WATAUGA COUNTY NC 11/17/2000
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WANDA C. SCOTT
REGISTER OF DEEDS
Real Estate Excise Tax
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BY: DEPUTY
WATAUGA COUNTY, NC

BK 0598 PG 548

NORTH CAROLINA
WATAUGA COUNTY

STATE OF NORTH CAROLINA

Project: 6.759005T
F. A.: N/A
I. D.: 0529WM
Parcel: 702WM

CONSERVATION EASEMENT and ~~EASEMENT OF~~ INGRESS AND EGRESS

THIS CONSERVATION EASEMENT and EASEMENT OF INGRESS AND EGRESS, made this 10 day of October, 2000, by and between *Frederick W. Racey and wife, Zoe N. Racey*, hereinafter called the "Grantor(s)" and the North Carolina Wildlife Resources Commission, hereinafter called the "Grantee", and administered by the North Carolina Department of Transportation, hereinafter called the "Administrator", provides the following:

196091

WITNESSETH

WHEREAS, the Grantor owns in fee simple approximately 8.071 acre(s) of land situated in **Stony Fork** Township of **Watauga** County as more particularly described in Book 176, Page 124 and Book 233, Page 114 of the **Watauga** County Registry, North Carolina, upon which land lies and known as _____ _____which land is hereinafter referred to as "the Property";

WHEREAS, the Administrator is an agency of the State of North Carolina whose purpose includes the construction of transportation projects for public use;

WHEREAS, the Administrator is beginning to restore 1,150 feet of stream in **Watauga** County on the said Property through the Grantee:

WHEREAS, the Grantee is an agency of the State of North Carolina whose purposes include the restoration and conservation of open space and streams for stream mitigation purposes; is authorized by the laws of the State of North Carolina to accept, hold and administer conservation easements; possesses the authority to accept and is willing to accept this Conservation Easement from the Grantor under the terms and conditions hereinafter described;

WHEREAS, the Grantor is willing to grant a perpetual Conservation Easement over 1.42 acres of the Property, thereby restricting and limiting the use of land within the Conservation Easement area to the terms and conditions and for the purposes hereinafter set forth, and to further grant an easement of ingress and egress (right of way easement) to the Conservation Easement area over **0.205 acres**, upon and along the Property as more particularly set forth hereinafter;

WHEREAS, the Grantor consents to the Administrator assigning this Conservation Easement over the designated portion of the Property to another state agency, the WRC, whose purpose is consistent with this Conservation Easement or to a non-profit corporation whose purposes are consistent with this Conservation Easement.

WHEREAS, the Administrator, under Section 404 permit granted by the U. S. Army Corps of Engineers (USACE), must conduct certain off-site trout stream enhancement for impacts to trout streams resulting from the construction of **US-421 from South Fork New River to East of the Blue Ridge Parkway (R-0529BA, R-0529BB & R-0529BD)**.

WHEREAS, the Administrator has entered into an agreement with the Grantee to reimburse them for conducting the restoration of such off-site trout stream enhancement;

WHEREAS, the USACE has reviewed and approved the use of the Conservation Easement on the Property to mitigate for the stream impacts, and such will satisfy the said permit conditions after the completion of the stream monitoring period;

NOW THEREFORE, in consideration of the sum of $8,125.00 (Eight Thousand One Hundred Twenty Five Dollars) and other valuable considerations to the Grantor in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the mutual convenants, terms, conditions, and restrictions hereinafter set forth, the Grantor hereby grants and conveys unto the Grantee and its successors or assigns forever and in perpetuity a Conservation Easement, pursuant to the USACE Section 404 permit requirements, of the nature and character and to the extent hereinafter set forth, in respect to the land of the grantor situated in **Watauga** County, North Carolina, as described in **Exhibit A**.

Together with an easement of ingress and egress (right of way easement) over and upon the remaining Property of the Grantors described in Book 176, page 124, and Book 233, page 114 of the **Watauga** County Registry as a means of Ingress and Egress to and from the Conservation Easement hereinabove described, as more particularly described in **Exhibit B**, for plat of the above described Conservation Easement and easement of Ingress and Egress (right of way easement), please see plat titled "Conservation Easement" recorded in Plat Book 15, Page 133 of the Watauga County Registry.

