



January 8, 2008

# PUBLIC WORKS DEPARTMENT

CITY OF PORTSMOUTH

680 Peverly Hill Road  
Portsmouth N.H. 03801  
(603) 427-1530 FAX (603) 427-1539

State of New Hampshire  
Public Utilities Commission, Director  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 03301-2429

Re: Petition to Extend Sewer Service Area  
Portsmouth, New Hampshire

Dear Commissioners:

Available sewerage capacity was reviewed as part of the evaluation of the impacts associated with the proposed Packard Development at 1450 Greenland Road, Greenland, New Hampshire. This property abuts the City of Portsmouth. It is our opinion that based on the previous studies and on-going sewer improvements projects there is adequate capacity to accept the additional flow generated by the proposed project.

In 1999 the City completed a Wastewater Infrastructure Facilities Plan which projected wastewater flows for the City up to the year 2020. Flow projections were based on current zoning and build-able lots as well as lot intensification. These projections included developable land along the route 33 corridor in Greenland. Based on these projections the average daily sanitary flow for the City in 1998 was estimated at approximately 2.1 million gallons per day. The future (2020) average Daily Sanitary flow was projected to be 3.86 million gallons per day. The anticipated flow from the Packard Development is estimated to be an additional 15,000 gallons per day or approximately 0.4% of the future total sanitary flow.

Since the 1999 study was completed, on-going Wastewater Infrastructure Improvements projects have reduced flow by over two million gallons per day into our collection system. Additional sewer separation projects are in design that will provide additional capacity as they are completed.

In conclusion, our current wastewater master plan anticipates additional flow from growth and this additional flow has been programmed into the City's Capital Improvements Plans to ensure adequate capacity for sustainable treatment of our wastewater in the future.

If you have any questions or require additional information please call me at 766-1416.

Respectfully submitted,

Peter Rice, P. E.  
City Engineer, Water/Sewer Division

cc: David S. Allen, P.E., Deputy Director of Public Works  
Suzanne Woodland, Assistant City Attorney

## ***SETTLEMENT AGREEMENT***

This agreement made as of this first day of August, 2007, by and between ***PDNED Greenland LLC***, a Delaware limited liability company, having a principal place of business at One Wells Avenue, Newton, Massachusetts ("PDNED") and the ***City of Portsmouth***, a New Hampshire municipal corporation, having a principal place of business at One Junkins Avenue, Portsmouth, New Hampshire ("Portsmouth").

### ***WITNESSETH:***

***WHEREAS***, PDNED has obtained a special exception from the Zoning Board of Adjustment of the Town of Greenland and site plan approval from the Planning Board of the Town of Greenland for the construction of an approximately 350,000 square foot retail facility on property located in Greenland, Rockingham County, New Hampshire, commonly known as the former Sylvania property (the "Project"); and

***WHEREAS***, a portion of the property upon which the Project will be located lies in the City of Portsmouth and Portsmouth believes that the Project will have significant impacts upon Portsmouth; and

***WHEREAS***, Portsmouth has appealed the decisions of the Greenland Zoning Board of Adjustment and the Greenland Planning Board to the Rockingham County Superior Court; and

***WHEREAS***, PDNED desires to address the concerns expressed by Portsmouth, obtain a dismissal of the Appeals filed by Portsmouth and enter into an agreement for the disposal of sanitary sewerage from the Project into Portsmouth's municipal sewer system.

***NOW, THEREFORE***, for valuable consideration, the receipt whereof is hereby acknowledged, PDNED and Portsmouth hereby agree as follows:

### ***I. TRAFFIC AND TRANSPORTATION ISSUES.***

1. NH Route 33 at the Intersection of Griffin Road; Ocean Road at the Intersection with Banfield Road. PDNED agrees to pay to Portsmouth the sum of Five Hundred Thousand Dollars (\$500,000.00) as a contribution toward Portsmouth's share of a combined Portsmouth/New Hampshire DOT improvement project for Ocean Road, and as a contribution toward such other traffic improvements as Portsmouth may deem necessary or desirable as a result of traffic impacts caused by the Project. The payment of said Five Hundred Thousand Dollars (\$500,000.00) shall be made no later than thirty (30)

days following the issuance by the Town of Greenland of a building permit for any building which is part of the Project and the expiration of all appeal periods from the issuance of such building permit. Notwithstanding the foregoing, PDNED acknowledges that Portsmouth may contract for the design of the aforementioned road improvements prior to the time PDNED is required to pay the Five Hundred Thousand Dollars (\$500,000.00), and PDNED therefore agrees to pay Portsmouth's one-third (1/3) share of the design cost (estimated to be approximately Fifty Thousand Dollars (\$50,000.00) for the road improvements within thirty (30) days of the execution of the Design Contract. Such advance payment shall be credited against the Five Hundred Thousand Dollars (\$500,000.00) payment. PDNED shall make available a maximum of \$25,000 total toward the signalization of the Route 33/Griffin Road intersection and a maximum of \$25,000 toward the signalization of the Ocean Road/Banfield intersection consistent with the approval received by Packard Development from the Greenland Board of Adjustment.

2. NH Route 33 Extending West from Portsmouth Avenue to Post Road (approximately 1.5 miles). The parties acknowledge that Route 33 is under the jurisdiction of the New Hampshire Department of Transportation (NHDOT). PDNED agrees to construct such improvements to this section of highway as the NHDOT may determine as being necessary or desirable. PDNED further agrees to construct off site and on site traffic improvements in accordance with plans submitted to the Greenland Planning Board and the NHDOT including the coordination of the Route 33 traffic signals in accordance with the recommendations set forth in the traffic study submitted to the Greenland Planning Board and the NHDOT. PDNED further agrees that it shall conduct or cause to be conducted post-opening timing studies on the NH Route 33 corridor at a cost not to exceed Ten Thousand Dollars (\$10,000.00).

