

Brief of Plaintiff, Robert E. Rivell, in support of its motion for  
Partial Summary Judgment

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WL 000755 B

ROBERT E. RIVELL,

Plaintiff

vs.

TOWNSHIP OF TEWKSBURY, a  
municipal corporation located  
in Hunterdon County, New  
Jersey,

Defendant.

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION  
: HUNTERDON COUNTY/  
: MIDDLESEX COUNTY  
: MOUNT LAUREL  
:  
: DOCKET NO. L-040993-85PW  
: CIVIL ACTION  
:  
:

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BRIEF OF PLAINTIFF, ROBERT E. RIVELL, IN SUPPORT  
OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

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THOMAS J. BEETEL, Attorney for  
Plaintiff

## ARGUMENT

TEWKSBURY'S TOWNSHIP ZONING ORDINANCE FAILS TO PROVIDE A REALISTIC OPPORTUNITY FOR THE CONSTRUCTION OF LOW AND MODERATE INCOME HOUSING OF ITS INDIGENOUS AND PROSPECTIVE HOUSING NEED.

"Mount Laurel II" substantially changed the test for determining whether or not the obligations set forth in "Mount Laurel" have been met by a particular municipality's zoning ordinances. It is the intent of the Supreme Court in "Mount Laurel" that obligation can be determined solely on an objective basis. That is "if the municipality has in fact provided a realistic opportunity for the construction of its fair share of low and moderate income housing, it has met the Mount Laurel obligation to satisfy the constitutional requirement; if it has not, then it has failed to satisfy it. See "Mount Laurel II" at page 221. The Court went on further to hold that a showing by the plaintiff that the defendant municipality's land use regulations fail to provide a realistic opportunity for low and moderate income housing or that such regulations contain requirements, restrictions, or exactions which preclude or substantially hinder it, create a prima facie case of the failure to satisfy the Mount Laurel obligation. See Mount Laurel II at page 222. Notwithstanding a most recent amendment to the Township zoning ordinance, namely 4-84 wherein the Township established a multi-family zone in a formerly rural residential

district which would allow townhouses at three units per acre or five apartments per acre, with a 20 percent set-aside for low and moderate income housing.

This amendment which well may be procedurally deficient as to its enactment, is economically unrealistic, see reports of Robert Tublitz, P.P. dated April 29, 1985, William Steinfield, dated, May 20, 1985, Harry Oldstein, dated, May 28, 1985, and the depositions of Bruce C. Clay, June 18, 1985 as well as other submitted reports relevant to the above. Mr. Dale Blazure, I.C.A. has valued the re-zoned land known partially as Lot 8, Block 29 at \$2,812,500.00 less 20 percent for the required set aside, which translates into \$2,250,000.00 or \$30,000.00 per acre. Presently there is no sewer or water availability or the likelihood within the foreseeable future for this land to be developed even if it were for sale.

The defendant expert, William E. Fitzgerald, P.E., in his report dated April 3, 1985, values the same land at \$885,750.00, and suggests that a profit would be realized in the amount of \$3,942,033. Our analysis of said report indicates a loss of \$1,907,360 after five years, which illustrates the opinion of Robert Tublitz, P.P., plaintiff's planner, as stated in his report dated, October 4, 1984, page 10, and his report dated, May 24, 1985 on page 3, wherein he maintains that Tewksbury has and still continues an exclusionary posture through "camouflage zoning".

The defendant, Township of Tewksbury, lies within a growth

area as designated by the S.D.G.P. and has a constitutional requirement to provide its fair share of low and moderate housing, being comprised of present, reallocated and prospective housing needs. That Tewksbury has failed to provide through its zoning ordinances and regulations for this need is obvious from even a cursory review its zoning ordinance, master plan, and zoning maps. See Robert Tublitz, P.P., plaintiff's planner, reports previously submitted to the Court, containing the 1979 Tewksbury Master Plan, Land Use Plan, Zoning Map and Zoning Ordinance and Regulations of the defendant Township.

As outlined in Robert Tublitz, P.P., plaintiff's planner, report, dated October 4, 1985 Evaluation of the Constitutionality of the Township of Tewksbury Development Regulations Ordinance Including its Official Zoning Map and the Excessive Restrictions and Exactions Therein the municipality's zoning ordinances and regulations utterly fail because of the lack of affirmative measures to effectively encourage construction of its fair share of low and moderate income housing. As recited in Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township, 67 N.J. 155 (1975); Southern Burlington County N.A.A.C.P. v. Mt. Laurel Township, 92 N.J. 158 (1983); Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. (1977) and based thereon, the defendant Township zoning ordinances and regulations should be declared unconstitutional and be ordered to develop a new ordinance which provides a realistic opportunity for lower income housing.

In addition, the Zoning and Development Regulation Ordinance of the Township are presumptively and facially invalid, arbitrary and capricious, as the case may be and ultra vires and contrary to substantive due process and equal protection guarantees inherent in Article 1, Section 1 of the New Jersey Constitution and are contrary to N.J.S.A. 40:55D-62, due to the failure of the Township through its regulations to provide for a balanced community and to promote the general welfare.

## ARGUMENT

TEWKSBURY TOWNSHIP CONTAINS A SDGP GROWTH AREA. A LARGER AREA, DUE TO PLANNED AND ACTUAL IS APPROPRIATE AS A RECEIVING AREA FOR LOWER INCOME HOUSING FOR FAIR SHARE PURPOSES.

The issue is the appropriateness of the growth designation for Tewksbury Township as contained in the State Development Guide Plan (SDGP) published by the New Jersey Department of Community Affairs (DCA) as revised in May 1980. The SDGP was designed to provide a comprehensive growth management strategy to ameliorate the negative consequences which resulted from decades of expansive suburbanization. It enumerated four generalized land use categories: growth, limited growth, agriculture and conservation areas. Growth areas were described as:

...those regions of New Jersey where development has already occurred to an extensive, as well as partially suburbanized areas with accessibility to employment. Several existing rural in more peripheral have also been designated where continuing development would be appropriate.

The growth areas were delineated by applying the following criteria:

1. Location within or adjacent to major population and employment centers.
2. Location within or in proximity to existing major water supply and sewer service areas.
3. Location within or in proximity to areas served by highway and rail commuter rail facilities.
4. Absence of large concentration of agriculture land.

5. Absence of large blocks of public open space or environmentally-sensitive land.

The initial question is how appropriately was the growth area assigned to Tewksbury and was the criteria adhered to? A secondary question, of equal importance is raised by Mt. Laurel II, supra 92 N.J. at 248, F21 (emphasis supplied).

In addition to urban areas and the built-up suburbs, 'developing' municipalities will be subject to Mount Laurel to the extent that prior decisions imply that the so-called 'six criteria' must be satisfied to characterize a municipality as 'developing' see supra at 223-224, we disavow that implication. Any combination of factors demonstrating that the municipality is in the process of significant commercial, industrial or residential growth, or is encouraging such growth, or is it in the path of inevitable future growth, commercial, industrial or residential growth will suffice.

The Court's rejection of the formulaic "six-criteria" approach brings us back to first principles and is the key to understanding the use of the SDGP and the exceptions enumerated. The Court is admonishing us not to apply a rigid formula but to look at what is in fact happening in a particular municipality:

1. is it in the process of significant commercial, industrial or residential growth; or
2. is it encouraging such growth; or
3. is it in the path of inevitable future commercial, industrial or residential growth.

It should be noted that the Court, itself, emphasizes, in Mt. Laurel II, the disjunctive as to these three demographic factors. And they are the same factors which appear in its discussion of the SDGP exceptions.



Furthermore, these factors are a reiteration of the Court's basic concern. Where appropriate, as a result of actual growth or planning for growth, lower income housing must be provided to avoid further exacerbation of class segregation. Given the dynamic nature of the growth process and the need for adequate vacant land, it is obviously essential that lower income housing needs be addressed at the earliest possible time. This is particularly true when the major remedial and inclusionary device is to create incentives or mandate percentages of lower income housing in conventional developments. The Court refused to be beguiled by the notion that it could wait. It insisted that the provision of lower income housing and the planning for it, must be addressed at the outset of and then simultaneously with actual or planned growth.

In Mount Laurel I, the Court discussed these indicators of growth. Thus, while the Court acknowledged that a municipality may zone for industrial ratables, as has Tewksbury Township, it required that this be "done reasonably as part of a comprehensive plan". Mt. Laurel I, supra, 67 N.J. at 185. This meant two things: first, the lands so zoned must be "reasonably related to the potential" for such uses and, second:

Certainly, when a municipality zones for industry and commerce for local tax benefit purposes, it without question must zone to permit adequate housing within the means of the employees involved in such cases. Mt. Laurel I, supra, 67 N.J. at 187. (emphasis supplied)

The use of terms such as "certainly" and "without question" in the same sentence by the Supreme Court was clearly done to

leave no doubt as to the seriousness with which the Justices viewed this issue. In fact, the Court would reiterate its position again in Mt. Laurel II:

(I)f sound planning of an area allows the rich and middle class to live there, it must also realistically and practically allow the poor. And, if the area will accommodate factories, it must also find space for workers. Mt. Laurel II, supra, 92 N.J. at 211.

The Court looked as indicators of growth which were rather easily ascertainable: actual development of commercial, industrial or residential uses; planning for such development or the inevitability of such development occurring. A municipality which shows positively as to any one of these indicators is required to address lower income housing needs. In Tewksbury Township's case, all indicators point in this direction.

1. it is experiencing growth;
2. it has planned for growth; albeit, a select type of growth; and
3. it is in the path of inevitable future growth.

Application of the SDGP: The Court's use of the SDGP can now be addressed in the context of this background. The explicit purpose was to avoid the "developing" municipality issue by finding an objective standard to trigger the Mount Laurel fair share obligation. the SDGP seemed an obvious tool since its depiction of "growth" most readily matched what the Court had previously discussed as "developing". The Court, however, recognized three problems with using the SDGP and devised exceptions to a mechanistic application of its land use

designations:

1. The SDGP, in particular situations, may have been erroneous in the growth designation for a particular area;
2. The SDGP is a statewide, not a local, planning document - changed in the circumstances or local planning activities may warrant a change in the designation for a particular area;
3. The SDGP, as a planning document, would become dated. If not updated periodically, its usefulness as a planning tool would diminish, if not be totally lost.

There is an appealing neatness to the Court's recognition of these three problems since they cover the logical geography with perfection. Having accepted the SDGP, these were the only concerns left as to triggering the Mount Laurel fair share obligation.

The first exception is distinct from the other two. The second and third are essentially identical except as to the burden of proof involved; that is, the "relative ease of variance from the SDGP". Mt. Laurel II, supra, 92 N.J. at 243. In fact, the second and third exceptions do not necessarily involve an analysis of the DCA criteria for establishing the growth designations but revert back to the Court's earlier focus on demographic or planning factors which trigger the fair share responsibility. These have been discussed above.

The Court is telling its trial judges to look to see if these growth factors are operating and, if so, to insure that

lower income housing needs are properly addressed even before or until the SDGP is updated. This will be discussed in detail below; however, its importance is fundamental. The Supreme Court is simply stating that a municipality which experiences or encourages growth in an area is estopped from arguing that the area is inappropriate for fair share purposes. If it can experience or be planned for growth, then it is a reasonable area for lower income housing units.

The Exceptions: The first exception involves the simple recognition that a state-wide planning agency, undertaking a task as ambitious as a state development guide, might make an error in any given situation. Mt. Laurel II, supra, 92 N.J. at 241. One who challenges the SDGP on this ground must show:

1. the line drawn is arbitrary and capricious (acknowledging that a line must be drawn somewhere); and
2. not having drawn the line somewhere else was arbitrary and capricious.

Plaintiffs have reviewed the data used by DCA in drafting the SDGP. Based on that data, alone, DCA's lines appear generally reasonable in regard to most portions of Hunterdon County, however, exception is taken as to the growth area as it extends from Clinton into Somerset County (see Robert Tublitz, P.P., plaintiff planner, report dated, October 1, 1984, entitled Evaluating the State Development Guide Plan Designation of the Township of Tewksbury, pages 9, 13-22).

By 1980, the growth experience, pressures and planning were clear enough that, if known or utilized would have warranted the adoption of an extended growth area to include the area previously described.

The second and third exceptions are, essentially identical, but for the measure of proof involved. Both call upon the court to recognize a greater area for receiving fair share units under certain circumstances. The difference is the relative ease with which the court may "vary the locus of the Mount Laurel obligation". Mt. Laurel II, supra, 92 N.J. at 242.

In both, the Court would entertain two types of proofs relating to actual, planned or potential change within the Township:

1. actual or approved development of residential, commercial or industrial uses; and
2. actions by the municipality to encourage or allow such development.

Here, one must pause and look back to the foundation of the Mt. Laurel doctrine as previously discussed. The goal is to insure that government not act, through its land use practices, to exacerbate patterns of class segregation and polarization. The Court, in adopting the SDGP as a means to advance the mandate, wanted to be sure that it could never be used to retard

it.\* This had been its experience with the "developing" municipality test. Thus, whatever the Court indicated regarding problems with the "developing" municipality test a fortiori apply here.

The plaintiff urges the Court to review Mr. Robert Tublitz P.P., report dated October 1, 1984, entitled Evaluating the State Development Guide Plan, Designation of the Township of Tewksbury as to the plaintiff's response to the two questions posed in the beginning portion of this brief. In addition, this area of the Township, as evaluated by plaintiff's experts, can be aptly described by the Supreme Court's own language:

(I)f sound planning of an area allows the rich and middle class to live there, it must also realistically and practically allow the poor. And, if the area will accommodate factories, it must also find space for workers. Mt. Laurel II, supra, 92 N.J. at 211.

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\*DCA had first articulated this concern in its 1978 Housing Allocation Report.

On the other hand, those municipalities which may be exclusively categorized as open space or prime agricultural area may defer action in complying with their adjusted housing allocations until some future date or perhaps indefinitely. However, it is important to understand that a municipality will lose its deferred status if it acutally experiences growth or elects to pursue policies which encourage growth. For example, a municipality would be encouraging growth if it actively seeks ratables or jobs or manifests other characteristics which could be considered as having a growth orientation, such as zoning for commercial and industrial ratables. Where a municipality is experiencing or encouraging growth, a share of that growth (as quantified in this report) should be for low- and moderate-income housing. DCA Housing Allocation Report (1978), p. 23. (Emphasis added.)

Plaintiffs do not contend that all of the Township should now be considered in this context. Plaintiff's contention is that in areas where a municipality permits growth and growth has occurred, and where a municipality continues to encourage and allow development, it is essentially estopped from denying the suitability of the area for fair share purposes. The Supreme Court acknowledged that a municipality need not follow the SDGP. Mt. Laurel II, supra, 92 N.J. at 247. By the second and third exception, it attempted to insure that if it did not, the poor would not be forgotten.

The difference between exception two and three is the degree of growth or encouragement of growth which must be found before a court will vary the locus of the fair share receiving area. In the third exception, the degree is very low. As stated by the Court, allowing the construction of a "significant commercial and research uses" or a "residential subdivision" or attempting to attract such uses would probably be enough. Mt. Laurel II, supra, 92 N.J. at 242-243.

The second exception demands somewhat more since it predates the revision date of the SDGP. Thus, it "might or might not constitute a substantial change" if a township added an "industrial use" and a "fairly large, residential subdivision". In that case, the Court was open to the possibility of change "depending upon all of the circumstances". Mt. Laurel II supra, 92 N.J. at 241-242. However, proof would be definitely conclusive if there was added infrastructure and several new

substantial places of work and residential subdivisions. This would be even more true if the municipality continued to encourage or allow development. Mt. Laurel II, supra, 92 N.J. at 242.

#### History of the SDGP

The initial SDGP (September 1977) showed the Clinton corridor located to the north of Interstate 78 from Clinton to Somerset County and beyond to the east. The SDGP of 1980 located the growth area from Clinton bisecting Interstate 78 and U.S. Highway 22 in and about the Tewksbury/Readington Township area. This change is in conflict with the criteria set forth in the 1980 SDGP for growth areas, namely:

1. It totally disregarded the "location within or proximity to areas served by major highway and commuter rail facilities"
2. It disregarded the "location within or adjacent to major population and/or employment centers"
3. It disregarded :location within or in proximity to existing water supply and sewer service areas."

