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Timothy J. Henry

Return to:
Upstate Forever Land Trust
507 Pettigru Street
Greenville, SC 29601

STATE OF SOUTH CAROLINA)	CONSERVATION EASEMENT
)	Includes Transfer Fee Lien,
COUNTY OF GREENVILLE)	Allocation, and Notice Requirements

For and in consideration of the mutual covenants, terms, conditions, and restrictions herein contained, and as an irrevocable gift, for and in the consideration of the sum of \$18,000 provided by the Upstate Land Conservation Fund and other good and valuable consideration, this **CONSERVATION EASEMENT** is entered into this 29 day of December, 2022 by and between **JAMES D. WARD**, a citizen and resident of Greenville County, South Carolina (hereinafter referred to as "Grantor"), 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, Grantor is the owner in fee simple of certain real property, more particularly described on 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. Farm and 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 383 feet on the Bulls Road in Greenville County;
- B. The Protected Property's potential for agricultural productivity, thus preserving open space in accordance with goals of the governmental conservation policies identified in this Conservation Easement and yielding a significant public benefit, including preservation of an area estimated to be in excess of 25.9 acres of Prime Soils and Soils of Statewide Importance;

- C. Significant Natural Areas within the Riparian Buffers containing relatively natural habitat of fish, wildlife, and/or plants; and
- D. Agricultural and forest land in close proximity to other conserved property, such as: Clear Creek Heritage Preserve.

WHEREAS, the Conservation Values are of great importance to Grantor and Grantee and the people of Greenville 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 the following "Conservation Purposes" set forth in Section 170(h)(4) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"):

- A. The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem;
- B. The preservation of open space (including farmland and forest land) where such preservation is:
 - (1) for the scenic enjoyment of the general public, or
 - (2) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit;

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

- A. 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";

- B. 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”;
- C. 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, that documents the current condition and conservation values of the Protected Property at the time a conservation easement is granted;

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; and

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.

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, its heirs, successors, and assigns as follows:

1. **Definitions.** For the purposes of this Conservation Easement, Grantor and Grantee agree that, in addition to terms defined or abbreviated elsewhere herein, the following terms that appear throughout this Conservation Easement shall be defined as follows:

Agricultural Activities: Activities directly related to the production, harvesting, and/or storage of plant and/or animal products on the Protected Property, including, but not limited to, the means of production, and/or the improvement and maintenance of lands for the production of crops, animal husbandry, floriculture, and horticulture in a manner that preserves the long-term productivity of the soil. This includes the keeping of horses, mules or donkeys for the grazing of land.

Agricultural Structure: Any structure designed to be used or currently used in conjunction with permitted **Agricultural Activities**, not including any structure used as a dwelling for human beings.

Ancillary Structures: Any related or auxiliary structure customarily used as an accessory to a **Residence**, such as garages or sheds, not including any structure used as a dwelling for human beings. Swimming pools and other impervious water features do not constitute Ancillary Structures for the purposes of this Conservation Easement.

Approval: The prior written consent of the **Grantee** to allow **Grantor** to undertake an activity relating to certain rights described in Section 4 and as further characterized in Section 5.

Commercial Recreation: The provision of recreation-related products or services by private (or public) enterprise for a fee.

Commercial Use/Activity: Any use or activity making or intending to make a profit. **Limited Commercial Activities**, defined as those activities of limited scope and impact making or intending to make a profit, are sometimes permissible under the terms of a Conservation Easement when stipulated.

Forest Management: The production, improvement, and maintenance of forest lands for timber production and commercial harvesting, wildlife management, aesthetics or any other purpose. **Forest Management** includes 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.

Forest Management Plan: A written plan, subject to periodic updates, created by a licensed Registered Forester, to guide all **Forest Management** activities, or practices on the Protected Property.

Impervious Surface: A human-made surface area that either prevents or significantly retards the entry of surface water and stormwater into the soil or into a

water body. 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, docks, boardwalks, 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 permeable materials.

