

11/3/08

**Maryjane Kenney**

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**From:** Doug Halley  
**Sent:** Friday, October 31, 2008 3:05 PM  
**To:** Maryjane Kenney  
**Subject:** FW: Draft Quail Ridge/BOH settlement  
**Attachments:** Revised Quail Settlement (A0066243).DOC

(20)

F.Y.I.

-----Original Message-----

**From:** Doug Halley  
**Sent:** Tuesday, October 28, 2008 9:27 AM  
**To:** Steve Ledoux  
**Cc:** 'Douglas Wilkins'; Stephen Anderson; John Murray  
**Subject:** FW: Draft Quail Ridge/BOH settlement

Good Morning Steve,

Attached is the Quail Ridge settlement agreement reached between the Board of Health and Quail Ridge as recommended by Town Counsel. Please note that at the request of Quail Ridge the provision for immediate payment upon transfer has been eliminated from the agreement. It is the Board of Health's anticipation as per the agreement that the new owner will conform with the payment schedule as outlined. Given the pending transfer of the property it would be extremely helpful if the Board of Selectmen could consider this agreement at their November 3rd meeting. Thanks.

Doug

-----Original Message-----

**From:** Douglas Wilkins [mailto:DWilkins@AndersonKreiger.com]  
**Sent:** Thursday, September 25, 2008 1:41 PM  
**To:** Steven Graham  
**Cc:** Doug Halley; John Murray; Stephen Anderson  
**Subject:** RE: Draft Quail Ridge/BOH settlement

Try this.

Doug

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**From:** Steven Graham [mailto:SGraham@graham-harsip.com]  
**Sent:** Thursday, September 25, 2008 11:24 AM  
**To:** Douglas Wilkins  
**Cc:** Doug Halley; John Murray; Stephen D. Anderson  
**Subject:** RE: Draft Quail Ridge/BOH settlement

Doug,

I just took a quick look at the redraft of the Settlement Agreement and saw that you provided for payments in increments of \$10,000. I hope that was inadvertent as my client's offer was to make incremental payments in the amount of \$5,000, which is what the BOH vote as part of the settlement last Monday.

Please correct and send back to me.

10/31/2008

Steve

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**From:** Douglas Wilkins [mailto:DWilkins@AndersonKreiger.com]  
**Sent:** Wednesday, September 24, 2008 8:08 PM  
**To:** Steven Graham  
**Cc:** Doug Halley; John Murray; Stephen D. Anderson  
**Subject:** Draft Quail Ridge/BOH settlement

Steven: Here is my redraft based upon Monday's BOH meeting.

Doug

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Douglas H. Wilkins, Esq.  
ANDERSON & KREIGER LLP  
One Canal Park, Suite 200  
Cambridge MA 02141  
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Phone: 617-621-6580  
Fax: 617-621-6680  
e-mail: [dwilkins@andersonkreiger.com](mailto:dwilkins@andersonkreiger.com)  
[www.andersonkreiger.com](http://www.andersonkreiger.com)  
Main Firm #s:  
Phone: 617-621-6500  
Fax: 617-621-6501

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

\_\_\_\_\_  
TOWN OF ACTON, on behalf of its Board  
of Health,

Plaintiff,

v.

QUAIL RIDGE COUNTRY CLUB LLC,

Defendant.  
\_\_\_\_\_

**SETTLEMENT AGREEMENT**

**Introduction**

Whereas, the Town of Acton (the “Town”) on behalf of its Board of Health (“Board”) brought this action against Defendant Quail Ridge Country Club LLC (“Quail Ridge”), to redress Quail Ridge’s alleged violations of the Acton Board of Health’s Regulations (the “Regulations”) and the conditions upon the irrigation well variance issued by the Board on October 25, 2004 (“Permit”); and

Whereas, the Town alleged that Quail Ridge pumped groundwater for irrigation of the 18-hole golf course at the Quail Ridge Country Club, in Acton, Massachusetts (hereinafter, the entire country club facility is referred to as the “Facility” and the golf course is referred to as the “Golf Course”), from on-site wells at a rate exceeding the volume allowed under the Permit without seeking or receiving from the Board a required permit to do so; failed to keep and submit to the Board for the years 2004 through 2006 almost all of the quarterly reports of water

withdrawals and other information that Quail Ridge was required to file; and failed to perform stream flow monitoring of Nagog Brook during those same years; and

Whereas, to remedy these alleged violations, which the Town asserts have harmed the environment, the Town brought this action for injunctive relief and substantial civil penalties; and

Whereas, Quail Ridge and the Town have reached an agreement which resolves Quail Ridge's liability to the Town; and

Whereas, this settlement was reached after evaluating respective litigation risks and is in the public interest.

Now, therefore, the Town and Quail Ridge hereby agree as follows:

**Jurisdiction, Venue, Parties Bound and Contempt**

1. The Superior Court has jurisdiction over the subject matter of the above-captioned action and over the parties thereto.
2. Venue is appropriate in Middlesex County.
3. The Complaint alleges facts which if proven would constitute good and sufficient grounds for the relief set forth in the proposed final judgment (the "Final Judgment") attached hereto.
4. The parties bound by this Settlement Agreement are the Town; Quail Ridge, and any person or entity acting by, for or through Quail Ridge, including, but not limited to, Quail Ridge's managers, officers, directors, agents, servants, attorneys-in-fact, employees, successors, assigns and transferees. Quail Ridge shall not violate this Settlement Agreement or the Final Judgment and shall not allow any other person or entity to do so. No change in ownership of Quail Ridge and/or the Quail Ridge Country Club in Acton, Massachusetts, will alter in any way any responsibilities of Quail Ridge or other persons bound under this Settlement Agreement or

the Final Judgment. Quail Ridge shall not transfer any interest in Quail Ridge or the Quail Ridge Country Club to any transferee without first providing to each such transferee a signed copy of this Settlement Agreement.

