **Boardwalk** providing access to the **Marsh Preserve** may be constructed, maintained, repaired, improved, removed or replaced, provided it shall be limited to primarily natural or non-reflective materials, shall be limited to a total length of six hundred (600) feet, the walkway of no wider than six (6) feet, and an optional associated observation platform that does not exceed a maximum of two hundred (200) square feet in the aggregate (the “Ashley River Marsh Pier”). The observation platform shall be constructed at the same height as the **Boardwalk**. There shall be minimal adverse impact to the **Marsh Preserve** during construction. All structures and construction activities shall be consistent with applicable South Carolina Department of Health and Environmental Control’s Ocean and Coastal Resource Management regulations.

X. Upland and Marshland Boardwalks. **Boardwalks** providing access to the **Protected Property** may be constructed, maintained, repaired, improved, removed or replaced, provided they shall be limited to primarily natural or non-reflective materials, limited to no more than six (6) feet in width, and limited to walkways and associated observation platforms with a maximum of two thousand two hundred (2,200) feet in length. There shall be minimal adverse impact to **Wetlands** during construction. All structures and construction activities shall be consistent with applicable South Carolina Department of Health and Environmental Control’s Ocean and Coastal Resource Management regulations.

XI. Towers. There shall be no towers on the **Protected Property**, including, but not limited to, radio, microwave, broadcast, communication and cellular towers. Notwithstanding the above, **Grantor** retains the right to construct, maintain, improve, repair and replace three (3) scientific and/or educational observation towers, all of which shall not individually exceed twenty-five (25) feet in height inclusive of handrails. No more than one (1) observation tower shall be located in the **Ashley River Buffer**. All observation towers shall be limited to primarily natural or non-reflective materials that blend with the natural environment.

(C) Limitations in the Ashley River Buffer. In order to provide an aesthetic and ecological transition zone between permitted structures and waterways (or roadways), there shall be no **Impervious Surface**, **Agricultural Activities**, structures (other than fencing and gates, existing utility and service lines for any permitted use under this Easement, the permitted dock, the permitted **Boatshed**, permitted **Boardwalks** and the permitted observation tower), fuel storage tanks, nor new roads (with the exception of one (1) new pervious road to the permitted **Boatshed**) in the **Ashley River Buffer**. **Grantor** reserves the right to cut any tree, in accordance with applicable governmental laws and regulations, when it is necessary to salvage timber damaged by natural causes, when cutting is necessary to prevent further such damage or personal injury, or when a permitted structure is in danger and to engage in **Forest Management Practices** in the **Ashley River Buffer**, provided there shall be no clearcutting, no cutting or otherwise destroying **Significant Trees** without **Approval**. **Grantor** reserves the right to create and maintain trails and **Boardwalks** within the **Ashley River Buffer** area as permitted in Paragraph 5(B)(X). The **Ashley River Buffer** shall be subject to the following additional restrictions:

(D) Limitations in the Marsh Preserve. There shall be no structures (other than the permitted dock, the permitted Ashley River Marsh Pier and associated platform, the permitted **Boardwalks**, and the existing utility and service lines), fuel storage tanks, **Impervious Surface**, road, material adverse alteration to the topography or hydrology other than as necessary to further the **Restoration Project**, **Agricultural Activities**, or **Forest Management Practices** in the **Marsh Preserve**. **Grantor** shall not cut or otherwise take destructive action affecting **Significant Trees** in the **Marsh Preserve** without **Approval**. Notwithstanding the above, **Grantor** reserves the right to cut any tree, in accordance with applicable governmental laws and regulations, when it is necessary to salvage timber damaged by natural causes, when cutting is necessary to prevent further such damage or personal injury, or when a permitted structure is in danger. The **Marsh Preserve** shall be subject to the following additional restrictions:

(E) 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 on the **Protected Property**.

(F) Commercial Uses. There shall be no commercial uses, activities or structures on the **Protected Property** without prior **Approval** by the **Grantee**. 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. For the purposes of this Easement, **Agricultural Activities, Forest Management Practices** and the leasing of hunting, trapping and fishing rights, and commercial, educational and land-leasing activity by a not-for-profit organization or governmental agency shall not be considered commercial uses.

(G) Educational and Recreational Uses. **Grantor** retains the right to engage in minimum impact educational and outdoor recreational activities including, but not limited to, hiking, wildlife observation, boating or other activities that do not impair the **Conservation Values** of the **Protected Property**.

