



CAPE COD COMMISSION

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AGREEMENT FOR JUDGMENT

This Agreement is entered into this 28th day of June, 1993, by and between the Cape Cod Commission (hereinafter referred to as "the CCC") and New Seabury Company Limited Partnership (hereinafter referred to as "NSCLP").

WHEREAS, NSCLP is in the business of real estate development and is the developer of New Seabury located in the Town of Mashpee, Barnstable County, Massachusetts; and

WHEREAS, the CCC is a county agency established by Chapter 716 of Acts and Resolves of 1989, as amended (hereinafter referred to as "Act"); and

WHEREAS, NSCLP has submitted plans to the Town of Mashpee Board of Health concerning a proposal to build Wastewater Treatment Plants #1 and #2, to be located on Shore Drive West within the New Seabury section of Mashpee to service various developments, which land area, developments and facilities are covered by a special permit which was granted in 1964 by the Mashpee Zoning Board of Appeals (hereinafter referred to as the "Special Permit"); More specifically Wastewater Treatment Plant #1 will serve proposed development in New Seabury to include but not be limited to residential condominium units, a swimming pool, and two restaurants, including the Popponesett Inn, and Wastewater Treatment Plant #2 will serve proposed development in New Seabury to include but not be limited to a hotel, conference center, and restaurant. Wastewater Treatment Plant #1 is proposed to

be located within Section 11 under the Special Permit and the proposed condominium/pool/restaurant development which is to be serviced by Wastewater Treatment Plant #1 is to be located within Section 10. Wastewater Treatment Plant #2 is proposed to be located within Section 21 under the Special Permit, and the proposed hotel/conference center/restaurant development which is to be serviced by Wastewater Treatment Plant #2 is also to be located within Section 21; and

WHEREAS, the Special Permit covers 1240 acres of land divided into 29 sections in Mashpee, and is comprised of the following documents:

- a. Section F(V), entitled "Cluster Zoning District," of the 1964 Mashpee zoning bylaws which sets forth the requirements for the issuance of a special permit;
- b. February 21, 1964 decision of the Mashpee Zoning Board of Appeals approving the Special Permit;
- c. Deed dated July 13, 1964 which establishes the density restrictions within each of the original 29 sections covered by the Special Permit;
- d. Land Court Plan No. 11408-34 (sheets 1 through 8) showing the 29 sections covered by the Special Permit;
- e. Amendment Modifying Restrictions dated December 27, 1971 relating to Sections 9, 20 and 23 through 29 of New Seabury; and

WHEREAS, the validity of the Special Permit was recently affirmed by the Massachusetts Appeals Court by a decision dated March 1, 1990 in New Seabury

Corporation v. Board of Appeals of Mashpee and Others , 28 Mass. App. Ct. 946, (further appellate review was denied by the Supreme Judicial Court), in which the court stated as follows:

The plaintiff, as owner of a 1240 acre tract of land in the Town of Mashpee, was properly granted a special permit in 1964 by the board of appeals (board) to develop the property according to cluster zoning principles.

The special permit granted to the plaintiff provided development flexibility restrained only by density control and time. The permit is explicit. As long as the density restrictions are in force, no other zoning strictures apply. The density restrictions run with the land (all of the 1240 acre tract) for a period of at least thirty years, the minimum time required by the zoning by-law itself; and

WHEREAS, on or about August 27, 1990, the Mashpee Board of Health referred the proposed Wastewater Treatment Plants #1 and #2 project to the CCC to determine (1) whether such project is exempt from Commission review pursuant to Section 22(b) of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989 (hereinafter referred to as the "Act") and (2) if not so exempt, whether such project is a development of regional impact under the Act; and

WHEREAS, on or about October 25, 1990 the CCC made a Jurisdictional Determination decision that the proposed project is not exempt from Commission review pursuant to Section 22(b) of the Act; and

WHEREAS, on or about November 21, 1990, NSCLP filed a Complaint in Barnstable County Superior Court, Civil Action No. 90-1552, appealing the October 25, 1990 Jurisdictional Determination decision of the CCC; and

WHEREAS, the NSCLP does not intend to construct proposed Wastewater Treatment Plant #2 presently, but may do so in the future; and

