

APPENDIX A

Pinelands Commission Waiver of Strict Compliance



State of New Jersey

PINELANDS COMMISSION

P.O. BOX 7, NEW LISBON, N.J. 08064

October 2, 1981

WAIVER OF STRICT COMPLIANCE

Mr. Peter Ferris, Vice-President
Midatlantic National Bank
744 Broad Street
Newark, New Jersey 07101

Re: Application No. 81-0556
Block *see attached
Evesham Township
Block 5503, lots 1 and 2
Medford Township

FINDINGS OF FACT

This application is for the continued development of a planned unit development on the above-mentioned 1,784.8 acre parcel in Evesham and Medford Townships. No more than 4,500 dwelling units are to be built on the site, including those units which are already built or which do not need approval from the Pinelands Commission. A total of 1,728.2 acres of the parcel are in Evesham Township. The remaining 56.6 acres are located in Medford Township. The property is located in a Rural Development Area. As the proposed lot sizes are not consistent with the minimum lot size or overall density requirements in the Rural Development Area, the applicant is requesting a Waiver of Strict Compliance from the requirements of Section 5-306 A and C. The applicant is also requesting a Waiver of Strict Compliance from the prohibition of development in fresh water wetlands contained in Section 6-106 and of the buffer to fresh water wetlands requirements contained in Section 6-114.

Tentative approval for the planned unit development was received from Evesham Township in 1968 for construction of a total of 9,000 dwelling units. The applicant initially applied to the Pinelands Commission under the Comprehensive Management Plan for development of a total of 6,856 units.

The original developer received final subdivision approval for 17 sections in the development on various dates in 1973 and 1974. A total of 762 units were approved in these sections.

Pine Barrens tree frogs have been located on Phase 2. There is a large area of uplands adjoining the southern boundary of the parcel in Phase 2.

The applicant submitted documentation that it can sell an average approved detached single family dwelling lot for \$16,800. An average approved townhouse lot would be sold for \$7,000. An approved multi-family dwelling unit could be sold for \$3,000. The applicant anticipated being able to sell 225 units a year. It presently expects the remaining unsold units to include 894 detached single family dwellings, 2,061 townshouses and 1,186 multi-family units.

CONCLUSION

The proposed development received various municipal development approvals prior to February 8, 1979. In reliance on those approvals, expenditures of such a nature and amount were made that the applicant could not receive a minimum reasonable rate of return on those expenditures under a strict application of the minimum standards of the Plan. The applicant meets the requirements of Section 4-505 A2.

The development of all 9,000 units originally approved would no longer give the applicant a reasonable rate of return on its expenditures. The issue in this application was the number of units and at what density would enable the applicant to reduce its loss to the greatest extent practical. This issue was compounded by the directive of the Pinelands Protection Act (see also Section 4-505 C of the Plan) that no development be approved if it would result in a substantial impairment of the resources of the Pinelands even if an extraordinary hardship existed. This required a balancing of the applicant's hardship against the environmental impact of the proposed development.

The size of the development dictates that the units be developed over an extended period of time. The comparative marketability and price of various types of housing over this extended period of time has inherent limitations. The evaluation of this application was premised on existing market conditions. Based on this analysis it was determined that the construction of 4,500 units would most effectively minimize the applicant's losses. The applicant does not fully agree with this analysis. As this analysis is a function of the marketability of the different types of residential development in the future, the applicant may request that this Waiver be re-evaluated after each additional 500 units that it sells or after 2 years, or which ever comes first, based on the experience in marketing these units if the units sold include more than one type of dwelling unit. Following such a request, the Waiver shall be re-evaluated based on a balancing of the economic benefit to the applicant of modifying the Waiver against the environmental impact of modifying the Waiver. The re-evaluation will consider the actual development costs, sales and marketing data and the economic benefit to the applicant of the proposed modification

of the Waiver compared to development of the parcel as specified in this Waiver. The applicant must demonstrate that its actual development experience is not as favorable as anticipated by this Waiver. In no event may any development be allowed which will result in a substantial impairment of the resources of the Pinelands.

A total of \$13,198,715 has been expended for acquisition of the land and for improvements to the parcel to date. The applicant has provided documentation that the costs of improvements for the remainder of the 4,500 units would be \$18,895,800. In addition, the applicant has expended an additional \$2,066,901 in operating costs associated with the development. An additional \$10,075,100 will be necessary to be expended in operating expenses to complete the development.

The applicant has presently received \$2,450,360 for approved units that it has sold to developers. From the sale of 894 detached single family dwellings, it would receive \$15,019,200. From the sale of 2,061 townhouses, it would receive \$14,427,000 and from the sale of 1,176 muti-family units it would receive \$3,528,000. This amount will enable the applicant to recover the past and future improvement costs (including operation of the utility companies) and the previously expended operating costs. The applicant will not be able to recover its future operating costs or realize a reasonable rate of return.

The proposed development will not result in a substantial impairment of the resources of the Pinelands if the proposed development complies with the following criteria (Section 4-505 C). Development shall only occur in the areas designated on the attached site plan prepared by Richard E. Martin Associates and dated April 28, 1981 and last revised September 9, 1981 and amended by the Pinelands Commission staff on October 1, 1981. Within Phase 1, all buildings must be located at least 50 feet from the fresh water wetlands which are not to be developed as designated on said site plan and at least 100 feet from any natural surface water body contained within the designated undevelopable wetlands. The buffer for other development in Phase 1 shall be determined when individual site plans are submitted. Within Phase 2, all development shall be located at least 300 feet from any fresh water wetland. Public improvements in both phases shall adhere to the provisions of Section 6-113 of the Plan. The applicant shall relocate hole numbers 4 and 5 of the existing golf course to within the area defined by the perimeter of the remainder of the golf course. The granting of this relief is the minimum relief necessary to alleviate the extraordinary hardship without causing a substantial impairment of the resources of the Pinelands and the Waiver is consistent with the Pinelands Protection Act, the Federal Act and with the Plan (Section 4-505 D and E).

