

NORTH CAROLINA
GUILFORD COUNTY

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR JAMES LANDING

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THIS DECLARATION is made this the 27th day of July, 1993, by AKELA TRAIL PROPERTIES, INC., a North Carolina corporation ("Declarant");

WITNESSETH:

WHEREAS, Declarant has executed a purchase agreement dated September 29, 1992, (the "Purchase Agreement") whereunder Declarant has agreed to purchase an approximately 253-acre tract of land lying between Wendover Avenue and Akela Trail in High Point Township, Guilford County, North Carolina (the "Boy Scout Tract"), more particularly described as Tracts 1 through 6 on the Exclusion Map for James Landing recorded in the Guilford County Registry in Book 107, Pages 36, 37 (the "Exclusion Map"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, which tract of land is within the City of High Point, North Carolina (the "City"); and

WHEREAS, the Purchase Agreement provides that the closing of Declarant's purchase of the Boy Scout Tract may occur in separate installments over time; and

WHEREAS, simultaneously with the execution of this Declaration, Declarant has purchased, pursuant to the Purchase Agreement, an approximately 88-acre tract of land within the Boy Scout Tract (the "Southern Tract") more particularly described as Tracts 1 through 4 on the Exclusion Map; and

WHEREAS, the Purchase Agreement provides for the closing on the purchase by the Declarant of the balance of the Boy Scout Tract exclusive of the Southern Tract (the "Northern Tract") in installments over the next two (2) years; and

WHEREAS, situated within the boundaries of the Northern Tract, and without the boundaries of the Southern Tract, and as identified on the Master Watershed Control Plan agreed to by the Declarant and the City, a copy of which is attached hereto as Exhibit B and incorporated herein by reference (the "Master Watershed Control Plan"), are certain areas designated as "Permanent Retention Pond," and areas designated as drainage, maintenance and utility easements ("DM&UE"s); and

WHEREAS, the Declarant has subdivided the Southern Tract and, upon its purchase of the Northern Tract, intends to subdivide the Northern Tract, and intends to convey the parcels so subdivided to other parties for development; and

WHEREAS, a condition to the subdivision of the Boy Scout Tract is the continued maintenance and preservation of the Maintenance Area (as defined below); and

WHEREAS, Declarant desires to provide for the maintenance and preservation of the Maintenance Area, and the reservation of easements, as more fully delineated in the Master Watershed Control Plan.

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North Carolina - Guilford County
The certificate (s) of

Katherine Lee Payne

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07/28/93

1 MISC DOCUMENT 696183 5.00
16 MISC DOC ADDN PGS 32.00
1 PROBATE FEE 1.00

RECORDED

KATHERINE LEE PAYNE
REGISTER OF DEEDS
GUILFORD COUNTY, NC

A Notary (Notaries) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time shown herein.

KATHERINE LEE PAYNE, REGISTER OF DEEDS
Katherine Lee Payne
Assistant/Deputy Register of Deeds

BOOK: 4098
PAGE(S): 0604 TO 0620

07/28/1993 13:03:59

NOW, THEREFORE, Declarant hereby declares that property more particularly described in Exhibit C attached hereto and incorporated herein by reference, shall be held, sold, and conveyed subject to the following restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding upon all parties having any right, title or interest in the property described in Exhibit D, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
Definitions

1.1 "Declarant" shall mean and refer to Akela Trail Properties, Inc., as well as its successors and Affiliates, if such successors or Affiliates should acquire any portion of the Boy Scout Tract for the purpose of development.

1.2 "Affiliate" shall mean and refer to any entity in which Declarant possesses at least a twenty-five percent (25%) ownership interest, or any entity which possesses at least a twenty-five percent (25%) ownership interest in Declarant.

1.3 "Association" shall mean and refer to the James Landing Property Owner's Association, a North Carolina non-profit corporation, its successors and assigns.

1.4 "Member" shall mean and refer to any constituent member of the Association.

1.5 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.6 "Boy Scout Property" shall mean and refer to Tracts 1 through 6 on the Exclusion Map.

