SETTLEMENT AGREEMENT

This Settlement Agreement dated this tenth day of June, 1995 by and among the Town of Sandwich, Massachusetts (the "Town"), a municipal corporation, acting by and through its Board of Selectmen, the Town of Sandwich (Zoning) Board of Appeals (the "Board of Appeals"), the Town of Sandwich Board of Health (the "Board of Health") and Sandwich Stump Dump, Inc. ("SSD"), a Massachusetts corporation having a usual place of business at 295 Service Road, Sandwich, Massachusetts.

WHEREAS, SSD and the Board of Appeals have been engaged in litigation captioned Sandwich Stump Dump, Inc. vs. Sandwich Board of Appeals, Barnstable Superior Court, C.A. No. 91-809 with respect to the interpretation of a constructively issued special permit;

WHEREAS, SSD has also been involved in litigation with the Board of Health in litigation captioned the Sandwich Stump Dump, Inc. vs. Board of Health of the Town of Sandwich, Appeals Court No. 92-P-1865 with respect to the grant of a site assignment; and

WHEREAS, the Town, the Board of Appeals, the Board of Health and SSD agree that it is in the public interest to resolve by settlement all outstanding issues relating to the aforesaid litigation and, thereby, to settle said litigation finally and for all purposes upon the terms set forth below.

NOW, THEREFORE, in order to effect such settlement of the above-cited litigation and in consideration of the covenants and agreements herein set forth, the Town, the Board of Appeals, the Board of Health and SSD agree as follows:

1. The Constructive Grant of Special Permit with respect to "Application for Special Permit (88-78) Sandwich Stump Dump" shall remain in full force and effect, as clarified, however, by the terms of this Settlement Agreement. These terms of settlement shall be binding upon SSD in connection with its exercise of said Constructive Grant of Special Permit.

2. The grant of Site Assignment which is to be issued by the Board of Health as a result of the decision rendered by the Appeals Court in the above-referenced case is also to be subject to the terms of this Settlement Agreement. Therefore, as noted above, this Settlement Agreement shall also resolve any outstanding issues associated with the concluding of the litigation involving the Board of Health.

3. The real property owned by Sandwich Stump Dump, Inc. (31.43 acres situated at 295 Service Road in Sandwich) [hereinafter the "Facility"] is to be site assigned for purposes of operating of (i) a wood waste processing and disposal facility and (ii) a processing and transfer station for recyclable

material and demolition and construction waste. A copy of the legal description of the Facility is attached hereto as Exhibit A and made part hereof. The definitions of "wood waste", "recyclable material" and "demolition and construction waste" shall be as specified in the Solid Waste Management Regulations which are set forth at 310 Code of Massachusetts Regulations ("CMR") 19.000. The definition of "wood waste" specifically excludes new or used lumber or wood from construction/demolition debris and wood pieces or particles containing or likely to contain asbestos, chemical preservatives such as creosote, pentachlorophenol, paints, stains or other coatings. (Demolition and construction waste is hereinafter referred to as "C&D Waste", and wood waste, recyclable material and C&D waste are hereinafter collectively referred to as "Permitted Wastes"). The operations of the Facility shall be subject to the tonnage limits, restrictions on hours of operation and other requirements of this Settlement Agreement.

4. The only materials which are permitted to be landfilled on the Facility are those traditionally associated with Sandwich Stump Dump, Inc.'s operations, including brush, stumps, limbs, branches and other similar wood-related wastes as permitted by the definition of "wood waste" set forth in the aforesaid Solid Waste Management Regulations. None of the recyclable materials or C&D Waste shall be permitted to be landfilled at the Facility.

5. No hazardous waste is to be processed or stored at the Facility. If hazardous waste should inadvertently be brought to the Facility, it shall not be permitted to remain on the Facility any longer than is necessary to identify and isolate the materials, handle them in an environmentally sound manner and arrange for prompt removal by an authorized contractor.

6. All processing of recyclable materials and C&D Waste shall be performed inside the building at the Facility. No materials shall be stored outside of said building, except at locations and in a manner which will prevent contamination of soils, groundwater and surface water.

