

07-031

Public Hearing Contract Zone Cumberland Center
Group – 317 Main Street

CONTRACT ZONING AGREEMENT
BY AND BETWEEN THE TOWN OF CUMBERLAND

AND

CUMBERLAND CENTER GROUP, LLC

Regarding a 1 +/- Acre Parcel of Land, Main Street, Cumberland, Maine

This Contract Zoning Agreement is entered into this 26th day of February, 2007, by and between the **Town of Cumberland**, a municipal corporation (the "**Town**"), and **Cumberland Center Group, LLC (CCG, LLC)** a **Maine limited liability company** with a business address of 16 Hillcrest Dr, Cumberland, Maine 04021, it's nominee or assigns (the "**Developer**"), pursuant to the Conditional and Contract Rezoning Provisions set forth in 30-A M.R.S.A. Section 4352 (the "**Act**") and Section 606 of the Cumberland Zoning Ordinance, as amended (the "**Zoning Ordinance**").

WHEREAS, the property subject to this Agreement consists of a **1.0 +/- Acre parcel** of improved real estate located on Main Street, in Cumberland, Maine, identified on the Town's Tax Assessor Map as Map U-13, Lot 111, as more particularly described in the **Exhibit C** attached hereto (the "**Property**"), which Property is currently owned by **CCG, LLC** (the "**Owner**") by virtue of a certain Warranty Deed October 18, 2006, recorded in the Cumberland County Registry of Deeds in Book 24482, pg 140

WHEREAS, the Property is located in the Medium Density Residential (MDR) zoning district (the "**MDR Zoning District**") as provided in Section 204.3 of the Zoning Ordinance

WHEREAS, the Developer intends to develop the Property **consisting of six (6) residential condominium units**, subject to the terms and conditions set forth herein (the "**Project**");

WHEREAS, in order for the Project to be financially feasible for the construction and sale of residential dwelling units while meeting all applicable codes and ordinances, certain amendments with respect to density and setbacks of the Zoning Ordinance are required; and

WHEREAS, the Town and the Developer desire to enter into a Contract Zoning Agreement relating to the Property, subject to the terms and conditions set forth herein.

NOW THEREFORE, pursuant to the provisions of 30-A M.R.S.A. § 4352(8) and Section 606 of the Cumberland Zoning Ordinance (as amended), the Cumberland Town Council hereby finds that this Amended and Restated Contract Zoning Agreement:

- A) is consistent with the Comprehensive Plan duly adopted by the Town of Cumberland on June 22, 1998; and

- B) establishes a contract zone area consistent with the existing and permitted uses in the original zone of the area involved; and
- C) only includes conditions and restrictions which relate to the physical development or future operation of the proposed development; and
- D) imposes those conditions and restrictions which are necessary and appropriate for the protection of the public health, safety and general welfare of the Town of Cumberland.

The parties agree as follows:

I. Establishment of the Contract Zone:

The Town hereby agrees that the Property as described herein shall be a contract zone (the "**Contract Zone**") pursuant to the provisions of 30-A M.R.S.A. § 4352(8) and Section 606 of the Cumberland Zoning Ordinance. This Agreement shall create an overlay zone. Except as expressly modified or otherwise stated herein, the Property shall be subject to the requirements of the underlying MDR Zoning District, as the same may be amended from time to time, together with all lot requirements and general requirements not modified herein.

II. Permitted Uses Within the Contract Zone:

The development permitted within the Contract Zone established in paragraph I above shall be as follows:

- A) The Project, consisting of six (6) residential condominium units, shall be a permitted use within the Contract Zone; provided, however, that the following use restrictions shall apply to the Project:
 - (1) Elderly Housing. All dwelling units within the Project shall be developed exclusively as "55 or Over" housing in accordance with the Housing for Older Persons Act (the "**Fair Housing Act**") 1995, Pub.L. No.104-76, 109 Stat. 787, and the regulations promulgated thereunder at 24 C.F.R. § 100.303;
 - (2) Affordable Housing. Two (2) dwelling units of the Project shall be designated and used **exclusively for occupancy as "low income"** household, which shall have the same meaning as the Federal median income by family size for "low income" households as published by the Department of Housing and Urban Development ("**HUD**") for the applicable Metropolitan Statistical Area ("**MSA**") of Portland - South Portland - Biddeford; and

On or before March 1st of each year the owners of all the housing units shall provide sufficient documentation to the Town of Cumberland to validate affordability (where applicable), age and sign a sworn affidavit that they understand the unit(s) must be occupied by a person(s) meeting the aforementioned affordability standards. Any exceptions to the affordability requirements must be approved by the Town Council and shall be considered an amendment to the Contract Zone Agreement.

(3) Cumberland Resident Preference. As part of the Contract Zone, the Town shall require preference for all units be first given to present or former Cumberland residents and their immediate relatives. The Developer and, thereafter, future owners shall notify the Town of Cumberland's Housing Director at least thirty (30) days prior to any sale offering or real estate listing. The town may notify a Cumberland Resident Preference list of this exclusive period to purchase.

(4) Restrictions. Restrictions regarding the Elderly, Affordable and Cumberland Resident Preference component will be included in the deeds and condominium documentation of the respective units.

- B) All other permitted uses in the underlying zoning district shall be permitted on the Property.

