

SECTION 00010 – SPECIAL CONDITIONS**PART 1. GENERAL****1.1 OWNER**

- 1.1.1 Wherever the word "Owner" is used in the specifications, it is meant to be Packard Development.

1.2 ASSIGNMENT

- 1.2.1 Owner reserves the right to assign its interest in this Project to any of its Subsidiaries or Affiliates.

1.3 ARCHITECT/ENGINEER, OWNER'S REPRESENTATIVE AND CONSTRUCTION MANAGER

- 1.3.1 Architect is Port City Architecture. Contact is John Charette at:

Port City Architecture
65 Newbury St.
Portland, ME 04101
Tel: (207) 761-9000
Fax: (207) 761-2010
Email: john@portcityarch.com

- 1.3.2 Owner's Representative shall be Packard Development. Contact is Howard Mintz at:

Packard Development
One Wells Avenue
Newton, Massachusetts 02459
Tel.: (617) 965-1966
Fax : (617) 965-6984
Email: hmintz@PACKARDDEVELOPMENT.com

- 1.3.3 Owner's Geotechnical Engineer or Soils Engineer shall be RW Gillespie & Associates, Inc. Contact is Charlie Nickerson at:

Charles R. Nickerson, P.E.
R.W. Gillespie & Associates
86 Industrial Park Road, Suite 4
Saco, ME 04072
Tel: (207) 286-8008
Fax: (207) 286-2882
Email: cnickerson@rwg-a.com

- 1.3.4 Civil Engineer shall be Sebago Technics, Inc. Contact is Danielle D. Betts, P.E.

Sebago Technics, Inc.
One Chabot Street
P.O. Box 1339
Westbrook, Maine 04098
Tel: (207) 856-0277
Fax: (207) 823-2206
E-mail: dbetts@sebagotechnics.com

- 1.3.5 Structural Engineer Shall be Becker Structural Engineers. Inc.

Becker Structural Engineers, Inc.
75 York Street
Portland, Maine 04101
Tel: (207) 879-1838
Fax: (207) 879-1822
E-Mail: todd@beckerstructural.com

- 1.3.6 Mechanical engineer shall be AWM Engineering, Inc.

AWM Engineering, Inc.
88 State Street
Gorham, Maine 04038
Tel: (207) 839-2167
Fax: (207) 839-2168
E-Mail: al@awmeng.com

1.4 CONTRACTOR

- 1.4.1 The terms "Contractor", "General Contractor", "Site Contractor", and Site Work Contractor" as used in these specifications means the person, firms, or corporation to whom this Contract will be awarded.

1.5 SITE

- 1.5.1 Access to Site: All persons and equipment connected with this project shall enter and leave the project site at entrances and/or places as designated and approved by the Architect/Engineer. Access to the site may be by way of Rand Road.
- 1.5.2 Staging Areas: Construction materials storage, offices, trailers, shops, etc., shall be located within the Owner's property lines as shown on the drawings, and shall be coordinated with other Contractors and the work to avoid delay.
- 1.5.3 Lowe's Staging Areas: Staging area and access to be constructed according to the drawings. Areas to be maintained by the contractor during construction. Lowe's

construction materials storage, offices, trailers, shops, etc., shall be located within the Owner's property lines as shown on the drawings, and shall be coordinated with other Contractors and the work to avoid delay. The Lowe's staging area shall be equipped and serviced with independent temporary water supply, temporary electrical power and temporary telephone lines. Contractor shall provide, at a minimum, 100 amp, 205/205 volt single phase electric service. Temporary service shall be ready at the Lowe's pad preparation completion date.

- 1.5.4 Retail Buildings 2 and 3 Staging Area: Staging area and access to be constructed according to the drawings. Areas to be maintained by the contractor during construction. Retail building construction materials storage, offices, trailers, shops, etc., shall be located within the Owners' property lines as shown on the drawings, and shall be coordinated with other Contractors and the work to avoid delay. The Retail building staging areas shall be equipped and serviced with independent temporary water supply, temporary electrical power and temporary telephone lines.

- 1.5.5 Site will be bid on an unclassified basis.

1.6 DUST CONTROL

- 1.6.1 Water shall be applied and spread in such manner and by such devices that uniform distribution is attained over the entire area. Water shall be applied as often as necessary and when directed by the Architect/Engineer to obtain proper dust control. Dust control shall be subject to the requirements of the City of Portland, the Maine Department of Environmental Protection, and other governmental agencies having jurisdiction.

- 1.6.2 Trucks carrying soil to and from the site must be covered.

