2009003919
MCDOWELL CO, NC FEE $26.00
PRESENTED & RECORDED:
08-17-2009 11:40:30 AM
JANE B MCGEE
REGISTER OF DEEDS
BY: LINDA C HARWOOD
DEPUTY REGISTER OF DEEDS
BK: CRP 1000
PG: 402-406

STATE OF NORTH CAROLINA
COUNTY OF MCDOWELL
Prepared by State Property Office
Return after recording to:
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

CONSERVATION EASEMENT OPTION AGREEMENT
Ecosystem Enhancement Program
SPO File Number 059-AF

THIS OPTION AGREEMENT, hereinafter referred to as Option, made and entered into this 6th day of July, 2009 by and between **James Lawton Haney, Jr.**, manager/member DEMMING CC, LLC hereinafter referred to as the **Seller**, and the **State of North Carolina**, and its successors and assigns, hereinafter referred to as the **State.**

WITNESSETH

In consideration of $10.00 and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and of the agreements contained in this Option, **Seller** hereby grants to the **State**, and its successors and assigns, the exclusive right and option to receive a perpetual **Conservation Easement** over mutually agreed upon lands owned by the **Seller**, hereinafter referred to as the **Parent Tract.** The **Conservation Easement** shall perpetually protect those lands hereinafter referred to as the **Easement Area. The Parent Tract is** located in McDowell County, North Carolina, and contains **69.98** +/- acres, more or less, and which is more particularly described as follows:

The **Property** is further described in a deed recorded in **Deed Book 344, Page 861, McDowell County Registry**. Property is also identified as being tax parcel number **1629-15-8661**.

Being a perpetual **Conservation Easement** that will permanently protect the restoration, enhancement or preservation of North Muddy Creek located on 1932 Old Glenwood Rd.

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in McDowell County. The **Easement Area** begins at the centerline of North Muddy Creek and extends outwardly a minimum of 50' feet from the top of bank on both sides of the stream where available on the property, and runs as the stream meanders. Exact acreage to be determined after survey.

The following terms, provisions, and conditions are further agreed to:

1. **OPTION PERIOD**. This option shall remain in effect from the date that this Option has been executed by the **Seller** until the **30th day of June 2012.** This Option shall be exercised upon posting, by certified mail, fax or written notice to the **Seller** at the following address: **1932 Old Glenwood, Marion, NC 28752**. Exercise shall be deemed timely if such written notice is mailed on or before the date first set forth in this paragraph.

2. **PURCHASE PRICE**. The total purchase price for the **Easement Area** shall be the sum of **$4,000.00, (Four Thousand Dollars)** per acre subject to final survey. ($4,000.00 per acre).

3. **CLOSING**. A closing of the sale of this **Conservation Easement** under this Option shall be held within **90 days** of the exercise of this Option; provided, however, in the event of objections to title or condition of land at closing, and diligent efforts on **Seller's** part to cure said objections, a closing shall be held within a reasonable time following the removal of said objections.

4. **EVIDENCE OF TITLE**. Upon receipt of this signed Option, the **State** will have title to the **Easement Area** examined, and if applicable, obtain a preliminary title insurance commitment. The title examination and/or commitment must evidence the **Seller's** ability to deliver title at closing as set forth below. All costs necessary to procure the title examination and, if applicable, the title commitment and final title insurance policy to be issued at closing, shall be the responsibility of the **State**.

5. **TITLE**. At closing, the **Seller** shall convey good, insurable and marketable title to the **Conservation Easement** together with all rights necessary to protect the **Easement Area** in perpetuity, including legal access, all mineral rights and all development rights, to the **State** free and clear of all liens, encumbrances, restrictions, rights, or exceptions except those of record that are acceptable to the **State**.

6. **TITLE DEFECTS**. If for any reason the **Seller** cannot deliver title at closing as required by Paragraph 5 of this Option, the **State** may elect to a) accept the **Conservation Easement** with title as is; b) refuse to accept the **Conservation Easement**; or c) allow the **Seller** additional time to pursue reasonable efforts to correct the problem, including bringing any necessary quiet title actions or other lawsuits.

7. **SUBJECT TO SURVEY AND DESIGN**. It is understood and intended that the final **Easement Area** and **Conservation Easement** under this option is subject to final

design, approval and survey by the **Ecosystem Enhancement Program** with these costs paid by the **State.**

8. **DOCUMENTS FOR CLOSING.** The **Seller** shall execute and deliver at closing a **Conservation Easement**, any owner's affidavits or documents required by a title insurance company to remove the standard title policy exceptions, and any other documents necessary to close in accordance with the terms of this Option. These documents will be prepared at the expense of the **State**.