The applicant qualifies for a Waiver of Strict Compliance from the provisions of Section 5-306 A and C, Section 6-106 and Section 6-114 to the extent indicated herein, pursuant to Section 4-505 A2.

This application for a Waiver of Strict Compliance is hereby APPROVED.

This Waiver is for the development of up to a maximum of 4,500 dwelling units, including existing dwelling units, in this development. This Waiver is also for the development of other uses normally associated with a planned unit development. This Waiver supersedes the approval granted by the Pinelands Commission for 151 dwelling units under the Interim Rules and Regulations (Application No. 80-1309).

This Waiver does not take effect until November 9, 1981, as, pursuant to Section 4-504, the Pinelands Commission may refer this matter to a hearing until that date.

This Waiver does not authorize the applicant commence the proposed development. An application for the proposed development must be submitted pursuant to the provisions of Part 3 of Article 4 of the Comprehensive Management Plan.

RECONSIDERATION

Any person who is aggrieved by this determination may seek reconsideration of the decision by the Pinelands Commission within 18 days of the date of this letter, by giving notice, by certified mail, of the request for reconsideration to the Pinelands Commission. Said notice shall include:

1. the name and address of the person requesting the reconsideration;
2. the application number;
3. a brief statement of the basis for the reconsideration request; and
4. a certificate of service indicating that service of the notice has been made, by certified mail, on:
 - a. the applicant (unless the applicant is requesting the reconsideration);
 - b. the secretary of the Evesham Township Planning Board;
 - c. the secretary of the Medford Township Planning Board;
 - d. the secretary of the Burlington County Planning Board;
 - e. the Medford Township Environmental Commission; and

f. the Evesham Township Environmental
Commission.

Sincerely,



William Harrison, Esquire
Assistant Director
Pinelands Commission

WH/ss

cc: Secretary, Evesham Township
Planning Board
Secretary, Medford Township
Planning Board
Secretary, Burlington County
Planning Board
Medford Township Environmental
Commission
Evesham Township Environmental
Commission
Joel Sterns, Esquire
Kings Grant Management, Inc.

APPENDIX B

Agreement of Sale

CONTRACT FOR SALE OF REAL ESTATE

This Contract for Sale is made on December 19, 2000,

BETWEEN the Evesham Municipal Utilities Authority, a public body corporate and politic, created pursuant to N.J.S.A. 40:14B-1, et seq. whose address is: 984 Tuckerton Road, Evesham, New Jersey 08053, referred to as Seller or Authority,

AND the Township of Evesham, a municipal corporation, whose address is: 984 Tuckerton Road, Evesham, New Jersey 08053, referred to as Buyer or Township.

- 1. Purchase Agreement.** The Seller agrees to sell and the Buyer agrees to buy the property described in this Contract (the "Property").
- 2. Property.** The Property to be sold consists of: (a) the land and all other improvements and fixtures on the land, and (b) all of the Seller's rights relating to the land, excepting out from (a) and (b) herein Seller's two (2) existing recharge basins and all existing access thereto for which a Deed of Perpetual Easement shall be retained by Seller. The Property to be sold is commonly known as Kings Grant/Phase II in the Township of Evesham, in the County of Burlington and State of New Jersey. The Property is more fully described in the attached Schedule A.
- 3. Purchase Price.** The purchase price is six Million Four Hundred Thousand Dollars (\$6,400,000.00) of which Four Million Eight Hundred Thousand Dollars (\$4,800,000) will be paid as cash and One Million Six Hundred Thousand Dollars (\$1,600,000) will be paid in kind.

4. **Payment of Purchase Price.** The Buyer shall pay the cash portion of the purchase price at closing of title, by certified or bank cashier's check. The Buyer shall pay the in-kind payment at closing of title by the delivery of the Deed of Easement referred to in Paragraph 12 herein. The Buyer's obligations to purchase the Property is contingent upon the Buyer obtaining grant funding for the purchase of the Property from the State of New Jersey and/or the County of Burlington in the combined amount of Seventy-Five Per Cent (75%) of the total purchase price. The Buyer may waive this contingency, in its sole discretion. The Buyer represents that it has sufficient funds to purchase the Property with the receipt of the grants referred to herein. The Buyer further represents that it has clear title to the property for which the Deed of Easement referred to in Paragraph 12 herein shall be given.

5. **Time and Place of Closing.** The closing date cannot be made final at this time. The Buyer and Seller agree to make October 2, 2006 the estimated date for this closing. Both parties will fully cooperate so the closing can take place on or before the estimated date. The closing will be held at the Evesham Township Municipal Complex, 984 Tuckerton Road, Evesham, New Jersey.

6. **Transfer of Ownership.** At the closing, the Seller will transfer ownership of the Property to the Buyer. This transfer of ownership will be free of all claims and rights of others except as provided in other parts of this Contract. The Seller will give the Buyer a properly executed deed, an adequate affidavit of title and a resolution authorizing the sale.

7. **Type of Deed.** A deed is a written document used to transfer ownership of Property. In this sale, the Seller agrees to provide and the Buyer agrees to accept a deed known as Bargain and Sale Deed with Covenant against Grantor's Acts.

8. **Physical Condition of the Property.** This Property is being sold "as is." The Seller does not make any claims or promises about the condition or value of any of the Property included in this sale. The Buyer has inspected the Property and relies on this inspection and any rights that may be provided for in other parts of this Contract. The Seller agrees to allow the Buyer to make additional inspections of the Property at any reasonable time before the closing.