3. NH Route 33 and Ocean Road Intersection. The parties acknowledge that the foregoing intersection will require modifications and improvements as a result of the Project and that the intersection is under the control and jurisdiction of the NHDOT. PDNED has received approval from the NHDOT for the redesign of and improvements to this intersection. PDNED agrees that it shall obligate itself to construct the improvements approved by the NHDOT by filing a bond with the NHDOT prior to the commencement of construction and shall complete such improvements prior to the opening of the Project.

4. Project Site Access. PDNED agrees that access to the Project from Route 33 shall be at the approximate location as shown on the Project site plans as may be approved by the Town of Greenland Planning Board and the NHDOT, subject to such minor modifications as may be thereafter required or approved by the NHDOT and/or the Greenland Planning Board. PDNED further agrees that a secondary emergency access to the Project site shall be provided to Portsmouth Avenue at such location as has been or

may be determined by the Greenland Planning Board and that the current Route 33 driveway to the Project site shall be closed.

5. Implementation Procedure. PDNED agrees that in addition to the aforementioned traffic mitigation measures set forth in Paragraphs 1-4 hereof, it shall also construct or implement the traffic mitigation improvement and/or methods as are (a) set forth in the Traffic Impact Study, Greenland, NH prepared by Rizzo Associates dated November 4, 2002, as amended and supplemented, and filed with the Greenland Planning Board, (b) required pursuant to the conditions set forth in the Greenland Zoning Board of Adjustment Special Exception, and (c) required by the NHDOT and/or the Greenland Planning Board, all in accordance with final plans approved by the NHDOT.

## ***II. SANITARY SEWER DISPOSAL AND WATER.***

6. Sanitary Sewerage Disposal. PDNED and Portsmouth agree that they shall enter into an Agreement for sewer service in the form set forth in Exhibit A attached hereto.

7. Water System. The parties acknowledge that the Project will be connected to the regional water system operated by Portsmouth and PDNED agrees that the water supply and storage system, which it will install at its own expense, shall not be installed until the engineering plans, prepared by PDNED, are reviewed by the City of Portsmouth Water Division. PDNED agrees to install, at its expense, the water storage and fire pump facilities shown on the plans approved by the Greenland Planning Board.

## ***III. ENVIRONMENTAL CONSIDERATIONS.***

8. Ground Water TCE. The parties acknowledge that the Project is located on a site where a release of trichloroethylene (TCE) occurred in 1994 and that the site is subject to a Ground Water Management Permit (GMP) issued by the New Hampshire Department of Environmental Services (NHDES) in April of 2001, which requires annual ground water monitoring and the submission of annual reports to the NHDES. PDNED agrees to comply with all requirements of the GMP and to submit duplicate copies of all annual reports and all other reports and correspondence submitted to the NHDES in connection with the GMP. PDNED further agrees that in the event any meetings are held with the NHDES in connection with the GMP, it will provide advanced written notice to Portsmouth promptly following the scheduling of such meeting. PDNED further agrees to provide Portsmouth, upon request, copies of all previous GMP reports for the Project site in order that Portsmouth may have access to the baseline groundwater quality information available with respect to the Project site. PDNED agrees that all development activities in connection with the Project will be conducted in accordance

with all applicable federal, state and local regulations including but not limited to regulations promulgated by the NHDES and the U.S. Army Corp. of Engineers and that no construction or development activity with respect to the site will be commenced without receiving all required approvals from all state, federal and local regulatory agencies having jurisdiction over the site. PDNED agrees to provide copies of all such approvals to Portsmouth prior to commencing any construction activity on the site.

9. Storm Water Management. PDNED represents that storm water control methods for the Project have been designed in accordance with all applicable federal, state and local regulations including those promulgated by NHDES and the U.S. Army Corp. of Engineers. PDNED agrees to obtain all necessary and required permits and approvals from the NHDES and the U.S. Army Corp. of Engineers and any and all other governmental agencies having jurisdiction over the Project site prior to the commencement of construction and to utilize industry standard best available practices/methods to mitigate impacts of storm water run off. PDNED agrees to forward to Portsmouth copies of all permits and approvals obtained in connection with storm water run off prior to the commencement of any construction activity on the Project.

#### ***IV. MISCELLANEOUS.***

10. Conditions of Approval. PDNED acknowledges that the approvals which it has obtained from the Town of Greenland Zoning Board of Adjustment and Planning Board contain certain conditions which the City of Portsmouth deems to be of importance, interest and concern to Portsmouth. PDNED agrees that it will not seek to amend or eliminate any of the conditions set forth in Exhibit B attached hereto without the prior written consent of Portsmouth, which consent shall not be unreasonably withheld.

11. Security; Dismissal of Appeal. Portsmouth acknowledges that the dismissal of the pending appeals filed by Portsmouth with the Rockingham County Superior Court are of critical importance to PDNED. Portsmouth agrees that, immediately following the posting of security for the performance by PDNED of its obligation to contribute Five Hundred Thousand Dollars (\$500,000.00) as set forth in Paragraph 1 hereof, in the form of a letter of credit satisfactory in form and substance to Portsmouth and issued by a financial institution acceptable to Portsmouth, it will withdraw, with prejudice, Portsmouth's appeal of the Greenland Zoning Board of Adjustment's grant of a special exception for the Project (City of Portsmouth vs. Town of Greenland, Case No. 02-E-0281, filed with the Rockingham County Superior Court) and Portsmouth's appeal of the Greenland Planning Board's grant of site plan approval for the Project (City of Portsmouth vs. Town of Greenland, Case No. 03-E-0583, filed with the Rockingham County Superior Court). Portsmouth agrees that so long as PDNED is not in default

under the terms and provisions of this agreement, it will not appeal any approvals or permits obtained by PDNED or appear before any governmental board or agency and speak adversely with respect to the Project.