7. Recyclable materials* and C&D Waste shall be processed inside of the building at the Facility, including being processed in a shredder/grinder and/or baler. It is expressly understood that such processing operations may not include the crushing of concrete or asphalt. **(NOTE: Should SSD desire to conduct concrete or asphalt crushing operations at the Facility, it shall obtain all necessary permits and approvals therefor under**

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* NOTE: It is anticipated that processing of recyclable materials will include separating and baling, although the term "processing' is used in accordance with its definitional meaning set forth in 310 CMR 19.000.

applicable State and local law, including, without limitation, a modification of site assignment pursuant to Massachusetts General Laws Chapter 111, Section 150A and compliance with all applicable requirements of the Zoning By-Law of the Town of Sandwich). Moreover, the operation of the shredding/grinding equipment shall be limited to the hours set forth in paragraph 8 of this Settlement Agreement.

8. Operating hours for the shredding/grinding equipment shall be limited to 8:00 a.m. to 5:00 p.m. on Mondays through Fridays.

9. The general hours of operation of the Facility (subject to the above-specified additional limitations affecting the use of shredding/grinding equipment) shall be 7:00 a.m. to 5:00 p.m. on Mondays through Fridays and 8:00 a.m. to 1:00 p.m. on Saturdays.

10. The average tonnage of all Permitted Wastes received at the Facility shall not exceed 500 tons per day computed on a monthly basis. When performing this computation, the average shall be determined using six working days per week. This daily average may be comprised of any mixture of Permitted Wastes. In order to accommodate normal fluctuations in waste deliveries, a <u>maximum</u> (as opposed to <u>average</u>) daily limit of 625 tons shall be established, provided that in no event shall the above-referenced 500 ton per day average daily limit be exceeded on a monthly basis. In order to verify compliance with these tonnage limits, all waste delivered to the Facility shall be weighed on a scale, and accurate records of the weights shall be maintained by SSD. Said records shall be made available to the Board of Health upon said Board's request.

11. Recyclable materials, except for those which are removed from the C&D Waste stream, are to be pre-sorted prior to their delivery to the Site. This pre-sorting is designed to remove recyclables from the general municipal solid waste stream, but it does not prohibit the mixing of more than one kind of plastic, glass, metal or cardboard together for subsequent segregation and transfer.

12. All trucks entering or leaving the Facility shall be instructed to utilize Quaker Meetinghouse Road. SSD shall make compliance with this instruction a condition of said trucks being allowed to enter the Facility.

13. SSD will cause the Service Road to be widened to a 24' width from the Facility's driveway to Quaker Meetinghouse Road. Said work shall be accomplished within the existing Service Road right of way. Said work shall be performed by a contractor selected and compensated by SSD, provided that the Town of Sandwich shall have the right to approve such contractor (which

approval shall not be unreasonably withheld or delayed) and to supervise the conduct of said work.

14. SSD will cause a sidewalk to be constructed from the west end of Madison Drive to Quaker Meetinghouse Road. Said work shall be accomplished within the existing Service Road right of way. Said work shall be performed by a contractor selected and compensated by SSD, provided that the Town of Sandwich shall have the right to approve such contractor (which approval shall not be unreasonably withheld or delayed) and to supervise the conduct of such work.

15. SSD will have the brush and shrubs along the Service Road trimmed between the Facility's driveway and Quaker Meetinghouse Road in order to improve sight lines. Said work shall be accomplished within the existing Service Road right of way. The Town of Sandwich shall have the right to supervise the conduct of such work. Thereafter, SSD shall continue to maintain the brush cutting so as to preserve adequate sight lines between the Facility's driveway and Quaker Meetinghouse Road for so long as the Facility is operated.

16. The work set forth in Paragraphs 13, 14 and 15 hereof shall be accomplished prior to the Facility's accepting recyclable materials or C&D Waste; provided, however, that if SSD desires to start accepting recyclable materials and/or C&D Waste at the Facility before the said work is accomplished, it may do so if it provides a cash escrow of $65,000 to secure the completion thereof. Said escrow may be drawn on by the Town of Sandwich to complete any portion(s) of said work which are not completed within ninety (90) days after the Facility begins to accept recyclable materials and/or C&D Waste.

17. In operating the Facility, SSD will comply with all applicable requirements of State and local law and regulation, including the above-cited regulations appearing at 310 CMR 19.000.

18. The Town, the Board of Health and SSD will enter into a Host Community Agreement which shall be consistent with the terms of this Settlement Agreement and shall:

a. Grant the Board of Health and the Town of Sandwich Building Inspector the right to inspect the Facility during its hours of operation and at such other times which, in the judgment of the Board of Health, are warranted upon reasonable advance notice;

b. Provide for an initial payment by SSD of $6,000 to establish a technical advice and assistance fund for the Board of Health in connection with its monitoring of the operations at the Facility. To the extent that

all or any portion of this fund shall be expended for such monitoring purposes, SSD shall replenish it on an annual basis, so that the fund shall be equal to $6,000 at the beginning of each monitoring year; and

c. Provide for corrective action procedures whereby SSD shall be obligated to respond promptly in writing to any Board of Health notice of non-compliance and to cure any event of non-compliance within thirty days, or, if such non-compliance cannot reasonably be cured within said thirty days, then to commence promptly such curative action and to pursue it diligently to completion.

