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February 28, 2007

Nancy L. Stroud, Executive Assistant  
Town of Cumberland  
290 Tuttle Road  
Cumberland, ME 04021

**Re: *Cumberland Foreside Village, LLC***

Dear Nancy:

Enclosed herewith please find the following:

1. Original Termination of Declaration of Restrictive Covenant by Cumberland Foreside Village, LLC, which was recorded in the Cumberland County Registry of Deeds in Book 24825, Page 241; and
2. Original Amended and Restated Contract Zoning Agreement by and between the Town of Cumberland and Cumberland Foreside Village, LLC, which was recorded in said Registry of Deeds in Book 24825, Page 242.

If you have any questions in regard to the enclosed, please let me know.

Very truly yours,

  
Kenneth M. Cole III

KMC/lts

Enclosures

cc: William R. Shane, Town Manager  
Philip H. Gleason, Esq. (w/copy of enclosures)

~ Over 50 Years of Service ~

**TERMINATION OF DECLARATION OF RESTRICTIVE COVENANT**

IN CONSIDERATION OF ONE DOLLAR (\$1.00) AND OTHER VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned, being the sole beneficiary of a certain Declaration of Restrictive Covenant from the Town of Cumberland, Maine, dated January 23, 2006 and recorded at the Cumberland County Registry of Deeds in Book 23628, Page 20 (the "Declaration"), hereby unconditionally terminates the Declaration.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this 29<sup>th</sup> day of January, 2007.

WITNESS:

CUMBERLAND FORESIDE VILLAGE, LLC

Name: cup U. TL

By: David Chase

David Chase  
Its Manager

STATE OF MAINE  
COUNTY OF CUMBERLAND, SS.

January 29, 2007

Personally appeared the above-named David Chase, Manager of Cumberland Foreside Village, LLC, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Cumberland Foreside Village, LLC.

Before me,

cup U. TL  
Notary Public/Attorney-at-Law

Print Name: PHILIP H. BLEASON

The Town of Cumberland, Maine, hereby consents to the foregoing Termination of Declaration of Restrictive Covenant.

Dated: January 29, 2007

WITNESS:

TOWN OF CUMBERLAND, MAINE

Name: Nancy Thorne

By: William Shane

William Shane  
Town Manager

Received  
Recorded Register of Deeds  
Feb 07, 2007 10:51:57A  
Cumberland County  
Pamela E. Lovley

**AMENDED AND RESTATED CONTRACT ZONING AGREEMENT**  
**BY AND BETWEEN THE TOWN OF CUMBERLAND**

**AND**

**CUMBERLAND FORESIDE VILLAGE, LLC**

**RELATING TO THE CUMBERLAND FORESIDE VILLAGE (formerly**  
**"HERITAGE VILLAGE") SUBDIVISION**  
**ROUTE 1, CUMBERLAND, MAINE**

This Amended and Restated Contract Zoning Agreement is entered into this 31<sup>st</sup> day of January, 2007, by and between the Town of Cumberland, a municipal corporation (the "Town"), and Cumberland Foreside Village, LLC, a Maine limited liability company (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.

WHEREAS, the Town and Peter Kennedy ("Kennedy") entered into a Contract Zoning Agreement dated September 10, 2002, which is recorded at the Cumberland County Registry of Deeds in Book 18114, Page 330 (the "Original Agreement"); and

WHEREAS, Kennedy conveyed his property which is subject to the Agreement to the Developer by Deed dated December 30, 2005 and recorded at the Cumberland County Registry of Deeds in Book 23549, Page 231; and

WHEREAS, Kennedy assigned his interest in the Original Agreement to the Developer by Assignment of Contract Zoning Agreement dated February 7, 2006 and recorded at the Cumberland County Registry of Deeds in Book 23652, Page 65; and

WHEREAS, the Town and the Developer desire to amend and restate the Original Agreement in its entirety;

NOW THEREFORE, the Original Agreement is hereby amended and restated in its entirety, as follows, it being understood that this Amended and Restated Contract Zoning Agreement supersedes and replaces the Original Agreement, which shall be of no further force and effect:

WHEREAS, the Property subject to this Amended and Restated Contract Zoning Agreement consists of the approximately 63.6 acre parcel of land (the "Project") located off U.S. Route One and depicted on Exhibit A attached hereto (the "Plan"); and

