

FOR REGISTRATION REGISTER OF DEEDS  
JUDY D. MARTIN  
MOORE COUNTY, NC  
2003 OCT 29 01:24:05 PM  
BK:2427 PG:328-337 FEE:\$38.00  
INSTRUMENT # 2003025295

Smith

Prepared by Marsh Smith, 225 North Bennett St., Southern Pines, NC 28387

STATE OF NORTH CAROLINA Parcel 955102880249  
COUNTY OF MOORE

DEED OF CONSERVATION EASEMENT  
Protecting Land North of Little River in Little River Township

This Deed of Conservation Easement ("Easement") is granted on this 29<sup>th</sup> day of September, 2003 by Forest Creek Holding Company, LLC, having an address of 200 Meyer Farm Road, Pinehurst, North Carolina 28374 ("Grantor"), to The Sandhills Area Land Trust, Inc., a North Carolina non-profit corporation with an address of PO Box 1032, Southern Pines, NC 28388-1032 ("Grantee").

WHEREAS:

Grantor is the sole owner in fee simple, of certain Property in Little River Township, containing 134 acres, more particularly described in a plat map found at Plat Cabinet 10, Slide 942 in the Moore County Register of Deeds Office in Carthage, North Carolina (hereinafter "the Property").

The Property consists of wetlands, degraded wetlands, sites for created wetlands, stream channels, degraded stream channels, riparian land adjacent to Little River, natural habitats for a variety of wildlife species, including potential longleaf pine (*Pinus palustris*) foraging habitat for the Red-Cockaded Woodpecker (*Picoides borealis*) ("RCW") and land of importance to the Grantor and the people of North Carolina. It is the primary purpose of this Easement to protect, enhance, restore and create these wetlands, and it is the secondary purpose of this Easement to protect the natural, historic, recreational, natural habitat (especially of the RCW), and scenic resources associated with the Property. The wetlands, natural habitat and scenic resources of the Property are collectively referred to as the "conservation values" of the Property.

It is the specific purpose of this Easement to fulfill the requirements of a U.S. Army Corps of Engineers permit issued to Grantor under Section 404 of the Clean Water Act (33 U.S.C. § 1344). The preservation of the Property is a condition of Department of the Army permit Action ID 200100005 issued by the Wilmington District Corps of Engineers, required to mitigate for unavoidable stream and/or wetland impacts authorized by that permit. Grantor and Grantee agree that third-party rights of enforcement shall be held by the U.S. Army Corps of Engineers, Wilmington District ("Corps", to include any successor agencies), and that these rights are in addition to, and do not limit, the rights of enforcement under said permit.

The specific conservation values of the Property and its current use and state of improvement are described in a Present Condition Report ("Report") to be prepared by the Grantee with the cooperation of the Grantor within a year from the date of this Easement's recordation. This Report may be used by the Grantee to document any future changes in the use or character of the Property in order to ensure the terms and conditions of this Easement are fulfilled. This Report, however, is not intended to preclude the use of other evidence to

establish the present condition of the Property if there is a controversy over its use. The Grantor and Grantee shall both have copies of this Report.

The Grantor intends that the conservation values of the Property be preserved and maintained, and further, Grantor intends to convey to the Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

The conservation purposes of this Easement are recognized by, and the grant of this Easement will serve, the following clearly delineated governmental conservation policies:

Sections 401 and 404 of the Clean Water Act (33 U.S.C. §§ 1341 and 1344);

North Carolina General Statute §§ 139-2 et seq., which provides that "it is hereby declared ...that the farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people... it is hereby declared to be the policy of the legislature to provide for the conservation of the soil and resources of this State;"

The North Carolina Conservation and Historic Preservation Agreements Act, North Carolina General Statute §§ 121-34 et seq. permits the creation of conservation easements.

The Grantee is a tax-exempt nonprofit organization and a qualified organization under §§ 501 (c)(3) and 170(h) of the Internal Revenue Code, and is qualified to hold Easements under the applicable laws of the State of North Carolina;

NOW, THEREFORE, for the reasons given, and in consideration of their mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows.

1. *Grant of Conservation Easement:* Grantor hereby voluntarily grants and conveys to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property the nature and character described herein. Grantor promises that it will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants herein. Grantor authorizes the Grantee to enforce these covenants in the manner described below.

2. *Statement of Purpose:* All of the Property is now designated as *Forever Wild Area*, and, in the *Forever Wild Area*, it is the primary purpose of this Easement to protect, enhance, restore and create wetlands on the property and, as these purposes allow, to protect the natural, historic, recreational, habitat or scenic values referenced in this Easement.

