



Committee on Planning & Development

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COMMITTEE ON PLANNING & DEVELOPMENT

Agenda Item No. 5 PD 5 Meeting Date: February 2, 2015

REQUEST FOR COMMITTEE ACTION

To: Joe Dill, Chairman, Committee on Planning & Development

From: Paula Gucker, Assistant County Administrator, Department of Community Planning and Development

Department: Legal

Item Title: Conservation Easements – Westside Park and Poinsett Park

Action Taken by Committee previously (include dates when Item was discussed):

Motion Requested Today: Approval

Staff Recommendation:

Impact of Action:

Funding Amount/Source:

Requested by: Legal Department

Staff Representative: Jeff Wile, Assistant County Attorney
Wade S. Kolb, III of the Wyche Firm

List of Attachments: current easements with proposed easements for each

1-29-15
Date Submitted

Approved by the County Administrator

various
Council District

Long Branch

WESTSIDE AQUATIC

BOOK 1910 PAGE 1835 ✓✓

CONSERVATION EASEMENT

FILED
MAY 1 2003

THIS CONSERVATION EASEMENT entered into this 20th day of MAY 2003, 12:23
1999, by and between Greenville County Recreation District, ("Grantor") and FRIENDS OF REEDY RIVER, INC. ("FORR"), a nonprofit corporation organized and existing under the laws of the State of South Carolina. DS

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property, more particularly described on Exhibit 1, attached hereto and made a part hereof (such property being hereinafter referred to as the "Protected Property");

WHEREAS, the Protected Property is an environmentally significant area located along Long Branch, a tributary to the Reedy River in Greenville County, South Carolina; and

WHEREAS, the Protected Property has been determined to be a suitable mitigation site for the impact of the Southern Connector and SC 153 Extension Highway Projects in Greenville County, South Carolina; and

WHEREAS, FORR is a non profit corporation whose principal purpose is to preserve, protect and restore the Reedy River and its tributaries; and

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

WHEREAS, both Grantor and FORR recognize the natural, scenic aesthetic, and special character of the Protected Property, and have the common purpose of the conservation and protection of the Protected Property in perpetuity;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants, terms, conditions and restrictions herein contained, Grantor, intending to be legally bound, agrees as follows;

1. Installation of Improvements. Interwest Carolina Transportation Group, LLC (ICTG) its duly authorized agents and contractors shall have the right to enter upon the Protected Property for the purpose of installing the improvements more particularly described on Exhibit 2, attached hereto:

00-10-30 0870 00-10-30

2. Maintenance of Improvements. Grantor shall have no responsibility to maintain the improvements described on Exhibit 2, but Grantor does agree that it shall not interfere with, disturb or alter such improvements in any way. FORR and/or ICTG and their duly authorized agents and contractors shall have the right to enter upon the Protected Property for the purpose of maintaining or rehabilitating the improvements more particularly described on Exhibit 2, attached hereto.

3. Restrictions on Use of Protected Property.

(A) There shall be no agricultural, residential, commercial or industrial activity undertaken or allowed on the Protected Property; nor shall any right of passage across or upon the Protected Property be allowed or granted if that right of passage is used in conjunction with agricultural, residential, commercial or industrial activity.

(B) At the Protected Property, there shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, minerals or other materials; no dumping of ashes, trash, garbage, or of any other material; and no changing of the topography of the land in any manner, except as may be required to install the plan described in Exhibit 2.

(C) There shall be no construction or placing of buildings, mobile homes, advertising signs, billboards, or other advertising material, or other structures at the Protected Property.

(D) No new roads shall be constructed on the Protected Property.

(E) No activity shall be undertaken on the Protected Property that is detrimental to water quality.

(F) There shall be no operation of automobiles, motorcycles, all-terrain vehicles or any other type of motorized vehicles at the Protected Property.

(G) There shall be no construction or placing of temporary or permanent buildings, docks, bridges, piers or other structures at the Protected Property.

(H) Any use of the Protected Property and any activity thereon, that, in the reasonable opinion of FORR is or may become inconsistent with the primary purpose and intention of this Easement, namely, the preservation of the Protected Property predominantly in its natural condition, is prohibited.

4. Inspection. FORR 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 purposes of inspecting it to determine compliance with the provisions of this Easement.

5. Enforcement. FORR shall have the right to exercise all rights and remedies available at law or equity to enforce this Easement, including, without limitation, the right to seek and obtain injunctive relief and the right to enter the Protected Property to undertake such actions that are reasonably necessary to correct any conditions constituting such a breach. Nothing herein shall be construed to entitle FORR to institute any proceedings against Grantor for any

changes to the Protected Property due to causes beyond Grantor's reasonable control such as changes caused by fire, floods, storms or unauthorized wrongful acts of third persons.