5. Quail Ridge acknowledges that any violation of the Final Judgment may be cause for Quail Ridge or any of the other persons bound under the Final Judgment to be adjudged in contempt of court.

### **Joint Motion for Entry of Final Judgment**

6. Concurrently with the execution of this Settlement Agreement, the Town and Quail Ridge shall authorize and direct their attorneys of record to execute and file with the Middlesex Superior Court a Joint Motion for Entry of Final Judgment in the form attached as Exhibit A.

7. The Town and Quail Ridge consent to the entry of a Final Judgment in the form attached as Exhibit B. Quail Ridge waives all rights of appeal upon entry of the Final Judgment.

8. This Settlement Agreement shall become effective upon being signed by the Town and Quail Ridge.

9. If for any reason the Court should decline to approve the Final Judgment on any ground except as to form, this Settlement Agreement is voidable at the option of either the Town or Quail Ridge within fourteen (14) days of receipt of written notice of the Court's decision. If, for any reason, the Court should determine prior to the entry of the Final Judgment that substantive modifications to the Final Judgment are necessary prior to approving the Final Judgment, the Town and Quail Ridge shall enter into good faith negotiations to discuss the modifications, and this Settlement Agreement shall be void unless the Town and Quail Ridge agree otherwise within fourteen (14) days of such determination.

### **Payment of Civil and Stipulated Penalties**

10. Quail Ridge shall pay the Town a civil penalty (the "Civil Penalty") of Twenty Thousand Dollars (\$20,000.00), payable as follows: Five Thousand Dollars (\$5,000.00) payable on or before October 10, 2008 and three additional monthly installments of Five Thousand Dollars (\$5,000.00) each on or before each first day of November, 2008, December, 2008 and January, 2009. but in neither event before the Board of Selectmen may approve this Agreement. Each payment due under this Settlement Agreement and the Final Judgment shall be made by bank or certified check made payable to the Town of Acton, and delivered to the Office of the Town Manager at Town Hall, 472 Main Street, Acton, Massachusetts, with copies to the Board (at the same address) and to Town Counsel.

11. For each violation of each provision of this Settlement Agreement or the Final Judgment that occurs after the Court's entry of the Final Judgment, Quail Ridge shall pay to the Town a stipulated penalty of Fifty Dollars (\$50.00) per day per violation for as long as the violation continues. All stipulated penalties shall be paid to the Town in the manner set forth above for the payment of the Civil Penalty. Payment of any stipulated penalties owed and correction of all violations are necessary for Quail Ridge to return to compliance with the Final Judgment and this Settlement Agreement.

### **Supplemental Environmental Project**

12. In order to obtain significant environmental and public health benefits, protection and improvement, Quail Ridge shall fund a Supplemental Environmental Project ("SEP") that goes beyond what is required of Quail Ridge by law. To fund the SEP described below and more fully in Exhibit C, Quail Ridge shall pay Thirty Thousand Dollars (\$30,000.00) ( the "SEP Payment") toward (1) a pump test to assess the viability of Quarry Pond as a source to refresh NARA Pond during May through September each year and (2) the design, permitting,

construction, installation, operation, maintenance, repair and replacement of aeration fountain/devices or other water quality improvement system in the North Acton Recreation (NARA) Pond and in Quarry Pond (the latter, only if shown to be viable after the pump test), of a design, appearance and capacity approved in advance of installation by the Board (which approval shall not be withheld unreasonably). The SEP Payment shall be payable as follows: Five Thousand Dollars (\$5,000.00) payable on or before February 1, 2009, and five monthly additional installments of Five Thousand Dollars (\$5,000.00) each payable on or before each first day of March through July, 2009, inclusive. In accordance with G.L. c. 44, § 53A, all such payments shall be deposited with the Town treasurer and held as a separate account and may be expended by the Board of Selectmen, without further appropriation, toward the Supplemental Environmental Project described herein. Interest on all such funds shall remain with and shall become a part of the same account and may be expended by the Board of Selectmen, without further appropriation, for the same purposes. Any funds that are left over after the completion of the SEP will be transferred to the Town's general revenue fund. Quail Ridge may, at its election, provide a plaque commemorating its funding of each aeration device or fountain, but the costs of purchasing, installing and maintaining the plaque shall not be credited toward the SEP.

13. If for some reason the aeration/fountain devices or other water quality improvement system cannot be installed in NARA Pond or Quarry Pond, Quail Ridge shall propose an alternative to the SEP using the funds. In such case, Quail Ridge shall pay the \$30,000.00 required for the SEP to the Town in accordance with G.L. c. 44, § 53A, as above. The funds will be disbursed promptly to the substitute entity by the Town upon receiving written notice that the substitute entity has been selected by Quail Ridge and has been determined by the Town to be suitable to implement the SEP.

14. At the time Quail Ridge makes the \$30,000.00 payment to fund the SEP, Quail Ridge shall send to each of the Town, the Board and Town Counsel a copy of the check by which the payment is made.

15. Quail Ridge hereby certifies that, as of the date of its execution of this Settlement Agreement, Quail Ridge is not otherwise required, by virtue of any local, state or federal order, consent decree, permit or agreement, to perform the SEP. Quail Ridge further certifies that it has not agreed to undertake and is not presently negotiating to undertake, any of the obligations set forth as the SEP in any other enforcement action or pursuant to any grant from MassDEP, the United States Environmental Protection Agency or any other entity.

16. Apart from the plaque referenced in paragraph 12 above, Quail Ridge agrees that any public statements by Quail Ridge, oral or written, to any person or entity as to the SEP shall include the following language: "This project was undertaken by Quail Ridge Country Club LLC in connection with the settlement of an enforcement action brought by the Town for alleged violations of the environmental regulations and penalties of the Town's Board of Health."

