

Parcel Id 3189995

DEED AND DECLARATION OF COVENANTS
(5 Acre Park Site)

THIS DEED AND DECLARATION OF COVENANTS ("Deed"), effective as of the 10th day of November, 1997, by KING FARM ASSOCIATES, L.L.C., a Delaware limited liability company (hereinafter referred to as "Grantor") and the MAYOR AND COUNCIL OF ROCKVILLE, a municipal corporation of the State of Maryland (hereinafter referred to as "Grantee").

FILED
MOLLY Q. RUHL
CLERKS OFFICE
MONTGOMERY CO. MD
98 FEB -9 P 1:34 PM

WITNESSETH:

WHEREAS, Field Farms Limited Partnership, Frederick Road Limited Partnership, William I. King, Elizabeth Jean Jacobs, and Louis K. Aschenbach (collectively, the "King Family Group"), Helios/Towle, L.L.C. and Grantee entered into that certain Annexation Agreement dated August 7, 1995 recorded among the land records of Montgomery County, Maryland in Liber 13811, at folio 073 (the "Annexation Agreement") by which the Grantee agreed to annex certain real property described in the Annexation Agreement as the "Subject Property" into the City of Rockville subject to certain terms and conditions; and

WHEREAS, the Annexation Agreement requires the King Family Group and Helios/Towle, L.L.C. to convey a designated portion of the Subject Property to the Grantee for use as a neighborhood park site (the "Park Site "); and

WHEREAS, the King Family Group has conveyed to Helios/Towle, L.L.C. that portion of the Subject Property designated for the Park Site; and

WHEREAS, Helios/Towle, L.L.C., by certificate of amendment approved by the Maryland State Department of Assessments and Taxation for a foreign limited liability company on November 13, 1996, changed its name to King Farm Associates, L.L.C.; and

WHEREAS, Concept Plan Application CPD95-0002 for the Subject Property was approved by the Grantee by Resolution No. 10-96 on July 8, 1996 (the "Concept Plan"); and

WHEREAS, Section VII (b) of the Concept Plan requires dedication of the Park Site to the Grantee; and

WHEREAS, the Grantor by this Deed desires to convey and dedicate the Park Site to the Grantee subject, however, to the covenants and reservations contained herein; and

WHEREAS, the Grantee has joined in this Deed to acknowledge its acceptance of the Park Site subject to the covenants contained herein and to confirm that the conveyance of the Park Site to Grantee fully satisfies all of the Grantor's obligations under the Annexation Agreement and Concept Plan to provide a neighborhood park site.

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NOW, THEREFORE, in consideration of the above Recitals incorporated herein by reference, the covenants of Grantee contained herein, and for other good and valuable consideration, the sufficiency of which the parties hereto acknowledge, the Grantor does grant and convey unto the Grantee, its successors and assigns, in fee simple, the Park Site situate, lying and being in Montgomery County, State of Maryland and more particularly known as Parcel A, Block A, as shown on a plat of subdivision entitled "Parcel A, Block A, Plat One King Farm: Bailey's Commons North" recorded among the Land Records of Montgomery County, Maryland in Plat Book 184, Plat No. 20357 (the "Record Plat"), together with any and all improvements, rights, easements, privileges, appurtenances and advantages to same belonging or in any way appertaining. By acceptance of this Deed, Grantee acknowledges that all improvements located on the Park Site are accepted in "as is" and "where is" condition without warranty or representation of any kind from Grantor.

AND the Grantor covenants that it will warrant specially the Park Site hereby conveyed.

SUBJECT, HOWEVER, to any and all leases, recorded and unrecorded, and further subject to all restrictions, covenants, rights-of-way, easements, and other conditions appearing of record, including, without limitation, that certain Declaration of Covenants for Forest Conservation dated October 28, 1997 a copy of which is attached hereto and made a part hereof as Exhibit "A".

