

**DEVELOPMENT AGREEMENT**

for the

**MASHPEE INDUSTRIAL PARK**  
Route 28, Mashpee, Massachusetts

Between the Cape Cod Commission  
and the Mashpee Industrial Park Trust

February, 1997

# Mashpee Industrial Park Development Agreement

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DEVELOPMENT AGREEMENT BY AND BETWEEN  
the MASHPEE INDUSTRIAL PARK TRUST  
and the CAPE COD COMMISSION

This Development Agreement is entered into this ~~February~~ <sup>April</sup> 17<sup>th</sup> day of 1997 by and between the Cape Cod Commission (the "Commission") and the Mashpee Industrial Park Trust (the "MIPT").

Whereas, the Commission was established by chapter 716 of the Acts of 1989, as amended (the "Act"), for the purpose of reviewing developments of regional impact (hereinafter "DRI") which, because of the magnitude of their impact are likely to present development issues significant to or affecting more than one municipality; and

Whereas, the Commission has adopted the Code of Cape Cod Commission Regulations of General Application, including inter alia, Enabling Regulations for the purpose of reviewing proposed DRIs (the "Regulations"), as well as the Regional Policy Plan for Barnstable County (the "RPP"); and

Whereas, Chapter D of the Regulations provides for the approval of Development Agreements, and, in particular, Section 5 thereof outlines the process by which a Development Agreement may be entered into by and between the Commission and a Qualified Applicant; and

Whereas, the MIPT is a Qualified Applicant which has voluntarily proposed a coordinated, planned phased development of the Property (as hereinafter defined); and

Whereas, the Cape Cod Commission Act and the RPP support the need for a sustainable and balanced economy while protecting the environment and natural resources protected by the Act and the RPP; and

Whereas, the MIPT is the owner of 13 Lots located within the Mashpee Industrial Park (the "Park") consisting of approximately 30.21 acres, said Lots being more particularly described in the list attached hereto as Exhibit A and shown on a plan, a copy of which is attached hereto as Exhibit B (the "Property"); and

Whereas, the Property is owned by the MIPT and is a part of the Park; and

Whereas, the Lots comprising the Park were created via a definitive subdivision plan dated August 1, 1984 and recorded with the Barnstable County Registry of Deeds in Plan Book 411, Page 73 (the "Subdivision Plan"); and

Whereas, the Commission issued on April 26, 1995 a Prescreening Report for the Park (the "Report") containing a preliminary analysis of impacts of a regional nature which may result from potential light industrial

development within the Park and projected potential needed infrastructure and improvements associated therewith; and

Whereas, the MIPT, the Commission and the Town of Mashpee (the "Town") wish to achieve a predictable development process for the Property; and

Whereas, substantial economic benefit for the Town and the Cape Cod region will be derived from development of the Property; and

Whereas, through this agreement the Commission agrees to eliminate individual regulatory review associated with development of the Property within the Park and the MIPT agrees to provide certain mitigation, infrastructure and monetary contributions necessary to support the Property concurrently with such development; and

Whereas, the Property is located partially within two marine water recharge areas, (i) the Waquoit Bay watershed, and (ii) the Popponesset Bay watershed which consists of the Lower Popponesset Bay subwatershed and the Mashpee River subwatershed, as shown on Exhibit C attached hereto, and as may be amended from time to time; and

Whereas, the existing nitrogen loading within the Waquoit Bay watershed and the Mashpee River subwatershed are known to exceed critical nitrogen loads; and

Whereas, a substantial portion of the Property is located within a Massachusetts Department of Environmental Protection certified Zone II to the Holland Mills public supply well as identified on Exhibit C attached hereto, as may be amended from time to time; and

Whereas, a portion of the Property is located partially within a "high priority site for rare species and an exemplary natural community" as defined by the Natural Heritage and Endangered Species Program; and

Whereas, the applicant has conducted a Plant and Wildlife Habitat Assessment for the Property which concludes that no rare plants or animals were documented on the site; and

Whereas, 40% of the Property will be protected as permanent open space, including pine barrens habitat; and

Whereas, traffic generated as a result of the development of the Property will impact the area roadways and area intersections, including the Park's site drive, and as a result those roadways and intersections and the site drive will require mitigation; and

Whereas, as mitigated through the terms and conditions of this development agreement, the proposed development will be substantially consistent with the RPP and the probable benefits of the proposed development outweigh the probable detriments; and

Whereas, based upon currently applicable zoning of the Town, the Property could be developed to a total of 380,000 square feet of Gross Floor Area, developments of less than 10,000 square feet could occur on individual lots within the Property without mandatory referral for DRI review, and the MIPT has agreed that the total development within the Property shall be limited to a maximum of 255,000 square feet of Gross Floor Area (the "Maximum Buildout"); and

Whereas, the Commission held duly noticed public hearings on May 22, 1996, July 2, 1996, July 25, 1996, July 31, 1996, and December 19, 1996 and held duly noticed subcommittee meetings on July 25, 1996, July 31, 1996, August 22, 1996, September 11, 1996, October 1, 1996 and December 12, 1996 in accord with its Regulations.

Now, therefore, the parties agree as follows:

The MIPT and the Commission agree that development constructed consistent with the terms and conditions of this Agreement and in compliance therewith shall not be subject to review as a development of regional impact under sections 12 and 13 of the Cape Cod Commission Act.