WHEREAS, the 8.27 acre parcel designated "N/F Town of Cumberland" on the Plan is owned by the Town (the "Town Lot"), and the remainder of the property by the Developer; and

WHEREAS, the Developer has submitted an application for subdivision approval to the Cumberland Planning Board, in accordance with the subdivision plan attached hereto as Exhibit B; and

WHEREAS, the Developer's Estimated Schedule of Completion of the Project is attached hereto as Exhibit C; and

WHEREAS, in order for the Project to be financially feasible for the construction and sale of commercial buildings and residential dwelling units while meeting all applicable codes, certain amendments with respect to density, setbacks, road lengths and certain other performance standards of the Cumberland Zoning Ordinance are required; and

WHEREAS, on May 22 and June 15, 2006, the Cumberland Town Council approved the execution of this Amended and Restated Contract Zoning Agreement, subject to later compliance with Subdivision and Site Plan Standards as set forth in the Cumberland Subdivision Ordinance for Major Subdivisions and Section 206 (Site Plan) of the Cumberland Zoning Ordinance, provided such Ordinance provisions are not in conflict with the Act.

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 and 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 approximately 63.6 acres shown on the Plan shall be a Contract Zone pursuant to the provisions of 30-A M.R.S.A. § 4352(8) and Section 606 of the Cumberland Zoning Ordinance.

## II. Permitted Uses Within the Contract Zone:

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

A) All uses currently authorized either as permitted uses or special exceptions in the Office Commercial District, including assisted living facilities.

B) Up to 134 residential dwelling units, which may be either individual houses or multiplex condominium units, on Lots 7-10 shown on the Plan. Individual house lots shall contain not less than 7,500 square feet. The Developer shall have the right to (i) vary the mix between individual houses and multiplex units, and (ii) convey or subcontract all or any portion of the Project to one or more third parties, subject to the provisions of this Agreement

C) Commercial development of not less than six (6) lots, as shown on the Plan; said commercial development to be developed with adequate buffering from the adjacent residential areas of the Project.

D) On proposed Lots 7-12 only, indoor storage facilities and warehouses which are set back at least 300 feet from the U.S. Route One right of way are permitted only if no residential use is created or existing on the lot. Indoor storage facilities and warehouses shall include enclosed buildings for the keeping of goods, commodities or supplies in which buildings there are not any sales, manufacturing, production or repair activity, except on an incidental or occasional basis. Distribution of goods and materials shall not be allowed.

E) A communications tower properly buffered from all residential uses in accordance with Section 433 of the Cumberland Zoning Ordinance.

F) On Lot 1 only, retail stores (uses may include any shop or store for the retail sale of goods or personal services, excluding any drive-up service, freestanding retail stand, gasoline and motor vehicle repair service, new and used car sales and service, and trailer and mobile home sales and service).

G) Tradesmens offices (i.e., the office of a self-employed craftsman or person in a skilled trade involving only the management of the business, interior storage of materials and goods related to the business; outdoor storage of vehicles, equipment and material ancillary to the business shall be permitted so long as such items are not visible from a public way. No on-site, retail sales or wholesale distribution shall be permitted as part of such use.



H) Site preparation activities, including grading and materials processing which substantially alter terrain and site character. The foregoing activities shall be performed in accordance with Maine Department of Environmental Protection requirements for ledge removal and materials processing, regardless of whether such use actually requires a permit from the Maine Department of Environmental Protection. If a permit from the Maine Department of Environmental Protection is not required for the use, the Town shall have the authority to enforce these requirements. Any such activities and any other site work proposed on the site, including development permitted under the terms of this Agreement shall be completed pursuant to the terms of the Town's Site Plan Ordinance provisions and limitations which specifically includes that all site plans must be completed within one year of approval unless an extension is requested from the Planning Board. The Planning Board is authorized to extend the project completion 2 times for a period of up to six months each time.

### III. Restrictions within the Contract Zone:

A) The setback provisions within the Contract Zone shall be as follows:

(1) setbacks for individual houses:

- Front yard setback not less than 25 feet.
- Side yard setback not less than 10 feet.
- Rear yard setback not less than 20 feet.

