

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

AND

CEDARWOOD DEVELOPMENT, INC.

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

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FORESIDE VILLAGE, LLC**

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VILLAGE")**

This Amended and Restated Contract Zoning Agreement (the "Agreement") is entered into this ____ day of _____, 2008, by and between the Town of Cumberland, a municipal corporation (the "Town"), and Cedarwood Development, Inc., a _____ (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.

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**Deleted: Cumberland Foreside Village,
LLC**

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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 was subject to the Original Agreement to Cumberland Foreside Village, LLC ("CFV"), by Deed dated December 30, 2005 and recorded at the Cumberland County Registry of Deeds in Book 23549, Page 231; and

Deleted: 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

WHEREAS, CFV then entered into an Amended Contract Zoning Agreement with the Town of Cumberland dated January 31, 2007, and recorded in Book 24825, Page 242 of the Cumberland County Registry of Deeds (the "Amended Agreement"); and

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WHEREAS, CFV has granted Developer an option to purchase the property (the "Purchase Option") which is subject to this Agreement; and

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

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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¶

NOW THEREFORE, subject to the provisions in Article IV below, the Amended Agreement is hereby amended and restated in its entirety, as follows, it being understood that this Agreement supersedes and replaces the Amended Agreement, which shall be of no further force and effect:

WHEREAS, the property subject to this Agreement consists of the approximately 63.6 acre parcel of land owned by CFV and the 8.27 acre parcel designated "N/F Town of Cumberland on the (collectively the "Property") located off U.S. Route One and depicted on Exhibit A attached hereto (the "Plan"); and

Deleted: ¶ 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 construction and sale of commercial buildings on the Property to be financially feasible, 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

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WHEREAS, on , 2008, the Cumberland Town Council approved the execution of this 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.

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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 Agreement:

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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 71.87 acres which includes the Property and the Town Lot, 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.

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Deleted: 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¶

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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,

B) Commercial development of not less than eight (8) lots; said commercial development to be developed with adequate buffering from the adjacent residential areas to the Property.

C) On all lots, retail stores (uses may include any shop or store for the retail sale of goods or personal services, including general merchandise, hardware, groceries, building products, automotive parts and products, home and garden products and plants, furniture and fertilizers and other home improvement store uses. Incorporated may be the following other uses: pharmacies, motor vehicle service and repair facilities, fully enclosed eating establishments, take-out eating establishments or drive-up eating establishments, financial institutions, and stores and businesses typically found in a retail development and accessory use).

Deleted: 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.¶

D) 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.

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

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E) 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.

Deleted: 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. ¶

III. Restrictions within the Contract Zone:

A) The setback provisions for all lots within the Contract Zone shall be as follows: provided, however, that any setback may be reduced to zero (0) feet with the consent of both abutting lot owners:

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Deleted: . (1) setbacks for individual houses:¶

- Front yard setback not less than 25 feet.¶

... [1]

• Front yard setback not less than 25 feet.

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• Side yard setback not less than 20 feet.

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• Rear yard setback not less than 15 feet.

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B) The minimum frontage on the street providing access to each lot shall be 150 feet.

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C) The width of any private road or right-of-way within the interior portion(s) of the Property shall be a minimum of 60 feet in width, with a paved width of 26 feet, and a four foot paved sidewalk for the main road.

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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 25 feet from the Route 1 right of way. 15 feet of the Route 1 buffer shall be undisturbed vegetation and the remaining 10 feet shall be used for a common walkway/path.

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I) Anything in Section III(A) above to the contrary notwithstanding, the building setback from Route 1 for any commercial structure in excess of 100,000 square feet shall be 200 feet from the Route 1 right of way.

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J) The minimum lot size for commercial lots shall be 30,000 square feet.

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K) 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. Effective Date and Termination:

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This Agreement shall take effect upon exercise of the Purchase Option held by Developer. In the event that Developer does not acquire the property subject to this Agreement, this Agreement shall be null and void and the January 31, 2007 Amended Agreement, executed by the Town of Cumberland and Cumberland Foreside Village, LLC, shall continue in full force and effect.

V. Miscellaneous Provisions:

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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. ▼

(F) Amendments: This Agreement may be amended only by written agreement signed by the parties; provided the parties hereby agree that the Cumberland Planning Board may approve minor or unsubstantial changes to any final development plans on the property and that such approvals shall not require amendment of this Agreement.

(G) 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.

Deleted: 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.

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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

By: _____
Name: _____ William R. Shane
Town Manager

CEDARWOOD DEVELOPMENT, INC.

By: _____
Name: _____

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.

(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:

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.