


Doc ID: 003710570018 Type: CRP
Recorded: 10/04/2007 at 11:52:51 AM
Fee Amt: \$65.00 Page 1 of 18
Jackson County, NC
Joe Hamilton Register of Deeds
BK **1703** PG **775-792**

**DEED OF CONSERVATION EASEMENT
FISHER CREEK WATERSHED**

Prepared by: Clean Water Management Trust Fund,
Town of Sylva, and The Land Trust for the
Little Tennessee

After Recording Return to: Clean Water Management Trust Fund
1651 Mail Service Center
Raleigh, NC 27699-1651
Attn: Real Property Counsel

STATE OF NORTH CAROLINA PIN: 7653-29-3182
COUNTY OF JACKSON CWMTF Grant No. 2006A-043

THIS CONSERVATION EASEMENT ("Conservation Easement") is made and executed on this the 2nd day of October 2007 by and between **TOWN OF SYLVA**, a municipal corporation organized and existing under the laws of North Carolina as authorized in Chapter 160A of the North Carolina General Statutes, with an address of 83 Allen Street, Sylva, NC 28779 (herein "Grantor") and **THE STATE OF NORTH CAROLINA**, (herein "State" or "Grantee"), by and through **NORTH CAROLINA CLEAN WATER MANAGEMENT TRUST FUND**, an independent agency of the State with its address at 1651 Mail Service Center, Raleigh, NC 27699-1651, (herein "Fund").

RECITALS AND CONSERVATION PURPOSES

A. Grantor is the sole owner in fee simple of the property containing 1088.09 acres located in Sylva Township, Jackson County, North Carolina; the property is described more

particularly on a survey dated April 23, 1984 and revised on March 1, 2007, entitled "CONSERVATION EASEMENT FOR THE STATE OF NORTH CAROLINA, CLEAN WATER MANAGEMENT TRUST FUND AND THE TOWN OF SYLVA, INC. CWMTF GRANT NO. 2006A-043," updated survey of the Town of Sylva property recorded in Deed Book 129, Page 410 (Watershed Property) PIN # 7653-29-3182, prepared by Davenport & Assoc., Inc., Drawing Number J-383 as recorded in Plat Cabinet 16, Slide 838, Office of the Register of Deeds for Jackson County North Carolina (hereinafter the "**Property**").

B. Grantor has agreed and desires to set aside and convey to the State as Grantee, a Conservation Easement in and affecting the aforementioned Property, (hereinafter referred to as the "Property" or the "Protected Property"); it is Grantor's intent and purpose to protect and restrict all of the Property, in order to preserve, enhance, restore, and maintain the natural features and resources of the Property, to provide habitat for native plants and animals, to improve, maintain and protect water quality, and to control runoff of sediment, (hereinafter referred to collectively as the "Conservation Values");

C. Grantor and Grantee recognize that the Property is deemed by the State to qualify as suitable for protection as a riparian buffer, to address the cleanup and prevention of pollution of the State's surface waters, and as part of a network of riparian buffers. Moreover, Grantor, Grantee and the Fund recognize that the Property has other Conservation Values including fish and wildlife conservation, open space, and scenic values.

D. The Fund is authorized by Chapter 113A, Article 18 of the North Carolina General Statutes ("NCGS") to finance projects and to acquire land and interests in land, including conservation easements for riparian buffers for purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses; and

E. Grantor is a municipal corporation, organized and existing under the laws of the State as authorized in NCGS Chapter 160A. It has received a grant from Fund, identified as Grant Agreement No. 2006A-043 ("Grant Agreement"), said Grant Agreement being dated and effective as of August 24, 2007 and in consideration of which Grantor conveys this Conservation Easement to the State. The Grant Agreement is incorporated by reference as if fully set forth herein, and is on file and available for inspection at the offices of the North Carolina Department of Environment and Natural Resources, Grantor and the Fund.

F. Grantor, State and the Fund (collectively referred to as the "Parties") have agreed that the Property shall be conserved and managed in a manner that will protect the quality of waters of Fisher Creek, Tuckaseegee River, Fontana Lake and the Little Tennessee River and streams tributary thereto, and otherwise promote the public purposes authorized by NCGS Chapter 113A, Article 18, thereby restricting the uses of the Property pursuant to the terms of the Grant Agreement.

