

Prepared by: Michael C. Frue, Buncombe County
Senior Staff Attorney

Return to: Town of Black Mountain

Stamps: \$ 0.00

STATE OF NORTH CAROLINA)
)
COUNTY OF BUNCOMBE)

NON-WARRANTY DEED

THIS NON-WARRANTY DEED, made this the ____ day of October, 2014, by and between County of Buncombe, a body politic and corporate, party of the first part, herein sometimes referred to as "Grantor", and Town of Black Mountain, a North Carolina municipal corporation, 160 Midland Avenue, Black Mountain, NC 28711, party of the second part, herein sometimes referred to as "Grantee":

WITNESSETH:

WHEREAS, Buncombe County owns certain property located at 125 East Street in Black Mountain identified as parcel #: 0710-41-9166 and described in deed recorded in Book 2297, Page 724, Buncombe County Registry;

WHEREAS, as part of the Federal Emergency Management Agency ("FEMA"), Hazard Mitigation Grant Program, the North Carolina Division of Emergency Management provided grant assistance to Buncombe County in order that it might acquire the property and demolish the house located there and the County did so;

WHEREAS, the Town of Black Mountain has provided a letter of intent indicating that the Town wishes to accept the property, and pledges to accept and enforce the deed restrictions, a copy of which is attached hereto, and the Federal Insurance and Mitigation Division of FEMA has approved the transfer;

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-11 and §160A-274 Buncombe County may convey real property to other governmental units; and

WHEREAS, pursuant to Resolution # _____, the Buncombe County Board of Commissioners authorized the transfer by non-warranty deed to the Town of Black Mountain of all its

right, title and interest in and to the property described in deed recorded in Book 2297, Page 724, Buncombe County Registry.

NOW, THEREFORE, by authority provided in N.C. Gen. Stat. §153A-11 and §160A-274 and pursuant to Resolution # _____, said County of Buncombe, by and through its Chairman of the Buncombe County Board of Commissioners, does hereby give, grant, bargain, sell, and convey unto the Grantee, its successors and assigns, in fee simple, all of that certain lot or parcel of land situated in the Town of Black Mountain, Buncombe County, North Carolina, and being more particularly described as follows:

BEGINNING on a stake on the North margin of a road and runs in the bank of Flat Creek; thence with said margin of said road, South 89° West 89.1 feet to a stake in the East margin of a 15 foot alley; thence with said margin of said alley, North 45 feet to a stake in the line of Lot No. 8; thence with said line of lot No. 8, south 86° 45' East 113.4 feet to a stake in the bank of Flat Creek; thence with the bank of flat Creek, South 34° West 48.6 feet to the BEGINNING. Being Lot No. 9 as laid down on a plat of the property of J.W. McWilliams, made by A.A. Hamlet, Surveyor, April, 1913, and recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 154 at Page 200.

AND BEING the same property and subject to the same perpetual deed restrictions set forth and described in deed recorded in Book 2297, Page 724 Buncombe County, North Carolina Registry. Said deed restrictions are set forth in Exhibit "A" attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land together with all rights, privileges and appurtenances thereunto belonging unto the said Grantee in fee simple.

The Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

IN WITNESS WHEREOF, County of Buncombe has caused this instrument to be executed by its Chairman, attested to by its Clerk, and its seal to be hereunto affixed all by authority duly given by resolution referenced above this the day and year first above written.

COUNTY OF BUNCOMBE

By: _____
David Gantt, Chairman

ATTEST:

Kathy Hughes, Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, Notary Public for said County and State, has personal knowledge of the identity of Kathy Hughes, and hereby certifies that said Kathy Hughes, Clerk to the Board, personally appeared before me this day and acknowledged that she is Clerk to the Board of Commissioners of County of Buncombe and that Gantt is the Chairman of the Board of Commissioners of Buncombe County, and that by authority duly given and as the act of the County of Buncombe, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by herself as its Clerk as the act and deed of the County of Buncombe, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the ____ day of October, 2014.

