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TRANSYLVANIA CO, NC FEE \$94.00
 STATE OF NC REAL ESTATE EXTX
\$560.00
 PRESENTED & RECORDED:
 12-09-2009 12:10:44 PM
 CINDY M OWNBEY
 REGISTER OF DEEDS
 BY: D REE MCCALL
 DEPUTY REGISTER OF DEEDS
BK: DOC 522
PG: 129-154

Revenue Stamps: \$560.00

After recording mail to:
 Carolina Mountain Land Conservancy
 P.O. Box 2822
 Hendersonville, NC 28793

ORIGINAL

NORTH CAROLINA
 TRANSYLVANIA COUNTY

Parcel ID Number: 8563-88-0024
 8564-70-6256

DEED OF AGRICULTURAL CONSERVATION EASEMENT WHITMIRE FARM

This Grant of Agricultural Conservation Easement (hereinafter "Conservation Easement") is made this 9th day of December, 2009, by Jimmy E. and Yvonne B. Whitmire, husband and wife, whose primary residence is 806 Whitmire Road, Brevard, NC 28712 (hereinafter "Grantor") and Carolina Mountain Land Conservancy, a North Carolina nonprofit corporation, with an address of Post Office Box 2822, Hendersonville, NC 28793 (hereinafter "Grantee").

RECITALS

- A. Grantor is the sole owner in fee simple of the properties containing 66.51 acres of agricultural farmland more or less, located in the Cathey's Creek Township, Transylvania County, North Carolina, and being a portion of that tract more particularly described in instruments recorded in Book 195, Page 175 and Book 229, Page 85, Transylvania County Registry (hereinafter the "Property") and further described in Exhibit A attached hereto and by this reference incorporated herein.

- B. The Property is depicted by two plats of survey. One plat of survey is dated January 20, 2009 and titled "Whitmire Farm Offering Parcels A and B" and the other plat of survey is also dated January 20, 2009 and titled "Whitmire Farm Offering Parcel C," both plats of survey having been prepared by Stacy Kent Rhodes, NC PLS 2959, and recorded in Plat File 13, Slide 327, and Plat File 13, Slide 328, respectively, Transylvania County Registry (the two plats of survey described herein hereinafter collectively referred to as "Survey").
- C. Grantor and Grantee recognize an Agricultural Conservation Easement to be a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability." (N.C.G.S 106-744(b)).
- D. Grantor and Grantee have agreed to set aside the Property for the purposes of creating an Agricultural Conservation Easement.
- E. Grantee is a publicly supported, tax-exempt nonprofit organization and a "Qualified Organization" under Sections 501(c)(3) and 170(h), respectively, of the Internal Revenue Code, as amended, and the regulations promulgated thereunder (hereinafter "the Code"), and not a private foundation under Code §509, whose primary purpose is the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested and/or open condition (hereinafter "Qualified Organization").
- F. The Property possesses open space and agricultural and water resource values (collectively hereinafter referred to as the "Conservation Values") of great importance to the Grantor, Grantee and the general public. The Conservation Values include:
1. 56.9 acres, more or less, of farmland designated "prime" as defined by NRCS consisting of Dillard loam (formerly identified by NRCS as Delanco fine sandy loam), 2 – 6% slopes; Rosman fine sandy loam; Tate fine sandy loam, 6 to 15 percent slopes; and Toxaway soils; and 3.9 acres, more or less, of "Farmland of Statewide Importance" as defined by NRCS consisting of Evard loam (formerly identified by NRCS as Chester fine sandy loam), 25 – 45% slopes;
 2. scenic and productive agricultural fields; and
 3. 5,667 feet, more or less, of frontage on the French Broad River (hereinafter "the River");
- G. The protection of the agricultural, natural, and open space characteristics of the Property will yield significant public benefits (hereinafter "the Conservation Purposes") as evidenced by:
1. The protection of the soils for the production of food and fiber in accordance with the clearly delineated conservation polices;
 2. The protection of the rural character of the community and open space for the scenic enjoyment of the general public from State Route 1128, also known as Whitmire Road;
 3. The protection of the floodplain of the River and the capacity of the land to store floodwater;

4. The policies and purposes of the Clean Water Management Trust Fund, N.C.G.S. Section 113-145.1 et seq., which recognizes the importance of protecting riparian buffers in protecting and conserving surface water;
 5. The policies and purposes of the Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. Section 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 policies and purposes of the special North Carolina Conservation Tax Credit Program which encourages contributions of land for conservation purposes as set forth in N.C.G.S. Section 105-130.34 and Section 105-151.12 et seq.;
 7. The “Conservation, Farmland and Open Space Protection and Coordination Act,” enacted in June 2000, N.C.G.S. 113A-240, which provides that the state shall encourage, facilitate, plan, coordinate, and support appropriate federal, state, local, and private land protection efforts so that an additional one million acres of farmland, open space and conservation lands are permanently protected by December 31, 2009; and
 8. The receipt of a grant from the North Carolina Agricultural Development and Farmland Preservation Trust Fund for the purchase of this Conservation Easement.
- H. Grantor believes that with the careful use of conservation easements and Best Management Practices, the natural and agricultural resources, and beauty of the Property can be protected in a manner that permits continuing private ownership of the land and its subsequent agricultural use and enjoyment, and Grantor is willing to forego forever the right to fully exploit the financial potential of the Property by encumbering the Property with this Conservation Easement.
- I. Grantor and Grantee have the common purposes of conserving the Conservation Values described in Paragraph F above, and Grantor further intends that the Conservation Values of the Property be conserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with them, including, but not limited to, those land uses relating to agricultural and recreational activities existing at the time of this grant.
- J. The characteristics of the Property, including the Conservation Values of the Property, and the current use and state of improvement of the Property, are described in a report entitled Whitmire Farm Conservation Easement Baseline Documentation Report, dated August 2009, (hereinafter “Report”) prepared by Grantee for the Grantor, which consists of maps, reports, and onsite photographs, a summary of which is attached as Exhibit B to this Conservation Easement, and by reference incorporated herein. The Grantor worked with the Grantee to ensure that the Report is a complete and accurate description of the Property as of the date of this Conservation Easement. The Report will be used by the Grantor and Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this

