

## **SETTLEMENT AGREEMENT**

Plaintiff/Appellee Twenty Wayland, LLC (“20 Wayland”), and Defendants/Appellants Town of Wayland (the “Town”) and Wayland Wastewater Management District Commission (the “WWMDC”), acknowledging the resource-consuming nature and the uncertainty of the outcome of continued litigation, hereby agree to settle the action between them, currently pending in the Massachusetts Appeals Court, Case No. 2014-P-0679, on appeal from the June 23, 2013 Judgment (the “Judgment”) entered in the Middlesex Superior Court, Case No. 2011-04095-F) (the “Action”), upon the following terms and conditions (the “Agreement”), effective as of the Effective Date, defined below.

### **1. Middlesex County Superior Court Case Judgment**

#### ***A. Amended Judgment and Dismissal of Appeal***

The judgment in the Action shall be amended and modified by reducing the total monetary award from \$1,227,485 to \$895,000. The amendment shall be effectuated by the filing within three business days of the Effective Date in the Massachusetts Appeals Court a joint motion to dismiss the appeal and to remand the matter back to the Middlesex County Superior Court. Upon remand to the Superior Court, the parties would then file a joint motion to amend the judgment, with a proposed amended judgment attached thereto. The forms of these filings are at Exhibit A.

#### ***B. Post-Judgment Interest***

20 Wayland waives any claim that it may have for post-judgment interest on the Judgment.

***C. Post-Verdict Damages***

20 Wayland waives any claim that it may have for damages and interest thereon as a result of not having available and useable 45,000 GPD of sewer capacity at the Wayland Wastewater Treatment Plant ("WWTP") for the June 12, 2013 through January 15, 2014 period.

***D. Payment of Amended Judgment***

The Parties agree that the Amended Judgment amount (\$895,000) shall be paid as follows: (i) Upon the Effective Date, the Town shall pay to 20 Wayland \$350,000; (ii) also upon the Effective Date, the Town shall pay to 20 Wayland any amount that it has received as of that date from the owner of the residential parcels of land in Wayland, Massachusetts described in the deed dated December 17, 2013 and recorded with the Middlesex South Registry of Deeds in Book 63078, Page 64 and in Certificate of Title No. 255702 registered in the Land Registration Office at said Registry of Deeds in Registration Book 1446, Page 122 (the "Residential Parcel"), from the sale of dwelling units at the Residential Parcel; (iii) thereafter, for the next 24 months from the execution of this Agreement or until the full Amended Judgment is satisfied, the Town shall pay 20 Wayland \$40,000 each time the owner of the Residential Parcel sells another dwelling unit constructed thereon and pays the Town \$40,000; and (iv) 24 months following the Effective Date, the Town shall pay to 20 Wayland whatever balance is left, if any, on the Amended Judgment, such that as of that date, 20 Wayland will have received from the Town a total payment of \$895,000.

Regarding the Town's obligation during the 24 months after the Effective Date (or until the Judgment is paid in full) to pay to 20 Wayland \$40,000 each time it receives \$40,000 from the owner of the Residential Parcel from the sale of dwelling units thereon, if for any reason, the owner of the Residential Parcel fails to such \$40,000 payments to the Town, then the Town will pursue its available remedies first against the owner of the Residential Parcel for each missed

\$40,000 payment(s) before pursuing collection remedies against any other party. In the event that any such \$40,000 payments are not made to the Town for the first 14 dwelling units sold within thirty (30) days of the closing of the sale of each such dwelling unit, the Town shall assign 20 Wayland the nonexclusive right to collect the owed \$40,000 payment(s) on behalf of the Town, at 20 Wayland's sole cost, and any money collected by 20 Wayland may in the Town's option be applied to the Town's balance on the Amended Judgment. At 24 months after the Effective Date, the Town will be responsible for the balance owed on the Amended Judgment, irrespective of any uncollected assigned claims. Upon satisfaction by the Town of the full Amended Judgment, any uncollected assigned claims shall revert back to the Town with no credit to the Town for any assigned claims not yet collected as of 24 months from the Effective Date.