12. Contingencies. In the event that PDNED is unable to obtain all required approvals for the construction and operation of the Project (without any conditions deemed unacceptable to PDNED), or in the event PDNED for any reason does not commence construction of the Project, then this Agreement shall be deemed void upon PDNED's notifying Portsmouth in writing of its decision not to proceed with the Project and PDNED shall have no further obligations hereunder and any security posted by PDNED shall be returned by Portsmouth forthwith.

13. Notices. All notices given in connection with this Agreement shall be given by certified mail, return receipt requested, or by delivery to a recognized overnight delivery service which maintains tracking records and a confirmation of delivery, and shall be addressed as follows:

City of Portsmouth  
Attention: City Manager  
One Junkins Avenue  
Portsmouth, NH 03801

with a copy to: City of Portsmouth  
Attention: City Attorney  
One Junkins Avenue  
Portsmouth, NH 03801

with a copy to: PDNED Greenland LLC  
One Wells Avenue  
Newton, Massachusetts 02459

with a copy to: William C. Tucker, Esquire  
Wadleigh, Starr & Peters, P.L.L.C.  
95 Market Street  
Manchester, New Hampshire 03101

14. Governing Law and Binding Effect. This Agreement shall be governed by and interpreted in accordance with the provisions of the laws of the State of New Hampshire and shall be binding upon and inured to the benefit of the parties hereto and their respective successors and assigns.

City of Portsmouth  
By its City Manager,

Barbara A. O'Neil

[Signature]

By: [Signature]

PDNED Greenland LLC  
By: PDNED Manager LLC

By: [Signature]

**AGREEMENT BETWEEN  
CITY OF PORTSMOUTH AND PDNED DEVELOPMENT  
FOR SEWER SERVICE, GREENLAND, NH**

This agreement made this \_\_\_\_ day of \_\_\_\_\_, 2007 by and between the City of Portsmouth (hereinafter referred to as Portsmouth), PDNED Greenland LLC (hereinafter, together with its successors and assigns as permitted hereunder, referred to as "PDNED"). Portsmouth is a municipal corporation located in Rockingham County, New Hampshire. PDNED is a Delaware limited liability company with a principal place of business at One Wells Avenue, Newton, Massachusetts, and has acquired or has agreements to acquire property being Tax Map R21, Lot 44, 44A, 44B, 44C and 44D in Greenland, and Map R-279, Lot 6, Portsmouth, Rockingham County, New Hampshire, commonly known as the former Sylvania Property (the Property).

WHEREAS, PDNED currently has developed plans for the construction of an approximately 350,000 square foot retail facility on the property (the Facility); and

WHEREAS, Travel Port of America, Inc. (Travel Port) and Siegel Limited Partnership (Siegel) constructed a private sewer line to service property owned by Siegel and leased to Travel Port pursuant to an agreement with Portsmouth dated April 2, 1999 (the "1999 Agreement"); and

WHEREAS, PDNED has reached agreement with Travel Port and Siegel allowing PDNED to connect to said sewer line; and

WHEREAS, RSA 149-I:4 enables Portsmouth to lease, enter into contracts to provide, sell or purchase sewage or waste treatment facilities to or from any other city, town, village,



district, or person whenever they judge the same necessary for the public convenience, health, and welfare; and

WHEREAS, Portsmouth and PDNED recognize that it is for the public convenience, health, and welfare that the facility have access to municipal waste water management as opposed to an on-site septic system.

NOW THEREFORE, the parties hereby mutually covenant and agree that:

1. Responsibility of PDNED to Portsmouth. PDNED and its successors and assigns, are ultimately responsible to Portsmouth for the purposes of this Agreement, for the construction, operation, and maintenance of all proposed sewage facilities which service the Facility up to and including the connection point to the existing private sewer line previously constructed by Travel Port and Siegel (the Existing Private Sewer) pursuant to the 1999 Agreement. This provision is applicable both for sewage facilities constructed under this agreement in Greenland and Portsmouth. Portsmouth shall not be responsible for any costs incurred in constructing, operating, and maintaining any system to accept sewage flow from the Facility into the Portsmouth Sewage System. The responsibility for the operation, maintenance, and repair of the Existing Private Sewer shall lie entirely with Travel Port, Siegel, and PDNED, pursuant to such agreements as may exist from time to time among them.

2. The Proposed New Sewer Line. PDNED will construct a private sewer lateral from the Existing Private Sewer to the Property, the private sewer line together with all meters, pumps, and other appurtenances being hereinafter called the "Proposed Sewer Line". This lateral shall be owned by PDNED. The construction of the Proposed Sewer Line will be according to the specifications approved in writing in advance of commencement of construction

by the Portsmouth City Engineer. Prior to sewage being received by the Portsmouth Sewage System, the construction shall be inspected and approved by the Portsmouth City Engineer. PDNED shall provide Portsmouth with any authority necessary to give Portsmouth access to all points of the systems for maintenance and repair.

3. Additional Sewer System Improvements. PDNED will pay to the City of Portsmouth a private sewer line access fee of One Million Dollars (\$1,000,000.00) intended for the design and construction of downline improvements to the Portsmouth Sewer System as Portsmouth shall determine to be necessary and appropriate to accommodate the additional flows from the Facility and as may otherwise be deemed necessary or desirable by the City of Portsmouth. All design and construction work shall be done by the City of Portsmouth and shall be done at such times as the City of Portsmouth shall determine to be appropriate. The payment by PDNED shall be in the amount of One Million Dollars (\$1,000,000.00), regardless of the actual cost of such improvements, which amount shall be paid pursuant and in the manner set forth in Paragraph 9 hereof.