Furthermore, the SDGP (1980) disregarded its relationship to other plans and programs, namely the Hunterdon County Land Use Plan (1975), the Farmers Home Administration plans for a sewer system in Oldwick (1978), the master plan of the Township of Tewksbury (1979) as to office and research zone at the interchange of Interstate 78 and County Road 523, as well as the



existence of A.M. Best office building (1977) at said interchange, as well as the goals of said master plan.

In fact, the entire area including all the Townships in Hunterdon County abutting Interstate 78 are growing at a much higher rate, population wise than the County. Furthermore the Hunterdon County Planning Board has created a report indicating the need for County Road 517 to be improved in and about Oldwick due to the influence of Interstate 78 and Route 22, and its interchange with County Road 523, which reflects the proposals in the Tewksbury master plan.

In addition, the SDGP indicates its adherence to the concept of cross-acceptance, wherein the State desires to develop its plan (SDGP) in concert with all the Counties as to its growth, limited growth, agricultural, etc. areas. With regard to Hunterdon County, their discussion were extremely limited. As per conversations with John Kellogg, Planning Director of the County, with four months experience. The SDGP (1980) on page 155 states, "Basic agreement was reached with the County prior to publication. Since then no comments have been received. However, additional discussions should be held to review current thinking." Discussions with John Kellogg indicated he does not subscribe to the SDGP statement, in that there was no general accord reached.

May the Court take notice of a report of John H. Rodrigues of the New Jersey Public Advocates Office, presented to the New Jersey State Senate Oversight Committee on Mount Laurel II and

the State Development Guide Plan, dated October 4, 1983, whereon pages 27, 28 and 29, the comments are that "Since, however the Supreme Court did make the SDGP the governing standard, it is critical that the plan be regularly updated.... "First, the plan is already becoming out-of-date and is a diminishing value as a planning document...." "The legislature has already mandated the SDGP be kept up to date N.J.S.A. 13:13-15.52 not only requires a guide plan be 'prepared' it also requires that it be 'maintained'.... "The Supreme Court declared in the second Mt. Laurel decision that the SDGP will continue to be the basis for determining Mt. Laurel obligations only if it is updated by January 1, 1985...." "If the Guide Plan is not updated, the Courts will be permitted to freely deviate from the Guide Plan."

It is now September 1985, the State has not updated or revised the SDGP, and will or cannot update the SDGP for at least another year, if then. It is now the responsibility of the Court to act upon our request. It should be prepared to modify the SDGP as to the Township of Tewksbury based upon this report and the evidence that can be provided.

As the Court has adopted the "Lerman Report" and subsequently modified it from time to time, decision to decision, so be it with the SDGP, and its mandate from the Supreme Court, based upon Mt. Laurel II.

## ARGUMENT

### TEWKSBURY TOWNSHIP RESPONSIBILITY TO MEET ITS FAIR SHARE OBLIGATION FOR LOW AND MODERATE INCOME HOUSING.

#### FAIR SHARE HOUSING ALLOCATION

According to the Mount Laurel II decision of the New Jersey Supreme Court, handed down in January of 1983, every municipality has an obligation to provide a realistic opportunity for the construction of decent housing affordable to those of lower income. How much of an obligation an individual municipality has depends on how it is designated within the State Development Guide Plan, New Jersey Department of Community Affairs, May, 1980.

The Guide Plan divides the State into Growth Areas, Limited Growth Areas, Agricultural Areas, and Conservation Areas. A municipality which is located wholly outside a Growth Area is obligated to meet only the needs of its existing lower income residents inhabiting overcrowded or dilapidated units, the present indigenous housing need. However, a municipality that is located wholly or partly within a Growth Area must provide for its present indigenous housing need and, in addition, must provide for a fair share of the surplus present housing need in its region. The surplus present housing need is that portion of the present indigenous housing need in certain other municipalities in the region which cannot or should not be met in

place because the need is disproportionately high compared with the region as a whole. Moreover, a Growth Area municipality must also provide its fair share of the projected future regional need for lower income housing.

A small part of Tewksbury Township lies within the Guide Plan's Growth Area. Specifically, 228 acres, out of a total of 20,352 acres contained within the Township's boundaries, are located within the Growth Area. The remainder of the Township is located within a Limited Growth Area. Because part of the Township lies within a Growth Area, Tewksbury has a housing obligation, according to the Mount Laurel II decision, which extends beyond its own boundaries to its region and beyond the present need to the future need.

A number of methods have evolved since the Mount Laurel II decision for determining the extent of a municipality's lower income housing responsibilities. The method which, until recently, appeared to have achieved the greatest legitimacy and has been most widely relied upon is that developed by the consensus of the planners involved in the Urban League of Greater New Brunswick v. Carteret, et als. case and applied by Judge Serpentelli in the AMG Realty Company et als. v. Township of Warren et als. decision, rendered July 16, 1984. The method is described in a report presented by Carla L. Lerman, P.P., to Judge Serpentelli on April 2, 1984, and further detailed and defended in the Warren decision. In brief, the "consensus methodology" provides a means of calculating the three components

of a Growth Area municipalities' lower income housing responsibility: its present indigenous need, its fair share of the surplus present need within the present need region; and its fair share of the prospective need in the municipality's employment of commutershed region.

On July 25, 1984, Judge Skillman decided the Countryside Properties, Inc. et als. v. Mayor and Council of the Borough of Ringwood et als. case. In that decision, Judge Skillman challenged the consensus approach to establishing the number of dilapidated housing units in a municipality. Based on the testimony of Dr. Robert Burchell, a co-author of the report entitled Mount Laurel II: Challenge and Delivery of Low Cost Housing, published by the Rutgers University Center of Urban Policy Research in 1983, Judge Skillman concluded that the indicators relied upon the consensus methodology to determine the existence of a dilapidated housing unit were not as reliable as those used by the Rutgers Center for Urban Policy Research. Moreover, the data available from Rutgers presents a direct count of those substandard units actually occupied by lower income households. The consensus methodology, on the other hand, relies upon a percentage (82%) published in a 1978 Tri-State Regional Planning Commission report, People, Dwellings and Neighborhoods. Judge Skillman found the use of the Tri-State percentage to be problematic and unreliable.

Using the Ringwood approach, we have computed Tewksbury's lower income housing responsibilities by modifying the consensus

methodology in accordance with the data available through the Rutgers Center for Urban Policy Research. Based on this "hybrid methodology", the Tewksbury Township has a total Mount Laurel II housing obligation through the year 1990 of about 120 units: 40+ for the present indigenous need, 16 for the share of the reallocated surplus present need, and 72+ for the prospective need. The following paragraphs describe in more detail the procedures utilized to determine each component of the Township's Mount Laurel II housing obligations.

### Indigenous Housing Need

The Mount Laurel II decision defines present indigenous housing need as those dilapidated and overcrowded units occupied by lower income households.

Overcrowded housing units are not truly substandard; there is merely a mismatch between the size of the occupying household and the size of the housing unit. The 1980 U.S. Census provides an indicator of overcrowding: those units having 1.01 more persons per room.

Dilapidated housing units are difficult to identify without a house-to-house survey. Even if such an inventory were to be undertaken, there are not uniform standards for evaluating dilapidated units in a manner which could be applied to all municipalities on an equitable basis. Because of the difficulty in developing reliable empirical data, Census indicators which suggest the existence of dilapidated housing are used instead.

(See Robert Tublitz, P.P., report, dated May 24, 1985 Addendum to the Determination of Tewksbury Township Low and Moderate Housing Obligation.

The consensus methodology relies upon the existence of one of the following indicators of dilapidation: units lacking complete plumbing facilities for the exclusive use of the occupants or units which are inadequately heated, defined as lacking either central heating or room heaters with flues. The Census tables used in the consensus methodology provide sufficient data to eliminate most of the overlap between these two factors. The consensus methodology adds to the dilapidated unit count the number of overcrowded units, again eliminating four double-counting.

The Rutgers study, cited in the Ringwood decision, does not separate out overcrowded versus dilapidated units. Instead, it establishes deficient housing based on the presence of at least two out of seven indicators from the Census: whether the unit was built prior to 1940; whether the unit is occupied by more than 1.01 persons per room; whether the unit has access only through another dwelling unit; whether the unit lacks plumbing facilities for the exclusive use of the occupants; whether the unit lacks complete kitchen facilities; whether the unit lacks centralized heating facilities; and whether the unit lacks an elevator if it is located in a structure of more than four stories.

According to the Ringwood decision,

...none of this census data directly measure housing dilapidation. A house may lack centralized heating or complete kitchen facilities and yet be structurally sound and possess the other qualities of satisfactory housing. Conversely, a housing unit may not exhibit any negative characteristic revealed by the census data and yet have broken windows and doors, a failed roof and a collapsing exterior structure, and hence be dilapidated. Nonetheless, the experts agree that there is some degree of correlation between the negative characteristics of housing recorded by the census and actual physical dilapidation.

As indicated above, the original Rutgers study did not count as substandard those overcrowded units constructed since 1939 and occupied by lower income households, although overcrowded units constructed prior to 1939 were included. Based on the mandate of the Mount Laurel II decision, Judge Skillman, in Ringwood, required that the post-1939 overcrowded units be added to the Rutgers present need numbers.

Another problem that Judge Skillman encountered in using the Rutgers data is that they are available only on a subregional level and not on a municipal level. To overcome this problem, Judge Skillman used the consensus calculations of each municipality's unadjusted present indigenous need and the consensus estimate of the total unadjusted present need in an equivalent subregion to develop a percentage which could then be used to allocate the Rutgers subregional count to each municipality in the subregion.

Under the consensus methodology, Tewksbury has a total of 86 dilapidated and overcrowded units (after eliminating double-counting), of which 82% or 71 are estimated to be occupied by



lower income households and therefore constitute the Borough's present indigenous housing need.

The Rutgers study computes the present need for lower income housing in Tewksbury's subregion (Hunterdon/Warren) to be 2360 units, significantly lower than the 4054 deficient units that the consensus counts in Hunterdon and Warren Counties. Utilizing the methodology described in the Ringwood decision for allocating the more reliable Rutgers present need figures to each municipality in the Hunterdon/Warren subregion, which is to formulate a percentage from the consensus numbers, Tewksbury's present indigenous housing need is  $\frac{68}{4054}$ , or .0168 of 2360, a total of 40 units.

#### Reallocated Present Need

Virtually every municipality in the State of New Jersey has an indigenous housing need. Some communities, particularly the central cities, have disproportionately large numbers of substandard and overcrowded dwellings occupied by lower income households. The Mount Laurel II decision clearly intended that this condition not be perpetuated. The opinion states that

Each municipality must provide a realistic opportunity for decent housing for its indigenous poor except where they represent a disproportionately large segment of the population as compared with the rest of the region.  
(emphasis added)

The consensus methodology translates this mandate into a technique in which a portion of the indigenous need in those communities which have a higher percentage of dilapidated and

overcrowded units as compared to total housing units then the average percentage for the region as a whole are allocated out to communities which have a relatively low indigenous housing need. The ratio of indigenous housing need units to total dwelling units is calculated for each municipality and for the region; the number of indigenous need units in any municipality which causes its percentage to exceed the regional average is determined to be surplus and is placed in a pool which is then reallocated among the remaining municipalities in the region in which the ration of indigenous need units to total units is lower than the regional percentage.

The consensus methodology divides the State into four fixed line regions for the purposes of reallocating surplus present need. Tewksbury Township lies with Region I, which includes the eleven northern New Jersey counties of Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren. The prospective need region differs from this fixed line present need region in that it varies with each municipality and is related to commuting distance. The prospective need region will be discussed in a later paragraph of this brief.

A significant difference between the Rutgers data used for determining present indigenous need and the numbers produced using the consensus methodology is that the Rutgers numbers reflect both lower income households and lower income subfamilies sharing a dilapidated or overcrowded housing unit, while the consensus methodology counts only the deficient housing

units. Since a single housing unit may contain a family and one or more subfamilies, each representing a potential separate household, the Rutgers data identifies an additional component of the present housing need not addressed in the consensus methodology. On a subregional level, in a rural or suburban area, this additional component does not make a noticeable difference in the numbers. At the level of the eleven-county region, it produces a present need number that exceeds by almost 9000 the consensus methodology's adjusted present need figure.

Assuming the Rutgers numbers are to be used consistently for the computation of a municipality's housing obligations, it is necessary to recompute the reallocatable surplus in the present need region using the Rutgers, rather than the consensus, data. This necessitates a computer run for each subregion within the eleven-county present need region, an expensive undertaking. Alternately, an adjustment can be made to the consensus allocation system by modifying both the municipal "fair share cap" and the percentage used to reduce the total present need count in a municipality to reflect lower income occupancy to be more consistent with the Rutgers data.

The methodology for determining the reallocated present need obligation is based on a series of calculations involving 1984 municipal employment compared to 1984 regional employment, municipal Growth Area compared to regional Growth Area, and municipal median household income for 1979 compared to that for the region. The resulting percentage is then multiplied times

the total surplus present need (as modified by the Rutgers numbers) in the eleven-county region (38,293) to arrive at the Township's fair share. The consensus methodology then multiplies the fair share by 1.2 to compensate for any units that cannot be constructed in other municipalities in the region due to insufficient vacant land. Additionally, a 3% allowance is added to ensure an adequate vacancy rate.

Tewksbury's fair share of the total reallocated surplus present need through 1990 is about 17 units.

#### Prospective Need

The region used for the determination of a municipality's fair share of prospective lower income housing need differs from the region used for the reallocation of the surplus present need. It is a region that varies with each municipality, since it is determined based upon a modified commutershed for each municipality. The modified commutershed includes all counties which are touched by a 30-minute commute as measured from the functional center of the municipality in question. The functional center of a municipality is described in the Warren decision. It is: a.) the generally recognized commercial/residential core of a community, or downtown area; or b.) in the absence of a commercial/residential core, it is the municipal building; or c.) in the absence of both, it is the major crossroads within the municipality. The 30-minute drive time must be measured at speeds of 30 miles per hour on local and

County roads, 40 miles per hour on State and Federal highways, and 50 miles per hour on interstates.

Since there is no generally recognized commercial/residential core of this community or downtown area, the functional center is therefore the municipal building, which incorporates the police headquarters located in Mountainville. Based upon the 30 minute drive computed at the requisite speeds for each type of roadway, the commutershed region for Tewksbury Township was determined to include the counties of Hunterdon, Warren, Morris and Somerset.

The method for calculating the Township's responsibility for the prospective lower income housing need in its region is similar to that for calculating the reallocated present need obligation. However, one additional factor is added to the prospective need computations, and that is employment growth between 1974 and 1984 for both the municipality and the region.

Based upon the use of the consensus methodology formula for the determination of prospective need, the Township of Tewksbury has an obligation to its commutershed region to supply 81 lower income dwelling units by 1990. This includes, again, a basic computation of about 72 units with a 20% allocation for units which cannot be constructed due to inadequate vacant land in the rest of the region as well as a 3% allowance for vacancies.

The formula used for the determination of Tewksbury's lower income housing obligation is the consensus methodology, as modified by the Rutgers data in accordance with the Ringwood

decision. This formula yields an allocation which is more reasonable than that which would result from the use of the consensus methodology with the consensus methodology numbers. However, there are ways in which even the hybrid methodology may assign too high a housing obligation to a municipality.

Both the Rutgers figures and the consensus numbers rely on data given in the Census regarding heating facilities. When the census was taken, householders were asked what type of heating equipment the most often used. In Hunterdon County, there are many households occupying units equipped with central heating facilities but depending upon a wood or coal stove for most of their heat in a conscious effort to maintain independence from the furnace. Because of the way the question on heating was asked, the number of physically deficient housing units derived by relying on this statistic will be artificially inflated. On the other hand, because the Rutgers data requires that each unit have at least one other deficiency for it to be counted as substandard, the degree of error is reduced.

One of the strongest criticism that has been made of the consensus methodology, particularly with respect to the reallocation surplus present need and the prospective need calculations, is that these formulae employ no factor for vacant developable land. This deficiency is recognized in the Warren decision and also in the Lerman report, which states that:

All of the planners and housing experts involved have felt that the lack of reasonably accurate data on land availability presents a serious problem. There was general agreement that as soon as this information is available, a reevaluations of all formulas would be in order.

In other words, the consensus methodology presently calculates a community's housing obligation without reference to its development potential or to the developability of its vacant lands. Although Tewksbury Township has a considerable amount of vacant land, some of that land is not well suited for a Mount Laurel II housing project because of steep slopes, flood plains or other considerations which preclude its intensive development. It is anticipated that any future statewide inventory of vacant developable land will result in a refinement of the methodology and a concomitant adjustment of each municipality's housing obligations with respect to its present and prospective housing regions.