Conservation Easement. However, the Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

- K. Grantor and Grantee believe and intend that this Conservation Easement meets the requirements for the qualifying "conservation purposes" described in Sections 170(h)(4)(A) (ii) and (iii) of the Code, as evidenced in Paragraph G above, and as shown by the Report. **Therefore, Grantor and Grantee assert that any governmental review of the compliance of this donation of a Conservation Easement with Section 170(h) is incomplete without reference to: (i) this deed of Conservation Easement, including Exhibits A and B, attached hereto and by reference incorporated herein; (ii) to the Report; and (iii) other evidence that Grantor and Grantee may offer.**
- L. Grantor owns the entire fee simple interest in the Property including the entire mineral estate subject to any liens, encumbrances, restrictions or covenants of record and all holders of liens or other encumbrances upon the Property have agreed to subordinate their interest in the Property to this Conservation Easement.
- M. 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 agricultural, horticultural, farming or forest use.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, the Grantors hereby unconditionally and irrevocably give, grant and convey forever and in perpetuity to the Grantee, its successors and assigns, and the Grantee hereby accepts, a Deed of Agricultural Conservation Easement of the nature and character and to the extent hereinafter set forth in, over, through and across the Property, together with the right to preserve and protect the Conservation Values thereof as described in the Recitals herein.

Grantors hereby voluntarily grant and convey to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual Conservation Easement, which must be defined by a metes and bounds description. Grantors promise that they will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants herein. Grantors authorize the Grantee to enforce these covenants in the manner described herein.

DEFINITIONS and ABBREVIATIONS

When used throughout this entire document, including the recitals above, the following words or phrases shall have the following meaning:

Agricultural Activities: the production or growing of crops, livestock, livestock products, fruits, vegetables, nursery products, or floral products including, but not limited to, corn, tobacco, hay, beef cattle, dairy cattle, poultry, sheep, bees, swine, apples, peaches, strawberries, sod, shrubs, greenhouse plants, and evergreens intended for use as Christmas trees; and equestrian activities relating to the stabling, breeding, raising, training, riding, care and sale of horses or other equine.

Agri-tourism: the act of visiting a working farm or any agricultural, horticultural or agribusiness operation for the purpose of enjoyment, education, or active involvement in the activities of the farm or operation.

Best Management Practice: a practice or combination of practices that are determined to be the most effective and practicable (including technological, economic, and institutional considerations) means of controlling point and nonpoint source pollutants at levels compatible with environmental quality goals.

Conservation Purposes: agricultural, horticultural, and forestland activities. *Source: NCDA*

Grantee: Carolina Mountain Land Conservancy

Grantor: Jimmy E. and Yvonne B. Whitmire, husband and wife, individually and collectively

NCDA: North Carolina Department of Agriculture and Consumer Services

NRCS: The Natural Resource Conservation Service of the United States Department of Agriculture

Parcel A: that parcel of land shown by the Survey as "Parcel A."

Parcel B: that parcel of land shown by the Survey as "Parcel B."

Parcel C: that parcel of land shown by the Survey as "Parcel C."

Property: 66.51 acres of agricultural farmland owned by the Grantor that is depicted by two plats of survey. One plat of survey is dated January 20, 2009 and titled "Whitmire Farm Offering Parcels A and B" and the other plat of survey is also dated January 20, 2009 and titled "Whitmire Farm Offering Parcel C," and recorded in Plat File 13, Slide 327, and Plat File 13, Slide 328, respectively, Transylvania County Registry.

Right of Way: the land area that is, or potentially may be, disturbed during the course of road construction and road maintenance.

SWCD: Soil and Water Conservation District

1. PURPOSES OF EASEMENT

The purposes of this Conservation Easement are to promote and encourage Agricultural Activities, preserve the rural character of the community, and permanently preserve and protect the Conservation Values of the Property by:

1. assuring the sustained, natural capacity of the Property and its soils to support Agricultural Activities;

2. allowing agricultural uses that are designed to assure a continuing, renewable, and long-term source of food and fiber;
3. ensuring that the floodplain of the River remains available for the storage of floodwater and the infiltration of rainfall;
4. maintaining the rural, open, and scenic characteristics of the Property.

2. 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, its representatives, successors, assigns, lessees, agents and licensees.

3. RESERVED RIGHTS, RESTRICTED USES, AND PROHIBITED USES

Grantor hereby voluntarily grants and conveys to the Grantee all development rights for the Property, except as otherwise reserved and provided by the terms of this Conservation Easement, that are now or hereafter inherent in the Property.

Subject to the terms and restrictions hereto, the Grantor reserves to and for Grantor and Grantor's successors, representatives and assigns, all customary rights and privileges of ownership, unless otherwise specifically prohibited herein. Grantor reserves certain rights including, but not limited to, the right to engage in or permit others to engage in uses of the Property that are not inconsistent with the purposes of this Conservation Easement. All rights reserved by Grantor are reserved for Grantor, its successors, representatives and assigns, and are considered to be consistent with the Conservation Purposes of this Conservation Easement.

Notwithstanding the foregoing, 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 Code or any regulations promulgated thereunder, or as a "qualified conservation easement" as described in Section 2031(c)(8)(B) of the Code or any regulations promulgated thereunder. The Property shall be maintained in its rural, scenic, open condition and restricted from any development or use that would impair or interfere with the Conservation Purposes of this Conservation Easement set forth above. Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Easement is prohibited.

3.1. **Agricultural Activities** Grantor may establish and conduct Agricultural Activities subject to the terms and conditions herein and consistent with the Conservation Purposes of this Conservation Easement.

