

400-D-3
Ray Street
Faulbrock Woods
Faulbrock Inc.

on Spreadsheet

lace (Daucus carota), Canada goldenrod (Solidago canadensis), black-eyed Susan (Rudbeckia serotina), orchard grass (Dactylis glomerata), red clover (Trifolium pratense), and common cinquefoil (Potentilla simplex). The soils in this portion of the upland appear to be fill.

W2 is located to the north on the edge of the property. Common species here are red maple, and quaking aspen (Populus tremula) saplings, buckthorn (Rhamnus sp.), wool grass, pointed broom sedge (Carex scoparia), sensitive fern (Onoclea sensibilis), and marsh fern (Thelypteris thelypteroides). This wetland is also adjacent to a stand of white pine.

W3 is a red maple swamp in the southeastern property corner. Red maple dominates the overstory and understory with some white pine mixed in along the edge. At the northern end of the wetland green ash (Fraxinus pennsylvanica) and American elm (Ulmus americana) are also common. Arrowwood (Viburnum recognitum) is abundant in the shrub layer. Dominant ground cover species are jewel weed and sensitive fern. The upland here is a dense softwood stand dominated by white pine. Common groundcover species are false solomon seal (Smilacena racemosa), Canada mayflower (Maiamthemum canadense), wintergreen (Gautheria procumbens), and lowbush blueberry (Vaccinium angustifolium). The soils in W3 are mottled within 6 inches of the soil surface with a chroma of 1 within 6 inches and 2 at 12 and 18 inches.

A wetland finger extends to the west off the main body of W3. This area of the wetland is dominated by emergent vegetation such as wool grass and soft rush.

One (1) stream channel flows north to south through W3 near the eastern property border. This channel is intermittent.

4.0 CONCLUSION

Three (3) wetland areas were delineated on the subject property and one (1) small stream channel was identified.

Under Section 404 of the Clean Water Act, the Army Corps of Engineers (ACE) has jurisdiction over all wetlands, regardless of size. Any wetlands that are non-isolated or adjacent (neighboring, bordering, or contiguous as defined by the ACE) to a greater than five (5) cubic foot per second (cfs) waterbody are considered to be "below headwater wetlands". Any proposed impacts in a non-isolated or below headwater wetland typically require an Individual Permit or possibly a General Permit if the project falls under Department of Environmental Protection (DEP) review. In isolated or above headwater wetlands Nationwide Permit 26 may apply.

The wetlands on this property are isolated. The amount of water flowing through the wetlands is less than five (5) cfs. This is based on the size of the wetland watershed and the amount of runoff in this area. Also, the wetlands on this site are not adjacent to a five (5) cfs waterbody. Thus, Nationwide Permit 26 should apply provided wetland filling is kept under one (1) acre.



The DEP regulates freshwater wetlands, streams, and their floodplains under the Natural Resources Protection Act (NRPA). A freshwater wetland is defined by the state as any wetland exceeding 10 acres in extent. A stream is defined in section 2.6 of this report. No 10 acre wetland or portions of a 10 acre wetland are located on the subject property. A scoured channel is located within W3. This channel meets the definition of a stream.

Any activities within a protected resource or within 100 feet of a protected resource are regulated by the DEP. The NRPA Permit-By-Rule standards calls for a buffer of 25 feet for resources with slopes up to 20% (sustained). On steeper slopes a 100 foot buffer is required. A full NRPA Permit is required for activities within this buffer zone. The wetland adjacent to the stream channel is not a floodplain wetland. Therefore the NRPA buffer would extend from the normal high water line.

We recommend consulting with the ACE and DEP regarding proposed impacts and specific permit requirements.



Literature Cited

Cowardin, L.M., V. Carter, F. C. Golet, E. T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U. S. Dept. of the Interior. Fish and Wildlife Service FWS/OBS - 79/31.

Environmental Laboratory. 1987. "Corps of Engineers Wetlands Delineation Manual," Technical Report 4-87-1, U.S. Army Engineers Waterways Experiment Station, Vicksburg, Miss.

Federal Interagency Committee for Wetland Delineation. 1989. Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and the U.S.D.A. Soil Conservation Service, Washington, DC Cooperative technical publication. 76 pp. plus appendices.

Fernald, M.L. 1950. Gray's Manual of Botany. Dioscorides Press. Portland, Oregon, 1632 pp.

Gleason, H.A. and A. Cronquist. 1963. Manual of Vascular Plants. D. Van Nostrand Company. New York. 810 p.

Gleason, H.A. 1952. The New Britton and Brown Illustrated Flora of the Northeastern United States and Adjacent Canada. 3



Volumes. The New York Botanical Garden. Hafner Press. New York.

Kollmorgan Instruments Corporation. 1988. Munsell Soil Color Charts.

Reed, P.B. Jr. 1988. National List of Plant Species that Occur in Wetlands: Northeast (Region 1). U. S. Fish Wildl. Serv. Biol. Rep. 88 (26.1) 111 pp.

Reed, P.B., Jr. 1988. Wetland Plants of the State of Maine.: 1988 in Cooperation with the National and Regional Wetland Plant List Review Panels. National Wetlands Inventory. U.S. Fish and Wildlife Service.

SCS. 1988. Section II - D, List of Maine Hydric Soils. Orono, Maine.

USDA 1989. Soil Taxonomy, SCS Agricultural Handbook 436



APPENDIX A

Note: Parentheses around the NWI status
indicates a non-dominant species
(ie., less than 20%)
which is not counted in the tally



LANDS UTILIZATION MANUAL

1 R ST. W. 1037 COLTS VALLEY

Project title: RAY STREET

File Number:

Transect: 01 Plot: WET Date: 8/27/92

DATA VEGETATION	Stratum and Species (DOMINANTS ONLY)	Abundance Ratio	Percent Dominance	HRP Status
TREE				
SAPLING				
SHRUB				
CIRCUIT				
	<i>Junco effluvis</i>	40/130	31%	FACW+
	<i>Scirpus cyperinus</i>	20/130	15%	(FACW)
	<i>Carex lasiocoma</i>	15/130	12%	(OBL)
	<i>Glyceria</i> sp.	50/130	23%	UNK
	<i>Polygonum sagittatum</i>	10/130	8%	(OBL)
	<i>Typha latifolia</i>	5/130	4%	(OBL)
	<i>Bidens</i> sp.	10/130	8%	(UNK)

Note: use asterisk * to indicate FAC, FACU, or UPL species with observed adaptations to wetland hydrology

100 x SUBTOTAL (HYDROPHILES) = 100% = PERCENT HYDROPHILES

100 x SUBTOTAL (HYDROPHILES) = 100% = PERCENT HYDROPHILES

DESCRIBE VEGETATION DISTURBANCE:
OF SCRIBE ADAPTATIONS:

Soil Taxonomy: Siallic

Depth	Horizon	Mottel Color (Munsell, Moist)	Color of Mottles (Munsell, Moist)	Abundance/Contrast	Criterion: Mottles - color, texture, etc.
4"		2.5Y 3/2			
10"		5Y 4/1			
12"		5Y 4/1			

Remarks:

Possible filling

Sketch Landscape Position:



SOIL DETERMINATION

NOTE: 1. "10P" in soil the following is evidence that the soil is NOT ENGINEERED. 2. This checklist is not to be used by the Corps or Corps of Engineers outside the 48 contiguous United States and its possessions. 3. This interpretive checklist may be inappropriate in unusual cases.

Yes No

Soil is frequently FROZED or THAWED for a duration longer than two weeks during the growing season (attach an explanation of the basis for your conclusions)

The soil meets the Corps of Engineers regional criteria as a VERY POORLY DRAINED SOIL and there is no evidence of altered hydrology

The soil meets the Corps of Engineers regional criteria as a POORLY DRAINED SOIL and there is no evidence of altered hydrology

The soil meets the Corps of Engineers regional criteria as a SOIL WITH POORLY DRAINED SOIL that has either of the following two characteristics:

Yes No

1. Within 6 inches of the soil surface there are:

Yes No

a soil mottles within an A or Ap horizon and the subsoil is mottled throughout; OR

b common to many distinct or prominent mottles with a matrix of chroma 3 or less; OR

c distinct or prominent oxidized chlorophylls and the subsoil is mottled throughout

2. Within 24 inches of the soil surface, there are mottles which are common to many distinct or prominent, and that are chroma 2 or less, and one of the following:

Yes No

a In the horizon that lies within 10 inches of the soil surface and directly beneath a dark^a A or Ap horizon, the matrix is chroma 3 or less; the mottles are at least 10% in abundance and distinct or prominent

b When a dark^a Ap horizon is between 10 and 14 inches thick, wetness morphology may be masked by organic matter. Normally, these problem situations will be considered hydric when: i hydrophytes are prevalent, ii there is no evidence of altered hydrology, and iii in the horizon that lies directly beneath the Ap horizon, the matrix color is chroma 3 or less and mottles are at least 10% in abundance and distinct or prominent

Check here and attach a description of your procedures and conclusions if one of the following options were chosen for your hydric soil determination: measured redox potentials, colorimetric test for ferrous iron test (e.g., Dipyridil), or other measurements and observations.

Typically in New England, soils having these morphologies will be classified in an aquatic suborder or an aquatic subgroup in soil taxonomy

^a That is, a dark A or Ap is defined as having a value of 3 or less and a chroma of 2 or less

Remarks

DATA DETERMINATION

NOTE: 1. Hydrology is often the most difficult factor to observe. 2. Interpretations must consider the significance of the observations in light of the season, recent weather conditions, and watershed alterations etc. 3. Interpretation of hydrology may require repeat observations more than one season.

Recorded Data

Stream, lake or tidal gauge Identification

Aerial Photograph

Map/air photo

Other

Identification

No Recorded Data Available

REPORT ANY OF THE FOLLOWING OBSERVATIONS

Depth to Free Water: 8"

Depth to Saturation: 5 to 6 feet

Describe Altered Hydrology

Mounded

Saturated in upper 12 inches

Water Marks

Drill Lines

Sediment Deposits

Drainage Patterns within Wetlands

Remarks: *Blackwater leaf litter*

CONCLUSIONS

Project title: *KAYSIKEE7*

Delineator: *ECO-ANALYSIS, INC. NPA*

Transect: *W1* Plot: *WET* Date: *2/27/92*

Greater than 50 Percent Hydrophytes? Yes No

Hydric Soils Criterion Met? Yes No

Wetland Hydrology Present? Yes No

IS THIS DATAPOINT WITHIN A WETLAND? Yes No

Remarks

CONCLUSIONS

Project title: *KAYSIKEE7*

Delineator: *ECO-ANALYSIS, INC. NPA*

Transect: *W1* Plot: *WET* Date: *2/27/92*

Greater than 50 Percent Hydrophytes? Yes No

Hydric Soils Criterion Met? Yes No

Wetland Hydrology Present? Yes No

IS THIS DATAPOINT WITHIN A WETLAND? Yes No

Remarks

LANDS DELINEATION MANUAL

FOR USE WITH 1987 CORPS WILSON COUNTY CHARTER TOWN OF THE CITY OF LENOIR COUNTY (CONVERSION FROM AN OBSOLETE TO A CURRENT EDITION) -- FORM 2-84-7

Project Title: RAY STREET File Number: L416 RAY

Transect: U01 Plot: UPL Date: 8/27/92

DATA VEGETATION	Stratum and Species (DOMINANTS ONLY)	Dominance Ratio	Percent Dominance	UPL Status
TREE				
SHRUB				
GROUND				
	<i>Vicia cracca</i>	10/195	5%	(UPL)
	<i>Phleum pratense</i>	10/195	36%	(FACU)
	<i>Hypericum perforatum</i>	50/195	26%	(UPL)
	<i>Daucus carota</i>	20/195	10%	(UPL)
	<i>Schicago canadensis</i>	20/195	10%	(FACU)
	<i>Rudbeckia serotina</i>	5/195	3%	(FACU)
	<i>Tactylis glomerata</i>	20/195	10%	(FACU)

Note: use asterisk * to indicate FAC-, FACU, or UPL species with observed adaptations to wetland hydrology

TALLY (Dominants Only)

UPL	FACW	FAC	FAC-	FACU	UPL
				1	1

SUBTOTAL (HYDROPHILES): 0 SUBTOTAL: 2

TOTAL: 2

100 x SUBTOTAL (HYDROPHILES) / TOTAL = 92 = 0%

PERCENT HYDROPHILES

DESCRIBE VEGETATION DISTURBANCE:

DESCRIBE ADAPTATIONS:

DATA -- SOIL Soil Taxonomy:

Corps of Engineers Regional Drainage Class:

Is Published Soil Survey Available? Yes No Title/Date:

Soil Type Mapped:	Horizon	Matrix Color (Munsell Moist)	C.L.C. (Munsell, Moist) Abundance/Contrast	Field Observations Corium Type Mapped? Yes <input type="checkbox"/> No <input type="checkbox"/>
6" *		10YR 3/3		

Criteria:

USDA Texture, Iron or manganese nodules or concretions, reactive layers, root distribution, oxidized rhizospheres, etc.

Remarks: * fill - gravel pieces. * tried 5 places, couldn't get core deeper than 6"

Sketch Landscape Position:

SOIL DETERMINATION

NOTE: 1. 100% in on the following is evidence that the soil is NOT BROWNE. 2. This check is to be made by the Corps of Engineers. 3. This integrative matrix may be incorporated in annual criteria.

SOIL DETERMINATION

NOTE: 1. Soil is frequently **POORLY** or **MODERATELY** for a duration longer than two weeks during the growing season (attach an explanation of the basis for your conclusions).

The soil meets the Corps of Engineers regional criteria as a **VERY POORLY DRAINED SOIL** and there is no evidence of altered hydrology.

The soil meets the Corps of Engineers regional criteria as a **POORLY DRAINED SOIL** and there is no evidence of altered hydrology.

The soil meets the Corps of Engineers regional criteria as a **SOMEWHAT POORLY DRAINED SOIL** that has either of the following two characteristics:

1. Within 6 inches of the soil surface there are:

Yes No
 a soil mottles within an A or Ap horizon and the subsoil is mottled throughout; OR

b. common to many, distinct or prominent mottles with a matrix of chroma 3 or less; OR

c. distinct or prominent oxidized rhizospheres and the subsoil is mottled throughout

2. Within 24 inches of the soil surface, there are mottles which are common to many, distinct or prominent, and that are chroma 2 or less, and one of the following:

Yes No
 a. In the horizon that lies within 10 inches of the soil surface and directly beneath a dark A or Ap horizon, the matrix is chroma 3 or less; the mottles are at least 10% in abundance and distinct or prominent

b. When a dark Ap horizon is between 10 and 14 inches thick, wetness morphology may be masked by organic matter. Normally, these problem situations will be considered hydric when:

i. hydriophytes are present, and

ii. there is no evidence of altered hydrology, and

iii. in the horizon that lies directly beneath the Ap horizon, the matrix color is chroma 3 or less and mottles are at least 10% in abundance and distinct or prominent

Check here and attach a description of your procedure and conclusions if one of the following options were chosen for your hydric soil determination: measured redox potentials, colorimetric test for ferrous iron test (e.g., Dipprid), or other measurements and observations

Typically in New England, soils having these morphologies will be classified in an aquatic suborder or an aquatic subgroup in soil taxonomy.

Note a dark A or Ap is defined as having a value of 3 or less and a thickness of 2 or less

Remarks

DATA 3 DETERMINATION HYDROLOGY

NOTE: 1. Hydrology is often the most difficult feature to observe. 2. Hydrologists must consider the implications of the observations in light of the season, recent weather conditions, and calculated alterations of hydrology. 3. Interpretation of hydrology may require repeatable observations over more than one season.

Recorded Data

Stream, lake or tidal gauge Identification

Aerial Photograph Identification

Other Identification

No Recorded Data Available

REPORT ALL OF THE FOLLOWING OBSERVATIONS

Depth to Free Water:

Depth to Saturation:

Describe Altered Hydrology

bounded

Subsoiled in upper 12 inches

Water Marks

Drift Lines

Sediment Deposits

Drainage Patterns within Wetlands

Remarks:

CONCLUSIONS

Project title: RAY STREET

Delinquent: EC/ANALYSIS, INC. NPA

Transect: U21 Plot: UPL Date: 8/27/92

Greater than 50 Percent Hydriophytes? Yes No

Hydric Soils Criterion Met? Yes No

Wetland Hydrology Present? Yes No

Remarks: disturbed wetland

PLANTS DELINEATION MANUAL

Project Title: **100 US1 WITH 1987 CORP'S WILSONS DELINEATION MANUAL**

Project Title: **RAY STREET**
 File Number: **CCCC-KAY**
 Date: **8/27/97**

Transect: **CC03** Plot: **WET**
 Corps of Engineers
 Regional Office: **San Antonio**
 Is Published Soil Survey Available? **Yes**

Soil Type Mapped:	Method	Moisture Code (Murch, Mohr)	Color of Matrix (Munsell, Hue, Chroma, Value)	Color of Matrix (Munsell, Hue, Chroma, Value)	USDA Texture, Iron or manganese nodules or concretions, rock fragments, root distribution, oxidized lithophanes, etc.
Scarp 17c					
		5Y 3/1	10YR 5/1	10YR 5/1	Silt loam
		5Y 5/2	10YR 5/2	10YR 5/2	
		5Y 5/2	10YR 5/2	10YR 5/2	

Depth	Soil Type Mapped	Moisture Code	Color of Matrix	USDA Texture
6"	Scarp 17c	5Y 3/1	10YR 5/1	Silt loam
12"		5Y 5/2	10YR 5/2	
18"		5Y 5/2	10YR 5/2	

Notes: use asterisk to indicate FAC, FACU, or UFI species with observed adaptations to wetland hydrology

100 x SUBTOTAL (HYDROPHILES) = 5/6 = 83.3%
 TOTAL = 5
 SUBTOTAL (HYDROPHILES) = 5

Sketch Landscape Position:

Species	Dominance Ratio	Percent Dominance	Hydro Status
TREE			
Pinus strobus	20/100	29%	FACU
Acer rubrum	102/100	71%	FAC
SAPLING			
Shrub			
Viburnum racematum	29/100	100%	FAC-
GROUND			
Impatiens capensis	10/150	46%	FACW
Oxalis stricta	50/150	33%	FACW
Maianthemum canadense	10/150	4%	(FAC-)
Equisetum sp.	10/150	7%	(UFI)
Rubus hispidus	10/150	7%	(FACW)

10 SCRF VEGETATION DISTURBANCE: **110%**

10 SCRF ADAPTATIONS:

FOR USE WITH 1987 CORPS WETLANDS DELINEATION MANUAL

SOIL DETERMINATION		NOTE:	1 Hydrology is often the most difficult feature to observe
SOIL DETERMINATION		NOTE:	2 Interpretations must consider the topography of the observation site
SOIL DETERMINATION		NOTE:	3 Interpretations must consider the topography of the observation site
SOIL DETERMINATION		NOTE:	4 Interpretations must consider the topography of the observation site

1. Soil is frequently FRODDED for a duration longer than two weeks during the growing season (attach an explanation of the basis for your conclusions)

2. The soil meets the Corps of Engineers regional criteria as a POORLY DRAINED SOIL¹ and there is no evidence of altered hydrology

3. The soil meets the Corps of Engineers regional criteria as a SOMEWHAT POORLY DRAINED SOIL² that has either of the following characteristics:

Yes No

1. Within 6 inches of the soil surface there are:

Yes No

() () a soil mottles within an A or Ap horizon and the subsoil is mottled throughout; OR

() () b common to many, distinct or prominent mottles with a matrix of chroma 3 or less; OR

() () c, distinct or prominent oxidized rhizospheres and the subsoil is mottled throughout.

2. Within 24 inches of the soil surface, there are mottles which are common to many, distinct or prominent, and that are chroma 2 or less, and one of the following:

Yes No

() () a in the horizon that lies within 10 inches of the soil surface and directly beneath a dark³ A or Ap horizon, the matrix is chroma 3 or less; the mottles are of least 10% in abundance and distinct or prominent

() () b When a dark³ Ap horizon is between 10 and 14 inches thick, wetness morphology may be masked by organic matter. Normally, these problem situations will be considered hydric when: i) hydriophytes are prevalent, ii) there is no evidence of altered hydrology, and iii) in the horizon that lies directly beneath the Ap horizon, the mottle color is chroma 3 or less and mottles are of least 10% in abundance and distinct or prominent

Check here and attach a description of your procedures and conclusions if one of the following options were chosen for your hydric soil determination: increased redox potentials, colorimetric test for ferrous iron test (w.e., Diphthid), or other measurements and observations

* Typically in New England, soils having these morphologies will be classified in an aquatic suborder or an aquatic subgenus in soil taxonomy

** Note: a dark A or Ap is defined as having a value of 3 or less and a chroma of 2 or less

DATA A DETERMINATION HYDROLOGIC		NOTE:	1 Hydrology is often the most difficult feature to observe
DATA A DETERMINATION HYDROLOGIC		NOTE:	2 Interpretations must consider the topography of the observation site
DATA A DETERMINATION HYDROLOGIC		NOTE:	3 Interpretations must consider the topography of the observation site
DATA A DETERMINATION HYDROLOGIC		NOTE:	4 Interpretations must consider the topography of the observation site

1. Recorded Data

Stream, lake or tidal gauge

Method of observation

Aerial Photograph

Method of observation

Other

Method of observation

2. No Recorded Data Available

REPORT ALL OF THE FOLLOWING OBSERVATIONS

Depth to Free Water: 16 ft

Depth to Saturation: Surface

Describe Altered Hydrology:

() Inundated

() Saturated in upper 12 inches

() Water Marks

() Drill Lines

() Sediment Deposits

() Drainage Patterns within Wetlands

Remarks:

CONCLUSIONS

Project title: RAY STREET

Date: _____

Delinicator: E.C.O. ANALYSTS, INC. MBM

Transsect: _____

Plot: _____

Greater than 50 Percent Hydriophytes? Yes No
() ()

Hydric Soils Cation Met? Yes No
() ()

Wetland Hydrology Present? Yes No
() ()

Remarks:

CONCLUSIONS

Project title: RAY STREET

Date: _____

Delinicator: E.C.O. ANALYSTS, INC. MBM

Transsect: _____

Plot: _____

Greater than 50 Percent Hydriophytes? Yes No
() ()

Hydric Soils Cation Met? Yes No
() ()

Wetland Hydrology Present? Yes No
() ()

Remarks:

FOR USE WITH 1987 CORPS WETLANDS DELINEATION MANUAL

Project title: KAY STREET

File Number: LCC-KAY

Transect: UV3 Plot: UPL

Date: 8/27/92

DATA VEGETATION	Shrub and Species (DOMINANTS ONLY)	Estimate Ratio	Percent Dominance	HYD Status
TREE	<i>Pinus strobus</i>	60% / UPL	100%	FACU
SAPLING	<i>Acer rubrum</i>	5/20	17%	(FACU)
	<i>Quercus sp.</i>	5/20	17%	(FACU)
	<i>Quercus rubra</i>	20/30	67%	FACU
SHRUB	<i>Viburnum racemifolium</i>	20/25	80%	FACU-
	<i>Acer saccharinum</i>	5/25	20%	FACU
GROUND	<i>Synlactena racemosa</i>	15/45	20%	FACU-
	<i>Gaillardia pinnatifida</i>	15/45	20%	FACU
	<i>Maianthemum canadense</i>	20/45	27%	FACU-
	<i>Vaccinium angustifolium</i>	15/45	20%	FACU-
	<i>Prunus sp.</i>	5/45	7%	(FACU)
	<i>Viburnum racemifolium</i>	5/45	7%	(FACU-)

NOTE: use asterisk to indicate FAC-, FACU, or UPL species with observed adaptations to wetland hydrology

FACU (Dominants ONLY)

OH1 FACW FAC FACU SHP

FAC FACU UPL

SUBTOTAL (HYDROPHILES) 1

3

SUBTOTAL 7

TOTAL

100 x SUBTOTAL (HYDROPHILES) / TOTAL = 1/8 = 12.5% HYDROPHILES

OF 50 PROF VEGETATION OBSERVATIONS

OF 50 PROF ADAPTATIONS

DATA ... SOU Soil Terminology

Corps of Engineers Regional Change Class:

Is Published Soil Survey Available? Yes () No ()

Collection:

Date: 8/27/92

Field Observations Contain Type Report Yes (X) No ()

Soil Type Stopped: SACUc

Horizon: 10YR 3/2

Depth: 12"

Horizon: 10YR 3/2

Depth: 14"

Horizon: refusal

Depth: 10YR 3/2

Horizon: 10YR 3/2

Depth: 10YR 3/2

Horizon: 10YR 3/2

Depth: 10YR 3/2

Horizon: 10YR 3/2

Depth: 10YR 3/2

Horizon: 10YR 3/2

Depth: 10YR 3/2

Horizon: 10YR 3/2

Depth: 10YR 3/2

Horizon: 10YR 3/2

Remarks:

Sketch Landscape Position:



FOR USE WITH 1987 CORPS WETLANDS DELINEATION MANUAL

DATA A RECOMMENDED HYDROLOGY

NOTE:

- Hydrology is often the most difficult feature to observe
- Interpretations must consider the appropriateness of the observations in light of the season, recent weather conditions and watershed activities, etc.
- Incorporation of hydrology may require repeated observations over more than one season

Recorded Data

Streams, lake or tidal gauge Identification:

Aerial Photograph Identification:

Other Identification:

No Recorded Data Available

REPORT ANY OF THE FOLLOWING OBSERVATIONS:

Depth to Free Water: _____

Depth to Saturation: _____

Describe Altered Hydrology: _____

Inundated

Saturated in upper 12 inches

Water Marks

Drift Lines

Sediment Deposits

Drainage Patterns within Wetlands

Remarks: _____

CONCLUSIONS

Project title: RAY STREET

Deflector: E-CO-ANALYSIS, INC.

Transect: W3 Plot: UPL Date: 8/27/92

Greater than 50 Percent Hydrophytes? Yes No

Hydric Soils Criterion Met? Yes No

Wetland Hydrology Present? Yes No

IS THIS DRAINAGE WITHIN A WETLAND? Yes No

Remarks: _____

SOIL DETERMINATION

NOTE:

- There is an on file reference to evidence that the soil is NOT HYDRIC and should be used for use by the U.S. Army Corps of Engineers, and outside the 48 contiguous states may be inappropriate.
- This interpretive ruling may be inappropriate in unusual cases.

Soil is frequently FLOODED or FLOODED for a duration longer than two weeks during the growing season (attach an explanation of the basis for your conclusions)

The soil meets the Corps of Engineers regional criteria as a VERY POORLY DRAINED SOIL¹ and there is no evidence of altered hydrology

The soil meets the Corps of Engineers regional criteria as a POORLY DRAINED SOIL² and there is no evidence of altered hydrology

The soil meets the Corps of Engineers regional criteria as a SOMEWHAT POORLY DRAINED SOIL that has either of the following two characteristics:

Yes No

- Within 6 inches of the soil surface there are:
 - Yes No a soil mottles within an A or Ap horizon and the subsoil is mottled throughout; OR
 - Yes No b. common to many, distinct or prominent mottles with a matrix of chroma 3 or less; OR
 - Yes No c. distinct or prominent oxidized rhizospheres and the subsoil is mottled throughout
- Within 24 inches of the soil surface, there are mottles which are common to many, distinct or prominent, and that are chroma 2 or less, and one of the following:
 - Yes No a. In the horizon that lies within 10 inches of the soil surface and directly beneath a dark* A or Ap horizon, the matrix is chroma 3 or less; the mottles are at least 10% in abundance and distinct or prominent
 - Yes No b. When a dark** Ap horizon is between 10 and 14 inches thick, wetness morphology may be masked by organic matter. Normally, these problem situations will be considered hydric when:
 - i. hydrophytes are prevalent, and
 - ii. there is no evidence of altered hydrology; and
 - iii. In the horizon that lies directly beneath the Ap horizon, the matrix color is chroma 3 or less and mottles are at least 10% in abundance and distinct or prominent.

Check here and attach a description of your procedures and conclusions if one of the following options were chosen for your hydric soil determination: measured redox potentials, colorimetric measurements and observations.

* Typically in New England, soils having these morphologies will be classified in an aquatic suborder or an aquatic subgroup in soil taxonomy.

** Note: a dark A or Ap is defined as having a value of 3 or less and a chroma of 2 or less.

Remarks: _____

CONCLUSIONS

Project title: RAY STREET

Deflector: E-CO-ANALYSIS, INC.

Transect: W3 Plot: UPL Date: 8/27/92

Greater than 50 Percent Hydrophytes? Yes No

Hydric Soils Criterion Met? Yes No

Wetland Hydrology Present? Yes No

IS THIS DRAINAGE WITHIN A WETLAND? Yes No

Remarks: _____

September 15, 1992

2608

**EROSION AND SEDIMENTATION CONTROL PLAN
FALLBROOK WOODS, PORTLAND, MAINE**

The following plan for controlling sedimentation and erosion from this project is based upon sound conservation practices as those outlined in the "Maine Erosion and Sedimentation Control Handbook For Construction: Best Management Practices" and Recommended Practices of the USDA Soil Conservation Service.

INTRODUCTION

This report addresses the erosion and sedimentation controls for the proposed Fallbrook Woods in Portland. The owner, Fallbrook Corporation, proposes the construction of a 56-bed boarding healthcare facility. The project will consist of a single building and associated parking areas, a site access drive and gravel fire lane.

The site contains 12.6 acres and is located on an undeveloped back parcel west of Ray Street and south of Allen Avenue in the North Deering area of Portland. The site gains access to Ray Street over Merrymeeting Drive; a private way extending westerly from Ray Street which is the access drive for Fallbrook Condominiums. Merrymeeting Drive dead-ends at the site boundary. Much of the area adjacent to the parcel is residentially developed.

SITE TOPOGRAPHY AND COVER COMPLEX

NOTE: Refer to the Existing Conditions, Plan Sheet 1 for site characteristics and wetland identification numbers.

The parcel is mostly wooded with the exception of a graded gravel access road and cleared area in the northwestern area of the site. The gravel road extends from the dead-end of Merrymeeting Drive into the site for approximately 350 feet. A small area of overgrown grasses and brush has resulted from previous clearing over a small section of the site near the gravel road. The woods on site are a mix of mature pine and oak with some secondary growth. The undergrowth is generally vegetated with low shrubs and plants.

The topography of the site is characterized by a ledgy knoll on the northeast end and a second knoll located 500 ft. southerly from this point. Three wetlands have also been identified on site by Eco Analysts, Inc. and mapped by LUC.

As one enters the parcel from Merrymeeting Drive, the topography slopes gently downhill along the gravel road and rises gently to the left (or east) to the first knoll mentioned. A low drainage between

LAND USE CONSULTANTS INC

the gravel drive and the knoll is occupied by wetland 1 while wetland 2 extends offsite to the right (or west) of the gravel drive. Both wetlands are small isolated drainage pockets.

A low saddle between the two prominent knolls forms a drainage channel which flows into a large wetland (wetland 3) which occupies roughly 25% of the site in the central and southern areas. This entire wetland and the knolls onsite drain through an intermittent stream to a culvert on Ray Street adjacent to the southeastern property corner.

SITE SOILS

The site soils were obtained from the U.S.D.A - Soil Conservation Service Medium Intensity Maps for Cumberland County.

The site boundaries have been scaled onto the site to determine hydrologic soil groups. The soil boundaries are depicted on the Pre-Development and Post-Development Drainage and Erosion & Sedimentation Control Plans, Sheets 3 and 6. The soils and their hydrologic soil groups are further listed below:

<u>Mapping Symbol</u>	<u>Soil Name</u>	<u>Hydrologic Soil Group</u>
Hr, Hs	Hollis	C/D (Use D)
Bg	Belgrade	C
Sn	Scantic	D
Bu	Buxton	C

DRAINAGE

The site has been divided into 2 watersheds and several sub-watersheds for both pre- and post-development conditions. The site design will incorporate two detention basins, several rip-rap swales and a number of grass swales and culverts to control and detain stormwater.

There are two major site discharge points which have been analyzed. One is at the culvert at the southwest property corner at Ray Street which receives the majority of the site drainage. The second is at an existing piped outlet to wetland 2 at the northwest end of the site. Refer to the Stormwater Management Report and The Grading, and Utilities Sheet 4 for the design of this system.

SENSITIVE AREAS

The planning and design of the project especially with regards to the building siting and paved parking and access road have tried to preserve the wetland areas and stream wherever possible. For the purposes of applying erosion and sedimentation controls, we have identified the following as sensitive areas:

1. Wetland 3 and the intermittent stream contained therein.

LAND USE CONSULTANTS INC

Work adjacent to or within wetland 3 will be protected and carefully supervised to minimize the possibility of sedimentation or erosion to this area.

2. Piles of Pond Spoils: Refer to "Pond Construction Specifics" for a more detailed discussion of this area.

CONSTRUCTION SCHEDULE

Site Construction is expected to commence in late fall 1992. Therefore, attention to winter and late season erosion control specifications on this report are critical to successfully stabilizing the site. The following is the proposed schedule for construction:

COMPLETE

START

- | | |
|---|-----------------|
| 1. Installation of erosion control measures | Fall 1992 |
| 2. Clear and grub | Fall 1992 |
| 3. Driveway, utility, and building construction | Fall/Winter '92 |
| 4. Detention basin construction and expansion | Fall 1992 |
| 5. Final grading and seeding | Late Spring '93 |
| 6. Reseed non-catch areas | Summer 1993 |
| 7. Removal of erosion control | Summer 1993 |

SPECIFIC EROSION AND SEDIMENTATION CONTROL PRACTICES

The construction of the Fallbrook Woods Subdivision shall incorporate the following procedures.

POND CONSTRUCTION SPECIFICS (FOR DETENTION BASINS A AND B)

1. Dam Construction

The foundation area shall be cleared of trees, logs, roots, stumps, brush, boulders, sod, and rubbish and the topsoil.

Fill material for the dam shall consist of excavated silt and clay. All fill material shall be free of sod, roots, frozen soil, stones greater than 6" in diameter and other objectionable material. All snow, ice, or frozen fill shall commence in the lowest point of the cutoff trench (if required) and/or dam and continue in horizontal lifts no greater than 12". Modified proctor densities of 95% (ASTM-D-1557) shall be obtained in each lift prior to adding additional lifts. The distribution and gradation of the fill shall be such that no lenses, pockets, streaks, or layers of substantially different materials are placed in the dam. Fill adjacent to the discharge pipe and antiseep collar shall also be compacted to 95% modified Proctor. Where the temporary diversion channel cuts through the dam, if required, the dam shall be filled to allow for 2:1 side slopes for the channel.

LAND USE CONSULTANTS INC

Fill material shall be excavated from the proposed pond area upstream from the dam. Spoils not used for the dam shall be deposited in the spoils area.

During the excavation, soils shall be stockpiled to save silts and clays for the dam (or placed in dam immediately); topsoil for final grading, and sand/sandy loam for the pond floor.

All pond outlets shall receive plunge pools or rip-rap aprons as specified. The natural channels downstream from the ponds shall be disturbed as little as possible.

Any disturbed sections of the receiving channels shall be stabilized with D50 = 3" or larger rip-rap.

The construction of the ponds shall commence during a period of minimal flow with a dry short range weather forecast. Once under construction, the ponds shall be built in the most expedient manner possible until complete.

If the construction of the ponds should be hampered by rain and excessive runoff the site must be stabilized in a manner which results in as little sediment entering downstream channels as possible.

Detention basin side slopes greater than 3:1 shall be protected by erosion control blanketing (see plans for locations and specifications).

2. Stockpiles of Pond Spoils

Stockpiles from the pond excavation shall be located upstream from the pond in the designated area.

Prior to stockpiling the spoils, the anticipated toe of slope shall be lined with haybales and/or silt fence as noted on the details.

Pond stockpiles shall be relatively flat on top and shall have side slopes no steeper than 2:1.

Once the disturbed area adjacent to the pond has undergone final grading it shall be seeded and mulched within 7 days.

Stockpiles from the pond shall be classified as a "Sensitive Area" and shall adhere to the seeding and mulching specifications outlined in the "Temporary Seeding and Mulching Table."

GENERAL EROSION AND SEDIMENTATION CONTROL PRACTICES

The following general erosion control practices will be used to prevent erosion and sedimentation before, during and after the construction of this project. Special care shall be used at all

LAND USE CONSULTANTS INC

times in an effort to: (1) limit disturbance and hence erosion (2) correct any erosion problems immediately (3) regularly monitor the practices implemented and (4) revegetate disturbed areas as soon as possible.

Stone-Check Dams

Stone check dams will be installed as shown on the plans. These check dams reduce flow velocities in swales and serve to filter and capture sediment before traveling downstream.

Swales

Swales will be used to direct runoff to the detention basin. In areas with steep slopes or high discharges, rip-rap or erosion mat has been used. All the swales have been designed to handle the 25 year storm event.

Haybales and /or Silt Fence

1. Haybales or silt fencing shall be installed at the toes of slopes near wetlands or streams, below any dike construction (out of the receiving channels), and along the more expansive fill slopes.
2. The locations requiring haybales and/or silt fence are noted on the plans. This erosion protection is not limited to only these areas and may be required elsewhere as directed by SCS or the engineer.

Outlet Protection

The outlets from the culverts shall be protected with rip-rap aprons. The 25 year discharges were used in the design of these aprons.

Inlet Protection

All culvert inlets shall be protected as noted on the Rip-Rap Headwall Detail unless otherwise noted on the plans. The rip-rap at the inlet shall be the same size as the rip-rap for the aprons at the outlet.

Erosion Mat

Erosion control mats shall be used on steep slopes as noted on the plans, specifically on the fill slope adjacent to the rear of the building.

Construction Entrance

A gravel construction entrance shall be installed wherever construction equipment will be entering a public road on a regular basis. The locations and specifications for these entrances are noted on the plans and details.

Temporary Perforated Risers

Detention basins A and B shall be fitted with temporary perforated filters at the outlets. See plans for locations and details. The

LAND USE CONSULTANTS INC

temporary risers can be removed and the design outlet orifice installed once the basins and all upgradient areas are stabilized.

CONSTRUCTION PHASE

The following general practices will be used to prevent erosion during construction of this project.

1. Only those areas under active construction will be cleared and left in an untreated or unvegetated condition. If final grading, loaming and seeding will not occur within 15 days see Item No. 4.
2. After clearing and prior to stripping and grubbing, silt fence and/or haybales will be installed around catch basins, at the toe of slope and in areas as located on the plans to protect against any construction related erosion. Immediately following construction of culverts and swales, stone check dams shall be installed, as shown on the plans.
3. Topsoil will be stockpiled when necessary in areas which have minimum potential for erosion and will be kept as far as possible from existing drainage areas and wetlands. All stockpiles expected to remain longer than 15 days shall be:
 - A. Treated with anchored mulch (within 5 days of the last deposit of stockpiled soil).
 - B. Seeded with conservation mix and mulched immediately. Stockpiles expected to remain longer than 3 days shall be encircled with haybales or silt fence at the toe of the pile.
4. All disturbed areas expected to remain longer than 15 days shall be:
 - A. Treated with anchored mulch immediately, OR
 - B. Seeded with conservation mix of perennial rye grass (0.9 lbs/1000 sq. ft.) and mulched immediately.
5. All grading will be held to a maximum 3:1 slope where practical. Greater slopes may be used in ledge cut. All slopes will be stabilized with permanent seeding immediately after final grading is complete. (It is understood that immediately means within 7 days of the completion of work. See Post-Construction Revegetation for seeding specification)
6. All culverts will be protected with stone rip-rap headwalls ($D^{50} = 4"$ unless otherwise specified) at inlets and outlets. Road ditches will be rock lined where excessive flows or velocities might occur. The locations of these ditches are noted on the plans.

LAND USE CONSULTANTS INC

7. Construction traffic will be directed over the construction entrances and proposed roads. Any areas subject to rutting will be stabilized immediately. The gravel construction entrance shall be maintained by the addition of more gravel as needed as the voids become filled. The public roadway shall be swept daily should mud be tracked onto it.

EROSION CONTROL FOR DETENTION BASINS

1. The construction of the detention basins shall only take place between June 15th and September 15th, unless prior approval is obtained to extend this "window".
2. The construction of the detention basins shall commence during a period of minimal flow with a dry short range weather forecast. Once under construction, the detention basin shall be completed in the most expedient manner possible.
3. If the construction of the detention basins should be hampered by rain and excessive runoff the site must be stabilized by mulching with hay (see Item 3 Post-Construction Revegetation for rates) and tacked with a photodegradable netting.
4. The sequence for the construction of the detention basins shall be as follows:
 - A. Install erosion controls as shown on plan.
 - B. Clear and grub only the area required for the detention basin construction.
 - C. Excavate and grade as shown on the plans.
 - D. Loam, fertilize, seed and mulch the disturbed areas the day final grades are reached.

POST CONSTRUCTION REVEGETATION

The following general practices will be used to prevent erosion as soon as an area is ready to undergo final grading.

1. A minimum of 4" of loam will be spread over disturbed areas and graded to a uniform depth and natural appearance.
2. If final grading is reached during the normal growing season (4/15 to 9/15), permanent seeding will be done as specified below. Prior to seeding, limestone shall be applied at a rate of 138 lbs/1000 sq. ft. and 10:20:20 fertilizer at a rate of 18.4 lbs/1000 sq. ft. will be applied. Broadcast seeding at the following rates:

LAND USE CONSULTANTS INC

Lawns:	"Emerald Blend" or approved equal	6 lbs/1000 sq. ft.
Ditches	Creeping Red Fescue	0.46 lbs/1000 sq. ft.
and	Red Top	0.05 lbs/1000 sq. ft.
Detention Basins:	Tall Fescue	0.46 lbs/1000 sq. ft.

3. An area shall be mulched immediately after it has been seeded. Mulching shall consist of hay mulch, hydro-mulch, erosion control mats or any suitable substitute deemed acceptable by the Design Engineer.
 - A. Hay mulch shall be applied at the rate of 2 tons per acre. Hay mulch shall be secured by either (1) being driven over by tracked construction equipment on grades of 5% and less or (2) blanketed by tacked photodegradable/biodegradable netting on grades between 5% and 15%.
 - B. Hydro-mulch shall consist of a mixture of either asphalt, wood fibre or paper fibre and water sprayed over a seeded area. Hydro-mulch shall not be used between 9/15 and 4/15.
 - C. Erosion control mats shall consist of interlocking excelsior or wood fibers with mulch net backing on one side. Install per manufacturers specifications.

4. Construction shall be planned to eliminate the need for seeding between September 15th and April 15th. Should seeding be necessary between these dates, the following procedure shall be followed:
 - A. Only unfrozen loam shall be used.
 - B. Loaming, seeding and mulching will not be done over snow cover. If snow exists, it must be removed prior to placement of seed.
 - C. Where permanent seeding is necessary, Annual Winter Rye (1.2 lbs/1000 s.f.) shall be added to the previously noted rates.
 - D. Where temporary seeding is required, Annual Winter Rye (2.6 lbs/1000 s.f.) shall be sown instead of the previously noted seeding rate.
 - E. Fertilizing, seeding and mulching shall be done on loam the day the loam is spread.

LAND USE CONSULTANTS INC

- F. For slopes up to 15%, hay mulch shall be secured with photodegradable/ biodegradable netting. Tracking by machinery alone will not suffice.
 - G. All slopes greater than 15% will require erosion control mats.
5. Where erosion control netting is called for in swales, the swale may be either:
- A. Seeded, mulched, and blanketed with photodegradable/ biodegradable netting.
 - B. Seeded and blanketed with netting containing excelsior.
- All netting shall be anchored as per the Manufacturer's specs.
6. Following final seeding, the site will be inspected every 30 days until 80% cover has been established. Reseeding will be carried out by the contractor within 10 days of notification by the engineer that the existing catch is inadequate.

MAINTENANCE SCHEDULE

The contractor shall be responsible for installing, monitoring, maintaining, repairing, replacing and removing all of the erosion and sedimentation controls or appointing a qualified subcontractor to do so. Land Use Consultants shall inspect the erosion controls on a regular basis to ensure compliance with the plans and specifications.

Maintenance measures will be applied as needed during the entire construction cycle. After each rainfall, a visual inspection will be made of all erosion and sedimentation controls to insure their continuing function as designed.

- 1. Haybale barriers and silt fence shall be inspected and repaired once a week or immediately following any significant rainfall. Sediment trapped behind these barriers shall be excavated when it reaches a depth of 6 inches and redistributed to areas undergoing final grading. Should the haybale barriers prove to be ineffective, the contractor shall replace them and reinforce them with silt fencing.
- 2. Stone check dams and perforated riser pipes shall be visually inspected once a week or after each significant rainfall and repaired as needed. Sediment trapped behind these devices shall be removed once it attains a depth equal to 1/2 the height of the dam or riser. The sediment removed shall be distributed off-site or to an area undergoing final grading. The sediment and the removal thereof shall be handled in a manner which does not promote erosion or sedimentation.

LAND USE CONSULTANTS INC

EROSION CONTROL REMOVAL

1. An area is considered stable if:
 - A. It is paved.
 - B. The seeded areas have 80% growth of planted seeds.
2. Haybales and silt fence shall be removed once the areas upstream are stable. The haybales and silt fence shall be disposed of legally and properly off-site. All sediment trapped behind these controls shall be:
 - A. Distributed to an area undergoing final grading.
 - B. Graded in an aesthetic manner to conform to the topography, fertilized, seeded and mulched in accordance with the rates previously stated.
3. The sediment trapped behind/around/in stone check dams, perforated risers, and detention basin, shall be removed and relocated off-site or to an area undergoing final grading.

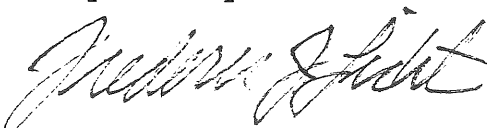
The sediment trapped by these devices shall not be regraded locally since they exist in drainage ways. The rip-rap from the check dams and risers may be either: (1) removed or (2) regraded in an aesthetic manner which does not inhibit flow or create erosion.

4. Once all the trapped sediments have been removed from the temporary sedimentation devices, the disturbed areas must be regraded in an aesthetic manner to conform to the surrounding topography. Once graded these disturbed areas must be loamed (if necessary) fertilized, seeded and mulched in accordance with the rates previously stated.

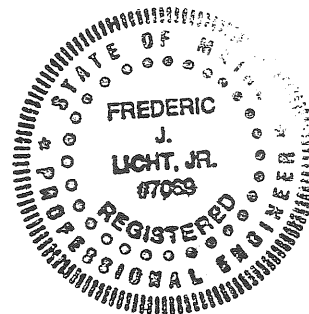
CONCLUSION

The construction of Fallbrook Woods, if constructed as detailed on these plans and according to this report, should not result in any significant erosion or sedimentation either on or off site.

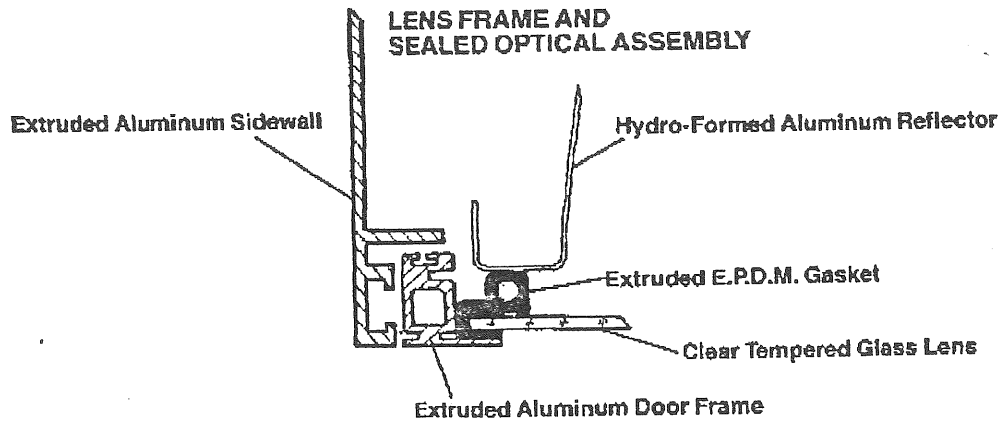
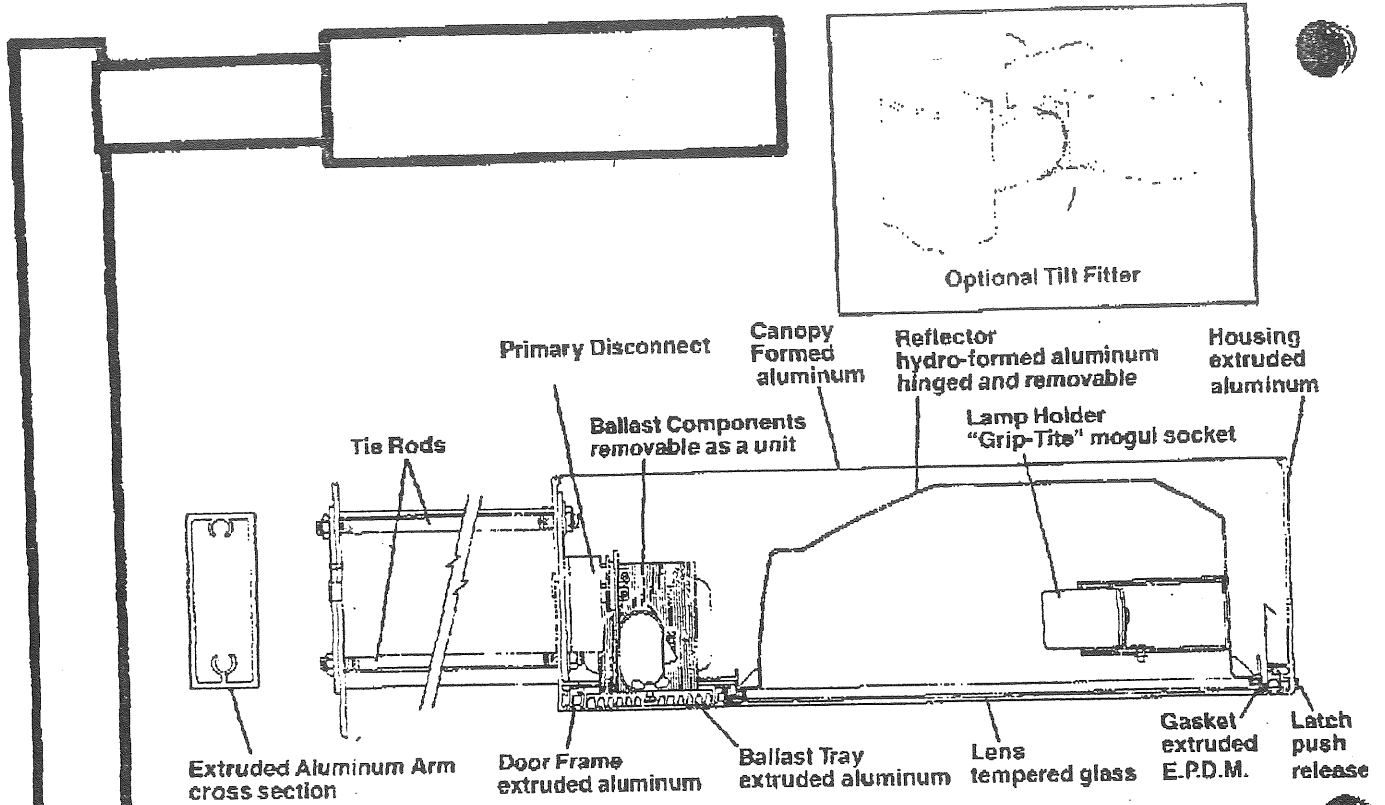
Prepared by:



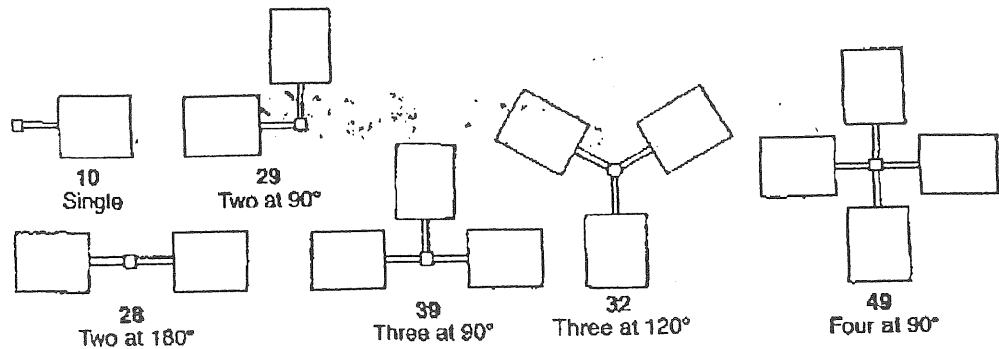
Frederic J. Licht, P.E.
Associate



Executive



(Mounting Arrangements)





LAND USE CONSULTANTS INC

RECEIVED

SEP 23 1992

J. David Haynes, R.L.A.
David A. Kamila, P.E.
Bradley H. Hare, R.L.A.
Frederic Licht, Jr., P.E.
John D. Roberts, P.L.S.

PORTLAND PLANNING OFFICE

September 22, 1992

2608

*Missing
first page*

Mr. Joseph E. Gray, Jr.
Director of Planning
City Hall
389 Congress Street
Portland, Maine 04101

Fallbrook Woods Boarding Health Care Facility

Dear Mr. Gray:

On behalf of Fallbrook, Inc., I am writing you to request credits for discharge into the combined stormwater and sewer system. As you may be aware, Fallbrook, Inc. is proposing a 56 bed boarding health care facility off Ray Street in Portland. This facility will discharge into the existing combined sewer system in Ray Street by extending the existing sewer system to the proposed facility.

