

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this ____ day of March, 2007, by and between Old Post Development Realty Trust, by its Trustee Michael Intoccia, u/d/t dated October 6, 2004 and recorded in the Norfolk Registry of Deeds in Book 21627, Page 53, whose principal place of business is located at 2 Washington Street, Foxborough, MA 02035 (hereinafter referred to as “Old Post Development”); Cranberry Realty Trust, by its Trustee, Michael Intoccia, u/d/t December 13, 2006, whose principal place of business is located at 2 Washington Street, Foxborough, MA 02035 (hereinafter referred to as “Cranberry Realty Trust”); Sharon CFII L.P., a Delaware Limited Partnership with a principal place of business at c/o The Congress Group, Inc., 33 Arch Street, Boston, MA 02110 (hereinafter referred to as “Sharon CFII”); and the Town of Sharon, acting by and through its Board of Selectmen, whose address is 90 South Main Street, Sharon, MA 02067 (hereinafter referred to as the “Town”). This Memorandum is intended to be binding upon and run with the land as provided in Sections III. 3., XII, and XIII.

WHEREAS, Old Post Development, Cranberry Realty Trust and Sharon CFII have acquired certain property or rights to purchase certain property as specified in the attached Exhibit A (hereinafter referred to as “Site”) and the Selectmen believe it may be in the best interests of the Town of Sharon for a portion of the Site to be developed commercially, but the Site is all located within a Single Residence “A” Zoning District and does not provide for nor allow commercial uses; and

WHEREAS, the Selectmen have called a Town Meeting to consider the adoption of a zoning amendment to establish a Business District D and change the zoning classification of a portion of the Site to Business District D;

WHEREAS, the Developer desires to develop a lifestyle-type retail and office project (currently referred to as “Sharon Commons”) on a portion of the Site and recognizes that there will be substantial impacts upon the Town of Sharon and its residents from the development and operation of Sharon Commons; and

WHEREAS, in connection with the development and operation of Sharon Commons the Developer desires to make certain commitments for consideration by the Town Meeting to mitigate the impacts of Sharon Commons and to otherwise serve the purposes of, and benefit the interests to be protected and promoted by, the Town of Sharon Zoning By-Law if the proposed zoning change is adopted;

NOW, THEREFORE, the Developer hereby agrees with the Board of Selectmen as follows:

I. Definitions.

“*Bogs*” shall mean cranberry bogs located on the Site.

“*Commercial Project*” and/or “*Project*” shall mean the zoning, permitting, construction and operation of a retail and office development project on the portion of the Site consisting of Parcels 4, 5, 6, 20, 22, and 24 as shown on Assessor’s Map 57.

“*Developer*” shall mean Old Post Development, Cranberry Realty Trust and Sharon CFII as first identified above.

“*Business District D*” shall mean the new zoning district that will come before the Sharon Town Meeting, the objective of which is to promote lifestyle center development accommodating retail, office and other uses within free-standing structures reflective of traditional New England architectural style.

“*LIP*” shall mean a Local Initiative Program designed to increase the stock of affordable housing in the Town, pursuant to M.G.L. c. 40B §§ 20-23, and as further defined in 760 CMR 45.00 et seq.

“*Residential Project*” shall mean a proposal for residential development of apartments and/or condominiums that will qualify for a LIP.

“*Site*” shall mean the land within the proposed Business District D and the land to be donated to the Town of Sharon; meaning Parcels 4-0, 4-1, 4-2, and 4-3 as shown on Assessor’s Map 47 and for Parcels 4, 5, 6, 20, 22 and 24, as shown on Assessor’s Map 57.

“*Special Town Meeting*” shall mean the Sharon Town Meeting called to commence on March 12, 2007 for the Town to vote on the proposed zoning by-law changes discussed herein. Provided, however, said meeting shall in any event not go beyond April 1, 2007.

“*Wetlands*” shall have the meaning as contained in Sharon Wetlands by-law.

II. Purpose.

This Memorandum evidences the commitments of the Developer to mitigate the impacts of Sharon Commons and to otherwise serve the purposes of, and benefit the interests to be protected and promoted by, the Town of Sharon Zoning By-Law in connection with the development and operation of Sharon Commons in the event of affirmative action by the Special Town Meeting to adopt the proposed Business District “D” zoning and accept portions of the Site as identified below.