3.1.A. Agricultural Activities must be conducted in accordance with a conservation plan prepared expressly for the Property by NRCS, Transylvania County SWCD, their successor agencies, or other qualified professional approved by Grantee (hereinafter "the Conservation Plan"). The Conservation Plan shall be

updated every fifteen (15) years, or at any time the primary type of agricultural operation on the Property changes, or at the time ownership of the Property changes. A goal of the Conservation Plan shall be to minimize sedimentation and contamination of the River due to the Agricultural Activities permitted herein through implementation of Best Management Practices. Grantor must provide a copy of the Conservation Plan to Grantee.

- 3.1.B. Livestock must be excluded from the River except where permitted by the Conservation Plan and after implementation of any Best Management Practices recommended therein. The purpose of this restriction is to prevent erosion and protect water quality from sedimentation and contamination.
- 3.1.C. Agricultural Activities must conform to the requirements of Paragraph 3.4.B and Paragraph 3.4.C.
- 3.1.D. If Agricultural Activities materially and adversely impair soils or the quality of surface water or groundwater, Grantee may condition the continuation of such activities upon the installation of protective measures including, but not limited to, fences, erosion controls, nutrient management measures, or other Best Management Practices recommended by SWCD or NRCS or their successor agencies.
- 3.1.E. Agricultural Activities must be undertaken in accordance with applicable federal, state, and local laws.
- 3.2. Chemical Use Grantor may use and safely store chemical herbicides, pesticides, rodenticides, fungicides, fertilizers, and other toxic agents, for the purpose of conducting Agricultural Activities and in accordance with the manufacturer's recommended application rates and procedures and applicable laws.
- 3.3. Improvements The construction, expansion or maintenance of any building, structure or other improvement must be in accordance with the terms, conditions and restrictions herein.
 - 3.3.A. *Agricultural Buildings & Improvements* – Grantor reserves the right to maintain, repair, replace and enlarge all existing agricultural buildings and improvements and construct, maintain, remove, and repair future agricultural buildings and other improvements for the sole purpose of conducting Agricultural Activities, including, but not limited to, the processing or sale of farm products, and must be consistent with sound agricultural practices and in accordance with the Conservation Plan. No building or structure permitted herein may be used for residential purposes. Except for the rights reserved herein, the construction of residential, commercial and industrial improvements is prohibited.
 - 3.3.B. *Construction of Non-Agricultural Improvements* – Grantor reserves the right to construct, repair, and replace non-residential buildings, structures, and other

improvements to exercise the rights permitted in Paragraphs 3.5.A, 3.5.B and 3.5.C subject to the terms, conditions, and limitations herein. The construction and/or placement of improvements must be consistent with the Conservation Purposes of this Conservation Easement. The location, description and purpose of the improvement along with architectural plans, landscaping plan, erosion control plan and other relevant information must be approved in writing by Grantee prior to the commencement of construction or placement, which approval may not be unreasonably withheld or delayed. The intent of this requirement is to protect the Conservation Values. Notwithstanding Paragraphs 3.4.B and 3.4.C, Grantor reserves the right to construct solely the following non-agricultural improvements within the Riparian Management Zone defined below and necessary access to the same through the Erosion Control Zone defined below:

- 3.3.B.1. Canoe Access Grantor may construct, repair, and replace two (2) canoe access sites with launches and chutes.
- 3.3.B.2. Viewing/Fishing Platforms Grantor reserves the right to construct, repair, and replace two (2) viewing/fishing platforms.
- 3.3.B.3. Picnic Shelter Grantor reserves the right to construct anywhere on the Property an open-sided, covered shelter that occupies a surface area on the ground no larger than six hundred (600) square feet (hereinafter "the Picnic Shelter). Grantor reserves the right to extend utilities to the Picnic Shelter, including installation of an attached, enclosed restroom facility, detached privy, or portable toilet. Grantor reserves the right, subject to applicable governmental regulations, to pour a concrete foundation for the Picnic Shelter. Grantor agrees and covenants that if Grantor elects to construct the Picnic Shelter in either the Erosion Control Zone or the Riparian Management Zone, then Grantor, prior to commencing construction, will obtain Grantee's written approval of erosion control measures to be implemented before and after construction, including management of storm water run-off from the roof of the Picnic Shelter, which written approval must not be unreasonably withheld or delayed. The purpose of Grantee's review of erosion control measures is to prevent sedimentation in the River.

3.3.C. *Roads and Trails*

- 3.3.C.1. Grantor may keep open and passable all roads and trails existing on the Property at the time of this Conservation Easement, the general locations of which are shown on the survey and in the Report (hereinafter "Existing Road(s)"). Furthermore, Grantor reserves the right to improve any Existing Road on Parcel A, including paving of the same. Grantor reserves the right to widen any

Existing Road on Parcel A up to the minimum width required by governmental regulations to enable use of the Existing Road on Parcel A to serve improvements and uses of lands adjacent to the Property. In addition to the Existing Road on Parcel A, Grantor reserves the right to construct and if desired to pave a second road on Parcel A that connects to Whitmire Road, State Route 1128, either on or off the Property, for the sole purpose of enabling Grantor to create a circular driveway to serve the land owned by Grantor as of the date of this deed of Conservation Easement that is adjacent to Parcel A but not part of the Property. Grantor reserves the right to construct and maintain future unpaved farm roads necessary and incidental to carrying out the improvements and uses permitted on the Property by this Conservation Easement, subject to the terms, conditions and restrictions herein. The location of any future road construction must be approved in writing by Grantee prior to the commencement of construction, which approval may not be unreasonably withheld or delayed, the intent of this requirement being to protect the Conservation Values of the Property. All future road construction must be sited at least fifty (50) feet from the top of the bank of the River, with the sole exception of any road constructed to gain access to the bank of the River. Notwithstanding the terms, conditions, and restrictions of Paragraphs 3.4.B and 3.4.C, Grantor reserves the right to construct future roads for the purpose of gaining access to the bank of the River, in which case Grantor agrees and covenants to minimize the length of road construction within fifty (50) feet of the top of the bank of the River as much as possible, so as to achieve the most direct route to the river bank. The width of the Right of Way disturbed for maintenance of Existing Roads and also for construction and maintenance of future roads on Parcel B and C may not exceed twenty-five (25) feet. The width of the Right of Way disturbed for maintenance of Existing Roads and also for construction and maintenance of future roads on Parcel A may not exceed sixty (60) feet.

