

ML - Tewksbury

9/16/85

Certification of Richard Dieterly regarding  
motion for transfer to Council on Affordable  
Housing

• attorney for  $\Delta$

p 32

+ deposition • upon oral examination transcript

ML 000760V

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

<hr/>		SUPERIOR COURT OF NEW
		JERSEY
		LAW DIVISION
		HUNTERDON COUNTY/MIDDLESEX
		COUNTY
ROBERT E. RIVELL	:	MOUNT LAUREL
	:	DOCKET NO. L-040993-84PW
Plaintiff	:	
vs.	:	CIVIL ACTION
	:	
TOWNSHIP OF TEWKSBURY	:	CERTIFICATION OF RICHARD
	:	DIETERLY REGARDING
Defendant	:	MOTION FOR TRANSFER TO THE
	:	COUNCIL ON AFFORDABLE
	:	HOUSING
<hr/>		

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

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

1 ROBERT E. RIVELL, :

2  
3  
4 Plaintiff, :

5 vs. :

DEPOSITION UPON  
ORAL EXAMINATION

6 TOWNSHIP OF TWKSBURY, :  
7 a Municipal Corporation :  
8 located in Hunterdon :  
County, New Jersey, :

OF  
ROBERT E. RIVELL

9 Defendants, :  
-----

10 TRANSCRIPT of the deposition of ROBERT E. RIVELL,  
11 witness called for Oral Examination in the above-entitled  
12 action, said deposition being taken pursuant to Rules  
13 Governing Civil Practice in the Superior Courts of New  
14 Jersey, by and before DONNA L. RINALDI, a Notary Public  
15 and Certified Shorthand Reporter of the State of New Jersey,  
16 Certificate No. 1310, at the offices of GEBHARDT & KIEFER  
17 ESQS, 21 Main Street, Clinton, New Jersey on February 14,  
18 1985, commencing at 10:00 a.m.  
19

20 ROBERT GIORDANO  
21 Petersburg Road  
22 Hackettstown, New Jersey, 07840  
(201) 852-5777  
23  
24  
25



7

I N D E X

WITNESS

DIRECT

Robert E. Rivell

2

E X H I B I T S

EXHIBITS

DESCRIPTION

IN IDENTIFICATION

7	D-1	Option Agreement	6
8	D-2	Map	18
9	D-3	Findings of fact	18
10	D-4	Minutes	18
11	D-5	Minutes	25
12	D-6	Proposed ordinance	28
13	D-7	Drawing	51
14	D-8	Traffic study	53
15	D-9	Mortgage	84

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

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

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



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.



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handwritten provisions?

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

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

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

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

A Paragraph three?

Q Right.

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

MR. DIETERLY: I will state that I am not asking for a legal conclusion about what 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 Rivall 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. DISTERLY: Could we have this  
9 marked for identification?

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

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, Mt. Laurel, 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 ACREAGE 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>ACLOSURE</sup> TO REPAY THE FIRST MORTGAGE DATED 9/14/54

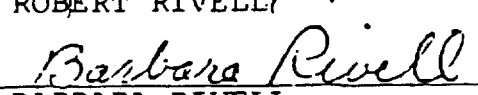
7. Rivell represents that the title to the aforementioned property was not derived from any Martin Act Proceedings or any proceeding based upon the non-payment of municipal taxes and assessments of adverse possession.

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.

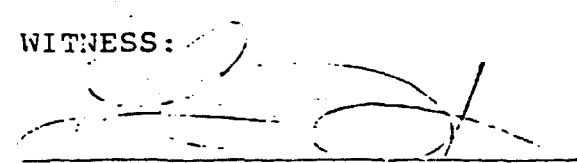
WITNESS:

  
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

RV8T-1

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

FORM 0664 REV 0092

# MORTGAGE

Prepared by *[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 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. Gimbél, 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>1/2</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. ~~Interest 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 ~~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:

.....  
*[Signature]*

..... (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.

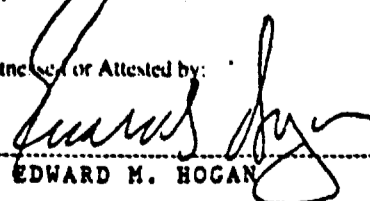
**No Waiver by Lender.** Lender may exercise any right under this Mortgage or under any law, even if Lender has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. Lender does not waive its right to declare that I am in default by making payments or incurring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


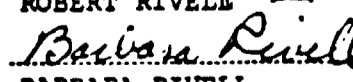
**Each Person Liable.** This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Lender may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

**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.

Witness or Attested by:  
  
 EDWARD M. HOGAN

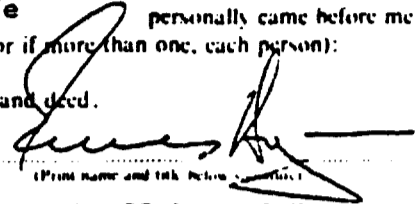
 (Seal)  
 ROBERT RIVELL  
 (Seal)  
 BARBARA RIVELL

0664-0097  
 RECORDED  
 SEP 20 2 12 PM '84  
 HUNTERDON COUNTY CLERK

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

SS.:

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 MORRIS  
 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

(Borrowers).

TO

HIGHVIEW DEVELOPMENT  
 CORPORATION EMPLOYEES  
 RETIREMENT TRUST

(Lenders).

**RECORD & RETURN TO:**

WAHL, FOX AND AST, P.C.  
 P.O. Box 1309R  
 Morristown, NJ 07960

**RECORDED**

Hunterdon County, N. J.

SEP 20 1984

BOOK 664 PAGE 19

ON \_\_\_\_\_  
 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.

20007

END OF DOCUMENT

EXHIBIT B

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

ROBERT E. RIVELL, :  
 :  
 Plaintiff, : DEPOSITION OF:  
 :  
 -vs- : HARRY OLSTEIN  
 :  
 TOWNSHIP OF TENKSBURY, :  
 :  
 Defendant. :  
 .....!

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  
Honahan, 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.

GEHARDT & 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

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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?

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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 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 positiv  
25 that High View Development Retirement-- I have two, a coupl

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 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?

1 of them. The Retirement Trust is just myself.

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

3 A Yes.

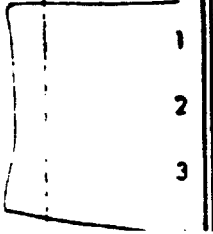
4 Q It was dated the same date as this option?

5 A I presume so, yes.

6 Q That mortgage is still open and outstanding?

7 A Yes.

---



(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

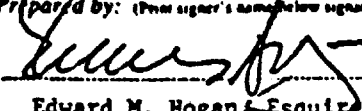
704 - NOTE MORTGAGE  
Ind. or Corp - Plain Language

RVST-1

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One Commerce Drive, Cranford, N.J. 07016

0667 PAGE 0666

# MORTGAGE

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

This Mortgage is made on November 8th, 1984.

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, 1984 (referred to as the "Note"). The Note provides for monthly 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, 1985. 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 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.