If the Town fails to satisfy the Amended Judgment within the 24 months from the Effective Date, the Town will be responsible for all fees and costs incurred by Twenty Wayland pursuing the balance of the Amended Judgment.

***E. Sewer Capacity.***

Notwithstanding anything to the contrary in the Judgment, the reduction in amount of available and useable sewer capacity to be provided to 20 Wayland by the Town and WWMDC at the WWTP from 45,000 GPD to 42,000 GPD resulting from 20 Wayland's transfer of 3,000 GPD of its sewer capacity at the WWTP to the Town pursuant to Section K 3 (b) of the DA shall not constitute a violation of the terms of the Judgment.

**2. WWTP Costs – Sewer Betterment Assessments and User Fees**

20 Wayland and its affiliated limited liability company, Wayland Town Center, LLC, hereby waive their rights to challenge in any proceeding (a) their sewer betterment assessments dated August 4, 2014 relative to the new WWTP on the grounds that the capital costs of the new WWTP in the amount of \$5,600,000 are excessive; and (b) their sewer usage fees on the grounds

that the operating costs included in the annual WWTP operating costs, which costs are part of the basis for said fees, are incorrect, for any reason, for the June 1, 2011 through June 30, 2014 period.

**3. Amendments to the Town Center Project Development Agreement**

Upon the execution of this Agreement by all parties hereto, 20 Wayland shall pay the Town the \$250,000 and \$120,000 gifts under sections J-3 and K-2 respectively under the Memorandum of Agreement between the Town of Wayland and Twenty Wayland, LLC dated March 28, 2006, as amended on October 20, 2009 (the "DA"), and agree that 20 Wayland has satisfied its obligations thereunder. The Parties agree to amend the DA in the form at Exhibit B to state that the Town may use these gifts for any municipal purpose.

**4. Town Center Project Municipal Parcel Utilities**

The Town agrees that the current location of the utilities extended to service the future development of the Municipal Parcel referenced in Section K-1 of the DA is satisfactory, provided that any subsurface easement necessary to construct or maintain said utilities to said Municipal Parcel shall be granted by 20 Wayland (or its successor) to the Town, as a gift. The agreed upon locations of the utilities are shown in Exhibit C attached hereto.

**5. Attorney's Fees and Costs**

Except for so much of the court costs awarded to 20 Wayland in the Superior Court Case that is included in said amended monetary award, each party shall bear its own attorney's fees and costs of the Superior Court Case and the above captioned appeal.

**6. Intent to Bind Successors, Heirs and Assigns**

The foregoing obligations of the Parties shall run with the property on and off Boston Post Road and Old Sudbury Road in Wayland, Massachusetts comprising the Wayland Town

Center Project, except for the Residential Parcel, and shall be binding upon and inure to the benefit and burden of the Parties, their heirs, successors, and assigns.

**7. Applicable Law; Construction**

a. This agreement shall be deemed to have been executed within the Commonwealth of Massachusetts, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Massachusetts.

b. This agreement is the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.

c. Neither 20 Wayland nor the Town or WWMDC waive any of their rights or claims which are not resolved by this Agreement or the Amended Judgment in the Action.

d. Time is of the essence for all obligations under this Agreement.

**8. Dispute Resolution; Enforcement**

This agreement shall have the force and effect of a judgment of the court and may be enforced in a civil contempt of court proceeding pursuant to Mass. R. Civ. P. 65.3. Prior to the initiation of any such court proceeding regarding the terms of this Agreement or performance thereunder, Wayland, the WWMDC and 20 Wayland agree that such disputes shall be first subject to nonbinding mediation, for a period not longer than ninety (90) days.

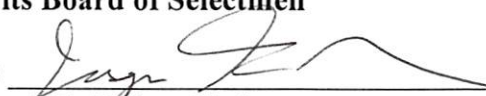
**9. Amendment**


This agreement may only be amended or modified by a writing signed by the Town, the WWMDC and 20 Wayland.