9. **Risk of Loss.** The Seller is responsible for any damage to the Property that occurs after this Contract is signed, except for normal wear and tear, until the closing.

10. **Other Agreements.** Any agreements entered into between the Buyer and Seller with respect to the design, construction, operation, maintenance or cost of improvements at Kings Grant/Phase II or Aerohaven site, including, but not limited to the Memorandum of Agreement, the Operations Protocol and the Agreement for Beneficial Reuse of Reclaimed Water, shall survive closing and the passing of title.

11. **Name.** The Buyer agrees to name and allow the Seller to name the recharge basins that are to be constructed upon the Aerohaven site, "Bob Flynn Lakes." This paragraph shall survive closing and the passing of title.

12. **Use of Aerohaven Site.** The Buyer agrees to sign and seal, and deliver at the closing, a **Deed of Perpetual Easement** to the Seller to construct, operate and maintain adequate recharge basins at the Aerohaven site owned by Buyer and to have reasonable access thereto and therein for the purposes stated in the Easement. The physical size and location of the recharge basins and buffer areas shall be subsequently determined by the parties but shall be sufficient to enable Seller to adequately dispose of approximately 600,000 gallons per day of treated effluent from Seller's Kings Grant Wastewater

Treatment Facility but shall not exceed a maximum area of thirty-five (35) acres. The Authority shall be solely responsible for all costs associated with the construction, operation and maintenance of the recharge basins and any related equipment, permitting, administrative and professional costs. The extent of the improvements that are required to be made by the Authority on the Aerohaven site shall be limited to the construction of the recharge basins, necessary piping thereto and incidental landscaping as required by the Treatment Works Approval Permit for the recharge basins issued by the New Jersey Department of Environmental Protection. All other amenities or appurtenances that are necessary or desirable in order to integrate the recharge basins into the active and passive recreational facilities to be developed at the Aerohaven site shall be the sole cost and obligation of the Township. These amenities and appurtenances include, but are not limited to, major landscaping, trails and the irrigation systems for the active and passive recreational uses to be developed. The Township shall be solely responsible for all costs associated with the design, construction, operation and maintenance of the active and passive recreational facilities to be developed at both the Property and the Aerohaven site and any related equipment, permitting, administrative and professional costs. Buyer does not warrant the presence and suitability of the soils at the Aerohaven site for recharge basins or the ability of the Seller to obtain permits or approvals for the construction, operation or use of the recharge basins. Buyer agrees to cooperate in Seller's efforts to obtain all necessary approvals and permits which may be required for Seller's use of the Aerohaven site, as stated herein. This paragraph shall survive closing and the passing of title.

13. **Contingencies.** As stated in Paragraph 4 herein, the Buyer's obligations to purchase the Property is contingent upon the Buyer obtaining funding for the purchase of the Property from the State of New Jersey and/or the County of Burlington in the combined amount of Seventy-five Per Cent (75%) of the total purchase price. The Buyer may waive this contingency, in its sole discretion. The Seller's obligations to sell the Property is contingent upon the Seller securing all necessary approvals from the Pinelands Commission, the New Jersey Department of Environmental Protection and all other governmental agencies with jurisdiction, for the construction, operation and maintenance of the recharge basins upon the Aerohaven site and reasonable access thereto and therein. In the event that the Seller is unable to obtain all required approvals for the recharge basins upon the Aerohaven site, the Seller may, in its sole discretion, waive the contingency if it is able to obtain all required approvals from the Buyer, the Pinelands Commission, the New Jersey Department of Environmental Protection and all other governmental agencies with jurisdiction for the construction, operation and maintenance of additional adequate recharge basins upon Kings Grant, Phase II and reasonable access thereto and there.

14. **Land Use Laws.** The Buyer intends to use the Property for passive and/or active recreational facilities. It shall be the responsibility of the Buyer to ascertain the extent to which the Property can be used for passive and/or recreational facilities under all existing land use ordinances or regulations. The inability of the Buyer to use the Property for passive and/or recreational activities because of any land use ordinance or regulation shall not relieve the Buyer of the obligation to purchase the Property.

15. **Ownership.** The Seller agrees to transfer and the Buyer agrees to accept ownership of the Property free of all claims and rights of others except for (a) the rights of utility companies to maintain pipes, poles, cables and wires over, on or under any part of the Property, and (b) recorded agreements which may limit or affect the use of the Property. The ownership by the Buyer must be insurable at regular rates by any title insurance company authorized to do business in New Jersey subject to the above exceptions.

15. **Notices.** All notices, requests, consents, approvals, waivers or other communications under this Contract shall be effective unless in writing and delivered personally or mailed by certified mail, return receipt requested, to the other party, and to the other party's attorney by registered mail, as follows:

as to Seller:	Louis D. Russo, Executive Director Evesham Municipal Utilities Authority 984 Tuckerton Road Evesham, NJ 08053
with copy to:	Edward A. Kondracki, Esquire Law Offices of Edward A. Kondracki, L.L.C. P.O. Box 996 Medford, NJ 08055-0996
as to Buyer:	Florence Ricci, Township Manager Township of Evesham 984 Tuckerton Road Evesham, NJ 08053
with copy to:	Richard W. Hunt, Esquire Parker, McCay & Grzesiela Three Greentree Centre Route 73 Evesham, NJ 08053

16. **Brokerage Fees.** Each party represents that no real estate broker is entitled to receive a fee or commission as a result of this transaction. Any party in breach of this representation shall be responsible for paying all such fees or commissions that are due.

