



Image ID: 000001417638 Type: CRP  
 Recorded: 05/29/2008 at 11:36:40 AM  
 Fee Amt: \$2,059.00 Page 1 of 16  
 Excise Tax: \$2,000.00  
 Craven, NC  
 Sherri B. Richard Register of Deeds  
 BK **2728** PG **632**

*Return: Smith Moore, 300 N. 3rd St, Ste. 301, Wilmington, NC 28401*  
 This instrument prepared by: Camilla M. Herlevich, Attorney at Law, North Carolina Coastal Land Trust,  
 131 Racine Drive, Suite 101, Wilmington NC 28403  
 After Recording Return To: Department of Administration, State Property Office, 116 West Jones Street,  
 Raleigh, NC 27603-8003

**STATE OF NORTH CAROLINA**

Tax Parcel ID# 2-025-001; 2-025-002

**COUNTY OF CRAVEN**

*Transfer Tax: \$2,000.00*

**WHITEHURST FOREST LEGACY CONSERVATION EASEMENT**

This Conservation Easement ("Conservation Easement"), made this 29<sup>th</sup> day of May 2008, by and between the **WHITEHURST FAMILY LIMITED LIABILITY COMPANY**, A North Carolina limited liability company having an address of 212 Queensferry Road, Cary, North Carolina 27511, Attn: Samuel L. Whitehurst (the "Grantor"); and the **State of North Carolina**, ("Grantee"), for the purpose of forever conserving the natural and open character, forested habitat and scenic qualities of the subject Easement Area.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context

**RECITALS**

- A. Grantor is the owner of the property containing 181.80 acres, more or less, of land in Craven County, North Carolina, and more particularly depicted on a survey dated February 25, 2008, entitled "Conservation Easement for the State of North Carolina, North Carolina Division of Forest Resources, Forest Legacy Program" prepared by Jack P. Huddle of Trader Construction Company, P.L.S. recorder in Plat Cabinet H Slide 1206, Craven County Registry, further described in Exhibit A attached hereto and by this reference incorporated herein; and

*mt*

- B. Whereas, Grantor and Grantee have agreed to set aside the 181.80 acres of the Property (as described herein below and hereinafter referred to as the "Easement Area"), for the purpose of creating a Conservation Easement to preserve, enhance, restore, and maintain the natural features and resources of the Easement Area, to provide habitat for native plants and animals, to improve and maintain water quality, to control runoff of sediment, and to conserve productive forest resources.
- C. Grantee is a qualified conservation organization (state conservation agency) as defined under Section 170 of the Internal Revenue Code. The Grantee can hold a perpetual easement, which will not automatically be extinguished as set forth in the Conservation and Historic Preservations Agreements Act, N.C.G.S. 121-34 et seq. This Conservation Easement is being acquired through the directive of the Forest Legacy Program of the 1990 Farm Bill and meets the objectives of the North Carolina Forest Legacy Assessment of Need Document dated September 15, 1999.
- D. Grantor and Grantee recognize that the Easement Area in its present state has conservation value as an area that has not been subject to significant development and that provides a "relatively natural habitat for fish, wildlife, or plants or similar ecosystem" as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code, including bottomland hardwood, mixed pine hardwood, longleaf pine, and loblolly pine plantation forest that provides (1) critical food, cover and travel corridors for important game species including wild turkey, black bear and white-tailed deer; (2) nesting, stopover and overwintering habitat for numerous neotropical and nonmigratory songbird species and (3) an undeveloped buffer to a regionally significant Natural Heritage site, *Duck Creek Wetlands*, acquired by the State of North Carolina and managed by the North Carolina Wildlife Resources Commission. The Easement Area has been deemed a significant forest system under the United States Department of Agriculture Forest Legacy Program and the North Carolina Division of Forest Resources has been awarded a grant to purchase a conservation easement over the Easement Area. Additionally, the Easement Area lies within a significant corridor of lands from approximately the Neuse River in Craven County to the Northwest Pocosin in Pamlico County identified by the Onslow Bight Conservation Forum, a multi-agency/organization group working together to conserve lands in a 9-county area along the Onslow Bight. The Easement Area also contains frontage along a portion of Upper Broad Creek, a tributary of the Neuse River. The Easement Area lies within the North Carolina Coastal Land Trust's Lower Neuse River Conservation area, an initiative to protect a large forested corridor along the Lower Neuse River from the Lenoir/Craven County line to New Bern.
- E. Thus, the Easement Area has water quality, forest resources, and wildlife habitat values, the preservation of which is pursuant to federal, state and local government policy and will yield significant public benefit as evidenced by:
- (1) requirement by the state of North Carolina of a basinwide management plan for the Neuse River and its tributaries for the purpose of protecting water quality, public water supply, significant wetlands and natural areas along the corridor;



