

CBL: 152-B-1

FOLDER NAME: City Council

filename: Recommend. from CDC 11-24-04

PROJECT: Morrills Crossing ~~Contract Reopening~~

ADDRESS: 33 Allen Avenue

Memorandum  
Department of Planning and Development  
Planning Division

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**To:** Mayor Smith and Members of the Portland City Council  
**From:** Sarah Hopkins, Development Review Services Manager  
**Date:** November 24, 2004  
**Re:** **Packard Development: Recommendation from the Community Development Committee**  
**Cc.:** Lee Urban, Director of Planning and Development  
Alexander Jaegerman, Planning Division Director

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On November 22, 2004, the Community Development Committee voted unanimously (3-0) to recommend:

1. A conditional B-2 rezoning of the Morrill's Corner property for use as a mixed use development.
2. The sale of two City-owned parcels to Packard Development: the Magnolia Street property (CBL 435-G-10, 11, 12, 26) and the Cambridge Street property (CBL 151A-A-13).

The Community Development Committee met over the past several weeks to review in great detail the Packard proposal and Planning Board's recommendation. As part of the Committee's review, additional information was submitted regarding traffic analysis and proposed roadway/pedestrian/bicycle improvements, the purchase and sale agreement was reviewed, and the committee spent considerable time discussing the proposed conditional rezoning as it relates to the City's Comprehensive Plan. Lastly, based on these topics, the Committee reviewed the conditional rezoning document and suggested amendments.

Attached to this memo are:

1. Final Traffic Review Memo from Tom Errico, PE.
2. Memo from Penny Littell, Associate Corporation Counsel dated November 23, 2004
3. Correspondence dated November 22, 2004 from Peggy McGehee, Esq.
4. Correspondence from Neighbors received since the City Council workshop on November 15, 2004
5. Community Development Committee REDLINED Rezoning Document
6. Community Development Committee "Clean" Version Document with



59 Middle Street  
 Portland, ME, 04101  
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 www.wilbursmith.com

November 18, 2004

Ms. Sarah Hopkins  
 Development Review Services Manager  
 Department of Planning & Development  
 City of Portland  
 389 Congress Street  
 Portland, Maine 04101

Subject: Peer Traffic Review for Packard Development Project

Dear Sarah:

The following presents my final comments relative to the review of traffic information transmitted to me in conjunction with the Packard Development project at Morrill's Corner. The following conclusions are based upon responses to comments prepared by Vanasse Hangen Brustlin, Inc. (VHB) dated November 12, 2004, and other information supplied to me over the past few weeks.

Based upon the review of the transmitted traffic data, it is my professional opinion that the proposed Packard Development Project can satisfy requirements for the issuance of a MaineDOT Traffic Movement Permit, and therefore provide acceptable operations following build-out of the project assuming implementation of roadway and traffic control improvements.

Please do not hesitate to call should you have any questions.

Sincerely,

**WILBUR SMITH ASSOCIATES**

Thomas A. Errico, P.E.

Senior Transportation Engineer

To: Mayor Smith and Member of the Portland City Council  
From: Penny Littell, Associate Corporation Counsel  
Date: November 23, 2004  
Re: Response to Legal Challenge to Conditional Rezoning Proposal

Attorney Peggy McGehee, representing opponents to the Packard rezoning, has raised several legal challenges to the Council's ability to enact the conditional rezoning for the Packard site at Morrill's Corner. I will attempt to respond to the challenges as presented.

I. Did the Packard Conditional Rezoning Language Change Following Planning Board Review So As To Legally Require the Planning Board to Again Review and Opine to the Council on the New Language?

ANSWER: The simple answer is no. There is no legal requirement, in either state law or local ordinance, which requires the duplicative review process suggested by Ms. McGehee.<sup>1</sup> The Planning Board considered Packard's request for rezoning during seven separate workshops and three public hearings. The public was given adequate opportunity to comment on the proposal for rezoning. The Planning Board expressed its opinions regarding the rezoning request, identifying a number of issues (including traffic) which factored into its ultimate vote. Furthermore, the Planning Board's policy recommendation on rezoning applications to the Council is advisory only.

Ultimately, the City Council is the legislative body responsible for rezoning decisions and for approving specific language contained in any contract or conditional rezoning agreement. Any additional language to the Packard rezoning agreement (language inserted following Planning Board review) which may be presented by the CDC<sup>2</sup>, or moved by any individual member of the Council, does not legally require that the Planning Board reexamine the rezoning language.

II. Is the Council Prohibited From Finding That The Proposed Conditional Rezoning, Which Includes Retail Use, Is Consistent With the Existing and Permitted Uses Within the Original Zones?

ANSWER: No, the Council is not so prohibited. The standard to be applied by the Council is whether the proposed uses are "consistent with" not "identical to" the uses existing and permitted in the original zones. Ms. McGehee appears to be confusing these very different standards.

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<sup>1</sup> §14-30 of the Portland City Code merely grants the Planning Board the jurisdiction and authority, generally, to "hear, review and offer its recommendations to the city council on applications for zoning changes and amendments to, or revisions of, the zoning ordinance, and to initiate recommendations for zoning changes and amendments to, or revisions of, the zoning ordinance."

<sup>2</sup> The CDC is also a committee process which also is open to the public.

The purpose of the stated standard, as delineated by the legislature in the Statement of Fact accompanying the conditional/contract rezoning statute, was to "preserve the integrity of the existing neighborhoods and the zoning process." The intent behind contract or conditional rezoning, in fact, is to allow uses of property not otherwise permitted in the underlying zone. By the imposition of various conditions and restrictions imposed on a parcel (through the conditional agreement) the end product must be uses that are determined to be consistent with the existing and permitted uses in the underlying zones – not uses identical to or otherwise permitted.

In the Packard case, the area involved in the conditional rezone proposal is about 20 acres, and includes I-L, R-5, and B-2 zones. The uses proposed by Packard, primarily retail and residential, are allowed in the B-2 zone, and residential is allowed in both the R-5 and B-2 zones. One issue here is that the site is proposed to be consolidated into the conditional zone, and the area that is presently I-L will be used for retail, recreation, and boxing club uses. Ms. McGehee intimates that the area now encompassed by I-L can only be used for uses allowed in the I-L zone. Such a strict interpretation of state law would frustrate otherwise reasonable rezoning proposals. In addition, the existing uses on the I-L portion of the site are 1) a boxing club and 2) vacant land. The proposed retail, recreation, boxing and residential uses cannot be said to be inconsistent with a parcel that has been put to no use whatsoever.

Finally, opponents to other rezoning proposals have cited the consistency requirement to suggest that the proposed rezoning is inconsistent with state law. No court challenges have been presented to the Maine courts on this issue. Of the many contract or conditional zoning amendments approved by the City of Portland, several have involved uses beyond those in the underlying zone. For example, Mercy Hospital received a contract rezone for the parcel along the I-295 connector, which was an industrial zone that did not allow hospital uses. The rezoned area, to include a hospital campus, is not inherently inconsistent with the existing (vacant land) and permitted (industrial) uses of the original zone. These rezoning decisions have not been challenged.

### III. Support for the Proposed Use May Be Found In The City's Comprehensive Plan.

The information to support this assertion can be found in the memo to the Council by Sarah Hopkins.

**PERKINS, THOMPSON, HINCKLEY & KEDDY**

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November 22, 2004

**BY HAND**

Mayor Nathan Smith  
and Members of the Portland City Council  
Portland City Hall  
389 Congress Street  
Portland, ME 04101

**Re: Morrill's Corner:  
Conditional Zone Agreement: Packard Development, LLC**

Dear Mayor Smith and Members of the Portland City Council:

The following comments are submitted on behalf of Brett McMillan and the Morrill's Corner Neighborhood Association, as to the proposed Conditional Zone Agreement between the City and Packard Development, LLC.