The Parties intend that the conservation and water quality values of the Property in their present state will be preserved, maintained and/or enhanced to serve those purposes set forth by the Grant Agreement

G. The Parties acknowledge that the characteristics of the Property and its current use and state of improvements are described in the Fisher Creek Baseline Report ("Report") prepared by The Land Trust for the Little Tennessee, Inc., dated September 12, 2007, which is hereby incorporated herein by reference, and maintained on file at Grantor's office, and that the Report is an appropriate basis for monitoring compliance with the objectives of preserving the conservation and water quality values of the Property. An abbreviated listing of the present conditions and characteristics of the Property, its current use, state of improvements, water quality sensitive species, including rare and endangered species are described in Exhibit A attached hereto and by this reference incorporated herein. Incorporation of this Report and Exhibit A are not intended to preclude the use of other evidence (i.e., surveys, appraisals) to establish the present condition of the Property if there is a controversy over their use.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the Grantor, for itself, its assigns and successors hereby unconditionally and irrevocably gives, grants and conveys forever and in perpetuity to the State of North Carolina, its successors and assigns, which by the recordation of this instrument does accept, this Deed of Conservation Easement of the nature and character and to the extent hereinafter set forth, in, over, through and across the Property, which includes Fisher Creek, and the wetlands, intermittent streams, drainage ditches, and tributaries thereto, together with the right to preserve and protect the conservation values thereof as described in the Recitals herein.

ARTICLE I. PURPOSES, DURATION OF EASEMENT

The purposes of this Conservation Easement are to protect wetlands, riparian areas and surface waters within the watershed where the Property is located, and to protect and preserve the forested, wildlife, natural heritage and other Conservation Values of the Property, to the end that the waters flowing over it and the waters into which those waters flow may be preserved in quality and protected in their present uses, without the deleterious effects that may arise from the uses or development of the Property which are prohibited herein.

This Conservation Easement shall be perpetual. It is an easement in gross, and runs with the land, and is enforceable by Grantee, against Grantor, its successors, grantees, representatives, permittees, assigns, lessees, agents, and licensees.

No activity or use inconsistent with the purposes of this Conservation Easement shall be conducted, permitted, or allowed on the Property.

ARTICLE II. RIGHTS RESERVED TO GRANTOR

Grantor reserves certain rights accruing from the fee simple ownership of the Property, including the right to engage in or permit others to engage in the uses of the Property that are not inconsistent with the purpose(s) of this Conservation Easement. All rights reserved by the Grantor, are reserved for Grantor, their representatives, successors, and assigns, and are considered to be consistent with the conservation purposes of this Conservation Easement. The provisions, conditions, and restrictions of this Conservation Easement apply to the Property. Except for the specific restrictions and prohibitions made applicable herein to the Property, Grantor shall continue to own and may use the Property in any lawful manner. Grantor expressly reserves the following rights:

A. Public Use and Access. Grantor reserves the right to engage in and to allow public access and use of the Property for passive, nonmotorized, recreational activities requiring minimal surface alteration of the land, including, without limitation, conducting educational tours, scientific study, animal/plant observation, walking, fishing, picnicking, camping, and horseback riding, so long as related alterations, construction, improvements, maintenance, activities and uses pose no threat to the conservation values of the Property as determined by the Fund.

B. Vehicular Access and Parking. Grantor reserves the right to (1) maintain and repair Grantor's existing roadbeds on the Property and (2) construct a parking area, to be located in a manner that does not materially diminish the wooded, open space character, and scenic and natural qualities of the Property as compared to those conditions existing on the date of this Conservation Easement. Maintenance and repair of Grantor's existing roads shall not be construed to permit the paving of any existing road not already paved or otherwise covered in an impervious material.

C. Walking and Hiking Trails. Grantor reserves the right to use and maintain existing trails and to construct naturally surfaced walking and hiking trails within the Property. New trails must be located at a minimum distance of fifteen (15) feet from the top of the bank of Fisher Creek and tributaries thereto, unless such locations are physically impracticable. In the construction of such trails and when required by the terrain, boardwalks, ramps, handrails and pedestrian bridges are permitted herein. Placement, construction and location of all such walking and hiking trails must be approved by the written consent of the Fund. The Grantor may also construct and maintain park benches, litter receptacles, and trail/feature signs along the walking and hiking trails.