It is our understanding that the City of Portland is under a consent decree from the State of Maine Department of Environmental Protection to remove stormwater from combined systems at a ratio of 5:1 (stormwater : sewage inflow). I have spoken with both Ms. Melodie Esterberg of your office and Mr. William Goodwin of Public Works whom both thought that credits would be available for this project. I understand that there is no formal process in place for this request so Melodie suggested I put the request directly to you.

As originally approved by the City of Portland, this site contained 65 condominiums, of which 28± were located in the area in which the new facility is proposed. This would translate to the following flows into the combined system.

Total Flow = 28 units x 2 bedrooms/unit x 120 GPD* = 6720,
GPD

For the proposed project we are projecting the following flows:

56 beds x 100 GPD* =	5600 GPD
25 employees x 15 GPD/employee =	<u>375 GPD</u>
Total flow	5975 GPD

* Based on the State of Maine Subsurface Wastewater Disposal Rules, Chapter 241.

LAND USE CONSULTANTS INC

Therefore the total credits requested for the Fallbrook Woods facility would be:

$$\text{Credits Required} = 5975 \text{ GPD} \times 5 = 29,875 \text{ GPD}$$

I trust that this information is sufficient, should you require anything further, please call.

Respectfully,



William R. Walsh

WRW/b

c.c.: Mr. Stephen Guthrie
Mr. Robert Feeney
Ms. Melodie Esterberg - Portland Planning Dept.
Mr. William Goodwin - Portland Public Works

The boarding facility is proposed to be triangular in plan and open in the center for a landscaped courtyard. A total of 38 beds are proposed, with single - and two-bed room occupancy. Ten staff persons will be on site during the day, with fewer on premises at night. As the enclosed floor plan (Attachment 3) indicates, the main entry is to be located in the center of one side of the triangle. A reception area, offices, lounges, a laundry, library, kitchen and other common facilities flank the entry area. Residents' rooms are concentrated along the other two sides of the triangle, with a dining/activity room, nurse's station and lounge located at the three points of the triangle.

The concept plan shows 24 parking spaces; 15 spaces are located in front of the main entry, with an additional 9 spaces (for staff) shown immediately south of the building. According to the zoning ordinance's parking standards, a total of 18 parking spaces would be required (1 space for each 5 beds or major fraction thereof, plus 1 space for each employee).

The attached site plan also shows in concept how the balance of the subdivision's land area might be developed in the future. At this time, the applicant envisions a P.R.U.D. for elderly persons who are able to live in a more independent setting. While the applicant has no immediate development plans, this concept site plan is shown to give the Board the "big picture" and to identify any issues which might affect future development in order that they might be resolved at this time.

ISSUES TO BE RESOLVED

In a preliminary review of the submitted plans and the Planning Department's files on the Fallbrook subdivision, the following issues have been identified as needing resolution:

1) Amendment to the Recording Plat

The original subdivision for this property was approved in 1985. The subdivision was known at the time as Ray Street Townhomes. In 1990, a successor owner, Merreal Corporation, sought and received approval for a sectional recording of the condominium project (renamed Fallbrook Condominiums), which would allow the project to be developed in 4 phases and would keep the amount of the required performance guarantee reasonable. Under the sectional recording, the same total number of units (98) were to be developed over the 4 phases.

To date, only Phase I has been constructed; twenty five (25) of the twenty eight (28) dwellings proposed having been completed. (When Fallbrook Inc. acquired the remaining 13.33 acres of land, they also acquired development rights for the remaining three units.)

As the proposed development does not correspond to the 4 phases envisioned in the 1990 sectional recording approval, it will be necessary for the applicant to submit a revised recording plat. The revised recording plat will need to show how the remainder of the developable property is to be delineated from the immediate project site.

2) Completion of Required Phase I Site Improvements

At the time of the 1990 sectional recording approval, a list of site improvements to be completed under each phase was developed. Although most of the required Phase I improvements have been completed, a tot lot and basketball court are still to be constructed and remain as Phase I obligations. The present applicant, the condominium association, and RECOLL Management (which still controls the condominium association) will need to come to an agreement regarding responsibility for completing outstanding Phase I site improvements before any subsequent development can be approved. The three parties will also need to provide evidence of an agreement regarding the maintenance of the private road within the development. The applicant is prepared to discuss at the workshop how these issues might be resolved.

As stated above, the enclosed plans and drawings are intentionally conceptual and are intended for the applicant to get initial feedback from the Board as to the proposed combination of uses and functional relationship between them.

Attachments:

1. August 10, 1992 letter from David Haynes of Land Use Consultants, representing applicant
2. Preliminary Site Plan for Fallbrook Woods
3. Preliminary Building Elevations and Floor Plan for Fallbrook Woods
4. Revised Recording Plat for Phase I Fallbrook Condominiums

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Chair DeCoursey and Members of the Portland Planning Board

FROM: Deborah Andrews, Senior Planner

DATE: September 29, 1992

SUBJECT: Site Plan, Subdivision and Conditional Use Review of Proposed Elderly Care Facility located off Ray Street; Fallbrook Inc., Applicant

On August 25, representatives of Fallbrook Inc. appeared before the Planning Board to present concept plans for Fallbrook Woods, a 28-unit licensed board care facility for the elderly to be located off Ray Street, adjacent to Fallbrook Condominiums. Since the August workshop, the applicant has refined plans for the project and, at the Board's request, submitted additional information regarding the relationship and legal agreements between Fallbrook, Inc. (the applicant) and the owners of Fallbrook Condominiums, from which Fallbrook Inc. acquired the land for the proposed project. On Tuesday, the Board will continue its review of the applicant's site plan, conditional use and amended subdivision application.

SUBDIVISION REVIEW

As the Board will recall from the first workshop, Fallbrook Inc. recently acquired from MERREAL Corporation the remaining 12.64 acres of undeveloped property within the approved Fallbrook Condominium subdivision. While the original subdivision called for a 4-phase condominium development, only the first phase was completed when the present applicant acquired the remaining land in 1991. As is obvious from the proposed plan, the present owners do not intend to develop the remaining 3 phases of the original project, but rather to construct the proposed congregate care facility on a portion of the remaining land. Accordingly, an amendment to the previously approved subdivision will need to be approved. In essence, the revision consists of the splitting of the parcel into two lots. Whereas the original subdivision called for a single lot with multiple condominium units to be developed over 4 phases, the revised subdivision calls for 2 lots - one of which has multiple condominium units (Fallbrook Condominium), and the other of which has a single, multi-unit structure (Fallbrook Woods congregate care facility). Fallbrook Inc., developers of the congregate care facility, and the condominium association are co-applicants for the amendment to the subdivision. (Within a matter of days, the condominium association will own the first parcel outright, eliminating MERREAL Corporation's interest in the project).

At the Board's last workshop there was discussion of the rights and responsibilities of the respective owners regarding various aspects of both projects. As is clear from the enclosed attachments, completion of the site amenities required under the Phase I Fallbrook Condominium development is solely the responsibility of the condominium association. MERREAL Corporation is in the process of transferring to the condo association the necessary funds to complete the improvements and we expect to have a fully executed agreement between parties regarding this issue before the public hearing. Paul Mergener, president of the Fallbrook Condominium Association, will be available at Tuesday's workshop to discuss plans for completing the required improvements.

Regarding use and maintenance of the shared access road (Merrymeeting Drive), Attachments 3 and 6 are pertinent. Attachment 3 is a copy of the quit claim deed which includes the easement for the right of way. Attachment 6 is a copy of the roadway maintenance agreement being finalized between Fallbrook Inc. and Fallbrook- A Condominium.

Two final notes regarding the proposed subdivision: First, as the Board might recall from the preliminary workshop, Fallbrook Inc. acquired the rights to construct 4 remaining units within the Fallbrook Condominium lot when it acquired the remaining land. As Attachment 5 indicates, Fallbrook Inc. is relinquishing those development rights. It is anticipated that the required Fallbrook Condominium site improvements will be constructed in the approximate location of these unbuilt units. Second, the applicant had earlier discussed the possibility of dividing the remaining 12.64 acres into two lots. For a variety of reasons, they have elected not to divide the parcel.

SITE PLAN REVIEW

The basic site plan for Fallbrook Woods has changed very little since the Board's initial review. Attachment 1 is Land Use Consultants' detailed description of the proposed site plan. In brief, lot coverage of the proposed development is 1.49 acres or 11.8 percent of the 12.64 acre site. The 27,600 square foot building is triangular in plan with a central open landscaped courtyard. The facility is to feature 28 units, designed for either single or double bed occupancy. Flanking the main entry, which faces Merrymeeting Drive and the Fallbrook Condominium project, are administrative offices and other common facilities. Residents' rooms are concentrated within the other 2 sides of the triangular structure. A dining/activity room, nurses station, and lounge are located at the three corners.

Principal access to the facility is from Ray Street over Merrymeeting Drive, a private way. Merrymeeting Drive, which was constructed as part of the Fallbrook Condominium development, will be extended approximately 450 feet to serve this project. In addition, a 16-foot wide gravel emergency access road will be constructed from Ray Street, opposite Nevada Avenue, connecting to the end of Merrymeeting Drive. The emergency lane will be gated at both ends, with a Knox lock. The access scheme within the project has been approved by Lt. Wallace Garroay, Fire Prevention Bureau, and Bill Bray, Traffic Engineer. Regarding the development's traffic impact on area, Mr. Bray is satisfied that the proposed project represents a decrease in potential impact from the originally approved condominium project.

The site plan provides for a total of 21 parking spaces. This count has been based on maximum capacity of the building with all 28 rooms in double room occupancy, and the expectation of 10 staff persons on site at any one time. While full double room occupancy is not anticipated, the developers have projected the most intensive use for purposes of parking calculation. The proposed parking meets the requirements of the ordinance.

The applicant has submitted a thorough wetland study and stormwater management report, which have been reviewed by Planning Staff Engineer, Melodie Esterberg. Included in this packet is a memo from Ms. Esterberg regarding the project's provisions for stormwater management and sedimentation & erosion control (Attachment 11).

Regarding design of the structure and its compatibility with surrounding development, there is no question that the proposed use is an institutional one and as such the multi-unit building will be distinct from other types of residential structures in the vicinity. However, its building materials (clapboard siding, asphalt shingle roof), together with its heavily wooded screening from most other developments in the area, makes for a reasonably compatible development.

Regarding landscaping and screening after development, the lot will remain mostly wooded with the exception of the immediate development site. New trees and shrubs will be planted adjacent to the parking areas and around the perimeter of the building. The plan also includes tree preservation provisions. Jeff Tarling, City Arborist, has not yet had an opportunity to review the landscaping plan.

CONDITIONAL USE REVIEW

In reviewing the request for an institutional use in an R-3 residential neighborhood, the Board will consider the impact of the institutional use's operations on surrounding residential development. As stated above, from a traffic perspective, the project will have a relatively minimal impact. Few, if any, of the residents are expected to own a car and visitation is generally light. There will be no more than 10 staff persons on site at any one time. Bob Feeney, who is to manage the proposed development, will be available at Tuesday's meeting to discuss other operational considerations.

ATTACHMENTS:

1. 9/15/92 letter from Land Use Consultants summarizing proposed project.
2. 9/14/92 letter from Fallbrook Inc.
3. Quit Claim Deed
4. Executed agreement between MERREAL Corp & Fallbrook Inc. for transfer and assumption of Special Declarant Rights
5. Draft agreement between Fallbrook Inc. & Fallbrook, A Condominium Unit Owners Association re: Special Declarant Rights
6. Draft Roadway Maintenance Agreement
7. Copy of proposed recording plat, with referenced Phase I subdivision attached
8. Proposed Site Plan
9. Proposed Drainage Plan
10. Proposed Building Elevations
11. Memo from Development Review Coordinator, Melodie Esterberg, regarding stormwater management
12. Excerpt from submitted Stormwater Management Report



LAND USE CONSULTANTS INC

J. David Haynes, R.L.A.
David A. Kamila, P.E.
Bradley H. Hare, R.L.A.
Frederic Licht, Jr., P.E.
John D. Roberts, P.L.S.

September 15, 1992

ATTACHMENT 1

Portland Planning Board
City Hall
389 Congress Street
Portland, ME 04101

Attention: Deborah Andrews

Fallbrook Woods, Off Ray Street, Portland, Maine

Dear Board Members:

On behalf of Fallbrook, Inc., we forward herein a Site Plan Review submission for the Fallbrook Woods healthcare boarding facility located off Ray Street on Merrymeeting Drive. The enclosed plan and technical documentation have been prepared in accordance with Chapter 14, Portland Land Use Ordinance, Article V, Sections 14-521 through 14-540, Site Plan. Also, with this submission, we are seeking Conditional Use approval for development of an intermediate care facility in an R-3 zone as specified under Article III, Section 14-78 Conditional Use.

Plans and technical documentation submitted as a part of this application are as follows:

- 1) Standard Boundary Survey, prepared by Land Use Consultants, Inc., dated 9/15/92, sealed by John D. Roberts, PLS #1155, Sheet 1 of 8.
- 2) Existing Conditions Plan, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 2 of 8.
- 3) Pre-Development Drainage Plan, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 3 of 8.
- 4) Grading and Utilities Plan, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 4 of 8.
- 5) Illustrative Landscape Layout and Details Plan, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 5 of 8.

LAND USE CONSULTANTS INC

- 6) Post-Development Drainage Plan and Erosion Controls, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 6 of 8.
- 7) Construction Details, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 7 of 8.
- 8) Construction Details, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 8 of 8.
- 9) Building Elevations Plan, prepared by Architectural Design Concepts, Inc.
- 10) Deed from MERREAL Corp. (MMII Real Estate Corporation) for Fallbrook Inc., dated December 20, 1991, CCRD Bk. 9831, Pg. 59, showing title to the project area.
- 11) "Wetland Delineation of the Ray Street Development in Portland, Maine", by Eco-Analysts, Inc., P.O. Box 224, Bath, ME 04530, dated 9/11/92.
- 12) Stormwater Management Report, prepared by Land Use Consultants, Inc., dated 9/15/92. (To be submitted under separate cover.)
- 13) Erosion and Sedimentation Control Report, prepared by Land Use Consultants, Inc., dated 9/15/92.

Background

Fallbrook Woods is to be developed on the remaining undeveloped 122.64 acre site of the Fallbrook Condominiums. The original project known as Ray Street Town Homes contemplated construction of 98 dwelling units and was approved by the Planning Board for the Liberty Group, Inc. on September 10, 1985. Rights to develop the project were subsequently conveyed to Merrymeeting Developers, Inc. with revised Site Plan and PRUD approvals from the Planning Board on November 10, 1987. In November of 1988, Merrymeeting Developers, which was at that time experiencing financial difficulties, conveyed their rights in the project to MM II Real Estate Corporation, a subsidiary of Maine Savings Bank. MM II, or MERREAL as it was later known, then contracted with R. Risbara Construction Co., Inc. to complete construction of Phase I. Of the 32 condominium townhouses approved, 25 are completed and occupied, 3 remain unfinished, and rights to develop the last 4 have been acquired by the present applicant. Fallbrook Inc. expects to give up its right to construct the last 4 units contingent upon State and local approval to develop the proposed boarding healthcare facility.

LAND USE CONSULTANTS INC

Planning Board approvals required by Fallbrook, Inc. to construct this project include Site Plan and Conditional Use as well as a new Recording Plat for filing at the CCRD to supersede the prior sectional recording approved May 1990. Approvals from the Department of Environmental Protection include a Transfer of Permit and an Amended Site Location of Development. Also, a Nationwide 26 filing to alter less than an acre of wetlands will be submitted to the Army Corp of Engineers.

Project Description

Fallbrook Inc. proposes to construct a single story boarding healthcare facility for the elderly called Fallbrook Woods. Lot coverage including building, paving and roads is 1.49 acres or 11.8 percent of the 12.64 acre site. The 27,600 sq. ft. building is triangular in plan with a central open landscaped courtyard. The 28-room facility is designed for both single or double bed occupancy as need may dictate. It is anticipated that ten (10) staff personnel will operate and maintain the facility during the day with fewer personnel at night. The main entry is located in the center of the front side with a reception area, office, lounge, laundry, library, kitchen and other common facilities flanking. Residents rooms are located within the other two sides of the triangular building. A dining/activity room, nurses station, as lounge are located at the three corners.

Access vs. Parking

Access to the facility is from Ray Street over Merrymeeting Drive, a private way. Merrymeeting Drive, a 24-foot paved road, will be extended approximately 450 feet from its current length of 580 feet (1030 ft. total). In addition, a 16-foot wide gravel road for emergency access will be constructed from Ray Street, opposite Nevada Avenue, around the rear of the building to the end of Merrymeeting Drive.

Vehicles will enter the site from Merrymeeting Drive via a one-way looped driveway with an entrance drop-off area. Short service drives are provided to each end of the building. Perpendicular parking for 21 cars is provided off the entry loop and the service drives with 3 of the spaces adjacent to the front entry designated for handicapped use.

Utilities

- 1) Water: Water service will be provided by extending the existing 8 inch main in Merrymeeting Drive to the end of the proposed road extension. At this point, a hydrant will be installed adjacent to the road and a service lead will be

LAND USE CONSULTANTS INC

run to the mechanical room at the southwest corner of the building. This service will be used for domestic water as well as to charge the building's sprinkler system.

- 2) Gas: Gas service, like water, will be provided by extending an existing 6 inch main in Merrymeeting Drive.
- 3) Telephone, Electric, CATV: These services will be extended underground from existing services along Merrymeeting Road to the end of new road construction. From here underground service leads will be run to the building mechanical room.
- 4) Sanitary Service: An existing combined sanitary/stormwater line extends up Ray Street between Jersey and Nevada Avenues, terminating with a manhole and 12 inch V.C. stub.

The existing Fallbrook condominiums utilize a gravity system exiting the units and discharging to a pump station on the northeast side of the property. From here the wastewater is pumped to a gravity sewer in Allen Avenue via an easement across land now or formerly of Libby.

To service this project, we propose to extend the Ray Street sewer to a point opposite the proposed emergency access road. From here a gravity service lead will be extended along the emergency access road to the rear of the building.

- 5) Storm Water: The proposed site encompasses portions of two separate watersheds. The first watershed drains westerly toward the abutting "Residences" condominium project into an existing culvert.

The second watershed encompasses the southern portion of the proposed healthcare facility and remaining site. This watershed drains via an existing intermittent stream toward the corners of Ray Street and Florida Avenue. At this point it discharges into the combined sanitary/stormwater system in Ray Street via a 10 inch CMP inlet.

The majority of the developed run-off will be diverted into the combined system in Ray Street. Detention basins will be utilized to regulate post-development peak flows to pre-development levels. Unlike the prior stormwater designs, detention basins will be situated outside a wetland areas consistent with current environmental standards. Reference is made to the stormwater Management and Wetland Delineation Reports submitted herein.

LAND USE CONSULTANTS INC

Financial and Technical Capability

Fallbrook, Inc. is headed by principals Stephen Guthrie and Robert Feeney. This team is experienced and qualified to offer healthcare services. Steve Guthrie is a professional financial consultant and Vice President with Shearson Lehman Brothers in Portland. Bob Feeney is an experienced healthcare professional being Administrator and an owner of Falmouth Manor, a residential care facility for the elderly, located on Winn Road, Falmouth.

Fallbrook, Inc. has engaged Land Use Consultant, Inc. and Architectural Design Concepts, Inc. to meet technical requirements of the project. LUC is responsible for site engineering and permitting with ADC providing building design and construction administration services.

Estimated project cost is \$1,500,000, which is to be financed through the Maine Health and Higher Education Facility Authority. Assuming timely approvals from the City and DEP, construction is expected to start in late fall 1992 with completion in late spring 1993.

We trust the contents of this submission meet the City's requirements for Site Plan Review. In that regard, we look forward to a workshop meeting with the Board on September 29, 1992. In the meantime, please feel free to call with questions or for follow-up information if required.

Very truly yours,



J. David Haynes
President

JDH:lm

Enclosures:

cc: Mr. Robert Feeney
Mr. Stephen Guthrie
Mr. George Razoyk, Architect

AGREEMENT FOR TRANSFER AND ASSUMPTION OF
SPECIAL DECLARANT RIGHTS IN
FALLBROOK, A CONDOMINIUM

This Agreement is made by and between MERREAL CORP., a Delaware corporation with a place of business in Portland, Maine (hereinafter "Transferor") and FALLBROOK, INC., a Maine corporation with a mailing address of 7 Shady Lane, Falmouth, Maine 04105 (hereinafter "Transferee").

WHEREAS, Transferor is the holder of certain Special Declarant Rights in a condominium development known as Fallbrook, a Condominium, located on Ray Street in Portland, Maine (the "Condominium") and created pursuant to a Declaration under the Maine Condominium Act of the Maine Revised Statutes Annotated, as amended, Title 33, Chapter 31 et seq., which Declaration is dated April 20, 1989 and recorded in the Cumberland County Registry of Deeds in Book 8730, Page 206, and amended by Amendment dated October 30, 1989 and recorded in said Registry in Book 8969, Page 159, Second Amendment dated May 11, 1990 and recorded in said Registry in Book 9172, Page 23, and Third Amendment dated August 1, 1990 and recorded in said Registry in Book 9267, Page 190, together with the Plat and Plans, which are Exhibits to the Declaration, recorded in said Registry in Plan Book 178, Page 66, Plan Book 182, Page 14 and Plan Book 185, Page 15 (the "Declaration"); and

WHEREAS, Transferor has agreed to transfer and assign to Transferee all its rights to construct, create and convey Fallbrook Condominium Units 29, 30, 31 and 32.

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration:

1. Transferor hereby gives, bargains, sells, conveys, assigns and transfers to Transferee, its successors and assigns, the following Special Declarant Rights in and to the Property and Transferee hereby accepts such Special Declarant Rights:

a) the rights under Article 8 of the Declaration to construct the following improvements indicated on the Plat and Plans filed with the Declaration and as indicated on a certain site plan as revised through May 9, 1989 as approved by the City of Portland on November 10, 1987 and recorded in the Cumberland County Registry of Deeds in Plan Book 168, Page 55 and as revised on June 12, 1989 and recorded in the Cumberland County Registry of Deeds in Plan Book 179, Page 47: units 29, 30, 31 and 32, being 4 condominium units proposed for development on the Property, as described in said Declaration, including all limited common elements appurtenant to said units and related alterations and improvements to the common elements including without limitation the excavation and alteration of the surface of

the earth and the construction of foundations, buildings, driveways, landscaping and utility lines (all collectively the "Units"); and

b) the right to use all easements reserved under Article 4 of the Declaration for the completion of the Units and the marketing and sale thereof including the right to maintain sales offices, management offices, signs advertising the Condominium and models as may be necessary and appropriate for the marketing and sale of the above proposed Units; and

c) the development rights necessary or appropriate to amend the Declaration to create the Units, and to reallocate the Common Element Interest, Common Expense, Liability and Vote in accordance with Section 2.2 of the Declaration and the Maine Condominium Act; and

d) all other rights, including real property rights in and to the Property, whether established under the provisions of the Declaration, the Maine Condominium Act or otherwise, which are necessary or appropriate to construct and create the above Units and appurtenant Limited Common Elements and any related interests and rights in said Condominium according to the Declaration, and to implement and complete the sale of said Units. All of the foregoing rights are subject, however, to all rights, terms and conditions of the Declaration and all provisions of the Maine Condominium Act.

2. Transferee and Transferor agree that Transferee shall be the "Declarant" with respect to all improvements constructed and created by Transferee, and Transferee hereby assumes all duties, obligations and liabilities related thereto, including without limitation the obligations arising under the Maine Condominium Act to prepare and deliver a Public Offering Statement and to warrant all improvements to purchasers of said Units. Transferee acknowledges that it is a "successor declarant" and not an "affiliate" of Transferor, for purposes of Section 1603-104 of the Maine Condominium Act. Transferee shall not be the "Declarant" with respect to any other improvements, and Transferor excepts and reserves all rights except as herein expressly transferred.

3. Transferor hereby assigns and transfers to Transferee all its right, title and interest in and to any and all land use and environmental approvals and permits relating to the Special Declarant Rights herein transferred.

Reference is made to a transfer and assignment of the above-described Special Declarant Rights from R. Risbara Construction Co., Inc. to Merreal Corp. dated November 21, 1990 and recorded in the Cumberland County Registry of Deeds in Book 9828, Page 205.

IN WITNESS WHEREOF, the parties have executed this Agreement this 31ST day of December, 1991.

TRANSFEROR
Merreal Corp.

Debra A. Manning
Witness

By: [Signature]
Its VICE PRESIDENT

TRANSFeree
Fallbrook, Inc.

Margaret Pease
Witness

By: [Signature]
Its Vice President

STATE OF MAINE
COUNTY OF CUMBERLAND, SS.

December 31, 1991

Personally appeared the above-named Parvula W. Cook, Vice President of Merreal Corp., and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Merreal Corp.

Before me,

[Signature]
Notary Public
DEBRA A. MANNING
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES APRIL 22, 1993
Type or Print Name

STATE OF MAINE
COUNTY OF CUMBERLAND, SS.

9/24/92

Personally appeared the above-named Stephen Guthrie, Vice-President of Fallbrook, Inc. and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Fallbrook, Inc.

Before me,

[Signature]
Notary Public
PETER W. WILEY
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES AUGUST 3, 1995
Type or Print Name

DAR020FB

DRAFT

ATTACHEMENTE

AGREEMENT FOR TRANSFER AND ASSUMPTION OF
SPECIAL DECLARANT RIGHTS IN
FALLBROOK, A CONDOMINIUM

This Agreement is made by and between Fallbrook, Inc. a Maine corporation with a mailing address of 7 Shady Lane, Falmouth, Maine 04105 (hereinafter "Transferor") and Fallbrook, A Condominium Unit Owners' Association, Inc., a Maine non-profit corporation with a mailing address of _____, Maine _____ (hereinafter "Transferee").

WHEREAS, Transferor is the holder of certain Special Declarant Rights in a condominium development known as Fallbrook, A Condominium, located on Ray Street in Portland, Maine (the "Condominium") and created pursuant to a Declaration under the Maine Condominium Act of the Maine Revised Statutes Annotated, as amended, Title 33, Chapter 31 et seq., which Declaration is dated April 20, 1989 and recorded in the Cumberland County Registry of Deeds in Book 8730, Page 206, and amended by Amendment dated October 30, 1989 and recorded in said Registry in Book 8969, Page 159, Second Amendment dated May 11, 1990 and recorded in said Registry in Book 9172, Page 23, and Third Amendment dated August 1, 1990 and recorded in said Registry in Book 9267, Page 190, together with the Plat and Plans, which are Exhibits to the Declaration, recorded in said Registry in Plan Book 178, Page 66, Plan Book 182, Page 14 and Plan Book 185, Page 15 (the "Declaration"); and

WHEREAS, Transferor has agreed to transfer and assign to Transferee all its rights to construct, create and convey Fallbrook Condominium Units 29, 30, 31, 32.

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration:

1. Transferor hereby gives, bargains, sells, conveys, assigns and transfers to Transferee, its successors and assigns, the following Special Declarant Rights in and to the Property and Transferee hereby accepts such Special Declarant Rights:

a) the rights under Article 8 of the Declaration to construct the following improvements indicated on the Plat and Plans filed with the Declaration and as indicated on a certain site plan as revised through May 9, 1989 as approved by the City of Portland on November 10, 1987 and recorded in the Cumberland County Registry of Deeds in Plan Book 168, Page 55 and as revised on June 12, 1989 and recorded in the Cumberland County Registry of Deeds in Plan Book 179, Page 47: units 29, 30, 31, 32, being 4 condominium units proposed for development on the Property, as described in said Declaration, including all limited common elements appurtenant to said units and related alterations and

improvements to the common elements including without limitation the excavation and alteration of the surface of the earth and the construction of foundations, buildings, driveways, landscaping and utility lines (all collectively the "Units"); and

b) the right to use all easements reserved under Article 4 of the Declaration for the completion of the Units and the marketing and sale thereof including the right to maintain sales offices, management offices, signs advertising the Condominium and models as may be necessary and appropriate for the marketing and sale of the above proposed Units; and

c) the development rights necessary or appropriate to amend the Declaration to create the Units, and to reallocate the Common Element Interest, Common Expense, Liability and Vote in accordance with Section 2.2 of the Declaration and the Maine Condominium Act; and

d) all other rights, including real property rights in and to the Property, whether established under the provisions of the Declaration, the Maine Condominium Act or otherwise, which are necessary or appropriate to construct and create the above Units and appurtenant Limited Common Elements and any related interests and rights in said Condominium according to the Declaration, and to implement and complete the sale of said Units. All of the foregoing rights are subject, however, to all rights, terms and conditions of the Declaration and all provisions of the Maine Condominium Act.

2. Transferee and Transferor agree that Transferee shall be the "Declarant" with respect to all improvements constructed and created by Transferee, and Transferee hereby assumes all duties, obligations and liabilities related thereto, including without limitation the obligations arising under the Maine Condominium Act to prepare and deliver a Public Offering Statement and to warrant all improvements to purchasers of said Units. Transferee acknowledges that it is a "successor declarant" and not an "affiliate" of Transferor, for purposes of Section 1603-104 of the Maine Condominium Act. Transferee shall not be the "Declarant" with respect to any other improvements, and Transferor excepts and reserves all rights except as herein expressly transferred.

3. Transferor hereby assigns and transfers to Transferee all its right, title and interest in and to any and all land use and environmental approvals and permits relating to the Special Declarant Rights herein transferred.

Reference is made to a transfer and assignment of the above-described Special Declarant Rights from R. Risbara Construction Co., Inc. to Merreal Corp. dated November 21, 1990 and recorded in the Cumberland County Registry of Deeds in Book 9828, Page 205.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 1992.

TRANSFEROR
Fallbrook, Inc.

BY: _____
Its

Witness

TRANSFeree
Fallbrook, A Condominium Unit
Owners' Association, Inc.

BY: _____
Its

Witness

STATE OF MAINE
CUMBERLAND, SS, ss.

Date: _____

Personally appeared the above-named _____,
_____ of Fallbrook, Inc., and acknowledged
the foregoing instrument to be his free act and deed in his said
capacity and the free act and deed of said Fallbrook, Inc.

Before me,

Notary Public

Type or Print Name

STATE OF MAINE
CUMBERLAND, SS, ss.

Date: _____

Personally appeared the above-named _____,
_____ of Fallbrook, A Condominium Unit
Owners' Association, Inc. and acknowledged the foregoing
instrument to be his free act and deed in his said capacity and
the free act and deed of said Fallbrook, A Condominium Unit
Owners' Association, Inc.

Before me,

Notary Public

Type or Print Name

ATTACHMENT 6

DRAFT

MAINTENANCE AGREEMENT

This Maintenance Agreement is entered into between Fallbrook, Inc. (hereinafter COMPANY) and Fallbrook, A Condominium, through its governing body the Unit Owners' Association (hereinafter CONDOMINIUM).

WITNESSETH

WHEREAS, the COMPANY and the CONDOMINIUM are the owners of two abutting parcels of property located on Ray Street in the City of Portland; and

WHEREAS, both parcels of land were at one time a single parcel of land known as Fallbrook, A Condominium; and

WHEREAS, the COMPANY obtained title to land that comprised a certain portion of said former condominium project on December 20, 1991; and

WHEREAS, both parties are desirous of sharing the present road known as Merrymeeting Drive, the developed portion of which is presently on CONDOMINIUM land; and

WHEREAS, the COMPANY has succeeded to a portion of the rights of the former declarant and/or said declarant's successors in interest, including an easement over, under and along the street known as Merrymeeting Drive; and

WHEREAS, the parties agree that they are desirous of sharing proportionately the expense of maintaining said Merrymeeting Drive, including any common utility lines;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The CONDOMINIUM shall arrange for the maintenance of said Merrymeeting Drive, including by way of example, and not of limitation snow plowing, necessary repair, maintenance and upkeep of Merrymeeting Drive and any common utility lines contained therein.

2. The COMPANY and the CONDOMINIUM agree to share equally the expenses of maintaining Merrymeeting Drive as set forth in paragraph 1 of this Agreement, from the intersection of Ray Street and Merrymeeting Drive to the property line between the condominium and the property, but not including maintenance for that portion of Merrymeeting Drive extended by the COMPANY to service their project, which extension shall be the sole responsibility of COMPANY. The CONDOMINIUM shall prepare an Annual Budget of anticipated maintenance costs for Merrymeeting Drive, and provide a copy of same to the COMPANY no later than December 1st of each year for the subsequent calendar year. As expenses are incurred by the CONDOMINIUM, it shall send a

DRAFT

statement of such expenditure to the COMPANY which shall reimburse the CONDOMINIUM fifty (50%) percent of such actual expenses within thirty (30) days after receipt of notification of expenditures.

3. If roadway deterioration necessitates extraordinary expense in excess of normal repairs budgeted for that year, then the CONDOMINIUM shall notify the COMPANY immediately of such proposed expenditure. Upon receipt of proof of such extraordinary expenditures, the COMPANY shall reimburse the CONDOMINIUM fifty (50%) percent of such expenditures within thirty (30) days after presentment.

4. If any amount due and owing under this Agreement is not paid within the times as specified herein, COMPANY shall be responsible for interest on the amount paid at the rate of ten (10%) percent per annum.

5. If the COMPANY disputes the accuracy of the expenditures, it shall notify the CONDOMINIUM promptly of such dispute. If the parties to this Agreement are unable to resolve such dispute, then it will be submitted to an arbitration process, employing an American Arbitration CONDOMINIUM certified Arbitrator, knowledgeable in the construction trades, whose decision shall be final and binding on both parties.

6. This Agreement shall have no effect and the CONDOMINIUM shall be responsible for all expenses for the maintenance of said Merrymeeting Drive until the COMPANY commences construction for the extension of Merrymeeting Drive into its proposed development. Upon commencement of such construction, then the COMPANY shall reimburse the CONDOMINIUM fifty (50%) percent of all maintenance expenditures for the designated portion of Merrymeeting Drive per paragraphs 2 and 3 of this Agreement.

7. It is contemplated by the parties to this Agreement that the construction of the COMPANY's Health Care Boarding Facility may cause abnormal wear and tear on Merrymeeting Drive requiring unanticipated repairs. Consequently, upon the conclusion of the construction of the COMPANY's project, the COMPANY will bear the sole expense and repair of any such abnormal wear and tear caused to Merrymeeting Drive by the construction process.

8. This Agreement is expressly limited toward that portion of Merrymeeting Drive running from the intersection of Ray Street to the boundary line of the property of the parties. Each party shall be responsible for the maintenance and upkeep of any and all other roads on their respective properties. By way of example, and not of limitation, the CONDOMINIUM shall be responsible for all maintenance and upkeep of the Loop Road, while the COMPANY shall be responsible for the maintenance and upkeep of the extension of Merrymeeting Drive from its present terminus at the property boundary between the parties into the COMPANY's facility.

DRAFT

3

9. Should construction of the proposed boarding facility and the extension of Merrymeeting Drive not commence within one year of the signing of this Agreement, then it shall be null and void unless both parties agree in writing to extend said Agreement prior to the anniversary date of the first year of its signing.

10. It is intended by both parties that this Agreement shall be binding upon the parties, their heirs, successors and assigns and shall run with the land.

11. The parties represent that they have carefully read the foregoing Maintenance Agreement and know and understand the contents hereof, and specifically acknowledge the terms hereof are contractual and not a mere recital.

IN WITNESS WHEREOF the parties have set their hands and seals as of the date set forth next to each signature below.

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Deb Andrews, Senior Planner

FROM: Melodie A. Esterberg PE, Development Review Coordinator *Melodie A. Esterberg*

DATE: September 29, 1992

SUBJECT: Fallbrook Woods

I have reviewed the plans for Fallbrook Woods with regards to stormwater management and erosion and sedimentation control. My comments are as follows:

STORMWATER MANAGEMENT

As stated in the Stormwater Management Report (attached), the site is primarily wooded with three wetlands. The wetlands were delineated by Eco-Analysts Inc and located by Land Use Consultants as shown on the drainage plans. None of the wetlands are DEP jurisdictional wetlands. Any work within the wetlands will require a permit from Army Corps of Engineers. The construction of the emergency access road will most likely be permitted under Nationwide Permit 26.

The site is divided into two watersheds. Watershed A is smaller in area and located in the northwest corner of the site. Two small wetlands are located in this watershed. These two wetlands are separated by an existing gravel road. The proposed access road will follow the existing road and will minimize intrusions into the wetland. Stormwater will be collected in a detention basin located west of the access road. This basin will be connected to the wetland east of the access road with dual culverts. This will provide additional storage capacity for the larger storm events. The outlet to the detention pond is sized to limit the post development peak flows to less than existing peak flows. The stormwater will then flow to an existing 12 inch pvc culvert which is part of the stormwater system at the Residences condominium project. This system ties into the stormdrain in Allen Avenue.

Watershed B consists of the remainder of the site. This area drains to the wetland located in the southeast corner of the site. There is an intermittent stream which begins in this wetland and flows to the southeast corner of the property and then follows the property line between the Gailey and Castonia properties prior to entering a 10 inch pipe which ties into the combined sewer in Ray Street. The stormwater calculations show that the existing pipe does not have sufficient capacity to handle the existing runoff from the site and water ponds in the swale and wetland. The developed portion of the site contributing to this sewer consists of the rear portion of the building and courtyard, the gravel emergency access road and a very small section of the parking area. Stormwater will be collected in two detention basins located north of the emergency access road. The stormwater management system is designed to ensure that post-development peak flows are less than existing peak flows. After exiting the detention ponds the stormwater will flow through the wetland and into the intermittent stream. Detaining the runoff at the upper reaches of the watershed and controlling the flows to less than existing rates, should minimize the impact of this development on the combined sewer system.

SEDIMENTATION AND EROSION CONTROL PLAN

A detailed sedimentation and erosion control plan has been submitted for this project. Erosion control measures included are hay bales, siltation fencing, stone checkdams, riprap channels, riprap aprons on all culverts, mulching, temporary and permanent seeding. If the project is constructed as specified in the erosion control plan, there should be no significant erosion or sedimentation either on or off the site.

LAND USE CONSULTANTS INC

September 18, 1992

2608

**STORMWATER MANAGEMENT REPORT
FALLBROOK WOODS
PORTLAND, MAINE**

INTRODUCTION

This report addresses the stormwater analysis conducted for the proposed Fallbrook Woods in Portland. The owner, Fallbrook Incorporated, proposes the construction of a 56-bed boarding health care facility. The project will consist of a single building and associated parking areas, a site access drive and gravel fire lane.

The site contains 12.6 acres and is located on an undeveloped back parcel west of Ray Street and south of Allen Avenue in the North Deering area of Portland. The site gains access to Ray Street over Merrymeeting Drive; a private way extending westerly from Ray Street which is the access drive for Fallbrook Condominiums. Merrymeeting Drive dead-ends near the site boundary. Much of the area adjacent to the parcel is residentially developed.

METHODOLOGY

For this study, a clone of the Soil Conservation Service (SCS) TR-20 Computer Modeling Method was used. This method was used to evaluate the peak flow rates for the 2, 10, and 25-year recurrence interval storm events for the pre(1981) and post-development conditions. The SCS Type III, 24-hour storm distribution was used.

The software used for the analysis was Hydrocad Version 3.02 developed by Applied Microcomputer Systems of Chocorua, N.H.

SITE TOPOGRAPHY AND COVER COMPLEX

NOTE: Refer to the Existing Conditions, Plan Sheet 2 for site characteristics and wetland identification numbers.

The parcel is mostly wooded with the exception of a graded gravel access road and cleared area in the northwestern area of the site. The gravel road extends from the dead-end of Merrymeeting Drive into the site for approximately 350 feet. A small area of overgrown grasses and brush has resulted from previous clearing over a small section of the site near the gravel road. The woods on site are a mix of mature pine and oak with some secondary growth. The undergrowth is generally vegetated with low shrubs and plants.

LAND USE CONSULTANTS INC

12" PVC inlet in "The Residences" storm drainage system. The calculated pre-development peak flow rates for Watershed A as it discharges off-site are:

$$Q_2 = 2.1 \text{ CFS} \quad Q_{10} = 4.7 \text{ CFS} \quad Q_{25} = 6.0 \text{ CFS}$$

WATERSHED B

Watershed B includes the remaining portion of the site as well as off-site area to the east, south and west. It was broken down into 4 sub-watersheds labelled B1 thru B4 on the plan. The entire watershed encompasses 15.6 ± acres of which 10.8± acres are wooded, 3.4± acres are grassed, 1.0± acres is meadow and 0.4± is impervious.

Generally the runoff in this watershed travels to the southeast via sheet, shallow concentrated and then channel flow thru on existing intermittent stream which discharges off-site. After leaving the southeast corner of the site, the flow travels between two residential lots towards Ray Street where it discharges into a combined sewer and stormwater system via a 10" CMP inlet. The calculated peak flow rates for Watershed B into the 10" inlet are:

$$Q_2 = 8.1 \text{ CFS} \quad Q_{10} = 19.0 \text{ CFS} \quad Q_{25} = 24.6 \text{ CFS}$$

Based on these calculations, the existing 10" inlet is inadequate in size to convey all storm events. Therefore, the flow is detained behind the inlet until it can be accepted by the system.

POST-DEVELOPMENT DRAINAGE

NOTE: Refer to the Post-Development Drainage Plan for Fallbrook Woods dated 9/15/92 for details.

As is the pre-development condition, the site was again broken down into Watershed A and B and the same discharge points were analyzed. On-site detention will be used, one basin in Watershed A and two basins in Watershed B, to detain post-development peak flow rates and discharge them at pre-development levels.

WATERSHED A

Post-Development Watershed A is located in the northwestern portion of the site. The Watershed will include the front portion of the proposed building and the majority of the proposed impervious drives and parking. Watershed A will encompass 2.4± acres of which 0.3± acres will be wooded, 1.1± acres will be grassed, 0.3± acres will be meadow and 0.7± acres will be impervious. As in the pre-development condition the runoff will generally flow from the east and west via sheet flow towards the center of the watershed. From here it will flow to south via the existing wetland channel to twin 12" RCP culverts which will pass beneath Merrymeeting Drive and into a proposed detention basin.

LAND USE CONSULTANTS INC

WATERSHED	PRE-DEVELOPMENT			POST-DEVELOPMENT		
	Q(CFS)			Q(CFS)		
	2-YR	10-YR	25-YR	2-YR	10-YR	25-YR
A	2.1	4.7	6.0	1.8	3.7	4.4
B	8.1	19.0	24.6	8.1	17.2	23.0

CONCLUSION

The site on which Fallbrook Woods is proposed is divided into two separate and distinct watersheds. Watershed A which discharges to the west empties into "The Residences" condominiums stormwater system. By utilizing the proposed detention basin, the post-development peak flow rates for Watershed A will be less than the existing (pre-development) flow rates.

In the pre-development condition, Watershed B discharges off-site via an existing intermittent stream and then into a 10" CMP inlet in the Ray Street combined storm and sanitary sewer system. Based on these calculations, this existing inlet is insufficient in size to convey any of the storms analyzed and therefore ponding behind this inlet is presently occurring.

For the post-development condition, we are proposing two detention basins to control the peak flow rates and discharge them below pre-development levels via the existing intermittent stream. We also recommend extending the combined storm and sanitary sewer system from Ray Street to the southeastern property corner via an existing easement across abutting parcels. It may be possible to increase the size of the pipe (from 10") to alleviate some of the existing flooding which is presently occurring. However, since this is a combined sewer/stormwater system, the city would need to agree to accept the increase in storm flows to the system.

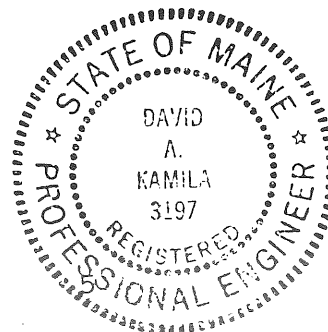
Therefore, by utilizing the proposed detention basins, the post-development peak flow rates will be at or below pre-development levels and existing flooding problems will not be increased and may be somewhat less.

Respectfully submitted,

William R. Walsh, III
Engineer

David A. Kamila, P.E.

WW/b





LAND USE CONSULTANTS INC

J. David Haynes, R.L.A.
David A. Kamila, P.E.
Bradley H. Hare, R.L.A.
Frederic Licht, Jr., P.E.
John D. Roberts, P.L.S.

September 15, 1992

ATTACHMENT 1

Portland Planning Board
City Hall
389 Congress Street
Portland, ME 04101

Attention: Deborah Andrews

Fallbrook Woods, Off Ray Street, Portland, Maine

Dear Board Members:

On behalf of Fallbrook, Inc., we forward herein a Site Plan Review submission for the Fallbrook Woods healthcare boarding facility located off Ray Street on Merrymeeting Drive. The enclosed plan and technical documentation have been prepared in accordance with Chapter 14, Portland Land Use Ordinance, Article V, Sections 14-521 through 14-540, Site Plan. Also, with this submission, we are seeking Conditional Use approval for development of an intermediate care facility in an R-3 zone as specified under Article III, Section 14-78 Conditional Use.

Plans and technical documentation submitted as a part of this application are as follows:

- 1) Standard Boundary Survey, prepared by Land Use Consultants, Inc., dated 9/15/92, sealed by John D. Roberts, PLS #1155, Sheet 1 of 8.
- 2) Existing Conditions Plan, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 2 of 8.
- 3) Pre-Development Drainage Plan, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 3 of 8.
- 4) Grading and Utilities Plan, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 4 of 8.
- 5) Illustrative Landscape Layout and Details Plan, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 5 of 8.

LAND USE CONSULTANTS INC

- 6) Post-Development Drainage Plan and Erosion Controls, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 6 of 8.
- 7) Construction Details, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 7 of 8.
- 8) Construction Details, prepared by Land Use Consultants, Inc., dated 9/15/92, Sheet 8 of 8.
- 9) Building Elevations Plan, prepared by Architectural Design Concepts, Inc.
- 10) Deed from MERREAL Corp. (MMII Real Estate Corporation) for Fallbrook Inc., dated December 20, 1991, CCRD Bk. 9831, Pg. 59, showing title to the project area.
- 11) "Wetland Delineation of the Ray Street Development in Portland, Maine", by Eco-Analysts, Inc., P.O. Box 224, Bath, ME 04530, dated 9/11/92.
- 12) Stormwater Management Report, prepared by land Use Consultants, Inc., dated 9/15/92. (To be submitted under separate cover.)
- 13) Erosion and Sedimentation Control Report, prepared by Land Use Consultants, Inc., dated 9/15/92.

Background

Fallbrook Woods is to be developed on the remaining undeveloped 122.64 acre site of the Fallbrook Condominiums. The original project know as Ray Street Town Homes contemplated construction of 98 dwelling units and was approved by the Planning Board for the Liberty Group, Inc. on September 10, 1985. Rights to develop the project were subsequently conveyed to Merrymeeting Developers, Inc. with revised Site Plan and PRUD approvals from the Planning Board on November 10, 1987. In November of 1988, Merrymeeting Developers, which was at that time experiencing financial difficulties, conveyed their rights in the project to MM II Real Estate Corporation, a subsidiary of Maine Savings Bank. MM II, or MERREAL as it was later know, then contracted with R. Risbara Construction Co., Inc. to complete construction of Phase I. Of the 32 condominium townhouses approved, 25 are completed and occupied, 3 remain unfinished, and rights to develop the last 4 have been acquired by the present applicant. Fallbrook Inc. expects to give up its right to construct the last 4 units contingent upon State and local approval to develop the proposed boarding healthcare facility.

LAND USE CONSULTANTS INC

Planning Board approvals required by Fallbrook, Inc. to construct this project include Site Plan and Conditional Use as well as a new Recording Plat for filing at the CCRD to supersede the prior sectional recording approved May 1990. Approvals from the Department of Environmental Protection include a Transfer of Permit and an Amended Site Location of Development. Also, a Nationwide 26 filing to alter less than an acre of wetlands will be submitted to the Army Corp of Engineers.

Project Description

Fallbrook Inc. proposes to construct a single story boarding healthcare facility for the elderly called Fallbrook Woods. Lot coverage including building, paving and roads is 1.49 acres or 11.8 percent of the 12.64 acre site. The 27,600 sq. ft. building is triangular in plan with a central open landscaped courtyard. The 28-room facility is designed for both single or double bed occupancy as need may dictate. It is anticipated that ten (10) staff personnel will operate and maintain the facility during the day with fewer personnel at night. The main entry is located in the center of the front side with a reception area, office, lounge, laundry, library, kitchen and other common facilities flanking. Residents rooms are located within the other two sides of the triangular building. A dining/activity room, nurses station, as lounge are located at the three corners.