- 6. Representation of Authority, Title and Enjoyment. Grantor represents and warrants that Grantor is seized of the Protected Property in fee simple and has the right to grant and convey this Easement and that the Protected Property is free and clear of any and all mortgages, liens and encumbrances.
- 7. No Liability for Environment Conditions. Neither FORR nor ICTG shall, as the result of entering into this Easement or of performing any work, activity or inspection in connection therewith, incur or assume any responsibility or liability whatsoever to investigate, clean up, remove or remediate any hazardous substance (as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act), petroleum product, contaminant or pollutant that now or hereafter is located in, on or beneath the Protected Property. Nothing in this Easement shall be interpreted to impose, directly or indirectly, any such responsibility or liability on FORR or on ICTG or on their respective agents, contractors, representatives, successors and assigns.
- 8. Severability. If any provision of this Easement is determined by a court of competent jurisdiction to be void and unenforceable, all remaining terms shall remain valid and binding.
- 9. Binding Effect. The burdens of this 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 Easement shall insure to FORR and its successors and assigns and to the citizens of Greenville County, South Carolina.

TO HAVE AND TO HOLD this Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, in law or in equity in possession or expectancy, for the proper use and benefit of FORR, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and FORR have executed this Conservation Easement as of the date and year first above written.

FILED FOR RECORD IN GREENVILLE COUNTY SC R.O.D. OFFICE AT 12:23 PM 05 09 00: RECORDED IN DEED BOOK 1910 PAGE 1835 THRU 1837 DOC # 2000037030 *Judy B. Hill*

WITNESSETH: *Charles L. Hill*

GRANTOR: Greenville County Recreation District
By: *Alan C. Hayes*, Comm. Ch.

Joan Peter

FRIENDS OF REEDY RIVER, INC.
By: *David J. Wright*

The foregoing instrument was acknowledged before me this 8th of May, by Versina Summers

Versina Summers
Notary Public

My Commission Expires: December 8, 2009

Return to:

STATE OF SOUTH CAROLINA) **AMENDED AND RESTATED**
COUNTY OF GREENVILLE) **CONSERVATION EASEMENT**

This **AMENDED AND RESTATED CONSERVATION EASEMENT** is entered into this ____ day of _____, 2014 by and among the County of Greenville (hereinafter referred to as "Grantor") and Friends of the Reedy River, Inc. ("FORR"), a nonprofit corporation organized and existing under the laws of the State of South Carolina (hereinafter referred to as "Grantee").

WITNESSETH:

WHEREAS, the Greenville County Recreation District is the owner in fee simple of certain real property, more particularly described on **Exhibit A**, attached hereto and incorporated herein;

WHEREAS, the Greenville County Recreation District and Grantee executed the Conservation Easement dated May 8, 2000 and recorded in the Register of Deeds office in Greenville County, South Carolina on May 9, 2000 in Book DE 1910, Page 1835 (hereinafter referred to as the "Original Conservation Easement");

WHEREAS, the Original Conservation Easement stated that the property protected was "more particularly described on Exhibit 1" as attached to the Original Conservation Easement, but no Exhibit 1 was attached to the Original Conservation Easement;

WHEREAS, a plat titled "Exhibit 1 Greenville County Recreation District" was recorded in the Register of Deeds office in Greenville County, South Carolina, on May 8, 2000, in Plat Book 42-B at Pages 38(A & B) (the "Easement Plat");

WHEREAS Grantor and Grantee agree that the Easement Plat indicates the property protected by the Original Conservation Easement, property more particularly described herein on **Exhibit A** (hereinafter the "Protected Property");

WHEREAS, Greenville County Recreation District is now a department of the County of Greenville and all of the Greenville County Recreation District's assets are now owned by the County of Greenville;

WHEREAS, the Protected Property includes a portion of the land that is commonly known as Westside Park. Although the greater Westside Park contains athletic fields, asphalt parking areas, an aquatic complex, and numerous playgrounds, these facilities are not included in the Protected Property;

WHEREAS, Grantee is a non-profit corporation having tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), has been established as a public charity for the purpose of preserving, protecting, and restoring the Reedy River and its tributaries, 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 Protected Property is a scenic area located along Long Branch Creek and an associated tributary; Long Branch Creek is a tributary to the Reedy River in Greenville County, South Carolina, and includes space commonly referred to as Westside Park;

WHEREAS, the Protected Property has been determined to be a suitable mitigation site for the purpose of improving water quality and natural habitat to offset impacts from projects outside the Protected Property;

WHEREAS, it was the intent of the Original Conservation Easement to protect certain conservation values on the Protected Property (the "Conservation Values") in perpetuity, including without limitation:

- A. Relatively natural habitat of fish, wildlife, and/or plants, associated with the Reedy River watershed and its riparian corridor and floodplain, including a riparian buffer along approximately 1,900 feet on Long Branch Creek, a tributary to the Reedy River; and a riparian buffer area along approximately 740 feet on a tributary to Long Branch Creek in Greenville County;
- B. Preservation of the Protected Property for improvement of water quality of the Reedy River; and
- C. The preservation of land areas for outdoor recreation by, or the education of, the general public;
- D. The scenic view along approximately 800 feet of W Blue Ridge Drive in Greenville County.

