



Resolution No.: 10-16-15-077

Date: November 2, 2015

**RESOLUTION FOR THE ANNEXATION OF
EVANS JARRELL, LLC PROPERTY
IN ACCORDANCE WITH THE
CHARTER OF THE TOWN OF CHESWOLD**

Whereas, the Charter of the Town of Cheswold, Section 3.1.1 and Section 3.2.1, authorizes the Town Council to consider requests from property owners to extend the boundaries of the said Town after notification of the property owners and the residents of the Town and the territory proposed to be annexed; and

Whereas, Evans Jarrell, LLC Properties, LLC ("Evans Jarrell"), represented by Mr. Barrett Edwards, Esquire, has filed an application, (Annexation Application 2015-0305-0002), with the Town seeking annexation of one, (1), parcel totaling approximately 133.9 acres and also known as MAP ID 3-00-05600-01-1200-0001, (the "Property"); and

Whereas, said parcel lies on the west side of Commerce Street/McKee Road, south of School Lane and adjacent to the Fox Pointe development, thus it is contiguously connected to the Town of Cheswold; and

Whereas, the Annexation Application, (2015-03-25-0002), includes the approved attached Annexation Agreement by and between the Town and Evans Jarrell, LLC and the Annexation Agreement, entered into by the Town, in accordance with Section 3.2.8, of the Town Charter, provides in pertinent part, that:

1. Annexation procedure shall be adhered to as directed by Section 3 of the Town Charter;
2. Town Council shall consider the approval of a R-3 Zoning Code, (Multi-Family and Townhouse Residential);
3. Town Council shall adopt an Annexation Ordinance upon the approval of the R-3 Zoning Code and the completion of the special election;
4. Town shall provide fire, rescue and police services to the Annexed property and that the Town has not agreed to provide public utilities;
5. Applicant shall comply with Town Ordinances;
6. Sub-division approvals granted by Kent County for the Eddie Evans properties shall be binding on the Town and the Town shall not require any additional approvals for the Eddie Evans property that have already been approved by Kent County; provided however, that following annexation of the Eddie Evans Property, the development of the Eddie Evans Property shall be subject to the requirements of the Town of Cheswold Land Use Ordinance;

7. Applicant shall take all steps necessary to name the Town as the beneficiary of such bonds and guaranties previously obtained, within ninety, (90), days of the final annexation;
8. Town waives real property taxes for the annexed property for seven, (7), years from the date the annexed property is annexed into the Town and if prior to the expiration of the seven, (7), years, any portions of the annexed property are transferred to new owners, the tax waiver shall continue with respect to those transferred portions for the remained of the seven, (7), years;
9. Enforcement of the Agreement shall be conducted as outlined in the Annexation Agreement;
10. Remainder of the Annexation Agreement deals with the binding effect of the Agreement; the recording of the Agreement; the handling of Conflicts and Severability; and

Whereas, the Town Council accepted the Annexation Application and Agreement for processing, upon an unanimous vote of the Town Council at the regularly scheduled Town Council meeting, held on Monday, May 4, 2015; and

Whereas, upon recommendation from the Planning Commission, (Memo 15-002), May 27, 2015, and for the reasons stated on the record of the June 1, 2015, Town Council meeting, the Town Council approved the Zoning Code of the Evans Jarrell, LLC property to be R-3 Multi-Family and Town House Residential; and

Whereas, the Mayor and Town Council of the Town of Cheswold passed a Resolution, (07-13-15-073), on July 21, 2015, proposing a Public Hearing on the annexation of the Property and;

Whereas, such Public Hearing was held as properly scheduled and noticed, on Tuesday, August 25, 2015, at 6:00 pm, at the Cheswold Fire Hall, 371 Main Street, Cheswold, Delaware, 19936 and gave proper notification of the proposed annexation and Public Hearing to property owners and residents of both the Town and the territory to be annexed and solicited public comment and opinion on the proposal, as required by the Town Charter: and

Whereas, the Plan of Services approval was received from the Office of State Planning Coordination, on August 25, 2015, as prescribed by Delaware State Law; and

Whereas, for the reasons stated on the record at the Town Council meeting held on, September 9, 2015, the Town Council ordered a Special Election with respect to the proposed annexation; and

