

MAR 24 1993

NORTH CAROLINA

GUILFORD COUNTY

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this 9th day of June, 1993, by and among AKELA TRAIL PROPERTIES, INC., a North Carolina corporation ("ATP"), ARAPPCO, INC., a North Carolina corporation ("Arappco"), and THE NEW FORTIS CORPORATION, a North Carolina corporation ("Fortis").

W I T N E S S E T H:

WHEREAS, ATP has entered into a contract with the Uwharrie Council, Boy Scouts of America, and its successor, the Old North State Council, Boy Scouts of America ("Owners"), to purchase an approximately 253-acre tract of land lying between Wendover Avenue and Akela Trail in Friendship Township, Guilford County, North Carolina (the "Boy Scout Tract"), which tract of land has been annexed by the City of High Point, North Carolina; and

WHEREAS, simultaneously with the execution of this Agreement, ATP has entered into a contract of sale to Arappco for that portion of the Boy Scout Tract labeled as Tract A on the sketch plan attached hereto as Exhibit A (the "Arappco Tract"); and

WHEREAS, simultaneously with the execution of this Agreement, ATP has entered into a contract of sale to Fortis for that portion of the Boy Scout Tract labeled as Tract B on the sketch plan attached hereto as Exhibit A (the "Fortis Tract"); and

WHEREAS, ATP, Arappco and Fortis desire to cooperate in the development of their respective portions of the Boy Scout Tract as a master planned community.

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Restrictive Covenants. At or prior to the closing of the purchase of any portion of the Boy Scout Tract, including any portion of either the Arappco Tract or the Fortis Tract, ATP will cause the entire Boy Scout Tract to be subjected to covenants, conditions and restrictions running with the land (the "Restrictive Covenants") providing for the following:

(a) Common Area Dedication. The lakes and appurtenant greenways depicted on the sketch plan attached hereto as Exhibit A, as well as any other common areas agreed upon by the parties (collectively the "Common Area"), shall be reserved for the common use and enjoyment of all the owners of property lying within the bounds of the Boy Scout Tract by conveyance of that Common Area to a property owners association (the "POA") upon its acquisition in installments from the Owners.

(b) Common Area Maintenance. The POA shall be composed of all owners (or a property owners association representing the interests of certain owners) of property lying within the bounds of the Boy Scout Tract (other than the Owners), which owners shall be assessed by the POA for their pro rata share of Common Area maintenance and capital reserve charges according to a formula agreed upon by the parties hereto. Any owner causing damage to the Common Area, such as the flow of excessive sedimentation into the lakes, shall further be specially assessed for that damage.

2. Dam Maintenance and Repair. It is agreed that for a period of five (5) years after the closing of the first installment purchase of the Arappco Tract or the Fortis Tract (whichever shall last occur), the Seller shall be solely responsible for all cost and expense of every type incurred in connection with the repair, reconstruction and maintenance of the dams depicted on the sketch plan attached hereto as Exhibit A. The Seller at its sole cost and expense agrees to keep all dams and lakes in a safe condition as mandated or required by any federal, state or local governmental agency having jurisdiction over such dams; provided, however, it is agreed that the POA shall be responsible at its expense during said five year period and thereafter to do all necessary mowing of the banks of the dams and lakes. Any repair, reconstruction or maintenance of the dams and lakes occurring after the expiration of the above-referenced five-year period, shall be the responsibility of the POA. In no event shall either Fortis or Arappco at any time have any responsibility for the repair, reconstruction or maintenance of the dams and lakes; provided, however, that Arappco and Fortis, like any other owner causing damage to the dams or lakes from, for example, violation of erosion control ordinances or plans, shall be liable for the cost of repairing such damage.