WHEREAS, the original multiple Conservation Values represent potentially competing values or conditions that are subject to change by natural forces over time, priority shall be given to the preservation of land areas for outdoor recreation by, or the education of, the general public as expressed in Conservation Value (A). While the relatively natural habitat of fish, wildlife, and/or plants, associated with the Reedy River and its riparian corridor and floodplain, protection of the riparian buffer for improvement of water quality of the Reedy River, and the scenic view along approximately 800 feet of W Blue Ridge Drive in Greenville County, as expressed in Conservation Values (B)(C) and (D) are also of great importance, where these benefits and their impacts are in conflict with the aforementioned value, consideration will first be given to the one in priority;

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 Code;

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 the Original Conservation Easement was conveyed, or as subsequently updated, and is intended to serve as an objective point of reference from which to monitor compliance with the terms of this Conservation Easement;

WHEREAS, the Original Conservation Easement included terms which Grantor and Grantee agree can be clarified through the adoption of this Amended and Restated Conservation Easement;

WHEREAS, Grantor and Grantee further agree that supplemental provisions included in this Amended and Restated Conservation Easement will bolster protection of the conservation purposes of the Original Conservation Easement;

WHEREAS, Grantor and Grantee desire to enter into this Amended and Restated Conservation Easement (hereinafter referred to as the "Conservation Easement") in order to clarify terms, supplement terms, and expressly allow the enhancement of public education and recreation features upon the Protected Property in accordance with the terms and conditions contained herein;

WHEREAS, Grantor is a governmental body and FORR is a non-profit corporation and the Protected Property is dedicated in part for use as a public park maintained in a predominately vegetated passive public park, and no private parties

or individuals derive a discernible private benefit in modifying the Original Conservation Easement;

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, 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, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained, does affirm, ratify, amend, and restate its prior gift and conveyance unto Grantee, its successors and assigns, forever this Conservation Easement in perpetuity over the Protected Property to be held for the benefit of the people of Greenville County and the State of South Carolina consisting of the following:

1. Restrictions on Uses of the Protected Property.

A. *Uses in General.* The Protected Property shall be used as a public park that promotes and protects water quality. There shall be no agricultural, commercial or industrial activity undertaken or allowed; nor shall any new right of passage across or upon the Protected Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial, or industrial activity. Grantor shall have the right to construct, operate, and maintain on the Protected Property limited facilities for passive public recreation, including but not limited to a greenway trail, benches, picnic tables, art, and informative signage; provided that

- (1) a master plan, or updates to an existing master plan relating to projects more limited in scope, shall be prepared by Grantor and provided to Grantee that describes the location, size, configuration, and design elements minimizing impacts to or promoting Conservation Values (the "Master Plan");
- (2) written approval of the Grantee must be obtained before any construction may begin, which approval shall not be unreasonably withheld;
- (3) design and implementation of the Master Plan or its updates will not, in Grantee's reasonable opinion, impair the Conservation Values of the Protected Property; and

- (4) maintenance activities involving installation of impervious surfaces or a single project disturbing land cover (vegetation or soil) in an area greater than 100 square feet shall first be approved in writing by Grantee, which approval shall not be unreasonably withheld.

B. Long Branch Creek Restoration. There shall be no filling, excavating, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, minerals or other materials, nor any dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land in any manner, except: 1) as may be required to restore or protect the bed and banks of Long Branch Creek or as part stream enhancement mitigation project, 2) as may be required by law, or 3) when necessary to enhance the public's educational or recreational use of the Protected Property as a public park.

C. Buildings, Bridges, and Other Structures. There shall be no construction or placing of temporary or permanent buildings, mobile homes, docks, bridges, piers or other structures, except where such structure is required by law or enhances the public's educational or recreational use of the Protected Property as a public park.

D. Signs. There shall be no construction or placing of commercial 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" / safety / warning signs or signs reflecting ownership of the property, 3) signs to indicate the Conservation Values of the Protected Property, or 4) after obtaining written approval from Grantee, educational signs and signs identifying contributors, artists, and sponsors.

E. Roads and Trails. Any existing roads on the Protected Property may be maintained but not expanded. No new roads may be established on the Protected Property. New paths or trails may be constructed and maintained provided such paths or trails do not impair the Conservation Values of the Protected Property. Furthermore, the detailed plans for such paths or trails shall be first approved in writing by Grantee, which approval shall not be unreasonably withheld.

F. Waters. Grantor shall maintain a vegetated riparian buffer of 30 feet from the ordinary high water mark of Long Branch Creek and all other tributaries of the Reedy River found on the Protected Property, excluding the existing sewer line right-of-way and structures as described in the updated baseline report, and any improvements approved by Grantee as part of a Master Plan, or updates to the existing Master Plan. Activities and maintenance throughout the site should be done with regard to protecting and improving water quality.

G. Vehicles. There shall be no operation of dune buggies, motorcycles, all-terrain vehicles or any other type of motorized vehicles upon the

Protected Property, except to the extent a motorized vehicle is needed for the management, maintenance, and security of the Protected Property, maintenance of the existing sewer line right-of-way, or for access to the site by visitors with a physical handicap.

H. Utility Systems. Grantor reserves the right to install and maintain utility systems that are reasonably required to serve the structures allowed under Section 1(A) through (E), provided that the location of any utility system shall be approved in writing and in advance by Grantee, which approval shall not be unreasonably withheld.