III. Sharon Commons Development.

To effectuate the Purpose of this Agreement, the Parties agree as follows:

1) ZONING AMENDMENT. The Selectmen for the Town of Sharon shall take the necessary actions to call for a Special Town Meeting to be held on March 12, 2007 where an amendment to the Sharon zoning by-laws shall be placed before the Special Town Meeting. The proposed zoning article affects Parcels 4, 5, 6, 20, 22 and 24, as shown on Assessor's Map 57. Said amendment will provide for, among other things, "business" uses, that would allow two 80,000 square foot and one 75,000 square foot retail establishments, one of the three of which will be either a grocer or a movie theater; and other business establishments having not greater than 60,000 square feet of space, all of which is to be approved by the Site Plan process. If the Developer proposes any buildings larger than those listed herein, application will be made to the Sharon Zoning Board of Appeals for a Special Permit. In any event, the maximum square footage allowed will be 630,000 square feet with a Special Permit. Parking shall be specified as five (5) spaces for each 1,000 square feet of useable area on the first floor and three (3) spaces for each 1,000 square feet of useable area on the second floor and above. The text of the proposed zoning amendment is contained in Exhibit B attached hereto. The Parties recognize that the proposed zoning may be amended by the Sharon Town Meeting, and provided the changes are acceptable to the Developer, the obligations of the Developer remain the same. The Developer shall be presumed to have accepted any such changes unless the Developer has notified the Town not later than ten (10) days after the final Town Meeting vote that such article is not acceptable.

2) CONTRIBUTION OF WETLANDS AND BOGS The Parties agree that if the above Zoning Amendment is adopted by Sharon Town Meeting, which vote shall be approved by the Attorney General, the Developer shall contribute (or cause to be contributed) to the Conservation Commission for the Town of Sharon (i) all of the Cranberry Bogs which it has rights to acquire from Morse Brothers, Inc. and which are identified by the Developer as not necessary for development of the Commercial Project or Residential Project, and (ii) all of those Bordering Vegetated Wetlands located within Business District D also identified by the Developer as not necessary for development of the Commercial Project or Residential Project. In lieu of a contribution of the fee interest in such land, the Developer may, if it is required as a result of the of the Project to retain ownership of a portion of such land to comply with certain environmental regulations, impose (or cause to be imposed) a conservation restriction on such land enforceable by the Conservation Commission. Such gift or restriction, as the case may be, shall be made prior to the issuance of any building permit for the Project.

3) RESTRICTION UPON USE Old Post Development Realty Trust agrees that this Memorandum of Understanding shall act as a restriction upon the use of parcels 4, 5, and 6 as shown on Assessor's Map 57, and said parcels may not be developed unless there has been full compliance with the terms of this Memorandum of Understanding. This condition is to act as a restrictive covenant upon the above-named parcels of land. Provided, however, that if the zoning amendment establishing Business District D is not adopted by the Sharon Town Meeting on

March 12, 2007 or such later date to which such meeting may have been adjourned, in the form attached hereto as Exhibit C (with such changes as are approved by Developer within 10 days), or if the zoning amendment is subsequently disapproved by the Attorney General or invalidated by a court of competent jurisdiction or amended prior to the completion of Sharon Commons, then the Town agrees to record an instrument releasing the restrictive covenants described herein, said instrument to be recorded by the Town not later than 180 days following any such event.

4) GIFT OF LAND The Parties agree that if the above Zoning Amendment is adopted by Sharon Town Meeting, which vote shall be approved by the Attorney General, the Developer shall gift (or cause to be gifted) to the Town Parcel 6 as shown on Assessor's Map 47, provided that the Developer may reserve from such parcel any land or easement areas for the widening of Old Post Road. The Town anticipates the use of this parcel for an additional town well. If this land is not useful for a well site, as determined in the sole discretion of the Town, the Town, following all applicable by-laws and statutes regarding the use of land by municipalities, may use the parcel for conservation and/or passive recreation purposes. The foregoing notwithstanding, the Town will not use the parcel in a way that will materially adversely affect the development of Sharon Commons. Provided, however, the foregoing sentence shall be applicable only to a Project that would be allowed through the Site Plan approval process or which does not require a special permit for more square footage than is allowed by right. The Town will not seek DEP approval of a well until a building permit has been issued to allow the construction of the Commercial Project to commence.

5) SITE ACCESS The Parties agree that the sole means of access to the Site is from South Main Street to Old Post Road. South Walpole Street shall only be used for emergency access. The Developer agrees to pay for all improvements and/or reconstruction of Old Post Road. The Developer shall be responsible for snow plowing, lighting, maintenance and all future reconstruction and repair of those portions of Old Post Road which service the Project; provided, however, that if Old Post Road from South Main Street is ever used to access South Walpole Street, such costs shall be apportioned with the Town of Sharon. The Developer will work with the County Commissioners, as well as other necessary state and local authorities, to obtain authorization to do this work. Further, it is understood by all parties hereto that in order to construct access to the Site, certain Bogs and Bordering Vegetated Wetlands lying within the boundaries of Old Post Road and adjacent thereto must be filled in order to provide suitable access.