19. SSD shall agree that neither it nor its successors or assigns with respect to the Facility shall apply for a Site Assignment or Special Permit which would authorize the accepting, processing or transferring of any type of municipal solid waste other than that which is a Permitted Waste hereunder and, therefore, apart from such Permitted Wastes, the processing and/or disposal of any municipal solid waste at the Facility is prohibited. SSD shall cause to be duly recorded or registered with the Barnstable County Registry of Deeds or the Barnstable Registry District of the Land Court, as the case may be, the Board of Health Site Assignment, this Settlement Agreement and the Host Community Agreement within fifteen (15) calendar days after the effective date of this Settlement Agreement (see Paragraph 23 hereof).

20. The claims which were raised or could have been raised in the Notice of Intent to Sue dated November 4, 1993 submitted by Messrs. Fasanella, Johnson & Wood, P.C., on behalf of SSD, shall be relinquished, and a release of such claims shall be executed by SSD as part of this settlement.

21. The terms of this Settlement Agreement shall be specifically enforceable by each of the parties hereto and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

22. It is understood that the Town will solicit public comment regarding this proposed Settlement Agreement and, for such purpose, the Zoning Board of Appeals, the Board of Health, and the Board of Selectmen may hold a publicly noticed, open meeting. This Settlement Agreement shall not be final as between the parties hereto until after such public meeting is held. In the event that any third party challenges any aspect of this Settlement Agreement, it is expressly understood between the parties hereto that the Town will not actively defend any such

challenge, and that SSD will defend and indemnify the Town in connection therewith.

23. This Settlement Agreement shall only become effective, and therefore is conditioned, upon the Barnstable Superior Court's granting a motion by all parties to the litigation involving the Sandwich Zoning Board of Appeals in Barnstable Superior Court, C.A. No. 91-809 to vacate the existing judgment rendered in said litigation and to enter judgment pursuant to an agreement for judgment which incorporates the terms of this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be executed and delivered as of the date first set forth above as a sealed instrument by their respective officers and officials who have been duly authorized and directed to do so.

TOWN OF SANDWICH

By: _____

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_____

Its Duly Elected and Serving Board of Selectmen

TOWN OF SANDWICH (ZONING) BOARD OF APPEALS

By: _____

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_____

_____

_____

TOWN OF SANDWICH
BOARD OF HEALTH

By: _____

Sandra Lee Tompkins

_____

_____

_____

SANDWICH STUMP DUMP, INC.

By: _____
President 8/23/95

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. August 10, **1995**

Then personally appeared the above-named Town of Sandwich and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Town of Sandwich, before me,

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Notary Public

My Commission Expires:

January 20, 2000

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. ~~June~~ August 23, 1995

Then personally appeared the above-named Frank Durante, President of Sandwich Stump Dump, Inc. as aforesaid, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said corporation, before me,

Notary Public CLEON H. TURNER

My Commission Expires: March 2, 2001

512440.1

EXHIBIT "A"

the land together with any buildings thereon situated in Sandwich, Barnstable County, Massachusetts, bounded and described as follows:

NORTHEASTERLY by the southwesterly line of Service Road, three hundred forty (340) feet;

SOUTHEASTERLY by land now Owner Unknown being in part a line crossing Discovery Hill Road, thirty-eight hundred fifty-five and 26/100 (3,855.26) feet;

SOUTHWESTERLY by land now or formerly of Rebekah B. Morse et al, three hundred seventy-nine (379) feet; and

NORTHWESTERLY by land now or formerly of Carl F. Hettinger being in part a line crossing Discovery Hill Road, thirty-eight hundred forty-six and 34/100 (3,846.34) feet.

All of said boundaries are determined by the Court to be located as shown on plan 40326-A dated April 1979, drawn by Hoz Engr. Assoc., Inc., Surveyors, and filed in the Land Registration Office at Boston, a copy of which is filed in Barnstable County Registry of Deeds in Land Registration Book 743 Page 25 with Certificate of Title No. 91225.

Being the premises described in Certificate of Title No. 111651 registered with the Barnstable County Registry District of the Land Court.