The consensus formula does recognize the problem of not considering the vacant developable land factor and attempts to compensate for the probability that some communities will not be able to accommodate their full fair share by adding 20% to the allocations of both the surplus present need and the prospective need. While this is logical in view of the desire of the Supreme Court to make certain that regional housing needs are met, it compounds any inequities inherent in a methodology that includes no vacant developable land factor.

Regardless of whatever fair share number is assigned to Tewksbury Township, there is clearly a lower income housing need

within the Township and within the regions, both present and prospective, of which Tewksbury is a part. The Township has the responsibility under Mount Laurel II to make the fulfillment of those needs realistically possible.

The plaintiff takes exception to Mr. Queale's fair share report, based upon Mr. Michael Morris' tax re-evaluation, using a physical examination of housing as the basis of indigenous need (1985), blending it with U.S. Census Information (1980) as to overcrowding, deleting any mention as to exclusive use of plumbing facilities, etc. arbitrarily using certain classifications for structural soundness, for the basis of fair share, utilizing a study designed to develop data in one sphere, and converting it into mode for such purposes is subject to suspect and investigation.

Please, take note of the book, Mount Laurel II, Challenge and Delivery of Low-Cost Housing by Robert W. Burchell et al. published by The Center of Urban Policy Research, Rutgers University 1983, wherein on pages 108 to 114, they discuss conditions signalling a deficient structure, namely seven criteria. Going further the report entitled Response to the Warren Report: Reshaping Mount Laurel Implementation prepared for: the New Jersey League of Municipalities by Robert W. Burchell, Ph.D.; David Listokin, Ph.D. with assistance of Fred Stickell III, Esq., December 1984, brings into focus the overall problems associated in attempting to develop specific fair share Mount Laurel numbers. Therefore a re-evaluation in 1984,



combined with data of 1980, blended with arbitrary assumptions casts doubts as to Mr. Queale's report being the "state of the art" as to the basis of indigenous need of Tewksbury Township in 1985.

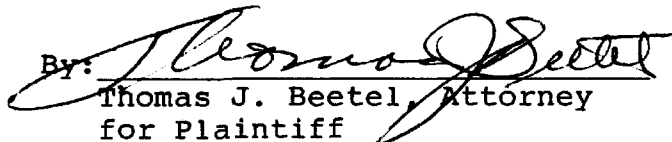
Furthermore, the Court has two reports as to fair share by William Queale Jr., P.P. defendant's planner; one dated December 31, 1984 indicating a fair share of 92, based on census data; 52 based upon Township data; and 33 based upon modified Warren decision with Township data. The other report dated May 22, 1985 shows two fair share numbers, one called previous estimates indicating 59, and a current estimate of 37.

The second report was based upon Mr. Michael Morris', Township survey based upon the Assessor's inspection. There are two reports by Mr. Michael Morris, which indicated deficient units as 22 and a subsequent report, showing 24. Both are doubtful in our opinion because of Mr. Morris' deposition taken on April 12, 1985, and our analysis of his overall approach and subsequent findings.

Mr. William Queale Jr., P.P., defendant's planner, has employed every technique, to skew the fair share obligation of Tewksbury Township to 29 as opposed to over 120 per the six surrogate identified deficient units plus any overcrowding (Skillman alteration of the Rutgers method). May the Court take note of estimate number of households based upon some adjustment to 1990 population estimates, the modification of the number of low and moderate income numbers from 2360 to 1880 per subregion

51, U.S. Census 1980, N.J. Public Use sample, the arbitrary use of a subjective inspection of houses in Tewksbury for valuation, as a basis for indicating deteriorated units, etc. The plaintiff contends the fair share number is about 120 based upon Judge Skillman's alteration of the Rutgers method in the Ringwood case.

Respectfully Submitted:

By:   
Thomas J. Beetel, Attorney  
for Plaintiff

Dated: September 4<sup>th</sup>, 1985

D 1 - 10

2-14-85

DR.

OPTION AGREEMENT

THIS AGREEMENT, made this 17<sup>th</sup> day of September, 1984, between: ROBERT RIVELL and BARBARA RIVELL, his wife, residing at PO Box 103, Hunterdon County, NJ (hereinafter referred to as "Rivell"), and HARRY OLSTEIN, AND/OR HIS ASSIGNEE, residing at 4 Highview Drive, Livingston, New Jersey - 07039, (hereinafter referred to as "Olstein").

WHEREAS, Rivell are the owners of premises located in Tewksbury Township, Hunterdon County, New Jersey and known as Lot 43, Block 45 and containing approximately 38 acres; and

WHEREAS, Rivell has instituted a law suit against the Township of Tewksbury, seeking permission to construct multi-family dwellings on the aforesaid property; and

WHEREAS, Olstein has arranged and provided for immediate financing requested by Rivell; and

WHEREAS, Olstein is desirous of purchasing the aforementioned property in the event the premises are rezoned to permit multi-family dwellings or a density of not less than one dwelling unit per acre.

NOW THEREFORE, in consideration of Olstein arranging and providing necessary developer input in the litigation and for other good and valuable consideration, it is agreed as follows:

1. Rivell will sell to Olstein the aforementioned premises for a purchase price of \$12,500.00 per dwelling unit approved, excluding any units required to satisfy the Mt. Laurel requirements. This price shall remain provided that from six to nine units per acre are approved or permitted.

2. There shall be deducted from the above purchase price the cost of all off-tract improvements which may be imposed or agreed upon in order to obtain approval for development.

3. Rivell shall hold a purchase money mortgage as follows: 20% of the dwelling units are to be paid for at the time of closing of title. ~~\*\*~~ The remaining units shall be paid for within four (4) years after closing with not less than 20% paid for per year. During the first year, any units desired to be paid for beyond the minimum 20% shall cost \$13,000.00 each. During the second year, each unit shall be paid for at a cost of \$13,000.00 per unit up to 20% mandatory amount. Each additional unit paid for during the second year shall be for a cost of \$13,500.00 per unit. During the third year, each unit shall be paid for at a cost of \$13,500.00 per unit up to the 20% mandatory amount and each additional unit shall be paid for at a cost of \$14,000.00 per unit. During the fourth year, each unit paid for shall be at a cost of \$14,000.00 per unit.

4. Title shall close 46 days after all appeals have been exhausted or after an appropriate ordinance or court decision has been adopted by Tewksbury Township.

5. In the event less than ~~five~~<sup>Six</sup> units per acre are approved or agreed upon, Olstein and Rivell shall negotiate a revised purchase price and terms. \*

6. This Agreement is subject to and contingent upon the ability of Rivell to convey marketable title and the willingness of a reputable title insurance company to insure the same without exception, except for utility easements and other restrictions of record which will not prevent the use of the property for multi-family dwellings, provided the same do not render the title unmarketable.

-2-

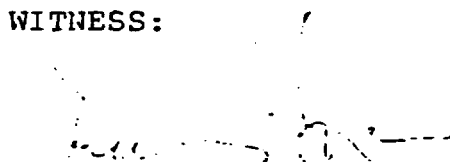
\* SAID PRICE + TERMS SHALL BE REASONABLY CONSISTENT WITH AVERAGE PRICE + TERMS SET FORTH IN Pgs 1, 2, + 3


\*\* RIVELL SHALL NOT BE REQUIRED TO PAY MORE THAN 50% OF THE PROCEEDS FROM THE 20% <sup>AT CLOSING</sup> TO REPAY THE FIRST MORTGAGE DATED 9/14/54

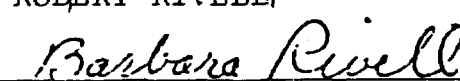
7. Rivell represents that the title to the aforementioned property was not derived from any Martin Act Proceedings or any proceeding based upon the non-payment of municipal taxes and assessments of adverse possession.

8. If at the time for the delivery of the Deed, the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this agreement all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and be liens upon the premises affected thereby and shall be paid and discharged by Rivell, upon the delivery of the deed. Unconfirmed improvements and assessments, if any, shall be paid and allowed by Rivell on account of the purchase price, if the improvement or work has been completed on or before the date of closing.

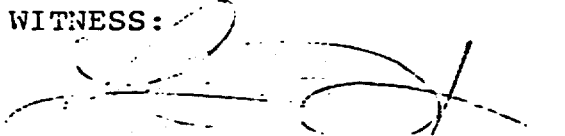
WITNESS:

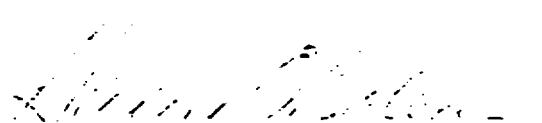
  
As to Robert & Barbara Rivell

  
ROBERT RIVELL

\*   
BARBARA RIVELL

WITNESS:

  
As to Harry Olstein

  
HARRY OLSTEIN

D9-ID  
2-14-85  
DR

204 - NOTE MORTGAGE  
Ind. or Corp. - Plain Language

RVST-1

Copyright 1982 by ALL-STATE LEGAL SUPPLY CO.  
One Commerce Drive, Cranford, N.J. 07016

0664-1-0092

# MORTGAGE

Prepared by *[Signature]*  
(Print name and date below signature)

Lawrence J. Fox, Esq.

This Mortgage is made on **September 14**, 19 **84**.

**BETWEEN** the Borrower(s)

**ROBERT RIVELL and BARBARA RIVELL, his wife**

whose address is **PO Box 103, King Street, Oldwick, N.J. 08858**

referred to as "I".

**AND the Lender**

**HIGHVIEW DEVELOPMENT CORPORATION EMPLOYEES RETIREMENT TRUST**

whose address is **4 Highview Drive, Livingston, New Jersey 07039**

referred to as the "Lender".

If more than one Borrower signs this Mortgage, the word "I" shall mean each Borrower named above. The word "Lender" means the original Lender and anyone else who takes this Mortgage by transfer.

Mortgage Note. In return for a loan that I received, I promise to pay **\$650,000.00** (called "principal"), plus interest in accordance with the terms of a Mortgage Note dated **September 14, 1984** (referred to as the "Note"). The Note provides for monthly payments of \$  and a yearly interest rate of **15 1/2 %**. All sums owed under the Note are due no later than , 19 . All terms of the Note are made part of this Mortgage.

**SEE NOTE ANNEXED**

**\$500,000. being disbursed today, September 14, 1984, and the balance of \$150,000. shall be disbursed 30 days from this date. Interest will be paid only on the monies disbursed.**

Property Mortgaged. The property mortgaged to the Lender (called the "Property") is located in the  Township of **Tewksbury** County of **Hunterdon** and State of New Jersey. The Property includes: (a) the land; (b) all buildings that are now, or will be, located on the land; (c) all fixtures that are now, or will be, attached to the land or building(s) (for example, furnaces, bathroom fixtures and kitchen cabinets); (d) all condemnation awards and insurance proceeds relating to the land and building(s); and (e) all other rights that I have, or will have, as owner of the Property. The legal description of the property is:

**SEE DESCRIPTION OF PROPERTY ATTACHED HERETO AS SCHEDULE A.**

29997

EXHIBIT A

BEGINNING in the centerline of the public road leading from Whitehouse to Oldwick and corner to formerly Charles A. Hildebrant, thence (1) South 55° 57' East 817.05 feet to an iron pin standing in the line of formerly R. Carter Nicholas; thence (2) along his line South 33° 55' West 60.88 feet to a pipe for a corner; thence still along Nicholas (3) South 60° 9' East 230.97 feet to a pipe; still along Nicholas thence (4) South 77° 55' East 754.18 feet to a pipe standing in the centerline of the Old Rockaway Valley Railroad; thence (5) along lands of Esther B. Crego et vir South 6° West 1143.76 feet to a point; which point is also the Northeast corner of Helen Simon; thence (6) along line of Helen Simon North 60° 7' West 1926.18 feet to a point in the centerline of the public road leading from Whitehouse to Oldwick; thence (7) along the centerline North 20° 24' East 127.52 feet to a point; thence still along the centerline (8) North 12° 42' East 149.90 feet to a point; thence (9) still along the centerline North 10° 50' East 700.65 feet to a point and place of BEGINNING. Containing 38.699 acres more or less.

Premises also described in accordance with Survey in July 1963 by Robert McEldowney, Jr., P. E. & L. S. New Jersey License No. 7697, Drawing No. 1434.C., to wit:

BEGINNING at a railroad spike in or near the middle of public macadam road, designated Oldwick Road, which runs from Whitehouse to Oldwick, said spike also marking the beginning point of the recital in the older description, of the premises described herein, and running thence (1) along lands of the Zion Lutheran Church and by line which, at 25.81 feet, passes through an iron pipe or\* corner to said Church and in line of lands formerly belonging to Jane C. Nicholas, now said to be Richard N. Colgate; thence by the following three courses along said Colgate land (2) South 35° 58' West 60.87 feet to an iron pipe thence; (3) by line which, for most of its length runs just southerly of a wire fence South 58° 12' 30" East 230.82 feet to an iron pipe; thence (4) by a line which, for most of its length, runs between a wire fence and an old rail fence South 75° 56' 30" East 754.00 feet to an iron pipe found in the middle of the Old Rockaway Valley Railroad; thence (5) by a line running along or near the middle of the said railroad right-of-way and along lands now or formerly of Jane C. Nicholas, South 7° 58' West 1143.76 feet to an iron pipe set (6) along land now or formerly belonging to Helen Simon and by a line which at 1881.04 feet passes through an iron pipe set on line North 58° 10' West 1926.18 feet to a railroad spike in the aforementioned Oldwick Road; thence by the remaining three courses along said road and near the middle thereof North 22° 21' East 127.52 feet to a railroad spike; thence (8) North 14° 39' East 149.90 feet to a railroad spike; thence (9) North 12° 45' 30" East 705.65 feet to the place of BEGINNING, all bearings being magnetic as observed in July 1963, and the tract or parcel contains a calculated area of 38.667 acres of land more or less.

Said parcel being known as Lot 43 in Block 45 on the tax map of the Township of Tewksbury, County of Hunterdon, New Jersey.

Being the same premises conveyed to Oldwick Associates, Ltd., by deed of John E. Gimbel, et als., dated January 11, 1979 and recorded in the Hunterdon County Clerk's Office in Deed Book 843 at Page 112.

\*line, South 53° 59' 10" East 817.05 feet to an iron pipe set

# MORTGAGE NOTE

This Mortgage Note is made on September 14, 1984

BETWEEN the Borrower(s)

ROBERT RIVELL and BARBARA RIVELL, his wife

whose address is

referred to as "I".

AND the Lender

HIGHVIEW DEVELOPMENT CORPORATION EMPLOYEES RETIREMENT TRUST

whose address is 4 Highview Drive, Livingston, New Jersey 07039

referred to as the "Lender".

If more than one Borrower signs this Note, the word "I" shall mean each Borrower named above. The word "Lender" means the original Lender and anyone else who takes this Note by transfer.

**Borrower's Promise to Pay Principal and Interest.** In return for a loan that I received, I promise to pay <sup>1AC</sup> \$650,000.00 (called the "principal"), plus interest to the Lender. Interest, at a yearly rate of 15 1/2 % will be charged on that part of the principal which has not been paid from the date of this Note until all principal has been paid. ~~500,000~~ <sup>500,000</sup> being ~~disbursed today, September 14, 1984, and the balance of \$150,000 shall be disbursed 30 days from this date.~~ Interest will be paid only on the <sup>quarterly</sup> ~~monthly~~ payments. I will pay principal and interest based on a 1 year payment schedule with ~~monthly~~ <sup>quarterly</sup> payments of interest only on the 14th day of each month beginning on October 1984. I will pay all amounts owed under this Note no later than September 14, 1985. All payments will be made to the Lender at the address shown above or at a different place if required by the Lender.

**Early Payments.** I have the right to make payments at any time before they are due. These early payments will mean that this Note will be paid in less time. However, unless I pay this Note in full, my monthly payments will remain the same.

**Late Charge for Overdue Payments.** If the Lender has not received any monthly payment within 10 days after the due date, I will pay the Lender a late charge of 5 % of the monthly payment. This payment will be made along with the late monthly payment.

**Mortgage to Secure Payment.** The Lender has been given a Mortgage dated September 1984, to protect the Lender if the promises made in this Note are not kept. I agree to keep all promises made in the Mortgage covering property I own located at Lot 43, Block 45 in the Township of Tewksbury in the County of Hunterdon and State of New Jersey. All of the terms of the Mortgage are made a part of this Note.