The proposed Agreement does not address in any detail whatsoever the description of the remediation/improvements which are required to be made, or the estimated costs which Packard will be required to pay for the remediation/improvements. Without such details, the Morrill's Corner residents and, indeed, the City itself cannot be assured that the remediation/improvements required as conditions of the rezoning will in fact be carried out to the level and effectiveness expected and agreed upon. The comments below are organized by the sections of the proposed Agreement:

7. *Development Standards. d. Traffic improvements:*

The proposed Agreement only states generally that Packard shall be responsible "for the design and installation of, at minimum, the off-site traffic improvements shown on Exhibit C, which improvements shall be made at Packard's sole expense. . . . Such traffic

improvements shall include, but not be limited to roadway widening, resignalization, road area for bicycles, uninterrupted bike lanes, bus stops, esplanades with street trees, and sidewalks." The referenced Exhibit C that was provided to us by the City consists only of an aerial photograph, with brief, general notes as to the location of the improvements. This is grossly inadequate to assure the public and the City that the necessary improvements will in fact be made to the level required.

For example, per MDOT, the traffic/right-of-way costs are projected to be approximately \$4,000,000, four times Packard's estimate of \$1,000,000. The expected amount to be expended for this work, especially in light of such vastly differing estimates, should be spelled out in the Contract Zone Agreement (or Exhibit C).

In addition, the proposed Agreement should make clear that Packard should pay the cost of the additional traffic signal to the level identified as being needed. Signal cost can vary widely depending on design, and it should be spelled out that Packard should pay the cost not just of an additional traffic signal, but specifically one which will accommodate an acceptable level of service within the study area.

The proposed Agreement fails to address how Packard will address the traffic gridlock caused by trains. At a minimum, Packard should gain consent from its neighbors to consolidate driveways near its entrance, so that queueing conflicts at its new signalized driveway are minimized. This work and its cost also should be articulated in the Contract Zone Agreement.

7. *Development Standards. e. Open space improvements:*

The Agreement states that Packard shall "be responsible for the remediation of the site", but does not describe what remediation work will be done or what cost has been estimated for the remediation to be completed in an acceptable fashion.

9. *Development Standards. e. CSO contribution:*

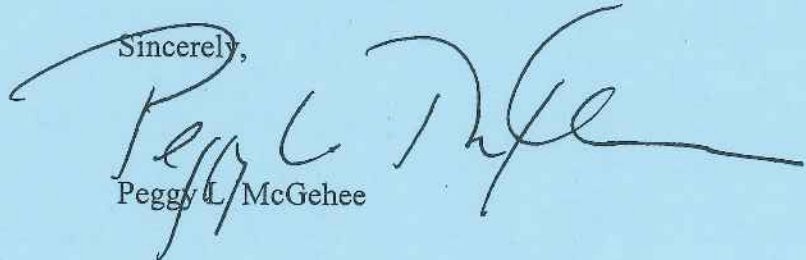
The proposed Agreement states that Packard shall be required to contribute "up to \$100,000 to the City's Fall Brook Combined Sewer Overflow project." Packard's contribution should be a definitive \$100,000; the "up to" language should be deleted.

Finally, the proposed Agreement does not state anywhere that Packard has obtained evidence of "right, title and interest" as relates to landowners (other than the City) from which it needs additional rights of way. The City cannot approve a contract zone if the developer does not have the necessary rights to privately-owned land which is encompassed in the plan.

Mayor Nathan Smith; Portland City Council  
November 22, 2004  
Page 3

Thank you for your attention to these proposed additions and revisions to the Contract Zone Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Peggy L. McGehee". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Peggy L. McGehee

PLM/ems

cc: Penny Littell, Asst. Corporation Counsel (By Hand)  
Thomas Errico, Peer Reviewer for the City  
Packard Development  
Morrill's Corner Neighborhood Association



Attachment 4

**Harborcity Realty, Inc.**  
502B Woodford Street, Portland, ME 04103  
775-1991

November 10, 2004

Portland City Council  
Portland, Maine

Re: Morrill's Corner - Packard Development Project

Dear Councilors,

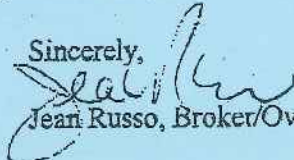
I am a lifelong Portland resident and, for the past 30 years, a real estate owner and taxpayer. Over the years, I have watched as shoppers left the City to spend their money in South Portland, Freeport, Kittery and other towns that pursue and actually entice businesses to locate in their towns. Downtown Portland died a slow death when the Mall opened in South Portland and, unfortunately, there have not been many developers willing to take on a new project in Portland.

Packard Development has proposed a beautiful shopping complex on a blighted piece of real estate in Portland and has bent over backward to appease the neighbors and the City. I attended a workshop called by one of your councilors looking for opposition to this project. It was clear at that meeting that there were very few people opposed to this project - most were clearly in favor. The exceptions were neighbors who, I might add, purchased property next to an industrial zone and should have known that at some point in time this piece of land would be developed. What better project than a shopping center with a walking trail connected to Portland Trails? Yes, Morrill's corner has a traffic problem, as does any major intersection with a train running through it. The city will have to address that problem eventually, whether this project goes through or not.

As a real estate broker for the past 20 years, I have heard many, many times that the City of Portland is a developer's nightmare. One developer even told me that they have developed projects all over the country and Portland, Maine was the worst place to do business. I have had several local builders tell me that they will not build in our City because there is simply too much red tape and that a project simply takes too long to go through the process. The real estate business goes in cycles; the market can change dramatically while waiting more than a year for the city to approve a project - and timing of a real estate project is critical to success.

I cannot believe that anyone would oppose this type of development in our City - especially the City Council. Are you kidding me? We need jobs and tax-paying businesses. A vote against this project is a vote against our City.

Sincerely,



Jean Russo, Broker/Owner

Therese Guerette  
32 Woodlawn Ave  
Portland, ME 04103

November 20, 2004

Dear City Councilor,

I am writing to express my **opposition to the Packard's Morrill Crossing proposal.**

I was at the City Council meeting on 11/15. Packard has clearly organized their efforts in gathering support and putting intense pressure on the Council for the rezoning approval. I have heard countless times that Packard has "bent over backwards" to appease the concerns of the opponents. Indeed they have put forth a plan that is somewhat improved over the original.

However, the most important issue has not been addressed, that is, **the one point of entry/exit.** The traffic engineer said there would be no "appreciable effect" on traffic. **How can 11,000-18,000 trips/day through that one point not affect the already congested Morrill's Corner?** This safety issue alone should be reason enough to deny the zoning change.

I would also like to know if there would be a follow up traffic study to determine if Packard's improvements to Morrill's Corner were adequate. Who will be held accountable if they are not?

Thank you for your careful consideration.

Sincerely,

Therese Guerette

**From:** "Tamiko Davies" <DAVIET@mmc.org>  
**To:** <SH@portlandmaine.gov>  
**Date:** 11/22/2004 12:43:15 PM  
**Subject:** Morrill's corner: PLEASE DISTRIBUTE TO CITY COUNCILORS

Dear Councilors

As you consider the complex question of rezoning to accomodate Packard, I want to remind you that Packard's proposal is not consistent with the city's comprehensive plan for affordable housing. Given the area to be developed, we could add much more than 50 units of housing. We clearly do not need another supermarket in that area; we do need more housing.

