Workflow No. 0000063748-0003

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ENHANCEMENT PROGRAM

Image ID: 000002077617 Type: CRP
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Fee Amt: $300.00 Page 1 of 10
Revenue Tax: $274.00
Workflow# 0000063748-0003
Craven, NC
Sherri B. Richard Register of Deeds
BK 3065 PG 305

STATE OF NORTH CAROLINA

**CONSERVATION EASEMENT PROVIDED PURSUANT TO FULL DELIVERY MITIGATION CONTRACT**

CRAVEN COUNTY
**SPO File Number 025-AM**
Prepared by: Office of the Attorney General
Property Control Section
Return to: NC Department of Administration
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

Excise Tax: $274.00
✓William P. Aycock
Greensboro, NC

**THIS CONSERVATION EASEMENT DEED,** made this 21st day of February, 2012, by **RESTORATION SYSTEMS, LLC,** a North Carolina limited liability company, (**"Grantor"**), whose mailing address is 1101 Haynes Street, Suite 211, Raleigh, North Carolina, 27604, to the **STATE OF NORTH CAROLINA,** (**"Grantee"**), whose mailing address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The designations of 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.

**WITNESSETH:**

**WHEREAS,** pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

**WHEREAS,** this Conservation Easement from Grantor to Grantee has been negotiated, arranged and provided for as a condition of a full delivery contract between Restoration Systems, LLC, 1101 Haynes Street, Suite 211, Raleigh, North Carolina, 27604, and the North Carolina Department of Environment and Natural Resources, to provide stream, wetland and/or buffer

mitigation pursuant to the North Carolina Department of Environment and Natural Resources Purchase and Services Contract Number 003985.

**WHEREAS,** The State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

**WHEREAS,** the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District entered into a Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003, which recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

**WHEREAS,** the acceptance of this instrument for and on behalf of the State of North Carolina was granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February 2000; and

**WHEREAS,** the Ecosystem Enhancement Program in the Department of Environment and Natural Resources, which has been delegated the authority authorized by the Governor and Council of State to the Department of Administration, has approved acceptance of this instrument; and

**WHEREAS,** Grantor owns in fee simple certain real property situated, lying, and being in Number Three Township, Craven County, North Carolina (the "**Property**"), said Property being a part of a larger parcel formerly owned by Horace Lee Mitchell (See Deed Book 2229, Page 1011), the Grantor's portion of the former Mitchell property being more particularly described as that certain parcel of land containing approximately 17.08 acres and being conveyed to the Grantor by deed from Mitchell as recorded in **Deed Book** 3065 **at Page** 298 of the Craven County Registry, North Carolina; and

**WHEREAS,** Grantor is willing to grant a Conservation Easement over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. This Conservation Easement shall be for the protection and benefit of Core Creek.

**NOW, THEREFORE,** in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement along with a general Right of Access.

The Easement Area consists of the following:

A tract containing a total of **17.08± acres** as shown on the plat of survey entitled "Conservation Easement Survey for The State of North Carolina Ecosystem Enhancement Program," Project



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Name: Sliver Moon Restoration Site, SPO File No. 025-AM, EEP Site No. 95017, dated February 9, 2012 by K2 Design Group, P.A., PLS Number 4194 and recorded in Cabinet I, Slide 3C and in Book 3064, Page 282, Craven County Registry.

See attached **"Exhibit A"**, Legal Description of area of the Property hereinafter referred to as the "Easement Area"

The purposes of this Conservation Easement are to maintain, restore, enhance, construct, create and preserve wetland and/or riparian resources in the Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

## I. DURATION OF EASEMENT

Pursuant to law, including the above referenced statutes, this Conservation Easement and Right of Access shall be perpetual and it shall run with, and be a continuing restriction upon the use of, the Property, and it shall be enforceable by the Grantee against the Grantor and against Grantor's heirs, successors and assigns, personal representatives, agents, lessees, and licensees.

## II. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. Any rights not expressly reserved hereunder by the Grantor, including the rights to all mitigation credits, including, but not limited to, stream, wetland, and riparian buffer mitigation units, derived from each site within the area of the Conservation Easement, are conveyed to and belong to the Grantee. Without limiting the generality of the foregoing, the following specific uses are prohibited, restricted, or reserved as indicated:

A. **Recreational Uses.** Grantor expressly reserves the right to undeveloped recreational uses, including hiking, bird watching, hunting and fishing, and access to the Easement Area for the purposes thereof.