4. Handling of Sewage by Portsmouth. The sewage that flows from the Facility through the Proposed Sewer Line will, after its construction is completed as provided herein, be received by Portsmouth for treatment.

5. Permitted Sewage Flow into the Portsmouth Sewer System. The sewage flow from the Facility received by the Portsmouth Sewage System shall not exceed 20,000 gallons of flow during any one calendar day, unless otherwise permitted by Portsmouth. Only sewage generated at the Facility shall be accepted. In order to eliminate odor emanating from or caused by sewerage from the Facility which is disposed into the Proposed or Existing Private Sewer

Lines , PDNED shall participate as may be reasonably necessary in any odor control efforts at its own cost as may be directed by the City of Portsmouth.

6. Metering of the Permitted Sewage Flow. PDNED will be responsible for appropriate flow meter facilities on the Proposed Sewer Line to measure the sewage flow delivered to the Portsmouth Sewer System. PDNED will be responsible for all costs of overseeing the installation, operation, and maintenance of the required metering facilities. The metering devices shall be of a continuous recording and totalizing type. Details of the location, type, and installation shall be approved by Portsmouth prior to commencement of construction of the Proposed Sewer Line. Representatives of Portsmouth shall have access to the metering for the purposes of obtaining meter readings, inspection of the facility, and/or verification of the accuracy of the flow measuring equipment. PDNED shall be responsible for all reasonable expenses for metering and testing of the meter, on a reasonable schedule to be determined by Portsmouth, and/or when necessitated by repair work. PDNED shall submit to the city Engineer monthly flow records and such additional flow records as may from time to time be reasonably requested. PDNED shall also submit annually proof of calibration of the flow meter by a qualified contractor.

7. Maintenance and Repair. PDNED shall conduct all construction, maintenance, and repair work on the Proposed Sewer Line. In the event that Portsmouth determines that (i) following the commencement of construction of the Proposed Sewer Line, PDNED has failed to diligently prosecute such construction to completion, or (ii) PDNED has failed to perform any required maintenance or repair work in a diligent manner, and if such failure continues for a period of five (5) days following Portsmouth's delivery of written notice thereof to PDNED, ,

sent in accordance with the provisions of Paragraph 19 (except in the case of an emergency when such shorter notice, if any, as may be deemed reasonable by Portsmouth shall be given), Portsmouth may perform such work, and if Portsmouth does, PDNED shall pay the costs of such work in an amount calculated to recover all direct and indirect costs associated with the work plus a 25% surcharge.

8. Nature of Sewage Acceptable to Portsmouth. Sewage which Portsmouth accepts will be limited to domestic and sanitary sewage of the type normally discharged from retail establishments located at the Facility plus normal infiltration. Portsmouth will not accept industrial wastewater. Neither PDNED nor its tenants will knowingly discharge or allow the discharge into the Proposed Sewer Line any waste which is toxic or otherwise harmful to the wastewater treatment facilities of Portsmouth. In the event that such wastes are discharged into the system from the Facility, PDNED shall be responsible for all costs associated with remediation. PDNED agrees to comply, in the same manner as other Portsmouth sewer users, with any grease trap requirements.

9. Hook Up and Access Charge. PDNED shall pay to the City of Portsmouth private sewer line hook up fee payable over a period of ten (10) years in the amount of One Million Dollars (\$1,000,000.00) with interest at a rate of 4.1% per annum. Each annual payment shall be in the amount of \$123,905 as set forth in the attached Exhibit A. The first annual payment shall be due and payable thirty (30) days following the issuance by the Town of Greenland of a Certificate of Occupancy for the first business to open at the Facility. Subsequent annual payments shall be made during each of the following nine (9) years on or before the same day of each such year. (For example, if the Certificate of Occupancy for a building is issued on April 1,

2008. The first payment would be due on May 1, 2008 and the following nine payments would be due on May 1 of the following nine years.) In addition, commencing with the eleventh (11<sup>th</sup>) year after the year sewerage is first discharged into the Portsmouth sewer system from the Property, PDNED shall pay an additional capital improvements charge equal to ten percent (10%) of the Usage Charge. This fee shall be payable annually, quarterly or monthly as determined from time to time by Portsmouth. A late fee of 5% of the annual payment shall be assessed for any late payment.

10. Usage Fee. PDNED shall be charged sewer rates, in accordance with the normal policies, procedures, and charges of Portsmouth, as they may from time to time be amended, as if PDNED were a resident of Portsmouth (the "Usage Charge") if any payment is not made when due, it shall be subject to simple interest at the rate of 18% per annum on the unpaid balance.

11. Security. A. As security for the performance of obligation of PDNED to complete the construction of the Proposed Sewer Line as described in Paragraph 2 and make the payments provided for in paragraph 9 hereof, within fifteen (15) days of the issuance of the first building permit for a structure to be located on the Property, PDNED will deliver to Portsmouth a letter of credit, bond, or other security (such as a guaranty from a financial institution or a mortgage, having a maximum obligation to value ratio of seventy-five percent (75%), on all or a portion of the Facility). Such letter of credit or other security shall be in form and substance satisfactory to Portsmouth and issued by an institution satisfactory to Portsmouth. Such security may be reduced in amount by Portsmouth from time to time upon the completion of construction of the Proposed Sewer Line and as payments are made pursuant to the provisions of paragraph 9. If PDNED fails to provide such security within the time period set forth above and otherwise to

the reasonable satisfaction of Portsmouth, and if such failure continues for a period of ten (10) days following Portsmouth's delivery of written notice thereof to PDNED, then Portsmouth shall have the right to terminate this Agreement by written notice given to PDNED at any time following such ten day period but prior to PDNED's satisfactory delivery of the required security. Portsmouth may call upon the security to satisfy any obligations of PDNED to Portsmouth under this Agreement after first giving PDNED thirty (30) days written notice to cure the default.