- 1.6.3 Municipal roadways, operational shopping center roads and parking lots, shall be kept clean daily or as required to maintain roads in a condition satisfactory to the City, State and Shopping Center Owner.

1.7 SHOPPING CENTER OPERATION

- 1.7.1 Contractor shall be aware that certain portions of the shopping center will be open at all times during construction. Construction operations will be coincided, for the duration of project, with the operational Shopping Center. Access to all operating portions of the Shopping Center shall be maintained at all times. The contractor shall adjust vehicular and pedestrian access routes, etc.; using whatever additional precautions are required, including but not limited to: concrete barriers, construction barrels or cones, temporary fencing and construction gates, security or police personal; as required to maintain safe access around the construction work area and to maintain the ongoing shopping center uses.

- 1.7.2 If necessary to maintain safe access in and out of the Shopping Center, the Contractor

shall supply police to manage the traffic, as required and coordinated with existing construction activities on site.

- 1.7.3 Transitions to and from the construction area to operational parking areas and access drives shall be maintained for safe passage and shall not exceed ¾" vertical difference between surfaces.

1.8 COORDINATION

- 1.8.1 Construction operations for Buildings will be proceeding concurrently with the Site Work. The Building Contractor shall make every effort to cooperate with the Site Contractors on the site and in a manner not to delay or interfere with carrying forward other Contractor's work. He must coordinate all installation with the Architect/Engineer. Any issue with said coordination must be addressed in writing with the Owners Representative and/or Engineer.
- 1.8.2 Each Contractor and Subcontractor shall coordinate their work with adjacent work, and cooperate with other trades so as to facilitate general progress of work. Each trade shall afford other trades every reasonable opportunity for installation of their work and for storage of their materials. All material staging locations shall be approved by the Owner/Engineer as previously stated.
- 1.8.3 Inasmuch as the construction completion within time limits is dependent upon cooperation of those engaged therein, it is required that each Contractor lay out and install his work at a time and in a manner that will not delay or interfere with carrying forward other Contractor's work.
- 1.8.4 The Building Contractor shall work in harmony with all other contractors and trades that shall be working on this Project and other buildings.

1.9 DISCREPANCIES

- 1.9.1 If, after examination of Contract Drawings and Specifications, any discrepancies, omissions, ambiguities, or conflicts are found in or among same or there is doubt as to their meaning, the Architect/Engineer is to be notified at the earliest possible date. Where information sought is not clearly indicated or specified, the Architect/ Engineer will issue addendum to all the Contractors clarifying conditions, which addendum will become part of the Contract Documents. Neither the Owner nor the Architect/Engineer will be responsible for any oral instructions.
- 1.9.2 In all work shown on drawings, figured dimensions are to be followed in all cases, though they may differ from scaled measurements. Before beginning the work, Contractor is to check through all dimensions and call to the attention of the Architect/Engineer for adjustment of any apparent or manifest discrepancy.

1.10 WORKING HOURS

- 1.10.1 In no case shall the Contractor or any subcontractor perform any work on the project except during regular working hours without, in each instance, notifying the Architect/Engineer in order that his representatives may be present to observe said overtime work. This shall not be interpreted as a measure to prevent the Contractor from working "overtime" under any circumstances, but merely to insure that the Architect/Engineer may have the opportunity to have his representatives on hand to assist the Contractor, as may be required, to interpret the Contract Documents, Drawings or Specifications. Regular construction work hours are as defined by the City of Portland Code.

1.11 OVERTIME WORK

- 1.11.1 If, at any time, any item of work is being unreasonably delayed as to interfere with progress of other dependent items, a reasonable amount of overtime work may be ordered at the Contractor's expense.
- 1.11.2 If found necessary to reach a proper stopping place in any portion of the work, or to complete work within the Contract time limit, the Contractor shall work his forces and forces of his subcontractors overtime without addition to the Contract Price. Contractor shall insure that installation of work under any subcontract does not interfere with nor delay progress of building work, nor with progress of any independent contracts running concurrently.

1.12 COORDINATION OF WORK BY OTHERS

- 1.12.1 Contractor shall coordinate all work that is to be done by others. Contractor shall make all necessary contact, and coordinate work with others as required so as to complete the site work by the dates specified and shall reflect the work by others in his construction schedule. Contractor will be held fully responsible for all coordination work.

1.13 TEMPORARY TOILETS

- 1.13.1 Building Contractor shall provide and maintain adequate temporary toilet facilities per Federal, State and/or local requirements and to the satisfaction of the Architect/Engineer and Public Authorities. Toilets shall be enclosed, weatherproofed, well ventilated, and kept in a sanitary condition. Upon completion of the work, remove without trace. Location to be approved by the Owner.

