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STATE OF SOUTH CAROLINA )

COUNTY OF OCONEE )

**CONSERVATION EASEMENT**

(Includes Transfer Fee Lien)

For and in the consideration of the sum of \$250,000 provided by the South Carolina Conservation Bank and other good and valuable consideration, this **CONSERVATION EASEMENT** entered into this 24th day of September, 2015, by and between **CITY OF WESTMINSTER, SOUTH CAROLINA**, a municipality in the State of South Carolina (hereinafter referred to as "Grantor" or "Westminster") and **UPSTATE FOREVER**, a nonprofit corporation organized and existing under the laws of the State of South Carolina (hereinafter referred to as "Grantee").

**WITNESSETH:**

WHEREAS, the Grantor is the owner in fee simple of certain real property, more particularly described in Exhibit 1, attached hereto and hereinafter referred to as the "Protected Property";

WHEREAS, it is the purpose and intention of the Grantor and Grantee by this Conservation Easement to protect certain Conservation Values on the Protected Property (the "Conservation Values") including without limitation the following:

- A. Significant natural areas containing relatively natural habitat of fish, wildlife, and/or plants, associated with the aquatic, narrow stream valley forest, floodplain forest, wet and dry scrub / shrub thickets, and mature mesic deciduous forests. The property is also upstream from the City of Westminster's public water intake, which serves the needs of over 10,000 people;
- B. The preservation of land areas for outdoor recreation by, or the education of, the general public;
- C. The preservation of land areas contiguous to the existing ChauRam County Park, which is owned by the City of Westminster and managed by the Oconee County Department of Parks, Recreation and Tourism; and

OCONEE COUNTY  
STATE TAX 650.00  
COUNTY TAX 275.00  
EXEMPT \_\_\_\_\_

- D. Forest land on the Protected Property as open space for the scenic enjoyment of the general public by protecting the rural scenic view along approximately 600 feet on U.S. Highway 76 and 1.4 miles of riparian corridor along the Chauga River, a navigable stream in Oconee County.

WHEREAS, the multiple Conservation Values represent potentially competing values or conditions which are subject to change by natural forces over time, priority shall be given to preservation of significant natural areas containing relatively natural habitat of fish, wildlife, and/or plants as expressed in Conservation Value (A), such preservation initiatives may include, among other things, the protection of the water quality in or about the Protected Property. While the preservation of land areas for outdoor recreation by, or the education of, the general public as expressed in Conservation Value (B), the preservation of land areas contiguous to the existing ChauRam County Park as expressed in Conservation Value (C), and forest land on the Protected Property as open space for the scenic enjoyment of the general public as expressed in Conservation Value (D), are also of great importance, where this benefit and its impacts are in conflict with the aforementioned values, consideration will first be given to the one in priority.

WHEREAS, the Conservation Values are of great importance to Grantor and Grantee and the people of Oconee County and the State of South Carolina;

WHEREAS, Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by allowing only limited and carefully controlled activities thereon, in accordance with the terms and conditions provided herein;

WHEREAS, in the view of Grantor and Grantee, the Conservation Values of the Protected Property meet one or more of the "Conservation Purposes" set forth in Section 170(h)(4) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code");

WHEREAS, the preservation of open space (including forest land) is recognized in the following governmental conservation policies:

- A. The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. Section 4201, *et seq.*, whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to ensure that Federal programs are administered in a manner that, to the extent practicable,

will be compatible with State, unit of local government, and private programs and policies to protect farmland;"

- B. South Carolina's right-to-farm law, as codified in S.C. Code Sections 46-45-10 to -70, which states in part that "The policy of the State is to conserve, protect, and encourage the development and improvement of its agricultural land and facilities for the production of food and other agricultural products";
- C. The Conservation Bank Act, S.C. Code Ann. § 48-59-10, *et seq.*, declares that "protection of open space by acquisition of interests in real property from willing sellers is essential to ensure that the State continues to enjoy the benefits of wildlife habitats, forestlands, farmlands, parks, historical sites, and healthy streams, rivers, bays, and estuaries; for recreational purposes, for scientific study, for aesthetic appreciation, for protection of critical water resources, to maintain the state's position as an attractive location for visitors and new industry, and to preserve the opportunities of future generations to access and benefit from the existence of the state's outstanding natural and historical sites";
- D. The S.C. Conservation Easement Act of 1991, S.C. Code Ann. § 27-8-10, *et seq.*, has a purpose of "ensuring the availability of real property for agricultural, forest, recreational, educational or open space use";
- E. South Carolina's preferential tax laws for agricultural land, as found in S.C. Code Sections 12-43-220 to -260, as amended, provide for a preferential tax rate for agricultural land in order for such lands to remain in productive agricultural uses; and
- F. The North American Wetlands Conservation Act, P.L. 101-233, 16 U.S.C. Section 4401, *et seq.*, whose purposes include the protection of "wetland ecosystems and habitats associated with wetland ecosystems and other fish and wildlife in North America" and sustaining "an abundance of waterfowl and other wetland associated migratory birds consistent with the goals of the North American Waterfowl Management Plan" and similar plans.