Whereas, a Special Election was held on Thursday, October 15, 2015, at the Cheswold Town Hall, located at 691 Main Street, Cheswold, Delaware, from 1:00 pm to 3:30 pm, to receive ballots of yes or no votes on the proposed annexation of the Evans Jarrell, LLC property into the corporate limits of the Town of Cheswold, by those entitled to vote per the Cheswold Town Charter, Section 3.2.5; and

Whereas, such Special Election was conducted and presided over by Presiding Officer Lorraine Sine and Board of Special Election members, Kenneth Brown and Robert Ridgeway, as directed by the Town Charter 3.2.6; and

Whereas, the majority of the votes were cast for the proposed annexation of the Evans Jarrell, LLC property into the corporate limits of the Town of Cheswold; and

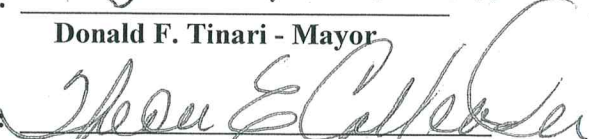
Whereas, upon final adoption and approval of this annexation, the Town Council shall cause the Zoning Map of the Town of Cheswold Land Use Ordinance to be revised to reflect addition of the annexed property, along with the associated Zoning Code;

NOW THEREFORE BE IT RESOLVED, by a unanimous vote of the Town Council and agreement of the Mayor, by this Resolution duly adopted by the Town Council and Mayor, at the Town of Cheswold Town Council Monthly Meeting, held on Monday, November 2, 2015, at 6:00 p.m., in the Cheswold Fire Hall, 371 Main Street, Cheswold, DE 19936, that the Town proposes to annex the Property to the Town's limits and territory;

I, Donald F. Tinari, Mayor of the Town of Cheswold, do hereby certify that the foregoing is a true and correct copy of Resolution 08-25-15-075, passed by an affirmative unanimous vote of the Town Council at the Monthly Council Meeting, held on, Monday, November 2, 2015, at which a quorum was present and voting throughout, and that the same is still in force and effect.

APPROVED: 
Donald F. Tinari - Mayor

Date: November 2, 2015

CERTIFIED: 
Theon E. Callender - Secretary/Treasurer

Date: November 2, 2015

Agreed: Robert W. Sine
Vice-Mayor Robert W. Sine

Date: November 2, 2015

Agreed: Sherry Lambertson
Councilperson Sherry Lambertson

Date: November 2, 2015

Agreed: Position Vacant
Councilperson

Date: November 2, 2015

Agreed: Position Vacant
Councilperson

Date: November 2, 2015

NOTARIZED: Shadina Jones
Shadina Jones - Town Clerk

Date: November 2, 2015

Annexation Agreement Attached

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT, (hereinafter referred to as "Agreement"), is made and is effective on this 21st day of August, 2015, by and between the TOWN OF CHESWOLD, DELAWARE, a municipal corporation organized and existing under and by virtue of the laws of the State of Delaware (hereinafter referred to as "Town") by and through Town Council, Regal Contractors, LLC ("Regal"), Eddie Evans Farm, Phase I, LLC, a Delaware limited liability company ("Eddie Evans I"), Eddie Evans Farm, Phase II, LLC, a Delaware limited liability company ("Eddie Evans II"), Eddie Evans Farm, Phase V, LLC, a Delaware limited liability company ("Eddie Evans V"), Eddie Evans Farm, Phase VI, LLC, a Delaware limited liability company ("Eddie Evans VI"), Eddie Evans Farm, Phase VII, LLC, a Delaware limited liability company ("Eddie Evans VII"), Eddie Evans Farm, Phase VIII, LLC, a Delaware limited liability company ("Eddie Evans VIII"), Eddie Evans Farm, Phase IX, LLC, a Delaware limited liability company ("Eddie Evans IX" and collectively with Regal, Eddie Evans I, Eddie Evans II, Eddie Evans V, Eddie Evans VI, Eddie Evans VII, and Eddie Evans VIII the "Eddie Evans Group") and Evans Jarrell, LLC ("Jarrell" and collectively with the Eddie Evans Group, the "Petitioners"). Each of the Town, the Eddie Evans Group and Jarrell may also be individually referred to herein as a "Party" or any two or more thereof as the "Parties."