- (2) the protection of similar properties along the Neuse River by the North Carolina Coastal Land Trust and the State of North Carolina;
- (3) the *Forest Legacy Program*, U.S.C. 2101 et seq., established by the United States Secretary of Agriculture to protect environmentally important forest areas that are threatened by conversion to nonforest uses and to promote forest land protection including the conservation of scenic, cultural, fish, wildlife and recreation resources, riparian areas, and other ecological values;
- (4) The Department of Agriculture Cooperative Forestry Assistance Act ("CFAA") of 1978, as amended (16 U.S.C. 2103(c) et seq.) provides authority for the United States Secretary of Agriculture to provide financial, technical, educational, and related assistance to states, communities, and private forest landowners. Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624; 104 Stat. 3359), also referred to as the 1990 Farm Bill, amended the CFAA and allows the Secretary to establish the Forest Legacy Program to protect environmentally important forest areas that are threatened by conversion to nonforest uses;
- (5) the Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. 121-34 et seq., which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use;" and which provides for tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvement less any reduction in value caused by the agreement";
- (6) the special North Carolina Conservation Tax Credit Program that encourages contributions of land that provides habitat for fish and wildlife and other similar land conservation purposes set forth in N.C.G.S. 105-130.34 and 105-151.12 et seq.;
- (7) the special use assessment of farm and forestland set forth in N.C.G.S. 105-277.2 et seq. and N.C.G.S. 105-287(a)(2)(a) et. seq.

F. Grantor and Grantee have the common purposes of conserving the above-described conservation values and the natural, scenic, and open condition of the Easement Area.

G. Grantee is a qualified public agency under Section 501(c)(3) and 509(a)(2) of the Internal Revenue Code, is authorized by the laws of the state of North Carolina to accept, hold and administer conservation easements, possesses the authority to accept and is willing to accept this Conservation Easement under the terms and conditions hereinafter described, and is a "qualified conservation agency" and an "eligible donee" within the meaning of Section 170(h)(3) of the Internal Revenue Code and regulations promulgated thereunder.

H. The biological and open space characteristics of the Easement Area and its current use are described in the Easement Documentation Report, dated January 8, 2008 prepared by the North Carolina Division of Forest Resources, and acknowledged by the Grantor and Grantee to be complete and accurate as of the date hereof. Both the Grantor and the Grantee have copies of this report. It will be used by the parties to assure that any future changes in the use



of the Easement Area will be consistent with the terms of this Conservation Easement. However, this report is not intended to preclude the use of other evidence to establish the present condition of the Easement Area if there is a controversy over its use.

- I. The Grantor owns the Easement Area.
- J. The Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. 121-34 et seq., provides for the enforceability of restrictions, easements, covenants or conditions appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in forest use.
- K. The purpose of this Conservation Easement is to effect the Forest Legacy Program in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103 (c)) on the Easement Area, which purpose includes protecting environmentally important forest areas that are threatened by conversion to nonforest uses and for promoting forest land protection and other conservation opportunities. The purpose also includes the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian areas, and other ecological values.

The Parties agree that the primary purpose of this easement is to assure that the Easement Area encumbered as set forth herein will be retained forever in a forested condition and will be used only in conformity with the terms and conditions of this Conservation Easement.

