

GREENVILLE, SC

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT entered into this 9th day of February, 2006 by and between **BURBAN CREEK PLANTATION HOMEOWNERS ASSOCIATION** (hereinafter referred to as "Grantor") and **UPSTATE FOREVER** ("Grantee"), a nonprofit corporation organized and existing under the laws of the State of South Carolina.

2006 FEB 13 A 10:44

WITNESSETH:

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

WHEREAS, the Protected Property possesses special natural beauty, a variety of flora, valuable habitat for wildlife, and several significant streams (hereinafter referred to collectively as "conservation values") of great importance to Grantor and Grantee and the people of Greenville County and the State of South Carolina; and

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

WHEREAS, Grantee has established a program for protecting and preserving significant lands and resources in the upstate region of South Carolina; 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, ecological, environmental, educational and open-space uses; 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 and for the people of Greenville County and the State of South Carolina;

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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 on behalf of itself and its successors and assigns as follows:

1. Restrictions on Uses of the Protected Property.

There shall be no building or development or any residential, commercial or industrial use or activity of any nature undertaken or allowed on the Protected Property or any portion thereof with the following sole exceptions:

(A) Grantor shall have the right to maintain the existing pump house on the Protected Property. In addition to this structure, Grantor may construct, in accordance with a plan that is first approved in writing by Grantee, and maintain the following on the Protected Property: (i) one single family residence which shall be used as the home of the caretaker of the Protected Property; (ii) structures and facilities for wildlife management; (iii) a small shelter near the waterfall; (iv) a small shelter near the lake; (v) a small stable for horses; and (vi) a skeet or target shooting range and associated small structures.

(B) The Protected Property shall not be subdivided.

(C) Grantor shall have the right to maintain the existing lake on the Protected Property.

(D) Grantor shall have the right to manage the Protected Property in order to enhance wildlife habitat provided such management does not adversely affect the conservation values of the Protected Property. Such management may include, but is not limited to, establishing food plots, planting grasses, and redirecting water flow; provided, however, any direction of water flow shall first be approved in writing by Grantee.

(E) On the Protected Property, except as may be reasonably required in connection with the construction and maintenance of any structure or device that is expressly permitted on the Protected Property and except for the installation, use and maintenance of erosion control measures in full compliance with applicable laws and regulations and except for the storage of stones, mulch and other landscaping materials, there shall be no filling, excavating, dredging, draining, diking, mining 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 that adversely affects the conservation values of the Protected Property.

(F) There shall be no construction or placing of signs, billboards, or any type of advertising devices or materials on the Protected Property except for directional signs required by law, for "no trespassing signs," and for signs associated with trails.

(G) The existing vehicular roads on the Protected Property may be maintained, and no new vehicular roads shall be constructed except as reasonably necessary to gain access to the caretaker residence allowed under paragraph (A) hereof. Any new vehicular road shall be constructed of dirt or gravel.

(H) No use or activity shall be undertaken on the Protected Property that causes or is likely to cause degradation, depletion or pollution of any surface or subsurface waters; provided, however, impoundments for providing and improving habitat for wildlife may be constructed in accordance with a plan that is first approved in writing by Grantee.

(I) There shall be no construction or placing of docks, bridges, piers or similar structures on the Protected Property with the following sole exceptions: (i) up to two new docks may be constructed and maintained on the lake; (ii) the existing bridges may be maintained; and (iii) new bridges may be constructed where necessary to protect existing roads and trails from erosion provided that a written plan for such docks and bridges is approved in writing by Grantee before construction begins.

(J) Cutting down or removal or planting of trees and vegetation on the Protected Property may be undertaken solely for the purpose of improving the ecological health of the forest or for enhancing wildlife habitat, provided, a written plan describing in detail the removal operation is first submitted to, and approved in writing by, Grantee, and provided further, that best management practices, as established by the South Carolina Forestry Commission (or successor agency), are strictly followed in removing any trees and vegetation. Grantor shall have the right to sell any trees and vegetation removed in accordance with this provision.