Access vs. Parking

Access to the facility is from Ray Street over Merrymeeting Drive, a private way. Merrymeeting Drive, a 24-foot paved road, will be extended approximately 450 feet from its current length of 580 feet (1030 ft. total). In addition, a 16-foot wide gravel road for emergency access will be constructed from Ray Street, opposite Nevada Avenue, around the rear of the building to the end of Merrymeeting Drive.

Vehicles will enter the site from Merrymeeting Drive via a one-way looped driveway with an entrance drop-off area. Short service drives are provided to each end of the building. Perpendicular parking for 21 cars is provided off the entry loop and the service drives with 3 of the spaces adjacent to the front entry designated for handicapped use.

Utilities

- 1) Water: Water service will be provided by extending the existing 8 inch main in Merrymeeting Drive to the end of the proposed road extension. At this point, a hydrant will be installed adjacent to the road and a service lead will be

LAND USE CONSULTANTS INC

run to the mechanical room at the southwest corner of the building. This service will be used for domestic water as well as to charge the building's sprinkler system.

- 2) Gas: Gas service, like water, will be provided by extending an existing 6 inch main in Merrymeeting Drive.
- 3) Telephone, Electric, CATV: These services will be extended underground from existing services along Merrymeeting Road to the end of new road construction. From here underground service leads will be run to the building mechanical room.
- 4) Sanitary Service: An existing combined sanitary/stormwater line extends up Ray Street between Jersey and Nevada Avenues, terminating with a manhole and 12 inch V.C. stub.

The existing Fallbrook condominiums utilize a gravity system exiting the units and discharging to a pump station on the northeast side of the property. From here the wastewater is pumped to a gravity sewer in Allen Avenue via an easement across land now or formerly of Libby.

To service this project, we propose to extend the Ray Street sewer to a point opposite the proposed emergency access road. From here a gravity service lead will be extended along the emergency access road to the rear of the building.

- 5) Storm Water: The proposed site encompasses portions of two separate watersheds. The first watershed drains westerly toward the abutting "Residences" condominium project into an existing culvert.

The second watershed encompasses the southern portion of the proposed healthcare facility and remaining site. This watershed drains via an existing intermittent stream toward the corners of Ray Street and Florida Avenue. At this point it discharges into the combined sanitary/stormwater system in Ray Street via a 10 inch CMP inlet.

The majority of the developed run-off will be diverted into the combined system in Ray Street. Detention basins will be utilized to regulate post-development peak flows to pre-development levels. Unlike the prior stormwater designs, detention basins will be situated outside a wetland areas consistent with current environmental standards. Reference is made to the stormwater Management and Wetland Delineation Reports submitted herein.

LAND USE CONSULTANTS INC

Financial and Technical Capability


Fallbrook, Inc. is headed by principals Stephen Guthrie and Robert Feeney. This team is experienced and qualified to offer healthcare services. Steve Guthrie is a professional financial consultant and Vice President with Shearson Lehman Brothers in Portland. Bob Feeney is an experienced healthcare professional being Administrator and an owner of Falmouth Manor, a residential care facility for the elderly, located on Winn Road, Falmouth.

Fallbrook, Inc. has engaged Land Use Consultant, Inc. and Architectural Design Concepts, Inc. to meet technical requirements of the project. LUC is responsible for site engineering and permitting with ADC providing building design and construction administration services.

Estimated project cost is \$1,500,000, which is to be financed through the Maine Health and Higher Education Facility Authority. Assuming timely approvals from the City and DEP, construction is expected to start in late fall 1992 with completion in late spring 1993.

We trust the contents of this submission meet the City's requirements for Site Plan Review. In that regard, we look forward to a workshop meeting with the Board on September 29, 1992. In the meantime, please feel free to call with questions or for follow-up information if required.

Very truly yours,


J. David Haynes
President

JDH:lm

Enclosures:

cc: Mr. Robert Feeney
Mr. Stephen Guthrie
Mr. George Razoyk, Architect

Fallbrook Inc.
7 Shady Lane
Falmouth, Me 04105

September 14, 1992

Ms. Deborah Andrews
Planner and Urban Development
City of Portland
City Hall
Portland, Me 04101

Re: Fallbrook Inc.
Deeded Rights/Phase I
Declarant Rights for Units 29, 30, 31 and 32
Road Maintenance

Dear Ms. Andrews,,

In response to your request about the deeded interest that Fallbrook Inc. has and its relationship with Fallbrook Condominium project. We submit the following information. On December 20, 1991 Fallbrook Inc. purchased 12.62 acres of land from Merreal Corp., a Corporation organized in Delaware and with a place of business in Portland, Maine. This land was part of Fallbrook Condominium project, better known as Phase II, III and IV. At the closing we received a description of the boundaries, three easements for sewer and drainage and an easement to the City of Portland for a turn-around. Also received was an easement for all purposes in common with others over, under and along the 50 foot wide right of way known as Merrymeeting Drive, which is reserved in the Declaration of Fallbrook Condominiums dated April 20, 1989 and recorded in said Registry of Deeds in Book 8730, page 206. We did not accept to be the declarant for Phase II, III and IV of the condominium project. Our intent was only to develop a Health Care Facility. As far as we are concerned Phase II, III and IV no longer exist. It is our understanding that once you decide to use the land for a different purpose, the original approval will be extinguished. Merreal Corp. continues to own and retain responsibility for Phase I. The Condominium Association which is made up of 28 units is legally self-sufficient.

In a separate agreement Merreal Corp. offered to Fallbrook Inc. the declarant rights to build Units 29, 30, 31 and 32 which was originally in Phase I but transferred to Phase IV by Merreal Corp. It is our intent to relinquish these rights to the Condominium Association for the sole purpose of complying with the City of Portland Planning Board Directive to complete a basketball court and/or park. Fallbrook Inc. is more than willing to do so and has informed the Association of our intent.

The question of who will maintain the road came up at the Planning Board workshop, under the public offering and the declaration of the condominium. The expenses of maintaining the 50 foot right of way shall be shared proportionally by the Condominium Association and by the owners (Fallbrook Inc.) of the additional land based on the number of residences, or comparable uses, located on the condominium property and on the additional land. We have mutually agree with the Condominium Association representatives that we will share the maintenance costs on a 50/50 basis once construction of the project goes forth.

See enclosed documents: Quick Claim Deed With Covenant, Sewerage and Drainage Easements, City of Portland Easement and Special Declarant Rights for Units 29, 30, 31 and 32.

If you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in cursive script that reads "Robert Feeney". The signature is written in dark ink and has a long, sweeping underline that extends to the right.

Robert Feeney,
Fallbrook Inc.

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Deb Andrews, Senior Planner

FROM: Melodie A. Esterberg PE¹, Development Review Coordinator *Melodie A. Esterberg*

DATE: September 29, 1992

SUBJECT: Fallbrook Woods

I have reviewed the plans for Fallbrook Woods with regards to stormwater management and erosion and sedimentation control. My comments are as follows:

STORMWATER MANAGEMENT

As stated in the Stormwater Management Report (attached), the site is primarily wooded with three wetlands. The wetlands were delineated by Eco-Analysts Inc and located by Land Use Consultants as shown on the drainage plans. None of the wetlands are DEP jurisdictional wetlands. Any work within the wetlands will require a permit from Army Corps of Engineers. The construction of the emergency access road will most likely be permitted under Nationwide Permit 26.

The site is divided into two watersheds. Watershed A is smaller in area and located in the northwest corner of the site. Two small wetlands are located in this watershed. These two wetlands are separated by an existing gravel road. The proposed access road will follow the existing road and will minimize intrusions into the wetland. Stormwater will be collected in a detention basin located west of the access road. This basin will be connected to the wetland east of the access road with dual culverts. This will provide additional storage capacity for the larger storm events. The outlet to the detention pond is sized to limit the post development peak flows to less than existing peak flows. The stormwater will then flow to an existing 12 inch pvc culvert which is part of the stormwater system at the Residences condominium project. This system ties into the stormdrain in Allen Avenue.

Watershed B consists of the remainder of the site. This area drains to the wetland located in the southeast corner of the site. There is an intermittent stream which begins in this wetland and flows to the southeast corner of the property and then follows the property line between the Gailey and Castonia properties prior to entering a 10 inch pipe which ties into the combined sewer in Ray Street. The stormwater calculations show that the existing pipe does not have sufficient capacity to handle the existing runoff from the site and water ponds in the swale and wetland. The developed portion of the site contributing to this sewer consists of the rear portion of the building and courtyard, the gravel emergency access road and a very small section of the parking area. Stormwater will be collected in two detention basins located north of the emergency access road. The stormwater management system is designed to ensure that post-development peak flows are less than existing peak flows. After exiting the detention ponds the stormwater will flow through the wetland and into the intermittent stream. Detaining the runoff at the upper reaches of the watershed and controlling the flows to less than existing rates, should minimize the impact of this development on the combined sewer system.

SEDIMENTATION AND EROSION CONTROL PLAN

A detailed sedimentation and erosion control plan has been submitted for this project. Erosion control measures included are hay bales, siltation fencing, stone checkdams, riprap channels, riprap aprons on all culverts, mulching, temporary and permanent seeding. If the project is constructed as specified in the erosion control plan, there should be no significant erosion or sedimentation either on or off the site.

LAND USE CONSULTANTS INC

September 18, 1992

2608

STORMWATER MANAGEMENT REPORT
FALLBROOK WOODS
PORTLAND, MAINE

INTRODUCTION

This report addresses the stormwater analysis conducted for the proposed Fallbrook Woods in Portland. The owner, Fallbrook Incorporated, proposes the construction of a 56-bed boarding health care facility. The project will consist of a single building and associated parking areas, a site access drive and gravel fire lane.

The site contains 12.6 acres and is located on an undeveloped back parcel west of Ray Street and south of Allen Avenue in the North Deering area of Portland. The site gains access to Ray Street over Merrymeeting Drive; a private way extending westerly from Ray Street which is the access drive for Fallbrook Condominiums. Merrymeeting Drive dead-ends near the site boundary. Much of the area adjacent to the parcel is residentially developed.

METHODOLOGY

For this study, a clone of the Soil Conservation Service (SCS) TR-20 Computer Modeling Method was used. This method was used to evaluate the peak flow rates for the 2, 10, and 25-year recurrence interval storm events for the pre(1981) and post-development conditions. The SCS Type III, 24-hour storm distribution was used.

The software used for the analysis was Hydrocad Version 3.02 developed by Applied Microcomputer Systems of Chocorua, N.H.

SITE TOPOGRAPHY AND COVER COMPLEX

NOTE: Refer to the Existing Conditions, Plan Sheet 2 for site characteristics and wetland identification numbers.

The parcel is mostly wooded with the exception of a graded gravel access road and cleared area in the northwestern area of the site. The gravel road extends from the dead-end of Merrymeeting Drive into the site for approximately 350 feet. A small area of overgrown grasses and brush has resulted from previous clearing over a small section of the site near the gravel road. The woods on site are a mix of mature pine and oak with some secondary growth. The undergrowth is generally vegetated with low shrubs and plants.

LAND USE CONSULTANTS INC

The topography of the site is characterized by a ledgy knoll on the northeast end and a second knoll located 500 ft. southerly from this point. Three wetlands have also been identified on site by Eco Analysts, Inc. and located by LUC.

As one enters the parcel from Merrymeeting Drive, the topography slopes gently downhill along the gravel road and rises gently to the left (or east) to the first knoll mentioned. A low drainage between the gravel drive and the knoll is occupied by wetland 1 while wetland 2 extends off-site to the right (or west) of the gravel drive. Both wetlands are small isolated drainage pockets.

A low saddle between the two prominent knolls forms a drainage channel which flows into a large wetland (wetland 3) which occupies roughly 25% of the site in the central and southern areas. This entire wetland and the knolls on-site drain through an intermittent stream to a culvert on Ray Street adjacent to the southeastern property corner.

SITE SOILS

The site soils were obtained from the U.S.D.A - Soil Conservation Service Medium Intensity Soil Survey Maps for Cumberland County.

The site boundaries have been scaled onto the site to determine hydrologic soil groups. The soil boundaries are depicted on the Pre-Development and Post-Development Drainage and Erosion & Sedimentation Control Plans, Sheets 3 and 6. The site soils and their hydrologic soil groups are further listed below:

<u>Mapping Symbol</u>	<u>Soil Name</u>	<u>Hydrologic Soil Group</u>
Hr, Hs	Hollis	C/D (Use D)
Bg	Belgrade	C
Sn	Scantic	D
Bu	Buxton	C

PRE-DEVELOPMENT DRAINAGE

NOTE: Refer to the pre-development drainage plan of Fallbrook Woods dated 9/15/92 for details.

For the pre-development condition, the site was divided into its two natural watersheds, A and B, as delineated on the aforementioned plan.

WATERSHED A

Watershed A is located in the northwestern portion of the site, encompassing 2.4± acres, included within this area is 1.2± of meadow, 1.1± acres of woods and 0.1± acres of gravel drive. Generally this watershed drains to the east and west into a small wetland swale which conveys the flow off-site to the south towards "The Residences" condominiums. From here, it enters a

LAND USE CONSULTANTS INC

12" PVC inlet in "The Residences" storm drainage system. The calculated pre-development peak flow rates for Watershed A as it discharges off-site are:

$$Q_2 = 2.1 \text{ CFS} \quad Q_{10} = 4.7 \text{ CFS} \quad Q_{25} = 6.0 \text{ CFS}$$

WATERSHED B

Watershed B includes the remaining portion of the site as well as off-site area to the east, south and west. It was broken down into 4 sub-watersheds labelled B1 thru B4 on the plan. The entire watershed encompasses 15.6 ± acres of which 10.8± acres are wooded, 3.4± acres are grassed, 1.0± acres is meadow and 0.4± is impervious.

Generally the runoff in this watershed travels to the southeast via sheet, shallow concentrated and then channel flow thru on existing intermittent stream which discharges off-site. After leaving the southeast corner of the site, the flow travels between two residential lots towards Ray Street where it discharges into a combined sewer and stormwater system via a 10" CMP inlet. The calculated peak flow rates for Watershed B into the 10" inlet are:

$$Q_2 = 8.1 \text{ CFS} \quad Q_{10} = 19.0 \text{ CFS} \quad Q_{25} = 24.6 \text{ CFS}$$

Based on these calculations, the existing 10" inlet is inadequate in size to convey all storm events. Therefore, the flow is detained behind the inlet until it can be accepted by the system.

POST-DEVELOPMENT DRAINAGE

NOTE: Refer to the Post-Development Drainage Plan for Fallbrook Woods dated 9/15/92 for details.

As is the pre-development condition, the site was again broken down into Watershed A and B and the same discharge points were analyzed. On-site detention will be used, one basin in Watershed A and two basins in Watershed B, to detain post-development peak flow rates and discharge them at pre-development levels.

WATERSHED A

Post-Development Watershed A is located in the northwestern portion of the site. The Watershed will include the front portion of the proposed building and the majority of the proposed impervious drives and parking. Watershed A will encompass 2.4± acres of which 0.3± acres will be wooded, 1.1± acres will be grassed, 0.3± acres will be meadow and 0.7± acres will be impervious. As in the pre-development condition the runoff will generally flow from the east and west via sheet flow towards the center of the watershed. From here it will flow to south via the existing wetland channel to twin 12" RCP culverts which will pass beneath Merrymeeting Drive and into a proposed detention basin.

LAND USE CONSULTANTS INC

The basin will use a combination of outlets consisting of a 12" culvert for the 2- and 25-year storm events and an emergency weir to direct any flows greater than the 25-year storm. During large storm events, the detention basin will surcharge and runoff will be stored in the basin as well as the wetland on the east side of Merrymeeting Drive. As in the pre-development condition, this watershed discharges off-site through an existing swale and into a 12" PVC inlet in "The Residences" condominiums storm drainage system. The calculated Post-Development Peak Flow Rates for Watershed A for the 2, 10, and 25-year storm events are:

$$Q_2 = 1.8 \text{ CFS} \quad Q_{10} = 3.7 \text{ CFS} \quad Q_{25} = 4.4 \text{ CFS}$$

WATERSHED B

Post-Development Watershed B encompasses the southern portion of the site, most of which will remain undeveloped at this time. The only development will be in the northern portion of the watershed which will include the rear of the proposed building and the fire access road. Watershed B was broken down into 7 sub-watersheds, labelled B1, B3, B4, B10, B11, B12 and B13 on the Post-Development Watershed Plan. Two small detention basins will be used in this watershed to detain peak flow rates.

Watershed B encompasses 15.6± acres of which 3.9± acres are grassed, 1.6± acres are meadow, 0.2± acres are gravel drive, 8.9± acres are wooded and 1.0± acres are impervious. Generally the runoff flows to the southeast towards Wetland #3. The detention basins will be located to the north of the fire access drive which will serve as an embankment for each of the basins. The outlet for both basins, will consist of orifices and weirs to control the flow. After exiting the basins, the runoff will travel through Wetland #3 to the southeast corner of the property. At this corner, a new pipe will be installed via an existing easement and connected by a new manhole into the combined storm and sanitary system in Ray Street. The calculated post-development flow rates to the proposed storm drain for the 2-, 10-, and 25-year storm events are:

$$Q_2 = 8.1 \text{ CFS} \quad Q_{10} = 17.2 \text{ CFS} \quad Q_{25} = 23.0 \text{ CFS}$$

SUMMARY

Two watersheds have been analyzed for the 2, 10, and 25-year recurrence interval storm events. The proposed boarding healthcare facility will not significantly change the boundaries or general flow paths of either watershed.

The following table summarizes the peak flow rates for the 2-, 10-, and 25-year recurrence interval storm events for both watersheds A and B for the pre- and post-development conditions:

LAND USE CONSULTANTS INC

WATERSHED	PRE-DEVELOPMENT Q(CFS)			POST-DEVELOPMENT Q(CFS)		
	2-YR	10-YR	25-YR	2-YR	10-YR	25-YR
A	2.1	4.7	6.0	1.8	3.7	4.4
B	8.1	19.0	24.6	8.1	17.2	23.0

CONCLUSION

The site on which Fallbrook Woods is proposed is divided into two separate and distinct watersheds. Watershed A which discharges to the west empties into "The Residences" condominiums stormwater system. By utilizing the proposed detention basin, the post-development peak flow rates for Watershed A will be less than the existing (pre-development) flow rates.

In the pre-development condition, Watershed B discharges off-site via an existing intermittent stream and then into a 10" CMP inlet in the Ray Street combined storm and sanitary sewer system. Based on these calculations, this existing inlet is insufficient in size to convey any of the storms analyzed and therefore ponding behind this inlet is presently occurring.

For the post-development condition, we are proposing two detention basins to control the peak flow rates and discharge them below pre-development levels via the existing intermittent stream. We also recommend extending the combined storm and sanitary sewer system from Ray Street to the southeastern property corner via an existing easement across abutting parcels. It may be possible to increase the size of the pipe (from 10") to alleviate some of the existing flooding which is presently occurring. However, since this is a combined sewer/stormwater system, the city would need to agree to accept the increase in storm flows to the system.

Therefore, by utilizing the proposed detention basins, the post-development peak flow rates will be at or below pre-development levels and existing flooding problems will not be increased and may be somewhat less.

Respectfully submitted,

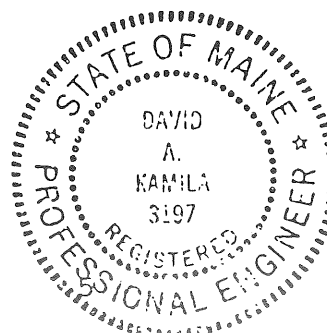


William R. Walsh, III
Engineer



David A. Kamila, P.E.

WW/b



QUITCLAIM DEED
WITH COVENANT

Doc 64377 9 9831 9:59

KNOW ALL MEN BY THESE PRESENTS that MERREAL CORP., a corporation organized and existing under the laws of the State of Delaware, formerly named MM II Real Estate Corporation, and with a place of business at Portland, in the County of Cumberland and State of Maine, for consideration paid, hereby grants to FALLBROOK, INC., a Maine corporation with a mailing address of 7 Shady Lane, Falmouth, Maine 04105, with Quitclaim Covenants, certain real estate situated in Portland, County of Cumberland and State of Maine, more particularly bounded and described as follows:

A certain parcel of land situated Westerly of Ray Street in the City of Portland, County of Cumberland and State of Maine bounded and described as follows:

Beginning at the southeasterly corner of Fallbrook, a Condominium at a point on the Westerly sideline of land now or formerly of John N. Jr. and Glennis E. Fitzpatrick (Book 2773, page 224);

Thence, S 13°-05'-20" E by the land of Fitzpatrick 110.00 feet to a point marked by a 5/8" iron rod set;

Thence, N 76°-54'-40" E by the land of Fitzpatrick 256.90 feet to a point on the Westerly sideline of Ray Street marked by 5/8" iron rod set;

Thence, S 16°-25'-15" E by the sideline of Ray Street 1.42 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Ivan G. and Edwina F. Callahan (Book 2997, page 486);

Thence, S 73°-34'-45" W by the land of Callahan 220.00 feet to a point marked by a 5/8" iron rod set;

Thence, S 16°-25'-15" E by the land of Callahan 65.00 feet to a point marked by a 5/8" iron rod set;

Thence, N 73°-34'-45" E by the land of Callahan 100.00 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Malcolm A. and Gail E. McDonald (Book 3614, page 219);

Thence, S 18°-02'-05" E by the land of McDonald 163.18 feet to a point marked by a 5/8" iron rod set;

Thence, N 74°25'-15" E by the land of McDonald 120.00 feet to a point on the Westerly sideline of Ray Street marked by a 5/8" iron rod set;

64:77
MAINE REAL ESTATE TAX PAID

Thence, S 18°-35'-45" E by the sideline of Ray Street 47.17 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Donald A. and Evelyn Thompson (Book 2892, page 451);

Thence, S 71°-24'-15" W by the land of Thompson 150.00 feet to a point marked by a 5/8" iron rod set;

Thence, S 18°-35'-45" E by the land of Thompson 50.00 feet to a point marked by a 5/8" iron rod set;

Thence, N 71°-24'-15" E by the land of Thompson 50.00 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Richard E. and Carolyn Grover (Book 2895, page 492);

Thence, S 18°-35'-45" E by the land of Grover and by the land now or formerly of Raymond A. and Florence M. Sevigny (Book 2490, page 327) 72.78 feet to a point marked by a 5/8" iron rod set;

Thence, S 17°-48'-10" E by the land of Sevigny and by the lands now or formerly of Gladys A. and Kenneth V. Moody (Book 3471, page 62), Betty L. Denbow (Book 2682, page 313), Anna J. Aiken (Book 3570, page 212), David A. and Carolyn J. Matthews (Book 4483, page 163), Laura H. Clark (Book 3708, page 194), and George and Doris Castonia (Book 4960, page 286) 333.24 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Frances F. Gatchell (Book 6257, page 342);

Thence, S 71°-28'-30" W by the land of Gatchell 51.09 feet to a point marked by a 5/8" iron rod set;

Thence, S 67°-57'-00" W by the land of Gatchell and lands now or formerly of Eleanor L. and Sherry Sapko, Charles E. and Linda J. Foshay (Book 3920, page 212), Linwood J. and Ruth L. Thaxter, Charles L. Arey (Book 2320, page 55), Dorothy M. and Richard M. Butler (Book 3765, page 177), Norman C. and Caroline M. Walton (Book 2014, page 140), James P. and Lula S. Cullen (Book 2044, page 474), and Glenda R. and Roger R. Pushor (Book 4755, page 44) 481.12 feet to a point marked by a 5/8" iron rod set;

Thence, S 54°-20'-55" W by the land of Pushor 29.58 feet to a point marked by a 5/8" iron rod set;

Thence, S 45°-14'-05" W by the land now or formerly of Claire D. and Edward L. Gulick (Book 3782, page 285) and by the land now or formerly of John H. and Jeannette B. Greer (Book 2824, page 131) 186.45 feet to a stone wall intersection and the end of Wadco Street;

Thence, N 01°-01'-00" W by a stonewall 7.90 feet to the Northeasterly sideline of Wadco Street;

Thence, N 37°-18'-55" W by the sideline of Wadco Street 165.51 feet to a point marked by a 5/8" iron rod set at the Easterly sideline of Ash Street;

Thence, N 01°-28'-55" W by the sideline of Ash Street 100.00 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Diane M. and Richard C. Hayes (Book 3615, page 161);

Thence, N 88°-31'-05" E by the land of Hayes 98.80 feet to a stonewall;

Thence, N 01°-01'-00" W by the land of Hayes, the land now or formerly of Bertha C. Judkins, by the end of Topsham Street, and by the land now or formerly of David F. Marshall (Book 4804, page 317) 369.17 feet to a 1" iron pipe found;

Thence, N 01°-26'-15" W by the land of Marshall 125.00 feet;

Thence, S 80°-04'-05" W by the land of Marshall 100.00 feet to a point marked by a 5/8" iron rod set;

Thence, S 01°-09'-05" E by the land of Marshall 125.00 feet to a 1" iron pipe found at the Northeast corner of the land now or formerly of Bertha C. Judkins;

Thence, S 81°-21'-30" W by the land of Judkins 56.91 feet to a 1/4" iron rod found at the Southeast corner of the land now or formerly of F. S. Plummer Co. (Book 6869, page 110);

Thence, N 07°-34'-10" E by land of F. S. Plummer Co. 592.31 feet;

Thence, S 63°-29'-00" E by Fallbrook, a Condominium 190.24 feet to a point;

Thence, N 76°-54'-40" E by Fallbrook, a Condominium 166.98 feet to the point of beginning.

Also those easements and rights, in common with others, which are described in the below referenced documents:

(1) Easements from George and Doris Castonia dated December 20, 1985, recorded in the Cumberland County Registry of Deeds at Book 7036, Page 92;

(2) Easements from Calvin L. and Myrtle W. Gailey, dated December 20, 1985, and recorded in the Cumberland County Registry of Deeds at Book 7036, Page 96;

(3) Easement from Francis Frances F. Gatchell dated December 20, 1985, and recorded in the Cumberland County Registry of Deeds at Book 7036, Page 100; and

(4) Easement to the City of Portland for a turn-around at the terminus of Topsham Street and other matters shown on the Plat of Fallbrook, a Condominium, recorded in the Cumberland County Registry of Deeds in Plan Book 178, Page 66.

Meaning and intending to describe a portion of the premises conveyed to MM II Real Estate Corporation (now Merreal Corp.) by Deed of Merrymeeting Developers, Inc. dated November 29, 1988 and recorded in said Registry of Deeds in Book 8572, Page 280.

Also, an easement for all purposes in common with others over, under and along the 50 foot wide right of way shown on the Plat of Fallbrook, a Condominium, recorded in the Cumberland County Registry of Deeds in Plan Book 178, Page 66 and reserved in the Declaration of Fallbrook Condominium dated April 20, 1989 and recorded in said Registry of Deeds in Book 8730, Page 206.

Reference is hereby made to a Certificate of Amendment of Certificate of Incorporation of MM II Real Estate Corporation dated February 27, 1989 and filed with the Office of Secretary of State for the State of Delaware, a copy of which is recorded in said Registry of Deeds; and to a Deed from Merrymeeting Developers, Inc. to MM II Real Estate Corporation dated November 29, 1988 and recorded in said Registry of Deeds in Book 8572, Page 280.

IN WITNESS WHEREOF, the said MERREAL CORP. has caused this instrument to be sealed with its corporate seal and signed in its corporate name by JEFFREY M. DIGGINS, its VICE PRESIDENT thereunto duly authorized, this 20 day of December, 1991 .

WITNESS:

MERREAL CORP.

Debra Manning

By: Jeffrey M. Diggins
Its VICE PRESIDENT

STATE OF MAINE
CUMBERLAND, SS.

December 20, 1991

Personally appeared the above-named JEFFREY M. DIGGINS, VICE PRESIDENT of said Grantor Corporation, 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 said Corporation.

recorded
Cumberland County
Registry of Deeds
Robert F. Brown
Register

Before me,

Debra A. Manning
Notary Public/Attorney at Law

SEAL

Print Name: _____

DRAFT

Attachment 10

AGREEMENT FOR TRANSFER AND ASSUMPTION OF
SPECIAL DECLARANT RIGHTS IN
FALLBROOK, A CONDOMINIUM

This Agreement is made by and between Fallbrook, Inc. a Maine corporation with a mailing address of 7 Shady Lane, Falmouth, Maine 04105 (hereinafter "Transferor") and Fallbrook, A Condominium Unit Owners' Association, Inc., a Maine non-profit corporation with a mailing address of _____, Maine _____ (hereinafter "Transferee").

WHEREAS, Transferor is the holder of certain Special Declarant Rights in a condominium development known as Fallbrook, A Condominium, located on Ray Street in Portland, Maine (the "Condominium") and created pursuant to a Declaration under the Maine Condominium Act of the Maine Revised Statutes Annotated, as amended, Title 33, Chapter 31 et seq., which Declaration is dated April 20, 1989 and recorded in the Cumberland County Registry of Deeds in Book 8730, Page 206, and amended by Amendment dated October 30, 1989 and recorded in said Registry in Book 8969, Page 159, Second Amendment dated May 11, 1990 and recorded in said Registry in Book 9172, Page 23, and Third Amendment dated August 1, 1990 and recorded in said Registry in Book 9267, Page 190, together with the Plat and Plans, which are Exhibits to the Declaration, recorded in said Registry in Plan Book 178, Page 66, Plan Book 182, Page 14 and Plan Book 185, Page 15 (the "Declaration"); and

WHEREAS, Transferor has agreed to transfer and assign to Transferee all its rights to construct, create and convey Fallbrook Condominium Units 29, 30, 31, 32.

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration:

1. Transferor hereby gives, bargains, sells, conveys, assigns and transfers to Transferee, its successors and assigns, the following Special Declarant Rights in and to the Property and Transferee hereby accepts such Special Declarant Rights:

a) the rights under Article 8 of the Declaration to construct the following improvements indicated on the Plat and Plans filed with the Declaration and as indicated on a certain site plan as revised through May 9, 1989 as approved by the City of Portland on November 10, 1987 and recorded in the Cumberland County Registry of Deeds in Plan Book 168, Page 55 and as revised on June 12, 1989 and recorded in the Cumberland County Registry of Deeds in Plan Book 179, Page 47: units 29, 30, 31, 32, being 4 condominium units proposed for development on the Property, as described in said Declaration, including all limited common elements appurtenant to said units and related alterations and

improvements to the common elements including without limitation the excavation and alteration of the surface of the earth and the construction of foundations, buildings, driveways, landscaping and utility lines (all collectively the "Units"); and

b) the right to use all easements reserved under Article 4 of the Declaration for the completion of the Units and the marketing and sale thereof including the right to maintain sales offices, management offices, signs advertising the Condominium and models as may be necessary and appropriate for the marketing and sale of the above proposed Units; and

c) the development rights necessary or appropriate to amend the Declaration to create the Units, and to reallocate the Common Element Interest, Common Expense, Liability and Vote in accordance with Section 2.2 of the Declaration and the Maine Condominium Act; and

d) all other rights, including real property rights in and to the Property, whether established under the provisions of the Declaration, the Maine Condominium Act or otherwise, which are necessary or appropriate to construct and create the above Units and appurtenant Limited Common Elements and any related interests and rights in said Condominium according to the Declaration, and to implement and complete the sale of said Units. All of the foregoing rights are subject, however, to all rights, terms and conditions of the Declaration and all provisions of the Maine Condominium Act.

2. Transferee and Transferor agree that Transferee shall be the "Declarant" with respect to all improvements constructed and created by Transferee, and Transferee hereby assumes all duties, obligations and liabilities related thereto, including without limitation the obligations arising under the Maine Condominium Act to prepare and deliver a Public Offering Statement and to warrant all improvements to purchasers of said Units. Transferee acknowledges that it is a "successor declarant" and not an "affiliate" of Transferor, for purposes of Section 1603-104 of the Maine Condominium Act. Transferee shall not be the "Declarant" with respect to any other improvements, and Transferor excepts and reserves all rights except as herein expressly transferred.

3. Transferor hereby assigns and transfers to Transferee all its right, title and interest in and to any and all land use and environmental approvals and permits relating to the Special Declarant Rights herein transferred.

Reference is made to a transfer and assignment of the above-described Special Declarant Rights from R. Risbara Construction Co., Inc. to Merreal Corp. dated November 21, 1990 and recorded in the Cumberland County Registry of Deeds in Book 9828, Page 205.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 1992.

TRANSFEROR
Fallbrook, Inc.

BY: _____
Its

Witness

TRANSFeree
Fallbrook, A Condominium Unit
Owners' Association, Inc.

BY: _____
Its

Witness

STATE OF MAINE
CUMBERLAND, SS, ss.

Date: _____

Personally appeared the above-named _____,
_____ of Fallbrook, Inc., and acknowledged
the foregoing instrument to be his free act and deed in his said
capacity and the free act and deed of said Fallbrook, Inc.

Before me,

Notary Public

Type or Print Name

STATE OF MAINE
CUMBERLAND, SS, ss.

Date: _____

Personally appeared the above-named _____,
_____ of Fallbrook, A Condominium Unit
Owners' Association, Inc. and acknowledged the foregoing
instrument to be his free act and deed in his said capacity and
the free act and deed of said Fallbrook, A Condominium Unit
Owners' Association, Inc.

Before me,

Notary Public

Type or Print Name

AGREEMENT FOR TRANSFER AND ASSUMPTION OF
SPECIAL DECLARANT RIGHTS IN
FALLBROOK, A CONDOMINIUM

This Agreement is made by and between MERREAL CORP., a Delaware corporation with a place of business in Portland, Maine (hereinafter "Transferor") and FALLBROOK, INC., a Maine corporation with a mailing address of 7 Shady Lane, Falmouth, Maine 04105 (hereinafter "Transferee").

WHEREAS, Transferor is the holder of certain Special Declarant Rights in a condominium development known as Fallbrook, a Condominium, located on Ray Street in Portland, Maine (the "Condominium") and created pursuant to a Declaration under the Maine Condominium Act of the Maine Revised Statutes Annotated, as amended, Title 33, Chapter 31 et seq., which Declaration is dated April 20, 1989 and recorded in the Cumberland County Registry of Deeds in Book 8730, Page 206, and amended by Amendment dated October 30, 1989 and recorded in said Registry in Book 8969, Page 159, Second Amendment dated May 11, 1990 and recorded in said Registry in Book 9172, Page 23, and Third Amendment dated August 1, 1990 and recorded in said Registry in Book 9267, Page 190, together with the Plat and Plans, which are Exhibits to the Declaration, recorded in said Registry in Plan Book 178, Page 66, Plan Book 182, Page 14 and Plan Book 185, Page 15 (the "Declaration"); and

WHEREAS, Transferor has agreed to transfer and assign to Transferee all its rights to construct, create and convey Fallbrook Condominium Units 29, 30, 31 and 32.

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration:

1. Transferor hereby gives, bargains, sells, conveys, assigns and transfers to Transferee, its successors and assigns, the following Special Declarant Rights in and to the Property and Transferee hereby accepts such Special Declarant Rights:

a) the rights under Article 8 of the Declaration to construct the following improvements indicated on the Plat and Plans filed with the Declaration and as indicated on a certain site plan as revised through May 9, 1989 as approved by the City of Portland on November 10, 1987 and recorded in the Cumberland County Registry of Deeds in Plan Book 168, Page 55 and as revised on June 12, 1989 and recorded in the Cumberland County Registry of Deeds in Plan Book 179, Page 47: units 29, 30, 31 and 32, being 4 condominium units proposed for development on the Property, as described in said Declaration, including all limited common elements appurtenant to said units and related alterations and improvements to the common elements including without limitation the excavation and alteration of the surface of

the earth and the construction of foundations, buildings, driveways, landscaping and utility lines (all collectively the "Units"); and

b) the right to use all easements reserved under Article 4 of the Declaration for the completion of the Units and the marketing and sale thereof including the right to maintain sales offices, management offices, signs advertising the Condominium and models as may be necessary and appropriate for the marketing and sale of the above proposed Units; and

c) the development rights necessary or appropriate to amend the Declaration to create the Units, and to reallocate the Common Element Interest, Common Expense, Liability and Vote in accordance with Section 2.2 of the Declaration and the Maine Condominium Act; and

d) all other rights, including real property rights in and to the Property, whether established under the provisions of the Declaration, the Maine Condominium Act or otherwise, which are necessary or appropriate to construct and create the above Units and appurtenant Limited Common Elements and any related interests and rights in said Condominium according to the Declaration, and to implement and complete the sale of said Units. All of the foregoing rights are subject, however, to all rights, terms and conditions of the Declaration and all provisions of the Maine Condominium Act.

2. Transferee and Transferor agree that Transferee shall be the "Declarant" with respect to all improvements constructed and created by Transferee, and Transferee hereby assumes all duties, obligations and liabilities related thereto, including without limitation the obligations arising under the Maine Condominium Act to prepare and deliver a Public Offering Statement and to warrant all improvements to purchasers of said Units. Transferee acknowledges that it is a "successor declarant" and not an "affiliate" of Transferor, for purposes of Section 1603-104 of the Maine Condominium Act. Transferee shall not be the "Declarant" with respect to any other improvements, and Transferor excepts and reserves all rights except as herein expressly transferred.

3. Transferor hereby assigns and transfers to Transferee all its right, title and interest in and to any and all land use and environmental approvals and permits relating to the Special Declarant Rights herein transferred.

Reference is made to a transfer and assignment of the above-described Special Declarant Rights from R. Risbara Construction Co., Inc. to Merreal Corp. dated November 21, 1990 and recorded in the Cumberland County Registry of Deeds in Book 9828, Page 205.

IN WITNESS WHEREOF, the parties have executed this Agreement this 31ST day of December, 1991.

TRANSFEROR
Merreal Corp.

Debra A. Manning
Witness

By: [Signature]
Its VICE PRESIDENT

TRANSFeree
Fallbrook, Inc.

Margaret Pease
Witness

By: [Signature]
Its Vice President

STATE OF MAINE
COUNTY OF CUMBERLAND, SS.

December 31, 1991

Personally appeared the above-named Parola W. Coe, Vice President of Merreal Corp., and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Merreal Corp.

Before me,

[Signature]
Notary Public
DEBRA A. MANNING
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES APRIL 22, 1993
Type or Print Name

STATE OF MAINE
COUNTY OF CUMBERLAND, SS.

9/24/92

Personally appeared the above-named Stephen Guthrie, Vice-President of Fallbrook, Inc. and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Fallbrook, Inc.

Before me,

[Signature]
Notary Public
PETER J. WILEY
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES AUGUST 3, 1996
Type or Print Name

DAR020FB

DRAFT**MAINTENANCE AGREEMENT**

This Maintenance Agreement is entered into between Fallbrook, Inc. (hereinafter COMPANY) and Fallbrook, A Condominium, through its governing body the Unit Owners' Association (hereinafter CONDOMINIUM).

WITNESSETH

WHEREAS, the COMPANY and the CONDOMINIUM are the owners of two abutting parcels of property located on Ray Street in the City of Portland; and

WHEREAS, both parcels of land were at one time a single parcel of land known as Fallbrook, A Condominium; and

WHEREAS, the COMPANY obtained title to land that comprised a certain portion of said former condominium project on December 20, 1991; and

WHEREAS, both parties are desirous of sharing the present road known as Merrymeeting Drive, the developed portion of which is presently on CONDOMINIUM land; and

WHEREAS, the COMPANY has succeeded to a portion of the rights of the former declarant and/or said declarant's successors in interest, including an easement over, under and along the street known as Merrymeeting Drive; and

WHEREAS, the parties agree that they are desirous of sharing proportionately the expense of maintaining said Merrymeeting Drive, including any common utility lines;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The CONDOMINIUM shall arrange for the maintenance of said Merrymeeting Drive, including by way of example, and not of limitation snow plowing, necessary repair, maintenance and upkeep of Merrymeeting Drive and any common utility lines contained therein.

2. The COMPANY and the CONDOMINIUM agree to share equally the expenses of maintaining Merrymeeting Drive as set forth in paragraph 1 of this Agreement, from the intersection of Ray Street and Merrymeeting Drive to the property line between the condominium and the property, but not including maintenance for that portion of Merrymeeting Drive extended by the COMPANY to service their project, which extension shall be the sole responsibility of COMPANY. The CONDOMINIUM shall prepare an Annual Budget of anticipated maintenance costs for Merrymeeting Drive, and provide a copy of same to the COMPANY no later than December 1st of each year for the subsequent calendar year. As expenses are incurred by the CONDOMINIUM, it shall send a

DRAFT

statement of such expenditure to the COMPANY which shall reimburse the CONDOMINIUM fifty (50%) percent of such actual expenses within thirty (30) days after receipt of notification of expenditures.

3. If roadway deterioration necessitates extraordinary expense in excess of normal repairs budgeted for that year, then the CONDOMINIUM shall notify the COMPANY immediately of such proposed expenditure. Upon receipt of proof of such extraordinary expenditures, the COMPANY shall reimburse the CONDOMINIUM fifty (50%) percent of such expenditures within thirty (30) days after presentment.

4. If any amount due and owing under this Agreement is not paid within the times as specified herein, COMPANY shall be responsible for interest on the amount paid at the rate of ten (10%) percent per annum.

5. If the COMPANY disputes the accuracy of the expenditures, it shall notify the CONDOMINIUM promptly of such dispute. If the parties to this Agreement are unable to resolve such dispute, then it will be submitted to an arbitration process, employing an American Arbitration CONDOMINIUM certified Arbitrator, knowledgeable in the construction trades, whose decision shall be final and binding on both parties.

6. This Agreement shall have no effect and the CONDOMINIUM shall be responsible for all expenses for the maintenance of said Merrymeeting Drive until the COMPANY commences construction for the extension of Merrymeeting Drive into its proposed development. Upon commencement of such construction, then the COMPANY shall reimburse the CONDOMINIUM fifty (50%) percent of all maintenance expenditures for the designated portion of Merrymeeting Drive per paragraphs 2 and 3 of this Agreement.

7. It is contemplated by the parties to this Agreement that the construction of the COMPANY's Health Care Boarding Facility may cause abnormal wear and tear on Merrymeeting Drive requiring unanticipated repairs. Consequently, upon the conclusion of the construction of the COMPANY's project, the COMPANY will bear the sole expense and repair of any such abnormal wear and tear caused to Merrymeeting Drive by the construction process.

8. This Agreement is expressly limited toward that portion of Merrymeeting Drive running from the intersection of Ray Street to the boundary line of the property of the parties. Each party shall be responsible for the maintenance and upkeep of any and all other roads on their respective properties. By way of example, and not of limitation, the CONDOMINIUM shall be responsible for all maintenance and upkeep of the Loop Road, while the COMPANY shall be responsible for the maintenance and upkeep of the extension of Merrymeeting Drive from its present terminus at the property boundary between the parties into the COMPANY's facility.

DRAFT

3

9. Should construction of the proposed boarding facility and the extension of Merrymeeting Drive not commence within one year of the signing of this Agreement, then it shall be null and void unless both parties agree in writing to extend said Agreement prior to the anniversary date of the first year of its signing.

10. It is intended by both parties that this Agreement shall be binding upon the parties, their heirs, successors and assigns and shall run with the land.

11. The parties represent that they have carefully read the foregoing Maintenance Agreement and know and understand the contents hereof, and specifically acknowledge the terms hereof are contractual and not a mere recital.

IN WITNESS WHEREOF the parties have set their hands and seals as of the date set forth next to each signature below.

ATTACHMENT 13
Executive

Dimensions

	Wattage	Luminaire Size	Standard Arm Dimensions	Recommended Mounting Height
EXECUTIVE 20	up to 250 watts	16" x 20" x 6"	2" x 4" - 8"	7'6" to 20'
EXECUTIVE 25	up to 400 watts	20" x 25" x 8"	2 1/4" x 6" - 12"	15' to 40'
EXECUTIVE 30	up to 1000 watts	23" x 30" x 10"	2 1/4" x 6" - 12"	25' to 40'

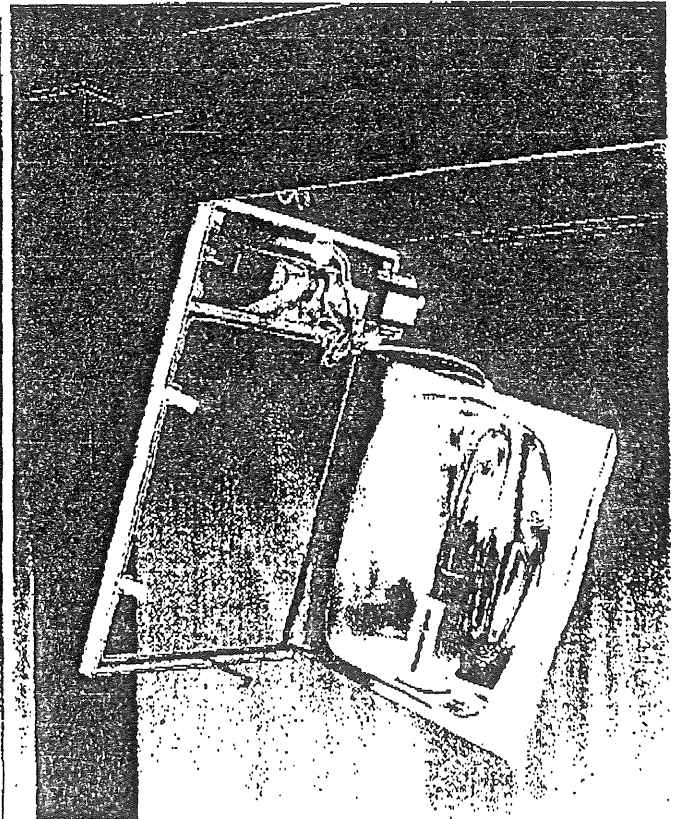
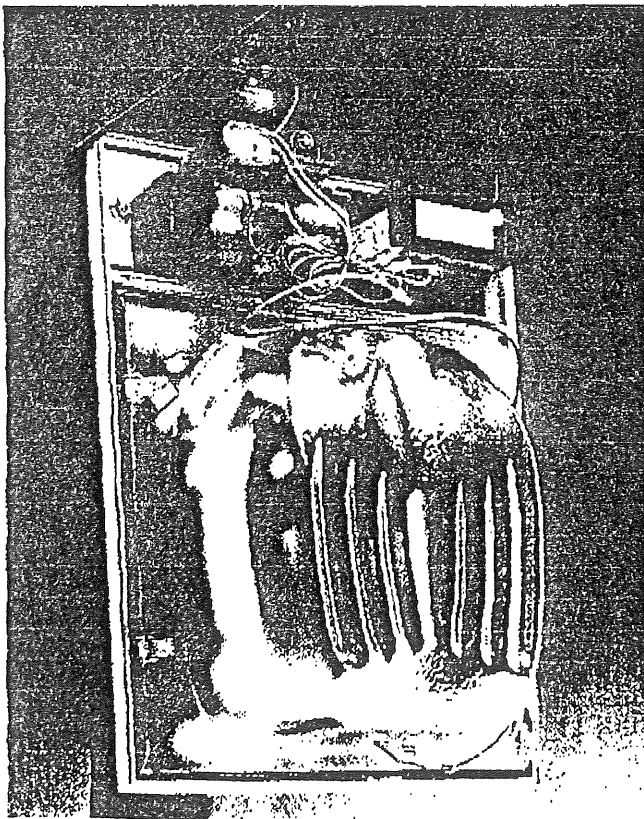
INCANDESCENT.

Mechanical Features • Unitized ballast/reflector system, hinged and removable as a unit. Easy access for installation and maintenance. • Reflector is hinged and sealed against a one piece E.P.D.M. gasket. • Thermal and impact tempered glass lens. • Extruded aluminum arm with galvanized steel threaded tie rods. • Extruded aluminum lens frame with accurately mitered corners, secured with internal corner keys.

Photometric Flexibility • Die-formed, semi-specular reflector system in standard IES patterns II, III and V. A Forward Distribution Reflector is also available. 1000 WATT EXECUTIVE 30, identical in appearance and construction, forward distribution reflector or with bilateral field-adjustable reflector. Designed and manufactured to meet or exceed UL and

NEC requirements. All fixtures bear the IBEW and UL label.

Options • Photoelectric control receptacle • Single or duplex weatherproof receptacle • Luminaires can be wall mounted • Baked enamel or anodic hard coat finishes available in a wide range of colors.



CITY OF PORTLAND
MEMORANDUM

TO: Chairman DeCoursey and Members of the Portland Planning Board

FROM: Deborah Andrews, Senior Planner

DATE: August 25, 1992

RE: Preliminary Site Plan Review of Proposed 28-unit Elderly Care Facility off Ray Street; Fallbrook Inc., Applicant

Fallbrook, Inc. requests preliminary site plan, subdivision, and conditional use review of a proposed 28-unit licensed board care facility for the elderly to be located off Ray Street. The development is to be sited on a portion of the remaining 13.33 acres of the Fallbrook Condominium site, with the balance of land reserved for possible future development. The property is located in an R-3 zone, where intermediate care facilities, such as that proposed, are allowed as a conditional use.

Because of the unique and relatively complex issues raised by the proposed development and its relationship to the existing Fallbrook Condominium project, the applicant has been encouraged to present a preliminary concept plan to the Board for its review and comment prior to completing a detailed site plan and elevation drawings. Accordingly, the enclosed plans (Attachments #2 and #3) are concept plans only and leave open a number of issues for discussion by the Board. On Tuesday, Stephen Guthrie and Robert Feeney, principals of Fallbrook, Inc., and David Haynes of Land Use Consultants will discuss immediate and long-term plans for the site.

DESCRIPTION OF THE PROJECT

Fallbrook Inc. proposes to construct a single-story, 28-room boarding health care facility for the elderly within the previously-approved Fallbrook Condominium subdivision. The facility, to be called Fallbrook Woods, is to be sited immediately south of the completed Phase I Fallbrook Condominiums and is to be accessed from the same private road which runs off of Ray Street. While the proposed facility is to be sprinklered, construction of an emergency access lane will also be required because of the combined number of units included within the condominium development and the proposed elderly boarding facility. (The enclosed site plan, Attachment #2, shows two possible locations for the emergency access lane - see dotted lines. One shows the access lane connecting to Topsham Street and the alternative connecting to Ray Street. Because of costs associated with constructing Topsham Street (now a paper street), the applicant prefers to connect the emergency access lane to Ray Street. The applicant is aware that this option will require some reconfiguration of the future residential development as currently shown, but as this development is strictly conceptual at this point, such a reconfiguration is possible.

Executive Department



Robert B. Ganley
City Manager

CITY OF PORTLAND

March 24, 1993

Mr. William R. Walsh
Land Use Consultants, Inc.
One India Street
Portland, ME 04101

RE: Fallbrook Woods
CSO Credits

Dear Mr. Walsh:

Per your letter dated September 22, 1992 regarding credits for the Fallbrook Woods Boarding Health Care Facility, the City of Portland hereby grants 29,875 credits for this project.