B. As security for the payment of the usage fees to be paid pursuant to paragraph 10 hereof and the repair and maintenance obligations of PDNED set forth herein, PDNED shall execute, deliver and record a Municipal Lien Agreement in the form of Exhibit B attached hereto. Such Municipal Lien Agreement shall constitute a first lien of record upon the Property and PDNED shall cause to be delivered to Portsmouth an opinion of counsel or other evidence satisfactory to Portsmouth that the Municipal Lien Agreement constitutes a first lien of record upon the Property.

12. Term. The term of this Agreement shall be thirty (30) years from the date of the execution of the Agreement. At the end of the original and each succeeding term and provided that PDNED is not in default beyond any applicable notice and cure periods at the time hereunder, this Agreement shall be automatically renewed for additional ten (10) year terms.

13. Assignment. The parties acknowledge that PDNED intends to create a three (3) Unit condominium on the Property with each building constituting a Unit and that the Units may be sold, leased or mortgaged and accordingly this Agreement and the rights and obligations hereunder shall be assignable by PDNED to the condominium association and the other owners,

lessees or mortgagees of the Facility, or portions thereof, provided that prior written notice is given to the Portsmouth City Manager; provided, however, such assignment may only occur if (a) either (i) the condominium association and/or the new owner(s) assume the obligations of PDNED set forth herein, or (ii) PDNED remains fully responsible for the payment and performance of its obligations set forth herein and (b) the security posted pursuant to Paragraph 11 remains in place or substitute security acceptable to Portsmouth is delivered to Portsmouth. In all other cases, the prior approval of the Portsmouth City Manager shall be required, such approval not to be unreasonably withheld. The granting by PDNED of rights to flow sewerage into the Portsmouth Sewer System to lessees or tenants of portions of the Property shall not be deemed an assignment of this Agreement. Any request for an approval of an assignment shall be in writing and shall be sent pursuant to the provisions of Paragraph 19 hereof, and provided the notice from PDNED to Portsmouth specifically states that the failure to respond within sixty (60) days of receipt shall be deemed approval, then the failure of Portsmouth to respond to such a request, in writing, within sixty (60) days of receipt of such request, shall be deemed the approval of such requested assignment. The notice shall be substantially in the form found at Exhibit C. If PDNED does not receive a response within thirty (30) days, it shall issue a second letter advising that consent to assignment is being sought and enclosing a copy of the original letter. PDNED shall also attempt to make contact with the City Manager by telephone or in person.

14. Sewer Uses. This Agreement authorizes use of the Portsmouth sewer system solely by the Facility of PDNED. Any other person and/or entity that wishes to utilize the Proposed Sewer Line installed by PDNED must have the approval of the City and of PDNED.

15. Termination of Service. PDNED, its successors and assigns, agree to maintain compliance at all times with all ordinances, policies, and regulations of Portsmouth regarding sewer use and disposal. In the event of non-compliance or default under this Agreement, Portsmouth may terminate sewer use if PDNED unreasonably fails to remedy the non-compliance within thirty (30) days of written notice. PDNED shall have an opportunity for a hearing before the City Manager to show cause why service should or should not be terminated.

16. Amendment. This Agreement may be amended only by written agreement signed by both parties.

17. Contingencies. The right granted to PDNED hereunder to construct the proposed private sewer line and connect into the City of Portsmouth Municipal System is conditioned upon PDNED providing Portsmouth with the written consent of the parties to the 1999 Agreement and the satisfaction of one of the following:

a) New Hampshire Public Utilities Commission (PUC) having issued a final, non-appealable order finding that the City's service to the Facility does not render the City a "public utility" as that term is defined in NH RSA 362; or

b) The City of Portsmouth having entered into an inter-municipal agreement for the provision of sewer service with the Town of Greenland, such inter-municipal agreement to be upon such terms and conditions as are satisfactory to the City of Portsmouth; or

c) The PUC having granted a final, non-appealable order authorizing the City of Portsmouth to extend its sewer franchise into the Town of Greenland to the extent necessary to service the Facility on such terms and conditions as are acceptable to the parties.



The satisfaction of one of the foregoing conditions is the sole responsibility of PDNED; however, Portsmouth agrees to reasonably cooperate with PDNED in the pursuit of its satisfaction of the conditions and to file such applications, materials and information with the PUC as may be reasonably requested by PDNED. In the event that PDNED is unable to satisfy one of the foregoing conditions or obtain any required approvals for the construction and/or use of the Proposed Sewer Line on the Facility (without any conditions deemed unacceptable to PDNED), or otherwise decides not to proceed with the construction of the Facility, this Agreement shall be deemed void upon PDNED notifying Portsmouth in writing of its decision not to proceed. In the event that the Proposed Sewer Line is constructed and fully completed and put into use and subsequently PDNED is unable or unwilling to continue to use the Proposed Sewer Line, then PDNED shall have the right to terminate this Agreement on thirty (30) days written notice delivered to the Portsmouth City Manager; provided, however, such termination shall not terminate PDNED's obligation to make the payments provided for in Section 9, which obligation shall continue until payment in full. Upon such termination of this Agreement, Portsmouth shall cease receiving sewage from the Facility and PDNED shall be responsible for all costs of disconnecting the Proposed Sewer Line and PDNED shall have no further obligations to make any payments to Portsmouth after termination of the Agreement except as provided in Paragraphs 9 and 17. However, PDNED shall not be entitled to reimbursement of any payments made to Portsmouth prior to the effective date of termination.

