

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT  
CIVIL ACTION  
NO. 11-4095

TWENTY WAYLAND, LLC,

Plaintiff,

v.

TOWN OF WAYLAND and WAYLAND  
WASTEWATER MANAGEMENT  
DISTRICT COMMISSION,

Defendants.

**COMPLAINT**

This is a simple breach of contract action. The contract is an August 30, 1999 Memorandum of Agreement. The parties were the Town of Wayland, the Wayland Wastewater Management District Commission and Twenty Wayland's predecessor-in-interest. Through this Complaint, Twenty Wayland asks no more than to be put into the position it would have been in but for the defendants' breach of their obligations under the parties' contract. The contract, the Memorandum of Agreement, addressed the transfer of rights in a wastewater treatment facility owned by and located on land belonging to Twenty Wayland's predecessor-in-interest. At the time of the Memorandum of Agreement, the facility had excess capacity. The transfer of ownership of the facility to the Town and Commission promised to be mutually beneficial, the Town and Commission securing a source of wastewater treatment capacity that it could commit (for a fee) to other users, and Twenty Wayland's predecessor-in-interest being freed of operational burdens. Since 1999, the Town and Commission have abused that arrangement. They have oversubscribed (despite warnings) the facility, thereby depriving Twenty Wayland of

guaranteed capacity necessary for current development of Twenty Wayland's adjoining property, and have, for years, overcharged Twenty Wayland (despite Twenty Wayland having zero allocated capacity and zero usage).

Twenty Wayland has spent more than a year trying to resolve these issues amicably with the Town and Commission. Those efforts have not been met with reciprocal efforts. Twenty Wayland does not lightly file suit against the Town in which it is a corporate citizen and one of the boards with which it must work cooperatively. But the Town's and the Commission's treatment of Twenty Wayland as the deep pockets to exploit is unfair and not permitted by a freely entered into contract. And the Town's and Commission's inability to deliver contractually guaranteed wastewater treatment capacity (that used to belong to Twenty Wayland's predecessor-in-interest) jeopardizes a development project in which Twenty Wayland has devoted more than six years of permitting time and millions of dollars, and on which Twenty Wayland continues to incur carrying costs, including taxes, insurance, interest, and management expenses.

For these reasons, Twenty Wayland, LLC, files this Complaint.

#### **The Parties**

1. Plaintiff Twenty Wayland, LLC is a Massachusetts limited liability corporation. Twenty Wayland owns an approximately 56.9-acre parcel of land at 400-440 Boston Post Road in Wayland, Massachusetts (the "Property"). Twenty Wayland is the successor-in-interest to Wayland Business Center, LLC with respect to the Property.

2. Defendant Town of Wayland (the "Town") is a municipal corporation in Middlesex County, Massachusetts, with a principal place of business at Wayland Town Hall, 41 Cochituate Road, Wayland, MA 01778.

3. Defendant Wayland Wastewater Management District Commission (the “Commission” or the “WWMDC”) is the duly-designated municipal body of the Town of Wayland responsible for the establishment and maintenance of the town’s wastewater management system, pursuant to Chapter 461 of the Acts of 1996. The Commission’s usual place of business is at Wayland Town Hall, 41 Cochituate Road, Wayland, MA 01778.

#### **The Contract**

4. Effective August 30, 1999, Wayland Business Center, LLC, the Town, and the Commission entered into a Memorandum of Agreement. A true and accurate copy of the Memorandum of Agreement is attached as Exhibit A.

5. The Memorandum of Agreement recited that “WBC [referring to the Wayland Business Center, LLC] owns the property located at 400-440 Boston Post Road in the Town of Wayland ... upon which is located a wastewater treatment plant used to serve the buildings located on the Site...”

6. The wastewater treatment plant was the subject of a September 4, 1998 permit (NPDES Permit No. MA0039853) issued by the United States Environmental Protection Agency and the Massachusetts Department of Environmental Protection, which authorized the plant to discharge no more than 65,000 gallons per day of treated wastewater into the Sudbury River.

7. At the time, the wastewater treatment plant had excess capacity. The Town and the Commission desired to take the plant by eminent domain. Ownership of the plant would allow the Town and Commission to take advantage of the excess capacity to provide wastewater treatment hook-ups to other users in the Town.

8. Through the Memorandum of Agreement, WBC agreed not to oppose the Town’s eminent domain taking of the wastewater treatment plant and appurtenant easements.