(2) setbacks for commercial lots:

- Front yard setback not less than 25 feet.
- Side yard setback not less than 20 feet.
- Rear yard setback not less than 40 feet.

(3) setbacks for assisted living facilities:

- Front yard setback not less than 50 feet.
- Side yard setback not less than 30 feet.
- Rear yard setback not less than 50 feet.

(4) setbacks for storage and warehouse facilities:

- Front yard setback not less than 25 feet.
- Side yard setback not less than 25 feet.
- Rear yard setback not less than 25 feet.
- If storage and warehouse facilities are adjacent to residential property, the above minimum setbacks shall be increased to 60 feet.

B) The minimum frontage on the street providing access to each residential lot shall be 50 feet and for each commercial lot shall be 150 feet.

C) The length of the dead-end road serving the interior portion(s) of the Project shall be not more than 2,500 feet, and the road right-of-way be established at 60 feet in width, with a paved width of 26 feet (base shall be 30 feet wide) and a four foot paved sidewalk for the main road.

D) The height restriction on all structures shall be 50 feet.

E) There shall be no other variances from the Cumberland Zoning Ordinance granted to any lot owner beyond those expressly set forth herein, unless the Town and Developer agree.

F) This Agreement shall be subject to the Town's Growth Control and Impact Fee Ordinances to the extent applicable.

G) Any commercial development shall be subject to the "Design Requirements for Commercial Properties" which are attached hereto as Exhibit D.

H) The Route 1 buffer shown on the Plan shall be 35 feet from the Route 1 right of way. 25 feet of the Route 1 buffer shall be undisturbed vegetation and the remaining 10 feet shall be used for a common walkway/path.

I) Anything in Section III(A) above to the contrary notwithstanding, the building setback from Route 1 shall be 65 feet from the Route 1 right of way.

J) The minimum lot size for commercial lots shall be 60,000 square feet.

Subject to the following, the Cumberland Planning Board shall have review authority under the applicable provisions of the Cumberland Subdivision, Site Plan and Zoning Ordinances to impose conditions of approval pursuant to said Ordinances relating to the development and construction of the Project.

#### IV. Miscellaneous Provisions:

A) 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. A true copy of this Agreement shall be recorded in the Cumberland County Registry of Deeds.

(B) Arbitration Clause: In the event of any dispute between the parties hereto arising out of the Town's approval of (or failure to approve) eligible and qualified purchasers, such dispute shall be submitted to arbitration pursuant to the rules and regulations of the American Arbitration Association, or such other similar arbitration tribunal as the parties may select. The decision of such arbitration panel shall be final, binding and conclusive as to all issues arbitrated therein. Any and all other disputes, claims, counterclaims, and other matters in question between the parties hereto arising out of or relating to this Agreement shall be decided by a Maine court of competent jurisdiction.

(C) 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.

(D) 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.

(E) 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. However, if all site work related to the infrastructure on the subdivision plan is not substantially completed within five (5) years from the date hereof, then the Town Council shall review the status of the project and shall determine whether to initiate a rezoning of the property to the zoning classification existing immediately prior to the zone change authorized by this contract zone.

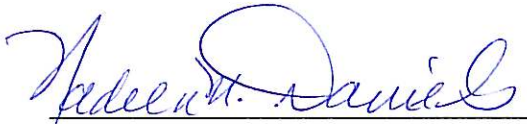
(F) Severability: In the event any one or more clauses of this Agreement shall be held to be void or unenforceable for any reason by any court of competent jurisdiction, such clause or clauses shall be deemed to be severable and of no force or effect in such jurisdiction, and the remainder of this Agreement 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.




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 Shane  
Town Manager

CUMBERLAND FORESIDE VILLAGE, LLC

  
Name:

By:   
David Chase  
Sole Member and Manager

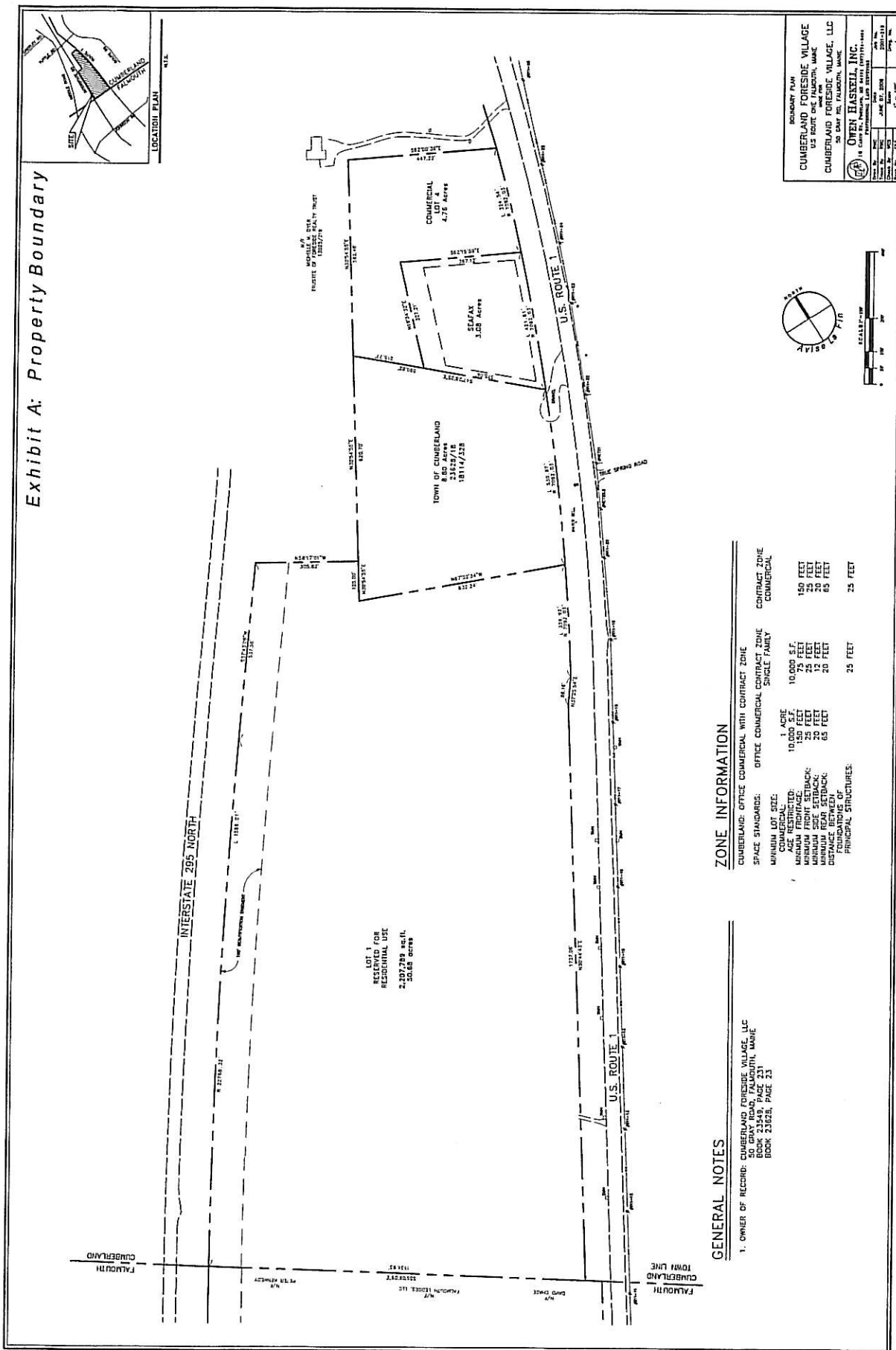
State of Maine  
County of Cumberland, ss.

Jan. 31, 2007

Then personally appeared the above-named William Shane in his capacity as Town Manager of the Town of Cumberland and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Town of Cumberland.

Before me,

  
Kenneth M. Cole III, Attorney-at-Law



Cumberland Foreside Village

Exhibit A: Property Boundary  
June 8, 2006

Route One, Cumberland, Maine

June 8, 2006

EXHIBIT A 2-4

June 7, 2006

TOWN LOT

A certain parcel of land situated on the westerly side of US Route One in the Town of Cumberland, County of Cumberland, State of Maine being bounded and described as follows:

Commencing on the westerly sideline of US Route One at the Town Line between the Towns of Falmouth and Cumberland and land now or formerly of Cumberland Foreside Village, LLC, reference Book 23,549 Page 231;

Thence N 30° 44' 43" E along said sideline and land a distance of 1,737.06 feet;