6) LOCAL INITIATIVE PROGRAM The Parties agree that a portion of the site not being used for the project and not being gifted to the Town may in the future contain a component comprised of Residential development. Such project would be for a maximum of 168 apartments and/or condominiums that will qualify for a LIP. The Residential Project will contribute to the overall stock of affordable housing in the Town of Sharon. Accordingly, the Developer agrees to cooperate with the Board of Selectmen in the LIP process. This section shall be binding only on

a Developer party proposing residential development.

7) TRAFFIC AND ROADWAY IMPROVEMENTS The Parties agree to work in a coordinated and cooperative fashion to create traffic and roadway improvements to bring the Project to successful fruition, while minimizing the impact on the surrounding residential areas. Such improvements include, but are not limited to, traffic signalization on South Main Street where required under the Business District D traffic standards, widening/increasing new lanes on South Main including Shaw's Plaza and possibly Gavin's Pond Road where required under the Business District D traffic standards provided that neither the Developer nor the Town shall be required to acquire any right of way from any other party, and the installation of appropriately-worded restrictive/dissuasive signage at Laurel Road and Mitchell Street (e.g., "Not a Through Way," "Dead End," or "No Access to Sharon Commons"). All traffic improvements will be to the level of service D, as defined in state highway regulations. With cooperation from the Town, the Developer shall seek approval from the Massachusetts Highway Department to design roadways under MHD jurisdiction. The Developer will work cooperatively with the Town to redesign traffic/roadways in a manner reasonably acceptable to Town, provided that any necessary MHD approvals are obtained. The Developer agrees to accept financial responsibility for all traffic and roadway improvements required under the Business District "D" traffic standards. Nothing contained herein shall require the Town to expend any funds for said work.

8) TRAFFIC SENSITIVITY STUDY The Parties agree that consistent with traffic and/or roadway improvements, the Developer agrees to commission a traffic sensitivity analysis. It is the intention of the Parties that the Sensitivity Study will be completed before the Special Town Meeting. Upon review of the Sensitivity Analysis by the Town, the Town will identify specific areas of concern to be included in a more detailed traffic impact statement, which the Developer agrees to provide.

9) NATURAL HERITAGE The Parties agree that they will seek, to the maximum extent feasible, to comply with any Natural Heritage requirements on land within or in the vicinity of the Site, or in the alternative, within the Town of Sharon if possible.

10) RELEASE OF EASEMENT The Parties agree that there currently exists an easement on the Site which benefits the Town of Sharon. The Board of Selectmen agrees to sponsor and support an Article for the Town Meeting to vote to terminate the easement.

11) REIMBURSEMENT TO TOWN The Parties agree that the Developer will reimburse the Town, for its costs in considering the proposed zoning change, including but not limited to costs for review and implementation of the proposed zoning by-law changes, this Memorandum of Understanding, and all work related thereto, up to a maximum of \$ 50,000.00. The Developer shall, upon the execution of this agreement, make an initial payment of \$30,000.00 to the Town Treasurer for such purposes. The payments required by this paragraph shall be due without regard to whether or not the zoning amendment is enacted by the Town Meeting. The Town

Accountant will set up a specific account for this purpose. This section does not include costs that may be associated with or imposed pursuant to G.L. c. 44 § 53G by the Town as a result of site plan or other review as required.

12) LAUREL ROAD AND MITCHELL STREET The Parties agree that prior to beginning road construction of Old Post Road as herein described, the Developer will take whatever steps are necessary to ensure that Laurel Road and Mitchell Street will not to be used for construction vehicles during the construction of Old Post Road and/or Sharon Commons. The foregoing notwithstanding, the Developer agrees to design and install, in conjunction with appropriate public safety officials in the Town, emergency access from Laurel Road to Old Post Road. Furthermore, the Developer and Town agree to work to determine the best way to protect and preserve the stream which runs along the east side of Laurel Road, including, but not limited to, installing a culvert if required.

Additionally, working in cooperation with the Sharon Site Plan approval authority, the Developer will construct and/or erect a berm, landscaping and/or fencing, or some combination thereof, the purpose of which will be to shield the residents residing on Laurel Road from excessive noise due to construction or traffic along Old Post Road.

