

**AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 21, 2016
REGULAR MEETING – 7:00 P.M.**

NO NEW BUSINESS SHALL BE TAKEN UP AFTER 10:00 P.M.

- Item 1.** Call to Order.
- Item 2.** Pledge of Allegiance.
- Item 3.** Roll Call.
- Item 4.** General Public Comments.*
- Item 5.** Minutes: December 07, 2016 – Regular Meeting.
- Item 6.** Adjustment to the Agenda.
- Item 7.** Items to be signed: a. Treasurer's Warrants.

***Procedure for Addressing Council** [Posted in Chambers.]

Order No. 16-080, 7:00 p.m. Public hearing and action on the following applicants who have applied for renewal of their Manufactured Housing Communities License: *[Town Clerk]*

<u>Name</u>	<u>Address</u>
1. Crystal Springs Manufactured Housing Community Donna Alexander	U.S. Route 22
2. Pinecrest Manufactured Housing Community Theresa Desfosses	126 U.S. Route One
3. Hillcrest Manufactured Housing	126 U.S. Route One

Order No 16-081, 7:00 p.m. Public Hearing and discussion on the renewal request for a Food Handlers License from Michael Hoglund, d/b/a Country Side Butchers and The Painted Turtle, located at 89 County Road. *[Zoning Administrator]*

OLD BUSINESS: None at this time.

NEW BUSINESS:

Order No. 16-082. First Reading of the Eighth Amendment to Contract Zone IX by The Residences at Gateway Commons – Devine Capital, LLC [formerly New England Expedition] pursuant to Chapter 405(II)(I)(5)(C) of the Scarborough Zoning Ordinance and referral to the Planning Board for further review. *[Planning Department]*

Order No. 16-083. Act on the request from the Deputy Tax Collector for a waiver of foreclosure on the following properties: 4 David Drive – Map T003/Lot 004, 29 Matthews Way – Map T003/Lot 029, 13 Crystal Lane – Map T003/Lot 013, 15 Crystal Lane – Map T0003/Lot 015 and 20 Garnet Drive – Map T003/Lot 020, and authorize the Town Manager to sign the necessary documentation. *[Deputy Tax Collector]*

Order No. 16-084. Act on the request to authorize the Town Manager to enter into a Service Agreement with the Town of Wells for vehicle maintenance and to sign any and all documents. *[Town Manager]*

Order No. 16-085. Act to accept donations to the Town of Scarborough received in 2016 for the Eastern Trail “Close the Gap Campaign” and to ratify the Memorandum of Understanding dated August 31, 2016, between the Town of Scarborough, the Eastern Trail Alliance and the Eastern Trail Management District. *[Town Manager]*

Order No. 16-086. Act on the Council Chair appointments for Council Standing Committee and Committee Liaisons. *[Council Chair]*

Item 8. Non Action Items.

Item 9. Standing and Special Committee Reports and Liaison Reports.

Item 10. Town Manager Report.

Item 11. Council Member Comments.

Item 12. Adjournment.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 21, 2016
REGULAR MEETING – 7:00 P.M.

Order No. 16-080. Move approval on the following applicants who have applied for renewal of their Manufactured Housing Communities License: *[Town Clerk]*

<u>Name</u>	<u>Address</u>
1. Crystal Springs Manufactured Housing Community Donna Alexander	U.S. Route 22
2. Pinecrest Manufactured Housing Community Theresa Desfosses	126 U.S. Route One
3. Hillcrest Manufactured Housing	126 U.S. Route One

Town Clerk

Ought to Pass

Sponsor

Recommendation

12/21/16

N/A

First Reading/Vote

Second Reading/Final Approval/Vote

Town of Scarborough, Maine
Town Clerk's Office
259 US ROUTE ONE
PO BOX 360
SCARBOROUGH, MAINE • 04070-0360

TO: Town Council Members

FROM: Yolande P. Justice, Town Clerk

DATE: December 16, 2016

RE: **Renewal Requests for Manufactured Housing Community
and/or Mobile Home Park License**

The following applicants have applied for renewal for Manufactured Housing Communities:

<u>Name</u>	<u>Address</u>
1. Crystal Springs Manufactured Housing Community Donna Alexander	U.S. Route 22
2. Pinecrest Manufactured Housing Community Theresa Desfosses	126 U.S. Route One
3. Hillcrest Manufactured Housing Theresa Desfosses	126 U.S. Route One

Per Brian Longstaff, Zoning Administrator, all three Communities have been inspected and are all in compliance with the Code Office. It is recommended that the licenses be approved for Pinecrest Manufactured Housing Community, Hillcrest Manufactured Housing, and Crystal Springs Manufactured Housing Community.

The applications are kept on file in the Clerk's Office.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 21, 2016
REGULAR MEETING – 7:00 P.M.

Order No 16-081. Discussion and action on conditional approval for the renewal requests for a Food Handlers License from Michael Hoglund, d/b/a Country Side Butchers and The Painted Turtle, located at 89 County Road, as recommended by the Zoning Administrator in memorandum dated December 16, 2016. [*Zoning Administrator*]

Zoning Administrator

Sponsor

12/21/16

First Reading/Vote

Ought to Pass with conditions

Recommendation

N/A

Second Reading/Final Approval/Vote

Town of Scarborough, Maine
Planning and Code Enforcement

Memo

From: Brian Longstaff, Zoning Administrator

To: Town Council, Town Manager

Date: December 16, 2016

Subject: Countryside Butchers & Painted Turtle Food Handlers License, 89
County Road

The Town Council will hold a public hearing for a Food, Food Handlers, and Food Establishments License for the subject businesses. Per Chapter 1015, any applicant must comply with all applicable rules and regulations of the Town, including the building code and fire code.

The first issue with this business is the failure to renew the food handler's license before June 30, 2016. They have operated in willful violation of this regulation for nearly 6 months.

Secondly, Mr. Hoglund has failed to correct violations discovered by the Scarborough Fire Department upon annual inspection, and has failed to respond to repeated notices from the fire department regarding re-inspection of the premises to verify that the violations have been corrected. This behavior is not acceptable, and directly impacts the health and safety of the public.

After issuing a Notice of Violation (NOV), which you have in your packets, I received a visit from Mr. Hoglund on Friday, December 9. He claims that the notices have been sent to the wrong mailing address (89 County Road) and that is why he has not been responding to them. I received a return receipt for the NOV, so he clearly does receive mail at 89 County Road. He claimed to have corrected most of the violations, and promised to arrange an inspection with Capt. Jim Butler as soon as possible. This inspection was finally scheduled until Friday, December 16, and the result was that corrections were incomplete. Although several deficiencies had been corrected, there were still 2 fire extinguishers, kitchen hood suppression maintenance, quarterly sprinkler system inspections, and 4 sprinkler head issues.

Therefore, the Codes Department feels that Council may issue these Food Handler's licenses, subject to the following conditions:

1. Mr. Hoglund must complete the remaining corrective actions by January 18, 2017. Should Mr. Hoglund fail to correct all remaining violations by this date, the Council shall suspend or revoke the Food Handler's License for the offending business, pursuant to Chapter 1015, Section 8. Penalties will be assessed by the Codes Department and must be paid before reinstatement of license can occur.
2. Pursuant to Chapter 1015, Section 10, and prior to the issuance of the new licenses, Mr. Hoglund shall pay a penalty of \$300 to the Codes Department, for willfully operating without a Scarborough Food Handler's License, and for failure to take timely corrective action on identified code violations.
3. In addition to the annual inspection by Scarborough Fire Department, Mr. Hoglund must agree to an interim inspection between January 1 and June 30, 2017 to insure that he is adequately maintaining the life safety and building code aspects of the 2 business operations, and the second floor dwelling unit.

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Town of Scarborough, Maine

Planning and Code Enforcement

December 5, 2016

Michael Hoglund
89 County Road
Scarborough, ME 04074

Subject: Notice of Violation and Suspension of Operations

Mr. Hoglund:

Your Food, Food Handler and Food Establishment Licenses ("Food Handler's License") for Countryside Butchers and The Painted Turtle restaurant expired as of June 1, 2016. Therefore you are operating in violation of the Town of Scarborough Food, Food Handler's and Food Establishment Ordinance, Chapter 1015, Section 3 of the Scarborough Code. **You must cease operations of both establishments immediately and you may not recommence operations until you have corrected all violations and obtained the required food handler's licenses for both establishments.**

Additionally, the Town will request that your current liquor license be revoked by the State of Maine due to non-compliance.

The Town has made several attempts to communicate with you to renew your Food Handler's Licenses and to work toward corrective action on your code violations, but you have been unresponsive (a copy of the 11/12/2016 Notice of Violation from the Scarborough Fire Department is attached to this letter). As a result, if you fail to comply with this order, the Town will take legal action through the District Court for violation of the Food Handler's Ordinance, and will seek penalties of no less than \$300 per day for each day that you have been and remain in violation, and may also seek recovery of the Town's costs and other legal and equitable remedies pursuant to Section 10 of the Ordinance.

Upon receipt of this Notice, **you have 24 hours to contact the Department of Planning and Codes** to outline a schedule for correcting the code violations that are attached to this order. You should direct your communication to the Commercial Building/Fire Inspector Capt. James Butler or to the Zoning Administrator Brian Longstaff at 207.730.4040 during normal business hours.

Cordially,



Brian Longstaff
Zoning Administrator

Encl. (2)

Cc: Thomas Hall, Town Manager via email
Yolande Justice, Town Clerk via email
Phil Saucier, Town Attorney via email
Dan Bacon, Planning Director via email
Chief Michael Thurlow via email
Capt. Jim Butler via email



Scarborough Fire Department

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NARRATIVE FOR VIOLATIONS Z

Ref: 16SCA-289-IS

Entered: 11/02/2016 @ 1332 Entry ID: 10223
Modified: 11/02/2016 @ 1332 Modified ID: 10223

11/02/2016

Michael Hoglund
89 County Rd
Scarborough ME 04074

A follow-up inspection of COUNTRYSIDE BUTCHERS at 89 COUNTY RD, SCARBOROUGH, ME was conducted on 10/26/2016. The Inspector observed the following at the time of the inspection:

VIOLATIONS:

16SCA-155-VN : Fire Extinguishers

Resolve By: 02/01/2017

Regulations:

40 : 4005 - Fire Extinguishers- Inspect & Service

Have your fire extinguishers inspected and serviced annually by a certified company to ensure proper operation.

16SCA-156-VN : Fire Extinguishers

Resolve By: 02/01/2017

Regulations:

40 : 4010 - Fire Extinguishers-Clear

The area around fire extinguishers must be kept clear of storage and debris to ensure easy access.

13SCA-220-VN : Exit Signs & Emergency Lights

Resolve By: 02/01/2017

Regulations:

10 : 1020 - Exit Signs & Emergency Lights

Replace or repair all inoperable exit signs (main exit).

A follow-up inspection to determine compliance with this notice will be conducted on or about 90 days from the inspection date above.

This inspection cannot, and does not identify every possible hazard or deficiency within your facility. It is intended to assist you with

Scarborough Fire Department

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NARRATIVE FOR VIOLATIONS Z

Ref: 16SCA-289-IS

Entered: 11/02/2016 @ 1332

Entry ID: 10223

Modified: 11/02/2016 @ 1332

Modified ID: 10223

identifying safety issues and in complying with codes & standards. Reminder-Sprinkler & Fire Alarm systems must be maintained and tested on a regular basis according to NFPA 25 & 72 which have been adopted as State Law and local ordinance.

Please contact Captain James Butler @ 730-4051 if you have any questions.

Scarborough Fire Department

Page: 1

NARRATIVE FOR VIOLATIONS Z

Ref: 16SCA-681-IS

Entered: 11/02/2016 @ 1328 Entry ID: 10223
Modified: 11/02/2016 @ 1328 Modified ID: 10223

11/02/2016

Michael Hoglund
89 County Rd
Scarborough ME 04074

A follow-up inspection of PAINTED TURTLE at 89 COUNTY RD, Scarborough, ME was conducted on 10/20/2016. The Inspector observed the following at the time of the inspection:

VIOLATIONS:

16SCA-836-VN : General Violations

Regulations:

10 : 1000 - General Violations

Contact Captain Butler @ 730-4051 regarding the 2nd floor apartment.

16SCA-45-VN : Sprinkler System

Resolve By: 02/01/2017

Regulations:

30 : 3035 - Sprinkler Coverage

Repair the sprinkler head in the womens room and the front entry near the beer taps.

16SCA-46-VN : Exit Signs & Emergency Lights

Resolve By: 02/01/2017

Regulations:

10 : 1020 - Exit Signs & Emergency Lights

Replace or repair all inoperable exits lights at the front door.

14SCA-104-VN : Ceiling Tiles - Replace/Repair

Resolve By: 02/01/2017

Regulations:

90 : 9090 - Ceiling Tiles - Replace/Repair

Replace all missing or damaged ceiling tiles in the sprinkler room.

A follow-up inspection to determine compliance with this notice will be conducted on or about 90 days from the inspection date above.

This inspection cannot, and does not identify every possible hazard or deficiency within your facility. It is intended to assist you with identifying safety issues and in complying with codes & standards. Reminder-Sprinkler & Fire Alarm systems must be maintained and tested on a regular basis according to NFPA 25 & 72 which have been adopted as State Law and local ordinance.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 21, 2016
REGULAR MEETING – 7:00 P.M.

Order No. 16-082. Move approval of the first reading of the Eighth Amendment to Contract Zone IX by The Residences at Gateway Commons – Devine Capital, LLC [formerly New England Expedition] pursuant to Chapter 405(II)(I)(5)(C) of the Scarborough Zoning Ordinance and referral to the Planning Board for further review and schedule a public hearing and second reading upon the filing of the Planning Board's recommendations. [*Planning Department*]

Planning Department

Sponsor

12/07/16

First Reading/Vote

Ought to Pass

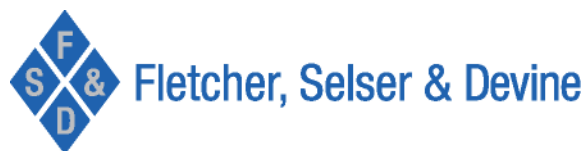
Recommendation

To be scheduled following Planning Board Review

Public Hearing/Second Reading



The Residences at Gateway Commons
Submission Packet - Devine Capital, LLC
Scarborough Town Council Meeting on December 21, 2016



Devine Capital, LLC
c/o Fletcher, Selser & Devine, LLC
2 Monument Square, Seventh Floor
Portland, Maine 04101

December 14, 2016

Hand Delivered

Town Council
Town of Scarborough, Maine
P.O. Box 360
Scarborough, Maine 04070-0360

Re: **The Residences at Gateway Commons** - Request for Approval of Eighth Amendment to Contract Zone Agreement

Ladies and Gentlemen:

Devine Capital, LLC (“Devine Capital” or the “Applicant”) is pleased to submit the enclosed Eighth Amendment to Contract Zone Agreement to the Town Council for review and consideration (see Attachment 1 attached hereto) in connection with the proposed development of the approximately 32.65 acre parcel of land located at 259 Payne Road within the Haigis Parkway District in Scarborough and known as Parcel #RO40014 Scarborough Parcel Id/Book/Page 31987/206 (the “Property”). The project, referred to as “**The Residences at Gateway Commons**,” involves the construction of a multi-family residential community, consisting of twelve buildings, with up to 288 residential rental units, all as more specifically described in Section 2 below (the “Project”).

1. Applicant’s Right, Title and Interest in the Property

Exit 42 Haigis Parkway LLC is the current owner of the Property. Devine Capital holds the right to purchase the Property under the terms of a certain Option Agreement dated October 26, 2016, between Exit 42 Haigis Parkway LLC and Devine Capital, a memorandum of which is recorded in the Cumberland County Registry of Deeds at Book 33649, Page 324 (see Attachment 2 attached hereto).

2. Project Overview

The Project consists of a total of 288 luxury apartment homes/units in 12 buildings, with each building containing 24 units. The architecture will be New England style indigenous to the area. Exterior materials will be of the highest quality with a combination of cultured stone and traditional lap siding, including oversized windows to provide plenty of natural light, along with outdoor balconies for the residents to enjoy. Energy efficiency is paramount to the Project, with individually controlled HVAC and hot water equipment, Energy Star stainless steel appliances in the kitchens, along with granite countertops and wood cabinets. Additionally, each unit will have its own washer and dryer.

The Project shall include extensive amenities throughout the community. For example, a large clubhouse of approximately 5,000 square feet will include a community room with serving kitchen, gaming center, media center, card room, business center, a pet washing room, and a large workout gym with state-of-the-art equipment. Other amenities will include: WIFI throughout the facility; ancillary bath/locker rooms serving the clubhouse and an outdoor pool; a large deck surrounding the pool with areas for a fire pit and BBQ grilling; and a mail center with a package concierge. Additional outdoor amenities include: heavy landscaping throughout; a dog park; and walking trails throughout the community and to the commercial areas.

As set forth below, the Applicant anticipates the buildings will contain a mix of studio, 1, 2 and 3 bedroom units, with a maximum building footprint of 12,500 square feet per building.

The anticipated Project elements consist of the following:

<u>Project Element</u>	<u>Number of Units</u>
Studio Apartments	30
1-Bedroom Apartments	69
2-Bedroom Apartments	150
3-Bedroom Apartments	39
Total Residential Rental Units	288

The site plan attached hereto as Attachment 3 shows a preliminary depiction of The Residences at Gateway Commons' community layout. In addition, the Applicant has attached photographs of a similar residential development project recently completed by members of the Applicant's development team in East Lyme, Connecticut (see Attachment 4). The Applicant anticipates following the same high quality build-out as shown on the attached photographs.

While not addressed in the current development plan for the Project, it is anticipated that the portion of the Property that directly abuts Haigis Parkway could later be developed for light

commercial activities and uses that such a residential community would help attract and support – e.g., restaurant, health club, coffee shop, artists’ galleries.

3. Community Benefits/Economic Impact

The residential unit mix and demographics of those living within this new community will assist the Town in filling an anticipated shortage of housing, particularly in regards to units available for rent. In addition, this combination of unit mix and tenant demographics will attract the light commercial and mixed-use activities and amenities desired within the Haigis Parkway District (“HP District”). As noted in the Comprehensive Plan, housing units, particularly rental units, are currently very limited and are needed to support both the current and anticipated future needs of the community and to support the commercial growth desired within the HP District. Currently, relatively few rental options are available in the area, and as noted in the Comprehensive Plan, it is anticipated that approximately 67 housing units will be needed for each 100 new jobs in the area.

The Project, as a highly amenitized luxury apartment development, will attract millennials migrating into the area, renters of choice from across the region, as well as empty nesters looking to sell their homes. The new residents will bring with them high annual average household incomes (\$100,000 +/-), and will typically spend a significant amount of their discretionary income in the shops, restaurants and service industries of the local area.

The Project will utilize existing municipal infrastructure extended to the HP District and allow the Town to leverage more fully its investment in these infrastructure improvements – roads, water and sewer service. Additionally, the Project will help attract the types of businesses, amenities and activities desired in the HP District as well as support those businesses currently located in the HP District, consistent with the Town’s vision of the area as a “regional center for employment, entertainment and cultural activities” (as noted in the Comprehensive Plan).

a. Property Tax Revenue

As discussed below, the increased property taxes generated from the Project, together with the payment of the special assessment fee applicable to development within the HP District, and the additional spending the new residents will bring directly to the Town (e.g., car registrations, license fees, etc.), will contribute significantly to the repayment of the Town’s investment in this area and help encourage and support further economic activity within the HP District and surrounding area.