3. *Rights and Responsibilities Retained by Grantor:* Notwithstanding any provisions of this Easement to the contrary, the Grantor reserves to and for itself and its successors all customary rights and privileges of ownership, including the rights to sell, lease, devise or "mortgage" (provided that, in the case of an encumbrance such as a deed of trust, the deed of trust shall be subordinate to this Easement) the Property and the right of Grantor and its guests to engage in passive recreational activities (activities that require no surface

alteration of the land and which pose no threat to conservation values) such as fishing, hunting, boating (to include the launching of canoes, kayaks and similar small watercraft), swimming, hiking, birdwatching, picking berries, conducting botanical studies or conducting similar passive recreational activities on the Property, together with any rights not specifically prohibited by or limited by this Easement, not inconsistent with the Statement of Purpose herein. Unless otherwise specified below, nothing in this Easement shall require the Grantor to take any action to restore the condition of the Property after any Act of God or other event over which they had no control, to include actions of third parties over which they had no control. Grantor understands that nothing in this Easement relieves it of any obligation or restriction on the use of the Property imposed by law.

Grantor specifically retains the right to restore, create, maintain or enhance wetlands and on the Property as required under the previously mentioned Section 404 permit issued to it by the U.S. Army Corps ("Corps") of Engineers. This shall include the right to move earth, modify hydrology, remove plant material from and install plant material on the Property in a manner consistent with the approved mitigation plan entitled *Final Wetland Mitigation Plan for Forest Creek Golf Club's River Bend Mitigation Site*, Moore County, North Carolina, dated February 18, 2003 ("mitigation plan"). Other than this specific right, any change, disturbance, alteration or impairment of the natural features of the Property or any introduction of non-native plants and/or animal species is prohibited.

Grantor specifically retains the right to restore, create, maintain or enhance Red-Cockaded Woodpecker foraging habitat on the Property. This shall include the right to mow, burn, remove plant material from and install plant material on the Property. Any mowing, burning, or removal or addition of plant material on the Property shall be done in accordance with the most recent RCW management plan for the Property approved by the U.S. Fish and Wildlife Service, or in accordance with a written plan approved by the Corps.

4. *Right to Privacy:* Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

5. *Construction of Buildings and Other Improvements:* The Grantor relinquishes all rights to construct, place, or reconstruct buildings and other improvements on or above the Property.

6. *Utility Services and Septic Systems:* Installation, maintenance, repair, replacement, removal and relocation of electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over or under the Property for the purpose of providing electrical, gas, water, sewer, or other utilities is prohibited, and the right to grant Easements over and under the Property for such purposes, is prohibited, and no telecommunication towers are allowed on the Property under this Easement, unless the easement for any of such utilities (to include water, electrical, gas, telecommunication, septic and sewer utilities) was recorded at the Moore County Registry prior to the time of this Easement's granting.

7. *Subdivision:* The subdivision of the Property, recording of a subdivision plan, partition, or any other division of the Property into two or more parcels, is prohibited. This prohibition applies regardless of how many separately described parcels are contained in the Property.

8. *Other Conservation Practices:* This Easement prohibits the land application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources. Additionally, such land application for agricultural purposes may not be undertaken, even if in accordance with all applicable federal, state and local laws and regulations.

9. *Forest Management:* Other than the activities specifically allowed in the mitigation plan or in paragraph 3 of this easement, there shall be no removal, burning, destruction, harming, cutting, or mowing of trees, shrubs, or other vegetation on the Property.

10. *Mining:* The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited.

11. *Paving and Road Construction:* There shall be no construction of roads, trails, or walkways on the Property, except that a dirt road no wider than 12 feet may be maintained or constructed for the principle purpose of management and maintenance of the conservation easement and for the secondary purpose of allowing the transport of canoes, kayaks and similar small watercraft to and from the Little River for launching and retrieval. The parties envision this road to substantially follow the route of the existing road on the Property and that canoes, kayaks and similar small watercraft will be transported by persons on foot for the last ten (10) meters to and from the Little River.

12. *Dumping and Trash:* No trash, refuse, vehicle bodies or parts, grass clippings, rubbish, debris, junk, waste, radioactive or hazardous waste, shall be placed, stored, dumped, buried or permitted to remain on the Property.