The secondary objective of this Conservation Easement is to conserve productive forest resources on the Easement Area and to encourage the long-term, professional management of those resources, and to facilitate the economically sustainable production of forest resources without compromising surface water and ground water quality, scenic benefits to the public, wildlife habitat, recreational and other conservation values.

The Grantor specifically reserves the right to use the Easement Area herein encumbered by the Conservation Easement for commercial forest management and commercial and/or non-commercial recreation, as herein defined and restricted.

**NOW, THEREFORE**, in consideration of the premises and the mutual benefits recited herein, together with Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby unconditionally and irrevocably grants and conveys forever and in perpetuity to the Grantee, its successors and

assigns, and the Grantee hereby accepts a Grant of Conservation Easement of the nature and character and to the extent hereinafter set forth in, over through and across the Easement Area, together with the right to preserve and protect the conservation values thereof as described in the Recitals herein.

## ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by Grantee against Grantor, Grantor's personal representatives, successors and assigns, lessees, agents and licensees forever.

## ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. The Easement Area shall be maintained in its natural, scenic, and open condition subject to the provisions hereinafter set forth, and restricted from any development or use that would impair or interfere with the conservation values of the Easement Area.

All rights reserved by Grantor are considered to be consistent with the conservation purposes of this Conservation Easement and require no prior notification to or approval by Grantee unless expressly provided hereunder. Notwithstanding the foregoing, the Grantor and Grantee have no right to agree to any activity that would result in the termination of this Conservation Easement or would cause it to fail to qualify as a qualified conservation contribution as described in section 170(h) of the Internal Revenue Code, or any regulations promulgated thereunder.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted, or reserved as the case may be.

A. Industrial, Agricultural and Commercial Use. Industrial, agricultural and commercial use of the Easement Area and access therefore is prohibited except:

- (1) Commercial forestry and wildlife enhancement as described below; and
- (2) The leasing and licensing of hunting, fishing, hiking, nature and environmental education, forestry and historic tours, photography and filming, horseback riding rights and other similar passive or "eco-tourist" type commercial recreational activities and uses; provided; however that all such activities must be conducted in a manner not inconsistent with the conservation purposes of this Conservation Easement and are limited to de minimis access to and uses of the Easement Area and shall not violate the standard set forth in Section 2031(c)(8)(B) of the Internal Revenue Code.

B. Commercial Forestry. Silvicultural use of the Easement Area, including but not limited to timber thinning, timber stand improvements, pine straw raking, prescribed burning, mechanical and chemical site preparation, and reforestation with planting of genetically improved tree species may continue; provided however that any timber harvesting and management shall be carried out in accordance with a written Multiple Resources



Management Plan that is consistent with the provisions of this Conservation Easement. Said Multiple Resources Management Plan shall be prepared by a registered forester, shall be subject to approval by Grantor and Grantee, may be amended at least every ten years and shall be subject, at a minimum, to the following specific terms:

- 1) all such activities shall be in accordance with best management practices and forest practices guidelines for the timber industry as the same may be promulgated by law or regulation in the state of North Carolina and amended from time to time;
  - 2) forested land may be cleared and converted to beneficial wildlife openings including food plots or other habitat, not to exceed a total of ten (10) acres in the aggregate not including existing road acreage;
  - 3) Grantor has the right to prevent and control fire, as well as to apply fire as a management tool, on the Easement Area. It is hereby recognized that fire is a natural component of the surrounding ecosystem and Grantor shall have no obligation to prevent or fight fires on the Easement Area, unless the fire is the result of gross negligence of the Grantor;
  - 4) The Multiple Resource Management Plan shall not apply if the purpose of the harvest is to salvage timber lost as a result of a hurricane, fire, flood or similar event or if an insect, disease, or forest health pest outbreak occurs and sanitation harvests are necessary to prevent the outbreak from spreading to adjacent stands. In the event salvage operations are necessary that would constitute removal of the timber on more than 25% of the Easement Area, then the Grantor will notify and consult with Grantee in writing prior to commencement of salvage operations. In the event salvage operations are necessary that would constitute removal of the timber on 25% or less of the Easement Area, then the Grantor shall not be required to notify and consult with Grantee prior to commencement of salvage operations. Salvage operations must be conducted in a manner that complies with forestry best management practices, state law, government regulations.
- C. Signage. Display to the public of billboards, signs or advertisements is prohibited on or over the Easement Area, except the posting of no trespassing signs, hunt club signs, for sale signs, signs identifying the conservation values of the Easement Area and/or identifying the Grantor as owner of the Easement Area and Grantee as holder of the Conservation Easement, and signs for educational or informational purposes concerning the natural communities, wildlife, etc. of the Easement Area and/or forest management activities that have occurred or will occur on the Easement Area.
- D. Refuse/Dumping. Dumping of nonbiodegradable substances such as chemicals and other hazardous substances, trash, garbage, human wastes or any other unsightly or offensive material, abandoned vehicles, appliances, machinery, or other nonbiodegradable material on the Easement Area is prohibited. Grantor and Grantee recognize, however, that illegal dumping of refuse by third parties can occur and Grantor shall remove such material within a reasonable time through specific collection or routine clean-ups, as is currently provided for



in the company policy of Grantor. The temporary storage of trash in receptacles and the use of temporary port-a-johns for human waste for periodic off-site disposal are permitted. Land application of domestic septic effluent and/or municipal, commercial or industrial sewage sludge or liquid generated from such sources is prohibited.

- E. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Easement Area except (a) for the purpose of combating erosion or flooding; (b) for construction and maintenance of existing and permitted structures, roads and activities permitted hereunder; (c) for maintenance of existing drainage ditches and culverts; (d) for construction, repair and maintenance of new drainage ditches incident to forestry uses permitted herein, subject, however to all federal, state and local laws and regulations; and (e) for archeological and historical purposes; provided there will be no such excavation for archaeological or historic purposes if such excavation may be destructive of other conservation values and purposes of this Conservation Easement as set forth in the Recitals.
- F. Hunting, Fishing, Wildlife Enhancement, Educational and Other Non-Commercial Recreational Activities. Non-commercial hunting, fishing, hiking, nature, environmental education and historic tours, photography and filming, horseback riding rights and other similar passive or "ecotourist" type and/or educational recreational activities by Grantor and its invitees, subject to all federal, state and local laws and regulations is allowed. Commercial trapping, and trapping for wildlife management or other management purpose is allowed subject to all federal, state and local laws and regulations. The right to maintain existing unpaved trails and to clear and construct new unpaved trails and boardwalks for non-commercial recreational use, and to provide for recreational access is allowed, provided that such activity or use is consistent with the purposes of this Conservation Easement.
- G. Conveyance and Subdivision. The Easement Area may not be divided, partitioned, or subdivided, nor conveyed except in its current configuration as an entity.
- H. Water Quality and Drainage Patterns. Grantor and Grantee acknowledge that the Easement Area contains forested wetlands and lies adjacent to valuable riparian areas and that the Easement Area's natural hydrology is relatively intact, all of which contribute to the conservation values of the Easement Area as set forth in the Recitals. There shall be no timbering activities within 100 feet of Upper Broad Creek, except under circumstances described in Article II, B, 4. There shall be no alteration of natural drainage patterns or activities that would result in impairment to water quality or natural wetlands. Ditching activities in association with silvicultural practices occurring on the Easement Area are allowed in accordance with best management practices for forested wetlands, and all laws and regulations and as described in section E above. Notwithstanding anything in this Conservation Easement to the contrary, Grantor may take such steps as it deems necessary for making Upper Broad Creek navigable or maintaining the navigability of Upper Broad Creek, and nothing herein shall be construed to prohibit the same; provided, however, that Grantor shall abide by all local, state and federal laws, rules and regulations.