WITNESSETH:

WHEREAS, the Town is a municipal corporation organized and existing under the laws of the State of Delaware; and

WHEREAS, Jarrell is the owner of record of certain real property more fully described on Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the "Jarrell Property"), which property is contiguous to, but not within, the corporate limits of the Town; and

WHEREAS, Eddie Evans Group is the owner of record of certain real property more fully described in Exhibit B attached hereto and incorporated herein (hereinafter referred to as "Eddie Evans Property"), which property is not, absent annexation of Jarrell Property, contiguous to and is not located within the corporate limits of the Town; and

WHEREAS, the Petitioners have filed a Petition for Annexation ("Petition") with the Town seeking the annexation of the Jarrell Property and the Eddie Evans Property (collectively, the "Annexed Property") into the Town.

WHEREAS, the Petitioners and the Town desire to address matters that are or may be relevant to the Annexed Property including, but not limited to, zoning of the Annexed Property, public utilities, public services, storm water management, compliance with existing recorded subdivision plans, and future subdivision approvals.

WHEREAS, the Petition is contingent upon the adoption and approval of this Agreement by Town Council; and

WHEREAS, the Petition is also contingent upon the adoption by Town Council of an ordinance adopting an amendment to the Town's Land Use Ordinance, adopted April, 2005, as amended from time to time ("Land Use Ordinance") which, among other things, creates a new zoning district to be known as the "R-5 Age-Defined Community" zoning district (the "R-5 Zoning Amendment").

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the Parties hereto agree as follows:

1. **Applicable Law.** This Agreement is made pursuant to and in accordance with the provisions of Section 3.2.8 of the Town's Charter entitled "Annexation Agreements". The preceding "Whereas" clauses are hereby made a part of this Agreement and incorporated herein as if fully set forth.
2. **Annexation Procedure.** The Petition shall be considered by Town Council in accordance with the rules and procedures mandated by Section 3 of the Town's Charter and notwithstanding anything that may be contained herein to the contrary, nothing in this Agreement shall alter such rules and procedures. Upon acceptance of the Petition by Town Council, Town Council shall adopt a resolution notifying the property owners and the residents of the Annexed Property and the Town of the proposed annexation by the Town of the Annexed Property, and shall fix a time and place for the public hearing on such proposed annexation. At the public hearing, Town Council shall hear comments and opinion from any concerned party regarding the proposed annexation. The Town Council may, either at the public hearing or within thirty (30) days thereafter, pass a resolution ordering a special election to be held regarding the proposed annexation of the Annexed Property, which action shall be considered the determination by the Town Council to proceed with the Petition and the proposed annexation of the Annexed Property.
3. **Zoning Ordinance.** Upon a favorable vote to the proposed annexation at the special election, the Town Council shall at its first meeting following the special election, consider the R-5 Zoning Amendment. Nothing in this Agreement shall require or otherwise bind the Town and/or its Town Council to approve the R-5 Zoning Amendment. In the event that Town Council does not adopt the R-5 Zoning Amendment, the Petition shall automatically be deemed withdrawn by the Petitioners. In the event that Town Council adopts the R-5 Zoning Amendment, the Eddie Evans Property (if annexed) shall be zoned R-5 Age-Defined Community effective immediately upon annexation, and the Jerrell Property (if annexed) shall be zoned R-3 Multi-Family and Townhouse Residential effective immediately upon annexation.
4. **Annexation Ordinance.** Upon a favorable vote to the proposed annexation at the special election and the adoption by Town Council of the R-5 Zoning Amendment, Town Council shall at its first meeting following the special election adopt a resolution annexing the Annexed Property (hereinafter referred to as the "Annexation Resolution") and including it within the limits of the Town. The Annexation Resolution shall be signed by the Mayor and certified by the Secretary with the municipal seal affixed, together with a plot of the Annexed Property and shall be forthwith filed for record in the Office of the Recorder of Deeds in and for Kent County, Delaware. Recording shall take place no more than twenty (20) days after the enactment of the

Annexation Resolution. The Town shall send all notices required by law, if any, to be sent in connection with the enactment of such Annexation Resolution.