(H) Services/Utilities. Construction of water wells, septic systems, and utility services, is limited to serve the allowed uses in Paragraph 4, subject to the Restrictions and Limitations of Paragraph 5, and subject to all applicable governmental laws and regulations. Existing utilities within the **Ashley River Buffer and Marsh Preserve** may be maintained, repaired, removed, or replaced at their current location as necessary. Fuel storage tanks are limited to aboveground or underground gaseous (not liquid) fuel storage tanks and/or aboveground liquid fuel storage tanks to serve the Reserved Rights outlined in Paragraph 4, subject to the Restrictions and Limitations of Paragraph 5, subject to all applicable governmental laws and regulations.

(I) Roads and Parking Areas. Roads and parking areas shall be limited to those required to facilitate the uses permitted by this Easement, provided there shall be no road constructed or covered with **Impervious Surface**. Maintenance of roads and roadside ditches shall be limited to standard practices for non-paved roads. Any road and/or parking area additions or improvements shall be subject to **Grantee Approval**.

(J) Landscaping. Landscaping shall be limited to the management of vegetation associated with the uses allowed by this Easement, including but not limited to, mowing, pruning, trimming, and gardening and any work permitted by the **Restoration Project**. Structural elements of landscaping, including but not limited to walkways and patios, shall be subject to **Impervious Surface** restrictions and limitations as outlined in this Easement.

(K) Lighting. There shall be no exterior lighting of which the light source is visible from off the **Protected Property** at ground level (except for an exterior light on the **Caretaker Residential Structure**); lights shall employ an opaque shield so as to prevent direct visibility of the light source from off the **Protected Property**. The purpose of this provision is to allow lighting on the **Protected Property** for safety and security and to minimize the impact of lighting on the relatively natural and scenic views of the **Protected Property**. No lighting shall be visible from the Ashley River or adjacent marshland.

(L) Signs. Signs visible from off of the **Protected Property** shall be limited to a maximum of eight (8) square feet in size, individually. Signs shall be placed so as to minimally impact the scenic view as seen from any public roadway or waterway.

(M) Archeological and Paleontological Excavations. **Grantor** may undertake or permit archeological or paleontological excavation on the **Protected Property** and shall give **Notice** to **Grantee** prior to commencing such activity. Any archeological or paleontological site shall, upon completion of any excavation, be returned to, or as close as possible to its previous state, unless the site is to be maintained in an excavated condition for interpretive purposes related to education. Any items found during archeological and paleontological excavations shall be the property of **Grantor**.

(N) Forestry Uses. A **Forest Management Plan** will be required for the **Protected Property** when deemed appropriate by the **Grantee**. Such **Forest Management Plan** may be solely for the **Protected Property** or may be included in other plans for **Drayton Hall**, such as a landscape plan or site master plan, at the sole discretion of **Grantor**. Forestry Uses are limited to those **Forest Management Practices** defined in the **Forest Management Plan**, or upon **Approval** from **Grantee**. **Grantor** shall provide **Notice** to **Grantee** of timber harvests. Notwithstanding the above, **Grantor** reserves the right to cut any tree, in accordance with applicable governmental

laws and regulations, when it is necessary to salvage timber damaged by natural causes, when cutting is necessary to prevent further such damage or personal injury, or when a permitted structure is in danger.

(O) **Significant Trees.** **Grantor** shall not cut or otherwise take destructive action affecting **Significant Trees** without **Approval**.

(P) **Agricultural Uses.** **Agricultural Activities** are restricted to the recommended or accepted practices, currently in use at the time of implementation, recommended by the South Carolina Cooperative Extension Service, the United States Natural Resources Conservation Service, their successors or other entities mutually acceptable to the **Grantor** and **Grantee**. **Grantor** and **Grantee** recognize that changes in agricultural technologies, including accepted management practices, may result in an evolution of **Agricultural Activities**. Such evolution shall be permitted so long as it is consistent with the **Purpose** described in Paragraph 1.

(Q) **Pond(s).** Enlargement of existing pond(s) and construction of new pond(s) shall be prohibited.