I. Vegetation. There shall be no planting or introduction of any invasive species of vegetation.

J. Other Uses and Activities. Any use of the Protected Property and any activity thereon, that in the reasonable opinion of Grantee, is or may become inconsistent with the primary purposes of this Easement, is prohibited.

2. 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 mortgages, liens and encumbrances which would preclude the operation of this Conservation Easement.

3. 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.

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.

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 11 of this Conservation Easement.

4. Notice of Third Party Activities. Grantor shall keep Grantee reasonably informed as to substantial 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 restoration projects). 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 3. For purposes of this provision, basic recreational or educational visitors are not third parties triggering notice.

5. 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 the 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 (30) days after receipt of Grantee's notice or, if the circumstances are such that the violation cannot be cured within the thirty (30) day period, Grantor does not begin curing such violation within the thirty (30) 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 5 without waiting for the thirty day period provided for cure to expire.

The following is not applicable to the County of Greenville but is applicable to any non-governmental Grantor: all costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and reasonable attorneys' fees, costs of Grantee's staff (measured at twice the amount of their salaries), and any costs of restoration necessitated by responsible Grantor's violation of the terms of this Conservation Easement shall be borne solely by responsible Grantor.

The following is not applicable to the County of Greenville but is applicable to any non-governmental 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 the terms 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.

6. 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 or the governmental equivalent thereof. 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.

7. 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. Provided however, Grantor retains and does not waive any of its rights under all applicable laws to pursue potentially responsible third parties for any costs, liabilities, and damages of any type incurred pursuant to this Section 7.

8. 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 filed, enforced, and/or foreclosed in accordance with the laws of the State of South Carolina.

9. 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.

10. Hold Harmless. This Section 10 is not applicable to the County of Greenville but is applicable to any non-governmental Grantor: 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.

11. 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 herein;

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 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 11 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.

12. Fair Market Value of Conservation Easement. This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Section 12, the parties stipulate to have a fair market value respective to their interests in the Protected Property on the respective dates of execution of the Original Conservation Easement.

13. 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, after the satisfaction of prior claims, 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 12 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 13.

14. Extinguishment. If a subsequent, unexpected and material change in the conditions of the Protected Property or the surrounding property, make impossible or impractical its continued use for the purposes hereof, the restrictions may be extinguished, whether in whole or in part, by judicial proceeding in a court of competent jurisdiction, and Grantee shall be a party to any such proceeding.

15. 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 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, and any such assignment shall be first approved in writing by Grantor, which approval shall not be unreasonably withheld. 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 Code, or if Grantee is unable or unwilling to carry out its obligations under this Conservation Easement, then Upstate Forever shall have the first option to serve as holder of this Conservation Easement. If Upstate Forever 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.

16. 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 16 shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

17. 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 the Grantor: Greenville County Parks, Recreation and Tourism
 Attn: Gene Smith
 4806 Old Spartanburg Road.
 Taylors, SC 29687

and

County of Greenville
County Administrator
301 University Ridge, Suite 2400
Greenville, SC 29601

To Grantee: Friends of the Reedy River, Inc.
 P.O. Box 9351
 Greenville, SC 29604

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.

18. 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.

19. 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.

20. 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.

21. Recordation. This instrument shall be recorded in a timely fashion in the Office of the Register of Deeds for Greenville 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.

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

23. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of its primary purposes. The parties recognize and agree that the primary purposes of this Conservation Easement are to preserve and protect the Protected Property and to improve and enhance its Conservation Values. 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.

24. 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.

25. Binding Effect. The burdens of this Conservation Easement shall run with the Protected Property in perpetuity and shall be enforceable against Grantor and its respective 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.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Amended and Restated Conservation Easement as of the date first above written.

WITNESSETH:

County of Greenville, Grantor:

By: Bob Taylor
Its: Chairman, Greenville County Council

By: Joseph M. Kernell
Its: County Administrator

ATTEST:

Theresa Kizer
Clerk to Council

COUNTY OF GREENVILLE

) ACKNOWLEDGEMENT
)

I, _____, a notary public for the State of South Carolina, do hereby certify that _____ personally appeared before me and acknowledged being the _____ of County of Greenville and acknowledged the due execution of the foregoing Amended and Restated Conservation Easement this ___ day of _____, 2014.

Notary Public for South Carolina
My commission expires: _____

IN WITNESS WHEREOF, Grantor and Grantee have executed this Amended and Restated Conservation Easement as of the date first above written.

WITNESSETH:

Friends of the Reedy River, Grantee:

By: _____

Its: _____

STATE OF SOUTH CAROLINA

)

)

ACKNOWLEDGEMENT

COUNTY OF GREENVILLE

)

I, _____, a notary public for the State of South Carolina, do hereby certify that _____ personally appeared before me and acknowledged being the _____ of the Friends of the Reedy River and acknowledged the due execution of the foregoing Amended and Restated Conservation Easement this ___ day of _____, 2014.