- 3.3.C.2. Grantor reserves the right to create and maintain a reasonable number of hiking and horseback riding trails on the Property so long as the network of trails does not degrade the Conservation Values of the Property and does not encroach on the Riparian Management Zone with the sole exception of a trail constructed to gain access to the bank of the River. Notwithstanding the terms, conditions, and restrictions of Paragraphs 3.4.B and 3.4.C, Grantor reserves the right to create and maintain trails for gaining access to the bank of the River, in which case Grantor agrees and covenants to minimize the length of trail constructed within the Riparian Management Zone.

- 3.3.D. *Utilities* – Grantor may construct, install, repair and replace utilities without permission of Grantee to serve improvements permitted herein. Grantor also reserves the right to construct a well or wells to serve improvements and uses of the Property, along with aboveground appurtenances including transmission lines and conduits.
- 3.3.E. *Towers* – Grantor reserves the right to construct utility towers, cellular or digital telephone towers, microwave relay stations, satellite towers, or related or similar structures of a commercial nature on the Property, including structures and related equipment for harnessing the energy of the wind for productive uses including, but not limited to, the generation of electricity, subject to limitation that prior to construction Grantor must obtain the written permission of Grantee to erect any structure described in this paragraph. The sole purpose of obtaining Grantee’s written permission is to insure that any such structure does not impair the view from Whitmire Road, State Route 1128, and is consistent with the objectives of this Conservation Easement. Notwithstanding the limitations and restrictions of Paragraph 3.4.C, Grantor reserves the right to construct windmills for the purpose of pumping water or generating electricity for consumption by the Grantor.
- 3.3.F. *Cumulative Limit on Area of Impervious Surfaces* – The combined surface area on the ground of all impervious surfaces including buildings, structures, footings of towers, and roads shall not exceed 6.65 acres of the Property. The purpose of this restriction is to protect the Conservation Values of the Property.

3.4. Water Resources

- 3.4.A. Grantor may alter the land in furtherance of wetland or riparian restoration activities so long as such activities to restore natural hydrology, or to enhance wetlands or other hydric habitat, are performed in accordance with a habitat improvement plan prepared by a biologist, consultant, or other qualified professional, that is approved in writing by the Grantee and complies with all applicable laws
- 3.4.B. In order to provide a vegetated area along the River, there shall be no impervious surface, plowing, future road construction, structures other than fences and gates, nor extermination of the vegetation within that area extending from the edge of the rooted mat of vegetation along the River to a width of ten (10) feet for the entire length of the Property along the River (the “Riparian Management Zone”) except as necessary for the exercise of those rights reserved by the Grantor herein at Paragraphs 3.3.B.1, 3.3.B.2, 3.3.B.3, 3.3.C.1, 3.3.C.2, and 3.4.D, or for implementing Best Management Practices. Notwithstanding the terms, conditions and restrictions of Paragraph 3.6, Grantor reserves the right to maintain the Riparian Management Zone by cutting and pruning vegetation in such manner that permits the perpetual growth of a dense stand of woody plants, including shrubs and trees. Grantor reserves the right to cut trees within the Riparian Management Zone, but

Grantor shall not take action intended to prevent the regeneration of trees and shrubs within the Riparian Management Zone.

- 3.4.C. Grantor reserves the right to disturb the soil in that area having a width of twenty (20) feet and lying adjacent to the Riparian Management Zone (hereinafter "Erosion Control Zone"), but subject to the limitation that the purpose of any such soil disturbance within the Erosion Control Zone is limited to the establishment, improvement, or replacement of a ground cover crop; or to exercise of rights defined in Paragraphs 3.3.B.1, 3.3.B.2, 3.3.B.3, 3.3.C.1, 3.3.C.2, 3.3.E, and 3.4.D or implementing Best Management Practices.
- 3.4.D. Notwithstanding Paragraph 3.4.B, Grantor may draw water from the River to support Agricultural Activities, and to construct, install and maintain pumps, conduits, transmission lines and other facilities for conveying water from the River to elsewhere on the Property for use by Grantor or Grantor's lessees. Grantor reserves the right to construct, install, and maintain the requisite utilities for operating such facilities, and roads and trails for gaining access to the improvements permitted in this Paragraph 3.4.D, subject to the terms, conditions, exceptions and restrictions at Paragraphs 3.3.C.1 and 3.3.C.2.
- 3.5. Industrial & Commercial Use Except for the uses and activities expressly permitted in this Paragraph 3.5, industrial and commercial activities are prohibited on the Property.
 - 3.5.A. *Agriculture-Related Commercial Activities* – Grantor reserves the right to establish and conduct agriculture-related commercial activities including, but not limited to, the storage and sale of farm produce and related products, processing and packaging of farm products, farm machinery repair, agricultural tourism, and saw mills anywhere on the Property, subject to applicable federal, state, and local laws and regulations.
 - 3.5.B. *Commercial Activities not Related to Agriculture* – Grantor reserves the right to establish and operate commercial activities not related to agriculture only after having obtained Grantee's prior, written approval, which must not be unreasonably withheld or delayed. Any structure used for a commercial activity not related to agriculture and that is heated or equipped with any type of human waste disposal system requiring connection to a well or water system must be located on Parcel A, and not on Parcel B or Parcel C. The purpose of the requirement to obtain Grantee's approval is to ensure that any such business or enterprise is consistent with the Conservation Purposes, does not substantially impair the Conservation Values, and does not materially impede use of Parcel A or the Property as a whole for Agricultural Activities.
 - 3.5.C. *Tourism* – Grantor reserves the right to establish and operate any commercial enterprise for the purpose of furnishing hunting, fishing, hiking, nature study, historic tours, horseback riding and similar recreational uses of the Property, or lease the Property for such activities. Any structure used for a commercial

activity not related to agriculture and that is heated or equipped with any type of human waste disposal system requiring connection to a well or water system must be located on Parcel A, and not on Parcel B or Parcel C.

