



**DEED OF CONSERVATION EASEMENT**  
(Valley River at Marble Enhancement Project)

STATE OF NORTH CAROLINA  
Tax Parcel No.:

COUNTY OF CHEROKEE  
CWMTF No: 2004B-402

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Prepared by and  
After Recording Return to: Callie D. Moore, Executive Director, HRWC

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**THIS DEED OF CONSERVATION EASEMENT** ("Conservation Easement") is made, given, granted and executed on this the \_\_\_\_ day of \_\_\_\_\_ 2008 by and between **LANDOWNER(S)** ("Grantor") and the **CHEROKEE COUNY SOIL & WATER CONSERVATION DISTRICT**, a nonprofit corporation organized and existing under the laws of State of North Carolina with its address at 225 Valley River Rd., Ste. J., Murphy, NC 28906 ("Grantee") acting by and through **NORTH CAROLINA CLEAN WATER MANAGEMENT TRUST FUND**, an independent State agency with an address at 1651 Mail Service Center, Raleigh, North Carolina 27699-1651 ("Fund"). The designations "Grantor" and "Grantee", as used herein shall include said parties, their heirs, successors, and permitted assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

**RECITALS & CONSERVATION PURPOSES**

**A.** Grantor is the sole owner in fee simple of that certain real property containing 99.08 acres more or less, located in **Valleytown Township**, Cherokee County, North Carolina, and more particularly described in the deed recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, **Cherokee County** Registry and designated as parcel \_\_\_\_\_ in the Cherokee County Tax Office (hereinafter the "Property").

**B.** Grantee is a non-profit organization "established for the purpose of promoting the preservation of ecologically valuable lands, natural and wildlife habitat, and lands with significant natural and open space values in the State of North Carolina for charitable, scientific, educational and aesthetic purposes."

**C.** The State has enacted the Uniform North Carolina Conservation and Historic Preservation Agreements Act (the "Act"), Chapter 121, Article 4 of the North Carolina General Statutes ("NCGS"), which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate for retaining in land or water areas predominantly in their natural, scenic, or open condition . . . ."

**D.** The Fund is authorized by NCGS Chapter 113A, Article 18, to finance projects and to acquire land and interests in land, including conservation easements for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies.

**E.** Grantor and Grantee have agreed to set aside \_\_\_\_\_ acres of the Property more or less (as described herein below and hereinafter referred to as the "Property/Easement Area"), for the purpose of creating a Conservation Easement to preserve, enhance, restore, and maintain the natural features and resources of the Property/Easement Area, to provide habitat for native plants and animals, to improve and maintain water quality, and to control runoff of sediment and nutrients (hereinafter the "Conservation Values").

**F.** The Property/Easement Area is described as all that area lying along the right bank descending of the Valley River, at least 30 feet in width as measured from the top of the right bank (descending) together with the right of ingress, egress and regress over, upon and across the Property to and from the Property/Easement Area. A map showing the specific area of the Conservation Easement is attached hereto as Exhibit "A" and incorporated herein by reference as if fully set out.

**G.** Grantor and Grantee recognize that the Property/Easement Area is located adjacent to the VALLEY RIVER and the Property/Easement Area has been deemed by the State to qualify as a riparian buffer, addressing the cleanup and prevention of pollution of the State's surface waters, and the establishment of a network of riparian buffers. Moreover, Grantor and Grantee recognize that the Property/Easement Area has other Conservation Values including fish and wildlife conservation, open space, and scenic values.

**H.** The Hiwassee River Watershed Coalition Inc ("HRWC") has obtained a grant from the Fund to carry out the restoration and conservation activities described herein. Said grant is styled as CWMTF Grant Agreement No. 2004B-402 ("Grant Agreement"), its terms require Grantee to be the holder of the Conservation Easement, and Grantee has agreed to be the holder. The HRWC coordinates all activities in connection herewith and shall stand in the shoes of the Grantee insofar as monitoring and maintenance of the Conservation Easement is concerned.