17. Modification. This Contract may not be modified, altered, amended, or changed except by an instrument in writing duly authorized and executed by the parties hereto

18. Authorization. Each party represents that the execution of this Contract has been duly authorized by appropriate governmental action of that party and the persons named below are authorized to execute this Contract on behalf of that party

19. Effective Date. The effective date of this Contract shall be the date and year first written above

IN WITNESS WHEREOF, the parties have executed this Contract for Sale as of the date and year first written above, intending to be bound thereby.

EVESHAM MUNICIPAL UTILITIES AUTHORITY

By: Mark P. Neessen
Chairman

ATTEST

By: Juan Valero
Secretary

TOWNSHIP OF EVESHAM

By: Gregory J. Ambrosio
Mayor

ATTEST

By: Charmaine Lucas
Township Clerk

**AMENDMENT NUMBER 1 TO
CONTRACT FOR SALE OF REAL ESTATE**

This Amendment Number 1 to the Contract for Sale of Real Estate of December 19, 2000 is made and entered as of the 26th day of June, 2002

BETWEEN The Evesham Municipal Utilities Authority, a public body corporate and politic, created pursuant to N.J.S.A. 40:14B-1, et seq. whose address is: 1331 Tuckerton Road, Evesham, New Jersey 08053, referred to as Seller or Authority,

AND The Township of Evesham, a municipal corporation, whose address is: 984 Tuckerton Road, Evesham, New Jersey 08053, referred to as Buyer or Township.

WHEREAS, the Seller and the Buyer have entered into a Contract for Sale of Real Estate on December 19, 2000 (the "Contract") with respect to the Property defined therein; and

WHEREAS, paragraph 17 of the Contract provides that the Contract may not be modified, altered, amended or changed except by an instrument in writing duly authorized and executed by the parties hereto; and

WHEREAS, the Seller and the Buyer have agreed to certain modifications, alterations, amendments and changes to the Contract which are memorialized herein,

NOW, THEREFORE, BE IT AGREED by the Seller and the Buyer, for the consideration of the mutual promises contained herein and for the consideration as stated in the Contract, that the Contract be modified as follows:

I. Modifications and Amendments:

A. Paragraph 2 of the Contract is hereby modified and amended to read as follows:

2. **Property.** The Property to be sold consists of: (a) the land and all other improvements and fixtures on the land, and (b) all of the Seller's rights pertaining to the land, excepting out from (a) and (b) herein a reservation of easement and right of way, including access, ingress and egress, which shall be retained by Seller for i.) Seller's two (2) existing recharge basins, ii.) Seller's existing spray irrigation fields, iii.) Seller's proposed Phase IV water main, iv.) Seller's proposed effluent discharge line from the two (2) existing recharge basins to Block 54, Lot 6, as designated on the Tax Map of the Township of Fresham, v.) Seller's proposed effluent discharge line from the two (2) existing recharge basins to Block 57, Lot 1, as designated on the Tax Map of the Township of Fresham, and vi.) additional recharge basins upon Block 54, Lots 1 and 2, in an area not included in the proposed Environmental Infrastructure Financing Program area. The property to be sold is commonly known as Kings Grant/Phase II in the Township of Fresham, in the County of Burlington, and State of New Jersey. The Property is more fully described in the attached Schedule A in Exhibit A.

B. Paragraph 5 of the Contract is hereby modified and amended to read as follows:

5. Time and Place of Closing. The buyer and Seller agree to make July 14, 2022 9:00 AM, the date and time for the closing. The closing will be held at the Fresham Township Municipal Complex, 984 Tuckerton Road, Fresham, New Jersey.

C Paragraph 13 of the Contract is hereby modified and amended to read as follows:

13. Contingencies. As stated in Paragraph 4 in the Contract, the Buyer's obligations to purchase the Property is contingent upon the Buyer obtaining funding for the purchase of the Property from the State of New Jersey and/or the County of Burlington in the combined amount of Seventy-Five Per Cent (75%) of the total purchase price. The Buyer may waive this contingency, in its sole discretion. The Seller's obligations to sell the Property is contingent upon the Seller securing all necessary approvals from the Pinelands Commission, the New Jersey Department of Environmental Protection and all other governmental agencies with jurisdiction for the construction, operation and maintenance of the recharge basins upon the Aerohaven site and reasonable access thereto and therein. In the event that the Seller is unable to obtain all required approvals for the recharge basins upon the Aerohaven site, the Seller may, in its sole discretion, waive the contingency if it is able to obtain all required approvals from the Buyer, the Pinelands Commission, the New Jersey Department of Environmental Protection and all other governmental agencies with jurisdiction for the construction, operation and maintenance of additional adequate recharge basins upon Kings Grant, including reasonable access thereto and therein. In the event that the Seller is unable to obtain all required approvals for the recharge basins upon either the Aero Haven site or the Kings Grant Phase II site, including

reasonable access thereto and therein, by the date and time of closing, the Seller may, in its sole discretion, waive the approval contingencies contained herein if it has received a true copy of a Resolution duly adopted by the Buyer to the effect that in the event the Seller is unable after the date of closing to obtain all necessary approvals from the Pineland's Commission, the New Jersey Department of Environmental Protection and all other governmental agencies with jurisdiction, for the construction, operation and maintenance of the recharge basins upon the Aero Haven site, including reasonable access thereto and therein, then in such event, the Buyer shall fully cooperate with the Seller to site additional recharge basins upon the Property, including reasonable access thereto and therein, and to fully cooperate with the Seller in obtaining all required approvals from the Buyer, the Pineland's Commission, the New Jersey Department of Environmental Protection and all other governmental agencies with jurisdiction for the construction, operation and maintenance of such additional recharge basins.

II. Authorization. Each party represents that the execution of this Amendment has been duly authorized by appropriate governmental action of that party and the persons named below is authorized to execute this Amendment on Behalf of that party.

Signatures follow on succeeding page.