The Applicant anticipates the following increase in property tax revenue to the Town upon build-out of the Project:

Property's Current Assessed Value	\$4,897,000.00
Anticipated Range of Project Costs	<u>\$30,000,000.00 to \$40,000,000.00</u>
Town's Current Mil Rate	\$15.92
Assessment Ratio	100%
Estimated Range of Property Tax Payment	<u>\$555,560.24 to \$714,760.24</u>
Less Current Property Tax Bill	<u>\$77,968.20</u>
Projected Annual Net Prop. Tax Increase	<u>\$477,592.04 to \$636,792.04</u>

b. Limited Impact on Town Services

The Project will utilize the existing infrastructure recently extended to the Haigis Parkway area. It is not anticipated that the Project itself will cause a significant burden to other Town services. This new residential rental community will utilize private trash removal and recycling services as well as private snow removal and grounds-keeping services. In addition, given the demographics of the market for such rental units, the Applicant does not anticipate a significant impact on the school system as a majority of units will be studio and 1 and 2 bedroom units. Furthermore, the overall development design and marketing plan will be targeted to attract a diverse mix of millennials, retirees and professionals transitioning into the area.

4. Current Zoning/Contract Zone Amendment

a. Zoning

The Property is located within the HP District. Presently, the HP District allows, as a permitted use, multi-family residential dwellings only if such dwellings are developed as part of a mixed-use planned development. Additionally, the HP District limits multi-family dwellings to a maximum building footprint of 12,500 square feet, a maximum of 5 dwelling units per acre of net lot area, and limits the floor area of all residential uses within a planned development to a maximum of 40% of the total floor area of all the building floor area within a planned development.

The current zoning, therefore, would require any residential development of the Property to involve a significant commercial component, and the density requirement (5 units per acre of net

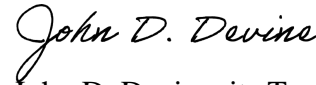
lot area), would limit the Project to 125 residential units which does not provide sufficient unit development to support an economically viable project.

b. Contract Zone Agreement

The Property is also currently subject to a contract zone agreement which governs certain aspects of the use and development of the Property (referred to in the contract zone agreement as “The Gateway Square at Scarborough”) as is the adjacent parcel on the northwesterly side of Payne Road, known as “The Gateway Shoppes at Scarborough” where Cabela’s is currently located, all as more fully set forth in that certain Contract Zone Agreement, dated January 3, 2007, originally entered into by and between the Town and The New England Expedition – Scarborough, LLC, as subsequently amended, a copy of which, together with the amendments thereto, is attached hereto as Attachment 5 (the “Contract Zone Agreement”).

Given the community need/market demand for this Project, and the direct and indirect community benefits generated by such a development project, the Applicant hereby requests the Town enter into a further amendment to the Contract Zone Agreement, in the form of the Eighth Amendment to Contract Zone Agreement attached hereto as Attachment 1, to permit the applicable zoning for the Property to allow for the Project as a multi-family residential development project within the HP District, as well as to provide for the allocation of the necessary growth permits from the reserve pool under Section 5(a) of the Town’s Growth Management Ordinance, Chapter 413, to permit the issuance of the requisite building permits to construct the Project.

We hope you find this summary and the related attachments helpful in your review of this submission. We look forward to discussing this exciting project with you at the Town Council meeting on December 21, 2016. In the meantime, please do not hesitate to contact me with any questions or comments.

Very truly yours,
Devine Capital, LLC

John D. Devine, its Treasurer

BMD/wmf

cc: Thomas Hall, Town Manager
Dan Bacon, Town Planner
Richard A. Granara, CDP, KGI Properties, LLC

List of Attachments:

- | | |
|---------------|---|
| Attachment 1: | Eight Amendment to Contract Zone Agreement |
| Attachment 2: | Notice of Option |
| Attachment 3: | Site Plan – The Residences at Gateway Commons |
| Attachment 4: | Photographs of Similar Project by Members of the Development Team |
| Attachment 5: | Existing Contract Zone Agreement, as amended |
| Attachment 6: | List of Development Team Members/Contact Information |

Attachment 1: Eighth Amendment to Contract Zone Agreement

EIGHTH AMENDMENT TO CONTRACT ZONING AGREEMENT
AMONG THE TOWN OF SCARBOROUGH, EXIT 42 HAIGIS PARKWAY LLC, AND
DEVINE CAPITAL, LLC
THE GATEWAY AT SCARBOROUGH

This Eighth Amendment to Contract Zoning Agreement (hereinafter, this "Eighth Amendment") is made as of the ____ day of _____, 2016 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the "Town"), EXIT 42 HAIGIS PARKWAY LLC, a Maine limited liability company, with an office at 11 Bartlett Road, Gorham, Maine 04038 (hereinafter, "Exit 42 HP"), and DEVINE CAPITAL, LLC, a Massachusetts limited liability company with a mailing address of 2 Monument Square, Seventh Floor, Portland, Maine 04101 (hereinafter, "Devine Capital"), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the "Zoning Ordinance").

WHEREAS, The New England Expedition – Scarborough, LLC, a Maine limited liability company with an office at 222 Newbury Street, 4th Floor, Boston Massachusetts 02116 (hereinafter, "New England Expedition"), entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, the "Agreement") creating Contract Zoning District Number 9 (hereinafter, the "District") as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the "First Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the "Second Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30th day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the "Third Amendment"); and

WHEREAS, that portion of the Property comprising "The Gateway Square at Scarborough" was conveyed by New England Expedition to The New England Expedition – Scarborough II, LLC (hereinafter, "New England Expedition II") by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 3rd day of March, 2010, and recorded in said Registry of Deeds in Book 27642, Page 85 (the "Fourth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fifth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 21st day of July, 2010, and recorded in said Registry of Deeds in Book 27960, Page 322 (the "Fifth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Sixth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 19th day of January, 2011, and recorded in said Registry of Deeds in Book 28464, Page 260 (the "Sixth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Seventh Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 6th day of March, 2013, and recorded in said Registry of Deeds in Book 30462, Page 162 (the "Seventh Amendment"); and

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by Deed In Lieu of Foreclosure With Covenant from New England Expedition – Scarborough, LLC to GlennDonna, Inc. and to R.J. Grondin & Sons dated as of the 26th day of September, 2014, and recorded in said Registry of Deeds in Book 31987, Page 197; and was subsequently conveyed to Exit 42 HP by Quitclaim Deed With Covenant from GlennDonna, Inc. and R.J. Grondin & Sons dated November 13, 2014, and recorded in said Registry of Deeds in Book 31987, Page 206; and

WHEREAS, Devine Capital intends to purchase of The Gateway Square at Scarborough from Exit 42 HP;

WHEREAS, the Haigis Parkway District, HP (hereinafter, the "HP District"), the District under the Zoning Ordinance in which The Gateway Square at Scarborough is located, presently allows, as a permitted use, multi-family residential dwellings/units provided such dwellings/units are developed as part of a mixed-use building or mixed-use planned development;

WHEREAS, the HP District limits multi-family dwellings to a maximum building footprint of 12,500 square feet, a maximum of 5 dwelling units per acre of net lot area, and limits the floor area of all residential uses within a planned development to a maximum of 40% of the total floor area of all the building floor area within a planned development;

WHEREAS, the Town's Growth Management Ordinance, Chapter 413, requires the issuance of growth permits in order to obtain building permits to construct dwelling units and requires that growth permits be issued either from the annual allocation of growth permits or from a reserve pool of growth permits;

WHEREAS, Devine Capital desires to develop The Gateway Square at Scarborough as a multi-family residential development project;

WHEREAS, Devine Capital proposes to construct up to twelve (12) multi-family residential buildings, with up to twenty-four (24) dwelling units per building, consisting of up to 30,000 square feet of floor area for residential purposes, containing studio, 1, 2 and 3 bedroom units, with a maximum building footprint of 12,500 square feet per building the (“Project”);

WHEREAS, the residential unit development mix of the Project will foster the commercial and mixed-use activities and amenities desired within the HP District, consistent with the 2006 Update of the Comprehensive Plan of the Town of Scarborough adopted by the Scarborough Town Council on July 19, 2006 (the “Comprehensive Plan”);

WHEREAS, Exit 42 HP and Devine Capital have requested that the Town approve this Eighth Amendment to the Agreement to permit the multi-family residential development project within The Gateway Square at Scarborough as described herein, including the allocation of necessary growth permits from the reserve pool to permit the issuance of building permits for the Project.

NOW THEREFORE, in consideration of the mutual promises made by the parties to each other, the parties covenant and agree as follows:

1. Notwithstanding the provisions of Section XVIII.B Haigis Parkway District zoning ordinance, as may be amended from time to time, Devine Capital, its successor and assigns, are hereby permitted to develop within The Gateway Square at Scarborough up to twelve (12) multi-family residential buildings, with up to twenty-four (24) dwelling units per building, resulting in a maximum number of residential units of two hundred eighty-eight (288) and consisting of up to 30,000 square feet of floor area for residential purposes per building, containing studio, 1, 2 and 3 bedroom units, with a maximum building footprint of 12,500 square feet per building, without regard to the requirement that any such dwelling units be part of a mixed-use building or part of a mixed-use planned development and without regard to any conflicting lot area, dimensional, and density requirements otherwise applicable within the HP District.
2. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the “Site Plan Ordinance”) and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the “Subdivision Ordinance”).
3. Pursuant to Section 5(a) of the Town’s Growth Management Ordinance, Chapter 413, the Town hereby authorizes the use of growth permits from the reserve pool for the Project and authorizes the Planning Board to so allocate from the reserve pool the appropriate number of growth permits to allow Devine Capital, its successor and assigns, to obtain the requisite building permits for the Project.

4. The Agreement, as amended by this Eighth Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, and the Seventh Amendment, remains consistent with the Comprehensive Plan.

5. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

6. The Town acknowledges and agrees that (a) any breach of the restrictions, provisions and conditions of the Agreement relating to The Gateway Square at Scarborough shall not be deemed a breach of the Agreement as it relates to The Gateway Shoppes at Scarborough, and (b) any breach of the restrictions, provisions and conditions of the Agreement relating to The Gateway Shoppes at Scarborough shall not be deemed a breach of the Agreement as it relates to The Gateway Square at Scarborough.

7. This Eighth Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH

By: _____
Thomas J. Hall, its Town Manager*
(* Duly authorized by vote of the
Scarborough Town Council on _____
____, 2016)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2016

Personally appeared the above named Thomas J. Hall, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

Notary Public/Attorney at Law
Print Name:_____

WITNESS:

DEVINE CAPITAL, LLC

By: _____
Bernard M. Devine, Jr., its Member

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2016

Personally appeared the above named Bernard M. Devine, Jr., Member of Devine Capital, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Devine Capital, LLC.

Before me,

Notary Public/Attorney at Law
Print Name: _____

WITNESS:

EXIT 42 HAIGIS PARKWAY LLC

By: _____
Philip Grondin, Jr., its Manager

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2016

Personally appeared the above named Philip Grondin, Jr., Manager of Exit 42 Haigis Parkway LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Exit 42 Haigis Parkway LLC.

Before me,

Notary Public/Attorney at Law
Print Name: _____

Attachment 2: Notice of Option

Exhibit C

NOTICE OF OPTION

Notice is hereby given of the following Option Agreement vesting in Buyer an option to purchase real property owned by Seller:

SELLER: Exit 42 Haigis Parkway LLC

BUYER: Devine Capital LLC

DATE OF AGREEMENT: October 26 2016

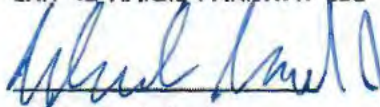
PREMISES: See Exhibit A attached hereto [attach Property legal description]

TERM OF OPTION: Beginning October 26 2016 and ending on the later of: April 15, 2017 or forty-five (45) days after the Rezone/Permitting Approval Date (as defined in the Option Agreement) (i.e., up to 420 days from the date hereof), absent such extensions as permitted under the Option Agreement.

The parties hereto further expressly acknowledge that this Notice of Option is being executed pursuant to the provisions of the Option Agreement, and is not intended to vary the terms or conditions of the Option Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Notice of Option to be signed by its duly authorized representative.

EXIT 42 HAIGIS PARKWAY LLC


Authorized signature

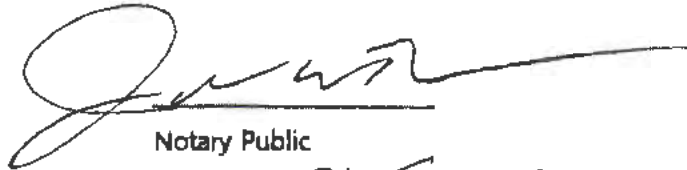
Philip Gorden Jr
Print name

Manager
Title

Date: October __, 2016

STATE OF Maine)
COUNTY OF Cumberland) ss.
res

On this 2 day of November, 2016, before me, the undersigned notary public,
personally appeared Philip Gordon Jr. Manager of Exit 42 Haigis Pkwy LLC
personally known to the notary or proved to the notary through satisfactory evidence of
identification, which was N/A to be the person whose name is signed on the
preceding or attached document, and he acknowledged to the notary that he signed it voluntarily for
its stated purpose, his free act and deed and the free act and deed of said entity.



Notary Public


Print name: Julie Turner

My commission expires:

SEAL

JULIE E. TURNER
Notary Public, Maine
My Commission Expires December 8, 2018

As to Answers:




Jesse Abbott,
Manager of 3 Commercial, LLC

STATE OF MAINE
Cumberland, ss

November 9, 2016

Then personally appeared the above named Jesse Abbott, as Manager of 3 Commercial, LLC, who swore to the foregoing statements by him are true, based upon his personal knowledge, information and belief, and where based upon information and belief, he believes said information to be true.

Before me,



Notary Public/Attorney-at-Law
Printed Name:

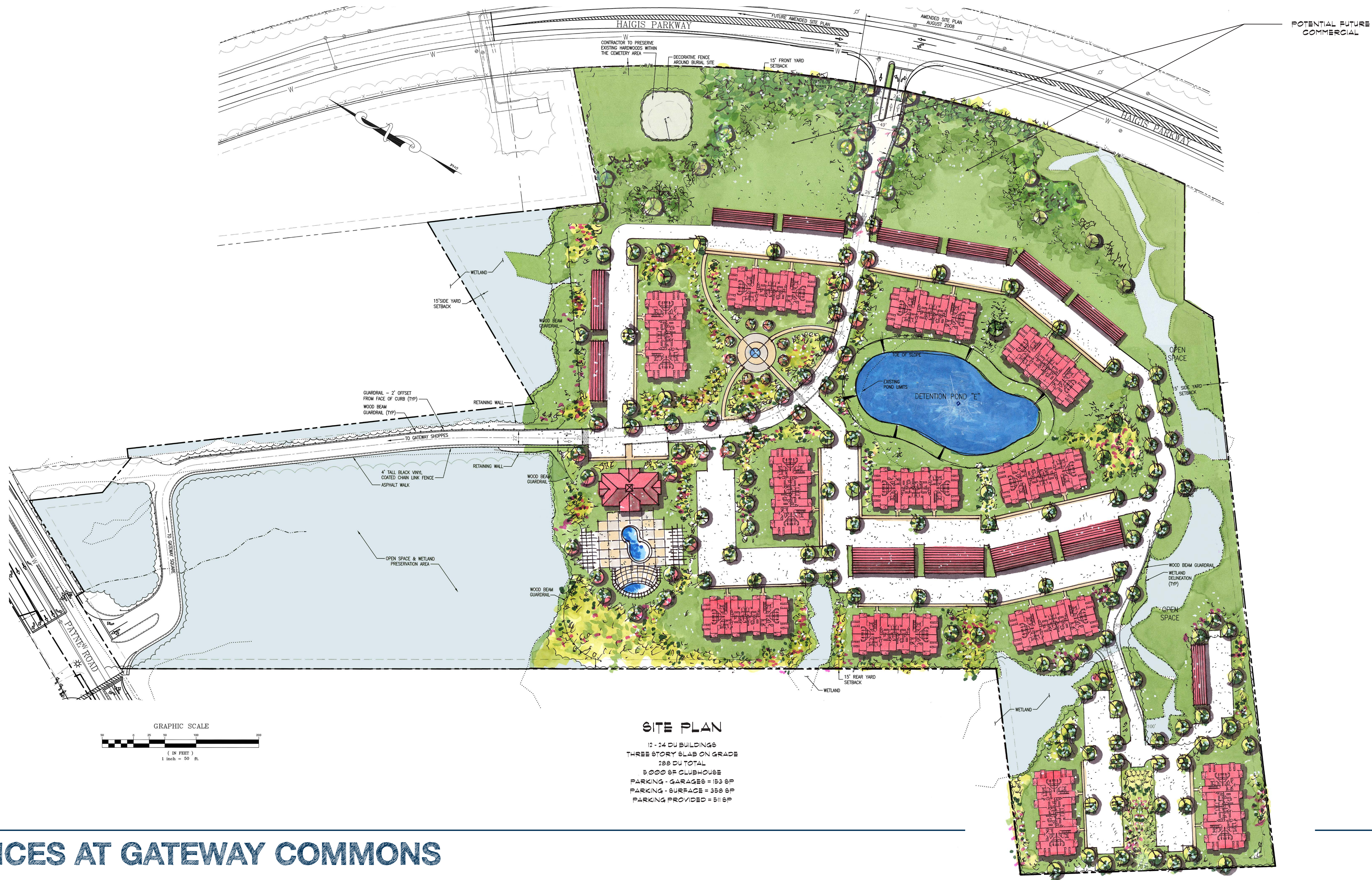
CERTIFICATE OF SERVICE

I, David J. Perkins, hereby certify that on November 10, 2016, I served the above document upon all counsel of record by email and first class mail.