**I.** The Grantor, Grantee, HRWC, and Fund (collectively referred to herein as the "Parties") hereto intend that the Conservation Values of the Property/Easement Area will be preserved and managed in a manner that will protect the quality of waters of the VALLEY RIVER, and otherwise promote the public purposes authorized by NCGS Chapter 113A, Article 18, and as set forth in the Grant Agreement. The Parties further acknowledge and agree that Grantee will accept this Conservation Easement and that Grantor has received consideration for granting this Conservation Easement to the Grantee and thus restricting the uses of the

Property/Easement Area.

**J.** Grantor and Grantee acknowledge that the Property/Easement Area is currently unimproved. The Parties acknowledge that an abbreviated description of present conditions and characteristics of the Property, its current use, and state of improvements, water quality sensitive species, including rare and endangered species is attached as Exhibit B and by this reference incorporated herein. The Parties may use this Exhibit B as a basis for monitoring compliance with the objectives of preserving the conservation and water quality values of the Property. However, Exhibit B is not intended to preclude the use of other evidence (i.e. surveys, appraisals, phase one environmental site assessment) to establish the present condition of the Property/Easement Area if there is a controversy over its 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 hereby unconditionally and irrevocably gives, grants and conveys forever and in perpetuity to the Grantee, its successors and assigns, and the Grantee hereby accepts, this Conservation Easement of the nature and character and to the extent hereinafter set forth in, over, through and across the Property/Easement Area, together with the right and easement to preserve and protect the Conservation Values.

The purposes of this Conservation Easement are to provide environmental protection for surface waters and to protect the wildlife and natural heritage values and it shall be so held, maintained, and used therefore. It is the further purpose of this Conservation Easement to prevent any use of the Property/Easement Area that will significantly impair or interfere with the preservation of said Conservation Values. Grantor intends that this Conservation Easement will restrict the use of the Property/Easement Area to such activities as are consistent with the Conservation Values described in the Recitals herein.

#### **ARTICLE I. 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.

#### **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/Easement Area that are not inconsistent with the purpose(s) of this Conservation Easement. All rights reserved by the Grantor, are reserved for Grantors, 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/Easement Area in any lawful manner. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee.

Grantor expressly reserves the following rights:

**A. Passive Recreational Use.** Grantor reserves the right to engage in and to permit others to engage in passive recreational uses of the Property/Easement Area as provided herein requiring minimal surface alteration of the land, so long as related alterations, construction, improvements, maintenance, activities and uses pose no threat to the Conservation Values.

**B. Public Use and Access.** Grantor reserves the right to allow public access and use of the Property/Easement Area for the purpose of creating open space with associated recreational activities, including, without limitation, conducting educational tours, scientific study, animal/plant observation, walking, biking, fishing, and any other purposes consistent with these accepted uses and maintaining conservation values. All improvements shall be subject to the terms and conditions set forth herein and by the aforementioned Grant Agreement.

**C. Hiking Trails.** Grantor reserves the right to construct and maintain [paved and/or] unpaved trails on the Property/Easement Area. All trails must be located at a minimum distance of fifteen (15) feet from the top of the bank and tributaries of VALLEY RIVER, unless such locations are physically impracticable. In the construction of such trails and when required by the terrain, boardwalks, ramps and handrails are permitted herein. If required, all trails and associated improvements may comply with the rules and regulations of the Americans with Disabilities Act of 1990, Title III regulations, ADA Standards for Accessible Design, 28 CFR Part 36, revised July 1994 and amendments thereto ("ADA") The Grantor may also construct and maintain park benches, litter receptacles, and trail/feature signs along the trails. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation of VALLEY RIVER either during or after construction.

**D. Observation/Viewing Platform.** Grantor reserves the right to construct, maintain, and repair one (1) observation/viewing platform constructed of composite building materials on the Property/Easement Area with optional bench seating, handrails, connecting steps and ramp as required by the terrain to be located on the bank of the VALLEY RIVER as allowed and approved by the North Carolina Division of Water Quality, provided such platform is connected to the trails constructed on the Property/Easement Area. Construction of such platform shall comply with ADA. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation of VALLEY RIVER either during or after construction.

**E. Early Successional Habitat Areas.** The Parties agree and acknowledge that the Grantor reserves the right to establish and maintain existing areas located along VALLEY RIVER in early successional habitat for the purpose of providing habitat diversity for wildlife species and may include the planting of various grasses, forbs, and herbaceous vegetation.