WHEREAS, The rapid infiltration beds of proposed Wastewater Treatment Plants #1 and 2 are sited within 800 feet of Nantucket Sound and based upon available information it has been determined that their projected effluent plumes will ultimately discharge into Nantucket Sound without impacting any fresh water, marine embayment or public or private drinking water supplies, as shown in:

- "New Seabury company hydrogeologic analysis for effluent disposal from two wastewater treatment facilities, June 1990, SEA Consultants, Inc."; and

- "Environmental Impact Study of Proposed Development at New Seabury on Cape Cod, support documentation Volume II-B, 1981, Sasaki Associates"; and

- "New Seabury Company review of the impact of treated wastewater effluent disposal on the regional groundwater resources of Mashpee. Mass, 1990, SEA Consultants, Inc."; and

- "SEA Consultants, Inc. letter to NSCLP of January 17, 1991";

and

WHEREAS, the issue of the jurisdiction of the CCC with regard to Wastewater Treatment Plants # 1 and 2 is unresolved; and

WHEREAS, the parties hereto wish to settle said appeal and enter into an agreement resolving all issues concerning NSCLP's construction and operation of Wastewater Treatment Plant #1 and the disposal of effluent therefrom, and the possible

construction and operation of Wastewater Treatment Plant #2 and the disposal of effluent therefrom;

NOW THEREFORE, the parties hereto stipulate and agree as follows:

1. The following restrictions shall govern the design, construction, maintenance and operation of Wastewater Treatment Plant #1 and the disposal of effluent therefrom:

a. New Seabury agrees that Treatment Plant 1 shall be subject to independent engineering review in accordance with the regulations of the Mashpee Board of Health; and

b. NSCLP shall monitor the groundwater down gradient from the effluent disposal fields of Wastewater Treatment Plant # 1 by annual testing for determining the presence of any pathogens which pose a health hazard as may be required by the forthcoming Massachusetts Department of Environmental Protection (hereinafter referred to as "DEP") Groundwater Discharge Permits for the treatment plant. NSCLP will supply said monitored data to the CCC, as it becomes available, for informational purposes only. The supplying of such data is being done as a courtesy and shall not confer on the CCC any power of oversight of the plants. If harmful levels of pathogens are found in the groundwater and determined to originate from the effluent disposal fields, the NSCLP shall treat the effluent from the treatment plant by UV, Chlorine dosing, Ozone or other appropriate method to reduce the pathogens to acceptable levels as determined by DEP. NSCLP shall install monitoring wells at three locations near each effluent discharge field, with one well up-gradient and two wells down-gradient from the field. The down-gradient wells shall be installed in clusters of three, terminating at approximately (1) 0-10, (2) 20-30, and (3) 40-50 feet below the top of the groundwater; and

c. Prior to the operation of Wastewater Treatment Plant #1, provisions shall be made by NSCLP for the disposal of the sludge material generated by the plant through one of the following methods: (i) Removal to a composting site, (ii) removal to a sludge treatment facility, or if none of these options are reasonably available, (iii) removal to a sanitary land fill or any other disposal method as permitted by local, state and federal regulations; and

d. It is agreed that no fees shall be due the CCC from NSCLP regarding Wastewater Treatment Plant #1, except for incidental administrative fees not to exceed a total of two hundred dollars (\$200.00).

2. The CCC hereby agrees that this Agreement For Judgment contains all of the conditions to be imposed by the CCC regarding the design, construction, maintenance and operation of Wastewater Treatment Plant #1. Wastewater Treatment Plant #1,

as currently proposed, and in addition any future modifications that are not substantial, will not require further review as a Development of Regional Impact pursuant to sections 12 and 13 of the Act or any other review by the CCC. Any change approved by DEP within existing design parameters (See attached List of Drawings for Construction of Wastewater Treatment Facility, NSCLP, Contract #1, August 1990) but not requiring any substantial change in the engineered design capacity shall be deemed to be a modification that is not substantial, so long as such modification is in compliance with the provisions of Section 1(a-d) above. Any change in technology approved by DEP shall be deemed to be a modification that is not substantial, so long as such modification is in compliance with the provisions of Section 1(a-d) above. The CCC may claim that it has jurisdiction to review any substantial modifications as Developments of Regional Impact, and NSCLP may contest such claim (and the appropriate Massachusetts court shall decide whether the CCC has jurisdiction). In any case the jurisdiction of the CCC shall be limited only to such substantial modifications and not include any other matter concerning said Plant.