Sincerely,


Robert B. Ganley
City Manager

cc: Joseph E. Gray, Jr., Director of Planning and Urban Development
Melodie Esterberg, Development Review Coordinator
Deborah Andrews, Senior Planner
William Goodwin, Environmental Engineer, Department of Parks and Public Works

Inspection Services
Samuel P. Hoffses
Chief



Andrews
- Planning

Planning and Urban Development
Joseph E. Gray Jr.
Director

CITY OF PORTLAND

April 13, 1993

Fallbrook, Inc.
c/o Steven Guthrie
167 Bayside Rd
Portland, ME 04102

Re: 418 Ray St (Fallbrook Woods)
CBL: 400-D-003/400-F-001

Dear Sir,

Your application to construct a twenty eight room boarding health care facility has been reviewed and a permit is herewith issued subject to the following requirements:

No certificate of occupancy can be issued until all requirements of this letter are met.

Site Plan Review Requirements

Planning Division	Approved	D. Andrews
Public Works	Approved	M. Esterberg
Inspection Services	Approved	W. Giroux

Building and Fire Code Requirements

1. Two means of access to the site required. Access to structures shall be at least 20' wide nearest the structure. Hydrant must be shown or installed within 800' of the building, measured along normal path of travel of fire apparatus. Location of sprinkler connection must be shown for approval. LT Garroway
2. All required fire alarm systems shall have the capability of "Zone Disconnect" via switches or key pad program provided the method is approved by the Fire Prevention Bureau.
3. All remote annunciators shall have a visible "trouble" indicator along with the Fire Alarm "Zone" indicators.
4. Any Master Box connected to the Municipal Fire Alarm System shall have a supervised Municipal Disconnect Switch.
5. All Master Box locations shall be approved by the Fire Department Director of Communications. A Master Box shall be located so that the center of the box is five feet above finished floor.
6. All Master Box locations are required to have a locked box (knoxbox).
7. A fire alarm acceptance report shall be submitted to the Portland Fire Department.
8. Additional pull stations are needed in kitchen and in room #125.
9. A four inch storz connection shall be provided for the sprinkler system.
10. Kitchen Equipment/Kitchen Exhaust Equipment - Shall comply with the BOCA National Mechanical Code/1990, Article 5.

RECEIVED

AUG 24 1992

PORTLAND PLANNING OFFICE

August 21, 1992

Joseph E. Gray, Jr.
Director of Planning and Urban Development
Room 211, City Hall
389 Congress Street
Portland, ME 04101

RE: Fallbrook, Inc.

Dear Mr. Gray:

I would urge the Portland Planning Board's approval for the proposed development of Fallbrook, Inc. for a 28-unit licensed boarding home to be located off Ray Street.

This is a needed type of housing and it is refreshing to have local businessmen planning the development.

Fallbrook Woods will make a good neighbor and possibly, in the future, enhance the value of the condominium property.

Sincerely,



Jane G. Everett
24 Merrymeeting Drive
Portland, ME 04103

cc: Stephen E. Guthrie
167 Wayside Road
Portland, ME 04102

DRUMMOND WOODSUM PLIMPTON & MACMAHON

ATTORNEYS AT LAW

245 COMMERCIAL STREET

PORTLAND, MAINE 04101-1117

(207) 772-1941

FAX (207) 772-3627

MUGH G. E. MACMAHON
JOHN A. GRAUSTEIN
JOSEPH L. DELAFIELD III
S. JAMES LEVIS, JR.
DANIEL AMORY
ROBERT E. HIRSHON
HARRY R. PRINGLE
RICHARD A. SPENCER
JOHN A. MAHANEY
THOMAS H. ALLEN
RICHARD A. CARRIUOLO
RONALD N. WARD
RICHARD A. HULL III
JOHN S. KAMINSKI
RUFUS E. BROWN
KATHLEEN BARRY
WILLIAM L. PLOUFFE
CAROLYN B. WOODWORTH
JERROL A. CROUTER

KEITH C. JONES
MICHAEL E. HIGH
RICHARD A. SHINAY
BRUCE W. SMITH
WILLIAM R. BRITTON, JR.
E. WILLIAM STOCKMEYER
BARBARA L. KRAUSE
BENJAMIN E. MARCUS
ELTING H. SMITH, JR.
MELISSA A. HEWEY
ERIC R. HERLAN
MARK E. STANDEN
GENE A. AUTY
DAINA J. NATHANSON
BARBARA A. APPLEYBY
DAVID P. CROCKER
DANIEL J. ROSE
JAMES D. WILLIAMS III
LEIGH C. TAGGART

PARK ONE-ELEVEN
409 ALFRED STREET
BIDDEFORD, MAINE 04005
(207) 282-5983
FAX (207) 282-4310

OF COUNSEL
DANIEL T. DRUMMOND, JR.
HAROLD E. WOODSUM, JR.
DAVID PLIMPTON

June 1, 1992

Alan R. Atkins, Esq.
Bernstein Shur Sawyer & Nelson
100 Middle Street
P.O. Box 9729
Portland, Maine 04104

1. SIGN
2. USE of PARK
3. Sawyer ??

Re: Fallbrook Condominium/Fallbrook, Inc.

Dear Alan:

Back in January of this year Merreal Corp. conveyed special declarant rights to construct Units 29, 30, 31 and 32 at Fallbrook Condominium to your client, Fallbrook, Inc. I assume that document was signed and recorded, but I am not really concerned with that point. My reason for writing now is to explain that we are trying to work with the condominium Association to construct some amenities that were promised to the condominium owners and which are part of the City approval.

Our plan is to construct a level grassy playing area and a tot lot on the property, and we have now been advised that the best site for this would be the portion of the common land that is subject to the declarant rights. If your clients have plans to construct the remaining units at any time in the foreseeable future, it probably would not make sense for us to construct these amenities in this location. However, if your clients do not intend to build the additional units, we would appreciate hearing some indication of this from them. As I understand it, your clients have no rights in this area other than to construct the units within the applicable development period. I also understand that due to the presence of ledge the cost of building the units here is prohibitive. In any event, the cooperation of your clients with the Association on this issue may go a long way in cultivating the kind of good will that will be helpful to your clients when they have a development proposal before the City.

As far as Merreal Corp. is concerned it doesn't really matter where the amenities are located, but I did offer to get the ball rolling on this issue by contacting you. We do not

Alan R. Atkins, Esq.
June 1, 1992
Page 2

represent the Association, and I believe it would be best for the Association to discuss this directly with your clients. Therefore, would you kindly pass this message on to your clients. The Association president is Paul Mergener, who can be reached at 871-9572 and the property manager is Don Neill, who can be reached at 878-5831.

Thank you very much for your assistance in this matter.

Very truly yours,



Elting H. Smith, Jr.

/db

cc: Charles Eisenberg
Paul Mergener
Don Neill

W. J. ...
...
...

AGREEMENT FOR TRANSFER AND ASSUMPTION OF
SPECIAL DECLARANT RIGHTS IN
FALLBROOK, A CONDOMINIUM

This Agreement is made by and between MERREAL CORP., a Delaware corporation with a place of business in Portland, Maine (hereinafter "Transferor") and FALLBROOK, INC., a Maine corporation with a mailing address of 7 Shady Lane, Falmouth, Maine 04105 (hereinafter "Transferee").

WHEREAS, Transferor is the holder of certain Special Declarant Rights in a condominium development known as Fallbrook, a Condominium, located on Ray Street in Portland, Maine (the "Condominium") and created pursuant to a Declaration under the Maine Condominium Act of the Maine Revised Statutes Annotated, as amended, Title 33, Chapter 31 et seq., which Declaration is dated April 20, 1989 and recorded in the Cumberland County Registry of Deeds in Book 8730, Page 206, and amended by Amendment dated October 30, 1989 and recorded in said Registry in Book 8969, Page 159, Second Amendment dated May 11, 1990 and recorded in said Registry in Book 9172, Page 23, and Third Amendment dated August 1, 1990 and recorded in said Registry in Book 9267, Page 190, together with the Plat and Plans, which are Exhibits to the Declaration, recorded in said Registry in Plan Book 178, Page 66, Plan Book 182, Page 14 and Plan Book 185, Page 15 (the "Declaration"); and

WHEREAS, Transferor has agreed to transfer and assign to Transferee all its rights to construct, create and convey Fallbrook Condominium Units 29, 30, 31 and 32.

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration:

1. Transferor hereby gives, bargains, sells, conveys, assigns and transfers to Transferee, its successors and assigns, the following Special Declarant Rights in and to the Property and Transferee hereby accepts such Special Declarant Rights:

a) the rights under Article 8 of the Declaration to construct the following improvements indicated on the Plat and Plans filed with the Declaration and as indicated on a certain site plan as revised through May 9, 1989 as approved by the City of Portland on November 10, 1987 and recorded in the Cumberland County Registry of Deeds in Plan Book 168, Page 55 and as revised on June 12, 1989 and recorded in the Cumberland County Registry of Deeds in Plan Book 179, Page 47: units 29, 30, 31 and 32, being 4 condominium units proposed for development on the Property, as described in said Declaration, including all limited common elements appurtenant to said units and related alterations and improvements to the common elements including without limitation the excavation and alteration of the surface of

the earth and the construction of foundations, buildings, driveways, landscaping and utility lines (all collectively the "Units"); and

b) the right to use all easements reserved under Article 4 of the Declaration for the completion of the Units and the marketing and sale thereof including the right to maintain sales offices, management offices, signs advertising the Condominium and models as may be necessary and appropriate for the marketing and sale of the above proposed Units; and

c) the development rights necessary or appropriate to amend the Declaration to create the Units, and to reallocate the Common Element Interest, Common Expense, Liability and Vote in accordance with Section 2.2 of the Declaration and the Maine Condominium Act; and

d) all other rights, including real property rights in and to the Property, whether established under the provisions of the Declaration, the Maine Condominium Act or otherwise, which are necessary or appropriate to construct and create the above Units and appurtenant Limited Common Elements and any related interests and rights in said Condominium according to the Declaration, and to implement and complete the sale of said Units. All of the foregoing rights are subject, however, to all rights, terms and conditions of the Declaration and all provisions of the Maine Condominium Act.

2. Transferee and Transferor agree that Transferee shall be the "Declarant" with respect to all improvements constructed and created by Transferee, and Transferee hereby assumes all duties, obligations and liabilities related thereto, including without limitation the obligations arising under the Maine Condominium Act to prepare and deliver a Public Offering Statement and to warrant all improvements to purchasers of said Units. Transferee acknowledges that it is a "successor declarant" and not an "affiliate" of Transferor, for purposes of Section 1603-104 of the Maine Condominium Act. Transferee shall not be the "Declarant" with respect to any other improvements, and Transferor excepts and reserves all rights except as herein expressly transferred.

3. Transferor hereby assigns and transfers to Transferee all its right, title and interest in and to any and all land use and environmental approvals and permits relating to the Special Declarant Rights herein transferred.

Reference is made to a transfer and assignment of the above-described Special Declarant Rights from R. Risbara Construction Co., Inc. to Merreal Corp. dated November 21, 1990 and recorded in the Cumberland County Registry of Deeds in Book 9828, Page 205.

IN WITNESS WHEREOF, the parties have executed this Agreement this 31ST day of December, 1991.

TRANSFEROR
Merreal Corp.

Debra A. Manning
Witness

By: [Signature]
Its VICE PRESIDENT

TRANSFeree
Fallbrook, Inc.

Witness

By: _____
Its

STATE OF MAINE
COUNTY OF CUMBERLAND, SS.

December 31, 1991

Personally appeared the above-named Parula W. Cook, Vice President of Merreal Corp., and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Merreal Corp.

Before me,

Debra Manning
Notary Public
DEBRA A. MANNING
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES APRIL 30, 1993

Type or Print Name

STATE OF MAINE
COUNTY OF CUMBERLAND, SS.

December __, 1991

Personally appeared the above-named _____, President of Fallbrook, Inc. and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Fallbrook, Inc.

Before me,

Notary Public

Type or Print Name

OWEN HASKELL, INC.

Civil Engineer — Land Surveyor

8 Broadway, South Portland, Maine 04106

Telephone 207 799-5694

August 19, 1985

DESCRIPTION

SEWER AND DRAINAGE EASEMENT

GAILEY TO LIBERTY GROUP

That portion of a 30 foot wide sewer and drainage easement shown on "Plan of Land on Ray Street, Portland, Maine for Liberty Group, Owen Haskell, Inc. Aug. 16, 1985" which lies on the land of Calvin L. and Myrtle W. Gailey (see Book 3063 page 400) and which is described as follows:

Beginning at a 5/8" iron rod set at the Southernmost corner of land of George and Doris Castonia (Book 4960 page 286);

Thence, N 67°-57'-30" E by the land of Castonia 48.74 feet;

Thence, S 84°-44'-05" E through the land of Gailey 55.86 feet to the Westerly sideline of Ray Street;

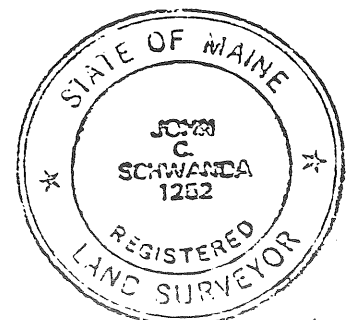
Thence, S 17°-48'-10" E by Ray Street 32.61 feet;

Thence, N 84°-44'-05" W through the land of Gailey 108.69 feet to the land of Frances F. Gatchell (Book 6257 page 342);

Thence, N 17°-48'-10" E by the land of Gatchell 8.30 feet to the point of beginning.

Said portion of the 30 foot wide sewer and drainage easement contains 2,670 square feet more or less. Also, that portion of the 40 foot wide construction easement shown on said plan which lies on land of Gailey and which is located 5 feet wide on each side of the above mentioned 30 foot wide sewer and drainage easement.

All bearings are magnetic 1942 as based on C.C.R.D. Plan Book 86 page 29.



John C. Schwanda

OWEN HASKELL, INC.

Civil Engineer — Land Surveyor

8 Broadway, South Portland, Maine 04106

Telephone 207 799-5694

August 19, 1985

DESCRIPTION

SEWER AND DRAINAGE EASEMENT

CASTONIA TO LIBERTY GROUP

That portion of a 30 foot wide sewer and drainage easement shown on "Plan of Land on Ray Street, Portland, Maine for Liberty Group, Owen Haskell, Inc. Aug. 16, 1985" which lies on the land of George and Doris Castonia (see Book 4960 page 286) and which is described as follows:

Beginning at a 5/8" iron rod set at the Southern most corner of land of Castonia;

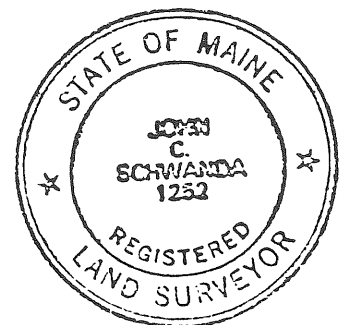
Thence, N 17°-48'-10" W by land of the Liberty Group 24.30 feet;

Thence, S 84°-44'-05" E through land of Castonia 52.83 feet to land of Calvin L. and Myrtle W. Gailey (Book 3063 page 400);

Thence, S 67°-57'-30" W by land of Gailey 48.74 feet to the point of beginning.

Said portion of the 30 foot wide sewer and drainage easement contains 591 square feet more or less. Also, that portion of the 40 foot wide construction easement shown on said plan which lies on land of Castonia and which is located 5 feet wide on each side of the above mentioned 30 foot wide sewer and drainage easement.

All bearings are magnetic 1942 as based on C.C.R.D. Plan Book 86 page 29.



John C. Schwanda

OWEN HASKELL, INC.

Civil Engineer — Land Surveyor

8 Broadway, South Portland, Maine 04106

Telephone 207 799-5694

August 19, 1985

DESCRIPTION

SEWER EASEMENT

LIBBY TO LIBERTY GROUP

A 30' wide sewer easement over land of David T. and Helen M. Libby (see Book 2026 page 64) situated on the Southeasterly side of Allen Avenue in the City of Portland, County of Cumberland and State of Maine, the centerline of which easement is described as follows:

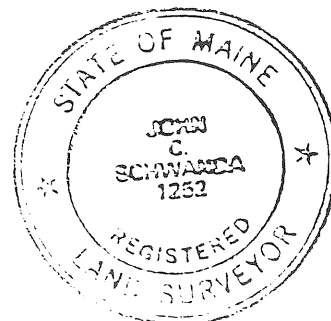
Beginning at a point on the Southeasterly sideline of Allen Avenue, which point is located N 64°-47'-25" E 96.03 feet from a granite monument with a drill hole, which marks an angle point in the sideline of Allen Avenue and which is the Northwesterly corner of the land of Libby;

Thence, S 23°-30'-00" E 93.00 feet;

Thence, S 47°-00'-00" E 123.76 feet to a point at land of the Liberty Group, which point is located S 83°-13'-15" W 112.41 feet from a 5/8" iron rod set at the Southernmost corner of land of Lewis H. and Joan J. Waugh (Book 2790 page 464).

Said 30' wide sewer easement to lie 15 feet wide on both sides of the above described centerline. Also, a 40' wide construction easement which lies 5 feet wide on each side of the above described 30 foot wide sewer easement. Said 30' wide easement contains 6,503 square feet more or less and is shown on "Plan of Land on Ray Street, Portland, Maine for Liberty Group, Owen Haskell, Inc. Aug. 16, 1985".

All bearings are magnetic 1942 as based on C.C.R.D. Plan Book 86 page 29.



John C. Schwassa

OWEN HASKELL, INC.

Civil Engineer — Land Surveyor

8 Broadway, South Portland, Maine 04106

Telephone 207 799-5694

August 19, 1985

DESCRIPTION

SEWER AND DRAINAGE EASEMENT

GATCHELL TO LIBERTY GROUP

That portion of a 30 foot wide sewer and drainage easement shown on "Plan of Land on Ray Street, Portland, Maine for Liberty Group, Owen Haskell, Inc. Aug. 16, 1985" which lies on land of Frances F. Gatchell (see Book 6257 page 342) and which is described as follows:

Beginning at a 5/8" iron rod set at the western most corner of the land of Calvin L. and Myrtle W. Gailey (Book 3063 page 400);

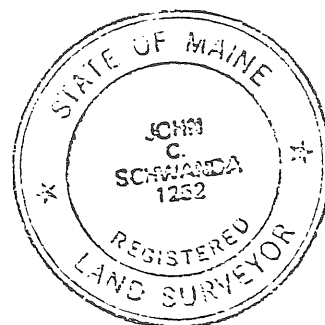
Thence, S 17°-48'-10" E by the land of Gailey 8.30 feet;

Thence, N 84°-44'-05" W through the land of Gatchell 20.58 feet to the land of Liberty Group;

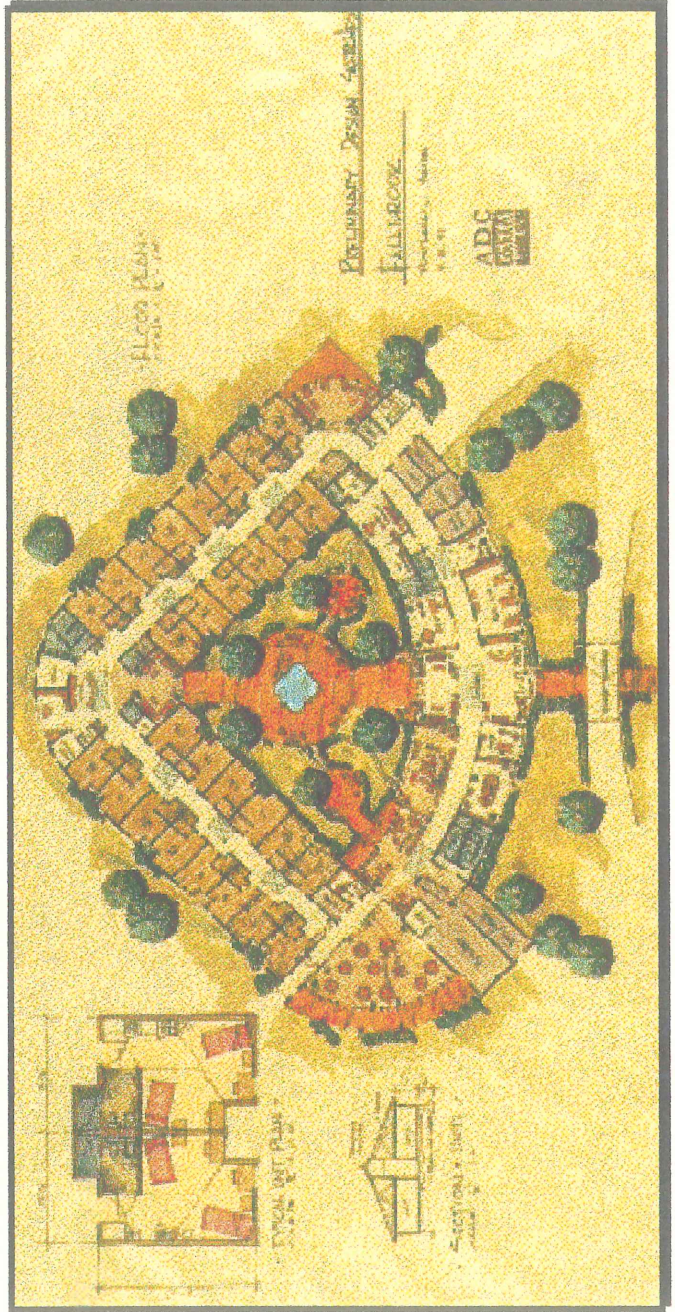
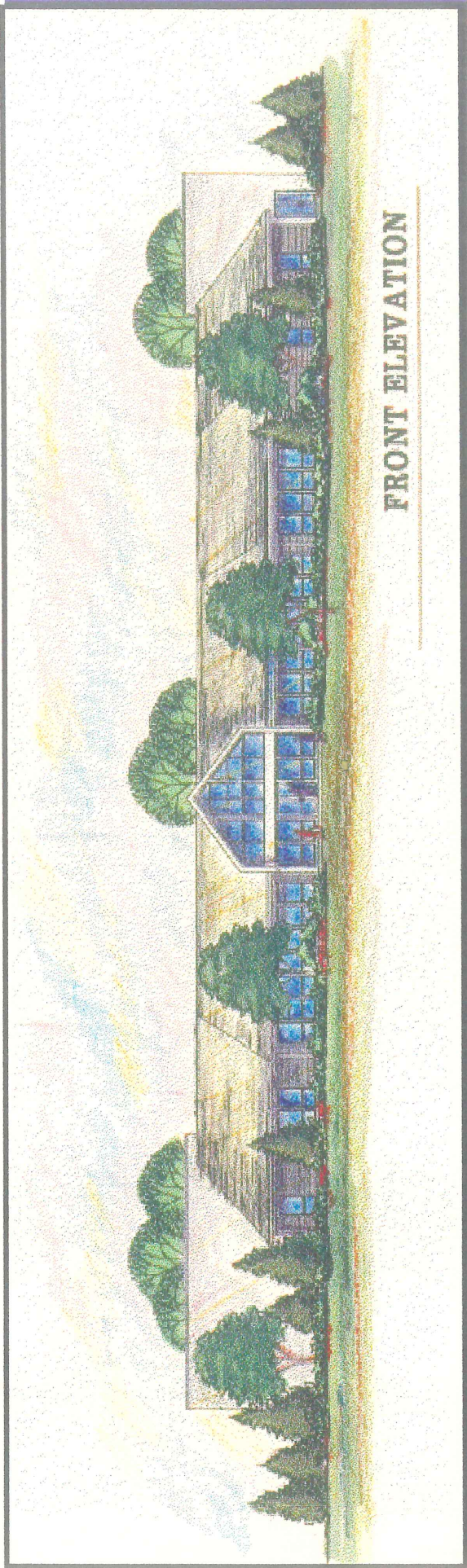
Thence, N 71°-28'-30" E by land of Liberty Group 18.94 feet to the point of beginning.

Said portion of the 30' foot wide sewer and drainage easement contains 79 square feet more or less. Also, that portion of a 40 foot wide construction easement, shown on said plan, which lies on land of Gatchell and which is located 5 feet wide on each side of the above mentioned 30 foot wide sewer and drainage easement.

All bearings are magnetic 1942 as based on C.C.R.D. Plan Book 86 page 29.



John C. Schwanda



Fallbrook Woods
 Portland, Maine

Architects

Architectural Design Concepts, Inc.
 48 Salem Street
 Bradford, Ma 01835
 (508) 374-0336

Parks & Public Works



RECEIVED *S. Greene, Planning*

DEC 04 1990

George A. Flaherty
DIRECTOR
PORTLAND PLANNING OFFICE

CITY OF PORTLAND

December 4, 1990

Pat Harrington
Land Use Consultants
One India Street
Portland, ME 04101

Re: Fallbrook Condominium Status

Dear Pat,

It appears that most of the construction items discussed on our site walk of October 23rd have been completed with the follow exception:

Silt continues to be evident at the outlet of the culvert that may be damaged. This item will be observed and if indeed there is a problem, it will have to be corrected next summer. This item will be covered under the defect guarantee.

The items that remain to be completed and listed in the letter of credit, as well as an additional new concern, are as follow:

- | | |
|--|--------------------|
| 1. Basketball court | \$15,000 |
| 2. Tot lot | \$ 1,500 |
| 3. Minor landscaping | \$ 1,200 |
| 4. Completion of Traffic improvements | \$35,000 |
| 5. Additional drainage work most likely needed behind the unfinished units to allow runoff to enter the culvert adjacent to these units. Runoff currently is draining onto the abutters' property. | \$ 1,500 |
| Total | \$54,200.00 |

It is my understanding that the traffic signalization issue needs to be resolved prior to further issuance of certificates of occupancy. Hopefully, this can be accomplished. Additionally, as noted above, I have included the remaining traffic item in the cost break down.

Given the current project status, the city will not be requiring the turnaround easement at this time. However, we are still requiring a



CITY OF PORTLAND

October 14, 1992

RECEIVED

OCT 15 1992

PORTLAND PLANNING OFFICE

Mr. William Walsh
Land Use Consultants, Inc.
One India Street
Portland, Maine 04101

Dear Bill:

At the request of the Fallbrook, Inc., I am writing to address traffic improvements that were done on Ray Street and at the Washington and Allen Avenue intersection. The subject improvements were based upon a traffic study by T.Y. Lin/Hunter-Ballew Associates, dated December 16, 1987, completed for the proposed Ray Street Town Homes (aka Fallbrook Condominiums). The improvements proposed in this study were required by the Department of Environmental Protection Site Location Order #L-011219-87-B-R and are as follows:

1. An eight phase signal system at the intersection of Washington Avenue and Allen Avenue. This system was to be coordinated with the controls at the intersections of Washington Avenue and Dairy Queen and Washington Avenue and Sanborn Street.
2. Widening and resurfacing Ray Street from Nevada Avenue to Allen Avenue.

These improvements have been completed and they fulfill the traffic requirements imposed upon this development.

Very truly yours,

William J. Bray
Deputy Director Parks/Public Works

WJB/bjm

cc: Rick Knowland, Director Planning/Urban Development
Desk File

9/30/92

Mr. William Walsh
Land Use Consultants, Inc.
1 India Street
Portland, Maine 04101

~~TO WHOM IT MAY CONCERN:~~

Dear Bill:

At the request of Fallbrook, Inc., I am writing to address traffic improvements that were done on Ray Street and at the Washington and Allen Avenue Intersection. The subject improvements were based upon a traffic study by T.Y. Lin/Hunter-Ballew Associates, dated December 16, 1987, completed for the proposed Ray Street Town Homes (aka Fallbrook Condominiums). The improvements proposed in this study were required by Department of Environmental Protection Site Location Order #L-011219-87-B-R and are as follows:

1. An eight phase signal system at the intersection of Washington Avenue and Allen Avenue. This system was to be coordinated with the controls at the intersections of Washington Avenue and Dairy Queen and Washington Avenue and Sanborn Street.
2. Widening and resurfacing Ray Street from Nevada Avenue to Allen Avenue.

These improvements have been completed and they fulfill the traffic requirements imposed upon this development.

~~Very~~ truly yours,

William J. Bray
City of Portland Traffic Engineer

Very truly yours

WJ Bray

C.C. Rick Knowland



LAND USE CONSULTANTS INC

J. David Haynes, R.L.A.

David A. Kamila, P.E.

Bradley H. Hare, R.L.A.

Frederic Licht, Jr., P.E.

John D. Roberts, P.L.S.

August 10, 1992

2608

Portland Planning Board
City Hall
389 Congress Street
Portland, Maine 04101

Attention: Deborah Andrews

Fallbrook Woods, Off Ray Street, Portland, Maine

Dear Board Members:

On behalf of Fallbrook, Inc., we respectfully request that you schedule us into your workshop meeting on the afternoon of August 25, 1992. The purpose of our meeting will be to make a concept presentation for development of Fallbrook Woods and to receive comments or concerns from the Board which should be addressed during the review/approval process.

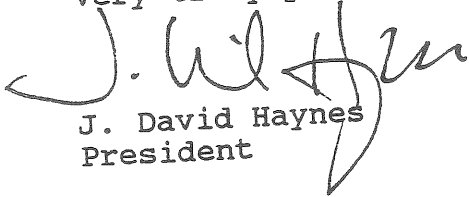
Fallbrook, Inc. is headed by principals Robert Feeney and Stephen Guthrie. Their proposal is to utilize the remaining 13.33 acres of the Fallbrook Condominium site to develop a 28 room boarding health care facility called Fallbrook Woods. The following plans are included as a part of this submission:

1. Fallbrook - A Condominium (formerly Ray Street Development) for MERREAL Corp., dated May 30, 1990, approved by Portland Planning Board September 24, 1990; Drawing 1 of 4.
2. Preliminary Design Sketches by ADC, Architectural Design Concepts, Inc., dated July 22, 1992.
3. Preliminary Site Plan by ADC, Architectural Design Concepts, Inc., scale 1"=50'.

LAND USE CONSULTANTS INC

We look forward to meeting with the Board on August 25th at which time we can review this proposal in detail. In the meantime, please do call with any questions or comments.

Very truly yours,



J. David Haynes
President

JDH/b

Enc.: (6)

c.c.: Mr. Robert Feeney
Mr. Stephen Guthrie
Mr. George Razoyk, Architect

Planning & Urban Development

Joseph E. Gray Jr.
Director



CITY OF PORTLAND

October 15, 1992

Bill Walsh
Land Use Consultants, Inc.
One India Street
Portland, ME 04101

Re: Fallbrook Woods

Dear Mr. Walsh:

Per your inquiry regarding the Portland Land Use Code's maximum lot coverage standard as it applies to the Fallbrook Woods Project, the Code stipulates that lot coverage shall not exceed 25% in the R-3 residential zone. (See attached excerpt of Land Use Code.) According to Fallbrook Inc.'s submitted site plan, lot coverage (including building, paving and roads) appears to be 1.49 acres or 11.8 percent of the 12.64 acre site.

Sincerely,

Deborah Andrews
Senior Planner

R-3 RESIDENTIAL ZONE

§ 14-90

PORTLAND CODE

b. *Rear yard:*

1. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty-five (25) feet.
2. Accessory detached structures with ground coverage of one hundred (100) square feet or less: Five (5) feet.

Setbacks for swimming pools shall be as provided for in section 14-432 (swimming pools) of this article.

c. *Side yard:*

1. Principal or accessory structures with ground coverage greater than one hundred (100) square feet:

<i>Height of Structure</i>	<i>Required Side Yard</i>
1 story	8 feet
1½ stories	8 feet
2 stories	14 feet
2½ stories	16 feet

The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than eight (8) feet in width. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than eight (8) feet.

2. Accessory detached structures with ground coverage of one hundred (100) square feet or less: Five (5) feet.

d. *Side yard on side streets:*

1. Principal or accessory structures: Twenty (20) feet.

- (5) *Maximum lot coverage:* Twenty-five (25) percent of lot area.
- (6) *Minimum lot width:* Seventy-five (75) feet, except a lot under the provisions of section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article need be only sixty-five (65) feet.
- (7) *Maximum structure height:* Principal or accessory attached structure: Thirty-five (35) feet.
Accessory detached structure: Eighteen (18) feet.
- (8) a. *Maximum number of units in a building (PRUD of five (5) acres or more):* Six (6) units.
b. *Maximum number of units in a building (PRUD of less than five (5) acres):* Two (2) units.
- (9) *Maximum average number of units in a building (PRUD of five (5) acres or more):* Five (5) units.
- (10) *Maximum length of building (PRUD):* One hundred (100) feet for buildings without garages; one hundred forty (140) feet for buildings with integral garages.

CITY OF PORTLAND, MAINE

PLANNING BOARD

Joseph R. DeCoursey, Chair
Kenneth M. Cole III, Vice Chair
Jadine R. O'Brien
Irving Fisher
Cyrus Hagge
John H. Carroll
Donna Williams

October 15, 1992

Robert Feeney
Fallbrook Inc.
7 Shady Lane
Falmouth, ME 04105

Re: Fallbrook Woods

Dear Mr. Feeney:

On October 13, 1992 the Portland Planning Board voted 6-0 (DeCoursey absent) to approve the site plan and conditional use request for Fallbrook Woods located off Ray Street. The Board also voted to approve the proposed amendment to the subdivision. The approvals were granted for the project with the following conditions:

1. Evidence that declarant and developer rights and any and all remaining rights held by MERREAL Corporation in Fallbrook, A Condominium will be transferred to Fallbrook, A Condominium Unit Owners' Association shall be submitted to Corporation Counsel for its review and approval prior to issuance of any building permit. In the event that such transfer does not take place, MERREAL Corp. shall be substituted on the final recording plat as the co-owner of the subdivision prior to issuance of any building permit.
2. The applicant shall submit details of the dumpster location and screening for Planning staff review and approval.
3. The applicant shall submit final landscape plans and list of specified plant materials for review and approval by City Arborist.

The approval is based on the submitted site plan and the findings related to site plan review standards as contained in Planning Report #31-92, which is attached. A performance guarantee covering the site improvements as well as an inspection fee payment of 1.7% of the guarantee amount and 7 final sets of plans must be submitted to and approved by the Planning Division and Public Works prior to the release of the building permit. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval. The site plan approval will be



CITY OF PORTLAND

March 12, 1993

Robert Feeney
Fallbrook, Inc.
7 Shady Lane
Falmouth, ME 04105

Dear Mr. Feeney:

Bill Walsh of Land Use Consultants has forwarded a copy of the proposed final landscaping plan (dated 2/16/93 & revised on 3/9/93) for Fallbrook Woods. The plan also indicates the proposed dumpster location and screening provisions for such. This is to advise you that the landscaping and dumpster treatment plan have been approved by the Department of Planning and Urban Development, satisfying outstanding conditions #1 and 2 of the approved project.

A copy of the approved plan is attached for your reference.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph E. Gray, Jr.", written over a printed name and title.

Joseph E. Gray, Jr.
Director of Planning and Urban Development

cc: Stephen Guthrie
Bill Walsh
✓ Deborah Andrews, Senior Planner
Melodie A. Esterberg, Development Review Coordinator

**CITY OF PORTLAND, MAINE
SITE PLAN REVIEW
Processing Form**

Fallbrook, Inc.
 Applicant c/o Steven Guthrie
 167 Bayside Rd Pctd, ME 04102
 Mailing Address
 Boarding Health Care Facility
 Proposed Use of Site (Fallbrook Woods)
 13.33 acres /
 Acreage of Site / Ground Floor Coverage

August 11, 1992
 Date
 off Ray St (& Allen Ave.)
 Address of Proposed Site
 400-D-003, 400-F-001
 Site Identifier(s) from Assessors Maps
 E-3
 Zoning of Proposed Site

Site Location Review (DEP) Required: () Yes () No
 Board of Appeals Action Required: () Yes () No
 Planning Board Action Required: () Yes () No
 Proposed Number of Floors 1
 Total Floor Area _____
 Other Comments: contact person: David Haynes 772-8392 (Land Use Consultants)

Date Dept. Review Due: _____

Major Site Plan Review & Subdivision review (2 lots)
 (& conditional use appeal)

FIRE DEPARTMENT REVIEW

(Date Received)

	ACCESS TO SITE	ACCESS TO STRUCTURES	SUFFICIENT VEHICLE TURNING ROOM	SAFETY HAZARDS	HYDRANTS	SIAMESE CONNECTIONS	SUFFICIENCY OF WATER SUPPLY	OTHER	
APPROVED			/				/		
APPROVED CONDITIONALLY	X	X			X	X			CONDITIONS SPECIFIED BELOW
DISAPPROVED	X								REASONS SPECIFIED BELOW

REASONS: 2 means of access to the site required, access structures shall be at least 16' wide and at least 20' wide around the structure, Hydrant must be shown or installed within 800' of the building measured along normal path of travel of fire apparatus, location of sprinkler connection must be shown for approval

David Haynes
 SIGNATURE OF REVIEWING STAFF/DATE
 8-20-92

Unique combining a private roadway a PRVD is an elderly care facility

* A new reading - a revision to prior reading

* Is there still a performance guarantee for remaining amenities

are in lot showing the big picture
separate bring lot conceptually there way

the applicant & condo owners need to assure in a legally satisfactory way

introductory work to identify issues - begin

vs: maintenance of road projects; shared completion of outstanding amenities

the Board declared the condo association has no standing

cul-de-sac

could parcel all into 2 lots but show how it would be feasible

future development will require development of 100% of the

- who owns the Fallmoor Cndos?

the bank is responsible

100% ends of previous plans need to be tied up

3 party deal - condo assoc - bank - Fallmoor, Inc.

that needs to be amended to show both split of 2 parcels & deletion of units proposed under these

re: Fallbrook drainage

Florida: Ray

existing 10" culvert inlet
- inlet sufficient as is

existing problem

~~have~~

pre-development problem -
are they as

go into a combined ^{storm & sanitary} system -

double-edged sword.

Fallbrook Inc.
7 Shady Lane
Falmouth, Me 04105

September 14, 1992

Ms. Deborah Andrews
Planner and Urban Development
City of Portland
City Hall
Portland, Me 04101

Re: Fallbrook Inc.
Deeded Rights/Phase I
Declarant Rights for Units 29, 30, 31 and 32
Road Maintenance

Dear Ms. Andrews,

In response to your request about the deeded interest that Fallbrook Inc. has and its relationship with Fallbrook Condominium project. We submit the following information. On December 20, 1991 Fallbrook Inc. purchased 12.62 acres of land from Merreal Corp., a Corporation organized in Delaware and with a place of business in Portland, Maine. This land was part of Fallbrook Condominium project, better known as Phase II, III and IV. At the closing we received a description of the boundaries, three easements for sewer and drainage and an easement to the City of Portland for a turn-around. Also received was an easement for all purposes in common with others over, under and along the 50 foot wide right of way known as Merrymeeting Drive, which is reserved in the Declaration of Fallbrook Condominiums dated April 20, 1989 and recorded in said Registry of Deeds in Book 8730, page 206. We did not accept to be the declarant for Phase II, III and IV of the condominium project. Our intent was only to develop a Health Care Facility. As far as we are concerned Phase II, III and IV no longer exist. It is our understanding that once you decide to use the land for a different purpose, the original approval will be extinguished. Merreal Corp. continues to own and retain responsibility for Phase I. The Condominium Association which is made up of 28 units is legally self-sufficient.

In a separate agreement Merreal Corp. offered to Fallbrook Inc. the declarant rights to build Units 29, 30, 31 and 32 which was originally in Phase I but transferred to Phase IV by Merreal Corp. It is our intent to relinquish these rights to the Condominium Association for the sole purpose of complying with the City of Portland Planning Board Directive to complete a basketball court and/or park. Fallbrook Inc. is more than willing to do so and has informed the Association of our intent.

The question of who will maintain the road came up at the Planning Board workshop, under the public offering and the declaration of the condominium. The expenses of maintaining the 50 foot right of way shall be shared proportionally by the Condominium Association and by the owners (Fallbrook Inc.) of the additional land based on the number of residences, or comparable uses, located on the condominium property and on the additional land. We have mutually agree with the Condominium Association representatives that we will share the maintenance costs on a 50/50 basis once construction of the project goes forth.

See enclosed documents: Quick Claim Deed With Covenant, Sewerage and Drainage Easements, City of Portland Easement and Special Declarant Rights for Units 29, 30, 31 and 32.

If you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in cursive script that reads "Robert Feeney". The signature is written in dark ink and has a long, sweeping underline that extends to the right.

Robert Feeney,
Fallbrook Inc.

Conceptual
ceolists?
The applicant
has been
told they will
need to
respond to
the

original
complex

28 units (not sprinklered) exist

Nursing home 28 rooms - single or double occ.

- o parceling out middle (3' traces - 4' h)
w/ sheet footage
- o Falworth Manor - (25 beds)
- o 28th Sept. approval date. (No guarantee)

Workshop (concept) Aug 25

Workshop details Sept 8

Public Hearing Sept 22 or

Oct 13 if absolutely necessary

Call David
Hanes at UC
should submit
what
entire
in
also
application

Original
1985 - Subdivision approved - originally envisioned
a 4-phase development w/ 98 2-bedroom condos
to be developed over time

RE: Tot Lot - Basketball Court

when they acquired land,
acquired right to build 4 max units - won't build
them - let the association build recreational amenities

- will make cases intended for 4 units available
to association for bldg amenities

what guarantee is there that there will be
built? - agreement to the Board.

no additional traffic study needed

What about sprinkling?

existing development prob, not
know how would be
sprinkled.

need street frontage, but don't need developed street frontage

- they have it on Topsham
- also 50' on Key Street
- 47.17 right of way
- just emergency access

- frontage issue
- do we need update on traffic study?
- thinks there will be minimal traffic impact
- Planning

no issues

23 rooms -> 2 beds
not designed in
hall will mark it

- Parking # of spaces
- 1 for each 5 beds
- 1 for each employee

lot - what is the arrangement? where are they to be located?

need to find out # of beds

- talk to Willy

considering an emergency access to Key Street

Will be a licensed board facility as defined by DHS (state) - otherwise would not be defined as intermediate care facility

built to nursing home standards higher standard interior of design - wide corridors

proposal med by...
Fall...
...
... principal in charge of quality

applicant wants
~~the~~ parking
calls based
on double - volume
occupancy



condo owners came to Fallbrook Inc.

Fallbrook Inc got the right to build 4 more units
when they acquired

Owners asked that Fallbrook Inc give land
dedicated for 4 condos for basketball court

strip land

Fallbrook Inc will give condo owners rights to land
reserved for more condos

When they ^{close} ~~go~~ off w/ record

applicant intends to
divide development
into 2 lots

Question: - do we want "basketball court" a park or recreation
area

~~the~~

what is in effect

In next memo, state that the balance of land
has been acquired by Fallbrook Inc.

Plans are not part of the picture
need clarification about
ownership that fact
that this is a new
state

9/30/92

Fallbrook Inc.
2nd workshop

other approvals would be vacated

add note on page 12

- all the declarant's development rights fall to Fallbrook Inc.

- Vacated approvals, ^{for other phases} must be vacated.

- want to make sure ~~MERRILL~~ isn't retaining something.

~~no equivalent statement~~

11
5/20

9/14

- letter from Fallmoor Inc. clarifies history of ownership, & the fact that the former subdivision is being vacated? & replaced

We did not accept to be the declarant for Phase II, III, & IV of the

- need plans to show 2 lots

Peter Wiley - Fallmoor's, ^{Inc.} attorney

Wid Guich - ^{Merreal} ~~RSCD~~'s attorney

Carido owners do now own Phase I property - they are the ones to sign as asco-applicants for subdivision amendments & to come up w/ agreement re: maintenance of access road

call Fallmoor Inc. re: who to contact - they should contact.

2 applicants in front of them - Carido owners - ^{they're been given} go ahead to improvements Fallmoor, Inc.

Fallmoor should not be held up for the use.

We need subdivision plan w/ 2 names in it as applicants

Carido
owners

an amendment to existing subdivision plan to show 2 or 3 parcels w/ 2 or 3 types of development

need amendment to previous n/k plan for Fallbrook Cando.
Assn.

Fallbrook

Bill will check if the parking # is sufficient.

parking # needs to be clarified by LUC

- what's the decision re: gate

cut off last bit of ~~the~~ paving, because people will park in it; block access.

need
joint application w/ MARRBAC as regards subdivision.

- have not read drainage report (not yet submitted)

- erosion controls look good.

Paul
homeowners rep. by Managers / describe
getting document transferred, \$
document executed by Condo am Tuesday night

will have
a fully
executed
agreement
regarding
completion
of
amendments

Where is it?

amendments very, solely of Condo Assn.

amendment is the splitting into 2 lots
increases from one lot w/ multiple condos
to 2 lots - 1 w/ multiple condos
1 w/

Map
of
lot

owners will be back shortly to ask for

replaces all other phases beyond Phase I

Phase I developments will remain as indicated in that plan

vs reference - will include note on plan indicating the
2 owners of the

- also include note re: maintenance agreement

has become 2 lots

2 lot subdivision w/ multiple bldgs

8/25

in the
right

maintenance

Use eliminate

Bob Feeney

Steve Gutman

Grace Rospyk

Bob Walsh - Land Use Consultant

Fallbrook Inc. has decided vis

discussed through DHS

65+ ~~may~~ need assistance - medical problems
fall under all vis of DHS - dictate staff

Feeney will be administrator

physician on call

- met w/ neighbors to inform them of project

Carpat to administrative wiley

proposing recreational amenities w/in

2nd means of access - gravel only w/ gates

Can do amoc negotiating w/ RECOLL - some \$20k
got letter from RECOLL - not happy w/ it.

CITY OF PORTLAND, MAINE
M E M O R A N D U M

TO: Chair and Members of the Planning Board

FROM: Natalie L. Burns, Associate Corporation Counsel

DATE: September 5, 1990

RE: Fallbrook Sectional Recording

At the public hearing on this matter, the Board raised an issue concerning the proposal for approval of a sectional recording. The applicant has stated that it wishes to have a phased approval for this development in order to replace the current performance guarantee with a separate guarantee for each phase as it is developed. The Board was concerned about the possible need for a vacation of the previously approved recording plat before the performance guarantee for the entire project could be returned.

As a preliminary matter, it should be noted that the process for vacation of subdivision plats is created through section 14-496(4) of the Portland City Code. There is no subdivision vacation process established by state statute. The primary purposes of the ordinance are to undo the previous approval, thereby returning the land to its previous state, and to clarify the title in the undeveloped land. The ordinance makes specific provision for the passage of title in vacated streets, alleys and public easements to the owners of lots which abut the dedicated areas. In addition, the vacation extinguishes all public rights in such areas. The vacation order must be filed in the Registry of Deeds in order to provide notice to subsequent purchasers. Any person who has already purchased property in the subdivision must sign the document vacating the subdivision. This process closely follows the state statute concerning the vacation of public streets, 23 M.R.S.A. §3027.

The concerns raised by this application relate in part to the timing of an approval for phasing of a subdivision which has already posted a performance guarantee and which has already commenced construction of one or more of the phases. This procedure has been utilized in two previous subdivisions, Parsons Pond and Appleledge. Both of those projects, like this one, involved approved PRUD's which had posted guarantees for the entire development, or for a larger phase. While Parsons Pond also sought a revision to the previously approved plan which resulted in a reduction of the number of units that would ultimately be built, Appleledge sought a rephasing that reduced the number of units to be built in some of the phases, but retained the same of number of units overall in the final project. Once the sectional recording has been approved, the

City holds the recording plat indicating the phased approval until the applicant posts the required performance guarantees for the phase or phases which are to be developed next or which are currently being developed. The previous performance guarantee is also held by the City until the new guarantees are posted.

In addition to the City process for sectional recordings, state law requires that the planning board review revisions or amendments to approved subdivisions and that the register of deeds indicate on the original recording plat that it has been superseded. This requirement ensures that subsequent purchasers of property within a subdivision will know about changes to the original approval.

Vacation was not recommended for this project since the applicant has indicated its desire to complete the project, probably through sale to a developer after completion of the first phase. If the applicant or a successor to the applicant decides to use the land for a different purpose, vacation will be required at that time. Since there are no streets that are dedicated for use of the public, a vacation order would extinguish the rights of owners of units within the development in the vacated areas, unless another agreement has been made as part of the condominium documents.

The Board also raised a question concerning the effect bankruptcy would have upon the letter of credit. The letter of credit is an agreement between the bank and the City that the bank will pay amounts to the City if the public improvements are not completed as approved. According to 11 U.S.C.A. §109, a bank cannot be a creditor and therefore does not undergo the bankruptcy procedures set forth in federal law. Instead, control of the bank passes to a federal agency, which assumes the obligations of the bank. In addition, these obligations are insured in much the same fashion that deposits are. Even if the developer, a wholly owned subsidiary of the bank, is subject to federal bankruptcy laws, payment to the bank for a letter of credit is not likely to be set aside as a preferential transfer because the letter of credit does not qualify as "a transfer of property of the debtor to or for the benefit of a creditor... for or on account of an antecedent debt owed by the debtor before such transfer was made." 11 U.S.C.A. §547. The letter of credit is more appropriately viewed as a contemporaneous exchange that is in payment of a debt incurred in the ordinary course of business or financial affairs of the company contracting for the letter of credit, since the letter of credit is required by the City before building permits can be issued. This type of transfer is not regarded as a preferential transfer and for that reason cannot be avoided by a trustee in bankruptcy.

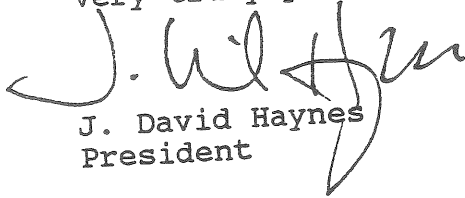
Natalie L. Burns

Natalie L. Burns
Associate Corporation Counsel

LAND USE CONSULTANTS INC

We look forward to meeting with the Board on August 25th at which time we can review this proposal in detail. In the meantime, please do call with any questions or comments.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J. David Haynes". The signature is fluid and cursive, with a large, sweeping initial "J" and a long, horizontal stroke extending to the right.

J. David Haynes
President

JDH/b

Enc.: (6)

c.c.: Mr. Robert Feeney
Mr. Stephen Guthrie
Mr. George Razoyk, Architect



LAND USE CONSULTANTS INC

ATTACHMENT 1

J. David Haynes, R.L.A.

David A. Kamila, P.E.

Bradley H. Hare, R.L.A.

Frederic Licht, Jr., P.E.

John D. Roberts, P.L.S.

August 10, 1992

2608

Portland Planning Board
City Hall
389 Congress Street
Portland, Maine 04101

Attention: Deborah Andrews

Fallbrook Woods, Off Ray Street, Portland, Maine

Dear Board Members:

On behalf of Fallbrook, Inc., we respectfully request that you schedule us into your workshop meeting on the afternoon of August 25, 1992. The purpose of our meeting will be to make a concept presentation for development of Fallbrook Woods and to receive comments or concerns from the Board which should be addressed during the review/approval process.

