

EXHIBIT B

THE AGREEMENT

AGREEMENT

THIS AGREEMENT is made as of the 19th ^{CVP} day of March, 2003, by and between National Development Associates of New England, Inc., a corporation duly organized under the laws of the Commonwealth of Massachusetts, with a place of business at 2310 Washington Street, Newton Lower Falls, Massachusetts (the "Developer"), the Town of Framingham, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting through its Board of Selectmen (the "Town"), New England Sand & Gravel Co., Inc., a corporation duly organized under the laws of the Commonwealth of Massachusetts with an address of P.O. Box 3248, Framingham, Massachusetts 01701, and Riverpath Associates Limited Partnership ("Riverpath LP"), a Massachusetts limited partnership with an address of c/o New England Sand & Gravel Co., Inc., P.O. Box 3248, Framingham, Massachusetts 01701 (New England Sand & Gravel Co., Inc. and Riverpath LP being collectively "NESG").

WHEREAS, NESG is the owner of certain land in Framingham, Middlesex County, Massachusetts more particularly described in Exhibit A attached hereto (the "NESG Land") and the Developer has made an application for a special permit ("Special Permit") for the approval of a planned unit development on the NESG land (the "PUD Project");

WHEREAS, in connection with the prosecution of the Special Permit application, certain disputes have developed between the Town and the Developer and NESG as to certain rights of access over land owned by the Town (hereinafter defined and referred to as the "Town Access Strip"), the Town's assent to the application for a Special Permit and the location of well-protection areas on the NESG Land under paragraph 7 of that certain Memorandum of Agreement between the Town and NESG executed on or about August 11, 1999 (the "MOU Paragraph 7 Provisions");

WHEREAS, the Town Access Strip is the Town's land and the Town contends that it has no obligation to make it available to the Developer, and the Developer requires the use of the Town Access Strip for the PUD Project;

WHEREAS, the Developer has requested the Town to assent to the inclusion of the Town Access Strip within the PUD Project under the Special Permit and to accept the Town Access Strip as a public way to afford access to the PUD Project;

WHEREAS, the Developer and NESG have committed to certain undertakings in connection with the Town providing such assent and taking such action in respect of the Town Access Strip, including a payment to the Town of \$2,000,000.00 and the grant of certain well-buffer rights in implementation and satisfaction of the MOU Paragraph 7 Provisions, and the Town and Developer desire to confirm these undertakings and certain other matters relating to the PUD Project;

NOW THEREFORE, the Developer, the Town and NESG, for good and valuable consideration, hereby agree as follows subject to and upon the terms and conditions set forth herein:

1. ACCEPTANCE OF TOWN ACCESS STRIP AS A PUBLIC WAY;
CONSENT TO USE OF LAND

(a) Acceptance of Town Access Strip as Public Way. The Town will undertake the procedures necessary to bring the Town Access Strip to a Special Town Meeting on March 19, 2003 or as soon thereafter as can be scheduled (the "Special Town Meeting") for acceptance as a public way, subject to the Town's regulatory authority and discretion pursuant to its ordinary permit-granting and police powers in compliance with applicable laws, rules, regulations and ordinances of the Town, state and federal governments. The land shown within the limits of Riverpath Drive on Exhibit B attached hereto shall constitute the "Town Access Strip."

(b) Payment of First Installment. At the time of execution hereof, the Developer will deliver to Town Counsel the sum of \$500,000.00 (the "First Installment") by bank or certified check or by wire transfer to be held in escrow by Town Counsel, subject to the terms of this Agreement, and to be paid as follows: (i) \$200,000.00 shall be paid to the General Fund of the Town at the time the Town provides evidence to the Planning Board of its consent to the inclusion of the Town Access Strip as part of the PUD Project, pursuant to Section 1(g) below, said \$200,000.00 payment to be nonrefundable in any event as long as said consent is provided; and (ii) if the Special Town Meeting votes to accept the Town Access Strip as a public way, without conditions other than those provided for in this Agreement or as typically required, the balance of \$300,000.00 shall be paid to the General Fund of the Town at such time as said acceptance of the Town Access Strip is no longer subject to a referendum petition, or if a referendum petition is filed, at the time the vote of the Special Town Meeting is upheld (the "Final Acceptance of the Public Way"); provided that if there is no Final Acceptance of the Public Way, then the balance of \$300,000.00 shall be paid to the Developer and this Agreement shall terminate without further obligations except as provided for herein. This Agreement shall be executed by the Town after the Special Town Meeting has voted to accept the Town Access Strip as a public way and authorized the Board of Selectmen to enter into this Agreement.

