

Sherwood N. Fender
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Date: 10/27/05

To: Terry Finger

Fax: 681-8802

From: Sherwood Fender Michael Fabian Daun Schouten

Re: Bluffton Property

Comments: As you requested.

The contents of this transmission are intended for the above recipient only, if you receive this fax in error, please contact our office at (843)575-5555 immediately.

Number of Pages including cover _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

**DECLARATION OF
RESTRICTIVE COVENANT**

WHEREAS, Sherwood N. Fender, Declarant, is the owner of a certain tract of land located in the Big Salkehatchie river basin in Colleton Count, and Hampton County South Carolina known as the Richard B. Herndon Tract consisting of One Hundred Eighty-nine and one-quarter (189 ¼) acres more or less, a portion of which includes surface waters and wetlands (hereinafter "the Property"); and

WHEREAS, Declarant desires to protect the property pursuant to the terms and conditions contained herein;

NOW THEREFORE, Sherwood N. Fender, Declarant, does hereby declare that the provisions contained herein are Rights, Restrictions, Affirmative Obligations, Conditions, etc. which constitute covenants running with the land in and to the following property (hereinafter "the Property"):

All that certain piece, parcel or tract of land situate, lying and being in Hampton County and Colleton County, South Carolina located in the Big Salkehatchie River Basin consisting of One Hundred Eighty-nine and One-fourth (189 ¼) acres, more or less, bounded on the North by lands now or formerly of Gabriel Varn; on the East by lands now or formerly of R.B. Herndon; on the South by lands now or formerly of A.C. Varn; and on the West by lands now or formerly of Henry Miley.

This is the same property conveyed to Sherwood N. Fender by deed of Anthony R. Porter dated July 17, 2002 and recorded at the Office of the Register of Deeds for Colleton County, South Carolina, in Book 983 at Page 114.

1. Purpose: The purpose of this covenant is to ensure that the wetlands, buffers, open space and other natural resources within the Property's boundaries, that consist of wetlands, buffers and/or other natural resources will be retained forever predominantly in its natural, scenic condition, and to protect the Property from being used in any way that will significantly impair or interfere with the conservation values of the Property while allowing for traditional uses on the Property that are expressly contained herein.

2. Property Uses: Any activity on or use of the Property inconsistent with the terms and purposes of this Covenant is prohibited. Without limiting the generality of the foregoing, the following is a list of activities and uses which are expressly allowed or which are expressly prohibited.

2.1 The Property may not be subdivided.

2.2 Transfer. Declarant, his successors and assigns, shall have the right to sell, give, mortgage, lease or otherwise convey the Property subject to the terms and conditions of these restrictive covenants.

2.3 **Development.** No development activity shall be permitted except for the erection of one (1) residential house and a road to access the residence along with the installation of utilities to service one house.

2.4 **Forestry Management.** Harvesting and management of timber by Declarant, his heirs and assigns, is limited to the extent necessary to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects or infectious organisms. Such timber harvest and management shall be carried out in accordance with the Best Management Practices approved by the South Carolina forestry Commission or successor agency, as amended.

2.5 **Recreation.** Declarant reserves the right to engage in any outdoor, non-commercial recreational activities, including hunting and fishing, with cumulatively very small impacts, and which are consistent with the continuing natural condition of the Property.

2.6 **Other Reserved Rights.** Declarant reserves the right to engage in all acts or uses not prohibited by these covenants, and which are not inconsistent with the conservation purposes of this covenant, the preservation of the Property substantially in its natural condition, and the protection of its environmental systems.

3. **Right to Enforce.** Ocean and Coastal Resource Management (hereinafter "OCRM") a division of the Department of Health and Environmental Control, its successors and assigns, agent or designee as it may use from time to time, shall have the right to enforce these covenants and to enter the Property at reasonable times after prior written notice to Declarant, his heirs or assigns, as provided in Paragraph 5, for the purpose of inspecting the Property to determine if Declarant, his heirs or assigns, is complying with the covenants and purposes of this Restrictive Covenant. Prior written notice is not required if Grantee is entering upon the Property because of an immediate or imminent violation that could substantially diminish or impair the conservation values of the Property.

4. **Enforcement:** To enforce the terms of this Restrictive Covenant, OCRM, its successor and assigns, agent or designee shall give notice of a violation of this Restrictive Covenant to the Declarant, his heirs or assigns, by certified mail, return receipt requested. In such notice the OCRM shall request the Declarant, his heirs or assigns, to correct the violation, to take action to stop ongoing or future violations, and to restore the Property to its conditions existing on the date of this Restrictive Covenant. Failure by the Declarant, his heirs or assigns, to abate the violation and take such corrective action as may be requested by the OCRM within sixty (60) days after receipt of such notice (the "cure period") shall entitle the OCRM to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this Restrictive Covenant. If the court determines that the Declarant has failed to comply with this Restrictive Covenant, the Declarant shall reimburse the OCRM for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. Nothing herein shall be construed to entitle OCRM to institute any enforcement proceedings against the Grantor for any changes to the Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, earthquake, hurricane or other act of nature, or the unauthorized wrongful acts of third persons.

5. This Protective Covenant is intended to satisfy the provisions the Court Order and Settlement Agreement in Beaufort County Civil Action #2001CP07-944 on behalf of McFee, LLP, a partnership in which Declarant is a principal and possesses agency authority to act in its behalf.

