



# CAPE COD COMMISSION

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## DEVELOPMENT AGREEMENT

### *Falmouth Technology Park*

This agreement is entered into this 7 day of January, 1998, by and between the Cape Cod Commission (hereinafter referred to as "CCC") and the Falmouth Economic Development Industrial Corporation (hereinafter referred to as "FEDIC"); and

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

*WHEREAS*, the CCC is authorized to enter into Development Agreements pursuant to Section 14 of the Act and Barnstable County Ordinance 92-1 establishing CCC Regulations for the purpose of Enabling Development Agreements; and

*WHEREAS*, the CCC reviews Developments of Regional Impact (hereinafter "DRIs"). A DRI is a Development which, because of its magnitude or the magnitude of its impact on the natural or built environment, is likely to present development issues significant to or affecting more than one municipality, and which conforms to the criteria established in the applicable standards and criteria for DRIs pursuant to Section 12 of the Act; and

*WHEREAS*, FEDIC is a quasi-public entity established under M.G.L. Chapter 121C by a vote of the Falmouth Town Meeting on April 7, 1981, with a place of business at the Town Hall, Falmouth, Barnstable County, Massachusetts; and

*WHEREAS*, FEDIC has submitted subdivision plans to the Town of Falmouth Planning Board concerning a proposal to build the

Falmouth Technology Park (Park) in three phases, to be located on Thomas Landers Road within Falmouth. More specifically Phase I of the project, involving 50 acres, was created pursuant to M.G.L. Chapter 41 §81P as "approval not required" lots off a public way. Said public way was approved by a Falmouth Town Meeting vote on 10/25/82. Phase II of the project was approved by the Falmouth Planning Board as shown on the endorsed definitive plan dated 7/3/90 and revised 9/28/90 and involved 18.83 acres. Phase III of the project was approved by the Falmouth Planning Board as shown on the endorsed definitive plan dated 1/4/90, revised 3/23/90 and 7/30/90 and involved 56.19 acres; and

*WHEREAS*, the buildout/traffic study (Falmouth Technology Park Build-Out Analysis and Traffic Report, Falmouth Planning Office, B.A. Currie, September 16, 1992) and the wastewater study (An Assessment of Nutrient Loading to West Falmouth Harbor from the Falmouth Technology Park and Other Sources, B.L. Howes/ D.W. Bourne/ N.P. Millham, July 1, 1992) conducted by the FEDIC show Development limitations of the Park based on the identified environmental factors and municipal infrastructure limitations of the study areas surrounding the Park.

*NOW THEREFORE*, in consideration of the provisions and requirements of this agreement, the CCC's agreement to waive mandatory DRI review for the life of this agreement, and the FEDIC's agreement to complete the studies referenced below, and so long as the completion of needed infrastructure improvements as described in the schedule outlined below occur, the parties hereto agree to the phasing of Developments within the park in order to ensure protection of the environment and the timely commitment to capital investments for timely completion of needed public infrastructure.

Developments which comply with all conditions contained in this agreement shall not require referral to the CCC as DRIs for the life of this agreement, with the exception of those uses excluded from this agreement under Section C.

In order to insure the continuance of a compatible environment for primarily high technology industries to operate at the Park, to sustain a good business environment, and to ensure that future Development within the Park is compatible with the values and purposes of the Act and the Cape Cod Regional Policy Plan (RPP), the parties hereto stipulate and agree as follows:

A. Application of the Regulations

All applicable codes, bylaws and regulations of the Town of Falmouth, the provisions of the Park's Protective Covenants (Attachment A), the provisions of the RPP, and the provisions of the Act, as may be amended from time to time, shall apply to Developments within the Park. In the event of a conflict between the following conditions and any applicable code, bylaw, covenants, or regulations the more restrictive requirements shall apply.

B. Timetable of this Agreement

**Stage 1:** The FEDIC may authorize the construction of a maximum of 132,094 sq.ft. of Gross Floor Area within the Park following: (1) the completion of the agreed upon Wastewater, Traffic and Plant / Wildlife studies. The CCC will assist with the completion of the studies. Said studies shall be completed to the satisfaction of the CCC before any future Development may proceed. The scope of each study referenced above is hereby incorporated as Attachment B; and (2) CCC approval of the solid waste recycling and hazardous waste and materials plans as required by Sections E and F below.

Upon approval of said studies and plans by the CCC, the CCC shall issue a Certificate of Compliance indicating compliance with the requirements of Stage 1 of this agreement. Upon issuance of said certificate, the development of the 132,094 sq. ft. of Gross Floor Area referenced above may be authorized by the FEDIC and

may proceed without mandatory DRI review as allowed by the terms of this agreement.