13. *Water Quality and Drainage Pattern:* Except as specifically authorized by the mitigation plan, there shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

14. *Water Rights:* Grantor shall not transfer, encumber, lease, sell or otherwise separate such water rights from title to the Property itself.

15. *Vehicles*: Except as is necessary to fulfill the obligations of the mitigation plan, or as necessary to comply with or enforce the terms of this Easement, the operation of mechanized vehicles, including, but not limited to, motorcycles, dirt-bikes, all-terrain vehicles, cars and trucks is prohibited, except that intermittent transport of canoes, kayaks or similar small watercraft to and from Little River for launch or retrieval by up to a ¾ ton pick-up truck with or without a canoe trailer shall not violate this Easement.

16. *Ongoing Responsibilities of Grantor and Grantee*: Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Property. Among other things, this shall apply to:

(a) *Taxes* -- The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same.

(b) *Upkeep and Maintenance* -- The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Furthermore, Grantor shall ensure that maintenance crews remove trash, debris and other undesirable encroachments from the Property at least once a year or after major storm events (whichever is more frequent) to Grantee's satisfaction. Grantor will notify Grantee prior to any major clean up. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) *Liability and Indemnification* -- Grantor agrees to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due solely to the negligence of Grantee or its agents.

(d) *Boundary Markers* -- Grantor shall install and maintain boundary markers on the boundaries of the Property of a design and configuration on which Grantor and Grantee mutually agree.

17. *Extinguishment of Development Rights*: Except as otherwise reserved to the Grantor in this Easement, the parties agree that all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

18. *Warranty*: Grantor warrants, covenants and represents that it owns the Property in fee simple, and that Grantor either owns all interests in the Property which may be impaired by the granting of this Conservation Easement or that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Property which have not been expressly subordinated to this Conservation Easement. Grantor further warrants that Grantee shall have

the use of and enjoy all the benefits derived from and arising out of this Conservation Easement, and that Grantor will warrant and defend title to the Property against the claims of all persons.

19. *Enforcement:* With reasonable advance notice to the Grantor, the Grantee shall have the right to enter the Property for the purpose of inspecting for compliance with the terms of this Easement. The Grantee shall have the right to prevent violations and remedy violations of the terms of this Easement through judicial action, which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties attempting to violate the terms of this Easement. Except when an ongoing, or imminent violation could irreversibly diminish or impair the conservation values of the Property, the Grantee shall give the Grantor written notice of the violation and thirty (30) days to cure the violation, before commencing any legal proceedings. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop the violation, temporarily or permanently. The parties agree that a court may issue an injunction or order requiring the Grantor to restore the Property to its condition prior to the violation as restoration of the property may be the only appropriate remedy. In any case where a court finds that a violation has occurred, the Grantor shall reimburse the Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. In any case where a court finds no such violation has occurred, each party shall bear its own costs.

No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right to Grantee to enforce the same in the event of a subsequent breach or default.

20. *Transfer of Easement:* The Grantee shall have the right to transfer the Easement created by this Deed – upon consultation with and 30 days notice to Grantor – to any public agency or private nonprofit organization that, at the time of transfer, is a qualified organization under § 170(h) of the U.S. Internal Revenue Code, as amended and under NCGS §§ 121-34 et seq., provided the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this Deed. If the Grantee ever ceases to exist or no longer qualifies under § 170(h) of the U.S. Internal Revenue Code, or applicable state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed by this Easement.

21. *Transfer of Property:* The Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interests, including leasehold interests, in all or a portion of the Property. The Grantor shall notify the Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way. **The Grantor agrees to transfer and convey the fee simple ownership of the Property to Grantee, for no additional consideration, upon the Corps' notification to Grantor that the Corps deems the wetland mitigation activities on the Property to be successful.**

22. *Amendment of Easement:* This Easement may be amended only with the written consent and approval of the Grantee, the Grantor, and the Corps. Any such amendment shall be consistent with the Statement of Purposes of this Easement and with the Grantee's Easement amendment policies, and shall comply with § 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be duly recorded.

23. *Procedure in the Event of Termination of Easement:* If it determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill the conservation purposes of this Easement, a court with jurisdiction may, at the joint request of both the Grantor and the Grantee, terminate or modify the Easement created by this Deed in accordance with applicable state law. If the Easement is terminated and the Property is sold then as required by § 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Easement, subject to any applicable law which expressly provides for a different disposition of the proceeds (the parties stipulate that this ratio is 50%). The Grantee shall use its proceeds consistently with the general conservation purposes of this Easement.