IN WITNESS WHEREOF the parties have executed this Amendment Number 1 to the Contract for the ... of the date and year first written above, intending to be bound thereby

THE EVESHAM MUNICIPAL UTILITIES AUTHORITY

By: [Signature] Chairman

ATTEST

By: [Signature] Secretary

THE TOWNSHIP OF EVESHAM

By: [Signature] Mayor

ATTEST

By: [Signature] Township Clerk

APPENDIX C

LEGAL DESCRIPTION AND TAX BLOCK AND LOT NUMBERS COMPRISING
THE APPROXIMATE 700 ACRES OF THE KINGS GRANT PHASE I AND PHASE
II PARCELS THAT ARE THE SUBJECT OF THIS MOA

JAN 29 2001

Chicago Title Insurance Company
26929-C

EXHIBIT "A"

A M E N D E D
D E S C R I P T I O N

ALL that certain lot, tract or parcel of land situate in the Township of Evesham, County of Burlington and State of New Jersey bounded and described according to a survey prepared by Lawrence J. Babb, P.L.S., of Land Engineering and Surveying Company, Inc., dated March 13, 1989, and more particularly described as follows, viz:

TRACT 1

BEGINNING at a point in the Southeasterly sideline of Kettle Run Road (33 feet wide) corner to Lot 1 and Lot 1A, Block 57 as shown on the Township of Evesham Tax Map; thence

- 1) Along said sideline, North 19 degrees 51 minutes 43 seconds East, a distance of 1212.63 feet to an angle in the same; thence
- 2) Along the same, North 32 degrees 08 minutes 17 seconds West to an angle in the same a distance of 846.77 feet; thence
- 3) Along the same, North 06 degrees 08 minutes 17 seconds West, a distance of 971.95 feet to a point in the same; thence
- 4) North 85 degrees 03 minutes 44 seconds East, a distance of 314.41 feet to a point in the same; thence
- 5) North 31 degrees 25 minutes 36 seconds West, a distance of 735.87 feet to a point in the aforesaid sideline of Kettle Run Road; thence
- 6) Along the same, North 06 degrees 08 minutes 17 seconds West, a distance of 210.86 feet to an angle in the same; thence
- 7) Along the same, North 44 degrees 08 minutes 17 seconds West, a distance of 409.35 feet to a point in the same; thence
- 8) North 31 degrees 25 minutes 36 seconds West, a distance of 479.17 feet to a point; thence
- 9) North 16 degrees 23 minutes 54 seconds West, a distance of 2090.10 feet to a point in the curved Easterly sideline of Kettle Run Road; thence
- 10) Along the same in a Northwardly direction curving to the right with a radius of 323.67 feet, an arc length of 87.92 feet (CHD. Bearing, North 13 degrees 27 minutes 07 seconds East, 87.65 feet), to a point of tangency in the same, and corner to Lot 30, Block 41; thence
- 11) Along Lot 30, South 36 degrees 48 minutes 24 seconds East, a distance of 853.02 feet to a point corner to the same; thence
- 12) Along the same, North 18 degrees 43 minutes 54 seconds East, a distance of 468.50 feet to a point in the line of the same; thence
- 13) South 65 degrees 16 minutes 00 seconds East, a distance of 1129.20 feet to a point corner to Lot 1, Block 52.12; thence

-continued-

Commitment No. 26929-G

A M E N D E D

D E S C R I P T I O N

- 14) Along the same, South 01 degrees 44 minutes 00 seconds West, a distance of 690.00 feet to a point corner to the same; thence
- 15) Along the same, South 86 degrees 46 minutes 00 seconds East, a distance of 600.00 feet to a point corner to the same; thence
- 16) Along the same, South 64 degrees 06 minutes 00 seconds East, a distance of 525.00 feet to a point corner to the same; thence
- 17) Along the same, North 87 degrees 34 minutes 00 seconds East, a distance of 400.00 feet to a point corner to the same; thence
- 18) Along the same, North 81 degrees 04 minutes 00 seconds East, a distance of 810.00 feet to a point corner to the same; thence
- 19) Along the same, South 53 degrees 06 minutes 00 seconds East, a distance of 380.00 feet to a point corner to the same; thence
- 20) Along the same, North 67 degrees 44 minutes 00 seconds East, a distance of 735.00 feet to a point corner to the same; thence
- 21) Along the same, South 31 degrees 56 minutes 00 seconds East, a distance of 260.00 feet to a point corner to the same; thence
- 22) Along the same, North 57 degrees 04 minutes 00 seconds East, a distance of 610.00 feet to a point corner to the same; thence
- 23) Along the same, North 76 degrees 04 minutes 00 seconds East, a distance of 350.00 feet to a point corner to the same; thence
- 24) Along the same, South 15 degrees 26 minutes 00 seconds East, a distance of 760.00 feet to a point corner to the same; thence
- 25) Along the same, South 50 degrees 56 minutes 00 seconds East, a distance of 176.84 feet to a point corner to the same; thence
- 26) Along the same, North 66 degrees 04 minutes 00 seconds East, a distance of 113.09 feet to a point corner to the same; thence
- 27) Along the same, North 40 degrees 54 minutes 00 seconds East, a distance of 1115.00 feet to a point corner to the same; thence
- 28) Along the same, North 33 degrees 14 minutes 00 seconds East, a distance of 515.00 feet to a point corner to the same; thence
- 29) Along the same, Due East, a distance of 850.00 feet to a point corner to the same; thence
- 30) Along the same, North 79 degrees 14 minutes 00 seconds East, a distance of 742.93 feet to a point corner to the same; thence