- 3.6. Timber Harvest Grantor may cut timber or remove, destroy or otherwise manage trees upon the Property, except as such cutting, destruction or removal of trees is limited by Paragraph 3.4.B.
- 3.7. Recreational Use Grantor may engage in and permit others to engage in recreational uses of the Property including, but not limited to, hiking, camping, picnicking, horseback riding, bicycling, lawful hunting and fishing, motorized vehicles and other recreational uses that require no buildings, facilities, surface alteration or other development of the land.
- 3.8. Excavation Grantor may excavate only as necessary to exercise the rights expressly reserved herein and for the prevention of erosion and/or flooding as permitted by local, state and federal law and regulations. There shall be no other excavation or alteration to the topography allowed on the Property.
- 3.9. Signage No signs or billboards or other advertising displays are allowed on the Property, except that signs whose placement, number and design do not significantly diminish the scenic character of the Property may be displayed to identify the name and address of the Property or the names of persons living on the Property; roads or trails, the Conservation Values of the Property, to give directions; to advertise or regulate reserved rights on the Property; to proscribe rules, use, and regulations for recreational use of the protected Property; to advertise the sale of farm products; to advertise the Property for sale or rent; to identify business enterprises located on the Property; and to post the Property to control trespassing.
- 3.10. Vehicular Use Grantor reserves the right to use motorized vehicles in the exercise of rights reserved herein so long as such use does not impede the use of the Property for Agricultural Activities or impair the Conservation Values.
- 3.11. Subdivision Neither Parcel A, Parcel B nor Parcel C may be divided, subdivided or partitioned. Each of the three parcels must be conveyed as an entity.
- 3.12. Septic Drain Field Grantor reserves the right to install, maintain and replace two (2) septic drain fields on Parcel A. One of the two drain fields permitted herein exists as of the date of the grant of this Conservation Easement. This septic drain field currently serves no more than one (1) single family residential dwelling (hereinafter "SFRD"), which is not located on the Property, and use of this septic drain field, and any replacement thereof, is limited to the service of the existing SFRD, or in the event the existing SFRD is no longer habitable, this drain field may serve another structure not located on the Property, or this drain field may serve a structure located on the Property. The other drain field shall serve only structures located on the Property. The square footage of land surface required for the normal functioning of any septic drain field permitted herein, as determined by applicable public health regulations,

may not exceed ten thousand (10,000) square feet for each drain field, which includes any requirement for additional land to be reserved for an alternative drain field upon the expiration of an active drain field.

- 3.13. Mineral Use, Excavation, Dredging There shall be no filling, excavation, dredging, mining, drilling, removal of topsoil, sand, gravel, rock, peat, minerals or other materials; and no change in the topography of the land in any manner except as necessary for the purpose of combating erosion or flooding, or as is incidental to any conservation management or Agricultural Activities. Grantor reserves the right to ditch and to dredge for the purpose of installing, repairing or maintaining drainage ditches needed to conduct Agricultural Activities as permitted by the Conservation Plan and applicable federal, state, and local laws and regulations.
- 3.14. Trash and Hazardous Waste No radioactive or hazardous waste shall be placed, stored, dumped, buried or permitted to remain on the Property. Grantor reserves the right to store for no more than twelve (12) months on the Property trash, refuse, rubbish, debris, junk or waste resulting from Agricultural Activities on the Property prior to removing said items for permanent disposal elsewhere. Grantor reserves the right to store agricultural products, agricultural byproducts (including the composting of biodegradable material for on-farm use) and agricultural equipment on the Property indefinitely, including, but not limited to, non-operational machinery and engines, so long as the storage of the aforesaid items on the Property is in accordance with all applicable federal, state and local laws and regulations, and said storage does not impair the Conservation Values of the Property.
- 3.15. Natural Resource Restoration and Enhancement Activities Notwithstanding any terms contained within this Conservation Easement, Grantor may engage or contract others to engage in any activity designed to repair, restore, or otherwise enhance the natural resources found or once present on the Property, so long as such uses do not significantly diminish or impair the Conservation Values of the Property.
- 3.16. Prohibited Activities and Adverse or Inconsistent Use Activities or land uses that are inconsistent with the Conservation Purposes, or the protection of the Conservation Values, are strictly prohibited. Furthermore, the grant of any easements or restrictions on use that might diminish or impair the economic viability of Agricultural Activities or agricultural productivity of the Property or otherwise diminish or impair the Conservation Values of the Property is prohibited.

4. RIGHTS RESERVED TO GRANTEE, ENFORCEMENT AND REMEDIES

- 4.1. Enforcement To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the Grantor, all subsequent owners, heirs and assigns to restore such areas or features of the Property that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor in writing (hereinafter

"First Notice") of such breach. The Grantor shall have thirty (30) days after receipt of the First Notice to either correct the conditions constituting such breach or to pursue mediation as described in Paragraph 6.10 of this Conservation Easement. In the event that mediation or voluntary compliance is not agreed upon within thirty (30) days of receipt of First Notice, the Grantee shall give written notice to Grantor of such violation (hereinafter "Second Notice") and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured. If the Grantor fails to agree to mediation or to cure the breach within thirty days after receipt of the Second Notice 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 Property by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; and (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.

- 4.2. Enforcement by the NCDA In the event that Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Commissioner of Agriculture, the said Commissioner of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the Conservation Easement through any and all authorities available under Federal and State law. In the event that Grantee attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this Conservation Easement without the prior consent of the Commissioner of Agriculture and payment of consideration to the State of North Carolina, then, at the option of the Commissioner of Agriculture, all right, title, and interest in this Conservation Easement shall become vested in the State of North Carolina.
- 4.3. Right of Entry and Inspection Grantee, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the Property once a year for the purpose of inspecting the Property to determine if the Grantor, Grantor's representatives, or assigns are complying with the terms, conditions and restrictions of this Conservation Easement. Grantee may enter the Property without giving reasonable notice to the Grantor whenever Grantee has reasonable evidence of a violation; in this event Grantee will notify Grantor of the reasonable evidence prompting Grantee's entry of the Property in accordance with paragraph 6.7 below.

