BP1208172

PGS: 8

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THIRD AMENDMENT TO
CONSERVATION EASEMENT ON
ROSEBANK ESTATES LOT III

(Tracer to Book P433, page 512)
(Tracer to Book P433, page 489)

THIS THIRD AMENDMENT TO CONSERVATION EASEMENT ON ROSEBANK ESTATES LOT III ("Third Amendment") is made and entered into by EPIC2020 LLC, a South Carolina limited liability company ("EPIC"), Heidi J. Qualey ("Qualey") and Michelle S. Morgan ("Morgan") (together "Grantors") and the Lowcountry Land Trust, Inc., a South Carolina nonprofit corporation formerly known as Lowcountry Open Land Trust, Inc. ("LLT") as of this 12th day of OCTOBER, 2023.

WHEREAS, Grantors' predecessor in interest, Branch Banking and Trust Company of South Carolina as Successor Personal Representative of the Estate of Huger Sinkler ("Original Grantor"), granted the Conservation Easement on Rosebank Estates Lot III dated January 21, 2003 and recorded January 21, 2003 in Book P-433 at Page 512 in the ROD Office for Charleston County, South Carolina (the "Original Conservation Easement") to LLT, which encumbered real property on Wadmalaw Island, in Charleston County, South Carolina, known as Rosebank Estates Lot III and being more fully described in Exhibit A to the Conservation Easement (the "Protected Property"); and

WHEREAS, the Original Conservation Easement was amended by Grantors' predecessor in interest by virtue of the execution and recordation of that certain Amendment to Conservation Easement on Rosebank Estates Lot III ("First Amendment") dated September 13, 2004, and recorded September 14, 2004 in Book H-509 at Page 675 in the ROD Office for Charleston County, South Carolina, reducing the transfer fee percentage to be assessed by LLT in Paragraph 15 of the Conservation Easement; and

WHEREAS, Grantors sought to further amend the Original Conservation Easement by virtue of the execution and recordation of that certain Second Amendment to Conservation Easement on Rosebank Estates Lot III ("Second Amendment") dated November 25, 2014, and recorded December 5, 2014 in Book 0444 at Page 622 in the ROD Office for Charleston County, South Carolina, reducing the allowable residential square footage from 12,000 square feet to 8,000 square feet, increasing the allowable square footage for the fixed pierhead and floating platform from 420 square feet to 620 square feet, and correcting the inadvertent omission of a word in the Conservation Easement; and

WHEREAS, the Second Amendment was executed after it was discovered that there exists on the Protected Property a dock on Bohicket Creek, a structure affirmatively allowed by the Conservation Easement, with a fixed pierhead and floating platform measuring an aggregate size of 620 square feet, exceeding the allowable square footage permitted by the Conservation Easement; and

WHEREAS, it is believed that a permit that allowed for a 620 square feet dock was originally issued for the Protected Property prior to execution the Conservation Easement and it is not known if the dock was constructed shortly before or shortly after the Easement was executed; and

WHEREAS, five of the seven adjacent conservation easements in the Rosebank Estates Lots neighborhood allow the landowner the right to construct, maintain, repair or replace one dock extending into Bohicket Creek or its tributaries, provided the dock shall be limited to one (1) floating platform with a maximum of six hundred twenty (620) square feet in the aggregate between the fixed pierhead and floating platform, and one (1) four pile 10' x 16' boat lift; and

WHEREAS, subsequent to the grant of the Original Conservation Easement and the five adjacent conservation easements in the Rosebank Estates Lots neighborhood, the public viewshed from Bohicket Creek in close proximity to the Protected Property has been significantly impaired by a proliferation in the number of docks constructed by private property owners; and

WHEREAS, the existing dock in its current size, in light of the context of the surrounding area, does not materially diminish the overall conservation purposes of the Original Conservation Easement, as amended; and

WHEREAS, EPIC purchased the Protected Property from Qualey and Morgan by deed dated November 6, 2020 and recorded in Book 0933 and Page 099 in the ROD Office for Charleston County, South Carolina; and

WHEREAS, because of an error in the Book and Page numbers, the Second Amendment was incorrectly styled as amending that certain Conservation Easement dated as of January 21, 2003 and recorded in the ROD Office for Charleston County at Book P-433, Page 489 pertaining to Rosebank Estates Lot II (the "Lot II Conservation Easement"); and

WHEREAS, EPIC was not on notice of the reduced allowable residential square footage when it purchased the Protected Property because of the recording error; and

WHEREAS, EPIC, Grantors, and LLT desire to further amend the Original Conservation Easement for the purpose of revoking the Second Amendment because they agree that EPIC would otherwise be unfairly penalized in its use of the Protected Property; and

WHEREAS, EPIC, Grantors, and LLT also desire to further amend the Original Conservation Easement for the purpose of revoking the Second Amendment because it is not clear if the dock was constructed before the Original Conservation Easement was executed and even if it was not, because the difference in dock size from the allowable square footage is diminius, an amendment would otherwise not be necessary; and

WHEREAS, EPIC, Grantors, and LLT desire to further amend the Original Conservation Easement to correct the recording error and clarify that the Second Amendment amends the Original Conservation Easement and pertains to the Protected Property, and that both this present Third Amendment and the Second Amendment in no way pertain to the Lot II Conservation Easement; and

WHEREAS, EPIC, Grantors, and LLT desire to further amend the Original Conservation Easement to correct the inadvertent omission of a word in the Original Conservation Easement which is necessary to accurately reflect the intent of the affected provision and correcting this error is in the best interest of EPIC, Grantors, and LLT; and

WHEREAS, LLT has determined that this Third Amendment is fair, equitable, and appropriate and is permitted by the reasonable discretion provision of Paragraph 10 of the Original Conservation Easement; and

WHEREAS, S.C. Code Ann. §27-8-30(A) expressly permits modification of a conservation easement in accordance with principles of law and equity;

NOW, THEREFORE, in consideration of the above recitals and the covenants, terms and conditions contained herein and other valuable consideration, the receipt and sufficiency of which is hereby

acknowledged, EPIC, Grantors, and LLT, for themselves and their respective heirs, successors and assigns, agree as follows:

1. The Second Amendment, dated November 25, 2014 and recorded on December 5, 2014 at Book 0444, Page 622 is hereby revoked.