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DB5535 PG126

Commitment No. 26929-G

A M E N D E D

D E S C R I P T I O N

- 31) Along the same, North 50 degrees 14 minutes 00 seconds East, a distance of 533.77 feet to a point corner to the same, and corner to Lot 55, Block 52.19; thence
- 32) Along the curved line of Lot 55 in a Northeasterly direction and curving to the left with a radius of 800.00 feet, an arc length of 343.64 feet to a point of reverse curvature in the same; thence
- 33) Along the same in an Eastwardly direction curving to the right with a radius of 319.78 feet, an arc length of 171.03 feet to a point of tangency in the same; thence
- 34) Along the same, North 88 degrees 36 minutes 55 seconds East, a distance of 110.00 feet to a point corner to the same; thence
- 35) Along the same Due East, a distance of 99.00 feet to a point of curvature in the same; thence
- 36) Along the same in an Eastwardly direction with a radius of 313.93 feet an arc length of 247.35 feet to a point corner to the same and in the Township line dividing Evesham and Medford Townships, also in the line of Block 5503, Lot 2.01 as shown on the Township of Medford tax map; thence
- 37) Along the same, South 02 degrees 28 minutes 39 seconds West, a distance of 1858.98 feet to a point in the same and corner to Lot 12, Block 53-1 as shown on the Evesham Township tax map; thence
- 38) Along the same, North 75 degrees 05 minutes 18 seconds West, a distance of 495.67 feet to a point corner to the same; thence
- 39) Along the same, South 14 degrees 54 minutes 42 seconds West, a distance of 66.00 feet to a point corner to the same and Lot 8; thence
- 40) Along Lot 8, North 75 degrees 05 minutes 18 seconds West, a distance of 248.16 feet to a point corner to the same; thence
- 41) Along the same, North 14 degrees 54 minutes 42 seconds East, a distance of 66.00 feet to a point corner to the same; thence
- 42) Along the same and Lot 3.01, Block 53, North 75 degrees 05 minutes 18 seconds West, a distance of 907.26 feet to the point corner to Lot 3.01 and the centerline of Taunton Road (not open); thence
- 43) Along the centerline of Taunton Road, South 42 degrees 37 minutes 22 seconds West, a distance of 4204.22 feet to a point in the same; thence
- 44) Along Lot 6, Block 54, South 10 degrees 46 minutes 00 seconds West, a distance of 449.57 feet to a point corner to the same; thence
- 45) Along the same, South 35 degrees 40 minutes 27 seconds West, a distance of 1591.12 feet to a stone found corner to the same; thence
- 46) South 87 degrees 18 minutes 35 seconds West, a distance of 3399.46 feet to the point and place of BEGINNING.

Subject to any and all easements and restrictions of records.

Containing within said bounds 691.2227 Acres.

Being known as portion of Lot 1, Block 47
portion of Lot 1, Block 52
portion of Lot 1, Block 53.

Also known as Lot 2, Block 53
Lot 1A, Block 54 (also known as Lot 1.01, Block 54)
Lot 1, Block 54
Lot 2, Block 54
Lot 1A, Block 57 (also known as Lot 1.01, Block 57).

TRACT 2:

Beginning at a point in the westerly sideline of Kettle Run Road said point located N 31°25'36"W a distance of 77.25 feet from the end of the fifth course in the above described tract 1, thence;

1. Along the aforesaid Kettle Run Road, N 06 °08'17"W a distance of 129.65 feet to an angle in the same, thence;
2. Along the same, N 44° 08'17"W a distance of 251.69 feet to a point in the same, thence;
3. S 31°25'36"E a distance of 362.75 feet to the point and place of beginning.

Containing 0.2306 Acres.

APPENDIX D

SURVEY OF KINGS GRANT II PROPERTY

APPENDIX E

Proposed Form of Deed of Conservation Easement

APPENDIX E

DEED OF CONSERVATION EASEMENT

Prepared by:

THIS DECLARATION OF CONSERVATION EASEMENT (“Easement”) is made this ___ day of _____, 2005 by and between

THE TOWNSHIP OF EVESHAM, an incorporated municipality located within the County of Burlington, State of New Jersey, having an address at 984 Tuckerton Road, Marlton, New Jersey, 08053 (hereinafter referred to as “Grantor”) and

THE STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, a principle Department in the Executive Branch of the State of New Jersey, having an address at 401 East State Street, Trenton, New Jersey and the **TOWNSHIP OF EVESHAM** (hereinafter referred to as “Grantees”)

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property known and designated as Block 57, Lots 1 & 2 on the Official Tax map of the Township of Evesham, County of Burlington, State of New Jersey, which property is described in the Schedule A attached hereto (hereinafter referred to as the “Aerohaven Parcel”);

WHEREAS, Grantor is also the owner of 400 acres of certain real property located adjacent to a planned unit development known as Kings Grant and designated as Block ___, Lot ___ on the Official Tax map of the Township of Evesham, County of Burlington, New Jersey, which property is described in the Schedule B attached hereto (hereinafter referred to as the “Kings Grant, Phase I Parcel”);

WHEREAS, Grantor is also the owner of 300 acres of certain real property designated as Block 47, Lot 1; Block 52, Lot 1; Block 53, Lots 1 & 2; Block 54, Lots 1, 1.01 & 2; Block 57, Lots 1.01 and Block 48, Lot 17.01 on the Official Tax map of the Township of Evesham, County of Burlington, New Jersey, which property is described in the Schedule C attached hereto (hereinafter referred to as the “Kings Grant, Phase II Parcel”);

WHEREAS, the Grantees consist of a principal Department in the Executive Branch of State Government charged with the responsibility to formulate comprehensive policies for the conservation of the natural resources of the state, including protection of threatened and endangered species and their associated habitat, the promotion of environmental protection and the prevention of pollution of the environment of the State