I. Transportation

TR1. The MIPT agrees to limit traffic generation from the Property to 2,119 vehicle trips per day and 298 p.m. peak hour trips based upon ITE Trip Generation Manual estimates, assuming a 20% trip reduction, as mitigated under Section TR4(b) of this Agreement.

TR2. The MIPT agrees to develop the Property in four (4) phases; the Commission may, at its discretion, approve subphases within these four (4) phases. Prior to applying for a building permit for any structure within a phase, the MIPT shall deliver to the Commission a list of the lots as described within Exhibit A to be contained within the phase and shall show the lots to be included within the phase on a copy of Exhibit B. No phase shall exceed 100,000 square feet in Gross Floor Area.

TR3. The parties acknowledge that the assumptions and conditions which form the basis for this Agreement with respect to transportation impacts are predicated upon the generic land uses listed below. For the purpose of mitigating transportation impacts, the MIPT agrees to limit the uses within each phase to the following: mini warehouse, manufacturing, warehousing (excluding wholesale/retail/club warehouse operations), light industrial, research and development, general office, office park, high technology/marine technology, business park, financial professional offices, telecommunications, incubator space and medical/dental offices and/or facilities. The MIPT agrees that uses within the Property which do not fall within the above-mentioned use categories and which exceed then-current DRI review thresholds shall be subject to DRI review.

TR4. Prior to the commencement of construction of each phase the MIPT agrees to do the following:

(a) List of Uses by Phase

Provide to the Commission a list of proposed uses and anticipated daily and PM Peak vehicle trip generation figures based on the then-current ITE Trip Generation Manual;

(b) Trip Reduction

Provide a monetary contribution to an escrow fund (the "TDM Contribution Escrow") in the amount of twelve thousand five hundred dollars (\$12,500), which amount shall be deemed a contribution toward the 20% trip reduction requirement set forth in the RPP (the "TDM Contribution"). The MIPT agrees to provide a total TDM Contribution of fifty thousand dollars (\$50,000) for all four phases of the project. In addition to the TDM Contribution, MIPT agrees to implement the following trip reduction measures within each phase of the Property:

(i) Creation of a Mashpee Industrial Park Travel Demand Management Panel (the "TDM Panel") which shall consist of a representative of the MIPT and representatives of Occupants operating within the Property at any time. The TDM Panel shall be created prior to commencement of construction in the first phase and shall meet at least semi-annually to discuss methods of meeting the 20% trip reduction goal and improving trip reduction strategies and implementation for the Park. The TDM Panel shall provide the MIPT with an annual report to be incorporated into the TDM Report referenced below.

(ii) Construction of a shuttle bus stop, including a covered and enclosed waiting area, in a location approved by the Commission, the Town, and the Cape Cod Regional Transit Authority. This stop shall be located within the Park or on Route 28 near the site and shall be constructed prior to commencement of construction within the fourth phase.

(iii) Require Occupants to provide bicycle racks for use by employees.

(iv) Require Occupants to implement preferential parking for car/van poolers and to enforce such parking restrictions.

(v) Provide showers and lockers within buildings controlled by the MIPT.

(vi) Encourage on-site amenities to reduce trips such as ATM, direct deposit, cafeterias, child care and fitness centers as appropriate.

(vii) MIPT will prepare and deliver to each Occupant a trip reduction strategy manual and will coordinate the presentation of seminars or

other educational materials (i.e. video tapes) to all Occupants regarding trip reduction strategies. The MIPT is encouraged to contact Caravan to assist in this task.

The MIPT agrees that the foregoing TDM strategies will be implemented on a permanent basis by the MIPT and, to the greatest extent feasible, by each Occupant within the phase. The MIPT further agrees to provide the Commission with an annual report on the success of implemented TDM strategies (the "TDM Report"). The first TDM Report shall be due after the completion of the first phase.

**(c) Off-Site Mitigation**

Provide a monetary contribution to an escrow fund (the Off-Site Mitigation Escrow) in an amount equal to the average per square foot cost for off-site mitigation attributable to each use within the proposed phase, consistent with the Off-site Mitigation Schedule attached hereto as Exhibit D, which Schedule shall be adjusted annually consistent with the then-current Boston Consumer Price Index. The off-site mitigation contribution for each phase shall be adjusted if actual uses are not consistent with the list of uses provided pursuant to subsection (a) above, upon a change of use, and/or upon occupancy by medical/dental uses pursuant to subsection (c) below. The escrow fund shall be used for design and construction of off-site roadway improvements in the vicinity of the Park. Escrow funds not expended within ten (10) years of receipt shall revert to the Cape Cod Regional Transit Authority.

**(d) Proposed Medical/Dental Uses**

Provide the amount of gross floor area of proposed medical and/or dental uses within the phase and an additional monetary contribution, as determined by the Commission, to address off-site mitigation and 20% trip reduction associated with such development. The MIPT further agrees to provide to the Commission the amount of gross floor area of medical and/or dental uses created as a result of changes of use to existing buildings within the Property and to provide an additional monetary contribution, as approved by the Commission, to address off-site mitigation and 20% trip reduction associated with such changes of use. The off-site mitigation component of such monetary contribution shall be based upon then-current ITE trip generation manual and the fair share contribution as determined under the then-current Commission technical bulletin(s). The trip reduction component of such monetary contribution shall be based upon then-current Commission policy regarding trip reduction, taking into account trip reduction measures implemented under subsection (b) above. The MIPT agrees that such monetary contribution shall be made prior to applying for a building permit for the proposed medical/dental use.

