

2/07/01

**MEMORANDUM OF AGREEMENT
BETWEEN
THE EVESHAM MUNICIPAL UTILITIES AUTHORITY,
EVESHAM TOWNSHIP
AND
THE NEW JERSEY PINELANDS COMMISSION**

I. PURPOSE

This Memorandum of Agreement (MOA) is between the Evesham Municipal Utilities Authority (Utilities Authority), Evesham Township (Evesham) and the New Jersey Pinelands Commission (Commission). The Utilities Authority's Kings Grant Wastewater Treatment Facility currently discharges treated wastewater on a parcel in the Pinelands Area portion of Evesham Township both through groundwater recharge basins and spray irrigation. This MOA is intended to allow for the discharge of treated wastewater generated from the Kings Grant Wastewater Treatment Facility to additional groundwater recharge basins and additional spray irrigation in the Pinelands Area.

II. BACKGROUND

The Kings Grant Planned Unit Development

The Kings Grant planned unit development, located in the Pinelands Area, originally received approvals from Evesham for the development of 9,000 dwelling units and associated commercial development. This approval was prior to creation of the Pinelands Commission in 1979. In reliance on those municipal approvals, the developer built significant infrastructure, including the existing Kings Grant wastewater treatment plant and two wastewater recharge basins, all prior to 1979. However, less than 200 dwelling units were built prior to creation of the Commission. An application was then filed with the Commission for a Waiver of Strict Compliance (Waiver) to allow for completion of the remainder of the development. A Waiver was approved (Appendix A) limiting development to a maximum of 4,500 dwelling units (pre-existing and proposed) and associated commercial development on the overall Kings Grant parcel. The Waiver precluded significant portions of the overall parcel from development because of environmental constraints. Approvals were ultimately received for development of less than 3,500 dwelling units and commercial development on what is commonly known, and will be referred to in this MOA, as Kings Grant, Phase I. Kings Grant, Phase I is the currently built out portion of the planned unit development.

An approximate 300 acre portion of the Kings Grant parcel which was also subject of the Waiver received approvals to develop 244 dwelling units. This approximate 300 acres is commonly known, and will be referred to in this MOA, as Kings Grant, Phase II. The concerned 244 dwelling units have not been built. The portion of the Commission's Waiver applicable to Kings Grant, Phase II will expire on October 9, 2006.

The Evesham Municipal Utilities Authority

During development of Kings Grant, Phase I, the Utilities Authority purchased the Kings Grant Wastewater Treatment Facility (Treatment Facility), including the groundwater recharge basins. Because of inadequate recharge capacity of those basins, the Utilities Authority obtained approval from the Commission for a third recharge basin. The Utilities Authority has represented that the recharge basin was not constructed because it would not provide significant additional capacity. Based on the previously approved Waiver, the Utilities Authority then received approval from the Commission and built a wastewater spray irrigation facility on a developable portion of the Kings Grant, Phase II parcel.

A lawsuit was brought by the Utilities Authority against the developer of Kings Grant concerning the wastewater facilities. As a result of that lawsuit, the developer conveyed approximately 400 acres of Kings Grant that was precluded from development by the Waiver and the approximate 300 acre Kings Grant, Phase II to the Utilities Authority. In total, the Utilities Authority owns approximately 700 acres contiguous to the currently built out portion of the Kings Grant planned unit development. (See Appendix B for a complete list of tax map blocks and lots comprising the approximate 700 acre parcel.)

The Kings Grant Wastewater Treatment Plant

The Utilities Authority's Treatment Facility is intended to provide service only to the Kings Grant planned unit development. The Treatment Facility has a design capacity of 700,000 gallons per day. The Utilities Authority's New Jersey Department of Environmental Protection (NJDEP) New Jersey Pollution Discharge Elimination System (NJPDES) permit number 0029203 for the Treatment Facility authorizes a maximum discharge of 600,000 gallons per day. The Treatment Facility currently processes approximately 450,000 gallons per day of wastewater.

Some of the treated wastewater is currently disposed of in two groundwater recharge basins located on Kings Grant, Phase II. Each recharge basin is approximately 2.5 acres. The two existing recharge basins have a total recharge capacity of approximately 225,000 gallons per day. The remainder of the treated wastewater is spray irrigated on Kings Grant, Phase II. The existing NJPDES permit for the Treatment Facility specifies the level of treatment that must occur prior to discharge of treated wastewater to the recharge basins or through spray irrigation.