**10. Effective Date**

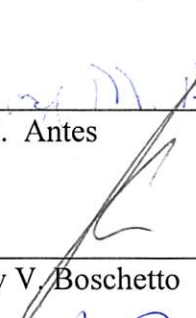
This agreement shall be effective when it is signed by a majority of the members of the Board of Selectmen of the Town of Wayland and of the members of the Wayland Wastewater Management District Commission, as well as by the Manager of 20 Wayland.


**Town of Wayland,  
by its Board of Selectmen**

by:   
Joseph F. Nolan, Chair  
Date:

  
Cherry C. Karlson, Vice Chair  
Date:

  
Mary M. Antes  
Date:

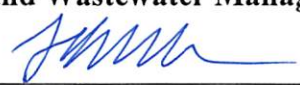
  
Anthony V. Boschetto  
Date:

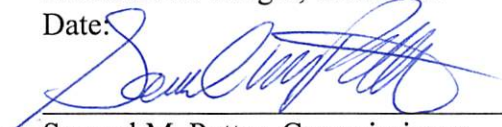
  
Edward J. Collins  
Date: February 3, 2015

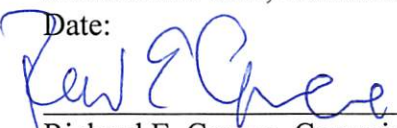
**Twenty Wayland, LLC**

by: \_\_\_\_\_  
Anthony J. DeLuca, Manager  
Date:

**Wayland Wastewater Management District Commission**

  
Frederick K. Knight, Chairman  
Date:

  
Samuel M. Potter, Commissioner  
Date:

  
Richard E. Greene, Commissioner  
Date: February 3, 2015

**10. Effective Date**

This agreement shall be effective when it is signed by a majority of the members of the Board of Selectmen of the Town of Wayland and of the members of the Wayland Wastewater Management District Commission, as well as by the Manager of 20 Wayland.

**Town of Wayland,  
by its Board of Selectmen**

by: \_\_\_\_\_  
Joseph F. Nolan, Chair  
Date: \_\_\_\_\_

\_\_\_\_\_  
Cherry C. Karlson, Vice Chair  
Date: \_\_\_\_\_

\_\_\_\_\_  
Mary M. Antes  
Date: \_\_\_\_\_

\_\_\_\_\_  
Anthony V. Boschetto  
Date: \_\_\_\_\_

\_\_\_\_\_  
Edward J. Collins  
Date: \_\_\_\_\_

**Wayland Wastewater Management District Commission**

\_\_\_\_\_  
Frederick K. Knight, Chairman  
Date: \_\_\_\_\_

\_\_\_\_\_  
Samuel M. Potter, Commissioner  
Date: \_\_\_\_\_

\_\_\_\_\_  
Richard E. Greene, Commissioner  
Date: \_\_\_\_\_

**Twenty Wayland, LLC**

by:   
\_\_\_\_\_  
Anthony J. DeLuca, Manager  
Date: 2/4/15

**COMMONWEALTH OF MASSACHUSETTS  
APPEALS COURT  
No. 2014-P-0679**

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TWENTY WAYLAND, LLC,

Plaintiff-Appellee,

v.

TOWN OF WAYLAND and WAYLAND WASTEWATER MANAGEMENT  
DISTRICT COMMISSION,

Defendants-Appellants.

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ON APPEAL FROM A JUDGMENT OF THE  
MIDDLESEX COUNTY SUPERIOR COURT,  
CASE NO. 2011-04095-F (CURRAN, J.)

