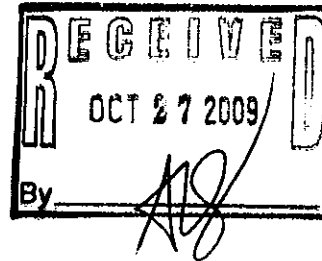


October 26, 2009
02482

Amanda Stearns, AICP, Town Planner
Town of Falmouth
271 Falmouth Road
Falmouth, Maine 04105



sebagotechnics.com

One Chabot Street
P.O. Box 1339
Westbrook, Maine
04098-1339
Ph. 207-856-0277
Fax 856-2206

Request for Street Acceptance, Sherman Drive

Dear Ms. Stearns:

I am writing to follow up on our recent conversation regarding the request by Normand Berube Builders, Inc. to accept Sherman Drive as a public street. Attached is the documentation to support that request, which was submitted September 14, 2007 and included a metes and bounds description of the Sherman Drive right-of-way (ROW), including the future extension of Sherman Drive across the open space as well as copies of the certificates of occupancy for at least 20% of the housing units.

As you requested, I have also enclosed the following information:

1. Road Ownership: Normand Berube Builders, Inc. presently owns the ROW of Sherman Drive, as well as a future ROW extension of Sherman Drive across the open space as shown the approved subdivision plan recorded in the Cumberland County Registry of Deeds in Plan Book 205, Page 763.
2. A copy of the recorded Sherman Woods' Homeowners Association Declaration of Protective Covenants, Conditions, Restrictions, Common Easements and Road Maintenance Agreement.
3. Final Road Inspection: As you suggested, I have discussed Sherman Drive with Engineering Technician, Tony Hayes. Mr. Hayes has performed his final walk-through of Sherman Drive and is prepared to report his findings to you.
4. Two copies of an updated as-built drawing showing the roadway and infrastructure.
5. The applicant, Normand Berube Builders, Inc., is not requesting any variances to the Town of Falmouth Roadway Construction Standards.

We are requesting a waiver of the performance guarantee for a road defect maintenance bond under the provisions of Section 14-58(c) because:

1. Sherman Drive has been constructed and has been in place for more than two calendar years.

2. The road has been properly maintained since the time of construction.
3. There are no known road defects (to be verified by the Town Engineer).

We look forward to meeting with the Town Council on November 9, but in the interim please contact me if you have questions or require additional information. Thank you for your assistance in the matter.

Sincerely,

SEBAGO TECHNICS, INC.



Walter P. Stinson, P.E.

President

WPS:kn

Att.

cc: Normand Berube Builder, Inc.

**TOWN OF FALMOUTH
STREET ACCEPTANCE CHECKLIST
APPLICANT**

Street: Sherman Drive

Petitioner: Normand Berube Builders, Inc.

Address: 1040 Portland Rd., Suite 2

Saco, Maine 04072

Telephone: 207-883-8270 E-mail Address nberubeldrs@maine.rr.com

- 1). Enclosed A letter requesting acceptance of proposed street (Section 14-54)
- 2). Enclosed Warranty deed with metes and bounds description of the property being offered to the town for acceptance of the street (Section 14-53)
- 3). Enclosed A plan, street profile and cross section of the proposed street (an as-built plan) as specified in (Section 14-54)
- 4). Enclosed A plan of the location of all infrastructure locations (such as sewer and/or water lines and culverts as specified in (Section 14-54)
- 5). _____ Performance guarantee for a Road Defect Maintenance Bond as Specified in (Section 14-58)
- 6). Enclosed Proof that certificates of occupancy have been issued for at least 20% of the housing units, or 2 units, which ever number is greater (Section 14-56)

TOWN OF FALMOUTH
Code Administration
271 Falmouth Rd. Falmouth, Maine 04105
ph: 781-5253 fax 781-8577
email: jbrown@town.falmouth.me.us

CERTIFICATE OF OCCUPANCY

For work as described on the Permit Application and supporting documents, pursuant to:
PERMIT# 6458 ; issued under International Residential Code.

DATE: August 6, 2007

NAME: Norman Berube

LOCATION OF CONSTRUCTION: 17 Sherman Dr.


MAP/LOT: R01-021-006

DESCRIPTION OF WORK: New Single Family Dwelling

OCCUPANCY/USE: Residential

NUMBER OF BEDROOMS: 3

SPECIAL CONDITIONS:


Justin K. Brown, Code Enforcement Officer

CC: file__ assessing__

TOWN OF FALMOUTH
Code Administration
271 Falmouth Rd. Falmouth, Maine 04105
ph: 781-5253 fax 781-8677
email: jbrown@town.falmouth.me.us

CERTIFICATE OF OCCUPANCY

For work as described on the Permit Application and supporting documents, pursuant to:
PERMIT# 0658 issued under International Residential Code 2003

DATE: November 16, 2006

NAME: Normand Berube Builders

LOCATION OF CONSTRUCTION: 15 Sherman Dr.

MAP/LOT: R01-021-007

DESCRIPTION OF WORK: New Single Family Dwelling

OCCUPANCY/USE: Residential

NUMBER OF BEDROOMS: 4

SPECIAL CONDITIONS:


Justin Brown, Code Enforcement Officer

CC: file__ assessing__

WARRANTY DEED
Maine Statutory Short Form

KNOW ALL MEN BY THESE PRESENTS,

THAT **NORMAND BERUBE BUILDERS, INC.**, a Maine Corporation with a principal place of business in Saco, County of York, State of Maine,

for consideration paid,

grant to **THE TOWN OF FALMOUTH**, a body corporate and politic located in the Town of Cumberland, County of Cumberland, State of Maine, whose mailing address is 271 Falmouth Road, Falmouth, ME 04105, with warranty covenants, the land in the Town of Falmouth, County of Cumberland, State of Maine, described as follows:

A certain right-of-way off the westerly side of Longwoods Road, also known as Route 9 in the Town of Falmouth, County of Cumberland and State of Maine being shown and depicted as **SHERMAN DRIVE** on a Subdivision Plan of Sherman Woods for Normand Berube Builders, Inc. by Sebago Technics, Inc. dated January 24, 2005 and last revised November 15, 2005, with reference to Project Number 02482, which plan is duly recorded in the Cumberland County Registry of Deeds in Plan Book 205, Page 763 and being further bounded and described as follows:

Beginning at a monument near the northerly corner of Lot One at the intersection of the westerly side of Longwoods Road and the southerly side of the right-of-way herein described;

Thence by Lot One and along a curve to the left with a radius of 10.00 feet, a length of 15.86 feet, having a chord of N 48°-16'-31" W, 14.25 feet to a monument at a point of tangency;

Thence S 86°-18'-09" W, by and along Lot One, a distance of 233.40 feet to a monument at a point of curvature;

Thence by and along a curve to the left with a radius of 225.00 feet, a length of 27.07 feet, having a chord of S 82°-51'-22" W, 27.05 feet to a 5/8-inch capped rebar at the northerly corner of Lot Two;

Thence continuing by and along a curve to the left with a radius of 225.00 feet, a length of 209.30 feet, having a chord of S 52°-45'-38" W, 201.84 feet to a monument at a point of tangency;

Thence S 26°-06'-42" W, by and along Lot Two, a distance of 258.09 feet to a 5/8-inch capped rebar at the corner of Common Open Space;

Thence continuing S 26°-06'-42" W, by and along said Common Open Space, a distance of 71.90 feet to a monument at a point of curvature;

Thence continuing along a curve to the right with a radius of 275.00 feet, a length of 55.30 feet, having a chord of N 48°-29'-54" E, 55.21 feet to a monument at a point of tangency;

Thence N 54°-15'-34" E, by and along Lot Six, a distance of 105.70 feet to a monument at a point of curvature;

Thence by and along a curve to the left with a radius of 225.00 feet, a length of 41.10 feet, having a chord of N 49°-01'-34" E, 41.05 feet to a 5/8-inch capped rebar at the southerly corner of Lot Seven;

Thence continuing by and along a curve to the left with a radius of 225.00 feet, a length of 69.43 feet, having a chord of N 34°-57'-08" E, 69.16 feet to a monument at a point of tangency;

Thence N 26°-06'-42" E, by and along Lot Seven, a distance of 135.30 feet to a 5/8-inch capped rebar at the southerly corner of Lot Eight;

Thence continuing N 26°-06'-42" E, by and along Lot Eight, a distance of 194.69 feet to a monument at the southerly corner of Lot Nine, marking a point of curvature;

Thence by and along a curve to the right with a radius of 275.00 feet, a length of 234.13 feet, having a chord of N 50°-30'-06" E, 227.12 feet to a 5/8-inch capped rebar marking Common Open Space;

Thence continuing by and along a curve to the right with a radius of 275.00 feet, a length of 54.77 feet, having a chord of N 80°-35'-49" E, 54.68 feet to a monument at a point of tangency;

Thence N 86°-18'-09" E, by and along said Common Open Space, a distance of 234.74 feet to a monument at a point of curvature;

Thence by and along a curve to the left with a radius of 10.00 feet, a length of 15.47 feet, having a chord of N 41°-58'-46" E, 13.97 feet to a monument at the westerly side of Longwoods Road;

Thence by and along a non-tangent curve to the left with a radius of 7,863.43 feet, a length of 69.92 feet, having a chord of S 02°-35'-54", 69.92 feet to the Point of Beginning.

Meaning and intending to describe all of Sherman Drive as shown on said plan, containing approximately 75,148 square feet.

Together with a 10-foot wide grading and utility easement running parallel to along said right-of-way as shown on said plan.

Together with an access, grading, and drainage easement over and through a portion of Lot 3 and the Open Space B, as shown on said plan.

Together with a pedestrian easement off the southerly end of the herein described Sherman Drive right-of-way, being further bounded and described as follows:

Beginning at 5/8-inch capped rebar at the southerly corner of Lot Four as shown on said plan;

Thence by and along a curve to the right with a radius of 275.00 feet, a length of 135.10 feet, having a chord of S 40°-11'-08" W, 133.75 feet to a monument at a point of tangency;

Thence S 54°-15'-34" W, continuing by and along Common Open Space, a distance of 105.70 feet to a monument at a point of curvature;

Thence by and along a curve to the left with a radius of 225.00 feet, a length of 38.21 feet, having a chord of S 49°-23'-42" W, 38.16 feet to a 5/8-inch capped rebar at the northerly corner of Lot Three;

Thence continuing by and along a curve to the left with a radius of 225.00 feet, a length of 134.49 feet, having a chord of S 27°-24'-25" W, 132.49 feet to a monument at a point of tangency;

Thence S 10°-17'-02" W, by and along Lot Three, a distance of 84.15 feet to a monument at a point of curvature;

Thence by and along a curve to the left with a radius of 10.00 feet, a length of 15.71 feet, having a chord of S 34°-42'-58" E, 14.14 feet to a monument at a point of tangency;

Thence S 79°-42'-58" E, by and along Lot Three, a distance of 40.00 feet to a 5/8-inch capped rebar at said common open space, being the terminus of the hammer head turn around;

Thence S 10°-17'-02" W, by and along said Common Open Space a distance of 50.00 feet to a 5/8-inch capped rebar;

Thence N 79°-42'-58" W, continuing along said Common Open Space, a distance of 40.00 feet to a monument at a point of curvature;

Thence by and along a curve to the left with a radius of 10.00 feet, a length of 15.71 feet, having a chord of S 55°-17'-02" W, 14.14 feet to a monument at a point of tangency;

Thence S 10°-17'-02" W, by and along said Common Open Space, a distance of 40.00 feet to the southerly most terminus of the hammerhead turn around;

Thence N 79°-42'-58" W, by and along said Common Open Space, being the terminus of said turn around, a distance of 50.00 feet to a 5/8-inch capped rebar at the southerly corner of Lot Four;

Thence N 10°-17'-02" E, by and along Lot Four, a distance of 156.15 feet to a 5/8-inch capped rebar at the southerly corner of Lot Five;

Thence continuing N 10°-17'-02" E, by and along Lot Five, a distance of 38.00 feet to a point of curvature;

Thence by and along a curve to the right with a radius of 275.00 feet, a length of 155.76 feet, having a chord of N 26°-30'-37" E, 153.69 feet to a 5/8-inch capped rebar at the southerly corner of Lot Six;

Thence S 79°-42'-58" E, by and along the southerly terminus of Sherman Drive, a distance of 15.00 feet;

Thence S 10°-17'-02" W, over and through Common Open Space, a distance of 107.19 feet to the northerly sideline of a Central Maine Power Easement described in Deed Book 1493, Page 253;

Thence N 89°-36'-34" W, along the northerly sideline of the CMP easement, a distance of 15.22 feet;

Thence by and along said Common Open Space, along a curve to the right with a radius of 275.00 feet, a length of 1.25 feet, having a chord of N 10°-09'-14" E, 1.25 feet;

Thence N 10°-17'-02" E, by and along said Common Open Space, a distance of 108.56 feet to the Point of Beginning.