5. **Services to Annexed Property.** The Town will provide fire, rescue and police services to the Annexed Property. Petitioners acknowledge and agree that the Town has not agreed to provide, and will not at this time provide, any public utility or other utility-type services at this time to the Annexed Property including, but not limited to, water, stormwater management, sewer, road maintenance, electric, and/or solid waste removal services; provided, however, that nothing herein shall prevent the Town from choosing to provide such service in the future to the Annexed Property, and at such time as the Town provides distribution of these services through a municipal or municipally approved operation, the Petitioner will obtain these services pursuant to Town Codes, Ordinances and operating practices, with all costs to transfer such services already being provided to the Annexed Property being at the sole expense of the Town. Petitioners acknowledge and agree that any streets located within the Annexed Property that are dedicated to public use shall be maintained by the owner of such streets (including, but not limited to, any homeowner's association or maintenance corporation charged with such obligation) and not the Town.

6. **Compliance with Ordinances.** Petitioners agree to comply with all ordinances of the Town in effect at the time of annexation of the Annexed Property unless expressly waived or varied in this Agreement or pursuant thereto. Effective immediately upon annexation of the Annexed Property into the Town, the provisions of the Land Use Ordinance shall be applicable to and govern any use of the Annexed Property including, but not limited to, zoning, subdivision, permitting, inspection, fees, stormwater management, drainage, erosion and sediment control, streets, sidewalks, parking, signs, landscaping and active open space. Notwithstanding anything herein to the contrary, all structures and uses existing on the Annexed Property at the time of annexation that do not comply with any Town ordinances or regulations shall be deemed legal non-conforming structures and uses that shall be permitted to exist in the condition and intensity in which they are annexed into the Town.

7. **Existing Final Recorded Subdivision Plans.** The Eddie Evans Property is subject to existing final recorded subdivision plans recorded in the Office of the Recorder of Deeds in and for Kent County on December 10, 2009 in Plot Book 108, Page 4 and on April 26, 2011 in Plot Book 113, Page 60 ("Recorded Plans"), copies of which are attached hereto as Exhibit C and incorporated by reference as if set forth fully herein, which were approved by Kent County prior to annexation. Nothing in this Agreement (or by virtue of the annexation of the Eddie Evans Property) shall relieve the owners of the Eddie Evans Property from compliance and adherence to the Recorded Plans, including all notes on the Recorded Plans. The Eddie Evans Property shall be annexed subject to all approvals that have been granted by Kent County, and all approvals granted by Kent County for the Eddie Evans Property, including but not limited to subdivision approvals and approvals of improvements that have been installed, shall be binding on the Town, and the Town shall not require any additional approvals for the Eddie Evans Property that have already been granted by Kent County; provided, however, that, following annexation of the Eddie Evans Property, the development of the Eddie Evans Property shall be subject to the requirements of the Land Use Ordinance including, but not limited to, any plans, permits, inspections, fees, procedures and/or other requirements that may be contained therein. To the extent that there is a conflict between the Recorded Plans and the Land Use Ordinance, the more stringent of the two will apply.

Nothing in this Agreement shall be deemed to relinquish any duties, rights, or obligations of any other applicable governing authority or agency (i.e., DelDot, Kent County Conservation District, etc.) with respect to the Recorded Plans.

8. **Bonds and Guaranties.** To the extent that a Petitioner has previously posted a bond or guaranty of the type required by the Land Use Ordinance prior to the annexation of the any of the Annexed Property that remains open on the date of annexation, the Petitioner shall be required to take all requisite steps necessary to name the Town as the beneficiary of such bond or guaranty within ninety (90) days of the final annexation of the Annexed Property. Prior to transferring the bond, Petitioner shall be permitted to have the bond amount reduced by the amount of all bonded improvements that have been completed by Petitioner. The Town may, in its sole discretion, require additional bonds and guaranties in accordance with the provisions of the Land Use Ordinance.