9. **PROPERTY TAXES.** Any delinquent real estate taxes and all levied assessments are the **Seller**'s responsibility and should be satisfied of record by the **Seller** at or before closing. Any deferred taxes on the **Easement Area,** which become due as a result of this conveyance, shall be the responsibility of the **Seller**. Real estate taxes for the year in which the transaction is closed shall be the responsibility of the **Seller** and not prorated, as the **State** is not receiving fee simple title.

10. **MISCELLANEOUS CLOSING EXPENSES.** The **Seller** will pay any documentary stamp tax, real estate transfer fee or any similar charge due upon conveyance of title to the **State**. The **State** will pay recording fees.

11. **POSSESSION.** The **Seller** will deliver possession of the **Easement Area** to the **State** at closing subject to no leases, mortgages, liens or other reserved rights, and in the condition set forth below in Paragraph 12.

12. **CONDITION OF PROPERTY/ RISK OF LOSS.** The **Seller** shall not transfer or encumber any interests in the **Easement Area** prior to closing. The **Seller** shall keep the **Easement Area** in its current condition until closing and shall prevent and refrain from any use of the **Easement Area**, for any purpose or in any manner, that would diminish its value or adversely affect the **State's** intended uses.

    In the event of any adverse change in the condition of the **Easement Area**, whether said change is caused by **Seller** or by forces beyond **Seller's** control, the **State** may elect to a) refuse to accept the property; b) accept the Property, or a portion thereof, in which case there may be an equitable adjustment of the purchase price based on a change in circumstances; or c) require restoration of the Property to its condition at the time this Option was granted.

13. **RIGHT OF ENTRY AND INSPECTION.** The **State** and its agents shall have the right to enter upon the Property at reasonable times for surveying, engineering, conducting environmental inspections and assessments to detect hazardous or toxic substances, and other reasonable purposes related to this transaction. Based upon the results of the environmental inspections and assessments, or upon other conditions revealed to be unsuitable to the **State**, the **State** may elect to refuse to accept the **Easement Area**.

14. **REMEDIES.** In addition to any other remedy specifically set forth in this Option, the **State** has the right to enforce the provisions of this Option through an action for specific performance, injunctive relief, damages, contribution or any other available

proceedings in law or equity. The election of any one remedy available under this Option shall not constitute a waiver of any other available remedies.

15. **BINDING EFFECT.** This Option becomes effective when signed by the **Seller** and shall then apply to and bind the **Seller** and **Seller's** heirs, executors, administrators, successors, and assigns.

16. **COMPLETE AGREEMENT.** This Option constitutes the sole and complete agreement between the parties and cannot be changed except by written agreement. The **Ecosystem Enhancement Program** promotes the preservation, restoration and enhancement of streams and/or wetlands. Any representations, contracts or agreements created by or for the **Ecosystem Enhancement Program** are exclusive of this option unless specifically incorporated herein by exhibit.

17. **NO WAIVER.** No provision of the Option shall be deemed amended or waived unless such amendment or waiver is set forth in a writing signed by the **State**. No act or failure to act by the **State** shall be deemed a waiver of its rights hereunder, and no waiver in any one circumstance or of any one provision shall be deemed a waiver in other circumstances or of other provisions.

18. **ASSIGNMENT.** The **State** has the right to assign this Option. In the event of such assignment, the assignee will have all the rights, powers, privileges and duties held by the **State** pursuant to this Option.

IN TESTIMONY THEREOF, the parties have hereunto set their hands and seals, or if corporate have caused this instrument to be executed in their corporate names by their duly authorized representatives as of the dates indicated below.

Seller: DEMMING CO, LLC

By: James Lawton Haney, Jr.

James Lawton Haney, Jr.
Manager/member

NORTH CAROLINA
COUNTY OF ~~MCDOWELL~~ Rutherford

I, Rachel Rhodes Dowdle, a Notary Public in and for the County and State aforesaid, do hereby certify that James Lawton Haney, Jr., Seller, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 6 day of July, 2009.

Rachel Rhodes Dowdle
Notary Public

My commission expires:

February 4, 2014

RACHEL RHODES DOWDLE
NOTARY PUBLIC
My Comm. Expires 2-4-2014
RUTHERFORD COUNTY, NC

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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Filed For Registration: 08/17/2009 11:40:30 AM

Book: CRP 1000 Page: 402-406

Document No.: 2009003919

AGREEMENT 5 PGS 26.00

Recorder: LINDA C HARWOOD

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State of North Carolina, County of McDowell

Filed for registration and Duly Recorded this 17TH day of AUGUST 2009.

JANE B MCGEE, REGISTER OF DEEDS

Linda C. Harwood

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.