9. The Memorandum of Agreement provided in part: “[The Commission] shall provide 45,000 [gallons per day] of sewage treatment capacity to WBC at a pro-rated cost of operation and amortized acquisition costs, but excluding all costs in any way related to installations made for service to others and services provided to others.”

10. Thus, under the Memorandum of Agreement, WBC was guaranteed at least 45,000 gallons per day of sewage treatment capacity at the plant, with 20,000 gallons per day available for other users. This was not a future commitment by the Town and Commission to some day deliver 45,000 gallons of flow in the future, but a reservation of 45,000 gallons in the existing plant being transferred from WBC to the Town and Commission. Those gallons of flow at no time were the Town’s and Commission’s to allocate to other users.

11. Further, under the Memorandum of Agreement, the Commission could charge WBC its pro-rated cost of operation and amortized acquisition costs, but could not charge WBC for costs related to other users.

12. The execution of the Memorandum of Agreement by the Board of Selectmen on behalf of the Town and by the Commission was an authorized act. On June 4, 1998, the Town at a Special Town Meeting voted to adopt Article 5 of the 1998 Special Town Meeting Warrant authorizing the Town’s Board of Selectmen to acquire the wastewater treatment plant and appurtenant easements for access and other purposes.

13. Effective September 24, 1999, the Memorandum of Agreement was modified by a Supplemental Agreement, which did not alter the obligation of the Commission to provide 45,000 gallons per day to WBC and to not charge WBC for services provided to other users.

14. Since 1999, the Town and the Commission have reaffirmed their obligations under the Memorandum of Agreement on a number of occasions.

15. For example, effective March 28, 2006, the Town and Twenty Wayland entered into a Memorandum of Agreement that stated in part: “[Twenty Wayland] and Wayland hereby acknowledge and confirm that each has certain rights and obligations under a August 30, 1999 Memorandum of Agreement by and between Wayland and [Commission] and Wayland Business Center, LLC (Developer’s predecessor in interest), as modified by a Supplemental Agreement dated September 24, 1999 (collectively the “MOA”), including, without limitation, regarding gallons per day of maximum daily design flow (as defined in 310 CMR 15.000) of 20,000 for Wayland and [Commission] and 45,000 for Developer [Twenty Wayland].” A true and accurate copy of the 2006 Memorandum of Agreement is attached as Exhibit B.

16. By letter dated February 26, 2007, the Town Administrator wrote to counsel for Twenty Wayland stating in part: “I can assure you that the WWMDC has not taken any actions that would effectively abrogate its and the Town’s contractual obligations to provide Twenty Wayland, LLC 45,000 gallons per day (“GPD”) of wastewater disposal capacity of the maximum permitted 65,000 GPD capacity at the Town-owned sewage treatment plant adjacent to 400-440 Boston Post Road.” The letter continues: “This letter confirms and reaffirms the Town’s and the WWMDC’s contractual obligation to provide Twenty Wayland, LLC, as successor to Wayland Business Center, LLC (“WBC”), 45,000 GPD of wastewater flow capacity at the Plant in accordance with the Memorandum of Agreement among WBC, the Town, and the WWMDC dated August 30, 1999.” A true and accurate copy of the February 26, 2007 letter is attached as Exhibit C.

17. On July 2, 2007, the Town Administrator wrote again to counsel for Twenty Wayland: “The Board of Selectmen, Town Counsel and I have reviewed this matter with the Wayland Wastewater Management District Commission (the “WWMDC”). After doing so on

June 28, 2007, the WWMD C voted (2-0-0; Davies and Schofield in favor; Roberts absent) to confirm and reaffirm the Town's and the WWMD C's contractual obligation to provide Twenty Wayland, LLC, as successor to Wayland Business Center, LLC ("WBC"), 45,000 GPD of wastewater capacity at the Town's sewage treatment plant in accordance with the Memorandum of Agreement among WBC, the Town and the WWMD C dated August 30, 1999." A true and correct copy of the July 2, 2007 letter is attached as Exhibit D.

18. Most recently, on May 6, 2011, the Board of Selectmen posted a letter (a true and accurate copy of which is attached as Exhibit E) that stated: "Under the terms of that 1999 agreement transferring the existing plan to the town, the Town Center property is entitled to 69 percent of the flow [45,000/65,000] that is treated at the plant and discharged into the Sudbury River. The remaining flow is available to nearby businesses, homes and municipal buildings."