**(e) Site Drive Mitigation**

(i) The MIPT agrees to mitigate impacts from the development of the Property at the Park's site drive. The site drive currently operates at LOS E. Therefore, mitigation is necessary for any development which



may occur within the Property. Current problems include poor sight distance on the southbound approach and delays for vehicles turning left out of the site. Costs of improvements at the site drive shall be the responsibility of the MIPT.

(ii) The MIPT agrees to conduct a signal warrant study each year in which additional square footage is constructed within the Property up to Maximum Buildout and to conduct such a study one year after Maximum Buildout to determine the need for signalization and other mitigation which may be required at the site drive to meet the minimum performance standards of the Regional Policy Plan, provided, however, that said signal warrant studies shall not be required after the Massachusetts Highway Department (the "MHD") formally approves signal installation or other mitigation to satisfy the RPP. The MIPT agrees to work with the Town and the MHD to determine when such mitigation shall be implemented. Site Drive mitigation shall be approved by the MHD, if necessary, and may include but shall not be limited to: a peak period detail officer, alignment and/or grade changes, signalization, turn restrictions, and provision for a left turn lane on Route 28.

(iii) The MIPT agrees to initiate temporary traffic control measures (such as providing a police detail at the site drive at peak hours if approved by the Town) until the site drive is signalized or otherwise mitigated to ensure that the site drive operates at no build levels, based upon permissible mitigation strategies as identified in the Minimum Performance Standards of the Regional Policy Plan and, when necessary, as approved by the MHD.

## II. Water Resources/Hazardous Materials and Wastes

In order to protect fresh and marine water resources by minimizing the risk of potential groundwater contamination from land uses on the Property and in order to promote pollution prevention, the MIPT agrees as follows:

WR1. Heating systems involving oil storage shall not be located within the Zone II or the Mashpee River subwatershed, as shown on Exhibit C attached hereto.

WR2. Use, handling, treatment, storage, generation, or disposal of radioactive materials or radioactive waste, acutely hazardous waste as defined by 310 CMR 30.00, and highly explosive or reactive materials as defined herein, shall be prohibited. Infectious waste shall be stored, treated, handled or disposed in accordance with 105 CMR 480.00 and the requirements of this Development Agreement. In cases of conflict or overlapping regulations, the more restrictive requirements shall apply.

WR3. Self-transport of hazardous waste for disposal by generators shall be prohibited. This does not include hazardous waste transported within Lots under common ownership for the purposes of complying with the waste handling and storage conditions of the Development Agreement.

WR4. On-site vehicle, boat, airplane or equipment maintenance, repair, servicing or refueling and/or storage as a primary activity or business shall be prohibited. The only exception to this prohibition shall be for limited maintenance of accessory equipment as might be needed for typical, routine functioning. Any such limited maintenance shall be done on an impervious surface, done in a manner that limits the use or release of hazardous materials, the generation of hazardous waste or release of hazardous materials or wastes. Storage of any vehicles, boats, airplanes or equipment shall be on an impervious surface. With the exception of transient vehicles, the fuel tanks and crankcases of any vehicles, boats, airplanes or heavy equipment which are stored, used or maintained within the Property shall be stored with gasoline tanks at least 95 % full to prevent fire hazard from vapors. Except during pick-ups and deliveries, parking and/or storage of transport vehicles for fuel and hazardous materials and wastes, including but not limited to oil, coal, and gasoline, shall be prohibited.

WR5. All hazardous materials and hazardous wastes shall be stored in a manner such that materials or wastes of different types are stored separately by hazard class and/or waste type and such that incompatible materials or wastes are segregated.

WR6. All areas where containers of hazardous materials and/or hazardous waste are stored shall be inspected on a weekly basis. The inspection shall include looking for deterioration of the containers and the containment system and the Occupant and/or the MIPT shall maintain a reasonable record of said weekly inspection.

WR7. A facility audit designed to identify opportunities for toxics use reduction and/or pollution prevention shall be conducted annually by all Occupants which use, generate, treat, store, or dispose of hazardous materials, hazardous wastes or infectious wastes. The audit shall be conducted in accordance with the Massachusetts Toxics Use Reduction Act (TURA) of 1989. The audit shall consider, at a minimum, strategies for hazardous materials input substitution, product reformulation, process redesign, process modifications, improved operations or maintenance methods and in-process reuse and/or recycling of hazardous materials. The audit shall also consider ways to reduce or eliminate hazardous waste

generation to the extent feasible. The audit report shall be included in the Annual Report described in Section AM4.

WR8. All loading docks within the Property shall be designed to contain potential spills of hazardous materials and hazardous wastes. All loading dock drainage areas shall be designed so that they may be isolated from downgradient catchbasins or other leaching facilities.

WR9. Floor drains shall be prohibited within the Zone II and the Mashpee River subwatershed as shown on Exhibit C attached hereto. Occupants within the Zone II and/or the Mashpee River subwatershed which are required to install floor drains under the State Building Code or the State Plumbing Code shall submit a proposal for review and approval by the Commission or its designee.

WR10. Groundwater heat pumps and the resulting hot water discharges shall be prohibited. Occupants may apply to the Commission for approval of innovative systems resulting in such discharges.