17. Quail Ridge shall pay Five Thousand (\$5,000) Dollars upon the execution of this Agreement (in addition to the amounts set forth in paragraphs 10 - 12 above) toward the proposal submitted to the Board by O'Reilly, Talbot & Okun to evaluate the potential impact from the irrigation wells at Quail Ridge as set forth in the proposal, a copy of which is attached hereto and incorporated herein by reference and marked as Exhibit D ( the "Proposal").

18. The Permit may be revoked for failure to pay any installment of \$20,000 for the Civil Penalty, any installment of the \$30,000.00 for the SEP, the \$5,000 for the Proposal, and any sums that may become due as stipulated penalties under Paragraph 11, above; provided that the installment or sum or any part thereof remains unpaid after a 30 day grace period following

any due date. Quail Ridge has executed or will execute a Notice of Agreement recorded within the chain of title of the property that Quail Ridge owns on Skyline Drive off of Great Road in Acton, Massachusetts, which is more fully described in Exhibit E attached hereto and made a part hereof. Quail Ridge acknowledges that its obligations to pay the Civil Penalty, funds for the SEP, funds for the Proposal, and any stipulated penalties that may become due are part of the settlement of a penal action by the Commonwealth, and that Quail Ridge's payment obligations are neither "preferences" under the United States Bankruptcy Code, 11 U.S.C. § 547, nor obligations dischargeable in bankruptcy because of the limitations on discharge set forth in 11 U.S. C. §523(a)(7).

**Interest and Collections**

19. Quail Ridge agrees that the Town may institute suit against it to collect any amounts due and owing under the Settlement Agreement and Final Judgment and to enforce their terms. If any payment required pursuant to this Settlement Agreement or the Final Judgment is late or not made, Quail Ridge shall pay interest on any overdue amount for the period of such nonpayment at the rate of twelve percent (12%) per annum. In the event of any action by the Town to collect any sums due and owing or to enforce the Settlement Agreement or the Final Judgment, Quail Ridge shall pay all expenses incurred by the Town, including attorneys' fees actually incurred and all costs of collection.

20. All sums payable for the Civil Penalty, the SEP and the Proposal shall become immediately due and payable in the event that the Property is sold or refinanced.

**Affirmative Relief Under the Regulations and Permit**

21. Quail Ridge shall not conduct any operations at the Facility that are not in compliance with the Regulations, Permit and 310 C.M.R. 35.00 *et seq.*, any permits or approvals

that have been or may be issued by MassDEP relative to the Facility, and any other applicable state, federal or local law or regulations.

22. Quail Ridge shall not pump any water from Wells BE-1, BE-2, BE-3, BE-4 or BE-6, or from the Other Ponds, for irrigation at the Facility or for any other purpose, without prior written consent and approval from the Board pursuant to the regulations. Quail Ridge shall not withdraw more than 7.1 million gallons for any purpose in any 90 day period from Wells BE-5 and BE-7, including without limitation to recharge the Pond. Nor shall it withdraw more than 0.1 million gallons on any day for any purpose from those wells, or refill the irrigation pond(s) during periods of high irrigation demand, May through September, each year. No irrigation water may be drawn or used on site from any other wells on site or the Acton Water District, or any other source without prior written approval and further permit approvals by the Acton Board of Health.

23. Within five (5) days of the Court's entry on its docket of the Final Judgment, Quail Ridge shall provide to the Board a copy of Quail Ridge's current written agreement, if any, with the Acton Water District for water purchases for the Facility. Quail Ridge shall provide the Board with a copy of any revised or new water purchase agreement with any water source within five (5) days of the agreement's effective date.

24. From the date this Settlement Agreement becomes effective, Quail Ridge shall separately meter each and every water withdrawal source at the Facility that is actually used or could be used to irrigate any part of the Facility, including without limitation Wells BE-5 and BE-7, the Pond, any Acton Water District connection(s) to the Facility, and any other source of purchased water. Wells BE-1, BE-2, BE-3 and BE-6 need not be separately metered, because they were built only for ground water monitoring purposes and lack pumps and meters for

measuring water withdrawals, and Well BE-4 need not be monitored so long as it remains inaccessible and unusable. The Other Ponds at the Facility need not be separately metered, because they were built for retention purposes only and have no pumping or metering systems. If Quail Ridge receives written approval to withdraw water from any of Wells BE-1, BE-2, BE-3 or BE-6, or the Other Ponds at the Facility as in Paragraph 21 above, Quail Ridge shall install such equipment as the Board determines is necessary to separately meter water withdrawals from each of those sources approved for use. Quail Ridge shall tabulate all metered water use data monthly and submit it to the Board quarterly using DEP's Water Management Act annual statistical report forms, which must be signed by a responsible Quail Ridge corporate official.

25. From the date this Settlement Agreement becomes effective, Quail Ridge shall read all meters at the Facility on a daily basis, from Monday through Sunday, and shall provide the daily metered water use data to the Board each week on the following Monday in readable written or electronic form.

26. From the date this Settlement Agreement becomes effective, Quail Ridge shall collect monthly water level data from each of Wells BE-1, BE-2, BE-3 and BE-6, and wetland piezometers located at the Facility, designated as WL-1 through WL-4, and shall tabulate and graph (water level elevation versus time) the collected data and submit it to the Board each quarter with the Water Management Act statistical report form referred to in Paragraph 23, above.

27. Within ten (10) days of the Court's entry on its docket of the Final Judgment, Quail Ridge shall submit to the Board all pre-pumping data relative to the Facility for the period from October 1, 2003, through the date that any Well was first pumped (unless already provided).