3. Construction of Piedmont Parkway. ATP will undertake to engineer and construct the easternmost two lanes of a proposed thoroughfare bisecting the Boy Scout Tract ("Piedmont Parkway") from its intersection with Wendover Avenue to the eastern margin of the Boy Scout Tract, all as more fully shown on that sketch plan

attached hereto as Exhibit A. Such construction shall be commenced by ATP immediately following closing on the first installment of the Arappco Tract and the Fortis Tract and shall be completed as expeditiously as possible consistent with good engineering and construction practices and subject to the procurement of required permits and the vagaries of the weather and other acts of God. Arappco and Fortis acknowledge that ATP shall dedicate to the public a 100-foot right-of-way for Piedmont Parkway, with a view to the ultimate construction in that right-of-way of a four-lane thoroughfare divided by a median, but that ATP shall only be obligated under this paragraph to construct the easternmost two lanes of that thoroughfare to specifications prescribed by the City of High Point. ATP shall bear all of the costs of engineering and construction of Piedmont Parkway in accordance with this paragraph and shall obtain, at or prior to closing, construction financing sufficient to pay, and expressly dedicated by agreement with the lender to, the estimated cost of the construction of Piedmont Parkway. The construction financing so set aside may be used by ATP as security for any bond or letter of credit required to be posted by the City of High Point and/or the North Carolina Department of Transportation to ensure the completion of Piedmont Parkway across the Boy Scout Tract. ATP may also use the construction financing so set aside to satisfy its commitment to any other purchaser of any portion of the Boy Scout Tract to construct Piedmont Parkway across the Boy Scout Tract. ATP may

make periodic draws against such construction financing to pay Piedmont Parkway construction costs as they are incurred.

4. Extension of Sewer Line. ATP, Arappco and Fortis will undertake the engineering and construction of a sewer line connected to the sanitary sewer system of the City of High Point from its existing terminus to the west of the Boy Scout Tract across the westernmost portion of the Boy Scout Tract, the Arappco Tract, the Fortis Tract and the right-of-way of Piedmont Parkway to a point or points of termination in one or more branches, with such sewer line to be engineered and stubbed so as to serve the needs of all those portions of the Boy Scout Tract that it traverses, as well as the CU-PDR and CU-PDL tracts shown on the plat attached hereto as Exhibit A. Such construction shall be commenced by ATP, Arappco and Fortis immediately following initial closing and shall be completed as expeditiously as possible consistent with good engineering and construction practices and subject to the procurement of required permits and the vagaries of the weather and other acts of God. Such sewer line shall be constructed in an easement dedicated to the City of High Point by ATP, Arappco, Fortis or the Owners, as appropriate. If dedication of easement for the sewer line by the Owners is required, ATP will cause the Owners to dedicate such easement to the City of High Point. ATP, Arappco and Fortis shall bear the cost of engineering and construction of segments of the sewer line provided for in this paragraph as follows:

<u>Party</u>	<u>Segment</u>
ATP	From current terminus of sewer line to western margin of Fortis Tract and from western margin of right-of-way of Piedmont Parkway to eastern margin of right-of-way of Piedmont Parkway
Arappco	From eastern margin of Fortis Tract to eastern margin of Arappco Tract (and to northern margin of Arappco Tract if separate branches have to be engineered to serve the CU-PDR and CU-PDL tracts)
Fortis	From western margin of Fortis Tract to western margin of Arappco Tract

The exact location of the sewer line that each party is responsible to construct is shown on the attached Exhibit A. Neither ATP, nor Arappco, nor Fortis shall be required under this Paragraph 4 to construct a sanitary sewer line at a diameter (which the parties hereto acknowledge to be 8") or at a depth greater than that which would normally be required for subdivision approval under the ordinances, regulations, and guidelines of the City of High Point. Notwithstanding anything in this paragraph to the contrary, Arappco need not construct the northern branch of the sanitary sewer line crossing the Arappco Tract until its development of the Arappco Tract shall extend to that portion of the Arappco Tract where the northern branch of the sanitary sewer line would be constructed. If ATP desires to construct the northern branch of the sanitary sewer line prior to its construction by Arappco, ATP may proceed to construct such line, initially at its own cost, with such cost to

