

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 06-1587L

W.R. GRACE & CO. – CONN.,)
Plaintiff,)
)
VS.)
)
LAUREN ROSENZWEIG, F. DORÉ HUNTER,)
ANDREW MAGEE, WALTER FOSTER, and)
PETER ASHTON, As they are the Members of)
and Constitute the Sewer Commissioners of the)
Town of Acton, Middlesex County,)
Massachusetts,)
Defendants.)

AGREEMENT FOR JUDGMENT

Now come the parties in the above entitled action and represent the following:

1. They have entered into a Settlement Agreement dated September 4, 2009, a copy of which is attached hereto and incorporated herein as Exhibit A (“Settlement Agreement”).
2. The Settlement Agreement resolves all of the disputes in the above action, including *inter alia* providing certain abatements to the Plaintiff of the final sewer betterments which are the subject matter of this action.

THEREFORE, the parties, waiving all rights of appeal, respectfully request this Honorable Court enter Judgment in this action in the form attached hereto as Exhibit B.

Respectfully submitted,
TOWN OF ACTON
Members of the Sewer Commission,
By their Attorneys,
ANDERSON & KREIGER, LLP

Respectfully submitted,
W.R. GRACE & CO.-CONN.,
By its Attorneys,
D’AGOSTINE, LEVINE, PARRA & NETBURN, P.C.

By: _____
Stephen D. Anderson, BBO# 018700
Nina L. Pickering Cook, BBO# 886030
One Canal Park, Suite 200
Cambridge, MA 02141
(617) 621-6500

By: _____
Louis N. Levine, BBO# 296880
F. Alex Parra, BBO# 390315
268 Main Street
Acton, Massachusetts 01720-6223
(978) 263-7777

Dated: September __, 2009

AGREEMENT FOR JUDGMENT

Exhibit A – Settlement Agreement

AGREEMENT FOR JUDGMENT

Exhibit B – Proposed Judgment

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

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CIVIL ACTION NO. 06-1587L

W.R. GRACE & CO. – CONN.,)
Plaintiff,)
)
VS.)
)
LAUREN ROSENZWEIG, F. DORÉ)
HUNTER, ANDREW MAGEE, WALTER)
FOSTER, and PETER ASHTON, As they)
are the Members of and Constitute the Sewer)
Commissioners of the Town of Acton,)
Middlesex County, Massachusetts,)
Defendants.)

JUDGMENT

This action having come before the Court on the parties’ Agreement for Judgment, it is hereby ordered, adjudged and declared that Judgment shall enter (a) requiring the Sewer Commissioners of the Town of Acton (the “Town”) to issue the following final sewer betterment abatement; (b) establishing the following final sewer betterment assessment; (c) determining that the following final sewer betterment assessment is secured as provided below; (d) liquidating the amount of W.R. Grace & Co, - Conn.’s (“Grace’s”) prior overpayment; and (e) establishing the following remaining quarterly payment schedule, all in accordance with the following Table 1 for the parcels of land listed in Table 2:

Table 1

CRITERION	SBUS	COST/SBU	AMOUNT
Challenged Betterment	297.50	\$12,311.52	\$3,662,677.19
Abatement	121.83711	\$12,311.52	\$1,500,000.00
Final Betterment After Abatement	175.66289	\$12,311.52	\$2,162,677.19
Overpayment (the total amount of any and all prior excess sewer betterment payments, committed interest, interest on late payments paid, and statutory refund interest through 4/30/09) To Be Applied to Future Quarterly Payments Until Exhausted	N/A	N/A	\$293,944.16
Quarterly Payments Due for Quarters 34-120	N/A	N/A	\$22,570.35
Quarterly Payments 34-46 (After Application of \$22,570.35 of Overpayment Per Quarter)	N/A	N/A	\$0.00
Quarterly Payment 47 (After Application of remaining \$529.61 of Overpayment Per Quarter)	N/A	N/A	\$22,040.74
Quarterly Payments 48-120	N/A	N/A	\$22,570.35

