

~~NORTH CAROLINA~~
~~SWAIN COUNTY~~

GRANT OF FLOWAGE EASEMENTS

TRACT NO FR-449-F

THIS INDENTURE, made and entered into this 3 day of August, 1942, by and between Harley Pace and wife Myrtle Johnston Pace, and M.J. Hopkins, Tenant, all of Swain County, North Carolina, hereinafter called the "Grantors", and the UNITED STATES OF AMERICA, hereinafter called the "Grantee"

W I T N E S S E T H

That for and in consideration of the sum of Two Thousand Six Hundred Eight and 55/100 Dollars (\$2,608.55) cash in hand paid, the receipt whereof is hereby acknowledged, the Grantors have this day bargained and sold, and do hereby grant, bargain, sell, transfer, and convey unto the Grantee, and its assigns, easment rights in and over the land hereinafter described, for the following uses and purposes: (1) Over that portion of the following described land which lies below contour elevation 1715.63, Mean Sea Level (all elevations referred to herein being based upon Mean Sea Level as established by the Southeastern Supplementary Adjustment of 1936, U.S.C. & G.S.), and containing 21.2 acres, more or less: (a) The right to permanently overflow, flood, and/or cover said hereinafter designated land with the flood, slack, or backwater created by the erection and operation of a dam or dams across the Little Tennessee River; (b) The right to enter upon said land from time to time, and prepare the reservoir area for impoundage of the water and clear and remove therefrom any timber or other natural growth and any obstructions, accumulations, trash, filth, or any other thing which would in any way interfere with navigation or flood control, or tend to render inaccessible, unsafe, or insanitary either the reservoir created by said dam or dams or the margin thereof; together with the right to prevent the draining or dumping into said reservoir of any refuse, sewage, or other material which might tend to pollute the same; (c) The right to enter upon said land and do such ~~draining~~ and other work as, in the discretion of the Authority, may be necessary to carry out an adequate program of malaria control, including the maintenance of necessary patrols and the application of larvicides; (d) The right to enter upon said land and do such dredging, excavating, and other channel improvement work as, in the discretion of the Authority, may be necessary together with the right to erect and maintain ~~beacons~~ ^{between} or other signal structures as aids to navigation.

(2) Over that portion of the following described land which lies ^{between} ~~below~~ contour elevation 1715.63 and elevation 1722.63 and containing 0.9 acres, more or less, the right to temporarily overflow the land and store water during flood periods.

The land affected by the easement rights above set forth is located and described as follows:

The land affected by the ~~above~~ described easement rights is that portion of the following described tract of land which lies below elevation 1722.63 MSL and is located in Forneys Creek Township of Swain County, state of North Carolina, on the left bank of Hazel Creek approximately 1/2 mile northeast of the State Highway No. 288 bridge across Hazel Creek, the said tract being more particularly described as follows:

Beginning at a point in the center line of Hazel Creek, a corner of the lands of Mrs. Ollie Hall, Ollie Hall & the Hazel Creek Land Company, and the J.E. Coburn Heirs; thence with the J.E. Coburn Heirs line North 83°00' East 655 feet passing a 20 inch maple tree at 50 feet, to ~~mark~~ a 16 inch maple tree; thence South 10°00' West 175 feet to a 26 inch spanish oak tree at the top of a ridge; thence with the top of the ridge as it meanders approximately along a bearing and distance of South 31°00' East, 460 feet to a 12 inch chestnut stump, a corner of the lands of the J.E. Coburn Heirs, and Dock Hall et al, thence with Dock Hall's line and the top of the ridge as it meanders approximately along the following bearings and distances; South 17°30' East 1160 feet; South 12°00' West 495 feet to a stake at the top of "elch Ridge, a corner of the lands of Dock Hall et al, and the J.E. Coburn Heirs; thence with the J.E. Coburn Heirs line and the top of Welch Ridge as it meanders in a southwesterly direction approximately 1000 feet to a 20 inch pine snag, a corner of the lands of the J.E. Coburn Heirs, and H.N. Ballew et ux; thence, leaving the top of "elch Ridge, with N.H. Ballew's line and the top of a spur ridge as it meanders approximately along a bearing and distance of North 12°30' West, 1065 feet, to a point, thence, leaving the top of the ridge, with a fence line for the last approximately 120 feet North 21°00' West 160 feet to a fence angle; thence North 30°00' West, 310 feet, passing a stake at approximately 260 feet, to a point in the center line of Hazel Creek, a corner of the lands of H.N. Ballew et ux. and Bill Cable et ux, thence with Bill Cable's and Mrs. Ollie Hall's line and the center line of the creek as it meanders upstram approximately 1020 feet to the point of beginning and containing a total of 56.0 acres, more or less, of which 21.2 acres, more or less, lie below elevation 1715.63, and 0.9 acre, more or less, lies between elevations 1715.63 and 1722.63, giving a total of 22.1 acres, more or less, lying below elevation 1722.63.

The above described tract of land is shown on Tennessee Valley Authority Land Map 19MS 421K 504-5, Fontana Reservoir, a copy of which will be filed in the Office of the Register of Deeds of Swain County, North Carolina,

It is understood and agreed that the bearings given in the above description are based on the North Carolina State Coordinate System, Lambert Projection, as established by the U.S. Coast and Geodetic Survey. The central meridian for this coordinate system is located at Longitude 79°00' West, and the elevations given therein refer to Mean Sea Level Datum and are based on the U.S. Coast and Geodetic Survey's Southeastern Supplementary Adjustment of 1936.