1.7 "Southern Tract" shall mean and refer to Tracts 1 through 4 on the Exclusion Map.

1.8 "Northern Tract" shall mean and refer to that portion of the Boy Scout Tract exclusive of the Southern Tract.

1.9 "Property" shall mean that property described in Exhibit C attached hereto.

1.10 "Lot" shall mean and refer to any separately numbered plot of land described on any recorded subdivision map of land located within the Property.

1.11 "Development Tract" shall mean and refer to any site or area within the Boy Scout Tract to be separately developed as a single-family residential subdivision, planned unit development, townhouse or condominium site, office or institutional site, apartment site, shopping center or other form of development permitted under the zoning classification for that site or area. By way of example, and not by way of limitation, each residential subdivision developed or to be developed within the Boy Scout Tract shall be a separate "Development Tract."

1.12 "Maintenance Area" shall mean and refer to: (i) all areas designated as "Permanent Retention Pond" on the Master Watershed Control Plan; (ii) all areas designated as "DM&UE"

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surrounding any area designated as "Permanent Retention Pond" on the Master Watershed Control Plan; and (iii) the signage, plantings, lighting, and green spaces constituting the entrance statement for James Landing situated at the intersection of Wendover Avenue (as widened) and James Landing Parkway (to be constructed). Notwithstanding the foregoing, the Maintenance Area shall specifically not include any area within any "DM&UE" designated on the Master Watershed Control Plan adjacent to any creek identified on the Master Watershed Control Plan. Property included within the Maintenance Area under this Declaration may also be included in a common area within any Development Tract developed within the Boy Scout Tract, but such inclusion within such a common area of a Development Tract shall be expressly subject to the provisions of this Declaration with respect to any easements applicable to any portion of the Maintenance Area and the maintenance of the Maintenance Area.

ARTICLE II
Property Rights

2.1 **Owner's Easements of Enjoyment.** Every Owner shall have an easement in and to the Maintenance Area for drainage, retention pond, and watershed protection, which easement shall be appurtenant to, and shall pass with the title to, every Lot subject to the following provisions:

- (a) The right of the Association to restrict passage over portions of the Maintenance Area for protection of the Maintenance Area, provided, however, that such right to restrict passage does not interfere with the development of the Boy Scout Tract by the Declarant or others;
- (b) The right of the Association to dedicate or transfer all or part of any of the Maintenance Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds (2/3) of the Members of the Association agreeing to such dedication or transfer has been recorded; and
- (c) The right of the Declarant to change the dimensions or configuration of the Maintenance Area as dictated by good engineering practice and as permitted by the City, or such other governmental entity as may succeed to the rights of the Watershed Committee with respect to the oversight of watershed protection plans on the Boy Scout Tract.

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ARTICLE III
Membership

3.1 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot that is subject to assessment hereunder.

3.2 **Class of Membership.** The Association shall have one (1) class of voting membership.

3.3 **Voting Rights.** Each Owner of a Lot within the Property, including the Declarant, shall be entitled to one (1) vote: (a) per dwelling unit; or (b) per one thousand (1,000) feet of leasable commercial space planned for development or construction on that Lot (rounded up or down to the nearest one thousand feet).

ARTICLE IV
Covenant for Maintenance Assessments

4.1 **Creation of Lien and Personal Obligation of Assessment.** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the Maintenance Assessment provided for hereafter, such assessment to be established and collected as hereinafter provided. The Maintenance Assessment, together with interest at the rate of eighteen percent (18%) per annum, or the highest rate allowed by law, whichever is less, costs and reasonable attorney's fees up to fifteen percent (15%) of the amount owed, shall be a charge on the Owner's Lot and shall be a continuing lien upon the Owner's Lot against which each such assessment is made. Each such assessment, or amount paid by the Association on behalf of the Owner, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal liability for delinquent assessments shall not pass to any Owner's successors in title unless expressly assumed by them, but any delinquent assessment shall constitute an encumbrance on the Lot despite passage of title.