Meaning and intending to describe the Pedestrian Easement off the southerly side of Sherman Drive across the Open Space as shown on said plan connecting to the 100-foot wide CMP access easement, containing approximately 1,627 square feet.

Together with a future right-of-way off the southerly end of Sherman Drive, being further bounded and described as follows:

Beginning at 5/8-inch capped rebar at the southerly corner of Lot Four as shown on said plan;

Thence S 79°-42'-58" E, by and along the southerly terminus of Sherman Drive, a distance of 50.00 feet to a 5/8-inch capped rebar;

Thence S 10°-17'-02" W, by and along Common Open Space, a distance of 108.56 feet to a point of curvature;

Thence by and along a curve to the left with a radius of 225.00 feet, a length of 251.57 feet, having a chord of S 21°-44'-50" E, 238.67 feet to a point of tangency;

Thence S 53°-46'-42" E, by and along Common Open Space, a distance of 46.70 feet to land now or formerly of Thomas R. Day as described in a deed recorded at Cumberland County Registry of Deeds in Book 4720, Page 51;

Thence S 36°-13'-18" W, by and along land of said Day, a distance of 50.00 feet;

Thence N 53°-46'-42" W, by and along Common Open Space, a distance of 46.70 feet to a point of curvature;

Thence by and along a curve to the right with a radius of 275.00 feet, a length of 307.48 feet, having a chord of N 21°-44'-50" W, 291.71 feet to a point of tangency;

Thence N 10°-17'-02" E, by and along said Common Open Space, a distance of 108.56 feet to the Point of Beginning.

Meaning and intending to describe the future Right-of-Way Extension of Sherman Drive across the Open Space as shown on said plan and over and through the 100-foot wide CMP access easement, containing approximately 21,739 square feet.

For Grantor's source of title, reference is made to deed of Cleo Sherman, dated December 8, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23485, Page 80.

RESERVING to the Grantor, its successors and assigns, the use and enjoyment of said land for such purposes as will in no way interfere with the perpetual use thereof by the Grantee, its successors and assigns, for the purposes above mentioned, provided that no building or any kind of permanent structure shall be erected on said land by the Grantor, its successors and assigns, and that the Grantor, its successors and assigns, shall not remove earth from said land or place fill thereon without written permission of the Grantee.

IN WITNESS WHEREOF, IT, the said **NORMAND BERUBE BUILDERS, INC.**, has caused this instrument to be signed and sealed in its corporate name and behalf by **SUSAN M. BERUBE**, its Vice President, thereunto duly authorized, all as of this _____ day of _____, 2007.

**SIGNED, SEALED AND DELIVERED
IN PRESENCE OF**

NORMAND BERUBE BUILDERS, INC.

BY: _____
Susan M. Berube
Its Vice-President

STATE OF MAINE
_____, ss.

_____, 2007

Then personally appeared the above named **SUSAN M. BERUBE**, Vice-President of **NORMAND BERUBE BUILDERS, INC.** and acknowledged the foregoing instrument to be her free act and deed, in her said capacity and the free act and deed of said corporation

Before me, _____
Notary Public/Attorney at Law
PRINT NAME:
My Commission Expires: _____

SHERMAN WOODS HOMEOWNERS' ASSOCIATION
OF FALMOUTH, MAINE

DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS,
COMMON EASEMENTS AND ROAD MAINTENANCE AGREEMENT

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, COMMON EASEMENTS AND ROAD MAINTENANCE made this 8th day of December, 2005 by **NORMAND BERUBE BUILDERS, INC.**, a Maine corporation with an established place of business in Saco, York County, Maine (hereinafter called "**Declarant**").

WHEREAS, Declarant owns, with the exception of Lots No. 4 and 8 as shown on the hereinafter referenced Plan which are to be retained by Cleo C. Sherman, by deed from Cleo C. Sherman, dated December 8, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23485, Page 80, certain real estate situated in Falmouth, Cumberland County, Maine, and depicted upon a certain Plan entitled "**Subdivision Plan of: SHERMAN WOODS Longwoods Road Falmouth, Maine for: Cleo Sherman**" dated January 24, 2005, prepared by Sebago Technics, and recorded in said Registry of Deeds in Plan Book 205, Page 763 (hereinafter called the "**Plan**") as Lots 1 through 9, and one interior roadway known as and referred to herein as Sherman Drive; and,

WHEREAS, Declarant desires to develop a nine (9) lot (although only 7 of such lots are to be owned by Declarant) residential subdivision on property to be known as **Sherman Woods** in accordance with the Plan (Lots 1-9 on the Plan being collectively called "**Property**", the "lots" or in the singular "lot"); and,

WHEREAS, Cleo Sherman, as owner of Lots 4 and 8 as shown on said Plan, has agreed that said Lots 4 and 8 should be made subject to and shall have all of the benefits of the protective covenants, conditions, restrictions and common easements set forth herein, and Declarant desires and intends that said Lots 4 and 8 should be so benefited, all as set forth and evidenced on the Limited Joinder attached hereto and executed by Declarant and Cleo Sherman; and,

WHEREAS, Declarant desires to assure quality standards for the wholesome development of the **Property** and to promote the interests and welfare of each owner of a part of the **Property** and therefore, desires to subject the **Property** to protective covenants and common easements, all as set forth hereinafter; and,

WHEREAS, Declarant has, for its own purposes in connection with the development of the **Property** and as a requirement of the Town of Falmouth subdivision approval, formed a Homeowners' Association for the various purposes set forth herein, including that in the event said Town does not accept Sherman Drive as a public way, the Homeowners' Association will be

responsible for the maintenance of said Sherman Drive. In addition, the Association will be responsible for the maintenance of the common area(s) and easements noted on the aforementioned Plan as well as for the payment of real estate taxes on the common and easement area(s).