III. Restrictions within the Contract Zone:

- A) The setbacks within the Contract Zone shall be as follows:

(1) The setbacks for the duplex condominium buildings shall be as depicted on the attached plan (Exhibit A).

- B) Notwithstanding anything to the contrary contained in the MDR Zoning District ordinance or otherwise provided by the Zoning Ordinance, the Property shall satisfy all unit density and minimum lot size requirements for the Project within the Contract Zone.

- C) Buildings must be of similar style, finish and exterior architecture as those presented to the Town Council on February 12, 2007 (Exhibit B). The buildings and improvements comprising the Project shall be constructed in accordance with the following additional requirements:

- (1) *Condominium Building with Garage.* There shall be three (2)-unit multiplex condominium buildings each with approximately 2,700 square feet footprint

- (2) *Height, Lighting, and Landscaping.* The buildings and improvements on the Property shall comply with all applicable height restrictions, lighting requirements, and landscaping requirements under the Town's Site Plan Ordinance and Zoning Ordinance.
 - (3) *Entrance to Main Street.* The entrance for the access drive to the Project shall be located on Main Street, on the southerly boundary of the Property.
 - (4) A vinyl coated chain link fence or approved **equivalent** shall be installed on both property lines abutting the High School. Said fence shall be a minimum of 4' in height.
 - (5) *A vegetated buffer* shall be planted along the northerly property line abutting the Turner property. Said buffer shall be approved by the Planning Board.
 - (6) *An interior private street* shall serve all units. The street shall be constructed for an 18' width of pavement; 3.5" in final thickness of pavement; the underlying gravel shall meet Town specifications, and shall be 24' in width and shall be centered on the pavement.
 - (7) *No conventional above ground detention ponds* shall be permitted. Any on site detention must be made to appear consistent with the proposed lawns and landscaped areas of the project.
- D) The condominium documents for the Project, including the Declaration of condominium to be recorded in the Cumberland County Registry of Deeds, shall expressly include covenants and restrictions establishing the Elderly Housing and Affordable Housing restrictions set forth in Parts II (A) (1) and (2) of this Agreement, and such covenants and restrictions shall specifically include, without limitation, a requirement for the unit owners' association of the condominium to conduct an annual review and report to the Town to verify compliance with such Elderly Housing and Affordable Housing restrictions. The proposed Declaration of condominium shall be submitted to the Town Planning Board for review in connection with the Subdivision review for the Project, and such Declaration shall be satisfactory to the Planning Board and Town's legal counsel as a condition to such Subdivision review.
- E) Other than utilities, Cumberland Center Group will relinquish any right, title and interest in Osgood Drive by release deed to the Town.

IV. Other Reviews:

Except as otherwise set forth herein, the Cumberland Planning Board shall have review authority under the applicable provisions of the Cumberland Subdivision and Zoning Ordinances and also shall have the authority to impose conditions of approval pursuant to said Ordinances relating to the development and construction of the Project. Notwithstanding anything to the contrary contained in the Zoning Ordinance, the Project: (1) shall be exempt under Section 406-A of the Zoning Ordinance from Planning Board review and the related standards applicable to Multiplex Dwellings; and (2) shall be exempt from Site Plan review under Section 206 of the Zoning Ordinance, except as otherwise expressly set forth under Part III(C)(3) of this Agreement.

V. Miscellaneous Provisions:

1. Survival Clause: The terms and conditions of this Agreement shall run with the land and be binding upon and shall inure to the benefit of the respective successors, heirs and assigns of the parties hereto except as specifically set forth herein. This Agreement shall not be assignable without the prior approval of the Cumberland Town Council, provided, however, that the Developer may assign this Agreement without such approval to a corporate entity or limited liability company solely owned and organized by the Developer for the purpose of developing the Project. A true copy of this Agreement shall be recorded in the Cumberland County Registry of Deeds.
2. Further Assurances: In order to effectively and properly implement this Agreement, the parties agree to negotiate in good faith the terms and conditions of such further instruments and agreements as may be reasonably necessary from time to time to give effect to this Agreement.
3. Maine Agreement: This contract is a Maine agreement, entered into in the State of Maine and shall be governed by and enforced in accordance with the laws of the State of Maine.
4. Binding Covenants: The above-stated restrictions, provisions, and conditions are an essential part of this contract and shall run with the subject premises, shall bind the Developer, its successors and assigns with respect to the Project or any part thereof or any interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by, the Town, by and through its duly authorized representatives. This Agreement may not be amended except by mutual written agreement by the parties.
5. Severability: In the event any one or more clauses of this Agreement shall be held to be void or unenforceable for any reason by any court of competent jurisdiction, such clause or clauses shall be deemed to be severable and of no

force or effect in such jurisdiction, and the remainder of this Agreement shall be deemed to be valid and in full force and effect, and the terms of this Agreement shall be equitably adjusted if possible so as to compensate the appropriate party for any consideration lost because of the elimination of such clause or clauses.

6. Enforcement. The Town shall also have the ability to enforce any breach of this Agreement or any other violation of the Zoning Ordinance through the provisions of 30-A M.R.S.A. § 4452.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed as of the day and year first above written.

WITNESS:

Town of Cumberland

Name:

By: _____

William R. Shane, Town Manager

**CCG, LLC
Cumberland Center Group**

Name:

By: _____

Name:

By: _____