(c) NESG Strip. Concurrently with the execution hereof, NESG has delivered a 99-year lease to the Town in a form acceptable to the Town, for consideration of One Dollar (\$1.00) ("Lease") of the portion of the NESG Land depicted on Exhibit C attached hereto as "Parcel A - Land to be Leased to the Town of Framingham" ("NESG Strip"). NESG has also delivered a notice of the Lease ("Notice of Lease") in a form suitable for registering. Both the Lease and the Notice of Lease are being delivered to Town Counsel, to be held in escrow, and upon the Final Acceptance of the Public Way, the Lease will be released to the Town and the Notice of Lease filed for registration with the Middlesex South Registry District of the Land Court. Developer has delivered to Town Counsel a commitment for title insurance for the Lease (the "Commitment") and following execution of the Lease by the Town, Developer will forthwith fulfill the requirements of the Commitment in order for the leasehold policy of title insurance to be issued thereunder. If there is no Final Acceptance of the Public Way, then the Lease and the Notice of Lease shall be returned to NESG and this Agreement shall terminate without further obligation except as by the express terms hereof is intended to survive such termination.

Following the Final Acceptance of the Public Way, the Developer and NESG shall promptly take all steps necessary to obtain approval from the Land Court of the NESG Strip as a separate parcel (the "Land Court Approval"). At the later of the time of the Land Court Approval or the payment of the Final Installment (as hereinafter defined), NESG shall deliver to the Town a deed in fee simple to the NESG Strip consistent with and in the form described in Section 1(e) below (the "Deed"), at which time the Lease shall terminate. The Developer and NESG shall cause the Deed to be filed for registration with the Land Court at the time of delivery thereof, and shall promptly provide the Town with a copy of the registered Deed.

Upon the Developer's request of the Town to execute the same, the Developer's delivery of any filing fee and the Town being reasonably satisfied that the same has been prepared and the submissions to be filed therewith are in conformity with the submittal requirements applicable thereto, the Town shall sign, upon the Developer's request, any applications for subdivision or other governmental approvals involving the use of the NESG Strip as part of the PUD Project, but the consideration of such application, once signed and filed, shall be subject to the Town's regulatory authority (and where the applicable law or statute permits discretion in acting on any such application, good faith discretion) pursuant to its ordinary permit-granting and police powers in compliance with applicable laws, rules, regulations and ordinances of the Town, state and federal governments.

(d) Phase One Site Plan and Final Installment. Promptly following the issuance of the Special Permit, the Developer will prepare and submit to the Planning Board the definitive final site plan for phase one of the PUD Project (the "Phase One Site Plan"). Separate and apart from the First Installment, the Developer will pay to the General Fund of the Town, by bank or certified check, the sum of \$1,500,000.00 (the "Final Installment") together with interest thereon, within thirty (30) days of the Planning Board's approval of the Phase One Site Plan, provided that if either or both of the Special Permit or the approval of the Phase One Site Plan is appealed, the Final Installment shall not be due and payable until the thirtieth (30th) day after entry of a final judgment in favor of the Developer in respect of such appeal(s). If there are any such appeals which are not finally resolved in favor of the Developer (it being agreed that an outcome which enables the Developer to proceed with the PUD Project in any fashion, whether or not in accord with the plans approved by the Planning Board, shall be deemed an outcome in favor of the Developer should the Developer elect to proceed with the PUD Project), then the Developer shall have no obligation to pay the Final Installment and interest thereon and this Agreement shall terminate on the thirtieth (30th) day following the entry of a final judgment resolving such appeals in a manner not favorable to the Developer unless the Developer shall within such thirty (30) day period pay the Final Installment. Interest shall be paid together with the Final Installment, and shall accrue as of the date of the Special Town Meeting, compounded annually, at the rate of four percent (4%) during the first year immediately following the Special Town Meeting, which rate shall increase by one percent (1%) in each year thereafter until the Final Installment is paid. If the Developer does not pay the Final Installment, the parties hereto agree that the Lease shall not terminate and the PUD Project to which this Agreement pertains shall not be constructed. Nothing in this Agreement shall constitute a waiver of the Town's regulatory authority (and where the applicable law or statute permits discretion in acting on any such application, good faith discretion) pursuant to