The purchase price hereinabove recited is the total value of the easement rights herein granted and described, and include the value of the share of M.J. Hopkins as tenant, the said M.J. Hopkins, Tenant, joins in the execution of this Grant of Flowage Easement to the United States of America for the purpose of subordinating all of his rights in the above described property to all of the provisions of the Contract for Purchase of Flowage Easement executed by Harley Pace and wife Myrtle Johnston Pace and M.J. Hopkins Tenant, dated July 10, 1942; and for the further purpose of subordinating all of his rights in the above described property to all of the terms and provisions of this grant of Flowage Easement to the United States of America

Being a portion of the land described in the deed from Grace Crisp, dated August 17, 1940 recorded in Deed Book 64, page 124, Swain County Register's Office.

TO HAVE AND TO HOLD the aforescribed easment rights unto the grantee and unto its assigns forever.

The grantors for themselves, their heirs, executors, administrators, successors, and assigns do hereby covenant to and with the Grantee that they are lawfully seized and possessed of the

above described tract of land; that they have a good and lawful right to sell and convey the above described easement rights therein; that said land is free and clear of all encumbrances; and that they will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.

In further consideration of the payment of the purchase price above stated, and in order that the land affected by the above described easement rights and the remainder of Seller's land adjoining same may be thereby benefited and protected, the Grantors, for themselves, their heirs, personal representatives, successors and assigns, do hereby covenant and agree that they will not use said adjoining land in any manner which will result in the draining or dumping into the reservoir created by the above mentioned dam or dams of any refuse, sewage, or other material which might tend to pollute the waters of said reservoir; and this covenant shall be a real covenant which shall attach to and run with said adjoining land which shall be binding upon everyone who may hereafter come into ownership of said land, whether by purchase, devise, or descent.

As a further consideration for the payment of said purchase price, the Grantors for themselves, their heirs, personal representatives, successors and assigns, do hereby release the United States of America and the County of Swain, their successors, assigns, agents, and employees from any and all liability from damages to the Grantors remaining land by reason of any resulting loss of access facilities thereto. If, as a result of the highway plans ultimately adopted by the Grantee, the Grantors remaining land should be furnished with access, then in consideration of the furnishing of such access, the Grantors shall grant, execute, and deliver, without the payment of additional money consideration, a right of way easement not exceeding 100 feet in width, sufficient for use in the construction of said access road.

The Grantors understand and hereby agree that all buildings, structures, or other improvements, tents and house trailers, located on that portion of the above described land lying below 1715.63 elevation, Mean Sea Level, either constitute potential hazards to navigation or otherwise interfere with the program for the preparation of the reservoir for the above mentioned dam or dams, and must be ultimately removed. This conveyance is made, however, upon the condition that the Grantors may retain said buildings, structures, improvements, tents, and house trailers, on said land until December 1, 1943, provided that: (1) No buildings, structures, or other improvements, tents, or house trailers on the property shall be used for human habitation unless sanitary facilities, determined to be adequate by the Tennessee Valley Authority (the corporate creature and agent of the Grantee, which is hereinafter referred to as "Authority"), are provided in connection therewith. If the Authority determines that the sanitary facilities are not adequate it may require the vacation of any and/or all buildings, structures, or other improvements, tents and house trailers and require their removal or remove them if after 10 days notice the owner has failed to correct the situation by installation of necessary sanitary facilities specified in the Authority's notice. (2) If, in the opinion of the Authority's sanitary engineers, the water supply is inadequate for the purpose for which the property is being used, or if they determine that it is contaminated, the owner, on 10 days notice, must provide, a new and adequate supply or upon failure to do so, the Authority may require the vacation of any and/or all buildings, structures, or other improvements, tents, and house trailers, and require their removal or remove them. (3) No buildings, structures, or other improvements, tents or house trailers shall be used for any purpose or to carry on any business which might tend to lower the morals of the community or be incompatible with the development of the area through the expenditures of public funds, which restriction in the use of the property shall include the sale of wine, beer and other beverages of alcoholic content. (4) No additional improvements to be used for human habitation shall be placed on the property unless the Authority approves of the sanitary facilities to be provided in connection therewith. (5) All buildings, fences, structures, or other improvements, tents and house trailers, may be salvaged by the Seller provided that he removes the same from the land prior to December 31, 1943.

Wherever the context hereof requires, the plural number, as used herein shall be read as singular, and the masculine gender as feminine or as neuter.

IN WITNESS WHEREOF, the grantors herein have hereunto set their hands and seals this the day and year first above written.

Documentary Revenue Stamps, \$3.30 P.D. and
Cancelled.

Harley Pace (SEAL)
Myrtle Johnston Pace (SEAL)
M.J. Hopkins, tenant (SEAL)

STATE OF NORTH CAROLINA
SWAIN COUNTY

I, Will W Wiggins, a notary public for said county and state do hereby certify that M.J. Hopkins, tenant, Harley Pace, and Myrtle Johnston Pace, his wife personally appeared before me this day and acknowledged the due execution of the foregoing instrument; and the said Myrtle Johnston Pace, wife of Harley Pace, being by me privately examined, separate and apart from her said husband touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion, of her said husband ~~assent~~ or any other person, and that she does still voluntarily assent thereto.

Witness my hand and official seal this 3rd day of August, 1942.

(Notarial Seal) My commission expires Feb. 20, 1944.

NORTH CAROLINA

SWAIN COUNTY

The foregoing certificate of Will W. Wiggins a notary public of Swain County, is adjudged to be correct. Let the instrument, and the certificates be registered,

Witness my hand this 3 day of August, 1942.

Will W Wiggins, Notary Public
attested by his official seal,

Filed for registration at 10:00 O'clock A.M. August 3, 1942 and registered in the office of the register of Deeds for Swain county in Book 66, Page 125. August 3, 1942.

Register of Deeds