I. Improvements, New Construction and Access Thereto. No building, facility, mobile home, cell tower, antenna, radio tower, satellite tower, structure, or means of access shall be constructed or placed on the Easement Area after the date of this Conservation Easement except that Grantor may, upon providing written notice to Grantee:

(1) Construct, maintain, and utilize reasonable means of access to, utilities for all permitted uses of the Easement Area incidental to Grantor's forest management and recreational uses, provided, however that (a) no road bed way may be wider than twenty-five (25) feet, and no road right of way shall exceed forty-five (45) feet, (b) construction of roads shall be limited to permeable materials, and (c) all new utilities shall, unless prohibited by the appropriate utility, be installed underground;

(2) Construct and maintain gates for the purpose of limiting access and protecting the Easement Area.

J. Development Rights. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

K. Quiet Enjoyment. Grantor reserves to itself, its successors and assigns, all rights accruing from its ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area as exist on the date of this grant that are not expressly prohibited or restricted herein and do not significantly impair or interfere with the conservation values of the Easement Area as set forth in paragraph D of the Recitals hereinabove and the right to sell, give or otherwise convey the Easement Area. Without limiting the generality of the foregoing, Grantor expressly reserves for itself, its successors and assigns, invitees and licensees the right of quiet enjoyment of the Easement Area.

L. Scientific Research and Monitoring, Stewardship Activities. Notwithstanding the prohibitions and restrictions set forth above, there may be scientific studies, research and affirmative conservation management on the Easement Area as follows:

(1) Grantor and Grantee each have the right, but not the obligation, to undertake, at their own expenses, research, restoration and any special management necessary (e.g. removal of exotic species, prescribed burns, wildlife habitat restoration, hydrological and land form restoration) to insure the conservation of natural habitats, provided however, that the prior written consent of both the parties to any such proposed activity is obtained.

(2) Any entry on the Easement Area or the Property for study, research, or affirmative conservation management by Grantee shall be coordinated with the Grantor to ensure that there is no interference with any other right reserved by the Grantor, such as hunting.







**ARTICLE III. ENFORCEMENT, REMEDIES & CASUALTY LOSS**

A. Upon any breach of the terms of this Conservation Easement by Grantor or by a third party that comes to the attention of the Grantee, the Grantee shall notify the Grantor in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to begin undertaking actions that are reasonably calculated to correct promptly the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief including the right to require that the land be restored promptly to the condition required by this Conservation Easement.

Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury, damage or change in the Easement Area resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Easement Area resulting from such causes.

B. Grantor and Grantee mutually acknowledge that their failure to abide by the provisions of this Conservation Easement will result in irreparable harm to the other party, and that each party's remedy at law for damages will be inadequate. Accordingly, Grantor and Grantee shall be entitled upon any breach by the other to injunctive relief and to specific performance, in addition to any other available remedies.

C. If Grantor or Grantee determines that circumstances require immediate legal action to prevent or mitigate significant damage to the conservation values of the Easement Area, such party may pursue its remedies without prior notice to the other party, but shall exercise reasonable efforts to notify such other party.

D. Any cost incurred by one party in enforcing the terms of this Conservation Easement against the other, including, without limitations, costs of suits and attorney's fees, and any costs of restoration necessitated by the defaulting party's acts or omissions in violation of the terms of this Conservation Easement, shall be borne initially by the party prosecuting the lawsuit, and upon resolution of such lawsuit, the party found to be in breach of this Conservation Easement shall reimburse in full the prevailing party for its costs.