28. For the period from April 1 through October 31 in each year, beginning in calendar year 2007, Quail Ridge:

- (a) shall monitor streamflow in Nagog Brook at an upgradient and a downgradient location on the Facility site, using the streamflow measuring device Quail Ridge installed and MassDEP approved in October of 2006; and
- (b) shall monitor temperature data for Nagog Brook at those same locations; and
- (c) shall tabulate and provide to the Board graphical representations of the collected streamflow and temperature data by the following February 15<sup>th</sup>, starting with February 15<sup>th</sup> of 2008.

**The Board's Right of Access**

29. The Board shall have the right to enter any portion of or structure on the Facility at reasonable times, without prior notice and without securing any judicial or administrative warrants or other process, to monitor Quail Ridge's compliance with this Settlement Agreement and the Final Judgment. Board personnel making an inspection shall report their arrival at the reception area of the Facility. Quail Ridge shall have the right to assign one of its employees to accompany Board personnel during an inspection. Quail Ridge shall make that person available to begin the inspection within fifteen minutes of the Board's arrival at the Facility, or the Board may perform the inspection without accompaniment. Quail Ridge shall make available for immediate examination and copying by the Board at the time of the inspection any documents or other materials requested by the Board. Any information or documents gathered by the Board during any such inspection may be used by the Board or the Town in any other civil or criminal prosecution against Quail Ridge, as well as in this or any other action to enforce this Settlement Agreement and the Final Judgment.

## Notices

30. All notices and submissions required under this Settlement Agreement or the Final Judgment shall be sent by hand delivery, overnight or first class mail to the following addresses:

For the Board:

Acton Board of Health  
Town Hall  
472 Main Street  
Acton, Massachusetts 01720

For the Town Counsel:

Stephen D. Anderson, Esquire  
Douglas H. Wilkins, Esquire  
Arthur P. Kreiger, Esquire  
Anderson & Kreiger LLP  
One Canal Park, Suite 200  
Cambridge, Massachusetts 02141

For Quail Ridge:

Steven R. Graham, Esquire  
Graham & Harsip, P.C.  
289 Great Road  
Acton, Massachusetts 01720

Quail Ridge shall notify the Board and Town Counsel in writing within five (5) business days of establishing a new mailing address.

### **Further Relief and Conditional Release**

31. Upon payment by Quail Ridge of all sums due to the Town and required to fund the SEP, as provided for under this Settlement Agreement and the Final Judgment, and upon Quail Ridge's satisfaction of all of the other specific requirements of this Settlement Agreement and the Final Judgment, Quail Ridge shall be released from liability to the Town for the claims specifically made in the Complaint that arose prior to the effective date of this Settlement

Agreement. The Town expressly reserves all claims for injunctive relief for future violations of any law or regulation, and all claims for any past violations of law that are not expressly remedied or addressed by this Settlement Agreement or the Final Judgment.

32. Nothing in this Settlement Agreement, the Final Judgment, or any permit or approval issued to Quail Ridge: (a) shall bar any action by the Town on any claim not specifically pleaded in the Complaint; (b) shall be deemed to excuse compliance by Quail Ridge or any others bound by this Settlement Agreement or the Final Judgment with the Regulations, the Permit or any applicable law or regulation; or (c) shall preclude a separate or ancillary action by the Town to enforce the terms of this Settlement Agreement, the Final Judgment, or any permit or approval issued by the Board to Quail Ridge or any others bound by this Settlement Agreement or the Final Judgment relative to the Facility.

33. Quail Ridge and any others bound by this Settlement Agreement or the Final Judgment waive any rights to administrative or judicial review of this Settlement Agreement and the Final Judgment.

#### **The Court's Retained Jurisdiction**

34. The parties agree that the Court, subject to its approval, may retain jurisdiction to enforce the Settlement Agreement and the Final Judgment.

#### **Miscellaneous**

35. The titles in this Settlement Agreement have no independent legal significance and are used merely for the convenience of the parties.

36. Massachusetts law shall govern the interpretation and enforcement of this Settlement Agreement.

37. Except as expressly set forth in this Settlement Agreement, this Settlement Agreement and the Final Judgment set forth all of the obligations of the parties, and any other

representations, communications or agreements by or between the parties shall have no force and effect. The parties further agree that there shall be no modifications of this Settlement Agreement unless the modification is reduced to writing and signed by all parties.

38. Each person signing this Settlement Agreement on behalf of Quail Ridge acknowledges: that he or she has personally read and understands each of the numbered Paragraphs of this Settlement Agreement and the Final Judgment; that he or she is a manager of Quail Ridge; that all of Quail Ridge's Managers have consented to Quail Ridge entering into this Settlement Agreement and the Final Judgment; and that he or she is authorized by Quail Ridge to sign and bind Quail Ridge to the terms of this Settlement Agreement and the Final Judgment.

STIPULATED AND AGREED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

FOR THE TOWN OF ACTON:

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Stephen D. Anderson, Esquire  
Douglas H. Wilkins, Esquire  
Arthur P. Kreiger, Esquire  
Anderson & Kreiger LLP  
One Canal Park, Suite 200  
Cambridge, Massachusetts 02141  
(617) 621-6500

FOR QUAIL RIDGE COUNTRY CLUB LLC:

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Ronald B. Peabody, Manager

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A. Peter Andersen, Manager

**EXHIBIT A**

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

TOWN OF ACTON, on behalf of its Board of Health,	)
	)
Plaintiff,	)
v.	)
	)
QUAIL RIDGE COUNTRY CLUB LLC,	)
	)
Defendant.	)
	)

**JOINT MOTION FOR THE ENTRY OF FINAL JUDGMENT**

The Plaintiff Town of Acton and the Defendant Quail Ridge Country Club LLC jointly move for entry of Final Judgment in the form submitted with this Motion. Also being submitted with this motion is the Settlement Agreement among the Parties. Because this is a joint motion, Superior Court Rule 9A does not apply.