Impoundments: Any dam, weir or other structure that can raise the water level of a water body above its natural level.

Natural Areas: An area of unique scenic, historic, geologic or ecological value and of sufficient size and character so as to allow its maintenance in a natural condition by the operation of physical and biological processes, usually without direct human intervention.

Ordinary High Water Mark: According to the Army Corps of Engineers: "That line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas."

Residence: Any structure that could be used for human habitation and which contains sleeping quarters, sanitary facilities, and cooking facilities.

Riparian Buffer: Any vegetated areas that are within 200 feet of the Ordinary High Water Mark or any other river, stream, waterway, pond, lake or Impoundment on the Protected Property that protects and improves water quality, provides bank stabilization, and creates aquatic and wildlife habitat. Riparian Buffers are subject to specific restrictions and protections further described in Section 4.

Subdivided Tract: A transferable parcel of land separate and distinct from the original parcel(s) comprising the Protected Property, which is created from said original parcel(s) after the date of this Conservation Easement; provided, however, any **Subdivided Tract** will continue to be a portion of the Protected Property.

Subdividing: The process of legally dividing the original legal parcels of land that comprised the Protected Property at the time this Conservation Easement was executed in order to create additional legal, transferable parcels of land.

Wetlands: 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.

2. 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").

3. Reserved Rights. Grantor reserves to himself, and to his personal representative, heirs, 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 4, 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.

4. Restrictions on Uses of the Protected Property. The provisions in this Section 4 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 Use 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. Residences and Structures. There are no existing Structures on the Protected Property. Grantor shall have the following rights regarding Residences and structures on the Protected Property:

(1) New Structures: To construct, maintain, repair, improve and replace up to one new single family Residence and new Ancillary Structures for the Residence, provided that the new Residence, Ancillary Structures and their other associated Impervious Surfaces satisfy the following:

(i) No Residence shall occupy a footprint of more than 3,500 square feet;

(ii) No Residence shall exceed two stories in height excluding underground basements;

(iii) A Residence may include a basement;

(iv) Collectively, new Ancillary Structures associated with the Residence shall occupy a total footprint of no more than 1,000 square feet and shall not exceed two stories in height;

(v) The one single family Residence and its associated Ancillary Structures shall be constructed, subject to the conditions described herein, in one (1) separate permitted "building envelope" area, which building envelope area shall

touch and include the one locational "Pin", as such Pin is shown and described on **Exhibit 2**, which is attached hereto and incorporated herein by reference. Further, and without limiting the foregoing, the permitted building envelope area shall not exceed two acres for the building envelope corresponding to "Residential Pin." Further, and without limiting the foregoing, the relevant building envelope described herein, while being required to touch and contain the relevant Pin described above, shall also be in the shape of either a perfect circle or perfect square and the center of any such building envelope shape shall be no further than fifty (50) feet from the associated Pin. The final location of the one building envelope area, as permitted herein, shall be subject to the advanced Approval by the Grantee, which Approval shall not be unreasonably withheld.

(vi) Collectively, existing or new decks, patios, and other Impervious Surfaces associated with each Residence shall not exceed 500 square feet in footprint;

(vii) Grantor obtains Grantee's Approval of Grantor's plan for the location, site preparation and construction of all Residences before any work begins; and

(viii) Grantor obtains Grantee's Approval of Grantor's plan for the location, construction, and expansion of any Ancillary Structure before any work begins.

(2) Dwelling Restriction: Other than permitted Residences, no other structure on the Protected Property shall be used as a temporary or permanent dwelling for human beings.

B. Subdividing and Ownership of Parcels. The Protected Property currently consists of three legal parcels, namely (tax map number 0641010102500, tax map number 0641020103502, and tax map number 0641010102300). The Protected Property shall not be Subdivided into any additional legal parcels. Moreover, separate conveyance of any portion of the Protected Property is prohibited. For the purpose of this Conservation Easement, the Protected Property must remain under unified ownership, which may be joint and undivided.