NOW, THEREFORE, Declarant hereby declares that the **Property** is and shall be held, occupied, improved, transferred, leased and otherwise used and disposed of subject to the protective covenants, conditions, restrictions and common easements set forth herein, all of which are declared to be in furtherance of a uniform scheme of mutual equitable servitudes upon each and every portion thereof, in favor of each and every other portion thereof, and to create reciprocal rights and privity of contract and estate between all persons acquiring or owning an interest in any portion thereof, which protective covenants, conditions, restrictions and common easements shall be determined to run with the land and be a burden and benefit upon and to, and be enforceable by, all persons having any interest in any portion of the **Property**.

ARTICLE I **DEFINITIONS**

Section 1: "**Sherman Woods**" shall mean and refer to the lots and the property which are made subject to the terms of this Declaration, as the same may be amended from time to time.

Section 2: "**Declarant**" shall mean and refer to **NORMAND BERUBE BUILDERS, INC.**, its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the **Declarant** for the purpose of development of the Sherman Woods subdivision and if, in the conveyance to such successor or assign, the **Declarant** expressly transfers to such party **Declarant's** rights hereunder.

Section 3: "**Declaration**" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions, Common Easements and Road Maintenance Agreement applicable to the **Property** and as recorded in the Cumberland County Registry of Deeds, as the same shall be amended from time to time.

Section 4: "**Lot**" shall mean and refer to those numbered parcels shown upon the Plan. Lot shall **ALSO** mean any residential lot or parcel of land which **Declarant** elects to make subject to the terms of this Declaration and which is shown upon a survey Plan or Plans recorded in the Cumberland County Registry of Deeds.

Section 5: "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the property, including contract companies, but excluding those having such interest merely as security for the performance of an obligation.

Section 6: "**Property**" shall mean and refer to that certain real property hereinbefore described and shown on the Plan, together with the rights and easements for ingress, egress and utilities in, on, over and across Sherman Drive as shown on the Plan. In addition, the **Property**

shall include any lot or lots which may be created from any other property of the **Declarant**, whether now owned or acquired in the future, which is contiguous to the original property or contiguous to any property which has been so added (herein the "Additional Property"); provided, however, that any such additional property will only become subject to the terms and provisions of this Declaration upon an amendment executed by the **Declarant** expressly making such Additional Property subject to the terms hereof.

Section 7: "Homeowners' Association" shall mean the Sherman Woods Subdivision Homeowners' Association of Falmouth, Maine.

Section 8: Road "maintenance" shall refer to and include, but not be limited to, snow plowing, sanding, repair and replacement ("repair and replacement" including, without limitation, all work necessary or desirable to continuously keep Sherman Drive in a suitable condition for its intended purpose, including reconstruction, paving and repaving, installation and repair of culverts and other facilities or structures customarily associated with a road providing access to residential properties in the Town of Falmouth).

ARTICLE II: PROTECTIVE COVENANTS AND RESTRICTIONS

Each conveyance by **Declarant**, its successors and assigns, of any lot within the **Property** shall be subject to the following protective covenants and restrictions:

1. Subject to the rights of the **Declarant** set forth in **ARTICLE VI** of this Declaration, each lot conveyed shall be used only as a single family residence. No trade, business, profession or commercial trade of any nature shall be conducted on the lots unless it: (1) is conducted within the residence located on the lot; and (b) has no employees other than the lot owner; and (c) is not advertised on the lot, except that the lot owner shall be permitted to use one directional sign not larger than 150 square inches of surface area. Any use or signage allowed by this Paragraph must comply with all applicable requirements of the Zoning Ordinance of the Town of Falmouth, Maine.
2. No poultry, swine, dog kennels, livestock or other animals, except household pets normally housed in a single family residence, shall be kept on the **Property**.
3. Except in the development of the lots by the **Declarant** or by an owner of a Lot, no business or commercial vehicle or vehicles of similar nature shall be brought upon, or be maintained or be permitted to remain on the **Property**, except that a business vehicle normally used by a lot owner in his occupation may remain on the **Property**.
4. No more than one principal residential building shall be maintained at any time on any lot.
5. No dwelling or other building erected on any lot shall be covered with tar paper, asphalt siding or corrugated metal siding but shall be covered with clapboards, shingles, brick, vinyl siding or other materials of like quality.

6. A lot owner shall at all times prevent the accumulation of rubbish and debris on his lot, and the **Declarant** shall have the right to remove any rubbish or debris which is in violation of this provision at the lot owner's expense after having given the lot owner at least ten (10) days' written notice of its intention to exercise that right.

7. No junk automobiles or other vehicles which do not display a current registration sticker may be kept or maintained on the **Property** unless parked in a garage.

8. Any dwelling or other structure on the **Property** which is destroyed or damaged in whole or in part by fire, windstorm or other casualty must be rebuilt, or all debris removed and the affected portion of the **Property** restored to its natural condition without delay.

9. No lot shall be further subdivided.

10. No generators for the generation of electric power shall be installed, maintained or used on any lot, except during the initial period of construction of the principal residential dwelling on the lot and during any power outage.

11. During any time in which Sherman Drive is posted prohibiting the transport of heavy equipment, lot owners shall not bring any heavy equipment into the **Property**. Any lot owner who violates this provision shall be liable for the costs of repair of any resulting damage to the interior road of the **Property**.

12. All dwelling or other buildings constructed on the **Property** shall have a floor space of at least 2,000 square feet (not including the garage), have an attached two-car garage and all driveways are to be paved. Each lot owner (but excluding Lots 4 and 8) shall submit his/her architectural design to the **Declarant** for approval prior to construction. The exterior finish and color of all buildings constructed on the **Property** (but excluding Lots 4 and 8) shall need **Declarant's** approval.