D. Bridle Trails. Grantor reserves the right to use and maintain existing trails for recreational horseback riding. New bridle trails may be established, maintained and located at a minimum of fifty (50) feet from the top of the bank of Fisher Creek. Bridle trails and their use shall be managed to prevent erosion and to prevent manure from being washed or deposited in Fisher Creek or its tributaries. Bridle trails may transverse Fisher Creek and its tributaries at no

more than two (2) designated locations. Placement, construction and location of all such bridle trails must be approved by the written consent of the Fund.

E. Primitive Campsite Areas. Grantor reserves the right to construct, maintain, and repair primitive campsites areas and associated fire rings to be located at a minimum of fifty (50) feet from the top of the bank of Fisher Creek and tributaries thereto. Grantor agrees that the campsites will be located in proximity to the walking and hiking trails permitted herein.

F. Convenience Facilities. Grantor reserves the right to construct, maintain, and repair self-composting, solar powered convenience facilities on the Property to be located outside a three hundred (300) foot riparian buffer as measured from the top of the bank of Fisher Creek and its tributaries thereto. Future improvements may include a sewer or septic system, a water system or well and electric power, provided any such improvements are approved by the written consent of the Fund.

G. Covered Picnic Shelter. Grantor reserves the right to construct, maintain and repair one (1) covered picnic shelter located outside a three hundred (300) foot riparian buffer as measured from the top of the bank of Fisher Creek and tributaries thereto. Grantor reserves the right to construct, maintain and repair picnic tables on the Property, provided all such picnic tables are located at a minimum of fifty (50) feet from the top of the bank of Fisher Creek and tributaries thereto.

H. Water Supply Source. Grantor reserves the right to use Fisher Creek as a future public water supply source, including but not limited to bottling of drinking water, if future conditions make this action appropriate and necessary. Before such action is undertaken, Grantor shall inform Grantee in writing of the intended activation of Fisher Creek as a public water supply source. Grantor shall meet all requirements of the North Carolina Department of Environment and Natural Resources related to public water supply source activation.

I. Utilities. Grantor reserves the right in the Property to install, connect and maintain utilities to serve improvements permitted herein on the Property and any public water supply systems permitted under Paragraph H of this Article. All new utilities must be located in a manner that does not materially diminish the wooded, open space character and scenic and natural qualities of the Property as compared to those conditions existing on the date of this Conservation Easement, and at a location and in a manner to be determined in consultation with the Grantee and with prior written approval of the Fund.

J. Environmental Learning Kiosk. Grantor reserves the right to construct signage and one (1) kiosk located at a minimum of fifty (50) feet from the top of the bank of Fisher Creek and tributaries thereto to provide for public environmental education on the Property.

Notwithstanding the foregoing, all amenities and improvements to be located on the Property must receive the prior written approval of the Fund, and must comply with the terms set forth herein and in the aforementioned Grant Agreement. The Grantor shall maintain the Property in a clean, natural and undisturbed state. **The total cleared, and not re-vegetated, pervious and impervious surface areas associated with all aforesaid improvements, including, but not limited to the trails and bridges, shall not exceed two percent (2%) of the total area of the Property.**

Furthermore, the Parties have no right to agree to any activity that would result in the termination of this Conservation Easement.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Easement is prohibited. The Property shall be maintained in its natural, scenic, wooded and open condition, and restricted from any development or use that would impair or interfere with the water quality protection and conservation purposes of this Conservation Easement, set out above. Grantor and Grantee have agreed that the activities specifically allowed by this Easement do not and will not impair the Conservation Values of the Property.

Except for those rights specifically reserved to Grantor in Article II and without limiting the generality of the foregoing, the following is a listing of activities and uses which are prohibited, or where expressly stated, which may be permitted on the Property:

A. Industrial and Commercial Use. All industrial and commercial activities and uses, and any right of passage for such purposes, are prohibited on the Property.

B. Agricultural, Timber Harvesting, Grazing and Horticultural Use. Agricultural, timber harvesting, grazing, horticultural and animal husbandry operations are prohibited on the Property.