B. **Motorized Vehicle Use.** Motorized vehicle use in the Easement Area is prohibited.

C. **Educational Uses.** The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the Easement Area for such purposes including organized



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educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.

D. **Vegetative Cutting.** Except as related to the removal of non-native plants, diseased or damaged trees, or vegetation that destabilizes or renders unsafe the Easement Area to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

E. **Industrial, Residential and Commercial Uses.** All industrial, residential and commercial uses are prohibited in the Easement Area.

F. **Agricultural Use.** All agricultural uses are prohibited within the Easement Area including any use for cropland, waste lagoons, or pastureland.

G. **New Construction.** There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

H. **Roads and Trails.** There shall be no construction of roads, trails, walkways, or paving in the Easement Area.

I. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, signs giving directions, or signs prescribing rules and regulations for the use of the Easement Area.

J. **Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or any other material in the Easement Area is prohibited.

K. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, drilling; removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

L. **Water Quality and Drainage Patterns.** There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water in the Easement Area. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns is allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides in the Easement Area is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production on the Property.

M. **Subdivision and Conveyance.** Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying Property owned by the Grantor in fee simple ("fee") that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future



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conveyance of the underlying fee and the rights conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of unlimited and repeated ingress and egress over and across the Property to the Easement Area for the purposes set forth herein.

N. **Development Rights.** All development rights are permanently removed from the Easement Area and are non-transferrable.

O. **Disturbance of Natural Features.** Any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantor is prohibited.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is not inconsistent with the purposes of this Conservation Easement, and the Grantor obtains advance written approval from the N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

## III. GRANTEE RESERVED USES

A. **Right of Access, Construction, and Inspection.** The Grantee, its employees and agents, successors and assigns, receive a perpetual Right of Access to the Easement Area over the Property at reasonable times to undertake any activities to restore, construct, manage, maintain, enhance, and monitor the stream, wetland and any other riparian resources in the Easement Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

B. **Restoration Activities.** These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow.

C. **Signs.** The Grantee, its employees and agents, successors or assigns, shall be permitted to place signs and witness posts on the Property to include any or all of the following: describe the project, prohibited activities within the Conservation Easement, or identify the project boundaries and the holder of the Conservation Easement.

D. **Fences.** The Grantee, its employees and agents, successors or assigns, shall be permitted to place fencing on the Property to restrict livestock access. Although the Grantee is not responsible for fence maintenance, the Grantee reserves the right to repair the fence, at its sole discretion.

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## IV. ENFORCEMENT AND REMEDIES

A. **Enforcement.** To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features in the Easement Area that may have been damaged by such unauthorized activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, the Grantee shall, except as provided below, notify the Grantor-in writing of such breach and the Grantor shall have ninety (90) days after receipt of such notice to correct the damage caused by such breach. If the breach and damage remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by bringing appropriate legal proceedings including an action to recover damages, as well as injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief, if the breach is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement, and the Grantor and Grantee acknowledge that the damage would be irreparable and remedies at law inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

B. **Inspection.** The Grantee, its employees and agents, successors and assigns, have the right, with reasonable notice, to enter the Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor is complying with the terms, conditions and restrictions of this Conservation Easement.

C. **Acts Beyond Grantor's Control.** Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Easement Area caused by third parties, 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, or damage to the Property resulting from such causes.

D. **Costs of Enforcement.** Beyond regular and typical monitoring expenses, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

E. **No Waiver.** Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

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## V.
## MISCELLANEOUS

A. 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 the 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.

B. Grantor is responsible for any real estate taxes, assessments, fees, or charges levied upon the Property. Grantee shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Property, except as expressly provided herein. Upkeep of any constructed bridges, fences, or other amenities on the Property are the sole responsibility of the Grantor. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of the Reserved Rights.

C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown herein or to other addresses as either party establishes in writing upon notification to the other.

D. Grantor shall notify Grantee in writing of the name and address and any party to whom the Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees that any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

E. The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof.

F. This Conservation Easement and Right of Access may be amended, but only in writing signed by all parties hereto, or their successors or assigns, if such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement. The owner of the Property shall notify the U.S. Army Corps of Engineers in writing sixty (60) days prior to the initiation of any transfer of all or any part of the Property. Such notification shall be addressed to: Justin McCorkle, General Counsel, US Army Corps of Engineers, 69 Darlington Avenue, Wilmington, NC 28403

G. The parties 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, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code, and the 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 in perpetuity the conservation purposes described in this document.