The Aerohaven Parcel

Evesham Township owns a 212 acre parcel commonly referred to as the Aerohaven Airport parcel. (Block 57, Lots 1 & 2 and Block 63, Lots 1 & 2) The Aerohaven Airport parcel and the Kings Grant acreage are contiguous. Evesham is considering using the Aerohaven parcel and the developable portion of the Kings Grant parcel for recreational purposes.

The Utilities Authority Proposal

The Utilities Authority proposes to construct three to five additional wastewater recharge basins on the Aerohaven parcel. The basins would have a total surface area of approximately 35 acres and be sited throughout the Aerohaven parcel. The recharge basins would be designed to compliment any future recreational use of the parcel. The Utilities Authority also proposes the spray irrigation of potential future recreational uses of the parcel with treated wastewater. The Utilities Authority will require approval from the NJDEP, through modification of its NJPDES permit, to discharge into the additional recharge basins and to allow for the spray irrigation of treated wastewater from the Treatment Facility on areas designated for public access on the Aerohaven parcel.

The two existing wastewater recharge basins on the Kings Grant, Phase II parcel will continue in operation. The existing spray irrigation facility on the Kings Grant, Phase II parcel will be abandoned once the new recharge basins and spray irrigation facilities are fully operational.

The proposed recharge basins and spray irrigation on the Aerohaven parcel are not intended to increase the capacity of the plant or accommodate development that could not otherwise occur.

The Aerohaven parcel is located in a Pinelands Rural Development Area. The proposed wastewater recharge basins and spray irrigation of treated wastewater are considered to be centralized waste water treatment and collection facilities by the CMP. With limited exceptions which are not applicable with this situation, the CMP (N.J.A.C. 7:50-5.26 (b) 10.) prohibits centralized wastewater treatment and collection facilities in a Pinelands Rural Development Area.

The Basis of the MOA

The CMP (N.J.A.C. 7:50-4.52(c)2) provides that the Commission may enter into intergovernmental memoranda of agreement (MOA) with any agency of local government which authorize such agency to carry out specified development activities that may not be fully consistent with the provisions of the CMP. The agency must demonstrate and the Commission must find that any proposed development that may not be fully consistent with the provisions of the CMP is accompanied by measures that will, at a minimum, afford a level of protection to the resources of the Pinelands equivalent to that provided through strict application of the standards of the CMP.

The Utilities Authority intends to sell the approximate 700 acres it owns in Kings Grant to Evesham. Once it acquires title to the 700 acres, Evesham will impose a conservation easement precluding all development on the approximate 400 acres adjacent to Kings Grant, Phase I that was precluded from development by the Commission's Waiver. The conservation easement will allow for such infrastructure that is necessary, and approved by the Commission, to convey the Authority's treated wastewater to the recharge basins and spray irrigation facilities on the Aerohaven parcel. The conservation easement will also allow for other public service infrastructure that is a permitted land use in a Pinelands Rural Development Area in accordance with the CMP (N.J.A.C. 7:50-5.26.b.10.) and the previously approved Waiver.

Evesham is considering using the 300 acre Kings Grant, Phase II for recreational purposes. Consistent with the Commission's Waiver, a conservation easement precluding all development will also be imposed on that acreage of the Kings Grant, Phase II on or within 300 feet of wetlands. The conservation easement will also be imposed by Evesham on the remaining upland acreage of the Kings Grant, Phase II parcel not within 300 feet of wetlands precluding all development, including the previously approved 244 single family dwellings, but allowing for recreational use of that same area. The conservation easement will allow for such infrastructure that is necessary, and approved by the Commission, to convey the Authority's treated wastewater to the recharge basins and spray irrigation facilities on the Aerohaven parcel. The conservation easement will also allow for other public service infrastructure that is a permitted land use in a Pinelands Rural Development Area in accordance with the CMP (N.J.A.C. 7:50-5.26.b.10.) and the previously approved Waiver.

A proposed conservation easement on the Aerohaven parcel will also limit the use of that parcel to recreation, additional wastewater recharge basins and spray irrigation facilities. The conservation easement will allow for such infrastructure that is necessary, and approved by the Commission, to convey the Authority's treated wastewater to the recharge basins and spray irrigation facilities on the Aerohaven parcel. The conservation easement will also allow for other public service infrastructure that is a permitted land use in a Pinelands Rural Development Area in accordance with the CMP (N.J.A.C. 7:50-5.26.b.10.). The 212 acre Aerohaven parcel is located in Evesham's Environmental Protection (EP) zoning district. This zoning district allows a residential density of one dwelling unit per 10 acres. Evesham is eliminating the potential to develop of up to 21 dwelling units on the Aerohaven parcel. Evesham Township has adopted a revised zoning ordinance that effects the zoning of the Aerohaven parcel. Although under review by the Commission, the revised zoning ordinance has not been certified (approved) by the Commission. The revised zoning ordinance places the Aerohaven parcel in an institutional zoning district that does not permit residential uses.