C. Commercial Activities. Except with the prior Approval of Grantee, there shall be no Commercial Uses/Activities, or Structures. For purposes of this limitation, Commercial Uses/Activities do not include: recreational or lease based hunting or fishing, leasing of Residences for residential purposes, or leasing of the Protected Property for agricultural uses.

D. 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.

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;
- (2) "No trespassing," "no hunting," or similar signs;
- (3) Signs relating to the sale of the Protected Property;
- (4) Signs indicating the name or ownership of the farm or home, not to exceed twelve square feet; and
- (5) Signs to indicate the Conservation Values of the Protected Property.

F. Protection of Riparian Buffers. Grantor shall not remove or cut any trees or otherwise alter or disturb any area of the Protected Property that is within the Riparian Buffer 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) Except as allowed in Sections 4(J) and (K);
- (6) For roads, bridges, and trails constructed or restored in accordance with Section 4(M);
- (7) Maintaining the existing fields within the Riparian Buffer area, which are more particularly described in the Baseline Report; or
- (8) Performing ecological enhancements in accordance with a professionally prepared plan and following Approval by Grantee.

In addition, Grantor shall take all steps reasonably necessary to keep livestock out of all rivers, streams, waterways, ponds, lakes, or Impoundments on the Protected Property.

G. 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 directly serve the structures and uses allowed under Section 4(A), (I) and (J) hereof may be located on Protected Property.

H. Forest Management. Grantor reserves the right to harvest timber from the Protected Property and conduct Forest Management activities in a manner that complies with Section 4(F) of this Conservation Easement and that is in accordance with a Forest Management Plan. The Forest Management Plan must meet or exceed the best management practices of the South Carolina Forestry Commission (or successor agency), be written with the goal of protecting the Conservation Values of the Protected Property, and have the Grantee's Approval. Forest Management Plans must include: (1) map(s) showing the boundaries of the Protected Property, waterways, primary and secondary Stream Management Zones, existing and/or proposed new roads and bridges for accessing timber, and harvest areas; (2) timber species to be harvested in each area; (3) identification of equipment to be used in each area; (4) strategies for protecting Conservation Values; (5) a timeline for timber harvest; and (6) a plan for reseeding, replanting, and/or stabilizing the site. Notwithstanding the above, Grantor reserves the right, outside of the Riparian Buffer (Section 4(F)):

- (1) To remove trees that are dead;
- (2) To remove 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) To remove trees that pose a significant and immediate hazard to life or property;
- (4) To cut, remove, or eradicate any plant which is recognized by state or federal natural resource authorities to be a non-indigenous species;
- (5) To cut and remove trees after obtaining Grantee's 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.

I. Agricultural Structures. There are currently no existing Agricultural Structures on the Protected Property. Grantor shall have the right:

(1) Construct, Maintain, and Replace Additional Agricultural Structures: construct, maintain and replace additional structures and facilities for Agricultural Activities, including stables, feed barns, fences, and similar structures provided;

(i) Such structures, facilities, and Impervious Surfaces, collectively, excluding trails and fences, shall not exceed a total of 1,000 square feet in footprint;

(i) Grantor must provide a written plan for all new, expanded and replacement structures and facilities and receive Approval from Grantee before site preparation or construction begins, except prior Approval shall not be required for a structure that is less than 1,000 square feet in size and is located within 100 feet of an existing structure more particularly described in the Baseline Report;

(ii) Unless Grantee provides Approval, no new Agricultural Structures, excluding fences and gates, may be located within 100 feet of the closest edge of the adjacent public roadways and, to the extent possible, shall not be located on prime soils or soils of statewide importance.

(2) New Agricultural Activities: To initiate additional Agricultural Activities, not existing at the time of the Baseline Report, subject to the terms and conditions of a conservation plan that meets the National Conservation Practice Standards set by the USDA, as well as all other local and state criteria regarding agricultural practices, and is prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, or by a qualified conservation professional Approved by Grantee. Such plan and all amendments to the plan shall first be Approved by Grantee.