4.2 **Purpose of Assessments.** The assessments levied by the Association shall be used for maintenance and preservation of the Maintenance Area. The assessments levied by the Association shall further be used for payment of premiums for liability and other forms of insurance deemed appropriate by the Association. Assessments levied by the Association shall further be used for the establishment of reserves for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of any capital improvement in or to the Maintenance Area.

4.3 **Amount of Assessments.** The portion of the Maintenance Assessment applicable to each Lot shall be equal to the product of the Maintenance Assessment multiplied by the Lot Runoff Percentage applicable to that Lot, in accordance with the following:

- (a) A runoff coefficient (the "Runoff Coefficient") has been established for each Development Tract of land within the Boy Scout Tract on the basis of the type of development occurring on each such Development Tract as follows:
 - (i) For Development Tracts on which residential subdivisions consisting of single family housing have been, are being, or will be developed, the Runoff

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Coefficient is: 0.5;

- (ii) For Development Tracts on which apartments, other forms of multi-family residential development, offices, or institutional uses have been, are being, or will be developed, the Runoff Coefficient is: 0.7; and
 - (iii) For Development Tracts on which shopping center(s) have been, are being, or will be developed, the Runoff Coefficient is: 0.85.
- (b) The number of acres within each Development Tract shall be multiplied by the Runoff Coefficient applicable to such tract to yield the runoff for that Development Tract (the "Tract Runoff"). For example, a Development Tract consisting of fifty (50) acres which will be developed into a single family housing residential subdivision will have a Tract Runoff of: $50 \text{ acres} \times 0.5 = 25$.
 - (c) The Tract Runoff for each Development Tract shall be divided by the sum of the Tract Runoffs for all tracts within the Boy Scout Tract to yield a runoff percentage for each tract (the "Tract Runoff Percentage"). For example, if there are four tracts within the Boy Scout Tract, A, B, C, and D, and each tract has the following Tract Runoff: A = 25, B = 100, C = 40, and D = 35, then the Tract Runoff Percentage for each tract would be: A = 12.5%, B = 50%, C = 20%, and D = 17.5%.
 - (d) The Tract Runoff Percentage for each Development Tract shall be divided by the number of Lots within the Development Tract to yield a runoff percentage for each such Lot (the "Lot Runoff Percentage"). Continuing the example in Article 4.3(c), if there are 50 Lots in tract A, then each such Lot would have a Lot Runoff Percentage equal to $12.5\% / 50 = .25\%$. The Tract Runoff Percentage for each Lot shall be calculated without regard to the size of the Lot. For example, if within tract A, one Lot is .75 acres and another Lot is .5 acres, both Lots will have a Lot Runoff Percentage of .25%, even though the Lots differ in size.
 - (e) Each Lot shall be assessed a portion of the Maintenance Assessment equal to the Lot Runoff Percentage multiplied by the Maintenance Assessment. For example, if the Lot Runoff Percentage applicable to a Lot is .25%, and the Maintenance Assessment is \$4,000, then that Lot will be assessed \$10.

4.4 Date of Commencement of Maintenance Assessments: Due Dates. Each Maintenance Assessment shall be imposed by the Association on December 31 of each calendar year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

4.5 Effect of Nonpayment of Assessments: Remedies of the Association. Any Maintenance Assessment or payment due from an individual Owner not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum, or the highest rate permitted by law, whichever is less. The Association may bring an action at law against an Owner personally to pay the same, and to enforce the lien against the Owner's Lot. Interest, costs, and reasonable attorney's fees of up to fifteen percent (15%) of the amount owed shall be added to the amount of such assessment.

4.6 Effect of Conveyance on Lien. Sale or transfer of any Lot shall not affect the assessment lien or any other lien provided for in this Article IV. No such sale or transfer shall relieve such Lot from liability for any assessments or from the lien thereof.

