2010003502
MCDOWELL CO, NC FEE $49.00
STATE OF NC REAL ESTATE EXTX
$144.00
PRESENTED & RECORDED:
08-03-2010 03:22:23 PM
JANE B MCGEE
REGISTER OF DEEDS
BY: TONIA R HAMPTON
DEPUTY REGISTER OF DEEDS
BK: CRP 1025
PG: 785-795

WHE

STATE OF NORTH CAROLINA
MCDOWELL COUNTY

CONSERVATION EASEMENT AND RIGHT OF ACCESS

SPO File Number 059-AF
EEP Site ID 93874
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 #144 DS

THIS DEED OF CONSERVATION EASEMENT AND RIGHT OF ACCESS, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and made this 3rd day of August, 2010, by **Demming Company, LLC, James Lawton Haney, Jr., Manager/Member**, ("**Grantor**"), whose mailing address **1932 Old Glenwood, Marion, NC 28752**, 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 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.

APPROVED BY CRA WATERSHED ADMINISTRATOR

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, 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 Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; and

DEA 8/3/10
APPROVED TO RECORD
TAX DEPARTMENT

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. This MOA 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, Grantor owns in fee simple certain real property situated, lying, and being in Glennwood Township, McDowell County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately 75.32 +/- acres and being conveyed to the Grantor by deed as recorded in **Deed Book 778 at Page 935** of the McDowell County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement and Right of Access 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 said Easement and Access Rights. The Conservation Easement shall be for the protection and benefit of the waters of ***North Muddy 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:

Conservation Easement areas A and B containing a total area of **17.84 acres** as shown on the plat of survey entitled "Final Plat of a Conservation Easement Survey for NC Department of Administration, Ecosystem Enhancement Program, North Muddy Creek, SPO File Number 059-AF, EEP Project ID. 93874," dated 01/28/10-06/07/10 by Brad Kee, License Number C-3039 and recorded in the McDowell County, North Carolina Register of Deeds at **Plat Book 19 Page 13.**

See attached "**Exhibit A**", Legal Description.

The purposes of this Conservation Easement are to maintain, restore, enhance, 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 ACTIVITES

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. 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. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

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

C. Vegetative Cutting. Except as related to the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, 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.

D. Industrial, Residential and Commercial Uses. All are prohibited in the Easement Area.

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

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

G. Roads and Trails. The Grantor hereby reserves the right to construct, maintain, and gain access to, at Grantor's expense, up to three (3) stream crossings being no greater than forty-five (45) feet in width, that shall conform to all applicable federal, state and local laws, rules and regulations, as permitted. Crossings shall be constructed across the conservation easement and

the stream in a perpendicular manner, and in a manner that maintains water quality and minimizes disturbance. Grantor shall obtain permission from EEP in writing upon initiation of the plan for each crossing. Upon consultation and approval of Grantee, and such approval not to be unreasonably withheld, said roads and crossings shall be released from the terms of this conservation easement and will not be incompatible with nor will the Grantor be in violation of the terms of this conservation easement. Livestock shall be excluded from such crossings except when moving from one side of the conservation easement to the other and when under direct supervision of Grantor, successors or assigns. Unless approved by the Grantee in writing as specified above, there shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area after the stream restoration construction is complete may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads or trails are shown on the plat of survey entitled "Final Plat of a Conservation Easement Survey for NC Department of Administration, Ecosystem Enhancement Program, North Muddy Creek, SPO File Number 059-AF, EEP Project ID. 93874," dated 01/28/10-06/07/10 by Brad Kee, License Number C-3039 and recorded in the McDowell County, North Carolina Register of Deeds at **Plat Book 19 Page 13**.

H. 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 may be allowed.

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

I. Grading, Mineral Use, Excavation, Dredging. There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials. Grantor reserves the right to hand pan for gold in the stream within the easement area. Any and all sluice boxes and digging are prohibited.

J. 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. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides 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.

K. Subdivision and Conveyance. Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as 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.

L. Development Rights. All development rights are removed from the Easement Area and shall not be transferred.

M. 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 consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining 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 of 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.

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 of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct 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. 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 of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be 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, their successors or assigns are 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, their successors or assigns, 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, damage to property or harm to the Property resulting from such causes.

D. Costs of Enforcement. Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their successors or assigns, 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.

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. 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.