**F. Natural Community Restoration.** The Parties hereto agree and acknowledge that the Grantor reserves the right to perform all activities necessary to restore the natural plant and animal communities on the Property/Easement Area. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation either during or after construction.

**G. Pedestrian Foot Bridges.** Grantor reserves the right to construct, maintain, and gain access to one (1) pedestrian footbridge to be constructed five (5) to ten (10) feet wide across the VALLEY RIVER provided such bridge is connected to the trails permitted herein. If required, such bridges shall comply with the ADA. If feasible and consistent with this Conservation Easement, such bridges may be constructed in compliance with the most recent version of the "Guide Specifications for Design of Pedestrian Bridges" published by the American Association of State Highway and Transportation Officials ("AASHTO").

Notwithstanding the foregoing, all amenities and improvements to be located on the Property/Easement Area must comply with the terms set forth herein and in the aforementioned Grant Agreement. The Grantor shall maintain the Property/Easement Area in a clean, natural and undisturbed state, and shall comply with all applicable land use regulations, and other applicable laws and ordinances, subject to this Conservation Easement. The total cleared, and not re-vegetated, pervious and impervious surface areas associated with all aforesaid improvements, including, but not limited to, the trails, boardwalks, ramps, steps, observation/viewing platforms, pedestrian bridges, shall not exceed ten percent (10%) of the total area of the Property/Easement Area.

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/Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. The Property/Easement Area 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 conservation purposes of this Conservation Easement.

Except for those rights specifically reserved to Grantor in Article II and without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted.

**A. Industrial and Commercial Use.** Industrial and commercial activities and any right of passage for such purposes are prohibited on the Property/Easement Area.

**B. Agricultural, Grazing and Horticultural Use.** Agriculture, grazing, horticultural and animal husbandry operations are prohibited on the Property/Easement Area.

**C. Disturbance of Natural Features, Plants and Animals.** There shall be no cutting or removal of trees, or the disturbance of other natural features within the Property/Easement Area except as noted in Article II above and for the following: (1) as incidental to boundary marking, fencing, signage, (2) the application of mutually approved herbicides and pesticides for control of non-native plants, (3) selective cutting and prescribed burning or clearing of vegetation and the application of mutually approved herbicides and pesticides for fire containment, protection and damage, insect and disease control, storm-related

damage, wetlands enhancement, and/or human safety; subject however to a written plan for same prepared by a registered forester, (4) hunting and fishing pursuant to applicable local, state and federal rules and regulations; and (5) removal of damaged trees and debris caused by storm and fire and posing a threat to life or property.

**D. Construction of Buildings and Recreational Use.** There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock or any other temporary or permanent structure or facility on or above the Property/Easement Area except for the following: placement and display of no trespassing signs, local, state or federal traffic or similar informational signs, for sale or lease signs, boundary fencing, entry signs, signs identifying the Conservation Values and purposes of the Property/Easement Area, and/or signs identifying the Grantor as owner of the Property, the Grantee as holder of this Conservation Easement, and the Fund as the source of funding for the acquisition of the Conservation Easement; signs proclaiming that the Property/Easement Area will remain in its protected state, educational and interpretative signs, identification labels or any other similar temporary or permanent signs, reasonably satisfactory to 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 land in any manner except as necessary for the purpose of combating erosion or incidental to any conservation management activities otherwise permitted in the Property/Easement Area.

**F. Wetlands and Water Quality.** Except as set forth in Article II above, there shall be no pollution or alteration of water bodies and no construction or other activities that would be detrimental to water purity or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Property/Easement Area or into any surface waters, or cause soil degradation or erosion, nor any diking, dredging, alteration, draining, filling or removal of wetlands, except activities to restore natural hydrology, wetlands enhancement, or to enhance or improve water quality as permitted by state and any other appropriate authorities.

**H. Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the Property/Easement Area is prohibited.

**I. Subdivision.** Subdividing or partitioning the Property/Easement Area is permitted, provided, however, all of the resulting properties shall remain subject to the Conservation Easement.