Fallbrook, Inc. is headed by principals Robert Feeney and Stephen Guthrie. Their proposal is to utilize the remaining 13.33 acres of the Fallbrook Condominium site to develop a 28 room boarding health care facility called Fallbrook Woods. The following plans are included as a part of this submission:

1. Fallbrook - A Condominium (formerly Ray Street Development) for MERREAL Corp., dated May 30, 1990, approved by Portland Planning Board September 24, 1990; Drawing 1 of 4.
2. Preliminary Design Sketches by ADC, Architectural Design Concepts, Inc., dated July 22, 1992.
3. Preliminary Site Plan by ADC, Architectural Design Concepts, Inc., scale 1"=50'.

PLANBBL
KCOTE

City of Portland, Maine
Department of Planning & Urban Development
INVALID CURSOR POSITION

04 FEB 91
09:24

CBL Listing for Post Cards: Format - (CCC-1-BB-LLL)
Fill with '*' for all C - Chart 1 - Chart letter B - Block L - Lot

376 - - - - - 377 - - - - - 400 - - - - - 401 - - - - - 402 - - - - -

403 - - - - - 406 - - - - - 406 - - - - - 406 - - - - - 406 - - - - -

406 - - - - - 407 - - - - - 407 - - - - - 407 - - - - - 407 - - - - -

- -

- -

- -

- -

- -

Continue [] Cancel [] Done []

Facebook

5484

CITY OF PORTLAND, MAINE
MEMORANDUM

DATE: 2-23-92

TO: Portland Housing Alliance Strategy Subcommittee Members
FROM: Mark B. Adelson, Community Development Administrator *MBA*
SUBJECT: Strategy Subcommittee Meeting

The next meeting of the Alliance's Strategy Subcommittee will be on Monday, March 30th in City Hall, Room 401 from 4:00 - 6:00 p.m.

We will be looking at the 1990 Census housing data and figures from the City Assessor's office in relation to the draft goals and action strategies.

Please call me at 874-8733 if you will be unable to attend.

Presented to and received by
Merveal Corp. at the Special
Meeting of Members, Nov. 25, 1991

We the undersigned members of the Fallbrook Condominium Association,
with this petition, here by request to substitute low maintenance
landscaped area as an amenity for the proposed basketball court. Total
cost of landscaping (for this area or others) shall be equal to the cost
for the proposed basketball court.

- 1 Susan Leonard Susan Leonard
- 2 Michael & Liz Chitwood Michael & Liz Chitwood
- 3 Nona Thornton Nona Thornton
- 4 Jo Goodwin Jo Goodwin
- 5 Bill Welsh & Wendy Wyman Wendy Wyman
- 6 Bill Dalbec & Janet Alexander Bill Dalbec Janet Alexander
- 7 Bob Levi Bob Levi
- 8 Phil Conan _____ (over)
- 9 Jodi Lerman Jodi Lerman
- 10 Kenneth E Lay
Shelley L Kari (see letter of approval of some alternative?)
- 14 Vicki Webster Vicki Webster
- 15 Vivian Hughes Vivian Hughes
- 16 Paul & Tara Mergener Paul & Tara Mergener
- 17 Don Neill & Linda Lord Don Neill & Linda Lord
- 18 Ruth Rothman Ruth Rothman
- 19 Sandy Curren Sandy Curren
- 20 June Clark June Clark
- 21 Carol Discatio Carol Discatio
- 22 CAROLYN
Carol Nixolek Carol Nixolek
- 23 Frank & Eleanor Hill Frank & Eleanor Hill
- 24 Terry Dunn Terry Dunn
- 25 Peter Minvielle Peter Minvielle
- 26 Eileen Carbonneau Eileen B. Carbonneau
- 27 Paul & Kym Cournoyer Paul & Kym Cournoyer
- 28 Ed & Janice Buddington Ed & Janice Buddington

January 8th, 1992

TO: Richard Nolan, Planning Dept, City of Portland
From: Officers, Fallbrook Condo Association
Re: Basketball court / tot lot

Enclosed please find a copy of a petition signed by all unit owners except two who are no longer residents and live out of state. We have no reason to believe they could not sign this petition.

By the petition the Association was requesting that both the basketball court and tot lot not be required to be built and instead monies so allocated be used instead for grounds beautification/ other amenities. We are willing to present a plan for the improvements at a later date for your review. We do want to emphasize that it was the intent of the Association to replace both the basketball court and the tot lot which we thought would be the lesser issue.

by: President: K. Mauer 1/13/92
Treasurer: Susan Leonard 1/13/92
Secretary: Paul G. Magare 1/13/92
Asst Treasurer: John Miller 1/13/92
Asst Secretary: Eric Buckley 1/13/92

878-5555
Peter Minivelle

cc: C. Deeman, City Councilors

**CITY OF PORTLAND, MAINE
MEMORANDUM**

TO: Chair Vestal and Members of the Planning Board

FROM: Richard Henry, Planner

DATE: July 31, 1990

SUBJECT: Fallbrook Sectional Recording

Merreal Corporation is requesting Planning Board review for a sectional recording of the Fallbrook condominium project. The project originally received subdivision approval, as Ray Street Townhomes, on September 10, 1985, and site plan and PRUD approval on November 10, 1987, and revised site plan approval on September 2, 1988. The project received approval on January 10, 1989, for a change of owner. The site is 19.98 acres, zoned R-3 Residential and located in the vicinity of Ray Street and Allen Avenue.

As the applicant describes in their letter, Attachment 2, the original project, Ray Street Townhomes, was divided into four phases, with improvements both on and off site tied into the phases. Each phase received Planning Board approval and was signed. At that time, the applicant recorded all four phases at the Registry of Deeds. Given the market conditions and the large performance guarantee, the applicant is requesting to have the project reapproved utilizing the same number of phases, and total number of units (98) with a shift of 4 units from Phase I to Phase IV. The applicant has included an outline of improvements and amenities to be completed as part of each phase as approved, which is included as Attachment 3. The Board may recall that these issues were brought up during the original approvals.

Under the Subdivision Ordinance, the Board can approve a sectional recording provided that each phase is not less than 20% of the total number of units. Unlike the Parson's Pond project, this sectional recording does not require any waivers of the Subdivision Ordinance. The Board had originally approved the phases and improvements; the shifting of 4 units from Phase I to Phase IV constitutes the only change from what was approved. No changes to any of the recreational amenities or other features of the project have been proposed. The applicants have been in contact with Paul Niehoff, Materials Engineer, in regard to the posting of performance guarantees and defect bonds.

Under the provisions of the Subdivision Ordinance, the applicant would have 3 years, after receiving approval for the sectional recording, to record the next phase of the project (Phase II). They would have five years from the approval to record the entire project (Phases II, III and IV).

Attachments

1. Subdivision Plan
2. Applicant's Letter 6/4/90
3. Description of Phases and Amenities

*Want to do improvements in May
Tot lot,
basketball court.*

**SECTIONAL RECORDING
FALLBROOK-A CONDOMINIUM
MERREAL CORPORATION, APPLICANT**

What disturbance has taken place?

*Tabled to
sept 11*

Submitted to:
Portland Planning Board
Portland, Maine
August 28, 1990

I. Introduction

Merreal Corporation, a subsidiary of Maine Savings Bank, is requesting approval for a sectional recording of the Fallbrook-A Condominium-project, located in the vicinity of Ray Street, Allen Avenue and Topsham Street. The project originally received subdivision approval, as Ray Street Townhomes, on September 10, 1985. Since that time, the project has been before the Board for site plan review (1987) and change of owner (1989). The site is 19.98 acres, zoning is R-3 Residential.

Notice for this project consisted of 361 notices mailed to area residents and property owners.

II. Summary of Findings

Zoning	R-3 Residential
Land Area	19.98 Acres
Number of Units	98
Number of Phases Requested	Four, with Phase I nearly completed.

III. Staff Review

As described in the applicants letter, Attachment 2, the Ray Street Townhomes project was originally approved with four phases, each with specific improvements and amenities. The applicant, at that time, recorded all the phases at the Registry, and posted the performance guarantee for the entire project. Because of market conditions, the applicant is seeking to have the project reapproved, utilizing the same number of phases (4) and the same number of units (98) as was previously approved. The only change from what the Board approved originally is the shifting of 4 units from Phase I to Phase IV. Phase I has 28 units, Phase II has 30 units, Phases III and IV have 20 units each. Each phase is over 20% of the total number of units, unlike the Parson's Pond sectional recording, this project does not require a waiver of the Subdivision Ordinance.

The proposal has been reviewed by the Planning, Building Inspections, Fire and Public Works Department. At the workshop, the Board had inquired about outstanding conditions of approval on this project. The Board may wish to clarify a time schedule for the completion of the items mentioned in Paul Niehoff's memo with the applicant. One potential condition of approval would require all Phase I improvements and the interconnection and coordination of all required traffic improvements be completed by November 1, which was suggested by the Materials Engineer. The second condition of approval would require the current owner to record the drainage maintenance agreement and the turn around easement at the Registry of Deeds. With those items clarified, there would be no outstanding conditions of approval.

If the Board approves the sectional recording, the applicant would have three years to record Phase II, and a total of five years, from the date of approval, to record all remaining phases.

IV. Motion for the Board to Consider

On the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #39-90 relevant to standards for Subdivision Review, the Planning Board finds:

- That the proposed sectional recording for Phases I, II, III and IV is in conformance with the Subdivision Ordinance of the Land Use Code.

+ landscaping

Potential Conditions of Approval

*except basketball court + tot lot
Swe Image 91*

1. All Phase I improvements and the interconnection and coordination of traffic improvements shall be completed by November 1, 1990.
2. The current owner shall record a drainage maintenance agreement and a turnaround easement, to meet previously required conditions of approval, at the Registry of Deeds.

3 Merreal Corp post

Attachments

add'l pg to remedy

1. Plats for Phases I-IV
2. Applicant's Letter Dated 6/4/90
3. Description of Phases and Amenities
4. Material Engineer's Comments
5. Applicant's Letter Dated 8/ /90

any detriment caused by developer or decision to date

3 yrs + 5 yrs. UNAN 7-0

4.

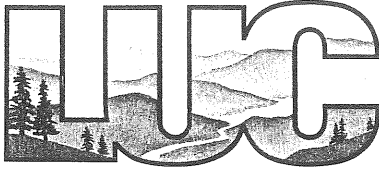
*Frank Mitchell
114 Florida Ave
drainage -
large trees...*

*72-62 Florida Ave
Path to Gertrude St*

*Kinsey Fieron
Gertrude / Topsham
Have cleared down through
created a swamp...*

*Involved corp.
Risk as a construction.*

*9/19/85 Liberty Co P
Activated control system
- add'l landscaping
- maintenance agreements*



J. David Haynes, ASLA
David A. Kamila, P.E.

LAND USE CONSULTANTS

June 4, 1990

2322

Mr. Richard Henry
Portland Planning Department
City of Portland
City Hall
389 Congress Street
Portland, Maine 04101

Fallbrook Condominium Sectional Recording

Dear Mr. Henry:

Merreal Corporation, a wholly owned subsidiary of Maine Savings Bank requests Planning Board review for a sectional recording of the Fallbrook Condominium project. This project received subdivision approval from the Planning Board on September 10, 1985. Site plan and PRUD approval were granted November 10, 1987. All original applications were made by The Liberty Group. The project was later sold to Merrymeeting Developers, Inc. and subsequently acquired by Merreal Corporation. The project name has been changed from Ray Street Townhouses to Fallbrook Condominiums.

This request for sectional recording does not revise plans for the number of units. This request is only based on the need to phase the construction of the development. The project was originally designed, reviewed, approved and recorded in phases. In hind sight, a sectional recording would have been appropriate during the initial review. Unfortunately that was not requested at the time.

As part of the original Planning Board review of the Ray Street Townhouses, the project was divided into four phases. The purpose of the phases was to insure that adequate on and off site improvements would be constructed during the established phases by th Planning Board. In 1987, the Planning Board reviewed each phase and signed separate subdivision recording plats for each separate phase. Each plat was recorded in the Cumberland County Registry of Deeds. We are now requesting a sectional recording of that development, with one minor modification, based on the previously approved phases.

As illustrated on the attached layout plans, we request that Phase One be revised to exclude four units located at the southerly end of the entrance road and to shift those same units

LAND USE CONSULTANTS

FALLBROOK CONDOMINIUM

Project Information

Location: Ray Street and Allen Avenue
Total Area: 19.98 Acres
Zone: R-3
Number Units: 98 residential condominium units separated into four phases of development

Ownership

All applications were made by The Liberty Group which later sold the project to Merrymeeting Developers, Inc. The project was subsequently acquired by Merreal Corporation. The project name has been changed from Ray Street Townhouses to Fallbrook Condominiums.

Approvals/Portland Planning Board

Subdivision approval was received September, 1985 for Ray street Townhouses. Site Plan and PRUD approval was granted November 10, 1987. Phase I of the plan was revised through an administrative approval to reflect as-built conditions in 1989.

The following plans, reflecting approval by the City of Portland are recorded in the Cumberland County Registry of Deeds

Plan of Land, Ray Street Development

	Date Planning Board <u>Approval</u>	Cumberland County <u>Registry of Deeds</u>
Phase I/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 55
Phase II/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 56
Phase III/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 57
Phase IV/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 58
Revised Recording Plat Fallbrook Condominiums Recorded Plan Book 179, Pg. 47 dated 6/14/89		

Letters of Credit

On January 28, 1988, Maine Savings Bank issued a Letter of Credit in the amount of \$1,025,089 to cover site development improvements throughout the entire four phase Fallbrook Condominium project. That Letter of Credit expires on May 1, 1990. To date, improvements in Phase I are nearly complete, Phase II, III and IV have not begun. Sectional recording, would enable the reduction of the Letter of Credit amount to improvements within Phase I only. Phases II, III and IV would be released from the Letter of Credit at this time and would be re-bonded during each individual phase.

LAND USE CONSULTANTS

into Phase Four. Those units are part of a cluster which is primarily located in Phase Four. The presence of substantial amounts of ledge make it cost prohibitive to develop only four units at that location at this time. There are no revisions proposed in Phase Two and Phase Three. Phase Four is revised to include the four units from Phase One. The plans are consistent with all standards and requirements of the Land Use Code.

Additionally, this request for sectional recording meets all standards of the Land Use Code Sec. 14-495(L) sectional recordings. Upon approval, we understand the first section of the plat must be recorded within three years and subdivision plat approval for the remaining sections will remain in effect for five years after the date of planning board approval. We also understand that the existing letter of credit which has been issued to complete all phases of the project will be reduced to cover the completion of those roads and other public improvements in Phase I only. Improvements in subsequent phases will be re-bonded during each individual phase.

We very much look forward to working with you on this sectional recording. We have met with Paul Neihoff and Jeff Tartelling of the City of Portland and believe our plans meet all city standards. Maintaining a letter of credit on a project which was previously approved in phases has been burdensome and does not meet the needs of Merreal or the City of Portland.

Enclosed for your review are the following:

1. Ten copies of the Revised Final Site Grading and Drainage-North Plans relocating a swale near the project entrance as requested by Paul Neihoff of the City Engineering Department.
2. Ten copies of Revised Recording Plats Fallbrook, A Condominium Phases I, II, III and IV.

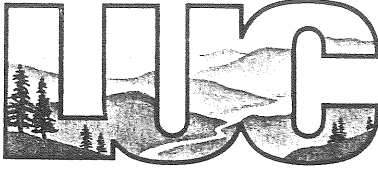
Thank you very much. If we can provide any additional information, please let me know. Enclosed with this letter in addition to the plans is an application fee in the amount of \$350.00 and a brief summary of the project.

Very truly yours,


Patricia C. Harrington

PCH/b

c.c.: Jeffrey A. Nathanson
Elting H. Smith, Jr., Esq., Drummond & Woodsum



LAND USE CONSULTANTS
July 25, 1990

J. David Haynes, ASLA
David A. Kamila, P.E.

2322

Mr. Richard Henry
Portland Planning Department
City Hall
389 Congress Street
Portland, Maine 04101

Fallbrook Condominium Ray Street

Dear Rick:

At your request I have catalogued the site improvements which are associated with each phase of the Fallbrook Condominium project as follows:

PHASE I

Washington Avenue & Ray Street Improvements
Basketball court
Tot lot
Private road
Sanitary sewer
Storm drainage
Site lighting
Erosion control measures
Landscaping
Water
Granite curbing and sidewalks on Ray Street

PHASE II

Topsham Street Improvements
Emergency roadway to Ray Street
Path system with trail, steps, benches and landscaping
Tot lot
Private road
Sanitary Sewer
Water
Storm drainage
Site lighting
Erosion control measures
Landscaping

LAND USE CONSULTANTS

PHASE III

Private road
Sanitary sewer
Water
Storm drainage
Site lighting
Erosion control measures
Landscaping

PHASE IV

Path system with trail, steps, benches and landscaping
Private road
Sanitary Sewer
Storm drainage
site lighting
Erosion control measures
Landscaping

With the exception of the basketball court the tot lot and landscaping around unconstructed units, the site improvements in Phase I are nearing completion.

I have also enclosed twenty sets of reduced size plans which illustrate the four phases and the relationship of each to the other.

If I can provide any additional information please let me know. We are very much looking forward to the Planning Board workshop on July 31st.

Very truly yours,



Patricia C. Harrington

PCH/b

Enc.

c.c.: Paul Neihoff, City of Portland
Jeff Nathanson
Elting H. Smith, Jr., Esq. - Drummond and Woodsum

Attachment 4
RECEIVED

JUL 30 1990

PORTLAND PLANNING OFFICE

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Rich Henry - Planning
FROM: Paul Niehoff - Materials Engineer *PN*
DATE: July 27, 1990
SUBJECT: Fallbrook - "A Condominium"

Rich, the following items have not been completed as yet:

1. Jogging Path
2. Basketball Court
3. Tot Lot
4. Inlet Repair on Culvert
5. Rip-rap various Inlets and Outlets
6. Minor Drainage Issues
7. Landscaping by Unconstructed Units
8. Removed Dead Trees

As I understand from Pat Harrington, the tot lot and basketball court are to be included in phase I. The jogging path will be included in phase II. If this is the situation, then I believe all the above items with the exception of the jogging path should be completed at least by October 15, 1990. Please note the current letter of credit expires November 1, 1990. When the items have been completed, the City should obtain a defect guarantee in the amount of \$10,000 (if that's acceptable with planning) for a one-year term. We may need to hold an additional performance guarantee for unplanted landscaping, although I believe the landscaping could be included in the defect guarantee.

The site is in good condition with relatively few items remaining to be completed. If they can be resolved in the near future, we can hold a defect guarantee for one year and require a separate performance guarantee prior to the start of phase II.

If you've got any questions, call me.

PN/cf

pc: Bruce Ringrose - City Engineer
Steve Harris - Planning Engineer
Nancy Knauber - Senior Technician

MERREAL
Corporation

August 22, 1990

Mr. Richard Henry
Portland Planning Department
City Hall
389 Congress Street
Portland, Maine 04101

Re: Fallbrook Sectional Recording

Dear Rich:

At the July 31, 1990 Planning Board workshop on Merreal's sectional recording request at Fallbrook, several questions were raised regarding the impact of the sectional recording on the existing homeowner's association. This letter will address those questions.

For the Board's information, attached please find a copy of the revised Public Offering Statement, revised to reflect the change of ownership. At the outset, please note that the Condominium Declaration has not been amended since it was first recorded other than to reflect the addition of certain units to the condominium as units were built and declared as part of Phase I.

In order to answer the Board's questions, I have indicated the question posed and the answer below:

1. How many units will there be in each phase?

Assuming that units 29-32 are moved into Phase IV as requested, the phasing will be as follows:

Phase	# Units	% of Total
I	28	28.57%
II	30	30.61%
III	20	20.41%
IV	20	20.41%
	-----	-----
	98 units	100%

2. When will the existing homeowners be able to assume control of the Association?

Richard Henry
August 22, 1990
Page 2

Pursuant to Section 9.3 of the Declaration, the Declarant (Merreal) has the right to appoint and remove members to the Board of Directors, thereby exercising effective control of the Association, until the earlier of: i) five years after the date of conveyance of the first unit (in this case, 4/21/94); or ii) 60 days from the date of conveyance of 75% of the units which are or may be declared (in this case, after the sale of the 74th unit ($.75 \times 98 = 74$)). If Phases II - IV are not constructed, the homeowners would assume control of the Association no later than 4/21/94.

3. How will the future phases merge with Phase I?

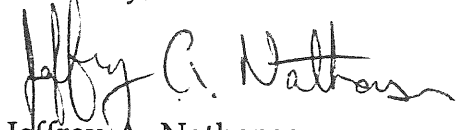
Pursuant to Article 8 of the Declaration, the Declarant reserved the right to add up to 88 additional units to the condominium. Pursuant to this authority, should the Declarant add units to the condominium in Phase II, those unit owners would become part of the Association. As required by the Declaration, a budget would be established for the entire Association and dues allocated accordingly. As such, the two construction phases would "merge" from a technical perspective into one Association although they would be separated by a future phase (Phase IV). This aspect of the development has not changed since the original approvals were granted.

4. What happens if other phases are not constructed?

Pursuant to Article 8 of the Declaration, the Declarant reserved certain development rights including, as was pointed out above, the right to add units to the condominium. Article 8 further provides that these development rights must be exercised, if at all, within 7 years of the date of Declaration. Unless the development period were extended, which would require a unanimous vote of the unit owners, these development rights would be lost. At that point, the Declarant would lose his/her right to add those units to the condominium and the land would either lie dormant or be put to some other permitted use. If Phases II - IV are not completed or declared within this 7 year period, the Association would continue to exist and would be made up entirely of unit owners in Phase I.

I believe that this answers all of the questions regarding the Association raised by the Planning Board at the July 31st workshop. If you have any additional questions, please feel free to contact either myself or Patricia Harrington at Land Use Consultants.

Sincerely,



Jeffrey A. Nathanson
Senior Asset Manager

Enclosure

cc: Patricia Harrington

DRAINAGE MAINTENANCE AGREEMENT

IN CONSIDERATION OF subdivision approval granted by the Planning Board of the City of Portland to a plan entitled "Ray Street Development" dated _____, 1985 and prepared by Archtellic of Portland, Maine, which plan is recorded in the Cumberland County Registry of Deeds in Plan Book _____, Page _____, and pursuant to a condition thereof, Liberty Group, Inc. of Portland, Maine, the owner of the subject premises (the "Owner"), does hereby agree, for itself, its successors and assigns, as follows: That it will, at its own cost and expense, at all times in perpetuity maintain in good repair and in proper working order the surface water drainage system as shown on said plan, including the detention pond or basin and the outlet or outlets therefrom, for the benefit of the said City of Portland, persons in lawful possession of any portion of the subject premises and abutters thereto who may be adversely affected by any failure or neglect of said surface water drainage system; further, that the said City of Portland and said persons and abutters, or any of them, may enforce this Agreement by an action at law or in equity in any court of competent jurisdiction; further that after giving the Owner written notice and a reasonable time to perform, the said City of Portland may, by its authorized agents or representatives, enter upon the subject premises, or any portion thereof, for the purpose of performing the aforementioned maintenance of said surface water drainage system in the event of any failure or neglect thereof, the cost and expense thereof to be reimbursed in full to the said City of Portland by the then owner or owners of the subject premises upon demand.

This Agreement shall not confer on the City or any other persons the right to utilize said surface water drainage system for public use or for the development of any other parcels, and the Owner shall bear no financial responsibilities by virtue of this Agreement for enlarging the capacity of said surface water drainage system for any reason whatsoever.

This Agreement shall bind the undersigned only so long as it retains any interest in the subject premises, and shall run with the land and be binding upon its successors and assigns, as their interest may from time to time appear.

Dated at Portland, Maine this _____ day of _____, 1985.

LIBERTY GROUP, INC.

By: _____
Its

Maine Credit Holdings, Inc.

RECEIVED

MAY 20 1991

May 15, 1991

PORTLAND REGIONAL OFFICE

Alex Jaegerman
Chief City Planner
City of Portland
389 Congress St.
Portland, ME 04101

Re: Twin Knolls and Fallbrook

Dear Alex:

It was nice to have the opportunity speak with you earlier this week about the Planning Department in the City. I very much miss my days back there and I am glad to hear that everything is going so well. I wanted to drop you a note and just reaffirm the information I shared with you regarding the above referenced projects.

As you know, when Maine Savings Bank was declared insolvent by the FDIC, the letters of credit for both of those projects were terminated. Although we are not in a position to reinstate those letters of credit at this time, we very much intend to work with the City and to insure that the obligations associated with those developments are completed according to sound practices.

As I mentioned to you, we believe we have an individual who wishes to purchase the Twin Knolls condominium project. I understand the purchaser will need to apply to the City for a transfer of ownership of the subdivision. At that time, the outstanding punch list items will, as well as the wetlands restoration project, be reviewed with the Planning Board and the applicant. A new letter of credit amount will be determined and it will be the responsibility of the new owner to satisfy the municipality in this case. I will be informing the potential owner that they should be working with you and Paul Neihoff to go through that transfer of ownership process.

Regarding Fall Brook condominiums, we have three major items which need to be completed: the offsite traffic improvements, the tot lot and the basketball court. We have sent a contract to A & D Electric to complete the traffic improvements. I believe that the contract will be signed soon and that work will be undertaken within the next several weeks. We are also working with a construction company to prepare specifications for the tot

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Chair Vestal and Members of the Planning Board

FROM: Richard Henry, Planner

DATE: July 31, 1990

SUBJECT: Fallbrook Sectional Recording

Merreal Corporation is requesting Planning Board review for a sectional recording of the Fallbrook condominium project. The project originally received subdivision approval, as Ray Street Townhomes, on September 10, 1985, and site plan and PRUD approval on November 10, 1987, and revised site plan approval on September 2, 1988. The project received approval on January 10, 1989, for a change of owner. The site is 19.98 acres, zoned R-3 Residential and located in the vicinity of Ray Street and Allen Avenue.

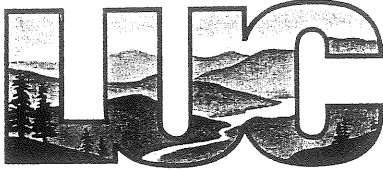
As the applicant describes in their letter, Attachment 2, the original project, Ray Street Townhomes, was divided into four phases, with improvements both on and off site tied into the phases. Each phase received Planning Board approval and was signed. At that time, the applicant recorded all four phases at the Registry of Deeds. Given the market conditions and the large performance guarantee, the applicant is requesting to have the project reapproved utilizing the same number of phases, and total number of units (98) with a shift of 4 units from Phase I to Phase IV. The applicant has included an outline of improvements and amenities to be completed as part of each phase as approved, which is included as Attachment 3. The Board may recall that these issues were brought up during the original approvals.

Under the Subdivision Ordinance, the Board can approve a sectional recording provided that each phase is not less than 20% of the total number of units. Unlike the Parson's Pond project, this sectional recording does not require any waivers of the Subdivision Ordinance. The Board had originally approved the phases and improvements; the shifting of 4 units from Phase I to Phase IV constitutes the only change from what was approved. No changes to any of the recreational amenities or other features of the project have been proposed. The applicants have been in contact with Paul Niehoff, Materials Engineer, in regard to the posting of performance guarantees and defect bonds.

Under the provisions of the Subdivision Ordinance, the applicant would have 3 years, after receiving approval for the sectional recording, to record the next phase of the project (Phase II). They would have five years from the approval to record the entire project (Phases II, III and IV).

Attachments

1. Subdivision Plan
2. Applicant's Letter 6/4/90
3. Description of Phases and Amenities



LAND USE CONSULTANTS
July 24, 1990

RECEIVED
JUL 26 1990
PORTLAND PLANNING OFFICE

J. David Haynes, ASLA
David A. Kamila, P.E.

2322

Lt. Garoway
City of Portland Fire Department
380 Congress Street
Portland, Maine 04101

Fallbrook condominium/Sectional Recording Request

Dear Lt. Garoway:

Thank you for reviewing our request on behalf of Merreal Corporation for a sectional recording of Fallbrook Condominium of Ray Street in Portland. This project has been fully reviewed by the staff and Planning Board and has received subdivision, site plan and PRUD approvals. Our request at this time does not revise the plans or the number of units but is based on the need to phase the letter of credit associated with site improvements. At the time of original project review, the project was presented as a phased project to insure that adequate on and off site improvements would be constructed during the established phases, including adequate emergency access during each phase of construction.

You requested information regarding the emergency gravel fire access which is proposed as part of the project. The project is divided into four phases. The first phase, which is nearly complete, receives its access from Ray Street. The second phase, which is not adjacent to the first, is separated by land reserved for Phase IV. Phase II is accessed through Topsham Street. An 18' wide gravel emergency fire access providing access to Ray Street is reserved for Phase II as a secondary means for emergency vehicles. Phase III, which is located to the south of Phase II, is also accessed through Topsham Street with the same secondary 18' emergency fire access drive to Ray Street. When the final phase, Phase IV, is constructed the roadway from Topsham Street and Ray Street will be connected, eliminating the need for the emergency fire access. At that time, the final condominium units in Phase II will be constructed and the access road will be discontinued.

For your information I have enclosed reduced plan sets which illustrate the need for the fire access road during Phases II and III and the reason to eliminate the access road when the Phase IV connection road is constructed. The recording plats for Phases II, III and IV all contain the note:

LAND USE CONSULTANTS

"18' wide gravel emergency fire access drive in Phase II.
Unit #59 to be built in Phase IV. Return area to original
ground and provide 4" loam and seed."

I believe our efforts will provide emergency access to the
development at all times.

If you have any additional questions about this project or about
our request I hope you will let me now.

Very truly yours,



Patricia C. Harrington

PCH/b

Enc.

c.c.: ✓ Richard Henry - City of Portland
Jeff Nathanson
Elting H. Smith, Jr., Esq. - Drummond & Woodsum

DICK
RAY ST. DRAFT

DRAINAGE MAINTENANCE AGREEMENT

IN CONSIDERATION OF subdivision approval granted by the Planning Board of the City of Portland to a plan entitled "Ray Street Development" dated _____, 1985 and prepared by Archtellic of Portland, Maine, which plan is recorded in the Cumberland County Registry of Deeds in Plan Book _____, Page _____, and pursuant to a condition thereof, Liberty Group, Inc. of Portland, Maine, the owner of the subject premises (the "Owner"), does hereby agree, for itself, its successors and assigns, as follows: That it will, at its own cost and expense, at all times in perpetuity maintain in good repair and in proper working order the surface water drainage system as shown on said plan, including the detention pond or basin and the outlet or outlets therefrom, for the benefit of the said City of Portland, persons in lawful possession of any portion of the subject premises and abutters thereto who may be adversely affected by any failure or neglect of said surface water drainage system; further, that the said City of Portland and said persons and abutters, or any of them, may enforce this Agreement by an action at law or in equity in any court of competent jurisdiction; further that after giving the Owner written notice and a reasonable time to perform, the said City of Portland may, by its authorized agents or representatives, enter upon the subject premises, or any portion thereof, for the purpose of performing the aforementioned maintenance of said surface water drainage system in the event of any failure or neglect thereof, the cost and expense thereof to be reimbursed in full to the said City of Portland by the then owner or owners of the subject premises upon demand.

This Agreement shall not confer on the City or any other persons the right to utilize said surface water drainage system for public use or for the development of any other parcels, and the Owner shall bear no financial responsibilities by virtue of this Agreement for enlarging the capacity of said surface water drainage system for any reason whatsoever.

This Agreement shall bind the undersigned only so long as it retains any interest in the subject premises, and shall run with the land and be binding upon its successors and assigns, as their interest may from time to time appear.

Dated at Portland, Maine this _____ day of _____, 1985.

LIBERTY GROUP, INC.

By: _____
Its

STATE OF MAINE
CUMBERLAND, ss.

_____, 1985

Personally appeared the above-named _____
_____ of Liberty Group, Inc. and acknowledged the
foregoing instrument to be his free act and deed in his capacity
and the free act and deed of said Corporation.

Before me,

Notary Public

LAND USE CONSULTANTS

into Phase Four. Those units are part of a cluster which is primarily located in Phase Four. The presence of substantial amounts of ledge make it cost prohibitive to develop only four units at that location at this time. There are no revisions proposed in Phase Two and Phase Three. Phase Four is revised to include the four units from Phase One. The plans are consistent with all standards and requirements of the Land Use Code.

Additionally, this request for sectional recording meets all standards of the Land Use Code Sec. 14-495(L) sectional recordings. Upon approval, we understand the first section of the plat must be recorded within three years and subdivision plat approval for the remaining sections will remain in effect for five years after the date of planning board approval. We also understand that the existing letter of credit which has been issued to complete all phases of the project will be reduced to cover the completion of those roads and other public improvements in Phase I only. Improvements in subsequent phases will be re-bonded during each individual phase.

We very much look forward to working with you on this sectional recording. We have met with Paul Neihoff and Jeff Tartelling of the City of Portland and believe our plans meet all city standards. Maintaining a letter of credit on a project which was previously approved in phases has been burdensome and does not meet the needs of Merreal or the City of Portland.

Enclosed for your review are the following:

1. Ten copies of the Revised Final Site Grading and Drainage-North Plans relocating a swale near the project entrance as requested by Paul Neihoff of the City Engineering Department.
2. Ten copies of Revised Recording Plats Fallbrook, A Condominium Phases I, II, III and IV.

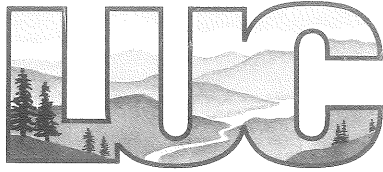
Thank you very much. If we can provide any additional information, please let me know. Enclosed with this letter in addition to the plans is an application fee in the amount of \$350.00 and a brief summary of the project.

Very truly yours,


Patricia C. Harrington

PCH/b

c.c.: Jeffrey A. Nathanson
Elting H. Smith, Jr., Esq., Drummond & Woodsum



J. David Haynes, ASLA
David A. Kamila, P.E.

LAND USE CONSULTANTS

July 25, 1990

2322

Mr. Richard Henry
Portland Planning Department
City Hall
389 Congress Street
Portland, Maine 04101

Fallbrook Condominium Ray Street

Dear Rick:

At your request I have catalogued the site improvements which are associated with each phase of the Fallbrook Condominium project as follows:

PHASE I

Washington Avenue & Ray Street Improvements
Basketball court
Tot lot
Private road
Sanitary sewer
Storm drainage
Site lighting
Erosion control measures
Landscaping
Water
Granite curbing and sidewalks on Ray Street

PHASE II

Topsham Street Improvements
Emergency roadway to Ray Street
Path system with trail, steps, benches and landscaping
Tot lot
Private road
Sanitary Sewer
Water
Storm drainage
Site lighting
Erosion control measures
Landscaping

LAND USE CONSULTANTS

PHASE III

Private road
Sanitary sewer
Water
Storm drainage
Site lighting
Erosion control measures
Landscaping

PHASE IV

Path system with trail, steps, benches and landscaping
Private road
Sanitary Sewer
Storm drainage
site lighting
Erosion control measures
Landscaping

With the exception of the basketball court the tot lot and landscaping around unconstructed units, the site improvements in Phase I are nearing completion.

I have also enclosed twenty sets of reduced size plans which illustrate the four phases and the relationship of each to the other.

If I can provide any additional information please let me know. We are very much looking forward to the Planning Board workshop on July 31st.

Very truly yours,



Patricia C. Harrington

PCH/b

Enc.

c.c.: Paul Neihoff, City of Portland
Jeff Nathanson
Elting H. Smith, Jr., Esq. - Drummond and Woodsum

LAND USE CONSULTANTS

FALLBROOK CONDOMINIUM

Project Information

Location: Ray Street and Allen Avenue
Total Area: 19.98 Acres
Zone: R-3
Number Units: 98 residential condominium units separated into four phases of development

Ownership

All applications were made by The Liberty Group which later sold the project to Merrymeeting Developers, Inc. The project was subsequently acquired by Merreal Corporation. The project name has been changed from Ray Street Townhouses to Fallbrook Condominiums.

Approvals/Portland Planning Board

Subdivision approval was received September, 1985 for Ray street Townhouses. Site Plan and PRUD approval was granted November 10, 1987. Phase I of the plan was revised through an administrative approval to reflect as-built conditions in 1989.

The following plans, reflecting approval by the City of Portland are recorded in the Cumberland County Registry of Deeds

Plan of Land, Ray Street Development

	<u>Date Planning Board Approval</u>	<u>Cumberland County Registry of Deeds</u>
Phase I/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 55
Phase II/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 56
Phase III/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 57
Phase IV/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 58
Revised Recording Plat Fallbrook Condominiums Recorded Plan Book 179, Pg. 47 dated 6/14/89		

Letters of Credit

On January 28, 1988, Maine Savings Bank issued a Letter of Credit in the amount of \$1,025,089 to cover site development improvements throughout the entire four phase Fallbrook Condominium project. That Letter of Credit expires on May 1, 1990. To date, improvements in Phase I are nearly complete, Phase II, III and IV have not begun. Sectional recording, would enable the reduction of the Letter of Credit amount to improvements within Phase I only. Phases II, III and IV would be released from the Letter of Credit at this time and would be re-bonded during each individual phase.

Attachment 4
RECEIVED

JUL 30 1990

PORTLAND PLANNING OFFICE

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Rich Henry - Planning
FROM: Paul Niehoff - Materials Engineer *PN*
DATE: July 27, 1990
SUBJECT: Fallbrook - "A Condominium"

Rich, the following items have not been completed as yet:

1. Jogging Path
2. Basketball Court
3. Tot Lot
4. Inlet Repair on Culvert
5. Rip-rap various Inlets and Outlets
6. Minor Drainage Issues
7. Landscaping by Unconstructed Units
8. Removed Dead Trees

As I understand from Pat Harrington, ~~the tot lot and basketball court~~ are to be included in phase I. The jogging path will be included in phase II. ~~If this is the situation,~~ then I believe all the above items with the exception of the jogging path should be completed at least by October 15, 1990. Please note the current letter of credit expires November 1, 1990. When the items have been completed, the City should obtain a defect guarantee in the amount of \$10,000 (if that's acceptable with planning) for a one-year term. We may need to hold an additional performance guarantee for unplanted landscaping, although I believe the landscaping could be included in the defect guarantee.

The site is in good condition with relatively few items remaining to be completed. If they can be resolved in the near future, we can hold a defect guarantee for one year and require a separate performance guarantee prior to the start of phase II.

If you've got any questions, call me.

PN/cf

pc: Bruce Ringrose - City Engineer
Steve Harris - Planning Engineer
Nancy Knauber - Senior Technician

CITY OF PORTLAND, MAINE
M E M O R A N D U M

TO: Chair and Members of the Planning Board

FROM: Natalie L. Burns, Associate Corporation Counsel

DATE: September 5, 1990

RE: Fallbrook Sectional Recording

At the public hearing on this matter, the Board raised an issue concerning the proposal for approval of a sectional recording. The applicant has stated that it wishes to have a phased approval for this development in order to replace the current performance guarantee with a separate guarantee for each phase as it is developed. The Board was concerned about the possible need for a vacation of the previously approved recording plat before the performance guarantee for the entire project could be returned.

As a preliminary matter, it should be noted that the process for vacation of subdivision plats is created through section 14-496(4) of the Portland City Code. There is no subdivision vacation process established by state statute. The primary purposes of the ordinance are to undo the previous approval, thereby returning the land to its previous state, and to clarify the title in the undeveloped land. The ordinance makes specific provision for the passage of title in vacated streets, alleys and public easements to the owners of lots which abut the dedicated areas. In addition, the vacation extinguishes all public rights in such areas. The vacation order must be filed in the Registry of Deeds in order to provide notice to subsequent purchasers. Any person who has already purchased property in the subdivision must sign the document vacating the subdivision. This process closely follows the state statute concerning the vacation of public streets, 23 M.R.S.A. §3027.

The concerns raised by this application relate in part to the timing of an approval for phasing of a subdivision which has already posted a performance guarantee and which has already commenced construction of one or more of the phases. This procedure has been utilized in two previous subdivisions, Parsons Pond and Appleledge. Both of those projects, like this one, involved approved PRUD's which had posted guarantees for the entire development, or for a larger phase. While Parsons Pond also sought a revision to the previously approved plan which resulted in a reduction of the number of units that would ultimately be built, Appleledge sought a rephasing that reduced the number of units to be built in some of the phases, but retained the same of number of units overall in the final project. Once the sectional recording has been approved, the

City holds the recording plat indicating the phased approval until the applicant posts the required performance guarantees for the phase or phases which are to be developed next or which are currently being developed. The previous performance guarantee is also held by the City until the new guarantees are posted.

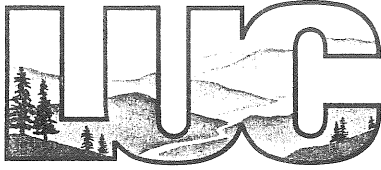
In addition to the City process for sectional recordings, state law requires that the planning board review revisions or amendments to approved subdivisions and that the register of deeds indicate on the original recording plat that it has been superseded. This requirement ensures that subsequent purchasers of property within a subdivision will know about changes to the original approval.

Vacation was not recommended for this project since the applicant has indicated its desire to complete the project, probably through sale to a developer after completion of the first phase. If the applicant or a successor to the applicant decides to use the land for a different purpose, vacation will be required at that time. Since there are no streets that are dedicated for use of the public, a vacation order would extinguish the rights of owners of units within the development in the vacated areas, unless another agreement has been made as part of the condominium documents.

The Board also raised a question concerning the effect bankruptcy would have upon the letter of credit. The letter of credit is an agreement between the bank and the City that the bank will pay amounts to the City if the public improvements are not completed as approved. According to 11 U.S.C.A. §109, a bank cannot be a creditor and therefore does not undergo the bankruptcy procedures set forth in federal law. Instead, control of the bank passes to a federal agency, which assumes the obligations of the bank. In addition, these obligations are insured in much the same fashion that deposits are. Even if the developer, a wholly owned subsidiary of the bank, is subject to federal bankruptcy laws, payment to the bank for a letter of credit is not likely to be set aside as a preferential transfer because the letter of credit does not qualify as "a transfer of property of the debtor to or for the benefit of a creditor... for or on account of an antecedent debt owed by the debtor before such transfer was made." 11 U.S.C.A. §547. The letter of credit is more appropriately viewed as a contemporaneous exchange that is in payment of a debt incurred in the ordinary course of business or financial affairs of the company contracting for the letter of credit, since the letter of credit is required by the City before building permits can be issued. This type of transfer is not regarded as a preferential transfer and for that reason cannot be avoided by a trustee in bankruptcy.

Natalie L. Burns

Natalie L. Burns
Associate Corporation Counsel



J. David Haynes, ASLA
David A. Kamila, P.E.

LAND USE CONSULTANTS
June 4, 1990

2322

Mr. Richard Henry
Portland Planning Department
City of Portland
City Hall
389 Congress Street
Portland, Maine 04101

Fallbrook Condominium Sectional Recording

Dear Mr. Henry:

Merreal Corporation, a wholly owned subsidiary of Maine Savings Bank requests Planning Board review for a sectional recording of the Fallbrook Condominium project. This project received subdivision approval from the Planning Board on September 10, 1985. Site plan and PRUD approval were granted November 10, 1987. All original applications were made by The Liberty Group. The project was later sold to Merrymeeting Developers, Inc. and subsequently acquired by Merreal Corporation. The project name has been changed from Ray Street Townhouses to Fallbrook Condominiums.

This request for sectional recording does not revise plans for the number of units. This request is only based on the need to phase the construction of the development. The project was originally designed, reviewed, approved and recorded in phases. In hind sight, a sectional recording would have been appropriate during the initial review. Unfortunately that was not requested at the time.

As part of the original Planning Board review of the Ray Street Townhouses, the project was divided into four phases. The purpose of the phases was to insure that adequate on and off site improvements would be constructed during the established phases by th Planning Board. In 1987, the Planning Board reviewed each phase and signed separate subdivision recording plats for each separate phase. Each plat was recorded in the Cumberland County Registry of Deeds. We are now requesting a sectional recording of that development, with one minor modification, based on the previously approved phases.

As illustrated on the attached layout plans, we request that Phase One be revised to exclude four units located at the southerly end of the entrance road and to shift those same units

LAND USE CONSULTANTS

FALLBROOK CONDOMINIUM

Project Information

Location: Ray Street and Allen Avenue
Total Area: 19.98 Acres
Zone: R-3
Number Units: 98 residential condominium units separated into four phases of development

Ownership

All applications were made by The Liberty Group which later sold the project to Merrymeeting Developers, Inc. The project was subsequently acquired by Merreal Corporation. The project name has been changed from Ray Street Townhouses to Fallbrook Condominiums.

Approvals/Portland Planning Board

Subdivision approval was received September, 1985 for Ray street Townhouses. Site Plan and PRUD approval was granted November 10, 1987. Phase I of the plan was revised through an administrative approval to reflect as-built conditions in 1989.

The following plans, reflecting approval by the City of Portland are recorded in the Cumberland County Registry of Deeds

Plan of Land, Ray Street Development

	Date Planning Board <u>Approval</u>	Cumberland County <u>Registry of Deeds</u>
Phase I/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 55
Phase II/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 56
Phase III/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 57
Phase IV/Plate 1 + 2	Nov. 10, 1987	P.B. 168, Pg. 58
Revised Recording Plat Fallbrook Condominiums Recorded Plan Book 179, Pg. 47 dated 6/14/89		

Letters of Credit

On January 28, 1988, Maine Savings Bank issued a Letter of Credit in the amount of \$1,025,089 to cover site development improvements throughout the entire four phase Fallbrook Condominium project. That Letter of Credit expires on May 1, 1990. To date, improvements in Phase I are nearly complete, Phase II, III and IV have not begun. Sectional recording, would enable the reduction of the Letter of Credit amount to improvements within Phase I only. Phases II, III and IV would be released from the Letter of Credit at this time and would be re-bonded during each individual phase.

LAND USE CONSULTANTS

into Phase Four. Those units are part of a cluster which is primarily located in Phase Four. The presence of substantial amounts of ledge make it cost prohibitive to develop only four units at that location at this time. There are no revisions proposed in Phase Two and Phase Three. Phase Four is revised to include the four units from Phase One. The plans are consistent with all standards and requirements of the Land Use Code.

Additionally, this request for sectional recording meets all standards of the Land Use Code Sec. 14-495(L) sectional recordings. Upon approval, we understand the first section of the plat must be recorded within three years and subdivision plat approval for the remaining sections will remain in effect for five years after the date of planning board approval. We also understand that the existing letter of credit which has been issued to complete all phases of the project will be reduced to cover the completion of those roads and other public improvements in Phase I only. Improvements in subsequent phases will be re-bonded during each individual phase.

We very much look forward to working with you on this sectional recording. We have met with Paul Neihoff and Jeff Tartelling of the City of Portland and believe our plans meet all city standards. Maintaining a letter of credit on a project which was previously approved in phases has been burdensome and does not meet the needs of Merreal or the City of Portland.

Enclosed for your review are the following:

1. Ten copies of the Revised Final Site Grading and Drainage-North Plans relocating a swale near the project entrance as requested by Paul Neihoff of the City Engineering Department.
2. Ten copies of Revised Recording Plats Fallbrook, A Condominium Phases I, II, II and IV.

Thank you very much. If we can provide any additional information, please let me know. Enclosed with this letter in addition to the plans is an application fee in the amount of \$350.00 and a brief summary of the project.

Very truly yours,


Patricia C. Harrington

PCH/b

c.c.: Jeffrey A. Nathanson
Elting H. Smith, Jr., Esq., Drummond & Woodsum



J. David Haynes, ASLA
David A. Kamila, P.E.

LAND USE CONSULTANTS

June 4, 1990

2322

Mr. Richard Henry
Portland Planning Department
City of Portland
City Hall
389 Congress Street
Portland, Maine 04101

Fallbrook Condominium Sectional Recording

Dear Mr. Henry:

Merreal Corporation, a wholly owned subsidiary of Maine Savings Bank requests Planning Board review for a sectional recording of the Fallbrook Condominium project. This project received subdivision approval from the Planning Board on September 10, 1985. Site plan and PRUD approval were granted November 10, 1987. All original applications were made by The Liberty Group. The project was later sold to Merrymeeting Developers, Inc. and subsequently acquired by Merreal Corporation. The project name has been changed from Ray Street Townhouses to Fallbrook Condominiums.

This request for sectional recording does not revise plans for the number of units. This request is only based on the need to phase the construction of the development. The project was originally designed, reviewed, approved and recorded in phases. In hind sight, a sectional recording would have been appropriate during the initial review. Unfortunately that was not requested at the time.

As part of the original Planning Board review of the Ray Street Townhouses, the project was divided into four phases. The purpose of the phases was to insure that adequate on and off site improvements would be constructed during the established phases by th Planning Board. In 1987, the Planning Board reviewed each phase and signed separate subdivision recording plats for each separate phase. Each plat was recorded in the Cumberland County Registry of Deeds. We are now requesting a sectional recording of that development, with one minor modification, based on the previously approved phases.

As illustrated on the attached layout plans, we request that Phase One be revised to exclude four units located at the southerly end of the entrance road and to shift those same units

FALLBROOK, A CONDOMINIUM
PUBLIC OFFERING STATEMENT

Name of Condominium: Fallbrook, a Condominium
Address of Condominium: Ray Street, Portland, Maine
Name of Declarant: Merreal Corp., a Delaware corporation
Principal address of Declarant: c/o Drummond Woodsum Plimpton
and MacMahon
245 Commercial Street
Portland, ME 04101
Attn: Elting H. Smith, Jr.

UNLESS A PURCHASER HAS RECEIVED AND REVIEWED A COPY OF THIS PUBLIC OFFERING STATEMENT PRIOR TO THE EXECUTION OF A CONTRACT FOR SALE OF A CONDOMINIUM UNIT, HE MAY, BEFORE CONVEYANCE OF THE UNIT, CANCEL ANY CONTRACT FOR PURCHASE OF THE UNIT FROM DECLARANT.

IF A PURCHASER ACCEPTS THE COVEYANCE OF A UNIT HE MAY NOT CANCEL THE CONTRACT.

Effective Date of this Public Offering Statement: May, 1989

I. THE DECLARANT

The Declarant is Merreal Corp., a Delaware corporation. Declarant's attorneys in connection with the condominium are Drummond Woodsum Plimpton & MacMahon, P.A., 245 Commercial Street, Portland, ME 04102 (attn: Elting H. Smith, Jr., Esq.)

II. DESCRIPTION OF THE CONDOMINIUM

A. The Site and the Construction Schedule.

Fallbrook, a Condominium is located on approximately 7.4 acres of land owned by the Declarant on the westerly side of Ray Street in Portland, Maine ("Land Phase I"). The Declarant has reserved the right to add up to 12.6 acres of additional land to the Condominium as part of its development rights. The Condominium will include private streets as shown on the Plat attached as Schedule C to the Fallbrook, a Condominium Declaration. It is anticipated that the streets will be constructed to municipal standards, but it is not expected that the the City of Portland will maintain those streets. It is expected that the streets will be maintained solely by the Fallbrook Condominium Association, the association of unit owners (the "Association").