**Stage 1A:** The FEDIC may authorize the construction of an additional 40,000 sq. ft. of Gross Floor Area within the Park subject to the following two conditions: (1) The FEDIC agrees that no application will be made for a Certificate of Occupancy for this additional 40,000 sq. ft., or any portion thereof, until the traffic impact component of the Plan required for Stage 2 of this agreement is approved by the CCC. This requirement includes but is not limited to identification of traffic mitigation, consistent with the RPP. The FEDIC agrees to implement this condition through a deed restriction in the event that land is sold to accommodate any portion of the 40,000 sq. ft; and (2) The FEDIC agrees that until the Plan required in Stage 2 of this agreement is approved by the CCC and Falmouth Town Meeting as set forth in Stage 2, all further development in the Park shall install and maintain DEP-approved alternative septic systems with enhanced nitrogen removal. The FEDIC agrees to record a deed restriction on all properties sold after November 14, 1997 to require the installation and maintenance of said denitrifying systems unless the approved Plan does not require them.

**Stage 2:** The FEDIC may authorize the construction of an additional 224,188 sq. ft. of Gross Floor Area within the Park following approval by the CCC or its designee and subsequent approval by Falmouth Town Meeting of a Capital Improvements Plan (Plan) together with a funding mechanism for infrastructure improvements as identified in said Plan. Contemporaneous with the submission of the Plan to the CCC for approval, the FEDIC shall submit to the CCC up-to-date traffic safety data as outlined in the scope of work at Attachment B, pages 3 - 10. The Plan shall address nitrogen loading and traffic

impacts and shall ensure compliance with nitrogen loading and traffic standards of the RPP. The Plan shall include the methods of mitigation of nitrogen loading and traffic impacts and a timetable for completion of the mitigation to achieve Nitrogen reduction and off site roadway improvements to the area road network. The Plan shall address nitrogen loading within the watershed to West Falmouth Harbor, as the watershed is generally identified on the attached map, which map may be amended from time to time by the CCC (Attachment C). In addition to meeting the nitrogen loading standards of the RPP, all nitrogen additions to the West Falmouth Harbor watershed generated from the Park, including existing construction, shall be offset by equivalent reductions in nitrogen loading within the watershed to West Falmouth Harbor. If the FEDIC demonstrates to the satisfaction of the CCC or its designee that under full buildout conditions within the harbor watershed West Falmouth Harbor will not exceed its critical loading limit as defined by the CCC, then the CCC may waive the requirement that the FEDIC offset all nitrogen additions to the West Falmouth Harbor watershed by equivalent reductions in nitrogen loading within the watershed and require only that the FEDIC meet the nitrogen loading standards of the RPP. The parties agree that the CCC, in cooperation with the FEDIC and the Town of Falmouth, shall determine the scope and methodology to be used in future studies pertaining to nitrogen loading to West Falmouth Harbor.

Upon approval of the Plan by the CCC and subsequent approval of the Plan by the Falmouth Town Meeting, the CCC shall issue a Certificate of Compliance indicating compliance with the requirements of Stage 2 of this agreement. Upon issuance of said certificate, the development of the additional 224,188 sq. ft. of Gross Floor Area referenced above may be authorized by the

FEDIC and may proceed without mandatory DRI review as allowed by the terms of this agreement.

**Stage 3:** The FEDIC may authorize the construction of the remaining 1,188,845 sq. ft. of Gross Floor Area within the park following written certification to the CCC by the Falmouth Board of Selectmen of the completion of the infrastructure improvements identified by the Plan mentioned above and the subsequent acceptance of said certification as satisfactory by the CCC or its designee. Upon a request from the Falmouth Board of Selectmen, the CCC may authorize the construction of any portion of the above referenced 1,188,845 sq. ft. of Gross Floor Area if it determines that the necessary infrastructure improvements are available to support such Development.

Upon CCC acceptance of the Selectmen's certification of completion for all or any portion of the infrastructure improvements referenced in Stage 3, the CCC shall issue one or more Certificate(s) of Compliance indicating compliance with the requirements of all or a portion of Stage 3 of this agreement. In the event that partial infrastructure improvements are completed, said Certificate(s) shall indicate the exact amount of Gross Floor Area which may be developed based upon the partial infrastructure completion. Upon issuance of said Certificate(s), the development of all or a portion of the additional 1,188,845 sq. ft. of Gross Floor Area referenced above may be authorized by the FEDIC in accordance with said Certificate(s), and may proceed without mandatory DRI review as allowed by this agreement.

#### C. Land Use

The purpose of this agreement is to foster growth of low-impact, high technology industries within the Park. The following uses are excluded from the terms of this

agreement and shall require DRI review pursuant to the Act and CCC regulations:

(i) commercial retail/wholesale distribution centers, warehouses, outlets, stores or related uses any of which generate over 350 vehicle trips per day (vtpd). The CCC agrees to provide vtpd information to the FEDIC and local officials upon request. The FEDIC agrees to forward development plans concerning such uses to the CCC for an informal determination of whether a proposed development is or is not excluded from mandatory DRI review under this agreement; and

(ii) solid waste recycling and composting facilities and/or transfer stations.