**J. Mitigation.** There shall be no use of the Property/Easement Area or any portion thereof to satisfy compensatory mitigation requirements under 33 USC Section 1344 or NCGS §143-214.11 or any successor or replacement provision of the foregoing.

## ARTICLE IV. ENFORCEMENT AND REMEDIES

**A. Enforcement.** To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity on or use of the Property/Easement Area that is inconsistent with the purposes of this Conservation Easement, and to require the restoration of such areas or features of the Property/Easement Area 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 of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Property/Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property/Easement Area; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement, including, without limitation, those set forth in the Grant Agreement under which this Conservation Easement was obtained.

**B. Right of Entry and Inspection.** Grantee, its employees and agents and its successors and assigns, HRWC, and the Fund, have the right, with reasonable notice, to enter the Property and Easement Area at reasonable times for the purpose of inspecting the Property/Easement Area to determine whether the Grantor, Grantor's representatives, successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

**C. 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 Grantee, 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. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the fair market value of the Grantee's, its successors and assigns, interest in the Property on 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 to the sale, exchange or involuntary conversion of the Conservation Area, or any damages otherwise awarded as a result of judicial proceeding, minus

the Grantor's expenses from such transaction or proceeding. Grantee shall use its share of the Proceeds of Sale in a manner consistent with the conservation purposes set forth herein.

**D. Changed Conditions.** When a change in conditions gives rise to the extinguishment of this Conservation Easement or a material term or provision hereof by judicial proceeding, the Grantee, its successor and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the fair market value of the Grantee's, its successors and assigns, interest in the Property on 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 to the sale, exchange or involuntary conversion of the Property/Easement Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding. Grantee shall use its share of the Proceeds of Sale in a manner consistent with the conservation purposes set forth herein.

**E. 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/Easement Area caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to Property/Easement Area or harm to the Property/Easement Area resulting from such causes.

**F. Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

**G. 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 of any other term of this Conservation Easement or of Grantee's rights. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

## ARTICLE V. TITLE

The Grantor covenants and represents and warrants (i) that the Grantor is the sole owner and is seized of the Property and Easement Area in fee simple and has good right to grant and convey the aforesaid Conservation Easement; (ii) that there is legal access to the Property and the Easement Area, that the Property/ /Easement Area is free and clear of any and all encumbrances, except those permitted exceptions shown on the attached Exhibit B none of which would nullify, impair or limit in any way the terms or effect of this Conservation Easement; and (iii) Grantor shall defend its title against the claims of all persons whomsoever, and Grantor covenants that the Grantee, its successors and assigns, shall have the right to

monitor and defend the terms of the aforesaid Conservation Easement.

## ARTICLE VI. MISCELLANEOUS

**A. Stewardship of the Conservation Easement.** Pursuant to the terms of the Grant Agreement, and regardless of whether the Grantee of this Conservation Easement is the State, the HRWC hereby covenants and agrees that it will monitor and observe the Property/Easement Area in perpetuity to assure compliance with the purposes and provisions of this Conservation Easement and the provisions of the Grant Agreement, and that it will report on the condition of the Property/Easement Area, or provide for such reporting, to the State and the Fund no less frequently than once a year; and further will report immediately to the State and the Fund any observed and/or known violations of this Conservation Easement or the Grant Agreement.

**B. Subsequent Transfers of the Fee.** Grantor agrees for itself, its successors and assigns, that in the event it transfers the Property, or any portion thereof including the Property/Easement Area described herein, to notify the Grantee in writing of the names and addresses of any party to whom the Property is to be transferred at or prior to the time said transfer is consummated. 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 or Easement Area is conveyed. The Property owner shall not convey the Property or any interest therein, and shall not incur, assume, or suffer to exist any lien upon or with respect to the Property without disclosing to the prospective buyer the Conservation Easement and the obligations of the Property owner and limitations on use of the Property.