In addition, Evesham also proposes to acquire Evesham block 90, lot 11 and permanently protect it as open space. This 133 acre lot is located in Evesham's RD-2 zoning district. This zoning district allows a residential density of 1 dwelling per 4 acres. Evesham is eliminating the potential to develop an additional 33 dwelling units on this lot.

The Utilities Authority and Evesham propose that by eliminating the development of a total of 298 dwellings (244 single family dwellings on Kings Grant, Phase II, 21 potential dwelling units on the Aerohaven parcel and 33 potential dwelling units on Evesham block 90, lot 11), an equivalent level of protection of the resources of the Pinelands would be provided to allow the Utilities Authority to discharge treated wastewater from the Treatment Facility on the 212 acre Aerohaven parcel.

The Kings Grant, Phase II acreage and the Aerohaven parcel are located in a Pinelands Rural Development Area. Evesham is considering using the acreage of the Kings Grant, Phase II parcel that will not be subject to a conservation easement prohibiting such use and that acreage of the Aerohaven parcel that is neither wetlands or subject to a required buffer to wetlands for recreational use. The CMP permits recreational uses, except amusement parks, in a Pinelands Rural Development Area.

III. AGREEMENTS

1. The Utilities Authority agrees:
 - A. In accordance with the conditions of the Agreement of Sale dated December 19, 2000 and entered into between the Utilities Authority and Evesham, the Utilities Authority intends to sell to Evesham the approximate 400 acres that was precluded from development by the Commission's Waiver and the approximate 300 acres referred to in this MOA as Kings Grant, Phase II.
 - B. This MOA is expressly contingent upon transfer by the Utilities Authority to Evesham of the approximate 400 acres of Kings Grant that was precluded from development by the Commission's Waiver and the approximate 300 acres referred to in this MOA as Kings Grant, Phase II. No application for any wastewater recharge facility on the Aerohaven parcel shall be deemed complete by the Pinelands Commission unless the concerned acreage has been transferred to Evesham Township. The Utilities Authority will not provide the public notice required by the CMP for such an application, until the concerned acreage has been transferred to Evesham. If the concerned acreage has not been transferred to Evesham by October 1, 2002, this MOA is terminated by mutual consent of all signatories to the MOA unless this provision of the MOA has been amended in accordance with IV. 2.
 - C. The use of the existing wastewater spray irrigation field on the Kings Grant, Phase II parcel will be terminated when the recharge basins and spray irrigation facilities on the Aerohaven parcel have been constructed, are operational and are capable of meeting the Utilities Authority's NJPDES permit requirements.
 - D. That the proposed wastewater recharge basins and spray irrigation on the Aerohaven parcel shall only be utilized to serve the Kings Grant Planned Unit Development and shall not be utilized to accommodate, either directly or indirectly, flows from lands not currently approved to be serviced by the Utilities Authority's Kings Grant Wastewater Treatment Facility
 - E. That the proposed wastewater recharge basins and spray irrigation on the Aerohaven parcel shall be consistent with all standards contained in Subchapter 6 of the CMP.
 - F. That no development of the wastewater recharge basins and the spray irrigation facilities shall be initiated prior to all parties signing this MOA and securing approval for the proposed development in accordance with the provisions of the CMP.

- G. The treated wastewater to be discharged to the recharge basins and spray irrigated, both on the Aerohaven parcel, shall meet the discharge limitations of the Utilities Authority's NJPDES permit.