WR11. The Commission agrees to provide to the MIPT for use as guidance by all Occupants outlines of the components of: (1) an employee education plan which addresses workplace safety; and (2) a workplace hazardous materials and hazardous waste management plan which addresses the proper methods to handle and store hazardous materials and hazardous wastes; and (3) an emergency response plan which addresses the issues of building evacuation, what to do in an emergency and how to respond to releases of hazardous materials or hazardous waste. The MIPT agrees that all Occupants shall develop individualized plans consistent with said outlines and that such plans shall be submitted to the Commission. The MIPT agrees that all Occupants shall abide by said individualized plans and said Occupants shall provide training to employees in the requirements of the relevant emergency response plan, waste management plan and workplace safety plan.

### III. Hazardous Wastes

HW1. Hazardous waste generation per Lot shall be limited to a Very Small Quantity Generator status which means a generation rate up to 100 kilograms or approximately 27 gallons per month. Total hazardous waste generation within the Property shall not exceed 1,300 kilograms per month or approximately 351 gallons per month. In order to promote pollution prevention, the MIPT agrees that each Lot may accumulate/store a maximum of 27 gallons (100 kilograms) of waste at a time before shipping waste for disposal and that the total accumulated/stored waste within the Property

shall not exceed 1,300 kilograms or approximately 351 gallons. Infectious waste shall be counted toward the limits on hazardous waste.

HW2. All Occupants which use, handle, treat, generate, store or dispose of hazardous waste shall:

1. notify the Massachusetts DEP and County Department of Health and the Environment.
2. complete a hazardous waste determination as required by 310 CMR 30.302.
3. maintain an inventory of all hazardous waste they generate by each individual type and quantity on site at any given time.
4. use a transporter permitted and licensed by the Massachusetts DEP for hazardous waste disposal.
5. keep on-site records of all hazardous waste shipments, whether made using a hazardous waste manifest or other shipping paper, for a period of three years from the date of shipment.

HW3. All hazardous waste storage areas shall be:

1. posted or marked as a hazardous waste storage area and shall be separated from areas where hazardous waste is generated.
2. fenced and/or secured against unauthorized entry.
3. bermed areas with secondary containment adequate to contain 125% of the total volume of hazardous waste stored there at any given time.
4. constructed of an impervious surface.
5. constructed without floor drains.
6. constructed such that such wastes are stored under cover or indoors.
7. constructed with sufficient aisle space to allow for inspections.

HW4. All hazardous waste shall:

1. be stored in containers which made of or lined with materials which are compatible with the hazardous waste stored in the container.
2. be stored in containers kept tightly closed except when waste is being added or removed.
3. stored in containers marked and labeled in a manner which identifies, in words, the hazardous waste(s) being stored in the container (e.g. acetone, toluene) and the hazard(s) associated with the waste (e.g. ignitable, toxic, dangerous when wet). Each container shall also be marked with the words "Hazardous Waste".
4. handled in accordance with the workplace safety, release response and emergency response plans of the Occupant.

HW5. All Occupants that generate, use, treat, store or dispose of hazardous waste shall comply with the requirements of the Massachusetts Hazardous Waste Management Regulations, 310 CMR 30.00, as amended.

#### IV. Hazardous Materials

HM1. Hazardous materials use, generation, treatment, storage or disposal shall be limited to 25 gallons or its dry weight equivalent (200 pounds) per Lot at any one time. Total hazardous materials use, generation, treatment, storage or disposal within the Property shall be limited to 325 gallons or its dry weight equivalent (2,600 pounds).

HM2. All Occupants which use, handle, treat, generate, store or dispose of hazardous materials shall:

1. register with the County Department of Health and the Environment.
2. maintain an inventory of all hazardous materials including type(s) and quantity(ies) on site at any given time.

HM3. All areas where hazardous materials are stored shall be:

1. posted or marked as a hazardous materials storage area and be separated from areas where hazardous materials are used or hazardous waste is generated.
2. fenced and/or secured against unauthorized entry.
3. bermed areas with secondary containment adequate to contain 125% of the total volume of hazardous materials stored there at any given time.
4. constructed of an impervious surface.
5. constructed without floor drains.
6. constructed such that such materials are stored under cover or indoors.
7. constructed with sufficient aisle space, if appropriate given the size or number of containers, to allow for inspections.

#### V. Water Resources/Wastewater Discharge

WD1. The MIPT agrees that each Lot within the Property shall not exceed 5 parts per million (5 ppm) nitrate/nitrogen load as determined by the Cape Cod Commission Technical Bulletin 91-001. Wastewater flow shall be determined by the aggregate of all uses on each Lot by any Occupant(s), including changes in use. By way of example, attached hereto as Exhibit E are acceptable wastewater flows assuming 45% pervious lot area, with and without denitrifying septic systems.

WD2. The MIPT agrees that discharges in excess of 2,000 gpd shall require a recirculating sand filter or its equivalent. In performing nitrogen loading calculations, nitrogen concentrations for denitrification facilities will be allowed at a value of 19 parts per million nitrogen. The MIPT agrees that discharges in excess of 10,000 gpd are prohibited within the Zone II and within the Mashpee River subwatershed as shown on Exhibit C.

WD3. The MIPT agrees that Lots 20, 21, 27, 28, 29 and 30 shall discharge their wastewater into the Lower Popponesett Bay subwatershed as identified on Exhibit C.