Respectfully submitted,  
TOWN OF ACTON,

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**Stephen D. Anderson, Esquire  
Douglas H. Wilkins, Esquire  
Arthur P. Kreiger, Esquire  
Anderson & Kreiger LLP  
One Canal Park, Suite 200  
Cambridge, Massachusetts 02141  
(617) 621-6500**

FOR QUAIL RIDGE COUNTRY CLUB LLC,

---

Steven R Graham, Esq. (BBO# 206500)  
Graham & Harsip, PC  
289 Great Road  
Acton, Massachusetts 01720  
(978) 264-0480

Dated: \_\_\_\_\_, 2008

**CERTIFICATE OF SERVICE**

I, Douglas H. Wilkins, hereby certify that on the \_\_\_\_ day of \_\_\_\_\_ 2008, I served a copy of the foregoing Joint Motion for the Entry of Final Judgment upon each of the parties to this case by sending it by first class mail, postage prepaid, or by hand delivery, to:

Steven R. Graham, Esq.  
Graham & Harsip, PC  
289 Great Road  
Acton, Massachusetts 01720

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Douglas H . Wilkins

**EXHIBIT B**

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

TOWN OF ACTON, on behalf of its Board of Health,	)
	)
Plaintiff,	)
v.	)
QUAIL RIDGE COUNTRY CLUB LLC,	)
	)
Defendant.	)
	)

**FINAL JUDGMENT**

This matter came before the Court on the Joint Motion of the town of Acton, Massachusetts (“Town”) and Quail Ridge Country Club LLC (“Quail Ridge”) for Entry of Final Judgment, and the Settlement Agreement between the Town and Quail Ridge (the “Settlement Agreement”), whereupon, after consideration of the same, and Quail Ridge having expressly consented hereto, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. Quail Ridge owns and operates the full-service country club facility with an 18-hole golf course and other amenities located on approximately 160 acres of land on Skyline Drive off of Great Road in Acton, Massachusetts. (The entire country club facility is referred to hereinafter as the “Facility.” Where appropriate, the golf course is referred to hereinafter as the “Golf Course.”) The Town alleges in its Complaint that Quail Ridge has violated the Regulations (the “Regulations”) of the Acton Board of Health (“Board”), and the conditions

upon the irrigation well variance issued by the Board on October 25, 2004 (“Permit”), in various ways at the Facility.

2. Quail Ridge shall pay the civil penalty (the “Civil Penalty”) of Twenty Thousand Dollars (\$20,000.00) payable as follows: Five Thousand Dollars (\$5,000.00) payable on or before October 10, 2008 and three additional monthly installments of Five Thousand Dollars (\$5,000.00) each on or before each first day of November, 2008, December, 2008 and January, 2009. . Each payment due under the Settlement Agreement and this Final Judgment shall be made by bank or certified check made payable to the Town of Acton and delivered to the Office of the Town Manager, Town Hall, 472 Main Street, Acton, Massachusetts 01720, with copies to the Board (at the same address) and to Town Counsel.

3. For each violation of each provision of this Settlement Agreement or the Final Judgment that occurs after the Court’s entry of the Final Judgment, Quail Ridge shall pay to the Town a stipulated penalty of Fifty Dollars (\$50.00) per day per violation for as long as the violation continues. All stipulated penalties shall be paid to the Town in the manner set forth above for the payment of the Civil Penalty. Payment of any stipulated penalties owed and correction of all violations are necessary for Quail Ridge to return to compliance with the Settlement Agreement and this Final Judgment. For violations amounting to contempt, the Court shall retain its full jurisdiction to impose fines, restitution or penalties commensurate with the violation, whether or not the amounts exceed \$50 per day.

4. Quail Ridge shall not conduct any operations at the Facility that are not in compliance with the Regulations or the Permit and any other applicable state, federal or local law or regulation.

5. Quail Ridge shall not pump any water from Wells BE-1, BE-2, BE-3, BE-4 or BE-6, or from the Other Ponds, for irrigation at the Facility or for any other purpose, without prior written consent and approval from the Board pursuant to the Regulations. Unless it receives prior written consent and approval from the Board pursuant to the Regulations and Permit, Quail Ridge shall not: (a) withdraw more than 7.1 million gallons of water for any purpose in any 90 day period from the combination of Wells BE-5 and BE-7, including without limitation to recharge the Pond; (b) withdraw more than 0.1 million gallons on any day for any purpose from those wells, or (c) refill the irrigation pond(s) during periods of high irrigation demand, May through September each year. No irrigation water may be drawn or used on site from any other wells on site or the Acton Water District or any other source without prior written approval and further permit approvals by the Acton Board of Health.

6. Within five (5) days of this Court's entry on its docket of this Final Judgment, Quail Ridge shall provide to the Board a copy of Quail Ridge's current written agreement, if any, with the Acton Water District for water purchases for the Facility. Quail Ridge shall provide the Board with a copy of any revised or new water purchase agreement with any water source within five (5) days of the agreement's effective date.

### **Supplemental Environmental Project**

7. In order to obtain significant environmental and public health benefits, protection and improvement, Quail Ridge shall fund a Supplemental Environmental Project ("SEP") that goes beyond what is required of Quail Ridge by law. To fund the SEP described below and more fully in Exhibit C to the parties' Settlement Agreement, Quail Ridge shall pay Thirty Thousand Dollars (\$30,000.00) payable as follows: Five Thousand Dollars (\$5,000.00) payable on or before February 1, 2009, and five monthly additional installments of Five Thousand Dollars (\$5,000.00) each payable on or before each first day of March through July, 2009,

inclusive. (collectively, the “SEP Payment”), toward (1) a pump test to assess the viability of Quarry Pond as a source to refresh NARA Pond during May through September each year and (2) the design, permitting, construction, installation, operation, maintenance, repair and replacement of aeration fountain/devices or other water quality improvement system in the North Acton Recreation (NARA) Pond and in Quarry Pond (the latter, only if shown to be viable after the pump test), of a design, appearance and capacity approved in advance of installation by the Board (which approval shall not be withheld unreasonably). In accordance with G.L. c. 44, § 53A, all such payments shall be deposited with the Town treasurer and held as a separate account and may be expended by the Board of Selectmen, without further appropriation, toward the Supplemental Environmental Project described herein. Interest on all such funds shall remain with and shall become a part of the same account and may be expended by the Board of Selectmen, without further appropriation, for the same purposes.” Any funds that are left over after the completion of the SEP will be transferred to the Town’s general revenue fund. Quail Ridge may, at its election, provide a plaque commemorating its funding of each aeration device or fountain, but the costs of purchasing, installing and maintaining the plaque shall not be credited toward the SEP.