2. Evesham Township agrees:

- A. Upon ownership of the approximate 400 acres in Kings Grant that was precluded from development by the Commission's Waiver, to record a conservation easement prohibiting all development of that acreage consistent with the previously approved Commission Waiver. The conservation easement will account for the area necessary for continued operation of the Utilities Authority's two existing recharge basins, access thereto, and allow for such infrastructure that may be necessary, and is approved by the Commission, to convey the Authority's treated wastewater to the recharge basins and spray irrigation facilities on the Aerohaven parcel. The conservation easement will also allow for other public service infrastructure that is a permitted land use in a Pinelands Rural Development Area in accordance with the CMP (N.J.A.C. 7:50-5.26.b.10.).
- B. Upon ownership of the approximate 300 acres referred to in this MOA as Kings Grant, Phase II, to record a conservation easement prohibiting all development except recreational uses that are permitted in a Pinelands Rural Development Area in accordance with the provisions of the CMP on the upland acreage greater than 300 feet from wetlands. The conservation easement will also allow for such infrastructure that may be necessary, and is approved by the Commission, to convey the Authority's treated wastewater to the recharge basins and spray irrigation facilities on the Aerohaven parcel. The conservation easement will also allow for other public service infrastructure that is a permitted land use in a Pinelands Rural Development Area in accordance with the CMP (N.J.A.C. 7:50-5.26.b.10.).
- C. Upon ownership of the approximate 300 acres referred to in this MOA as Kings Grant, Phase II to record a conservation easement on all wetland acreage and required 300 foot buffer to wetlands acreage prohibiting development consistent with the Commission's previously approved Waiver. This conservation easement will also allow for such infrastructure that may be necessary, and is approved by the Commission, to convey the Authority's treated wastewater to the recharge basins and spray irrigation facilities on the Aerohaven parcel. The conservation easement will also allow for other public service infrastructure that is a permitted land use in a Pinelands Rural Development Area in accordance with the CMP (N.J.A.C. 7:50-5.26.b.10.).

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- D. Impose a conservation easement on the entire Aerohaven parcel limiting use of the parcel to recreational uses that are permitted in a Pinelands Rural Development Area by the CMP and the proposed wastewater recharge basins and spray irrigation facilities. This conservation easements will also allow for such infrastructure that may be necessary, and is approved by the Commission, to convey the Authority's treated wastewater to the recharge basins and spray irrigation facilities on the Aerohaven parcel. The conservation easement will also allow for other public service infrastructure that is a permitted land use in a Pinelands Rural Development Area in accordance with the CMP (N.J.A.C. 7:50-5.26.b.10.).
 - E. No recreational development of the Kings Grant, Phase II acreage or the Aerohaven parcel shall be initiated prior to securing approval for the proposed development in accordance with the provisions of the CMP.
 - F. To acquire block 90, lot 11 in Evesham Township and permanently protect as open space and habitat for timber rattle snakes.
 - G. That Commission approval of this MOA shall not be construed, interpreted or implied as Commission endorsement or approval of any particular recreational plan or use for the Kings Grant, Phase II or Aerohaven parcels.
 - H. This MOA is expressly contingent upon transfer by the Utilities Authority to Evesham of the approximate 400 acres of Kings Grant that was precluded from development by the Commission's Waiver and the approximate 300 acres referred to in this MOA as Kings Grant, Phase II. No application for any wastewater recharge facility on the Aerohaven parcel shall be deemed complete by the Pinelands Commission unless the concerned acreage has been transferred to Evesham Township. The Utilities Authority will not provide the public notice required by the CMP for such an application, until the concerned acreage has been transferred to Evesham. If the concerned acreage has not been transferred to Evesham by October 1, 2002, this MOA is terminated by mutual consent of all signatories to the MOA unless this provision of the MOA has been amended in accordance with IV. 2.
3. The Pinelands Commission agrees:
- A. To allow for the use of the Aerohaven parcel by the Utilities Authority to discharge treated wastewater from the Kings Grant Wastewater Treatment Facility to recharge basins and for spray irrigation notwithstanding the limitation against centralized wastewater treatment and collection facilities in a Pinelands Rural Development Management Area contained in N.J.A.C. 7:50-5.26 (b) 10. of the CMP provided:

- i. The required conservation easements are imposed on the Kings Grant and Aerohaven acreages in accordance with the provisions of III. 2A., 2B, 2C and 2D of this MOA; and
 - ii. Evesham has acquired block 90, lot 11 in Evesham in accordance with III. 2E. of this MOA; and
 - iii. Upon completion of a development application with the Pinelands Commission that demonstrates compliance with the standards of the CMP, in particular Subchapter 6.
- B. This MOA is expressly contingent upon transfer by the Utilities Authority to Evesham of the approximate 400 acres of Kings Grant that was precluded from development by the Commission's Waiver and the approximate 300 acres referred to in this MOA as Kings Grant, Phase II. No application for any wastewater recharge facility on the Aerohaven parcel shall be deemed complete by the Pinelands Commission unless the concerned acreage has been transferred to Evesham Township. The Utilities Authority will not provide the public notice required by the CMP for such an application, until the concerned acreage has been transferred to Evesham. If the concerned acreage has not been transferred to Evesham by October 1, 2002, this MOA is terminated by mutual consent of all signatories to the MOA unless this provision of the MOA has been amended in accordance with IV. 2.