Notary Public

My Commission Expires:

Deed Restriction

Exhibit "A"

The property conveyed by this instrument is subject to perpetual deed restrictions as same are set forth and described in deed recorded in Book 2297, Page 724 Buncombe County, North Carolina Registry and which restrictions are herein set forth in their entirety as follows:

In reference to the Deed between Jacqueline L. Tillery ("Property Owner") participating the in the Federal Emergency Management Agency ("FEMA") acquisition project ("the Grantor" being also the "Property Owner") and Buncombe County ("the Grantee"):

WHEREAS, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain; and

WHEREAS, Section 404 of The Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space; and

WHEREAS, the North Carolina Division of Emergency Management has made such application and has entered into a FEMA-State Agreement, herein incorporated by reference; and

WHEREAS, Buncombe County, acting by and through the Buncombe County Board of Commissioners, has entered into a cooperative grant agreement with the North Carolina Division of Emergency Management dated July 1, 1999 ("Grant Agreement"), herein incorporated by reference; and

WHEREAS, the terms of The Stafford Act, regulations promulgated thereunder (44 CFR S 206.434) and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

Now, therefore, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to the terms of The Stafford Act, regulations promulgated thereunder (44 CFR 206.434), as they read now and may be amended in the future, and the FEMA- State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to The Stafford Act S 404 Acquisition Program
 - a. Compatible uses. The Property shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking

lots and other described in 44 CFR S 206.434, as it reads now and may be amended in the future.

- b. Structures. No new structures or improvements shall be erected on the Property other than: 1) a public facility that is open on all sides and functionally related to the open space use; 2) a public rest room; or 3) a structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

Any structures built on the Property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

- c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the Property may be sought, nor will such assistance be provided;
- d. Transfer. Transfer: The Grantee agrees that it shall convey an interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170 (h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a) above, including agriculture, with the prior approval of the Regional Director.

Title to the property must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means: 1) the Grantee shall convey, in accordance with section 1 (d), above, a conservation easement to someone other than the title holder, or 2) at the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including North Carolina Division of Emergency Services, shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of the grant.
3. Monitoring and Reporting. Every two (2) years, the Grantee through the State, shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of the grant.
4. Enforcement. If the subject Property is not maintained according to the terms of the grant, FEMA, its representative, and assigns, the State Division of Emergency Management, and the Grantee are responsible for taking measures to bring the Property back into compliance.
 - a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

- b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.
 - c. FEMA may enforce the terms of the grant by taking any measure it deems appropriate, including but not limited to the following: 1) requiring transfer of title in accordance with Paragraph 1(d) and the Grantee shall bear the costs of bringing the Property back into compliance with the terms of the grant; or 2) bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.
5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provision of this grant and their application shall not be affected and shall remain valid and enforceable.

Grantee Acknowledgement of Deed Restrictions:

Town of Black Mountain

By: _____
Mayor

Attest:

Prepared by: Michael C. Frue, Buncombe County
Senior Staff Attorney

Return to: Town of Black Mountain

Stamps: \$ 0.00

STATE OF NORTH CAROLINA)
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COUNTY OF BUNCOMBE)

NON-WARRANTY DEED

THIS NON-WARRANTY DEED, made this the ____ day of October, 2014, by and between County of Buncombe, a body politic and corporate, party of the first part, herein sometimes referred to as "Grantor", and Town of Black Mountain, a North Carolina municipal corporation, 160 Midland Avenue, Black Mountain, NC 28711, party of the second part, herein sometimes referred to as "Grantee":

WITNESSETH:

WHEREAS, Buncombe County owns certain property located at 299 Flat Creek Road in Black Mountain identified as parcel #: 0710-51-0292 and described in deed recorded in Book 2332, Page 217, Buncombe County Registry;

WHEREAS, as part of the Federal Emergency Management Agency ("FEMA"), Hazard Mitigation Grant Program, the North Carolina Division of Emergency Management provided grant assistance to Buncombe County in order that it might acquire the property and demolish the house located there and the County did so;

WHEREAS, the Town of Black Mountain has provided a letter of intent indicating that the Town wishes to accept the property, and pledges to accept and enforce the deed restrictions, a copy of which is attached hereto, and the Federal Insurance and Mitigation Division of FEMA has approved the transfer;

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-11 and §160A-274 Buncombe County may convey real property to other governmental units; and

WHEREAS, pursuant to Resolution # _____, the Buncombe County Board of Commissioners authorized the transfer by non-warranty deed to the Town of Black Mountain of all its

right, title and interest in and to the property described in deed recorded in Book 2332, Page 217, Buncombe County Registry.

NOW, THEREFORE, by authority provided in N.C. Gen. Stat. §153A-11 and §160A-274 and pursuant to Resolution # _____, said County of Buncombe, by and through its Chairman of the Buncombe County Board of Commissioners, does hereby give, grant, bargain, sell, and convey unto the Grantee, its successors and assigns, in fee simple, all of that certain lot or parcel of land situated in the Town of Black Mountain, Buncombe County, North Carolina, and being more particularly described as follows:

BEGINNING at a white oak on the eastern bank of flat Creek, Stepp's old corner, and runs Northwardly along and with the bank of flat Creek 75 feet, more or less, to a stake; thence Eastwardly 112 feet, more or less, to the right-of-way of flat Creek Road at a stake; thence southwardly 75 feet, more or less, to a stake; thence Westwardly 110 feet, more or less, to the BEGINNING.