Packard has many resources and are using them all to convince you that they "bent over backwards" for "us". I don't believe Packard would do anything that is not in their economic interest. If so, they would have considered building a bridge over the railroad tracks in order to create another access. They are not doing this because it is "too expensive." It does not make sense to have a shopping mall of this proportion, located at the busiest intersection in Maine, with just one entry and exit point. This does not feel like Packard is "bending over backwards."

The fact that Packard's plan is not consistent with Portland's plan, and the safety / traffic concerns, I urge you to vote against changing the zoning.

Thank you for your hard work  
Tamiko Davies

MORRILLS CROSSING QUESTIONNAIRE

1. Do you believe you have had adequate information available to you concerning the details of the development, including proposed uses, neighborhood impacts, traffic impacts, open space opportunities and other aspects of the proposal?

no -

Please comment on what information you have found most helpful and any additional information you consider important.

2. What is your overall recommendation (if any) concerning approval of the project? (Please comment on particular aspects of the proposal)

Upgrades to Site: The City should demand the owner of the buildings to <sup>be</sup> torn down - Then

Economic Development Impacts:

there would not be any question of what the abutting land owners have to look at.

(Please Comment on Specific Site Uses)

Supermarket: - Too Large & unneeded -

Housing:

Boxing Club Expansion:

Traffic Condition Changes: major problems - especially with the railroad.

Neighborhood Impact: - ~~selling~~ residential property to <sup>make into</sup> commercial property is wrong.

Neighborhood Shops:

Downsize this project -

Office Uses:

Restaurant:

3. Do you have recommendations for changes in the proposal or different uses for the property?

Optional

Name:

Brenda Braddon

Address:

53 Woodlawn Ave  
Portland, ME 04103

Telephone:

Email:

207-878-8402

The Community Development Committee will accept comments until at least September 24, 2004. We welcome your participation at the meeting, or by providing written comments using this questionnaire or in any other format you choose. Please send comments to:

James Cloutier, CDC Chair  
Portland City Council  
389 Congress Street  
Portland, Maine 04101

NATHAN H. SMITH (MAYOR)(3)  
WILLIAM R. GORHAM (1)  
KAREN A. GERAGHTY (2)  
CHERYL A. LEEMAN (4)  
JAMES I. COHEN (5)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

PETER E. O'DONNELL (A/L)  
JAMES F. CLOUTIER(A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**CONDITIONAL ZONE AGREEMENT**  
**PACKARD DEVELOPMENT, LLC**

**AGREEMENT** made this \_\_\_ day of \_\_\_\_\_, 2004 by **PACKARD DEVELOPMENT, LLC** a Delaware limited liability company with a mailing address of One Wells Avenue, Newton, Massachusetts 02159, and its successors and assigns (hereinafter "**PACKARD**").

**WITNESSETH**

**WHEREAS, PACKARD** seeks to develop property located at and in the vicinity of 33 Allen Avenue in the City of Portland and identified on the City of Portland on the Assessor's maps at Map 435, Block G, Lots 10-12, 21, 22, and 26; Map 151A, Block A, Lots 12 and 13; Map 152, Block C, Lots 2 and 5; and Map 435, Block D, Lots 15, 16, 17 and 18 (hereinafter referred to as the "**PROPERTY**") (See Exhibit A); and

**WHEREAS, PACKARD** proposes to develop the **PROPERTY** as a mixed use development, including residential units, a community shopping center with a grocery store, other retail uses, restaurants, offices, and a boxing club/ gym facility; and

**WHEREAS, the PROPERTY** is currently located in three different zoning districts, R-5, B-2 and I-L; and

**WHEREAS, the purpose** of this contract rezoning is to provide for a mixed use development, including a community shopping center, residential units, offices and a boxing and fitness facility; and

**WHEREAS, substantial public improvements** will be required to support any redevelopment of the **PROPERTY**, including but not limited to traffic improvements in the Morrills Corner area; and

**WHEREAS, PACKARD** has developed a traffic improvement plan, which plan has been reviewed by the **CITY**; and

**WHEREAS, the Planning Board** of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62, and after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY**, subject, however, to certain conditions; and

**WHEREAS**, the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and will establish uses that are consistent with the uses in the original zones and the surrounding areas; and

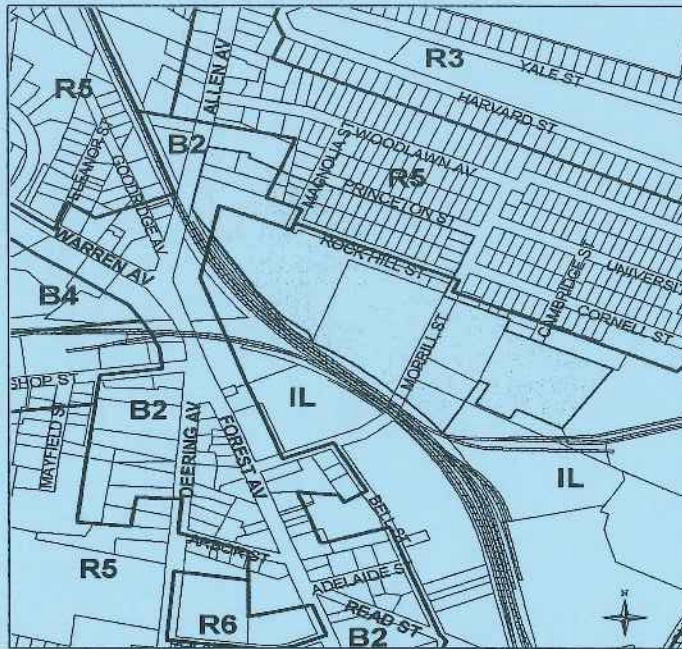
**WHEREAS**, the **CITY** has determined that the proposed development will be designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal through the design and implementation of significant public traffic improvements, stormwater drainage improvements, landscaping and buffering; and

**WHEREAS**, the **CITY** has determined that because of the unusual nature and unique location of the proposed development and the need for significant public improvements it is necessary and appropriate to have imposed the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

**WHEREAS**, on \_\_\_\_\_, 2004, the **CITY** authorized amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions become part of the **CITY'S** zoning requirements; and

**NOW, THEREFORE**, in consideration of the rezoning, **PACKARD** covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council on rezoning the **PROPERTY**, by Council Order No. \_\_\_\_\_, the City amends the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Portland City Code, by adopting the map change amendment for the **PROPERTY** shown herein.



**Proposed Rezoning for Morrill's Corner  
from IL, B2 and R5 to Conditional B2**

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Map prepared by the City of Portland's  
Department of Planning & Development and the GIS Workgroup

June 2004

This conditional rezoning shall become null and void and the **PROPERTY** shall revert to the existing R-5, B-2 and I-L zones in the event that **PACKARD** fails to record deeds transferring title ownership or long-term leases from White Chapel, LLC; Paul G. and Jonathan White; the City of Portland, except as otherwise provided in Section 6.G of this Agreement; James E. Darling, Jr.; Madeline F. and Jack Adams; and Allen Avenue Plaza, LLC to **PACKARD** within one year from the date of the Council vote. This one-year period shall be extended up to an additional one year period if:

- a. **PACKARD** has applied for all required approvals but has not received all required approvals within the one-year period;
- b. Any other event beyond the control of **PACKARD** has occurred which will delay the closing on some or all of the parcels and **PACKARD** has notified the **CITY** of such event and the projected time period for resolution of the event.