Return to: Division Right of Way Agent
PO Box 250
N Wilkesboro, NC 28659

It is specifically understood by all parties to this document that the easement of ingress and egress (right of way easement) will be valid until the completion of the construction of the stream mitigation project on said property of the Grantor. Upon completion of the construction of said stream mitigation project, the easement of ingress and egress (right of way easement) will dissolve and no longer be a part of the conservation easement and this document.

The terms, conditions and restrictions of the Conservation Easement are as hereinafter set forth:

1. The purposes of this Conservation Easement are to preserve and protect the conservation values of the easement area designated on the Property and to maintain permanently the dominant woodland, scenic and natural character of the easement area. To achieve these purposes, the parties hereto agree to the conditions and restrictions set forth herein.

2. This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by the Grantee or its successors and/or assigns against the Grantor(s), Grantor's heirs, devisees, successors and assigns, lessees, agents and licensees.

3. Any activity on, or use of, the designated easement area inconsistent with the purposes of this Conservation Easement is prohibited. The Easement Area shall be maintained in its natural, scenic and open condition and restricted from any development that would significantly impair or interfere with the conservation values of this easement area. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

   a) Disturbance of Natural Features. Any changes, disturbance, alteration or impairment of the natural, scenic and aesthetic features of the easement area or any introduction of non-native plants and/or animal species is prohibited unless the Grantee shall give its prior written consent or unless otherwise expressly permitted herein. Livestock shall cross or access water at areas appointed and agreed upon in the conceptual mitigation plan and at such locations shown on the property boundary survey attached. If no such areas are demarcated and agreed to in the Conceptual Stream Mitigation Plan attached hereto, then access to the Easement Area for these purposes is forbidden.

   b) Agricultural, Grazing and Horticultural Use. Agricultural, grazing and horticultural use (landscaping) of the easement area is prohibited. Grantors may have limited access to the easement area for the purpose of operating irrigation pumps. In an emergency situation (no other water source is available) livestock may access the stream for water, access should be limited to one side of the stream for a length not to exceed 30 linear feet and the Grantee should be notified immediately.

   c) Silvicultural Use and Land Clearing. There may be no destruction or cutting or trees or plants on the Easement Area, except in accordance with the Conceptual Stream Mitigation Plan attached hereto or upon approval of the Grantee. The gathering of firewood in the Easement Area shall be limited to dead trees, such that the gathering is consistent with purposes of this Conservation Easement. Removal of large trees may be allowed in some cases pending approval by the Grantee.

   d) Hunting and Fishing. Grantor expressly reserves the right to hunt and fish on the Easement Area and to control access of all persons for the purpose of hunting and fishing; provided that these activities do not impact the protection and conservation of any animal/trout habitat or other conservation values of the Easement Area.

   e) Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Easement Area is prohibited.

   f) 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 material, and no change in the topography of the land in any manner on the Easement Area nor shall there be any activities conducted on the Easement Area or on adjacent property if owned by the Grantor and his successors which would cause erosion or siltation on the Easement Area.

   g) Water Quality and Drainage Pattern. There shall be no activities conducted in the Easement Area that would be detrimental to water purity or to any of the plants or habitats within the Easement Area. There shall be no activities that would alter natural water levels, drainage, sedimentation and/or flow in or over the Easement Area, or cause soil degradation or erosion. Diking, dredging, alteration, draining, filling or removal of wetland or stream is prohibited. The Grantee maintains the right to install, operate and maintain structures for the purpose of reestablishing, protecting, and enhancing stream functional values, including those described in the Conceptual Stream Mitigation Plan for the Easement Area.

4. The Grantor, for himself, his successors, assigns, invitees and licensees, hereby reserves the right to quiet enjoyment of the Easement Area, the right to ingress and egress to the Easement Area and all adjacent property of the Grantor, the right to continue such uses as exist as of the date of this grant not inconsistent with this Conservation Easement and the right to sell, transfer, gift or otherwise convey the Easement Area, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of this Conservation Easement and written notice is provided to the Grantee in accordance with the provisions herein below.

5. Nothing contained herein shall be construed to entitle the Grantor to bring any action against Grantee for any injury or change in the Property resulting from causes beyond the Grantee's control, including fire, flood, storm, war, acts of God or third parties, or from any prudent action taken in good faith by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes, in accordance hereunder.

6. The Grantee may enter the Grantor's adjoining property only for the purposes set forth in this agreement and only in accordance with the Easement for Ingress and Egress described hereinabove. The Grantee will attempt to notify the Grantor before entering the Property.