13. All houses shall be properly numbered with the numbers being visible from the street year-round.

14. Prior to the date of the execution and recording of this Declaration, there has been formed the **SHERMAN WOODS SUBDIVISION HOMEOWNERS' ASSOCIATION OF FALMOUTH, MAINE**, a non-profit non-stock corporation organized and existing under the laws of the State of Maine (hereinafter called the "Association"). Each owner of a lot shall automatically become a member of the Association. Upon termination of interest of any owner in a lot, membership and any interest in the Association shall thereupon automatically terminate and transfer and inure to the next owner of said lot. Each owner of a lot shall be bound by the By-Laws of the Association, as the same may be amended from time to time, and each owner of a lot shall comply strictly with said By-Laws of the Association. No holder of a mortgage of a lot shall be considered as lot owners until such holder shall acquire title to the lot by foreclosure, by deed in lieu of foreclosure, or by maintaining possession of the lot.

15. Notwithstanding any of the foregoing restrictions, the Association may, upon the application of any lot owner and with the favorable vote of two-thirds of the lot owners, waive any of the foregoing covenants and restrictions; provided, however, that the provisions of Paragraph 14 of **ARTICLE II** hereof may not be amended without (i) the unanimous approval of all lot owners, (ii) the approval of the Town of Falmouth acting through its Planning Board, and (iii) the Maine Department of Environmental Protection as and if required by the DEP Permit.

ARTICLE III: EASEMENTS

1. **Creation of Easements:** The following easements are hereby created (in addition to any other easements created in this Declaration):

(a) The **Declarant** reserves the right to maintain on the **Property** (but excluding Lots 4 and 8) such advertising signs as may comply with the 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 lots to owners other than the **Declarant**.

(b) The **Property** (but excluding Lots 4 and 8) shall be, and hereby is, made subject to easements in favor of the **Declarant**, appropriate utility and service companies, cable television companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the **Property**. The easements created by this **ARTICLE** shall include, without limitation, rights of the **Declarant**, or the providing utility or service company, or governmental agency or authority to install, lay, maintain, repair, remove and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, drainage ditches, pump stations and leachfields, telephone wires and equipment, television equipment and facilities (cable or otherwise), electrical wires, conduits and equipment and ducts and vents over, under, through, along and on the **Property** (but excluding Lots 4 and 8). Notwithstanding the foregoing provisions of this **ARTICLE**, any such easement through a lot shall be located either in substantially the same location as such facilities or similar facilities that existed at the time of first conveyance of the lot by **Declarant** or occupancy of the lot by its occupants.

(c) The lots (but excluding Lots 4 and 8) shall be and hereby are made subject to an easement in favor of the **Declarant**, and the agents, employees and independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement, if applicable, of the lots and any improvements and fixtures located thereon, pursuant to its rights to enforce the provisions of this Declaration.

(d) All easements, rights and restrictions described and mentioned in this **ARTICLE** are easements appurtenant, running with the land and the property, and (except as expressly may be otherwise provided herein or in the instrument creating the same) shall continue in full force and effect until the termination of this Declaration.

2. **Reservation of Easement:** So long as the **Declarant** has title to any lot or any other portion of the **Property**, the **Declarant** reserves the right to grant to any third party any license or easement in, on, over or through the **Property** (but excluding Lots 4 and 8), in addition to and not in limitation of those set forth above, which license or easement is determined by the **Declarant**, in its reasonable judgment, to be necessary or desirable for the development or improvement of the **Property**. Any such license or easement granted hereunder shall be located so as not to materially interfere with the use or occupancy of the lots by their occupants, and may be recorded by the **Declarant** at its sole cost and expense. **Declarant** will obtain Planning Board approval prior to the granting of said easement rights.

ARTICLE IV: DURATION

The protective covenants and common easements and the other provisions of this Declaration, as set forth herein and as the same may be amended from time to time, shall run with and be a burden upon the lots and shall inure to the benefit of and be enforceable by the **Declarant** and any other owners of any portion of the **Property**, their respective legal representatives, heirs, successors or assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time all of said provisions shall be automatically extended for successive periods of five (5) years unless an instrument signed by the owners of two-thirds of the lots has been recorded, agreeing to terminate this Declaration as of a specified date following such recording date. Nothing in this Paragraph will affect the obligations of the Homeowners' Association to maintain Sherman Drive and the Stormwater Management System if they shall remain private.

ARTICLE V: SUPPLEMENTAL DECLARATIONS

This Declaration may be amended from time to time by a Supplemental Declaration duly executed by (i) the **Declarant**, so long as it is the owner of one of the lots or (ii) by a two-thirds majority of the lot owners after the **Declarant** has conveyed all of the lots within the **Property**. No such amendment shall render invalid any use or subdivision of land within the **Property** existing in accordance with this Declaration at the time of recording of such Supplemental Declaration, and any such amendment shall be reasonably consistent with the uniform scheme of development established by this Declaration and with applicable zoning and other land use regulations. In no event shall any such amendment impose any additional or changed obligation on Lot 4 or Lot 8, unless the owner thereof shall expressly so agree.

ARTICLE VI: DECLARANT'S RIGHTS

The conveyance of lots to owners shall be subject to the following reserved rights:

1. The **Declarant** reserves the right until the construction, marketing and sale of all lots is completed to:

(a) Change the size, number, layout and location of any lot or improvement owned by **Declarant** (but not the location of Sherman Drive) for which a purchase and sale agreement has not been executed by the **Declarant** or with respect to which the purchaser is in default under a purchase and sale agreement. The change or changes shall be effective upon the recording by the **Declarant** of an amendment to this Declaration and/or the recording by the **Declarant** of a modified Subdivision Plan indicating the changes made. Any reserved rights under this Paragraph require prior Planning Board approval as amendments to the Subdivision Plan.

(b) Connect with and make use of utility lines, pipes and conduits located on the **Property** (except for Lots 4 and 8) for construction and sale purposes, provided that the **Declarant** shall be responsible for the cost of service so used.

(c) Install and maintain signs and lighting for sales purposes.

(d) With respect to any lots remaining unsold by **Declarant**, **Declarant** may let or lease such lots to any person or persons as **Declarant** sees fit, but only consistent with the uses, conditions, covenants and restrictions set forth herein.

(e) Amend the restrictions as set forth in **ARTICLE II** (except as set forth in section 15 thereof and except as to Lots 4 and 8) by recording an amendment to the Declaration of Protective Covenants in the Cumberland County Registry of Deeds.

This **ARTICLE VI** shall not be amended without the consent of the **Declarant** so long as the **Declarant** owns any part of the **Property**.

ARTICLE VII
MAINTENANCE PLAN OF STORMWATER MANAGEMENT FACILITIES
AND COMMON USE IMPROVEMENTS

The Property is subject to the terms and conditions of a Department Order issued by the Maine Department of Environmental Protection to Berube Builders, Inc. for "Sherman Woods Subdivision, #L-22437-NJ-A-N and L-22437-TC-B-N, Stormwater Management Law, Natural Resources Protection Act Tier One Wetland Alteration Water Quality Certification Findings of Fact and Order" dated July 18, 2005, recorded in the Cumberland County Registry of Deeds in Book _____, Page _____ (the "DEP Order"). The initial installation of all facilities, structures or alteration of the land required by the DEP Order shall, in the first instance, be completed by the Declarant. The maintenance of the pond and the riprap channel or any other

facilities or improvements required pursuant to the DEP Order shall be undertaken in compliance with the terms of the DEP Order and will be the responsibility of the Homeowners' Association upon the completion of all of the initial installation of improvements related to the stormwater management system and the conveyance of five (5) lots to third parties. Until that time, **Declarant** will assure that the following maintenance plan is adhered to and shall be solely responsible for the costs thereof.

The **Declarant**, during the **Declarant** contractual period, and the Homeowners' Association in perpetuity, will be responsible for the maintenance of all stormwater management structures, the establishment of any contract services required to implement the program, and the keeping of records and maintenance log book. Records of all inspections and maintenance work accomplished must be kept on file and retained for a minimum 5 year time span. The maintenance log book will be made available to the DEP upon request. At a minimum, the appropriate and relevant activities for each of the stormwater management systems will be performed on the prescribed schedule, as follows:

Ditches, Swales and Culverts

1. Open swales and ditches need to be inspected on a monthly basis or after a major rainfall event to assure that debris or sediments do not reduce the effectiveness of the system. Debris needs to be removed at that time. Any sign of erosion or blockage shall be immediately repaired to assure a vigorous growth of vegetation for the stability of the structure and proper functioning.
2. Vegetated ditches should be mowed at least monthly during the growing season. Larger brush or trees must not be allowed to become established in the channel. Any areas where the vegetation fails will be subject to erosion and should be repaired and revegetated.
3. Riprap ditches where stone is displaced should be replaced and chinked to assure stability. With time, riprap may need to be added. Vegetation growing through riprap should be removed on a yearly schedule.
4. If sediment in culverts or piped drainage systems exceeds 20% of the diameter of the pipe, it should be removed. This may be accomplished by hydraulic flushing or any mechanical means; however, care should be taken to not flush the sediments into the retention/detention pond as it will reduce the pond's capacity and hasten the time when it must be cleaned. All pipes should be inspected on an annual basis.

Detention Pond

1. After each significant rainfall event, or at least monthly, the detention basin will be visually inspected to assure that the outlet structure is not blocked and that no sign of erosion is apparent within the berm or riprap.

2. The top layer of the infiltration area shall be roto-tilled periodically (once or twice a year) to assure filtration capacity.
3. Any sign of erosion or blockage shall be immediately repaired to assure a vigorous growth of vegetation for the stability of the structure and proper functioning.
4. The pond will be inspected on an annual basis to assure that significant sediment accumulation has not occurred. Whenever the sediment is within three inches of the outlet invert the accumulated sediment shall be removed and disposed of properly.
5. On a semi-annual basis, remove debris from the level lip spreader, outlets and emergency overflow channel. Examine the sediment accumulation in the forebay sump.
6. On a semi-annual basis, inspect and remove debris from the control structure; check the orifice and all openings, and the elevation of the weir.

Level Lip Spreader and Ditch Turnout

1. Inspect and remove debris in level spreader, record weir elevation, and adjust if necessary. Inspect for bypass or undermining, repair as needed any channelization as it is occurring and remove sediment buildup to assure sheet flow conditions. Perform inspection on a semi-annual basis at a minimum.

Common Use Improvements

1. The Homeowners' Association shall cause the regular inspection of the private common use improvements at intervals specified by the Falmouth Planning Board which shall include the removal of any accumulated debris thereon.
2. The Homeowners' Association shall make appropriate arrangements for the timely management, operation, maintenance and eventual replacement of all private common use improvements and shall pay all expenses necessary or incidental to the performance of its functions and responsibilities.
3. Personnel from the Town of Falmouth, (i.e. Code Enforcement Officer, Plumbing Inspector, Town Engineer and other duly authorized employee) bearing proper credentials or identification, shall be permitted to enter, at all reasonable times upon all real or personal property necessary to the operation of the private common use improvements for inspection, observation, measurement, sampling and testing related to the operation, maintenance and repair of the private common use improvements.

ARTICLE VIII
ROAD MAINTENANCE; EASEMENTS IN SHERMAN DRIVE

Sherman Drive shall be constructed by the Declarant to Town of Falmouth standards and shall be private until the Town of Falmouth accepts said road. The ownership of the fee interest in Sherman Drive shall remain in the Declarant's name until such time as six (6) lots (but excluding Lots 4 and 8) shown on said Plan have been conveyed to others. In the event the Town has not accepted Sherman Drive as a public road, then upon the sale of the sixth (6th) (not counting Lots 4 and 8) of such lots, the **Declarant** shall convey, by quit-claim deed, all its right, title and interest in and to Sherman Drive to the Homeowners' Association, subject to all easements, rights-of-way, privileges and subject to all provisions of this Declaration.