3. In the event Wastewater Treatment Plant #1, as currently proposed, and in addition any future modifications that are not substantial, are required to file an Environmental Notification Form and/or an Environmental Impact Report under the provisions of sections sixty-one to sixty-two H, inclusive, of chapter thirty of the General Laws, the CCC agrees that it will not require Wastewater Treatment Plant #1 to be reviewed as a Development of Regional Impact pursuant to Sections 12(i) and 13(b) of the Act. Any change approved by DEP within existing design parameters but not requiring any substantial change in the engineered design capacity shall be deemed to be a modification that is not substantial, so long as such modification is in compliance with the provisions of Section 1(a-d) above. Any change in technology

approved by DEP shall be deemed to be a modification that is not substantial, so long as such modification is in compliance with the provisions of Section 1(a-d) above.

4. The parties agree that this Agreement for Judgment shall be entered as the Judgment in Barnstable County Superior Court Civil Action No. 90-1552 in NSCLP vs. CCC et al. upon the execution of this agreement.

5. The CCC may claim that it has jurisdiction to review said Plant #1 as a Development of Regional Impact, and NSCLP may contest said claim (and the appropriate Massachusetts court shall decide whether the CCC has jurisdiction), if construction of said Plant #1 is not commenced within a period of seven years, such seven year period to begin upon the issuance of all local, state and federal permits necessary for said Plant and the developments to be served by it and said construction is not completed within twelve years from the date of this Agreement for Judgment; provided, however, that if this Agreement or any of said permits is the subject matter of any court action, the seven and twelve year periods shall each be extended for a period equal to the period of time from the filing of any such court action to the date of final disposition thereof, including any appeals, and also provided that NSCLP diligently pursues said appeals. So long as said Plant #1 is constructed within said twelve year period and any extension thereof as stated above, the CCC shall have no jurisdiction over said Plant #1 unless specifically stated to the contrary herein.

6. Nothing in this Agreement shall prevent the CCC from claiming that it has jurisdiction with respect to any future wastewater treatment plants in New Seabury (with the exception of Wastewater Treatment Plant #2; see Section 9 herein) nor NSCLP from contesting such claim (and the appropriate Massachusetts court shall decide whether the CCC has jurisdiction).

7. Nothing in this Agreement shall preclude a change in ownership or operation of Wastewater Treatment Plant #1.

8. The CCC hereby agrees that for the duration of the Special Permit the CCC has no jurisdiction over any development allowed under the Special Permit by the Mashpee Building Inspector after an appeal, if any, to the Mashpee Zoning Board of Appeals and the Massachusetts Courts. The CCC shall have standing to challenge such determination of the Mashpee Building Inspector and/or the Mashpee Zoning Board of Appeals. The CCC agrees that any such development constructed in substantial compliance with the Special Permit, as determined by the Building Inspector after an appeal, if any, to the Mashpee Zoning Board of Appeals and the Massachusetts Courts, is exempt from the provisions of the Act, as amended.

9. All of the terms and conditions contained in this agreement shall apply to the design, construction, maintenance and operation of Wastewater Treatment Plant #2 . The attached List of Drawings for Construction of Wastewater Treatment Facility, NSCLP, Contract #2, August 1990 sets forth existing design parameters for Wastewater Treatment Plant #2.

10. Each party hereto agrees to all the terms hereof, and this Agreement shall be binding upon and shall benefit the parties hereto and their respective successors and assigns.

11. The waiver by any party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.

12. The invalidity or unenforceability of any provision or clause of the Agreement shall not in any way affect the validity or enforceability of any other provision or clause of this Agreement.

13. This Agreement shall be governed by the laws of Massachusetts.

14. This Agreement sets forth the entire agreement of the parties. Any modifications or amendments hereto must be in writing, signed by both parties and specifically reference this Agreement.

Executed under seal by the authorized representatives of NSCLP and the CCC this

28th day of June, 1993.

For The Cape Cod Commission,

Alix Ritchie

Alix Ritchie, Chair

6/24/93
Date

Katharine K Peters

Notary Public

6/24/93
Date

My Commission Expires December 31, 1997

For The New Seabury Company Limited Partnership,

Christopher Burden

Christopher Burden, President of
A & C Great Island Corp., a General Partner

6/28/93
Date

Lorna S. Duckame
Notary Public

My Commission Expires 9/23/99

6/28/93
Date