Notwithstanding the foregoing, Grantor shall not use any portion of the Protected Property for a "concentrated animal feeding operation" as defined by either the United States Center for Disease Control and Prevention or by the United States Environmental Protection Agency, as such definitions may be modified from time to time, including, without limitation, a feed lot operation or similar intensive livestock facility.

J. Ponds and Wetland Impoundments. There are currently no existing ponds or Impoundments on the Protected Property. No new ponds or Impoundments may be constructed on the Protected Property.

K. Docks and Viewing Platforms. There are currently no existing Docks or Viewing Platforms on the Protected Property. No new docks or viewing platforms may be constructed on the Protected Property.

L. 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, provided such additional fencing does not impair the Conservation Values of the Protected Property.

Grantor shall have the right to maintain the current open fields on the Protected Property, which are more particularly described in the Baseline Report and to establish and maintain additional open field sites provided:

- (1) Grantor undertakes all reasonable measures to avoid or minimize adverse ecological impacts during establishment of the fields;
- (2) No part of any newly-established field is located within the Riparian Buffer (Section 4(F));
- (3) Existing fields within the Riparian Buffer, may be maintained in accordance with Section 4(F) hereof.

M. Roads, Bridges and Trails. The existing 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 4(A), (H), (I) or (J) hereof;
- (2) Roads within the Riparian Buffer area, subject to Section 4(F), shall be limited to the smallest area necessary to provide reasonable access to the uses and activities permitted under Section 4(M)(1).
- (3) Grantee shall Approve a plan for the location and construction of any road to be located within a Riparian Buffer, subject to Section 4(F), before any work begins;
- (4) Grantee shall Approve a plan for the location and construction of any road to be built with the use of heavy equipment before any work begins;

(5) Grantee shall Approve a plan for the location and construction of any bridge before any work begins;

(6) All construction shall be done in accordance with applicable federal, state and local laws and regulations;

(7) Trails constructed within the Riparian Buffer area described in Section 4(F) shall be unpaved and no wider than five feet;

(8) Grantor shall undertake all reasonable measures to avoid or minimize adverse ecological impacts on the Conservation Values of the Protected Property; and

(9) Roads and trails on the Protected Property shall not be paved. Existing paved roads and trails, which are more particularly described in the Baseline Report, may be maintained and replaced.

N. 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.

O. 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.

P. 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.

Q. 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 may be transferred to any other lands pursuant to a transferable development rights program, clustered development arrangement or otherwise; provided, however, that with the Approval of Grantee, this Section 4(Q) shall not preclude such transfer of development rights resulting from the destruction or demolition of any permitted Residence on the Protected Property.

R. 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.

S. 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.

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

5. 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. In such events, Grantee shall have the right to enter upon the Protected Property without notice.

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; Constructive Denial. For activities or uses that are expressly permitted by the terms of this Conservation Easement subject to Grantee's Approval, the Grantor's request for Approval shall be in writing and shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity or use in sufficient detail to permit the Grantee to make an informed determination regarding Approval or denial of the request. Such a request shall be delivered to the Grantee at least sixty (60) days prior to the anticipated start date of such activity or use. The Grantee agrees to use reasonable diligence to respond in writing to such a request within sixty (60) days of delivery of said request. Unless otherwise specified, Approval or denial shall be subject to Grantee's sole discretion and shall be based on whether the activity or use is consistent with the Primary Purposes of this Conservation Easement. Approval for an activity or use may be granted with conditions. The Grantee's failure to respond to such a request within the sixty (60) day period shall be deemed a constructive denial of the request for Approval. Because a constructive denial is not a decision by the Grantee based on the merits of the Grantor's request, it is not final or binding on the Grantee and the Grantor can resubmit the same or similar request for Approval.