Until such time as the Town of Falmouth accepts said Sherman Drive as a public road, (which may or may not occur), all lots will be subject to the following provisions:

1. All lots shall be benefited by an appurtenant easement over Sherman Drive, the road shown on the Plan, for purposes of ingress and egress and location of utilities and all customary uses of a public or private street intended to provide full and adequate ingress and egress to the lots. It is the intention of the Developer to petition the Town of Falmouth to accept the roadway as a public road to be maintained by the Town of Falmouth, but no assurances are made by **Declarant** as to whether the Town will accept Sherman Drive as a public road.

2. Sherman Drive will require plowing and sanding in the winter and other repair, maintenance and replacement. The Homeowners' Association will be responsible for the removal of snow and ice from the sidewalks located within the subdivision. **NOTE: Declarant, the Town of Falmouth or any other organization is not responsible for the removal of snow and ice from the sidewalks.**

3. The Homeowners' Association shall be responsible for maintaining and plowing the road upon the conveyance by the **Declarant** of the first lot (excluding Lots 4 and 8) from the Plan.

4. In the event the Town shall accept Sherman Drive as a public way, the **Declarant** and/or Homeowners' Association shall convey the fee interest in Sherman Drive with all appurtenances thereto to the Town of Falmouth by deed and, upon such conveyance, all obligations and responsibilities of the **Declarant** and Homeowners' Association with respect to the road shall terminate and cease.

ARTICLE IX
HOMEOWNERS' ASSOCIATION RESPONSIBILITIES

1. The Homeowners' Association shall perform and be responsible for the maintenance, resurfacing, improvement, clearing and repair of, and snow removal from said Sherman Drive, removal of snow and ice from the sidewalks located within Sherman Woods, for the payment of any real estate taxes assessed on said road and the common open spaces as shown on the

aforementioned Plan and for the cost of labor, equipment, materials and management relating to the Road and open spaces and supervision thereof, including the Wetland and Stormwater Management Systems and Facilities described in and regulated by the DEP Order. Assessments by the Homeowners' Association upon the lots and the owners thereof shall be used exclusively for the purposes of maintenance, resurfacing, improvement, clearing and repair of and snow removal from Sherman Drive, removal of snow and ice from the sidewalks within Sherman Woods, management of the open space(s); payment of any real estate taxes assessed on said Road and the common open spaces, and the cost of labor, equipment, materials and management relating to the Road and common open spaces and supervision thereof, and for such other purposes as shall be permitted by the By-Laws of the Homeowners' Association (hereinafter collectively called the "Common Expenses"). The Association shall also maintain liability insurance for the roadways and the common open spaces in an amount not less than one million dollars. In addition, the following provisions shall govern matters related to Sherman Drive:

- A. Any and all decisions with respect to the nature and extent of the work to be done, the individual or entity to be employed, the total amount of money to be expended, or any and all other matters or questions shall be made and decided by the Homeowners' Association. Each of the lot owners shall be entitled to vote in accordance with the By-Laws.
- B. As a part of the Association Assessments, each lot owner shall contribute a fractional share of the total cost of the maintenance of Sherman Drive, which fraction shall be a numerator of one over a denominator equal to the total number of lots accessed by said road, for each lot owners. Notwithstanding the foregoing, no lot shall be assessed for snow plowing or sanding until such time as (i) a building permit has been issued for such lot and (ii) the commencement of any construction activity has occurred thereon. All payments shall be made within fourteen (14) days after receipt of a bill for work done.
- C. Each lot owner's proportionate share of the reasonable charges for the work undertaken pursuant to this ARTICLE IX shall constitute a debt owned to the Homeowners' Association which may be collected in any court of competent jurisdiction of this State, and said debt shall constitute a lien upon the lot or lots owned by the party failing to contribute his or her proportionate share of the cost. The lien established hereby may be enforced by any member of the Homeowners' Association, his heirs, successors or assigns, by a lien action following the procedure as set forth at Title 10 of the Maine Revised Statutes Annotated § 3251 et seq. which established the procedure for enforcing a mechanic's lien.
- D. The Homeowners' Association shall act on behalf of the other lot owners in contracting to have the work done and collecting the contribution of each lot owner.

Under no condition can the Homeowners' Association close the private road herein called Sherman Drive to travel and discontinue maintenance unless unanimously approved by all lot owners.

2. No later than thirty (30) days prior to each Annual Meeting of the members of the Association, the Board of Directors shall estimate the common expenses for the following calendar year and shall present such estimate to the members at the Annual Meeting as the proposed annual budget for such calendar year. The annual assessment required to meet annual estimated common expenses for each calendar year shall require approval by the members of the Association at their Annual Meeting in accordance with the By-Laws of the Homeowners' Association. The Association shall be provided with sufficient funds by Normand Berube Builders, Inc. to meet its anticipated expenses for one year after the date on which the management of the Association is turned over to the owners of the dwellings, lots or buildings to be served.

3. All assessments shall be billed no later than the second Wednesday in December in each calendar year by the Treasurer of the Homeowners' Association sending the bills thereof to the respective lot owners at the address recorded in the Secretary's records, either personally or by placing the bill in the United States mails, postage prepaid, addressed to the lot owner as aforesaid. All sums so assessed and billed shall become due no later than the succeeding January 1.

4. The members of the Homeowners' Association may, from time to time, at special meetings, levy additional assessments for the purposes previously provided by the same majority of votes as required for the annual assessments.

5. If the assessment to a lot owner shall not be paid within thirty (30) days after the date when due, then said assessment shall be delinquent and shall, together with interest at the annual rate of 12% per annum, costs of collection and reasonable attorney's fees, be a lien upon the lot.

ARTICLE X: MISCELLANEOUS

1. **Enforcement:** By the acceptance of a deed to his/her/their/its lot, each owner covenants and agrees to comply with the covenants and restrictions set forth in this Declaration. Except as provided in Section 5 of this **ARTICLE X**, any failure to so comply shall be grounds for an action against the offending owner to recover damages or for injunctive relief or both. Such action may be maintained by any aggrieved owner or by the **Declarant** so long as it owns any part of the **Property**. The person violating the restriction shall be responsible for all costs, including attorney's fees, in any enforcement action.