WHEREAS, Grantee is a non-profit corporation having tax-exempt status under Section 501(c)(3) of the Code, has been established as a

public charity for the purpose of preserving and conserving natural habitats, environmentally sensitive areas and open space and for other charitable, scientific and educational purposes, and meets the requirements of a "qualified organization" under Section 170(h)(3) of the Code;

WHEREAS, Sections 27-8-20 and 27-8-30 of the South Carolina Code of Laws permit the granting of conservation easements for recreational, ecological, environmental, educational and open-space uses;

WHEREAS, the Conservation Values as described above are documented in a comprehensive Baseline Report consisting of descriptions, maps, and photographs;

WHEREAS, the Baseline Report is on file at Grantee's office and is incorporated herein by reference;

WHEREAS, the parties agree that the Baseline Report provides, collectively, an accurate representation of the Protected Property at the time of this grant and is intended to serve as an objective point of reference from which to monitor compliance with the terms of this Conservation Easement;

WHEREAS, Grantee agrees to enforce the terms of this Conservation Easement to ensure the preservation and protection of the Conservation Values of the Protected Property in perpetuity for the benefit of Grantee and its successors and assigns;

WHEREAS, the City of Westminster subsequently conducted a public hearing on the conveyance of this Conservation Easement on May 19, 2015 and approved this Conservation Easement pursuant to S.C. Code Ann. Section 27-8-30(E) on the same day;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, terms, conditions and restrictions herein contained, Grantor, intending to be legally bound and intending for this Conservation Easement to remain in effect in perpetuity, agrees on behalf of itself and its successors and assigns as follows:

**1. Primary Purposes.** The primary purposes of this Conservation Easement are to ensure that the Protected Property remains predominately in its natural state in perpetuity and to protect its Conservation Values in perpetuity (hereinafter the "Primary Purposes").

**2. Reserved Rights.** Grantor reserves to itself, and to its successors and assigns, all the rights, uses and activities inherent in fee simple ownership of the Protected Property (collectively, the "Reserved Rights"), subject to the specific restrictions and limitations of Section 3, which are included to accomplish the Primary Purposes. All Reserved Rights apply to the Protected Property in its entirety, except where specifically modified herein. 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 Primary Purposes and terms of this Conservation Easement.

**3. Restrictions on Uses of the Protected Property.**

The provisions in this Section 3 set forth Grantor's responsibilities with regard to acts and uses on, over, or under the Protected Property.

Grantor agrees that there shall be no building or development or any residential, commercial or industrial use or activity of any nature undertaken or allowed on the Protected Property or any portion thereof with the following limited exceptions:

**A. Public Use and Recreation Facilities.** Grantor shall have the right to construct, operate and maintain a passive nature park and environmental education center for public use and enjoyment. Such park and center may include, but is not limited to: parking areas, restroom facilities, primitive camping, facilities and laboratories for scientific research, facilities for meetings and educational activities, an outfitters' store (subject to Section 3(D)), pedestrian and biking trails, boardwalks and observation decks, disc golf course, exhibits, benches and picnic shelters, river access, and similar facilities, provided, however, that:

- (1) a master plan shall be prepared by Grantor and provided to Grantee that describes the location, size, configuration, and design elements minimizing impacts to Conservation Values (particularly A). The total square footprint of all new structures on the property will not exceed 3,000 square feet;
- (2) within the riparian buffers, the only allowable features are trails, boardwalks, benches, bridges, kiosks, and signs (see Section G);
- (3) written approval of the Grantee must be obtained before any construction may begin under the master plan;
- (4) design and implementation of the master plan will not, in Grantee's reasonable opinion, impair the Conservation Values of the Protected Property.

Approval of such master plan and any subsequent amendments thereto shall not be unreasonably withheld by Grantee.

In addition, Grantor shall have the right to construct and maintain gates, fences, and barriers to control public access to certain areas of the Protected Property and to protect the Conservation Values of the Protected Property.

**B. Existing Structures.** Grantor may maintain, repair or remove, but not expand or replace, the existing cabin, as further described in the Baseline Report. Grantor may maintain, repair, replace, expand or remove the existing fencing and building constituting the pump station located on the Protected Property next to Highway 76, and more particularly described in the Baseline Report. Notwithstanding the foregoing, at no time will either the fence or the building associated with the pump station be increased by more than 100% of their current respective sizes.

**C. Subdividing.** The Protected Property shall not be subdivided.

**D. Limited Commercial Activities.** Except with the prior written approval of Grantee, there shall be no commercial uses, activities, or structures except as defined herein, and in Section 3(F). For purposes of this limitation, commercial uses do not include: recreational or lease based hunting or fishing. Grantor may construct and lease a store for limited commercial use by an outfitter, provided such store:

- (1) is subject to all the terms of Section 3(A), and shall be presented to Grantee for prior written approval as part of the master plan described therein;
- (2) shall not exceed 2,000 square feet in footprint
- (3) is subject to Section 3(G).

**E. Signs.** There shall be no construction or placing of signs, billboards, or any type of advertising devices or materials on the Protected Property except for:

- (1) directional signs required by law and signs required by the highway department;
- (2) "no trespassing," "no hunting," or similar signs;
- (3) "for sale" signs relating to the Protected Property;
- (4) signs indicating the name or ownership of the Protected Property, not to exceed twelve square feet;
- (5) signs to indicate the Conservation Values of the Protected Property;

- (6) signs required for management of the Protected Property, for institutional controls of human activities, and for public safety; and
- (7) signs acknowledging those people and organizations that have contributed to the acquisition and protection of the Protected property.

**F. Commercial Recreation.** No commercial recreational activities of any kind shall be allowed on the Protected Property, provided Grantor shall have the right to lease the Protected Property for hunting and fishing in accordance with applicable laws and regulations. Grantor shall also have the right to operate commercial tubing, kayaking, and similar recreational tours on and from the Protected Property.