13) ENVIRONMENTAL IMPACT MITIGATION The Parties agree that in order to monitor and if necessary mitigate the impacts, if any, on environmentally sensitive areas within the Site, including, but not limited to mitigation made necessary by Natural Heritage pursuant to Section 9 hereof, the Developer will contribute to the Town of Sharon Conservation Commission value in the amount of two hundred and fifty thousand (\$250,000.00) dollars, of which not less than one hundred thousand dollars (\$100,000.00) shall be in cash. The use of such cash amount shall be as determined by the Conservation Commission in their discretion. Said cash shall be deposited in the Conservation Trust currently established. Said cash payment shall be due prior to the issuance of any building permit for the Project. Further, the Developer shall, from time to time and as requested by the Conservation Commission, provide labor and materials for the balance of said \$250,000.00 to be used by or on behalf of the Conservation Commission for conservation activities such as, but not limited to, the protection of water resources, groundwater and aquifer areas, and other environmentally sensitive areas, all as determined, in their sole discretion, by the Conservation Commission.

14) WATER MANAGEMENT IMPACT MITIGATION The Parties agree that in order to monitor and if necessary mitigate the impacts, if any, on water resources impacted by the development or use of the Site, the Developer will pay to the Town, acting by and through its Board of Selectmen, for water conservation and management practices, as the same may be determined by the Board of Selectmen after consultation with the Water Management Advisory Committee four hundred thousand (\$400,00000) dollars. Said payment shall be a gift to the Town through a Water Conservation Trust Fund established specifically to be used for such purposes and the Town Accountant will set up a specific account for this purpose. Said payment

shall be due in one-third installments prior to the issuance of the Certificates of Occupancy for each of large three anchors for the Project.

15) POLICE DETAIL REQUIREMENTS The Developer agrees to pay for whatever private or public police details are reasonably deemed to be necessary by the Town from time to time during the construction and/or use of the Project.

16) BOARD OF HEALTH The Parties recognize that the Developer must seek permits from the Department Environmental Protection (DEP) and other agencies, comply with the Massachusetts Environmental Protection Act (MEPA) and other laws for the protection of the environment related to the Project. The Developer agrees to work cooperatively with the Sharon Board of Health and other local and state agencies having jurisdiction thereof to meet environmental and other public health concerns.

17) Sustainable Development. The developer has committed to construct and maintain the Project as a “sustainable development.” The developer will build and maintain the project to standards not less beneficial to the environment than are as set forth in Exhibit D which is attached hereto and incorporated herein.

18) Recreation Contribution. The Developer will contribute twenty five thousand dollars (\$25,000.00) in cash and a like kind donation in the form of site work also in the value of twenty-five thousand dollars (\$25,000.00) to the Town, acting by and through the Board of Selectmen for use of playing fields and/or recreation facilities improvements or construction, as determined by said Board. The monetary contribution shall be made prior to the issuance of the first building permit for the Project and the in kind site work donation shall be made when requested by the Town acting through the Board of Selectmen.

IV. Acceptance By the Town of Sharon.

Those portions of this Memorandum referring and relating to zoning amendments are subject to the approval by the Town of Sharon Town Meeting, at a Special Town Meeting to be commenced on March 12, 2007. If the zoning amendment establishing Business District D is not adopted by the Sharon Town Meeting on March 12, 2007 or such later date to which said meeting may have been adjourned, in the form attached hereto as Exhibit B (with such changes as are approved by Developer, the Developer having 10 days from the time of the vote by Town meeting to notify the Town if such changes are not acceptable as provided above), or if the zoning amendment is subsequently disapproved by the Attorney General or invalidated by a court of competent jurisdiction or amended prior to the issuance of a building permit for the Project, then this Agreement, except as otherwise provided herein with respect to paragraphs III 3, III 10 and III 11, shall be rendered null and void. So long as the zoning amendment in the form attached hereto as Exhibit B (with such changes as are approved by Developer as above provided) is validly adopted and remains in full force and effect, then this Agreement shall be

binding on Developer and all portions of the Site owned by Developer whether or not the Commercial Project is constructed.

V. Notices.

Except as otherwise provided in this Memorandum, all notices, demands, requests, consents, approvals and other communications required or permitted to be given hereunder, or which are to be given with respect to this Memorandum, shall be in writing and shall be deemed delivered (i) upon the delivery by facsimile electronic transmission (provided that such facsimile is sent on a business day prior to 5:00 p.m. of the recipient's local time, and a confirmation copy is sent via another manner set forth in this Section V), (ii) the next business day following delivery to Federal Express or another nationally recognized air freight or commercial delivery service for next day delivery, or (iii) two (2) Business Days following deposit thereof in the United States mail, certified mail (return receipt requested), provided such notices shall be addressed or delivered to the parties at their respective addresses or facsimile telephone numbers set forth below. Copies of all notices delivered hereunder shall also be delivered in the same manner to counsel for the parties hereto.