C. Disturbance of Natural Features. No trees may be cut or removed, and the natural features of the Property may not be disturbed, except for:

- (i) as may be incidental to boundary marking, fencing, and signage allowed or required hereunder;
- (ii) selective cutting and prescribed burning or clearing of vegetation and the application of mutually approved pesticides and fire containment and protection, disease control, restoration of hydrology, wetlands enhancement and/or control of non-native plants, all subject however, to prior approval of the Fund.

D. Construction of Buildings and Recreational Use. There shall be no construction

or placement of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock or other temporary or permanent structure or facility on, above, or below the surface of the Property, except for the following: placing and display of no trespassing signs, local, state or federal traffic or similar informational signs, for sale or lease signs, fencing, signs identifying the Conservation Values of the Property, and/or signs identifying the Fund or the Town of Sylva as the owner or source of funds for the conservation easement on the Property, educational and interpretive signs, identification labels or any other similar temporary or permanent signs, and utilities to serve improvements permitted herein, all subject, however, to the prior approval of the Fund.

E. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials; and no change in the topography of the Property in any manner, except as may be necessary for the purpose of combating erosion or incidental to any conservation management practices otherwise permitted by this Conservation Easement.

F. Wetlands and Water Quality. No activities causing or contributing to pollution of or alteration of water bodies will be conducted, permitted, or allowed to continue on the Property; furthermore, no activities will be conducted, permitted, or allowed to continue to the detriment of water purity or that alter natural water levels or drainage, or that contribute to sedimentation, or that alter surface water flow, in or over the Property or into any surface waters adjacent thereto, or that may otherwise cause soil degradation or erosion, nor shall any diking, dredging, draining, piping, filling, or other activity causing any alteration to wetlands be conducted, permitted, or allowed to continue on the Property, except activities to restore natural hydrology, or wetlands enhancement as permitted by state and other appropriate authorities, and only then after and with the prior consent of the Fund.

G. Dumping. Dumping of soil, trash, ashes, garbage, or waste, abandonment of vehicles, appliances, or machinery, or other waste or discarded materials, is prohibited on the Property.

H. Conveyance and Subdivision. The Property may not be subdivided, partitioned, or conveyed separately, and the Property shall remain in its current configuration as an undivided entity or parcel of land.

I. No Use as Mitigation Property. There shall be no use of the Property to satisfy compensatory mitigation requirements under any federal or state law, nor may any part of the Property be used or referenced so as to allow density credits to be allowed or added to any other property for purposes of development.

ARTICLE IV. ENFORCEMENT & REMEDIES

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 restoration of such areas or features of the Property that have been damaged or altered by such activity or use. Upon any breach of the terms of this Conservation Easement, Grantee, by and through Fund or any other agency of the State, may seek the enforcement of the Grantee's rights hereunder, including enforcement of the restrictions and prohibitions contained herein, in accordance with the following provisions.

A. Notice and Obligation to Cure; Injunctive Relief. Upon any determination that a violation of this Conservation Easement has occurred, is being maintained, or is threatened, Grantee, or any assign or successor of Grantee, shall have standing and may bring suit either individually or jointly to enforce compliance with the terms of this Conservation Easement and shall be entitled to obtain any relief available at law or in equity under the laws of this State, therein to enforce compliance with the terms of this Conservation Easement.

Unless an imminent or ongoing violation of this Conservation Easement would sooner substantially impair any Conservation Values of the Property, the State shall give the owner of the Property written notice of the violation and thirty (30) days to correct the violation and comply with the Conservation Easement, or to commence cure if such cure would take longer than thirty days, before filing legal action.

In the event a Court of competent jurisdiction determines that Grantor, or any successor, grantee, assign or licensee have committed or permitted a violation of the Conservation Easement, Grantee shall be entitled to injunctive relief requiring cessation of the violation and cure of any damages to the Property. No failure or delay by Grantee in seeking its lawful remedy for any breach of this Conservation Easement may be pled or asserted as a defense to any action by Grantee in seeking its lawful remedy for any subsequent violation of the Conservation Easement.

Grantee shall have the power and authority, consistent with statutory authority and its rights hereunder, (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/or (c) to seek damages from any appropriate person or entity. 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 in connection with this Conservation Easement.

B. Violations by Third Parties. 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, 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.