- 4.4. 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 Property 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.
- 4.5. Costs of Enforcement Where a Grantor has admitted to, or been found by a court to have committed a violation, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, any court costs, attorneys fees, and any other costs of remediation necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor. In any case where a court finds no such violation has occurred, each party shall bear its own costs.
- 4.6. No Waiver The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. Any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or of any other term of this easement or of Grantee's rights.

5. DOCUMENTATION AND TITLE

- 5.1. Property Condition The parties acknowledge that the Property is of the condition as described in Exhibit B, and easements and rights of way of record.
- 5.2. Grantor's Title Warranty The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement on the Property; that there is legal access to the Property, that the Property is free and clear of any and all encumbrances, except easements of record, none of which would nullify, impair or limit in any way the terms or effect of this Conservation Easement; Grantor shall disclose any encumbrances on the Property to the Commissioner of Agriculture and shall defend its title against the claims of all persons whomsoever, and Grantor covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.
- 5.3. Baseline Documentation Report The parties acknowledge that the Report, a copy of which is on file at the offices of Grantee, accurately establishes the uses, structures, Conservation Values and condition of the Property as of the date hereof.

6. MISCELLANEOUS

- 6.1. Subsequent Transfers Grantor agrees for itself, its successors, representatives and assigns, to notify Grantee in writing of the names and addresses of any party to whom

the Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Grantor agrees to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which Grantor transfers or divests of any interests, including leasehold interests, in all or a portion of the Property. Failure of Grantor to comply with this section shall not impair the validity of this Conservation Easement as to successor owners or limit its enforceability in any way, nor shall any Grantor's failure to comply with this section constitute a default under this Conservation Easement.

- 6.2. Transfer of Conservation Easement Subject to the contingent rights of the State of North Carolina and with timely written notice and approval of the North Carolina Department of Agriculture and Consumer Services, the Grantee shall have the right to transfer this Conservation Easement to any public agency or private nonprofit organization that, at the time of transfer, is a qualified organization under 26 U.S.C. §170(h) of the Internal Revenue Code, as amended and under NCGS 121-34 et seq., provided the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. As a condition of such transfer, Grantee shall require that the Conservation Purposes intended to be advanced hereunder shall be continued to be carried out. If the Grantee ever ceases to exist or no longer qualifies as a Qualified Organization under 26 U.S.C. §170(h) of the Internal Revenue Code, or applicable state law, a court with jurisdiction shall transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed by this Conservation Easement.

6.3. Conservation Purpose

- 6.3.A. Grantee, for itself, its successors and assigns, agrees that this Conservation Easement shall be held exclusively for Conservation Purposes.
- 6.3.B. 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, the organization receiving the interest will be a Qualified Organization, 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.

- 6.4. Existing Responsibilities of Grantor and Grantee Not Affected Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantee or the State of North Carolina, or in any way to affect any existing obligation to the Grantor as owner of the Property. Among other things, this shall apply to:

- 6.4.A. *Taxes* – Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.
- 6.4.B. *Upkeep and Maintenance* – Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.
- 6.5. 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 et seq. 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 Code.
- 6.6. Recording Grantee shall record this instrument and any amendment hereto in timely fashion in the official records of Transylvania County, North Carolina, and may re-record it at any time as may be required to preserve its rights.
- 6.7. Notices Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first-class mail to the Grantor, Grantee, and NCDA, respectively, at the following addresses, unless a party has been notified in writing by the other of a change of address:

To Grantor:
Jimmy & Jackie Whitmire
806 Whitmire Road
Brevard, NC 28712

To Grantee:
Carolina Mountain Land Conservancy
P.O. Box 2822
Hendersonville, NC 28793

North Carolina Department of Agriculture and Consumer Services:
NC ADFP Trust Fund
2 West Edenton Street
Raleigh, NC 27601

- 6.8. Amendments In furtherance of the Conservation Purposes of this Conservation Easement, neither Grantor nor Grantee contemplate the amendment of this Conservation Easement except in the event of an error in drafting jointly acknowledged by both Grantor and Grantee, or other rare, unlikely circumstances. If circumstances arise such that an amendment to, or modification of, this Conservation Easement would be appropriate, Grantor and Grantee are free to jointly amend this Conservation Easement, provided that no amendment shall be allowed that will affect

the qualification of this Conservation Easement as a qualified conservation contribution or the status of Grantee under any applicable laws, including Section 170(h). Grantor and Grantee are free to jointly amend this Conservation Easement to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of this Conservation Easement or affects the perpetual duration of this Conservation Easement. Such amendment(s) require the written consent of Grantor, Grantee and the Commissioner of Agriculture, and shall be effective upon recording in the public records of Transylvania County, North Carolina. Grantee shall give notice of any amendment to, and secure approval from, NCDA.

- 6.9. Grantor's Environmental Warranty The Grantor warrants, represents and covenants to the Grantee that a) it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, and at all times hereafter will continue to be, in full compliance with all federal, state and local environmental laws and regulations, and (b) as of the date hereof there is no environmental condition existing on the Property that may prohibit or impede use of the Property for the purposes set forth in the Recitals and the Grantor will not allow such uses or conditions.
- 6.10. Mediation If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose or terms of this Conservation Easement that they cannot resolve through unassisted consultation between themselves, and Grantor agrees not to proceed with, or shall discontinue, the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing upon the other. Within ten (10) days of the receipt of such request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then within fifteen (15) days of receipt of the initial request each party shall choose a representative, and the representatives shall meet within seven (7) days of their appointment to choose a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:
- 6.10.A. *Purpose* – The purposes of the mediation are to (a) promote discussion between the parties; (b) assist the parties in developing and exchanging pertinent information concerning issues in dispute; and (c) assist the parties in developing proposals that enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this Conservation Easement.
- 6.10.B. *Participation* – The mediator may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of both parties having settlement authority will attend sessions as requested by the mediator.