All termination related expenses incurred by the Grantor and the Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

24. *Procedure in the Event of Condemnation or Eminent Domain:* If condemnation or a taking by eminent domain of a part of the Property or the entire Property by a public authority renders it impossible to fulfill any of the conservation purposes of this Easement, the Easement may be terminated or modified through condemnation proceedings. If the Easement is terminated and the Property is sold or taken for public use, then, as required by § 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Easement, subject to any applicable law which expressly requires for a different disposition of the proceeds (the parties stipulate that this ratio is 50%). The Grantee shall use its proceeds consistently with the general conservation purposes of this Easement.

All termination-related or condemnation-related expenses incurred by the Grantor and the Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

25. *Interpretation:* This Easement shall be interpreted under the laws of the State of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

26. *Perpetual Duration; Severability; No Merger:* The Easement created by this Deed shall be servitude running with the land in perpetuity. Every provision of this Deed that

applies to the Grantor or the Grantee shall also apply to their respective agents, heirs, Executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof by court order or judgment shall in no way, affect the validity of any of the other provisions hereof which shall remain in full force and effect. The Doctrine of Merger shall not affect this Easement since the parties envision Grantee acquiring Grantor's remaining interest in the Property under ¶ 21, above.

27. *Notices:* Any notices required by this Deed shall be in writing and shall be personally delivered or sent by first class mail to the Grantor and the Grantee respectively at the following addresses, unless a party has been notified in writing by the other of a change of address:

To Grantor:

Forest Creek Holding Company, LLC  
200Meyer Farm Road  
Pinehurst, North Carolina 28374

To Grantee:

The Sandhills Area Land Trust, Inc.  
PO Box 1032  
Southern Pines, North Carolina 28388-1032

To Corps:

US Army Corps of Engineers  
Post Office Box 1890  
Wilmington, North Carolina 28402-1890

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

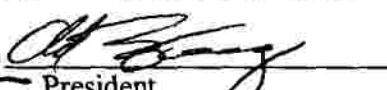
FOREST CREEK HOLDING COMPANY, LLC. a  
North Carolina Limited Liability Company

By:   
Manager

Accepted:

GRANTEE:

THE SANDHILLS AREA LAND TRUST, INC. a North  
Carolina Non-profit Corporation

By:   
President

Attest:

By: \_\_\_\_\_  
Secretary

(Corporate Seal)

### Acknowledgments

STATE OF NORTH CAROLINA  
COUNTY OF MOORE

I, Frank Marsh Smith, a Notary Public of Moore County, North Carolina do hereby certify that N. Barton Tuck, Jr. personally appeared before me this day and acknowledged that he is a manager of **Forest Creek Holding Company, LLC**, a North Carolina Limited Liability Company, and further acknowledged the due execution of the foregoing instrument on behalf of **Forest Creek Holding Company, LLC**.

Witness my hand and notarial seal this the 26<sup>th</sup> day of September, 2003.

Frank Marsh Smith  
Notary Public

My commission expires: 8/26/2008



NORTH CAROLINA  
MOORE COUNTY

I, Janette M. Gleason, a Notary Public of Moore County, North Carolina do hereby certify that C. Lane Toney personally appeared before me this day and acknowledged that he is the President of The Sandhills Area Land Trust, Inc., a non-profit corporation, and that by authority duly given and as act of the corporation the foregoing instrument was signed in its name by its ~~secretary~~ President, ~~sealed with its corporate seal and attested by itself as its secretary~~ my.

Witness my hand and notarial seal this the 27<sup>th</sup> day of October, 2003.

My commission expires: My Commission Expires February 12, 2008

(SEAL)



Janette M. Gleason  
Notary Public



JUDY D. MARTIN  
REGISTER OF DEEDS, MOORE  
JUDICIAL BUILDING  
100 DOWD STREET  
CARTHAGE, NC 28327

\*\*\*\*\*  
Filed For Registration: 10/29/2003 01:24:05 PM  
Book: RE 2427 Page: 328-337  
Document No.: 2003025295  
EASE 10 PGS \$38.00  
Recorder: JEANETTE CHISHOLM

\*\*\*\*\*  
State of North Carolina, County of Moore

The foregoing certificate of FRANK MARSH SMITH , JEANETTE M GLEASON Notaries are certified to be correct. This 29TH of October 2003

JUDY D. MARTIN , REGISTER OF DEEDS

By: *Jeanette B. Chisholm*  
Deputy/Assistant Register of Deeds

\*\*\*\*\*  
**\*2003025295\***  
2003025295