**Default.** If I fail to make any payment required by this Note within 15 days after the due date, the Lender may declare that I am in default on the Mortgage and this Note. Upon default, I must immediately pay the full amount of all unpaid principal, interest, other amounts due on the Mortgage and this Note, the Lender's costs of collection and reasonable attorney fees. The Lender does not give up its right to declare a default due to any previous delay or failure to declare a default.

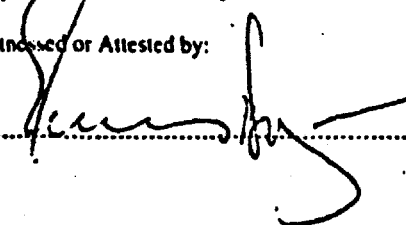
**Waivers.** I give up my right to require that the Lender do the following: (a) to demand payment (called "presentment"); (b) to notify me of nonpayment (called "notice of dishonor"); and, (c) to obtain an official certified statement showing nonpayment (called a "protest").

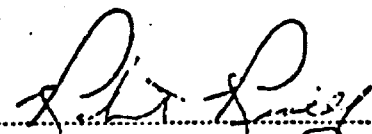
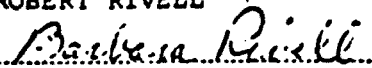
**Each Person Liable.** The Lender may enforce any of the provisions of this Note against any one or more of the Borrowers who sign this Note.

**No Oral Changes.** This Note can only be changed by an agreement in writing signed by both the Borrower(s) and the Lender.

**Signatures.** I agree to the terms of this Note. If the Borrower is a corporation, its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:



 (Seal)  
ROBERT RIVELL  
 (Seal)  
BARBARA RIVELL



**Rights Given to Lender.** I mortgage the Property to the Lender. This means that I give the Lender those rights stated in this Mortgage and also those rights the law gives to lenders who hold mortgages on real property. When I pay all amounts due to the Lender under the Note and this Mortgage, the Lender's rights under this Mortgage will end. The Lender will then cancel this Mortgage at my expense.

**Promises.** I make the following promises to the Lender:

1. **Note and Mortgage.** I will comply with all of the terms of the Note and this Mortgage.
2. **Payments.** I will make all payments required by the Note and this Mortgage.
3. **Ownership.** I warrant title to the premises (N.J.S.A. 46:9-2). This means I own the Property and will defend my ownership against all claims.
4. **Liens and Taxes.** I will pay all liens, taxes, assessments and other government charges made against the Property when due. I will not claim any deduction from the taxable value of the Property because of this Mortgage. I will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

5. Insurance. I must maintain extended coverage insurance on the Property. The Lender may also require that I maintain flood insurance or other types of insurance. The insurance companies, policies, amounts and types of coverage must be acceptable to the Lender. I will notify the Lender in the event of any substantial loss or damage. The Lender may then settle the claim on my behalf if I fail to do so. All payments from the insurance company must be payable to the Lender under a "standard mortgage clause" in the insurance policy. The Lender may use any proceeds to repair and restore the Property or to reduce the amount due under the Note and this Mortgage. This will not delay the due date for any payment under the Note and this Mortgage.

6. Repairs. I will keep the Property in good repair, neither damaging nor abandoning it. I will allow the Lender to inspect the Property upon reasonable notice to me.

7. Statement of Amount Due. Upon request of the Lender, I will certify to the Lender in writing: (a) the amount due on the Note and this Mortgage, and (b) whether or not I have any defense to my obligations under the Note and this Mortgage.

8. Rent. I will not accept rent from any tenant for more than one month in advance.

9. Lawful Use. I will use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.

Eminent Domain. All or part of the Property may be taken by a government entity for public use. If this occurs, I agree that any compensation be given to the Lender. The Lender may use this to repair and restore the Property or to reduce the amount owed on the Note and this Mortgage. This will not delay the due date for any further payment under the Note and this Mortgage. Any remaining balance will be paid to me.

Tax and Insurance Escrow. If the Lender requests, I will make regular monthly payments to the Lender of: (a) 1/2 of the yearly real estate taxes and assessments on the Property; and (b) 1/2 of the yearly cost of insurance on the Property. These payments will be held by the Lender without interest to pay the taxes, assessments and insurance premiums as they become due.

Payments Made for Borrower(s). If I do not make all of the repairs or payments as agreed in this Mortgage, the Lender may do so for me. The cost of these repairs and payments will be added to the principal, will bear interest at the same rate provided in the Note and will be repaid to the Lender upon demand.

Default. The Lender may declare that I am in default on the Note and this Mortgage if:

- (a) I fail to make any payment required by the Note and this Mortgage within 30 days after its due date;
- (b) I fail to keep any other promise I make in this Mortgage;
- (c) the ownership of the Property is changed for any reason;
- (d) the holder of any lien on the Property starts foreclosure proceedings; or
- (e) bankruptcy, insolvency or receivership proceedings are started by or against any of the Borrowers.

Payments Due Upon Default. If the Lender declares that I am in default, I must immediately pay the full amount of all unpaid principal, interest, other amounts due on the Note and this Mortgage and the Lender's costs of collection and reasonable attorney fees.

Lender's Rights Upon Default. If the Lender declares that the Note and this Mortgage are in default, the Lender will have all rights given by law or set forth in this Mortgage. This includes the right to do any one or more of the following:

- (a) take possession of and manage the Property, including the collection of rents and profits;
- (b) have a court appoint a receiver to accept rent for the Property (I consent to this);
- (c) start a court action, known as foreclosure, which will result in a sale of the Property to reduce my obligations under the Note and this Mortgage; and
- (d) sue me for any money that I owe the Lender.

Notices. All notices must be in writing and personally delivered or sent by certified mail, return receipt requested, to the addresses given in this Mortgage. Address changes may be made upon notice to the other party.

No Waiver by Lender. Lender may exercise any right under this Mortgage or under any law, even if Lender has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. Lender does not waive its right to declare that I am in default by making payments or incurring expenses on my behalf.

Each Person Liable. This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Lender may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

No Oral Changes. This Mortgage can only be changed by an agreement in writing signed by both the Borrower(s) and the Lender.

Copy Received. I ACKNOWLEDGE RECEIPT OF A TRUE COPY OF THIS MORTGAGE WITHOUT CHARGE.

Signatures. I agree to the terms of this Mortgage. If the Borrower is a corporation, its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

EDWARD M. BOGAN

ROBERT RIVELL

BARBARA RIVELL

(Seal)

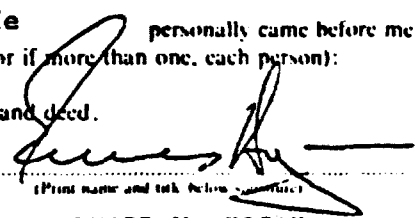
(Seal)

0864 0097

STATE OF NEW JERSEY, COUNTY OF MORRIS  
I CERTIFY that on September 14, 1984

RECORDED  
SEP 20 2 19 84  
HUNTERDON COUNTY CLERK

ROBERT RIVELL and BARBARA RIVELL, his wife personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):  
(a) is named in and personally signed this document; and  
(b) signed, sealed and delivered this document as his or her act and deed.



EDWARD M. HOGAN  
An Attorney at Law of New Jersey  
SS.:

STATE OF NEW JERSEY, COUNTY OF  
I CERTIFY that on . 19 .

personally came before me, and this person acknowledged under oath, to my satisfaction, that:  
(a) this person is the secretary of the corporation named in this document;  
(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the President of the corporation;  
(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;  
(d) this person knows the proper seal of the corporation which was affixed to this document; and  
(e) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on . 19 .  
(Print name of attesting witness below signature)

**NOTE MORTGAGE**

Dated: September 14, 1984

ROBERT RIVELL and  
BARBARA RIVELL, his wife  
Borrower(s).

RECORD & RETURN TO:  
WAHL, FOX AND AST, P.C.  
P.O. Box 1309R  
Morristown, NJ 07960

TO

HIGHVIEW DEVELOPMENT  
CORPORATION EMPLOYEES  
RETIREMENT TRUST  
Lender(s).

RECORDED  
Hunterdon County, N. J.  
SEP 20 1984

BOOK 664 PAGE 12  
ON 1/19  
DOROTHY K. TIRPOK  
COUNTY CLERK

To the County Recording Officer of County:

This Mortgage is fully paid. I authorize you to cancel it of record.

Dated . 19 . (Seal)  
Lender

I certify that the signature of the Lender is genuine.

END OF DOCUMENT

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I N D E X

WITNESS

DIRECT

HARRY OLSTEIN  
By: Mr. Dieterly

2

E X H I B I T S

NUMBER

DESCRIPTION

FOR I.D.

DT-5	3 page letter dated 5/28/85	3
DT-6	Mortgage dated 11/8/84	20
DT-7	Deed dated 3/8/84	57
DT-8	Deed dated 6/29/84	58
DT-9	Deed dated 10/2/84	60
DT-10	Schedule B-Land Improvements List	65
DT-11	Map	70

EXHIBIT B

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION; HUNTERDON/  
MIDDLESEX COUNTY - MT. LAUREL  
DOCKET NO. L-040993-84 P.W.

1  
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4 ROBERT E. RIVELL, :  
5 Plaintiff, : DEPOSITION OF:  
6 -vs- : HARRY OLSTEIN  
7 TOWNSHIP OF TEWKSBURY, :  
8 Defendant. :  
9 .....

10 T R A N S C R I P T of deposition of HARRY  
11 OLSTEIN, taken at the offices of Gebhardt & Kiefer, Esqs.  
12 21 Main Street, Clinton, New Jersey, by and before Michael  
13 Monahan, a Notary Public and Shorthand Reporter of the State  
14 of New Jersey on June 12, 1985, commencing at 1:30 p.m.  
15

16 A P P E A R A N C E S:

17 BEETEL & HAMILTON, ESQS.  
18 Attorneys for Plaintiff  
19 BY: THOMAS J. BEETEL, ESQ.

20 GERHARDT & KEIPER, ESQS.  
21 Attorney for Defendant  
22 BY MR. RICHARD DIETERLY, ESQ.

23 ALSO PRESENT:

24 Robert E. Rivell  
25

1 Q As an electrical contractor.

2 A Equitable Electrical Contractors.

3 Q Where was that located?

4 A In Brooklyn, New York.

5 Q That was prior to 1968?

6 A Yes.

7 Q Have you been engaged in any other business or  
8 employed by anyone since 1968?

9 A No.

10 Q Since 1968 you've been totally engaged in the  
11 building business?

12 A Yes.

13 Q In 1979 you had a commercial development; is that  
14 right?

15 A Right.

16 Q What was the nature of that development?

17 A It was a professional building.

18 Q What business names have you used in the last  
19 five years, businesses that you've been associated with?

20 A High View Development Corporation; OLS Corporation;  
21 Oldstar Construction; Olstein Incorporated. There were many  
22 of them but I can't remember all of them.

23 Q These are some of the main ones?

24 A Yes.

25 Q These were basically corporations?

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A Yes.

Q You were a stockholder in these corporations?

A Yes.

Q Were you the main stockholder?

A Yes.

Q Would there have been anyone else involved as a stockholder in any of these corporations?

A At times, yes.

Q Taking High View Development Corporation, were you the majority stockholder in that?

A Sole stockholder.

Q Does it have any employees?

A At this time, no.

Q Did it, at any time?

A Yes.

Q Who were the employees; were you an employee?

A Yes, I was.

Q Who else?

A I had field supervisors and laborers. Basically, we subcontracted. We did mostly subcontracting and had some key personnel.

Q On other peoples' projects, is that what you're saying?

A No. I always owned the property that was developed.

Q What did this subcontracting consist of?

1 A I subcontracted ninety-five percent of the job out.  
2 Those employees were supervisors, strictly supervisors and  
3 labor and office personnel.

4 Q The rest of the work was subcontracted out to  
5 other people on projects that were the High View Development  
6 Corporation?

7 A Yes, on all my corporations.

8 Q What corporations do you have active right now?

9 A OLS Corp. There was another one, Whitehouse Partners

10 Q Any others?

11 A I forgot the name of my corporation in Washington  
12 Township. I can't remember it. There's Carriage Hill, but  
13 forget the corporation. It's a partnership with-- oh, Haro  
14 Inc.

15 Q You have an interest in the Rivell property that  
16 is involved in this suit; is that correct?

17 A Pardon me?

18 Q You have an interest in the Rivell property  
19 that's involved in this suit?

20 A Yes.

21 Q Can you describe that interest?

22 A It's an option to purchase.

23 Q Do you have any other interest in it?

24 A Personally?

25 Q Or as a corporation that you are a stockholder



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in?

A No.

Q You say there's an option. I show you a document which was marked as Exhibit D-1 for identification on February 14th, 1985. It's entitled, "Option Agreement".

This is a Xerox copy. I'll ask you if you can identify that as the option to which you are referring? (handing)

A Yes.

Q Is that the complete option agreement or is there any portion of it missing, to your knowledge?

A That's it.

Q Was that signed in September of 1984?

A Yes, if that's the date of it on that one, yes.

Q I'd like you to look over this option and tell what your understanding is of the phrase at the bottom, "Sale price and terms shall be reasonably consistent with the acreage price and terms set forth in", it looks like "paragraphs one, two and three".

A This is just, as far as the terms are concerned, and I guess it would vary depending upon if, depending upon whatever yield or depending upon the amount of units per acre, and I think that's the only variable that would change that.

Q The paragraph above says, "A purchase price of

1 Q Would Mr. Rivell have any participation in it?

2 A That remains to be seen. We haven't discussed it.

3 Q This agreement has not been superseded by any  
4 other agreement?

5 A No.

6 Q As far as you know, this agreement is still valid  
7 and active?

8 A Yes.

9 Q Do you know who prepared this agreement; did a  
10 lawyer prepare it?

11 A An attorney prepared that, yes.

12 Q Was that Mr. Fox?

13 A Yes.

14 Q Do you know if Mr. Rivell had a lawyer review  
15 this?

16 A I don't recall.

17 Q Your corporation, High View Development  
18 Corporation, has a mortgage; is that right?

19 A The Pension or Profit Sharing Trust has a mortgage on  
20 it, right.

21 Q It's the High View Development Corporation  
22 Employees Pension Trust?

23 A It should be Retirement Trust.

24 Q Retirement Trust?

25 A Yes.

1 Q That's a corporation that you are the principal  
2 stockholder of?

3 A It's a Retirement Trust.

4 Q Do know who the trustees of that trust are?

5 A I am.

6 Q Anyone else?

7 A No.

8 Q What people have accounts in it, are there more  
9 people than you that have accounts in that?

10 A I don't understand the question.

11 Q There's money in the Trust for retirement, it's  
12 Retirement Trust, is that right?

13 A Yes.

14 Q Are there people other than you that have monies  
15 in that for their benefit?

16 A No.

17 Q You are the only person?

18 A Yes.

19 Q No one else is involved in this Retirement Trust  
20 but you?

21 A That's right. Wait a minute, I'm trying to think. I  
22 take that back. I don't recall. There might have been  
23 someone that-- I don't recall, really.

24 That's High View Retirement Trust. I'm almost positiv  
25 that High View Development Retirement-- I have two, a coupl

1 of them. The Retirement Trust is just myself.

2 Q That mortgage is for \$650,000?

3 A Yes.

4 Q It was dated the same date as this option?

5 A I presume so, yes.

6 Q That mortgage is still open and outstanding?

7 A Yes.

---

1 A No.

2 Q There was no security for this payment, other  
3 than this mortgage and the two Rivell signatures?

4 A The land and the personal signatures of Mr. and Mrs.  
5 Rivell, that's it.

6 Q Have you or any retirement or pension trusts or  
7 any corporations you are associated with made any other loa  
8 to the Rivells or either or them?

9 A The Retirement Trust has not.

10 Q Has anyone else made any other loans, any other  
11 pension trust or profit sharing trust?

12 A Yes.

13 Q Tell me about that?

14 A A first mortgage.

15 Q A first mortgage on what?

16 A On a home.

17 Q On Rivell's home?

18 A Yes.

19 Q Who made that loan?

20 A High View Development Employees Pension Trust.

21 Q I want to show you a mortgage dated November 8th  
22 1984, from Robert E. and Barbara C. Rivell to High View  
23 Development Corporation Employees Pension Trust.

24 Is this the mortgage you're talking about?

25 (handing)

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A Yes.

Q Are you a trustee of this trust?

A Yes.

Q Are you the sole trustee?

A I believe now, but I'm not sure. I believe now I am.

Q Was there anyone else who was trustee at the time this loan was made?