**G. Protection of Riparian Buffers.** Grantor shall not remove or cut any trees within, or otherwise alter or disturb, any area of the Protected Property that is within 100 feet of the top of bank of the Chauga River or any other river, stream, waterway, pond, lake or impoundment with the limited exceptions of:

- (1) removing trees that are dead;
- (2) removing trees that are substantially damaged or threatened by natural causes (e.g. - insect, disease, etc.) when it is necessary to maintain the ecological health of the affected forest community;
- (3) removing trees that pose a significant and immediate hazard to life or property;
- (4) cutting, removing, or eradicating any plant which is recognized by state or federal natural resource authorities to be a non-indigenous species;
- (5) removing trees and other vegetation to create two (2) river access points to provide put ins/take outs for kayaks, canoes and other boats, the combined width of both not to exceed thirty (30) feet in width, provided such put-ins/take outs and the clearing done to provide for them does not impact the Conservation Values of the Protected Property, and no removal shall occur until Grantee has provided written approval of a plan provided by Grantor;
- (6) except as allowed in Section 3(L);
- (7) except for roads, bridges, and trails constructed or restored in accordance with Section 3(L);
- (8) for the construction and maintenance of the pedestrian and biking trails, boardwalks,

observation decks, picnic shelters, and river access permitted in Section 3(A).

- (9) performing ecological enhancements in accordance with a professionally prepared plan, first approved in writing by Grantee. Grantee may withhold or condition its approval based on the activity's potential impacts on the Conservation Values of the Protected Property.

**H. Utility Systems.** Utility systems, including, without limitation, water, sewer, septic tanks, propane tanks, electrical power (including geothermal, solar and wind power), and communication lines and related facilities that are reasonably required to serve the structures and activities allowed under Section 3(A), (B), (F), (I), (J) and (L) hereof may be located on Protected Property; provided, however, no cellular tower may be located on the Protected Property.

**I. Forest Management.** Grantor reserves the right to harvest timber from the Protected Property, in a manner that complies with Section 3(G) of this Conservation Easement, and that is in accordance with a written forest management plan prepared by a licensed professional forester, adheres to the best management practices of the South Carolina Forestry Commission (or successor agency), and has been approved in writing by Grantee. Notwithstanding the above, Grantor reserves the right, outside of the Riparian Buffer (Section 3(G)), to cut any tree: (1) in accordance with applicable county, state, and federal regulations, when it is necessary to remove trees that threaten the health of the forest; (2) when cutting is necessary to prevent personal injury; (3) when a permitted structure is in danger; (4) in order to construct firebreaks and emergency vehicle access routes; or (5) after obtaining Grantee's prior written approval, when necessary to perform other activities otherwise permitted by this Conservation Easement (*e.g.* – clearing a site for a permitted building). Grantor may use prescribed fires as a forest management tool, may reasonably maintain existing firebreaks, and may install new firebreaks except within the Riparian Buffer.

**J. Public Water Supply.** Grantor shall have the right to construct, operate, and maintain a public water supply intake on the Protected Property, provided (1) a plan for such intake and associated structures is first approved in writing by Grantee; (2) impacts to Conservation Values are the least possible to achieve the purpose; and (3) the intake and associated structures are installed, operated, and maintained in accordance with applicable law and regulation.



**K. Open Fields and Fences.** Grantor shall have the right to maintain the current fences on the Protected Property, which are more particularly described in the Baseline Report, and to add additional fencing.

Grantor shall have the right to maintain the current open fields on the Protected Property and to establish and maintain additional open field sites provided:

- (1) the total open field area shall not exceed five (5) percent of the total acreage of the Protected Property;
- (2) Grantor undertakes all reasonable measures to avoid or minimize adverse ecological impacts during establishment of the fields;
- (3) no part of any newly-established field is located within the Riparian Buffer (Section 3(F)); and
- (4) existing fields within the Riparian Buffer, more particularly described in the Baseline Report, may not be maintained.

**L. Roads, Bridges and Trails.** The existing roads, bridges, and trails on the Protected Property may be maintained. New roads, bridges, and trails may be constructed on the Protected Property subject to compliance with all of the following conditions:

- (1) The roads and bridges are needed in order to provide access to the uses or activities permitted under Section 3 (A), (B), (D), (F), (G), (I) (J), or (O) hereof;
- (2) Road construction shall be subject to Section 3 (G);
- (3) Grantee shall approve in writing a plan for the location and construction of any road to be built with the use of heavy equipment before any work begins;
- (4) Grantee shall approve in writing a plan for any bridge before construction begins;
- (5) All construction shall be done in accordance with applicable federal, state and local laws and regulations;
- (6) Trails constructed within the Riparian Buffer area described in Section 3(G) shall be unpaved and no wider than five feet; and
- (7) Grantor shall undertake all reasonable measures to avoid or minimize adverse ecological impacts on the Conservation Values of the Protected Property.

**M. Ditches and Wells.** Existing manmade ditches may be maintained or replaced. New ditches may be installed for permitted uses. Wells may be installed, maintained and replaced as needed.

**N. Motor Vehicles.** Grantor shall ensure that use of tractors, all-terrain-vehicles (ATVs), and other vehicles do not have a significant negative impact on the Conservation Values. In fulfillment of the Primary Purposes, Grantee shall have the right to prohibit or restrict vehicular use and to require restoration where appropriate.