(R) **Impoundment(s).** **Grantor** is prohibited from creating, improving, repairing, replacing or maintaining new or existing and/or historic wetland impoundments, green tree reservoirs, dikes, ditches and water control structures. PROVIDED, HOWEVER, **Beazer** is permitted to conduct the **Restoration Project**.

(S) **Mining.** Mining and recovery of any oil, gas or minerals is prohibited on the **Protected Property**.

(T) **Topography and Hydrology.** **Grantor** shall not make adverse material alterations of the topography or hydrology, unless otherwise provided for in Paragraphs 4 or 5 or in the **Statement of Work**.

(U) **Leasing.** **Grantor** reserves the right to lease or grant other less-than-fee interests in all or a portion of the Protected Property for any use permitted to the **Grantor** under this Easement, provided that such lease or other interest is consistent with and subject to the terms of this Easement, and is not of a nature or terms as to constitute an impermissible **Subdivision** of the Protected Property. Leases with terms that exceed three (3) years shall be subject to **Notice** by **Grantor** to **Grantee**.

(V) **Refuse.** There shall be no placing of refuse on the **Protected Property** of vehicle bodies or parts, or refuse not generated on the **Protected Property**. Temporary piles for collection of refuse generated on the **Protected Property** established between regular removals are permitted provided such piles do not contain hazardous substances, pollutants, or wastes and do not impair the **Conservation Values** of the **Protected Property**. PROVIDED, HOWEVER, natural vegetation refuse is permitted 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 Purpose, to restore the portion of the **Protected Property** so injured.

If **Grantor** fails to cure the violation within sixty (60) calendar days after receipt of Second Notice thereof from **Grantee** (or under circumstances where the violation cannot reasonably be cured within a sixty (60) calendar day period, if **Grantor** shall fail to begin curing such violation within said sixty (60) day period, or shall 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 discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the **Conservation Values**, **Grantee** shall give immediate notice of the circumstances to **Grantor**, as described in Paragraph 21, and may immediately pursue its legal and equitable remedies under this Paragraph without waiting for the period provided for cure to expire. **Grantor** agrees that if such emergency arises, **Grantee** may obtain injunctive relief without the necessity of posting a bond.

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, and without the necessity of posting a bond. **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 (which includes 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 without limitation **Grantor's** cost of the suit (which includes reasonable attorneys' fees) shall be borne by **Grantee**.

9. Discretionary Consent. If, owing to unforeseen or changed circumstances, any of the uses or activities prohibited under this Easement are deemed desirable by both **Grantor** and **Grantee**, **Grantee** may, in its sole discretion, give **Approval** for such uses or activities, subject to such limitations as it deems necessary or desirable and provided that **Grantee** may give **Approval** only if **Grantee** determines that such activities (i) are consistent with the Purpose of this Easement, (ii) will not adversely affect the qualification of this Easement as a "qualified conservation contribution" under any applicable laws, including §§170(h) and 2031(c) of the Code or the Act, and (iii) 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. Furthermore, **Grantee** and **Grantor** have no right or power to agree to any use or activity that would result in the termination or extinguishment of this Easement.

10. 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.

11. Grantor's Environmental Warranty. The **Grantor** warrants that **Grantor** has no actual knowledge of the existence or storage of hazardous substances, pollutants, or wastes on the **Protected Property** or a release or threatened release of hazardous substances, pollutants or wastes on the **Protected Property** excepting those required by the **Restoration Project**. **Grantor** promises to defend and indemnify the **Grantee** against all litigation, claims, demands, penalties, and damages, including reasonable attorney's fees, arising from breach of this warranty.

12. 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, fire, hurricane, flood, rising sea levels, climate change, 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.

13. Access. **Grantor** and **Grantee** hereby provide the **Natural Resource Trustees**, or their designees, and **Beazer and its contractors or designees**, a right of access to the **Protected Property** to facilitate **Restoration Project** implementation and long-term monitoring of the **Restoration Project** until the **Natural Resource Trustees** issue the Certification of Completion of the **Restoration Project** required by Section 4.0 of the **Statement of Work**. Such access is subject to **Grantor's** right to restrict access to personnel who have signed a reasonable and appropriate release of liability and/or right of access indemnity agreement. Notwithstanding the foregoing, to the extent the **Natural Resource Trustees** is an agency of the State of South Carolina, or a party otherwise bound by and subject to the South Carolina Tort Claims Act, the **Natural Resource Trustees** shall not be subject to the indemnification obligations of this Paragraph 13. No right of public access to any portion of the **Protected Property** is conveyed by this Easement, except as expressly provided herein.