/s/ David J. Perkins
David J. Perkins, Bar No. 3232
Perkins Olson, P.A.
32 Pleasant Street
Post Office Box 449
Portland, Maine 04112-0449
207-871-7159
dperkins@perkinsolson.com

Received
Recorded Register of Deeds
Nov 30, 2016 11:07:16A
Cumberland County
Nancy A. Lane

Attachment 3: Site Plan – The Residences at Gateway Commons



THE RESIDENCES AT GATEWAY COMMONS

SCARBOROUGH, MAINE
DEVINE CAPITAL, LLC

1" = 50'
NOVEMBER 22, 2016
© 2016 - GATE IT ARCHITECTURE LLC

GATE
architecture

35 Grove Street
Haddonfield, New Jersey, 08033
856.429.2001

Attachment 4: Photographs of Similar Project by Members of the Development Team













Attachment 5: Existing Contract Zone Agreement, as amended

**CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND
THE NEW ENGLAND EXPEDITION – SCARBOROUGH LLC**

This Contract Zoning Agreement (hereinafter, this “Agreement”) is made as of the 3rd day of January, 2007 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition intends to purchase certain lots or parcels of land located on Payne Road and Haigis Parkway in Scarborough, Maine, consisting of (a) the premises currently owned by 262 Payne Road, LLC, et al., located at 262 and 274 Payne Road comprising Lots 8 and 11A shown on Town of Scarborough Tax Map R-40 and described in deeds to 262 Payne Road, LLC, et al., recorded in the Cumberland County Registry of Deeds in Book 3630, Page 199, Book 21070, Page 169 and Book 22791, Page 266, (b) the premises currently owned by TD Banknorth, N.A., located at 246, 248 and 250 Payne Road comprising Lots 5, 6 and 7 shown on Town of Scarborough Tax Map R-40 and described in deeds to Peoples Heritage Savings Bank, predecessor to TD Banknorth, N.A., recorded in the Cumberland County Registry of Deeds in Book 15215, Page 204 and Book 15272, Page 261, (c) the premises currently owned by 23 Spring Street, LLC located at 264 Payne Road comprising Lot 9 shown on Town of Scarborough Tax Map R-40 and described in deed to 23 Spring Street, LLC recorded in the Cumberland County Registry of Deeds in Book 18263, Page 310, and (d) the premises currently owned by GlennDonna, Inc. located on Haigis Parkway and Payne Road comprising Lot 14 shown on Town of Scarborough Tax Map R-40 and being a portion of the premises described in deed to GlennDonna, Inc. recorded in the Cumberland County Registry of Deeds in Book 7564, Page 223 (hereinafter, collectively referred to as the “Property”), the Property containing approximately seventy-four (74) acres; and

WHEREAS, New England Expedition intends to develop the Property as a single project to be known as “The Gateway at Scarborough” (hereinafter, the “Project”), with that portion of the Project located on the northwesterly side of Payne Road to be known as “The Gateway Shoppes at Scarborough” and that portion of the Project located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway to be known as “The Gateway Square at Scarborough”, with construction of the Project anticipated to proceed in phases commencing with The Gateway Shoppes at Scarborough and progressing to The Gateway Square at Scarborough; and

WHEREAS, the Property is currently located in the Haigis Parkway District, HP (hereinafter, the “HP District”) as described in Section XVIII B. of the Zoning Ordinance; and

WHEREAS, the HP District presently allows, as a permitted use, among other uses, retail sales and services with less than twenty thousand (20,000) square feet of retail floor area per unit of occupancy; and

WHEREAS, New England Expedition desires to construct multiple facilities on the Property in which will be conducted various permitted uses including, but not limited to, a facility on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road for the retail sale of specialty hunting, fishing and other outdoor recreational equipment by Cabela’s Incorporated or its subsidiaries (hereinafter, “Cabela’s”), which

facility will include, in addition to retail sales space, exhibit and education areas as well as an accessory restaurant for patrons; and

WHEREAS, Cabela's requires a facility of one hundred thirty thousand (130,000) square feet of retail floor area in order to facilitate the manner in which such facility operates and displays its products and to accommodate the unique exhibit and educational components that are an integral part of such facility; and

WHEREAS, Cabela's requires certain specific signage attached to and associated with such facility that varies from signage permitted under Section XII of the Zoning Ordinance; and

WHEREAS, New England Expedition desires to install certain signage, together with related improvements, lighting and landscaping, for the purpose of identifying the Project, off-site on property in the immediate vicinity of the Property; and

WHEREAS, the sign regulations under Section XII of the Zoning Ordinance impose limitations on the placement of off-site signage relating to the Project; and

WHEREAS, New England Expedition has requested that, notwithstanding the requirements of Section B6 of the HP District requirements and the sign regulations set forth in Section XII of the Zoning Ordinance, in addition to the other facilities proposed to be constructed on the Property, the Town permit New England Expedition to construct a facility to be occupied by Cabela's and utilized for the uses permitted under said Section B6 of the HP District requirements containing not more than one hundred thirty thousand (130,000) square feet of retail floor area on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road, together with certain specific signage attached to and associated with such facility, and to install certain signage, together with related improvements, lighting and landscaping, for the purpose of identifying the Project, off-site on property in the immediate vicinity of the Property; and

WHEREAS, the size, location, configuration and topography of this site permit a level of buffering, landscaping and site design which will mitigate what might otherwise be adverse impacts of the Cabela's facility, and the other facilities proposed for the Property, provided the operation is restricted to the density, scale and intensity proposed by New England Expedition and further provided that the restrictions, provisions and conditions of this Agreement and the site plan and subdivision approval are strictly observed; and

WHEREAS, the Scarborough Planning Board, pursuant to Section II, Paragraph G Subsection 3 of the Zoning Ordinance and 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberation thereon, recommended that New England Expedition be permitted to develop the Property so as to include, in addition to the other facilities proposed for the Property, a facility on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road to be occupied by Cabela's and utilized for the uses permitted under said Section B6 containing not more than one hundred thirty thousand (130,000) square feet of retail floor area, together with certain specific signage attached to and associated with such facility, and to install certain signage, together with related improvements, lighting and landscaping, for the purpose of identifying the Project, off-site on property in the immediate vicinity of the Property; and

WHEREAS, the proposed uses of the Property, being in accordance with the requirements of the HP District, are consistent with the 2006 Update of the Comprehensive Plan of the Town of Scarborough adopted by the Scarborough Town Council on July 19, 2006 (hereinafter, the "Comprehensive Plan") for the area of the Property; and

WHEREAS, the Town of Scarborough, by and through its Town Council, having determined that the said uses are pursuant to and consistent with the Comprehensive Plan and consistent with the permitted uses within the HP District, authorized the execution of this Agreement on December 20, 2006.

NOW THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The Town will amend the Zoning Map of the Town of Scarborough by adopting the map change amendment shown on Attachment 1.
2. Notwithstanding the provisions of Section B6 of the HP District requirements, New England Expedition shall be permitted to develop the Property so as to include, in addition to the other facilities proposed for the Property, a facility on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road to be occupied by Cabela's and utilized for the uses permitted under Section B6 of the HP District requirements containing not more than one hundred thirty thousand (130,000) square feet of retail floor area.
3. New England Expedition is authorized to construct the Cabela's facility to be used in accordance with the requirements of the HP District, except as amended by this Agreement, together with the other facilities proposed for the Property containing such other uses as are permitted in the HP District.
4. Notwithstanding the provisions of Section XII of the Zoning Ordinance, New England Expedition shall be permitted to include signage attached to and associated with the Cabela's facility as more particularly described and shown on Attachment 2.
5. Notwithstanding the provisions of Section XII of the Zoning Ordinance, New England Expedition shall be permitted to install certain signage, together with related improvements, lighting and landscaping, which signage is generally depicted on Attachment 3, for the purpose of identifying the Project, on the property located between that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway and said Payne Road and Haigis Parkway, or within the right of way of said Payne Road or Haigis Parkway adjacent to said property, subject, however, to the terms and provisions of any agreements entered into with the owners of said property and/or the Town of Scarborough relating to such signage including, but not limited to, the following terms and provisions:
 - a. Such signage shall be built in accordance with the Town of Scarborough's specifications and at the expense of New England Expedition;
 - b. Such signage shall be maintained by New England Expedition; and
 - c. Except as otherwise amended by this Agreement, such signage shall comply with the requirements of Section XII of the Zoning Ordinance and all other applicable local and state regulations applicable thereto.
6. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the "Site Plan Ordinance") and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the "Subdivision Ordinance"), with construction anticipated to proceed in phases commencing

with that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road and then progressing to that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway. The phasing of the construction as outlined above shall be subject to the additional requirement that New England Expedition shall “substantially complete” the construction of that portion of the Project which includes the ten (10) buildings and related improvements to be constructed by New England Expedition, (collectively, the “NEE Buildings”), the NEE Buildings designated and shown on Attachment 4. The NEE Buildings shall be substantially complete within two (2) years from the date that New England Expedition receives Planning Board approval for the Project. For purposes hereof, “substantially complete” shall mean the completion of the clearing and rough grading of the Project building sites and related improvement areas and the internal road system, the installation of utilities, storm drains and sanitary sewer lines and the completion and approval of the foundations for the NEE Buildings. In the event that New England Expedition requires additional time to attain substantial completion as described herein, the Town Planner, or if the Town Planner chooses, the Scarborough Planning Board, may, for good cause shown, grant New England Expedition an additional one (1) year period for such purpose.

7. New England Expedition shall record this Agreement in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

8. The provisions of this Agreement shall be deemed restrictions on the use of the Property except as this Agreement may be amended by future written agreement of the Town of Scarborough and New England Expedition, or their successors or assigns.

9. Except as the requirements of the HP District and Section XII of the Zoning Ordinance have been amended by this Agreement, and subject to any other restrictions, provisions and conditions set forth herein regarding the development and use of the Property, all other requirements of the underlying HP District and the requirements of Section XII of the Zoning Ordinance shall apply and shall govern the use and development of the Property. Any such restrictions, provisions and conditions are an essential part of the aforesaid modification of the HP District requirements and the requirements of Section XII of the Zoning Ordinance as set forth herein, shall run with the Property, shall bind New England Expedition, its successors and assigns of the Property or any part thereof.

10. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Zoning Ordinance and any applicable amendments thereto and nothing contained in this Agreement shall be deemed to prohibit or limit the development of the Property in any other manner so long as such development is in compliance with the applicable provisions of the Zoning Ordinance and otherwise approved pursuant to the Site Plan Ordinance, the Subdivision Ordinance and/or other applicable Scarborough Ordinances and, if applicable, State and Federal laws, ordinances and regulations.

11. Notwithstanding anything to the contrary set forth herein or in the Zoning Ordinance, in the event that Cabela's shall, for any reason following its initial occupancy of the facility containing not more than one hundred thirty thousand (130,000) square feet of retail floor area as permitted hereunder to be located on that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road, fail to continue to operate its business therein, then:

a. New England Expedition shall, within sixty (60) days of the date that Cabela's ceases its business operations at the facility, remove the signage unique to Cabela's from the buildings and as otherwise permitted under this Agreement;

b. New England Expedition shall, within sixty (60) days of the date that Cabela's ceases its business operations at the facility, report to the Scarborough Town Council on the status of New England Expedition's efforts to secure a substitute tenant, and will continue to update the Council regarding such efforts at intervals not later than every sixty (60) days thereafter, so as to afford the Council the opportunity to comment on any such proposed substitute tenant; and

c. New England Expedition shall have the right to substitute another retailer in such facility so long as such substitute retailer is not a discount store, wholesale club, or home improvement center, the substitute retailer to be subject to such approvals as may be required from the Scarborough Planning Board under applicable Ordinances and regulations and any other State or Federal regulatory bodies having jurisdiction over the development, and provided further, that in the event New England Expedition should seek to substitute another retailer in such facility within the first five (5) years following the date Cabela's commences business operations at the facility, such substitute retailer shall be subject to the review and approval of the Scarborough Town Council, which approval shall not be unreasonably withheld, conditioned or delayed.

12. Any change to the development that results in either an increase in the size of the one hundred thirty thousand (130,000) square foot retail facility permitted hereunder or changes to the signage attached thereto or associated therewith, or any change with respect to the off-site signage permitted hereunder, shall require an amendment to this Agreement approved by the Scarborough Town Council and will also be subject to further Planning Board review, as required, except for any change to signage that results in the signage being in compliance with the requirements of Section XII of the Zoning Ordinance.

13. The Town of Scarborough shall have the power to enforce all conditions and restrictions of this Agreement, both through enforcement action pursuant to Section IV of the Zoning Ordinance and through legal action for specific performance of this Agreement. In the event that New England Expedition or its successors or assigns fail to develop the Project in accordance with this Agreement, or in the event of any other breach hereof, and such failure or breach continues for a period of thirty (30) days after written notice of such failure or breach, or in the event such failure or breach cannot reasonably be remedied or cured within such thirty (30) day period, if New England Expedition, its successors or assigns, fail to commence to cure or remedy such failure or breach within said thirty (30) day period and thereafter fails to diligently prosecute such cure or remedy to completion in a reasonable time taking into account the nature of such failure or breach and the action necessary to cure or remedy same, then this Agreement may be terminated by vote of the Scarborough Town Council. In that event, the Property may then be used only for such uses and according to such zoning requirements as are otherwise allowed by law.

14. In the event any provision of this Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in

equity. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH

/s/ Joseph F. Ziepniewski

By: /s/ Ronald W. Owens

its Town Manager (duly authorized by vote of the Scarborough Town Council on December 20, 2006)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

January 3, 2007

Personally appeared the above named Ronald W. Owens, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

/s/ Cheryl G. Profenno

Notary Public/Attorney at Law

WITNESS:

THE NEW ENGLAND EXPEDITION –
SCARBOROUGH, LLC

/s/ Richard A. Shinay

By: /s/ Barry E. Feldman

Its Member

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

January 4, 2007

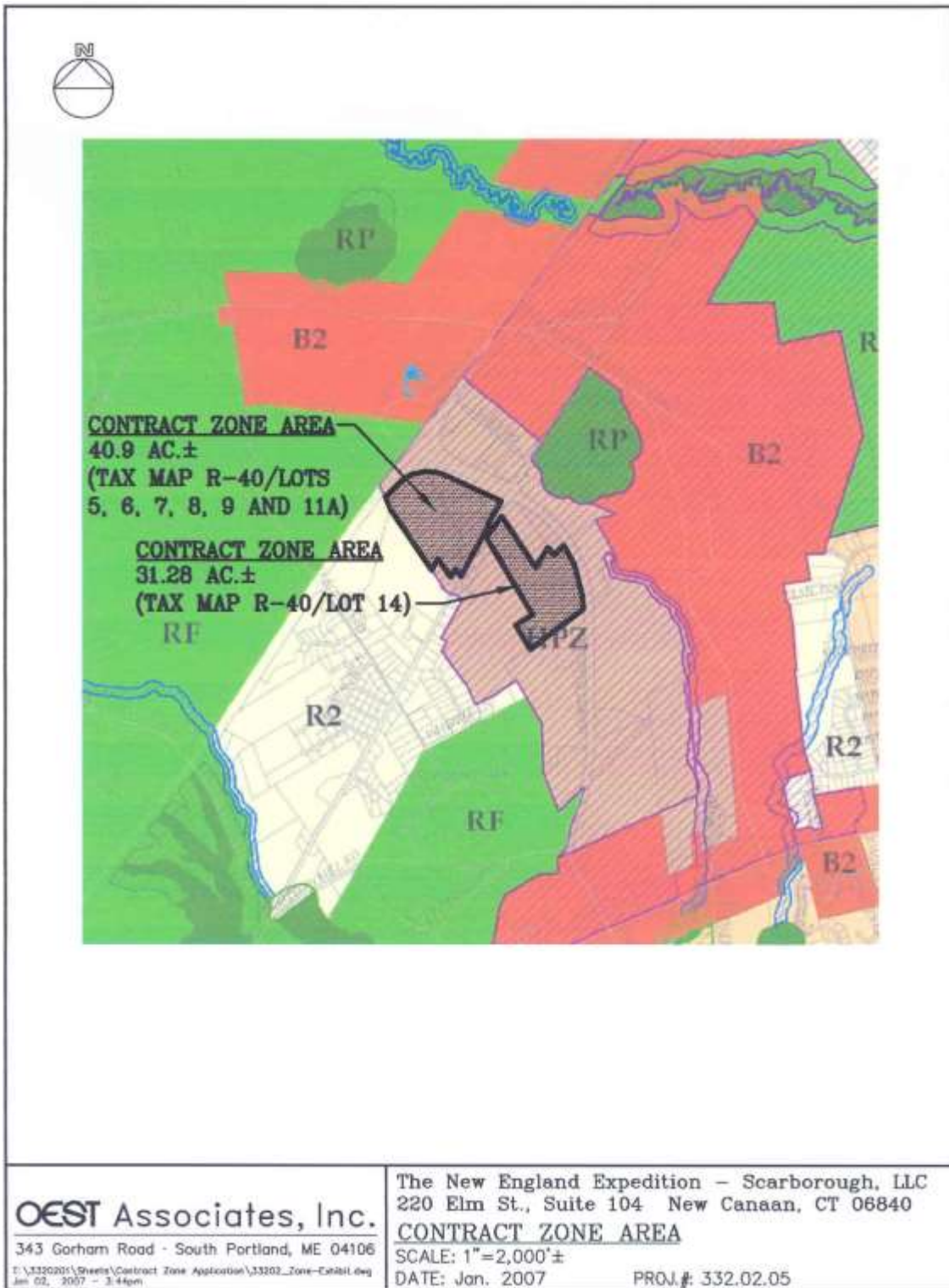
Personally appeared the above named Barry E. Feldman, Member of The New England Expedition – Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

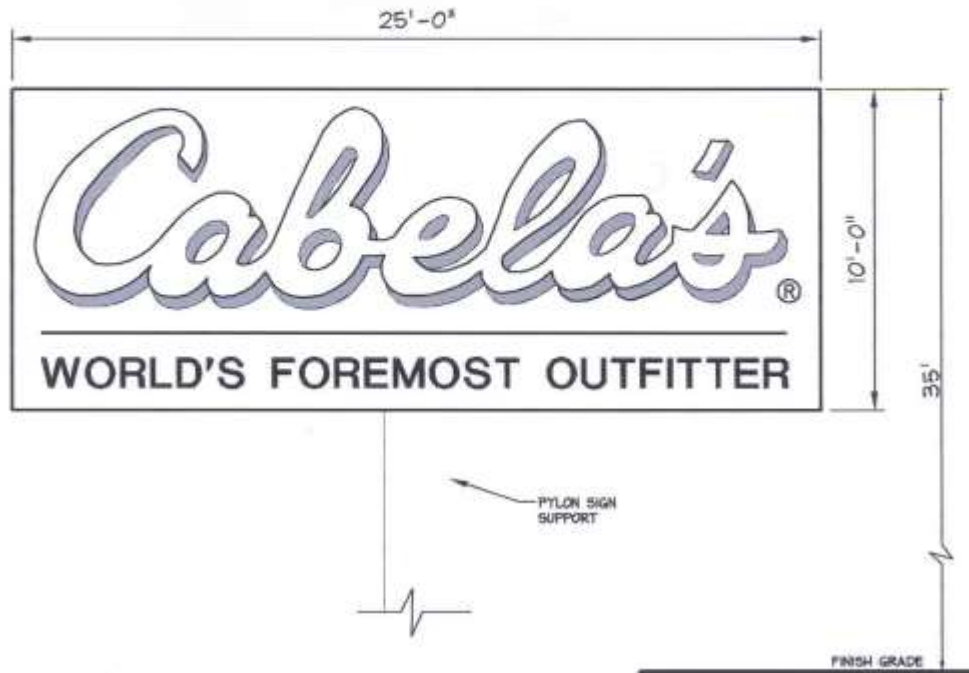
/s/ Richard A. Shinay

Notary Public/Attorney at Law

Attachment 1
Map Change Amendment consisting of one (1) page.



Attachment 2
Cabela's signage depiction consisting of five (5) pages.

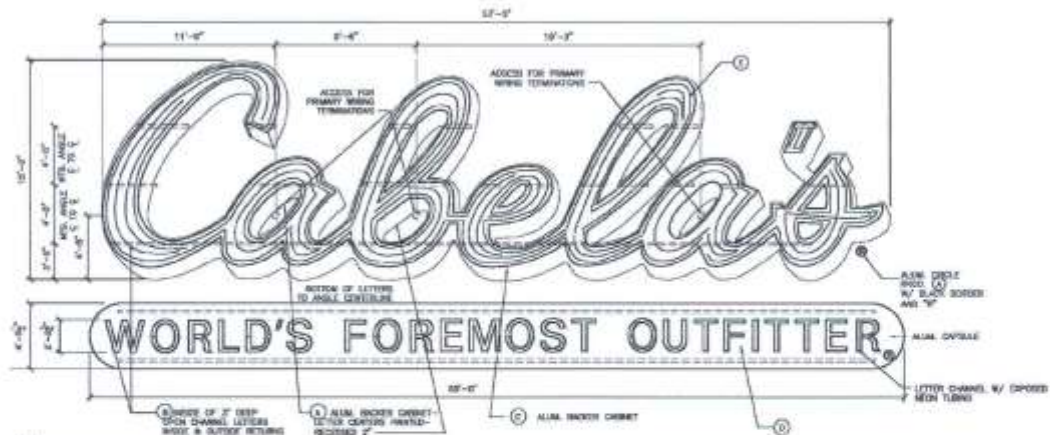


PYLON SIGN
N.T.S.

OEST Associates, Inc.

