



CAPE COD COMMISSION

3225 MAIN STREET
P.O. BOX 226
BARNSTABLE, MA 02630
(508) 362-3828
FAX (508) 362-3136

E-mail: frontdesk@capecodcommission.org

DEVELOPMENT AGREEMENT

Falmouth Technology Park

This agreement is entered into this 20 day of July, 2000, 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; and

WHEREAS, FEDIC has completed development of Stage 1 of this agreement, as amended (172,094 sq. ft.), and compliance with some mitigation requirements related to Stage 1 have been completed, while other mitigation requirements including those related to transportation and water resources have not been fully addressed; and

WHEREAS, FEDIC seeks to authorize construction of new projects as part of Stage 2 and 3, as amended encompassing all additional development in the Park (427,906 sq. ft.) for a total Park buildout of 600,000 sq. ft.; and

WHEREAS, FEDIC voluntarily seeks to substantially reduce total buildout numbers from 1,585,127 sq. ft. to 600,000 sq. ft.; and

WHEREAS, nitrogen loading analyses completed by the Commission through the Cape Cod Coastal Embayment project (Interim Final Report 9/98), and water quality and ecosystem analyses completed by the Center for Marine Science & Technology – University of Massachusetts – Dartmouth (B.L. Howes,

K.N. Smith and G.R. Hampson, 1999) confirm existing excessive nitrogen loads to West Falmouth Harbor; and

WHEREAS, the Park is located within the watershed to West Falmouth Harbor; and

WHEREAS, Title 5 regulations require the use of denitrifying septic systems in Nitrogen Sensitive Areas for systems with flows 2,000 gallons per day (gpd) or greater; and

WHEREAS, the Commission and the FEDIC have reviewed current water use within the Park, determined that the average water use is approximately 12 gpd per 1,000 sq. ft. of building (with a range of 8.66 to 15.70 gpd/1,000 sq. ft.), and determined that use of this average flow for the projected 600,000 sq. ft. buildout of the Park will result in 7,309 gpd of water use; and

WHEREAS, the Commission and the FEDIC have agreed that treating 7,309 gpd of wastewater with standard Title 5 septic systems will result in an annual load of 353.4 kilograms of nitrogen to the West Falmouth Harbor embayment system; and

WHEREAS, the Commission and the FEDIC have agreed that treating 353.4 kilograms would require the upgrade of septic systems at 68.4 houses from Title 5 systems to denitrifying septic systems at the cost of \$8,000 per upgrade for a total of \$547,240; and

WHEREAS, the Town of Falmouth has committed to provide funding of \$306,000 for transportation improvements and programs to benefit the study area according to the following schedule: 2005 - \$27,000, 2006 - \$34,000, 2007 - \$40,000, 2008 - \$60,000, 2009 - \$69,000, 2010 - \$70,000; and

WHEREAS, development limitations of the Park and of the study area surrounding the Park pertaining to environmental factors, traffic, and water resources require mitigation for activities in the Park related to traffic and water resources impacts for Stage 1 as amended, and mitigation for all development - related impacts for Stage 2 and 3 as amended; and

WHEREAS, due to the quasi-governmental economic development effort that the Park represents, the Town of Falmouth remains committed to mitigating the impacts of the development in the Park through municipal offsets for the outstanding issue areas and the Board of Selectmen will seek to become a party to the agreement.

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 (for a total of 172,094 sq. ft.) within the Park subject to the following condition: (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.