1.14 TEMPORARY WATER SUPPLY

- 1.14.1 Building Contractor shall install at his expense an adequate water supply for all construction operations at any point within the work. Make permanent connection to

mains and install temporary metered service as soon as possible. Permanent lines may be used if provided with temporary hose bibbs and drainage connections.

- 1.14.2 Drinking water shall be obtained from a proven safe source, piped, or transported so as to be kept clean, fresh and cool, and served from single-service disposable containers or satisfactory types of sanitary drinking stands or fountains. Drinking water facilities shall be provided-for all personnel engaged on the project.

1.15.1 TEMPORARY ELECTRIC SERVICE

- 1.15.1 Building Contractor shall make all arrangements with the electric utility company in its name for the installation of temporary electric power and light service required in connection with the use of any of its equipment and for the Contractor's trailers. The expense for the initial installation shall be borne by the Contractor.

1.16 TEMPORARY SIGNS

- 1.16.1 Signs and advertisements are not permitted to be displayed without approval of the Owner and/or Architect/Engineer.
- 1.16.2 The Contractor shall furnish all signage to direct traffic around the phased construction areas as required to maintain safe access to all operational portions of the shopping center. All signs shall be clearly visible to vehicles and pedestrian traffic.

1.17 TAXES

- 1.17.1 Pay sales, unemployment, old age pension, other taxes imposed by local, city, state or federal government; include such expenses in stipulated sum.

1.18 REPORTS

- 1.18.1 Furnish statement once a month, in a form approved by the Owner/Engineer, stating conditions, general progress of work, percentage of each kind of work that has been finished, and approximate date when work will be finished and delivered. Contractor shall furnish the Owner and the Architect/Engineer one copy each of a daily report, the form of which shall be approved by the Construction Manager prior to the start of work.

1.19 CONSTRUCTION SCHEDULE AND PROGRESS MEETINGS

- 1.19.1 At the time of Contract negotiations, the Contractor shall prepare and submit for acceptance by the Owner, a complete graphic construction schedule. The Contractor's schedule shall show dates upon which each item or subdivision of the work shall be begun and completed, to assure orderly progress of the work. The Contractor,

Construction Manager and Packard Development will work to create a mutually agreeable schedule which will be part of the Contract.

- 1.19.2 This progress schedule will be made a definite part of the Contract. It shall be in such form as to readily indicate the definite status of the work as planned and scheduled, so that at weekly intervals it may be clearly determined whether the actual state of the work is in accord with the schedule, and what subdivision, if any, is responsible for delays. Schedule shall be revised as necessary during the course of the work.
- 1.19.3 Throughout the entire operation, these schedules shall be adhered to as closely as possible. A copy of approved progress schedule shall be posted in the construction office, and actual progress shall be checked and posted weekly.
- 1.19.4 Construction schedule shall reflect a March 15, 2005 start date and a July 15th, 2005 substantial completion date for retail 2 and retail 3 building shells.

1.20 AS-BUILT DRAWINGS

- 1.20.1 At the completion of the work, the Site Contractor shall deliver a complete set of documents, including changes made to that date, on which he shall have recorded, as required by the Supplementary General Conditions and by other sections of the specifications, changes or discrepancies between the drawings and the actual locations or dimensions of utilities, etc.
- 1.20.2 These drawings shall be kept up to date, reflecting changes made during the progress of the work and shall be made available to the Architect/Engineer for his review and inspection at any time.
- 1.20.3 An As-Built Drawing showing building locations, elevations, utilities and inverts shall be maintained as a red-line mark up and on disk in AutoCAD format by the Contractor and delivered to the Owner at the completion of the job.

1.21 GUARANTEE, WARRANTY

- 1.21.1 Unless otherwise noted or specified, the Site Contractor shall guarantee all work for a period of **one (1) year** from the date of final acceptance of the completed work.
- 1.21.2 In case of work performed by subcontractors and where guarantees are required, secure guarantees from said subcontractors on their letterhead countersigned by the Site Contractor addressed to and in favor of Owner. Deliver copies of guarantees to Architect/Engineer upon completion of work.
- 1.21.3 Delivery of said guarantees shall not relieve the Contractor from any obligation assumed under any other provisions of Contract.
- 1.21.4 Should any defects develop in aforesaid work within specified periods, due to faults in

materials and/or workmanship, Contractor is to make repairs, do necessary work to correct defective work as approved. Execute such repairs, corrective work, including costs or making good other work damaged by or otherwise affected by making of repairs or corrective work without extra cost to Owner, at entire cost to Contractor. Work to be done within five days after written notice to the Contractor by the Owner.