If the CCC determines that a proposed development meets the standards and criteria for DRIs adopted pursuant to the Act and is excluded from this agreement as set forth above, then the CCC may review such development as a DRI notwithstanding the fact that the development has not been referred by a municipal agency or official.

D. Open Space

Forty percent (40%) of the upland area of any lot, excluding wetlands, shall be maintained as open space. Said open space may include landscaped areas designed to screen and buffer the Development. Within this area, the maximum amount of natural vegetation shall be maintained. Of said forty percent open space, thirty percent (12% of the entire lot) shall remain in an undisturbed, natural state.

E. Solid Waste

FEDIC shall create a plan to facilitate the separation, collection, and marketing of recyclable materials generated by Occupants. Said plan shall be completed by the FEDIC, with technical assistance from the CCC, within six months of the execution of this agreement.

Construction and demolition debris from Development and Redevelopment within the Park shall be removed from construction sites and reused or recycled to the maximum extent possible.

Development within the Park shall allocate adequate storage space for interim storage of materials to be recycled.

F. Hazardous Waste and Materials

The storage, transport, and usage of all toxic and hazardous materials and wastes at the Park shall be subject to all federal and state statutes and regulations and/or county and local bylaws and regulations as may now or in the future be designated and/or defined by such federal and state statutes and regulations and/or county and local bylaws and regulations.

Occupants that use, store, generate, treat, or dispose of hazardous waste or hazardous materials shall comply with the following restrictions:

1. A designated hazardous waste storage area shall be provided which is physically separated from the hazardous materials storage area by a wall, berm or similar means; and
2. Hazardous waste and/or materials shall be stored in an indoor area or in an enclosed, covered shed with containment that has a capacity of 110% of the volume of

the largest container(s) of hazardous waste and/or materials stored on the site. Such containment may be provided by means of a pan, bermed area or similar enclosed, impermeable surface area and shall have a sealed impervious concrete floor without floor drains. The sealer should extend 6" up the walls and containment shall be provided as outlined above; and

3. Incompatible waste types (corrosive, ignitable, reactive, toxic) shall not be stored in close proximity to one another; and

4. A Hazardous Waste and Materials Management Plan and a Spill Response Plan shall be developed and implemented and a copy of said plan shall be available for inspection by the FEDIC and the CCC. The CCC agrees to provide model plans to the FEDIC for distribution to Park Occupants; and

5. Hazardous materials users shall register with the Barnstable County Health and Environment Department's Hazardous Materials Users Registration Program.

The FEDIC agrees to notify the CCC of any Occupant that proposes to or actually stores hazardous materials in excess of 110 gallons (unless all containers are 5 gallons or less) and/or is a Small or Large Quantity Generator of hazardous waste in order to enable CCC staff to comment on hazardous materials and wastes aspects of the proposed project to local permit granting authorities.

The FEDIC agrees to establish and implement a Park-wide plan to encourage Occupants to minimize their hazardous waste generation through source reduction, reuse, material substitution, employee education and recycling. Said plan shall be completed by the FEDIC, with technical

assistance from the CCC, within six months of the execution of this agreement

G. Applicability

This development agreement shall apply to all Development within the Park including but not limited to new construction, additions, auxiliary buildings, alterations, changes in use, and modifications.

H. Successors

FEDIC shall ensure that its successors and assigns, and as a condition of their tenancy, Park tenants and their respective successors and assigns, shall agree to design, construct, maintain and operate their facilities in accordance with this agreement. These restrictions shall run with the land.

I. Discretionary Referrals

In the event any Development within the Park is referred to the CCC as a discretionary referral pursuant to Section 12(e) of the Act, the CCC or its designee shall hold a public meeting to consider such referral and may, notwithstanding the provisions of this agreement, vote to accept jurisdiction to review such Development as a DRI.

J. Noncompliance

Noncompliance with the terms and conditions of this agreement by the FEDIC shall result in a termination of the agreement and all Developments which meet or exceed the Standards and Criteria set forth in Section 12(c), or Standards and Criteria adopted subsequent to this agreement pursuant to Section 12(a) of the Act, shall be referred to the CCC for DRI review. Noncompliance with the terms and conditions of this agreement by an Occupant shall result in a termination of this agreement with respect to the non-complying Occupant and/or property and all Developments proposed by said

Occupant within the Park and/or all Development regarding a non-complying lot or lots which meet or exceed the Standards and Criteria set forth in Section 12(c) or 12(i), or Standards and Criteria adopted subsequent to this agreement pursuant to Section 12(a) of the Act, shall require DRI review. The CCC may issue and may record at the Barnstable County Registry of Deeds a Certificate of Compliance and/or a Certificate of Non-compliance for one or more lots, as it deems appropriate.