C. Changed Conditions. The grant 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 as a whole.

That proportionate value of Grantee's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Protected Property for conservation purposes, the restrictions contained herein may only be extinguished by judicial proceeding. If this Conservation Easement is terminated and the Property is sold, then as required by Section 1.170A-14(g)(6) of the IRS regulations, the Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of any sale, exchange, involuntary conversion of the Property or damage award which is the result of such judicial proceeding. Upon such proceedings, such portion shall be equal to the proportionate value that Grantee's, its successors' and assigns' interest in the Conservation Easement bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred, or contributed in consideration for, or as otherwise required as a condition of sale, exchange or involuntary conversion of the Property, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding. As allowed by NCGS §146-30, Grantee, its successors and assigns, shall use its share of the proceeds of sale in a manner consistent with the Conservation Purposes set forth herein.

All termination related expenses incurred by the Grantor and the Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

D. Condemnation. Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate, or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor shall immediately give notice to the State, and the Fund, and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking, and all incidental or direct damages resulting from the taking, which any proceeds recovered in such actions shall be divided in accordance with the proportionate values of Grantor's and Grantee's interests as specified herein. If this Conservation Easement is terminated or modified and any or all of the Property is sold or taken for public use, then, as required by Section 1.170A-14(g)(6) of the IRS regulations, the Grantee, its successors and assigns shall be entitled to a portion of the proceeds of such sale, exchange or involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that Grantee's, successors' or assigns' interest in the Conservation Easement bears to the value of the Property as a whole as of the date of recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred, or contributed in consideration for, or as otherwise required as a condition of sale, exchange or involuntary conversion of the Conservation Property, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding. As allowed by NCGS §146-30, Grantee, its successors and assigns, shall use its share of the proceeds of sale in a manner consistent with the Conservation Purposes set forth herein.

All termination related expenses incurred by the Grantor and the Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

E. Access for Inspection and Right of Entry. Grantee shall have the right, by and through their agents and employees, after prior written notice to Grantor, to enter the Property to inspect the same for compliance with this Conservation Easement.

F. No Waiver. Enforcement of this Conservation Easement shall be at the discretion of the Grantee, and 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 any other term of this Conservation Easement or of Grantee's rights. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

G. Indemnity. To the extent allowed by law, Grantor agrees to defend, protect, indemnify, and hold harmless the Grantee, its successors and assigns, from and against all claims, actions, liabilities, damages, fines, penalties, costs, and expenses resulting from (i) its intentional or negligent misrepresentation of the environmental condition of the Property; or (ii) any action or forbearance by the Grantor in the future which causes or contributes to the existence of any environmentally hazardous or illegal condition on the Property harmful to the environmental, conservation or water quality values of the Property.

ARTICLE V. DOCUMENTATION AND TITLE

A. Property Condition. The parties acknowledge that the Property is currently undeveloped land other than development described in Report.

B. Title. Grantor covenants and represents that 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; that there is legal access to the Property, that the Property is free and clear of any and all liens, loans, claims, restrictions, easements and encumbrances, except as otherwise identified in **Exhibit B** attached hereto, 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; provided, absent Grantor's consent, Grantee's right of access may not be assigned separately and shall only be exercised for the purposes provided herein.

ARTICLE VI. MISCELLANEOUS

A. Subsequent Transfers of Property by Grantor. Grantor agrees for itself, its successors and assigns, that at or before any transfer of any interest in the Property, Grantor shall notify Grantee and Fund, in writing of the name and address of any party to whom the Property, or any part thereof, is to be transferred. Grantor, for itself, its successors and assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Property is conveyed, pointing out that any such conveyance is made subject to the terms and restrictions of this Conservation Easement, and continuing to provide for Grantee's right of entry and access to

the Property.

B. Conservation Purposes for which Conservation Easement is Held. The Grantee, for itself, its successors and assigns, agrees that this Conservation Easement shall be held exclusively for the conservation purposes set out herein.

The Parties recognize and agree that the Property may be open for public entry and public use, and in that event the Property shall be open to entry and use equally by all persons, regardless of race, color, creed, national origin, sex, or residence, subject to reasonable published and posted rules governing use of the Property by the Grantor, as approved by the Fund, and consistent with the conservation purposes provided by this Conservation Easement.