2. **Waiver:** No delay or omission on the part of the **Declarant**, or any lot owner in enforcing the covenants set forth herein or in seeking a remedy for breach thereof shall be construed as a waiver of any right to enforce or to seek such remedy or acquiescence in such breach.

3. **Severability:** In the event any one or more of the provisions of this Declaration shall be found for any reason by a court of competent jurisdiction to be unenforceable or null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any other provisions of this Declaration.

4. **Construction:** Wherever used, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders.


5. **Arbitration:** In the event a dispute arises between two or more owners, such owners may submit the dispute to arbitration and the result thereof shall be binding and conclusive upon the parties. Upon the written request of either party to the dispute, each party at the dispute shall appoint one person as an arbitrator to hear and determine the dispute and if two arbitrators so chosen shall be unable to agree, then they shall select a third arbitrator whose decision shall be final and conclusive upon the parties. The expenses of such arbitration shall be borne by the losing party, or in such proportion as the arbitrators shall decide. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

6. **Amendments:** Except as limited in **ARTICLE VI**, the restrictions set forth in **ARTICLE II** may be amended from time to time by a two-thirds majority vote of the lot owners. Any amendment to the Protective Covenants shall be in writing signed by two-thirds of the lot owners and recorded in the Cumberland County Registry of Deeds.

IN WITNESS WHEREOF, the said **NORMAND BERUBE BUILDERS, INC.** has caused this Declaration of Protective Covenants and Common Easements to be executed in its name and behalf by **SUSAN M. BERUBE**, its Vice President, thereunto duly authorized, on this 8th day of December, 2005.

WITNESS:

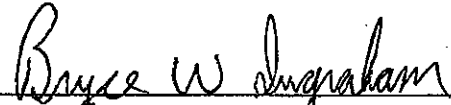
NORMAND BERUBE BUILDERS, INC.

BY: 
Susan M. Berube
Its Vice President

STATE OF MAINE
YORK, ss.

December 8, 2005

Then personally appeared the above named **SUSAN M. BERUBE**, Vice President of **NORMAND BERUBE BUILDERS, INC.** and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said **NORMAND BERUBE BUILDERS, INC.**

Before me, 
Notary Public/Attorney at Law
Print Name: Bruce W. Ingraham
My Commission Expires: _____

LIMITED JOINDER OF CLEO SHERMAN

Whereas, **Cleo C. Sherman** (hereafter "Sherman"), is the owner of Lot 4 and Lot 8, together with certain appurtenant rights and easements (herein the "Sherman Lots") as shown on the plan entitled "Subdivision Plan of: SHERMAN WOODS Longwoods Road Falmouth, Maine for: Cleo Sherman" dated January 24, 2005, prepared by Sebago Technics, and recorded in said Registry of Deeds in Plan Book 205, Page 763 (hereinafter called the "Plan").

Whereas, Sherman has agreed to join with **Normand Berube Builders, Inc.** (hereafter "Declarant") in submitting the Sherman Lots to the provisions of the Declaration of Protective Covenants, Conditions, Restrictions, Common Easements and Road Maintenance Agreement of even date herewith and to which this Limited Joinder is attached.

Now, therefore, Sherman hereby joins, covenants and agrees with Declarant in submitting the Sherman Lots to the terms of the Declaration for the sole and limited purposes of (1) evidencing Sherman's consent as owner of the Sherman Lots to the creation and granting of those protective covenants, conditions, restrictions and common easements as are described in the Declaration, and (2) covenanting and agreeing that the Sherman Lots, and the record owner(s) thereof from time to time, shall be bound by all of the provisions of said Declaration the same as if said Sherman Lots were owned in fee by Declarant at the making of said Declaration and included therein as the property of the Declarant.

Declarant hereby covenants and agrees with Sherman that the said Sherman Lots shall have the benefit and burden of the protective covenants, conditions, restrictions and common easements as are described in the Declaration, and to such end Declarant hereby GRANTS to Sherman, for the benefit of said Sherman Lots, all of those protective covenants, conditions, restrictions and common easements as are described in the Declaration, the same as if said Sherman Lots were owned in fee by Declarant at the making of said Declaration and included therein as the property of the Declarant.

THIS LIMITED JOINDER SHALL NOT BE CONSTRUED TO MAKE SHERMAN, HER HEIRS, SUCCESSORS AND/OR ASSIGNS, A DECLARANT OR A PARTNER OR JOINT VENTURER WITH THE DECLARANT, OR TO IMPOSE ON SHERMAN ANY OF THE OBLIGATIONS OR LIABILITIES OF DECLARANT UNDER THE DECLARATION OR THE SUBDIVISION APPROVALS FOR THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY OBLIGATION OR LIABILITY OF ANY KIND TO ANY PURCHASER(S) OF ANY LOTS, AND SHERMAN MAKES NO WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED, TO ANY PERSON OR PARTY AS RESULT OF THIS JOINDER, EXCEPT TO THE EXTENT THE SHERMAN LOTS ARE BENEFITED AND BURDENED BY THE TERMS OF THE DECLARATION AS SET FORTH HEREIN.

In Witness where of, Cleo Sherman and Normand Berube Builders, Inc. have signed and sealed this instrument on December 8, 2005.

WITNESS:

Bryce W Ingraham

Cleo C. Sherman
Cleo C. Sherman

WITNESS:

to both

NORMAND BERUBE BUILDERS, INC.

By: Susan M. Berube
Susan M. Berube
Its Vice President

STATE OF MAINE

York, ss.

December 8, 2005

Personally appeared the above named Cleo C. Sherman and acknowledged the foregoing instrument to be her free act and deed.

Before me,
Bryce W Ingraham
Notary

Public/Attorney at Law
Print Name: Bryce W Ingraham

STATE OF MAINE

YORK, ss.

December 8, 2005

Then personally appeared the above named **SUSAN M. BERUBE**, Vice President of **NORMAND BERUBE BUILDERS, INC.** and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said **NORMAND BERUBE BUILDERS, INC.**

Before me,
Bryce W Ingraham
Notary Public/Attorney at Law

Print Name: Bryce W Ingraham
My Commission Expires: _____