

## AGREEMENT

WHEREAS, BERTRAND FOURNIER, trustee of BASS RIVER REALTY TRUST, w/d/t dated July 6, 1994, recorded at the Barnstable County Registry of Deeds at Book 9269, Page 270, with a principle place of business at Post Office Box 1238, Hyannis, Massachusetts, hereinafter referred to as "Owner", is proposing to renovate the Bass River Exxon Station located at 1353 Main Street (Route 28) in Yarmouth, Massachusetts as described in the discretionary referral made by the Yarmouth Planning Board on September 12, 1996 (the "Project"), and which land is recorded at the Barnstable County Registry of Deeds at Book 9269, Page 275; and

WHEREAS, the TOWN OF YARMOUTH, acting through its various departments, boards and agencies, hereinafter referred to as the "Town", wishes to enter onto an agreement concerning certain aspects of the Project; and

WHEREAS, the the CAPE COD COMMISSION, hereinafter referred to as the "Commission", was created by and acts under the provisions of the Cape Cod Commission Act, c. 716 of the Acts and Resolves of 1989, as amended (the "Act") and acts under the Code of Cape Cod Commission Regulations (the "Regulations") and wishes to enter onto an agreement concerning certain aspects of the Project; and

WHEREAS, the Project lies within the Bass River Historic District, is located on a Roadway of Regional Significance as identified in the Cape Cod Regional Policy Plan (the "RPP") and is located in close proximity to and upgradient of the Bass River; and

WHEREAS, the Yarmouth Planning Board referred the Project to the Commission as a discretionary referral for review as a Development of Regional Impact, hereinafter referred to as "DRI"; and

WHEREAS, in accepting the Project for DRI review, the Commission identified regional impacts from the proposed Project; and

WHEREAS, the parties hereto are desirous of securing certain amendments to the Project that would accommodate the concerns of the Town, the Historic District, the Neighborhood Association, the Route 28 Task Force, and the Commission;

NOW THEREFORE, the Owner agrees to amend the Project in consideration of the Commission releasing the Project from DRI review by accepting a request from the Yarmouth Planning Board to withdraw the discretionary referral, it is hereby agreed as follows:

1. As between the Commission and the Owner this agreement shall be considered a Development Agreement under Section 14 of the Act and this agreement shall run with the land and shall be binding and enforceable by

the Commission and the Owner for so long as the Owner operates the Project. As between the Town and the Owner this agreement shall be considered a contract which shall run with the land and shall be binding and enforceable by the Town and the Owner for so long as the Owner operates the Project. The parties agree that the Yarmouth Building Inspector may enforce any aspect of this agreement.

2. The parties hereto agree to waive the procedures contained in Chapter D of the Commission's regulations concerning the adoption of Development Agreements.

3. The Owner has agreed to certain changes set forth on the attached site plan dated 7/10/96, revised 10/9/96, with all changes listed and noted thereon and initialed by all parties and the Owner agrees to construct, operate, and maintain the Project consistent with the above-referenced plan and with the conditions set forth below:

The Owner hereby agrees to the following conditions:

#### Site Access/Curb Cut Closure

a) The two existing curb cuts which are closest to the intersection of Old Main Street and Route 28 shall be closed consistent with this subsection and subsection (c) below. The Owner shall provide an approximately 10-foot wide planted area along the closed curb cut on Old Main Street, as described in the landscaping section below and as shown on the Site Plan dated 7/10/96, revised 10/9/96; and

b) The site shall be accessed via the existing curb cuts on Old Main Street and Route 28 which are farthest from the intersection of Old Main Street and Route 28, as shown on the Site Plan dated 7/10/96, revised 10/9/96. The remaining curb cut on Old Main Street shall be reduced in width to 42 feet, as shown on the Site Plan dated 7/10/96, revised 10/9/96; and

c) The Owner shall diligently and in good faith seek approval from the Massachusetts Highway Department (MHD) to close the curb cut on Route 28 closest to the intersection of Old Main Street and Route 28, and to construct a 4-foot sidewalk and a 2-foot grass strip within the state right of way in order to restrict vehicular access. If the MHD does not approve the sidewalk and grass strip, then the Owner shall close the curb cut by other means as approved by the MHD, in consultation with the Yarmouth Planning Board and the Commission staff no later than June 30, 1997. The Owner shall provide copies of all plans submitted to the MHD to the Commission and the Yarmouth Planning Department within two (2) business days of filing said plans with the MHD; and

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### Landscaping/Buffering

d) An approximately 10-foot wide landscaped area shall be provided within the Owner's property and abutting the layout for Old Main Street as shown on the Site Plan dated 7/10/96, revised 10/9/96;. The area shall be planted with trees, shrubs and perennials as identified on the attached Proposed Landscape Plan dated 7/10/96, revised 10/9/96; and

e) Consistent with subsection (c) above, the Owner shall seek approval from MHD to provide a 2-foot grass strip along Route 28 frontage of the property in place of the existing 37-foot curb cut located closest to the intersection of Old Main Street and Route 28. The Owner shall provide copies of all plans submitted to the MHD to the Commission and the Yarmouth Planning Department within two (2) business days of filing said plans with the MHD; and

f) The existing vegetation located to the rear of the Owner's property shall not be removed and additional vegetation shall be planted as identified on the attached Proposed Landscape Plan dated 7/10/96, revised 10/9/96; and