#### VI. Audit and Monitoring Requirements

AM1. The MIPT agrees to provide to the Commission semi-annual audit reports to be conducted by an independent auditor or auditors meeting the qualifications provided below. Said auditor(s) shall be pre-approved by the Commission. The purpose of the audit shall be to ensure compliance the terms and conditions of this agreement contained in Sections II, III, IV and V, and to identify threats of contamination of groundwater from both sources.

##### AM2. Hazardous Materials and Waste Audit

(a) The MIPT agrees that the auditor(s) shall conduct an audit of hazardous materials and hazardous waste management on the Property. The MIPT agrees that the Auditor(s) shall conduct an audit of each Occupant semi-annually for two years from the date of occupancy within the Property and annually thereafter, provided, however, that semi-annual auditing shall be re-initiated for each two year period following changes in occupancy. Audits shall be conducted unannounced and shall result in a written report which details findings and provides recommendations on ways to improve hazardous materials and waste management. Copies of audit reports shall be provided to the Commission, the Mashpee Water District, the Mashpee Health Department and the Mashpee Fire Department. The Commission reserves the right to require semi-annual audits of particular Occupant(s) in the event an audit shows a lack of compliance by an Occupant with the terms and conditions of this Agreement.

(b) In the event the MIPT fails to conduct said audit, the Commission shall notify the MIPT which shall then complete the audit within 60 days. In the event the MIPT fails to provide the Commission with a copy of said audit within 60 days of notification or to show good cause for a delay, in the Commission's sole discretion, the Commission may cause the audit to be conducted and may assess the MIPT for reimbursement of the costs of conducting said audit. In addition, the MIPT agrees that each Occupant may be inspected, once per year, upon at least one hour notice by telephone, by a

representative of the Mashpee Water District, the Mashpee Board of Health, the Mashpee Fire Department and/or the Cape Cod Commission to ensure that all facilities are abiding by the conditions of this agreement as well as any state or local permits and approvals which relate to the protection of groundwater. The foregoing parties may also conduct such inspections of an Occupant at any time upon at least 24 hours notice.

(c) If the Commission or its designee determine at any time that the operations of the MIPT or any Occupant is not in compliance with the terms of this agreement relating to hazardous materials and hazardous waste use, generation, management, storage and disposal, the Commission or its designee may issue to the MIPT and to said Occupant a Notice of Noncompliance. Said Notice shall specify in reasonable detail the alleged conditions of non-compliance and the information obtained by the Commission or its designee which supports the Commission's determination of non-compliance. The MIPT and/or Occupant agree to respond promptly, in writing, to any such notice of non-compliance and agree to cure any event of non-compliance promptly and with due diligence, or, if such non-compliance cannot reasonably be cured promptly, then to commence promptly such curative action and to pursue it diligently to completion. Curative action shall include measures to address the source of the noncompliance as well as mitigating impacts, if any, resulting from the noncompliance. The MIPT agrees that the failure of any Occupant to comply with the terms of this agreement, following notice as aforesaid, shall result in the termination of this agreement with respect to the noncomplying Occupant and/or Lot(s) and all developments proposed by said Occupant within the Property and/or all development regarding a noncomplying Lot or Lots shall require DRI review regardless of size. The MIPT reserves its legal rights, defenses and remedies to contest any such Notice of Noncompliance issued by the Commission. Nothing herein shall be construed to prevent or impede the MIPT from obtaining contribution, indemnification, reimbursement or damages from any Occupant causing such noncompliance.

(d) Auditor qualifications:

1. Current certification as a Toxics Use Reduction Planner under the Toxics Use Reduction Act regulations and a Licensed Site Professional under the Massachusetts Contingency Plan (21-E) program.
2. Experienced and professionally non-biased.
3. Pre-approved by the Commission.

(e) Contents of Audit:

Audits to be conducted for hazardous materials and hazardous waste management shall include:

1. a determination of compliance with the conditions of this Development Agreement,
2. a review of the latest annual toxics use reduction/pollution prevention audit.
3. a review of weekly inspection records of waste and materials storage areas for the preceding period,
4. a review of the latest hazardous materials and hazardous waste inventory,
5. a review of waste disposal records for the preceding period,
6. a review of release and emergency response activities for the preceding period,
7. a determination of compliance with workplace safety and/or release and emergency plan updates as well as refresher employee training and new-hire employee training in these plan requirements which occurred during the preceding period,
8. a review of the latest notification to the DEP and County Health Department,
9. a review of the latest hazardous materials and waste inventory,
10. a review of the results of any water quality monitoring done during the preceding period under Condition AM3 below, and
11. a review of the results of soil and soilgas sampling analysis performed under Condition AM3 below, if any,
12. recommendations on ways to improve hazardous materials and waste management.

**AM3. Water Quality Audit**

(a) The MIPT agrees to hire an independent auditor to conduct water quality sampling from water quality monitoring wells and from all septic systems at a point near the sanitary tee outlet. Sampling from each sanitary tee outlet shall be conducted every six months beginning with commencement of operation of each septic system through two years following initial occupancy and use of the septic system, and said sampling shall be conducted annually thereafter, provided, however, that semi-annual auditing shall be re-initiated for each two year period following changes in occupancy. The MIPT agrees that outlet tee sampling shall be conducted without notice to Occupants, and at least one semi-annual sample shall be conducted without notice to Occupant(s). Said auditor shall be pre-approved by the Commission. All septic systems located within the Property shall install a manhole cover at grade to facilitate sampling access at a point near the sanitary tee outlet. Samples shall be collected in a manner that avoids aerating the sample prior to analysis. The septic system samples shall be tested for volatile organic compounds. The



auditor shall perform a visual inspection for surface staining in order to check for surface spills. In the event surface staining is noticed, the auditor shall conduct representative soil sampling and/or perform on-site soilgas sampling.