AND SPECIFICALLY RESERVING UNTO THE GRANTOR, its successors and assigns, an easement and a right of entry on, over, under, through and across the Park Site for purposes of (1) grading, regrading, sloping, resloping, contouring and recontouring the fifteen (15)-foot temporary slope easement area identified on the Record Plat for purposes of constructing the adjacent future public street; (2) planting, maintaining, removing and re-planting trees and other planting materials in accordance with the Final Forest Conservation Plan for Phase I-A (as delineated in Detailed Application No. CPD96-002B) and designated FTPO 95-25B (the "FFCP"), as the same may be amended from time to time, and as necessary to assure compliance with that certain Forest Conservation Maintenance Agreement dated May 12, 1997, a copy of which is attached hereto and made a part hereof as Exhibit "B"; (3) installing, maintaining, removing, replacing and repairing directional and marketing signage and entrance features and associated lighting and landscaping (collectively, the "Entrance Features"), such Entrance Features, if any, to be located in the areas described and shown on the description and sketch attached hereto and made a part hereof as Schedule "C" and Exhibit "C", respectively and (4) storing construction materials in the barns identified on Exhibit "D"; provided, however, such easements shall not materially interfere with the use of the Park Site as a neighborhood park, and further provided Grantor obtains all necessary approvals and permits, which shall not be unreasonably withheld by Grantee, prior to commencing any activity on the Park Site pursuant to the rights reserved hereunder, and further provided that at any time after the date Grantee presents initial design plans to Grantor for the improvements to be constructed by Grantee on the Park Site, Grantor shall first obtain Grantee's consent prior to undertaking or continuing to exercise any of the rights reserved pursuant to paragraphs (3), (4), (5) and (6) above, and any other work not specifically identified hereunder. Grantor shall indemnify and hold Grantee harmless from any and all liability, loss or damages, including reasonable attorneys' fees, arising

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out of or resulting from Grantor's exercise of the rights reserved hereunder. Upon request, Grantor shall provide Grantee with a certificate of insurance naming Grantee as an additional insured.

AND FURTHER RESERVING UNTO GRANTOR, its successors and assigns, for Grantor's use in developing the Subject Property in accordance with the Annexation Agreement and Concept Plan, the residential and nonresidential density attributable to the Park Site. In accordance with Paragraph 3 of the Annexation Agreement, Grantee expressly agrees and acknowledges that any and all residential and nonresidential density otherwise attributable to the Park Site is hereby shifted to the remainder of the Subject Property so the overall project density is not reduced as a result of the dedication of the Park Site.

AND subject to the following covenants:

1. The Park Site shall be used as a site for a neighborhood park and recreational facility that shall serve the current and future residents of the Subject Property, and the general public.
2. The Grantee shall, at no expense to Grantor, its successors or assigns, construct recreational facilities on the Park Site designed to serve the current and future residents of the Subject Property and the general public. The development of the recreational facilities constructed on the Park Site shall be subject to Grantor's reasonable review prior to commencement of construction. The parties shall use their best efforts to reach consensus on the design of the recreational facilities.
3. Grantor shall have the right, but not the obligation, to participate as a member of each committee, task force or other group preparing, considering or evaluating plans for the park facilities, and Grantee shall promptly advise Grantor of the formation of such committee, task force or other group.
4. The Park Site shall be subject to the terms, conditions, restrictions and covenants contained in the Declaration of Covenants for Forest Conservation and shall not be used for any purpose whatsoever inconsistent therewith. Upon acceptance and recordation of this Deed among the Land Records of Montgomery County, Maryland, Grantee shall provide Grantor with an equivalent credit for Grantor's future reforestation of a 1.30 acre portion of the Park Site to be designated by Grantee against the total reforestation requirements for the Subject Property as if the 1.30 acres had been fully planted. Grantee, in accordance with the FFCP, shall designate 1.30 acres of the Park Site for reforestation by Grantor within ten (10) years after the date Grantee accepts and records this Deed. If Grantee fails to make such designation within the aforesaid ten (10) year period, Grantor shall have the option, at Grantor's sole and absolute discretion, either to (1) designate and reforest an alternate 1.30 acres of the Subject Property as a substitute reforestation site, in which event Grantor shall be relieved of its obligation to reforest 1.30 acres of the Park Site; (2) make a monetary contribution to the City of Rockville equal to the estimated cost to reforest 1.30 acres of the Park Site, in which event Grantor shall also be relieved of its obligations to reforest 1.30 acres of the Park Site; or (3) agree to extend the aforesaid ten (10) year period to provide the City with additional time to designate the 1.30 acres of the Park Site to be reforested.

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5. For a period of not less than six months after the date this Deed is accepted by Grantee, Grantee shall not commence or pursue any action whatsoever to remove, evict or displace any tenant located or residing on the Park Site or remove the property thereof which is lawfully situated on the Park Site.

6. The covenants hereby imposed shall be perpetual and shall not be extinguished without the prior written consent of Grantor, its successors and assigns.

The Grantee has entered into this Deed to acknowledge its acceptance of the above covenants, which covenants shall be deemed to run with the land and shall be enforceable by the Grantor, and any successors and assigns of Grantor to whom such right of enforcement is assigned in writing.

[SIGNATURE PAGES FOLLOW]

LF 15521.701

IN WITNESS WHEREOF, the Grantor and Grantee have entered into this Deed and Declaration of Covenants on the day and year first above written.

GRANTOR:

KING FARM ASSOCIATES, L.L.C.,
a Delaware limited liability company

By: TOWLE PARTNERS, L.L.C.