F. Right of Discretionary Consent. If, owing to unforeseen circumstances, any of the uses or activities prohibited under this Conservation Easement are deemed by both Grantor and Grantee to be necessary to maintain or enhance the Conservation Values, Grantee may, in its sole discretion, give permission for such activities for a specified period of time, 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 20 of this Conservation Easement.

6. 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 agricultural leasing). 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 5.

7. Representation of Title. Grantor represents and warrants that he 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.

8. 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.

9. 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 at the time of this grant.

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 9 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 9, 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 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.

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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. Grantee's Property Right. The Grantor agrees that the contribution of this Conservation Easement gives rise to a property right, vested in the Grantee immediately upon the Effective Date, with a fair market value that is at least equal to the proportionate value that this Conservation Easement, on the Effective Date, bears to the value of the Protected Property as a whole at that time (the "Proportionate Value"). The Proportionate Value shall remain constant. For the purposes of this Conservation Easement, the Proportionate Value is determined by dividing the fair market value of this Conservation Easement on the Effective Date (numerator) by the fair market value of the Protected Property as a whole on the Effective Date (denominator) and is understood to be 0.63 or sixty three percent (63%).

16. Condemnation. If all or any part of the Protected Property is taken through the exercise or threat of exercise, of eminent domain, 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 from the condemnation or involuntary conversion 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 15, Grantee's Property Right, 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 condemnation 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 16.

17. 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.

18. 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 himself 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.

19. 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 condemnation or 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 Conservation Easement: a) without consideration, b) to a spouse, a lineal descendant, a spouse of a lineal descendant of Grantor (collectively, "Immediate Family Members"), c) to an entity at least 50% of the equity interest of which is owned by Grantor or an Immediate Family Member, d) to a trust whose presumptive beneficiaries are Grantor or an Immediate Family Member, or e) 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.

20. Limitations on Amendment. If Grantor desires to add real property subject to the restrictions set forth in this Conservation Easement to the Protected Property, or if circumstances arise under which an amendment to this Conservation Easement would be appropriate to maintain or enhance the Conservation Values of the Protected Property or to clarify ambiguities in this Conservation Easement, Grantor and Grantee may amend this Conservation Easement by a mutually acceptable written agreement, provided that the amendment:

- A. Does not affect this Conservation Easement's perpetual duration;
- B. Does not permit development, improvements, or uses prohibited by this Conservation Easement;

C. Shall be consistent with the Primary Purposes of this Conservation Easement, as set forth in Section 2 hereof;

D. Shall not impair the Conservation Values of the Protected Property;

E. 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;

F. 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; and

G. Shall be consistent with the policies of Grantee in effect at the time the amendment is executed.

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 20 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.

21. Extinguishment. If an unexpected change in the conditions surrounding the Protected Property subsequent to the Effective Date can make impossible or impractical the continued use of the Protected Property for the Primary Purposes, the restrictions imposed by this Conservation Easement can only be extinguished through a judicial proceeding. In such case, on a subsequent sale, exchange, or involuntary conversion of the Protected Property, the Grantee shall be entitled to a portion of the proceeds at least equal to that Proportionate Value of the Conservation Easement as determined in Section 15, Grantee's Property Right. The Grantee shall use any such proceeds in a manner that is consistent with the Primary Purposes. 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 2, 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 21. 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 21.

22. 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: James D. Ward
204 Roberts Circle
Greer, SC 29650

To Grantee: Scott Park (or successor)
Land Conservation Director
Upstate Forever
507 Pettigru Street
Greenville, South Carolina 29601

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.

23. 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.

24. 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.

25. 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.

26. Recordation. This instrument shall be recorded in a timely fashion in the Office of the Register of Deeds/RMC for Greenville County, South Carolina, and may be rerecorded by Grantee at any time as may be required to preserve its rights in this Conservation Easement.

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

28. 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.

29. 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.