8. If for some reason the aeration/fountain devices or other water quality improvement system cannot be installed in NARA Pond or Quarry Pond, Quail Ridge shall propose an alternative to the SEP using the funds. In such case, Quail Ridge shall pay the \$30,000.00 required for the SEP to the Town in accordance with G.L. c. 44, § 53A, as above. The funds will be disbursed promptly to the substitute entity by the Town upon receiving written notice from the Town that the substitute entity has been selected by Quail Ridge and has been determined by the Town to be suitable to implement the SEP.

9. At the time Quail Ridge makes the \$30,000.00 payment to fund the SEP, Quail Ridge shall send to each of the Town, the Board and Town Counsel a copy of the check by which the payment is made.

10. Apart from the plaque referenced in paragraph 7 above, Quail Ridge agrees that any public statements by Quail Ridge, oral or written, to any person or entity as to the SEP shall include the following language: “This project was undertaken by Quail Ridge Country Club LLC in connection with the settlement of an enforcement action brought by the Town for alleged violations of the environmental regulations and penalties of the Town’s Board of Health.”

11. At the time of execution of the Settlement Agreement, Quail Ridge shall pay Five Thousand (\$5,000) Dollars (in addition to the amounts set forth in paragraphs 2 and 7 - 9 above) toward the proposal submitted to the Board by O’Reilly, Talbot & Okun to evaluate the potential impact from the irrigation wells at Quail Ridge as set forth in the proposal, a copy of which is attached hereto and incorporated herein by reference and marked as Exhibit D to the Settlement Agreement ( the “Proposal”).

12. All sums payable for the Civil Penalty, the SEP and the Proposal shall become immediately due and payable in the event that the Property is sold or refinanced. The Permit may be revoked for failure to pay any installment of \$20,000 for the Civil Penalty, any installment of the \$30,000.00 for the SEP, the \$5,000 for the Proposal, and any sums that may become due as stipulated penalties under Paragraph 11, above; provided that the installment or sum or any part thereof remains unpaid after a 30 day grace period following any due date.

13. From the date this Court enters this Final Judgment on its docket, Quail Ridge shall separately meter each and every water withdrawal source at the Facility that is actually used or could be used to irrigate any part of the Facility, including without limitation Wells BE-5 and

BE-7, the Pond, any Acton Water District connection(s) to the Facility, and any other source of purchased water. Wells BE-1, BE-2, BE-3 and BE-6 need not be separately metered because they were built only for ground water monitoring purposes and lack pumps and meters for measuring water withdrawals, and Well BE-4 need not be monitored because it currently is inaccessible and unusable. The Other Ponds at the Facility need not be separately metered because they were built for retention purposes only and have no pumping or metering systems. If Quail Ridge receives written approval to withdraw water from any of Wells BE-1, BE-2, BE-3 or BE-6, or the Other Ponds at the Facility, as in Paragraph 5 above, Quail Ridge shall install such equipment as the Board determines is necessary to separately meter water withdrawals from each of those sources approved for use. Quail Ridge shall tabulate all metered water use data monthly and submit it to the Board quarterly using DEP's Water Management Act annual statistical report forms, which must be signed by a responsible Quail Ridge corporate official.

14. From the date this Court enters this Final Judgment on its docket, Quail Ridge shall read all meters at the Facility on a daily basis, from Monday through Sunday, and shall provide the daily metered water use data to the Board each week on the following Monday in readable written or electronic form.

15. From the date this Court enters this Final Judgment on its docket, Quail Ridge shall collect monthly water level data from each of Wells BE-1, BE-2, BE-3 and BE-6, and wetland piezometers located at the Facility, designated as WL-1 through WL-4, and shall tabulate and graph (water level elevation versus time) the collected data and submit it to the Board each quarter with the Water Management Act statistical report form referred to in Paragraph 11, above.

16. Within ten (10) days of this Court's entry on its docket of this Final Judgment, Quail Ridge shall submit to the Board all pre-pumping data relative to the Facility for the period from October 1, 2003, through the date that any Well was first pumped (if not already submitted).

17. For the period from April 1 through October 31 in each year, beginning in calendar year 2007, Quail Ridge:

- (a) shall monitor streamflow in Nagog Brook at an upgradient and a downgradient location on the Facility site, using the streamflow measuring device Quail Ridge installed and MassDEP approved in October of 2006; and
- (b) shall monitor temperature data for Nagog Brook at those same locations; and
- (c) shall tabulate and provide to the Board graphical representations of the collected streamflow and temperature data by the following February 15<sup>th</sup>, starting with February 15<sup>th</sup> of 2008.

18. This Court shall retain jurisdiction to enforce this Final Judgment until all sums due hereunder have been paid by Quail Ridge to the Town and Quail Ridge has satisfied all of the other specific requirements of this Final Judgment.