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**Joint Motion for Voluntary Dismissal with Remand**

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mjlanza@comcast.net

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BBO#632411  
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GARNER, P.C.  
745 Atlantic Ave., 5<sup>th</sup>  
Floor  
Boston, MA 02111  
Telephone: 617.542.4800  
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ddain@daintorpy.com



As a result of a settlement reached by the parties, Defendants-Appellants Town of Wayland and Wayland Wastewater Management District Commission and Plaintiff-Appellee Twenty Wayland, LLC, jointly move that this appeal (2014-P-0679) be dismissed and that the Court issue an order remanding this matter to the Middlesex County Superior Court (No. 2011-04095-F) so that the parties may file a motion for an amendment to the trial court's June 23, 2013 judgment.

The parties agree that each party shall pay its own post-judgment costs and expenses incurred in this appeal.

Respectfully submitted,

DEFENDANTS-APPELLANTS,  
  
TOWN OF WAYLAND and the  
WAYLAND WASTEWATER  
MANAGEMENT DISTRICT  
COMMISSION,

PLAINTIFF-APPELLEE,  
  
TWENTY WAYLAND, LLC  
  
By its attorneys,

By its attorney,

\_\_\_\_\_  
Mark J. Lanza (BBO#549994)  
Town Counsel  
41 Cochituate Road  
Wayland, MA 01778  
Telephone: 617.369.9100  
mjlanza@comcast.net

\_\_\_\_\_  
Daniel P. Dain  
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Michael J. McDermott  
(BBO#685223)  
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Facsimile: 617.542.4808  
ddain@daintorpy.com  
mmcdermott@daintorpy.com

Dated: February \_\_, 2015

**Certificate of Service**

I, Mark J. Lanza, counsel for the Defendants-Appellants hereby certify that this motion was served by first-class mail on Daniel P. Dain, Esq., counsel for the Plaintiff-Appellee Twenty Wayland, LLC.

Dated this \_\_th day of February, 2015.

\_\_\_\_\_  
Mark J. Lanza

**EXHIBIT A (2)**

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

TWENTY WAYLAND, LLC

Plaintiff,

v.

TOWN OF WAYLAND and WAYLAND  
WASTEWATER MANAGEMENT DISTRICT  
COMMISSION,

Defendants.

CIVIL ACTION NO. 11-04095-F

**JOINT MOTION FOR AMENDMENT TO THE JUDGMENT**

The parties, having reached a settlement of their dispute, jointly request that this Court amend the June 23, 2013 Final Judgment in accordance with the attached proposed Amendment to the Judgment.

Respectfully submitted,

TWENTY WAYLAND, LLC,

By its attorneys,

TOWN and WWMDC,

By their attorney,

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Daniel P. Dain (BBO No. 632411)  
Michael J. McDermott (BBO No. 685223)  
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Wayland, MA 01778  
Tel: 978-369-9100/508-358-3624  
mjlanza@comcast.net

February \_\_, 2015

**CERTIFICATE OF SERVICE**

I, Daniel P. Dain, do hereby certify the foregoing was served upon all counsel of record  
by overnight delivery on February \_\_, 2015.

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Daniel P. Dain

**EXHIBIT A (3)**

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

TWENTY WAYLAND, LLC

Plaintiff,

v.

TOWN OF WAYLAND and WAYLAND  
WASTEWATER MANAGEMENT DISTRICT  
COMMISSION,

Defendants.

CIVIL ACTION NO. 11-04095-F

**[PROPOSED] AMENDMENT TO THE JUDGMENT**

The parties having reached a post-judgment settlement, have requested that the Court's  
Final Judgment dated June 23, 2013, be amended as follows:

1. Contractual Damages: Paragraph A shall be amended to state that  
"Defendants shall pay to Twenty Wayland \$895,000 in contractual damages."
2. Other Monetary Damages: Paragraphs B and C shall be amended so that  
Defendants are not obligated to pay Twenty Wayland the pre-judgment interest  
of \$234,298.45 and the statutory costs of \$3,413.04.

In all other respects the Judgment is reaffirmed and remains in effect.

So ordered.