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its ordinary permit-granting and police powers in compliance with applicable laws, rules, regulations and ordinances of the Town, state and federal governments.

(e) Deed; PUD Easement. The Deed to be delivered pursuant to the Section 1(c) of this Agreement shall reserve for the benefit of the NESG Land: (i) an easement for access and egress for the use of the NESG Land as a gravel pit and to the same extent NESG has any rights to use the Town Access Strip, if any, as of the day immediately preceding the date of this Agreement; and (ii) an easement over the NESG Strip providing for the nonexclusive right to pass and repass, the installation of utilities, and otherwise for purposes for which public ways are commonly used in the Town in connection solely with the PUD Project and not for any other purpose (the "PUD Easement"). The Deed, including said easements, shall be in a form acceptable to Town Counsel and shall convey fee simple title consistent with the Commitment with any changes thereto acceptable to Town Counsel.

(f) Well Buffer Area. Concurrently with the execution hereof, NESG has delivered a conservation restriction (the "Conservation Restriction") in respect of the area marked as "Zone 1 Restriction Easement 244,722 S.F. 5.62 Acres" on Exhibit D attached hereto (the "Well-Buffer Area") in a form acceptable to the Town to limit the use of the Well-Buffer Area in accordance with the requirements of the regulations of the Massachusetts Department of Environmental Protection (the "DEP") for well-buffer or Zone I areas. The Conservation Restriction is being delivered to Town Counsel, to be held in escrow, and upon Final Acceptance of the Public Way, the Conservation Restriction shall be released for approval by the DEP and, if required, by the Executive Office of Environmental Affairs (the "EOEA") and thereafter shall be recorded at the Middlesex South Registry of the Land Court. If there is no Final Acceptance of the Public Way, then the Conservation Restriction shall be returned to NESG and this Agreement shall terminate without further obligation except as by the express terms hereof is intended to survive such termination. In addition to the foregoing, NESG agrees to make changes to the Conservation Restriction and/or execute and deliver additional conservation restriction(s) in respect of the Well Buffer Area in such form as may reasonably be requested by Town Counsel in order to comply with the requirements of the DEP or the EOEA.

Developer and NESG agree that no well shall be located on the NESG Land within 400 feet of the perimeter of the Well-Buffer Area and that any well outside of such area and on the NESG Land shall be utilized for irrigation purposes and shall be subject to the requirements of law applicable to any permitting or approval required of any governmental authorities therefor.

Following the Final Acceptance of the Public Way, NESG agrees, for itself, and its successors in title, that upon the Town's election to take the fee simple interest in the Well-Buffer Area for water supply purposes and the adoption of such zoning relief as may be required (if any) in order for the PUD Project to be constructed or used, after the consummation of such taking, in conformity with the provisions of Framingham Zoning By-Law, to accept One Dollar (\$1.00) as the sole consideration for such taking. In making such taking, the Town shall permit the owners of the NESG Land, to the extent DEP consents to the same, to continue to have the right to remove trash and other debris from the Well-Buffer Area and to consult with the owner of NESG Land in the appearance of any fence or barrier installed along or near

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the perimeter of the Well-Buffer Area. The provisions of this paragraph shall be entitled to the maximum extent permitted by law of the presumption of G.L. c. 184A.

The grant of the rights hereunder to the Town shall be treated as the implementation and satisfaction of the MOU Paragraph 7 Provisions.