343 Gorham Road - South Portland, ME 04106-2317
Tel: (207)761-1770 Fax: (207)774-1246
Web: www.oest.com Email: mail@oest.com

engineers
architects
surveyors
construction
managers



A. MATCHING ANTI-REFLECTIVE POLYURETHANE -
COLOR TO MATCH PRECAST CONCRETE PANELS
B. MATCHING MATTERING SPOTCH 1/4"X 1/4" (MATCH)
C. MATCHING MATTERING SPOTCH 1/4"X 1/4" (MATCH)
D. MATCHING MATTERING SPOTCH 1/4"X 1/4" (MATCH)
E. WHITE BORDER FULL PERIMETER OF BLACK SHADOW LINE

NOTE:
"WORLD'S FOREMOST OUTFITTER"
TEXT ONLY APPLIES TO (1) SIGN
ON THE PLAIN WEST SIDE OF THE
BUILDING. SEE SITE PLAN (1/24/17)

NOTE:
COLORED PORTIONS OF CHANNEL
AND BACKING SHALL BE PAINTED
TO MATCH FINISH COLOR OF CONCRETE
WALLS WHERE

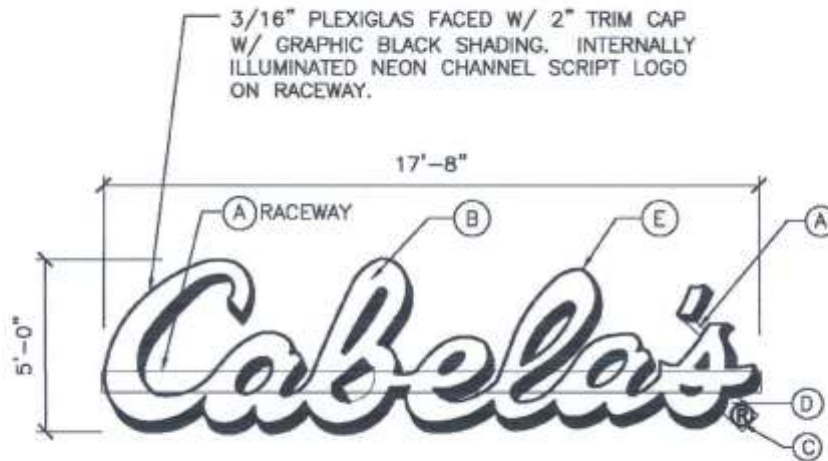
SIGN TYPE A

N.T.S.

OEST Associates, Inc.

343 Gorham Road · South Portland, ME 04106-2317
Tel: (207)761-1770 Fax: (207)774-1246
Web: www.oest.com Email: mail@oest.com

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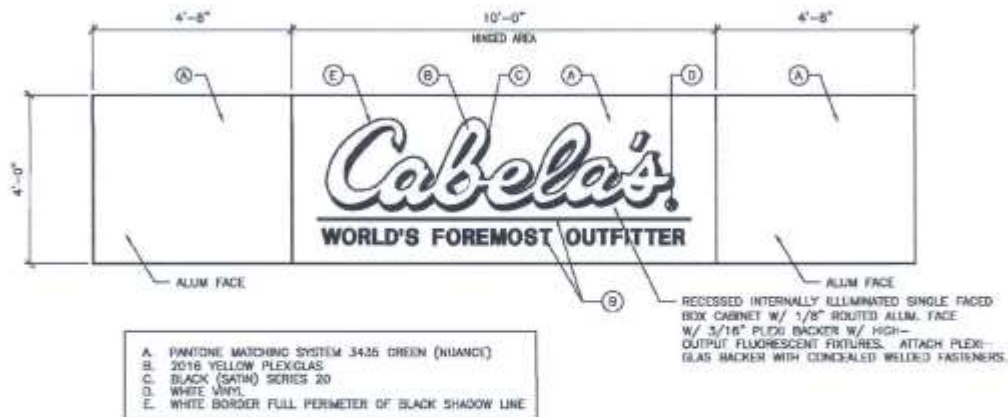
- | | |
|----|---|
| A. | MATCH COLOR OF WOOD STAIN @ LOGS |
| B. | 2016 YELLOW PLEXIGLAS |
| C. | BLACK VINYL |
| D. | .063 WHITE ALUM. |
| E. | WHITE BORDER FULL PERIMETER OF
BLACK SHADOW LINE |

SIGN TYPE B
N.T.S.

OEST Associates, Inc.

343 Gorham Road - South Portland, ME 04106-2317
Tel: (207)761-1770 Fax: (207)774-1246
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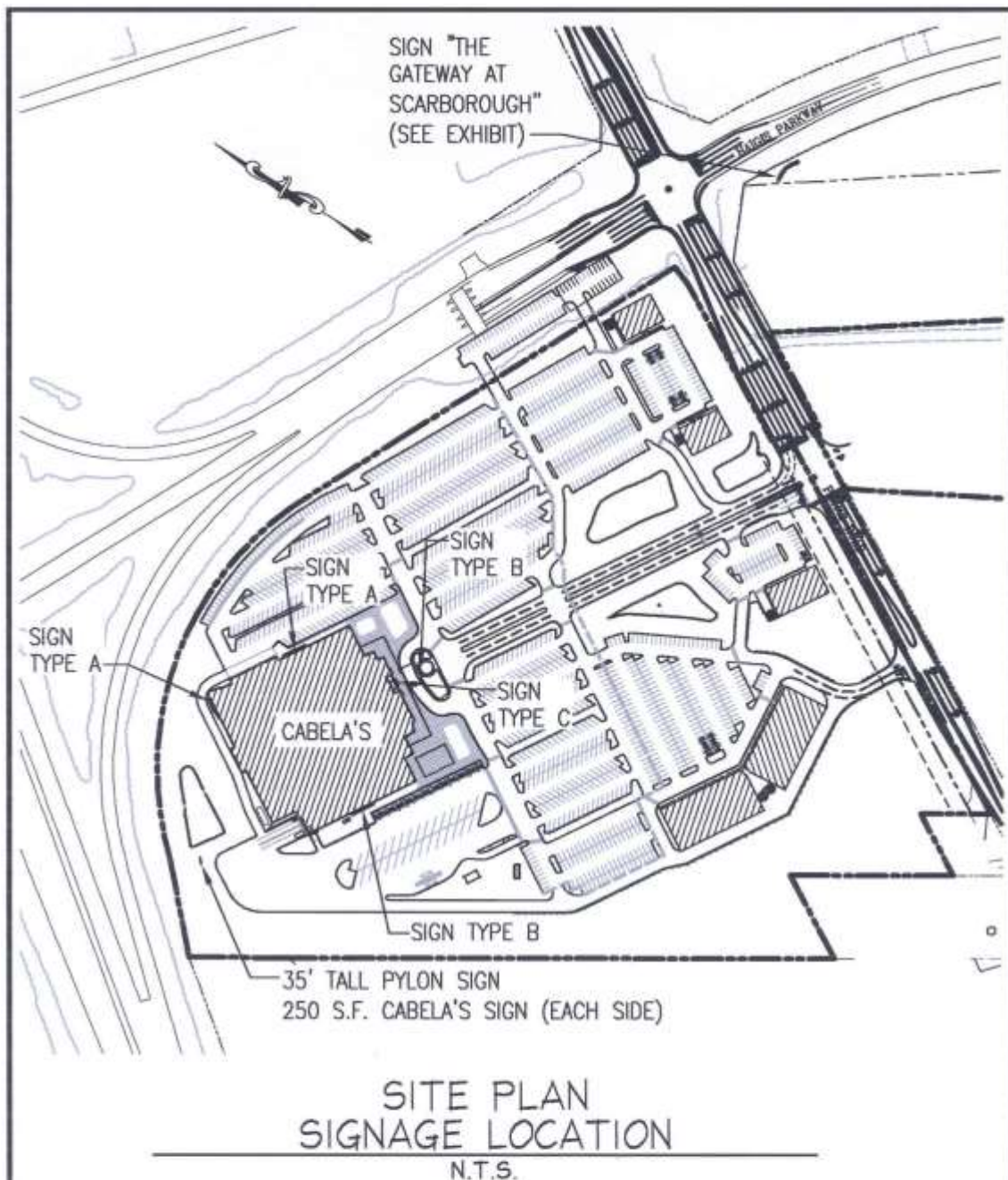
SIGN TYPE C

N.T.S.

OEST Associates, Inc.

343 Gorham Road · South Portland, ME 04106-2317
 Tel: (207)761-1770 Fax: (207)774-1246
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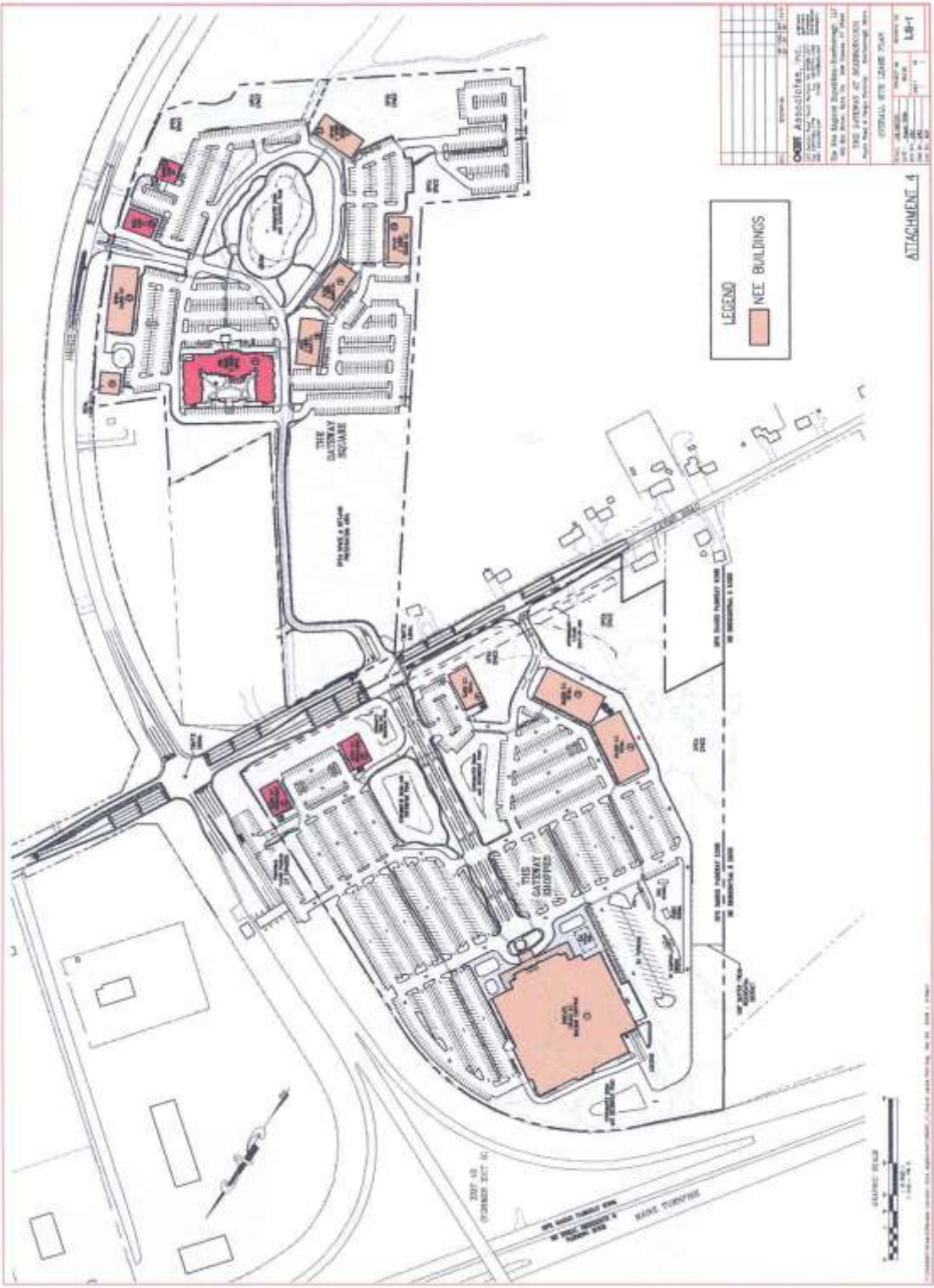
engineers
architects
surveyors
construction
managers

Attachment 3

Project off-site signage depiction consisting of one (1) page.



Attachment 4
Plan of NEE Buildings consisting of one (1) page.



**AMENDMENTS TO
CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND
THE NEW ENGLAND EXPEDITION – SCARBOROUGH LLC**

This First Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the ____ day of _____, 2007 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, this “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, among other modifications of the provisions of the Zoning Ordinance, the Agreement allows for certain specific signage relating to the Cabela’s building described in the Agreement that varies from signage permitted under Section XII of the Zoning Ordinance; and

WHEREAS, Cabela’s has proposed modifications to the number of signs, size and location thereof on its building as currently allowed under the Agreement; and

WHEREAS, the signage requirements of other tenants proposed for the buildings to be constructed within the District vary from the signage otherwise permitted under Section XII of the Zoning Ordinance; and

WHEREAS, New England Expedition has requested that the Town approve this Amendment to the Agreement (a) modifying the number of signs, size and location thereof relating to the Cabela’s building as currently allowed under the Agreement, and (b) permitting certain signage relating to tenants for the proposed buildings to be constructed within the District that varies from the signage otherwise permitted under Section XII of the Zoning Ordinance.

NOW THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, New England Expedition shall be permitted to include signage attached to and associated with the Cabela’s building as more particularly described and shown on Attachment 2 to the Agreement, as modified as described and shown on Attachment 1 to this Amendment.
2. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, New England Expedition shall be permitted to install certain signage hereinafter described, together with related improvements, lighting and landscaping, relating to the

tenants to be located in the buildings to be constructed within the Project as hereinafter provided:

- a. With respect to buildings containing multiple tenants, two (2) wall signs per tenant, each of said signs not to exceed one hundred (100) square feet, one to be located on the front wall of the building and one to be located on the rear wall of the building, except that in the case of end units within a building, the second wall sign may be located on the end wall of the building rather than on the rear wall of the building; and
 - b. With respect to single-tenant buildings, two (2) wall signs, each sign not to exceed one hundred (100) square feet, one to be located on the front wall of the building and one to be located on a second wall of the tenant's choosing, except that in the case of single-tenant buildings to be located in that portion of the Project known as "The Gateway Shoppes at Scarborough", said buildings may have up to four (4) wall signs not to exceed one hundred (100) square feet each, with no more than one (1) such wall sign per wall; and
 - c. With respect to both multiple tenant and single-tenant buildings, the total gross area of all wall signs shall not exceed 10% of the wall area on which they are located.
3. Nothing set forth in the Agreement as amended by this Amendment shall be deemed to limit or prohibit signage within the District that is otherwise allowed under Section XII of the Zoning Ordinance, as it may be amended from time to time.
 4. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.
 5. New England Expedition shall record this Amendment in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

/s/ Laurel R. Nadeau

TOWN OF SCARBOROUGH

By: /s/ Ronald W. Owens

its Town Manager (duly authorized by vote of the Scarborough Town Council on September 5, 2007)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

September 18, 2007

Personally appeared the above named Ronald W. Owens, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

/s/ Yolanda P. Justice

Notary Public

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

/s/ Richard A. Shinay

/s/ Barry E. Feldman
Its Managing Member

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

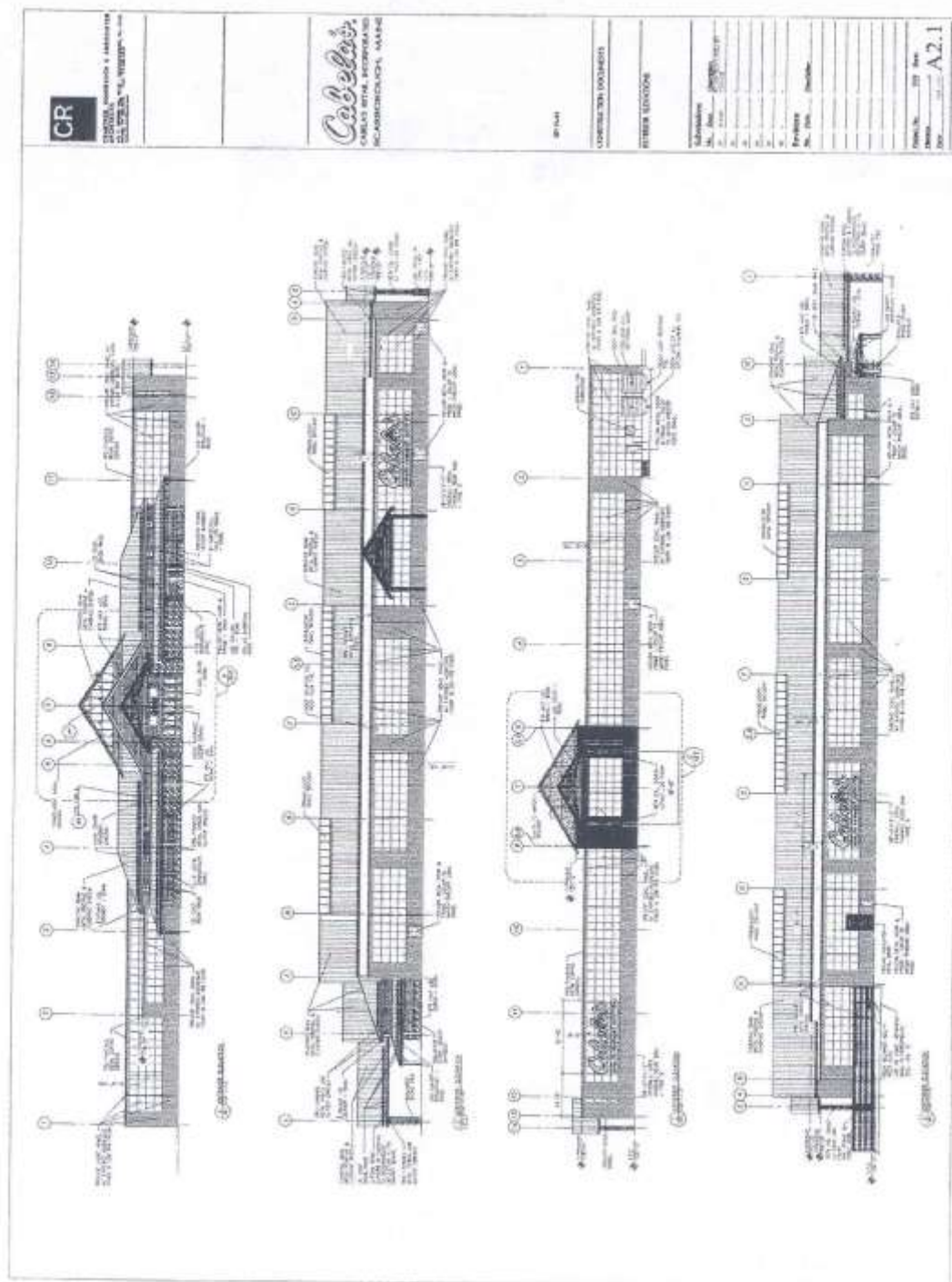
September 12, 2007, 2007

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,
/s/ Richard A. Shinay
Notary Public

Attachment 1

Modification of Cabela's signage depiction consisting of one (1) page.



**AMENDMENTS TO
CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND
THE NEW ENGLAND EXPEDITION – SCARBOROUGH LLC**

This Second Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the ____ day of _____, 2007 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State (hereinafter, the “Town”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, this “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201; and

WHEREAS, the Haigis Parkway District, HP, the underlying District within which the land subject to the Agreement is located, allows for the use of property located therein for “Educational Institutions” only pursuant to a contract zoning agreement; and

WHEREAS, New England Expedition desires to construct one of more buildings to be located in that portion of the Project known as “The Gateway Square at Scarborough” in which will be located an educational institution and being hereinafter referred to as the “Facility”; and

WHEREAS, New England Expedition has requested that the Town approve this Amendment to the Agreement so as to allow for an “Educational Institution” use within the Facility; and

WHEREAS, New England Expedition agrees that use of the Facility by an educational institution will not qualify the Facility for exemption from property taxes under 36 M.R.S.A. § 652 as long as the Facility is owned by a for-profit entity.

NOW THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. “Educational Institution” use shall be a permitted use in that portion of Contract Zoning District Number 9 which the Facility is located.
2. New England Expedition agrees for itself and for any future owner of the Facility that use of the Facility by an educational institution will not qualify the Facility for exemption from property taxes under 36 M.R.S.A. § 652 as long as the Facility is owned by a for-profit entity, and further, that should the Facility ever qualify for a tax exempt status under 36 M.R.S.A. § 652, as it may be amended from time to time or as otherwise may become law by virtue of its use as an Educational Institution and the nature of the ownership entity, then New

England Expedition or the then owner will pay to the Town annually, at the same time property taxes are due, an amount equivalent to one hundred percent (100%) of the property taxes that would be imposed on the facility if it did not qualify for exempt status. Such payments shall be subject to the same interest charges and penalties for late payment or non-payment as are applicable under Maine law for non-payment of property taxes and New England Expedition or any future owner of the Facility shall have the same rights to dispute valuation and seek abatements as if such payments were assessed as property taxes.

3. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, remains consistent with the Comprehensive Plan.

4. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

5. New England Expedition shall record this Amendment in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH

By: _____

Ronald W. Owens, its Town Manager

(duly authorized by vote of the Scarborough
Town Council on November 7, 2007)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2007

Personally appeared the above named Ronald W. Owens, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

Notary Public/Attorney at Law

Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

By: _____

Barry E. Feldman

Its Managing Member

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2007

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

Notary Public/Attorney at Law

Print name

**THIRD AMENDMENT
TO
CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND THE NEW ENGLAND EXPEDITION
– SCARBOROUGH, LLC
THE GATEWAY AT SCARBOROUGH**

This Third Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the 30th day of April, 2008 by and between the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and

WHEREAS, Cabela’s proposes to modify the pylon sign permitted under the Agreement relating to the Cabela’s building described in the Agreement; and

WHEREAS, New England Expedition proposes that banners be allowed to be affixed to light poles within the District; and

WHEREAS, New England Expedition has requested that the Town approve this Amendment to the Agreement (a) permitting a modification of the Cabela’s pylon sign, and (d) permitting banners to be affixed to light poles within the District.

NOW THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The first page of Attachment 2 to the Agreement depicting the Cabela’s pylon sign is hereby deleted and the modified version of the Cabela’s pylon sign depicted on Attachment 1 to this Amendment is substituted in its place.
2. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, banners depicting seasonal or decorative scenes or images, and general or seasonal messages and greetings may be affixed to light poles within the District. Banners

announcing the opening of specific businesses within the District and/or promoting sales of products by specific retailers within the District may be affixed to those types of light poles within the District as depicted on Attachment 2 to this Amendment provided, however, that such types of banners may remain in place for not more than one hundred and eighty (180) cumulative days per calendar year. Banners shall not be allowed to deteriorate in appearance so as to become unsightly.

3. New England Expedition, its lessees, and future owners of all or any portion of the property within the District acquire no property interests in the use of banners as allowed by this Amendment and use of banners will not confer lawful non-conforming use status in the event that the provisions of this Amendment are amended or repealed by the Scarborough Town Council pursuant to this Section 3. Within forty-five (45) days following the first (1st) anniversary of the date of adoption of this Amendment by the Scarborough Town Council, the Town Council shall review the experience with banners and may amend or repeal Section 2 above if it should be determined by the Town Council that (a) the banners have been allowed to deteriorate in appearance so as to become unsightly, or (b) the banners pose a distraction to motorists so as to cause unsafe traffic conditions.

4. Nothing set forth in the Agreement as amended by this Amendment shall be deemed to limit or prohibit signage within the District that is otherwise allowed under Section XII of the Zoning Ordinance, as it may be amended from time to time.

5. The Agreement, as amended by this Amendment and as previously amended by the First Amendment and the Second Amendment, remains consistent with the Comprehensive Plan.

6. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

7. New England Expedition shall record this Amendment in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

/s/ Laurel R. Nadeau

TOWN OF SCARBOROUGH

By: /s/ Ronald W. Owens

Its Town Manager (duly authorized by vote of the Scarborough Town Council on April 30, 2008)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

May 2, 2008

Personally appeared the above named Ronald W. Owens, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

/s/ Yolande P. Justice

Notary Public/Attorney at Law

Yolande P. Justice

Notary Public

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

By: _____

Barry E. Feldman

Its Managing Member

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

May ____, 2008

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

Notary Public/Attorney at Law

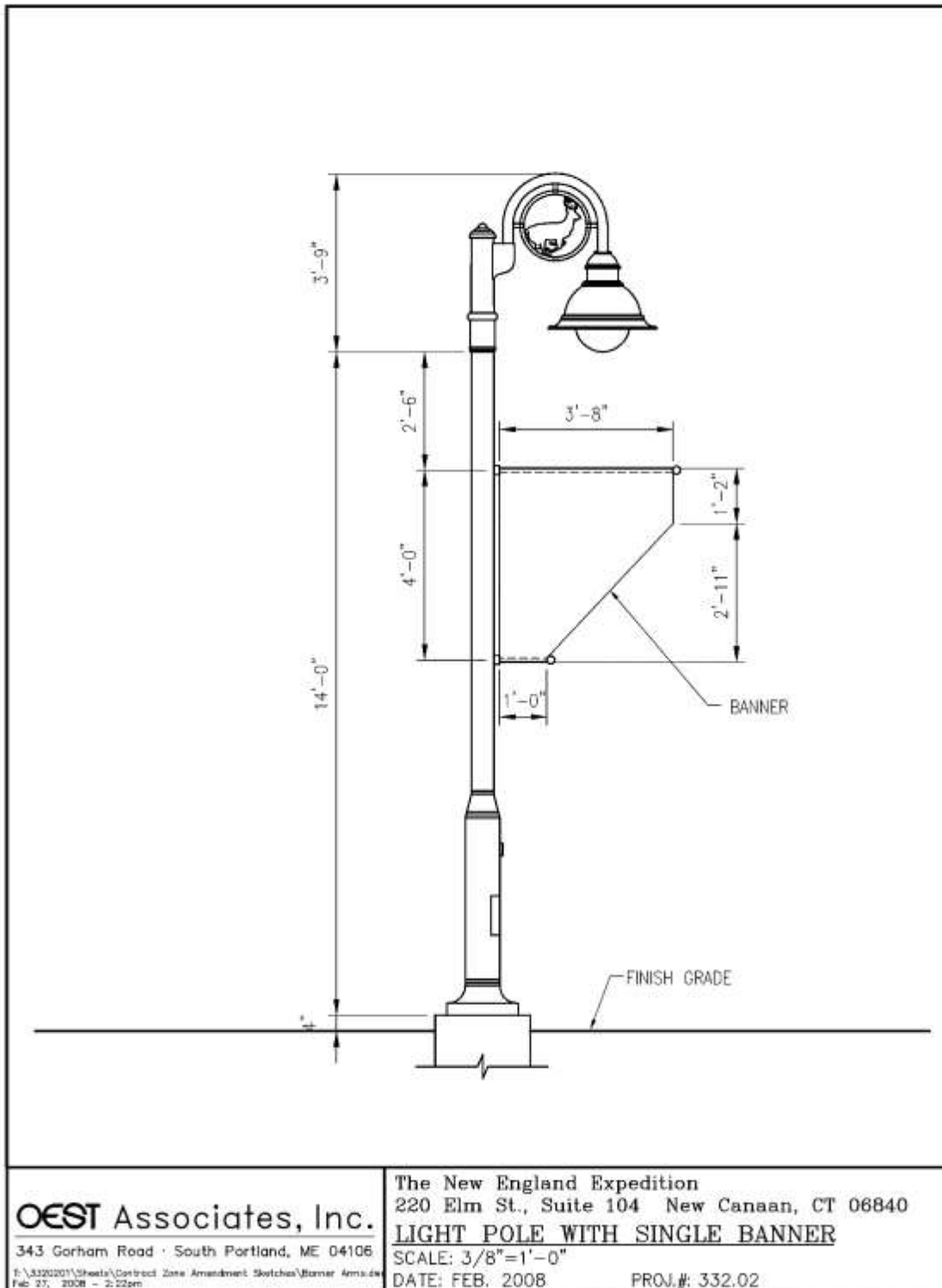
Print name

Attachment 1

Modification of Cabela's pylon sign consisting of one (1) page.



Types of light poles on which temporary banners may be affixed consisting of two (2) pages.



9PCA 33E 02

**TO CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND
THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC
THE GATEWAY AT SCARBOROUGH**

This Fourth Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the 3rd day of March, 2010 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH II, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition II”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and,

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and,

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and,

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30th day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the “Third Amendment”); and,

WHEREAS, Section 6 of the Agreement provided that certain improvements within that portion of the Property located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway known as “The Gateway Square at Scarborough” be “substantially complete,” as that term is defined in said Section 6 of the Agreement, within two (2) years from the date that New England Expedition received Planning Board approval for the Project; and,

WHEREAS, the Town Planner extended said “substantial completion” deadline to March 12, 2010, pursuant to authority granted the Town Planner under said Section 6 of the Agreement; and,

WHEREAS that portion of the Property known as The Gateway Square at Scarborough was conveyed by New England Expedition to New England Expedition II by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and,

WHEREAS, the New England Expedition and the New England Expedition II have requested that the Town approve this Amendment to Section 6 of the Agreement (a) further extending said "substantial completion" deadline for an additional three (3) years to March 12, 2013, and (b) amending the definition of "substantially complete" as set forth therein.

NOW THEREFORE, in consideration of the mutual promises made by the parties to each other, the parties covenant and agree as follows:

1. Section 6 of the Agreement is hereby amended in its entirety to read as follows:

6. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the "Site Plan Ordinance") and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the "Subdivision Ordinance"), with construction anticipated to proceed in phases commencing with that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road and then progressing to that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway. The phasing of the construction as outlined above shall be subject to the additional requirement that construction of that portion of the Project comprising The Gateway Square at Scarborough shall be "substantially complete" no later than March 12, 2013. For purposes hereof, "substantially complete" shall mean the completion of the clearing and rough grading of the Project building sites and related improvement areas and the internal road system, the installation of utilities, storm drains and sanitary sewer lines and the completion and approval of the foundations for one or more buildings containing in the aggregate not less than one hundred thousand (100,000.00) square feet of gross leaseable area.

2. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, the Second Amendment and the Third Amendment, remains consistent with the Comprehensive Plan.

3. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

4. This Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH

By: _____

Thomas J. Hall, its Town Manager (duly authorized by vote of the Scarborough Town Council on March 3, 2010)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

March ____, 2010

Personally appeared the above named Thomas J. Hall, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

Notary Public/Attorney at Law

Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

By: _____
Barry E. Feldman
Its Managing Member

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

March ____, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

Notary Public

Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH II, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

By: _____
Barry E. Feldman
Its Managing Member

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

March ____, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition – Scarborough II, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition – Scarborough II, LLC.

Before me,

Notary Public

Print name

**TO CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND
THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC
THE GATEWAY AT SCARBOROUGH**

**FIFTH AMENDMENT
TO
CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND THE NEW ENGLAND EXPEDITION
– SCARBOROUGH, LLC
THE GATEWAY AT SCARBOROUGH**

This Fifth Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the 21st day of July, 2010 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH II, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition II”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30th day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the “Third Amendment”); and

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by New England Expedition to New England Expedition II by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 3rd day of March, 2010, and recorded in said Registry of Deeds in Book 27642, Page 85 (the “Fourth Amendment”); and

WHEREAS, the New England Expedition and the New England Expedition II have requested that the Town approve this Amendment to the Agreement regarding (a) signage and banners, and (b) certain uses within the District.

NOW THEREFORE, in consideration of the mutual promises made by the parties to each other, the parties covenant and agree as follows:

1. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, in addition to the wall signs permitted under Section 2 of the First Amendment, one (1) additional doorway sign not exceeding fifteen (15) square feet, which sign may be two-sided and, in the case of a two-sided sign, not exceeding fifteen (15) square feet for each face with the width of such two-sided sign between such faces not to exceed one (1) foot, indicating the location of any entrance to a restaurant at which “pick-up,” “take-out” or “to-go” orders can be picked up, may be affixed to the exterior of the building either parallel or perpendicular to the building wall, either attached directly to the building wall or attached to one or more supports attached to the building wall, and located over any such entrance, which sign may not extend more than three (3) feet from the building wall.

2. Section 2 and Section 3 of the Third Amendment are hereby deleted in their entirety.

3. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, banners depicting seasonal or decorative scenes or images, and general or seasonal messages and greetings, may be affixed to those light poles within the District designated “Seasonal Banner Light Pole (Typ.)” on Attachment 1 to this Amendment. Banners promoting sales of products by specific retailers within the District may be affixed to those types of light poles within the District depicted on Attachment 2 to the Third Amendment. Banners shall not be allowed to deteriorate in appearance so as to become unsightly.

4. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, the existing Cabela’s pylon sign depicted on Attachment 1 to the Third Amendment and located where shown on Attachment 1 to this Amendment may be modified so as to include one (1) additional sign for advertising purposes for one or more businesses that may be located within that portion of the District comprising The Gateway Shoppes subject to the following conditions:

- a. Said pylon sign shall not be increased in height; and
- b. Said additional sign shall not be greater in size than seventy-five percent (75%) of the size of the existing Cabela’s sign as shown on said Attachment 1 to the Third Amendment.

This Section 4 shall not be deemed to eliminate the need to comply with applicable State law regarding signage located adjacent to the Maine Turnpike.

5. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, the following additional signage shall be permitted:

- a. One (1) business directory sign not exceeding one hundred fifty (150) square feet, which sign may be two-sided and, in the case of a two-sided sign, not exceeding one hundred fifty (150) square feet for each face, advertising the businesses located within

that portion of the District comprising The Gateway Shoppes, may be located within the area designated “Shoppes Business Directory Sign Area” on Attachment 2 to this Amendment;

- b. Two (2) signs not exceeding thirty-two (32) square feet each, which signs may be two-sided and, in the case of a two-sided sign, not exceeding thirty-two (32) square feet for each face, designating the secondary entrance to The Gateway Shoppes on Payne Road for employees, trucks, buses, recreational vehicles, service vehicles, and delivery vehicles for deliveries to one or more named tenants, one of which may be located within the area designated “Shoppes Secondary Entrance Sign One Area” and one of which may be located within the area designated “Shoppes Secondary Entrance Sign Two Area” on Attachment 2 to this Amendment;
- c. Two (2) business directory signs not exceeding one hundred fifty (150) square feet, which signs may be two-sided and, in the case of a two-sided signs, not exceeding one hundred fifty (150) square feet for each face, advertising the businesses located within that portion of the District comprising The Gateway Square, one of which may be located within the area designated “Square Business Directory Sign One Area” and one of which may be located within the area designated “Square Business Directory Sign Two Area” on Attachment 3 to this Amendment; and
- d. Signs indicating the name of the project and/or the names of not more than three (3) of the businesses located therein may be affixed to the faces of the existing rock walls located on either side of the main entrances on Payne Road and Haigis Parkway to that portion of the District comprising The Gateway Square as shown and designated “Existing Stone Walls” on Attachment 3 to this Amendment.

The signage referred to in this Section 5 shall otherwise comply with all requirements of Section XII of the Zoning Ordinance, as it may be amended from time to time.

6. Nothing set forth in the Agreement as amended by this Amendment shall be deemed to limit or prohibit signage within the District that is otherwise allowed under Section XII of the Zoning Ordinance, as it may be amended from time to time.

7. The following additional uses and related signage shall be permitted within that portion of the District comprising The Gateway Shoppes:

- a. Restaurants that include drive-up or drive-thru service windows to be located within the areas designated “Restaurants with Drive-Ups and Drive-Thrus” on Attachment 4 to this Amendment, the design of which shall be architecturally compatible with the existing buildings, provided that this provision shall not be deemed to prohibit the number of restaurants within the District that do not include drive-up or drive-thru service windows;
- b. Craft shows and art shows, including the sale of items displayed therein, that may be conducted within any building or outdoors and that need not be related to, or accessory to, any existing building or use, which craft shows and art shows conducted outdoors shall be conducted within the areas designated “Special Events” on Attachment 5 to this Amendment, together with temporary signs meeting the requirement of Section XII of the Zoning Ordinance advertising such events and directing persons thereto that may be located within the areas designated “Temporary Sign Areas” on Attachment 5 to this Amendment the day or days of the event; and

- c. Outdoors sales and tent sales that need not be related to, or accessory to, any existing building or use, which outdoor sales and tent sales shall be conducted within the areas designated "Special Events" on Attachment 5 to this Amendment, together with temporary signs meeting the requirements of Section XII of the Zoning Ordinance advertising such events and directing persons thereto that may be located within the areas designated "Temporary Sign Areas" on Attachment 5 to this Amendment the day or days of the event.
- d. Not more than an aggregate total of six (6) craft shows, art shows, outdoor sales and tent sales, which shall not exceed three (3) consecutive days each, excluding time for setup, dismantling and cleanup which may occur on the day immediately before the commencement of the event and on the day immediately after the conclusion of the event unless additional time is required due to inclement weather or other circumstances beyond the reasonable control of the business or organization conducting the event, may be conducted within a calendar year.

8. Craft shows, art shows, outdoor sales and tent sales described in Section 7 above that are not being conducted by on-site businesses shall be subject to the review and approval by the Code Enforcement Officer and the Chief of the Scarborough Fire Department in accordance with the following procedure:

- a. No later than twenty-one (21) days prior to the date of commencement of the event, the Code Enforcement Officer and the Chief of the Scarborough Fire Department shall be provided with written notification of the event, which notification shall contain the following information:
 - i. The type of event;
 - ii. The name, address and telephone number of the business or organization conducting the event, together with the name of an individual associated with such business or organization who can be contacted regarding the event;
 - iii. A sketch plan showing in which Special Events areas the event will be conducted and the approximate layout of the event facilities within those areas; and
 - iv. The date or dates during which the event will be conducted.
- b. If the proposed event is anticipated to be repeated on multiple dates such as, by way of example, an art show that occurs on multiple Sundays each week during the months of June through October, only a single notification in accordance with Subsection 8. a. above need be provided to the Code Enforcement Officer and the Chief of the Scarborough Fire Department prior to the date of the first of such multiple repetitive events.
- c. Any temporary structures such as tents shall require a permit be obtained not less than seven (7) days prior to the date or dates of the event from the Chief of the Scarborough Fire Department.
- d. The event shall comply with all National Fire Protection Association and Town fire safety standards and requirements as applicable.

e. In the event that the Code Enforcement Officer and/or the Chief of the Scarborough Fire Department should reasonably determine that the event fails to comply with the terms and conditions set forth herein, the Code Enforcement Officer and/or the Chief of the Scarborough Fire Department shall provide written notice to the notifying party indicating in what manner the event fails to so comply. In the event the Code Enforcement Officer and/or the Chief of the Scarborough Fire Department should fail to provide such notice to the notifying party within fourteen (14) days following the Code Enforcement Officer's and the Chief of the Scarborough Fire Department's receipt of the notification required in Subsection 8. a. above, the event shall be deemed approved.

f. No other Town permits or approvals shall be required for such events.

9. The terms and conditions of this Amendment including, but not limited to, the review and approval process described in Section 8 above for craft shows, art shows, outdoor sales and tent sales that are not being conducted by on-site businesses, shall not be applicable to craft shows, art shows, outdoor sales and tent sales that are otherwise allowed to be conducted by on-site businesses in accordance with the Zoning Ordinance and other applicable Town regulations and procedures.

10. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, remains consistent with the Comprehensive Plan.

11. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

12. This Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH

By: _____

Thomas J. Hall, its Town Manager (duly authorized by vote of the Scarborough Town Council on July 21, 2010)

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

July ____, 2010

Personally appeared the above named Thomas J. Hall, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

Notary Public/Attorney at Law

Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

By: _____
Barry E. Feldman
Its Managing Member

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

July ____, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

Notary Public

Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH II, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

By: _____
Barry E. Feldman
Its Managing Member

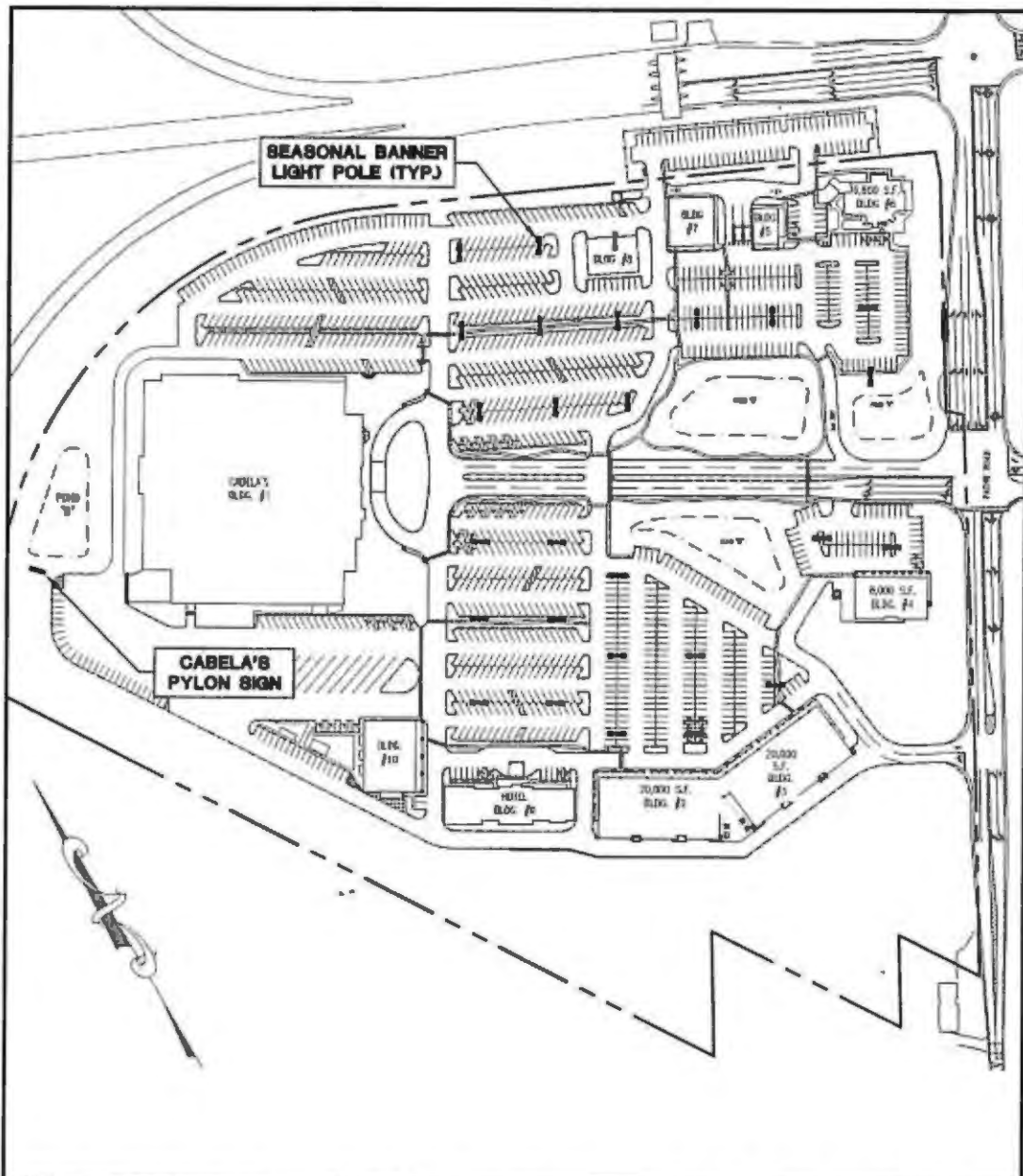
STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

July ____, 2010

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition – Scarborough II, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition – Scarborough II, LLC.

Before me,

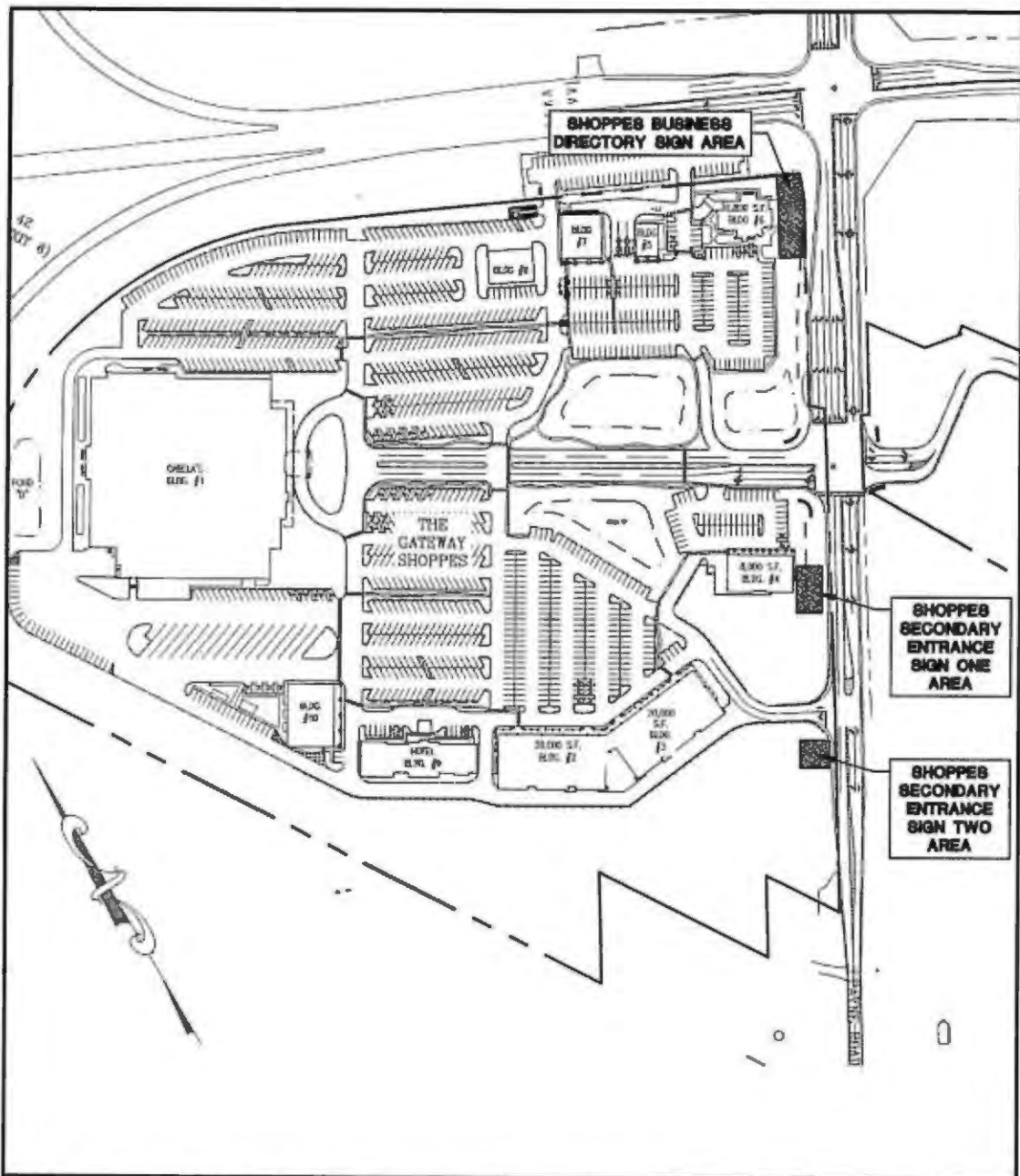
Notary Public




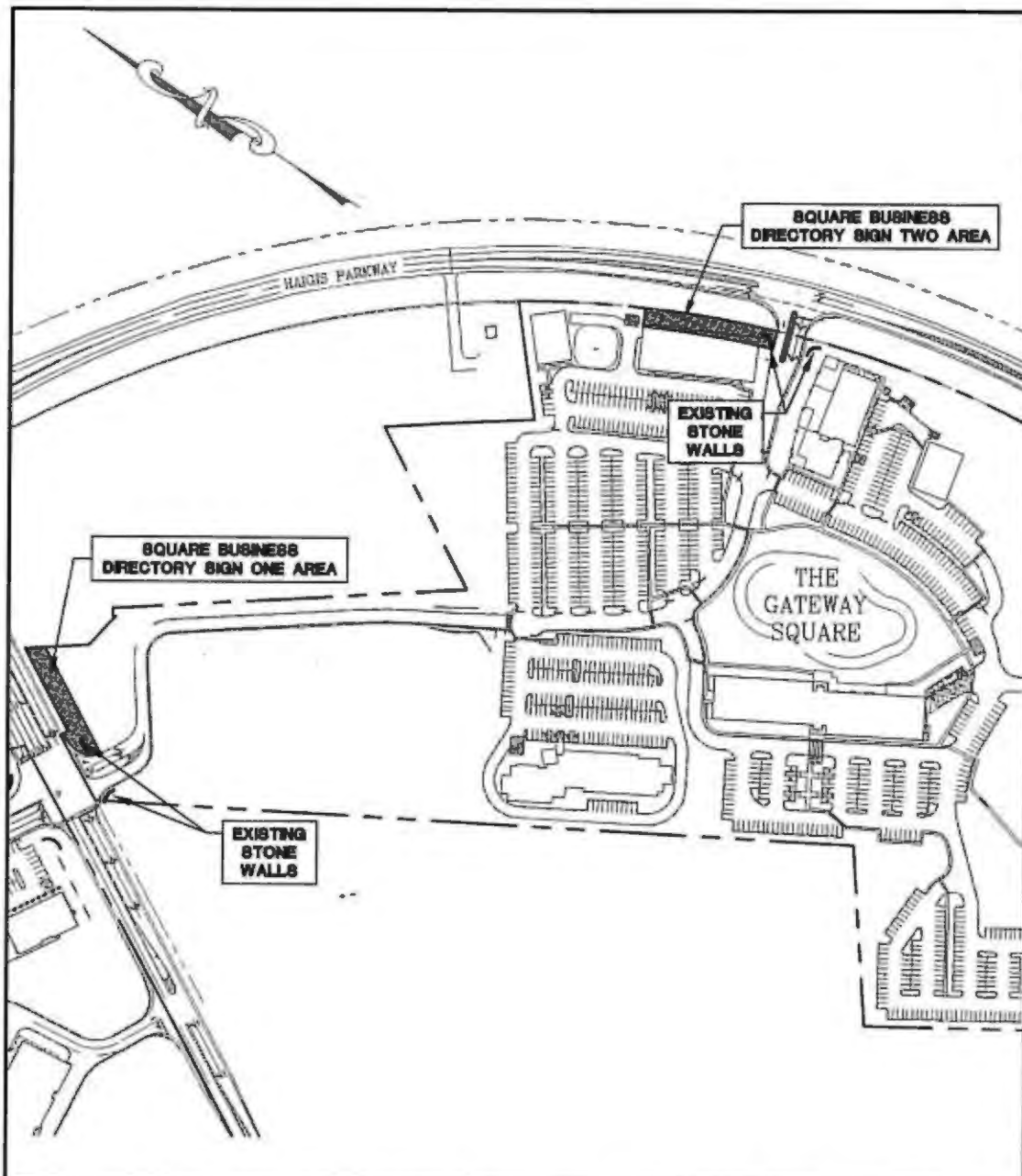
PROJECT: The New England Expedition - Scarborough, LLC The Gateway at Scarborough Payne Rd. & Haight Parkway - Scarborough, Maine		PROJECT NUMBER: 332.02.90
		PROJECT MANAGER: GRC
		A/E OF RECORD: SDH
		CAD FILE:
		DRAWN BY: GRC
		DATE: June 2010
		SCALE: N.T.S.
TITLE: GATEWAY SHOPPES SEASONAL BANNERS & PYLON SIGN		SKETCH NO: Attachment 1




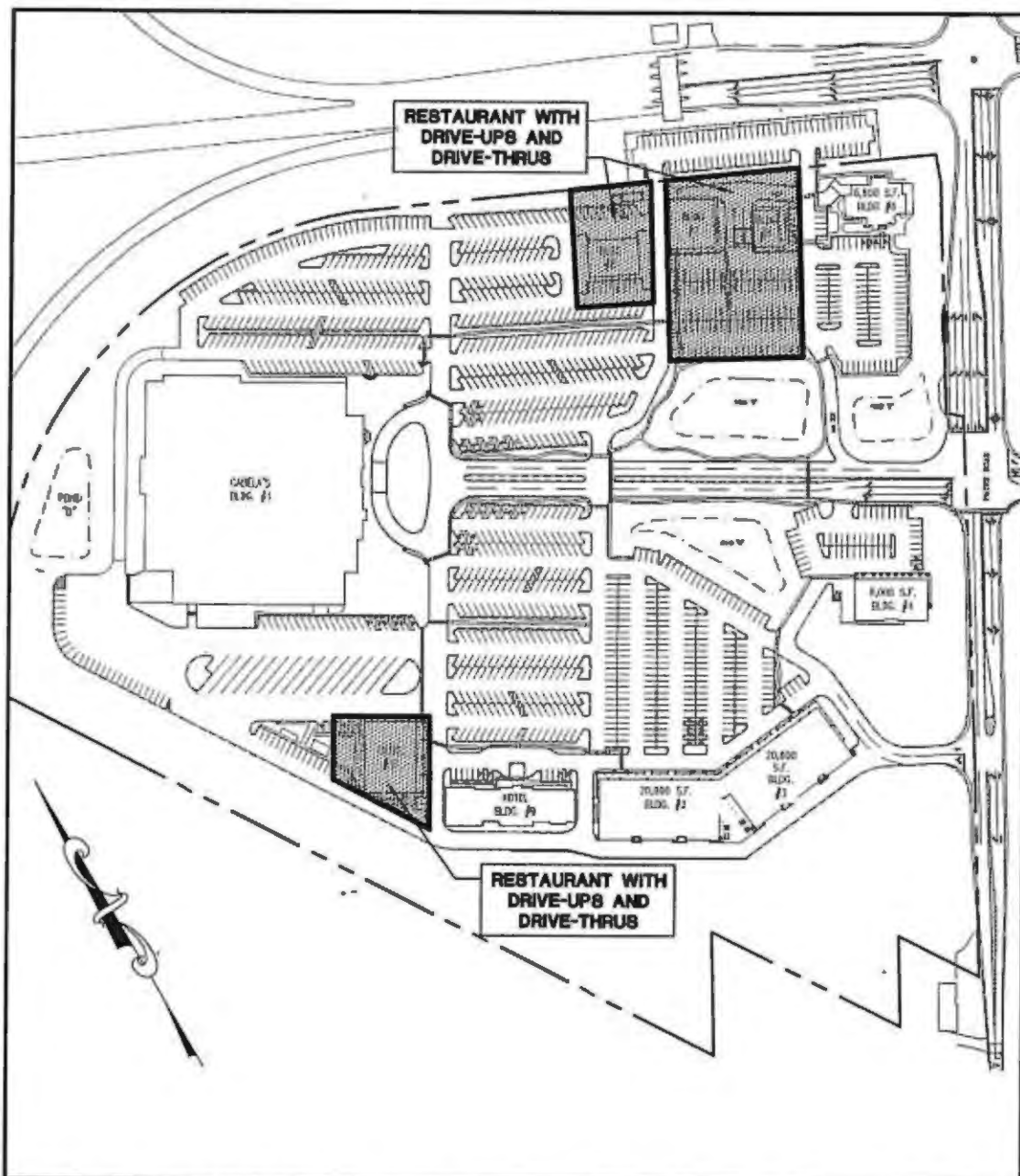
340 Granite Road, South Portland, ME 04106
P: (207) 761-1770 F: (207) 774-1200 www.amec.com




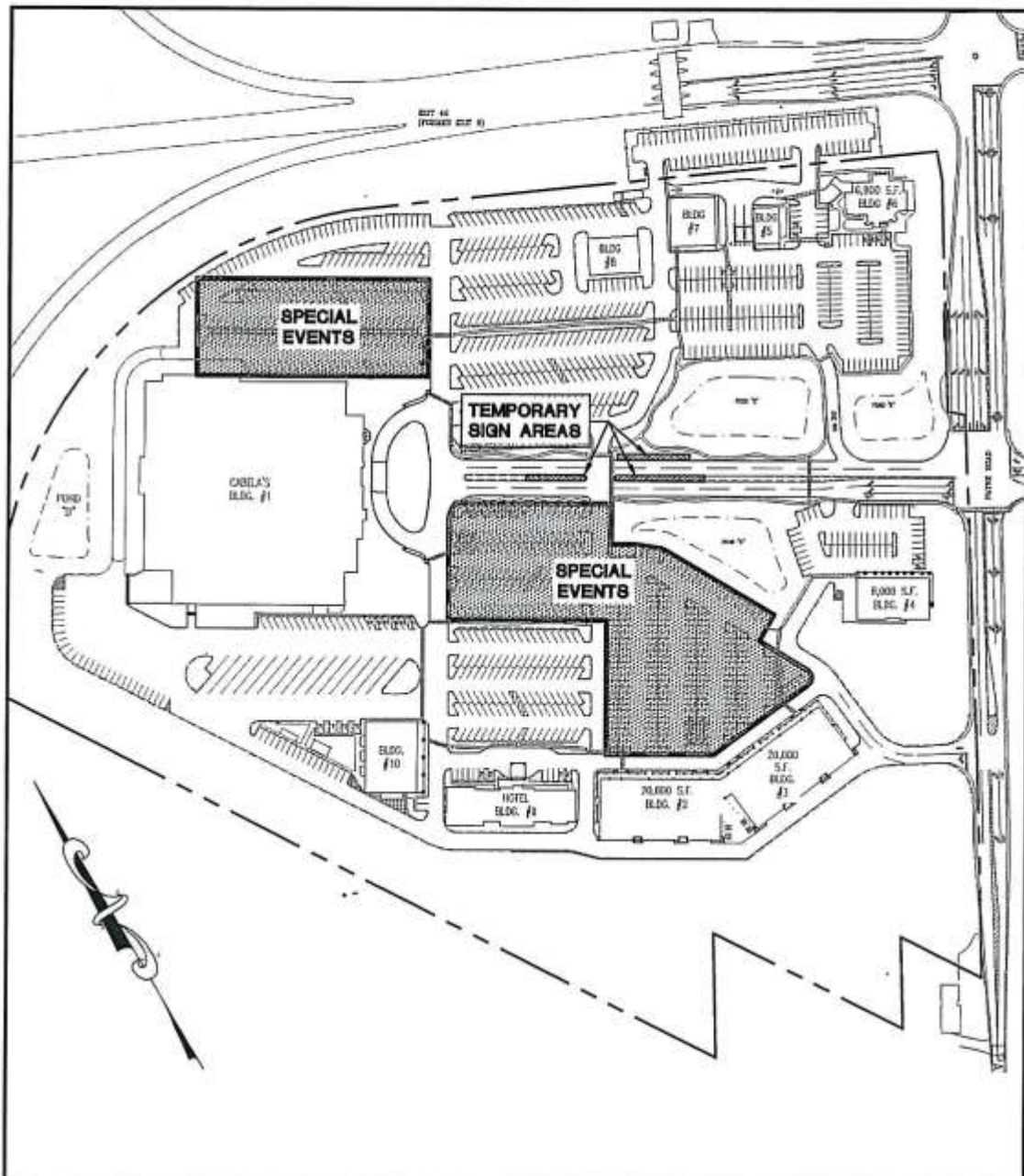
PROJECT: The New England Expedition - Scarborough, LLC The Gateway at Scarborough Payne Rd. & Holgis Parkway - Scarborough, Maine		PROJECT NUMBER: 332.02.00	
		PROJECT MANAGER: GRC	
		A/E OF RECORD: SDH	
 340 Cornwell Road, South Portland ME 04106 P: (207) 551-1272 F: (207) 574-1248 www.amec.com	TITLE: GATEWAY SHOPPES DIRECTORY AND SECONDARY ENTRANCE SIGNS	CAD FILE:	
		DRAWN BY: GRC	SKETCH NO: Attachment 2
		DATE: June 2010	
		SCALE: N.T.S.	