#### **The Breach (capacity)**

19. Since approximately 2006, the buildings at the Property have been empty. Since that time, the actual usage from 400-440 Boston Post Road of the wastewater treatment plant has been zero.

20. In or around 2004, demand from other users to hook up to the wastewater treatment plant exceeded the 20,000 gallons per day available to the Town under the 1999 Memorandum of Agreement. In early 2004, the Commission got creative. The Commission decided that it could allocate more flow to users than the plant's legal capacity because, based on experience, actual usage is less than allocated usage.

21. The Commission explained its idea to the Board of Selectmen via letter dated March 17, 2004 (a true and correct copy is attached as Exhibit F): "The Commission has decided to use 60 percent of Title 5 Guidelines as the typical water usage for users of the Sewer System (50 % plus a safety factor of 10 %). Using the 60 percent rule and maximum water

usage (or input to the Sewer System) of 20,000 gallons per day for users other than the Wayland Business Center [Twenty Wayland's predecessor], the Commission can allocate sewer capacity of 33,333 gallons per day (20,000/.6) without exceeding the flow through the treatment plant.”

22. In other words, under the 1999 Memorandum of Agreement, the Commission had 20,000 gallons per day of flow to allocate, but then made the unilateral decision in 2004 to treat the 20,000 gallons as if it were 33,333 gallons per day – effectively reducing what was available to Twenty Wayland by more than 13,000 gallons.

23. The Commission made up the 60 percent actual to allocated capacity standard; it has no basis in engineering.

24. The Commission's decision also had no basis in Department of Environmental Protection regulations, specifically 314 CMR 7.15 Calculation of Flows. A true and accurate copy of that section of the regulations is attached as Exhibit G.

25. 314 CMR 7.15 provides a chart for calculating system design flows and plant capacity. Those calculations are based on factors like the number of bed rooms, seats in a restaurant, or square feet of retail space. There is no provision allowing a local wastewater commission to ignore the regulations and make up its own method of calculation. The regulations require the use of the chart “unless a variance is authorized by the Department in writing.”

26. The Commission never sought a variance from the DEP regulations. DEP has not authorized any variance from its flow regulations to the Commission.

27. The Commission then proceeded to allocate capacity at the wastewater treatment plant in excess of 65,000 gallons per day (assuming 45,000 gallons were reserved for 400-440 Boston Post Road).

28. For example, in a May 24, 2005 memo from the Commission to the Wayland Zoning Board of Appeals (a true and accurate copy is attached as Exhibit H), the Commission recommended approval of the Wayland Commons 40B project because even though its hookup to the treatment plant would result in allocation greater than the 65,000 capacity, “[i]n the five years of the system’s existence, the system has never been required to treat anywhere near the allowable average or maximum amount of wastewater.”

29. Twenty Wayland has repeatedly protested this over-allocation of capacity to the wastewater treatment plant. For example, on December 8, 2006, counsel for Twenty Wayland wrote to the Town Administrator and Town Counsel: “We of course expect the Town and the WWMDC to perform fully their contractual obligation to deliver to us our full 45,000 GPD capacity. I am sure I need not remind you of the importance to us of that 45,000 GPD and our continuing reliance on its availability. But in light of the fact that the plant’s maximum daily flow capacity is 65,000 GPD, we feel we must ask you to explain both the methodology for the allocations to others that exceed the 20,000 GPD available and bring the total above 65,000 GPD, and the legal basis for that methodology. In this regard, we note that the July 18, 2005 chart makes reference to a ‘60% rule’ that is not described and for which we have found no regulatory or engineering reference.” A true and accurate copy of the letter is attached as Exhibit I. Attached as Exhibit J is a true and accurate copy of another letter from Twenty Wayland protesting the over-allocation of capacity.

30. Because of the Commission’s adoption of the 60 percent usage to allocation methodology, resulting in an over-allocation of capacity at the wastewater treatment plant, DEP has held that the 45,000 gallons per day of flow is not available to Twenty Wayland.

31. In a January 5, 2007 review letter, DEP indicated that 45,000 gallons of flow per day were not available to Twenty Wayland.

32. By letter dated November 9, 2010 to the Town (a true and accurate copy of which is attached as Exhibit K), DEP wrote: “Additionally, it should be noted that the Department still has concern with the past practice of the WWMDC in oversubscribing commitments to projects seeking to connect to the WWTP. MassDEP needs written assurance from both the Town and WWMDC that connections to the WWTP will be more responsibly managed moving forward. Absent some better checks and balances being put in place, the Department may take action to serve as the approving authority for all future connections to the WWTP.”

33. 314 CMR 7.05(1)(h) provides that normally 50,000 gallons per day is the threshold for DEP review of a sewer connection permit. However, under 314 CMR 7.04, DEP may require review when it has concerns about “inadequacies in the design or capacity of a sewer system.” Because of this latter concern, DEP required Twenty Wayland to get a DEP permit to connect to the wastewater treatment facility.

34. This permitting process, required because of the Commission’s over-allocation of capacity at the wastewater treatment plant, created delay, uncertainty and expense for Twenty Wayland.

35. Nevertheless, wishing to avoid conflict with the Commission and the Town, on June 9, 2010, counsel to Twenty Wayland wrote to counsel to the Commission with a proposal for moving forward together, under which Twenty Wayland would seek a connection permit for only the first 28,000 gallons of capacity, and would not pursue the balance of 17,000 gallons of capacity for more than a year. A true and accurate copy of the letter is attached as Exhibit L. However, in exchange, Twenty Wayland requested: “Until such time as WWMDC has issued all

local permits and approvals required for Twenty Wayland to discharge 45,000 gallons per day to the plant (as may be replaced by a new plant and/or augmented by new treatment facilities), WWMDC shall not issue any sewer connection permits to existing or new users, nor allow any existing user to increase its allocation or average daily sewage flow rate.”

36. Three months later, in October 2010, the Commission and the Town rejected Twenty Wayland’s proposal, stating that they “strongly disagreed with” “the proposed conditions in the letter.” A true and accurate copy of the Commission’s response is attached as Exhibit M.

37. The Commission then allocated another 7,200 gallons per day of capacity to another user. The Commission did not tell Twenty Wayland it was doing this.

38. On May 19, 2011, Twenty Wayland appeared before DEP for a public hearing on its sewer connection permit.

39. In June 2011, DEP permitted Twenty Wayland for 28,000 gallons per day of flow.

40. Twenty Wayland remains 17,000 gallons short of its contractually guaranteed 45,000 gallons per day.

#### **The Breach (charges)**

41. Since at least 2008, Twenty Wayland has been charged by the Commission a wastewater treatment fee based on a capacity of 45,000 gallons per day.

42. This is after the Commission had already over-allocated capacity and was on notice that DEP therefore would not allow Twenty Wayland the full 45,000 gallons capacity that the Commission and the Town were contractually obligated to reserve for Twenty Wayland.

43. Beginning in 2010, the Commission adopted a new methodology for charging wastewater treatment fees. It determined that it would seek to recover its fixed costs based on a user’s allocated capacity, and its variable costs based on a user’s actual usage. It then

determined that 80 percent of its overall costs were due to fixed costs and 20 percent were due to variable costs.

44. This split was flawed. It included as fixed costs expenses such as maintenance and electricity that are both by definition and past experience better categorized as variable costs. The result was an inflation in the percentage of total costs that the Commission sought to recover based on allocated capacity as opposed to actual usage.

45. Under the formula, the Commission would then divide each user's allocated capacity by total plant capacity and multiply that number by 80 percent and then add it to 20 percent times actual usage divided by total usage.

46. The Commission chose 69,827 as the total system capacity to use as the denominator in the capacity (fixed cost) side of the formula. This number was too low based on what the commission had actually allocated. The Commission did not include 7,200 gallons per day of capacity allocated to Wayland Meadows. It did not include 500 gallons per day of capacity allocated to the library.

47. The Commission used 45,000 gallons as the numerator on the capacity (fixed cost) side of the formula for the calculation of Twenty Wayland's fee. That came to 64.4 percent. The Commission then multiplied that by 80 percent, to come up with a subtotal allocation to Twenty Wayland of 51.52 percent. On the usage (variable cost) side of the formula, Twenty Wayland's actual usage has been zero on a total usage of 10,740 gallons for a subtotal allocation of zero. Adding both parts of the formula together gave a total allocation to Twenty Wayland of 51.52 percent of the total costs for the wastewater treatment plant.

48. Since the beginning of 2008, the Commission has charged Twenty Wayland based on this formula.

49. From the beginning of 2008 until DEP permitted the 28,000 gallons of capacity to Twenty Wayland, Twenty Wayland's actual allocated capacity has been zero and its actual usage has been zero.

50. The Commission views Twenty Wayland as the "deepest pockets" among all its users.

51. Through its wastewater treatment fees, the Commission has used Twenty Wayland to subsidize the use of other users.

52. Put another way, the Commission has charged Twenty Wayland for "costs in any way related to installations made for service to others and services provided to others."

53. Furthermore, the Commission has been charging Twenty Wayland fees that are not equitable or proportional to the benefit received by the user. *See* M.G.L. c. 83, §16; *Carson v. Sewerage Commissioners of City of Brockton*, 175 Mass. 242 (1900). *See also Spence v. Boston Edison Co.*, 390 Mass. 604 (1983).

54. Twenty Wayland protested the formula and its allocated charges. Nevertheless, through the end of 2010, Twenty Wayland paid the charges under protest, reserving its rights.

55. Now that DEP has permitted 28,000 gallons per day capacity to Twenty Wayland, Twenty Wayland has requested that going forward the Commission use 28,000 gallons per day in the numerator for Twenty Wayland on the capacity (fixed cost) side of the formula.

56. The Commission has stated that it intends to continue to use 45,000 gallons per day in the numerator for Twenty Wayland.

57. In October 2011, the Town threatened Twenty Wayland that if Twenty Wayland did not pay all outstanding invoiced charges, including interest and demand fees, the Town would withhold all future permits and approvals for Twenty Wayland. On November 2, 2011,

Twenty Wayland paid \$102,689.63, representing the full amount that the Commission and Town claimed were due, including interest and demand fees. In making the payment, Twenty Wayland did not intend to waive its assertion that these charges are contrary to the 1999 MOA.

58. On November 8, 2011, the Commission issued an invoice to Twenty Wayland for “wastewater” charges of \$23,817.75, and a “surcharge” of \$24,867.67. A true and accurate copy of the invoice is attached as Exhibit N.

59. According to minutes from the Commission’s August 24, 2011 meeting, the assessment was allocated entirely on capacity and not at all based on usage. Additionally, the minutes note, “The surcharge will not be assessed to Town Building and the Public Safety Building.” A true and accurate copy of the minutes is attached as Exhibit O.

#### **Causation and Damages**

60. As is quite familiar to the Town and Commission, for the past six years, Twenty Wayland has been trying to permit a mixed-use development at 400-440 Boston Post Road in Wayland. The development is known as the Town Center Project.

61. The Town Center Project enjoys the support of a large majority of the residents of Wayland.

62. Twenty Wayland has already invested millions of dollars in this effort.

63. Twenty Wayland appreciates that the members of the many different and varied permitting boards in Wayland are volunteers; these members generally work very hard on what is often a thankless job.

64. In the mid to late 2000s, the Town and the Commission were faced with a difficult problem. The demand for wastewater treatment connections exceeded supply and costs exceeded current assessments. Twenty Wayland presented an easy solution for the Commission

and Town – Twenty Wayland was both the deepest pocket and was not using its guaranteed capacity at the time (while it was trying to permit its Town Center Project).

65. Accordingly, as recounted here, the Town and the Commission over-allocated capacity to other users, making the 45,000 gallons per day unavailable to Twenty Wayland; and overcharged Twenty Wayland to subsidize other users.

66. But the Commission's actions have had serious consequences to Twenty Wayland.

67. Twenty Wayland has been overcharged for wastewater treatment.

68. Twenty Wayland has incurred significant time and expense permitting with DEP, something that would not have been necessary but for the over-allocation of capacity.

69. With the 17,000 gallons per day of capacity shortfall, Twenty Wayland has had to put the residential phase of the Town Center Project entirely on hold. Since DEP refused to permit in excess of 28,000 gallons, Twenty Wayland has had to cease all planning, marketing, solicitation of investors, lining-up contractors, and securing financing for the residential phase of the project.

70. Every day that continues to be lost due to the Town's inability to provide the full 45,000 gallons of capacity to Twenty Wayland increases Twenty Wayland's carrying costs (property taxes, insurance, interest charges) on the property and hinders Twenty Wayland's ability to take advantage of what is today a hot residential apartment market.

71. The total damage to Twenty Wayland is in the millions of dollars.

72. Yet, as recounted here, Twenty Wayland has made every effort over the past six years to protest what it saw as unfair or inconsistent with the 1999 Memorandum of Agreement. Those protests have been ignored.

73. Twenty Wayland has repeatedly offered to compromise and work with the Commission and Town. Those efforts have not been reciprocated. Indeed, rather than work cooperatively with Twenty Wayland in an effort to amicably resolve these issues, the Town and Commission threatened to withhold all future permits and approvals for the Town Center Project.