AND BEING the same property and subject to the same perpetual deed restrictions set forth and described in deed recorded in Book 2332, Page 217 Buncombe County, North Carolina Registry. Said deed restrictions are set forth in Exhibit "A" attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land together with all rights, privileges and appurtenances thereunto belonging unto the said Grantee in fee simple.

The Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

IN WITNESS WHEREOF, County of Buncombe has caused this instrument to be executed by its Chairman, attested to by its Clerk, and its seal to be hereunto affixed all by authority duly given by resolution referenced above this the day and year first above written.

COUNTY OF BUNCOMBE

By: _____
David Gantt, Chairman

ATTEST:

Kathy Hughes, Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, Notary Public for said County and State, has personal knowledge of the identity of Kathy Hughes, and hereby certifies that said Kathy Hughes, Clerk to the Board, personally appeared before me this day and acknowledged that she is Clerk to the Board of Commissioners of County of Buncombe and that Gantt is the Chairman of the Board of Commissioners of Buncombe County, and that by authority duly given and as the act of the County of Buncombe, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by herself as its Clerk as the act and deed of the County of Buncombe, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the ____ day of October, 2014.

Notary Public

My Commission Expires:

Deed Restriction

Exhibit "A"

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WHEREAS, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public law 93-288, as amended ("The Stafford Act"), identifies the use of disaster relief funds under Section 404 (Hazard Mitigation Grant Program, "HMGP"), including the acquisition and relocation of structures in the floodplain; and

WHEREAS, Section 404 of The Stafford Act provides a process for a Community, through the State, to make application for funding to be used to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the buildings, and to convert the land use into perpetual open space; and

WHEREAS, the North Carolina Division of Emergency Management has made such application and has entered into a FEMA-State Agreement, herein incorporated by reference; and

WHEREAS, Buncombe County, acting by and through the Buncombe County Board of Commissioners, has entered into a cooperative grant agreement with the North Carolina Division of Emergency Management dated July 1, 1999 ("Grant Agreement"), herein incorporated by reference; and

WHEREAS, the terms of The Stafford Act, regulations promulgated thereunder (44 CFR S 206.434) and the FEMA-State Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values; and

Now, therefore, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to the terms of The Stafford Act, regulations promulgated thereunder (44 CFR 206.434), as they read now and may be amended in the future, and the FEMA- State Agreement, the following conditions and restrictions shall apply in perpetuity to each property described in the attached deed and acquired by the Grantee pursuant to The Stafford Act S 404 Acquisition Program
 - a. Compatible uses. The Property shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved pervious parking lots and other described in 44 CFR S 206.434, as it reads now and may be amended in the future.

- b. Structures. No new structures or improvements shall be erected on the Property other than: 1) a public facility that is open on all sides and functionally related to the open space use; 2) a public rest room; or 3) a structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure.

Any structures built on the Property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

- c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the Property may be sought, nor will such assistance be provided;
- d. Transfer. Transfer: The Grantee agrees that it shall convey an interest in the property only with prior approval of the transferee from the Regional Director of FEMA and only to another public entity or to an organization qualified under Section 170 (h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a) above, including agriculture, with the prior approval of the Regional Director.

Title to the property must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means: 1) the Grantee shall convey, in accordance with section 1 (d), above, a conservation easement to someone other than the title holder, or 2) at the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.

2. Inspection. FEMA, its representatives, and assigns, including North Carolina Division of Emergency Services, shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of the grant.
3. Monitoring and Reporting. Every two (2) years, the Grantee through the State, shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of the grant.
4. Enforcement. If the subject Property is not maintained according to the terms of the grant, FEMA, its representative, and assigns, the State Division of Emergency Management, and the Grantee are responsible for taking measures to bring the Property back into compliance.
 - a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.

- b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.
 - c. FEMA may enforce the terms of the grant by taking any measure it deems appropriate, including but not limited to the following: 1) requiring transfer of title in accordance with Paragraph 1(d) and the Grantee shall bear the costs of bringing the Property back into compliance with the terms of the grant; or 2) bringing an action at law or in equity in a court of competent jurisdiction against the State or the Grantee.
5. Severability. Should any provision of this grant or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provision of this grant and their application shall not be affected and shall remain valid and enforceable.

Grantee Acknowledgement of Deed Restrictions:

Town of Black Mountain

By: _____
Mayor

Attest:
