

PINE BARRENS CREDIT LETTER OF INTERPRETATION APPLICATION

STAFF REPORT

Issue Date: May 12, 1998

| Item | Tax Map Number |
|---|---|
| | 200-461-3-32 |
| Applicant Name | Stephen D'Agostino c/o Dominic Nicolazzi |
| Location/Access | N/O LIE, S/O LIRR ROW, E/O Eastport Manor Road, Manorville. Parcel has road access from Lanes Road. |
| Hagstrom Map # | Map 20, L-26 |
| Aerial # | |
| Acreage | .12 acres as per tax bill. |
| Topography/Geologic Features | Relatively flat, approximately 50 ft. above mean sea level. (Moriches Quad Map) |
| Soils (<i>SC Soil Survey</i>) | |
| Wetlands, Depth to Seasonal High Water Table, Surface Water, etc. | R-5 Wetlands associated with the Peconic River are to the north of the parcel according to NYS DEC Wetlands Map (Moriches Quad) |
| Vegetative Cover Type | Pitch pine-Oak Woods |
| Rare and Endangered Species | Natural Heritage elements associated with the wetlands in this general area according to Natural Heritage Data, April 1995. |
| Cultural Resources | Not available at this time. |
| Land Use | 311 Residential Vacant Land as per tax map database. |
| Zoning | J2 Business (Town Zoning Map Sheet No. 9) |
| School District | South Manor as per tax bill. |
| Public Water | No |
| Public Sewer | No |
| Fire/Police District | Manorville as per tax bill. |
| Comment | |

*confirmed by
TOB Planning Dept
6/15/98*

35636

RECORDED

11955PG358

1 2

Cont Copy

3

Number of pages 10

TORRENS

Serial # _____

Certificate # _____

Prior Ctf. # _____

RECEIVED

\$ 0

REAL ESTATE

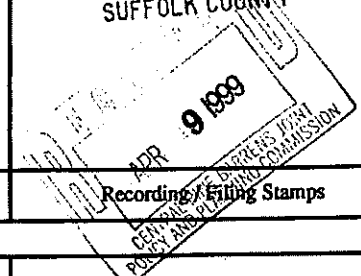
APR 05 1999

TRANSFER TAX
SUFFOLK
COUNTY

35636

99 APR -5 PM 1:14

EDWARD P. ROMAINE
CLERK OF
SUFFOLK COUNTY



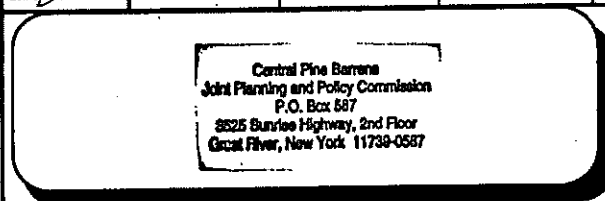
Deed / Mortgage Instrument Deed / Mortgage Tax Stamp Recording / Filing Stamps

FEES

| | |
|--|--|
| Page / Filing Fee _____ | Mortgage Amt. _____ |
| Handling _____ | 1. Basic Tax _____ |
| TP-584 _____ | 2. Additional Tax _____ |
| Notation _____ | Sub Total _____ |
| EA-5217 (County) _____ Sub Total _____ | Spec./Assit. _____ |
| EA-5217 (State) _____ | or _____ |
| R.P.T.S.A. <u>N/C</u> _____ | Spec./Add. _____ |
| Comm. of Ed. <u>5.00</u> _____ | TOT. MTG. TAX _____ |
| Affidavit _____ | Dual Town _____ Dual County _____ |
| Certified Copy _____ | Held for Apportionment _____ |
| Reg. Copy _____ | Transfer Tax <u>0</u> _____ |
| Other _____ | Mansion Tax _____ |
| Sub Total _____ | The property covered by this mortgage is or will be improved by a one or two family dwelling only. |
| GRAND TOTAL _____ | YES _____ or NO _____ |
| | If NO, see appropriate tax clause on page # _____ of this instrument. |



| Real Property Tax Service Agency Verification | | | | | Title Company Information | |
|---|-------|---------|-------|---------|---------------------------|--|
| Stamp | Dist. | Section | Block | Lot | Company Name | |
| 4/5/99 | 0200 | 466.00 | 03.00 | 032.000 | Title Number | |
| Initials | | | | | | |



FEE PAID BY:

Cash _____ Check _____ Charge _____

Payer same as R & R _____ (or if different)

NAME: _____

ADDRESS: _____

RECORD & RETURN TO (ADDRESS)

Suffolk County Recording & Endorsement Page

This page forms part of the attached conservation easement made by: _____

(SPECIFY TYPE OF INSTRUMENT)

James Stephen D'Agostino, Stephen J. D'Agostino, and Rose M. D'Agostino

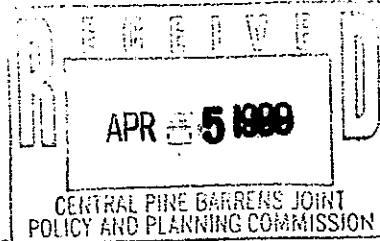
The premises herein is situated in SUFFOLK COUNTY, NEW YORK.

TO _____ In the Township of Brookhaven

Central Pine Barrens Joint Planning and Policy Commission In the VILLAGE of Manorville

BOXES 5 THRU 9 MUST BE TYPED OR PRINTED IN BLACK INK ONLY PRIOR TO RECORDING OR FILING.

Conservation Easement



THIS INDENTURE, made this 5 day of April, 1999,

Witnesseth:

WHEREAS, James Stephen D'Agostino, Stephen J. D'Agostino, and Rose M. D'Agostino all residing 25 Sweetbriar Drive, Mastic, New York 11950, hereinafter called the Grantors, are the owners in fee simple of certain real property, hereinafter called the "Property," which has ecological, scientific, groundwater recharge, scenic, educational, recreational and aesthetic value (the "Natural Values") in its present state as a natural area which property is described as follows:

See Schedule A annexed hereto

SCTM: WHEREAS, the Central Pine Barrens Joint Planning and Policy Commission (the
0200 "Commission"), with offices at P.O. 587, 3525 Sunrise Highway, 2nd Floor, Great River New
461 York 11739-0587, was created pursuant to the Long Island Pine Barrens Protection Act of 1993
3 (the "Act") codified in New York Environmental Conservation Law Article 57 ("Article 57"), is
32 hereinafter described as the "Grantee;" and

WHEREAS, the Central Pine Barrens is a 100,000 acre area within the central and eastern portions of New York's Suffolk County which includes parts of the towns of Brookhaven, Riverhead and Southampton, and which is divided into two areas, the Core Preservation Area (the "Core") and the Compatible Growth Area (the "CGA"), as delineated in Article 57; and

WHEREAS, the Commission adopted the Central Pine Barrens Comprehensive Land Use Plan (the "Plan") which is designed to protect, preserve and enhance the functional integrity of the Pine Barrens ecosystem and its significant natural resources, including plant and animal populations and communities, to protect the quality of surface water and groundwater, discourage piecemeal and scattered development, promote recreational and environmental educational uses that are consistent with the Plan, to accommodate development in a manner consistent with the long term integrity of the Pine Barrens ecosystem, and to ensure that the pattern of development is compact, orderly and efficient; and

WHEREAS, the Plan's goals for the Core include protecting and preserving the ecologic and hydrologic functions of the Central Pine Barrens by preserving the Central Pine Barrens area in its natural state, promoting compatible agricultural, horticultural and open space and certain recreational uses within the framework of maintaining a Pine Barrens environment and minimizing the impact of such activities thereon, prohibiting or redirecting new construction or development, accommodating specific Pine Barrens management practices, and protecting and preserving the quality of surface and

groundwaters; and

WHEREAS, this grant of Conservation Easement is made pursuant to Environmental Conservation Law ("ECL"), Title 3, Article 49 or its similar successor statute, and this Conservation Easement is intended to comply with said statute; and

WHEREAS, Grantors and Grantee recognize the ecological, scientific, groundwater recharge, scenic, educational, recreational and aesthetic value of the Property and have the common purpose of conserving the Natural Values of the Property by the conveyance to the Grantee of a Conservation Easement on, over and across the Property which shall conserve the Natural Values of the Property and advance the goals of the Commission pursuant to the Act and the Plan;

NOW, THEREFORE, Grantors, for and in consideration of the facts above and hereinafter recited including, but not limited to, entitlement to receipt of the Pine Barrens Credits pursuant to Grantors' Letter of Interpretation issued on June 19, 1998, totaling 1.00 Pine Barrens Credits and of the mutual covenants, terms, conditions and restrictions herein contained, does hereby give, grant, bargain, sell and convey unto the Grantee, its successors and assigns forever a Conservation Easement in perpetuity over the Property consisting of the following:

1. The right of visual access to and view of the Property in its natural, scenic and open condition.
2. The Grantors' forbearance from taking any of those actions constituting development pursuant to ECL Section 57-0107(13), and the Grantors' forbearance from operations or uses pursuant to ECL Section 57-0107(13)(i-xiv) unless such operations or uses are otherwise expressly reserved herein.
3.
 - a. The right of the Grantee, its respective agents, employees or other representatives, to enforce this Conservation Easement in an action at law or in equity or both.
 - b. The right of the State of New York, the County of Suffolk, the Township in which the Property is situated or their respective agents, employees or other representatives, exercising a third party enforcement right, to enforce this Conservation Easement in an action at law or in equity or both.

Enforcement pursuant to (a) and (b) hereinabove shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver. Grantee or any party with a third party enforcement right or their respective agents, employees or other representatives shall be permitted access, if necessary, to cross other lands retained by

the Grantors, and to enter upon the Property at all reasonable times but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions herein contained. Grantee, its agents, employees or other representatives, agree to give Grantors reasonable advance notice of its intention to enter and inspect the Property, and further such entrance and inspection shall be in a reasonable manner and at reasonable times. Furthermore, Grantors shall provide any third party with enforcement rights, or its agents, representatives or employees, access to cross other lands retained by Grantors, and permission to enter upon the Property, upon receipt of advance notice of such third party's intention to enter and inspect. Such entrance and inspection shall be in a reasonable manner and at reasonable times.

Covenants

In furtherance of the foregoing affirmative rights, the Grantors make the following covenants, on behalf of themselves, their successors, heirs and assigns, lessees, personal representatives and other successors in interest, which covenants shall run with and bind the Property in perpetuity:

1. There shall be no construction activity, alteration of vegetation or change in topography, no development as defined by ECL Section 57-0107(13) and no operations or uses not constituting development pursuant to ECL Section 57-0107(13)(i-xiv), unless otherwise expressly reserved herein.
2. There shall be no storing, dumping, discharging or placing of any substance in or on the Property in contravention of any applicable federal, state or local law or ordinance.

Reserved Rights

NEVERTHELESS, and notwithstanding any of the foregoing provisions to the contrary and as expressly limited herein, the Grantors reserve for themselves, their heirs, successors and assigns the following reserved rights in addition to all those rights previously retained, reserved and defined herein, which may be exercised without written notice to the Grantee.

1. The right of exclusive possession of the Property.
2. The right to use the Property for passive recreational activities such as, but not limited to, hunting, fishing, camping, hiking and activities associated therewith so long as such activities conform to local zoning regulations and do not constitute development as

defined in ECL Section 57-0107(13).

3. The right to use the Property for any existing, expanded, or new activity involving agriculture or horticulture if such use does not involve the material alteration of native vegetation; the right to use the Property for the erection of agricultural buildings, including but not limited to barns, greenhouses and farm stands, required for the production of plants or animals as reflected under ECL Section 57-0107(14), if such activity does not involve material alteration of native vegetation.
4. The right to use the Property for operations or uses described in ECL Section 57-0107(13) (i, ii and vi), or environmental restoration projects commenced by the Grantors or their heirs, successors or assigns upon approval of any applicable Federal, State or local agency, or any activity authorized under the federal natural gas act (15 U.S.C. Sections 717- 717w), as same may be amended from time to time.
5. The right to sell, give or otherwise convey the Property or, consistent with the Covenants herein, any portion or portions of the Property, subject to the terms of this Conservation Easement. The Grantors, upon the sale, gift or other conveyance of his fee interest in the Property, shall have no further obligations or liabilities under this Conservation Easement. Grantors shall promptly notify Grantee of any conveyance of any interest in the Property, including the full names and mailing addresses of all Grantees, and the individual principals thereof, under any such conveyance. The instrument of any such conveyance shall specifically set forth that the interest thereby conveyed is subject to this Conservation Easement, without modification or amendment of the terms of this Conservation Easement, and shall incorporate this Conservation Easement by reference, specifically setting forth the date, office, liber and page of the recording thereof. The failure of any such instrument to comply with the provisions hereof shall not affect Grantee's rights hereunder.

Rights of the Public

Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement except as may be granted by the Grantors herein or their successors.

Miscellaneous

1. The parties hereto understand and agree that all the terms and provisions of ECL, Title 3, Article 49, as the same may be hereafter amended, entitled Conservation Easements, shall apply to this Conservation Easement.
2. This Conservation Easement contains the entire understanding between its parties concerning its subject matter. Any prior agreement between the parties concerning its subject matter shall be merged into this Conservation Easement and superseded by it.
3. Any provision of this Conservation Easement restricting Grantors' activities, which is determined to be invalid or unenforceable by a court, shall not be rendered a nullity. Instead, that provision shall be reduced or limited to whatever extent that the court determines will make it enforceable and effective. Any other provision of this Conservation Easement which is determined to be invalid or unenforceable by a court shall be severed from the other provisions, which shall remain enforceable and effective.
4. Regardless of any contrary rule of construction, no provision or alleged ambiguity of this Conservation Easement shall be construed in favor of one of the parties because it was drafted by the other party's attorney. If any provision of this Conservation Easement is ambiguous or shall be subject to two or more interpretations, one of which would render that provision invalid, then that provision shall be given such interpretation as would render it valid and consistent with the purposes of this Conservation Easement as intended by Grantors. Any rule of strict construction designed to limit the breadth of the restrictions on use of the Property shall not apply in the construction or interpretation of this Conservation Easement, and, this Conservation Easement shall be interpreted broadly to effect the purposes of this Conservation Easement as intended by Grantors. The parties intend that this Conservation Easement, which is by nature and character primarily negative in that the Grantors have restricted and limited the Grantors' right to use the Property, except as otherwise recited herein, be construed at all times and by all parties to effectuate its purposes.
5. This Conservation Easement can be terminated only in accordance with the law of the State of New York applicable to the termination of easements and covenants running with the land. This Conservation Easement may be modified only upon the written consent of both the Grantors and Grantee, or their successors, heirs, representatives or assigns. Grantors and Grantee recognize that circumstances could arise which would justify the modification of certain of the restrictions contained herein. To this end, Grantee and the Grantors shall mutually have the right, in their sole discretion, to agree to amendments to this Conservation Easement which are not inconsistent with the basic purpose of this Conservation Easement, provided, however, that the Grantee shall have no right or power to agree to any amendments hereto that would result in this Conservation Easement failing to qualify as a valid conservation easement under ECL, Title 3, Article 49 as the same may be hereafter amended.

6. The Grantors agree that the terms, conditions, restrictions and purposes of this Conservation Easement shall continue as a servitude running in perpetuity with the Property and will be incorporated by reference in any subsequent deed or other legal instrument by which the Grantors divests themselves of either the fee simple title to or its possessory interest in the Property or any portion thereof specifically setting forth the date, and the liber and page of the Suffolk County Clerk's records of the recording hereof.
7. Any notices required in this Conservation Easement shall be written. Notices shall be given either by manual delivery or by mailing in a mail receptacle maintained by the United States Postal Service. Mailed notices must be contained in an accurately addressed, sealed envelope, marked for delivery by first class registered or certified mail, with sufficient prepaid postage affixed and with return receipt requested. Mailed notice to the Grantors shall be addressed to Grantors' address as recited herein or to any such other address as the Grantors may designate by notice in accordance with this section. Mailed notice to the Grantee shall be addressed to Grantee's address as recited herein or to any such other address as the Grantee may designate by notice in accordance with this section.
8. It is understood and agreed by the Parties hereto that the Grantors, their successors, heirs and assigns, shall not be liable for any changes to the Property caused by any natural disaster or Act of God.
9. The Grantor and Grantor's lessees, representatives, successors, heirs and assigns, shall not apply to the Commission or the Pine Barrens Credit Clearinghouse for a hardship, other permit or Pine Barrens Credits under the Plan or under ECL Article 57 pertaining to the "Schedule A" premises.
10. The Grantors do further covenant and represent that the Grantors are seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement, that the Property is free and clear of any and all encumbrances, other than those of record, and that the Grantee shall have the use of, and enjoy all of the benefits derived from and arising out of, the aforesaid Conservation Easement.
11. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, and the Grantee hereby covenants and agrees that any transferee or assignee will be an organization or public body qualified to hold a Conservation Easement pursuant to ECL, Title 3, Article 49, as the same may be hereafter amended, and the regulations promulgated thereunder.
12. All references to statutory provisions of Article 57 shall be as such provisions were in effect on the date of execution of this Conservation Easement.

IN WITNESS WHEREOF, Grantors have executed and delivered and Grantee has accepted and received this Grant of Conservation Easement on the day and year set forth above.

James S. D'Agostino
James Stephen D'Agostino

Stephen J. D'Agostino
Stephen J. D'Agostino

STATE OF New York)
) SS:
COUNTY OF Suffolk)

STATE OF New York)
) SS:
COUNTY OF Suffolk)

On this 31 day of March, 1999, before me personally came James Stephen D'Agostino, to me known and known by me to be the individual described in and who executed the foregoing instrument; and he acknowledged to me that he executed the same.

On this 31 day of March, 1999, before me personally came Stephen J. D'Agostino to me known and known by me to be the individual described in and who executed the foregoing instrument; and he acknowledged to me that he executed the same.

ASD
Notary Public

ASD
Notary Public

Anna-Sigge Drantze
Notary Public, State of New York
No. 02DR5062154
Qualified in Kings County
Commission Expires 6/24/2000

Anna-Sigge Drantze
Notary Public, State of New York
No. 02DR5062154
Qualified in Kings County
Commission Expires 6/24/2000

Rose D'Agostino
Rose M. D'Agostino

STATE OF New York)
) SS:
COUNTY OF Suffolk)

On this 31 day of March, 1999, before me personally came Rose M. D'Agostino, to me known and known by me to be the individual described in and who executed the foregoing instrument; and she acknowledged to me that she executed the same.

ASD
Notary Public

Anna-Sigge Drantze
Notary Public, State of New York
No. 02DR5062154
Qualified in Kings County
Commission Expires 6/24/2000

Central Pine Barrens Joint Planning and Policy Commission

GRANTEE

BY:

George Proios, Acting Chair

STATE OF New York)

COUNTY OF Suffolk) SS:

On this 5th day of April, 1999, before me personally came George Proios, to me known, who, being by me duly sworn, did depose and say that he is the Acting Chair of the Central Pine Barrens Joint Planning and Policy Commission, the Commission described in and which executed the foregoing instrument; and he acknowledged to me that he signed his name thereto by order of the Commissioners of the Commission which has no seal.

Roseann Hansen
Notary Public

ROSEANN HANSEN
Notary Public, State of New York
No. 4917002
Qualified in Suffolk County
Commission Expires December 28, 1999

Schedule A

All that certain plot, piece or parcel of land, with the buildings and improvements thereon, if any, situate, lying and being in Manorville, in the Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the easterly side of Raynor Road (Ryerson Avenue) (Station Road) and the southerly side of Long Island Rail Road Main Line;

RUNNING THENCE North 71 degrees 54 minutes 50 seconds East along the southerly side of Long Island Rail Road Main Line, a distance of 79.82 feet to the westerly line of Lane Road;

THENCE South 0 degrees 47 minutes 40 seconds East along the westerly side of Lane Road, 64.63 feet;

THENCE South 47 degrees 19 minutes 30 seconds West 27 feet to the northerly side of Long Island Rail Road Manor Branch;

THENCE westerly along the northerly side of Long Island Rail Road Manor Branch the following two (2) courses and distances:

- 1) Along an arc bearing to the left having a radius of 1120.20 feet a distance of 39.45 feet;
- 2) Along an arc bearing to the left having a radius of 1500.43 feet a distance of 32 feet to the easterly side of Raynor Road (Ryerson Avenue) (Station Road);

THENCE along the easterly side of Raynor Road (Ryerson Avenue) (Station Road) to the following two (2) courses and distances:

- 1) North 16 degrees 15 minutes 40 seconds East, a distance of 50.37 feet;
- 2) North 2 degrees 54 minutes 50 seconds East, a distance of 4.66 feet to the point or place of BEGINNING.

The foregoing parcel being and intended to be the same as described in a deed dated February 14, 1977 between James Rafuse as surviving tenant by the entirety as grantor and James Stephen D'Agostino, Stephen J. D'Agostino, and Rose M. D'Agostino as grantees and recorded at Liber 8194 Page 343 in the offices of the Suffolk County Clerk. Grantors herein, James Stephen D'Agostino, Stephen J. D'Agostino, and Rose M. D'Agostino are the same parties as the party of the second part in the deed recorded at Liber 8194 Page 343 in the offices of the Suffolk County Clerk.

SCTM 200-461-3-32

CONVEYED

Pine Barrens Credit Clearinghouse

Number: 0200-00197
Date Issued: April 7, 1999

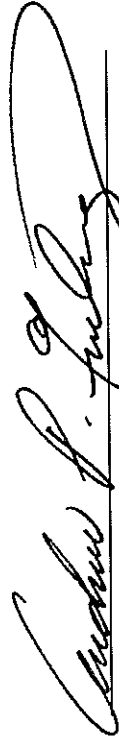
Pine Barrens Credit Certificate

Issued Pursuant to the Long Island Pine Barrens Protection Act
and the *Central Pine Barrens Comprehensive Land Use Plan*

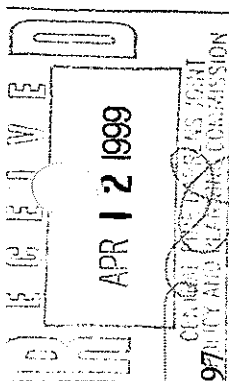
This certifies that James Stephen D'Agostino, Stephen J. D'Agostino and Rose M. D'Agostino hereby own:

1.00 Pine Barrens Credit

This certificate entitles the owner to a land use density or intensity increase as provided in the Central Pine Barrens Comprehensive Land Use Plan and pursuant to local ordinances.



Member, Pine Barrens Credit Clearinghouse



SALE, CONVEYANCE OR TRANSFER
OF
PINE BARRENS CREDITS

Within ten (10) business days the person selling, conveying, transferring or pledging a Pine Barrens Credit, or any interest therein, shall deliver to the Pine Barrens Credit Clearinghouse this Certificate representing the Credits sold, conveyed, transferred, or pledged.

Upon Clearinghouse receipt, a Certificate will be issued in the name of the person(s) who have secured an interest in the Credits. A new Certificate will be issued to the grantor if he has retained any interest in the Credits represented by this Certificate.

Grantor (Seller)
Name: JAMES STEWART EAST DISCERNING
Address: 25 SWEETFAIR AVE
City/State/Zip Code: MARSHFIELD NY
Signature: [Signature]
Grantee (Buyer)
Name: DENNIS NICOLAZZI
Address: 81 PINEBARNS AVE
City/State/Zip Code: FARMINGVILLE NY 11737
Signature: [Signature]
Number of Credits Sold, Conveyed or Transferred: 1
Date of Transaction: 4/8/99
Interest Secured: _____
Consideration: 12,000 + 0.75% APR + 0.25% ORG. FEE
Attach written evidence of the transaction (e.g., Contract of Sale, Bill of Sale)

PINE BARRENS CREDITS
PLEGGED AS SECURITY

When Pine Barrens Credits are pledged as security for loans, the lending institution shall return this certificate to the Pine Barrens Credit Clearinghouse properly completed, within ten (10) business days.

Upon Clearinghouse receipt, a revised Pine Barrens Certificate reflecting the encumbrance will be re-issued

Owner (Borrower)
Name: _____
Address: _____
City/State Zip Code: _____
Signature: _____
Lending Institution
Name: _____
Address: _____
City/State Zip Code: _____
Signature: _____
Title: _____
Amount of loan: _____
Term of Loan: _____
Number of Pine Barrens Credits pledged as collateral: _____
Attach written evidence of the transaction.
(Note: When Pine Barrens Credits are released as security, the Clearinghouse will again reissue a Pine Barrens Certificate upon notification by the owner and the lender.)

REDEMPTION
OF
PINE BARRENS CREDITS

When Pine Barrens Credits are redeemed in association with a development project approved by a municipal approving agency, the person redeeming the Pine Barrens Credit shall return this Certificate to the Pine Barrens Credit Clearinghouse within ten (10) business days of their redemption.

Owner (Person Redeeming)
Name: _____
Address: _____
City/State Zip Code: _____
Signature: _____
Town in which Pine Barrens Credits are redeemed:
Town: _____
School District in which Redeemed: _____
Suffolk County Tax Map of parcel where Pine Barrens Credits redeemed: _____
Number of Pine Barrens Credits Redeemed: _____
Municipal development approval was issued: _____ date _____
Municipal Official issuing development approval:
Name: _____
Title: _____
Signature: _____