4.7 Subordination of Liens to Mortgages. The liens provided for herein shall be subordinate to the lien of any mortgage, mortgages, or deed(s) of trust. A sale or transfer of any Lot shall not affect the assessment lien or any other lien provided for in this Article IV. However, the sale or transfer of any Lot which is subject to any mortgage(s) or deed(s) of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment(s) as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due, or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage(s) or deed(s) of trust.

4.8 Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein.

ARTICLE V
Rezoning

5.1 Application for Rezoning. The Boy Scout Tract is currently zoned as shown on the sketch plan attached hereto as Exhibit D, which is incorporated herein by reference. The Declarant, or its successors in interest, any Owner of a Lot, or the Association may make applications for rezoning of any portion of the Boy Scout Tract owned by them in accordance with procedures established by the City.

5.2 Consent to Article V: Each Owner of a Lot(s), by the acceptance of a deed therefor, whether or not it is or should be expressed in such deed, is deemed to consent to any future application for rezoning of any portion of the Boy Scout Tract then owned by the Declarant, or its successors in interest, any Owner of a Lot, or the Association. Such consent to an application for rezoning shall not prejudice the right of an Owner otherwise having standing to do so to oppose the rezoning requested in an application.

ARTICLE VI
Annexation

Additional property may be annexed to the Property and made subject to this or another Declaration, and the jurisdiction of the Association, in accordance with the following procedures:

- (a) If within fifteen (15) years of the date of incorporation of the Association the Declarant shall develop additional lands within the area described in Exhibit A attached hereto and incorporated herein by reference, such additional lands may be annexed to the Property without the assent of the Members. The Declarant shall have the authority to determine the number of acres to be annexed, the restrictions to be placed thereon, the dwellings erected thereon and other matters incident to the development of such additional land.

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- (b) If within fifteen (15) years of the date of incorporation of the Association any person shall develop additional lands within the Boy Scout Tract described in Exhibit C attached hereto and incorporated herein by reference, and such person shall request that the property then being developed be annexed to the Property, such additional lands may be annexed to the Property without the assent of the Members or the Declarant.
- (c) Subsequent to the expiration of the fifteen (15) year period described in Article 6(a) and (b) hereof, annexation of additional property shall require the consent of two-thirds (2/3) of Members of the Association at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. In the event that two-thirds (2/3) of the Members are not present in person or by proxy at the meeting, Members not present may give their written assent to the action taken at the meeting.

ARTICLE VII
General Provisions

7.1 Enforcement. The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, the Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

7.2 Severability. Invalidation of any one of these covenants, conditions, restrictions, liens, or reservations by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

7.3 Term. The covenants, conditions, restrictions, and reservations of this Declaration shall run with and bind the Property for a term of ten (10) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless a majority of the Members consent in writing to their termination.

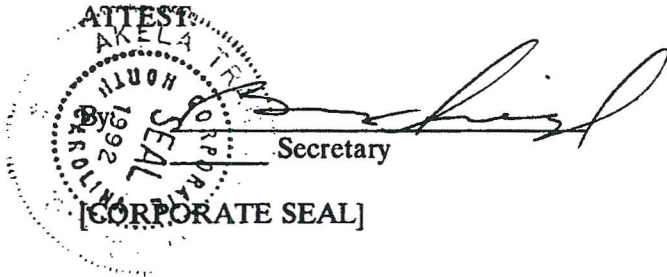
7.4 Amendment. The provisions hereof may not be amended without prior review and written approval by the City.

7.5 Survival of Provisions. The rights and obligations described herein shall survive any dedication of the Property to the City.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, the date first written above.

AKELA TRAIL PROPERTIES, INC.

By: M. Wheel T. [Signature]
President



STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

I, a Notary Public of the ^{State of} County and State aforesaid, certify that BARRY S. SIGAL personally came before me this day and acknowledged that he is the _____ Secretary of AKELA TRAIL PROPERTIES, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by him as its _____ Secretary.

WITNESS my hand and official stamp or seal, this the 27th day of ^{July} ~~June~~, 1993.

[Signature]
Notary Public

My Commission Expires:

10/14/1997



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