PROJECT: The New England Expedition - Scarborough, LLC The Gateway at Scarborough Payne Rd. & Holds Parkway - Scarborough, Maine		PROJECT NUMBER: 332.02.90	
		PROJECT MANAGER: GRC	
		A/E OF RECORD: SDH	
 343 Doherty Road, South Portland, ME 04106 P: (207) 751-1770 F: (207) 774-1268 www.ameco.com	TITLE: GATEWAY SQUARE DIRECTORY AND EXISTING STONE WALL SIGNS		CAD FILE:
			DRAWN BY: GRC
			DATE: June 2010
			SCALE: N.T.S.
		SKETCH NO: Attachment 3	



PROJECT: The New England Expedition - Scarborough, LLC The Gateway at Scarborough Payne Rd. & Haisla Parkway - Scarborough, Maine		PROJECT NUMBER: 332.02.90	
		PROJECT MANAGER: GRC	
		A/E OF RECORD: SDH	
 343 Grafton Road, South Portland, ME 04106 P: (207) 761-1770 F: (207) 774-1246 www.amec.com		TITLE: GATEWAY SHOPPES RESTAURANTS WITH DRIVE-UPS AND DRIVE-THRU8	
		CAD FILE:	
		DRAWN BY: GRC	SKETCH NO:
		DATE: June 2010	Attachment 4
SCALE: N.T.S.			



PROJECT: The New England Expedition - Scarborough, LLC The Gateway at Scarborough Payne Rd. & Halja's Parkway - Scarborough, Maine		PROJECT NUMBER: 332.02.90 PROJECT MANAGER: GRC A/E OF RECORD: SDH	
 <small>340 Gateway Road, South Portland ME 04106 P: (207) 261-1770 F: (207) 776-1246 www.amec.com</small>		CAD FILE: DRAWN BY: GRC DATE: June 2010 SCALE: N.T.S.	
TITLE: GATEWAY SHOPPES SPECIAL EVENTS		SKETCH NO: Attachment 5	

**CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND THE NEW ENGLAND EXPEDITION
– SCARBOROUGH, LLC**

THE GATEWAY AT SCARBOROUGH

This Sixth Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the ____ day of _____, 2011 by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH II, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition II”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30th day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the “Third Amendment”); and

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by New England Expedition to New England Expedition II by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 3rd day of March, 2010, and recorded in said Registry of Deeds in Book 27642, Page 85 (the “Fourth Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fifth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and

New England Expedition II dated as of the 21st day of July, 2010, and recorded in said Registry of Deeds in Book 27960, Page 322 (the "Fifth Amendment"); and

WHEREAS, the New England Expedition and the New England Expedition II have requested that the Town approve this Amendment to the Agreement regarding the height of the business directory signs permitted within the District.

NOW THEREFORE, in consideration of the mutual promises made by the parties to each other, the parties covenant and agree as follows:

1. Notwithstanding Section XII of the Zoning Ordinance, as it may be amended from time to time, the business directory signs permitted within the District under Section 5.a. and Section 5.c. of the Fifth Amendment may be up to sixteen (16) feet in height as measured from the base of such signs at ground level.
2. Nothing set forth in the Agreement as amended by this Amendment shall be deemed to limit or prohibit signage within the District that is otherwise allowed under Section XII of the Zoning Ordinance, as it may be amended from time to time.
3. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment, remains consistent with the Comprehensive Plan.
4. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.
5. This Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH

Thomas J. Hall, its Town Manager (duly authorized by vote of the Scarborough Town Council on _____, 2011)

By: _____

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2011

Personally appeared the above named Thomas J. Hall, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

Notary Public/Attorney at Law

Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

By: _____
Barry E. Feldman
It's Managing Member

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

_____, 2011

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

Notary Public

Print name

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH II, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

By: _____
Barry E. Feldman
It's Managing Member

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

_____, 2011

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition – Scarborough II, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition – Scarborough II, LLC.

Before me,

Notary Public



SIGNConcepts
Visual Communication Experts

Date: 4/23/09 Scale: 1/4" = 1'

Drawing #: 4 Sales Rep: DF

Rev #: 14 Rev Date: 11/17/10

Appr'd by:

The Gateway Shoppes

• Internally illuminated tenant pylon sign

• Internally illuminated sign cabinet w/ 3x16" white Lexan faces

• Custom fabricated "roof"

• Cultured stone pylons to match existing Cabeda's colors

This design is the exclusive property of Sign Concepts, LLC, and cannot be copied, exhibited, or shown to anyone outside of your organization without the prior consent of Sign Concepts, LLC. Copyright © 2010

**SEVENTH AMENDMENT
TO
CONTRACT ZONING AGREEMENT
BETWEEN THE TOWN OF SCARBOROUGH AND THE NEW ENGLAND
EXPEDITION – SCARBOROUGH, LLC
THE GATEWAY AT SCARBOROUGH**

This Seventh Amendment to Contract Zoning Agreement (hereinafter, this “Amendment”) is made as of the 6th day of March, 2013, by and among the TOWN OF SCARBOROUGH, a body corporate and politic, located in the County of Cumberland and State of Maine (hereinafter, the “Town”), THE NEW ENGLAND EXPEDITION – SCARBOROUGH, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition”), and THE NEW ENGLAND EXPEDITION – SCARBOROUGH II, LLC, a Maine limited liability company with an office at 220 Elm Street, Suite 104, New Canaan, Connecticut 06840 (hereinafter, “New England Expedition II”), pursuant to the Contract Zoning provisions of Section II, Subsection I of the Zoning Ordinance of the Town of Scarborough (hereinafter, the “Zoning Ordinance”).

WHEREAS, New England Expedition entered into a Contract Zoning Agreement with the Town dated as of the 3rd day of January, 2007 (hereinafter, the “Agreement”) creating Contract Zoning District Number 9 (hereinafter, the “District”) as described in Section XXIII of the Zoning Ordinance, said Agreement having been recorded in the Cumberland County Registry of Deeds in Book 24730, Page 25; and

WHEREAS, the Agreement was amended pursuant to the terms and provisions of a First Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 5th day of September, 2007, and recorded in said Registry of Deeds in Book 25482, Page 201 (the “First Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Second Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 7th day of November, 2007, and recorded in said Registry of Deeds in Book 25610, Page 171 (the “Second Amendment”); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Third Amendment to Contract Zoning Agreement between the Town and New England Expedition dated as of the 30th day of April, 2008, and recorded in said Registry of Deeds in Book 26060, Page 162 (the “Third Amendment”); and

WHEREAS, that portion of the Property comprising The Gateway Square at Scarborough was conveyed by New England Expedition to New England Expedition II by Quitclaim Deed With Covenant dated September 18, 2009, and recorded in said Registry of Deeds in Book 27269, Page 212; and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fourth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 3rd day of March, 2010, and recorded in said Registry of Deeds in Book 27642, Page 85 (the "Fourth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Fifth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 21st day of July, 2010, and recorded in said Registry of Deeds in Book 27960, Page 322 (the "Fifth Amendment"); and

WHEREAS, the Agreement was further amended pursuant to the terms and provisions of a Sixth Amendment to Contract Zoning Agreement by and among the Town, New England Expedition and New England Expedition II dated as of the 19th day of January, 2011, and recorded in said Registry of Deeds in Book 28464, Page 260 (the "Sixth Amendment"); and

WHEREAS, Section 6 of the Agreement, as amended pursuant to said Fourth Amendment to Contract Zoning Agreement, provides that certain improvements within that portion of the Property located on the southeasterly side of Payne Road and the southwesterly side of Haigis Parkway known as "The Gateway Square at Scarborough" be "substantially complete," as that term is defined in said Section 6 of the Agreement as amended, no later than March 12, 2013; and

WHEREAS, the New England Expedition and the New England Expedition II have requested that the Town approve this Seventh Amendment to Contract Zoning Agreement further amending the definition of "substantially complete" as set forth in Section 6 of the Agreement, as previously amended, to eliminate the requirement that by March 12, 2013, foundations for one or more buildings containing in the aggregate not less than one hundred thousand (100,000.00) square feet of gross leaseable area be completed and approved within The Gateway Square at Scarborough.

NOW THEREFORE, in consideration of the mutual promises made by the parties to each other, the parties covenant and agree as follows:

1. Section 6 of the Agreement is hereby further amended in its entirety to read as follows:

6. The Property shall be developed and used only in accordance with the site plan and subdivision plan as finally approved by the Scarborough Planning Board, and as said approved site plan and subdivision plan may be amended from time to time pursuant to the provisions of the Site Plan Review Ordinance of the Town of Scarborough (hereinafter, the "Site Plan Ordinance") and the Subdivision Ordinance of the Town of Scarborough (hereinafter, the "Subdivision Ordinance"), with construction anticipated to proceed in phases commencing with that portion of the Property comprising The Gateway Shoppes at Scarborough located on the northwesterly side of Payne Road and then progressing to that portion of the Property comprising The Gateway Square at Scarborough located on the southeasterly side of Payne Road and the southwesterly side

of Haigis Parkway. The phasing of the construction as outlined above shall be subject to the additional requirement that construction of that portion of the Project comprising The Gateway Square at Scarborough shall be "substantially complete" no later than March 12, 2013. For purposes hereof, "substantially complete" shall mean the completion of the clearing and rough grading of the Project building sites and related improvement areas and the internal road system, and the installation of utilities, storm drains and sanitary sewer lines.

2. The Agreement, as amended by this Amendment and as previously amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, remains consistent with the Comprehensive Plan.

3. Except as specifically amended herein, all terms and conditions of the Agreement shall remain in full force and effect.

4. This Amendment shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days after its approval by the Scarborough Town Council.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

WITNESS:

TOWN OF SCARBOROUGH

Yolande Justice

By: Thomas J. Hall
Thomas J. Hall, its Town Manager (duly
authorized by vote of the Scarborough
Town Council on March 6, 2013)

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

March 6, 2013

Personally appeared the above named Thomas J. Hall, Town Manager of the Town of Scarborough, and acknowledged the foregoing instrument to be his free act deed in his said capacity and the free act and deed of said Town of Scarborough.

Before me,

Yolande Justice
Notary Public/Attorney at Law



YOLANDE P. JUSTICE
Print name Notary Public, Maine
My Commission Expires October 21, 2015

WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

Elise Klein

By: Barry E. Feldman
Barry E. Feldman
Its Managing Member

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

March 8th, 2013

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition - Scarborough, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition - Scarborough, LLC.

Before me,

SEAL

Elise Klein
Notary Public

Elise Klein
Print name



WITNESS:

THE NEW ENGLAND EXPEDITION-
SCARBOROUGH II, LLC

By FELDCO SCARBOROUGH, LLC, its
Manager

Elise Klein

By: Barry E. Feldman
Barry E. Feldman
Its Managing Member

STATE OF CONNECTICUT
COUNTY OF FAIRFIELD, ss.

March 8th, 2013

Personally appeared the above named Barry E. Feldman, in his capacity as the Managing Member of Feldco Scarborough, LLC, the Manager of The New England Expedition – Scarborough II, LLC, and acknowledged the foregoing instrument to be his free act deed in his said capacity, the free act and deed of said Feldco Scarborough, LLC in its said capacity, and the free act and deed of said The New England Expedition – Scarborough II, LLC.

Before me,

Elise Klein

Notary Public

Elise Klein

Print name



SEAL

Received
Recorded Register of Deeds
Mar 12, 2013 03:33:38P
Cumberland County
Pamela E. Lovley

RECEIVED
CUMBERLAND COUNTY
MAR 12 2013 3:33 PM
PAMELA E. LOVLEY

Attachment 6: List of Development Team Members/Contact Information

Development Team Overview/Contact Information

Principals:

Devine Capital, LLC

Primary Contact: Ben Devine

Email: bmd300@gmail.com

Telephone: (617) 548-8412

Address: Two Monument Square, 7th Floor
Portland, ME 04101

KGI Properties, LLC

Primary Contact: Rick Granara

Email: r.granara@kgiproperties.com

Telephone: (401) 273-8600

Address: 10 Memorial Boulevard
Two Monument Square
Providence, RI 02903

Engineers:

Sebago Technics

Primary Contact: Will Conway

Email: wconway@sebagotechnics.com

Telephone: (207) 200-2100

Address: 75 John Roberts Road
South Portland, ME 04106

Gate 17 Architecture, LLC

Primary Contact: Timothy Wentz

Email: tim@gate17architecture, LLC

Telephone: (484) 459-0099

Address: 35 Grove Street
Haddonfield, NJ 08033

Legal:

Fletcher, Selser & Devine, LLC

Primary Contact: William Fletcher

Email: wfletcher@fsd-lawfirm.com

Telephone: (207) 536-4665

Address: Two Monument Square, 7th Floor
Portland, ME 04101

Construction Contractor/Marketing:

The Simon Konover Company

Primary Contact: Newton Brainard

Email: nbrainard@simonkonover.com

Telephone: (860) 570-2000

Address: 342 N. Main Street
West Hartford, CT 06117

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 21, 2016
REGULAR MEETING – 7:00 P.M.

Order No. 16-083. Move approval on the request from the Deputy Tax Collector for a waiver of foreclosure on the following properties: 4 David Drive – Map T003/Lot 004, 29 Matthews Way – Map T003/Lot 029, 13 Crystal Lane – Map T003/Lot 013, 15 Crystal Lane – Map T0003/Lot 015 and 20 Garnet Drive – Map T003/Lot 020, and authorize the Town Manager to sign the necessary documentation. [*Deputy Tax Collector*]

Town Clerk

Sponsor

12/07/16

First Reading/Vote

Ought to Pass

Recommendation

N/A

Second Reading/Final Approval/Vote

To: Tom Hall

CC: Ruth Porter

From: Lisa Saulle

Date: 12/6/16

Re: Waiver of Foreclosures

Mr. Hall,

This is a request for the Council to waive Automatic Foreclosure on the following properties:

4 David Drive Map T003/ Lot 004

29 Matthews Way Map T003/ Lot 029

13 Crystal Ln Map T003/ Lot 013

15 Crystal Ln Map T003/ Lot 015

20 Crystal Ln Map T003/ Lot 020

These properties have outstanding taxes from 2014 and are due to foreclose on 12/22/16.

Thank you,
Lisa Saulle
Deputy Tax Collector

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 21, 2016
REGULAR MEETING – 7:00 P.M.

Order No. 16-084. Move approval on the request to authorize the Town Manager to enter into a Service Agreement with the Town of Wells for vehicle maintenance and to sign any and all documents. *[Town Manager]*

Town Manager

Sponsor

12/21/16

First Reading/Vote

Ought to Pass

Recommendation

N/A

Second Reading/Final Approval/Vote

**SERVICE AGREEMENT FOR VEHICLE MAINTENANCE AND REPAIR
BETWEEN
THE TOWN OF SCARBOROUGH
AND
THE TOWN OF WELLS**

AGREEMENT between the Town of Scarborough, Maine, with a mailing address of 259 U.S. Route 1, PO Box 360, Scarborough, ME 04070-0360 ("Scarborough") and the Town of Wells with a mailing address of, 208 Sanford Road, Wells, ME 04090 ("Wells"), collectively ("the Parties"), as follows:

WHEREAS, Scarborough has the means and capacity to provide maintenance and repair services on the specialty fire suppression systems of the Town of Wells' Fire apparatus; and

WHEREAS, Wells wishes to contract with Scarborough for the provision of VEHICLE MAINTENANCE AND REPAIR SERVICES; and

WHEREAS, Wells and Scarborough are duly authorized to enter into Service Agreements pursuant to their home rule authority under 30-A M.R.S.A. §3001; and

NOW THEREFORE, in consideration of the promises and the covenants set forth herein, the Parties agree as follows:

1. Services to be provided:

Scarborough will furnish the qualified personnel and all necessary facilities and materials to provide Vehicle Maintenance and Repair Services to Wells as more fully described in **Attachment A**.

2. Term:

The initial term of this Agreement shall commence on January 1, 2017 and end on June 30, 2017; and thereafter, this Agreement shall be automatically renewed without affirmative action by the Parties for successive one-year periods, each July 1st – June 30th, or until notice of termination as set forth in this Agreement is otherwise given. This Agreement may be extended for future additional terms by the mutual consent of the Parties. Such extensions shall be the subject of formal approvals by both Parties in writing and shall include additional terms and conditions of such extension(s), including, but not limited to, changes in the annual fees or levels of service related to the provision of Vehicle Maintenance and Repair Services.

3. Payments for Services

Payments for services will be based on actual hourly and benefits costs and related overhead expenses as detailed in **Attachment B**. During the first year of the contract the regular hourly rate for services shall be \$55.23 and the overtime hourly rate shall be \$82.85. Thereafter, the hourly rate will increase annually by a minimum of 3% on July 1st of each year.

Repair and maintenance parts costing *less than \$1,000.00* will be sold at cost plus 15%. Parts costing *more than \$1,000.00* will be sold at cost plus 10%.

Scarborough will issue invoices by the fifteenth of each month. The terms are NET thirty (30) DAYS. Balances not paid within terms are subject to a finance charge of 1.5% per month (ANNUAL PERCENTAGE RATE OF 18%). A minimum finance charge of \$.50 will apply to any past due balance. Accounts not paid in accordance with stated terms may be obligated to pay costs of collection, including all legal fees as permitted by law.

4. Scarborough's Supervisory Responsibilities:

Scarborough shall assume sole responsibility for the supervision and the performance of the Scarborough personnel who provide Vehicle maintenance and Repair Services.

5. Limitations on Waiver:

The Parties shall not be deemed to have waived any provisions of this Agreement unless expressed in writing and signed by the waiving Party. The Parties agree that they shall not assert any action relating to the Agreement that any waiver occurred between the Parties that is not expressed in writing. The failure of any Party to insist in any one or more instances upon strict performance of any of the terms and provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any Party or anyone or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement.

6. Termination of Agreement:

A. In the event of Breach.

Each Party shall have the right to terminate this Agreement in the event of a material breach or default by the other Party of the other Party's obligations hereunder that is not cured within thirty (30) days from the date of receipt by the breaching Party of written notice of such breach from the non-breaching Party. If the breach or default, by its nature, cannot be cured within such thirty (30) day period, then the breaching Party shall have such additional time (not to exceed

30 additional days) as may be necessary to cure the breach or default, provided the breaching Party has exercised reasonable efforts and taken appropriate action to begin cure of the breach or default within the initial thirty (30) day cure period.

B. At the convenience of the Parties.

This agreement may be terminated by either Party for convenience by notifying the other Party in writing at least six (6) months prior to the date of termination. Between the time of notice and the date of termination.

7. Insurance, Indemnity and Immunity:

A. The parties shall obtain and maintain, throughout the terms of this Agreement, general and professional liability insurance and automobile liability insurance in the amount of not less than Four Hundred Thousand Dollars (\$400,000) or other such amount as is established by the Maine Tort Claims Act (14 M.R.S.A. 8101 et seq.) as amended from time to time, combined single limit, to protect the Parties and any subcontractor performing Services under this Agreement from claims and damages that may arise from operations under this Agreement, whether such operations be by the Parties or by any subcontractor or anyone directly or indirectly employed by the Parties.

B. To the fullest extent permitted by Law, each Party shall defend, indemnify, and hold harmless the other Party, its officers, employees and agents, in their official and individual capacities, from and against all claims, costs, losses, and damages (including but not limited to attorney's fees), arising out of or relating to the performance of the Agreement by the Parties, their officials, employees, agents and subcontractors. Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the Parties or their respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

8. Maintenance of Records:

Scarborough shall maintain records pertaining to maintenance and repairs made to each vehicle. Documentation will be retained in the Cityworks software used by Scarborough Public Works. Information will be made available at the request of Wells staff.

9. Governing Law and Severability:

This Agreement shall be governed by and interpreted under the laws of the State of Maine. The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

10. Entire Agreement- Full Terms and Amendment:

This Agreement contains the entire agreement of the Parties with respect to the matters addressed therein and may only be amended in writing agreed by both Parties.

11. Costs Associated with Disputes:

In the event of a dispute between the Parties under this Agreement, each Party shall be solely responsible for its own expenses, costs, and attorney fees.

12. Ongoing Oversight of Agreement:

Once authorized by the respective Town Councils and/or Boards of Selectmen, the Scarborough Town Manager and the Wells Town Manager shall execute this Agreement and shall serve as the joint body responsible for the oversight and ongoing administration of this Agreement.