(N.J.S.A. 13:1D-9) and a municipal body whose intent is to preserve and protect certain lands within the municipality that constitute critical habitat for threatened and endangered species, respectively;

WHEREAS, pursuant to the terms of a Memorandum of Agreement executed amongst the Grantor, the New Jersey Pinelands Commission, and the Evesham Municipal Utilities Authority, dated _____, 2005, the Grantor agreed to execute a deed of conservation easement prohibiting any development, as defined in the Pinelands Comprehensive Management Plan, with limited exceptions defined herein, from occurring in, on and/or under the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels;

WHEREAS, Grantor desires and intends to prohibit development, with the limited exceptions provided herein, in, on and/or under the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels in perpetuity pursuant to the terms, covenants, conditions, and restrictions set forth herein;

WHEREAS, Grantor desires and intends that once this Deed of Conservation Easement has been executed, that the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels shall be used, occupied, conveyed and transferred subject to, and benefited by, the terms, covenants, conditions, and restrictions hereinafter set forth;

WHEREAS, the purposes of this Easement include, but are not limited to:

- (a) that the lands subject to this Easement be protected in their natural, scenic, open and existing state in perpetuity, subject only to the specific rights reserved to the Grantor herein;
- (b) that the natural features of the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels shall be respected and preserved to the maximum extent consistent with Grantor's exercise of the rights expressly reserved to Grantor by the terms of this Easement;
- (c) that the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels be forever protected and preserved in its natural, scenic and existing state free from all activities that might damage, compromise or interfere with its ecological diversity, natural beauty or resource quality, or with the natural processes occurring therein;
- (d) that the future uses of the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels be confined to such activities as are not inconsistent with the said purposes or with the terms, conditions and restrictions of this Easement;

NOW, THEREFORE, in consideration of the foregoing and the agreements, terms, covenants, conditions and restrictions contained herein, the Grantor, for itself, its successors and assigns, hereby voluntarily grants, bargains, conveys, transfers and

assigns to Grantees, their successors and assigns, in perpetuity, the conservation easements and restrictions described herein and agrees that the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels are hereby made and declared to be subject to the terms, covenants, conditions, and restrictions contained herein;

1. The following activities shall not be conducted, performed or take place in, on and/or under the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels:
 - (a) **Structure.** The construction, building, installation, placement, erection, assembly, manufacture, fabrication, alteration, enlargement, renovation or replacement of any structures or structures in, on, above or beneath the surface of the Property;
 - (b) **Surface Alteration or Other Land Disturbance.** Any disturbance or alteration of the surface topography and natural features of the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels;
 - (c) **Clearing, Cutting or Destruction of Vegetation.** Clearing, cutting, destruction or removal of any tree cover, tree limbs, trees, shrubs, plants, vegetation or other plant material, except that (a) dead, fallen, diseased or infected tree limbs or other vegetation that pose a health or safety hazard may be trimmed or removed, and (b) non-native vegetation may be controlled;
 - (d) **Invasive Plant Species.** The planting of any invasive or non-native plant species;
 - (e) **Refuse and Offensive Materials.** Processing, storage, disposal, spreading, placing or dumping of refuse, rubbish, debris, dredge spoils, chemicals, hazardous materials, animal waste, fertilizers, herbicides, pesticides, fungicides, abandoned vehicles or other refuse or offensive materials;
 - (f) **Placement of Soils or Fill Materials.** Placement, installation, dumping, side casting of any soils or other substances or materials as fill or the stockpiling of soils or other substances or materials on the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels;
 - (g) **Motorized Vehicles.** Use of the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels by automobiles, trucks, all-terrain vehicles, trail bikes, motorcycles, snowmobiles or other motorized vehicles;

- (h) **Commercial or Industrial Uses.** Use of the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels for commercial or industrial uses;
 - (i) **Mining and Resource Extraction.** Mining, quarrying, drilling, extraction, excavation, dredging, extraction or otherwise removing loam, peat, turf, soil, gravel, sand, coal, rock, mineral, petroleum, natural gas, or other natural resources from the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels; and
 - (j) **Other Activities.** Other activities, uses, disturbances or development that could be detrimental to continuation of the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels in its natural state.
2. Grantor agrees to leave the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels unmolested and in their natural state.
 3. Notwithstanding any provision of this Easement to the contrary, the Grantor may engage in such soil and water conservation practices or habitat restoration projects within the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels as may be necessary or appropriate, provided that such activities further the goals intended to be achieved by this Easement. The Grantor may also use and allow the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels to be used for low intensive recreational facilities, as defined at N.J.A.C.7:50-2.11, which include, nature study and observation, and hiking. Recreational facilities other than low intensive recreational facilities shall not be permitted. The scope and frequency of, number of participants in, and manner of carrying out such low intensive recreational facilities shall be limited as necessary to ensure that they do not result in damage to, or degradation of the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels.
 4. Notwithstanding any provision of this Easement to the contrary, the Grantor may, upon submission of a public development application to and approval of the same by the Pinelands Commission, construct and maintain a parking area to provide public access to any low intensive recreational facilities to be provided on the Aerohaven parcel.
 5. Notwithstanding any provision of this Easement to the contrary, the Grantor may permit the Evesham Municipal Utilities Authority, upon submission of a public development application to and approval of the same by the Pinelands Commission, to construct and maintain three recharge basins and any infrastructure that may be necessary to convey the Authority's treated wastewater to the wastewater recharge facility to be constructed on the Aerohaven parcel.