14. Costs, Liabilities, and Taxes. **Grantor** retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the **Protected Property**, including, but not limited to, clean up or remediation costs due to chemical contamination (excepting those associated with the **Restoration Project**) caused by **Grantor** and payment of taxes. Furthermore, if the **Grantor** maintains general liability insurance coverage for the **Protected Property**, **Grantor** will be responsible for such costs.

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 wrongful or negligent activities of the indemnifying party on the **Protected Property**.

15. Transfer Fee. There shall be assessed by the **Grantee** a transfer fee equal to one (1) percent of the sales price and/or other consideration paid in connection with the transfer of any freehold or fee simple interest in the **Protected Property**, including but not limited to any conveyance by warranty deed, limited warranty deed, or quitclaim deed, sale, mortgage foreclosure, or conveyance in lieu of foreclosure. The transfer fee shall be paid to the **Grantee** on the date of the closing of the transfer.

Exemptions from assessment of transfer fee:

- (A) The sale of timber rights or products produced from permitted **Forest Management Practices** and/or permitted **Agricultural Activities** of such **Protected Property**.
- (B) Any transfer subsequent to the conveyance of this Easement:
 - I. Being the first transfer by the National Trust for Historic Preservation in the United States, the **Grantor** herein, or
 - II. Without consideration, or
 - III. To a spouse, a lineal descendant, an ancestor or ancestors, a spouse of a lineal descendent (collectively, "Immediate Family Members"), or
 - IV. To or from a trust whose beneficiaries or presumptive beneficiaries are the **Grantor** or an Immediate Family Member, or both, or
 - V. To an entity at least 50% of the equity interest of which is owned by **Grantor** or an Immediate Family Member, or
 - VI. If the **Grantor** of this Easement is a corporation, limited liability company or a partnership, to an owner/partner/member of such entity or to an Immediate Family Member thereof, or
 - VII. To a charitable organization which is tax exempt under §501(c)(3), or
 - VIII. Any transfer under a will, or
 - IX. Any transfer implemented or effected by court order, except foreclosure, or
 - X. Any transfer that corrects, modifies, or confirms a transfer previously made.

- (C) If a creditor purchases the **Protected Property** at a foreclosure sale or takes title to the Property in lieu of foreclosure, the transfer fee shall be due and paid at the time the creditor takes title. The transfer fee shall be based on the total bid for the **Protected Property** if purchased at a foreclosure sale or on the amount of the accrued indebtedness if the creditor accepts a deed in lieu of foreclosure. An additional transfer fee shall be due if the creditor who takes title through foreclosure or a deed in lieu of foreclosure sells the **Protected Property** for an amount higher than the amount subject to the transfer fee at the time the creditor took title; the additional transfer fee due shall be based on the additional amount alone, not the entire sales price. Creditor for purposes of this Paragraph shall include an assignee of the creditor who purchases the **Protected Property** at a foreclosure sale or takes a deed in lieu of foreclosure.

An exchange of properties pursuant to Code §1031, or similar statute, shall be deemed to be for consideration based on the market value of the property plus boot, if applicable, received at the time of such transfer. Market value of the **Protected Property** shall be determined by agreement of the **Grantor** and the **Grantee**, or in the absence of such agreement by a Member Appraisal Institute (MAI) appraiser selected by the **Grantee**, whose appraisal fee shall be paid by the **Grantee**.

Grantor grants **Grantee** a lien against the **Protected Property** for all or any part of the transfer fee that is unpaid at the time of the conveyance or assignment triggering the transfer fee. **Grantee**'s lien shall be subordinate to this Easement and to the lien of any first mortgage on the **Protected Property**. **Grantee** shall have the right to record a notice of lien for such unpaid transfer fee. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of South Carolina. **Grantee** may require the **Grantor** and/or any subsequent purchaser to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds or other such evidence.