Retroactive to April 30, 2009 *nunc pro tunc*, the Town shall abate sewer betterment assessments as set forth in Table 2. The parcels located on the north-side of the MBTA Railroad tracks (“Grace North”) shall be considered a single parcel for the purposes of using their allocated SBUS in the future; and the parcels located on the south-side of the MBTA Railroad tracks (“Grace South”) shall be considered a single parcel for the purposes of using their allocated SBUs in the future. During Grace’s ownership of the parcels comprising Grace North and Grace South, Grace shall pay the applicable quarterly payments. Said payments are secured as follows: the Town holds a duly perfected and validly enforceable first priority lien against (a) Grace North to secure payment of \$265,409.56, plus interest and other charges as determined and allowed by Massachusetts law, and (b) Grace South to secure payment of \$1,897,267.62, plus interest and other charges as determined and allowed by Massachusetts law. The payment obligations shall run with Grace North and Grace South respectively according to the allocations between Grace North and Grace South as set forth in Table 2, and shall constitute separate liens on each of Grace North and Grace South accordingly.

Table 2

Grace North:

MAP	LOT	ACRES	SBU's AS ABATED	FINAL SEWER BETTERMENT AFTER ABATEMENT	FRONTAGE
H3	251	8.110	10.42759	\$128,379.43	Parker Street
I3	4	9.110	11.13024	\$137,030.13	Parker Street
Total Grace North			21.55783	\$265,409.56	

Grace South:

MAP	LOT	ACRES	SBU's AS ABATED	FINAL SEWER BETTERMENT AFTER ABATEMENT	FRONTAGE
I3	135	2.990	1.53521	\$18,900.71	Independence Road
I4	5	130.000	150.46781	\$1,852,487.48	Independence Road
I4	6	0.283	0.36609	\$4,507.09	Independence Road
I4	7	1.350	1.73596	\$21,372.34	Independence Road
Total Grace South			154.10507	\$1,897,267.62	

A copy of this Judgment shall be recorded in the Middlesex South District Registry of Deeds and filed with the Middlesex South District Registry of the Land Court with respect to the Grace Bettered Property reflected in Table 2 herein, amending and abating to the extent expressly set forth herein any and all prior sewer betterment orders and any and all other documents heretofore filed relative to the aforesaid final sewer betterments.

For the sewer assessment title references see:

- Order for Construction of the Middle Fort Pond Brook Sewer System (as recorded with the Middlesex South District Registry of Deeds at Book 32363, Page 77; Book 32370, Page 507; Book 32657, Page 083; Book 44689, Page 164, and filed with the Middlesex South District Registry of the Land Court as Document No. 1162908);
- Supplemental Order for Construction of Middle Fort Pond Brook Sewer System (as recorded with the Middlesex South District Registry of Deeds at Book 45383, Page 378);
- Order Determining and Certifying Final Sewer Betterment Assessments for the Middle Fort Brook Pond Sewer Betterment Area (for Recorded Land) (as recorded with the Middlesex South District Registry of Deeds at Book 45383, Page 382);

- Order Determining and Certifying Final Sewer Betterment Assessments for the Middle Fort Brook Pond Sewer Betterment Area (for Registered Land) (as filed with the Middlesex South District Registry of the Land Court as Document No. 1377528); and
- Statements to Continue Municipal Liens (as recorded with the Middlesex South District Registry of Deeds at Book 40104, Page 595; Book 40104, Page 596; Book 40104, Page 597; Book 40104, Page 598; Book 48145, Page 576; Book 48145, Page 577; Book 48145, Page 578; Book 48145, Page 579; and filed with the Middlesex South District Registry of the Land Court as Document Nos. 1285187, 1285186, 1423841 and 1423842).

The remaining provisions of the parties' Settlement Agreement shall represent the enforceable contractual obligation of the parties hereto. The Settlement Agreement shall not be enforceable by contempt proceedings but shall be enforceable by all other applicable remedies at law and in equity.

By the Court,

Dated: _____

_____, J.