All of the buildings and improvements constituting the Condominium will be constructed in phases between 1988 and a date not later than seven years after the recording of the Declaration. Units 1-10 have been completed. If construction goes according to schedule, the remaining 88 units will be ready for conveyance by 1992.

The land area of the Condominium is in an R-3 residential zone in the City of Portland. This zone permits condominium development such as the Condominium, following approval by the Portland Planning Board. The Condominium was approved by the Portland Planning Board on November 10, 1987. The Planning Board has granted subsequent approvals, including an approval of the Declarant as the successor developer of the site. In addition, the project received Department of Environmental Protection (DEP) Site Location approval on October 10, 1985. The DEP has granted subsequent approvals, including approval of the transfer to the Declarant.

B. The Declaration.

The Declaration, a copy of which is attached as Exhibit A to this Public Offering Statement, is the legal document which created the Condominium. The Declaration became effective when recorded in the Cumberland County Registry of Deeds. The Declaration establishes the boundaries of the Condominium as a whole, as well as the boundaries of and percentage interest in the common elements appertaining to each unit. In addition,,

the Declaration establishes special property rights within the Condominium such as limited common elements and easements. The Declaration will be recorded prior to the first Unit sale.

General amendments of the Declaration may be accomplished by a vote of 67% of the aggregate voting rights of the unit owners, except that certain amendments will require the approval of institutional lenders holding first mortgages on condominium units, and certain special kinds of amendments, such as the exercise of development rights or relocation of boundaries between units, can be effectuated without a vote of the unit owners.

All of the units are restricted to residential use, except that the Declarant may use any unsold units as models or as sales offices.

C. Development Rights.

The Declaration created 10 condominium units and reserves in favor of the Declarant the right to add additional land to the Condominium, to create a maximum of 88 units in addition to the 10 existing units and to create limited common elements appurtenant to the additional units similar to the limited common elements created as to the existing units. A maximum of 4.9 units per acre may be created pursuant to the exercise of these development rights. The 88 additional units will be restricted to residential use, except that the Declarant may use any unsold units as models or as sales offices. The Declarant has also reserved the right to create and construct such additional common elements as it, in its sole discretion, deems to be useful to and in accordance with the design of the Condominium as a whole. The Declarant must exercise these development rights, if at all, within seven years from the date on which the Declaration is recorded. The exercise of the development rights by the Declarant may reduce each unit's interest in common elements and liability for common expenses to not less than 1.02 percent.

Upon the addition of future units to the Condominium, all new and old units will then share in the common areas, voting rights and liability for the Condominium expenses as a group. All newly added units will each have one (1) vote in the Condominium Association so that the original units may each have one (1) vote out of up to 98 units instead of one (1) vote out ten (10). The liability for common expenses and the percentage ownership of the common elements of the Condominium is allocated equally among all units based on the total number of units. These allocated interests shall be reduced in proportion to the additional number of the newly added units although the size of the common elements and the common expense budget for the Condominium on the whole are anticipated to increase.

Any limited common element appurtenant to any unit in Land Phase I created pursuant to the development rights reserved by the Declarant will be of the same general type and size as the limited common elements appurtenant to the existing units and the proportion of limited common elements to units created pursuant to the development rights reserved by the Declarant will be approximately equal to that proportion as to the existing units. No assurances are made as to limitations on the location of any building or other improvement that may be made within any part of the Condominium or additional real estate pursuant to any development right reserved by the Declarant.

Any buildings or other improvements erected in Land Phase I pursuant to the development rights reserved in the Declaration shall be compatible with existing buildings and improvements in the Condominium in terms of architectural style, quality of construction and size.

All restrictions in the Declaration affecting use, occupancy and alienation of units will apply to any units created by the Declarant pursuant to the development rights reserved in the Declaration.

All future units and improvements located on future land not presently a part of the condominium, including the units, common element buildings and drives, must be reasonably consistent with the initial units and improvements for quality of construction and principal building materials if added to the condominium, but the Declarant may substitute materials and techniques of equal or better quality and may change the architectural style and unit configuration. No other assurances are given with respect to the locations, types, proportions or sizes of any buildings or improvements or limited common elements located on future land phases. The time for physical construction if all possible units are added is not definitely known and construction may continue in stages, although the Declarant must make the decision to legally create the units within 7 years of the date of recording of the Declaration. The Declarant is not required to add more units or land and may stop at any point short of the maximum number of 98 units. The Condominium is legally self-sufficient, however, if only the initial 10 units are built.

Future Land Phases NEED NOT BE ADDED and said units and improvements NEED NOT BE BUILT. The anticipated location of additional buildings and improvements is shown on the plan approved by the City of Portland Planning Board on November 10, 1987 but no limitation presently exists on the final actual locations of buildings and improvements in the future Land Phases or the configuration of possible residential units except that the approvals of the City Planning Board and Department of Environmental Protection must be obtained to change the original approved site plan.

The Declarant also reserves the right to create and relocate public utility easements on the property servicing the Condominium, to connect into those public utility lines, to use the Condominium for the repair and construction of future units, for sales purposes, and to operate a sales, leasing, and management office until all Condominium units including future units have been sold. As a part of the construction of future building and addition of land phases, the private roads may be extended, new parking and access areas created, the sewerage pump station relocated, recreational facilities constructed and additional landscaping undertaken.

The Declarant may voluntarily give up these rights before it is required to do so by written statement recorded in the Cumberland County Registry of Deeds.

In the event that any development right is not exercised by the Declarant, the assurances contained in this Paragraph C of Article I shall nonetheless apply as to any development rights which are in fact exercised. Beyond those contained in this Paragraph C of Article I, the Declarant makes no assurances as to the nature of units, common elements and limited common elements that may be created by the Declarant within any part of the Condominium or additional real estate pursuant to the development rights reserved in the Declaration.

In the event the Declarant does not exercise its development rights with respect to the additional land, or a portion thereof, none of the above assurances applies and the Declarant shall be free to develop such additional land for single-family homes, apartments or other uses, as permitted under the City of Portland Zoning Ordinance and as approved by the City of Portland Planning Board. The Declarant has reserved a right-of-way to Ray Street for all purposes necessary to complete the development of the additional land, whether or not it is added to the Condominium. The expense of maintaining the right of way, including any common utility lines, shall be shared proportionally by the Condominium Association and by the owners of the additional land based on the number of residences, or comparable uses, located on the Condominium Property and on the additional land.

III. THE UNITS

Each of the Units located in Land Phase I will be of similar architectural character and will be included in a building containing two or three attached Units. Each Unit will be of one or two story design with a minimum of one and one half baths. The Units will vary in size from 945 square feet to 1600 square feet, depending on unit type and options chosen. Generally speaking, each unit will consist of the space bounded by the walls, floor and ceiling of the unit. The unit will also include any floor covering (carpet, tile, etc.),

wallboard and wall covering, and apparatus for heating, and hot water. Amenities within units will include a stove with vent hood, refrigerator, dishwasher and garbage disposal. Each unit will have the exclusive right to at least one parking space as a limited common element. Each unit is expected to have a patio or deck and a driveway, and most units will have a garage and separate walkway to the front door. These will be limited common elements reserved to the exclusive use of the Unit to which they are appurtenant.

As provided above, all future units and improvements located on future land not presently a part of the condominium, including the units, common element buildings and drives, must be reasonably consistent with the initial units and improvements for quality of construction and principal building materials if added to the condominium, but the Declarant may substitute materials and techniques of equal or better quality and may change the architectural style and unit configuration. All buildings and improvements in future land phases must be substantially complete upon addition to the Condominium. No other assurances are given with respect to the locations, types, proportions or sizes of any buildings or improvements or limited common elements located on future land phases. If land is not added to the Condominium, the Developer makes none of the foregoing assurances.

IV. COMMON ELEMENTS

The common elements constitute all of the Condominium other than the units. The following are the major common elements of the Condominium: all of the land, buildings, foundations, roofs, outside walls, pipes, ducts, electrical wiring and conduits, public utility lines, floors and ceilings (other than the interior surfaces thereof located within the units), perimeter walls of units (other than the interior surfaces thereof), structural parts of the buildings, including structural columns, girders, beams and supports, tot lot, basketball court, access and utilities, trees, shrubbery and other landscaping.

The limited common elements are those parts of the common elements which are reserved for the exclusive use of a specific unit or units. The limited common elements include the garage spaces, driveways, walkways, decks and patios, if any, assigned or adjacent to their respective units, the concrete floor slab (including skylights) and ground area below each unit, and any shutters, window boxes, doorsteps or stoops adjacent to the unit.

The units, the common elements and limited common elements are shown on the Plats and Plans, which are attached as Schedules C and D to the Declaration.

Each unit has an undivided interest in the common elements. This undivided interest is stated as a percentage and is referred to in the Declaration, as amended, and Bylaws as the "percentage interest" or "Common Element Interest." The percentage interest of each unit is set forth in the Declaration, as amended. The percentage interest of each Unit will be the same and as additional Units are declared, each Unit's percentage interest will be reallocated on an equal basis such that the total interest will always equal 100%.

V. CREATION OF AND RESTRICTIONS ON THE CONDOMINIUM

A. Description of the Declaration and Bylaws.

The Declaration and Plat and Plans are the legal documents necessary to create the Condominium and are referred to as the "Condominium Instruments". The Condominium Instruments will be recorded at the Cumberland County Registry of Deeds, and copies of them are attached to this Public Offering Statement as Exhibit A. Additionally, the operation of the Condominium is governed by the provisions of the Bylaws attached as Exhibit B.

Essentially, the Declaration is viewed as being a deed which establishes and defines the Condominium and which recites the manner in which the Declarant desires to submit the property to a condominium regime. The Declaration describes the property, the boundaries of the units, the elements that comprise the common elements, a determination of each unit's percentage interest in the common elements, the purposes and restrictions on the use of the property, provisions for easements and provisions concerning assessments and liens against the units and the liability of the unit owners for payment of the common expenses. The Declaration also describes the manner in which the Executive Board of the Association will be elected.

The Bylaws contain the rules for self-government of the Condominium by the Association. The Bylaws provide for the creation of the Executive Board, which directs the affairs of the Condominium, administers policies outlined in the Declaration and Bylaws, and generally oversees the upkeep and administration of the Condominium. The Bylaws also cover such matters as the composition of the Executive Board, requirements for meetings, voting, the manner in which the Condominium budget should be prepared, the determination and handling of assessments, including special assessments, and the filing of assessment liens, the nature of insurance coverage, and restrictions on the use of the units and the common elements.

The Bylaws provide that the Executive Board has the power to establish Rules and Regulations governing the use of the Condominium. Rules and Regulations which have been adopted, if any, will be attached to this Public Offering Statement as an

Addendum. Although it is anticipated that Rules and Regulations will be implemented at a later date, it is not expected that any special fees or charges will be imposed in connection with the use of the common elements.

If a dispute arises between the Declarant and a unit owner, or the Association, arising out of or relating to the Declaration, the Bylaws or a deed to a unit, the Declaration provides that such dispute shall be submitted to binding arbitration.

B. Liens, Defects, Encumbrances and Restrictions on Use.

A unit owner's use and enjoyment of his unit is restricted by the Declaration and Bylaws. These restrictions, which apply to all units, relate to such matters as the leasing of units, compliance with the Declaration and Bylaws, payment of assessments, use of the common areas including limited common areas, keeping of pets, excess noise, parking and others.

The Declaration prohibits subdivision of ownership interests in condominium units to permit "time sharing" or other devices to effect interval ownership.

The Declarant and its agents have the right to post signs and advertisements on the Condominium property for the purpose of selling the units. Each unit is restricted to residential use.

The Condominium will be subject to the normal utility easements for water, sewer, electric and telephone lines. In addition, the Condominium will be subject to certain easements created by the Declaration and the Maine Condominium Act. These easements are:

1. Easement for encroachments. By virtue of this easement, unit owners and the Association are protected in the event that a unit or common element encroaches upon another unit or common element.

2. Easement to facilitate sales and construction. The Declarant may use any unsold units in the Condominium as models or as sales offices and may place advertising signs anywhere within the Condominium. In addition, the Declarant has easements to complete all improvements and to carry out development rights.

3. Easement for ingress and egress. Each unit owner has a right of access to the common elements, subject to rules, regulations and restrictions established by the Association.

4. Easement for access to units. Authorized representatives of the Association and the Declarant may enter any unit to the extent necessary to correct conditions threatening other units or the common elements, to make repairs to common elements which are accessible from the unit, or to correct conditions which constitute violations of the Declaration, Bylaws, Rules or Regulations or in accordance with warranty obligations of the Declarant.

5. Easement for support. Each unit and common element has an easement for lateral and adjacent support from every other unit and common element.

The Condominium property is subject to a mortgage to secure certain financing. However, at the time of the conveyance of a unit to a purchaser, the Declarant will have such unit released of record from every mortgage, deed of trust, or any other perfected lien affecting the unit, except the lien of the unit purchaser's mortgage, if any, and the encumbrance of the Condominium instruments of record, general real estate taxes for the current year not then due, and easements, restrictions and covenants of record.

The condominium property is also subject to:

1. A drainage pipe easement granted by David I. Libby to John D.R. Mulhern, et al., dated November 18, 1982 and recorded in the Cumberland County Registry of Deeds in Book 5067, Page 214;

2. Twenty-five foot set back requirements as set forth in Instruments recorded in the Registry of Deeds in Book 1815, Page 321, and Book 6257, Page 342; and

3. A pipeline easement granted to Portland Water District dated September 21, 1988 and recorded in the Registry of Deeds in Book 8490, Page 164.

4. An easement benefiting the additional land owned by the Declarant for all purposes over under and along the 50 foot wide right-of-way shown on the Plat.

5. Conditions of Approval from the City of Portland Planning Board appearing on the project subdivision plan recorded in the Registry of Deeds.

6. Conditions of Approval from the Department of Environmental Protection set forth in Site Location Orders relating to the project and recorded in the Registry of Deeds.

7. Each deed conveying a Unit shall also contain a reservation of an easement benefiting the additional land owned by the Declarant in substantially the following form:

A perpetual easement for all purposes including without limitation, ingress and egress on foot and by motor vehicle and for the installation, maintenance, repair and replacement of roads, sidewalks and utility lines, wires, pipes, poles, conduits and mains, together with the right to alter, excavate and pave the surface of the earth for the foregoing purposes over, under and across that portion of Land Phase I located southeasterly of the westerly sideline of the 50-foot wide right-of-way as shown on said Plat and located within 40 feet of each side of the centerline of a certain "loop road" servicing Units 1 through 28 including the spur road leading to said loop road; including without limitation the right to connect into existing utility lines and services, provided that the holder shall be responsible to pay for all such services consumed.

C. Restraints on Alienation and Leasing.

Section 1604-102 of the Maine Condominium Act prohibits the Declarant from offering any interest in a Condominium unit until the Declarant has prepared and delivered to a purchaser a current public offering statement.

The Maine Condominium Act states that portions of the common elements may be mortgaged or sold if unit owners possessing at least 80% of the voting rights in the Condominium agree to such action.

The Declaration authorizes the Executive Board to prescribe by resolution a form of lease or specific provisions to be included in any lease of a unit, and if the Executive Board so acts, no unit owner may thereafter execute a lease of his own unit which is not in compliance with such resolution.

The Condominium Declaration and Bylaws, attached to this Public Offering Statement as Exhibits A and B, respectively, should be carefully reviewed by each prospective purchaser of a unit.

VI. OPERATION OF THE CONDOMINIUM.

A. The Unit Owners Association.

1. Self-Governing of the Condominium. The Maine Condominium Act provides for the self-governing of the Condominium by a unit owners association. All of the unit owners collectively constitute the Association. Membership in the Association is an incident of ownership of a unit. Therefore, every unit owner is automatically a member of the Association and remains a member until his ownership of a unit ceases.

The Association is organized as a non-profit corporation under Maine law. At the date of this Public Offering Statement there are no unsatisfied judgments or, to the best of Declarant's knowledge and belief, no pending suits against the Association.

2. Delegation of the Powers and Responsibilities of the Association. The Bylaws provide that the powers and responsibilities of the Association are delegated to the Condominium's Executive Board, some of which in turn may be delegated to a managing agent. Basically, the Executive Board has the powers and responsibilities in administering the Condominium to, among other things: (a) prepare the annual budget; (b) make and collect assessments against the unit owners for common expenses; (c) provide for the upkeep, maintenance and care of common elements; (d) designate, hire and dismiss the personnel necessary for the maintenance of the Condominium; (e) establish bank accounts on behalf of the Association; (f) make alterations to the Condominium; (g) enforce by legal means the provisions of the Condominium instruments; (h) obtain necessary insurance; (i) pay the cost of services rendered to the Condominium; and (j) keep the books of account of the Condominium. In addition, the Board has the power to make Rules and Regulations governing the Condominium.

3. Allocation of Voting Power. Each Unit is allocated one vote in the Association. A unit owner is entitled to cast the vote allocated to his unit.

4. Transfer of Control. The Declaration authorizes the Declarant to appoint and remove three (3) members of the Executive Board and all officers of the Association until the earlier of (i) five (5) years after the date on which the first unit in the Condominium is conveyed or (ii) sixty (60) days from the date of the conveyance of 75% of the units (including units which may be created pursuant to development rights), at which time the unit Owners shall elect a three-member Executive Board. The Declarant at its option can relinquish this authority at any time.

B. Management of the Condominium.

The Bylaws provide that the Executive Board may employ a professional managing agent for the Condominium at a level of compensation fixed by the Executive Board. The Declarant intends to cause the Association to enter into a management agreement with Maine Properties, Inc., as provided in the Condominium Budget. After the transfer of control of the Association to the unit owners as provided above, the decision as to whether to retain the services of the managing agent will be made by the Association. The decision as to whether to retain the services of the managing agent will be made by the

Association. A management fee is provided for in the proposed budget.

The Bylaws contain provisions for reserves for capital expenditures. Article V, Section 2(d) of the Bylaws provides for the establishment of reasonable reserves for operating contingencies, maintenance and replacements. The Bylaws also provide that if for any reason such reserve fund is inadequate to defray the cost of a required capital improvement, replacement or major repair, the Executive Board may levy a further assessment against the unit owners in proportion to the percentage interest of their respective units.

A unit owner will be personally liable for all lawful assessments levied against his unit which become due while he is the unit owner. In addition, common expenses assessed against the unit owner will give rise to a lien on the owner's unit, which lien, if unsatisfied, may be enforced by foreclosure or other legal remedies.

The percentage interests of each unit in the common elements of the Condominium are set forth in the Declaration; the amount of the estimated monthly assessment for Condominium expenses for each unit is set forth in Exhibit C. The assessment is based on the percentage interest of the unit.

VII. BUDGET

Information regarding the annual budget for the Condominium's operation for the current year is attached to this Public Offering Statement as Exhibit C. The budget was prepared by the Declarant based on the best estimates available to it. Because the Condominium is new it is impossible to project future costs with assurance. The budget assumes an inflation factor of zero. Any other assumptions, including occupancy assumptions are set forth on Exhibit C. Declarant provides no special services nor incurs any special expenses on behalf of the unit owners that are anticipated to become common expenses at a subsequent time, except as set forth on Exhibit C.

VIII. UNIT PURCHASE

The obligations of the parties in connection with the purchase of a unit are stated in detail in their Purchase and Sale Agreement. A sample Purchase and Sale Agreement is attached to this Public Offering Statement as Exhibit D. Prices for all units are established by the Declarant and may be subject to change at any time at the Declarant's discretion prior to the execution of a Purchase and Sale Agreement. Different purchasers may pay different prices for similar units at the sole discretion of the Declarant.

At the settlement on the purchase of the unit the purchaser will be required to pay, in addition to the purchase price of the unit, those settlement costs identified in the purchase agreement. It is not anticipated that the purchaser will be required to sign any contracts or leases at the settlement.

In addition to regular monthly assessments, Purchasers will also have to pay an amount equal to twice the projected monthly assessment on their unit to the Association (or to the Developer if the Developer has previously advanced the payment to the Association) for the purpose of providing the Association with working capital.

A prospective unit purchaser may arrange for his own financing. The Declarant does not anticipate receiving a commitment from a lending institution to provide permanent financing to purchasers.

Purchaser's deposits will be placed in a non-interest bearing escrow account by Declarant. Deposits will be returned to prospective purchasers who cancel their purchase contracts in accordance with Section 1604-107 of the Maine Condominium Act; or if not applicable, such deposits will be treated in accordance with the terms of the Purchase and Sale Agreement. Purchasers will not be entitled to interest on returned deposits.

IX. INSURANCE

The Executive Board will obtain insurance to protect the Association and, to a certain limited extent, the unit owners as individuals. In general, the types and amounts of insurance to be obtained by the Association are described in Article V, Section 12 of the Bylaws.

Each building, including the units, will be covered by fire and property damage insurance. The coverage will be "all-risk" and in an amount equal to the full replacement value of the building. This coverage will not insure personal property belonging to a unit owner or improvements to the unit made by or on behalf of the unit owner.

The Association and unit owners will be insured against liability arising from ownership or use of the common elements. This coverage will not insure unit owners against liability arising from an accident or injury occurring within a unit or liability arising from the act or negligence of a unit owner.

The Executive Board will also maintain appropriate workmen's compensation insurance and fidelity bond coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle funds of the Association, including the managing agent.

The Declarant strongly recommends that each unit owner obtain insurance coverage on his personal property and liability exposure not covered by the Association policy. The unit owner may also wish to insure any improvements to his unit to the extent that the improvements increase the value of his unit beyond the limit of coverage provided by the policy maintained by the Association. The unit owner should be aware, however, that there are certain restrictions on this type of additional insurance in Section V of the Bylaws. The unit owner should consult the Executive Board or the managing agent before purchasing such additional insurance.

X. WARRANTIES

Certain warranties are given to all unit owners as described below, subject to certain exclusions and modifications made by the Declarant. On or before settlement of the purchase of a unit, as a condition of purchase, the purchaser will be asked to execute a written instrument providing for a two-year statute of limitations. Additionally, implied warranties of merchantability will be limited to the duration of the Limited Warranty Certificate issued by the Declarant, attached hereto as Exhibit E.

With respect to the units being sold and the common elements, the Maine Condominium Act provides as follows:

§1604-112. Express warranties of quality.

(a) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are only created as follows:

(1) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the Condominiums that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the Condominium, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(2) Any model or description of the quantity or extent of the real estate comprising the Condominium, including plans and specifications of or for improvements, creates an express warranty that the Condominium will substantially conform to the model or description; and

(3) Any written description of the quantity or extent of the real estate comprising the Condominium, including plats or surveys, creates an express warranty that the Condominium will conform to the description, subject to customary tolerances; and

(4) A provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(b) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty, are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

(c) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers.

§1604-113. Implied warranties of quality.

(a) A declarant and any person in the business of selling real estate for his own account warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) A declarant and any person in the business of selling real estate for his own account impliedly warrants that a unit and the common elements in the Condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him, or made by any person before the creation of the Condominium, will be:

(1) Free from defective materials; and

(2) Constructed in accordance with applicable law, according to sound engineering and construction standards and in a workmanlike manner. Construction complying with the National Building Code and Code Administrators (BOCA), Basic Building Code or equivalent applicable local building code, if any, shall be deemed to satisfy such sound engineering or construction standards.

(c) In addition, a declarant warrants to a purchaser from him of a unit that may be used for residential use that any existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(d) Warranties imposed by this section may be excluded or modified as specified in section 1604-114.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, section 1601-103, paragraph (1), are made or contracted for by the declarant.

(f) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

§1604-114. Exclusion or modification of implied warranties of quality.

(a) Except as limited by subsection (b) with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

(1) May be excluded or modified by agreement of the parties; and

(2) Are excluded by expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant may disclaim liability in an instrument signed by the purchaser, for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

§1604-115. Statute of limitations for warranties.

(a) A judicial proceeding for breach of any obligation arising under section 1604-112 or 1604-113 must be commenced within six (6) years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two (2) years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a non-possessory interest was conveyed; and

(2) As to each common element, at the time the common element is completed or, if later:

(i) As to a common element which may be added to the Condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; or

(ii) As to a common element within any other portion of the Condominium, at the time the first unit in the Condominium is conveyed to a bona fide purchaser.

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the Condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

4924S

ADDENDUM TO
PUBLIC OFFERING STATEMENT

FALLBROOK, A CONDOMINIUM

The following information supplements the Public Offering Statement dated May, 1989:

Pursuant to an Agreement for Transfer and Assumption of Declarant Rights in Fallbrook, a Condominium, dated July 28, 1989 and recorded in the Cumberland County Registry of Deeds in Book 8852, Page 260, the Declarant, Merreal Corp., has transferred to R. Risbara Construction Co., Inc. all rights necessary to construct, create, market and convey proposed units #11 through #32 inclusive. Henceforth, R. Risbara Construction Co., Inc. will be the "declarant" with respect to units 11-32. Merreal Corp. will continue to be the "declarant" with respect to units 1-10 and the common element improvements it has constructed. Merreal Corp. has also retained its development rights to add land to the condominium and to create additional units as described in the Public Offering Statement and Article 8 of the Declaration.

THE PUBLIC OFFERING STATEMENT DATED MAY, 1989 DOES NOT APPLY TO AND MAY NOT BE RELIED UPON FOR THE SALE OF UNITS 11-32.



DECLARATION OF FALLBROOK, A CONDOMINIUM
PORTLAND, MAINEARTICLE 1SUBMISSION; DEFINED TERMS

Section 1.1. Submission of Property. Merreal Corp., a Delaware corporation with a place of business in Portland, Maine ("Declarant"), owner in fee simple of the land described in Schedule A annexed hereto, located within the City of Portland, Cumberland County, Maine ("Land"), hereby submits the Land, together with all improvements, easements, rights and appurtenances thereunto belonging ("Property") to the provisions of Chapter 31 of Title 33 of the Maine Revised Statutes Annotated, as amended, known as the Maine Condominium Act ("Condominium Act") and hereby creates with respect to the Property a condominium, to be known as "Fallbrook, a Condominium" ("Condominium"). The Property shall henceforth consist of Units, described in Article 2 hereof and listed on Schedule B annexed hereto, and of Common Elements, described in Article 3 hereof. The Property is shown on the Condominium Plat and Plans recorded herewith in the Cumberland County Registry of Deeds and identified on Schedules C and D annexed hereto ("Plat and Plans").

Section 1.2. Defined Terms. Terms not otherwise defined herein, as the same may be amended from time to time, or in the Plat and Plans, shall have the meanings specified in Section 1601-103 of the Condominium Act. "Condominium Instruments" shall mean this Declaration, as it may be amended from time to time, and all Schedules attached hereto.

Section 1.3. Name and Address of Condominium and Association. The name of the Condominium is "Fallbrook, a Condominium". The address of the Condominium is Ray Street, Portland, Maine. The name of the Unit Owners association is Fallbrook Condominium Association ("Association") and its address is Ray Street, Portland, Maine.

Section 1.4. Notice to Unit Owners. Notice of matters affecting the Condominium shall be given to Unit Owners by delivery in hand or by sending prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner.

Section 1.5. Interpretation. In the event of any conflict or discrepancy between this Declaration and the Plat and Plans, this Declaration shall govern.

ARTICLE 2

BUILDINGS ON THE LAND; UNIT BOUNDARIES

Section 2.1. Location and Dimension of Buildings. The location and dimensions of each building on the Land are depicted on the Plat attached as Schedule C hereto.

Section 2.2. Units. This Declaration creates ten (10) Condominium Units on the Land out of a maximum of ninety-eight (98) Units that may be created. The location of the Units created herein and their dimensions are shown on the Plat and Plans. Attached as Schedule B hereto is a list of the ten created or declared Units, their identifying numbers, Common Element Interest, Common Expense Liability and Vote appurtenant to each Unit. The dimensions and types of Units are shown on the Plans attached hereto as Schedule D. Additional Units may be created pursuant to Development Rights Article 8 of this Declaration. The Common Element Interest and Common Expense Liability of each Unit (collectively "Percentage Interest") shall be equal and shall be determined on the basis of the number of Units declared. Each Unit shall have one (1) Vote in the Association affairs. As additional Units are created, the Percentage Interest and Vote shall be reallocated on this basis and listed on an amended Schedule B.

Section 2.3. Unit Boundaries. The boundaries of each Unit are as follows:

(a) Upper and Lower (horizontal) Boundaries: The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the vertical (perimetric) boundaries:

(1) Upper Boundary: The planes formed by the lower surfaces of the rafters or truss elements directly supporting the roof sheathing.

(2) Lower Boundary: The horizontal plane of the top surface of the undecorated concrete floor or flooring, as the case may be, of the Unit.

(b) Vertical (perimetric) Boundaries: The vertical boundaries of the Unit shall be the vertical planes formed by the interior surfaces of the studs located in perimeter walls bounding the Unit extended to intersections with each other and with the upper and lower boundaries, the Unit to include the drywall and finish wall material. Boundary lines shall also be the exterior surface of doors, windows and storm windows, and glass walls, and their frames, sills and thresholds.

Section 2.4. Relocation of Unit Boundaries and Subdivision of Units. Relocation of boundaries between Units is permitted subject to compliance with the provisions therefor in Section 1602-112 of the Condominium Act. Subdivision of Units is not permitted.

ARTICLE 3

COMMON ELEMENTS

Section 3.1. Common Elements. The common elements shall consist of all of the Property except the individual Units, and shall include the land, buildings, foundations, roofs, outside walls, pipes, ducts, electrical wiring and conduits, public utility lines, floors and ceilings (other than the interior surfaces thereof located within the Units), perimeter walls of Units (other than the interior surfaces thereof); structural parts of the buildings, including structural columns, girders, beams and supports; easements as set forth in Schedule A for access and utilities; and in addition, all other parts of the Property necessary and convenient to its existence, maintenance and safety, and normally in common use as defined in the Condominium Act, except such parts of the Property as may be specifically excepted or reserved herein or in any schedule attached hereto. Each Unit Owner in any building shall have the right to use the common elements in common with all other Unit Owners, as may be required for the purposes of ingress and egress to and use, occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such rights shall extend to the Unit Owners and the members of the immediate family, guests and other authorized occupants, licensees, and visitors of the Unit Owner. The use of the common elements and the rights of the Unit Owners with respect thereto shall be subject to and governed by the provisions of the Condominium Act, this Declaration, the Bylaws and Rules and Regulations of the Association, as they may hereafter be amended from time to time.

Section 3.2. Limited Common Elements. Limited common elements are those portions of the common elements allocated for the exclusive use of one or more designated Units. The locations of the common elements to which each Unit has direct access are shown on the Plat and Plans; pursuant to Section 1602-102(4) of the Condominium Act, a shutter, awning, window box, doorstep, stoop, balcony, porch or patio, if any, adjacent to a Unit is a limited common element appurtenant to that Unit. The concrete slab or foundation and ground area below it are limited common elements appurtenant to the Unit above. A driveway and garage, if any, serving a particular Unit is also a limited common element appurtenant to that Unit.

Section 3.3. Alteration of Common Elements by the Declarant. The Declarant reserves the right to modify, alter, remove or improve portions of the common elements, including without limitation any equipment, fixtures and appurtenances, when in the Declarant's judgment it is necessary or desirable to do so, until the expiration of the applicable warranty period.

Section 3.4. Rental Operation. The Declarant shall have the right to operate any Units owned by the Declarant as a rental project. The Declarant may establish and maintain all offices, signs and other accoutrements normally used in the operation of such rental properties in the sole discretion of the Declarant. Such operations shall be for the benefit of the Declarant and neither the Association nor any Unit Owner (other than the Declarant) shall have any right or interest in the profits or losses thereof.

ARTICLE 4

EASEMENTS

In addition to the easements provided by the Condominium Act and those rights and easements excepted and reserved in Schedule A hereto for the benefit of the Declarant and others, the following easements are hereby created, granted and reserved:

Section 4.1. Easement to Facilitate Sales and Construction. The Property shall be subject to an easement in favor of the Declarant pursuant to Section 1602-115 of the Condominium Act. The Declarant reserves the right to use any Units owned or leased by the Declarant as models, management offices, sales offices for this and other projects or customer service offices. The Declarant reserves the right to relocate the same from time to time within the Property; upon relocation, the furnishings thereof may be removed. The Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of the Declarant. This easement shall continue until the Declarant has conveyed all Units which are or may be created hereunder to Unit Owners other than the Declarant.

The Declarant further reserves an easement to connect with and make use of utility lines, wires, pipes and conduits located on the Property for construction purposes, provided that Declarant shall be responsible for the cost of service so used, and to use the common elements for ingress and egress and construction activities and for the storage of construction materials and equipment used in the completion of the Units and common elements. This easement shall continue until the Declarant has conveyed all Units which are or may be created hereunder to Unit Owners other than the Declarant.

Section 4.2. Easement for Access and Support.

(a) The Declarant reserves in favor of the Declarant and the managing agent and/or any other person authorized by

the Executive Board the right of access to any Unit as provided in Section 1603-107(a) of the Condominium Act. In case of emergency, such entry shall be immediate whether or not the Unit Owner is present at the time. Further, until the expiration of the warranty period such entry shall be permitted to perform warranty-related work whether or not the Unit Owner consents or is present at the time. Declarant, its agents, officers, servants, and its successors and assigns, shall have the reasonable right of access to all common elements as long as it or they may own Units or shall have obligations or rights with respect to such areas. The Association or its authorized representatives shall have the irrevocable right, to be exercised by the Manager or Executive Board, to have access to each Unit from time to time during reasonable hours and upon reasonable notice as may be necessary for the maintenance, repair or replacement of any of the common elements therein, or at any time as may be reasonable for making emergency repairs therein necessary to prevent damage to the common elements or to other Units.

(b) Each Unit and common element shall have an easement for lateral and subjacent support from every other Unit and common element, and shall have an easement for encroachments as provided in Section 1602-114 of the Condominium Act.

Section 4.3. Easement to Facilitate Discharge of Declarant's Obligations. Pursuant to Section 1602-116 of the Condominium Act, Declarant shall have an easement through the common elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Declarant's rights.

Section 4.4. Declarant's Right to Grant Easements. The Declarant shall have the right, until all Units which may be created hereunder have been conveyed to Unit Owners other than Declarant, to grant and reserve easements and rights-of-way through, under, over and across the Property for construction purposes, and for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities.

ARTICLE 5

AMENDMENT

Section 5.1. Amendments. Except in cases of amendments to this Declaration that may be unilaterally executed and recorded by the Association as described in Sections 1601-107, Eminent Domain, 1602-108(c), Allocation of Limited Common Elements, 1602-113, Subdivision of Units and 1602-117(a), Amendment of

Declaration, of the Condominium Act and except in cases, where permitted, of amendments to this Declaration by certain Unit Owners, as described in Sections 1602-108(b), Reallocation of Limited Common Elements, 1602-112(a), Relocation of Boundaries Between Adjoining Units, 1602-113(b), Subdivision of Units, or 1602-118(b), Termination of Condominium, of the Condominium Act, and except in cases of amendments to the Declaration that may be executed by the Declarant under Section 1602-109(f), Plats and Plans, or under Section 1602-110, Exercise of Development Rights, of the Condominium Act, and subject to the other provisions of this Declaration and of the Condominium Act, this Declaration, and the Plats and Plans may be amended as follows:

a. Before Any Conveyance. Prior to the conveyance of any Unit by the Declarant to a Unit Owner other than as security for an obligation, the Declarant shall in any manner which the Declarant may deem appropriate have the right to amend and re-amend this Declaration.

b. After First Conveyance. After the first conveyance of a Unit by a Declarant and except as provided herein, the Declaration may be amended by either the vote or agreement of owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 5.2. Material Amendments. Approval of amendments of a material nature must be obtained from Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of Units that are subject to mortgages held by Eligible Mortgage Holders, excepting, however, those amendments adopted by the Declarant pursuant to the exercise of Development Rights. "Eligible Mortgage Holder" means the holder of a recorded first mortgage on a Unit which has delivered written notice to the Association stating its name and address, the number of the Unit and that such mortgage is a first mortgage. A change to any of the following would be considered as material:

- (a) voting rights;
- (b) assessments, assessment liens, or the priority of assessment liens;
- (c) reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common or Limited Common Elements, or rights to their use;
- (f) redefinition of any Unit boundaries;

- (g) convertibility of Units into Common Elements or vice versa;
- (h) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (i) insurance or fidelity bonds
- (j) leasing of Units;
- (k) imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit;
- (l) a decision by the Association to establish self-management when professional management had been required previously by the Condominium Documents or by a mortgagee;
- (m) restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (n) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
- (o) any provisions that expressly benefit mortgage holders, insurers or guarantors.

An Eligible Mortgage Holder who receives by certified or registered mail, return receipt requested, a written request to approve a proposed amendment, and who fails to submit a response within thirty (30) days after it receives proper notice, shall be deemed to have approved such request in writing.

Section 5.3. Certain Amendments. Notwithstanding the foregoing provisions of this Article, except as otherwise permitted by the Condominium Act and provided in this Declaration, no amendment may increase the number of Units or change the boundaries of any Unit, the Allocated Interests allocated to a Unit, or the uses to which any Unit is restricted without the unanimous consent of the Unit Owners. No amendment of this Declaration shall make any change which would in any way affect any of the rights, privileges, powers and options of the Declarant, its successors or assigns, unless the Declarant, or its successors or assigns shall join in the execution of such amendment.

Section 5.4. Notice and Challenge. No action to challenge the validity of an amendment to this Declaration adopted by the

Association pursuant to this Article may be brought more than one year after such amendment is recorded. After each amendment to this Declaration adopted pursuant to this Article has been recorded, notice thereof shall be sent to all Unit Owners and to all known mortgage holders at the address last furnished to the Executive Board, but failure to send such notices shall not affect the validity of such amendment. The Association shall make copies of the Declaration and all amendments thereto available for inspection at reasonable times upon reasonable request for such inspection.

ARTICLE 6

RESTRICTIONS ON USE, OCCUPANCY OR ALIENATION

Section 6.1. Use and Occupancy Restrictions on Units. The Declarant shall own in fee simple each Condominium Unit to which legal title is not conveyed or otherwise transferred to another person. The Declarant retains the right to enter into leases with any persons for the occupancy of any of the Units owned by the Declarant. Each Unit is intended to serve as a self-contained living Unit and shall be subject to the Rules and Regulations and Bylaws of the Association. No Unit shall be used for other than single-family, residential purposes for the Unit Owner, his relatives, guests or tenants.

Section 6.2. Interval Ownership Prohibited. No ownership interest in any Unit in the Condominium shall or may be subdivided to permit "time sharing" or other devices to effect interval ownership. For purposes of this paragraph, "devices" to effect interval ownership shall include but not be limited to ownership arrangements, including uses of corporations, trusts, partnerships or tenancies in common, in which four or more persons not members of a single household have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same condominium Unit and such owners have a formal or informal right-to-use agreement.

Section 6.3. Leasing Restrictions. No Unit shall be rented for transient or hotel purposes or in any event for an initial period of less than thirty (30) days and no portion of any Unit (other than the entire Unit) shall be leased for any period. No Unit Owner shall lease a Unit other than on written form of lease requiring the lessee to comply with the Condominium Instruments and Rules and Regulations of the Association. Each Unit Owner shall, promptly following the execution of such a lease of a Unit, forward a conformed copy thereof to the Board.

Section 6.4. Compliance with Condominium Documents. Each Unit Owner shall comply strictly with the Bylaws and with the Rules and Regulations adopted pursuant thereto, and with the covenants, conditions and restrictions set forth or incorporated by reference in this Declaration or in the deed to his Unit. Failure to so comply shall be grounds for an action to recover damages or for injunctive relief, or both, maintainable by the Manager or Executive Board on behalf of the Association or in a proper case by an aggrieved Unit Owner. No Unit Owner shall do any work which may jeopardize the soundness or safety of the property, reduce the value thereof, increase the rate of insurance thereof, or impair any easement, rights, appurtenances or other hereditament consisting of common elements, without the unanimous consent of all the other Unit Owners.

The provisions of this Declaration and the Bylaws and the rights and obligations established hereby shall be deemed to be covenants, running with the land, so long as the Property remains subject to the provisions of the Condominium Act as amended, replaced or revised, and shall inure to the benefit of and be binding upon each and all of the Unit Owners and their respective heirs, representatives, successors, assigns, purchasers, lessees, grantees and mortgagees. By the recording of or by the acceptance of a deed or other document of conveyance, which deed or document transfers a Unit or any interest therein, the grantee, his heirs, successors or assigns shall be deemed to accept and agree to be bound by and subject to all of the provisions of the Condominium Act, this Declaration, and the Bylaws. Acceptance of such deed shall also constitute waiver of minor discrepancies in said Plat and Plans.

ARTICLE 7

SPECIAL DECLARANT RIGHTS; NO OBLIGATIONS

Section 7.1. Special Declarant Rights. Special declarant rights are those rights reserved for the benefit of the Declarant as provided for in the Condominium Act and the Condominium Instruments, and shall include without limitation the following rights: (a) to complete improvements indicated on the Plat and Plans filed with the Declaration; (b) to exercise development rights; (c) to maintain sales offices, management offices, customer service offices, signs advertising the Condominium and models; (d) to use easements through the common elements for the purpose of making improvements within the Condominium or real estate which may be added to the Condominium; and (e) to appoint or remove any officer of the Association or any Member of the Executive Board or to approve any acts of the Association or the Executive Board during the period of Declarant control.

Except as otherwise provided herein, these rights may be exercised by the Declarant until such time as the Declarant has conveyed all Units which may be created hereunder to Unit Owners other than the Declarant.

Section 7.2. No Obligations. Nothing contained in the Condominium Instruments shall be deemed to impose upon the Declarant or its successors or assigns any obligation of any nature to build, construct or provide any improvements except to the extent required by the Condominium Act.

ARTICLE 8

DEVELOPMENT RIGHTS

The Declarant reserves the right to add real estate to the condominium, to create and construct up to eighty-eight (88) condominium units in addition to the ten (10) Units created by this Declaration within the land described in Schedule E hereto (the "Development Area"), and to create and construct limited common elements appurtenant to the additional Units similar in type and size to the limited common elements created by this Declaration as to the declared Units. The Declarant also reserves the right to create and construct in the Development Area such additional common elements as it in its sole discretion deems to be useful to and in accordance with the design of the Condominium as a whole. As shown on the Plat and as described on Schedule E, the Development Area includes portions of the Land now comprising the Condominium as well as Additional Real Estate which may, but need not, be added to the Condominium. These reserved development rights must be exercised, if at all, within seven (7) years from the date on which this Declaration is recorded. Each of the development rights reserved herein may be exercised as to different parcels of the Property and at different times, and no assurances are made by the Declarant as to the order in which the development rights will be exercised as to those parcels. The exercise of any development right as to any portion of the Property subject to that right does not obligate the Declarant to exercise that right in all or any other portion of the remainder of the Property.

The exercise of any of the foregoing development rights shall be evidenced by the recordation of an amendment to this Declaration in accordance with Section 1602-110 of the Condominium Act. The reallocation of common element interest, common expense liability and voting rights shall be in accordance with the formulas set forth in Section 2.2. The amendment will become effective upon its recordation in the Cumberland County Registry of Deeds. Additionally, any improvements created pursuant to such an amendment shall be consistent with existing improvements in terms of quality of construction and shall be substantially completed prior to their creation.

ARTICLE 9

ASSOCIATION; EXECUTIVE BOARD

Section 9.1. The Association. The Association is the governing body of the Condominium and shall have all of the powers set forth in the Condominium Act, except as otherwise stated in this Declaration; and shall be subject to the provisions of the Condominium Act, this Declaration and the Bylaws, as amended from time to time. The members shall consist of all Unit Owners of the Condominium in accordance with the above provisions.

Section 9.2. Initial Executive Board. Subject to the provisions of the Condominium Act, this Declaration or the Bylaws, the Executive Board shall have the power to act on behalf of the Association. The initial Board shall consist of three (3) Members. The Members of the initial Board shall be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations. The Declarant-appointed Board Members shall be replaced with Members elected by the Unit Owners, in accordance with the provisions of Section 9.3.

Section 9.3. Election by Unit Owners of Executive Board. No later than the earlier of (i) sixty (60) days after the conveyance of 75% of the Units (including Units which may be created pursuant to development rights) to Owners other than the Declarant or (ii) five (5) years following conveyance of the first Unit to an Owner other than the Declarant, the Owners shall elect an Executive Board initially composed of three (3) persons each of whom shall be Unit Owners or spouses of Unit Owners or, in the case of a Unit Owner which is a corporation, partnership, trust or estate, a designated agent thereof. The Board Members so elected shall serve until the first regular election of the Board held at the first annual meeting of the Association held in accordance with the Bylaws.

ARTICLE 10

MAINTENANCE; ASSESSMENTS

Section 10.1. Maintenance. Each Unit Owner shall furnish and be responsible for, at his own expense, all the maintenance, repairs and replacements within his own Unit; provided, however, such maintenance, repair and replacements as may be required for the functioning of or for the bringing of water, gas, and electricity to the Unit, shall be furnished by the Association as part of the common expenses. The Association shall be responsible for the maintenance, repair and administration of the common elements.

Section 10.2 Insurance. The Association, through its Executive Board, shall obtain and maintain such master policies of insurance for the Condominium as are required by the Bylaws

Section 10.3. Assessments. Each Unit Owner shall pay to the Association, or its authorized representative, monthly, or as otherwise required by the Association, his proportionate share, as assessed by the Executive Board, of the expenses of maintenance, repair, replacement, insurance, administration and operation of the common elements and of any reserves for operation, maintenance or replacement established by the Executive Board. Such proportionate share shall be equivalent to the Common Element Interest and Common Expense Liability as set forth in Schedule B attached hereto, except that common expenses which, in the judgment of the Executive Board of the Association, benefit fewer than all of the Units may be assessed exclusively against the benefitted Units. Payment thereof shall be in such amount and at such times as may be provided by the Bylaws or the Rules and Regulations of the Association and shall be subject to annual review. In the event of the failure of a Unit Owner to pay such assessments when due, the amount thereof shall constitute a lien on the interest of such Unit Owner, as provided by the Condominium Act. The obligation to pay any amounts required by the provisions hereof shall commence no later than 60 days after the sale of the first Unit.

Section 10.4. Working Capital Fund. The Declarant shall establish a segregated working capital fund for the Association equal to a minimum of two (2) months estimated Common Expense Liability for each Unit. Each Unit's share of the working capital fund shall be collected from the Unit purchaser upon the initial transfer of title from the Declarant to the purchaser and shall be transferred to the Association for deposit into the working capital fund. The amount paid by the Unit purchaser shall not be considered as advance payment of the normal Common Expense Liability and no Unit owner shall be entitled to a refund of these monies by the Association upon the subsequent conveyance of his Unit or otherwise. Upon transfer of control of the Association to the Unit owners pursuant to Section 9.3 hereof, the Declarant shall pay each unsold Unit's share of the working capital fund to the Association. When any such unsold Unit is sold, the Declarant shall be entitled to reimbursement for the Unit's prepaid share. The working capital fund shall not be used for any purpose until after such transfer of control.

ARTICLE 11

EMINENT DOMAIN

Section 11.1. Acquisition of Unit.

(a) If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must compensate the Unit Owner for his Unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's allocated interests are automatically reallocated to the remaining Units in proportion to the respective allocated interests of those Units before the taking, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection shall be thereafter a common element.

(b) Except as provided in subsection (a), if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and its interest in the common elements whether or not any common elements are acquired. Upon acquisition: (1) that Unit's allocated interests are reduced in proportion to the reduction in the size of the Unit; and (2) the portion of the allocated interests, votes, and common expense liability divested from the partially acquired Unit, if any, are automatically reallocated to that Unit and the remaining Units in proportion to the respective allocated interests of those Units before the taking, with the partially acquired Unit participating, if appropriate, in the reallocation on the basis of its reduced allocated interests.

Section 11.2. Acquisition of Common Elements. If part of the common elements are acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the Association. Any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the Units to which that limited common element was allocated at the time of acquisition. Each Unit Owner shall be deemed to have delegated to the Executive Board his right to negotiate or settle with any entity seizing any of the common elements by eminent domain.

Section 11.3. Court Decree. The court decree shall be recorded in the Cumberland County Registry of Deeds.

Section 11.4. Priority of Liens. Notwithstanding anything to the contrary in this Declaration, the Bylaws or the Rules and Regulations of the Association, lien holders on any Unit, common element, or limited common element shall have a lien on any such awards in order of priority of their respective liens.

ARTICLE 12

MORTGAGES OF UNITS: RIGHTS OF MORTGAGEES

Section 12.1. Right to Mortgage. Each Unit Owner shall have the right to mortgage or encumber his own respective Unit together with the Common Element Interest, Common Expense Liability and voting rights (the "Allocated Interests") appurtenant to such Unit. Except as otherwise permitted by Section 1603-112 of the Condominium Act and subject to this Declaration, no Unit Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the common elements or any part thereof except his own Unit and his own respective Allocated Interests appurtenant to his Unit. A Unit Owner who mortgages his Unit shall notify the Executive Board in writing of the name and address of his mortgagee(s) and shall file a conformed copy of the note and mortgage with the Board.

Section 12.2. Mortgage Foreclosure. Any mortgagee of a Unit holding a recorded first mortgage on a Unit that obtains title to the Unit pursuant to the remedies provided in the mortgage, or through a completed foreclosure of the mortgage, or through deed (or assignment) in lieu of foreclosure, shall take the Unit with the Allocated Interests appurtenant thereto free of such claims and liens for unpaid assessments for common expenses, interest and costs levied against such Unit which accrue prior to the acquisition of title to such Unit by the mortgagee, other than the proportionate share of the common expenses which become due and payable from and after the date on which the mortgagee shall acquire title to the Unit through a completed foreclosure or deed (or assignment) in lieu of foreclosure.

Section 12.3. Rights of Eligible Mortgage Holders.

(a) In addition to any notices required under Section 5.2, the Association shall send reasonable prior written notice by prepaid United States mail to Eligible Mortgage Holders of the consideration by the Association of the following proposed actions:

(1) The termination of the Condominium pursuant to Section 1602-118 of the Act;

(2) A change in the allocated interest of a Unit, a change in the boundaries of a Unit or a subdivision of a Unit;

(3) The merger or consolidation of the Condominium with another condominium;

(4) The conveyance or subjection to a security interest of any portion of the Common Elements;

(5) The proposed use of any proceeds of hazard insurance required to be maintained by the Association under Section 1603-113(a) of the Act for purposes other than the repair or restoration of the damaged property;

(6) The adoption of any proposed budget by the Executive Board and of the date of the scheduled Unit owners meeting to consider ratification thereof. A summary of the proposed budget shall accompany this notice; and

(7) Any default in the performance or payment by a Unit owner of any obligations under the Declaration, including, without limitation, default in the payment of Common Expense liabilities.