Entered this \_\_\_\_ day of February, 2015, as an amendment to the June 23, 2013 Final

Judgment of this Court by:

\_\_\_\_\_  
Associate Justice of the Superior Court

**EXHIBIT B**

**AMENDMENT NO. 2**

**TO:**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE TOWN OF WAYLAND AND TWENTY WAYLAND, LLC DATED MARCH 28, 2006**

The foregoing agreement dated as of March 28, 2006, and amended on October 20, 2009, entered into by and between the Town of Wayland, acting by and through its Board of Selectmen ("Wayland") and Twenty Wayland, LLC (the "Developer") relative to the development of a mixed-use project on the property shown on Exhibit B to said agreement, is hereby further amended and modified as follows:

1. By making the following revisions to Section J. 3. of said agreement:

[Key to revisions: underlining = additions;  
~~strikethrough~~ = deletions]

3. Pursuant to its offer, Developer has following ~~issuance of a certificate of occupancy for 50% of the Gross Floor Area in Phase II of the non-residential component of the MUP on the Property~~ donated the sum of \$250,000.00 pursuant to M.G.L. c. 44, §53A to Wayland to be expended by Wayland for any municipal purpose. ~~fund Wayland's efforts to acquire in fee or by easement or license rights for, and to develop or improve a bicycle trail along the existing MBTA easement, adjacent to the Property, from Route 20 to Route 27, for use by the public. Any funds remaining in the account established for said gift at the completion of said bicycle trail may be used for the planning, design and construction of an historic railroad interpretive site within or along said portion of the MBTA easement. If Wayland does not acquire the necessary land, rights or license for and to develop or improve said bicycle trail within twenty four (24) months following issuance of a certificate of occupancy for 50% of the Gross Floor Area in Phase II of the non-residential component of the MUP on the Property, the unexpended balance of said gift of~~

~~\$250,000.00 will be returned to Developer, after which Wayland will grant any licenses required for, and use best efforts to facilitate Developer's development or improvement of said bicycle trail.; and~~

2. By making the following revisions to Section K. 2. of said agreement:

[Key to revisions: underlining = additions;  
~~strikethrough~~ = deletions]

~~2. Wayland may, within forty-five (45) days following notice from Developer that Developer has received a Master-Special Permit, notify Developer of its election to require Developer to construct a parking lot ("Parking Lot Election Notice") with up to 100 parking spaces on the Parking Parcel. Such notice shall include complete construction specifications which shall not exceed the parking design criteria set forth in the Zoning Bylaw. Developer shall then be obligated to construct such parking lot no later than one year following the issuance of the first certificate of occupancy for a building within the MUP. If Wayland does not send a Parking Lot Election Notice, as specified above, Pursuant to Developer's offer, Developer has the issuance of a certificate of occupancy for 50% of the Gross Floor Area in Phase II of the non-residential component of the MUP, donated pursuant to M.G.L. c. 44S, 53A, \$120,000.00 to Wayland to be expended by Wayland for any municipal purpose assist Wayland with costs of future construction of such parking lot and Developer will have no obligation to construct such parking lot.~~

In all other respects, the foregoing agreement is hereby ratified and confirmed.

Executed under seal as of this \_\_\_\_ day of February, 2015.  
Town of Wayland, by: Twenty Wayland, LLC


  
Joseph F. Nolan, Chair

by:

  
Anthony J. DeLuca, Manager

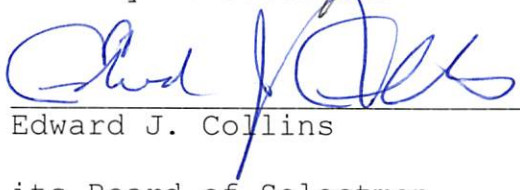
  
Cherry C. Karlson, Vice Chair

  
Mary M. Antes



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Anthony V. Boschetto



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Edward J. Collins

its Board of Selectmen



**Exhibit C**  
**Municipal Parcel Utilities**  
**Wayland Town Center**  
**January 28, 2015      No Scale**