E. No failure on the part of 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.

- F. Grantee, its employees and agents and its successors and assigns, has the right, with thirty (30) days prior written notice, to enter the Easement Area at reasonable times for the purpose of inspecting the Easement Area to determine whether the Grantor, Grantor's representatives, heirs, successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement. Grantor may waive this thirty (30) day written notice requirement on a case by case basis, and in that event, then Grantee shall provide reasonable notice to Grantor prior to entering the Easement Area under this Article III, Section F.
- G. **Violations by Third Parties.** Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury, damage or change within the Easement Area caused by third parties, resulting from causes beyond the Grantors' control, or from any prudent action taken in good faith by the Grantors under normal operating or emergency conditions to prevent, abate, or mitigate significant injury to life, damage or harm to the Easement Area.
- H. **Limitation of Grantor's Liability.** Any entry onto the Property by Grantee or any third party is at such person's own risk. Except in cases of Grantor's negligence or willful misconduct, Grantor shall not be liable for any injury or damage suffered on the Property by Grantee or any third party. Grantee shall carry at all times adequate liability insurance, or only in the case of the State of North Carolina, be adequately self-insured, for the purpose of covering Grantee's employees and any third party on the Property with the permission of Grantee. Grantee shall provide proof of such insurance to Grantor each time Grantee asks Grantor's permission to bring third parties onto the Property.

#### ARTICLE IV. ACCESS

The granting of this Conservation Easement does not convey to the public the unencumbered right to enter the Easement Area for any purpose whatsoever. However, the public has the right to view the Easement Area from adjacent publicly accessible areas such as public roads.

#### ARTICLE V. TITLE

The Grantor covenants to and with the said Grantee that said Grantor has done nothing to impair such title as it received and said Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through the said Grantor and no further.

And further, this conveyance by Grantor to Grantee is subject to the following terms and provisions:

- (1) This Conservation Easement is conveyed subject to all matters, conditions, restrictions, and easements of record, and those, if any, constituting constructive notice.
- (2) This Conservation Easement is conveyed subject to such defects in title as might appear from a current and accurate survey of the Easement Area.
- (3) This Conservation Easement is conveyed "AS IS, WHERE IS".



- (4) This Conservation Easement is conveyed subject to all matters disclosed by an inspection of the premises, taxes not yet due and payable and all prior reservations whether by deed or possession.

## ARTICLE VI. MISCELLANEOUS

A. Subsequent Transfers. Grantor agrees for itself, its successors and assigns, to notify Grantee in writing of the names and addresses of any party to whom the Easement Area, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Grantor, for itself, its successors and assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Easement Area is conveyed.

B. Conservation Purpose.

- 1) Grantee, for itself, its successors and assigns, agrees that this Conservation Easement shall be held exclusively for conservation purposes, as defined in Section 170(h)(4)(A) of the Internal Revenue Code.
- 2) Grantor and Grantee agree that the conveyance of this Conservation Easement gives rise to a property right, immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value to the Easement Area as a whole.

That proportionate value of the Grantee's property rights shall remain constant. If a change in conditions which makes impossible or impractical any continued protection of the Easement Area for conservation purposes, the restrictions contained herein may only be extinguished by judicial proceeding. Upon such proceeding, the Grantee, upon a subsequent sale, exchange or involuntary conversion of the Easement Area, shall be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement. The Grantee's proceeds shall be used for other conservation purposes pursuant to the approval of the United States Secretary of Agriculture.

- 3) Whenever all or part of the Easement Area is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantee's and Grantor's interests as specified above; all



expenses including attorneys fees incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority.

- 4) The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Easement Area.
- 5) The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, provided, however that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement it holds, the organization receiving the interest will be a qualified government entity which is organized or operated primarily for one of the conservation purposes specified in Section 170 (h)(4)(A) of the Internal Revenue Code, and Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.
- 6) The Grantor agrees to pay any real estate taxes or other assessments levied on the Easement Area.

C. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. 121-34, which authorizes the creation of Conservation Easements for purposes including those set forth in the recitals herein, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code and shall be governed by and construed under the laws of the State of North Carolina and the United States of America.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

E. Recording. Grantee shall record this instrument and any amendment hereto in timely fashion in the official records of Craven County, North Carolina, and may re-record it at any time as may be required to preserve their rights under this Conservation Easement.

F. Hazardous Waste. The Grantor covenants to and with the Grantee that it has not placed or caused to be placed on the property any hazardous material.