(b) The MIPT agrees to install no less than 5 water quality monitoring wells, (more wells may be required under the Mashpee Zoning Code, section 174-27(B)(9)) , to be installed at locations and depths approved by the Mashpee Board of Health consistent with Mashpee Zoning Code, section 174-27(B)(9). Prior to installation, proposed well depth, design and method of installation and sediment sampling shall be approved by the Commission or its designee. In the event of a conflict, the Mashpee Board of Health shall control. Prior to each sampling, water levels should be recorded in each monitoring well (surveyed to establish elevations) and level recorders shall be decontaminated prior to each level measurement, or, water levels shall be taken at least three hours after sampling. Said monitoring wells shall be sampled semi-annually for volatile organic compounds using EPA method 502.2, PH, conductivity, sodium, ammonia, nitrates and nitrites and for other constituents identified in the Mashpee Zoning Code, section 174-27(b)(9). Samples shall be drawn by the Mashpee Water District and analyzed by a Massachusetts certified laboratory. The MIPT agrees to reimburse the Mashpee Water District for the reasonable costs of such sampling and to pay for the analysis required above. The MIPT agrees to provide the monitoring results consistent with Mashpee Zoning Code, Section 174-27(B)(9) to the Commission, the Mashpee Water District, the Mashpee Planning Board, the Mashpee Board of Health, and the Mashpee Fire Chief. The MIPT agrees that the Commission, the Mashpee Planning Board and the Mashpee Board of Health shall have access to the monitoring wells.

(c)

(1) In the event the outlet tee or monitoring well samples show contaminant levels in excess of then-current Maximum Contaminant Levels as established by the DEP, the MIPT and/or the potentially responsible Occupant shall follow notification requirements contained in Code of Massachusetts Regulations at 310 CMR 40 and shall immediately notify the Commission, the Mashpee Water District , the Mashpee Planning Board, the Mashpee Board of Health, and affected abutters. The MIPT agrees to immediately provide the Commission with a list of affected abutters so notified. In addition, the MIPT and/or the potentially responsible Occupant shall initiate immediate response action to remediate any exceedence originating from the Property, and shall pursue such remediation diligently to completion. The MIPT shall have the burden of proof to establish that the contamination is not originating from within the Property.

(2) In the event the outlet tee or monitoring well samples show trace levels of volatile organic compounds (with the exception of chloroform

which may occur naturally), the MIPT and/or the potentially responsible Occupant shall notify the Commission, the Mashpee Water District, the Mashpee Planning Board and the Mashpee Board of Health of such trace levels and shall conduct a second sampling. If the second sampling confirms trace levels of volatile organic compounds, the MIPT and/or potentially responsible Occupant agree to initiate immediate response action to remediate said discharge(s) originating from the Property, and to pursue such remediation diligently to completion. The MIPT shall have the burden of proof to establish that the contamination is not originating from within the Property.

(3) In the event the monitoring well samples show nitrate/nitrogen concentrations in excess of 5 ppm, the MIPT shall immediately notify the Commission, the Mashpee Planning Board and the Mashpee Water District. The MIPT agrees that it shall demonstrate that excess nitrate/nitrogen concentrations will be promptly remediated or that such excesses are the result of uses on lots which are not part of the Property. The MIPT shall have the burden of proving that such excess is not a result of uses within the Property. The MIPT agrees to promptly remediate excesses which it has not proven, to the Commission's satisfaction, are originating from outside of the Property. If remediation does not fully address excess nitrate/nitrogen concentrations, regardless of the source, all development initiated after the determination of exceedence of the 5 ppm concentration, including expansions of existing developments and changes of use, shall be required to install recirculating sand filters or an equivalent nitrogen removal technology, regardless of the amount of wastewater flow, in order to lower nitrate/nitrogen discharges from the Property and that all use of fertilizers within the Property shall thereafter be prohibited.

#### AM4. General Review and Reporting Requirements.

The MIPT agrees to submit an annual report (the "Annual Report") to the Commission which includes the TURA Audit required under WR7, TDM reports required under TR4(b), the Signal Warrant Study required under TR4(e), and Occupant's individualized employee education, workplace safety, and workplace hazardous waste and materials management plans required under WR11, as applicable. The Annual Report shall also address the extent and timing of compliance with the terms and conditions of this Agreement. This annual report shall be initially due eleven (11) months after approval of this Agreement, and thereafter on that date until the termination of this Agreement. The Commission shall review this Agreement and the annual report to determine if there has been demonstrated good faith compliance with the terms of this Agreement.

#### VII. Storm Water

SW1. The MIPT may retain the existing roadway drainage system and may redesign the existing detention basin consistent with this condition. The

MIPT agrees to design and install new stormwater drainage system(s) that maximizes pollutant removal. The new system(s) shall be consistent with current Massachusetts Highway Department Best Management Practices for open air vegetated stormwater drainage systems and shall be approved by the Commission or its designee prior to the commencement of each Phase of development as outlined in Condition TR#2 above.