### Building Facade Improvements and Canopy Design/Materials

g) A brick kneewall and windows with exterior muntins shall be provided in place of the existing garage doors on the front facade of the building, as shown on the attached Floor Plan and Building Elevation dated 7/10/96, revised 10/9/96; and

h) The fueling station canopy shall be constructed with a hip roof; 4/12 pitch, as shown on the attached Gable Canopy Elevations dated 9/19/96, revised 10/9/96. All trim shall be white or painted white. Asphalt architectural shingles of a gray color shall be used on the roof. No sign shall be included on the canopy, per the Town sign code.

### Drainage Improvements

i) A dry well shall be located on the site to collect stormwater runoff from the canopy roof and from the front roof gable of the building, as shown on the Grading and Utility plan dated 7/9/96, revised 10/9/96. A catch basin shall be located in the northeast corner of the site to collect stormwater runoff from paved areas of the property, as shown on the Grading and Utility plan; and

### Lighting

j) Lighting shall be provided as shown on the attached Photometric Lighting Plan dated 7/10/96, revised 10/9/96 to insure that light generated on the site is restricted almost entirely to within the boundaries of the Owner's property.

4. With the exception of the requirements of subsection (c) above and excepting landscape work guaranteed by a Commission-approved letter of credit, the Owner shall complete the requirements of this agreement prior to applying for a permanent or temporary Certificate of Occupancy and/or prior to opening the convenience store portion of the Project to the general public. The Owner agrees to provide to the Commission an irrevocable letter of credit, which shall be in form and content satisfactory to Commission counsel, in an amount sufficient to cover 110% of the costs of completing any landscaping improvements not completed prior to the issuance of a Certificate of Occupancy. The letter of credit shall be released upon completion of all landscaping requirements of this agreement, as determined by the Commission. The Owner shall complete all requirements of this agreement prior to obtaining a Certificate of Compliance from the Commission. The Owner shall obtain a Certificate of Compliance from the Commission by the close of business October 31, 1997, which certificate shall be in a recordable form.

5. In consideration of voluntary changes made to the site plan as referenced herein, the Yarmouth Planning Board voted at its October 9, 1996 meeting to petition to withdraw the discretionary referral made on September 12, 1996.

6. In consideration of the Owner's agreement to comply with voluntary changes made to the site plan as referenced herein and to comply with the voluntary changes set forth below, the Commission agrees to rescind the actions taken at its meeting on September 19, 1996 and to vote to accept the withdrawal of the discretionary referral as requested by the Yarmouth Planning Board, thereby terminating its DRI review of the Project.

7. The parties agree that the Town, acting by its Planning Board, reserves the right to refer the Project to the Commission as a discretionary referral if the Owner does not construct required improvements prior to the close of business June 30, 1997 and/or if the Owner does not maintain agreed upon landscaping for the Project in compliance with the site plan and conditions referenced above. Maintenance shall mean the replacement of dead or diseased vegetation.

8. The parties agree that this agreement shall be null and void if the Owner does not obtain a building permit for the Project.

9. The parties agree that the Commission will record this agreement at the Barnstable County Registry of Deeds upon execution. The parties further agree that the Owner may record the Certificate of Compliance issued by the Commission under Section 4 above.

10. Nothing herein shall be construed or is intended to affect zoning or to restrict the property as to use. No vesting of any rights in the Commission under Chapter 14 of the Act or any other Chapter or regulation shall exist.

after the issuance of the Certificate of Compliance, other than the right to enforce this agreement.

Executed this 17<sup>th</sup> day of October, 1996.

For the OWNER by:

Bertrand Fournier  
Bertrand Fournier, Owner

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

Then personally appeared before me the above-named Bertrand Fournier, <sup>Trustee</sup> and acknowledged the foregoing instrument to be his free act and deed, before me,

Theodore A. Schilling  
Notary Public  
My Commission Expires: 12-7-2001  
THEODORE A. Schilling

For the TOWN by:

Christopher Bowman  
Christopher Bowman  
Chairman, Yarmouth Board of  
Selectmen

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

Then personally appeared before me the above-named Christopher Bowman, Chairman of the Yarmouth Board of Selectmen, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Town of Yarmouth, before me,

Barbara A. Benoit  
Notary Public  
My Commission Expires:  
January 20, 2000

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For the COMMISSION by:

*FOR: Madeline A. Petros Vice-Chair*  
Gregory Silverman  
Chairman, Cape Cod  
Commission

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

Then personally appeared before me the above-named Gregory Silverman, Chairman of the Cape Cod Commission, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Cape Cod Commission, before me,

*Katharine L. Peters*  
Notary Public  
My Commission Expires:

*BF*