30. Binding Effect. The burdens of this Conservation Easement shall run with the Protected Property in perpetuity and shall be enforceable against Grantor and its heirs, 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, Grantee has set its hand to this Conservation Easement as of the day and year first above written.

WITNESSES:

Caitlyn Gaudin

Mark Burt

GRANTEE: Upstate Forever

By: Scott Park

Scott Park
Land Conservation Director

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF GREENVILLE)

The foregoing instrument was acknowledged this 19 day of December 2022 before me the undersigned Notary, and I do hereby certify that the above named Grantee by and through its authorized Land Conservation Director personally appeared before me and acknowledged the due execution of the foregoing instrument.

Alison Miller

(Signature of Notary)

Notary Public for the State of South Carolina

My commission expires: March 22, 2029

Alison Miller
Notary Public, State of South Carolina
My Commission Expires March 22, 2029

EXHIBIT 1

Legal Description of Property

Parcel 1: 1.09 ac Bull Rd

All that certain piece, parcel or tract of land, situate, lying and being on the eastern side of Bull Road in the State of South Carolina, County of Greenville, being shown and designated as 7.69 acres, more or less, on a plat requested by James D. Ward, prepared by Arnold Dell Murphey, SCPLS No. 13853, of Blue Ridge & Associates Land Surveying, Inc., dated February 2, 2004 and recorded in the Office of Greenville County Register of Deeds in Plat Book 48-A at Page 37. Reference to which plat is hereby made for a more complete and accurate description.

LESS AND EXCEPT,

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as 6.60 acres, more or less, as shown on plat entitled "Surveyed for: Joan E. & Gerald L. Mobley", prepared by Sinclair & Associates, LLC, dated August 15, 2007 and recorded on October 12, 2007 in Plat Book 1052 at Page 36, Greenville County ROD and conveyed by deed recorded in Deed Book 2294 at Page 1200, Greenville County ROD.

Parcel 2: 28.93 ac Brook Laurel Ln

All that certain piece, parcel or tract of land, situate, lying and being on the eastern side of Bull Road in the State of South Carolina, County of Greenville, containing 35.99 acres, more or less, according to a plat prepared by Blue Ridge Land Surveying, Inc., for James D. Ward dated December 3, 1998, recorded in the Office of Greenville County Register of Deeds in Plat Book 39-F at Page 93. Reference to which plat is hereby made for a more complete and accurate description.

LESS AND EXCEPT,

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as 3.63 acres, more or less, as shown on plat requested by James D. Ward, prepared by Arnold Dell Murphey, of Blue Ridge Land Surveying, Inc., dated November 15, 1999 and recorded on November 19, 1999 in Plat Book 41-F at Page 78, Greenville County ROD and conveyed by deed recorded in Deed Book 1880 at Page 417.

ALSO LESS AND EXCEPT,

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as 0.31 acres, more or less, designated as Tract A on plat prepared by Blue Ridge Land Surveying, Inc., entitled "Survey for Delta Properties", dated April 4, 2001 and recorded in Plat Book 43-Y at Page 1, Greenville County ROD and conveyed by deed recorded in Deed Book 1948 at Page 1462.

ALSO LESS AND EXCEPT,

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as 3.12 acres, more or less, on a plat requested by James D. Ward, prepared by Arnold Dell Murphey, SCPLS No. 13853, of Blue Ridge Land Surveying, Inc., dated May 24, 1996 and recorded in the Office of

Greenville County Register of Deeds in Plat Book 33-H at Page 41, Greenville County ROD and conveyed by deed recorded in Deed Book 1656 at Page 1989.

Parcel 3: 33850 Mays Bridge Rd

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as 3.12 acres, more or less, on a plat requested by James D. Ward, prepared by Arnold Dell Murphey, SCPLS No. 13853, of Blue Ridge & Associates Land Surveying, Inc., dated May 24, 1996 and recorded in the Office of Greenville County Register of Deeds in Plat Book 33-H at Page 41. Reference to which plat is hereby made for a more complete and accurate description.