Thence N 37° 25' 54" E along said sideline and land a distance of 86.16 feet;

Thence northerly along said sideline and land and along a curve concave to the left having a radius of 7,092.03 feet an arc distance of 339.92 feet to the Point of Beginning, said curve having a chord which bears N 29° 23' 38" E a distance of 339.89 feet;

Thence N 67° 32' 34" W along said land a distance of 632.24 feet;

Thence N 30° 54' 55" E along said land a distance of 120.00 to land now or formerly of Michelle M. Dyer, Trustee, reference Book 13025 Page 219;

Thence continuing N 30° 54' 55" E along said land a distance of 620.70 feet;

Thence S 47° 28' 25" E a distance of 590.82 feet to said westerly sideline of Route One;

Thence southwesterly along said sideline and along a curve concave to the right having a radius of 7,092.03 feet an arc distance of 530.97 feet to the point of beginning, said curve having a chord which bears S 25° 52' 33" W a distance of 530.84 feet, containing 8.81 acres, more or less.

Reference is made to a field survey by Owen Haskell, Inc.

EXHIBIT A 3-4

June 7, 2006

LARGE LOT

A certain parcel of land situated on the westerly side of US Route One in the Town of Cumberland, County of Cumberland, State of Maine being bounded and described as follows:

Beginning on the westerly sideline of US Route One at the Town Line between the Towns of Falmouth and Cumberland;

Thence N 30° 44' 43" E along said sideline a distance of 1,737.06 feet;

Thence N 37° 25' 54" E along said sideline a distance of 86.16 feet;

Thence northerly along a curve concave to the left having a radius of 7,092.03 feet an arc distance of 339.92 feet to land now or formerly of the Town of Cumberland, reference Book 23628 Page 18, said curve having a chord which bears N 29° 23' 38" E a distance of 339.89 feet;

Thence N 67° 32' 34" W along said land a distance of 632.24 feet;

Thence N 30° 54' 55" E along said land a distance of 120.00 to land now or formerly of Michelle M. Dyer, Trustee, reference Book 13025 Page 219;

Thence N 58° 17' 01" W along said land a distance of 305.82 feet to the easterly sideline of Route 295;

Thence S 37° 43' 09" W along said sideline a distance of 537.56 feet;

Thence southwesterly along a curve concave to the left having a radius of 22,768.32 feet an arc distance of 1,588.01 feet to said Town Line, said curve having a chord which bears S 35° 43' 16" W a distance of 1,587.69 feet;

Thence S 55° 09' 09" E along said Town Line a distance of 1,134.93 feet to the point of beginning, containing 50.68 acres, more or less.

Reference is made to a field survey by Owen Haskell, Inc.

EXHIBIT A 4-4

June 7, 2006

COMMERCIAL LOT 4

A certain parcel of land situated on the westerly side of US Route One in the Town of Cumberland, County of Cumberland, State of Maine being bounded and described as follows:

Beginning on the westerly sideline of US Route One at land now or formerly of Michelle M. Dyer, Trustee, reference Book 13025 Page 219;

Thence southerly along said sideline and land and along a curve concave to the right having a radius of 7,092.03 feet an arc distance of 324.54 feet, said curve having a chord which bears S 19° 00' 45" W a distance of 324.51 feet;

Thence N 62° 15' 59" W a distance of 367.12 feet;

Thence S 19° 34' 32" W a distance of 327.21 feet to land now or formerly of the Town of Cumberland, reference Book 18114 Page 328;

Thence N 47° 28' 25" W along said land a distance of 215.76 feet to land of said Dyer;

Thence N 30° 54' 55" E along said land a distance of 592.48 feet;

Thence S 62° 00' 36" E along said land a distance of 447.22 feet to the westerly sideline of US Route One and the point of beginning, containing 4.76 acres, more or less.

Reference is made to a field survey by Owen Haskell, Inc.