- 1.21.5 In cases where the Contractor fails to do work so ordered, the Owner may have work done and charge cost thereof against moneys retained as provided for in Agreement. If said retained moneys are insufficient to pay such cost, or if no money is available, the Contractor and his sureties agree to pay Owner cost of such work.

1.22 TRAFFIC CONTROL

- 1.22.1 Contractor shall furnish uniformed police officers and/or flagmen as are necessary for the direction and control of traffic within and adjacent to the site at such locations and for such periods as ordered or directed by the City of Portland or State of Maine authorities.
- 1.22.2 Traffic control shall be shown on a Traffic Management Plan prepared by the Contractor and approved by Packard Development and the Shopping Center Owner.

1.23 EXISTING PUBLIC UTILITIES

- 1.23.1 Contractor must verify with the Site Contractor the existence of any public utilities on the Project area running to any buildings existing on the Site.

1.24 OSHA

- 1.24.1 All Contractors and subcontractors shall comply with the requirements of the Occupational Safety and Health Act of 1970, or revisions thereto, which are applicable during the term of this Contract and hold the Owner and/or his agents harmless from any claim or loss that may result from violations of or claims under this act.

1.25 HOLD HARMLESS CLAUSE

- 1.25.1 Contractor agrees to defend, indemnify, and hold Packard Development, LLC harmless and, if requested by Packard Development, LLC, the Owner, their consultants, agents and employees of any of them, from and against any and all claims, suits, losses or liability, including attorneys' fees and litigation expenses, for or on account of injury to or death of persons including contractor's employees, or damage to or destruction of property, or any bond obtained for the same, arising out of or resulting from any act or omission, or alleged act or omission, of contractor, its employees or agents, whether caused in part by a party indemnified hereunder.

- 1.25.2 Contractor's indemnification and defense obligations hereunder shall extend to Claims occurring after this agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable laws.
- 1.25.3 Contractors shall provide a Certificate of Insurance prior to starting work. Packard Development LLC shall be added as an additional Insured on Contractor's General Liability policy and evidenced by a certificate of insurance with an Additional Insured CG2020 (11/85) endorsement attached or and endorsement with equivalent language that provides Premises/Operations and Products/Completed Operations coverage. [Limits on the Contractor's General Liability for Premises/Operations and Products/Completed Operations shall be equal to or greater than the contractor's limits of \$10,000,000.00 (Ten Million Dollars).
- 1.25.4 Contactor shall maintain the Products and Completed Operations Liability Coverage in force until the expiration of the applicable statute of limitations relating to latent defects in construction of, or improvements to, real property.
- 1.25.5 Contractor acknowledges and represents that it has made an on-site inspection of the Premises and the work area so as to be familiar with all conditions which may affect the safety and health of its employees as well as those of its Subcontractors. Owner reserves the right but not the obligation, to inspect the safety work performance to Contractors/Subcontractors to ascertain their compliance with these and other applicable safety provisions. Notwithstanding the foregoing, Contractor, as an independent contractor, is solely responsible for controlling the manner and means by which it performs the Work pursuant to this Agreement, unless otherwise agreed to by the parties in writing. Contractor shall provide all safety equipment, materials, tools and personal protection equipment necessary to perform the work in a safe, healthful, and workmanlike manner. Contractor shall immediately, report to Owner or Owners representative all accidents, occupational injuries and injuries and illnesses involving its employees or those of its subcontractors, relating to the Work or in which cause any injury to a third party or which cause damage to the property of the Owner, Contractor, or a third party. Contractor shall promptly furnish to Owner copies of any workers compensation report of injury or illness forms filed by any of its employees or those of its Subcontractors and when requested, assist Contractor/Owner in any investigation it may conduct of any such accident, injury or illness.

1.26 MAINTENANCE MANUALS AND INSTRUCTIONS

1.26.1 Maintenance Manuals:

- a. Provide three bound copies of a manual each containing a copy of all approved shop drawings, wiring diagrams, manufacturers maintenance manuals and operating procedures, parts list of all equipment and source of supply. Include in each manual a typed copy of operating and maintenance instructions of the complete system.
- b. The above items are required to be complete before request for final inspection.