WHEREFORE, the Parties, after duly processing the required procedures and voting to approve this Agreement, have authorized the execution this Agreement on each respective Party's behalf on the dates set forth below:

TOWN OF SCARBOROUGH

Dated: _____

By: Thomas J. Hall, Town Manager

TOWN OF WELLS

Dated: _____

By: Jon Carter, Town Manager

SPECIFICATIONS OF SERVICES TO BE PERFORMED

1. Scarborough agrees to provide facilities, equipment and personnel to adequately furnish maintenance and repair services on specialty fire suppression systems of the Town of Wells' fire apparatus. Work will be performed on water pumps and compressed foam suppression equipment. Scarborough will maintain all associated items such as valves, piping and electric switching systems as needed. Repair for truck chassis and preventative chassis maintenance are not part of this Service Agreement.
2. Scarborough will provide an administrator responsible for scheduling vehicle maintenance repair, out-sourcing, new equipment set-ups, and warranty work. The administrator will also be responsible for coordinating parts & supplies, cost structuring, and monthly billing.
3. Scarborough will be responsible for all related record-keeping & reporting. Scarborough will provide Wells with maintenance backup documentation upon request.
4. Scarborough will provide 24-hour emergency service for vehicles being actively serviced.
5. Scarborough will initiate annual review of contract and advise annual cost increases in a timely manner.

ATTACHMENT B**CONTRACTED VEHICLE MAINTENANCE - HOURLY RATE WORKSHEET**

Based on full-time, 2,080 hours annually.

WAGES & BENEFITS		RATE
Base hourly wage		\$24.97
FICA		1.54
Medicare		.36
Family Medical		5.42
Family Dental		.14
Retirement		3.22
LTD		.13

MISCELLANEOUS OVERHEAD		
Stipends, Uniforms, PPE, Compliance Testing, Training		\$1.30
Fully-Loaded Cost for 2,000 Sq.Ft. Workbay		\$2.00
Administrative Costs: Scheduling, Warranty Oversight, Cityworks Reporting, Etc.		\$5.10

(Wages + Overhead + 25% Margin)

RATE = \$55.23/Hr.

To recoup costs associated with parts procurement and inventory management a 15% margin will be assessed to items costing \$1,000.00 or less. Parts over \$1,000.00 will be billed at cost plus 10%.

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 21, 2016
REGULAR MEETING – 7:00 P.M.

Order No. 16-085. Motion to accept \$106,268.46 in donations to the Town of Scarborough received in 2016 for the Eastern Trail “Close the Gap Campaign” and to ratify the Memorandum of Understanding dated August 31, 2016, between the Town of Scarborough, the Eastern Trail Alliance and the Eastern Trail Management District. *[Town Manager]*

Town Manager

Ought to Pass

Sponsor

Recommendation

12/21/16

N/A

First Reading/Vote

Second Reading/Final Approval/Vote



Town of Scarborough, Maine

P.O. BOX 360 • SCARBOROUGH, MAINE 04070-0360

TO: Thomas J. Hall, Town Manager
FROM: Ruth D. Porter, Finance Director *RDP*
SUBJECT: Contributions for the Eastern Trail Project "Close the Gap Campaign"
DATE: December 15, 2016

As you know, the Town of Scarborough, in conjunction with the Eastern Trail Alliance and the Eastern Trail Management District, is seeking funding to complete the Eastern Trail. The town entered into a "Memorandum of Understanding" (MOU) with the Eastern Trail Alliance (ETA), a Maine Nonprofit Corporation and the Eastern Trail Management District (ETMD), also a Maine Nonprofit Corporation. I have attached a copy of the MOU. Donors have begun contributing to the Close the Gap Campaign.

Pursuant to 30-A M.R.S. §§ 5653-5655, the Town Council will need to accept any gift or donation of money.

I am requesting a draft Town Council Order as follows:

Motion to accept \$106,268.46 in donations to the Town of Scarborough received in 2016 for the Eastern Trail "Close the Gap Campaign" and to ratify the Memorandum of Understanding dated August 31, 2016 between the Town of Scarborough, the Eastern Trail Alliance and the Eastern Trail Management District.

Contributions received by the Town of Scarborough from the Eastern Trail Alliance are as follows:

\$ 51,768.46	Donations received by ETA or ETMD
\$ 50,000.00	Maximum match
<u>\$ 4,500.00</u>	Other Donations received prior to the match agreement
\$106,268.46	Total contributions received by the Town of Scarborough

If permissible, we will provide a request for the Town Council to accept the Close the Gap Campaign donations on a quarterly or semi-annual basis.

**MEMORANDUM OF UNDERSTANDING
CONCERNING FIDUCIARY RESPONSIBILITIES RELATING TO THE
EASTERN TRAIL – CLOSE THE GAP CAMPAIGN**

This Memorandum of Understanding Concerning Fiduciary Responsibilities Relating to the Eastern Trail- Close the Gap Campaign ("Memorandum") is made as of this 31st day of August, 2016, by and between the Town of Scarborough, a Maine Municipal Corporation (the "Town") and the Eastern Trail Alliance, a Maine Nonprofit Corporation with a mailing address of P O Box 250, Saco, ME 04074 (the "Alliance"), and the Eastern Trail Management District, together, a Maine Nonprofit Corporation with a mailing address of P O Box 250, Saco, ME 04074 (the "ETMD"), the "Parties" and individually, a "Party";

WHEREAS, the Parties are collaborating on the "Close The Gap" Campaign (hereinafter the "Project") to complete the portion of the Eastern Trail in Scarborough, and such collaboration involves fundraising activities; and

WHEREAS, the fundraising campaign is underway and starting to yield donations and grant awards toward the project and the Parties agree that there should be a clear understanding of the mutual roles and responsibilities relating to the receipt, tracking, reporting and expenditures of donated funds; and

WHEREAS, Parties acknowledge that depending on the grantor's or donor's wishes, monies may be received by either the Alliance or the ETMD or the Town, but the Parties agree that given the Town's substantial financial capabilities and audit requirements that the Town hold the donated funds and administer them accordingly; and

NOW, THEREFORE, in consideration of the mutual covenants and promises made herein, the Parties set forth their understanding as follows:

1. All donated funds or grant monies earmarked for the Close the Gap campaign (hereinafter "Project Funds") received by either the Alliance or the ETMD or the Town shall be used exclusively toward the project costs of the Project and for no other purpose. Such costs are limited to final design, permitting or construction under the Maine DOT Project # 019426.00
2. In the event the Alliance or the ETMD receives donated or grant funds so earmarked for the Close the Gap campaign, the Alliance or the ETMD shall endeavor to provide said funds to the Town for safe-keeping as soon as is practicable, at least every thirty (30) days., unless the grant monies have specific requirements and must be held by either the ETA or the ETMD until ready full matching \$ received and funds are ready to be disbursed for construction expenses on the project. Such disbursements from the Alliance or the ETMD to the Town shall be accompanied by a sufficient detail to identify the donor's name, unless the donor has specifically donated under an anonymous category and that information is not available, the date the donation was received, the amount of the donation, and any special conditions that may accompany the donation.

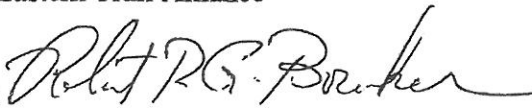
3. The Town shall establish a segregated interest bearing account to receive all funds related to the Project and such segregated account shall be subject to an independent audit.
4. With the receipt of all donated project funds, the Town accepts the responsibility to disburse the funds for qualified project expenses as outlined above.
5. In the event sufficient funds are not raised to enable the Project to go forward, the Town accepts responsibility to notify all donors accordingly and to keep said funds in an interest bearing account until such time that the project can go forward unless the donor requests otherwise.

IN WITNESS WHEREOF, the Parties have set their hands and seals as of the date first written above.

WITNESS




Eastern Trail Alliance

By: 
Bob Bowker,
Acting President, Vice President

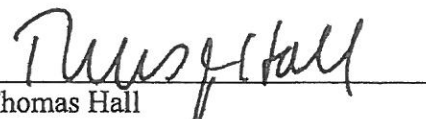
Eastern Trail Management District



By: 
Val Camire,
Treasurer

Town of Scarborough



By: 
Thomas Hall
Town Manager

AGENDA
SCARBOROUGH TOWN COUNCIL
WEDNESDAY – DECEMBER 21, 2016
REGULAR MEETING – 7:00 P.M.

Order No. 16-086. Move approval on the Council Chair appointments for Council Standing Committee and Committee Liaisons. [*Council Chair*]

Council Chair

Sponsor

12/21/16

First Reading/Vote

Ought to Pass

Recommendation

N/A

Second Reading/Final Approval/Vote

Town Council Appointments to Standing Committees and Council Liaison Positions

Pursuant to Chapter 300, Sec. 302, Subsection 201.0: Appointments to Town Committees/Board [as amended 9/4/02 and 4/1/15]

IN THE FORM OF A MOTION, THE COUNCIL CHAIRMAN MOVES APPROVAL OF THE FOLLOWING APPOINTMENTS FOR THE 2016-2017 COUNCIL YEAR:

STANDING COMMITTEES AS FOLLOWS:

APPOINTMENTS COMMITTEE:	COUNCILORS CAIAZZO (CHAIR), HAYES, DONOVAN
FINANCE COMMITTEE:	COUNCILORS HAYES (CHAIR), CAIAZZO, BABINE, ROWAN AS ALTERNATE
ORDINANCE COMMITTEE:	COUNCILORS DONOVAN (CHAIR), ST CLAIR, ROWAN, FOLEY AS ALTERNATE
COMMUNICATIONS COMMITTEE:	COUNCILORS ST CLAIR (CHAIR), FOLEY, HAYES
RULES & POLICY COMMITTEE:	COUNCILORS FOLEY (CHAIR) ST CLAIR, DONOVAN
FAIR HEARING COMMITTEE:	COUNCILORS ROWAN (CHAIR), DONOVAN, CAIAZZO

COUNCIL LIAISONS AS FOLLOWS:

ADA ADVISORY	COUNCILOR FOLEY	HOUSING ALLIANCE	COUNCILOR ROWAN
COASTAL HARBOR	COUNCILOR HAYES	LIBRARY TRUSTEES	COUNCILOR BABINE
CONSERVATION COMMISSION	COUNCILOR FOLEY	LONG RANGE PLANNING	COUNCILOR CAIAZZO, ROWAN AS ALTERNATE
COMMUNITY CHAMBER OF COMMERCE	COUNCILOR ST CLAIR	METRO COALITION	COUNCILOR DONOVAN
EASTERN TRAIL ALLIANCE	COUNCILOR FOLEY	ORGANICS	COUNCILOR DONOVAN
ECOMAINE BOARD OF DIRECTORS	COUNCILOR DONOVAN WITH A TERM TO EXPIRE IN 2017	PACTS POLICY	COUNCILOR CAIAZZO
ENERGY	COUNCILOR DONOVAN	PEST MANAGEMENT	COUNCILOR DONOVAN
FIRING RANGE	COUNCILOR ST CLAIR	PLANNING BOARD	COUNCILOR DONOVAN
GPCOG, GA (3)	COUNCILOR CAIAZZO, MGR TOM HALL, ASST MGR CROCKETT	SEDCO	COUNCILOR ROWAN
HEALTH SAFETY & SECURITY	COUNCILOR ST CLAIR	SENIOR ADVISORY	COUNCILOR ROWAN
HISTORICAL PRESERVATION	COUNCILOR ROWAN	SHELLFISH CONSERVATION	COUNCILOR HAYES
		TRANSPORTATION	COUNCILOR CAIAZZO

2016-2017 TOWN COUNCIL APPOINTMENTS TO STANDING COMMITTEES AND LIAISON POSITIONS

APPOINTMENTS OVERVIEW

TOTAL ASSIGNMENTS	
STANDING COMMITTEES	6 Committee combinations of 3 Councilors (and 2 Committees with 1 Alternate each)
LIAISON ASSIGNMENTS	27 Groups requesting at least one Council Liaison appointment; 4 requesting 2, 1 requesting 3 for a total of 40 appointments.

** Recommending discontinuation of 1 Liaison position - Employee Incentive Cmtee; Increased membership on the Communications Cmtee from 1 to 3; and, that the Chair and Vice Chair assume the responsibility of Liaison(s) with the Board of Education.*

METHODOLOGY IN APPOINTMENTS

Factors taken into consideration in priority order:

- Councilors' individual requests.
- Each Councilor is Chair of 1 Standing Committee.
- Councilors' experience with the subject matter.
- My goals as Council Chair - work load evenly shared; synergy between Committee and Liaison positions; forward looking: how will these assignments help a future Town Council; continuity, retention of knowledge.

APPOINTMENTS BY COUNCILOR SUMMARY

	Cmtees	Liaison
CHAIRMAN BABINE	1	3
VICE CHAIR ST CLAIR	3	5
COUNCILOR CAIAZZO	3	3
COUNCILOR DONOVAN	2	6
COUNCILOR FOLEY	3	3
COUNCILOR HAYES	3	3
COUNCILOR ROWAN	2	5
STAFF - ASST TOWN MGR CROCKETT	-	2
STAFF - MICHAEL SHAW	-	1
STAFF - TOWN MGR HALL	-	1

2016-2017 TOWN COUNCIL APPOINTMENTS TO STANDING COMMITTEES AND LIAISON POSITIONS

APPOINTMENTS BY COUNCILOR DETAIL - STANDING COMMITTEES AND COUNCIL LIAISON POSITIONS

	STANDING COMMITTEES	COUNCIL LIAISON POSITIONS	
CHAIRMAN SHAWN A BABINE	FINANCE CMTEE	LIBRARY TRUSTEES	Monthly, 3rd Thurs, 7:00 PM, Library Meeting Room
	EX-OFFICIO MEMBER OF ALL CMTEES	MMA LEGISLATIVE POLICY	As Determined by MMA, Day Long Event, MMA Executive Offices, Augusta
VICE CHAIR KATE ST CLAIR	COMMUNICATIONS CMTEE (CHAIR)	CHAMBER OF COMMERCE	Monthly, 3rd Mon, 12:00 Noon, Library Meeting Room
	ORDINANCE CMTEE	FIRING RANGE CMTEE	At least Once Annually before June 15th
	RULES & POLICY CMTEE	HEALTH & SAFETY SECURITY CMTEE	Quarterly, _____, 7:45 AM, Council Chambers A&B
		PUBLIC SAFETY BUILDING CMTEE	As Determined by the Cmtee
COUNCILOR CHRIS CAIAZZO	APPOINTMENTS (CHAIR)	GREATER PORTLAND COUNCIL OF GOV'T	All Day Event, June 14 or 21, 2017 - General Assembly
	FINANCE CMTEE	LONG RANGE PLANNING CMTEE	As Needed Basis Only, Town Mgrs Conference Room
	FAIR HEARING AUTHORITY	PACTS POLICY CMTEE	4 times per year, 3:00 PM
		TRANSPORTATION CMTEE	Monthly, 2nd Weds, 6:00 PM, Town Mgr's Conference Room
COUNCILOR BILL DONOVAN	ORDINANCE CMTEE (CHAIR)	ECOMAINE BOARD OF DIRECTORS*	Monthly, 3rd Thurs, 4:00 PM, ecoMaine Executive Offices, Portland
	APPOINTMENTS CMTEE	ENERGY CMTEE	As Needed Basis Only, Town Mgrs Conference Room
	FAIR HEARING AUTHORITY	METRO COALITION	Need information
		PEST MANAGEMENT CMTEE	Every 6 weeks March - October, 11:30 AM, Town Mgr's Conference Room
		ORGANICS MANAGEMENT CMTEE	Need information
		PLANNING BOARD	Monthly, 3rd Mon, 7:00 PM, Council Chambers A&B
COUNCILOR KATY FOLEY	RULES & POLICY CMTEE (CHAIR)	ADA ADVISORY CMTEE	As Needed Basis Only
	ORDINANCE CMTEE (ALTERNATE)	CONSERVATION COMMISSION	Monthly, 2nd Mon, 7:00 PM, Town Mgr's Conference Room
	COMMUNICATIONS CMTEE	EASTERN TRAIL ALLIANCE	Monthly, 2nd Weds, 8:30 PM, Kennebunk Town Hall, 3rd Floor
COUNCILOR PETER HAYES	FINANCE CMTEE (CHAIR)	COASTAL HARBOR CMTEE	Monthly, 2nd Tues, 6:30 PM, town Mgr's Conference Room
	APPOINTMENTS CMTEE	PUBLIC SAFETY BUILDING CMTEE	As Determined by the Committee
	COMMUNICATIONS CMTEE	SHELLFISH COMMISSION	Monthly, 2nd Tues, Town Mgr's Conference Room
COUNCILOR WILL ROWAN	FAIR HEARING AUTHORITY (CHAIR)	HISTORICAL PRESERVATION CMTEE	Monthly, 1st Tues, 6:30 PM Town Mgr's Conference Room
	ORDINANCE CMTEE	HOUSING ALLIANCE CMTEE	Monthly, 1st Thurs, Town Mgr's Conference Room
	FINANCE CMTEE (ALTERNATE)	LONG RANGE PLANNING CMTEE (ALTERNATE)	As Needed Basis Only
		SCARB ECONOMIC DEVELOPMENT CORP	Monthly, 2nd Tues, 7:30 AM SEDCO Offices, Rte 1 Scarborough
		SENIOR ADVISORY CMTEE	Monthly, 3rd Tues, 6:00 PM, Town Mgr's Conference Room

APPOINTMENTS BY COMMITTEE - FRAMEWORK

2017 COUNCIL STANDING COMMITTEES					
APPOINTMENTS COMMITTEE	FINANCE COMMITTEE	ORDINANCE COMMITTEE	COMMUNICATIONS COMMITTEE	RULES & POLICY COMMITTEE	FAIR HEARING AUTHORITY COMMITTEE
CAIAZZO (Chair)	HAYES (Chair)	DONOVAN (Chair)	ST CLAIR (Chair)	FOLEY (Chair)	ROWAN (Chair)
HAYES	CAIAZZO	ST. CLAIR	FOLEY	ST CLAIR	DONOVAN
DONOVAN	BABINE	ROWAN	HAYES	DONOVAN	CAIAZZO
	ROWAN (Alt)	FOLEY (Alt)			

APPOINTMENTS BY LIAISON - FRAMEWORK

2017 COUNCIL LIAISONS					
ADA ADVISORY	COASTAL HARBOR	CONSERVATION COMMISSION	COMMUNITY CHAMBER OF COMMERCE	EASTERN TRAIL ALLIANCE	ECOMAINE BOARD OF DIRECTORS
FOLEY	HAYES	FOLEY	ST CLAIR	FOLEY	DONOVAN SHAW

2017 COUNCIL LIAISONS					
ENERGY	FIRING RANGE	GPCOG, GA (3)	HEALTH SAFETY & SECURITY	HISTORICAL PRESERVATION	HOUSING ALLIANCE
DONOVAN	ST CLAIR	CAIAZZO CROCKETT HALL	ST CLAIR	ROWAN	ROWAN

2017 COUNCIL LIAISONS					
LIBRARY TRUSTEES	LONG RANGE PLANNING	METRO COALITION	MMA LEGISLATIVE POLICY (1 Elected by District) (1 Appointed by Council))	ORGANICS	PACTS POLICY
BABINE	CAIAZZO ROWAN (Alt)	DONOVAN	BABINE CROCKETT	DONOVAN	CAIAZZO

2017 COUNCIL LIAISONS					
PEST MANAGEMENT	PLANNING BOARD	PUBLIC SAFETY BUILDING	SEDCO	SENIOR ADVISORY	SHELLFISH CONSERVATION
DONOVAN	DONOVAN	ST CLAIR HAYES	ROWAN	ROWAN	HAYES

2017 COUNCIL LIAISONS					
TRANSPORTATION	EMPLOYEE INCENTIVE	BOARD OF EDUCATION			
CAIAZZO	DISCONTINUE 2016-2017				
		BABINE ST CLAIR			