(g) Consent. Forthwith following the Town Meeting's vote to accept the Town Access Strip as a public way, the Town shall provide its consent to the inclusion of the Town Access Strip as part of the PUD Project and will promptly provide evidence thereof to the Planning Board. Upon the delivery of evidence thereof to the Planning Board, the \$200,000.00 payment to the General Fund of the Town referred to in Section 1(b)(i) shall be made.

(h) Interests. It is expressly agreed that no interests in real property are hereby conveyed, released or otherwise disposed of by the Town to the Developer or to NESG nor are any rights of NESG in real property waived or released hereby, except for the Lease, the conveyance of the NESG Strip and the Conservation Restriction, and that the Town Access Strip shall continue to be used for Town purposes including access to and from the Town's well fields. Nothing in this section shall operate to confirm or grant to NESG, the Developer or any other party any access rights in the NESG Strip or the Town Access Strip, pursuant to statutory or common law or otherwise, except as expressly contemplated in this section.

(i) Adequacy. The Developer and NESG represent and warrant that the procedures set forth in this Section 1 are adequate for the purposes of providing public access to and from the PUD Project, and agree that the PUD Easement will be used, subject to the provisions of this Agreement, in perpetuity solely for access to and egress from the PUD Project as provided herein.

2. UPGRADES AND MAINTENANCE

(a) Work and Maintenance. The Developer shall be responsible for upgrading the Town Access Strip for use as a public way and the NESG Strip in accordance with the Town's standards for public ways (the "Work") as provided in this Agreement, and shall at all times after the Commencement Date (as defined in Section 4 of this Agreement) and in perpetuity be responsible for maintaining the Town Access Strip and the NESG Strip, and any utilities thereon and therein which are installed by the Developer, in good order and repair and in a safe condition in accordance with the Town's standards for the condition and maintenance of public ways (the "Maintenance"). As of the Commencement Date (as defined in Section 4 of this Agreement), the Town will give Developer access to the Town Access Strip and the NESG Strip in order to undertake the Work and Maintenance without the payment of fees or other charges for such access. The Developer and NESG shall indemnify the Town in connection with the Work and Maintenance as provided in Section 6(a) below, but notwithstanding the terms of that section, to the extent that the Town or any of its employees, agents or contractors shall cause damage to the Work or if, solely by reason of the act, omission or neglect of the Town, its employees, agents or contractors any person is injured or any property of third parties is damaged in connection with the use of the Town Access Strip or the NESG Strip, the Developer shall not be liable therefor.

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(b) Standards. All Work and Maintenance shall be performed in conformity with sound engineering standards and good construction practices, and in conformity with the standards and policies of the Town and all applicable laws, bylaws or ordinances of the Commonwealth of Massachusetts, the Town, the federal government, and other governing bodies. All materials and workmanship employed by the Developer in exercising its rights and performing its obligations hereunder shall be of first class quality. All contractors or subcontractors performing the Work and Maintenance shall first be approved in writing by the Town acting through its Director of Public Works in accordance with its standard practices governing work within public ways, such approval not to be unreasonably withheld.

(c) Permits and Licenses. The Developer shall be responsible, at its own expense, for ensuring that it has all necessary permits and licenses required for the Work and Maintenance and shall be responsible for obtaining all final inspections and certificates of compliance as may be required. Upon the Developer's request, the Town shall execute such applications as may be required in order for the Developer to obtain such permits and licenses, subject to the Developer's delivery of any filing fee and the Town being reasonably satisfied that the same and the submissions to be filed therewith, have been prepared and are in conformity with the submittal requirements applicable thereto. Notwithstanding the foregoing, the consideration of such applications, once signed and filed, shall be subject to the Town's regulatory authority (and where the applicable law or statute permits discretion in acting on such applications, good faith discretion) pursuant to its ordinary permit-granting and police powers in compliance with applicable laws, rules, regulations and ordinances of the Town, state and federal governments.

(d) Repair of Private Property. In the event that any real or personal private property is damaged or destroyed as a result of the Work, Maintenance or use of the Town Access Strip or the NESG Strip by the Developer, NESG, their employees, agents or contractors, or any third party (excluding the Town), the Developer and NESG shall be jointly and severally responsible, at their sole cost and expense, for repairing or replacing all such property, and without limiting the foregoing, shall be solely responsible for any and all damage claims advanced by abutting property owners, licensees, and guests on account of the Work, Maintenance or such use of the Town Access Strip and NESG Strip.