A No, I don't believe so.

Q Are there any other persons who have an interest in that trust, that is, an account, someone besides you, any employees or people who have an interest in that?

A No.

Q You are the only person who has an account in that trust?

A Yes.

Q This mortgage is for \$260,000; is that right?

A I think that was reduced. I don't know how much it was reduced.

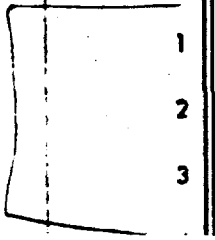
Q It says that on December 8th he paid \$35,000 on account of the principal; is that correct?

A Correct.

Q Is that what you're talking about, the reduction?

A Yes.

Q Was \$260,000 advanced at the time of this mortgage?



(Whereupon, the above described mortgage da  
November 8th, 1984 was marked as Exhibit DT-6 for  
identification as of this date.)

EXHIBIT DT-6 ID  
DATE 6/12/85  
M. MONAHAN

304 - NOTE MORTGAGE  
Ind. or Corp - Plain Language

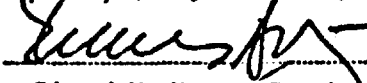
RVST-1

Copyright © 1982 by ALL-STATE LEGAL SUPPLY CO  
One Commerce Drive, Cranford, N.J. 07016

FORM 0667 PAGE 0666

# MORTGAGE

Prepared by: (Print signer's name below signature)

  
Edward M. Hogan Esquire

This Mortgage is made on November 8th, 19 84.

BETWEEN the Borrower(s)

**ROBERT E. RIVELL and BARBARA V. RIVELL, Husband and Wife,**

whose address is King Street, Post Office Box #103, Oldwick, New Jersey 08858,  
referred to as "I".

AND the Lender

**HIGHVIEW DEVELOPMENT CORPORATION EMPLOYEES PENSION TRUST**

whose address is 4 Highview Drive, Livingston, New Jersey 07039,  
referred to as the "Lender".

If more than one Borrower signs this Mortgage, the word "I" shall mean each Borrower named above. The word "Lender" means the original Lender and anyone else who takes this Mortgage by transfer.

**Mortgage Note.** In return for a loan that I received, I promise to pay \$ 260,000.00 (called "principal"), plus interest in accordance with the terms of a Mortgage Note dated November 8th, 19 84 (referred to as the "Note"). The Note provides for monthly <sup>interest</sup> payments of \$ 3,250.00 and a yearly interest rate of 15 %. All sums owed under the Note are due no later than November 8th, 19 85. All terms of the Note are made part of this Mortgage. SEE ADDITIONAL TERMS ON REVERSE SIDE.

**Property Mortgaged.** The property mortgaged to the Lender (called the "Property") is located in the Hunterdon Township of Tewksbury County of Hunterdon and State of New Jersey. The Property includes: (a) the land; (b) all buildings that are now, or will be, located on the land; (c) all fixtures that are now, or will be, attached to the land or building(s) (for example, furnaces, bathroom fixtures and kitchen cabinets); (d) all condemnation awards and insurance proceeds relating to the land and building(s); and (e) all other rights that I have, or will have, as owner of the Property. The legal description of the property is:

More particularly described on SCHEDULE "A" which is attached hereto and made a part hereof.

31171



## SCHEDULE "A"

Description of Lot 16.04 Block 38  
Tewksbury Township, Hunterdon County, New Jersey

Prepared for Robert E. & Barbara V. Rivell

All that certain lot, tract or parcel of land situate, lying and being in the Township of Tewksbury, County of Hunterdon, and State of New Jersey and being more particularly bounded and described as follows:

Beginning at a concrete monument on the Northerly right-of-way line of Potterstown Road (variable width) and being the Southwest corner of lot 16.01, Block 38, said monument being distant 34.06 feet from the center-line of said Potterstown Road as measured along the prolongation of the westerly line of said lot 16.01, and running thence:

1) N 78°46' 55" W along said line of Potterstown Road a distance of 42.52 feet to a point of curvature, thence;

2) Northwesterly along said line of Potterstown Road being a curve bearing to the right having an arc length of 97.85 feet, a radius of 1275.00 feet and a delta angle of 04°23' 50" to a point of tangency, thence;

3) N 74°23' 05" W a distance of 151.95 feet along said line of Potterstown Road to a point of curvature, said point being a concrete monument, thence;

4) Northwesterly along said line of Potterstown Road being a curve bearing to the left having an arc length of 364.70 feet, a radius of 1525.00 feet and a delta angle of 13°42' 07" to a point of reverse curvature, said point being a concrete monument, thence:

5) Westerly and Northerly along said Potterstown Road being a curve bearing to the right having an arc length of 39.80 feet, a radius of 25.00 feet and a delta angle of 91°13' 12" to a point of tangency, said point being a concrete monument and also being on the Easterly right-of-way line of Round Top Road (50.00 feet wide) , thence;

6) N 03°08' 00" E along said line of Round Top Road a distance of 53.65 feet to a point of curvature, said point being a concrete monument, thence;

7) Northerly along said line of Round Top Road being a curve bearing to the left having an arc length of 69.36 feet, a radius of 425.00 feet and a delta angle of 09°21' 00" to a point, said point being the Southwest corner of Lot 16.05, Block 38, thence;

8) N 69°02' 00" E along the Southerly line of said Lot 16.05 Block 38 a distance of 430.03 feet to a point in the aforesaid line of Lot 16.01, Block 38, thence;

9) S 31°33' 17" E along the Westerly line of said Lot 16.01, Block 38 a distance of 505.03 feet to the point and place of beginning.

Containing 147,640.3+ square feet  
 3.389+ acres

Being known and designated as Lot 16.04, Block 38 as shown on a map of Round Top Village-Section 1A, Tewksbury Township, Hunterdon County, New Jersey. Filed in the Hunterdon County Clerks Office on March 10, 1983 as map number 704.

Said Lot 16.04 being subject to a 30 foot by 100 foot Sighth Right and Drainage Easement as shown on said filed map.

**ADDITIONAL TERMS:**

The Borrowers shall pay the sum of Thirty Five Thousand (\$35,000.00) Dollars on account of principal reduction, together with the monthly interest payment in the amount of \$3,250.00, on December 8, 1984. Each monthly interest payment thereafter shall be in the amount of \$2,812.50.

**Rights Given to Lender.** I mortgage the Property to the Lender. This means that I give the Lender those rights stated in this Mortgage and also those rights the law gives to lenders who hold mortgages on real property. When I pay all amounts due to the Lender under the Note and this Mortgage, the Lender's rights under this Mortgage will end. The Lender will then cancel this Mortgage at my expense.

**Promises.** I make the following promises to the Lender:

1. **Note and Mortgage.** I will comply with all of the terms of the Note and this Mortgage.
2. **Payments.** I will make all payments required by the Note and this Mortgage.
3. **Ownership.** I warrant title to the premises (N.J.S.A. 46:9-2). This means I own the Property and will defend my ownership against all claims.
4. **Liens and Taxes.** I will pay all liens, taxes, assessments and other government charges made against the Property when due. I will not claim any deduction from the taxable value of the Property because of this Mortgage. I will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

5. Insurance. I must maintain extended coverage insurance on the Property. The Lender may also require that I maintain flood insurance or other types of insurance. The insurance companies, policies, amounts and types of coverage must be acceptable to the Lender. I will notify the Lender in the event of a substantial loss or damage. The Lender may then settle the claim on my behalf if I fail to do so. All payments from the insurance company must be payable to the Lender under a "standard mortgage clause" in the insurance policy. The Lender may use any proceeds to repair and restore the Property or to reduce the amount due under the Note and this Mortgage. This will not delay the due date for any payment under the Note and this Mortgage.

6. Repairs. I will keep the Property in good repair, neither damaging nor abandoning it. I will allow the Lender to inspect the Property upon reasonable notice to me.

7. Statement of Amount Due. Upon request of the Lender, I will certify to the Lender in writing: (a) the amount due on the Note and this Mortgage, and (b) whether or not I have any defense to my obligations under the Note and this Mortgage.

8. Rent. I will not accept rent from any tenant for more than one month in advance.

9. Lawful Use. I will use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.

Eminent Domain. All or part of the Property may be taken by a government entity for public use. If this occurs, I agree that any compensation be given to the Lender. The Lender may use this to repair and restore the Property or to reduce the amount owed on the Note and this Mortgage. This will not delay the due date for any further payment under the Note and this Mortgage. Any remaining balance will be paid to me.

Tax and Insurance Escrow. If the Lender requests, I will make regular monthly payments to the Lender of: (a) 1/12 of the yearly real estate taxes and assessments on the Property; and (b) 1/12 of the yearly cost of insurance on the Property. These payments will be held by the Lender without interest to pay the taxes, assessments and insurance premiums as they become due.

Payments Made for Borrower(s). If I do not make all of the repairs or payments as agreed in this Mortgage, the Lender may do so for me. The cost of these repairs and payments will be added to the principal, will bear interest at the same rate provided in the Note and will be repaid to the Lender upon demand.

Default. The Lender may declare that I am in default on the Note and this Mortgage if:

- (a) I fail to make any payment required by the Note and this Mortgage within 30 days after its due date;
- (b) I fail to keep any other promise I make in this Mortgage;
- (c) the ownership of the Property is changed for any reason;
- (d) the holder of any lien on the Property starts foreclosure proceedings; or
- (e) bankruptcy, insolvency or receivership proceedings are started by or against any of the Borrowers.

Payments Due Upon Default. If the Lender declares that I am in default, I must immediately pay the full amount of all unpaid principal, interest, other amounts due on the Note and this Mortgage and the Lender's costs of collection and reasonable attorney fees.

Lender's Rights Upon Default. If the Lender declares that the Note and this Mortgage are in default, the Lender will have all rights given by law or set forth in this Mortgage. This includes the right to do any one or more of the following:

- (a) take possession of and manage the Property, including the collection of rents and profits;
- (b) have a court appoint a receiver to accept rent for the Property (I consent to this);
- (c) start a court action, known as foreclosure, which will result in a sale of the Property to reduce my obligations under the Note and this Mortgage; and
- (d) sue me for any money that I owe the Lender.

Notices. All notices must be in writing and personally delivered or sent by certified mail, return receipt requested, to the addresses given in this Mortgage. Address changes may be made upon notice to the other party.

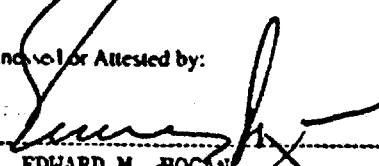
No Waiver by Lender. Lender may exercise any right under this Mortgage or under any law, even if Lender has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. Lender does not waive its right to declare that I am in default by making payments or incurring expenses on my behalf.

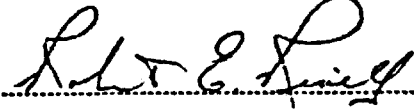
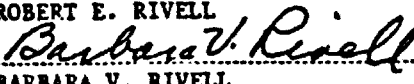
Each Person Liable. This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Lender may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

No Oral Changes. This Mortgage can only be changed by an agreement in writing signed by both the Borrower(s) and the Lender.

Copy Received. I ACKNOWLEDGE RECEIPT OF A TRUE COPY OF THIS MORTGAGE WITHOUT CHARGE.

Signatures. I agree to the terms of this Mortgage. If the Borrower is a corporation, its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:  
  
 \_\_\_\_\_  
 EDWARD M. HOGAN,  
 Attorney at Law of New Jersey

 (Seal)  
 \_\_\_\_\_  
 ROBERT E. RIVELL  
 (Seal)  
 \_\_\_\_\_  
 BARBARA V. RIVELL

RECORDED

NOV 14 11 32 PM '84

SS.:

HUNTERDON COUNTY  
DOROTHY K. TIPPOK  
CLERK

STATE OF NEW JERSEY, COUNTY OF HUNTERDON  
I CERTIFY that on November 8th, 19 84

ROBERT E. RIVELL and BARBARA V. RIVELL, Husband & Wife, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):  
(a) is named in and personally signed this document; and  
(b) signed, sealed and delivered this document as his or her act and deed.

*[Signature]*  
EDWARD M. HOGAN,  
Attorney at Law of New Jersey

STATE OF NEW JERSEY, COUNTY OF  
I CERTIFY that on \_\_\_\_\_, 19 \_\_\_\_\_ SS.:

personally came before me, and this person acknowledged under oath, to my satisfaction, that:  
(a) this person is the \_\_\_\_\_ secretary of \_\_\_\_\_ the corporation named in this document;  
(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is \_\_\_\_\_ the \_\_\_\_\_ President of the corporation;  
(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;  
(d) this person knows the proper seal of the corporation which was affixed to this document; and  
(e) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on \_\_\_\_\_, 19 \_\_\_\_\_

(Print name of attesting witness below signature)

**NOTE MORTGAGE**

Dated: November 8th, 19 84

ROBERT E. RIVELL and  
BARBARA V. RIVELL,  
Husband and Wife,

Borrower(s).

R&R:

HOGAN, FOLK & SIMMS  
COUNSELLORS AT LAW  
HIGHWAY #22 P.O. BOX 100  
WHITEHOUSE, NEW JERSEY 08888

TO  
HIGHVIEW DEVELOPMENT CORPORATION  
EMPLOYEES PENSION TRUST,

Lender(s).

RECORDED

Hunterdon County, N. J.

NOV 14 1984

County: BOOK 6674 PAGE 666  
ON \_\_\_\_\_

DOROTHY K. TIPPOK  
COUNTY CLERK

(Seal)

Lender

To the County Recording Officer of

This Mortgage is fully paid. I authorize you to cancel it of record.

Dated \_\_\_\_\_, 19 \_\_\_\_\_

I certify that the signature of the Lender is genuine.

AMERICAN...

11-14-84

HUNTERDON COUNTY CLERK  
DOROTHY K. TIPPOK

END OF DOCUMENT

31171

*Judge Skillman*

PHILIP R. GEBHARDT  
E. HERBERT KIEFER  
RICHARD DIETERLY  
GEORGE H. HOERRNER  
JAMES H. KNOX  
RICHARD P. CUSHING

WALTER N. WILSON  
WILLIAM W. GOODWIN, JR.  
SHARON HANDROCK MOORE

GEBHARDT & KIEFER  
RECEIVED AND FILED  
LAW OFFICES

21 MAIN STREET  
SEP 17 11 01 AM '85  
P.O. BOX 1  
CLINTON, N.J. 08809  
MIDDLESEX COUNTY, NJ  
NEW BRUNSWICK, NJ 08901 (201) 735-5161

WILLIAM C. GEBHARDT  
1884-1929  
W. READING GEBHARDT  
1919-1980

RECEIVED AT CHANCERY  
September 16, 1985

SEP 17 1985

JUDGE STEPHEN SKILLMAN

John M. Mayson, Esq.  
Superior Court Clerk  
CN 971  
Hughes Justice Complex  
Trenton, NJ 08625

Re: Rivell v. Township of Tewksbury  
Mt. Laurel  
Docket No. L-040993-84 P.W.

Dear Mr. Mayson:

Enclosed for filing in the above matter are original of Certification of Richard Dieterly with attachments. This is filed in response to certifications of the responding party on a pending motion for transfer to the Council on Affordable Housing, returnable September 23, 1985.

By copy of this letter I am filing a copy of this Certification with the Hunterdon and Middlesex County Clerks.

Additionally, a Letter Reply Brief is being filed with Judge Skillman.

Copies of the Certification of Richard Dieterly and the Letter Reply Brief are also served by this letter on Plaintiff's attorney.

Very truly yours,

*Richard Dieterly*  
RICHARD DIETERLY

RD:me  
Encl.

cc. Hunterdon County Clerk  
Middlesex County Clerk  
The Hon. Stephen Skillman  
Thomas J. Beetel, Esq.

GEBHARDT & KIEFER  
 Attorneys for Defendant, Township  
 Tewksbury  
 21 Main Street  
 Clinton, New Jersey 08809  
 Tele. (201)735-5161

RECEIVED AND FILED  
 SEP 17 11 01 AM '85  
 MIDDLESEX COUNTY CLERK  
 NEW BRUNSWICK, N.J.

ROBERT E. RIVELL

Plaintiff

vs.