18. Indemnity. PDNED shall be responsible to hold harmless and indemnify Portsmouth and its officers, agents, and employees from any and all costs of construction, maintenance, or use of any sewage facility constructed pursuant to this Agreement, including but

not limited to, environmental harm or damage caused to Portsmouth or others attributable in any way to the construction, existence, or use of those facilities. This indemnity shall survive termination of this Agreement.

19. Notices. All notices given in connection with this Agreement shall be given by certified mail, return receipt requested, or by delivery to a recognized overnight delivery service which maintains tracking records and a confirmation of delivery, and shall be addressed as follows:

City of Portsmouth  
Attention: City Manager  
One Junkins Avenue  
Portsmouth, NH 03801

with a copy to:

City of Portsmouth  
Attention: City Attorney  
One Junkins Avenue  
Portsmouth, NH 03801

With a copy to:

City of Portsmouth  
Attn: Director of Public Works  
680 Peverly Hill Road  
Portsmouth, NH 03801

PDNED Greenland LLC  
One Wells Avenue  
Newton, Massachusetts 02459

with a copy to:

Kaitz & Fellman, LLP  
Attn: Ronald Fellman, Esquire  
54 Jaconnet Street - Suite 300  
Newton, MA 02461

Any party hereto shall have the right to change the address at which it is given notice by written notice to the other parties sent in accordance with the first sentence hereof.

Copies of notices to PDNED shall be sent to any mortgagee of PDNED which has notified Portsmouth in the manner set forth in this Section 18, that it is a mortgagee of all or a portion of the Property and that it is entitled to receive copies of notices under this Section 18. Any such mortgagee shall have the right to cure any default or breach hereunder (i) within ten (10) days following its receipt of such notice if the default or breach involves the payment of money, or (ii) within thirty (30) days following its receipt of such notice for other breaches or defaults (or if the mortgagee requires possession of the Property in order to cure, such additional period of time as may reasonably be required provided such mortgagee has commenced taking action to obtain possession of the Property), and Portsmouth shall not terminate this Agreement while any such cure is being prosecuted diligently and in good faith.

20. Governing Law. This Agreement shall be governed by and interpreted in accordance with the provisions of the laws of the State of New Hampshire.

21. Notice of this Agreement shall be filed with the Rockingham County Registry of Deeds.

City of Portsmouth  
By its City Manager,

\_\_\_\_\_  
By: \_\_\_\_\_

PDNED Greenland LLC  
By: PDNED Manager LLC

\_\_\_\_\_  
By: \_\_\_\_\_

# EXHIBIT A TO SEWER AGREEMENT

City of Portsmouth

Principal 1,000,000  
 Years 10  
 Payment 123,905  
 Rate 4.10%

Year	Beginning Balance	Principal	Interest	Total Payment	Ending Balance
1	1,000,000	82,905	41,000	123,905	917,095
2	917,095	86,305	37,601	123,905	830,790
3	830,790	89,843	34,062	123,905	740,947
4	740,947	93,527	30,379	123,905	647,420
5	647,420	97,361	26,544	123,905	550,059
6	550,059	101,353	22,552	123,905	448,706
7	448,706	105,509	18,397	123,905	343,197
8	343,197	109,834	14,071	123,905	233,363
9	233,363	114,338	9,568	123,905	119,025
10	119,025	119,025	4,880	123,905	(0)
Totals		1,000,000	239,055	1,239,055	

## MUNICIPAL LIEN AGREEMENT

This Agreement made as of the first day of \_\_\_\_\_, 2007, by and between **PDNED Greenland, LLC**, a Delaware limited liability company, having a principal place of business at and a mailing address of c/o Packard Development, One Wells Avenue, Newton, Massachusetts 02459 (hereinafter referred to as "PDNED") and the **City of Portsmouth**, a municipal corporation organized and existing under the laws of the State of New Hampshire, having a principal place of business at and a mailing address of City Hall, One Junkins Avenue, Portsmouth, New Hampshire 03801.

### RECITALS

**WHEREAS**, PDNED has acquired fee simple title to certain tracts of land located in the Town of Greenland and the City of Portsmouth, Rockingham County, State of New Hampshire, said parcels being more particularly described in Exhibit A attached hereto (the "Property") and intends to construct a three building retail development on that portion of the Property which is situated in the Town of Greenland (the "Project"); and

**WHEREAS**, there currently does not exist an Inter-Municipal Agreement between the City of Portsmouth and the Town of Greenland with respect to the provision of sewer service by Portsmouth to properties located in the Town of Greenland and consequently, PDNED and Portsmouth have simultaneously with the execution of this Agreement entered into an Agreement Between City of Portsmouth and PDNED Development for Sewer Service, Greenland, NH (the "Sewer Agreement") permitting the Project to dispose of its sanitary sewerage into the Portsmouth municipal system; and

**WHEREAS**, New Hampshire Revised Statutes Annotated Chapter 149-I:11 provides that in the collection of sewer charges, municipalities shall have the same liens and use the same collection procedures as are authorized by RSA 38:22 which provides, in part, that all charges for services furnished to patrons by a municipality owned utility shall create a lien upon the real estate where such services are furnished and further provides that upon non-payment of such municipal charges, the Tax Collector of the municipality may enforce the lien and collect the charges in the same manner as the Tax Collector may collect and enforce the lien for real estate taxes; and

**WHEREAS**, New Hampshire law provides that the municipal lien for real estate taxes and municipal charges is a first priority lien which supersedes and has priority over prerecorded mortgages; and

**WHEREAS**, doubt exists as to the ability of a tax collector in one municipality to enforce a lien on property in another municipality in the absence of an Inter-Municipal Agreement; and

**WHEREAS**, Portsmouth desires to be assured that Portsmouth's lien for the provision of municipal sewer service to the Project has the same priority and Portsmouth has the same enforcement rights as would be available to Portsmouth if the Project were located in Portsmouth and not in Greenland; and

**WHEREAS**, PDNED desires to confirm to Portsmouth that Portsmouth's lien for the provision of sewer services shall be a first priority lien on the Property.