- 6.10.C. *Confidentiality* -- All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.
- 6.10.D. *Time Period* -- Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.
- 6.10.E. *Costs* -- The cost of the mediator shall be borne equally by Grantor and Grantee. The parties shall bear their own expenses, including attorney's fees, individually.
- 6.10.F. *Decisions* -- No verbal discussions arising from mediation are binding unless they are written and signed.
- 6.11. 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. The party(ies) hereto intend this document to be an instrument executed under seal. If any party is an individual, partnership or limited liability company, such party hereby adopts the word "SEAL" following his/her signature and the name of the partnership or limited liability company as his/her/its legal seal. The Recitals set forth above and the Exhibits attached hereto are incorporated herein by reference.
- 6.12. Liability and Indemnification The Grantor agrees to indemnify and hold Grantee and the State of North Carolina harmless from any and all costs, claims or liability, including but not limited to reasonable attorneys' fees arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the deliberate act or negligence of Grantee or its agents, in which case liability shall be apportioned accordingly.
- 6.13. Interpretation This Conservation Easement shall be construed and interpreted under the laws of the State of North Carolina, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes sought to be protected herein.
- 6.14. Parties Every provision of this Conservation Easement that applies to the Grantor or to the Grantee shall likewise apply to their respective heirs, executors, administrators,

representatives, assigns, lessees and grantees, and all other successors in interest herein.

- 6.15. No Extinguishment Through Merger Grantor and Grantee herein agree that should Carolina Mountain Land Conservancy come to own all or a portion of the fee interest in the Property, (a) Carolina Mountain Land Conservancy as successor in title to Grantor shall observe and be bound by the obligations of Grantor and the restrictions imposed upon the Property by this Conservation Easement, as provided in Section 3; (b) this Conservation Easement shall not be extinguished, in whole or in part, through the doctrine of merger in view of the public interest in its enforcement; and (c) Carolina Mountain Land Conservancy as promptly as practicable shall assign the Grantee interests in this Conservation Easement of record to another holder in conformity with the requirements of this paragraph, 6.15. Any instrument of assignment of this Conservation Easement or the rights conveyed herein shall refer to the provisions of this paragraph, 6.15, and shall contain language necessary to continue it in force.
- 6.16. Subsequent Liens No provisions of this Conservation Easement shall be construed as impairing the ability of Grantors to use the Property for collateral or borrowing purposes, provided that any mortgage or lien arising therefrom shall be subordinated to this Conservation Easement.
- 6.17. Procedure in the Event of Condemnation or Eminent Domain Grantor and Grantee recognize that the partial donation and partial sale of this Conservation Easement gives rise to a property right, immediately vested in the Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property prior to the restrictions imposed by the Conservation Easement. Accordingly, if any condemnation or eminent domain action shall be taken, on all or part of the Property, by any authorized public authority, said authority shall be liable to the Grantee for the value of the property right vested in the Grantee at the time of the signing of this Conservation Easement.

If condemnation or a taking by eminent domain of a part of the Property or the entire Property by a public authority renders it impossible to fulfill any of the conservation purposes of this Conservation Easement on all or part of the Property, the Conservation Easement may be terminated or modified accordingly through condemnation proceedings. If the Conservation Easement is terminated or modified and any or all of the Property is sold or taken for public use, then, as required by Treas. Reg. 1.170A-14(g)(6), the Grantee shall be entitled to the proportionate value of the Conservation Easement which has been predetermined at 50 (fifty) percent of the Property's unrestricted value. The Grantee shall use its proceeds consistently with the general conservation purposes of this Conservation Easement. If this Conservation Easement is extinguished or terminated, the North Carolina Department of Agriculture and Consumer Services, and Grantee shall receive its proportional share of the Conservation Easement value at the time of termination. Those proportional shares of the Conservation Easement value are as follows: 28.78 percent

to the Grantee, and 71.22 percent to the North Carolina Department of Agriculture and Consumer Services.

- 6.18. Procedure in the Event of Termination of Conservation Easement If it determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill the conservation purposes of this Conservation Easement, a court with jurisdiction may, at the joint request of both the Grantor(s) and the Grantee and with prior consent of North Carolina Department of Agriculture and Consumer Services as provided herein, terminate or modify this Conservation Easement in accordance with applicable state law. If the Conservation Easement is terminated and the Property is sold then as required by Treas. Reg. 1.170A-14(g)(6), the Grantee shall be entitled to 50 (fifty) percent of the gross sale proceeds or condemnation award representing an amount equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. The Grantee and the North Carolina Department of Agriculture and Consumer Services shall divide the resulting proceeds in accordance with the percentage of the purchase price of the Conservation Easement that each party contributed. The percentages are 28.78 percent for the Grantee and 71.22 percent for the North Carolina Department of Agriculture and Consumer Services. The Grantee shall use its proceeds consistently with the general conservation purposes of this Conservation Easement.
- 6.19. No Public Access Unless otherwise specifically set forth in this Conservation Easement, nothing herein shall convey to or establish for the public a right of access over the Property or on the Property.
- 6.20. Subsequent Easements & Restrictions on the Property The grant of any easements or use restrictions that might diminish or impair the agricultural viability or productivity of the Property or otherwise diminish or impair the conservation values of the Property is prohibited.

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TO HAVE AND TO HOLD unto THE CAROLINA MOUNTAIN LAND CONSERVANCY, 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 representatives, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

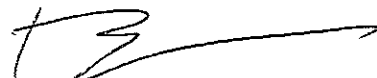
IN WITNESS WHEREOF, Grantor and Grantee, by authority duly given, have hereunto caused these presents to be executed in such form as to be binding, the day and year first above written.