7. The Grantee has the right to prevent any action on or use of the Easement Area that is inconsistent with the purpose of this Conservation Easement. Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, the Grantee may pursue its remedies without prior notice to the Grantor, but shall call the Grantor to leave a voice message and shall exercise within two business days an effort to notify the Grantor and explain the action undertaken. The Grantor reserves the right to take action against the Grantee for use of the Easement Area in a way that is inconsistent with the purpose of this Conservation Easement.

8. No failure on the part of the Grantee to enforce any covenant or provision hereof shall be a waiver to discharge or invalidate such covenant or any other covenant, condition, provision hereof or affect the right of Grantee to enforce in the same in the event of a subsequent breach or default.

9. The Grantee and Grantor may amend this Conservation Easement and Easement of Ingress and Egress only by a jointly executed written agreement, and provided that no amendment will be allowed that is inconsistent with the purposes stated herein, and provided that it is approved by the USACE.

10. The attached Exhibit A (X), Exhibit B (X), Exhibit C ( ) and Plat recorded in Plat Book 15, Page 133 of the Watauga County Registry are incorporated in and made a part of this instrument by reference.

11. The parties acknowledge that the Conceptual Stream Mitigation Plan was developed by a WRC biologist and dated *March 2000,* a copy of which is on file at the office of the Administrator and the Grantee, and which is also attached hereto and incorporated herein, describes the plan for restoring the stream stretch in the Easement Area.

12. The covenants agreed to, and the terms, conditions, restrictions and purposes imposed as aforesaid, shall be binding upon the Grantors, their successors and assigns, and shall continue to serve as a servitude running in perpetuity with the Property.

The Grantors covenant and represent that the Grantors are the sole owner and are seized of the Property in fee simple and have good right to grant and convey the aforesaid Conservation Easement and Easement of Ingress and Egress; that the Conservation Easement Area and Easement of Ingress and Egress is free and clear of any and all encumbrances, except easement and leases of record or in effect by prescriptive rights as of the date hereto, and Grantors covenant that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid easements conveyed. The easements conveyed herein shall run with the land and must be made part of any transfer of title by the Grantors.

This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and Easement of Ingress and Egress and supersedes all prior discussions, negotiations, understandings or agreements relating to the said easements. 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 is found to be invalid, shall not be affected thereby.

The Administrator shall record this instrument and any amendment hereto in timely fashion in the **Watauga** County, North Carolina, Registry and may re-record it at any time as may be required to preserve its right under this Conservation Easement.

This rights and obligations set forth herein shall insure to and be binding upon the Grantor and the Grantee, theirs heirs, executors, administrators, assigns and successors in title or interest.

TO HAVE AND TO HOLD the aforesaid easements unto the NORTH CAROLINA WILDLIFE RESOURCES COMMISSION, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal the day and year first above written.

GRANTORS:

Frederick W. Racey (SEAL) — Frederick W. Racey

Zoe N. Racey (SEAL) — Zoe N. Racey

(SEAL)

(SEAL)

ADMINISTRATOR:
ACCEPTED FOR THE DEPARTMENT OF TRANSPORTATION BY:

A. D. Allison, Jr. NOV 09 2000 (SEAL) — 11/8/00 Date

GRANTEE:
ACCEPTED FOR THE WILDLIFE RESOURCES COMMISSION BY:

Charles R. Fullwood (SEAL) — Charles R. Fullwood — 10/13/00 Date

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SEAL-STAMP NORTH CAROLINA, COUNTY OF Watauga

I, Anthony A. Adams a Notary Public of Alexander County do hereby certify that Frederick W. Racey and wife Zoe N. Racey, Grantor(s) personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 10 day of October, 2000.

My Commission Expires: 2-20-2005

Anthony A. Adams
Signature of Notary Public

NOTARY PUBLIC ANTHONY A. ADAMS ALEXANDER COUNTY, N.C.