### VIII. Open Space and Buffer Areas

#### OS1. Reservation of Open Space

(a) In order to provide wildlife and pine barrens habitat and provide buffers to adjacent parcels, the MIPT shall provide 40% permanently protected open space (as defined by the RPP) within the Property (the "Open Space").

(b) Said Open Space shall consist, in part, of the land shown on the plan attached hereto as Exhibit F as "Required Buffer Area", depicted by cross-hatching, which land shall count toward the 40 % requirement. Prior to the conveyance of any Lot the MIPT shall provide a permanent open space restriction, consistent with M.G.L. Chapter 184 Sections 31-33, in a form reasonably acceptable to Commission Counsel, providing that the Required Buffer Area shown on Exhibit F remain as permanent open space and remain in a vegetated, natural state. At a minimum, the Required Buffer Area shall include 100 feet from the southern boundary of the Park extending into Lots 20 and 21 and 50 feet from the southern boundary of the Park extending into Lot 27 and any other Lots owned or controlled by the MIPT located on the southern boundary of the Park. The MIPT agrees to make a good faith attempt, to the greatest extent feasible, to extend the permanently restricted buffer area to all Lots along the southern boundary of the Park.

(c) The remainder of the Open Space shall be provided on-site. No more than half of the Open Space shall consist of lawn/landscaped area. Landscaped areas shall contain only native species. The other half of the Open Space shall consist of existing vegetated land left in an undisturbed, natural state. Prior to the commencement of construction within each phase, as set forth in Section TR2 of this Agreement, the MIPT agrees to submit an open space plan for each phase for Commission review to determine conformance herewith, provided, however, that the open space plan submitted for the final phase shall provide open space sufficient to meet the total 40% requirement. The MIPT shall make a good faith attempt, to the greatest extent feasible, to locate open space within the "Habitat Protection Area" depicted by diagonal hatching on Exhibit F and shall make a good faith attempt, to the greatest extent feasible, to maintain reasonable wildlife habitat and travel corridors. The MIPT shall make a good faith attempt, to the greatest extent feasible, to ensure that all fencing within the Park will not impede wildlife movement within the Habitat Protection Area. The MIPT shall make a good faith attempt, to the greatest

extent feasible, to preserve as open space the naturally occurring kettle hole on Lot 28.

(d) In addition, the MIPT agrees to provide either a) a \$20,000 monetary contribution to be placed in escrow (the "Open Space Escrow") for the purpose of acquiring developable land or a conservation restriction on developable land within the Mashpee River subwatershed for wildlife habitat protection, or b) developable land or a conservation restriction on developable land within the Mashpee River subwatershed of a value equal to or greater than \$20,000, as shown by a certified appraisal, for wildlife habitat protection. In the event the MIPT provides land or a restriction pursuant to subsection (b) above, said contribution of land shall be provided to the Town, or to an entity approved by the Commission, upon completion of construction of phase 2 or conveyance of all Lots within phase 2, or upon commencement of phase 3, whichever is sooner. The MIPT shall provide the Commission with proof of such donation to the Town.

#### OS2. Buffer Areas

In order to ameliorate impacts between adjacent land uses and to provide useful wildlife habitat where wide undisturbed wooded buffers exist, the MIPT agrees to provide a bufferyard to adjacent residential properties, which bufferyard is shown as Required Buffer Area on Exhibit F.

#### OS3.

For all landscaped areas, trees and shrubs shall be selected from the Route 6A Vegetation Management Plan, tree and shrub tables. Vegetation shall be native and shall be tolerant to sandy soils and drought.

### IX. General Conditions

GC1. The parties agree that the total development within the Property shall be limited to a maximum of 255,000 square feet of Gross Floor Area.

GC2. The definitions contained in the Cape Cod Commission Act shall apply to this agreement. In addition, the following definitions shall apply:

Hazardous Waste: any waste material as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.00, as amended.

Hazardous Materials: any: chemical; combustible liquid; compressed gas; explosive; flammable aerosol, gas, liquid or solid; hazardous chemical; health hazard; mixture; organic peroxide; oxidizer; physical hazard; pyrophoric; unstable (reactive) or water reactive, as defined under Title 29 of the Code of Federal Regulations, Section 1910.1200(c) and any other chemical, material or substance

identified by the Cape Cod Commission as hazardous based on available scientific evidence. This includes, but is not limited to, petroleum products, solvents, paint and pesticides. Hazardous materials do not include Hazardous Wastes, tobacco products, wood products, foods, drugs, alcoholic beverages or cosmetics.

Highly Explosive or Reactive Material: Any Hazardous Material or Hazardous waste which causes or undergoes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature or that will ignite spontaneously in air at a temperature of 130 degrees, Fahrenheit (54.5 degrees, Celsius) or below. This definition includes blasting agents.

Infectious Waste: Any waste defined and/or regulated by Chapter 111 of the Massachusetts General Laws and 105 CMR 480.00, as amended.

Occupant: Any tenant, lesee, sublesee, person or any entity occupying or in possession of any Lot or any portion thereof within the Property.

Radioactive Materials: any solid, liquid or gas which emits radiation spontaneously.

Radioactive Waste: any waste regulated by the Atomic Energy Act of 1954, as amended or the Low-Level Radioactive Waste Policy Act, as amended.