(e) Costs. The Developer shall, at its sole cost and expense, furnish all materials, labor and equipment required for the Work and Maintenance. Without limiting the foregoing, the Developer shall pay all costs associated with employment of any reserve police officers in connection with the Work and Maintenance, including wages at the prevailing rate paid to regular police officers in the Town, Workmen's Compensation Insurance, and employer's liability insurance.

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3. NON-EXCLUSIVE RIGHTS

The Developer and NESG each acknowledge and agree that the public shall have full rights to use the Town Access Strip as a road for all purposes for which public roads are permitted to be used in the Town of Framingham. The Developer and NESG each expressly acknowledge and agree that the Town shall continue to have the right to use the Town Access Strip after its improvement for accessing, upgrading, and utilizing its well site and surrounding Town-owned land; for installation and maintenance of above-ground and underground utilities (and any above-ground utilities shall be limited to those permitted under the Town's Subdivision Rules and Regulations), including without limitation one or more water lines, provided that the Town shall be responsible for maintaining said utilities and shall return the Town Access Strip to substantially the same condition as existed immediately prior to installation of said utilities; and to temporarily close or obstruct the Town Access Strip for installation, maintenance, repair or replacement of said utilities or for any other purpose, subject to provision of continuing access to the PUD Project. This Agreement shall not affect or limit the Town's property rights in the Town Access Strip.

4. TIME FOR PERFORMANCE

The Developer shall, subject to delays occasioned by adverse weather conditions, delays in securing necessary permits and approvals and delays occasioned by the occurrence of events beyond Developer's reasonable control (collectively, "Delays"), commence the Work on the Town Access Strip on the Commencement Date. The "Commencement Date" shall be the date of the expiration of the appeal period following the Planning Board's approval of the Phase One Site Plan if no appeal is filed, and if an appeal is filed, the Commencement Date shall be the date thirty (30) days after entry of a final judgment in favor of Developer resolving all appeals in favor of Developer (it being agreed that an outcome which enables the Developer to proceed with the PUD Project in any fashion, whether or not in accord with the plans approved by the Planning Board, shall be deemed an outcome in favor of the Developer should the Developer elect to proceed with the PUD Project). In any event, the Developer shall have no right to commence the Work, and the Commencement Date shall not occur, until the Developer has paid the Final Installment, and the Work shall be entirely completed within one year following the commencement of the Work as extended for Delays. The Developer agrees that failure to carry out the Work or Maintenance promptly, diligently and with reasonable speed, or stoppage of work altogether without due cause, will constitute an event for which the Town may give written notice thereof to the Developer pursuant to Section 5 below.

5. DEFAULT AND TERMINATION

(a) Work and Maintenance Obligations. In the event the Town determines that the Developer or NESG has defaulted with respect to any of its obligations hereunder in respect of the Work or the Maintenance, the Town shall give written notice thereof in accordance with Section 12 hereof to Developer and to NESG (the "Default Notice"), and if the Developer or NESG does not commence to correct the default to the reasonable satisfaction of the Town within such time as the Town shall specify in writing (not less than thirty (30) days, except in cases of emergency, in which event the Town may specify a shorter period), or if the Developer

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or NESG does not proceed with due diligence to promptly cure said default to the reasonable satisfaction of the Town, the Town shall further notify the Developer or NESG in writing that there has been a breach of this Agreement, in which event the Town reserves the right to pursue all of its remedies at law or equity.

(b) Failure to Pay Final Installment. In the event the Developer fails to pay the Final Installment when due, the Town shall give written notice thereof in accordance with Section 12 below to the Developer and to NESG (the "Payment Default Notice") and unless Developer tenders payment of the Final Installment together with interest thereon computed as provided under Section 1(d) of this Agreement through the date on which the Final Installment is paid within thirty (30) days after the receipt of the Payment Default Notice, this Agreement shall terminate and the construction of the PUD Project to which this Agreement pertains shall be prohibited and such shall be the Town's exclusive remedies for Developer's failure to pay the Final Installment.