C. Qualification of Successor Grantees. 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 of transfers or assignment of its interest in this Conservation Easement, the organization receiving the interest must be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, and must be one organized or operated primarily for one of the conservation purposes specified in Section 170 (h)(4)(A) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

D. Stewardship. Pursuant to the terms of the Grant Agreement, the Parties herein agree that The Land Trust for the Little Tennessee, Inc., a "qualified organization" within the meaning of Section 170(h) (3) of the Internal Revenue Code and regulations promulgated thereunder, will monitor and observe the Property not less frequently than annually in perpetuity with the State, to assure compliance with the purposes and provisions of this Conservation Easement and the provisions of the Grant Agreement, and that it will report, or provide for the reporting to the State and the Fund any observed and/or known violations of this Conservation Easement or Grant Agreement upon the Property.

The Town of Sylva and The Land Trust for the Little Tennessee shall obtain the prior written approval from the Fund before conveying or assigning any interest in the Property, or obligation to monitor the Property, to any other entity. With the prior written consent of Fund, upon any such conveyance or assignment, The Land Trust for the Little Tennessee, Inc., and its assigns, may be released from all or any part of its obligation under this Conservation Easement. Such stewardship obligation is assignable only to a qualified organization as that term is herein defined, and may be made only with the prior written approval of the Fund. Notification and the transfer of said stewardship obligations and rights shall be made in writing signed by the parties hereto or their successors in interest, and recorded in the Office of the Register of Deeds of Jackson County, North Carolina.

In furtherance of this covenant and pursuant to the Grant Agreement, The Land Trust for the Little Tennessee, Inc., and its assigns, may receive funds to carry out this covenant (the "Stewardship Funds"). In the event that the stewardship obligation and rights are transferred, The Land Trust for the Little Tennessee, Inc. may transfer pro rata the balance of the Stewardship Funds to the assignee (the "Assignee") of said stewardship obligation and rights. Notification and the transfer of the Stewardship Funds shall be in writing and made by and between the Town of Sylva, The Land Trust for the Little Tennessee, Inc., Assignee, and the Fund and shall be available for inspection in the offices of the North Carolina Department of Environment and Natural Resources, the Town of Sylva, the Assignee, and the Fund.

E. 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, 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 Internal Revenue Code.

F. Recording. Grantor shall record this instrument upon the consent and approval of the Fund in timely fashion in the office of the Register of Deeds of Jackson County, North Carolina, and may re-record it and amendments thereto, as may be required and approved by the Fund and the State.

G. Notices. Any notices required to be sent under this Conservation Easement shall be sent by certified mail, return receipt requested, addressed to the parties set forth, and addressed to the record owner of the Property, as shown in the Jackson County Tax Office, or as follows:

If to Grantor:

Town of Sylva
83 Allen Street
Sylva, NC 28779
Attn. Town Manager

If to Grantee w/ copy to Fund:

State of North Carolina
1321 Mail Service Center
Raleigh, NC 27699-1321
Attn: CWMTF Real Property Agent

If to the Fund:

Clean Water Management Trust Fund
1651 Mail Service Center
Raleigh, NC 27699-1651
Attn: Real Property Counsel

In any case where the terms of this Conservation Easement require the consent of any party, such consent shall be requested by written notice, and shall be deemed to be granted unless within 90 days after mailing the receipt, written notice of denial of such consent shall have been given the requesting party by the party of whom such consent was requested.

H. Amendments. No amendment to this Conservation Easement shall be effective

unless executed by the owner of the Property and the Grantee, or their successors or assigns hereunder. No amendment will be allowed that is inconsistent with the purposes of this Conservation Easement or affects the perpetual duration of this Conservation Easement. No amendment executed by the parties as required above shall be effective until recorded in the office of the Jackson County Register of Deeds.

I. Environmental Condition of Property. The Grantor warrants and represents to the State that to the best of its knowledge: (a) the Property described herein is now and at all times hereafter will continue to be maintained in full compliance with all federal, state and local environmental laws and regulations, and (b) as of the date hereof there are no hazardous materials, substances, wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos, petroleum, or any toxic substance or ingredient) located on, in or under the Property or being used in connection therewith, and that 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.

J. 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.

K. 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.

L. Parties. Every provision of this Conservation Easement that applies to the Grantor or Grantee shall likewise apply to their respective heirs, executors, administrators, assigns, and grantees, and all others of their successors in interest herein.

M. Merger. The parties agree that the terms of this Conservation Agreement shall survive any merger of the fee and easement interest in the Property.