**O. Participation in Certain Government Programs.** For activities and uses that are expressly permitted by this Conservation Easement, Grantor shall have the right to participate in, and receive the benefits of, federal, state or local government programs relating to wetlands conservation or mitigation, stream bank mitigation, carbon offsets or sequestration, greenhouse gas credits, plant and wildlife habitat enhancement, or other natural resource credits or initiatives.

**P. No Transferable Rights.** Neither the Protected Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purpose of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme, clustered development arrangement or otherwise; provided, however, that with the prior written approval of Grantee, this Section 3(P) shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Protected Property.

**Q. Archaeological Artifacts and Features.** Prior to disturbing archaeological features or commencing any archaeological digs on the Protected Property, Grantor shall give at least thirty days prior written notice to Grantee of such activities. Any archaeological site shall, upon completion of any disturbance or 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.

**R. No Other Disturbances.** On the Protected Property, except as may be reasonably required in connection with any of the uses and activities expressly permitted by this Conservation Easement and except for the installation, use and maintenance of erosion control measures in full compliance with applicable laws and regulations, there

shall be no filling, excavating, dredging, draining, diking, mining (on or below the surface) or drilling; no removal of topsoil, sand, gravel, rock, minerals or other materials; no dumping of trash, garbage, or any other material; and no alteration of the topography of the land in any manner.

**S. Other Uses and Activities.** Any use of the Protected Property and any activity thereon that contravenes the Primary Purposes of this Conservation Easement are prohibited.

**4. 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 for the purposes of monitoring and enforcement of this Conservation Easement, provided that such right shall not be construed to permit general public access over or upon the Protected Property.

**B. Right of Inspection.** Grantee and its agents, contractors and representatives shall have the right, in a reasonable manner and at reasonable times, to enter the Protected Property for the purpose of inspecting it to determine compliance with the provisions of this Conservation Easement. Grantee shall not inspect the Protected Property more than two times per year unless Grantee is invited to do so by Grantor or unless Grantee determines, or has reason to believe, that a violation of this Conservation Easement has occurred, could occur, or is occurring.

**C. Right to Prevent Inconsistent Uses.** To prevent Grantor and / or third parties from conducting any activity or use inconsistent with the Primary Purposes and terms of this Conservation Easement.

**D. Right to Require Restoration.** To require Grantor and/or third parties to restore such Conservation Values that may be damaged by any uses or activities prohibited by, or inconsistent with the Primary Purposes of, this Conservation Easement.

**E. Right of Approval.** Unless otherwise specified, Grantee approval, where required herein, shall not be unreasonably withheld, taking into consideration the Primary Purposes and terms of this Conservation Easement. Grantee approval shall be prior written approval, unless otherwise specified, and may be granted with conditions.

**F. Right of Discretionary Consent.** If, owing to unforeseen circumstances, any of the uses or activities prohibited under

this Conservation Easement are deemed desirable by both Grantor and Grantee, Grantee may, in its sole discretion, give permission for such activities, subject to such limitations as it deems necessary or desirable, and provided that:

- (1) The activities will not affect the qualification of this Conservation Easement as a "qualified conservation easement" under any applicable laws, including §§170(h) and 2031(c) of the Code or any provision of the S.C. Conservation Easement Act;
- (2) The activities will not adversely affect the tax exempt status of Grantee under any applicable laws, including §501(c)(3) of the Code and Treasury Regulations promulgated thereunder;
- (3) The activities will not adversely affect the Conservation Values of the Protected Property;
- (4) Neither the Grantee nor Grantor shall have the right or power to agree to any uses or activities that would result in the termination of this Conservation Easement; and
- (5) Grantee reserves the right to deny a request by Grantor for discretionary consent without liability.

Discretionary consent pursuant to this provision is distinct from Grantee approval, where such may be required herein, and from amendment pursuant to Section 19 of this Conservation Easement.

**5. Notice of Third Party Activities.** Grantor shall keep Grantee reasonably informed as to activities being conducted on the Protected Property which are within the scope of this Conservation Easement and as to the identity of any third parties who are conducting or managing such activities (for example facility construction). Grantor shall ensure that all third parties who are conducting activities relating to the Conservation Values and/or the permitted uses of the Protected Property are fully and properly informed as to the restrictions and covenants contained within this Conservation Easement which relate to such uses, including without limitation, the provisions of this Section and Sections 1 through 4.

**6. Representation of Title.** Grantor represents and warrants that it owns valid, fee simple absolute title to the Protected Property and

has the right to grant and convey this Conservation Easement and that the Protected Property is free and clear of any and all encumbrances, except easements of record, prescriptive easements, and mortgages or liens that have been subordinated to this Conservation Easement.

**7. Additional Representations and Warranties.** Grantor further represents and warrants the following:

**A. *Hazardous or Harmful Substances.*** No substance defined, listed or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from or across the Protected Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements except as disclosed in writing by Grantee to Grantor.

**B. *Underground Storage Tanks.*** There are not now any underground storage tanks located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Protected Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.

**C. *Compliance with Laws and Regulations.*** Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use.

**D. *Litigation.*** There is no pending or threatened litigation in any way affecting, involving, or relating to the Protected Property.

**E. *Proceedings or Investigations.*** No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of or failure to comply with any federal, state, or local law, regulation, or requirement applicable to the Protected Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

**F. *Mineral Rights.*** There are no outstanding surface or subsurface mineral rights associated with the Protected Property.

**8. Grantee's Remedies.** If Grantee determines that a violation of this Conservation Easement has occurred, is occurring or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action to cease or cure the violation and where such violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purposes of this Conservation Easement, to restore the Protected Property so injured. If Grantor fails to cease or cure the violation within thirty days after receipt of Grantee's notice or, if the circumstances are such that the violation cannot be cured within the thirty day period, Grantor does not begin curing such violation within the thirty day period, or if Grantor fails to continue diligently to cure the 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 Conservation Easement. In such action, Grantee may seek a temporary or permanent injunction, damages for violation of this Conservation Easement, including damages for the loss of the Conservation Values of the Protected Property, and an order requiring Grantor to restore the Protected Property to the condition that existed prior to injury.

If Grantee, in its sole discretion, determines that a violation of this Conservation Easement has occurred, is occurring, or is threatened, and that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this Section 8 without prior notice to Grantor and without waiting for the thirty day period provided for cure to expire.

Grantor agrees that Grantee's remedies for violation of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 8, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

All costs incurred by Grantee in enforcing this Conservation Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, costs of Grantee's staff (measured at twice the amount of their salaries), and any costs of restoration necessitated by

Grantor's violation of this Conservation Easement shall be borne solely by Grantor.

All costs incurred by Grantor, including, without limitation, costs of suit and attorney's fees, and costs of Grantor's staff (measured at twice the amount of their salaries), in successfully defending against a claim or action instituted by Grantee to enforce this Conservation Easement shall be borne solely by Grantee.

All costs incurred by Grantee in defending any claim, demand or lawsuit made or instituted by Grantor to modify or terminate this Conservation Easement, including, without limitation, court costs, costs of Grantee's staff (measured at twice the amount of their salaries), and attorneys' fees, shall be borne solely by Grantor. This does not include actions to terminate or transfer the conservation easement if Grantor proves Grantee breached its obligations under this agreement.

All costs incurred by Grantor in successfully defending any claim, demand or lawsuit made or instituted by Grantee to modify or terminate this Conservation Easement, including, without limitation, court costs and attorneys' fees, shall be borne solely by Grantee.

Enforcement of this Conservation Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any provision hereof by Grantor shall not be deemed or construed to be a waiver by Grantee of such provision or of any subsequent breach of the same or any other provision of this Conservation Easement or of any of Grantee's rights hereunder. 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. No third party shall have any right to enforce any provision of this Conservation Easement.

Nothing herein 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 reasonable control, including, without limitation, fire, floods, storms or unauthorized wrongful acts of third persons. Notwithstanding the foregoing, Grantor and Grantee fully reserve their respective rights to pursue a claim or action against a third party for damages to the Protected Property caused by trespass, nuisance, vandalism and other activities.

**9. Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind relating to the ownership,

operation, upkeep, and maintenance of the Protected Property, including maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

**10. Remediation.** If at any time there occurs, or has occurred, a release in, on or about the Protected Property of any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements, Grantor agrees to take all steps necessary to assure the containment and remediation of such release, including any cleanup that may be required.

**11. Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Protected Property by competent authority. In the event Grantor fails to pay property taxes on time, Grantee shall have the right, but not the obligation, to pay such taxes and to receive from Grantor an immediate reimbursement of the amount of its payment and if such reimbursement is not made, to file a lien against the Protected Property, which lien shall be subordinate to this Conservation Easement. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of South Carolina.

**12. Subsequent Liens.** No provision of this Conservation Easement should be construed as impairing the ability of Grantor to use the Protected Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing shall be subject and subordinate to this Conservation Easement.

**13. Hold Harmless.** Grantor agrees to release, hold harmless, defend and indemnify the Grantee and its members, officers, directors, employees, agents and contractors and their respective heirs, successors and assigns (the "Indemnified Parties") from and against any and all liabilities including, but not limited to, injury, losses, damages, judgments, penalties costs, expenses and fees (including reasonable attorney's fees), causes of action, claims, demands or judgments arising from or in any way connected to any injury, including death, to any person or physical damage to any part of the Protected Property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due to the gross negligence or willful act of any of the Indemnified Parties



or injuries not involving the negligence of Grantor and that would normally be covered by workers compensation or normal liability insurance of the Grantee.

**14. Fair Market Value of Conservation Easement.** This Conservation Easement constitutes a real property interest immediately vested in Grantee, which the parties stipulate to have a fair market value determined by multiplying the fair market value of the Protected Property unencumbered by the Conservation Easement (minus the value attributable to improvements) by the ratio of the value of the Conservation Easement at the time of this grant to the value of the Protected Property, without deduction for the value of the Conservation Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code, as amended. For the purposes of this provision, the ratio of the value of the Conservation Easement to the value of the Protected Property unencumbered by the Conservation Easement is Sixty percent (60%).

**15. Condemnation.** If all or any part of the Protected Property is taken through the exercise, or threat of exercise, of eminent domain or involuntary conversion, by any governmental entity other than Grantor (a "Third Party Condemnation") Grantor and Grantee shall each take appropriate actions at the time of such taking to recover the full value of the taking and all direct and incidental damages resulting from the taking. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any condemnation or involuntary conversion (not being limited to Third Party Condemnations) of all or any portion of the Protected Property shall be determined, unless otherwise provided by South Carolina law at the time, in accordance with Section 14 of this Conservation Easement. Grantee shall use all proceeds that it receives in a manner consistent with the Primary Purposes of this Conservation Easement. Grantor and Grantee may consent to any condemnation or involuntary conversion to avoid unnecessary costs of judicial proceedings, provided that the Primary Purposes are upheld to the maximum extent possible, and also provided that the proceeds from any condemnation are distributed pursuant to this Section 15.

**16. Assignment.** This Conservation Easement is assignable, but Grantee may assign its rights and obligations under this Conservation Easement only to an organization which is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable),

and the applicable regulations promulgated thereunder, and which is authorized to acquire and hold conservation easements under South Carolina law. An express condition of such assignment is that the assignee organization shall have the commitment, ability and resources to meet its responsibilities and obligations under this Conservation Easement and to take the necessary steps to protect the Conservation Values of the Protected Property.

If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code, or if Grantee is unable or unwilling to carry out its obligations under this Conservation Easement, then The Nature Conservancy shall have the first option to serve as holder of this Conservation Easement. If The Nature Conservancy is not qualified or declines to serve as holder, then the rights and obligations under this Conservation Easement shall vest in such other qualified organization as a court of competent jurisdiction shall direct pursuant to applicable law.

**17. Notice of Subsequent Transfers.** Grantor agrees to incorporate the provisions of this Conservation Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty days prior to the date thereof. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

**18. Transfer Fee.** There shall be assessed by Grantee a transfer fee equal to one percent of the sales price or other consideration paid in connection with the sale or transfer of any interest in the Protected Property, directly or indirectly (including the transfer of shares, membership, or other ownership interests in a corporation, limited liability company, partnerships or other entity which owns the Protected Property), other than the sale of timber or timber rights, which transfer fee shall be paid to Grantee at the time of the sale or transfer. This sum shall be placed in Grantee's stewardship fund, or such similarly named successor fund, to support Grantee's efforts to uphold its duties and responsibilities under this Conservation Easement as well as on Grantee's other protected properties.

Grantee may require Grantor and/or any subsequent purchaser to provide reasonable written proof of the applicable sales price, such as closing statements, contracts of sale, copies of deeds and other such relevant evidence.

In the event of non-payment of such transfer fee, Grantee shall have the right to file a lien for such unpaid transfer fee which shall be a lien on the Protected Property but which lien shall be subordinate to this Conservation Easement. Any such lien may be enforced and/or foreclosed in accordance with the laws of the State of South Carolina.

Any transfer subsequent to the conveyance of this Easement: a) without consideration, b) to a governmental body, or c) to a charitable organization which is tax exempt under 501(c)(3), shall be exempt from the assessment of such transfer fee. If Grantor is a corporation, limited liability company, partnerships or other entity, it shall notify Grantee upon transfer of shares, membership, or other ownership interests in Grantor.

An exchange of properties pursuant to Section 1031 of the Internal Revenue Code, or similar statute, shall be deemed to be for consideration based on the market value of the property received at the time of such transfer. Market value shall be determined by agreement of Grantor and Grantee, or in the absence of such agreement by an MAI appraiser selected by Grantee, whose appraisal fee shall be paid by Grantee.

**19. Limitations on Amendment.** If circumstances arise under which an amendment to this Conservation Easement would be appropriate to clarify any ambiguities or to maintain or enhance the Conservation Values, Grantor and Grantee may amend this Conservation Easement by a mutually acceptable written agreement, provided that the amendment:

A. shall be consistent with the Primary Purposes of this Conservation Easement, as set forth in Section 1 hereof;

B. shall not impair the Conservation Values of the Protected Property;

C. shall not adversely affect the eligibility of this Conservation Easement as a "qualified conservation easement" under any applicable laws, including Section 170(h) and 2031(c) of the Code; and

D. shall not adversely affect the status of Grantee as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code or as a qualified organization under Section 170(h)(3) of the Code.

Any such amendment shall be executed by Grantor and Grantee and recorded in the appropriate public office of the county or counties in which the Protected Property is located. Nothing in this Section 19 shall be construed as requiring Grantor or Grantee to enter into any discussions or negotiations regarding any amendment of this Conservation Easement or to agree to any such amendment.

**20. Change of Circumstances.** If circumstances arise in the future which render the Primary Purposes of this Conservation Easement, as set forth in Section 1 hereof, impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and Grantee shall be a party to such proceedings. The fact that any use of the Protected Property that is expressly prohibited by this Conservation Easement, or any other use that is inconsistent with the Primary Purposes of this Conservation Easement, as set forth in Section 1, may become more economically valuable than permitted uses, or that neighboring properties may in the future be put to uses that are not permitted hereunder, has been fully and carefully considered by Grantor in granting this Conservation Easement. It is the intent of both Grantor and Grantee that any such changes shall not constitute circumstances justifying the termination or extinguishment of this Conservation Easement pursuant to this Section 20. In addition, the inability or difficulty of carrying on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity or enforceability of this Conservation Easement or be considered grounds for its termination or extinguishment pursuant to this Section 20.

**21. Notice.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:	City Administrator (or successor) City of Westminster Post Office Box 399 Westminster, South Carolina 29693
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To Grantee:	Erin Jordan Knight (or successor) Land Trust Director Upstate Forever 507 Pettigru Street Greenville, South Carolina 29601
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Grantor and Grantee may designate additional or different persons and/or addresses by written notice either served personally or sent by first class mail, postage prepaid.

**22. Severability.** If any provision of this Conservation Easement is determined by a court of competent jurisdiction to be void and unenforceable, all remaining terms shall remain valid and binding.

**23. Captions.** The captions in this Conservation Easement have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon its enforcement, construction or interpretation.

**24. Incorporation of Recitals and Exhibits.** The introductory paragraphs, or recitals, and the Exhibits identified in this Conservation Easement are incorporated herein by reference and made a part hereof.

**25. Recordation.** This instrument shall be recorded in a timely fashion in the Office of the Clerk of Court for Oconee County, South Carolina, and may be re-recorded by Grantee at any time as may be required to preserve its rights in this Conservation Easement.

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

**27. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the Primary Purposes. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Primary Purposes that would render the provision valid should be favored over any interpretation that would render it invalid.

**28. Counterparts.** The parties may execute this Conservation Easement in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

**29. Binding Effect.** The burdens of this Conservation Easement shall run with the Protected Property in perpetuity and shall be enforceable against Grantor and its successors and assigns and all future owners of the Protected Property and all persons or entities having any interest therein, in perpetuity. The benefits of this Conservation Easement shall inure to Grantee and its successors and assigns in perpetuity.

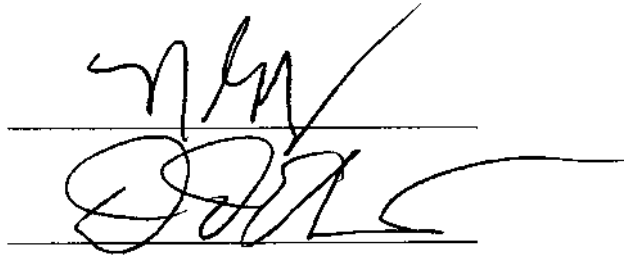
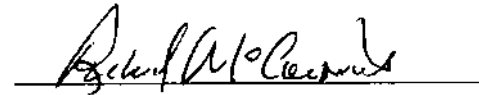
*{Signature pages follow}*

**SIGNATURE PAGE FOR CONSERVATION EASEMENT**

IN WITNESS WHEREOF, Grantor has set his hand(s) to this Easement as of this 24th day of September, 2015.

**WITNESSES:****GRANTOR:**

CITY OF WESTMINSTER

By: Richard McCormick

Its: Mayor

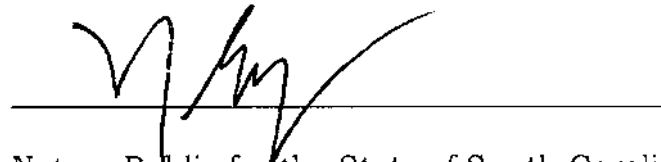
FILED FOR RECORD  
 OCONEE COUNTY, S.C.  
 REGISTER OF DEEDS  
 2015 SEP 24 A 11: 58

STATE OF SOUTH CAROLINA )

ACKNOWLEDGMENT

COUNTY OF OCONEE )

The foregoing instrument was acknowledged this 24th day of September, 2015 before me the undersigned Notary, and I do hereby certify that the above named Grantor, by and through its authorized representative, the Mayor of the City of Westminster, personally appeared before me and acknowledged the due execution of the foregoing instrument.

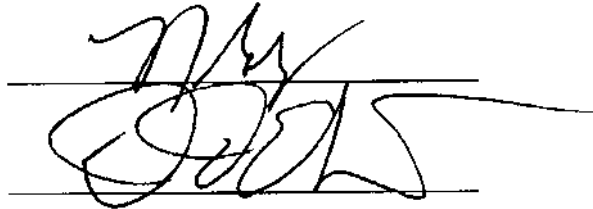


Notary Public for the State of South Carolina

My commission expires: 3/14/17

**SIGNATURE PAGE FOR CONSERVATION EASEMENT**

IN WITNESS WHEREOF, Grantee has caused the execution of this Easement as of the day and year first above written.

**WITNESSES:**

**GRANTEE:**

UPSTATE FOREVER

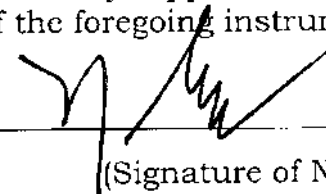
By:   
Erin Jordan Knight  
Land Trust Director

STATE OF SOUTH CAROLINA )

ACKNOWLEDGMENT

COUNTY OF OCONEE )

The foregoing instrument was acknowledged this 24<sup>th</sup> day of September, 2015 before me the undersigned Notary, and I do hereby certify that the above named duly authorized representative 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: 3/14/17

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
2015 SEP 24 A 11:58

**EXHIBIT 1**

## Legal Description of Property

All that certain piece, parcel or tract of land lying and being situate in the State of South Carolina, County of Oconee, Tugaloo Township, containing 89.46 acres, more or less, including right of way, as shown and more fully described on a plat thereof prepared by James G. Hart, RLS #6674, dated 04/22/13 and recorded in Plat Book B440, page 10, records of Oconee County, SC. Reference to said plat is hereby invited for a more complete and accurate description by metes and bounds.