(c) Other Defaults. As to any other default by the Developer or NESG in performance of their respective obligations under this Agreement, following notice thereof to Developer and to NESG in accordance with Section 12 hereof and the failure of the party in question to cure such default within thirty (30) days thereafter, the Town shall be entitled to exercise any and all remedies that are available at law or in equity on account of such default.

(d) Costs and Attorneys' Fees. In the event of default as provided in Section 5 (a) or Section 5 (c) hereof, the Town shall be entitled to collect from the defaulting party all expenses, including without limitation court costs and reasonable attorneys' fees, incurred by the Town in performing the Developer's obligations hereunder, enforcing the provisions of this Agreement or in recovering damages or pursuing any and all other remedies with respect to such breach and in the case of a default under Section 5(a), all expenses in performing Developer's obligations hereunder in respect of the Town Access Strip and the NESG Strip.

(e) Rights in the Town Access Strip upon Termination. It is acknowledged that certain claims have been made by the respective parties hereto relating to rights or the lack of rights of the owners of the NESG Land to use the Town Access Strip, and it is hereby agreed that if this Agreement shall terminate, such rights, if they exist, shall continue only to the extent they existed immediately prior to the execution hereof. The Town and NESG each reserve the right to contest whether and/or the extent to which such rights exist.

6. INDEMNIFICATION & REIMBURSEMENT OF TOWN EXPENSES

(a) Indemnification of Town. The Developer and NESG shall jointly and severally indemnify, defend, and save harmless the Town and all of the Town's officers, agents and employees, and all municipal boards, commissions and departments, from and against any and all claims, demands, lawsuits, costs, expenses, attorneys' fees, legal costs and all other costs, liabilities or obligations arising out of or resulting from the Work, Maintenance or use of the Town Access Strip and PUD Easement or arising out of the Town's agreement to sign any applications or approvals upon the Developer's request (as provided in Section 1(c) or otherwise), and/or arising out of any act or omission of the Developer, its contractors,

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subcontractors, agents or employees in the exercise of its rights or the performance of its obligations hereunder. The foregoing provisions shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by the Developer under this Agreement or an security, including without limitation a deposit of cash, given under the terms of any approvals or permits issued by the Planning Board or other officer or agency of the Town.

(b) Legal Costs arising from this Agreement and/or Unresolved Issues. It is agreed and acknowledged that uncertainties exist and that certain claims have been or may be advanced relating to this Agreement, the PUD Project or the permitting or construction or use thereof, including but not limited to certain claims or potential claims relating to the title of the Town Access Strip or the existence of rights in the Town Access Strip (collectively, the "Unresolved Issues"). Notwithstanding anything herein, the parties do not hereby admit that said claims are valid or with merit, and reserve all rights to challenge said claims or to contend that said claims are without merit. The Developer hereby agrees to indemnify, defend, save harmless and reimburse the Town and the Town's officers, agents and employees, and all municipal boards, commissions and departments, from, against and for any costs, expenses and attorneys' fees of any negotiations, claims, demands, lawsuits, judgments, arising out of or in connection with this Agreement or the Unresolved Issues, provided however that the obligations of the Developer under this sentence shall not exceed, in the aggregate, \$100,000.00. In addition to and separate and apart from the obligation to pay the foregoing sum of up to \$100,000.00, the Developer and NESG hereby agree to jointly and severally indemnify and reimburse the Town for the full amount of any monetary judgments in an amount not to exceed \$100,000.00 in the aggregate, in excess of amounts covered by the Town's policies of insurance, against the Town arising from any third party claim, demand, lawsuit or judgment in connection with this Agreement or the Unresolved Issues. The Developer and NESG specifically agree to reimburse the Town for such costs within thirty (30) days of presentation of invoice(s) by the Town or Town Counsel. The Town acknowledges that where the Developer is a party to any such claim, the Developer shall take the lead in defending the matter in question but the foregoing shall not be construed as limiting the discretion of Town Counsel to undertake such legal representation on behalf of the Town as Town Counsel determines to be in the best interests of the Town, and the Town shall in any event be entitled to representation by attorneys selected by the Town. The obligations of the Developer and NESG in this Section 6(b) shall arise upon the execution of this Agreement. The provisions of this section shall survive the termination of this Agreement.