GRANTOR: Jimmy E. and Yvonne B. Whitmire, husband and wife

 (Seal)
Jimmy E. Whitmire

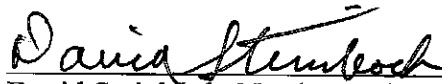
 (Seal)
Yvonne B. Whitmire

GRANTEE: Carolina Mountain Land Conservancy, a North Carolina Non-profit Corporation, and the State of North Carolina, by and through NCDA

 (Seal)
Richard S. Merrill
Board President

 (Seal)
Kieran Roe
Assistant Board Secretary

(Corporate Seal)

 (Seal)
David Steinbock, North Carolina Department
of Agriculture and Consumer Services
Legal Specialist



STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, a Notary Public, of said State and County, do hereby certify that Jimmy E. Whitmire and Yvonne B. Whitmire, husband and wife, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes contained therein.

WITNESS my hand and Notarial Seal, this the 9th day of December 2009.

Suzanne Gore, Notary Public

Suzanne Gore

Printed Name

My Commission Expires: 10-17-2011



STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a Notary Public of said State and Buncombe County do hereby certify that Kieran Roe personally appeared before me this day and acknowledged that he is the Assistant Board Secretary of the Carolina Mountain Land Conservancy, a North Carolina non-profit corporation, and that by authority duly given and as act of the corporation the foregoing instrument was signed in its name by its Board President, Richard S. Merrill, sealed with its corporate seal and attested by himself as its Assistant Board Secretary.

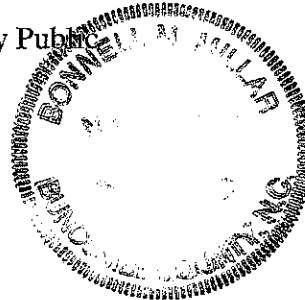
WITNESS my hand and Notarial Seal this the 8th day of December, 2009.

Bonnell M. Millar, Notary Public

Bonnell M. Millar

Printed Name

My Commission Expires: 11-18-2012



STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, a Notary Public, of said State and County, do hereby certify that David Steinbock personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes contained therein.

WITNESS my hand and Notarial Seal, this the 9th day of December 2009.

Suzanne Gore, Notary Public

Suzanne Gore
Printed Name

My Commission Expires: 10-17-2011

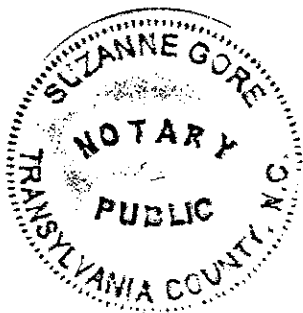


EXHIBIT A LEGAL DESCRIPTION OF THE PROPERTY

ALL of those approximately 21.79 acres of land lying and being in Catheys Creek Township, Transylvania County, North Carolina, as surveyed Stacy Kent Rhodes, P.L.S. No. L-2959 and labeled as "Parcel A" and "Parcel B" as depicted on a plat thereof titled "Plat of Survey for Carolina Mountain Land Conservancy Whitmire Farm Offering Parcels A and B," dated January 20, 2009, and recorded in Plat File 13, Slide 327, Transylvania County, North Carolina Registry, and also

ALL of those approximately 44.72 acres of land lying and being in Catheys Creek Township, Transylvania County, North Carolina, as surveyed Stacy Kent Rhodes, P.L.S. No. L-2959 and labeled as "Parcel C" as depicted on a plat thereof titled "Plat of Survey for Carolina Mountain Land Conservancy Whitmire Farm Offering Parcel C," dated January 20, 2009, and recorded in Plat File 13, Slide 328, Transylvania County, North Carolina Registry;

TOGETHER WITH the right of ingress, egress and regress over, upon and across the Property, including specifically the right to use all roads depicted on the Survey.

EXHIBIT B CONSERVATION EASEMENT BASELINE DOCUMENTATION REPORT SUMMARY

(To satisfy Section 1.170A-14(g)(5) of the federal tax regulations)

This is a summary of the uses, structures, conservation values and condition of the protected Easement Area as of August 2009, which has been prepared by the Carolina Mountain Land Conservancy. A copy of the complete Whitmire Farm Conservation Easement Baseline Documentation Report is on file at the offices of the Carolina Mountain Land Conservancy.

Donor Names: Jimmy & Yvonne Whitmire
Address: 806 Whitmire Road, Brevard, NC 28712
Property Location: Cherryfield Community
Acres: 66.51
Road: Whitmire Road, State Route 1128
Township: Catheys Creek
County: Transylvania
Tax Parcel ID: 8563-88-0024, 8564-70-6256
Deed Book/Page: Book 195, Page 175 and Book 229, Page 85,

LAND DESCRIPTION

Topography: mainly floodplain, with Parcel A situated on a hill slope.

Soils: 56.9 acres, more or less, of farmland designated "prime" as defined by NRCS consisting of Dillard loam (formerly identified by NRCS as Delanco fine sandy loam), 2 – 6% slopes; Rosman fine sandy loam; Tate fine sandy loam, 6 to 15 percent slopes; and Toxaway soils; and 3.9 acres, more or less, of "Farmland of Statewide Importance" as defined by NRCS consisting of Evard loam (formerly identified by NRCS as Chester fine sandy loam), 25 – 45% slopes;

Watersheds: French Broad River

Streams: 5,667 feet, more or less, of frontage on the French Broad River

Natural Community Types: riparian community

PROPERTY CONDITION AND HISTORY

Buildings, Structures and Improvements on the Property: utility lines and poles, fences, ground silo, three barns, riding ring, ditches, well, cattle watering stations

Roads/Trails: farm roads; State Route 1128, also known as Whitmire Road

Past Land Use/Disturbance: logging, farming

In compliance with Section 1.170A-14(g)(5) of the federal tax regulations, this natural resources inventory is an adequate representation of the property at the time of the conservation easement donation.

 12/9/09
Jimmy E. Whitmire Date

 12/9/09
Kieran Roe for Grantee Date
Title: Executive Director

 12/9/09
Yvonne B. Whitmire Date