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G. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, addressed to the parties as follows:

*To Grantor:*

Whitehurst Family Limited Liability Company  
212 Queensferry Road  
Cary, North Carolina 27511  
Attn: Samuel L. Whitehurst, Manager



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BK **2728** PG **644**

*To Grantee:*

State of North Carolina  
Division of Forest Resources  
1616 Mail Service Center  
Raleigh, North Carolina 27626-1616

Or to other address(es) as either party may establish in writing to the other.

In any case where the terms of this Conservation Easement require the consent of any party, such consent shall be requested by written notice. Such consent shall be deemed to have been given unless, within thirty (30) days after receipt of notice, a written notice of disapproval and the reason therefore has been mailed to the party requesting consent.

H. Amendments. Grantors and Grantee are free to jointly amend this Conservation Easement to meet changing conditions, provided that no amendment will be allowed that (1) will affect the qualification of this Conservation Easement under N.C.G.S. 121-34 et seq., or under Sections 170(h) of the Internal Revenue Code; (2) is inconsistent with the purposes of this Conservation Easement; or (3) affects the perpetual duration of this Conservation Easement. Such amendment(s) shall be effective upon recording in the public records of Craven County, North Carolina.

**TO HAVE AND TO HOLD** unto the **STATE OF NORTH CAROLINA**, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, Grantor's personal representatives, heirs, successor and assigns, and shall continue as a servitude running in perpetuity with the Easement Area.

**IN TESTIMONY WHEREOF**, the Whitehurst Limited Liability Company has caused this instrument to be signed in its name by its duly authorized representative, its corporate seal hereunto affixed, all by authority duly given, and Grantee, by authority duly given, has hereunto caused these presents to be executed in such form as to be binding, to be effective upon the date of recordation in the public records of Craven County, North Carolina and the delivery to Grantor of the full consideration for the conveyance to Grantee of the rights hereunder.



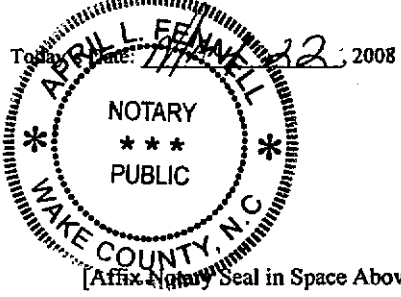
**GRANTOR:**

**Whitehurst Family Limited Liability Company**  
A North Carolina limited liability company

By: Samuel L. Whitehurst (SEAL)  
Samuel L. Whitehurst, Manager

STATE OF NORTH CAROLINA  
COUNTY OF Wake

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Samuel L. Whitehurst as Manager of Whitehurst Family Limited Liability Company.



April L. Fenwell  
[Notary's signature as name appears on seal]  
APRIL L. FENWELL  
[Notary's printed name as name appears on seal]

My commission expires: SEPTEMBER 20 2012

GRANTEE:

STATE OF NORTH CAROLINA

By: Wib L Owen (SEAL)  
Name: Wib L. Owen  
Title: Director

STATE OF NORTH CAROLINA

COUNTY OF Harnett

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Wib L Owen

Today's Date: 5-21, 2008

Teresa Ballard Tripp  
[Notary's signature as name appears on seal]

Teresa Ballard Tripp  
[Notary's printed name as name appears on seal]

My commission expires: 8-1, 2008



[Affix Notary Seal in Space Above]



**STATE OF NORTH CAROLINA**

**CRAVEN COUNTY**

The Foregoing (or annexed) Certificate(s) of \_\_\_\_\_

Notary(ies) Public (is)(are) Certified to be correct.

This instrument was filed for Registration on the Day and Hour in the Book and Page shown in the First page hereof.

\_\_\_\_\_  
, Register of Deeds

**STATE OF NORTH CAROLINA**

**COUNTY OF CRAVEN**

The foregoing certificate of \_\_\_\_\_, Notary Public, is certified to be correct.

This \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Register of Deeds

This instrument prepared by the State of North Carolina and by  
Camilla M. Herlevich  
Attorney at Law  
North Carolina Coastal Land Trust