**C. Subsequent Transfers of the Conservation Easement.** The Parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable with any such assignee having all the rights and remedies of Grantee hereunder. The Parties hereby covenant and agree, that in the event this Conservation Easement is transferred or assigned, the transferee or assignee of the Conservation Easement will be a qualified organization as that term is defined in Section 170(h)(3) of the Code of 1986, as amended, or any successor section, and the regulations promulgated there under (the "Code") which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, and a qualified holder as that term is defined in NCGS §121-35 (2) or any successor statute. The Parties further covenant and agree that the terms of the transfer or the 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 as set forth in the Recitals herein. Grantee, its successors or assigns, hereby covenants and agrees that subsequent to any transfer as provided for herein, it will continue to monitor and observe the Property/Easement Area in perpetuity for such purposes set forth by this Conservation Easement and Grant Agreement, and to report to the Fund and the State any observed violations on the Property/Easement Area.

**D. 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 in any way to affect any existing obligation to the Grantor as

owner of the Property, which includes the Property/Easement Area. Among other things, this shall apply to:

**1. Taxes.** The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property/Easement Area, the Grantor will reimburse the Grantee for the same.

**2. Upkeep and Maintenance.** The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property/Easement Area, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property/Easement Area.

**3. Liability and Indemnification.** If the Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property/Easement Area, the Grantor shall indemnify and reimburse the Grantee for these payments, as well as reasonable attorneys' fees and other expenses of defending itself, unless the Grantee has committed a deliberate act that is determined to be the sole cause of the injury or damage. In addition, Grantor warrants that Grantee shall be maintained as an additional insured on Grantor's liability insurance policies covering the Property.

**E. Conservation Purpose.**

1. Grantor and Grantee, for itself, its successors and assigns, agrees that this Conservation Easement shall be held exclusively for conservation purposes set forth by the Grant Agreement, this Conservation Easement and as specified in Section 170(h)(4)(A) of the Code.

2. 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 and Easement Area.

3. This Conservation Easement shall be construed to promote the purposes of the Act and such purposes of this Conservation Easement as are defined in Section 170(h)(4)(A) of the Code.

**F. Recording.** HRWC shall record this instrument and any amendment hereto in timely fashion in the official records of Cherokee County, North Carolina, and may re-record it at any time as may be required to preserve Grantee's rights.

**G. Notices.** All notices, requests or other communications permitted or required by this Agreement shall be sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above, or to such other addresses such party may establish in writing to the other. All such items shall be deemed given or made three (3) days after being placed in the United States mail as herein provided. In any case where the terms of this Conservation Easement require the consent of any party, such consent shall be requested by written notice. Such consent shall be deemed denied unless, within ninety (90) days after receipt of notice, a

written notice of approval and the reason therefore has been mailed to the party requesting consent.

**H. Amendments.** Grantor and Grantee, or their successors in interest in the Property/Easement Area, 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 both Grantor and Grantee and shall be effective upon recording in the public records of Cherokee County, North Carolina.

**I. Environmental Condition of the Property.** The Grantor warrants, represents and covenants to the Grantee that to the best of its knowledge after appropriate inquiry and investigation that: (a) the Property described herein is and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations; (b) as of the date hereof there are no hazardous materials, substances, wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the Property or used in connection therewith; (c) that there is no environmental condition existing on the Property or the Easement Area that may prohibit or impede use of the Property or the Easement Area for the purposes set forth herein; and (4) the Grantor will not allow such uses or conditions.

**J. Indemnity.** The Grantor agrees to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless Grantee and HRWC from and against all claims, actions, liabilities, damages, fines, penalties, costs and expenses suffered as a direct or indirect result of any violation of any federal, state, or local environmental or land use law or regulation or of the use or presence of hazardous substance, waste or other regulated material in, on or under the property.

**K. Entire Agreement.** The Recitals set forth above and the exhibits, if any, attached hereto are incorporated herein by reference. This instrument, including the Grant Agreement incorporated by reference herein, sets forth the entire agreement of the Parties with respect to the Project and supersedes all prior discussions, negotiations, understandings or agreements relating to the Project. To the extent that this Conservation Easement is in conflict with the Grant Agreement, the terms of the Conservation Easement shall control.

**L. Document Under Seal.** The Parties 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.

**M. Interpretation.** This Conservation Easement shall be construed and interpreted under the laws of the State, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes sought to be protected herein. Further, this Conservation Easement shall be construed to promote the purposes of the Act, which authorizes the creation of conservation agreements for purposes including those set forth herein, and such conservation purposes as are defined in Section 170(h) (4) (A) of the Code. If any provision of this 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.