**K. Waiver**

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.

**L. Validity**

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. If any part of this agreement is adjudged to fail either party may, at its option, withdraw from this agreement.

**M. Authority**

This agreement is adopted under the authority of Section 14 of the Act and Barnstable County Ordinance 92-1 and shall be governed by the laws of Massachusetts.

**N. Modification or Amendments**

Following the five-year review of the RPP required by Barnstable County Ordinance 91-8, the CCC and the FEDIC shall review this agreement for its consistency with the revised RPP. If the CCC determines that it is necessary to amend this agreement to maintain consistency, then the CCC shall initiate review and amendment procedures with

the FEDIC. If the parties cannot agree on amendments to bring the agreement into consistency with the revised RPP, then both parties agree to participate in a non-binding mediation process. If the parties are unable to reach agreement through good faith participation in the non-binding mediation process, then either party may withdraw from this agreement upon providing thirty days notice to the other party.

Upon CCC certification of the Town of Falmouth's Local Comprehensive Plan, the CCC will initiate review and amendment procedures with the FEDIC and the Town of Falmouth to include the Town of Falmouth as a party to this agreement.

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. Any modifications or amendments hereto must be made in compliance with Section 8 of Barnstable County Ordinance 92-1, Cape Cod Commission Regulations Enabling Development Agreements.

O. Time Limit on the Development Agreement

This agreement shall be valid for a period of 12 years from the date of execution and may be extended for a period of not more than 12 years by mutual agreement of the parties.

P. Recording of the Development Agreement

A fully executed version of this agreement shall be recorded with the Barnstable County Registry of Deeds by the CCC. In addition, the FEDIC shall cause each new Occupant to attach a copy of this agreement, as a deed restriction, to its deed(s) upon recordation with the Barnstable County Registry of Deeds.

Q. Definitions

The definitions contained in the Act and the RPP shall apply to this agreement. For the purposes of this agreement, the following terms shall have the following meanings:

**Act** - Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended.

**DRI** - Development of Regional Impact

**Gross Floor Area** - The gross floor area of a building is the sum (in square feet) of the area at each floor level, including but not limited to cellars, basements, mezzanines, penthouses, corridors, lobbies, stores, and offices, that are included within the principal outside faces of exterior walls, not including architectural setbacks or projections. Included are all stories or areas that have floor surfaces with clear standing head room (6 feet, 6 inches, minimum) regardless of their use. Also included are enclosed storage buildings. Where a ground level area, or part thereof, within the principal outside faces of the exterior walls is left unenclosed, the gross floor area of the unenclosed portion is said to be considered as a part of the overall square footage of the building. All unroofed areas are to be excluded from the area calculations.

**Hazardous Waste and Materials** - any toxic and/or hazardous waste or substance as defined by federal or state statutes and regulations and/or county or local ordinance, bylaw and/or regulation.

**Large Quantity Generator** - A large quantity generator of hazardous waste as defined by the Commonwealth of Massachusetts or the U.S.

Environmental Protection Agency, whichever is more inclusive.

**Occupant** - A person or entity having an interest in property located within the Park, including but not limited to lot owners and Park tenants.

**Park** - The Falmouth Technology Park.

**RPP** - The Cape Cod Regional Policy Plan, Barnstable County Ordinance 91-6.

**Small Quantity Generator**- A small quantity generator of hazardous waste as defined by the Commonwealth of Massachusetts or the U.S. Environmental Protection Agency, whichever is more inclusive.

R. Local Review

Nothing in this agreement shall be construed to limit or in any way restrict the authority of the Town of Falmouth or its officers, agencies or agents to regulate Development within the Park.

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*Executed under seal by the authorized representatives of FEDIC and the CCC this 7<sup>th</sup> day of January, 1997.*

For the Cape Cod Commission,

Madeleine Bebout

Madeleine Bebout, Chair

Date

12-18-97

Subscribed and sworn to before me this

18<sup>th</sup>

day of Dec 1997.

Katharine G Peters

Notary Public

Nov 19, 2004

Date

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**Development Agreement**

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Falmouth Technology Park

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For the Falmouth Economic Development Industrial Corporation,

Harlyn O. Halvorson  
Harlyn O. Halvorson, Chair

1/7/98  
Date

Joseph C. Martyna  
Board Member

1/7/98  
Date

[Signature]  
Board Member

7/1/98  
Date

Charles A. L.  
Board Member

1/7/98  
Date

Subscribed and sworn to before me this 7<sup>th</sup> day of January.

Mary R. Pacheco  
Notary

1-7-98  
Date