## EXHIBIT C

### **Estimated Schedule of Completion Cumberland Foreside Village May 2006**

- A. Schedule of Regulatory Reviews 2006
- Complete project plans and supporting documents 1-2 months
  - Planning Board Subdivision Review 4-5 months
  - Planning Board Site Plan Review (concurrent with subdivision) 1-2 months
  - Planning Board anticipated approval within 4-6 months
  - DEP SLODA review and approval 4-6 months
- B. Anticipated Construction Schedule 2006-2010
- Start construction within 1 month of approval
  - Construction of subdivision road and infrastructure 18 months to 3 years
  - Sitework – Lot 7 Beginning in 2007 – 12 months
  - Sitework - Lot 8 Start in mid-2007 – 12 months
  - Sitework – Lot 12 Start in 2008 – 12 months
  - Sitework complete on lots within 36 months – total elapsed time (maximum 2 years on any one lot)
  - Subdivision infrastructure-roads substantially complete - 48 months.

Exhibit D

## Cumberland Foreside Village Contract Zone

### Design Guidelines for Commercial Properties

The following design guidelines have been prepared as a part of the Contract Zone for the Cumberland Foreside Village Development. These guidelines will serve to assist in the development of the parcel in an orderly manner and will establish the design criteria to guide the development of the individual buildings on the commercial-use lots. The overall intent of these design guidelines is to assure that the building designs are well thought through and have coordinated architectural forms, massing, materials and color ranges.

#### General Design Guidelines:

- The design for the buildings at Cumberland Foreside Village (CFV) are encouraged to draw upon elements found in traditional New England vernacular architecture.
- All buildings proposed for CFV should be designed by an architect registered in the State of Maine; buildings designed by engineers are acceptable as long as the guidelines contained herein are closely followed.
- Individual building designs should have all of the elements coordinated to achieve harmony and continuity in the structure's appearance.
- Adjacent structures must be considered in the design for all new buildings. This should include scale of building, use of materials, and general building form.
- Buildings within 200 feet of US Route One, and in particular building elevations directly fronting on US Route One, need to have well designed, carefully detailed facades that have architectural interest and appeal. The existing Seafax structure can be referred to with regard to this guideline.

#### Specific Design Guidelines:

- Exterior siding materials are encouraged to be traditional building materials common to Northern New England. The use of split-face concrete block should be used in limited quantities. The use of asphalt shingles, **metal siding T-111**, or highly reflective siding materials is not permitted.
- The mass of larger structures needs to be broken down through the use of architectural detailing, changes in materials or other means so as to create visual interest. Main entrances to the buildings should be emphasized by architectural detailing, glazing, lighting, etc.
- Arbitrary or frequent changes in siding materials, applied embellishments, or the addition of architectural details that are not integrated into the building form or function should be avoided.
- All functional elements visible on the exterior of the structure (eg. meters, service connection, downspouts, vents, etc.) shall be treated as integral parts of, and incorporated into, the building design.
- All buildings shall provide an appropriate proportion of windows, doors or other fenestration so as to break up the building façade. The building fenestration should provide sufficient transparency to provide views to the interior of the building as functionally appropriate. Careful attention must be paid to the relative size, detailing and positioning of all openings in the building elevations.



- On small buildings, eg. those under 5,000 s.f., flat roofs should be avoided on one-story structures. Pitched roofs with traditional slopes (eg. higher than 8 in 12) are encouraged. Where the roof will be visible from adjoining public ways, the roofing materials should be selected so as to compliment the buildings façade. Preferred roofing materials shall include architectural grade asphalt shingles, standing-seam metal roofing, or natural materials.
- Color selected for the exterior of buildings should be earth-toned, or colors that are muted and not garish. The use of bright colors should be limited to areas where accents are desired (eg. doors, window trim, entrances, etc.).
- Where roofs are flat, parapets or other architectural elements should be used to break up a large expanse (eg. greater than 80 feet) of flat roof-line. Roof-top mounted mechanical or other equipment shall be screened.
- Long horizontal facades of buildings (those greater than 80 feet in length) should be made more interesting through either changes in the façade plane or selection of materials to provide interest through color, shadow, etc.
- Buildings with multiple entrances or uses shall be designed to be visually unified through complimentary detailing and use of materials.
- Separate accessory structures on the same lot as a principal structure should have consistent architectural detail so as to provide unified project design.
- Underground utility connections are required.
- Sidewalks along buildings and a trail in the I-295 buffer are required.
- A 5' paved walkway, with 10' of cleared space, is required within the Route 1 buffer zone shown on the Plan.
- **Signage shall be consist of natural materials (wood, stone, etc) and shall not be internally lit.**