If any required approval, including the approval of the conditional rezoning, has been appealed, then this conditional rezoning shall become null and void and shall revert if **PACKARD** fails to commence construction of Phase I within one (1) year from the final disposition of such appeal.

2. The following plans and documents are attached and incorporated into this

Agreement:

Exhibit A: **PARCEL**

Exhibit B: Site plan and signage plan

Exhibit C: Minimum off site traffic improvements

Exhibit D: Architectural renderings

Exhibit E: Phasing plan

Exhibit F: Potential lot divisions/long term leases

3. The **PROPERTY** shall be developed substantially in accordance with the Site Plan shown on Exhibit B (including the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and landscaping) and the architectural renderings shown on Exhibit D, provided, however, that each Phase, whether classified as a major or minor development, shall be subject to site plan review by the Planning Board, and if applicable, subdivision review by the Planning Board. Any site plan review applications shall fully comply with the Site Plan attached as Exhibit B, and the architectural renderings shown on Exhibit D, and the application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit minor deviations from the Site Plan, as long as the deviations are consistent with the purposes of this Agreement. The structure labeled "Existing Boxing/Proposed Expansion" in the northeasterly corner of Exhibit B shall be built with architecture similar to and compatible with that in Exhibit D for the other structures associated with this project.

4. The **CITY** shall not issue **PACKARD** any building permits for the project until **PACKARD** has 1) acquired the **PROPERTY** in accordance with the requirements of Section 1 of this Agreement and 2) has received all necessary federal, state and **CITY** permits.

5. *Permitted Uses.* **PACKARD** shall be authorized to establish and maintain the following uses on the **PROPERTY**:

a. Retail establishments, restaurants, business services and personal services, all as defined by Portland City Code § 14-47. Drive through restaurants, gasoline sales and major and minor service stations shall not be permitted on the site.

b. Professional and business offices occupying no more than 25,000 square feet.

c. Day care facilities and adult day care facilities.

d. Exercise and fitness centers, and health clubs, including but not limited to a boxing and fitness facility. Any boxing facility shall comply with the following restrictions:



1. Any event at a boxing club located on the **PROPERTY** with ticket sales or attendance numbers in excess of three hundred (300) hundred shall be limited to twelve (12) times per year; and
2. the days of the week such events may be held may be limited by the City, in its discretion, based on concerns of traffic conditions, other events around the City or any other reason deemed to negatively impact public health, welfare or safety; and
3. **PACKARD** shall notify the **CITY'S** parking division four (4) weeks in advance of such event.
4. **PACKARD** shall provide an annual parking management plan to handle the requirements for parking at said events.
5. **PACKARD** shall include in the annual parking management plan appropriate provisions for prohibiting parking on streets neighboring the property.

The initial plan shall be submitted for review as part of the site plan review for the boxing facility. The plan must include provisions for off site parking and shuttle bus transportation to the **PROPERTY**. Thereafter, the parking management plan shall be updated annually and shall be reviewed and approved on an annual basis by the City's Planning Authority and Parking Division, in its discretion. In any case, parking for daily use and for normal boxing club events shall be met on site.

e. Dwellings, as specified herein:

1. There shall be no fewer than ten (10) apartments (which may be combined live/work spaces) located in the building delineated on the Site Plan as "Proposed Mixed Use: Office/Prof. Service/ Retail/ Residential and "Proposed Retail"). The same and their associated parking shall be built in Phase I of the project. These units may serve as the replacement units for housing units to be displaced by construction of Phase I of the development in accordance with the requirements of the City's Preservation and Replacement of Housing Units Ordinance, § 14-483 et seq. if approved by the City during site plan review. Replacement units shall be available for occupancy before a certificate of occupancy may be issued for the new construction on the original site.

2. There shall be no fewer than 18 or more than 24 townhouses located adjacent to Princeton Street and shown on Exhibit E as Phase II. The same and their associated parking shall be built in Phase II of the project. No temporary or permanent certificate of occupancy shall be granted for the grocery store building until all municipal approvals have been obtained for the Phase II townhouse development and a building permit has been issued for the first townhouse units. Building permits for at least 18 townhouses shall be obtained within 2 years of the commencement of construction of Phase II. **PACKARD** shall post a

performance guarantee in the amount of \$50,000.00 per dwelling unit for the 18 townhouses required under this condition (hereinafter referred to as the "Housing Guarantee"), in a form acceptable to the CITY. The Housing Guarantee shall be reduced in amount for every six (6) townhouses built and certificates of occupancy issued for such units. In the event that **PACKARD** fails to complete any or all of the 18 required townhouses, the CITY shall have the right to all funds remaining in the Housing Guarantee at the time of default. The CITY may utilize the funds in the Housing Guarantee for any housing project or housing-related purpose that it deems appropriate. Notwithstanding any contrary provision of this Agreement, **PACKARD's** completion of the 18 townhouse unit development or the CITY'S call of the Housing Guarantee for any or all of the 18 required units shall satisfy **PACKARD's** obligations under this subsection to provide 18 dwelling units in Phase II. The Housing Guarantee shall be separate from the performance guarantee required for site improvements on the townhouse site.

~~3. \_\_\_\_\_ **PACKARD** may also construct up to 24 additional units in the area designated on Exhibit B, as "Area Reserved for Potential Residential Development" subject to prior subdivision and site plan review. In the event that **PACKARD** elects to construct these additional units, they must otherwise comply with the requirements established for the R-5 zoning district. Prior to construction of residential units, this area may be utilized for overflow parking for the boxing facility in the amount of no more than fifty (50) parking spaces, with the location of the parking spaces to be determined during site plan review. Should **PACKARD** wish to so use this area for parking, it must obtain site plan review and it must grant to the City an easement over the area for use by the public engaged in the use of the recreation/ open space when the parking is not needed for boxing club events.~~

The Area Reserved for Potential Residential Development shall be loamed and seeded as part of Phase I of the development of the site as required by Section 6.5 unless a parking lot is proposed for this area in which case the parking lot proposal shall be subject to site plan approval during Phase I.

3. \_\_\_\_\_ **PACKARD** may also construct up to 24 additional units in the area designated on Exhibit B as "Area Reserved for Potential Residential Development" (hereinafter referred to as Phase III) subject to prior subdivision and site plan review. Such development shall comply with the setback and height requirements established for the R-5 zoning district. Pending development of Phase III, the Area Reserved for Potential Residential Development shall be loamed and seeded as part of Phase I of the redevelopment of the site, as required by Section 6. Should **PACKARD** fail to develop or cause to be developed Phase III within seven (7) years after the date of issuance of the final certificate of occupancy for Phase I, **PACKARD** shall offer to sell and/or assign to the CITY **PACKARD'S** interest in the area labeled "Area Reserved for

Potential Residential Development" for \$100, which offer must be accepted by the CITY within 60 days of its receipt. In the event that the CITY does not accept the offer within the 60 day period, PACKARD shall retain its interest in the Area Reserved for Potential Residential Development, subject to the limitations as set forth in this paragraph. Should the CITY accept PACKARD'S offer, its use of the property shall be limited to development of up to 24 units of housing, subject to subdivision and site plan review.

f. Accessory uses, including, but not limited to, public trails, parking facilities and structures, utility services, stormwater management systems, community meeting center, and site amenities. The uses listed in this subparagraph f shall be functionally related, physically oriented, and complementary to the principal uses of the site.

6. The uses on the **PROPERTY** will be within multiple buildings, which ~~may~~shall be constructed in phases as specifically set forth on Exhibit E. All sections of Phase I and Phase II are required to be developed. Phase II shall be constructed in accordance with the schedule requirements set forth in Paragraph 5 e.4.