FILED FOR RECORD  
OCONEE COUNTY, SC  
REGISTER OF DEEDS  
2015 SEP 24 A 11:58



**STATE OF SOUTH CAROLINA )**

**COUNTY OF OCONEE ) ORDINANCE #2015-04-21-01**

**CITY OF WESTMINSTER )**

**AN ORDINANCE APPROVING AND AUTHORIZING AN AGREEMENT TO ENTER INTO  
A CONSERVATION EASEMENT BETWEEN THE CITY OF WESTMINSTER AND  
UPSTATE FOREVER, A NON PROFIT CORPORATION**

**TAX MAP PARCEL IDENTIFICATION NUMBERS: 218-00-01-005 and 218-00-01-015**

WHEREAS, the City of Westminster, South Carolina (the "City") owns EIGHTY NINE AND FORTY SIX HUNDRETHS (89.46) acres of real property located on Highway 76 and on the Chauga River in Oconee County, South Carolina identified as tax map parcel numbers 218-00-01-005 and 218-00-01-015 (the "Property") and shown in Plat Book B440, page 10, recorded on June 18, 2013 at the Office of the Oconee County Register of Deeds; and

WHEREAS, the property bounds the Chauga River immediately above the City's water intake which is the source of the City's water serving thousands of inhabitants daily; and

WHEREAS, the City desires to enter into a conservation easement, as authorized by S.C. Code Ann. § 27-8-10 *et seq.*, in which the South Carolina Conservation Bank has agreed to pay two hundred fifty thousand dollars (\$250,000.00) to the City in consideration for this easement; and

WHEREAS, the City finds that a conservation easement is desirable and necessary to protect the City's water source and water quality and the easement is in the best interests of the City and its citizens and its other water customers; and

WHEREAS, Upstate Forever, a nonprofit corporation organized and existing under the laws of the State of South Carolina, is an appropriate party to hold the easement under said statute and will also provide valuable consideration in taking this easement; and

WHEREAS, South Carolina Code Ann. § 5-7-40, 5-7-260 allows municipalities to sale, alienate, convey, lease or otherwise dispose of its real or mixed property by ordinance; and

WHEREAS, a public hearing on the creation, assignment, agreement, conveyance, sale, or alienation of the conservation easement on the Property from the City to Upstate Forever was held prior to the second reading of this Ordinance pursuant to South Carolina Code Ann. § 5-7-40 *et seq.*

NOW, THEREFORE, be it ordained, by the Mayor and the Council for the City of Westminster in a meeting duly assembled, as followed:

# SECTION I. FINDINGS INCORPORATED

In addition to the recitals set forth above, which the City hereby adopts as findings of fact, the Mayor and Council specifically find that:

1. The City owns the property known as the Chauga River Property, located on Highway 76 and on the Chauga River consisting of 89.46 Acres, in Oconee County, South Carolina by virtue of that Title to Real Estate by J.H. Orr to the Town of Westminster, dated November 16, 1933 and recorded in Deed Book 4-K, page 246 and also by virtue of that Title to Real Estate by J.G. Dickerson, *et al*, to the Town of Westminster, dated December 4, 1945 and recorded in Deed Book 5-H, page 454, said records being in the Office of the Oconee County Register of Deeds.
2. The City has agreed to enter into a conservation easement as authorized by S.C. Code Ann. § 27-8-10 *et seq* and the South Carolina Conservation Bank has agreed to pay two hundred fifty thousand dollars (\$250,000.00) to the City in consideration for this easement.
3. The conservation easement will protect the City's water source and water quality and Upstate Forever is an appropriate party to hold the easement under the laws of the State of South Carolina.
4. The sale and conveyance of the Property is in the best interests of the City and its citizens.
5. A public hearing on the proposed agreement, sale, conveyance, or alienation of the conservation easement on the Property from the City to Upstate Forever, for consideration of two hundred fifty thousand dollars (\$250,000.00) from the South Carolina Conservation Bank, as well as other valuable consideration provided by Upstate Forever, was held prior to the second reading of this Ordinance, pursuant to South Carolina Code Ann. § 5-7-10, *et seq.*, as well as the laws of the State of South Carolina and the ordinances and rules of procedure of the City of Westminster.

## SECTION II. APPROVAL OF AGREEMENT, CONVEYANCE, ALIENATION OF A CONSERVATION EASEMENT ON REAL PROPERTY AND AUTHORITY TO EXECUTE DOCUMENTS FOR SAID AGREEMENT AND CONVEYANCE

1. Westminster City Council authorizes the creation, agreement, conveyance, sale and alienation of a conservation easement on the Property located on the Chauga River in Oconee County, South Carolina, identified as tax map parcel numbers 218-00-01-005 and 218-00-01-015 to Upstate Forever, for consideration by the South Carolina Conservation Bank as well as valuable consideration of Upstate Forever in agreeing to take said easement.

2. Westminster City Council authorizes the City Attorney and City staff to prepare the necessary documentation and authorize the necessary appraisals, inspections, authorizations and any other necessary activities in order to approve the conservation easement. Said easement shall be attached at the ordinances second reading as Exhibit "A".

3. The Mayor of Westminster, or in his absence the Mayor Pro Tempore of the City of Westminster is authorized to execute and deliver any and all documents and instruments necessary for the creation, sale, conveyance, alienation, recordation or assignment of the easement of the Property.

## SECTION III. SEVERABILITY

If for any reason any part of this Ordinance is invalidated by a court of competent jurisdiction, the remaining portions of this Ordinance shall remain in full force and effect.

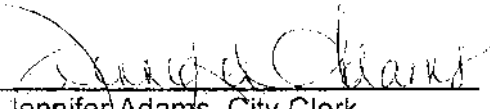
## SECTION IV. EFFECTIVE

This Ordinance shall become effective immediately upon approval following second reading by the Westminster City Council.

APPROVED, this 19 day of May 2015.


  
Rick McCormick, Mayor

First Reading: April 21, 2015

  
Jennifer Adams, City Clerk

Second Reading: May 19, 2015

Reviewed by City Attorney and approved as to form.

  
Derek J. Enderlin, City Attorney

*Certified  
True Copy  
Jennifer Adams  
City Clerk*