Notary Public for South Carolina

My commission expires: _____

EXHIBIT A

Legal Description of Protected Property:

ALL that certain piece parcel or lot of land located in the County of Greenville, State of South Carolina, and being identified as "Area of Easement" and consisting of approximately 9.59 acres according to Plat entitled "Exhibit 1 Greenville County Recreation District" by AOS, Inc. said survey being dated March 3, 1999, and recorded in the Register of Deeds Office for Greenville County in Plat Book 42-B at pages 38(A & B), reference to said plat being made for a metes and bounds description.

Portion/of Tax Map No. 0131000100401

PONSLETT PAGE
GREENVILLE LAND

BOOK 1758 PAGE 127

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT, granted this 22nd day of April, 1998, by THE GREENVILLE COUNTY RECREATION DISTRICT ("Grantor"), to FRIENDS OF REEDY RIVER, INC. ("FORR"), a nonprofit corporation organized and existing under the laws of the State of South Carolina.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property, more particularly described on Exhibit A, attached hereto and made a part hereof (such property being hereinafter referred to as the "Protected Property"); and

WHEREAS, the Protected Property is a scenic area located along a tributary to the Reedy River in Greenville County, South Carolina; and

WHEREAS, FORR is a nonprofit corporation whose principal purpose is to preserve, protect and restore the Reedy River and its tributaries; and

WHEREAS, Sections 27-8-20 and 27-8-30 of the South Carolina Code of Laws permit the granting of conservation easements for the purposes of, among other things, ensuring the availability of real property for recreational, educational and open-space uses; and

WHEREAS, both Grantor and FORR recognize the natural, scenic, aesthetic, and special character of the Protected Property, and have the common purpose of the conservation and protection in perpetuity of the Protected Property;

NOW, THEREFORE, Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift, hereby gives, grants, bargains, and conveys unto FORR, its successors and assigns, this Conservation Easement over the Protected Property in perpetuity to be held for the benefit of the people of Greenville County and of the State of South Carolina, as follows:

COVENANTS

1. Uses. The Protected Property shall be developed and used exclusively as a public park. There shall be no agricultural, commercial or industrial activity undertaken or allowed on the Protected Property that is inconsistent with the operation and maintenance of a public park.

2. Topography. There shall be no filling, excavating, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, minerals or other materials; no dumping of ashes, trash, garbage, or of any other material; and no changing of the topography of the land in any manner, except as may be required to establish and operate a public park.

3. Waters. There shall be no activity or use detrimental to water quality.
4. Vehicles. There shall be no operation of automobiles, trucks, motorcycles, all-terrain vehicles or any other type of motorized vehicle, except for public parking and for the management and security of the park.
5. Construction. There shall be no construction or placing of temporary or permanent buildings, docks, bridges, piers, roads, parking lots or other structures, except in connection with the establishment and operation of a public park.
6. Other. Any use of the Protected Property that, in the reasonable opinion of FORR, is or may become inconsistent with the operation and maintenance of a public park.

If a breach of these restrictions by Grantor or by a third party comes to the attention of FORR, FORR shall notify Grantor in writing of the breach. Grantor (or its successors or assigns) shall have 30 days after receipt of such notice to undertake actions that are reasonably calculated to correct promptly the conditions constituting such a breach. If Grantor (or its successors or assigns) fails to take such corrective action, FORR may undertake such actions, including appropriate legal proceedings, as are, in its discretion, reasonably necessary to correct the conditions.

GENERAL PROVISIONS

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

The burdens of this Conservation Easement shall run with the Protected Property 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.

If a subsequent, unexpected and material change in the condition of the Protected Property or the surrounding property makes impossible or wholly impractical its continued use for the purposes described herein, the restrictions may be extinguished by judicial proceeding, and FORR shall be a party to any such proceeding.

The rights granted shall be in addition to, and not in limitation of, any other rights and remedies available to FORR for enforcement of this Easement.

FORR (or its successors or assigns) does not waive or forfeit the right to take action as may be necessary to insure compliance with the covenants and purposes of this easement by any prior failure to act.

Nothing herein shall be construed to entitle FORR to institute any proceedings against Grantor for any changes to the Protected Property due to causes beyond Grantor's control such as changes caused by fire or floods.

TO HAVE AND TO HOLD this Easement together with all and singular the appurtenances and privileges belonging or in any way pertaining thereto, in law or in equity, in possession or expectancy, for the proper use and benefit of FORR, its successors and assigns, forever.

GRANTOR HEREBY WARRANTS and represents that Grantor is seized of the Protected Property in fee simple and has good right to grant and convey this Easement, that the Protected Property is free and clear of any and all mortgages, liens and encumbrances and that FORR and its successors and assigns shall have the use of, and enjoy all of the benefits derived from and arising out of, this Conservation Easement in perpetuity.

IN WITNESS WHEREOF, Grantor and FORR have executed this Conservation Easement as of the date and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of:

Barbara Allen
Kathleen J. Urundi

Jackie C. Ballard
David S. Seals

GRANTOR: GREENVILLE COUNTY
RECREATION DISTRICT

By: B. E. Murray

FRIENDS OF REEDY RIVER, INC.
By: Bradford W. Wyche
President

Attest:
By: David L. Hargett
Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within named Grantor sign, seal and as its act and deed, deliver the within written instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

Barbara Allen

Sworn to before me this 22^d
day of April, 1998.