16. Extinguishment, Condemnation and Fair Market Value.

- (A) Extinguishment. If circumstances arise in the future that render the Purpose of this Easement 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. **Grantor** and **Grantee** also recognize that **Grantee** holds an interest in the **Protected Property** as reflected in this Easement, that this interest is a valuable property right, and that extinguishment would result in the elimination of that property right. Unless otherwise required by applicable law at the time, in the event of any subsequent sale of all or a portion of the **Protected Property** (or any other property received in connection with an exchange or involuntary conversation of the **Protected Property**) after such termination or extinguishment, and after the satisfaction of prior claims and any costs or expenses associated with such sale in accordance with their respective percentage interests in the fair market value of the **Protected Property**, as such interests are determined under the provisions of Paragraph 16(C), adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by **Grantee** shall be used by **Grantee** in a manner consistent with **Grantee**'s primary purposes. In the unlikely event of an extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the **Protected Property** with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the **Protected Property**.
- (B) Condemnation. If all or any part of the **Protected Property** is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, **Grantor** and **Grantee** shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the **Protected Property** that are subject to the taking and all incidental and direct damages resulting from the taking. After the satisfaction of prior claims and net of expenses reasonably incurred by **Grantor** and **Grantee** in connection with such taking, **Grantor** and **Grantee** shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of Paragraphs 16(A) and 16(C) unless otherwise provided by law. PROVIDED, HOWEVER, if all or a part of the **Marsh Preserve** is taken by

exercise of the power of eminent domain within twenty (20) years of the Effective Date, the **Natural Resource Trustees** shall be entitled to the compensation due to **Grantee** as provided in this Paragraph.

- (C) Percentage Interests. For purposes of allocating proceeds pursuant to Paragraphs 16(A) and 16(B), **Grantor** and **Grantee** stipulate that as of the date of this Easement, **Grantor** and **Grantee** are each vested with real property interests in the **Protected Property** and that such interests have a stipulated percentage interest in the fair market value of the **Protected Property**. **Grantor** and **Grantee** hereby agree that **Grantee's** percentage interest in the fair market value of the **Protected Property** is twenty percent (20%), unless the Court granting extinguishment determines, in the exercise of its discretion, a different percentage. For purposes of this paragraph, the ratio of the value of the Easement to the value of the **Protected Property** unencumbered by the Easement shall remain constant, and the percentage interests of **Grantor** and **Grantee** in the fair market value of the **Protected Property** thereby determinable shall remain constant, except that the value of any improvements made by **Grantor** after the effective date of this Easement is reserved to **Grantor**. The distribution of the percentage interest under this Paragraph shall only occur after the extinguishment of this Easement; no distribution of the percentage interests shall occur upon a subsequent resale of the **Protected Property** while the Easement is still valid and enforceable.

17. 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" or "qualified conservation contribution" 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 Purpose of this Easement, shall not affect its perpetual duration, shall not permit additional development or improvements that would interfere with the **Restoration Project** or the essential scenic quality of the land or with any governmental conservation policy that is being furthered by this Easement donation and as stated in §1.170A-14(d)(4)(v) of the Treasury Regulations, shall not permit any impairment of the **Conservation Values**. **Grantor** and **Grantee** agree to 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 Charleston County, South Carolina.

18. Assignment. This Easement shall not be assignable by the **Grantee**, except if as a condition of any assignment, (i) 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 Purpose 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. Any assignment shall be in accordance with the **Grantee's** Policy on Assigning or Becoming a Secondary Conservation Easement Holder and Accepting Transfers or Transferring Conservation Easements on file with the **Grantee**. 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 a tax-exempt, nonprofit organization, qualified under §§501(c)(3) and 170(h)(3) and not a private foundation under §509(a) of the Code, which has a mission of protecting open lands or natural resources in the South Carolina Lowcountry.

19. No Extinguishment Through Merger. **Grantor** and **Grantee** herein agree that should **Grantee** come to own all or a portion of the fee interest in the Protected Property, (i) **Grantee** as successor in title to **Grantor** shall observe and be bound by the obligations of **Grantor** and the restrictions imposed upon the Protected Property by this Easement; (ii) this Easement shall not be extinguished, in whole or in part, through the doctrine of merger in view of the public interest in its enforcement; and (iii) **Grantee** as promptly as practicable shall assign the **Grantee** interests in this Easement of record to another holder in conformity with the requirements of this Paragraph 19. Any instrument of assignment of this Easement or the rights conveyed herein shall refer to the provisions of this

Paragraph 19, and shall contain language necessary to continue it in force. Further, no deed, transfer, or assignment shall be effective if it will result in merger, until a like conservation easement has been granted to avoid merger.