(c) Incurred Costs. The Developer acknowledges and agrees that the Town has incurred attorneys' fees, appraisal expenses, and related legal and consulting costs in connection with the PUD and this Agreement, and the Developer agrees to pay the Town for a portion of the same in the amount of \$50,000.00, which sum shall be tendered to Town Counsel upon execution of this Agreement by the Town.

7. INSURANCE

(a) General Liability and Motor Vehicles Insurance. The Developer shall, at its sole cost and expense, obtain and maintain general liability and motor vehicle policies protecting the

Town from claims that may be asserted against it in connection with the PUD or its performance of its rights and obligations hereunder, and the Town shall be named as an additional insured on such policies. General liability and motor vehicle coverage under such policies shall be in the amount of at least \$1,000,000.00 per occurrence and \$3,000,000.00 aggregate for bodily injury liability and property damage liability.

(b) Professional Liability Insurance. The Developer shall require any engineers or other professionals retained by the Developer to perform the Work or Maintenance hereunder to carry a professional malpractice or an errors and omissions policy with limits of at least \$1,000,000.00 per claim and \$3,000,000.00 aggregate, with a deductible of no more than \$25,000.00 per claim. The Town shall be named a certificate holder on such policy(ies) of insurance.

(c) Workers' Compensation. The Developer shall provide by insurance, or require any contractor retained by the Developer to perform any Work or Maintenance, to provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c. 152 (as amended) to all persons employed in connection with this Agreement and shall continue such insurance in full force and effect at all times during which the Work and Maintenance are performed. The Town shall be named a certificate holder on such policy(ies) of insurance.

(d) Excess Insurance Coverage. The Developer shall, at its sole cost and expense, obtain and maintain excess liability insurance protecting the Town from claims that may be asserted against it in connection with the PUD or its performance of its rights and obligations hereunder. Such excess insurance coverage shall be in the amount of \$5 million per occurrence and \$10 million in the aggregate. The Town shall be named a certificate holder on such policy(ies) of insurance.

(e) Time of Coverage; Evidence of Coverage. All insurance required herein shall be at the sole cost and expense of the Developer. The general liability, motor vehicle, and excess insurance coverage required by this agreement shall be in effect from and after the Commencement Date and for the entire period of time the Town Access Strip is used as a public way. The professional liability and workers' compensation insurance coverage required by this agreement shall be at the sole cost and expense of the Developer and shall be in force from and after the Commencement Date to the date when the Work is complete, and thereafter shall be in force at any time during which the Developer performs any Maintenance. The Certificates of Insurance and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Town prior to commencement of the Work or Maintenance, and shall be filed periodically with the Town upon renewal of all coverages. The Developer at all times is required to have current Certificates of Insurance showing all required coverages hereunder in full force and effect at all times. The Developer shall notify the Town if coverage becomes unavailable or if its policy changes. Any cancellation of insurance, whether by the insurers or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the Town at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.

8. PERFORMANCE BOND

The Developer shall furnish a bond ("the Bond") covering faithful performance of the Work and payment of obligations arising hereunder at the Developer's sole cost and expense. The amount of the Bond shall be \$400,000.00, which the Developer hereby represents to the Town is a reasonable estimate of the cost of the Work. The Bond shall be issued by a reputable surety licensed and qualified to issue the Bond in the Commonwealth of Massachusetts. The Developer shall deliver the Bond to the Town at least three days before the commencement of the Work. The Bond is subject to the approval of Town Counsel, such approval not to be unreasonably withheld, and Town Counsel shall be given the opportunity to review the terms, conditions and coverage of the Bond prior to deliver of the Bond. Following the completion of the Work to the reasonable satisfaction of the Town, including punch list items, the Bond shall be released.

9. BINDING AGREEMENT; SUCCESSOR OWNERS