Sandra J. Crandall
Notary Public for South Carolina
My commission expires: 02-12-04

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he was present and saw the within Friends of Reedy River, Inc., by its President Bradford W. Wyche and its Secretary, David L. Hargett, sign, seal and as its act and deed, deliver the within written instrument and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

Jackie C. Ballard

Sworn to before me this 22^d
day of April, 1998.

Sandra J. Crandall
Notary Public for South Carolina
My commission expires: 02-02-04

BOOK 1758 PAGE 131

Exhibit A

All that piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Greenville, located on the corner of Pine Forest Drive (formerly Pine Crest Drive) and Krieger Drive (U.S. Highway 25 Frontage Road) as shown on plat entitled "Survey for David Pavluk" prepared by W. R. Williams, Jr., Surveyor, and having exactly 4.537 acres net as recorded in the R.M.C. Office for Greenville County in Book 35Y at Page 87. Reference to said plat is made for a more complete property description.

This is the same property conveyed to the Friends of Reedy River, Inc. by Deed of David Pavluk and Sonia Pavluk recorded in Deed Book 1712 at Page 140 in the Office of the Register of Deeds for Greenville County on August 29, 1997.

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 03.48 PM
04/24/98 RECORDED IN DEED
BOOK 1758 PAGE 0127
DOC # 98032634

Judy A. Hill

Return to:

STATE OF SOUTH CAROLINA) **AMENDED AND RESTATED**
COUNTY OF GREENVILLE) **CONSERVATION EASEMENT**

This **AMENDED AND RESTATED CONSERVATION EASEMENT** is entered into this ____ day of _____, 2014 by and among the County of Greenville (hereinafter referred to as "Grantor") and Friends of the Reedy River, Inc. ("FORR"), a nonprofit corporation organized and existing under the laws of the State of South Carolina (hereinafter referred to as "Grantee").

WITNESSETH:

WHEREAS, Greenville County Recreation District was the owner in fee simple of certain real property, more particularly described on **Exhibit A**, attached hereto and incorporated herein;

WHEREAS, Greenville County Recreation District and Grantee executed the Conservation Easement dated April 22, 1998 and recorded in the Register of Deeds office in Greenville County, South Carolina on April 24, 1998 in Book DE 1758, Page 127-131 (hereinafter referred to as the "Original Conservation Easement") that applies to and covers the real property described herein on **Exhibit A** (hereinafter referred to as the "Protected Property");

WHEREAS, Greenville County Recreation District is now a department of the County of Greenville and all of the Greenville County Recreation District's assets are now owned by the County of Greenville;

WHEREAS, the Protected Property includes the land that is commonly known as Poinsett Park;

WHEREAS, Grantee is a non-profit corporation having tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"), has been established as a public charity for the purpose of preserving, protecting, and restoring the Reedy River and its tributaries, 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 Protected Property is a scenic area located along a tributary to the Reedy River in Greenville County, South Carolina, and includes space commonly referred to as Poinsett Park;

WHEREAS, it was the intent of the Original Conservation Easement to protect certain conservation values on the Protected Property (the "Conservation Values") in perpetuity, including without limitation:

- A. The preservation of land areas for outdoor recreation by, or the education of, the general public;
- B. Relatively natural habitat of fish, wildlife, and/or plants, associated with the Reedy River and its tributaries, riparian corridor, and floodplain;
- C. Preservation of the Protected Property for improvement of water quality of the Reedy River; and
- D. The scenic views along approximately 530 feet of Highway 25 and approximately 500 feet of Pine Forest Road in Greenville County.

WHEREAS, the original multiple Conservation Values represent potentially competing values or conditions that are subject to change by natural forces over time, priority shall be given to the preservation of land areas for outdoor recreation by, or the education of, the general public as expressed in Conservation Value (A). While the relatively natural habitat of fish, wildlife, and/or plants, associated with the Reedy River and its riparian corridor and floodplain, protection of the riparian buffer for improvement of water quality of the Reedy River, and the scenic view along approximately 530 feet of Highway 25 and approximately 500 feet of Pine Forest Road in Greenville County, as expressed in Conservation Values (B)(C) and (D) are also of great importance, where these benefits and their impacts are in conflict with the aforementioned value, consideration will first be given to the one in priority;

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 Code;

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 the Original

Conservation Easement was conveyed, or as subsequently updated, and is intended to serve as an objective point of reference from which to monitor compliance with the terms of this Conservation Easement;

WHEREAS, the Original Conservation Easement include terms which Grantor and Grantee agree can be clarified through the adoption of this Amended and Restated Conservation Easement;

WHEREAS, Grantor and Grantee further agree that supplemental provisions included in this Amended and Restated Conservation Easement will bolster protection of the conservation purposes of the Original Conservation Easement;

WHEREAS, subsequent to the recording of the Original Conservation Easement, Grantor enhanced public education and recreation features, including the construction of a picnic shelter, bathrooms, a paved trail for biking and walking, a play area for small children, and a parking facility, consistent with the goals of the Original Conservation Easement;

WHEREAS, the creation of facilities consistent with the operation of a public park has had a net beneficial effect on the Conservation Values protected by the Original Conservation Easement, as:

- A. The creation of a picnic shelter, play area, and paved trail has allowed greater accessibility and usage of the Protected Property, resulting in increased safety of and appeal to the general public;
- B. The scenic view is enhanced with the addition of these facilities.