(b) In the event of any proposed actions described in subsection (a), paragraphs (1), (2), (3), (4), or (5) hereinabove, an Eligible Mortgage Holder shall have the right, but not the obligation, in place of the Unit owner to cast the votes allocated to that Unit or give or withhold any consent required of the Unit owner for such action by delivering written notice to the Association with a copy to the Unit owner prior to or at the time of the taking of the proposed action, which notice shall be sent by prepaid United States mail, return receipt requested, or by delivery in hand. Failure of the Eligible Mortgage Holder to so exercise such rights shall constitute a waiver thereof and shall not preclude the Unit owner from exercising such right. In the event of any default described in subsection (a), paragraph (7), the Eligible Mortgage Holder shall have the right, but not the obligation, to cure such default.

(c) In addition, an Eligible Mortgage Holder or its representative shall have the right to attend Association and Executive Board meetings for the purposes of discussing the matters described in subsection (a), paragraphs (1) through (6).

Section 12.4. Rights of Mortgage Holders, Insurers or Guarantors.

(a) The Association shall send timely prior written notice of the following matters by prepaid United States mail to holders, insurers and guarantors of the mortgage on any Unit:

(1) Any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing the mortgage;

(2) Any sixty (60) day delinquency in the payment of Assessments or other charges owed by the owner of any Unit on which it holds the mortgage;

(3) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(4) Any proposed action that requires the consent of a specified percentage of the Eligible Mortgage Holders.

(b) To receive such notice, the mortgage holder, insurer or guarantor shall send a written request therefor to the Association, stating its name and address and the Unit number or address of the Unit on which it holds, insures or guarantees the mortgage.

Section 12.5. Condemnation Rights. No provision of this Declaration shall give a Unit owner, or any other party, priority over any rights of the Mortgagee of a Unit pursuant to its mortgage in the case of a distribution to such Unit owner of insurance proceeds or condemnation award for loss to or a taking of one or more Units and/or Common Elements.

Section 12.6. Books and Records. Any Unit Owner and any Mortgagee shall, including insurers or guarantors of the mortgage, have the right, exercisable by written notice to the Executive Board, to examine the books and records of the Association and to require that it be provided with a copy of each annual report of the Association and other financial data of the Association reasonably requested by such Mortgagee. Upon written request of any holder, insurer or guarantor of any first mortgage, after at least fifty Units have been created, the Association will provide an audited financial statement of the Association for the preceding year.

Section 12.7. Rights of First Refusal. Notwithstanding anything to the contrary elsewhere contained in this Declaration, the Bylaws or the Rules and Regulations, in the event that the Unit Owners in the future adopt any right of first refusal (which right may be adopted only by amending this Declaration) in the case of the sale of any Unit, such right of first refusal shall not affect, impair or apply to the right of any mortgagee to: (1) foreclosure or take title to the Unit pursuant to the remedies provided in the mortgage, (2) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (3) sell or lease a Unit acquired by the procedures hereinabove set forth.

ARTICLE 13

TERMINATION

The Condominium may be terminated only by agreement of the Unit owners of Units to which eighty percent (80%) of the votes in the Association are allocated and such agreement must also be approved by Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders; provided, however, that if the Condominium is being terminated for reasons other than substantial destruction or condemnation of the Condominium, the termination of the Condominium must also be approved by Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of Units that are subject to mortgages held by Eligible Mortgage Holders. Termination of the Condominium will be governed by the provisions of Section 1602-118 of the Act.

ARTICLE 14

MISCELLANEOUS

If any provision of this Declaration, the Bylaws or the Rules and Regulations, or any section, sentence, clause, phrase, or word therein, or the application thereof in any circumstances be judicially held in conflict with any applicable laws, including, but not limited to, the Condominium Act, then the laws shall be deemed controlling; but the validity of the remainder of this Declaration, the Bylaws and Rules and Regulations, and the application of any such provision, section, clause, phrase, or word in other circumstances shall not be affected thereby.

Any dispute or disagreement between Unit Owners with respect to interpretation or application of this Declaration or the Bylaws or Rules and Regulations shall be determined by the Executive Board, which determination shall be final and binding on all parties.

If any term, covenant, provision, phrase or other element of this Declaration, the Bylaws, any deed to a Unit, or the Rules and Regulations is held to be invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify, or impair in any manner, any other term, covenant or provision, phrase or other element of such documents.

Any Unit Owner in default in the payment of any amount due the Association or in violation of any provision of the Condominium Act, this Declaration, the Bylaws, or the Rules and Regulations of the Association, which violation continues for thirty (30) days after notice thereof by the Association to the Unit Owner may be prohibited by the Executive Board from the

use and enjoyment of any and all of the common elements not essential to access to the Unit, in addition to all other remedies available to the Board.

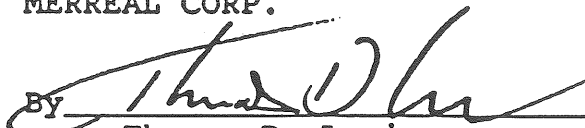
In any dispute between one or more Unit Owners and the Declarant regarding the common elements, the Executive Board shall act for the Unit Owners, and any agreement with respect thereto by the Board shall be conclusive and binding upon the Unit Owners.

All claims, disputes and other matters in question between the Declarant, on the one hand, and the Association or any Unit Owners on the other hand, arising out of or relating to, this Declaration, the Bylaws, or the deed to any Unit or the breach thereof, except for claims which have been waived by the acceptance of a deed, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Notice of the demand for arbitration shall be filed in writing with the other parties and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations or other principals of law and equity.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by Thomas D. Lewis, President of Merreal Corp. this 20th day of April , 1989.

MERREAL CORP.

BY 
Thomas D. Lewis
Its President

STATE OF MAINE
COUNTY OF CUMBERLAND

4/21, 1989

Personally appeared the above-named Thomas D. Lewis,
President of Merreal Corp., and acknowledged the foregoing
Declaration to be his free act and deed in his said capacity
and the free act and deed of said Corporation.

Before me,

Michael P. McCarron
Notary Public/Attorney at Law
MICHAEL P. MCCARRON
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES OCTOBER 3, 1992

Print Name

4906S

LIMITED JOINDER

The undersigned, Maine Savings Bank, as mortgagee and secured party (hereinafter "Mortgagee") under two Mortgage and Security Agreements dated December 28, 1987 and November 1, 1988, and under a UCC-1 Financing Statement dated November 1, 1988 and recorded in the Cumberland County Registry of Deeds in Book 8161, Page 85; Book 8543, Page 110; and Book 8543, Page 140, respectively (hereinafter collectively "Mortgage and Security Agreements"), each by and between Merrymeeting Developers, Inc. and said Maine Savings Bank, hereby submits the parcel described in Schedule A of this Declaration of Condominium, being a part of the premises subject to said Mortgage and Security Agreements, to the provisions of said Maine Condominium Act for the sole and limited purposes of compliance with said Act and for the creation and granting of easements, licenses, uses, rights and privileges as described in the Declaration, provided that such consent shall not be construed to make said Maine Savings Bank, as Mortgagee, the Declarant or to impose on it any obligations or liabilities whatsoever under this Declaration.

The undersigned hereby agrees that its security interest under the aforesaid Mortgage and Security Agreements, shall be subject to the provisions of the Maine Condominium Act, as amended, and shall attach to the Units, Common Elements, Special Declarant Rights and all other rights and property created under the Declaration. The undersigned further agrees that in the exercise of its rights as a Mortgagee under the aforementioned Mortgage and Security Agreements, it does and will recognize the establishment of a condominium by this Declaration of Condominium.

IN WITNESS WHEREOF, the said Maine Savings Bank has caused this instrument to be signed in its corporate name and sealed with its corporate seal by EDWARD A. DOX
its VICE PRESIDENT, this 21st day of APRIL, 1989.

Signed, Sealed and Delivered
in the presence of:

Michael P. McCarron

MAINE SAVINGS BANK

By [Signature]

Its

MICHAEL P. McCARRON
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES MARCH 2, 1990

Print Name

STATE OF MAINE
CUMBERLAND, SS.

APRIL 21, 1989

Personally appeared the above-named EDWARD A. DOX, VICE PRESIDENT of said Maine Savings Bank, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Maine Savings Bank.

Before me,

Michael P. McCarron

Notary Public/Attorney at Law

MICHAEL P. McCARRON
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES MARCH 3, 1994

Print Name

5201S

Schedule A

A certain parcel of land situated on the Westerly side of Ray Street in the City of Portland, County of Cumberland and State of Maine bounded and described as follows:

Beginning at a 5/8" iron rod set on the Westerly sideline of Ray Street at the Southeasterly corner of the land of Lewis H. and Joan I. Waugh (see Book 2790, page 464) which rod is located S 19°-46'-05" E along the Westerly sideline of Ray Street 255.00 feet from the Southerly sideline of Allen Avenue;

Thence, S 19°-46'-05" E along the sideline of Ray Street 331.98 feet to a 3/4" iron pipe found;

Thence, S 13°-05'-20" E along the sideline of Ray Street 88.43 feet to the land now or formerly of William Pickrell (Book 2181, page 203);

Thence, S 76°-54'-40" W by the land of Pickrell 150.00 feet to a point marked by a 5/8" iron rod set;

Thence, S 13°-05'-20" E by the land of Pickrell 150.00 feet to a point marked by a 5/8" iron rod set at the land now or formerly of John N. Jr. and Glennis E. Fitzpatrick (Book 2773, page 224);

Thence, S 76°-54'-40" W by the land of Fitzpatrick 100.00 feet to a point marked by a 5/8" iron rod set;

Thence, S 13°-05'-20" E by the land of Fitzpatrick 90.00 feet to a point;

Thence, S 76°-54'-40" W by other land of Declarant 166.98 feet to a point;

Thence, N 63°-29'-00" W by other land of Declarant 190.24 feet to a point;

Thence, N 19°-29'-20" W by the land of F. S. Plummer Co. 302.02 feet to a drill hole found and the land now or formerly of Serena M. Edwards (Book 1786, page 325);

Thence, N 53°-42'-00" E by the land of Edwards 34.49 feet to a drill hole found;

Thence, N 19°-43'-35" W by the land of Edwards 223.29 feet to the land now or formerly of John D. R. and Carrie L. Mulhern (Book 3467, page 321);

Thence, N 70°-35'-55" E by the land of Mulhern and by the land now or formerly of Andrew H. and Frances J. Grant (Book 3649, page 68) 170.14 feet;

Thence, N 83°-13'-15" E by the land now or formerly of Richard Libby 275.88 feet to a point marked by a 5/8" iron rod set at the Southwest corner of the land of Waugh;

Thence, N 70°-13'-55" E by the land of Waugh 110.00 feet to the point of beginning.

Also a Sewer Easement from Richard Libby and Virginia Crabtree dated April 23, 1986, recorded in the Cumberland County Registry of Deeds at Book 7145, Page 81.

Meaning and intending to describe a portion of the premises conveyed to the Declarant by Deed of Merrymeeting Developers, Inc. dated November 29, 1988 and recorded in said Registry of Deeds.

Subject to the following rights, easements, conditions and approvals:

1. A drainage pipe easement granted by David I. Libby to John D.R. Mulhern, et al., dated November 18, 1982 and recorded in the Cumberland County Registry of Deeds in Book 5067, Page 214;

2. Twenty-five foot set back requirements as set forth in Instruments recorded in said Registry of Deeds in Book 1815, Page 321 and Book 6257, Page 342;

3. A pipeline easement granted by Merrymeeting Developers, Inc. to Portland Water District dated September 21, 1988 and recorded in said Registry of Deeds in Book 8490, Page 164;

4. Conditions of Approval from the City of Portland Planning Board appearing on the project subdivision plans recorded in said Registry of Deeds; and

5. Conditions of Approval from the Department of Environmental Protection set forth in Site Location Orders relating to the project and recorded in said Registry of Deeds.

Excepting and reserving to Merreal Corp., as owner of the Additional Real Estate described in Paragraph 2 of Schedule E of this Declaration, an easement for all purposes over, under and along the 50 foot wide right-of-way shown on the Plat.

4931S

SCHEDULE B

<u>Unit Number</u>	<u>Common Element Interest and Common Expense Liability</u>	<u>Vote</u>
1	10%	1
2	10%	1
3	10%	1
4	10%	1
5	10%	1
6	10%	1
7	10%	1
8	10%	1
9	10%	1
<u>10</u>	<u>10%</u>	<u>1</u>
10	100%	10

The formula for allocating and reallocating Common Element Interest, Common Expense Liability and Vote for each Unit is set forth in Section 2.2 hereof.

4916S

SCHEDULES C and D

SCHEDULE C

This Schedule consists of the following plat recorded herewith in the Cumberland County Registry of Deeds:

Plat: Fallbrook, a Condominium on Ray Street, Portland, Maine made for Merreal Corp. by Owen Haskell, Inc., dated April 11, 1989.

SCHEDULE D

This Schedule consists of the following plans recorded herewith in the Cumberland County Registry of Deeds:

Floor Plans: Fallbrook, a Condominium, Portland, Maine made for Merreal Corp. by Archtellic, Architects, dated February 19, 1989 (4 sheets).

4916S

SCHEDULE E

DEVELOPMENT AREA

The Development Area is shown on the Plat recorded herewith (Schedule C) and consists of the following parcels of real estate:

1. All that portion of the real estate described in Schedule A, excepting, however, the Units now or hereafter created by this Declaration and all their appurtenant limited common elements.

2. Additional Real Estate. A certain parcel of land situated Westerly of Ray Street in the City of Portland, County of Cumberland and State of Maine bounded and described as follows:

Beginning at the southeasterly corner of Fallbrook, a Condominium at a point on the Westerly sideline of land now or formerly of John N. Jr. and Glennis E. Fitzpatrick (Book 2773, page 224);

Thence, S 13°-05'-20" E by the land of Fitzpatrick 110.00 feet to a point marked by a 5/8" iron rod set;

Thence, N 76°-54'-40" E by the land of Fitzpatrick 256.90 feet to a point on the Westerly sideline of Ray Street marked by 5/8" iron rod set;

Thence, S 16°-25'-15" E by the sideline of Ray Street 1.42 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Ivan G. and Edwina F. Callahan (Book 2997, page 486);

Thence, S 73°-34'-45" W by the land of Callahan 220.00 feet to a point marked by a 5/8" iron rod set;

Thence, S 16°-25'-15" E by the land of Callahan 65.00 feet to a point marked by a 5/8" iron rod set;

Thence, N 73°-34'-45" E by the land of Callahan 100.00 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Malcolm A. and Gail E. McDonald (Book 3614, page 219);

Thence, S 18°-02'-05" E by the land of McDonald 163.18 feet to a point marked by a 5/8" iron rod set;

Thence, N 74°25'-15" E by the land of McDonald 120.00 feet to a point on the Westerly sideline of Ray Street marked by a 5/8" iron rod set;

Thence, S 18°-35'-45" E by the sideline of Ray Street 47.17 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Donald A. and Evelyn Thompson (Book 2892, page 451);

Thence, S 71°-24'-15" W by the land of Thompson 150.00 feet to a point marked by a 5/8" iron rod set;

Thence, S 18°-35'-45" E by the land of Thompson 50.00 feet to a point marked by a 5/8" iron rod set;

Thence, N 71°-24'-15" E by the land of Thompson 50.00 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Richard E. and Carolyn Grover (Book 2895, page 492);

Thence, S 18°-35'-45" E by the land of Grover and by the land now or formerly of Raymond A. and Florence M. Sevigny (Book 2490, page 327) 72.78 feet to a point marked by a 5/8" iron rod set;

Thence, S 17°-48'-10" E by the land of Sevigny and by the lands now or formerly of Gladys A. and Kenneth V. Moody (Book 3471, page 62), Betty L. Denbow (Book 2682, page 313), Anna J. Aiken (Book 3570, page 212), David A. and Carolyn J. Matthews (Book 4483, page 163), Laura H. Clark (Book 3708, page 194), and George and Doris Castonia (Book 4960, page 286) 333.24 feet to a point marked by a 5/8" iron rod set at the land now or formerly of Frances F. Gatchell (Book 6257, page 342);

Thence, S 71°-28'-30" W by the land of Gatchell 51.09 feet to a point marked by a 5/8" iron rod set;

Thence, S 67°-57'-00" W by the land of Gatchell and lands now or formerly of Eleanor L. and Sherry Sapko, Charles E. and Linda J. Foshay (Book 3920, page 212), Linwood J. and Ruth L. Thaxter, Charles L. Arey (Book 2320, page 55), Dorothy M. and Richard M. Butler (Book 3765, page 177), Norman C. and Caroline M. Walton (Book 2014, page 140), James P. and Lula S. Cullen (Book 2044, page 474), and Glenda R. and Roger R. Pushor (Book 4755, page 44) 481.12 feet to a point marked by a 5/8" iron rod set;

Thence, S 54°-20'-55" W by the land of Pushor 29.58 feet to a point marked by a 5/8" iron rod set;

Thence, S 45°-14'-05" W by the land now or formerly of Claire D. and Edward L. Gulick (Book 3782, page 285) and by the land now or formerly of John H. and Jeannette B. Greer (Book 2824, page 131) 186.45 feet to a stone wall intersection and the end of Wadco Street;

(2) Easements from Calvin L. and Myrtle W. Gailey, dated December 20, 1985, and recorded in the Cumberland County Registry of Deeds at Book 7036, Page 96;

(3) Easement from Francis Frances F. Gatchell dated December 20, 1985, and recorded in the Cumberland County Registry of Deeds at Book 7036, Page 100; and

(4) Easement to the City of Portland for a turn-around at the terminus of Topsham Street as shown on the Plat.

Meaning and intending to describe a portion of the premises conveyed to MM II Real Estate Corporation by Deed of Merrymeeting Developers, Inc. dated November 29, 1988 and recorded in said Registry of Deeds.

Also, an easement for all purposes over, under and along the 50 foot wide right of way shown on the Plat.

4916S

EXHIBIT B

BYLAWS OF THE FALLBROOK CONDOMINIUM ASSOCIATION

ARTICLE I. OFFICE

Section 1. Principal office. The principal office of the Fallbrook Condominium Association (hereinafter referred to as "the Association") shall be maintained at Portland, Maine.

Section 2. Place of meetings. All meetings of the Association shall be held at its principal office unless some other place is stated in the call.

ARTICLE II. ASSOCIATION OF OWNERS

Section 1. Membership. The members of the Association (hereinafter "members") shall consist of all Unit Owners of Fallbrook, a Condominium, a property submitted to the provisions of the Maine Condominium Act and located in Portland, Maine, Cumberland County, Maine. Membership shall be in accordance with the Declaration or these Bylaws, as amended from time to time. The membership of each Unit Owner terminates upon a sale, transfer or other disposition of his ownership interest in the Unit as provided in the Declaration, whereupon the membership and any interest in the funds of the Association shall automatically transfer to and be vested in the successor in ownership. A conveyance in mortgage of the Unit, however, shall not operate to transfer membership until the mortgage is foreclosed or the property sold in lieu of foreclosure. The Association may, but is not required to, issue certificates of membership.

Section 2. First Meeting; Annual Meeting. The first meeting of the members shall be held, at the call of the Declarant, within 60 days after the closing of sales of 75% of the Units by the Declarant, or the expiration of five (5) years from the date of the first Unit sale by Declarant, whichever is first. Thereafter, the annual meeting of the Association shall be held each year on the first Monday of April, or in the event that day is a legal holiday, then on the first day thereafter which is not a holiday.

Section 3. Special meetings. Special meetings of the members may be held at any time upon the call of the President or upon the call of twenty percent (20%) Unit Owners. Upon receipt of the call, the Secretary shall send out notices of the meeting to all members of the Association.

Section 4. Notice of meetings. A written or printed notice of every meeting of the Association, stating whether it is an annual meeting or special meeting, the authority for the call, the place, day, and hour of the meeting, and the purpose therefor shall be given by the Secretary or the person or persons calling the meeting at least ten (10) days before the

date set for the meeting. Such notice shall be given to each member as indicated in the records of the Association by delivery in hand or mailing such notice, postage prepaid, addressed to the member at his address as it appears on the records of the Association. Such notice shall also be given to mortgage holders, insurers and guarantors when required by Article 12 of the Declaration. If notice is given pursuant to provisions of this section, the failure of any member to receive actual notice of the meeting shall in no way invalidate the meeting or any proceedings thereat. Upon written request for notices mailed by registered mail addressed to the Secretary of the Association at the address of the Association, the holder of any duly recorded mortgage against any Unit may promptly obtain a copy of any and all notices permitted or required to be given to the members from and after receipt of the request until the request is withdrawn or the mortgage is discharged of record.

Section 5. Waiver of notice. The presence of all the members in person or by proxy, at any meeting shall render the same a valid meeting, unless any member shall, at the opening of the meeting, object to the holding of the same for noncompliance with the provisions of Section 4 of this Article II. Any meeting so held without objection shall, notwithstanding the fact that no notice of meeting was given, or that the notice given was improper, be valid for all purposes, and any general business may be transacted and any action may be taken.

Section 6. Quorum. The presence at any meeting of the Association in person or by proxy of Unit Owners whose aggregate voting rights constitute more than 50% of the total voting rights shall constitute a quorum. At any meeting at which a quorum is present, the affirmative vote of a majority of those present shall decide any question except the election of Executive Board Members presented to the meeting, unless a greater percentage vote is required by law, by the Declaration or by these Bylaws. In the election of Board Members, those receiving the greatest number of votes, though less than a majority, shall be elected.

Section 7. Voting. Any person, firm, corporation, trust, or other legal entity or a combination thereof, owning any Unit other than as a mortgagee in the Condominium duly recorded in his or its name, the ownership whereof shall be determined by the records of the Cumberland County Registry of Deeds, shall be a member of the Association, and either in person or by proxy entitled to vote for each Unit so owned at all meetings of the Association. Any provisions to the contrary notwithstanding, co-Owners or joint Owners shall be deemed one Owner. The authority given by a member to another person to represent such member at meetings of the Association shall be in writing, signed by such member or if a Unit is jointly owned

then by all joint Owners, or if such member is a corporation, by the proper officers thereof, and shall be filed with the Secretary, and unless otherwise stated therein, such authority shall be valid until revoked in writing. An executor, administrator, guardian, or trustee may vote in person or by proxy at any meeting of the Association with respect to any Unit owned or held by him in such a capacity, whether or not the same shall have been transferred to his name by a duly recorded conveyance. In case such Unit shall not have so been transferred to his name, he shall satisfy the Secretary that he is the executor, administrator, guardian, or trustee holding such Unit in such capacity. Whenever any Unit is owned by two or more jointly according to the records of said Registry, the Owners thereof may designate in writing one or more of the Owners to cast the vote for all such Owners, and such designation, unless otherwise limited by its terms, shall be valid once filed with the Secretary until revoked by any such Owner by notice in writing filed with the Secretary. The Declarant may exercise the voting rights pertaining to any Unit title to which is in the Declarant. No vote pertaining to a Unit owned by the Association may be cast. Finally, an Eligible Mortgage Holder shall have the voting rights provided by Section 1602-119 of the Maine Condominium Act.

Any specified percentage of Owners refers to the aggregate voting rights and not to the number of Units or Owners.

Section 8. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the members present, whether a quorum be present or not. If the adjournment is for less than thirty (30) days and the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken, no further notice need be given. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

ARTICLE III. EXECUTIVE BOARD

Section 1. Number and qualification. As provided by these Bylaws, the Declaration and the Maine Condominium Act, the Association shall be administered by a board of directors known as the Executive Board (hereinafter "Board"). Until the first meeting, the affairs of the Association shall be governed by a Board composed of three persons appointed by the Declarant, who need not be Unit Owners. Thereafter, the affairs of the Association shall be governed by a Board elected by the members of the Association, initially composed of three persons, and as increased or decreased at any annual meeting by a majority vote, within the limits stated in the Articles of Incorporation. Each Executive Board Member shall be the Owner or the spouse of an Owner of a Unit in the Condominium; or if a

Unit Owner shall be a corporation, partnership, trust or estate, then an officer, partner, trustee or beneficiary thereof (hereinafter "Board Member").

Section 2. Powers and duties. The Executive Board shall have the power and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Owners.

Section 3. Other duties. In addition to other duties imposed by these Bylaws or by resolutions of the Association, the Executive Board shall be responsible for the following:

(a) Care, upkeep, and surveillance of the project and the common elements and facilities.

(b) Determination and collection of the monthly assessments from the Owners.

(c) Designation and dismissal of the personnel necessary for the maintenance and operation of the Condominium and the common elements and facilities.

Section 4. Manager or management agent, employees, generally. The Executive Board may employ for the Association a management agent or manager, at a compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in Section 3 of this Article. Any agreement for professional management, or any other contract providing for services of the Declarant to the Owners, shall not exceed a term of three years and shall be cancellable by either party without cause and without a termination fee upon 90 days written notice. The Board may employ any other employees or agents to perform such duties and at such salaries as the Board may establish. Any first mortgagee of a Unit may file a written request with the Board that it be notified of a change of management agent or manager and the Board shall, upon making such change, give such notification as requested. Until the first meeting of members, the Board may employ or use the services of the Declarant or the Declarant's employees, and all costs and expenses related to those services shall be charged to common expenses. Neither the Board nor the Declarant shall be charged with self-dealing or breach of fiduciary duty by reason of such employment.

Section 5. Election and term of office. From and after the first meeting, the Board Members shall be elected by the Owners. At the first annual meeting of the Association, the term of office of one Board Member shall be fixed for three years, the term of office of one Board Member shall be fixed at two years, and the term of office of one Board Member shall be

fixed at one year. At the expiration of the initial term of office for each Board Member, his successor shall be elected to serve a term of three years. The Board Members shall hold office until their successors have been elected and hold their first meeting, the intent and purpose being that the term of office of at least one-third of the Board Members shall expire annually.

Section 6. Vacancies. Until the first meeting of members, vacancies in the Board shall be filled by appointment by the Declarant. Thereafter, vacancies in the Board caused by any reason other than the removal of a Board Member by a vote of the members shall be filled by vote of the majority of the remaining Board Members, even though they may constitute less than a quorum; and each person so elected shall be a Board Member until a successor is elected at the next annual meeting of the Association.

Section 7. Removal of Board Members. At any regular or special meeting duly called, any one or more of the Board Members may be removed with or without cause by a majority of the members and a successor may then and there be elected to fill the vacancy thus created. Any Board Member whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting.

Section 8. Compensation. No compensation shall be paid to Board Members for their services as Board Members. No remuneration shall be paid to a Board Member for services performed by him for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been adopted by the Board before or after the services are undertaken. A Board Member may not be an employee of the Association.

Section 9. Annual Meeting. The annual meeting of the Executive Board shall be held immediately following the annual meeting of the Association and at the same place, and no notice shall be necessary in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

Section 10. Regular meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board Members. Notice of regular meetings of the Board shall be given to each Board Member, personally or by mail, addressed to his residence, or by telephone, at least three days prior to the day named for such meeting.

Section 11. Special meetings. Special meetings of the Board may be called by the President on three days' notice to each Board Member, given personally or by mail, addressed to his residence, or by telephone, which notice shall state the

time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least two Board Members. Upon the request of any Board Member made within 30 days after a meeting, the person giving notice of the meeting shall execute a sworn affidavit setting forth the specific manner in which notice of the meeting was given to and received by each Board Member.

Section 12. Waiver of notice. Before or after any meeting of the Board, any Board Member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board Member at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Board Members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 13. Quorum. At all meetings of the Board, a majority of the Board Members shall constitute a quorum for the transaction of business, and the acts of the majority of the Board Members present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 14. Unanimous action. Unless otherwise provided by law, the Declaration, or these Bylaws, any action which may be taken at a meeting of the Board may be taken without a meeting if all of the Board Members sign written consents, setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of Board meetings and shall have the same effect as a unanimous vote.

Section 15. Bonds of officers and employees. The Board may require that all officers and employees of the Association handling or responsible for corporate funds shall furnish adequate bonds. The premiums on such bonds shall be paid by the Association.

Section 16. Committees. The Board may establish such standing or other committees, with such powers and duties, as it deems advisable.

ARTICLE IV. OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Secretary, and a Treasurer all of whom shall be elected by the Executive Board. The Board

Members may in their discretion appoint an Assistant Treasurer, and an Assistant Secretary, and such other officers, as in their judgment may be necessary.

Section 2. Election of officers. The principal officers of the Association shall be elected annually by the Board at the annual meeting and shall hold office at the pleasure of the Board.

Section 3. Removal of officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. In his absence, a chairman pro tempore may be chosen by the members of the Association or, as the case may be, to preside at a meeting. He shall have all of the general powers and duties which are usually vested in the office of president of an association, including but not limited to the power to appoint ad hoc committees from among the Owners or their spouses from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Board or of the Association, shall give all notices as provided by these Bylaws, and shall have other powers and duties as may be incidental to the office of Secretary, given him by these Bylaws or assigned to him from time to time by the Board Members. If the Secretary shall not be present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose. The Secretary shall be responsible for the filing of all reports and documents required to be filed by the Association with any governmental agency. The Secretary shall keep a record of the names and addresses of all Unit Owners and mortgage holders, and shall keep copies of all Condominium documents. The Secretary shall, within ten (10) days after receipt of a request and payment of a fee, established by the Board, provide any person entitled thereto a written statement or certification of the information required to be provided by the Association pursuant to Section 1603-116(h) and 1604-108(b) of the Maine Condominium Act.

Section 6. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. Such books shall be available for examination by

Unit Owners during reasonable weekday hours. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board. He shall be responsible, subject to the direction of the Board, for preparing and providing to the Secretary for dissemination to the members all financial reports, budgets and notices required, and for the preparation and signing, if necessary, of all financial reports or tax returns required to be filed by the Association. The Treasurer shall have such other powers and duties as may be incidental to the office of Treasurer, given him by these Bylaws or assigned to him from time to time by the Board Members.

Section 7. Compensation. The officers shall receive no compensation for their services except as expressly provided by a resolution duly adopted by the Board.

Section 8. Auditor. The members may at any meeting appoint some person, firm or corporation engaged in the business of auditing to act as auditor of the Association and to perform such audits and fiscal duties as may be requested by the Association.

ARTICLE V. FISCAL MANAGEMENT

Section 1. Accounting. Books and accounts of the Association shall be kept under the direction of the Treasurer and in accordance with customary accounting principles and practices. Within 90 days after the close of each fiscal year, the Association shall furnish its members with a statement of the income and disbursements for such prior fiscal year and a balance sheet as of the close of that year.

Section 2. Assessments. With respect to each fiscal year, the Board shall estimate the amount required by the Association to meet its expenses for such year, including but not limited to the following items:

- (a) Management and administration expenses;
- (b) The estimated cost of repairs, maintenance and replacement of common elements and facilities;
- (c) The cost of such insurance and utilities as may be furnished by the Association;
- (d) The amount of such reserves as may be reasonably established by the Board, including general operating reserves, reserves for contingencies, reserves for insurance deductibles and reserves for maintenance and replacements; and

(e) Such other expenses of the Association as may be approved by the Board including operating deficiencies, if any, for prior periods.

Electricity, telephone, water, sewerage and television cable and other utilities may be assessed and billed to each Unit separate from the common assessments.

Within 90 days of the commencement of each fiscal year, the Board shall cause an estimated annual budget to be prepared based on its estimations of annual expenses, and copies of such budget shall be furnished to each member. The Board shall call a meeting of the members not less than 14 nor more than 30 days after such budget is furnished to the members for the purpose of considering ratification of such budget. Unless at that meeting 60% or more of the Unit Owners vote to reject the budget, the budget shall be deemed ratified, whether or not a quorum is present at the meeting. In the event the budget is rejected, the budget last ratified by the members shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

On or before the first day of each month of the fiscal year covered by such estimated annual budget, each member shall pay as his respective monthly assessment one-twelfth (1/12) of his proportionate share of the amount designated in the estimated annual budget as membership assessments. Each member's proportionate share of membership assessments shall be an amount equal to the total membership assessment multiplied by his respective percentage interest in the common elements provided, however, that with respect to certain common elements, the operation, maintenance and replacement costs and reserves may be allocated among the members according to the respective use and benefit of the particular facility or element to each Unit rather than according to the percentage interest of each Unit.

Until the annual budget for a fiscal year is ratified by the members, each member shall continue to pay that amount which had been established on the basis of the previous annual budget.

If any member shall fail or refuse to make payment of his proportionate share of the common expenses or any other amount payable to the Association when due, the amount thereof shall bear interest at a rate per annum, not exceeding 18%, established from time to time by the Board and, together with such interest and such costs and attorney's fees as are allowed by law, shall constitute a lien on the Unit of such member. The Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided in the Condominium Act, the Declaration or these Bylaws, or otherwise available at law or in equity for the collection of

all unpaid amounts including the right to accelerate payment on the full assessment for the year and, if available, all possessory remedies under the Forcible Entry and Detainer laws of Maine.

Section 3. Revised and emergency assessments. If at any time prior to or during the course of any fiscal year the Board shall deem the amount of the membership assessments to be inadequate by reason of a revision in its estimate of either expenses or other income, the Board shall prepare and cause to be delivered to the members a revised estimated annual budget for the balance of such fiscal year and shall call a meeting of the members to ratify such budget in the same manner as for an annual budget. After ratification, monthly assessments shall be determined and paid on the basis of such revision.

The Board may, upon finding that an emergency exists which requires immediate assessment of the members, make an emergency assessment not to exceed an amount equal to the then current monthly assessment for each Unit, which shall be due and payable when communicated to the members.

Section 4. Declarant. With respect to any Units owned by the Declarant, the Declarant shall pay a monthly assessment determined in the same manner as the monthly assessment is determined for all other Unit Owners.

Section 5. Maintenance and repair.

(a) Every Owner must perform promptly all maintenance and repair work within his own Unit, which if omitted would affect the Condominium in its entirety or in a part belonging to other Owners, and shall be expressly responsible for any damages or liabilities resulting from his failure to do so. Any repairs or replacements of exterior facing portions of a Unit must be made in a manner that maintains like appearance quality and type as compared to the other units. If any Owner fails to perform such maintenance or repair after reasonable notice from the Association, the Association, through its officers or manager, shall have the right and duty to enter the Unit and perform such maintenance or repair in the name of the Owner and shall be entitled to reimbursement from the Owner for any expenditures incurred.

(b) All the repairs of internal installations of the Unit such as water, light, power, sewerage, telephones, sanitary installations, doors, windows, lamps, and all other accessories belonging to the Unit area shall be maintained at the Owner's expense.

(c) An Owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common elements and facilities damaged through his negligence, misuse or neglect.

(d) Every Unit Owner must, at his own expense, maintain heat at levels sufficient to protect the common elements (sprinkler, water pipes, etc.) from damage.

(e) All other maintenance and repair of the common elements and facilities shall be performed at the direction of the manager or the Board, and shall be a common expense. Vouchers for the payment of maintenance and repair costs shall be approved by the manager or Board before payment.

Section 6. Improvements. The Board may make improvements to the common elements and assess the cost thereof to all Unit Owners as a common expense. In addition, if an improvement is requested by one or more Unit Owners and is, in the opinion of the Board, exclusively or substantially exclusively for the benefit of those who requested it, the cost shall be assessed against such Owner or Owners in such proportion as the Board shall determine as fair and equitable. Nothing contained herein shall prevent the Unit Owners affected by such improvement from agreeing, in writing, either before or after the assessment is made, to be assessed in different proportions.

The Declarant may, at its expense, make such improvements to the common elements as it deems advisable as long as it is an Owner, directly or indirectly, of at least one Unit.

Section 7. Use of Units. All Units shall be utilized in accordance with the provisions of the Bylaws, Declaration and Rules and Regulations established by the Board pursuant to Section 8 of this Article.

Every Unit Owner shall pay to the Association promptly on demand all costs and expenses including reasonable attorneys' fees incurred by or on behalf of the Association in collecting any delinquent assessments or fees against such Unit, foreclosing its lien therefor, collecting any penalties imposed hereunder, or enforcing any provisions of the Declaration or these Bylaws against such Owner or any occupant of such Unit.

Upon any violation of the Declaration, Bylaws, or Rules and Regulations, the offending party (including any Owner, tenant, lessee, licensee, guest or invitee) and the Owner of any Unit in which the violation is occurring or has occurred shall be given ten (10) days written notice by the Board by delivery in hand or by mail of the violation committed and the necessary corrective action that is required, and, if such violation continues beyond the ten (10) day period, the offending party and the Owner shall each pay a penalty in the amount of 10% of the then monthly assessment of the Unit per day to the Association until the violation is corrected. The delivery in hand or mailing of the notice shall constitute the commencement of the ten (10) day period.

Any person against whom a penalty is asserted under the preceding paragraph of this section shall be entitled to a hearing before the Board upon such reasonable notice and in accordance with such reasonable procedures as the Board may determine, but a request for such a hearing shall not interrupt or stay the time for correcting the violation or the continued penalty assessment.

Section 8. Rules and Regulations. In order to assure the peaceful and orderly use and enjoyment of the buildings and common areas and facilities of said project, the Executive Board may from time to time adopt, modify, and revoke in whole or in part, such reasonable rules and regulations, to be called Rules and Regulations, governing the conduct of persons on said project as it may deem necessary, including, but not limited to, regulations governing such matters as parking, pets, noise, lights, signs, leasing of units, landscaping, window appearance, refuse disposal, storage areas, use of common and limited common elements and methods and procedures for enforcing compliance with the Declaration and Bylaws. Such Rules and Regulations, and every amendment, modification, and revocation thereof, shall, upon adoption, be delivered promptly to each Owner and shall be binding upon all members of the Association and occupants of the property.

Section 9. Foreclosure of lien. In any action to foreclose the lien against any Owner of a Unit, the Association may represent itself through its manager or Executive Board in like manner as any mortgagee of real property. The manager or Executive Board acting on behalf of the Unit Owners shall have the power to bid and acquire such Unit at a foreclosure sale. The delinquent Owner shall be required to pay to the Association a reasonable rent for such Unit until the sale or foreclosure, together with all costs and reasonable attorneys' fees. Suit to recover money judgment for unpaid common expenses shall be maintainable with all costs and reasonable attorneys' fees without foreclosing or waiving the lien securing the same.

Section 10. Title. Every Unit Owner shall promptly cause to be duly recorded in the Cumberland County Registry of Deeds the deed, lease, assignment, or other conveyance to him of his Unit or other evidence of his title thereto and file such evidence of his title with the Board through the manager, and the Secretary shall maintain such information in the record of Ownership of the Association.

Section 11. Mortgages. Any mortgagee of a Unit may file a copy of its mortgage with the Board through the manager, and the Secretary shall maintain such information in the record of Ownership of the Association. After the filing of the mortgage, and upon the request of the mortgagee, the Board, through its manager, shall be required to notify the mortgagee

of any matters for which notice to eligible mortgage holders is required under the Maine Condominium Act.

Section 12. Insurance.

(1) The Executive Board shall obtain and maintain, to the extent available in accordance with general business practices and the standard requirements of mortgage holders, insurance on the Condominium buildings and all other insurable improvements upon the land, including but not limited to, all of the Units, together with the fixtures, service machinery and equipment and all other personal property as may be held and administered by the Board for the benefit of the Unit Owners, covering the interest of the Condominium Association, the Board and all Unit Owners and their mortgagees as their interest may appear. To the extent reasonably available and required by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration, Federal Housing Administration, or Maine State Housing Authority, such policy shall cover the fixtures, equipment and other personal property inside a Unit financed by a mortgage purchased by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration, Federal Housing Administration, or Maine State Housing Authority. The insurance shall be purchased from recognized insurance companies duly licensed to operate in the State of Maine. Such insurance shall be primary even if Unit Owners obtain other insurance covering the same loss. It must show the named insured as "Association of the Owners of Fallbrook, a Condominium, for the use and benefit of the individual Owners."

(2) The Executive Board shall obtain master policies of insurance which shall provide that the loss thereunder shall be paid to the Board as insurance trustees under the Declaration. Under the said master policies, certificates of insurance shall be issued which indicate on their face that they are a part of such master policies of insurance covering each and every Unit of the Condominium and its common elements. A certificate of insurance with proper mortgagee endorsements shall be issued to the Owner of each Unit and the original thereof shall be delivered to the mortgagee, if there be one, or retained by the Unit Owner if there is no mortgagee. The certificate of insurance shall show the relative amount of insurance covering the Unit and the interest in the common elements of the Condominium property and shall provide that improvements to a Unit or Units which may be made by the Unit Owner or Owners shall not affect the valuation for the purposes of this insurance of the buildings and other improvements upon the land. Such master insurance policies and certificates shall contain provisions that any Insurance Trust Agreement will be recognized, that the insurer waives its right to subrogation as to any claim against the Board, its agent and employees, Unit Owners, their respective employees, agents and

guests, and of any defense based on invalidity arising from the acts or omissions of the insured or the individual Unit Owners who are not under the control of the Association, and providing further that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Unit Owners as hereinafter permitted. The original master policy of insurance shall be deposited with the Board as insurance trustee and a memorandum thereof shall be deposited with any first mortgagee who may require the same. The Board must acknowledge that the insurance policies and any proceeds thereof will be held in accordance with the terms hereof. The Board shall pay, for the benefit of the Unit Owners and each Unit mortgagee, the premiums for the insurance hereinafter required to be carried at least thirty (30) days prior to the expiration date of any such policies and will notify each Unit mortgagee of such payment within twenty (20) days after the making thereof.

(3) The property shall be covered by:

(a) Casualty or physical damage insurance in an amount equal to not less than 100% of the full replacement value of the Condominium buildings and facilities as determined annually by the Board with the assistance of the insurance company affording such coverage, containing agreed amount provisions and provisions designed to protect against inflationary increases in value. The maximum deductible amount for any such policy shall be the lesser of \$10,000 or one percent (1%) of the policy face amount. Such coverage shall afford protection against the following:

(i) Loss or damage by fire, lightning, sprinkler leakage, vandalism and malicious mischief, boiler and machinery coverages, if applicable, and other hazards covered by the standard extended coverage endorsement together with coverage for the payment of common expenses with respect to damaged Units during the period of reconstruction.

(ii) Such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the Condominium buildings, including but not limited to, those covered by standard "all risk" endorsements, vandalism, malicious mischief, windstorm and water damage, and such other insurance as the Board may determine.

To the extent reasonably available and required by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration, Federal Housing Administration, or Maine State Housing Authority, such policies shall also contain an Inflation Guard Endorsement, when it can be obtained, a Steam Boiler and Machinery Coverage Endorsement,

if applicable, and construction code endorsements, which may include, but are not necessarily limited to, the following: Demolition Cost Endorsements; Contingent Liability from Operation of Building Laws Endorsement; Increased Cost of Construction Endorsement.

The policies providing such coverage shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the approval of the Board and shall further provide that the coverage thereof shall not be terminated or substantially changed by the insurer without twenty (20) days' notice to all of the insured, including each Unit mortgagee. Certificates of such insurance and all renewals thereof, together with proof of payment of premiums, shall be delivered to all Unit Owners and their mortgagees at least twenty (20) days prior to the expiration of the then current policies.

The policies shall also provide standard mortgage clauses which shall provide that any reference to a mortgagee in such policy shall mean and include all holders of mortgages of any Unit in their respective order and preference, whether or not named therein; provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect of the Executive Board or Unit owners or any persons under any of them; waive any provision invalidating such mortgage clauses by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, any requirement that the mortgagee pay any premium thereon, and any contribution clause; and provide that without affecting any protection afforded by such mortgage clause, any proceeds payable under such policy shall be payable to the Insurance Trustee designated by the Executive Board for that purpose, otherwise, to the Association.

(b) Public liability insurance covering the common elements and any other property under the Association's supervision in such amounts, but not less than \$1,000,000 Bodily Injury and Property Damage, and in such forms as shall be required by the Board, including but not limiting the same to legal liability, hired automobile, non-owned automobile, off-premises employee coverage, bodily injury or property damage that results from the operation, maintenance or use of the common elements and any legal liability that results from law suits related to employment contracts in which the Association is a party. Said policy must provide that the insurer may not cancel or substantially modify it without twenty (20) days' notice to all of the insured parties, including each mortgagee. Additionally, said policy shall also contain "severability of interest" provisions to the effect that the insurer waives its right to subrogation or to deny coverage as to any claim against the Association or any Unit

Owner as a result of negligent acts by the Association or such Unit Owner.

(c) Workmen's Compensation insurance to meet the requirements of law.

(d) Blanket Fidelity Bond coverage naming the Association as the Obligee and covering anyone who handles Condominium funds, in an amount equaling the maximum amount of funds that will be in the custody of the Association or any management agent at any time during which the insurance is in effect, but in no event less than the sum of three months' assessments on all Units plus the Association's reserve funds. The bond shall provide that the insurer may not cancel or substantially modify it without twenty (20) days' notice to all of the insurers including each Unit mortgagee.

(e) Flood insurance in the amount of the lesser of (i) 100% of the current replacement cost of all buildings and the insurable property located in a flood hazard area or (ii) the maximum available coverage for the property under the National Flood Insurance Program. A blanket or master policy shall be obtained which includes a maximum deductible of the lesser of \$5000 or 1% of the policy's face amount.

(4) Each Unit Owner may obtain additional insurance at his own expense affording coverage upon his personal property and for his personal liability, but all such insurance shall contain the same waiver of subrogation as that referred to in the preceding paragraph (2) hereof. Each Unit Owner may obtain casualty insurance at his own expense upon his Unit but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Board or shall be written by the same carrier. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Board pursuant to the preceding section due to proration of insurance purchased by the Unit Owner under this section, the Unit Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Board to be distributed as herein provided.

(5) Premiums upon insurance policies purchased by the Board shall be paid by it and charged as common expenses.

(6) All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Board hereinabove set forth shall be paid to it. The Board shall act as the insurance trustees. In the event that the Board Members have not posted surety bonds for the faithful performance of their duties as such trustees or if such bonds do not exceed the funds which will come into its hands, and

there is a damage to part or all of the Condominium property resulting in a loss, the Board shall obtain and post a bond for the faithful performance of its duties as insurance trustee in an amount equal to 100% of the insurance proceeds payable before it shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees.

(7) Each Unit Owner shall be deemed to have delegated to the Board his right to adjust with the insurance companies all losses under policies purchased by the Board.

(8) In no event shall any distribution of proceeds be made by the Board directly to a Unit Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittance shall be to the Unit Owner and his mortgagee jointly. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

Section 13. Reconstruction or repair of casualty damage.

Except as hereinafter provided, damage to or destruction of the buildings shall be promptly repaired and reconstructed by the Board, using the proceeds of insurance, if any, on the building for that purpose, and any deficiency shall constitute common expenses; provided, however, that if at least 80% of the Unit Owners vote not to proceed with repair or restoration, then and in that event (1) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium; (2) the insurance proceeds attributable to Units and limited common elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those limited common elements were allocated or to their respective lien holders as their interests may appear; and (3) the remainder of the proceeds shall be distributed to all the Unit Owners or lien holders as their interests may appear in proportion to the common element interests of all the Unit Owners. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section 1602-118 of the Maine Condominium Act governs the distribution of insurance proceeds if the condominium is terminated.

(a) Immediately after a casualty causing damage to property for which the Board has the responsibility of

maintenance and repair, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board desires.

(b) The proceeds of insurance collected on account of casualty, and the sums received by the Board from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair.

(c) Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by Unit Owner upon whose property such encroachment exists. Such encroachments shall be allowed to continue in existence for so long as the building stands.

(d) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the casualty damage has been fully completed and all costs paid, such sums may be retained by the Board as a reserve or may be used in the maintenance and operation of the Condominium property, or, in the discretion of the Board, it may be distributed to the Unit Owners and their mortgagees who are the beneficial Owners of the fund. The action of the Board in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against a member for committing willful or malicious damage.

ARTICLE VI. EXECUTION OF INSTRUMENTS

Section 1. Instruments generally. All checks, drafts, notes, bonds, acceptances, contracts, deeds, amendments and all other instruments shall be signed by the President, Secretary or Treasurer, or by such other officer or employee as the Board may designate.

ARTICLE VII. LIABILITY OF OFFICERS

Section 1. Exculpation. No Board Member or officer of the Association shall be liable for acts or defaults of any other officer or members or for any loss sustained by the Association or any member thereof, unless the same has resulted from his own willful misconduct or gross negligence.

Section 2. Indemnification. Every Board Member, officer, and member of the Association shall be indemnified by the Association against all reasonable costs, expenses, and liabilities (including counsel fees) actually and necessarily incurred by or imposed upon him in connection with any claim,

action, suit, proceeding, investigation, or inquiry of whatever nature in which he may be involved as a party or otherwise by reason of his having been an officer or member of the Association whether or not he continues to be such Board Member, officer or member of the Association at the time of the incurring or imposition of such costs, expenses, or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct or gross negligence toward the Association in the performance of his duties, or in the absence of such final adjudication, any determination of such liability by the opinion of the legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all rights to which such persons may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such person.

ARTICLE VIII. FISCAL YEAR

Section 1. Fiscal year. The fiscal year of the Association shall be such as may from time to time be established by the Board.

ARTICLE IX. BYLAWS

Section 1. Amendment. These Bylaws may be amended, modified, or revoked in any respect from time to time by vote of the members of the Association whose aggregate interest in the common areas and facilities constitutes sixty-seven (67) percent, at a meeting duly called for the purpose, PROVIDED, HOWEVER, that the contents of these Bylaws shall always contain those particulars which are required to be contained herein by the Maine Condominium Act. Amendments of these Bylaws are also subject to the rights of holders, insurers and guarantors of mortgages as set forth in the Declaration.

Section 2. Conflict. In the event of any conflict between these Bylaws and the provisions of the Declaration or the Condominium Act, the latter shall govern and apply.

4917S



EXHIBIT C
TO
PUBLIC OFFERING STATEMENT
FALLBROOK, A CONDOMINIUM

Attached hereto are:

1. The adopted Association annual budget for the 10 units initially declared (Exhibit C-1).
2. The proposed Association annual budget for the 32 units planned for the first year of the Condominium's operation, including the 10 units initially declared (Exhibit C-2).
3. Notes applicable to Exhibits C-1 and C-2 describing services provided and expenses incurred by the Declarant which are anticipated to become common expenses at a subsequent time (Exhibit C-3).
4. Management Agreement with Maine Properties, Inc.

NOTICE: THE 1989 MONTHLY ASSESSMENT IS ARTIFICIALLY LOW DUE TO SERVICES NOW PROVIDED BY THE DECLARANT WITHOUT CHARGE TO THE ASSOCIATION. SEE EXHIBIT C-3. THE PROJECTED ANNUAL BUDGET BASED ON 32 DECLARED UNITS WILL REQUIRE A MONTHLY ASSESSMENT OF \$91.00. THIS PROJECTION ASSUMES AN INFLATION FACTOR OF ZERO.