If to Developer

Old Post Development Realty Trust,
By it's Trustee, Michael Intoccia
2 Washington Street
Foxborough, MA 02035
Facsimile: (508) 850-8943
and

Sharon CFII, L.P.
C/o The Congress Group, Inc.
33 Arch Street
Boston, MA 02110
Attn: Dean F. Stratouly
Facsimile: (617) 897-7201

With a copy to:

Robert Shelmerdine, Esq.
C/o Intoccia Construction Company, Inc.
2 Washington Street
Foxborough, MA 02035
Facsimile: (508) 850-8943

and

Richard D. Rudman, Esq.
DLA Piper US LLP

33 Arch Street
Boston, MA 02110
Facsimile: (617) 426-6127

If to the Town:

Town of Sharon
ATTN: Benjamin Puritz, Town Administrator
90 South Main Street
Sharon, MA 02067
Facsimile: (781) 784-1503

With a copy to:

Richard A. Gelerman, Esq.
Gelerman & Buschmann, P.C.
30 Walpole Street
Norwood, MA 02062
Facsimile: (781) 769-6989

All costs and expenses of the delivery of notices hereunder shall be borne and paid for by the delivering party. No notice shall be deemed duly delivered hereunder unless all postage or delivery charges shall have been prepaid by the sending party, or otherwise delivered to the receiving party free of delivery charges.

VI. Entire Agreement: Amendments.

This Memorandum constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior understandings or agreements between the parties with respect to the subject matter hereof. This Memorandum may not be altered, modified, extended, revised or changed, nor may any party hereto be relieved of any of its liabilities or obligations hereunder, except by written instrument duly executed by each of the parties hereto. Any such written instrument entered into accordance with the provisions of the preceding sentence shall be valid and enforceable notwithstanding the lack of separate legal consideration therefore.

VII. Governing Law.

This Memorandum is made pursuant to, and shall be governed by and construed in accordance with, the laws of the Commonwealth of Massachusetts without reference to the conflicts of laws provisions thereof.

VIII. Headings.

Section and subsection headings used herein are for convenience and ease of reference only and are not intended to have any legal effect. Accordingly, no reference shall be made to

any such section or subsection headings for the purpose of interpreting, construing or enforcing any of the provisions of this Memorandum.

IX. Counterparts.

This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one Memorandum. In the absence of an original signature page, a signature page transmitted by facsimile transmission shall be effective to bind the party for all purposes of this Memorandum.

X. Time of the Essence.

Time is of the essence of this Memorandum.

XI. No Third Party Beneficiary.

Each of the covenants, undertakings and agreements of the parties hereto are intended solely for the benefit of the other party and its successors and permitted assigns under the provisions of this Memorandum, and are not intended for the benefit of, and may not be enforced by, any third party.

XII. Run with the Land.

All covenants and agreements as are herein contained in this Agreement by Developer shall be deemed and shall constitute covenants running with the land, and shall be binding upon and inure to the benefit of any portion of the Site now or in the future owned by Developer and all successors in title and assigns of the Developer; it being understood and agreed that, from and after any conveyance or transfer of the land parcels covered by this Agreement, the transferee shall be liable for the performance or observance of said covenants and agreements.

XIII. Recording.

This Memorandum of Understanding shall be recorded at the Norfolk County Registry of Deeds upon its execution, with the effected parcels indexed in a form acceptable to the Registry. For title of Old Post Development Realty Trust to parcels identified in Section III. (3) above, see Norfolk Registry Book 21627 Page 60, Document No. 1,042,101, dated October 6, 2004. Provided, however, that if the zoning amendment establishing Business District D is not adopted by the Sharon Town Meeting on March 12, 2007, or upon such later date to which such Town Meeting may be adjourned, in the form attached hereto as Exhibit B (with such changes as are approved by Developer within 10 days), or if the zoning amendment is subsequently disapproved by the Attorney General or invalidated by a court of competent jurisdiction or amended prior to the completion of Sharon Commons, then the Town agrees to record an instrument releasing the

restrictive covenants described herein.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the date first above written.

**OLD POST DEVELOPMENT
REALTY TRUST**

BY: _____
Michael Intoccia, Trustee

CRANBERRY REALTY TRUST

BY: _____
Michael Intoccia, Trustee

SHARON CFII, L.P.

**By: Sharon GP, LLC,
Its sole general partner**

By: _____
Dean F. Stratouly, Manager

**THE BOARD OF SELECTMEN OF
THE TOWN OF SHARON**

BY: _____
William A. Heitin, Chairman

BY: _____
Walter "Joe" Roache

BY: _____
Richard A. Powell