**NOW, THEREFORE**, in consideration of the execution and delivery of the Sewer Agreement and in further consideration of the provision of sewer service to the Property, PDNED hereby grants to the City of Portsmouth, with mortgage covenants, to secure any and all obligations of PDNED, its successors and assigns, pursuant to a Sewer Agreement (other than the agreement set forth in Paragraph 9 of the Sewer Agreement to pay the hook-up fee of One Million Dollars (\$1,000,000.00) plus interest for which separate security is being provided) (the "Obligations"), a lien upon the real estate described as follows:

Those certain tracts or parcels of land, with any improvements now or hereafter situated thereon, lying and being situated in the Town of Greenland and the City of Portsmouth, County of Rockingham, State of New Hampshire, being more particularly bounded and described in Exhibit A attached hereto and made a part hereof.

The lien granted hereby is upon the condition that PDNED shall pay and perform all of the Obligations and is also upon the statutory conditions, for any breach of which Portsmouth shall have the statutory power of sale. Advertising of any foreclosure shall be in a newspaper published in Rockingham County. The proceeds of any such sale shall be charged with the expenses thereof, including reasonable attorneys' fees. PDNED shall pay to Portsmouth all costs of collections, including reasonable attorneys' fees, in the event foreclosure proceedings are commenced and completed or in the event foreclosure proceedings are commenced in good faith and discontinued.

IN WITNESS WHEREOF, PDNED Greenland, LLC has caused this Municipal Lien Agreement to be executed as of this the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by its undersigned manager, hereunto duly authorized.

Witness:

PDNED GREENLAND, LLC

By: \_\_\_\_\_

Name:

Title: Manager

The foregoing Municipal Lien Agreement is accepted and the provisions hereof agreed to by the City of Portsmouth as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Witness:

CITY OF PORTSMOUTH

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

The Commonwealth of Massachusetts  
County of \_\_\_\_\_

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally appeared \_\_\_\_\_, being the Manager of PDNED Greenland, LLC, a New Hampshire limited liability company, and acknowledged the foregoing on behalf of the company

Before me,

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

The State of New Hampshire  
County of Rockingham

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally appeared \_\_\_\_\_, being the \_\_\_\_\_ of the City of Portsmouth, a municipal corporation organized and existing under the laws of the State of New Hampshire, and acknowledged the foregoing on behalf of the City.

Before me,

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

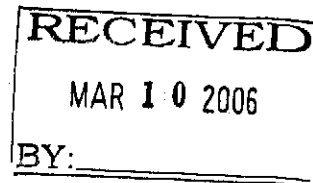
**EXHIBIT B  
TO THE SETTLEMENT AGREEMENT  
NOT INCLUDED**



TO: JOHN P. BOHENKO, CITY MANAGER  
FROM: KELLI L. BARNABY, CITY CLERK  
RE: ACTIONS TAKEN BY THE PORTSMOUTH CITY COUNCIL MEETING HELD ON APRIL 17, 2006 COUNCIL CHAMBER, MUNICIPAL COMPLEX, ONE JUNKINS AVENUE, PORTSMOUTH, NEW HAMPSHIRE  
PRESENT: MAYOR MARCHAND, ASSISTANT MAYOR FERRINI (left meeting at 8:35 p.m.), COUNCILORS GRASSO, DWYER, RAYNOLDS, PANTELAKOS, WHITEHOUSE, SMITH AND HYNES

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1. Presentation – Proposed Legal Settlement Re: Packard Development – Suzanne Woodland, Assistant City Attorney and David Allen, Deputy Public Works Director – Assistant City Attorney Woodland and Deputy Public Works Director Allen provided a presentation to the City Council Re: Packard Development Proposed Legal Settlement.
2. Voted to suspend the rules in order to take up Item VI – Public Comment Session.
3. Public Comment Session – There were eleven speakers: Ralph DiBernardo, Harold Ecker, Walter Allen, Gary Lowe, Deborah Terreson, Bill St. Laurent, Martin Cameron, and Cate Jones (Packard Development); Peter Bresciano (Funding of Public Art); Peter Whelan (Sewer Waiver – EPA); and Everett Eaton (City/Chamber Partnership).
4. Voted to suspend the rules in order to take up Item XII. D.1. – Packard Development.
5. Packard Development – On a roll call vote 3-6, motion to table this matter until a public hearing is held failed to pass. Councilors Whitehouse, Smith and Hynes voted in favor. Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Raynolds, Pantelakos and Mayor Marchand voted opposed.  
  
On a roll call 6-3, voted to authorize the City Manager to negotiate and execute a settlement agreement with Packard Development as outlined in the letter from Attorney William C. Tucker dated March 9, 2006. Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Raynolds, Pantelakos and Mayor Marchand voted in favor. Councilors Whitehouse, Smith and Hynes voted opposed.
6. Proclamation – Community Development Block Grant Week – April 17, 2006 – April 21, 2006 - Mayor Marchand presented the Proclamation declaring April 17, 2006 – April 21, 2006 as Community Development Block Grant Week to David Moore, Community Development Department. David accepted the Proclamation on behalf of the department with thanks and appreciation.
7. Acceptance of Minutes – April 3, 2006 – Voted to approve and accept the minutes of the April 3, 2006 City Council meeting.
8. Public Hearing – Ordinance amending Chapter 7, Article XVI, Section 7.1602 – Locations – Resident Only Parking by the addition of Pearl Street – Easterly side of Pearl Street, from a point ninety feet (90') north of Islington Street to the corner of Pearl Street and Hanover Street – Held a public hearing. Voted to pass second reading of amended ordinance, as submitted, and hold a third and final reading at the May 1, 2006 City Council meeting.