5667S

EXHIBIT C-1
 FALLBROOK CONDOMINIUM ASSOCIATION
 1989 BUDGET
 10 UNITS DECLARED

INCOME:

UNIT ASSESSMENTS	8640.00
(\$72 per unit/month X 10 units X 12 months)	
TOTAL INCOME	8640.00

OPERATING EXPENSES:

SNOW CONTRACT

PLOW AND SHOVEL	1400.00
(Includes 3 sandings)	
SNOW REMOVAL	
SANDING (Additional)	500.00
TOTAL SNOW CONTRACT	1900.00

LAWN CONTRACT:

MOW, TRIM & WEED	1600.00
FERTILIZE (Winter)	200.00
SHRUB FERTILIZER	
HEAVY FALL CLEAN UP	300.00
LIGHT SPRING CLEAN UP	200.00
MULCH 3 YDS. INSTALLED	100.00
LIMING	100.00
TOTAL LAWN CONTRACT	2500.00

OTHER:

INSURANCE	1566.00
RUBBISH COLLECTION	800.00
COMMON AREA LIGHTING	300.00
MANAGEMENT FEE (10 @ \$18.00)	2160.00
WATER	1416.00
TAX PREPARATION & INCOME TAXES DUE	150.00
MISCELLANEOUS EXPENSES & SUPPLIES	200.00
PARKING AREA MAINTENANCE	100.00
TOTAL OTHER	6692.00
TOTAL OPERATING BUDGET	11092.00

ESCROW (RESERVE) FUNDS

PAINTING	\$ 5000 - 6 years	833.00
ROOF	13600 - 20 years	680.00
PAVING	19155 - 10 years	1915.00
SEWER PUMPS	1500 - 10 years	150.00
DECKS	2000 - 10 years	200.00
SEAL DECKS	350 - 5 years	70.00
TOTAL ESCROW		3848.00

TOTAL OPERATING AND ESCROW - YEAR	14940.00
-----------------------------------	----------

LESS CREDITS FOR EXPENSES TO BE PAID BY DECLARANT FOR THE FIRST YEAR (See Note 1)	(4400.00)
---	-----------

LESS EXCLUSION OF PAVING ESCROW COMPONENT(See Note 2)	(1915.00)
--	-----------

TOTAL NET OPERATING AND ESCROW - YEAR	8625.00
---------------------------------------	---------

EXCESS INCOME OVER NET EXPENSES	15.00
---------------------------------	-------

EXHIBIT C-2
 FALLBROOK CONDOMINIUM ASSOCIATION
 PROPOSED ANNUAL BUDGET FOR 32 UNITS PLANNED
 TO BE DECLARED WITHIN FIRST YEAR

INCOME:

UNIT ASSESSMENTS	27648.00
(\$72 per unit/month X 32 units X 12 months)	
<u>TOTAL INCOME</u>	<u>27648.00</u>

OPERATING EXPENSES:

SNOW CONTRACT

PLOW AND SHOVEL	2800.00
(Includes 3 sandings)	
SNOW REMOVAL	500.00
SANDING (Additional)	500.00
<u>TOTAL SNOW CONTRACT</u>	<u>3800.00</u>

LAWN CONTRACT:

MOW, TRIM & WEED	3200.00
FERTILIZE (Winter)	280.00
SHRUB FERTILIZER	
HEAVY FALL CLEAN UP	340.00
LIGHT SPRING CLEAN UP	230.00
MULCH 10 YDS. INSTALLED	300.00
LIMING	120.00
<u>TOTAL LAWN CONTRACT</u>	<u>4470.00</u>

OTHER:

INSURANCE	4250.00
RUBBISH COLLECTION	2496.00
COMMON AREA LIGHTING	300.00
MANAGEMENT FEE (32 @ \$18.00)	6912.00
WATER	4428.00
TAX PREPARATION & INCOME TAXES DUE	250.00
MISCELLANEOUS EXPENSES & SUPPLIES	400.00
PARKING AREA MAINTENANCE	100.00
<u>TOTAL OTHER</u>	<u>19136.00</u>

<u>TOTAL OPERATING BUDGET</u>	<u>27406.00</u>
-------------------------------	-----------------

ESCROW (RESERVE) FUNDS

PAINTING	\$16000 - 6 years	2666.00
ROOF	43520 - 20 years	2176.00
PAVING	23944 - 15 years	1596.00
SEWER PUMPS	1500 - 10 years	150.00
DECKS	6400 - 10 years	640.00
SEAL DECKS	1200 - 5 years	240.00
<u>TOTAL ESCROW</u>		<u>7468.00</u>

<u>TOTAL OPERATING AND ESCROW - YEAR</u>	<u>34874.00</u>
--	-----------------

LESS CREDITS FOR EXPENSES TO BE PAID BY DECLARANT FOR THE FIRST YEAR (See Note 1)	(8270.00)
---	-----------

LESS EXCLUSION OF PAVING ESCROW COMPONENT(See Note 2)	(1596.00)
--	-----------

<u>TOTAL NET OPERATING AND ESCROW - YEAR</u>	<u>25008.00</u>
--	-----------------

<u>EXCESS INCOME OVER NET EXPENSES</u>	<u>2640.00</u>
--	----------------

EXHIBIT C-3
NOTES TO PROPOSED ANNUAL BUDGET
FALLBROOK, A CONDOMINIUM

- Note 1: Declarant will initially pay grounds maintenance (snow contract and lawn contract) expenses for the Association due to the requirements of equipment and personnel involved in the construction of units and common elements. THE ESTIMATES FOR SUCH SERVICES CONTAINED IN THE PROPOSED BUDGET REFLECT THE COSTS WHICH WOULD BE INCURRED BY THE ASSOCIATION TO OBTAIN THESE SERVICES FROM A PROVIDER OTHER THAN THE DECLARANT. THE ASSOCIATION WILL BE REQUIRED TO INCUR ALL OR PART OF THESE EXPENSES IN 1990 AND SUBSEQUENT YEARS.
- Note 2: The escrow component for repaving will not be included in the Total Escrow until such time as the final coat of paving is laid. This final coat is not expected to be put down until all construction requiring heavy equipment related to the first 32 units is completed. This is not estimated to occur before end of the year. BUDGETS FOR YEARS BEYOND THAT DURING WHICH THE FINAL COAT OF PAVING IS INSTALLED WILL INCLUDE THIS ESCROW COMPONENT.

MANAGEMENT AGREEMENT

THIS AGREEMENT by and between FALLBROOK CONDOMINIUM ASSOCIATION, a Maine non-stock corporation located at Ray Street, Portland, Maine (the "Association"), and MAINE PROPERTIES, INC., a Maine corporation with a mailing address of 140 Black Point Road, P.O. Box 368, Scarborough, Maine 04074 (hereinafter referred to as "MPI").

W I T N E S S E T H :

WHEREAS, the Association desires to have MPI act as Manager of the Fallbrook Condominium on the terms and conditions hereinafter set forth,

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE ONE
Definitions

Terms as used in this Agreement shall be defined as follows, unless the context clearly indicates a different meaning:

"Condominium" shall mean the Fallbrook Condominium created by the Declaration.

"Owner" shall mean any person or legal entity who is the owner of any Unit in the Condominium.

"Common Elements" shall mean the Common Elements as defined in the Declaration.

"Declaration" shall mean the Declaration of the Fallbrook Condominium duly recorded in the Cumberland County Registry of Deeds as amended.

"Bylaws" shall mean the Bylaws of the Association.

"Board" shall mean the Board of Directors of the Association.

"Property" shall mean the Property as more particularly defined in the Declaration.

"Common Charges" shall mean all assessments payable by Unit Owners as more particularly defined in the Declaration including regular monthly assessments, capital assessments and special assessments.

"Common Expenses" shall mean the expenses of administration, reserves, operation and other expenses provided in the Declaration and Bylaws of the Condominium.

"Units" for purposes of this Agreement, shall mean all legally created Units in the Condominium.

"Checking Account" shall mean the operating account established by the Association and under the control of the MPI.

"Management Fee" shall be as defined in Section 3.4 of this Agreement.

"Reserve Account" shall mean the separate account under the control of the Association established and separately funded by the Association for the repair, replacement and restoration of the Common Elements.

ARTICLE TWO MPM's Responsibilities

2.1 Management & Operation of the Condominium.

As agent for the Association, MPI shall carry out the following duties in order to generally manage the Common Elements and administer the Association based on standards and policies established by the Board:

A. Arrange and supervise all repairs and replacements, maintenance, cleaning and decorating of the Common Elements to assure their proper use, operation and appearance in accordance with standards established by the Board;

B. Provide general administrative services including the following: general accounting and record keeping, preparation of financial statements, insurance supervision and administration, preparation of payroll and related records, and general administrative services all of which records shall be available for inspection by the Board or their designees during business hours upon reasonable advance notice;

C. Collect and deposit into the Checking Account all payments which shall become due and owing to the Association as a result of Common Charges or otherwise and, at the direction of the Board, make payments into the Reserve Account out of funds available from the Checking Account;

D. Maintain accounting records of all receipts and expenditures and furnish the Board with an annual statement of the operations;

E. Assist the Board in preparing a proposed annual budget for the operation of the Association;

F. Upon the instruction of the Board, obtain such insurance coverage as called for in the Bylaws and as the Board shall deem necessary;

G. Investigate, hire, pay, supervise and discharge when necessary all independent contractors and personnel required to manage the Association. MPI shall be reimbursed for all costs of such contractors' personnel, including their base compensation and the cost of all forms of employee benefits;

H. Obtain surety and fidelity bonds if required by the Board for persons handling the Association funds;

I. Negotiate and enter into on behalf of the Association such service and maintenance contracts as may be required in the ordinary course of business including, without limitation, contracts for grounds maintenance, electricity, gas, water, snowplowing, cleaning, decorating, extermination, equipment maintenance, and other services reasonably necessary to the operation of the Association;

J. Assist in with the preparation for meetings of Owners, including the preparation and delivery of notices of meetings, preparation of proxy forms, preparation of the agenda and the conduct of the meetings;

K. Take action as requested by the Board to recover assessments or other sums that may be owing to the Association, and when expedient, settle, compromise and release such actions or suits;

L. Take other actions which are in MPI's opinion reasonably necessary for the proper, efficient and economical management and operation of the Association and implement such operating procedures, controls and regulations, as MPI, in its reasonable judgment, deems to be in the best interests of the parties hereto or to the successful management of the Association. The duties and responsibilities set forth in the Agreement shall not serve to limit such rights.

Special services rendered by MPI at the request of any Owner or his family, employees, tenants, or guests which are not provided by the Association shall be charged directly to and paid by such Owner or his family, employees, tenants, or guests. MPI shall not be responsible for the management or administration of buildings which have not been legally added to the Condominium.

ARTICLE THREE
Terms of Employment

3.1 Agreement. The Association hereby retains MPI as the Association's agent and manager and MPI hereby agrees to manage the Condominium in accordance with this Agreement.

3.2 Term. The term of this Agreement shall commence on the effective date hereof and terminate on [], 198[],

which term may be extended by MPI, at its option, for Two (2) additional terms of one (1) year each upon ninety (90) days prior notice by MPI to the Board, subject to such increases in the Management Fee provided under Section 3.4, unless sooner terminated by vote of the Owners, if so provided by the Declaration or the Maine Condominium Act, after 75% of the Units, including all future units which may be created, have been sold by the Declarant of the Condominium.

3.3 Actual Cost; Reimbursement. The term "Actual Cost" shall mean the total cost to MPI of operating the Condominium, including: all labor, the cost of all supplies, the cost of outside services, the cost of utilities, costs and equipment rental incurred for the landscaping, snowplowing, repair, decoration or cleaning of the Property, legal, accounting and other similar professional expense, and all other third party costs and expenses fairly attributable to the maintenance and operation of the Association, as defined in the Bylaws. The intent of the parties is that all costs, charges, and expenses of every kind and description fairly attributable to the operation, management or maintenance of the Associations shall be charged to and paid by the Association from the Checking Account.

MPI shall be entitled to reimburse itself for its Actual Costs as defined above and to collect its Management Fee from the Checking Account.

The Board shall be responsible for the creation and funding of the Reserve Account.

3.4 Management Fee. The Association shall pay MPI a monthly Management Fee of [] Dollars (\$[].00) per Unit per month for its management services, in addition to the Actual Costs for which MPI is to be reimbursed. The Management Fee to be paid to MPI shall be included in the annual budget and assessed as part of the Common Charges. Upon any renewals of this Agreement, the Management Fee shall be increased based on the increase in the Consumer Price Index for Urban Consumers issued by the Department of Labor for Boston, Massachusetts from the first day of the month of the date of this Agreement to the commencement of the renewal term, unless otherwise agreed.

3.5 Disputes. The Board shall have thirty (30) days from the rendition of a statement by MPI for both the Management Fee or of the Actual Cost within which to protest the nature, amount or method by which such amount was determined. If the matter cannot be resolved by the parties within thirty (30) days thereafter, it shall be rendered to an independent public accountant for a decision, which decision shall be binding on both parties.

3.6 Interest. MPI shall be entitled to payment of simple interest at the base rate of annual interest as charged

by Casco Northern Bank, N.A., Portland, Maine, at the time such interest becomes payable plus two percent (2%) in any and all sums advanced by MPI on behalf of the Association. Nothing provided herein, however, shall obligate MPI to make any such advances but MPI may do so as and to the extent (i) that there are insufficient funds in the Checking Account and (ii) that MPI determines, in its sole discretion, that to do so would be in the best interests of the Association.

ARTICLE FOUR Cancellation

4.1. By the Board. Except as to the accrued liabilities of either party, the Board shall have the right upon thirty (30) days advance written notice to MPI to cancel this Agreement upon the happening of any of the following events: (A) if MPI shall fail to keep, observe, or perform any material covenant, agreement, term or provision of this agreement to be kept, observed, or performed by MPI and such default shall not be cured within a period of thirty (30) days after written notice thereof by the Board to MPI; or (B) MPI shall apply for or consent to the appointment of a receiver, trustee, or liquidator of MPI or of all or a substantial part of its assets or file a voluntary petition in bankruptcy

In addition upon the termination of the Declarant Control Period as defined in the Maine Condominium Act, the Board may terminate this agreement at any time upon 30 days' written notice to MPI with the consent of the requisite percentage of Eligible Mortgage Holders as required by the Declaration and the terms of mortgages on individual Condominium Units.

4.2. By MPI. Except as to accrued liabilities of either party hereto, MPI shall have the right upon thirty (30) days' advance written notice to the Board to cancel this Agreement upon the happening of any of the following events of default: (A) if the Board shall fail to keep, observe, or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed, or performed by the Board, and such default shall continue for a period of thirty (30) days after written notice thereof by MPI to the Board; or (B) if all or a portion of the Common Elements shall be damaged or destroyed by fire or other casualty, and if the Board gives MPI written notice within ninety (90) days that it does not intend to repair, restore, rebuild or replace any such damage or destruction after such fire or other casualty.

Either party may terminate this Agreement for any reason upon sixty (60) days' written notice to the other.

4.4. Grace Period. If the defaulting party shall cure any default under Paragraphs 4.1 or 4.2 within the notice period, then such notice shall be of no further force and

effect. In event of any default which is susceptible of being cured with diligence within the notice period, if the defaulting party shall proceed promptly and with due diligence to cure the same, then, notwithstanding the giving of any such notice of default, the time within which to cure such default shall be extended for such period as may be necessary to cure the same with all due diligence.

ARTICLE FIVE
Miscellaneous Provisions

5.1. Consent. The following persons are hereby designated as the liaison parties on behalf of the Association in determining the duties of MPI and in giving all consents or instructions on behalf of the Association: _____

_____ with respect to general matters;
and _____ with respect to financial matters. MPI shall not be required to recognize instructions from any other source.

5.2. Insurance. In fulfilling its duties hereunder the Board agrees to save MPI harmless from liability or injury suffered by MPI or its employees or other agents except in cases of willful misconduct or gross negligence or actions taken in violation of this Agreement after written notice of default. The Association shall name MPI in its capacity as agent for the Association as a co-insured party under its public liability in the same manner and to the same extent as Owners. MPI also shall not be liable for any error of judgment or for any mistake of fact of law, or for anything which it may do or refrain from doing hereinafter in good faith or in response to instructions from the Association, its officers and directors. MPI may act as manager hereunder and manage the rental of units owned by affiliates of MPI or others without being charged with self-dealing or breach of obligation, fiduciary or otherwise.

5.3. Modifications. This Agreement cannot be changed or modified, except by another agreement in writing signed by all parties hereto or by their respective successors in interest.

5.5. Headings. The Article and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit or describe the scope or intent of any provisions of this Agreement.

5.6. Governing Law. This Agreement shall be governed by the laws of the State of Maine.

5.7. Successors and Assigns; Construction. This Agreement shall benefit and be binding upon the parties hereto and their respective successors and assigns provided that MPI shall not assign this Agreement to the prior written consent of the Board. Wheresoever applicable the singular number shall

include the plural, the plural the singular and the use of any gender shall be deemed applicable to all genders.

5.8. Liability of the Board of Trustees. This Agreement is executed by the Board as agent of the Owners on behalf of the Association. Each Owner's liability hereunder shall be limited to such proportion of the total liability hereunder as his interest in the Common Elements bears to the interest of all Owners in the Common Elements. Otherwise the members of the Board shall have no personal liability hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers and their seals affixed hereto on _____, 198_____.

CONDOMINIUM ASSOCIATION

Witness

By _____
Its

Maine Properties, Inc.

Witness

By _____
Name:
Its President

4018H

FIR AMENDMENT TO MANAGEMENT AGREEMENT

Amendment to agreement by and between [], a non-stock corporation organized and existing under the laws of the State of Maine, with offices in the [], County of Cumberland and State of Maine (hereinafter designated as "Association"), and MAINE PROPERTIES, INC., a corporation duly organized and existing by law with an office in said Town of Scarborough, (hereinafter referred to as "MPI").

WHEREAS the parties are about to enter into a Management Agreement for the [] Condominium of even or recent date (the "Agreement"); and

WHEREAS the Association has requested that MPI agree to amend certain provisions of the Agreement,

NOW THEREFORE, the parties hereby agree to amend the Agreement as follows:

1.

[]. Except as aforesaid the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers and their seals affixed hereto on [], 198[].

[]
CONDOMINIUM ASSOCIATION

Witness

By _____
Its

Maine Properties, Inc.

Witness

By _____
Name:
Its President

4018H



EXHIBIT D

FALLBROOK, A CONDOMINIUM

PURCHASE AND SALE AGREEMENT

A. Unit No.: _____ Date: _____

B. Information Concerning Purchaser:

Full Name _____ Soc. Sec. No. _____

Address _____ Telephone _____

Employer _____ Telephone _____

Full Name _____ Soc. Sec. No. _____

Address _____ Telephone _____

Employer _____ Telephone _____

C. Price and Method of Payment:

Purchase Price* \$ _____

1. Initial Deposit \$ _____

2. Advance payment made upon execution of this Agreement \$ _____

3. Additional payment due on _____, 198 \$ _____

4. Final payment due at closing \$ _____

Total Purchase Price* \$ _____

D. Purchaser's Special Instructions:

Nature of Tenancy: J/T _____ T/C _____ Trust _____

E. Effective Date of Contract:

F. Proposed Closing Date:

G. BROKER:

*The Total Purchase Price due at closing may be adjusted to take into account options and extras selected by Purchaser. Such options and extras, and the corresponding adjustments, shall be reflected in change orders to be signed by Seller and Purchaser.

THIS AGREEMENT made by and between Merreal Corporation, a Delaware corporation with a principal place of business in Portland, Maine and doing business in Maine as Merreal Corp. (hereinafter called "Seller") and the Purchaser (whether singular or plural) identified above.

WITNESSETH:

Seller agrees to sell and Purchaser agrees to purchase, upon and subject to the terms and conditions hereinafter set forth:

UNIT NO. (hereinafter called the "Unit") of FALLBROOK, A CONDOMINIUM, a proposed condominium (hereinafter called the "Condominium"), located in the City of Portland, Maine together with (a) an undivided percentage interest in the Common Elements of the Condominium (hereinafter called "Common Elements"), and (b) such other rights and easements appurtenant to the Unit as are set forth in the Declaration of Condominium to be recorded in the Cumberland County Registry of Deeds, (hereinafter, together with all exhibits thereto, called the "Declaration"), a proposed draft of which has been delivered to Purchaser. Purchaser hereby represents that he has read the proposed draft of Declaration, which is hereby incorporated herein by reference and made a part of this Agreement with the same force and effect as if set forth in full herein.

The transaction contemplated herein is to be upon the following terms, conditions, representations and covenants:

1. Purchase Price. The total purchase price for the Unit and schedule of payments is as indicated under Section C above.

All deposits or advance payments paid hereunder to Seller pending closing of this transaction shall be held by Seller as earnest money for the proper performance of this Agreement on the part of Purchaser subject to the terms of this Agreement and shall be duly accounted for at the time of closing. It is understood and agreed that such funds shall be placed in a non-interest bearing escrow account by Seller.

2. Seller's Representations. Seller represents unto Purchaser, as follows:

A) Seller is the owner of the fee simple title to that certain real property situated in the City of Portland, Maine, more particularly described in the Declaration. Seller is in the process of changing its corporate name to Merreal Corp. and expects to complete the transaction under the name Merreal Corp.

B) Upon recording of the Declaration, said real property and improvements shall be known as "Fallbrook, a Condominium", which shall be comprised of the Units and Common

Elements as such terms are defined in the Declaration, and which terms as defined therein shall have the same meaning and intent wherever used in this Agreement.

C) Seller reserves the right to substitute for any of the materials, fixtures or personal property specified herein or in the Declaration, materials, fixtures or personal property of equal or better quality. Seller also reserves the rights to amend the Declaration as proposed, the Units and/or the Common Elements, provided such changes will not vary substantially from the proposed draft of the Declaration as presented to Purchaser.

D) Seller will cause Fallbrook Condominium Association, (hereinafter called the "Association") to be duly organized and in existence, and will cause the Association to adopt Bylaws in substantially the form annexed to the Public Offering Statement.

E) A certificate of occupancy issued by the municipal inspector of buildings for the City of Portland, Maine, or if the same cannot be obtained for individual units in the condominium a certificate or statement of substantial completion of the Unit executed by an engineer or architect, as required by Section 1602-101(b) of the Maine Condominium Act, shall be delivered by Declarant to Purchasers not less than 2 days prior to the Closing Date.

3. Public Offering Statement. Purchaser represents that prior to the execution of this Agreement, Seller delivered to Purchaser copies of the Declaration of Condominium for the Condominium and the Bylaws of the Association including all exhibits and schedules attached thereto and any unattached exhibits and schedules referenced therein required under the provisions of the Maine Condominium Act and Purchaser acknowledged in writing receipt and review of the Public Offering Statement, which together with the plats and plans and other documents forming part of the Declaration are hereby incorporated herein by reference and made a part of this Agreement with the same force and effect as if set forth in full herein.

4. Description of Property. The Unit which is the subject matter of this Agreement has appurtenant thereto the percentage interest in Common Elements which is designated as an appurtenance in the Declaration. The dimensions, sizes and location of interior partitions in the Units, and the location of the Unit in relation to other Units and Common Elements as reflected in the Declaration, are approximate, and the same may vary slightly. Purchaser acknowledges and agrees that any such variance in any of said dimensions and sizes or in location of interior partitions in the Unit is acceptable to Purchaser, and

the variance in any of said dimensions and sizes or location of interior partitions shall not constitute grounds for any action for rescission, damages or diminution of the purchase price.

5. Mortgage Financing. If Purchaser requires financing to complete payment of the balance of the purchase price, then the Purchaser shall, within three (3) days of the effective date of this Agreement, apply to a financial institution for such Mortgage. If such financial institution refuses to commit to the requested Mortgage within thirty (30) days from the date hereof, then this Agreement shall become null and void, and any and all deposits paid hereunder shall be returned to the Purchaser. In the absence of evidence of such refusal within said thirty (30) day period being furnished by Purchaser, this condition shall be conclusively presumed to be satisfied.

6. Closing. The closing shall occur not later than Sixty (60) days from the proposed closing date set forth on Section F above,, at a time, date and place to be determined by mutual agreement of Seller and Purchaser, subject to the extensions provided for in this paragraph 6, and in paragraph 7 hereof. The closing date may be extended by Seller for a period of time equal to the period of time, if any, that construction of the Condominium is delayed due to acts of God or unavailability of labor or material. Subject to the foregoing, in the event the closing does not occur within the time period specified herein, Purchaser shall be entitled to cancel this Agreement and to a return of his deposit or deposits, as the case may be, without interest.

7. Title. The Unit shall be conveyed by means of a good and sufficient Quitclaim Deed with Covenant (herein called Deed of Conveyance), conveying good and marketable title, free from encumbrances, except those set forth in the Declaration or such easements and rights of way for utilities and access as do not unreasonably interfere with Purchasers use and enjoyment of the Unit or under the laws of the State of Maine or the ordinances and regulations of the City of Portland. Purchaser shall give Seller notice, not less than ten (10) days prior to the time of closing designating all defects in title existing at the time of such notice, and all defects not so designated shall be deemed to have been waived. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Unit, all as herein stipulated, or if at the time of closing the Unit does not substantially conform with the provisions hereof, then any payments made under this Agreement shall be refunded, without interest, and all other obligations of the parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto, unless Seller elects to use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Unit substantially conform to the provisions hereof, as the case may be, in which event Seller shall give notice of such election to

Purchaser at or before the time of closing, and thereupon the time of closing shall be extended for a period of thirty (30) days.

If at the expiration of the extended time Seller shall have failed so to remove any defects in title, deliver possession, or make the Unit substantially conform, as the case may be, all as herein agreed, then any payments made under this Agreement shall be forthwith refunded, without interest, and all other obligations of all parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto shall be relieved of any further liability or obligation in connection herewith.

8. Possession. Full possession of the Unit free of all tenants and occupants, is to be delivered at the time of closing, the Unit to be then in substantially the condition specified in the Declaration. Purchaser shall have the right to inspect the Unit during the time period established by Seller for such inspection, which shall be not less than 10 nor more than 20 days prior to the closing and, if Purchaser conducts such inspection, Purchaser shall specify by notice in writing given to Seller within ten (10) days of such inspection any manner in which Purchaser claims that the Unit does not conform to the requirements of this Agreement.

9. Closing Adjustments. Estimated real estate taxes for the then current year, water, sewerage and estimated common charges for the then current month, shall be adjusted as of the time of closing and the amount thereof shall be added to or be deducted from, as the case may be, the purchase price payable by Purchaser at the time of closing. Purchaser shall also pay to the Association a one-time working capital contribution equal to two months common assessments.

10. Monthly Maintenance Assessment. At the beginning of the month following the closing of the transaction contemplated hereby, Purchaser will become responsible for the payment of monthly assessments attributable to his Unit. The monthly maintenance assessment for each Unit in the Condominium will be determined by the Association in accordance with the provisions of the Declaration and the Bylaws of the Association.

11. Default by Purchaser. In the event that Purchaser fails to pay the balance of the purchase price to Seller, or in the event that Purchaser fails to take title to the Unit in accordance with the terms and provisions hereof, or if Purchaser shall otherwise default in the performance of any covenant or obligation herein undertaken by Purchaser, Seller shall have the right to cancel and terminate this Agreement, in which event Seller shall be entitled to retain all deposits and payments paid and held by Seller hereunder as liquidated and

agreed damages, it being recognized that Seller, in such event, will suffer and sustain damages which are incapable of exact ascertainment.

12. Default by Seller.

A) In the event that the Seller fails to give Purchaser notice of the time, date and place of closing as required herein, then Purchaser shall have the right to cancel and rescind this Agreement, in which event Purchaser shall be entitled forthwith to return of the entire deposit or deposits, as the case may be. Upon the return of the entire deposit or deposits, as the case may be, the parties hereto shall be relieved of any further obligation or liability in connection herewith.

B) In the event that Seller is required to return to Purchaser the entire deposit or deposits, as the case may be, made hereunder, the same shall be repaid to Purchaser without interest. Should Purchaser have the right to cancel and rescind this Agreement, Purchaser shall give Seller written notice of such election to cancel and rescind. Such notice shall be sent to Seller by certified or registered mail, return receipt requested. The liability of Seller is limited to the return of the deposits made hereunder by Purchaser without interest and in no event shall Seller otherwise be liable to Purchaser for any damages which Purchaser may sustain. Nothing by reason of the execution of this Agreement shall be construed as giving or granting unto Purchaser any lien upon the real property and improvements herein mentioned. Purchaser hereby expressly waives and relinquishes any lien or lien rights which might otherwise accrue or be available to Purchaser by operation of law.

13. Subordination. This Agreement shall be, and the same is hereby declared to be, subordinate and subject to the lien and operation of any construction or permanent mortgage which Seller may now or hereafter place upon the real property and improvements herein mentioned, or any portion thereof, but should Seller have mortgaged said property or should it hereafter mortgage the same, Seller, at Seller's cost and expense, shall be obligated to cause such mortgage or mortgages to be released or satisfied at the time of closing of this sale and purchase, so that the Unit covered hereby shall be free and clear of any such mortgage or mortgages at closing. This Agreement also shall be subordinate to the Declaration of Condominium.

14. Warranties: Statute of Limitations. Seller warrants the Unit against structural defects (as defined in Section 1604-113(b) of the Maine Condominium Act) for two years after Purchaser enters into possession, and each of the Common Elements for two years after the time the Common Elements are

completed or, if later, for two years after the time the first Unit in the Condominium is conveyed. All such warranties are more fully set forth on the Limited Warranty Certificate attached as an exhibit to the Public Offering Statement. At closing Seller will deliver to Purchaser a copy of the Limited Warranty Certificate for the Unit executed by Seller, and Purchaser agrees to execute the Limited Warranty Certificate at closing. Prior to the expiration of such two-year period, Seller will assign to the Board of Directors of the condominium, on behalf of the Unit owners of all Units, all guarantees from subcontractors or suppliers of materials running in favor of Seller, to the extent that such guarantees are assignable. Seller will deliver to Purchaser at closing any manufacturers' warranties covering any equipment in the Unit except insofar as the same may be Common Elements. Purchaser agrees to execute by separate instrument on or prior to the Closing Date and the delivery of the Deed an agreement to reduce, as permitted by Section 1604-115(a) of the Maine Condominium Act, the statutory six year limitation period to two years. No oral warranties, representations, statements or promises shall be considered a part of this Agreement or binding upon any party hereto.

15. Performance of Seller's Obligations. The acceptance of the Deed of Conveyance by Purchaser shall be deemed full performance and discharge of every agreement, obligation and representation made on the part of Seller in accordance with the terms and provision hereof, and the only agreements or representations which shall survive the delivery and acceptance of such Deed shall be those which may be herein specifically stated to survive the delivery and acceptance thereof; provided, however, that the acceptance of the Deed of Conveyance by Purchaser shall not constitute a waiver of any claims made by Purchaser under paragraph 8 of this Agreement as specified in any notice given under said paragraph 8.

16. Purchaser's Covenants. Purchaser covenants and agrees for himself, his heirs, successors and assigns, that Purchaser will abide by and comply with all of the terms, provisions and conditions of the Declaration, this covenant to survive delivery of the Deed of Conveyance.

17. No Assignment Without Prior Approval. Purchaser agrees that the interest of Purchaser hereunder shall not be assigned or transferred without the prior written consent of Seller. In the event that Purchaser assigns or transfers, or attempts to assign or transfer, his interest hereunder without Seller's written consent having first been obtained, such act on the part of Purchaser shall be treated and regarded as a default hereunder, and Seller shall not be obligated to recognize the assignee or transferee.

18. Amendment. This Agreement may be modified or amended only by an instrument in writing executed by and between Seller and Purchaser, and this Agreement shall be binding on the parties hereto and their respective heirs, personal representatives, successors, distributees and assigns, as the case may be.

19. Recordation. Recordation of this Agreement in any Registry of Deeds or with any other public entity is not authorized by either party. In the event Purchaser or anyone claiming by, through or under Purchaser, should record or purport to record this Agreement, any exhibit thereto or any of the accompanying material delivered concurrently herewith, Seller shall have the right to declare this Agreement in default by Purchaser and to retain, as liquidated damages, any and all deposits made by Purchaser hereunder.

20. Fire Insurance. Until the delivery of the Deed of Conveyance, the Seller (or the Association on behalf of the Seller) shall maintain fire and extended coverage insurance on the building in which the Unit is located.

21. Broker. Purchaser and Seller warrant and represent to each other that, except for any Broker noted under Section G above, neither has used the services of any other real estate broker in connection with this transaction and that there are no real estate commissions due or which may be claimed to be due in respect thereof, except those commissions due to Broker.

22. Notice. All notices required or permitted to be given hereunder shall be in writing and delivered by hand or mailed, postage prepaid, by registered or certified mail addressed to Purchaser or Seller, as the case may be, at the respective addresses shown in the first paragraph of this Agreement.

23. Paragraph Headings. The paragraph headings used herein are solely for convenience and identification and are not intended to restrict or limit the generality of the paragraphs.

24. Complete Agreement. This Agreement supersedes in all respects all understandings and agreements heretofore had between the parties hereto and may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement of Sale and Purchase to be executed the day and year first above written.

SELLER:

MERREAL CORPORATION

Witness

By: _____

Its: _____

PURCHASER:

Witness

Purchaser

Witness

Purchaser

4930S

Fallbrook, a Condominium

Acknowledgment

In accordance with the provisions of Section 1604-107 of the Maine Condominium Act, the undersigned hereby acknowledges receipt and review of the Fallbrook, a Condominium Public Offering Statement.

If the undersigned has previously entered into a contract for the purchase and sale of a Unit at Fallbrook, a Condominium, the undersigned further waives any right under Section 1604-107 to cancel such contract.

Dated:

4930S



EXHIBIT E

FALLBROOK, A CONDOMINIUM

LIMITED WARRANTY

Issued To and Accepted By

Unit Owner

Condominium Unit No. _____, in Fallbrook, a Condominium.

Merreal Corp. ("Declarant") has sold to you a home designated as Unit No. _____, Fallbrook, a Condominium, located in Portland, Maine. Your Unit has been constructed in accordance with the local building code of Portland, Maine. In any new construction certain items may require adjustment. This Limited Warranty Certificate describes Declarant's obligations to make such adjustments and outlines the methods and timeframe for you to follow to obtain such adjustments.

I. COVERAGE AND DURATION

A. Non-Consumer Products

1. Declarant will correct any structural defect, which shall be those defects in components constituting any Unit which reduce the stability or safety of the Unit below accepted standards or which restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement, brought to Declarant's attention in writing within two years from the date hereof.
2. Declarant will correct any structural defect in the plumbing system, except operating fittings, which causes the system not to be in proper working order and which is caused by defective workmanship and materials, brought to Declarant's attention in writing within two years from the date hereof.
3. Declarant warrants that the Unit is, at the time of closing, fit for habitation, and that the Unit was, at the time of construction, constructed in a workmanlike manner.

B. Consumer Products

1. Declarant gives no warranty on appliances or other equipment sold with the Unit except as may

be required by Title 11 M.R.S.A. Sections 2-314 and 2-315 and Title 33 M.R.S.A. Section 1604-113 (the "statutory warranty").

2. Declarant's sole obligation with respect to items not warranted by Declarant shall be to deliver to the Unit Owner at the time of closing any manufacturers' warranties covering such appliances and equipment in the Unit except insofar as the same may be Common Elements. Declarant is not responsible for performance under manufacturers' warranties in any way.

C. Examples

1. The following are examples of non-consumer products: ducts, doors, windows, wiring, water closet, bathtub, lavatory, etc.
2. The following appliances and other equipment, which may be sold with the Unit, are examples of consumer products: smoke detector, fire extinguisher, exhaust fan, thermostat, individual heating and air conditioning system, doorbell, garbage disposal, washer/dryer, refrigerator/freezer, range/oven and dishwasher.

D. Duration

Declarant and Unit Owner agree, in accordance with the provisions of the Maine Condominium Act, 33 M.R.S.A. Section 1604-115, to reduce the statute of limitations on any warranty claim, whether express or implied, from six years to two years.

II. DECLARANT'S RESPONSIBILITY

In the event of any defect in any item or component thereof covered by Declarant's warranty, Declarant, at its option, will repair or replace the affected item or component at no cost to the Unit Owner. Replacement items or components will be substantially comparable to those replaced (although identical colors and other features may not necessarily be available). Declarant will correct the defect in such manner as to restore the component to the condition which would have existed had the defect not been present.

III. EXCLUSIONS

- A. Declarant's warranty does not include cracks, popping nails or other effects of normal settlement, or expansion, contraction, shrinkage or warping of materials that may occur in walls, floors, ceilings,

doors or any of the components of the Unit, or drainage, seepage, or other water problems, as long as such defect will not prevent the normal intended use of all or part of the Unit.

- B. Declarant's warranty does not include defects or smudges in painted surfaces, chipping and/or cracking of marble, formica, fiberglass or tiles, defective or broken glass, or similar defects readily visible to the human eye, which are not noted or corrected at the time of inspection by the initial purchaser before settlement.
- C. Declarant's warranty does not cover normal maintenance items or conditions resulting from wear and tear and/or misuse or negligence. Declarant's warranty does not apply where use or maintenance by the Unit Owner was contrary to the condominium instruments or rules and regulations of the Condominium or where any defect results from damage caused by negligence or from unreasonable or unnecessary maintenance by the Unit Owner.
- D. Furniture, wallcoverings, furnishings or the like as shown in or about any model unit are for display purposes only and are not considered a part of the Unit. Further, the location of wall switches, thermostats, chases, plumbing and electrical outlets and similar items may vary from unit to unit and may not be as shown in any model unit. Any floor plans, sketches or sales drawings shown to Purchasers other than those which are a part of the plans or the Public Offering Statement are for display purposes only and may not be exactly duplicated. The Unit is being sold unfurnished and will contain only the appliances and equipment set forth in the Purchase and Sale agreement between Declarant and Purchasers.
- E. **DECLARANT SPECIFICALLY DISCLAIMS ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGE TO ANY PERSONS, THE UNIT, OTHER COMPONENTS OR ANY OTHER REAL OR PERSONAL PROPERTY, RESULTING FROM A DEFECT.**

IV. LIMITATION OF IMPLIED WARRANTIES

ON CONSUMER PRODUCTS FINALLY DETERMINED BY A COURT TO BE WITHIN THE STATUTORY WARRANTY DESCRIBED ABOVE, ALL IMPLIED WARRANTIES ARE LIMITED TO DURATION TO THE PERIOD OF THIS WRITTEN WARRANTY. This includes, without limitation, the implied warranties of merchantability and fitness created by Title 11 M.R.S.A. Sections 2-314 and 2-315 and the implied warranty of suitability created by Section 1604-113(b) of the Maine Condominium Act.

V. WARRANTY PROCEDURES

A. The following procedures have been established to permit maximum efficiency in administering work under warranty. Each Unit Owner had the opportunity to inspect his Unit prior to closing. At that time a list of items needing correction in accordance with Declarant's warranty usually is prepared. Certain additional items may arise from time to time, as is normal in a new building. If any additional items arise, the procedure to be followed for correcting these items is as follows:

1. Ninety days after occupancy, if the Unit Owner has discovered defects that are covered by this Limited Warranty Certificate, in order to obtain performance of any of the Declarant's warranty obligations, a written statement of all warranty claims should be sent to:

Merreal Corp
c/o Thomas D. Lewis
P.O. Box 1280
Portland, ME 04101

2. Upon receipt of the written statement, Declarant's representative will meet the Unit Owner, inspect the Unit and list all warranted defects on the "Warranty Inspection Form", a copy of which is attached, to be signed by both the Unit Owner and Declarant's representative.
3. Any latent defects that may be discovered subsequent to the completion of the "Warranty Inspection Form", during the period covered by the Limited Warranty Certificate, will be handled individually upon written notice from the Unit Owner to Declarant sent to the address set forth in paragraph 1 above.

B. If the Unit Owner and Declarant's representative fail to agree upon the defects to be noted on the Warranty Inspection Form or the workmanlike correction of such defects, Declarant will, within five days after the date of the Unit Owner's request therefor, submit the disagreement to the Project Architect for decision, and such decision shall be final and binding on Declarant and the Unit Owner. The Project Architect will render his decision based on the plans and specifications for the Unit, the Declaration, the written notice, if any, sent pursuant to the applicable paragraph of the Purchase and Sale agreement, and the Purchase and Sale Agreement. The

charge by the Project Architect for this service will be paid one-half by Declarant and one-half by the Unit Owner prior to resolution.

- C. This Limited Warranty Certificate may be assigned by a Unit Owner to a subsequent owner of the Unit effective on the date that the subsequent owner notifies Declarant in writing of such assignment; this Limited Warranty Certificate is not otherwise transferable.

VI. INTERPRETATION

Nothing contained herein shall be deemed to be in derogation of the warranty required by Section 1604-113(b) of the Maine Condominium Act, as amended, as of this date. No action taken to correct defects shall extend this warranty. This Limited Warranty Certificate shall be governed by the laws of the State of Maine.

Dated:

Merreal Corp.

By _____
Its

Purchaser

Purchaser

4929S

FALLBROOK, A CONDOMINIUM
WARRANTY INSPECTION FORM

Purchaser

Unit Number

Purchaser

Inspection Conducted By:

Date of Inspection:

Listed below are all of the defects discovered to date in my
(our) Unit in accordance with the terms and conditions of my
(our) Limited Warranty Certificate dated _____.

Date

Purchaser

Purchaser

4929S

TO

PAUL NEMOFF
INSPECTION SUPER.

FROM

NAVY THAUBER
SITE INSPECTOR
RECEIVERS

SUBJECT: FALL BROOK COWDOS

AUG 22 1990

FOLD HERE

PORTLAND PLANNING OFFICE

DATE 8/19/90-

MESSAGE

As you can tell from the attached
walk sheet map - grid units were planned
for the Bay St. Bonds area - but were never
built & appear that nothing they come back in
for approval, we require the drawings & I've given
complaints from architect.
C.C. S. Harris, D. Green, C. Kelly & File
James Krumholz -

REPLY

SIGNED



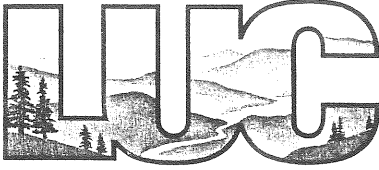
PLANNING REPORT #39-90

SECTIONAL RECORDING
FALLBROOK-A CONDOMINIUM
MERREAL CORPORATION, APPLICANT

Submitted to:

Portland Planning Board
Portland, Maine

August 28, 1990



J. David Haynes, ASLA
David A. Kamila, P.E.

LAND USE CONSULTANTS

October 29, 1990

2322

Mr. William Bray
Traffic Engineer
City of Portland
55 Portland Street
Portland, Maine 04101

Fallbrook Condominium

Dear Bill:

As we discussed on the phone today, would you please prepare a letter outlining all traffic improvements and reporting requirements which need to be completed as part of the Fallbrook Condominium project. As you know, we recently obtained Planning Board approval to separate Phase I of that project from Phases II, III and IV. We would like to be able to complete all outstanding obligations as quickly as possible.

Thanks for your help.

Very truly yours,

Patricia C. Harrington

PCH/b

c.c.: Jeff Nathanson



CITY OF PORTLAND

George A. Flaherty
Director

RECEIVED

NOV 09 1990

PORTLAND PLANNING OFFICE

November 8, 1990

Ms. Patricia C. Harrington
Land Use Consultants, Inc.
One India Street
Portland, Maine 04101

Dear Pat:

In response to your October 29, 1990 letter, A & D Electric Company must complete the following prior to acceptance of the traffic improvements:

- Replace existing Multi-Sonics 820 controllers with 820A model controllers which are compatible with City's Master Control System.
- Install hardware interconnect between three local intersections.
- Initiate "time-of-day" coordination plan for traffic system.
- Submit "As-built" wiring diagrams for traffic intersections and coordination system.

Completion of the above listed improvements fulfills the traffic requirements imposed upon the development.

Please call me with any questions.

Very truly yours,


William J. Bray
Traffic Engineer

WJB/sjr

pc: Sarah Green, Planning/Urban Development
Paul Niehoff, Materials Engineer

MERREAL

Corporation

April 6, 1990

Paul Niehoff
City Engineer
55 Portland Street
Portland, ME 04101

RE: Merreal Corp. Ray Street Planning and Development,
Ray Street, Portland, Maine
Letter of Credit No. 012888-1

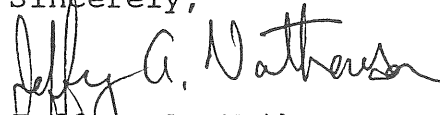
Dear Mr. Niehoff:

Pursuant to our conversation recently regarding the status of the Letter of Credit at the Ray Street Development now known as Fallbrook, Maine Savings Bank hereby extends the expiration date of the above-captioned Letter of Credit from May 1, 1990 to November 1, 1990. All other terms of said Letter of Credit remain unchanged.

As I mentioned to you on the phone, our intent is to pursue a sectional recording before the Planning Board to allow the Letter of Credit to correspond to the phasing of the project.

If you have any questions regarding the six-month extension, please feel free to give me a call. My number is 871-1111, extension 388.

Sincerely,


Jeffrey A. Nathanson
Assets Manager
Special Assets Group

JAN/vf

cc: Kathy Tergesen

Department of Parks and Public Works

SUBDIVISION / SITE DEVELOPMENT

COST BREAKDOWN OF IMPROVEMENTS TO BE COVERED BY PERFORMANCE GUARANTEE

Name of Project Ray Street DATE 1/13/88
 Address / Location 19.98 on Ray Street, Portland, Maine
 Developer Liberty Group Inc.
 Form of Performance Guarantee _____
 Type of Development - Subdivision Site Plan (Major / Minor)

ITEM	QUANTITY	UNIT COST	SUBTOTAL	COMPLETED
1. STREET/SIDEWALK:				
Topsham St.	830 L.F.	63.37	52,600	
Road (Private Road)	3,640 L.F.	\$103	\$375,000	
Granite Curbing	1,620 L.F.	\$ 20	\$ 32,400	
Sidewalks	(Included in item 8)			
Esplanades				
Monuments				
Street Lighting	(See site lighting)			
Other				
2. SANITARY SEWER:				
Manholes	160 V.F.	\$125	\$20,000	
Piping	3338 LF	\$21.40	\$71,435	
Connections	27 EA	\$100	\$ 2,700	
Other - Pumping Sta.	1 EA	\$35,000	\$35,000	
3. STORM DRAINAGE				
Manholes	41 VF	\$125	\$5,125	
Catch Basins	78 VF	\$125	\$9,750	
Piping	1552 LF	\$ 17	\$26,385	
Detention Basin	2 EA	\$2,500	\$5,000	
Other				
4. SITE LIGHTING			\$48,600	
5. EROSION CONTROL			\$1,500	
6. RECREATION AND OPEN SPACE AMENITIES				
Basketball Court			\$10,000	
Tot Lots (2EA)			\$20,000	
7. LANDSCAPING (Attach breakdown of plant materials, quantities, and unit costs)			\$141,600	
Price as directed by city of Portland				
8. MISCELLANEOUS	1000 CY	\$50	\$50,000	
(Rock Ex.)				

TOTAL AMOUNT OF PERFORMANCE GUARANTEE \$1,012,095
 X 1.7% = INSPECTION FEE \$17,206

Approved [Signature] 1/14/88
 Approved [Signature] 1/14/88
 rev. 9/15/87

8. (Cont.)
 Fully actuated control system at Washington/Allen Ray Street improvements \$30,000
 \$75,000

3-24-92

FALL BROOK

DON NEIL

PETER MERVILLE

ONLY 25% OF THE PROJECT HAS BEEN BUILT

NO CHILDREN LIVE THERE NOW

RSCOW IN CONTROL

A TRADITIONAL PATH THROUGH AREA FOR NEIGHBORING KID.

* RSCOW WILL NEED TO BE A COOPERATION APPROVAL WILL NOT BE LEGAL UNLESS RSCOW IS INVOLVED

JOB DILL HAS CONCERNS, LOOKING FOR ALTERNATIVE,

DORNA SOME TYPE OF ACTIVE RECREATIONAL ACTIVITIES SHOULD BE REQUIRED SHORTAGE OF PARKS IN NORTH OREM

IF NO PROBLEM WITH PARKING POND - OPPOSED TO ELIMINATE TOT LOT → KIDS AND CRANKIES, DON'T NECESSARILY NEED TO BE A BASKETBALL COURT

JOB WANT THE TOTAL OF THE WOULD CONSIDER SOME ALTERNATIVES TO THE BASKETBALL COURT
N.E. CORNER?

I. Introduction

Merreal Corporation, a subsidiary of Maine Savings Bank, is requesting approval for a sectional recording of the Fallbrook-A Condominium-project, located in the vicinity of Ray Street, Allen Avenue and Topsham Street. The project originally received subdivision approval, as Ray Street Townhomes, on September 10, 1985. Since that time, the project has been before the Board for site plan review (1987) and change of owner (1989). The site is 19.98 acres, zoning is R-3 Residential.

Notice for this project consisted of 361 notices mailed to area residents and property owners.

II. Summary of Findings

Zoning	R-3 Residential
Land Area	19.98 Acres
Number of Units	98
Number of Phases Requested	Four, with Phase I nearly completed.

III. Staff Review

As described in the applicants letter, Attachment 2, the Ray Street Townhomes project was originally approved with four phases, each with specific improvements and amenities. The applicant, at that time, recorded all the phases at the Registry, and posted the performance guarantee for the entire project. Because of market conditions, the applicant is seeking to have the project reapproved, utilizing the same number of phases (4) and the same number of units (98) as was previously approved. The only change from what the Board approved originally is the shifting of 4 units from Phase I to Phase IV. Phase I has 28 units, Phase II has 30 units, Phases III and IV have 20 units each. Each phase is over 20% of the total number of units, unlike the Parson's Pond sectional recording, this project does not require a waiver of the Subdivision Ordinance.

The proposal has been reviewed by the Planning, Building Inspections, Fire and Public Works Department. At the workshop, the Board had inquired about outstanding conditions of approval on this project. The Board may wish to clarify a time schedule for the completion of the items mentioned in Paul Niehoff's memo with the applicant. One potential condition of approval would require all Phase I improvements and the interconnection and coordination of all required traffic improvements be completed by November 1, which was suggested by the Materials Engineer. The second condition of approval would require the current owner to record the drainage maintenance agreement and the turn around easement at the Registry of Deeds. With those items clarified, there would be no outstanding conditions of approval.

If the Board approves the sectional recording, the applicant would have three years to record Phase II, and a total of five years, from the date of approval, to record all remaining phases.

IV. Motion for the Board to Consider

On the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #39-90 relevant to standards for Subdivision Review, the Planning Board finds:

- That the proposed sectional recording for Phases I, II, III and IV is in conformance with the Subdivision Ordinance of the Land Use Code.

Potential Conditions of Approval

1. All Phase I improvements and the interconnection and coordination of traffic improvements shall be completed by November 1, 1990.
2. The current owner shall record a drainage maintenance agreement and a turnaround easement, to meet previously required conditions of approval, at the Registry of Deeds.

Attachments

1. Plats for Phases I-IV
2. Applicant's Letter Dated 6/4/90
3. Description of Phases and Amenities
4. Material Engineer's Comments
5. Applicant's Letter Dated 8/9/90
6. Letters from Area Residents

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Gerry Pelletier, Data Processing
FROM: Kandi Cote, Planning Technician
DATE: July 19, 1990
SUBJECT: Request for labels

Please print two (2) sets of labels from the Assessor's Charts for the following project. The labels are needed as soon as possible. Thank you.

PROJECT

Fallbrook

CHARTS

400, 401, 402, 403, 406, 407