The following improvements must be constructed during Phase I: no fewer than 10 housing units in compliance with Portland City Code § 14-483 et seq., minimum off-site traffic improvements as shown on Exhibit C, the trail network shown on Exhibit B and E (except for that area labeled "Proposed Pedestrian Way in Princeton Street Right of Way" which shall be constructed as part of Phase II), the construction of the multi-purpose field and the Area Reserved for Residential Development shall be loamed and seeded. No certificate of occupancy at this site will be issued for any purpose, unless and until such improvements are completed. Trails shall be constructed with bituminous surface or another surface approved by the City and complying with trail construction specifications of Portland Trails.

If the **PROPERTY** is constructed in Phases, in addition to the requirements contained in the Portland City Code, **PACKARD** nonetheless will be required at the outset to post a performance guarantee to cover all of the following improvements regardless of the Phase:

- Landscaping for approved portions of the plan and any temporary landscaping or screening determined necessary by the Planning Authority, in its discretion, to buffer the adjacent residential zone
- At minimum, the traffic improvements as shown on Exhibit C
- Trail amenities
- Stormwater system

7. *Development Standards.* All site plans in conformance with Exhibit B and Exhibit D (architectural renderings) may be approved by the Planning Board only if, in

addition to the dimensional requirements of paragraph 9 and the applicable provisions of article IV (subdivisions) and article V (site plan), the development meets the following additional development standards:

a. *Landscaping:* Development proposals shall include a landscape program that is consistent with the landscaping plan shown on Exhibit B. All land areas not covered by structures, parking areas, bus facilities or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips as shown on Exhibit B. Development proposals shall include appropriate fencing and/or berming and planting treatment of a dense and continuous nature in order to buffer parking lot visibility from adjacent properties.

b. *Vehicular access.* Vehicular access to the Phase I portion of the site shall be from the signalized access as shown on Exhibit B and shall be coordinated with other minimum off-site traffic improvements as shown on Exhibit C. A gated emergency access shall be provided at the terminus of Morrill Street as shown on Exhibit B. Vehicular access to Phase II shall be as shown on Exhibit B, with the location of the access to the Area Reserved for Potential Residential Development to be established during site plan and subdivision review of such development.

c. *Signs:* Development proposals shall identify all proposed signage. Building signage shall be designed in proportion and character with the building facades. A pylon sign including tenant signage shall be located as depicted on Exhibit B. All signs shall be constructed of permanent materials and shall be coordinated with the building and landscaping design through the use of appropriate materials and finishes. Signage for the development shall meet the standards established in Section 14-369 for multi-tenant lots in the B-2 zoning district, except as otherwise approved pursuant to Section 14-526(a)(23).

d. *Traffic improvements:* ~~PACKARD shall be responsible for the design and installation of, at minimum, the off-site traffic improvements shown on Exhibit C, which improvements shall be made at PACKARD'S sole expense, following review and approval by the CITY. Such traffic improvements shall include, but not be limited to roadway widening, resignalization, road area for bicycles uninterrupted bike lanes, bus stops, esplanades with street trees, and sidewalks. PACKARD shall be responsible for the design and installation of, at minimum, the off-site traffic improvements shown on Exhibit C, which improvements shall be made at PACKARD'S sole expense, following review and approval by the CITY. Such traffic improvements may include, but not be limited to, roadway widening, signal modifications, installation of a new traffic signal, provisions for bicycle facilities, bus stops, esplanades with street trees, railroad preemption upgrades and pedestrian facilities (e.g. sidewalks, crosswalks). In addition, within twelve (12) months after issuance of the final certificate of occupancy for Phase I, PACKARD shall undertake~~

a post-development traffic study of the unsignalized intersections identified within the scope of the MDOT traffic movement permit. In the event that this study demonstrates that the impact from traffic attributable to the development is materially different than what was approved as part of the project's MDOT traffic movement permit, the CITY may require PACKARD to fund mitigation measures to address those impacts, to the extent that such mitigation is technically and economically feasible.

e. *Open space improvements:* In addition to the trail and other open space amenities delineated on Exhibit B, **PACKARD** shall be responsible for improving the parcel currently owned by the **CITY** and located in the vicinity of Cambridge Street (Tax Map 151A-A-13). **PACKARD** shall be responsible for the remediation of the site and for grading a level surface, installation of loam and seed or sod, installation of associated parking, creation of appropriate drainage, and installation of irrigation equipment appropriate to create a multi-purpose field. **PACKARD** shall also be responsible for providing those funds necessary to purchase the playground and similar equipment necessary to improve the multi purpose field to similar condition to the multi-purpose field similar to the **CITY'S** Fox Street multipurpose field as it exists as of June 8, 2004. **PACKARD** shall work with the **CITY'S** Department of Parks and Recreation in determining the design and construction standards for the multipurpose field. In the event that ownership of this parcel will remain with the **CITY** or will be reconveyed to the **CITY** after the completion of improvements **PACKARD** shall be granted or shall retain an easement for its stormwater facilities, which shall be located and incorporated on this site in a manner as to allow the construction and use of the multi-purpose field. The open space in this area shall remain accessible to the users of the **PROPERTY**, as well as the general public, by use of the walking trails and any other available access.

**PACKARD** shall deed to the **CITY** a public recreational easement on and over the "Recreation/Open Space" area, the "Proposed Walking Trail," the sidewalk traversing the site, as well as the "Proposed Pedestrian Way in Princeton Street Right of Way" as delineated on Exhibit B. **PACKARD** shall be responsible for installing the "Proposed Walking Trail" as part of Phase I, as shown on Exhibit B and E, of the development. **PACKARD** shall grant a public recreational easement to the **CITY** for the trail or other recreational improvements. **PACKARD** shall also be responsible for construction of the multi-purpose field as set forth above in Phase I unless, after **PACKARD** has expended all reasonable efforts, permitting by the Maine DEP is held up or delayed for any reason beyond the control of **PACKARD**. In such case, **PACKARD** shall have an additional one (1) year from the issuance of required DEP permits in which to install the multipurpose field.

8. *Phasing:* **PACKARD** shall be authorized to develop the **PROPERTY** in multiple phases. These phases shall occur in accordance with the phasing plan attached hereto as Exhibit E. As specified in paragraphs 4 and 5, all sections of Phase I and Phase II are required to be developed. The Area Reserved for Future Residential Development

shall be loamed and seeded or constructed for parking/green space as otherwise approved during site plan review.

9. *CSO contribution:* **PACKARD** shall be required to contribute up to \$100,000.00 to the **CITY'S** Fall Brook Combined Sewer Overflow project, as determined by Public Works Authority.

10. *Dimensional Requirements.* The dimensional standards established in Section 14-185 for the B-2 zoning district, as further modified by this Agreement or by Exhibit B, shall apply to the **PROPERTY** as a whole, and not additionally to individual lots (if any) within the **PROPERTY**. For purposes of front yard setbacks, the front yard for each office or retail building developed on the **PROPERTY** shall have as the front yard the area between the building and Allen Avenue. The potential lot divisions for residential development and areas to be subject to long-term ground leases are delineated on Exhibit F. These locations may be changed as part of the subdivision review process. Amendments to these locations, once approved, may occur after Planning Board review and approval of the proposed amendments.

11. **PACKARD**, and its successors and assigns shall maintain the **PROPERTY** and the perimeter of the **PROPERTY** in order to ensure litter and other garbage is not spread/ blown to adjacent properties/neighborhood. **PACKARD** shall provide to the **CITY** a Maintenance Agreement which, in the event **PACKARD** or its successor fails to maintain the **PROPERTY**, would give the **CITY** the right to enter the property for purposes of cleaning up litter and debris, and charge **PACKARD** for its costs. The Property Maintenance Agreement shall include a retrieval program for shopping carts that have been removed from the **PROPERTY**.