1.26.2 Maintenance Instructions:

- a. Instruct the Owner's designated representative on all operating and maintenance procedures of all systems installed, and provide a letter signed by person receiving these instructions to the Architect/Engineer at time of final inspection.
- b. All of the above shall be delivered to the Architect/Engineer with a letter of transmittal at the same time prior to the request for final payment.

1.27 SEPARATE CONTRACTS

- 1.27.1 Owner expressly reserves the right to award other contracts, and to employ other contractors for work in connection with this project. All contractors engaged in work on this project shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment, and for the execution of their work without hindrance or objection. They shall properly connect and coordinate all of their work with work of other contractors.

1.28 DEWATERING

- 1.28.1 In the event that areas to be worked on are water covered or waterlogged to the extent that site work in these areas can not be done, the Contractor is to do any pumping or dewatering necessary at its own expense so that work may continue without interruption. Snow removal is to be treated similarly if required to keep sitework proceeding expeditiously. Snow removal and dewatering cannot be discharged into the wetlands on or off-site. Snow should be removed from the site and disposed of off-site. Water from dewatering should be discharged into a wooded buffer, settling tank, basin or other approved device and the sediment removed from the site.

1.29 EROSION AND SEDIMENTATION CONTROL

- 1.29.1 Contractor will be required to install erosion and sedimentation control devices and methods as outlined in other sections of these specifications and as required by MDEP, City of Portland, the Stormwater Pollution Prevention Plan (SWPPP), and any governmental agency having jurisdiction. Contractor shall install and maintain these devices as required to control erosion and sedimentation and as additionally ordered by Architect/Engineer or municipal agents. Contractor shall be fully responsible for all

damages sustained due to failure of erosion and/or sedimentation including damages sustained due to delay of schedules and/or delivery dates.

- 1.29.2 All Contractors shall read carefully and comply with the Stormwater Pollution Prevention Plan (SWPPP) prepared as part of the Maine Construction General Permit application for NPDES compliance. See plans and narrative part of SWPPP. Proposed Modifications to the SWPPP shall be submitted by the Contractor for review and approval.

1.30 PRECONSTRUCTION CONFERENCE

- 1.30.1 Prior to the start of construction a preconstruction conference will be held at a place and time to be determined by the Owner's Representative. Contractor shall be prepared to present his detailed construction schedule and his plans, methods and schedules for erosion and sedimentation control. The Site Contractor, Officials and agents of the City of Portland and MDEP will be notified of the preconstruction conference.

1.31 CLEANING UP

- 1.31.1 Contractor shall remove all construction material, equipment or other debris remaining on the job as a result of construction operations and shall render the site of the work in a neat and orderly condition.
- 1.31.2 All pipes and structures constructed under or affected by work of this Contract shall be left in clean operable condition by Contractor at completion of work.

1.32 WINTER CONDITIONS

- 1.32.1 Frost Protection and Snow Removal: The site contractor is responsible for removing and disposing of snow to an off-site location. Under no circumstances can snow be dumped, pushed, and/or placed into the wetland sensitive areas located within the property. The site contractor is also responsible for over-excavation and removal of frozen soil. Fill can not be placed over frozen soil which is greater than 3" thick.

1.33 GRADES

- 1.33.1 Grades, both existing and finished, are indicated on the drawings. The Owner and/or Architect/Engineer are not responsible for existing grades shown on the drawings. Contractor shall check all areas wherein grades are shown to satisfy themselves as to actual conditions. The Owner will provide initial survey control at commencement of the work. The Contractor shall be responsible for maintaining all control points and establishing additional control necessary for the work. The Contractor shall be responsible for all layout and survey required to construct the project.

- 1.33.2 Owner and/or Architect/Engineer are not responsible for any existing grades shown; the Contractor shall be responsible for verifying grades shown and incorporating any variances into his Base Bid. No additional payment will be made for grade discrepancies discovered. Contractor may visit site during the bid period to confirm conditions, if desired.

1.34 DRAWINGS

- 1.34.1 Refer to Specification Section 00004 for a Drawing Index.

1.35 OTHER DOCUMENTS (incorporated by reference to this document and available for review by bidders at the office of Sebago Technics)

- 1.35.1 Drawings and specifications dated 10/01/04 and subsequent revisions and addenda, prepared by Sebago Technics, Inc., shall be made part of the specifications.
- 1.35.2 The report "Report of Geotechnical Investigation, Pine Tree Shopping Center, Portland, Maine", dated July 16, 2004 and all subsequent revisions and amendments, prepared by R.W. Gillespie & Associates, shall be made part of the specifications.

--- END OF SECTION --