9. **Tax Abatement.** The Town does hereby waive real property taxes for the Annexed Property for seven years from the date the Annexed Property is annexed into the Town. If, prior to the expiration of the seven years, any portions of the Annexed Property are transferred to new owners, the tax waiver shall continue with respect to those transferred portions for the remainder of the seven years.

10. **Enforcement of Agreement.**

10.1 Upon a breach of this Agreement, any of the Parties, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreement herein contained, or may be awarded damages for failure of performance; provided, however, that the Petitioners shall not be entitled to disconnect any portion of the Annexed Property previously annexed to the Town. No action taken by any party hereto pursuant to the provisions of any other Article of this Agreement shall be deemed to constitute an election of remedies and any remedies set forth in this Agreement shall be cumulative and nonexclusive of any other remedy either set forth herein or available to any party at law or in equity.

10.2 In the event of a material breach of this Agreement, the Parties agree that the Party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching Party's seeking of any remedy provided for herein, provided, however, that said thirty (30) day period shall be extended if the defaulting Party has initiated the cure of said default and is diligently proceeding to cure the same or if weather conditions are such as to make such period unreasonable.

10.3 If any of the Parties shall fail to perform any of its obligations hereunder, and the Party affected by such default shall have given written notice of such default to the defaulting Party, and such defaulting Party shall have failed to cure such default within thirty (30) days of such default notice, provided, however, that said thirty (30) day period shall be extended if the defaulting Party has initiated the cure of said default and is diligently proceeding to cure the same or if weather conditions are such as to make such period unreasonable, then, in addition to any and all other remedies that may be available, either in law or equity, the Party affected by such

default shall have the right, but not the obligation, to take such action as in its reasonable discretion and judgment shall be necessary to cure such default. In such event, the defaulting Party hereby agrees to pay and reimburse the Party affected by such default for all reasonable costs and expenses, including reasonable expert witness fees and attorney's fees, incurred by it in connection with action taken to cure such default.

10.4 The failure of the Parties to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any other Party imposed, shall not constitute as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenants, agreement or condition, but the same shall continue in full force and effect.

10.5 If any provision of this Agreement is held invalid, such provisions shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained in this Agreement.

11. Omitted.

12. **Binding Effect of Agreement; Recording.** This Agreement shall inure to the benefit of, and be binding upon, successors of Petitioners and their respective successors, grantees, lessees, and assigns, and upon successor corporate authorities of the Town and successor municipalities, and notwithstanding anything that may be contained in the Town's Charter to the contrary, shall not expire and shall constitute a covenant running with the land. If a portion of the Annexed Property is sold, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations the seller may have under this Agreement that affect the portion of the Annexed Property sold or conveyed and thereafter the seller shall have no further obligations under this Agreement as it relates to the portion of the Annexed Property conveyed. Within thirty (30) days after the execution of this Agreement, the text of this Agreement, or a suitable memorandum hereof, shall be recorded at the sole cost and expense of the Petitioners in the Office of the Recorder of Deeds in and for Kent County, Delaware.

13. **Conflicts.** In the event of any conflict or inconsistency between the terms and provisions of this Agreement and any existing or hereafter adopted resolutions, ordinances, codes or regulations by the Town, the terms and provisions of this Agreement shall supercede and control.

14. **Severability.** If any term, provision, covenant, or condition of this Agreement is held to be invalid or unenforceable by a court of law, such term, provision, covenant, or condition shall be severed and the remainder of this Agreement hereof shall be binding on the Parties and remain in full force and effect to the extent permitted by law.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the above-mentioned date.

TOWN OF CHESWOLD

Date: 8-27-2015

Donald F. Tinari (SEAL)
Mayor Donald Tinari

STATE OF DELAWARE :
 : SS
COUNTY OF KENT :

BE IT REMEMBERED that on this 27th day of August, A.D., 2015, personally came before me, a Notary Public for the State of Delaware, Donald Tinari, Mayor of the Town of Cheswold, party to this Indenture, known to me personally to be such, and has acknowledged the signature hereon as his own lawful signature and that his act of executing, sealing, and delivering this Indenture is the duly-authorized act of the Town Council of the Town of Cheswold.

GIVEN under my hand and Seal of Office, the day and year aforesaid.

Spencer
Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the above-mentioned date.