6. Notwithstanding any provision of this Easement to the contrary, the Grantor may permit the Evesham Municipal Utilities Authority, upon submission of a public development application to and approval of the same by the Pinelands Commission, to construct and maintain any infrastructure that may be necessary to convey the Utilities Authority's treated wastewater to the wastewater recharge facility to be constructed on the Aerohaven parcel.
7. Notwithstanding any provision of this Easement to the contrary, the Grantor may permit the Evesham Municipal Utilities Authority, upon submission of a public development application to and approval of the same by the Pinelands Commission, to construct and maintain any infrastructure that may be necessary to convey the Utilities Authority's treated wastewater to the Links and/or Little Mill Golf Courses, as part of any pilot program that may be initiated by the Pinelands Commission and the Department of Environmental Protection regarding the application of beneficial reuse water at golf courses.
8. Notwithstanding any provision of this Easement to the contrary, the Grantor may permit the construction and maintenance of the portion of the Phase IV Waster Main depicted on the survey entitled "Survey of Property, Kings Grant II", prepared by Dennis S. DiBlasio, Pennoni, dated February 2, 2002 and last revised July 15, 2002, upon submission to the Pinelands Commission of the Certificate of Appropriateness required pursuant to the Certificate of Filing issued by the Pinelands Commission on May 3, 2002 for Pinelands Application No. 93-0341.03 and copies of all local approvals and upon issuance by the Pinelands Commission of a letter of no further review for such local approvals.
9. Notwithstanding any provision of this Easement to the contrary, the Grantor may permit the Evesham Municipal Utilities Authority to continue to operate and maintain the Utilities Authority's two existing recharge basins located on the Kings Grant, Phase I parcel, and to utilize a portion of the Kings Grant, Phase I site to construct and maintain any infrastructure that may be necessary, and is approved by the Commission, to convey the Utilities Authority's treated wastewater to the wastewater recharge facility to be constructed on the Aerohaven parcel.
10. To accomplish the purposes of this Easement, the Grantor grants the following rights to the Grantees, their employees, agents, representatives, successors and assigns and to the New Jersey Pinelands Commission, which is a special beneficiary of the Easement, its employees, agents, representatives, successors and assigns:

- (a) To have access and enter upon at all reasonable times to inspect the Aerohaven, Kings Grant, Phase I or the Kings Grant, Phase II parcels and enforce the terms of this Easement; provided, however, that except in cases in which immediate entry is required to prevent, terminate or mitigate any violation of this Easement, such entry shall be made upon prior notice to the Grantor;
- (b) In addition to the exercise of any statutory or common law right, to enforce this Easement by means of any remedy provided for herein or available at law or equity, including but not limited to, enjoining any activity on, or use of, the Aerohaven, Kings Grant, Phase I or the Kings Grant, Phase II parcels that is inconsistent with the purpose of this Easement;
- (c) To require Grantor or third persons to restore the Aerohaven, Kings Grant, Phase I or the Kings Grant, Phase II parcels, or any portion thereof, as may be damaged by an inconsistent use or activity; and
- (d) To protect and preserve the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels, and in connection therewith, to determine the consistency of any activity or use for which no express provision is made herein with the purposes of this Easement.

11. Grantor intends that enforcement of the terms, covenants, conditions, and restrictions of this Easement shall be at the discretion of the Grantees and the New Jersey Pinelands Commission, which is a special beneficiary of the Easement, their successors or assigns, and that any forbearance on behalf the Grantees or the New Jersey Pinelands Commission, their successors or assigns, to exercise their rights hereunder in the event of any breach by the Grantor or third persons shall not be deemed or construed to be a waiver of the Grantees' or the New Jersey Pinelands Commission's rights granted hereunder in the event of any subsequent breach, regardless of the number of breaches or the length or time this Easement remains unenforced.

12. Grantor reserves to itself, its successors or assigns, all rights associated with ownership of the Property, including the right to engage in all uses of the Property not inconsistent with the terms, covenants, conditions, and restrictions of this Easement. In addition, any use of the Property or the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels shall adhere to the requirements of the certified municipal land use ordinances and the Pinelands CMP.

13. The terms, covenants, conditions, and restrictions of this Easement shall run with the land and shall be binding, in perpetuity, upon the Grantor, its successors or assigns, and all entities having or acquiring any right, title or interest in the Aerohaven, Kings Grant, Phase I and Kings Grant, Phase II parcels, or any portion thereof.
14. This instrument shall be recorded in the Office of the Clerk of Burlington County and a reference to this instrument shall be contained in a separate paragraph of any future deed, lease, sub-lease, document of transfer or conveyance or any other legal instrument that include or affect the Aerohaven, Kings Grant, Phase I or the Kings Grant, Phase II parcels, or any portion thereof. Grantor shall give written notice to the Grantees and the New Jersey Pinelands Commission of any transfer or conveyance of interest in the Property prior to or within ten (10) days following such transfer or conveyance. Such notice shall include the name and address of the grantee of such interest. Grantor shall provide a copy of this instrument to all subsequent grantees of a fee simple interest in any part of all of the Property. The failure of the Grantor to perform any act required by this Paragraph shall not impair the validity of this instrument or limit its enforceability in any way.
15. The Easement created herein is subject to the provisions of the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq.
16. If any provision of this Easement is held invalid as a result of its conflict with any federal, state, or local law, regulation, or other requirements, statutory or administrative, the remainder of this Easement shall not be affected thereby.
17. The following schedules and exhibits are annexed hereto and shall form a part of this Easement:
 - Schedule A: Metes and Bounds Description of the Aerohaven Parcel
 - Schedule B: Metes and Bounds Description of the 400 acres adjacent to the planned unit development known as "Kings Grant"
 - Schedule C: Metes and Bounds Description of the Kings Grant, Phase II parcel
 - Exhibit 1: Drawing depicting the Aerohaven Parcel
 - Exhibit 2: Drawing depicting the 400 acres adjacent to the planned unit development known as Kings Grant, Phase I
 - Exhibit 3: Survey of Property, Kings Grant, Phase II