**N. Parties.** Every provision of this Conservation Easement that applies to the Grantors or to the Grantee shall likewise apply to their respective heirs, executors, administrators, successors and assigns.

**O. No Extinguishment through Merger.** The Parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property and Easement Area. Further, the Parties agree that should Grantee, or any successor in interest to Grantee, acquire title to all or a portion of the fee interest in the Property subject to this Conservation Easement, (i) said owner shall observe and be bound by the obligations and the restrictions imposed upon the Property by this Conservation Easement, and (ii) this Conservation Easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement.

**P. Subsequent Liens.** No provisions of this Conservation Easement shall be construed as impairing the ability of Grantors to use this Property/Easement Area for collateral for borrowing purposes, provided that any mortgage or lien arising there from shall be subordinated to this Conservation Easement. The Property owner shall not convey the Property or any interest therein, and shall not incur, assume, or suffer to exist any lien upon or with respect to the Property without disclosing to the prospective buyer the Conservation Easement and the obligations of the Property owner and limitations on use of the Property.

**Q. Gender.** The designations Grantor, Grantee, State and Fund, as used herein shall include the Parties, their heirs, administrators, successors and assigns, and shall include the singular, plural, masculine, feminine or neuter as the context may require.

**R. Restrictions Considered Cumulative.** The prohibitions and restrictions in this Conservation Easement shall be considered cumulative and any prohibition and restriction which is interpreted to be more specific or more restrictive than another prohibition or restriction shall not serve as a limitation on the meaning, interpretation or enforceability of the less specific or restrictive provision.

**TO HAVE AND TO HOLD** the said rights and easements perpetually unto Grantee for the aforesaid purposes. 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.

[See next page for signatures and notary acknowledgment]

**IN TESTIMONY WHEREOF**, the Grantor has executed this Conservation Easement or, if corporate, has caused this instrument to be executed in its name by its President or other officer by authority duly given.

**GRANTOR:**

\_\_\_\_\_  
(SEAL)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for the above County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and that he executed the foregoing Conservation Easement by authority duly given as the act and on behalf of said entity. **IN WITNESS WHEREOF**, I have hereunto set my hand and Notarial Seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**IN TESTIMONY WHEREOF**, the Grantee has executed this Conservation Easement or, if corporate, has caused this instrument to be executed in its name by its President or other officer by authority duly given.

**GRANTEE:**

\_\_\_\_\_  
(SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF CHEROKEE

I, \_\_\_\_\_, a Notary Public in and for the above County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is the Chairman of the Cherokee Soil & Water Conservation District, and that he executed the foregoing Conservation Easement by authority duly given as the act and on behalf of said entity. **IN WITNESS WHEREOF**, I have hereunto set my hand and Notarial Seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