Zone II: The Zone of Contribution to the Holland Mills Well Site as defined by, and as amended or modified by, the Massachusetts Department of Environmental Protection under 310 CMR 22.02.

### GC3. Air Quality

All Occupants shall be in compliance with the Massachusetts State Implementation Plan and DEP's Air Pollution Control Regulations, 310 CMR 7.00 to the extent applicable.

GC4. Lots may be subdivided and/or combined without the approval of the Commission.

GC5. Developments within the Property shall not substantially disrupt transmission and receiving capabilities of existing telecommunications facilities located within the Park.

GC6. The term of this agreement shall be ten (10) years, during which time the MIPT or its successors may develop the Property in accordance with this agreement. Notwithstanding the foregoing, the restrictions and requirements contained within this agreement shall run with the land. In addition, this agreement shall apply to all development within the Property including but not limited to new construction, additions, auxiliary buildings, alterations, changes in use, and modifications.

GC7. Escrow accounts established under this Development Agreement, including the Off-site Mitigation Escrow, the TDM Contribution Escrow and the Open Space Escrow shall be in a form and content satisfactory to Commission Counsel and shall provide that monies shall be expended at the direction of the Commission.

GC8. Other Approvals and Permits. This Agreement does not relieve the MIPT of the necessity of complying with the law governing state or local permitting requirements. If requested by the Town, the Commission agrees to provide technical assistance concerning developments within the Property as staffing allows.

GC9. Amendment. This agreement may be amended or modified only by written agreement of the parties and shall be interpreted under the laws of the Commonwealth of Massachusetts.

GC10. Recordation. The MIPT shall record a copy of this agreement with the Barnstable Registry of Deeds and shall provide the Commission with proof of recording within 10 days of the execution of this agreement.

GC11. Successors. The burdens of this agreement shall be binding upon, and the benefits shall inure to, all successors in interest to the parties to this agreement. The MIPT agrees that Occupants shall agree to design, construct, maintain and operate each development in accordance with this agreement. The Commission shall have the right to approve any successor to the MIPT, which approval shall not be unreasonably withheld unless the Commission finds that the successor is unable or unwilling to comply with the terms of the agreement.

GC12. Breach of Agreement. Upon MIPT's material breach of the terms and conditions of this Agreement, the Commission shall send written notice to the MIPT. The MIPT shall have sixty (60) days to cure such breach, or, to provide evidence, satisfactory to the Commission, that the MIPT is diligently and in good faith attempting to so cure. In the event the MIPT fails to so cure, the Commission may vote to send written notice to the MIPT that this agreement is terminated and all further development work within the Property which meet or exceeds the Commission's development review thresholds shall be reviewed as a DRI. In the event of noncompliance with the terms and conditions of the Agreement by an Occupant, the Commission shall provide the MIPT and the Occupant with

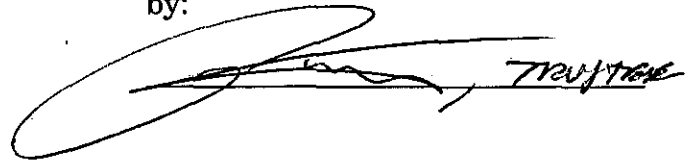
notice of said breach and the MIPT and/or the Occupant shall have sixty (60) days to cure such breach. In the event the MIPT and/or the Occupant fails to so cure, the Commission may vote to send written notice to the MIPT and the Occupant of termination of this Agreement with respect to the noncomplying Occupant and/or Lot(s) and all developments proposed by said Occupant within the Property and or all development regarding a noncomplying Lot or Lots shall require DRI review, regardless of size.

GC13. Enforcement. The Commission, the MIPT, and their successors or assigns may file an action for injunctive relief in Barnstable Superior Court to enforce the terms and conditions of this Agreement.

GC14. This agreement shall be governed by the laws of Massachusetts.

Signed this 3rd day of February, 1997:

For the MASHPEE  
INDUSTRIAL PARK TRUST  
by:



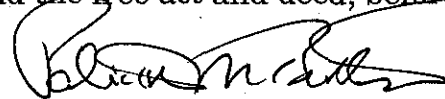
COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

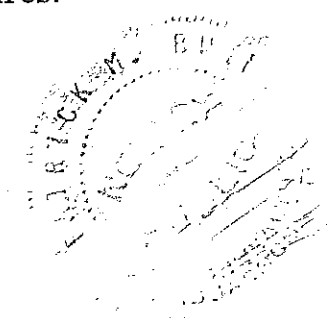
February 3, 1997

Paul deRuyter

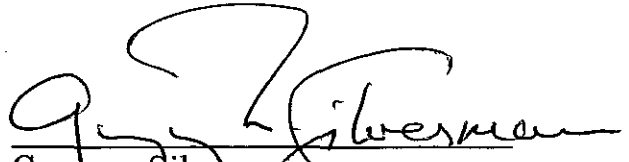
Then personally appeared before me the above-named Trustees of the Mashpee Industrial Park Trust, and acknowledged the foregoing instrument to be their free act and deed and the free act and deed, before me,



Notary Public *Patrick M. Butler*  
My Commission Expires: 10-30-98



For the CAPE COD  
COMMISSION by:

  
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,

4/17/97   
Notary Public  
My Commission Expires:

My Commission Expires December 3, 1997



## **Exhibit A**

### **List of Lots Subject to Mashpee Industrial Park Development Agreement**

**Lots #            1, 20, 21, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37**