NORTH CAROLINA, WATAUGA COUNTY

The foregoing Certificate(s) of Anthony A. Adams, Notary Public, Alexander County, NC

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Wanda C. Scott REGISTER OF DEEDS FOR Watauga COUNTY

BY: Jessica Fox DEPUTY/~~ASSISTANT~~ REGISTER OF DEEDS

"EXHIBIT A"

CONSERVATION EASEMENT #1

Frederick W. Racey and wife, Zoe N. Racey

BEGINNING at a point located on an eastern property line boundary of the Grantor(s), said point lying 79.28 feet southerly of and normal to a northeastern property corner of the Grantor(s), said corner lying in the center of a private gravel drive and being more particularly described in the hereinabove referenced deed(s); thence South 01° 26′ 15″ East along and with an eastern property line boundary of the Grantor(s) 106.21 feet to an iron pin, said iron pin lying on an eastern property line boundary of the Grantor(s); thence South 01° 26′ 15″ East along and with an eastern property line boundary of the Grantor(s) 114.36 feet to a southeastern property corner of the Grantor(s), said corner lying in Laxon Creek and being more particularly described in the hereinabove referenced deed(s);thence North 87° 22′ 23″ West along and with a southern property line boundary of the Grantor(s) 20.75 feet to a point, said point lying on a southern property line boundary of the Grantor(s); thence North 12° 57′ 43″ West 180.36 feet to a point; thence North 32° 02′ 37″ West 115.55 feet to a point; thence North 42° 45′ 31″ East 64.22 feet to a point; thence South 45° 00′ 33″ East 59.36 feet to a point; thence South 27° 52′ 14″ East 67.13 feet to the point of BEGINNING.

CONSERVATION EASEMENT #2

Frederick W. Racey and wife, Zoe N. Racey

BEGINNING at a point lying on a northwestern property line boundary of the Grantor(s), said point lying 22.34 feet southwesterly of and normal to a northwestern property corner of the Grantor(s), said corner being a common corner between Four Seasons Apartments Incorporated and the Grantor(s) and being more particularly described in the hereinabove referenced deed(s); thence South 69° 26′ 08″ East 180.36 feet to a point; thence South 84° 34′ 18″ East 173.25 feet to a point, said point lying in the right of way of a private gravel drive; thence South 64° 25′ 44″ East 183.72 feet to a point; thence South 75° 03′ 09″ East 40.62 feet to a point; thence North 87° 18′ 21″ East 82.19 feet to a point; thence South 81° 28′ 04″ East 49.37 feet to a point; thence South 63° 53′ 44″ East 35.69 feet to a point; thence South 41° 57′ 36″ West 64.42 feet to a point; thence North 76° 25′ 34″ West 69.17 feet to a point; thence South 70° 50′ 29″ West 112.27 feet to a point; thence North 53° 57′ 30″ West 87.81 feet to a point; thence North 53° 54′ 38″ West 83.56 feet to a point; thence North 76° 36′ 52″ West 153.96 feet to a point; thence North 70° 16′ 05″ West 211.30 feet to a point; thence North 70° 16′ 05″ West 42.74 feet to a point lying on a northwestern property line boundary of the Grantor(s), said point lying 71.41 feet southwesterly of and normal to a northwestern property corner of the Grantor(s), said corner being a common property corner between Four Seasons Apartment Incorporated and the Grantor(s) and being more particularly described in hereinabove referenced deed; thence North 44° 39′ 16″ East along and with a northwestern property line boundary of the Grantor(s) 49.07 feet to the point of BEGINNING.

"EXHIBIT B"

Easement of Ingress and Egress

Frederick W. Racey and wife, Zoe N. Racey

BEGINNING at a point lying on a southwestern right of way boundary of a 15-foot private gravel drive, said point lying 7.5 feet southwesterly of and normal to the center line of a private gravel drive and being the northernmost corner of Conservation Easement #1; thence South 42° 45′ 31″ West crossing Laxon Creek 64.22 feet to a point; thence South 45° 50′ 10″ West 78.21 feet to a spike; thence South 68° 56′ 43″ West 62.13 feet to a spike; thence North 58° 42′ 14″ West 96.27 feet to a spike; thence North 57° 24′ 09″ West 97.01 feet to a spike; thence North 57° 24′ 09″ West 148.90 feet to a point; thence South 76° 36′ 52″ East 77.68 feet to a point; thence South 53° 54′ 38″ East 83.56 feet to a point; thence South 53° 57′ 30″ East 87.81 feet to a point; thence South 58° 03′ 19″ East 87.06 feet to a spike; thence North 72° 37′ 09″ East 52.17 feet to a spike; thence North 44° 09′ 40″ East 71.22 feet to a point; thence North 41° 57′ 36″ East crossing Laxon Creek 64.42 feet to a point; thence South 63° 53′ 44″ East 18.57 feet to the point of BEGINNING.