TOWNSHIP OF TEWKSBURY

Defendant

SUPERIOR COURT OF NEW  
 JERSEY  
 LAW DIVISION  
 HUNTERDON COUNTY/MIDDLESEX  
 COUNTY  
 MOUNT LAUREL  
 DOCKET NO. L-040993-84PW  
 CIVIL ACTION  
 CERTIFICATION OF SERVICE  
 AND FILING

I certify that the original of Certification of Richard Dieterly Regarding Motion for Transfer to the Council on Affordable Housing, dated September 16, 1985, in the above-entitled matter, has been filed with the Superior Court Clerk and a copy of the same filed with the Hunterdon County Clerk and Middlesex County Clerk, and a copy served on all counsel.

GEBHARDT & KIEFER  
 Attorneys for Defendant

Dated: Sept. 17, 1985

By

  
 RICHARD DIETERLY

RECEIVED AND FILED  
SEP 17 11 02 AM '85  
MIDDLESEX COUNTY CLERK  
NEW BRUNSWICK, N.J.

GEBHARDT & KIEFER  
Attorneys for Defendant, Township of  
Tewksbury  
21 Main Street  
Clinton, New Jersey 08809  
Tele. (201)735-5161

SUPERIOR COURT OF NEW  
JERSEY  
LAW DIVISION  
HUNTERDON COUNTY/MIDDLESEX  
COUNTY  
MOUNT LAUREL  
DOCKET NO. L-040993-84PW  
  
CIVIL ACTION  
  
CERTIFICATION OF RICHARD  
DIETERLY REGARDING  
MOTION FOR TRANSFER TO THE  
COUNCIL ON AFFORDABLE  
HOUSING

---

ROBERT E. RIVELL :  
 :  
 Plaintiff :  
 vs. :  
 :  
 TOWNSHIP OF TEWKSBURY :  
 :  
 Defendant :

---

RICHARD DIETERLY hereby certifies as follows:

1. I am a partner in the law firm of Gebhardt & Kiefer, attorneys for Defendant, Township of Tewksbury, in the above action, and am actively handling such action.
2. On February 14, 1985 a deposition of Plaintiff, Robert E. Rivell, was taken in this action. A true copy of portions of such deposition are attached to this Certification as Exhibit A. Also part of Exhibit A are true copies of an Option Agreement, marked D-1 for identification

(See p. 6 of Rivell deposition), and a mortgage marked D-9 for identification at such deposition (See p. 84 of Rivell deposition).

3. On June 12, 1985, a deposition of Harry Olstein was taken in this action. A true copy of portions of such deposition are attached to this Certification as Exhibit B. Also part of Exhibit B is a true copy of a mortgage marked DT-6 for identification at such deposition (see p. 20 of Olstein deposition).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 16, 1985

  
RICHARD DIETERLY



EXHIBIT A

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUNTERDON  
MIDDLESEX COUNTY  
DOCKET NO. L-040993-84PW

ROBERT E. RIVELL,

Plaintiff,

vs.

TOWNSHIP OF TFWKSBURY,  
a Municipal Corporation  
located in Hunterdon  
County, New Jersey,

Defendants,

DEPOSITION UPON  
ORAL EXAMINATION  
OF

ROBERT E. RIVELL

-----

TRANSCRIPT of the deposition of ROBERT E. RIVELL,  
witness called for Oral Examination in the above-entitled  
action, said deposition being taken pursuant to Rules  
Governing Civil Practice in the Superior Courts of New  
Jersey, by and before DONNA L. RINALDI, a Notary Public  
and Certified Shorthand Reporter of the State of New Jersey,  
Certificate No. 1310, at the offices of GEBHARDT & KIEFER,  
ESQS, 21 Main Street, Clinton, New Jersey on February 14,  
1985, commencing at 10:00 a.m.

ROBERT GIORDANO  
Petersburg Road  
Hackettstown, New Jersey, 07840  
(201) 852-5777



I N D E X

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WITNESS

DIRECT

Robert E. Rivell

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E X H I B I T S

EXHIBITS

DESCRIPTION

IN IDENTIFICATION

D-1

Option Agreement

6

D-2

Map

18

D-3

Findings of fact

18

D-4

Minutes

18

D-5

Minutes

25

D-6

Proposed ordinance

28

D-7

Drawing

51

D-8

Traffic study

53

D-9

Mortgage

84



1 **A P P E A R A N C E S :**

2

**BEETEL & HAMILTON, P.A.**  
**BY: THOMAS J. BEETEL, ESQ.,**  
**Attorneys for Plaintiff**

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4

**GEBHARDT & KIEFER, ESQS.,**  
**BY: RICHARD DIETERLY, ESQ.,**  
**Attorneys for Defendant**

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1 R O B E R T E R I V E L L, being first duly sworn  
2 according to law by the Officer, testifies as follows:

3 DIRECT EXAMINATION BY MR. DIETERLY:

4 Q Mr. Rivell, you have been deposed here  
5 before? Is that correct?

6 A Yes, sir.

7 Q At your prior deposition you referred to an  
8 option on the 38 acre tract that you purchased from Warwick  
9 Associates?

10 A Yes.

11 Q You have a copy of that option here today?

12 A Yes, I do.

13 Q Could I see that?

14 Mr. Rivell, you have shown me an option  
15 agreement between you and Barbra Rivell and Olstein? Is  
16 that right?

17 A I believe so.

18 Q I can't quite read the date on that. Could  
19 you tell me what the date is, if you know?

20 A It appears to be the 14th day of September of 1984.

21 Q Was the option signed by the parties on that  
22 date or was it signed some other time and dated to that  
23 date? Do you know?

24 A I don't recall unless the date is next to the names  
25 right there.



1 Q Was it signed approximately at this time to  
2 your knowledge?

3 A I think so.

4 Q Have there been any amendments or changes to  
5 this option?

6 A Not to my knowledge.

7 Q To your knowledge is this option still  
8 enforced?

9 A Yes, it is.

10 Q There is no other option affecting this pro-  
11 perty, is there at the present time?

12 A None that I have knowledge of.

1 handwritten provisions?

2 A The printing was done by Mr. Larry Fox the attorney  
3 for Mr. Olstein.

4 Q Now, before we go further let's have this  
5 option marked for identification.

6 (Option agreement is marked as D-1 for  
7 identification.)

8 Q There is a provision number three in this  
9 option referring to your holding a purchase money mortgage  
10 as follows: then there is some provisions of money that is  
11 to be paid. I don't understand that provision and I wonder  
12 if you can tell me what your understanding of the intention  
13 of that paragraph was as to who was to pay what and under  
14 what circumstances?

15 A Paragraph three?

16 Q Right.

17 MR. BEETEL: If you can, otherwise  
18 the document will speak for itself. It  
19 requires the conclusions and/or legal advice  
20 in order to construe that. I would prefer  
21 if the witness did not answer it. Let the  
22 document speak for itself.

23 MR. DIETERLY: I will state that I am  
24 not asking for a legal conclusion about what  
25 it means. I am simply having difficulty

1 Q Just for the record, I want to show you a  
2 copy of a mortgage from Robert and Barbara Rivell to Highview  
3 Development Corporation employees retirement trust dated  
4 September 14, 1984. I ask you to your knowledge this is the  
5 mortgage you previously referred to which is presently out-  
6 standing on the 38 acre tract in Oldwick?

7 A Yes, it appears to be,

8 MR. DIETERLY: Could we have this  
9 marked for identification?

10 (Mortgage is marked as D-9 for identi-  
11 fication.)

D 1 - 1.0  
2-14-85  
DR.

OPTION AGREEMENT

THIS AGREEMENT, made this 17<sup>th</sup> day of SEPTEMBER, 1984, between: ROBERT RIVELL and BARBARA RIVELL, his wife, residing at PO Box 103, Hunterdon County, NJ (hereinafter referred to as "Rivell"), and HARRY OLSTEIN, AND/OR HIS ASSIGNEE, residing at 4 Highview Drive, Livingston, New Jersey - 07039, (hereinafter referred to as "Olstein").

WHEREAS, Rivell are the owners of premises located in Tewksbury Township, Hunterdon County, New Jersey and known as Lot 43, Block 45 and containing approximately 38 acres; and

WHEREAS, Rivell has instituted a law suit against the Township of Tewksbury, seeking permission to construct multi-family dwellings on the aforesaid property; and

WHEREAS, Olstein has arranged and provided for immediate financing requested by Rivell; and

WHEREAS, Olstein is desirous of purchasing the aforementioned property in the event the premises are rezoned to permit multi-family dwellings or a density of not less than one dwelling unit per acre.

NOW THEREFORE, in consideration of Olstein arranging and providing necessary developer input in the litigation and for other good and valuable consideration, it is agreed as follows:

1. Rivell will sell to Olstein the aforementioned premises for a purchase price of \$12,500.00 per dwelling unit approved, excluding any units required to satisfy the Mt. Laurel requirements. This price shall remain provided that from six to nine units per acre are approved or permitted.



2. There shall be deducted from the above purchase price the cost of all off-tract improvements which may be imposed or agreed upon in order to obtain approval for development.

3. Rivell shall hold a purchase money mortgage as follows: 20% of the dwelling units are to be paid for at the time of closing of title. ~~\*\*~~ The remaining units shall be paid for within four (4) years after closing with not less than 20% paid for per year. During the first year, any units desired to be paid for beyond the minimum 20% shall cost \$13,000.00 each. During the second year, each unit shall be paid for at a cost of \$13,000.00 per unit up to 20% mandatory amount. Each additional unit paid for during the second year shall be for a cost of \$13,500.00 per unit. During the third year, each unit shall be paid for at a cost of \$13,500.00 per unit up to the 20% mandatory amount and each additional unit shall be paid for at a cost of \$14,000.00 per unit. During the fourth year, each unit paid for shall be at a cost of \$14,000.00 per unit.

4. Title shall close 46 days after all appeals have been exhausted or after an appropriate ordinance or court decision has been adopted by Tewksbury Township.

5. In the event less than ~~five~~<sup>Six</sup> units per acre are approved or agreed upon, Olstein and Rivell shall negotiate a revised purchase price and terms. \*

6. This Agreement is subject to and contingent upon the ability of Rivell to convey marketable title and the willingness of a reputable title insurance company to insure the same without exception, except for utility easements and other restrictions of record which will not prevent the use of the property for multi-family dwellings, provided the same do not render the title unmarketable.

-2-

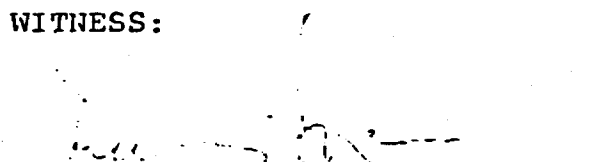
\* SAID PRICE + TERMS SHALL BE REASONABLY CONSISTENT WITH AVERAGE PRICE + TERMS SET FORTH IN PG 1, 2, + 3

\*\* RIVELL SHALL NOT BE REQUIRED TO PAY MORE THAN 50% OF THE PROCEEDS FROM THE 20% <sup>AT CLOSING</sup> TO REPAY THE FIRST MORTGAGE DATED 9/14/54

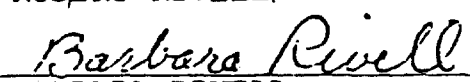
7. Rivell represents that the title to the aforementioned property was not derived from any Martin Act Proceedings or any proceeding based upon the non-payment of municipal taxes and assessments of adverse possession.

8. If at the time for the delivery of the Deed, the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this agreement all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by Rivell, upon the delivery of the deed. Unconfirmed improvements and assessments, if any, shall be paid and allowed by Rivell on account of the purchase price, if the improvement or work has been completed on or before the date of closing.

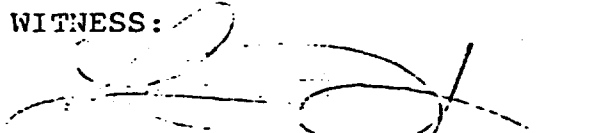
WITNESS:

  
As to Robert & Barbara Rivell

  
ROBERT RIVELL

  
BARBARA RIVELL

WITNESS:

  
As to Harry Olstein

  
HARRY OLSTEIN

D9 - ID  
2-14-85  
DR

304 - NOTE MORTGAGE  
Ind. or Corp. - Plain Language

RVST-1

Copyright © 1982 by ALL-STATE LEGAL SUPPLY CO.  
One Commerce Drive, Cranford, N.J. 07016

0664 PLE 0092

# MORTGAGE

Prepared by Lawrence J. Fox, Esq.  
*(Signature)*  
Lawrence J. Fox, Esq.

This Mortgage is made on September 14, 1984.

BETWEEN the Borrower(s)

ROBERT RIVELL and BARBARA RIVELL, his wife

whose address is PO Box 103, King Street, Oldwick, N.J. 08858

referred to as "I".

AND the Lender

HIGHVIEW DEVELOPMENT CORPORATION EMPLOYEES RETIREMENT TRUST

whose address is 4 Highview Drive, Livingston, New Jersey 07039

referred to as the "Lender".

If more than one Borrower signs this Mortgage, the word "I" shall mean each Borrower named above. The word "Lender" means the original Lender and anyone else who takes this Mortgage by transfer.

Mortgage Note. In return for a loan that I received, I promise to pay \$650,000.00 (called "principal"), plus interest in accordance with the terms of a Mortgage Note dated September 14, 1984 (referred to as the "Note"). The Note provides for monthly payments of \$ and a yearly interest rate of 15 1/2 % . All terms of the Note are made part of this Mortgage.

**SEE NOTE ANNEXED**

\$500,000. being disbursed today, September 14, 1984, and the balance of \$150,000. shall be disbursed 30 days from this date. Interest will be paid only on the monies disbursed.

Property Mortgaged. The property mortgaged to the Lender (called the "Property") is located in the Township of Tewksbury County of Hunterdon and State of New Jersey. The Property includes: (a) the land; (b) all buildings that are now, or will be, located on the land; (c) all fixtures that are now, or will be, attached to the land or building(s) (for example, furnaces, bathroom fixtures and kitchen cabinets); (d) all condemnation awards and insurance proceeds relating to the land and building(s); and (e) all other rights that I have, or will have, as owner of the Property. The legal description of the property is:

SEE DESCRIPTION OF PROPERTY ATTACHED HERETO AS SCHEDULE A.

29997

EXHIBIT A

**BEGINNING** in the centerline of the public road leading from Whitehouse to Oldwick and corner to formerly Charles A. Hildebrant, thence (1) South 55° 57' East 817.05 feet to an iron pin standing in the line of formerly R. Carter Nicholas; thence (2) along his line South 33° 55' West 60.88 feet to a pipe for a corner; thence still along Nicholas (3) South 60° 9' East 230.97 feet to a pipe; still along Nicholas thence (4) South 77° 55' East 754.18 feet to a pipe standing in the centerline of the Old Rockaway Valley Railroad; thence (5) along lands of Esther B. Crego et vir South 6° West 1143.76 feet to a point; which point is also the Northeast corner of Helen Simon; thence (6) along line of Helen Simon North 60° 7' West 1926.18 feet to a point in the centerline of the public road leading from Whitehouse to Oldwick; thence (7) along the centerline North 20° 24' East 127.52 feet to a point; thence still along the centerline (8) North 12° 42' East 149.90 feet to a point; thence (9) still along the centerline North 10° 50' East 700.65 feet to a point and place of **BEGINNING**. Containing 38.699 acres more or less.

Premises also described in accordance with Survey in July 1963 by Robert McEldowney, Jr., P. E. & L. S. New Jersey License No. 7697, Drawing No. 1434.C., to wit:

**BEGINNING** at a railroad spike in or near the middle of public macadam road, designated Oldwick Road, which runs from Whitehouse to Oldwick, said spike also marking the beginning point of the recital in the older description, of the premises described herein, and running thence (1) along lands of the Zion Lutheran Church and by line which, at 25.81 feet, passes through an iron pipe or corner to said Church and in line of lands formerly belonging to Jane C. Nicholas, now said to be Richard N. Colgate; thence by the following three courses along said Colgate land (2) South 35° 58' West 60.87 feet to an iron pipe thence; (3) by line which, for most of its length runs just southerly of a wire fence South 58° 12' 30" East 230.82 feet to an iron pipe; thence (4) by a line which, for most of its length, runs between a wire fence and an old rail fence South 75° 56' 30" East 754.00 feet to an iron pipe found in the middle of the Old Rockaway Valley Railroad; thence (5) by a line running along or near the middle of the said railroad right-of-way and along lands now or formerly of Jane C. Nicholas, South 7° 58' West 1143.76 feet to an iron pipe set (6) along land now or formerly belonging to Helen Simon and by a line which at 1881.04 feet passes through an iron pipe set on line North 58° 10' West 1926.18 feet to a railroad spike in the aforementioned Oldwick Road; thence by the remaining three courses along said road and near the middle thereof North 22° 21' East 127.52 feet to a railroad spike; thence (8) North 14° 39' East 149.90 feet to a railroad spike; thence (9) North 12° 45' 30" East 705.65 feet to the place of **BEGINNING**, all bearings being magnetic as observed in July 1963, and the tract or parcel contains a calculated area of 38.667 acres of land more or less.