C. 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 to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created.

D. 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.

E. This Conservation Easement and Right of Access may be amended, but only in writing signed by all parties hereto, and provided 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

F. 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 are 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 hand and seal, the day and year first above written.

Grantor: Demming Company, LLC.

By: _____

James Lawton Haney, Jr.

Title: Member-Manager

NORTH CAROLINA

COUNTY OF McDowell

I, Fay B. Wright, a Notary Public in and for the McDowellCounty, North Carolina, do hereby certify that James Lawton Haney, Jr., Member-Manager of Demming Company, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 3rd day of August, 2010.

Fay B Wright

Fay B. Wright, Notary Public

My commission expires:

2-8-2014

FAY B. WRIGHT NOTARY PUBLIC McDOWELL COUNTY, NC

Exhibit A

CRP 1025 794

Job Description> North Muddy Creek, MCDOWELL COUNTY, NORTH CAROLINA

Surveyor> KEE MAPPING & SURVEYING, PA (828) 645-8275 Job Number> 100105

SPO File Number> 059-AF EEP Project ID> 93874 Date> June 10, 2010

Area A: 2.92 Acres

Beginning at corner 1, being a 5/8" rebar set with EEP cap on the northern property boundary. Thence with the boundary of the conservation easement the following courses and distances:

(1) S 85°53'20" E 216.89 feet to a 5/8" rebar set with EEP cap (corner 2).

(2) S 56°32'22" E 620.79 feet to a 5/8" rebar set with EEP cap (corner 3).

(3) S 22°47'44" W 110.15 feet to a 5/8" rebar set with EEP cap (corner 4).

(4) N 70°40'32" W 481.02 feet to a 5/8" rebar set with EEP cap (corner 5).

(5) N 38°21'56" W 382.88 feet to the point of beginning.

Area B: 14.92 Acres

Beginning at corner 6, being a 1/2" iron pipe found. Thence with the boundary of the conservation easement the following courses and distances:

(1) S 72°43'02" E 129.99 feet to a 5/8" rebar set with EEP cap (corner 7).

(2) S 81°45'24" E 767.43 feet to a 5/8" rebar set with EEP cap (corner 8).

(3) S 41°38'09" E 207.55 feet to a 5/8" rebar set with EEP cap (corner 9).

(4) S 29°03'59" E 62.98 feet to a 5/8" rebar set with EEP cap (corner 10).

(5) S 41°05'31" E 158.35 feet to a 5/8" rebar set with EEP cap (corner 11). Point being located on the southeastern property boundary.

(6) S 35°05'46" W 249.56 feet to an angle iron found (corner 12).

(7) N 33°19'34" W 298.09 feet to a 5/8" rebar set with EEP cap (corner 13).

(8) N 83°21'42" W 334.33 feet to a 5/8" rebar set with EEP cap (corner 14).

(9) N 83°21'42" W 51.29 feet to a 5/8" rebar set with EEP cap (corner 15).

(10) N 83°21'42" W 137.87 feet to a 5/8" rebar set with EEP cap (corner 16).

(11) S 40°39'27" W 440.91 feet to a 5/8" rebar set with EEP cap (corner 17).

(12) S 20°25'24" E 189.85 feet to a 5/8" rebar set with EEP cap (corner 18).

(13) S 56°10'15" E 578.93 feet to a 5/8" rebar set with EEP cap (corner 19).

(14) S 36°40'31" W 204.24 feet to a 5/8" rebar set with EEP cap (corner 20).

(15) N 51°02'11" W 734.35 feet to a 5/8" rebar set with EEP cap (corner 21).

(16) N 04°17'48" W 744.50 feet to a 5/8" rebar set with EEP cap (corner 22).

(17) N 43°44'38" W 231.28 feet to the point of beginning.

Total Conservation Easement Area: 17.84 Acres

JANE B MCGEE
Register of Deeds

Mcdowell County
Register of Deeds

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752
Telephone 828-652-4727 • Fax 828-652-1537 • E-Mail jmcgeemcdowell@titlesearcher.com

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Book: CRP 1025 Page: 785-795

Document No.: 2010003502

DEED 11 PGS 193.00

Recorder: TONIA R HAMPTON

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State of North Carolina, County of McDowell

Filed for registration and Duly Recorded this 3RD day of AUGUST 2010.

JANE B MCGEE, REGISTER OF DEEDS

Tonia R Hampton

By:_____
DEPUTY REGISTER OF DEEDS

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DO NOT REMOVE!

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.