The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to replace the uses and requirements of the existing R-5 and I-L zones and to limit and supplement the requirements of the existing B-2 zone as set forth in this Agreement, except that the conditional uses included within Portland City Code § 14-483 are specifically excluded.

The above stated restrictions, provisions, and conditions, including all Exhibits to this Agreement, are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **PACKARD**, any entity affiliated with **PACKARD** that takes title to the **PROPERTY**, their successors and assigns, and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. **PACKARD** shall record a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **PROPERTY**.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent

provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the development, use, and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the case of any issue related to the **PROPERTY** which is governed by this section, neither **PACKARD** nor its successors or assigns may seek relief which might otherwise be available to them from Portland's Board of Appeals by means of a variance, practical difficulty variance, interpretation appeal, miscellaneous appeal or any other relief which the Board would have jurisdiction to grant. Nothing herein, however, shall bar the issuance of stop work orders.

This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. Following any determination of a zoning violation by the Court or the Zoning Administrator, the City Council, after recommendation of the Planning Board, may amend, modify or rescind its conditional rezoning of the site.

**WITNESS:**

**PACKARD DEVELOPMENT, LLC**

\_\_\_\_\_

By \_\_\_\_\_

Its: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

\_\_\_\_\_, 2004

Personally appeared before me the above-named \_\_\_\_\_, in his/her capacity as \_\_\_\_\_, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of Packard Development, LLC.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

NATHAN H. SMITH (MAYOR)(3)  
WILLIAM R. GORHAM (1)  
KAREN A. GERAGHTY (2)  
CHERYL A. LEEMAN (4)  
JAMES I. COHEN (5)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

CDC "clean"  
version 11/22/04  
w/ Exhibits  
Attachment 6  
PETER E. O'DONNELL (A/L)  
JAMES F. CLOUTIER (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**CONDITIONAL ZONE AGREEMENT**  
**PACKARD DEVELOPMENT, LLC**

**AGREEMENT** made this \_\_\_ day of \_\_\_\_\_, 2004 by **PACKARD DEVELOPMENT, LLC** a Delaware limited liability company with a mailing address of One Wells Avenue, Newton, Massachusetts 02159, and its successors and assigns (hereinafter "**PACKARD**").

**WITNESSETH**

**WHEREAS, PACKARD** seeks to develop property located at and in the vicinity of 33 Allen Avenue in the City of Portland and identified on the City of Portland on the Assessor's maps at Map 435, Block G, Lots 10-12, 21, 22, and 26; Map 151A, Block A, Lots 12 and 13; Map 152, Block C, Lots 2 and 5; and Map 435, Block D, Lots 15, 16, 17 and 18 (hereinafter referred to as the "**PROPERTY**") (See **Exhibit A**); and

**WHEREAS, PACKARD** proposes to develop the **PROPERTY** as a mixed use development, including residential units, a community shopping center with a grocery store, other retail uses, restaurants, offices, and a boxing club/ gym facility; and

**WHEREAS, the PROPERTY** is currently located in three different zoning districts, R-5, B-2 and I-L; and

**WHEREAS, the purpose of this contract rezoning is to provide for a mixed use development, including a community shopping center, residential units, offices and a boxing and fitness facility; and**

**WHEREAS, substantial public improvements will be required to support any redevelopment of the PROPERTY, including but not limited to traffic improvements in the Morrills Corner area; and**

**WHEREAS, PACKARD** has developed a traffic improvement plan, which plan has been reviewed by the **CITY**; and

**WHEREAS, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62, and after notice and hearing and due deliberation thereon, recommended the rezoning of the PROPERTY, subject, however, to certain conditions; and**



**WHEREAS**, the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and will establish uses that are consistent with the uses in the original zones and the surrounding areas; and

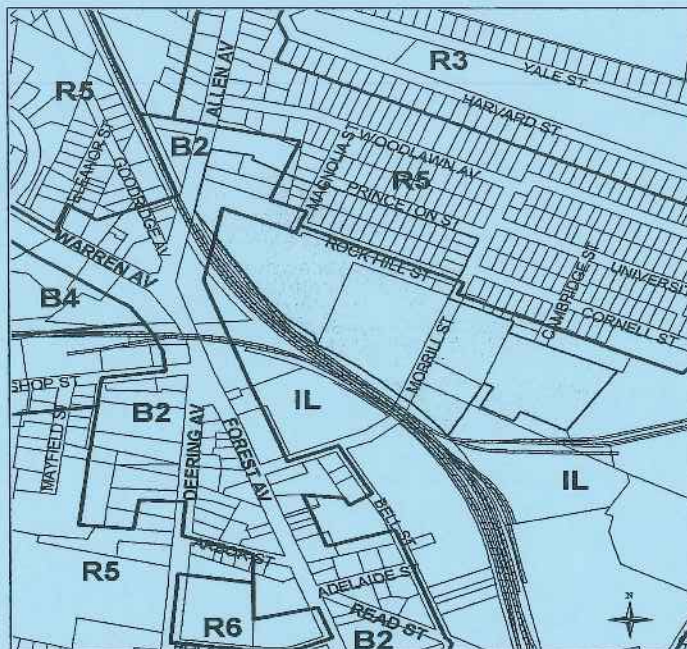
**WHEREAS**, the **CITY** has determined that the proposed development will be designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal through the design and implementation of significant public traffic improvements, stormwater drainage improvements, landscaping and buffering; and

**WHEREAS**, the **CITY** has determined that because of the unusual nature and unique location of the proposed development and the need for significant public improvements it is necessary and appropriate to have imposed the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

**WHEREAS**, on \_\_\_\_\_, 2004, the **CITY** authorized amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions become part of the **CITY'S** zoning requirements; and

**NOW, THEREFORE**, in consideration of the rezoning, **PACKARD** covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council on rezoning the **PROPERTY**, by Council Order No. \_\_\_\_\_, the City amends the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Portland City Code, by adopting the map change amendment for the **PROPERTY** shown herein.



**Proposed Rezoning for Morrill's Corner  
from IL, B2 and R5 to Conditional B2**

99-0-99-100-550 Fax#

Map prepared by the City of Portland's  
Department of Planning & Development and the GIS Workgroup

June 2004

This conditional rezoning shall become null and void and the **PROPERTY** shall revert to the existing R-5, B-2 and I-L zones in the event that **PACKARD** fails to record deeds transferring title ownership or long-term leases from White Chapel, LLC; Paul G. and Jonathan White; the City of Portland, except as otherwise provided in Section 6.G of this Agreement; James E. Darling, Jr.; Madeline F. and Jack Adams; and Allen Avenue Plaza, LLC to **PACKARD** within one year from the date of the Council vote. This one-year period shall be extended up to an additional one year period if:

- a. **PACKARD** has applied for all required approvals but has not received all required approvals within the one-year period;
- b. Any other event beyond the control of **PACKARD** has occurred which will delay the closing on some or all of the parcels and **PACKARD** has notified the **CITY** of such event and the projected time period for resolution of the event.

If any required approval, including the approval of the conditional rezoning, has been appealed, then this conditional rezoning shall become null and void and shall revert if **PACKARD** fails to commence construction of Phase I within one (1) year from the final disposition of such appeal.