Said parcel being known as Lot 43 in Block 45 on the tax map of the Township of Tewksbury, County of Hunterdon, New Jersey.

Being the same premises conveyed to Oldwick Associates, Ltd., by deed of John E. Gimbel, et als., dated January 11, 1979 and recorded in the Hunterdon County Clerk's Office in Deed Book 843 at Page 112.

\*line, South 53° 59' 10" East 817.05 feet to an iron pipe set

### MORTGAGE NOTE

This Mortgage Note is made on **September 14, 1984**

**BETWEEN** the Borrower(s)

**ROBERT RIVELL and BARBARA RIVELL, his wife**

whose address is

referred to as "I".

**AND** the Lender

**HIGHVIEW DEVELOPMENT CORPORATION EMPLOYEES RETIREMENT TRUST**

whose address is **4 Highview Drive, Livingston, New Jersey 07039**

referred to as the "Lender".

If more than one Borrower signs this Note, the word "I" shall mean each Borrower named above. The word "Lender" means the original Lender and anyone else who takes this Note by transfer.

**Borrower's Promise to Pay Principal and Interest.** In return for a loan that I received, I promise to pay <sup>132</sup> \$650,000.00 (called the "principal"), plus interest to the Lender. Interest, at a yearly rate of 15 1/2 % will be charged on that part of the principal which has not been paid from the date of this Note until all principal has been paid. ~~\$500,000, being~~ <sup>\$500,000, being</sup> ~~disbursed today, September 14, 1984, and the balance of \$150,000 shall be disbursed~~ <sup>30 days from this date. Interest will be paid only on the</sup> ~~monthly~~ <sup>quarterly</sup> payments. I will pay principal and interest based on a 1 year payment schedule with ~~monthly~~ <sup>quarterly</sup> payments of interest only on the 14th day of each month beginning on October 1984. I will pay all amounts owed under this Note no later than September 14, 1985. All payments will be made to the Lender at the address shown above or at a different place if required by the Lender.

**Early Payments.** I have the right to make payments at any time before they are due. These early payments will mean that this Note will be paid in less time. However, unless I pay this Note in full, my monthly payments will remain the same.

**Late Charge for Overdue Payments.** If the Lender has not received any monthly payment within 10 days after the due date, I will pay the Lender a late charge of 5 % of the monthly payment. This payment will be made along with the late monthly payment.

**Mortgage to Secure Payment.** The Lender has been given a Mortgage dated September 1984 to protect the Lender if the promises made in this Note are not kept. I agree to keep all promises made in the Mortgage covering property I own located at Lot 43, Block 45 in the Township of Tewksbury in the County of Hunterdon and State of New Jersey. All of the terms of the Mortgage are made a part of this Note.

**Default.** If I fail to make any payment required by this Note within 15 days after the due date, the Lender may declare that I am in default on the Mortgage and this Note. Upon default, I must immediately pay the full amount of all unpaid principal, interest, other amounts due on the Mortgage and this Note, the Lender's costs of collection and reasonable attorney fees. The Lender does not give up its right to declare a default due to any previous delay or failure to declare a default.

**Waivers.** I give up my right to require that the Lender do the following: (a) to demand payment (called "presentment"); (b) to notify me of nonpayment (called "notice of dishonor"); and, (c) to obtain an official certified statement showing nonpayment (called a "protest").

**Each Person Liable.** The Lender may enforce any of the provisions of this Note against any one or more of the Borrowers who sign this Note.

**No Oral Changes.** This Note can only be changed by an agreement in writing signed by both the Borrower(s) and the Lender.

**Signatures.** I agree to the terms of this Note. If the Borrower is a corporation, its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:

*[Handwritten signature]*

*[Handwritten signature]* (Seal)  
ROBERT RIVELL  
*[Handwritten signature]* (Seal)  
BARBARA RIVELL

**Rights Given to Lender.** I mortgage the Property to the Lender. This means that I give the Lender those rights stated in this Mortgage and also those rights the law gives to lenders who hold mortgages on real property. When I pay all amounts due to the Lender under the Note and this Mortgage, the Lender's rights under this Mortgage will end. The Lender will then cancel this Mortgage at my expense.

**Promises.** I make the following promises to the Lender:

1. **Note and Mortgage.** I will comply with all of the terms of the Note and this Mortgage.
2. **Payments.** I will make all payments required by the Note and this Mortgage.
3. **Ownership.** I warrant title to the premises (N.J.S.A. 46:9-2). This means I own the Property and will defend my ownership against all claims.
4. **Liens and Taxes.** I will pay all liens, taxes, assessments and other government charges made against the Property when due. I will not claim any deduction from the taxable value of the Property because of this Mortgage. I will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

5. Insurance. I must maintain extended coverage insurance on the Property. The Lender may also require that I maintain flood insurance or other types of insurance. The insurance companies, policies, amounts and types of coverage must be acceptable to the Lender. I will notify the Lender in the event of any substantial loss or damage. The Lender may then settle the claim on my behalf if I fail to do so. All payments from the insurance company must be payable to the Lender under a "standard mortgage clause" in the insurance policy. The Lender may use any proceeds to repair and restore the Property or to reduce the amount due under the Note and this Mortgage. This will not delay the due date for any payment under the Note and this Mortgage.

6. Repairs. I will keep the Property in good repair, neither damaging nor abandoning it. I will allow the Lender to inspect the Property upon reasonable notice to me.

7. Statement of Amount Due. Upon request of the Lender, I will certify to the Lender in writing: (a) the amount due on the Note and this Mortgage, and (b) whether or not I have any defense to my obligations under the Note and this Mortgage.

8. Rent. I will not accept rent from any tenant for more than one month in advance.

9. Lawful Use. I will use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.

Eminent Domain. All or part of the Property may be taken by a government entity for public use. If this occurs, I agree that any compensation be given to the Lender. The Lender may use this to repair and restore the Property or to reduce the amount owed on the Note and this Mortgage. This will not delay the due date for any further payment under the Note and this Mortgage. Any remaining balance will be paid to me.

Tax and Insurance Escrow. If the Lender requests, I will make regular monthly payments to the Lender of: (a) 1/12 of the yearly real estate taxes and assessments on the Property; and (b) 1/12 of the yearly cost of insurance on the Property. These payments will be held by the Lender without interest to pay the taxes, assessments and insurance premiums as they become due.

Payments Made for Borrower(s). If I do not make all of the repairs or payments as agreed in this Mortgage, the Lender may do so for me. The cost of these repairs and payments will be added to the principal, will bear interest at the same rate provided in the Note and will be repaid to the Lender upon demand.

Default. The Lender may declare that I am in default on the Note and this Mortgage if:

- (a) I fail to make any payment required by the Note and this Mortgage within 30 days after its due date;
- (b) I fail to keep any other promise I make in this Mortgage;
- (c) the ownership of the Property is changed for any reason;
- (d) the holder of any lien on the Property starts foreclosure proceedings; or
- (e) bankruptcy, insolvency or receivership proceedings are started by or against any of the Borrowers.

Payments Due Upon Default. If the Lender declares that I am in default, I must immediately pay the full amount of all unpaid principal, interest, other amounts due on the Note and this Mortgage and the Lender's costs of collection and reasonable attorney fees.

Lender's Rights Upon Default. If the Lender declares that the Note and this Mortgage are in default, the Lender will have all rights given by law or set forth in this Mortgage. This includes the right to do any one or more of the following:

- (a) take possession of and manage the Property, including the collection of rents and profits;
- (b) have a court appoint a receiver to accept rent for the Property (I consent to this);
- (c) start a court action, known as foreclosure, which will result in a sale of the Property to reduce my obligations under the Note and this Mortgage; and
- (d) sue me for any money that I owe the Lender.

Notices. All notices must be in writing and personally delivered or sent by certified mail, return receipt requested, to the addresses given in this Mortgage. Address changes may be made upon notice to the other party.

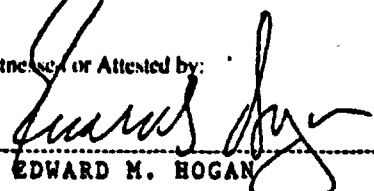
No Waiver by Lender. Lender may exercise any right under this Mortgage or under any law, even if Lender has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. Lender does not waive its right to declare that I am in default by making payments or incurring expenses on my behalf.

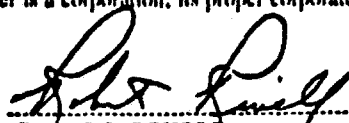

Each Person Liable. This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Lender may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

No Oral Changes. This Mortgage can only be changed by an agreement in writing signed by both the Borrower(s) and the Lender.

Copy Received. I ACKNOWLEDGE RECEIPT OF A TRUE COPY OF THIS MORTGAGE WITHOUT CHARGE.

Signatures. I agree to the terms of this Mortgage. If the Borrower is a corporation, its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:  
  
EDWARD M. HOGAN

 (Seal)  
ROBERT RIVELL  
 (Seal)  
BARBARA RIVELL

0664 0097

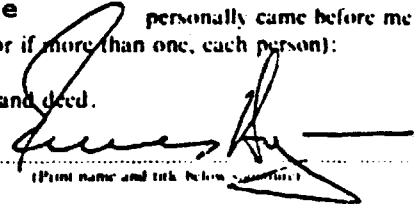
RECORDED

STATE OF NEW JERSEY, COUNTY OF MORRIS  
I CERTIFY that on September 14, 1984

SS.: SEP 20 2 19 84

HUNTERDON COUNTY CLERK  
DOROTHY K. TIRPCK

ROBERT RIVELL and BARBARA RIVELL, his wife personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):  
(a) is named in and personally signed this document; and  
(b) signed, sealed and delivered this document as his or her act and deed.



EDWARD M. HOGAN  
An Attorney at Law of New Jersey  
SS.:

STATE OF NEW JERSEY, COUNTY OF  
I CERTIFY that on . 19

personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the secretary of the corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the President of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (d) this person knows the proper seal of the corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on . 19  
(Print name of attesting witness below signature)

**NOTE MORTGAGE**

Dated: September 14, 1984

ROBERT RIVELL and  
BARBARA RIVELL, his wife  
Borrower(s).

RECORD & RETURN TO:  
WAHL, FOX AND AST, P.C.  
P.O. Box 1309R  
Morristown, NJ 07960

HIGHVIEW DEVELOPMENT  
CORPORATION EMPLOYEES  
RETIREMENT TRUST  
Lender(s).

RECORDED  
Hunterdon County, N. J.

SEP 20 1984  
BOOK 664 PAGE 72  
ON 1/1/84

DOROTHY K. TIRPCK  
COUNTY CLERK

To the County Recording Officer of

County:

This Mortgage is fully paid. I authorize you to cancel it of record.

Dated . 19 \_\_\_\_\_ (Seal)  
Lender

I certify that the signature of the Lender is genuine.

END OF DOCUMENT



EXHIBIT B

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUNTERDON/  
MIDDLESEX COUNTY - MT. LAUREL  
DOCKET NO. L-040993-84 P.W.

1			
2			
3			
4	ROBERT E. RIVELL,	:	
5		:	
6	Plaintiff,	:	DEPOSITION OF:
7		:	
8	-vs-	:	HARRY OLSTEIN
9		:	
10	TOWNSHIP OF TENKSBURY,	:	
11		:	
12	Defendant.	:	
13	.....	:	

T R A N S C R I P T of deposition of HARRY  
OLSTEIN, taken at the offices of Gebhardt & Kiefer, Esqs.  
21 Main Street, Clinton, New Jersey, by and before Michael  
Monahan, a Notary Public and Shorthand Reporter of the State  
of New Jersey on June 12, 1985, commencing at 1:30 p.m.

A P P E A R A N C E S:

BEETEL & HAMILTON, ESQS.  
Attorneys for Plaintiff  
BY: THOMAS J. BEETEL, ESQ.

GERHARDT & KEIPER, ESQS.  
Attorney for Defendant  
BY MR. RICHARD DIETERLY, ESQ.

ALSO PRESENT:

Robert E. Rivell

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I N D E X

WITNESS

DIRECT

HARRY OLSTEIN  
By: Mr. Dieterly

2

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>FOR I.D.</u>
DT-5	3 page letter dated 5/28/85	3
DT-6	Mortgage dated 11/8/84	20
DT-7	Deed dated 3/8/84	57
DT-8	Deed dated 6/29/84	58
DT-9	Deed dated 10/2/84	60
DT-10	Schedule B-Land Improvements List	65
DT-11	Map	70

1 Q As an electrical contractor.

2 A Equitable Electrical Contractors.

3 Q Where was that located?

4 A In Brooklyn, New York.

5 Q That was prior to 1968?

6 A Yes.

7 Q Have you been engaged in any other business or  
8 employed by anyone since 1968?

9 A No.

10 Q Since 1968 you've been totally engaged in the  
11 building business?

12 A Yes.

13 Q In 1979 you had a commercial development; is that  
14 right?

15 A Right.

16 Q What was the nature of that development?

17 A It was a professional building.

18 Q What business names have you used in the last  
19 five years, businesses that you've been associated with?

20 A High View Development Corporation; OLS Corporation;  
21 Oldstar Construction; Olstein Incorporated. There were many  
22 of them but I can't remember all of them.

23 Q These are some of the main ones?

24 A Yes.

25 Q These were basically corporations?

- 1 A Yes.
- 2 Q You were a stockholder in these corporations?
- 3 A Yes.
- 4 Q Were you the main stockholder?
- 5 A Yes.
- 6 Q Would there have been anyone else involved as a  
7 stockholder in any of these corporations?
- 8 A At times, yes.
- 9 Q Taking High View Development Corporation, were  
10 you the majority stockholder in that?
- 11 A Sole stockholder.
- 12 Q Does it have any employees?
- 13 A At this time, no.
- 14 Q Did it, at any time?
- 15 A Yes.
- 16 Q Who were the employees; were you an employee?
- 17 A Yes, I was.
- 18 Q Who else?
- 19 A I had field supervisors and laborers. Basically, we  
20 subcontracted. We did mostly subcontracting and had some key  
21 personnel.
- 22 Q On other peoples' projects, is that what you're  
23 saying?
- 24 A No. I always owned the property that was developed.
- 25 Q What did this subcontracting consist of?

1 A I subcontracted ninety-five percent of the job out.  
2 Those employees were supervisors, strictly supervisors and  
3 labor and office personnel.

4 Q The rest of the work was subcontracted out to  
5 other people on projects that were the High View Development  
6 Corporation?

7 A Yes, on all my corporations.

8 Q What corporations do you have active right now?

9 A OLS Corp. There was another one, Whitehouse Partners

10 Q Any others?

11 A I forgot the name of my corporation in Washington  
12 Township. I can't remember it. There's Carriage Hill, but  
13 forget the corporation. It's a partnership with-- oh, Haro  
14 Inc.

15 Q You have an interest in the Rivell property that  
16 is involved in this suit; is that correct?

17 A Pardon me?

18 Q You have an interest in the Rivell property  
19 that's involved in this suit?

20 A Yes.

21 Q Can you describe that interest?

22 A It's an option to purchase.

23 Q Do you have any other interest in it?

24 A Personally?

25 Q Or as a corporation that you are a stockholder

1 in?

2 A No.

3 Q You say there's an option. I show you a document  
4 which was marked as Exhibit D-1 for identification on  
5 February 14th, 1985. It's entitled, "Option Agreement".

6 This is a Xerox copy. I'll ask you if you can  
7 identify that as the option to which you are referring?  
8 (handing)

9 A Yes.

10 Q Is that the complete option agreement or is there  
11 any portion of it missing, to your knowledge?

12 A That's it.

13 Q Was that signed in September of 1984?

14 A Yes, if that's the date of it on that one, yes.

15 Q I'd like you to look over this option and tell  
16 what your understanding is of the phrase at the bottom, "Sa  
17 price and terms shall be reasonably consistent with the  
18 acreage price and terms set forth in", it looks like  
19 "paragraphs one, two and three".

20 A This is just, as far as the terms are concerned, and  
21 guess it would vary depending upon if, depending upon  
22 whatever yield or depending upon the amount of units per  
23 acre, and I think that's the only variable that would change  
24 that.