N. Subsequent Liens on Property. No provisions of this Conservation Easement shall be construed as impairing the ability of Grantor to use this Property or any portion thereof, for collateral for borrowing purposes, provided that any mortgage or lien arising therefrom and recorded prior and subsequent to the recordation of this Conservation Easement shall be subordinate to this Conservation Easement.

TO HAVE AND TO HOLD unto THE STATE OF NORTH CAROLINA, its successors, grantees, and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, Grantor's

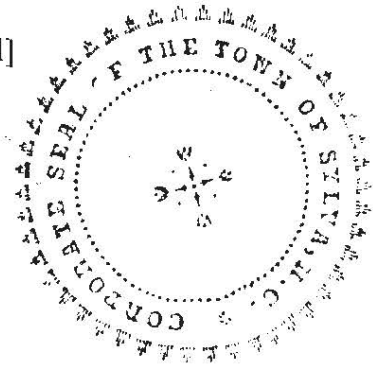
representatives, heirs, successors, grantees, and assigns, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor, by authority duly given, has hereunto caused these presents to be executed by its officers and its seal affixed, to be effective the day and year first above written.

GRANTOR: TOWN OF SYLVA

[Corporate Seal]

By: Brenda A. Oliver
Brenda A. Oliver, Mayor



ATTEST:

By: Jay A. Denton
Jay A. Denton, Town Manager

APPROVED AS TO FORM:

Eric Ridenour
Eric Ridenour, Town Attorney

STATE OF NORTH CAROLINA
COUNTY OF JACKSON

I, Laura B Holden, Notary Public in and for ^{Swain}~~Said~~ County and State, do hereby certify that Jay A. Denton, personally came before me this day and acknowledged that he is the Town Manager of the Town of Sylva, a municipal corporation organized and existing under the laws of the State of North Carolina, and that by authority duly given and as the act of Brenda A. Oliver the foregoing instrument was signed in its name by its Mayor, sealed with GRANTOR'S seal, and attested by himself as the Town Manager.

Witness my hand and notarial seal, this 2nd day Oct. 2007.

NOTARY PUBLIC: Laura B Holden
My Commission Expires: 8-29-2011

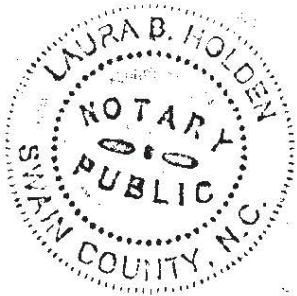


EXHIBIT A

CHARACTERISTICS OF THE PROPERTY

Present Condition and Characteristics:

The Fisher Creek Property is located within the Plott Balsams Mountain range, a key connector range between the Great Smoky Mountains and the Great Balsam Mountains. Topography of the Property is primarily steep, with the vast majority of the area steeper than 30%, averaging about 45%, though with small isolated flat to rolling benches also occurring. Elevation ranges from approximately 3,000 feet to 5,700 feet near the peak of Blackrock Mountain. Aspect is primarily south, though there are significant areas of east- and west-facing slopes that occur on the sides of lateral ridges that extend south from the main ridge of the Plott Balsam Mountains, which serves as the Property's north boundary. The east boundary is Blackrock Ridge. The west boundary is, in part, a straight line running slightly to the west of the ridge leading from Pinnacle Bald to The Pinnacle rock outcrop. The Property contains the entire upper headwaters of Fisher Creek, including both its east fork and west fork.

The Property connects significant protected lands, being adjacent to and west of a 3,320-acre outlying parcel of National Forest System land, and adjacent to and east of the 1,595-acre Water Rock Knob property, owned by the Nature Conservancy, which itself connects to the Blue Ridge Parkway, two miles from the Fisher Creek Property, and to another 486-acre National Forest System parcel one-half mile from the Property. The remainder of the Property's boundary is shared with privately-held parcels of varying sizes, including residential lots and subdivisions.