## WADLEIGH, STARR & PETERS, P.L.L.C.

THEODORE WADLEIGH (Of Counsel)  
WILLIAM C. TUCKER  
EUGENE M. VAN LOAN III  
JOHN E. FRIBERG, Sr.  
JAMES C. WHEAT  
JOHN A. LASSEY  
RONALD J. LAJOIE  
KATHLEEN N. SULLIVAN  
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CHARLES F. CLEARY  
CHRISTINE DESMARAIS-GORDON  
JENNIFER L. MURPHY (Of Counsel)  
TODD J. HATHAWAY  
STEPHEN J. JUDGE  
STEPHEN L. BOYD  
GREGORY M. SARGENT  
ALISON M. BETHEL  
MICHAEL J. TIERNEY

Email address: BTucker@wadleighlaw.com

March 9, 2006

Robert P. Sullivan, Esquire  
Portsmouth City Attorney  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Confidential Proposal re:  
City of Portsmouth vs. Packard Development  
Rockingham County Case #02-E-0281 and 03-E-0583

Dear Bob:

Packard Development would like to schedule a time for formal review and action by the City Council on our negotiated settlement to the above captioned matter. If possible we would like to have it on the agenda at their meeting of April 3, 2006.

At this time all conditions established by the Greenland Planning Board have been met and final site plan approval has been received. All other necessary permits and approvals have also been received. Additionally, the Town of Newington has withdrawn its appeals. Consequently, my client is interested in resolving this matter and is prepared to move forward with the settlement agreement negotiated by Packard, you and the City Manager, which essentially addresses all of the City's issues.

A recap of the terms contained in the formal settlement agreement as negotiated is as follows:

- 1) Packard will pay the City of Portsmouth \$500,000.00 to be used in conjunction with NHDOT's \$1.5 million planned improvements to Ocean Road.
- 2) Packard will make a capital contribution to the City Sewer System in the amount of \$1M, payable on a 10 year schedule.
- 3) Packard will construct improvements to the truck stop at the intersection of Route 33 & Ocean Road including a new exit from the truck stop directly onto Route 33.

In return the City will grant Packard a tie-in to the Portsmouth municipal sewer system for its Greenland project, withdraw existing appeals, and take no further appeals.

Additionally, the Council should be made aware that Packard will also be making the following investments as a condition of securing site approvals, all of which will result in substantial direct benefit to the City:

- 1) Packard will make improvements to one mile of the Route 33 corridor including the Ocean Road intersection at an estimated cost \$3,000,000.
- 2) Packard will contribute up to \$50,000.00 for signalization of the Banfield Road/Ocean Road and the Route 33/Griffin Road intersections.
- 3) Packard will acquire a 22 acre conservation area in the Great Bog & initiate a marsh restoration project at an estimated cost of \$500,000.00.
- 4) Packard will pay for a post-opening traffic study at an estimated cost of \$10,000.

We are confident that all of the matters raised in the City's appeals have been adequately addressed by the initiatives described and committed to herein and we look forward to an affirmative vote by the City Council.

We would appreciate this matter being kept confidential until the settlement is approved and consequently would ask that if it is discussed by the Council prior to April 3 that such discussion be done in executive session.

Very truly yours,

  
William C. Tucker



# Town of Greenland

575 Portsmouth Avenue

Post Office Box 100

Greenland, New Hampshire 03840-0100

Voice: 603-431-7111 · Fax: 603-430-3761

From the Office of:

- ☐ SELECTMEN
- ☐ TOWN CLERK
- ☐ TAX COLLECTOR
- ☐ PLANNING BOARD
- ☐ BOARD OF ADJUSTMENT
- ☒ TOWN ADMINISTRATOR
- ☐ BUILDING INSPECTOR
- ☐ \_\_\_\_\_

December 18, 2007

Mr. Thomas B. Getz, Chairman  
NH Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

Re: Expansion of Portsmouth Sewer Service into Greenland

Dear Chairman Getz,

The Board of Selectmen voted unanimously at their meeting of December 17, 2007 to support the expansion of the Portsmouth sewer service to the Packard Development property at 1450 Greenland Road for the Greenland Meadows project in Greenland.

We encourage the Public Utilities Commission to approve Portsmouth's petition regarding this extension.

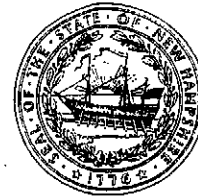
Sincerely,

  
Karen Anderson  
Town Administrator

/kma



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



Thomas S. Burack, Commissioner

February 8, 2008

MR. DOUGLAS W. BROGAN, P.E.  
NH PUBLIC UTILITIES COMMISSION  
21 SOUTH FRUIT STREET, SUITE 10  
CONCORD, NH 03301-2429

**Re: Petition to Extend Sewer Service Area  
Portsmouth, NH**

Dear Mr. Brogan:

This letter serves to express the NH Department of Environmental Services' support for proposed expansion of the wastewater service franchise of the City of Portsmouth, NH, to incorporate properties located at 1450 Greenland Road and 108 Ocean Road in the Town of Greenland, NH.

Feel free to contact me at the address below, or by e-mail at [stephen.roberts@des.nh.gov](mailto:stephen.roberts@des.nh.gov), if you need clarification or additional information regarding this issue.

Sincerely,

Stephen H. Roberts, P.E.  
Senior Sanitary Engineer  
Wastewater Engineering Bureau

cc: David S. Allen, P.E. – Deputy Director of Public Works  
Suzanne Woodland, Esq. – Assistant City Attorney  
Peter H. Rice, P.E. – City Engineer Water/Sewer

SHR/f:/wpdocs/Portsmouth PUC Petition Support.doc

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