## VI. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area

**TO HAVE AND TO HOLD,** the said rights and easements perpetually unto the State of North Carolina for the aforesaid purposes.

**AND** Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent Conservation Easement herein granted; that the same is free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

**IN TESTIMONY WHEREOF,** the Grantor has hereunto set his/her/its hand and seal, the day and year first above written.

RESTORATION SYSTEMS, LLC,
a North Carolina limited liability company

By: John P Preyer
Name: JOHN P PREYER
Title: Chief Operating Officer

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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:

JOHN P. PREYER

WITNESS my hand and official seal, this 20 day of FEB, 2012.

(Official Seal)

RAYMOND HOLZ
MY COMMISSION EXPIRES
August
07
2016
WAKE COUNTY, NC
NOTARY PUBLIC

Raymond Holz
**Notary's Official Signature**

Raymond Holz
**Notary's Printed or Typed Name**

My Commission Expires: Aug. 07 2016

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# Exhibit A

Beginning at an iron stake set, which iron stake is located in the common line of Grantor (see Deed Book 2229, Page 1011) and N/F Dills (see Deed Book 894, Page 315), which iron stake is also located the following two (2) calls from NGGS Marker "Sunset" (Grid Factor: 0.999873090; N=526,897.056'; E=2,502,752.928'): N 65 deg. 44 min. 59 sec. W 14542.93 feet and N 17 deg. 46 min. 24 sec. E 454.30 feet to the point and place of beginning; thence from said beginning point with N/F Dills line N 17 deg. 46 min. 24 sec. W 1067.02 feet to an existing iron pipe, the southeast corner N/F of White (see Deed Book 1087, Page 991); thence with White's southern line N 78 deg. 51 min. 16 sec. W 538.43 feet to an existing iron pipe, White's southwest corner in N/F Elliott's eastern line (see Deed Book 1594, Page 169); thence with Elliott's eastern line S 29 deg. 02 min. 02 sec. W 1234.01 feet to an existing iron pipe near the bank of a 4' wide ditch; thence continuing S 29 deg. 02 min. 02 sec. W 38.99 feet to an iron stake set; thence a new line with Grantor S 89 deg. 30 min. 01 sec. E 820.41 feet to the point and place of beginning and containing 17.08 acres +/- and as shown on a map of survey by K2 Design Group, P.A. entitled "Conservation Easement Survey for The State of North Carolina Ecosystem Enhancement Program" dated February 9, 2012 (DWG NO.: RSS004MR11) and which map of survey is recorded in Cabinet I, Slide 3C and in Book 3064, Page 282, Craven County Registry.

TOGETHER WITH a new 15' wide non-exclusive easement for ingress, egress and regress that includes an existing 12' +/- wide soil path which easement is located inside, along and parallel with Horace Lee Mitchell's remaining eastern property line from the southeast corner of the tract described above to the southeast corner of the Horace Lee Mitchell property described in Deed Book 2229, Page 1011.

ALSO TOGETHER WITH two (2) additional access easements as follows:

1. A non-exclusive access easement for ingress, egress and regress over and upon a portion of the property of Charles Monroe Smith running south from Horace Lee Mitchell's southeast corner to the northeast corner of the property conveyed to Raymond Earl Smith, Sr. and wife, Carrie Darlene Smith, by deed recorded in Book 2879, Page 1, said easement to be fifteen (15) feet in width and running along Charles Monroe Smith's eastern property line.

2. A 50' wide permanent, non-exclusive easement for the purposes of ingress, egress and regress to the Charles Monroe Smith property from US Highway 70, which right-of-way is described as follows: Beginning at the southeast corner of said Smith's property in the Raymond L. Mitchell line marked by an iron pipe; thence South 24° 13' 00" West 951.56 feet to an existing iron pipe; thence South 24° 01' 56" West 322.57 feet to an existing iron pipe in the northern right-of-way line of US Highway 70; thence along and with said right-of-way line, North 67° 51' 49" West 50.00 feet; thence North 24° 01' 56" East 1274.13 feet to a point in the southern boundary line of the Grantor's Property; thence along said Smith's southern boundary, South 65° 46' 50' East 50.00 feet to the point and place of Beginning, as shown on the map recorded in Book 2873, Page 80, Craven County Registry.