Having been logged in the past, the Property is entirely forested, with mature forest stands ranging in age from 60 to 100 years old. The upper elevations of the Property are part of the State-significant Yellow Face – Blackrock Mountain Significant Natural Heritage Area (SNHA) and the Regional-significant Pinnacle Bald SNHA, areas designated by the State of North Carolina's Natural Heritage Program (NHP) as being of special biodiversity significance. The Property contains four Natural Heritage Element Occurrences, including two plants: Blunt-lobed Grape-fern (*Botrychium oneidense*), listed as Significantly Rare and Imperiled at the state level, and Wretched Sedge (*Carex misera*), listed as Significantly Rare at the state level, and Vulnerable at the state and global level. The other two occurrences are prime examples of natural community types, High-Elevation Rocky Summit and High-Elevation Red Oak Forest. Other natural community types occurring on the Property include Red Spruce-Fraser Fir Forest, Northern Hardwood Forest (typic subtype), Montane Oak-Hickory Forest, and Poplar Cove Forest. High-elevation Rocky Summit and Red Spruce-Fraser Fir Forest are listed as Imperiled at the state and global level.

Current Use:

The Property's current use is recreational, with a network of maintained trails. Up until this conservation easement, the following uses on the Property have been prohibited: camping, open fires, motorized vehicles, digging or cutting of plants and trees, firearms use, and alcohol use. The trails appear to be mainly used by hikers, but there have been reports of use by all-terrain vehicles. A few campfire rings occur on the property, indicating overnight camping has occurred.

State of Improvements:

Improvements include a graveled parking area, four road gates, rock-and-soil forest roads with corrugated metal culverts used for stream crossings, maintained hiking trails, and now-abandoned remains of the town's former water supply system.

The parking area, which is the principal access point, is located at the southern bottom of the Property at the end of Fisher Creek Road, just inside an open metal gate. Immediately above this, a locked metal gate is located across the main rock-and-soil trunk road into the Property.

There are approximately 5 miles of maintained hiking trails, many of which are old forest roads. A short loop trail with a gentle grade has been developed on the lower portion of the Property. The main trunk road that proceeds up the left fork of Fisher Creek, as well as the upper roads leading to the Pinnacle, to The Nature Conservancy's (TNC) Water Rock Knob property, and to the private subdivision south of the TNC property are passable by four-wheel-drive vehicle. The road connecting to the private subdivision, accessed via Parris Branch, has a locked metal gate located near the boundary. Another metal gate that is located along the road leading to the TNC property is no longer functional, with its foundation having been torn out.

The main trunk road, which is steep in sections, is in a poor and eroding condition and stream crossings along it are poorly maintained. The Property also contains a significant number of other old, overgrown, and degraded roadbeds, most likely constructed during earlier logging, and which have not been mapped. The trail system connects to a trail along the crest of the Plott Balsams that leads to Blue Ridge Parkway at Water Rock Knob.

Various remains of the old water intake system remain on the Property, including three small impoundments, metal and plastic transfer pipes, and water control devices. An old ditch is visible that apparently channeled water from the east fork to the main impoundment on the left fork of Fisher Creek near the bottom of the Property.

Water Quality Species:

There is no documentation of water quality sensitive species on the Property. However, the Property contains the entire upper headwaters of Fisher Creek down to the former Sylva water supply intake and includes approximately 7.5 miles of high quality 1st and 2nd order streams, including 4.5 miles on the west fork and 3.0 miles on the east fork. This section of Fisher Creek is classified by the State of NC as Water Supply I (WS-I) and High Quality Water (HQW). From the water supply intake to Scott Creek, Fisher Creek has a Class C, Trout Water classification. The three small impoundments from the water supply system are still in place along the streams, and most likely are impediments to fish passage.

EXHIBIT B
EXCEPTIONS

1. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. NOTE: Property is owned by The Town of Sylva, A Municipal Corporation by a which qualifies for tax exempt status. Therefore no ad valorem taxes apply under current ownership.
3. Building restriction lines, easements and any other facts as shown on Map or Plat recorded in Plat Cabinet 16, Slide 838, Jackson County Registry.
4. Title to that portion of the property within the bounds of NCSR 1446.
5. Any encroachments, overlaps, boundary line disputes, easements, measurements, variations in area or content, party walls or other facts which a correct survey and inspection of the premises would show.
6. Terms, conditions, restrictions, covenants, reservations and obligations, including but not limited to the enforceability and compliance therewith, together with the rights of others, described in and created by that certain Conservation Easement by and between Town of Sylva, a municipal corporation and The State of North Carolina by and through the North Carolina Clean Water Management Trust Fund dated October 2, 2001 and recorded in Book 1703, Page 775, Jackson County Registry.