2. The following plans and documents are attached and incorporated into this Agreement:

Exhibit A: **PARCEL**

Exhibit B: Site plan and signage plan

Exhibit C: Minimum off site traffic improvements

Exhibit D: Architectural renderings

Exhibit E: Phasing plan

Exhibit F: Potential lot divisions/long term leases

3. The **PROPERTY** shall be developed substantially in accordance with the Site Plan shown on Exhibit B (including the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and landscaping) and the architectural renderings shown on Exhibit D, provided, however, that each Phase, whether classified as a major or minor development, shall be subject to site plan review by the Planning Board, and if applicable, subdivision review by the Planning Board. Any site plan review applications shall fully comply with the Site Plan attached as Exhibit B, and the architectural renderings shown on Exhibit D, and the application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit minor deviations from the Site Plan, as long as the deviations are consistent with the purposes of this Agreement. The structure labeled "Existing Boxing/Proposed Expansion" in the northeasterly corner of Exhibit B shall be built with architecture similar to and compatible with that in Exhibit D for the other structures associated with this project.

4. The **CITY** shall not issue **PACKARD** any building permits for the project until **PACKARD** has 1) acquired the **PROPERTY** in accordance with the requirements of Section 1 of this Agreement and 2) has received all necessary federal, state and **CITY** permits.

5. *Permitted Uses.* **PACKARD** shall be authorized to establish and maintain the following uses on the **PROPERTY**:

- a. Retail establishments, restaurants, business services and personal services, all as defined by Portland City Code § 14-47. Drive through restaurants, gasoline sales and major and minor service stations shall not be permitted on the site.
- b. Professional and business offices occupying no more than 25,000 square feet.
- c. Day care facilities and adult day care facilities.
- d. Exercise and fitness centers, and health clubs, including but not limited to a boxing and fitness facility. Any boxing facility shall comply with the following restrictions:

1. Any event at a boxing club located on the **PROPERTY** with ticket sales or attendance numbers in excess of three hundred (300) hundred shall be limited to twelve (12) times per year; and
2. the days of the week such events may be held may be limited by the City, in its discretion, based on concerns of traffic conditions, other events around the City or any other reason deemed to negatively impact public health, welfare or safety; and
3. **PACKARD** shall notify the **CITY'S** parking division four (4) weeks in advance of such event.
4. **PACKARD** shall provide an annual parking management plan to handle the requirements for parking at said events.
5. **PACKARD** shall include in the annual parking management plan appropriate provisions for prohibiting parking on streets neighboring the property.

The initial plan shall be submitted for review as part of the site plan review for the boxing facility. The plan must include provisions for off site parking and shuttle bus transportation to the **PROPERTY**. Thereafter, the parking management plan shall be updated annually and shall be reviewed and approved on an annual basis by the City's Planning Authority and Parking Division, in its discretion . In any case, parking for daily use and for normal boxing club events shall be met on site.

e. Dwellings, as specified herein:

1. There shall be no fewer than ten (10) apartments (which may be combined live/work spaces) located in the building delineated on the Site Plan as "Proposed Mixed Use: Office/Prof. Service/ Retail/ Residential and "Proposed Retail"). The same and their associated parking shall be built in Phase I of the project. These units may serve as the replacement units for housing units to be displaced by construction of Phase I of the development in accordance with the requirements of the City's Preservation and Replacement of Housing Units Ordinance, § 14-483 et seq. if approved by the City during site plan review. Replacement units shall be available for occupancy before a certificate of occupancy may be issued for the new construction on the original site.

2. There shall be no fewer than 18 or more than 24 townhouses located adjacent to Princeton Street and shown on Exhibit E as Phase II. The same and their associated parking shall be built in Phase II of the project. No temporary or permanent certificate of occupancy shall be granted for the grocery store building until all municipal approvals have been obtained for the Phase II townhouse development and a building permit has been issued for the first townhouse units. Building permits for at least 18 townhouses shall be obtained within 2 years of the commencement of construction of Phase II. **PACKARD** shall post a

performance guarantee in the amount of \$50,000.00 per dwelling unit for the 18 townhouses required under this condition (hereinafter referred to as the "Housing Guarantee"), in a form acceptable to the CITY. The Housing Guarantee shall be reduced in amount for every six (6) townhouses built and certificates of occupancy issued for such units. In the event that **PACKARD** fails to complete any or all of the 18 required townhouses, the CITY shall have the right to all funds remaining in the Housing Guarantee at the time of default. The CITY may utilize the funds in the Housing Guarantee for any housing project or housing-related purpose that it deems appropriate. Notwithstanding any contrary provision of this Agreement, **PACKARD's** completion of the 18 townhouse unit development or the CITY'S call of the Housing Guarantee for any or all of the 18 required units shall satisfy **PACKARD's** obligations under this subsection to provide 18 dwelling units in Phase II. The Housing Guarantee shall be separate from the performance guarantee required for site improvements on the townhouse site.

3. **PACKARD** may also construct up to 24 additional units in the area designated on Exhibit B as "Area Reserved for Potential Residential Development" (hereinafter referred to as Phase III) subject to prior subdivision and site plan review. Such development shall comply with the setback and height requirements established for the R-5 zoning district. Pending development of Phase III, the Area Reserved for Potential Residential Development shall be loamed and seeded as part of Phase I of the redevelopment of the site, as required by Section 6. Should **PACKARD** fail to develop or cause to be developed Phase III within seven (7) years after the date of issuance of the final certificate of occupancy for Phase I, **PACKARD** shall offer to sell and/or assign to the CITY **PACKARD'S** interest in the area labeled "Area Reserved for Potential Residential Development" for \$100, which offer must be accepted by the CITY within 60 days of its receipt. In the event that the CITY does not accept the offer within the 60 day period, **PACKARD** shall retain its interest in the Area Reserved for Potential Residential Development, subject to the limitations as set forth in this paragraph. Should the CITY accept **PACKARD'S** offer, its use of the property shall be limited to development of up to 24 units of housing, subject to subdivision and site plan review.

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e. *Open space improvements:* In addition to the trail and other open space amenities delineated on Exhibit B, **PACKARD** shall be responsible for improving the parcel currently owned by the **CITY** and located in the vicinity of Cambridge Street (Tax Map 151A-A-13). **PACKARD** shall be responsible for the remediation of the site and for grading a level surface, installation of loam and seed or sod, installation of associated parking, creation of appropriate drainage, and installation of irrigation equipment appropriate to create a multi-purpose field. **PACKARD** shall also be responsible for providing those funds necessary to purchase the playground and similar equipment necessary to improve the multi purpose field to similar condition to the multi-purpose field similar to the **CITY'S** Fox Street multipurpose field as it exists as of June 8, 2004. **PACKARD** shall work with the **CITY'S** Department of Parks and Recreation in determining the design and construction standards for the multipurpose field. In the event that ownership of this parcel will remain with the **CITY** or will be reconveyed to

the CITY after the completion of improvements **PACKARD** shall be granted or shall retain an easement for its stormwater facilities, which shall be located and incorporated on this site in a manner as to allow the construction and use of the multi-purpose field. The open space in this area shall remain accessible to the users of the **PROPERTY**, as well as the general public, by use of the walking trails and any other available access.

**PACKARD** shall deed to the CITY a public recreational easement on and over the "Recreation/Open Space" area, the "Proposed Walking Trail," the sidewalk traversing the site, as well as the "Proposed Pedestrian Way in Princeton Street Right of Way" as delineated on Exhibit B. **PACKARD** shall be responsible for installing the "Proposed Walking Trail" as part of Phase I, as shown on Exhibit B and E, of the development. **PACKARD** shall grant a public recreational easement to the CITY for the trail or other recreational improvements. **PACKARD** shall also be responsible for construction of the multi-purpose field as set forth above in Phase I unless, after **PACKARD** has expended all reasonable efforts, permitting by the Maine DEP is held up or delayed for any reason beyond the control of **PACKARD**. In such case, **PACKARD** shall have an additional one (1) year from the issuance of required DEP permits in which to install the multipurpose field.