2. The language in Paragraph 8 of the Original Conservation Easement entitled "**Grantee's Remedies"** is hereby deleted and the following language is substituted in lieu thereof:

> "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, that Grantee shall be entitled to seek the injunctive relief described in this Paragraph, both prohibitive and mandatory in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity."

4. All other provisions of the Original Conservation Easement relating to the Protected Property known as Rosebank Estates Lot III shall remain in full force and effect.

5. Nothing herein shall serve to change any provision of the Original Conservation Easement so as to cause a violation of Section 170(h) of the Internal Revenue Code of 1986, as amended, or applicable Treasury Regulations thereunder.

EPIC HEREBY WARRANTS and represent that EPIC is seized of the Protected Property in fee simple and has good right to grant and convey this Third Amendment, that the Protected Property is free and clear of any and all encumbrances, except easements of record and prescriptive easements, if any, and that the LLT and its successors and assigns shall have the use of and enjoy all of the benefits derived from and arising out of the Original Conservation Easement as amended.

[REMAINING PAGE INTENTIONALY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Third Amendment as of the date referenced above.

WITNESSES:

GRANTOR:

Witness

Witness

Heidi J. Qualey

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me, the undersigned Notary, and I do hereby certify that the above named Heidi J. Qualey personally appeared before me this day and that the above named acknowledged the due execution of the foregoing instrument.

SWORN to before me this 11 day of September, 2023.

Notary Public for South Carolina
My Commission Expires: 9/9/2025

WILLIAM ZACHARY SMITH NOTARY PUBLIC STATE OF SOUTH CAROLINA My Commission Expires September 9, 2025

WITNESSES:

GRANTOR:

Witness

Witness

Michelle S. Morgan

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me, the undersigned Notary, and I do hereby certify that the above named Michelle S. Morgan personally appeared before me this day and that the above named acknowledged the due execution of the foregoing instrument.

SWORN to before me this 9 day of September, 2023.

Notary Public for South Carolina
My Commission Expires:

Christa M Huffstetler
NOTARY PUBLIC
State of South Carolina
My Commission Expires 3/29/2028

WITNESSES:

EPIC:

EPIC2020 LLC

By: Rick Walker

Its: Manager

D. McMeekin
Witness

Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me, the undersigned Notary, and I do hereby certify that Rick Walker, as Manager of EPIC2020 LLC, a South Carolina limited liability company, personally appeared before me this day and that the above named acknowledged the due execution of the foregoing instrument.

SWORN to before me this 27th day of Sept, 2023.

Notary Public for South Carolina
My Commission Expires: 7/7/33

WITNESSES:

LLT:

LOWCOUNTRY LAND TRUST, INC., a South Carolina nonprofit corporation

By: Ashley Demosthenes

Its: President & CEO

By:

Its: Treasurer, Board of Trustees

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me, the undersigned Notary, and I do hereby certify that ASHLEY DEMOSTHENES, PRESIDENT & CEO of Lowcountry Land Trust, Inc., a South Carolina nonprofit corporation, personally appeared before me this day and that the above named acknowledged the due execution of the foregoing instrument.

SWORN to before me this 12th day of OCTOBER, 2023.

Notary Public for South Carolina
My Commission Expires: AUG. 3, 2033

MARLO MYTTY
Notary Public - State of South Carolina
My Commission Expires
August 3, 2033

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me, the undersigned Notary, and I do hereby certify that ROBERT HOLLINGS III as TREASURER of Lowcountry Land Trust, Inc., a South Carolina nonprofit corporation, personally appeared before me this day and that the above named acknowledged the due execution of the foregoing instrument.

SWORN to before me this 12th day of OCTOBER, 2023.

Notary Public for South Carolina
My Commission Expires: AUG. 3, 2033

MARLO MYTTY
Notary Public - State of South Carolina
My Commission Expires
August 3, 2033

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

LOWCOUNTRY LAND TRUST INC
635 RUTLEDGE AVENUE
SUITE 107 ATTN: MARLO MYTTY
CHARLESTON SC 29403

RECORDED

Date:	October 12, 2023
Time:	2:25:10 PM

Book	Page	DocType
1208	172	Amen/Esmt

Karen Hollings, Register of Deeds
Charleston County, SC

# of Pages:	8
# of Sats:	
# of References:	

MAKER:
EPIC2020 LLC AL

Note:

RECIPIENT:
LOWCOUNTRY LAND TR INC

Recording Fee	$ 25.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ 1.00
TOTAL	$ 26.00

Original Book:	P433
Original Page:	489

DRAWER	Drawer 5
CLERK	PLC



1208
Book



172
Page



10/12/2023
Recorded Date



8
Pgs



P433
Original Book



489
Original Page



D
Doc Type



14:25:10
Recorded Time