(K) Utility systems, including, without limitation, water, sewer, septic tanks, electrical power, and communication lines and related facilities that are reasonably required to serve the caretaker residence allowed under paragraph (A) hereof may be

located on Protected Property; provided, however, no cell tower may be located on the Protected Property without the prior written consent of Grantee.

(L) Small trail compatible vehicles, such as mountain bikes, golf carts, all terrain vehicles, small tractors and trail bikes, may be used on the Protected Property provided such use does not result in significant soil erosion or in significant topographical alteration.

(M) Recreational horseback riding may take place on the Protected Property provided such use does not result in significant soil erosion or in significant topographical alteration.

(N) Any use of Protected Property and any activity thereon that, in the reasonable opinion of Grantee, 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.

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 of any nature whatsoever.

3. **Use of Protected Property.** Access to and use of the Protected Property shall be restricted to Grantor and its successors, assigns and invitees and to the owners of the properties in the adjoining Burban Creek Plantation and their respective heirs, successors, assigns and invitees in accordance with applicable laws and regulations and in accordance with the Easements, Covenants and Restrictions of Burban Creek Plantation, recorded in the Greenville County Register of Deeds office in Deed Book 1975, at page 500.

4. **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 give Grantor advance notice of its plan to inspect the Protected Property and shall allow a representative of Grantor to accompany the person(s) conducting the inspection on behalf of Grantee.

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 Grantor of such violation and demand corrective action to cease or cure the violation or where such violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the Protected Property so injured. If Grantor fails to cease or cure the violation within thirty days after receipt of Grantee's notice or, if the circumstances are such that the violation cannot be cured within the thirty day period, Grantor does not begin curing such violation within the thirty day period, or if Grantor fails to continue diligently to cure the violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement. In such action, Grantee may seek a temporary or permanent injunction, damages for violation of this Conservation Easement, including damages for the loss of the conservation values of the Protected Property, and an order requiring Grantor to restore the Protected Property to the condition that existed prior to injury.

If Grantee reasonably determines 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 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 the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms 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 5 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 the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement 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 under this

Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

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.

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. 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. Grantee agrees to maintain adequate comprehensive general liability insurance coverage for the Protected Property.

7. **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.

8. **Hold Harmless.** Grantor shall hold harmless, indemnify and defend Grantee and its members, directors, officers, employees, agents and contractors and their respective heirs, successors and assigns from and against any and all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' fees, arising from of in any way connected with (1) injury to or the death of any person or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Protected Property, except to the extent such loss or damage is caused by the negligence of the indemnified party or parties; or (2) the breach by Grantor of any provision of this Easement.

9. Extinguishment.

(a) If circumstances arise in the future which render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and Grantee shall be a party to such proceedings. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to any termination or extinguishment of this Conservation Easement, shall be determined, unless otherwise provided by South Carolina law at the time, in accordance with paragraph 9(b) below. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

(b) This Conservation Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of this Section 9, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Protected Property unencumbered by the Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Conservation Easement at the time of this grant to the value of the Protected Property, without deduction for the value of the Conservation Easement, at the time of this grant. For the purposes of this provision, the ratio of the value of the Conservation Easement to the value of the Protected Property unencumbered by the Conservation Easement shall remain constant.

10. 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 of 1954, 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 Internal Revenue Code, or if Grantee is unable or unwilling to carry out its obligations under this Conservation Easement, then Grantee's rights and obligations shall become immediately vested in The Nature Conservancy. If The Nature Conservancy is no longer in existence at the time the rights and obligations under this Conservation Easement would otherwise vest in it, or if at such time The Nature Conservancy is not qualified or authorized to hold conservation easements under Section 170(h) of the Internal Revenue Code, as amended (or any successor provision then applicable) or if The Nature Conservancy shall refuse such rights and obligations, 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.