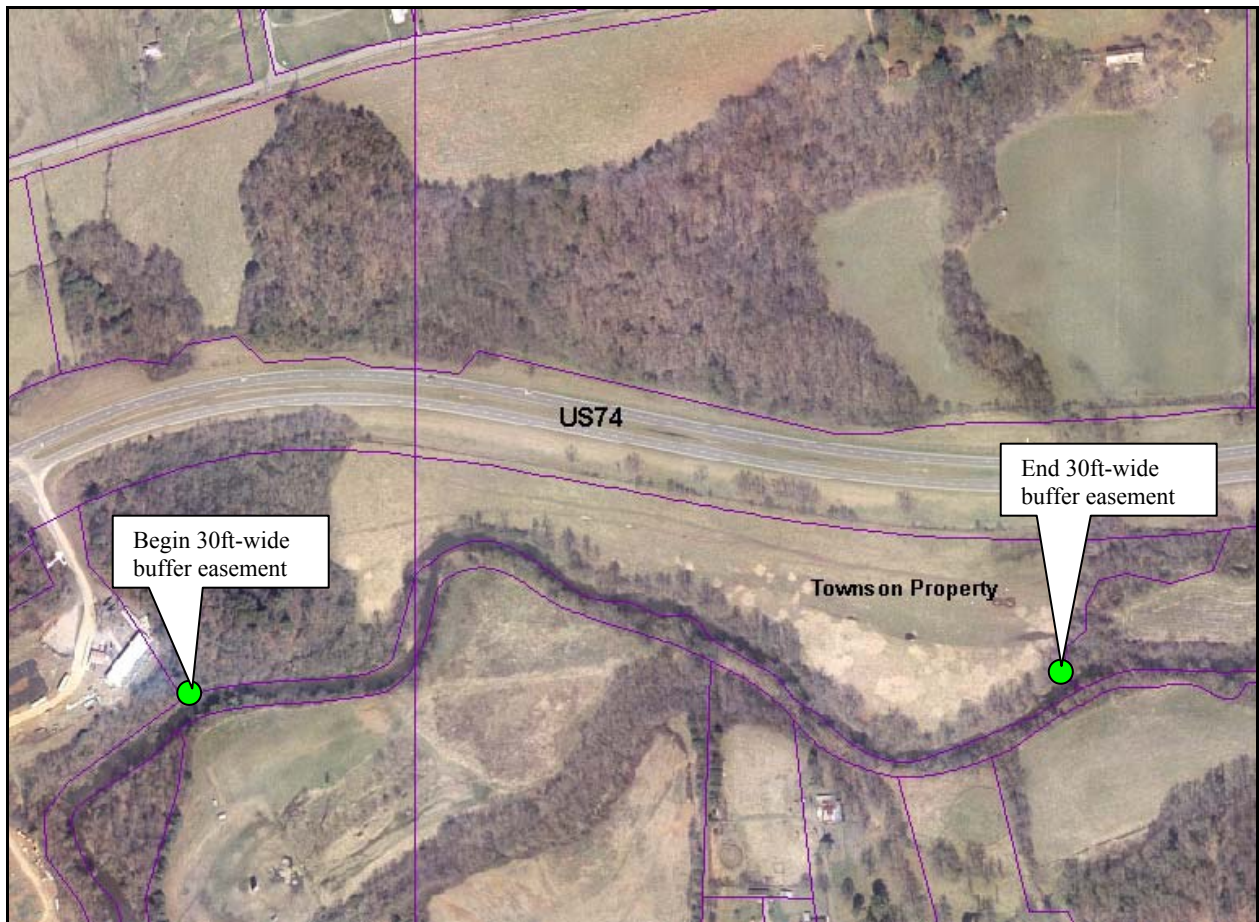
**EXHIBIT A**

**SKETCH OF CONSERVATION EASEMENT AREA**  
**PROPERTY OF LANDOWNER(S)**

**VALLEYTOWN TOWNSHIP**  
**CHEROKEE COUNTY, NORTH CAROLINA**

**FOR ILLUSTRATIVE PURPOSES ONLY**

**THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A**  
**LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE**  
**LAND DEVELOPMENT REGULATIONS**



## EXHIBIT B

### DESCRIPTION OF THE EXISTING CONDITION PROPERTY/EASEMENT AREA OF LANDOWNER(S)

#### VALLEYTOWN TOWNSHIP CHEROKEE COUNTY, NORTH CAROLINA

The property is currently undeveloped with the majority of the site currently in row crop production. In a few locations, corn is currently being planted right up to the edge of the Valley River. Approximately 25% of the property/easement area is forested. In the non-forested areas, much of the riparian buffer has been cleared with the exception of a narrow strip (in many cases less than 10 feet wide) along the river bank. Existing trees include sycamore (*Platanus occidentalis*), red maple (*Acer rubrum*), tulip poplar (*Liriodendron tulipifera*), water oak (*Quercus phellos*), southern red oak (*Quercus falcate*), ironwood (*Ostrya virginiana*), rhododendron (*Rhododendron maximum*), and tag alder (*Alnus serrulata*). There are several areas that are dominated by Chinese privet (*Ligustrum sinense*).

More detailed information about the existing condition of the Valley River is found in a document entitled "Valley River at Marble Stabilization and Enhancement Project, Cherokee County, North Carolina" prepared for the Hiwassee River Watershed Coalition, Inc. in October 2007 by Acer Engineering, PLLC of Raleigh, NC and Acer Environmental, Inc. of Lawrenceville, GA.