WHEREAS, Grantor and Grantee desire to enter into this Amended and Restated Conservation Easement (hereinafter referred to as the "Conservation Easement") in order to clarify terms, supplement terms and expressly allow the enhancement of public education and recreation features upon the Protected Property in accordance with the terms and conditions contained herein;

WHEREAS, Grantor is a governmental body and FORR is a non-profit corporation and the Protected Property is dedicated in part for use as a public park, and no private parties or individuals derive a discernible private benefit in modifying the Original Conservation Easement;

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, 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, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained, does affirm, ratify, amend, and restate its prior gift and conveyance unto Grantee, its successors and assigns, forever this Conservation Easement in perpetuity over the Protected Property to be held for the benefit of the people of Greenville County and the State of South Carolina consisting of the following:

1. Restrictions on Uses of the Protected Property.

A. *Uses in General.* The Protected Property shall be used as a public park that promotes and protects water quality. There shall be no agricultural, commercial or industrial activity undertaken or allowed; nor shall any new right of passage across or upon the Protected Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial, or industrial activity. Grantor shall have the right to construct, operate, and maintain on the Protected Property limited facilities for public recreation, including but not limited to picnic shelter, bathrooms, playground, benches, picnic tables, art, parking lot, and informative signage; provided that

- (1) a master plan, or updates to an existing master plan relating to projects more limited in scope, shall be prepared by Grantor and provided to Grantee that describes the location, size, configuration, and design elements minimizing impacts to or promoting Conservation Values (the "Master Plan");
- (2) written approval of the Grantee must be obtained before any construction may begin, which approval shall not be unreasonably withheld;
- (3) design and implementation of the Master Plan or its updates will not, in Grantee's reasonable opinion, impair the Conservation Values of the Protected Property; and
- (4) maintenance activities involving installation of impervious surfaces or a single project disturbing land cover (vegetation or soil) in an area greater than 100 square feet shall first be approved in writing by Grantee, which approval shall not be unreasonably withheld.

B. *Reedy River Tributary Restoration.* There shall be no filling, excavating, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, minerals or other materials, nor any dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land in any manner, except: 1) as may be required to restore or protect the bed and banks of the Reedy River and its tributaries, 2) as may be required by law, or 3) when necessary to

enhance the public's educational or recreational use of the Protected Property as a public park.

C. Buildings, Bridges, and Other Structures. There shall be no construction or placing of temporary or permanent buildings, mobile homes, docks, bridges, piers or other structures, except where such structure is required by law or enhances the public's educational or recreational use of the Protected Property as a public park.

D. Signs. *There shall be no construction* or placing of commercial 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" / safety / warning signs or signs reflecting ownership of the property, 3) signs to indicate the Conservation Values of the Protected Property, or 4) after obtaining written approval from Grantee, educational signs and signs identifying contributors, artists, and sponsors.

E. Roads and Trails. Any existing roads on the Protected Property may be maintained but not expanded. No new roads may be established on the Protected Property. New paths or trails may be constructed and maintained provided such paths or trails do not impair the Conservation Values of the Protected Property. Furthermore, the detailed plans for such paths, trails, or appurtenances shall be first approved in writing by Grantee, which approval shall not be unreasonably withheld.

F. Waters. Grantor shall maintain a vegetated riparian buffer of 15 feet from the ordinary high water mark of Hillhouse Creek and all other tributaries of the Reedy River found on the Protected Property, excluding the existing sidewalks and structures as described in the updated baseline report and any improvements approved by Grantee as part of a Master Plan, or updates to the existing master plan. Activities and maintenance throughout the site should be done with regard to protecting and improving water quality.

G. Vehicles. There shall be no operation of dune buggies, motorcycles, all-terrain vehicles or any other type of motorized vehicles upon the Protected Property outside the parking area and driveway, except to the extent a motorized vehicle is needed for the management, maintenance, and security of the Protected Property, or for access to the site by visitors with a physical handicap.

H. Utility Systems. Grantor reserves the right to install and maintain utility systems that are reasonably required to serve the structures allowed under Section 1(A) through (E), provided that the location of any utility system shall be approved in writing and in advance by Grantee, which approval shall not be unreasonably withheld.

I. Vegetation. There shall be no planting or introduction of any invasive species of vegetation.

J. Other Uses and Activities. Any use of the Protected Property and any activity thereon, that in the reasonable opinion of Grantee, is or may become inconsistent with the primary purposes of this Easement, is prohibited.

2. 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 mortgages, liens and encumbrances which would preclude the operation of this Conservation Easement.

3. 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.

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.

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 11 of this Conservation Easement.

4. Notice of Third Party Activities. Grantor shall keep Grantee reasonably informed as to substantial 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 restoration projects). 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 3. For purposes of this provision, basic recreational or educational visitors are not third parties triggering notice.