be reimbursed to ATP by Arappco at such time as Arappco shall extend its development of the Arappco Tract into the portion of the Arappco Tract which the northern branch of the sanitary sewer line crosses. ^{Provided however, prior to construction by ATP, ATP shall submit} At closing, ATP, Arappco and Fortis shall deliver to S. Leigh Rodenbough IV, as Escrow Agent, funds sufficient to pay the anticipated cost of engineering and construction of the sewer line contemplated under this paragraph, which funds shall be deposited in an interest-bearing account at Branch Banking and Trust Company in Greensboro, North Carolina, with S. Leigh Rodenbough IV, as Escrow Agent. To the extent that any of the parties shall have expended funds for the engineering or construction of the sewer line prior to closing, the Escrow Agent shall be authorized to reimburse the party so expending such funds upon proof of such expenditure. In the alternative, rather than placing funds in escrow with the Escrow Agent, any party may post a letter of credit from a financial institution to secure its obligations under this paragraph.

5. East-West Connector. Arappco and Fortis will undertake to engineer and construct the east-west connector, including an 8-inch water line in the right-of-way therefor, running from Piedmont Parkway to the western margin of that portion of the Fortis Tract purchased by Fortis at the initial closing, as more fully shown on the sketch plan attached hereto as Exhibit A. Such construction shall be commenced on the property actually purchased by Arappco and Fortis following closing of the portion of their respective tracts and shall be completed as expeditiously as possible

11/12
ADW
UT

consistent with good engineering and construction practices and subject to the procurement of required permits and the vagaries of the weather and other acts of God. Arappco and Fortis shall be liable for the cost of the engineering and construction of the following segments of the east-west connector:

<u>Party</u>	<u>Segment</u>
Arappco	From intersection of east-west connector with the western right-of-way line of Piedmont Parkway to eastern margin of the Fortis Tract, including one-half of the cost to cross the creek at the eastern margin of the Fortis Tract
Fortis	From eastern margin of the Fortis Tract to western margin of that portion of the Fortis Tract purchased by Fortis at the initial closing, including one-half of the cost to cross the creek at the eastern margin of the Fortis Tract

The exact segment that each party is responsible to construct is shown on the attached Exhibit A. As Fortis proceeds with development of the Fortis Tract in a westerly direction across the Fortis Tract, and as ATP proceeds with the development of the westernmost portion of the Boy Scout Tract in an easterly direction across that portion of the Boy Scout Tract, each party shall extend the construction of the east-west connector as shown on the sketch plan attached hereto as Exhibit A. Each of ATP and Fortis shall bear the cost of engineering and constructing the east-west connector across the respective tracts being developed by the two of them, with ATP and Fortis each bearing one-half of the cost to engineer and construct the east-west connector across the creek at

the western margin of the Fortis Tract. No party shall be required, under this Agreement, to post escrow funds or other security for the construction of the east-west connector.

6. Acreage Fees. Acreage fees for water and sewer services shall be due and payable to Guilford County at the rate of \$400.00 per acre when and as required by Guilford County. Those acreage fees will be prorated and paid by ATP, Arappco and Fortis as follows:

<u>Party</u>	<u>Fees On</u>
Arappco	Arappco Tract
Fortis	Fortis Tract
Seller	Balance of Boy Scout Tract

7. Entrance Statements. ATP, Arappco and Fortis shall join together in the design and construction of entrance statements at (i) the intersection of Piedmont Parkway with Wendover Avenue ("Entrance No. 1"), (ii) the intersection of Piedmont Parkway with the east-west connector with the entrance to the Arappco Tract ("Entrance No. 2"), (iii) the entrance to the Fortis Tract on Akela Trail ("Entrance No. 3"), and (iv) the entrance from Akela Trail into the westernmost portion of the Boy Scout Tract to be developed by ATP ("Entrance No. 4"). The cost of the design and construction of the entrances shall be paid for as follows:

(i) Entrance No. 1 shall be paid for entirely by ATP.