19. This Final Judgment may be modified for the same reasons as a litigated judgment.

\_\_\_\_\_  
Justice, Superior Court

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Assistant Clerk

\_\_\_\_\_  
Date

**CONSENT**

Defendant Quail Ridge Country Club LLC (“Quail Ridge”) admits to the continuing jurisdiction of the Superior Court as to the personal and subject matter jurisdiction of this action, and hereby consents to the entry of the Final Judgment to which this Consent form is attached. In so consenting, each of Quail Ridge’s Managers – Ronald B. Peabody and A. Peter Andersen – states that he has personally read and understands each of the numbered paragraphs of the Final Judgment to which this Consent form is attached, and also states that he is authorized to sign this Consent on behalf of Quail Ridge and to bind Quail Ridge to the terms of the Final Judgment.

Quail Ridge waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

Each of the Managers of Quail Ridge and Quail Ridge further understands that any violation of the Final Judgment may result in their and/or its being adjudged in contempt of court.

ASSENTED TO, WAIVING ALL RIGHTS TO APPEAL:

Quail Ridge Country Club LLC

\_\_\_\_\_  
Ronald B. Peabody, Manager

\_\_\_\_\_  
A. Peter Andersen, Manager

Date: \_\_\_\_\_, 2008

## EXHIBIT C

### **Supplemental Environmental Project**

Quail Ridge Country Club will fund a Supplemental Environmental Project (SEP) by the Town of Acton to promote and protect water quality in NARA Pond and its supporting water inflows. The project will implement environmental control measures which will serve to identify sources of contamination and remedial responses that will ensure quantity and quality for NARA Pond. The overall goal of this project is protecting and enhancing the public swimming capacity of NARA pond. The total cost of this project is \$30,000.

#### **Overview and Rationale**

NARA pond is a man made recreational resource which has been open to the public since 2000. During its initial years of operation, high bather loading combined with high summer temperatures has required the pond to be closed to the public for periods of time due to exceedances of *e. coli* levels above the public health regulatory standard. Contributing issues to this problem have been a large resident goose population and the attractiveness of the property for dog owners seeking to walk and run their dogs.

To counteract these contributing bacterial sources the Town has implemented two policies for NARA pond and the surrounding land. The first policy requires the staff to inspect the beach area each day before the park opens and to remove all goose droppings. The second policy requires dog owners to leash their dogs while on the property and to scoop up any feces produced from their dogs.

Since NARA pond is man-made, it has no inlet to refresh the water body and is dependent solely on Stormwater and Groundwater recharge. Stormwater quality can impact the pond negatively by washing bacterial sources into the pond. Addressing that issue the Town constructed a wetland adjacent to the pond which collects stormwater generated upland from the pond and filters that water through the wetland vegetation prior to entering the pond.

Groundwater recharge is minimal during the summer in New England. As a result the pond drops three to five feet in elevation throughout the summer and therefore is more prone to bacterial exceedances due to the reduced volume and depth of water. Addressing that issue the Town installed a bedrock irrigation well just upland of the constructed wetland. During the course of the summer water is pumped from the well on a daily basis and discharged to the wetland where it is again filtered prior to entering the Pond.

This project will address both the water quality and quantity of NARA pond. The Town has acquired the water rights to Quarry pond which is upgradient of NARA pond to the northwest. This water resource has been evaluated for its quality and has been found to have minor bacterial impacts, as well as, potential iron and manganese impacts. The potential quantity of water now has to be evaluated and a remedial system to address water quality has to be identified and implemented. In addition, the means and methods

for transporting water from Quarry Pond to NARA pond must be identified and implemented, and in conjunction with that work, a remedial system for NARA pond itself must be identified and implemented.

## **SEP Project Components**

The SEP will provide funding to:

1. Quarry Pond water quantity pump test
2. Quarry Pond remedial water quality method identified and implemented
3. Quarry Pond water transfer method identified and implemented
4. NARA Pond remedial water quality method identified and implemented

### **1. Quarry Pond water quantity pump test:**

The Town will contract an environmental consultant to develop a procedure and protocol to measure and quantify water withdrawal rates and recharge rates at Quarry Pond. A pump test will be conducted lowering water levels within the Quarry Pond and observations will be made of the level water recovers to in relationship to specific time periods.

Deliverables: The Town will provide a report prepared by an environmental consultant which will quantify the potential water available from the Quarry Pond during an average summer period.

### **2. Quarry Pond remedial water quality method identified and implemented:**

The Town, through good engineering practices, will review the remedial systems available that address the water quality components of Quarry Pond as identified including but not limited to the O'Reilly, Talbot and Okun report dated August 31, 2007. Comparing effectiveness with cost the Town will choose the appropriate system and install off-site from Quarry Pond

Deliverable: The Town will provide a written report which will detail the remedial system analysis, remedial system quotes and implementation measures that were performed under this task.

### **3. Quarry Pond water transfer method identified and implemented:**

The Town, through good engineering practices, will identify the most effective and cost efficient measure for transferring the water in Quarry Pond to NARA Pond. Utilizing its work force the Town will install the chosen transfer measure.

Deliverable: The Town will provide a written report which will detail the transfer measures

analyzed, quotes received and implementation measures that were performed under this task.

#### **4. NARA Pond remedial water quality method identified and implemented:**

The Town, through good engineering practices, will review the remedial systems available that address the water quality components of Quarry Pond as identified in the annual water quality measurements recorded by the Health Department. Comparing effectiveness with cost the Town will choose the appropriate system and install at the Quarry Pond

**Deliverable:** The Town will provide a written report which will detail the remedial system analysis, remedial system quotes and implementation measures that were performed under this task.

EXHIBIT D  
FORM OF NOTICE OF AGREEMENT

NOTICE OF AGREEMENT

Quail Ridge Country Club LLC, a Massachusetts limited liability company with its principal place of business at 178 Great Road, Acton, Middlesex County, Massachusetts ("Quail Ridge")

Hereby gives notice that it has entered into a Settlement Agreement (the "Settlement Agreement") dated September, 2008 with the Town of Acton, a municipal corporation, Town Hall, 472 Main Street, Acton, Massachusetts 01720 (the "Town") regarding Quail Ridge's alleged violations of the Acton Board of Health's Regulations (the "Regulations") and the conditions upon the irrigation well variance issued by the Board on October 25, 2004 ("Permit"). A copy of the Settlement agreement is on file at the Offices of the Town's Board of Health and Town Clerk, 472 Main Street, Acton, Massachusetts 01720.