8. *Phasing:* **PACKARD** shall be authorized to develop the **PROPERTY** in multiple phases. These phases shall occur in accordance with the phasing plan attached hereto as Exhibit E. As specified in paragraphs 4 and 5, all sections of Phase I and Phase II are required to be developed. The Area Reserved for Future Residential Development shall be loamed and seeded or constructed for parking/green space as otherwise approved during site plan review.

9. *CSO contribution:* **PACKARD** shall be required to contribute up to \$100,000.00 to the CITY'S Fall Brook Combined Sewer Overflow project, as determined by Public Works Authority.

10. *Dimensional Requirements.* The dimensional standards established in Section 14-185 for the B-2 zoning district, as further modified by this Agreement or by Exhibit B, shall apply to the **PROPERTY** as a whole, and not additionally to individual lots (if any) within the **PROPERTY**. For purposes of front yard setbacks, the front yard for each office or retail building developed on the **PROPERTY** shall have as the front yard the area between the building and Allen Avenue. The potential lot divisions for residential development and areas to be subject to long-term ground leases are delineated on Exhibit F. These locations may be changed as part of the subdivision review process. Amendments to these locations, once approved, may occur after Planning Board review and approval of the proposed amendments.

11. **PACKARD**, and its successors and assigns shall maintain the **PROPERTY** and the perimeter of the **PROPERTY** in order to ensure litter and other garbage is not spread/ blown to adjacent properties/neighborhood. **PACKARD** shall provide to the CITY a Maintenance Agreement which, in the event **PACKARD** or its successor fails to maintain the **PROPERTY**, would give the CITY the right to enter the



property for purposes of cleaning up litter and debris, and charge **PACKARD** for its costs. The Property Maintenance Agreement shall include a retrieval program for shopping carts that have been removed from the **PROPERTY**.

The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to replace the uses and requirements of the existing R-5 and I-L zones and to limit and supplement the requirements of the existing B-2 zone as set forth in this Agreement, except that the conditional uses included within Portland City Code § 14-483 are specifically excluded.

The above stated restrictions, provisions, and conditions, including all Exhibits to this Agreement, are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **PACKARD**, any entity affiliated with **PACKARD** that takes title to the **PROPERTY**, their successors and assigns, and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. **PACKARD** shall record a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **PROPERTY**.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the development, use, and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the case of any issue related to the **PROPERTY** which is governed by this section, neither **PACKARD** nor its successors or assigns may seek relief which might otherwise be available to them from Portland's Board of Appeals by means of a variance, practical difficulty variance, interpretation appeal, miscellaneous appeal or any other relief which the Board would have jurisdiction to grant. Nothing herein, however, shall bar the issuance of stop work orders.

This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. Following any determination of a zoning violation by the Court or the Zoning Administrator, the City Council, after recommendation of the Planning Board, may amend, modify or rescind its conditional rezoning of the site.

**WITNESS:**

**PACKARD DEVELOPMENT, LLC**

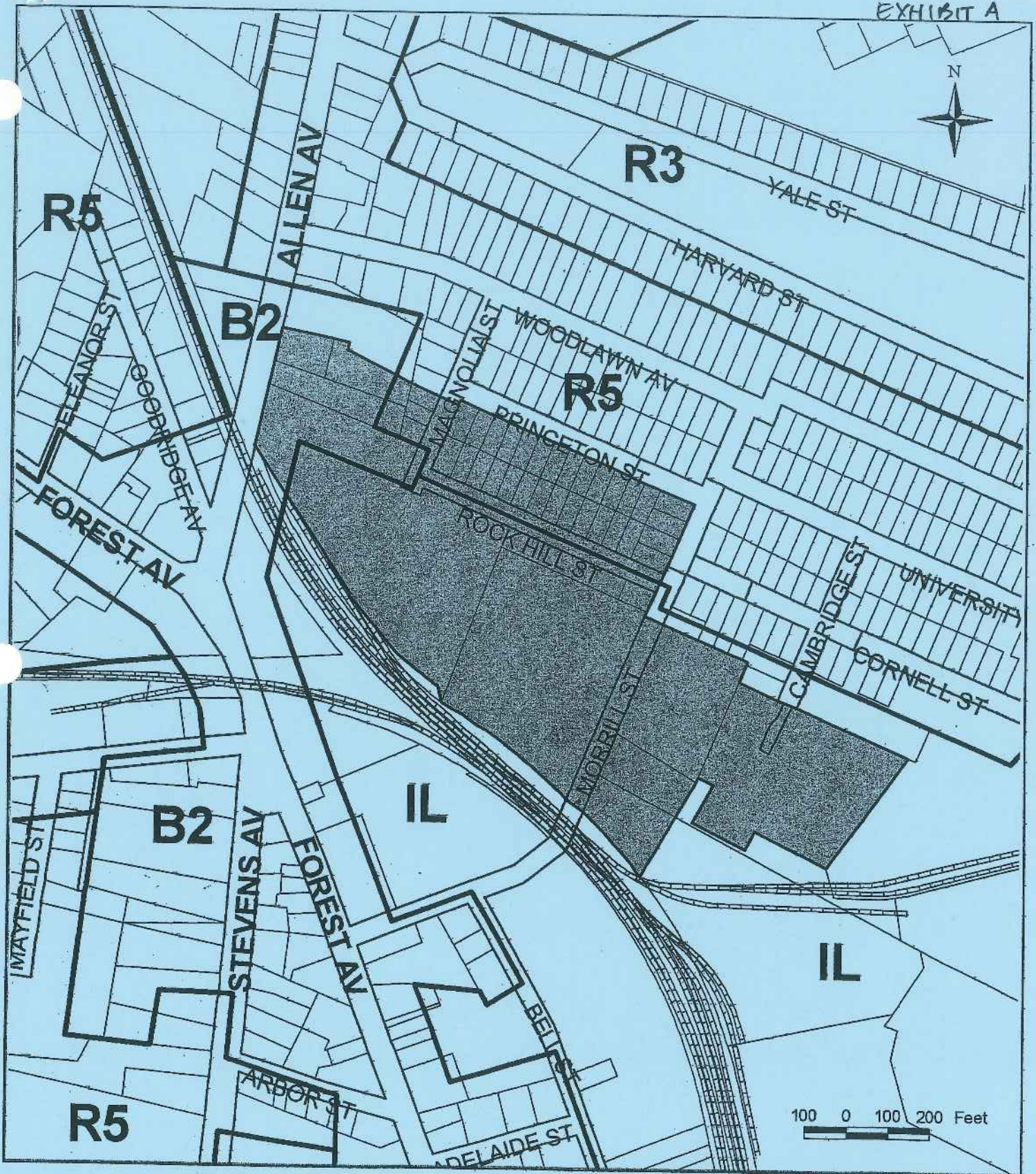
\_\_\_\_\_ By \_\_\_\_\_

Its: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX, ss. \_\_\_\_\_, 2004

Personally appeared before me the above-named \_\_\_\_\_, in his/her capacity as \_\_\_\_\_, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of Packard Development, LLC.

Before me,  
\_\_\_\_\_  
Notary Public/Attorney at Law



## Proposed Rezoning for Morrill's Corner from IL, B2 and R5 to Conditional B2

August 2004