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

There shall be assessed by Grantee a transfer fee equal to one-half of one (0.5) percent of the sales price or other consideration paid in connection with the transfer of any interest in the Protected Property, which transfer fee shall be paid to Grantee at the time of the transfer. This sum shall be placed in Grantee's Land Trust Endowment Fund, or such similarly named successor fund, to assist Grantee in meeting its duties and responsibilities under this Conservation Easement and other easements that it holds.

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

12. Grantee's Consent. Whenever a particular use or activity on the Protected Property is required under this Conservation Easement to receive Grantee's written consent or approval, such consent or approval shall not be unreasonably withheld.

13. 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: President
 Burban Creek Plantation Homeowners Association
 209 Patewood Drive
 Greenville, South Carolina 29615

To Grantee: Bradford W. Wyche (or successor)
 Executive Director
 Post Office Box 2308
 Greenville, South Carolina 29602

14. 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.

15. Contribution to Grantee's Endowment Fund. Grantor hereby agrees to contribute the sum of \$10,000 to Grantee, which shall place \$8,000 of such amount in Grantee's Land Trust Endowment Fund, a separate fund established to assist Grantee in paying for the costs of inspecting the properties on which Grantee holds conservation easements and if necessary, of enforcing such easements.

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

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

WITNESSETH:

BURBAN CREEK PLANTATION
HOMEOWNERS ASSOCIATION

Mary Bennett Greene
Margaret O'Donoghue

By: Thomas B. Pace
Thomas B. Pace
President

UPSTATE FOREVER

Mary Bennett Greene
Margaret O'Donoghue

By: Bradford W. Wyche
Bradford W. Wyche
Executive Director

STATE OF SOUTH CAROLINA)
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)
) ACKNOWLEDGEMENT
COUNTY OF GREENVILLE)

I, Gretchen Wilson, a notary public for the State of South Carolina, do hereby certify that Thomas B. Pace personally appeared before me and acknowledged being the duly authorized representative of the Grantor Burban Creek Plantation Homeowners Association and acknowledged the due execution of the foregoing Conservation Easement this 9th day of February, 2006.

Gretchen H. Wilson
Notary Public for South Carolina
My commission expires: 11-4-15

STATE OF SOUTH CAROLINA)
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) ACKNOWLEDGEMENT
COUNTY OF GREENVILLE)

I, Gretchen Wilson, a notary public for the State of South Carolina, do hereby certify that Bradford W. Wyche personally appeared before me and acknowledged being the Executive Director of the Grantee Upstate Forever and acknowledged the due execution of the foregoing Conservation Easement this 9th day of February, 2006.

Gretchen H. Wilson
Notary Public for South Carolina
My commission expires: 11-4-15

EXHIBIT 1

All those certain pieces, parcels or tracts of land situate, lying and being in the State of South Carolina, County of Greenville, and being shown and designated as Tracts A, B, and C on a plat recorded in the Register of Deeds Office for Greenville County in Plat Book 43-W at pages 14A and 14B, and also all that 0.227 acre tract shown on a plat recorded in the said Register of Deeds Office in Plat Book 44-N at page 66, less, however, the following:

- (1) All that 3.0 acre tract described in Deed Book 2000, at page 1392;
- (2) All those numbered lots of Burban Creek Plantation shown on the following plats recorded in the said Register of Deeds Office: Plat Book 44-0 at page 69; Plat Book 44-T at page 48; and Plat Book 44-S at page 35, as amended in Plat Book 45-I at page 14;
- (3) All that property shown on the site plan for Nextel Communications, Inc. dated January 26, 2005;
- (4) All that 3.45 acre tract shown on the plat recorded in the said Register of Deeds in Plat Book 49-G at page 13.

This is part of the same property conveyed to Grantor by Deed from Wild Turkey Holdings, LLC, recorded in Deed Book 2079 at page 159 and by Deed from Wild Turkey Holdings, LLC, recorded in Deed Book 2079, at page 164.