5. 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 the 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 (30) days after receipt of Grantee's notice or, if the circumstances are such that the violation cannot be cured within the thirty (30) day period, Grantor does not begin curing such violation within the thirty (30) 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 5 without waiting for the thirty day period provided for cure to expire.

The following is not applicable to the County of Greenville but is applicable to any non-governmental Grantor: all costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and reasonable attorneys' fees, costs of Grantee's staff (measured at twice the amount of their salaries), and any costs of restoration necessitated by responsible Grantor's violation of the terms of this Conservation Easement shall be borne solely by responsible Grantor.

The following is not applicable to the County of Greenville but is applicable to any non-governmental 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 the terms 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.

6. **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 or the governmental equivalent thereof. 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.

7. **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. Provided however, Grantor retains and does not waive any of its rights under all applicable laws to pursue potentially responsible third parties for any costs, liabilities, and damages of any type incurred pursuant to this Section 7.

8. **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 filed, enforced, and/or foreclosed in accordance with the laws of the State of South Carolina.

9. **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.

10. **Hold Harmless.** This Section 10 is not applicable to the County of Greenville but is applicable to any non-governmental Grantor: 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.

11. 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 herein;

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 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 11 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.

12. Fair Market Value of Conservation Easement. This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Section 12, the parties stipulate to have a fair market value respective to their interests in the Protected Property on the respective dates of execution of the Original Conservation Easement.

13. 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, after the satisfaction of prior claims, 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 12 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 13.

14. Extinguishment. If a subsequent, unexpected and material change in the conditions of the Protected Property or the surrounding property, make impossible or impractical its continued use for the purposes hereof, the restrictions may be extinguished, whether in whole or in part, by judicial proceeding in a court of competent jurisdiction, and Grantee shall be a party to any such proceeding.

15. 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 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, and any such assignment shall be first approved in writing by Grantor, which approval shall not be unreasonably withheld. 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 Code, or if Grantee is unable or unwilling to carry out its obligations under this Conservation Easement, then Upstate Forever shall have the first option to serve as holder of this Conservation Easement. If Upstate Forever 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.

16. 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 16 shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

17. 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 the Grantor: Greenville County Parks, Recreation and Tourism
 Attn: Gene Smith
 4806 Old Spartanburg Road.
 Taylors, SC 29687

and

 County of Greenville
 County Administrator
 301 University Ridge, Suite 2400
 Greenville, SC 29601

To Grantee: Friends of the Reedy River, Inc.
 P.O. Box 9351
 Greenville, SC 29604

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.

18. 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.

19. 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.

20. 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.

21. Recordation. This instrument shall be recorded in a timely fashion in the Office of the Register of Deeds for Greenville 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.

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

23. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of its primary purposes. The parties recognize and agree that the primary purposes of this Conservation Easement are to preserve and protect the Protected Property and to improve and enhance its Conservation Values. 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.

24. 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.

25. Binding Effect. The burdens of this Conservation Easement shall run with the Protected Property in perpetuity and shall be enforceable against Grantor and its respective 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.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Amended and Restated Conservation Easement as of the date first above written.

WITNESSETH:

County of Greenville, Grantor:

By: Bob Taylor
Its: Chairman, Greenville County Council

By: Joseph M. Kernell
Its: County Administrator

ATTEST:

Theresa Kizer
Clerk to Council

COUNTY OF GREENVILLE

) ACKNOWLEDGEMENT
)

I, _____, a notary public for the State of South Carolina, do hereby certify that _____ personally appeared before me and acknowledged being the _____ of County of Greenville and acknowledged the due execution of the foregoing Amended and Restated Conservation Easement this ___ day of _____, 2014.

Notary Public for South Carolina
My commission expires: _____

IN WITNESS WHEREOF, Grantor and Grantee have executed this Amended and Restated Conservation Easement as of the date first above written.

WITNESSETH:

Friends of the Reedy River, Grantee:

By: _____

Its: _____

STATE OF SOUTH CAROLINA

)

)

ACKNOWLEDGEMENT

COUNTY OF GREENVILLE

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I, _____, a notary public for the State of South Carolina, do hereby certify that _____ personally appeared before me and acknowledged being the _____ of the Friends of the Reedy River and acknowledged the due execution of the foregoing Amended and Restated Conservation Easement this ___ day of _____, 2014.

Notary Public for South Carolina

My commission expires: _____

EXHIBIT A

Legal Description of Protected Property:

ALL that certain piece parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, located on the corner of Pine Forest Drive (formerly Pine Crest Drive) and Krieger Drive (U.S. Highway 25 Frontage Road) as shown on plat entitled "Survey for David Pavluk" prepared by W.R. Williams, Jr., Surveyor, and having exactly 4.537 acres net as recorded in the Register of Deeds for Greenville County in Book PL 35Y at Page 87. Reference to said plat is made for a more complete property description.

This is the same property conveyed to the Friends of the Reedy River, Inc. by Deed of David Pavluk and Sonia Pavluk recorded in Deed Book 1712 at Page 140 in the Office of the Register of Deeds for Greenville County on August 29, 1997.

Tax Map No. 0487.00-01-014.00 (0487.00-01-014.00)