25 Q The paragraph above says, "A purchase price of

1 Q Would Mr. Rivell have any participation in it?

2 A That remains to be seen. We haven't discussed it.

3 Q This agreement has not been superseded by any  
4 other agreement?

5 A No.

6 Q As far as you know, this agreement is still valid  
7 and active?

8 A Yes.

9 Q Do you know who prepared this agreement; did a  
10 lawyer prepare it?

11 A An attorney prepared that, yes.

12 Q Was that Mr. Fox?

13 A Yes.

14 Q Do you know if Mr. Rivell had a lawyer review  
15 this?

16 A I don't recall.

17 Q Your corporation, High View Development  
18 Corporation, has a mortgage; is that right?

19 A The Pension or Profit Sharing Trust has a mortgage on  
20 it, right.

21 Q It's the High View Development Corporation  
22 Employees Pension Trust?

23 A It should be Retirement Trust.

24 Q Retirement Trust?

25 A Yes.

1 Q That's a corporation that you are the principal  
2 stockholder of?

3 A It's a Retirement Trust.

4 Q Do know who the trustees of that trust are?

5 A I am.

6 Q Anyone else?

7 A No.

8 Q What people have accounts in it; are there more  
9 people than you that have accounts in that?

10 A I don't understand the question.

11 Q There's money in the Trust for retirement; it's a  
12 Retirement Trust; is that right?

13 A Yes.

14 Q Are there people other than you that have monies  
15 in that for their benefit?

16 A No.

17 Q You are the only person?

18 A Yes.

19 Q No one else is involved in this Retirement Trust  
20 but you?

21 A That's right. Wait a minute, I'm trying to think. I  
22 take that back. I don't recall. There might have been  
23 someone that-- I don't recall, really.

24 That's High View Retirement Trust. I'm almost positive  
25 that High View Development Retirement-- I have two, a couple



1 of them. The Retirement Trust is just myself.

2 Q That mortgage is for \$650,000?

3 A Yes.

4 Q It was dated the same date as this option?

5 A I presume so, yes.

6 Q That mortgage is still open and outstanding?

7 A Yes.

---

1 A No.

2 Q There was no security for this payment, other  
3 than this mortgage and the two Rivell signatures?

4 A The land and the personal signatures of Mr. and Mrs.  
5 Rivell, that's it.

6 Q Have you or any retirement or pension trusts of  
7 any corporations you are associated with made any other loans  
8 to the Rivells or either of them?

9 A The Retirement Trust has not.

10 Q Has anyone else made any other loans, any other  
11 pension trust or profit sharing trust?

12 A Yes.

13 Q Tell me about that?

14 A A first mortgage.

15 Q A first mortgage on what?

16 A On a home.

17 Q On Rivell's home?

18 A Yes.

19 Q Who made that loan?

20 A High View Development Employees Pension Trust.

21 Q I want to show you a mortgage dated November 8th  
22 1984, from Robert E. and Barbara C. Rivell to High View  
23 Development Corporation Employees Pension Trust.

24 Is this the mortgage you're talking about?

25 (handing)

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A Yes.

Q Are you a trustee of this trust?

A Yes.

Q Are you the sole trustee?

A I believe now, but I'm not sure. I believe now I am.

Q Was there anyone else who was trustee at the time this loan was made?

A No, I don't believe so.

Q Are there any other persons who have an interest in that trust, that is, an account, someone besides you, any employees or people who have an interest in that?

A No.

Q You are the only person who has an account in that trust?

A Yes.

Q This mortgage is for \$260,000; is that right?

A I think that was reduced. I don't know how much it was reduced.

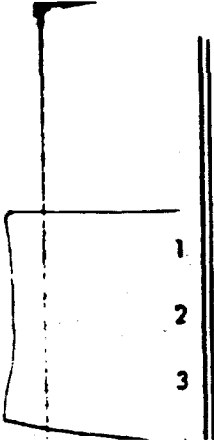
Q It says that on December 8th he paid \$35,000 on account of the principal; is that correct?

A Correct.

Q Is that what you're talking about, the reduction?

A Yes.

Q Was \$260,000 advanced at the time of this mortgage?



(Whereupon, the above described mortgage dated  
November 8th, 1984 was marked as Exhibit DT-6 for  
identification as of this date.)

EXHIBIT DT-6 ID  
DATE 6/12/85  
M. MONAHAN

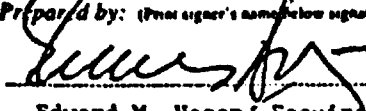
704 - NOTE MORTGAGE  
Ind. or Corp. - Plain Language

RVST-1

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One Commerce Drive, Cranford, N.J. 07016

FORM 0667 ~~FORM~~ 0666

# MORTGAGE

Prepared by: (Print signer's name below signature)  
  
Edward M. Hogan, Esquire

This Mortgage is made on **November 8th**, 19 **84**.

**BETWEEN** the Borrower(s)

**ROBERT E. RIVELL and BARBARA V. RIVELL, Husband and Wife,**

whose address is **King Street, Post Office Box #103, Oldwick, New Jersey 08858,**  
referred to as "I".

**AND** the Lender

**HIGHVIEW DEVELOPMENT CORPORATION EMPLOYEES PENSION TRUST**

whose address is **4 Highview Drive, Livingston, New Jersey 07039,**  
referred to as the "Lender".

If more than one Borrower signs this Mortgage, the word "I" shall mean each Borrower named above. The word "Lender" means the original Lender and anyone else who takes this Mortgage by transfer.

**Mortgage Note.** In return for a loan that I received, I promise to pay \$ **260,000.00** (called "principal"), plus interest in accordance with the terms of a Mortgage Note dated **November 8th**, 19 **84** (referred to as the "Note"). The Note provides for monthly <sup>interest</sup> payments of \$ **3,250.00** and a yearly interest rate of **15 %**. All sums owed under the Note are due no later than **November 8th**, 19 **85**. All terms of the Note are made part of this Mortgage. **SEE ADDITIONAL TERMS ON REVERSE SIDE.**

**Property Mortgaged.** The property mortgaged to the Lender (called the "Property") is located in the **Hunterdon** Township of **Tewksbury** County of **New Jersey** and State of New Jersey. The Property includes: (a) the land; (b) all buildings that are now, or will be, located on the land; (c) all fixtures that are now, or will be, attached to the land or building(s) (for example, furnaces, bathroom fixtures and kitchen cabinets); (d) all condemnation awards and insurance proceeds relating to the land and building(s); and (e) all other rights that I have, or will have, as owner of the Property. The legal description of the property is:

**More particularly described on SCHEDULE "A" which is attached hereto and made a part hereof.**

31171

SCHEDULE "A"

Description of Lot 16.04 Block 38  
Tewksbury Township, Hunterdon County, New Jersey

Prepared for Robert E. & Barbara V. Rivell

All that certain lot, tract or parcel of land situate, lying and being in the Township of Tewksbury, County of Hunterdon, and State of New Jersey and being more particularly bounded and described as follows:

Beginning at a concrete monument on the Northerly right-of-way line of Potterstown Road (variable width) and being the Southwest corner of lot 16.01, Block 38, said monument being distant 34.06 feet from the center-line of said Potterstown Road as measured along the prolongation of the westerly line of said lot 16.01, and running thence:

1) N 78°46' 55" W along said line of Potterstown Road a distance of 42.52 feet to a point of curvature, thence;

2) Northwesterly along said line of Potterstown Road being a curve bearing to the right having an arc length of 97.85 feet, a radius of 1275.00 feet and a delta angle of 04°23' 50" to a point of tangency, thence;

3) N 74°23' 05" W a distance of 151.95 feet along said line of Potterstown Road to a point of curvature, said point being a concrete monument, thence;

4) Northwesterly along said line of Potterstown Road being a curve bearing to the left having an arc length of 364.70 feet, a radius of 1525.00 feet and a delta angle of 13°42' 07" to a point of reverse curvature, said point being a concrete monument, thence:

5) Westerly and Northerly along said Potterstown Road being a curve bearing to the right having an arc length of 39.80 feet, a radius of 25.00 feet and a delta angle of 91°13' 12" to a point of tangency, said point being a concrete monument and also being on the Easterly right-of-way line of Round Top Road (50.00 feet wide) , thence;

6) N 03°08' 00" E along said line of Round Top Road a distance of 53.65 feet to a point of curvature, said point being a concrete monument, thence;

7) Northerly along said line of Round Top Road being a curve bearing to the left having an arc length of 69.36 feet, a radius of 425.00 feet and a delta angle of 09°21' 00" to a point, said point being the Southwest corner of Lot 16.05, Block 38, thence;

8) N 69°02' 00" E along the Southerly line of said Lot 16.05 Block 38 a distance of 430.03 feet to a point in the aforesaid line of Lot 16.01, Block 38, thence;

9) S 31°33' 17" E along the Westerly line of said Lot 16.01, Block 38 a distance of 505.03 feet to the point and place of beginning.

Containing 147,640.3+ square feet  
 3.389+ acres

Being known and designated as Lot 16.04, Block 38 as shown on a map of Round Top Village-Section 1A, Tewksbury Township, Hunterdon County, New Jersey. Filed in the Hunterdon County Clerks Office on March 10, 1983 as map number 704.

Said Lot 16.04 being subject to a 30 foot by 100 foot Sighth Right and Drainage Easement as shown on said filed map.

**ADDITIONAL TERMS:**

The Borrowers shall pay the sum of Thirty Five Thousand (\$35,000.00) Dollars on account of principal reduction, together with the monthly interest payment in the amount of \$3,250.00, on December 8, 1984. Each monthly interest payment thereafter shall be in the amount of \$2,812.50.

**Rights Given to Lender.** I mortgage the Property to the Lender. This means that I give the Lender those rights stated in this Mortgage and also those rights the law gives to lenders who hold mortgages on real property. When I pay all amounts due to the Lender under the Note and this Mortgage, the Lender's rights under this Mortgage will end. The Lender will then cancel this Mortgage at my expense.

**Promises.** I make the following promises to the Lender:

1. **Note and Mortgage.** I will comply with all of the terms of the Note and this Mortgage.
2. **Payments.** I will make all payments required by the Note and this Mortgage.
3. **Ownership.** I warrant title to the premises (N.J.S.A. 46:9-2). This means I own the Property and will defend my ownership against all claims.
4. **Liens and Taxes.** I will pay all liens, taxes, assessments and other government charges made against the Property when due. I will not claim any deduction from the taxable value of the Property because of this Mortgage. I will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

5. Insurance. I must maintain extended coverage insurance on the Property. The Lender may also require that I maintain flood insurance or other types of insurance. The insurance companies, policies, amounts and types of coverage must be acceptable to the Lender. I will notify the Lender in the event of any substantial loss or damage. The Lender may then settle the claim on my behalf if I fail to do so. All payments from the insurance company must be payable to the Lender under a "standard mortgage clause" in the insurance policy. The Lender may use any proceeds to repair and restore the Property or to reduce the amount due under the Note and this Mortgage. This will not delay the due date for any payment under the Note and this Mortgage.

6. Repairs. I will keep the Property in good repair, neither damaging nor abandoning it. I will allow the Lender to inspect the Property upon reasonable notice to me.

7. Statement of Amount Due. Upon request of the Lender, I will certify to the Lender in writing: (a) the amount due on the Note and this Mortgage, and (b) whether or not I have any defense to my obligations under the Note and this Mortgage.

8. Rent. I will not accept rent from any tenant for more than one month in advance.

9. Lawful Use. I will use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.

Eminent Domain. All or part of the Property may be taken by a government entity for public use. If this occurs, I agree that any compensation be given to the Lender. The Lender may use this to repair and restore the Property or to reduce the amount owed on the Note and this Mortgage. This will not delay the due date for any further payment under the Note and this Mortgage. Any remaining balance will be paid to me.

Tax and Insurance Escrow. If the Lender requests, I will make regular monthly payments to the Lender of: (a) 1/2 of the yearly real estate taxes and assessments on the Property; and (b) 1/2 of the yearly cost of insurance on the Property. These payments will be held by the Lender without interest to pay the taxes, assessments and insurance premiums as they become due.

Payments Made for Borrower(s). If I do not make all of the repairs or payments as agreed in this Mortgage, the Lender may do so for me. The cost of these repairs and payments will be added to the principal, will bear interest at the same rate provided in the Note and will be repaid to the Lender upon demand.

Default. The Lender may declare that I am in default on the Note and this Mortgage if:

- (a) I fail to make any payment required by the Note and this Mortgage within 30 days after its due date;
- (b) I fail to keep any other promise I make in this Mortgage;
- (c) the ownership of the Property is changed for any reason;
- (d) the holder of any lien on the Property starts foreclosure proceedings; or
- (e) bankruptcy, insolvency or receivership proceedings are started by or against any of the Borrowers.

Payments Due Upon Default. If the Lender declares that I am in default, I must immediately pay the full amount of all unpaid principal, interest, other amounts due on the Note and this Mortgage and the Lender's costs of collection and reasonable attorney fees.

Lender's Rights Upon Default. If the Lender declares that the Note and this Mortgage are in default, the Lender will have all rights given by law or set forth in this Mortgage. This includes the right to do any one or more of the following:

- (a) take possession of and manage the Property, including the collection of rents and profits;
- (b) have a court appoint a receiver to accept rent for the Property (I consent to this);
- (c) start a court action, known as foreclosure, which will result in a sale of the Property to reduce my obligations under the Note and this Mortgage; and
- (d) sue me for any money that I owe the Lender.

Notices. All notices must be in writing and personally delivered or sent by certified mail, return receipt requested, to the addresses given in this Mortgage. Address changes may be made upon notice to the other party.

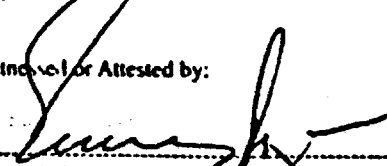
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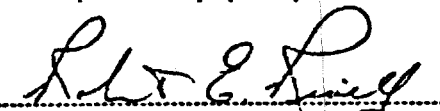
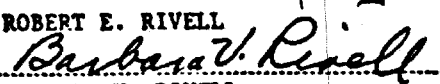
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Signatures. I agree to the terms of this Mortgage. If the Borrower is a corporation, its proper corporate officers sign and its corporate seal is affixed.

Witnessed or Attested by:  
  
 \_\_\_\_\_  
 EDWARD M. HOGAN,  
 Attorney at Law of New Jersey

 (Seal)  
 \_\_\_\_\_  
 ROBERT E. RIVELL  
 (Seal)  
 \_\_\_\_\_  
 BARBARA V. RIVELL

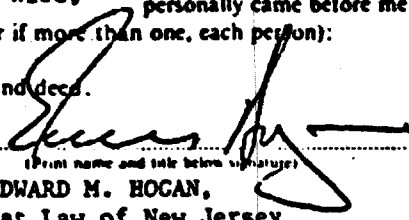


STATE OF NEW JERSEY, COUNTY OF HUNTERDON  
I CERTIFY that on November 8th, 19 84

SS.:

RECORDED  
NOV 14 11 33 PM '84  
HUNTERDON COUNTY  
DOROTHY K. TIPOK  
CLERK

ROBERT E. RIVELL and BARBARA V. RIVELL, Husband & Wife, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):  
(a) is named in and personally signed this document; and  
(b) signed, sealed and delivered this document as his or her act and deed.



EDWARD M. HOGAN,  
Attorney at Law of New Jersey

STATE OF NEW JERSEY, COUNTY OF  
I CERTIFY that on

, 19

SS.:

personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the secretary of the corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the President of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (d) this person knows the proper seal of the corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on  
. 19

(Print name of attesting witness below signature)

**NOTE MORTGAGE**

Dated: November 8th, 19 84

ROBERT E. RIVELL and  
BARBARA V. RIVELL,  
Husband and Wife,

Borrower(s).

TO

HIGHVIEW DEVELOPMENT CORPORATION  
EMPLOYEES PENSION TRUST,

Lender(s).

R&R:

HOGAN, FOLK & SIMMS  
COUNSELLORS AT LAW  
HIGHWAY #22 P.O. BOX 100  
WHITEHOUSE, NEW JERSEY 08886

RECORDED

Hunterdon County, N. J.

NOV 14 1984

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ON 11/13

DOROTHY K. TIPOK  
COUNTY CLERK

(Seal)

Lender

To the County Recording Officer of

This Mortgage is fully paid. I authorize you to cancel it of record.

Dated . 19

I certify that the signature of the Lender is genuine.

31171

END OF DOCUMENT