EVANS JARRELL, LLC

Date: 3-23-2015



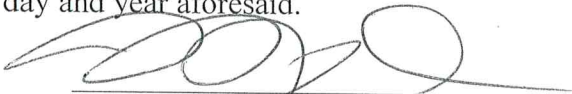
Dr. T. Noble Jarrell, Managing Member

(SEAL)

STATE OF DELAWARE :
 : SS
COUNTY OF Kent :

BE IT REMEMBERED that on this 23rd day of March, A.D., 2015, personally came before me, a Notary Public for the State of Delaware, Dr. T. Noble Jarrell, Managing Member Evans Jarrell, LLC, party to this Indenture, known to me personally to be such, and has acknowledged the signature hereon as his own lawful signature and that his act of executing, sealing, and delivering this Indenture is the duly-authorized act of the limited liability company.

GIVEN under my hand and Seal of Office, the day and year aforesaid.



Notary Public

MARK F. DUNKLE
DELAWARE LAWYER
NOTARIAL OFFICER
29 DEL. C. § 4323(a) (3)

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the above-mentioned date.

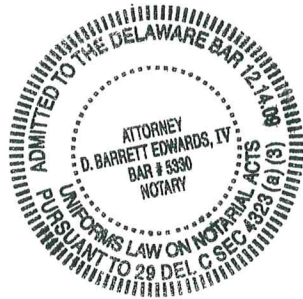
REGAL CONTRACTORS, LLC
EDDIE EVANS FARM, PHASE I, LLC,
EDDIE EVANS FARM, PHASE II, LLC
EDDIE EVANS FARM, PHASE V, LLC
EDDIE EVANS FARM, PHASE VI, LLC
EDDIE EVANS FARM, PHASE VII, LLC
EDDIE EVANS FARM, PHASE VIII, LLC
EDDIE EVANS FARM, PHASE IX, LLC

Date: 3/25/15

Mary Field, Manager (SEAL)
Mary Field, Manager

BE IT REMEMBERED that on this 25th day of March, A.D., 2015, personally came before me, a Notary Public for the State of Delaware, Mary Field, Manager of Regal Contractors, LLC, Eddie Evans Farm, Phase I, LLC, Eddie Evans Farm, Phase II, LLC, Eddie Evans Farm, Phase V, LLC, Eddie Evans Farm, Phase VI, LLC, Eddie Evans Farm, Phase VII, LLC, Eddie Evans Farm, Phase VIII, LLC, Eddie Evans Farm, Phase IX, LLC, parties to this Indenture, known to me personally to be such, and has acknowledged the signature hereon as her own lawful signature and that her act of executing, sealing, and delivering this Indenture is the duly-authorized act of the herein-referenced limited liability companies.

GIVEN under my hand and Seal of Office, the day and year aforesaid.



D. Barrett Edwards, IV
Notary Public

APPLICATION: CS-04-03

LEGAL NOTICE OF LEVY COURT HEARING: PUBLICATION: May 10, 2004

LEVY COURT HEARING DATE: May 25, 2004

LEVY COURT DECISION: Approved w/conditions & amendments

40 B

OWNERS: T. Noble Jarrell, III

PRESENT USE: Agricultural

PROPOSED USE: Residential B Planned Unit Development containing 1,021 proposed units.


At the above mentioned public hearing, on a motion duly made and seconded, the Levy Court of Kent County, Delaware, voted to adopt the following resolution:

WHEREAS, the above mentioned property owners petitioned the Levy Court to authorize a Conditional Use Permit with Site Plan in the 1st Levy Court District.

WHEREAS, a public hearing on this application was held by the Kent County Levy Court, after due notice by publication in the Delaware State News, and,

WHEREAS, after full consideration and due deliberation, the Kent County Levy Court by a unanimous decision, approved w/conditions & amendments the requested Conditional Use Permit with Site Plan.

NOW, THEREFORE, BE IT RESOLVED, that the requested Conditional Use Permit with Site Plan is hereby approved w/conditions & amendments as stated in the official minutes of the Kent County Levy Court dated May 25, 2004 (attached).



DAVID R. BURRIS, PRESIDENT
KENT COUNTY LEVY COURT