IV. EFFECTIVE DATE AND DURATION

1. In accordance with N.J.S.A. 13:18A-5 (h), this MOA shall take effect subsequent to the Governor's review and approval of the Pinelands Commission minutes authorizing entry of this MOA and then upon approval and signature by the authorized representative of all parties.
2. This MOA shall remain in effect unless amended by consent of all parties.
3. Prior to closing of the Agreement of Sale referenced in III. 1. A., this MOA may be terminated with cause by any of the concerned parties upon sixty (60) days written notice. After that closing, but prior to Commission approval of a development application for the wastewater recharge basins and spray irrigation on the Aerohaven parcel and any public service infrastructure that is necessary to convey the Utilities Authority's treated wastewater to the recharge basins and spray irrigation facilities on the Aerohaven parcel, this MOA may only be terminated if it is determined that the concerned facilities cannot be developed consistent with the standards of the CMP. After Commission approval of a development application for the proposed facilities, the conditions of any such Commission approval shall govern the development and operation of those facilities.

V. SIGNATURES

William F. Harrison

3/28/01

William F. Harrison, Assistant Director
NJ Pinelands Commission

Date

Augustus F. Tamburro

3/6/01

Augustus F. Tamburro, Mayor
Township of Evesham

Date

Louis D. Russo

3/15/01

Louis D. Russo, Executive Director
Evesham Municipal Utilities Authority

Date

Approved as to form by:

Valerie W. Haynes

3/26/01

Valerie Haynes, Deputy Attorney General
State of New Jersey

Date

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.

The applicant sells approved sections to developers to develop the units. As of December 31, 1980, the applicant has sold a potential 369 dwelling units to developers. A total of approximately 200 dwelling units have been developed. The applicant received \$2,450,360 for the 369 units it has sold. The Pinelands Commission approved 151 units under the Interim Rules and Regulations.

The original developer of this subdivision made in the early 1970's various improvements to the property. Included were extensive roads and curbing throughout Phase 1, sanitary and storm sewer lines, water lines, a series of man-made lakes and an 18-hole golf course. The original developer went bankrupt in 1974. The applicant, along with other banks, took over the project following the ensuing foreclosure in 1977. The applicant then received approval to build a 300,000 gallon per day capacity sewage treatment plant. The first phase of this plant (150,000 gallons per day) was built and received an operating permit in January, 1979.

The original cost of the land was \$3,000,000. A total of \$8,794,500 was spent for improvements prior to February 8, 1979 in reliance on the approvals which were received. The applicant expended an additional \$1,051,838 in improvements since February 8, 1979. The applicant also expended a total of \$2,066,901 in operating costs associated with the development.

The applicant has submitted documentation that these costs for the improvements to complete Phase 1 would be \$11,741,800. Some of these costs would be allocable to Phase 2. The applicant has estimated that the operating costs of the water and sewer companies would be \$2,804,000 based on the assumption that the utility companies would be disposed of after 10 years. In addition, the applicant expended \$352,377 for operating these utility companies in 1979 and 1980. The applicant has estimated that there would be an additional \$10,075,100 needed to be expended in operating costs to complete the development. The applicant has estimated that an additional \$4,350,000 would have to be expended to develop Phase 2.

Most of the existing development has occurred in Phase 1 which is located on the northern half of the property. It is separated from Phase 2 by the existing golf course. Most of this property was a fresh water wetland. The existing development has disturbed much of the fresh water wetlands located in Phase 1. Some of the wetlands were filled in. Approximately 50 more acres have either been significantly disturbed by the existing development or are small areas of wetlands which have become isolated. There remains in Phase 1 some large contiguous areas of wetlands which drain directly into wetlands on adjacent properties. The wetlands off-site are habitats for various threatened and endangered plant and animal species. Pine Barrens tree frogs have been located on these adjoining parcels. The fresh water wetlands on Phase 1 are no longer habitats for any threatened or endangered species. The fresh water wetlands in Phase 2 have not been impacted by the existing development in any significant way. These fresh water wetlands are the habitat for various threatened and endangered plant and animal species.

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 townhouses 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

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

LEGAL DESCRIPTION AND TAX BLOCK AND LOT NUMBERS COMPRISING THE APPROXIMATE 700 ACRES OF THE KINGS GRANT PARCEL SUBJECT OF THIS MOA

JAN 29 2001

Chicago-Title Insurance Company
26929-g

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

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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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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.