Witness my hand and seals this \_\_\_\_ day of October, 2008.

Quail Ridge Country Club LLC

By: \_\_\_\_\_  
Ronald B. Peabody, Manager  
and Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this \_\_\_\_ day of October, 2008, before me, the undersigned Notary Public, personally appeared Ronald B. Peabody, proved to me through satisfactory evidence of identification, which was: [ ] personally known to me to have the identity claimed; or [ ] examination of Massachusetts Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager and Authorized Signatory of Quail Ridge Country Club LLC, a Massachusetts limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
[apply seal]

EXHIBIT A

The land, together with the buildings thereon, in Acton, Middlesex County, Massachusetts, being more particularly described as follows:

**Parcel One:**

The land with the buildings thereon located on the southwesterly side of Great Road, Acton, Middlesex County, Massachusetts, being shown as Parcel B on a plan entitled "Skyline Drive Definitive Subdivision, Acton, Massachusetts". Lot Layout Plan prepared for Quail Ridge County Club, LLC dated April 14, 2003, revised June 18, 2003, by Stamski and McNary, Inc., recorded with the Middlesex South District Registry of Deeds as Plan No. 643 of 2003, to which plan reference is made for a more particular description.

Parcel B contains 139.8978± acres according to said plan.

For title to Parcel One, see deed dated July 15, 2003, recorded with said Deeds in Book 40020, Page 72. See also Confirmatory Deed dated September 18, 2003, recorded with said Deeds in Book 40979, Page 44.

Parcel Two:

A certain parcel of land located in Acton, Middlesex County, Massachusetts consisting of approximately 3.75 acres (the "Premises"), bounded and described as follows:

Beginning at the Southeasterly corner of the Premises at a stone bound in the middle of the concord Water Works right of way, thence running north 9 degrees 26' West 124.7 feet to a corner of land formerly of Ruth Robbins; thence turning and running South 85 degrees 14' West 163.4 feet to a stake; thence turning and running North 3 degrees 0' West 269.3 feet by land of Thomas F. McCarthy heirs; thence running North 19 degrees 1' West 16 feet; thence running North 40 degrees 42' West 29.2 feet; thence running North 29 degrees 12 West 83.4 feet to a stake, the last three courses being by said land of Thomas F. McCarthy heirs; thence turning and running South 78 degrees 9' West 325.6 feet to a stake by other land of Nelson H. Tenney; thence turning and running by said Tenney land South 11 degrees 51' East 531.5 feet

to a stake; thence turning and running by said Tenney land North 78 degrees 9' East 481.5 feet to the point of beginning.

Said premises are shown on Plan Number 526 of 1932, entitled "Plan of Land in Acton Mass" date June 1932 by Leonard C. Robinson, Engineer and recorded September 28, 1932 in Book 5676, Page 332 in the Middlesex South District Registry of Deeds.

For title to Parcel Two, see deed dated July 15, 2003, recorded with said Deeds in Book 40020, Page 72. See also Confirmatory Deed dated September 18, 2003, recorded with said Deeds in Book 40979, Page 44.

Parcel Three: (Registered Parcel)

A certain parcel of land in Acton, Middlesex County, Massachusetts bounded and described as follows:

Northerly by land now or formerly of Ruth Robins, two hundred and twenty-two feet;

Northeasterly by said Robbins land and land now or formerly of Stella D. Smith, nine hundred and fifty-two feet; and

Northerly, fifty-eight feet, and Southeasterly, one hundred eighty-two and 50/100 feet by said Smith land;

Westerly, forty-three feet, Southwesterly, four hundred and ninety feet, and Southerly, three hundred and eighty-two feet, by land now or formerly of Mary S. Munro; and

Westerly by land now or formerly of Moses Taylor, three hundred and six feet.

All of said boundaries are determined by the Court to be located as shown on a plan, as approved by the court, filed in the Land Registration Office, a copy of a portion of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 18, Page 565, with Certificate 3179.

For title to Parcel Three, see Certificate of Title No. 228254, filed in the Registry of Deeds for the South Registry District of Middlesex County in Book 1271, Page 104.

### **Parcel Four**

The land in Acton, Middlesex County, Massachusetts, containing 11.5 acres of land, bounded as follows:

Beginning at a corner of a wall, being the Northeast corner of the premises at land of said Taylor;

Thence Westerly on land of said Taylor to a corner of a wall at the wood pasture, so called;

Thence Southerly on said wood pasture and land of Simon Tuttle to a stake and stones in the swamp;

Thence Easterly on land of Luther Conant and Horace Tuttle to a stake and stone by the walls at the Muiler lot so called;

Thence Northerly on said Muiler lot as the wall now stands to a corner of a wall being the first bound.

For title to Parcel Four, see deed from the Town of Acton recorded with the Middlesex South District Registry of Deeds in Book 42294, Page 177.

Said Parcels are conveyed with the right to use Skyline Drive as shown on the plan entitled "Skyline Drive Definitive Subdivision, Acton, Massachusetts". Lot Layout Plan prepared for Quail Ridge County Club, LLC dated April 14, 2003, revised June 18, 2003, by Stamski and McNary, Inc., recorded with the Middlesex South District Registry of Deeds as Plan No. 643 of 2003, for all purposes for which streets and ways are now or may hereafter be used in the Town of Acton, including, without limitation, access on foot and motor vehicle, and installing, maintaining, and replacing any and all utilities needed to service said Parcels.