74. Thus, Twenty Wayland states the following causes of action:

**Count I: Breach of Contract (Capacity)**

75. Plaintiff repeats, realleges, and incorporates the allegations above.

76. Defendants contractually guaranteed to plaintiff, through the 1999 Memorandum of Agreement, 45,000 gallons per day of maximum daily design flow.

77. Defendants breached their obligation under the 1999 Memorandum of Agreement by over-allocating capacity at the wastewater treatment plant.

78. Defendants were not able to deliver any capacity to Twenty Wayland until June 2011. Even then, there was a 17,000 gallons per day shortfall in supplied capacity.

79. As a direct and proximate consequence of the defendants' actions, Twenty Wayland has incurred permitting expenses.

80. As a direct and proximate consequence of the defendants' actions, the residential phase of the Town Center Project is in jeopardy and has been put indefinitely on hold.

81. During the period of delay, Twenty Wayland is incurring significant carrying costs.

**Count II: Breach of Contract (Charges)**

82. Plaintiff repeats, realleges, and incorporates the allegations above.

83. Defendants contractually agreed, through the 1999 Memorandum of Agreement, not to charge Twenty Wayland for costs associated with other users of the wastewater treatment plant.

84. Defendants breached their obligation under the 1999 Memorandum of Agreement when it adopted a formula for charges that over-counted “fixed costs.”

85. Defendants breached their obligation under the 1999 Memorandum of Agreement when it adopted a formula for charges that under-counted actual allocated capacity in the denominator of the capacity (fixed cost) side of the formula.

86. Defendants breached their obligation under the 1999 Memorandum of Agreement when it used 45,000 gallons in the numerator for Twenty Wayland in the capacity (fixed cost) side of the formula when Twenty Wayland’s actual allocated capacity (and actual usage) was zero between the beginning of 2008 and June 2011.

87. Defendants breached their obligations under the 1999 Memorandum of Agreement since at least the beginning of 2008 by charging Twenty Wayland for costs associated with other users of the wastewater treatment plant.

88. As a direct and proximate consequence of the defendants’ actions, Twenty Wayland has paid charges for which it should not have been charged.

**Count III: Declaratory Judgment (charges going forward)**

89. Plaintiff repeats, realleges, and incorporates the allegations above.

90. Now that DEP has permitted 28,000 gallons per day of capacity, Twenty Wayland has requested that going forward, the Commission use 28,000 gallons per day in the numerator of the capacity (fixed cost) side of its formula.

91. The Commission has stated that it intends to continue to use 45,000 gallons per day in the numerator for Twenty Wayland.

92. An actual case or controversy exists.

93. Twenty Wayland requests a declaration that going forward, the Commission may not use more than 28,000 gallons per day in the numerator of the capacity (fixed cost) side of its formula until such time as additional capacity for Twenty Wayland is permitted by DEP.

**Count IV: Violation of G.L. c. 83, §16**

94. Plaintiff repeats, realleges, and incorporates the allegations above.

95. G.L. c. 83, §16, provides that any utility service charge must be “fair and equitable.”

96. “Fair and equitable” has been defined as an amount proportional to the benefit received from the actual use of that utility.

97. Since at least the beginning of 2008, Twenty Wayland’s actual allocated capacity has been zero and its actual usage has been zero.

98. Thus, the charges to Twenty Wayland have not been proportional to the benefit received by Twenty Wayland from its usage of the wastewater treatment plant.

**PRAYER FOR RELIEF**

Accordingly, Twenty Wayland requests the following relief:

(1) Judgment in its favor;

(2) damages to compensate it for the expenses it has incurred, the costs it has carried, and the loss in value of the residential phase of the Town Center Project, as a direct and proximate consequence of the defendants’ breach of their obligation on capacity;

(3) damages to compensate it for the costs it has incurred in paying charges inconsistent with the 1999 Memorandum of Agreement and which have not been fair and equitable;

(4) declaratory judgment that the Commission, in running its formula for the wastewater treatment plant charges, may not use a number greater than the actual capacity permitted by DEP to date;

(5) costs and interest; and

(6) all other relief that is just and appropriate.

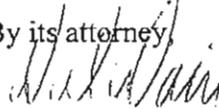
**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all counts so triable.

Respectfully submitted,

TWENTY WAYLAND, LLC,

By its attorney,



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