(ii) Arappco shall pay the first \$14,000.00 of the cost of Entrance No. 2, and the remainder of the cost over \$14,000.00 shall be paid as follows:

(a) Arappco shall pay 18.5% of the remainder.

(b) Fortis shall pay 37% of the remainder.

(c) ATP shall pay 44.5% of the remainder.

The parties have agreed upon a budget for the construction of Entrance No. 2 in the amount of \$70,000.

(iii) Entrance No. 3 shall be paid for entirely by Fortis.

(iv) Entrance No. 4 shall be paid for entirely by ATP.

8. Closing. As used in this Agreement, "closing" shall refer to the closing on the first installment of the purchase of property lying within the bounds of the Arappco Tract and the Fortis Tract, which closing the parties anticipate will occur on or about June 23, 1993.

9. Miscellaneous. This Agreement shall further be subject to the following terms and conditions:

(a) Purchase Agreements. Contemporaneously with the execution of this Agreement, ATP and Arappco have joined in an agreement for the purchase and sale of the Arappco Tract and ATP and Fortis have joined in an agreement for the purchase and sale of the Fortis Tract (collectively the "Purchase Agreements"). This Agreement is entered into pursuant to the Purchase Agreements, and the obligations of the parties under this Agreement are contingent upon the performance of the obligations of the parties under the Purchase Agreement.

(b) Assignment. This Agreement shall not be assigned by any party except to the extent and contingent upon the assignment by that party of its rights and obligations under the Purchase Agreements, or either of them.

(c) Parties. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. As used herein, the words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

(d) Survival. If any provision herein contained by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

(e) Arbitration. All disputes under this Agreement shall be referred to the American Arbitration Association to be settled by arbitration before a single arbitrator in Greensboro, North Carolina, in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment upon the order by the arbitrator may be entered in any court having jurisdiction thereof. As part of such award, the arbitrator may establish his fee and expenses in connection therewith. Each such fee and expenses of the arbitrator shall be paid promptly by the party seeking arbitration, but the portion of each such fee and expenses which represents the same percentage thereof as the percentage of claim of the party seeking arbitration represented by the amount

awarded to that party in arbitration shall be added to the amount of the award and shall be paid by the other party to the arbitration. Any award shall be a conclusive determination of the matter and shall be binding upon the parties to the arbitration and shall not be contested by any of them.

(f) Entire Agreement. This Agreement contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed in writing and signed by all the parties hereto.

(g) Counterparts. This Agreement shall become a binding contract when signed by ATP, Arappco and Fortis. It is to be signed in three (3) counterparts, with a signed counterpart being retained by each party hereto.

(h) Sole Venture. Investment in and the development of the Boy Scout Tract is and shall be the sole business venture of ATP, and ATP agrees not to engage in any other business venture until such time as Fortis and Arappco each have completed its purchase of all of that property in the Boy Scout Tract that they have agreed to purchase. This restriction shall not prevent the shareholders, officers and directors of ATP from engaging in other business in their individual capacities or as shareholders, partners, officers and directors, and employees of other legal entities. Neither shall this restriction prevent ATP from engaging in the sale of portions of the Boy Scout Tract, whether in a developed or an undeveloped state, including a sale or sales by way of like kind

exchange under Section 1031 of the Internal Revenue Code or any successor provision thereof.

(i) Rezoning. ATP agrees that, for a term of five (5) years after the date of this Agreement, it shall not apply for rezoning of those portions of the Boy Scout Tract currently zoned CU-PDR and CU-PDL to a classification that permits additional commercial uses unless it shall have first obtained the written consent of both Arappco and Fortis to such rezoning.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and year first above written.

AKELA TRAIL PROPERTIES, INC.

By: *m. W. [Signature]*
President

ATTEST:

[Signature]
Secretary

(CORPORATE SEAL)

ARAPPCO, INC.

By: *[Signature]*
President


ATTEST:

[Signature]
Secretary

(CORPORATE SEAL)

THE NEW FORTIS CORPORATION

By:


Vice President
Andrew D. White

ATTEST:


Secretary

(CORPORATE SEAL)