20. 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 ownership of the **Protected Property** within thirty (30) days of such change. 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.

21. Communication. All **Requests for Approvals** shall be in writing and shall be deemed sufficiently given or rendered only when acknowledged in writing by **Grantee**. All **Notices** and other communications to **Grantee** may be communicated by United States Postal Service first class mail, hand courier, electronic mail or facsimile, and shall be deemed sufficiently given or rendered and effective only when acknowledged in writing by **Grantee**. All such correspondence and communications shall be addressed as follows:

If to **Grantor**: National Trust for Historic Preservation
Drayton Hall
3380 Ashley River Road
Charleston, SC 29414
Attn: Executive Director

With a copy to **Grantor**'s Attorney: National Trust for Historic Preservation
The Watergate Office Building
2600 Virginia Avenue, NW, Suite 1100
Washington, DC 20037
Attn: Law Division

If to **Grantee**: Lowcountry Land Trust, Inc.
43 Wentworth Street
Charleston, SC 29401
Attn: President & CEO

or to such other person or place as such recipients 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 Paragraph 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. **Grantor** has the responsibility of promptly notifying **Grantee** of **Grantor**'s current address and other contact information. **Grantor** shall promptly notify **Grantee** of (i) any changes of **Grantor**'s address or other changes in **Grantor**'s contact information, and (ii) the name, address, and contact information of any transferee of the Protected Property if **Grantor** conveys the Protected Property. Any communications or Correspondence by **Grantee** to or with **Grantor** sent to the last address provided by **Grantor** shall be deemed sufficient to provide notice to **Grantor**. For a period of 20 years after the date of this Easement, copies of correspondence and communication required under Paragraph 21 and made pursuant to this Paragraph 21, except for routine correspondence between **Grantee** and **Grantor** that has no bearing on the **Restoration Project**, shall be contemporaneously provided to:

NOAA Restoration Center
c/o NOAA Office for Coastal Management
2234 S. Hobson Avenue
Charleston, SC 29405

22. Recordation. **Grantor** or **Grantee** shall record this instrument in timely fashion in the Register of Mesne Conveyance (“RMC”) Office for Charleston County, South Carolina, and may re-record it at any time as may be required to preserve its rights in this Easement.
23. Effective Date. **Grantor** and **Grantee** agree that the restrictions arising hereunder take effect on the day this Easement is recorded in the RMC Office for Charleston County, South Carolina, after all required signatures have been affixed hereto, and that such recording shall take place no later than 60 days following entry of the Consent Decree between **Beazer** and the **Natural Resource Trustees**.
24. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of South Carolina.
25. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of this Easement to uphold the Purpose as stated in Paragraph 1. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid should be favored over any interpretation that would render it invalid.
26. 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.
27. 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 Paragraph, Subparagraph, 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 the Easement interests herein described 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 the **Grantor** is seized of the **Protected Property** in fee simple and has the 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 duplicate original copies of this Easement under seal on the day and year first above written.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

WITNESSES:

GRANTOR:

National Trust for Historic Preservation in the United States

By: _____
Its: _____

DISTRICT OF COLUMBIA)
)
CITY OF WASHINGTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged this ____ day of _____, 2018, before me the undersigned Notary, and I do hereby certify that the above named **Grantor** personally appeared before me and acknowledged the due execution of the foregoing instrument.

(Signature of Notary)
Notary Public
My commission expires: _____

WITNESSES:

GRANTEE:

LOWCOUNTRY LAND TRUST, INC.

By: _____
Its: _____
And: _____
Its: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged this ____ day of _____, 2018, 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.

(Signature of Notary)
Notary Public for the State of South Carolina
My commission expires: _____

EXHIBIT A

Legal Description and Derivation of Protected Property

(TO BE PROVIDED BY **GRANTOR**)

TMS #(s) 406-00-00-011, 406-00-00-039, 406-00-00-040

Grantee's Address: 43 Wentworth Street
Charleston, SC 29401

EXHIBIT B

Aerial Map Showing **Marsh Preserve** and **Ashley River Buffer**

(TO BE PROVIDED BY GRANTEE)

EXHIBIT C

[Statement of Work]

(TO BE PROVIDED BY TRUSTEES)

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(TO BE PROVIDED BY **GRANTOR**)

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