Stage 2: The FEDIC may authorize the construction of an additional 127,906 sq. ft. of Gross Floor Area within the Park (for a total of 300,000 sq. ft.) provided the following:

1) The total nitrogen impact of full build-out of the Park has been estimated based on average water use from existing uses within the Park. Based on this average, the total nitrogen offset would be \$547,240. The Town of Falmouth has expended \$330,000 to complete the Town of Falmouth's waste water facility plan. This amount will be used as an offset to mitigate nitrogen impacts from the Falmouth Technology Park. FEDIC will contribute \$220,000 to the Town of Falmouth to be used for nitrogen impacts in the West Falmouth Watershed. Payment into an escrow account will be as follows: June 2000 - \$50,000, June 2002 - \$50,000, June 2004 - \$50,000, June 2006 - \$50,000, June 2008 -\$20,000;

2) In the event that a new or expanded project in Stage 2 or 3 has a Title 5 wastewater flow of greater than 15.7 gallons per day per 1,000 sq. ft. of building or a total flow of 2,000 gpd, the FEDIC will require a denitrifying septic system for that project;

3) FEDIC will implement a low water and reduced fertilizer use landscaping restriction for all future development in the Park;

4) FEDIC will provide \$30,000 to be placed in escrow for use in the Town of Falmouth for transportation improvements or programs to benefit the study area;

5) As a policy, the Town of Falmouth will provide sidewalk/bikeway access as feasible on each public road they improve, including the Park study area;

6) To further offset the traffic mitigation required, the Town of Falmouth Board of Selectmen commits to prioritize the purchase of the nearby 23-acre parcel for open space purposes (to lessen future traffic impact and nitrogen loading in the study area);

7) The FEDIC has constructed and will seek to improve a wireless high speed telecommunications system in the Park (to facilitate telecommuting) and will prepare and implement a Travel Demand

Management (TDM) plan with Caravan for Commuters by no later than October, 2000;

8) The FEDIC commits to perform traffic counts on Technology Park Drive and Research Road during one week per year in July or August and to submit reports to CCC staff to evaluate the need for a left turn lane. When 275,000 sq. ft. is built and operating, CCC staff and FEDIC will review actual traffic to determine whether a left turn lane is warranted. At the point at which a left turn lane is warranted, no further construction will occur until a left turn lane is constructed;

9) The Town of Falmouth Board of Selectmen will provide a certificate of vote and a letter agreement to FEDIC and the CCC in which the Board commits to seek approval of a Development Agreement bylaw by the Town of Falmouth and to become a Party to this Development Agreement by December of 2001; and,

10) The Town of Falmouth Board of Selectmen will provide a certificate of vote and a letter agreement to FEDIC and the CCC in which the Board commits to develop and implement the Capital Improvements Plan set forth in Stage 3 in order to address traffic mitigation issues.

Stage 3: The FEDIC may authorize the construction of an additional 300,000 sq. ft. of Gross Floor Area (for total Park buildout of 600,000 sq. ft.) within the Park following approval by the Board of Selectmen and subsequent approval by the CCC or its designee 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 traffic impacts and shall ensure compliance with traffic standards of the RPP. The Plan shall include the methods of mitigation for traffic impacts and

a timetable for completion of the mitigation to achieve off site roadway improvements to the area road network.

Upon approval of the Plan by the Board of Selectmen and subsequent approval of the Plan by the CCC, the CCC shall issue a Certificate of Compliance indicating compliance with the requirements of Stage 2 3 of this agreement. Upon issuance of said certificate, the development of the additional 300,000 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.

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.

As specified in the TDM, employee amenities are encouraged to reduce the need for travel during the work day. Examples of such uses include ATMs, childcare facilities, snack bars, news stands, neighborhood stores and cafeterias.

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 an/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.

Executed under seal by the authorized representatives of FEDIC and the CCC

this 24 day of July, 2000.

For the Cape Cod Commission,


Frank Shephard, Chair

7/24/2000
Date

Subscribed and sworn to before me this 24th day of July 2000

Kerien Ann Cannon
Notary Public

7/24/00
Date



For Falmouth Economic Development Industrial Corporation,

Harlyn O. Halvorson

7/20/00

Harlyn O. Halvorson, Chair

Date

Joseph C. Martyna

7/20/00

Board Member

Date

RJ Bysbell

7/20/00

Board Member

Date

RJ Stanley

7/20/00

Board Member

Date

Subscribed and sworn to before me this 20th day of July, 2000

Frank K. Duff, J

7/20/2000

Notary

Date

My Commission expires
February 9, 2001