By: [Signature]
Name: MARK W GREGG
Title: AUTHORIZED PERSON

COUNTY OF: MONTGOMERY

STATE OF: MARYLAND

I HEREBY CERTIFY that on this 10TH day of November, 1997, before me, the undersigned, a Notary Public in the jurisdiction aforesaid, personally appeared MARK W GREGG, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and who acknowledged himself to be an AUTHORIZED PERSON of TOWLE PARTNERS, L.L.C., which is the MANAGING PARTNER of KING FARM ASSOCIATES, L.L.C., a Delaware limited liability company, and that in such capacity and being so authorized to do, executed the foregoing Deed and Declaration of Covenants on behalf of TOWLE PARTNERS, L.L.C., for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

MARLA JO BENNETT
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 3, 2001

[Signature]
NOTARY PUBLIC

My Commission Expires: _____



LF 15521.702

CONSENT OF TRUSTEES

The undersigned trustee named in a certain deed of trust securing repayment of a loan from First Union National Bank of VA and recorded among the Land Records of Montgomery County, Maryland, in Liber 4594 at Folio 90 with the consent of the holder of the note secured by said deed of trust, does hereby consent to the foregoing Deed and Declaration of Covenants and agrees that his interest in the subject property shall be subordinate and subject thereto.

TRSTE, INC.

11/12/97
Date

By: Ronald J. Sanders
Name: RONALD J. SANDERS
Title: VICE PRESIDENT

* * *

COMMONWEALTH OF VIRGINIA

SS:

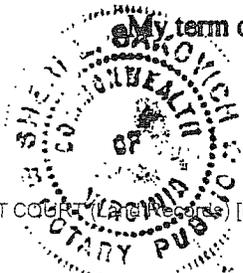
COUNTY OF Fairfax

I, Shirley S. Sakovich, a Notary Public in and for the Commonwealth and County aforesaid, do hereby certify that Ronald J. Sanders, whose name as Vice President of TRSTE, INC., is signed to the foregoing and annexed instrument, bearing date on the 12th day of November, 1997, has acknowledged the same before me in my County aforesaid.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 12th day of November, 1997.

Shirley S. Sakovich
Notary Public

My term of office expires on the 31st day of November, 2001, 1997.



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CONSENT OF TRUSTEES

The undersigned trustee named in a certain deed of trust securing repayment of a loan from Hiking Farm L.P. and recorded among the Land Records of Montgomery County, Maryland, in Liber 1447 at Folio 398 with the consent of the holder of the note secured by said deed of trust, does hereby consent to the foregoing Deed and Declaration of Covenants and agrees that his interest in the subject property shall be subordinate and subject thereto.

November 11, 1997
Date

Gregory B. Hauptman
Gregory B. Hauptman

* * *

_____ OF _____
_____ OF _____

SS:

I HEREBY CERTIFY that on this 11th day of November, 1997, before me, the undersigned officer, personally appeared Gregory B. Hauptman, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

MARIA JO BENNETT
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 3, 2001

Maria Jo Bennett
Notary Public

My Commission Expires: July 3, 2001

GRANTEE:

MAYOR AND COUNCIL OF ROCKVILLE

By: Rose G. Kraenow (SEAL)
Rose G. Kraenow, Mayor

COUNTY OF: Montgomery

STATE OF: Maryland

I HEREBY CERTIFY that on this 6th day of January, ~~1997~~ ¹⁹⁹⁸, before me, the undersigned, a Notary Public in the jurisdiction aforesaid, personally appeared Rose G. Kraenow, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and who acknowledged herself to be the Mayor of the City of Rockville, Maryland, a Maryland municipality, and that in such capacity, and being so authorized to do, executed the foregoing Deed and Declaration of Covenants on behalf of the Mayor and Council of Rockville, Maryland for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Anita A. McCombs
NOTARY PUBLIC Anita A. McCombs

My Commission Expires: 10/17/98

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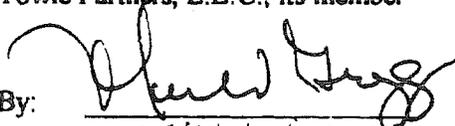
AFFIDAVIT OF CONSIDERATION

The undersigned hereby certifies under penalties of perjury that the actual consideration paid or to be paid for the foregoing dedication is NONE.

GRANTOR:

KING FARM ASSOCIATES, L.L.C.,
a Delaware limited liability company

By: Towle Partners, L.L.C., its member

By: 
MARK W. GREER
Authorized Person

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the foregoing document was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.



Todd D. Brown

SS. CURRENT: 25870 v.13 01425.0308
Cre. 8/28/98 Orig. Typ. Wmw Ed. 11/05/97