

Google Groups

notice below

Donna Schwartz <dlshrs@maine.rr.com>

Feb 16, 2018 12:38 PM

Posted in group: **Planning Board**

Dear Shukria & Planning Board Members,

Please know that I just learned of this via an email sent to someone other than myself - I, as a homeowner and taxpayer of Diamond Cove never rec'd formal (written/mailed) and/or informal notification via email, etc of this scheduled meeting?!

As a mostly "seasonal" community it is really interesting that these types of issues that can greatly impact a community - negatively or positively - always seem to come in front of the planning board off-season when most members of the community are absent and it is difficult for their voices to be heard. Can you have these types of hearings w/o the people who cld be negatively impacted by this go unnotified?

I can further tell you that alot of us homeowners thought that this was a "dead in the water" - issue because it was our understanding that the DEP / EPA wld not permit this over usage because of the restrictions - and, rightly so - on the wastewater usage / discharge, etc - My understanding is that - regardless of a permit - they would actually be usurping the usage of another property or properties and by doing so wld be compromising their usage, hence, devaluating others property for the benefit of themselves!

Please know that both the seller and the buyer of this commercial property are realtors - "full disclosure" & "buyer beware" shld have come into play in this instance! The buyer bought one property and wants to now change it into something other than what it was at the compromise / cost & expense to others!

This once was a "The General Store" that served food but was not a "sit down" per se' venue. It was more or less coffee & muffins in the morning along w/pizza and deli type foods for lunch & later. I believe that they were licensed to accomodate 13 or 14 which is not 35!

Oh and in case you do not already know this - we already have two restaurants on this very small parcel of island turf!

Diamonds Edge which is a long standing, well-established, restaurant practically nxt dr to what once was "The General Store" and the small restaurant at "The Inn @DC" which services it's clientele.

Sincerely,
Donna Schwartz / Diamond Cove

255 DIAMOND AVENUE - GREAT DIAMOND ISLAND

To Residents and Property Owners: The Portland Planning Board will hold a public hearing to consider a change of use from a general store to a 35-seat restaurant on Great Diamond Island. The applicant will also keep a portion of the general store at the rear of the building. Public comments will be taken at this

meeting and written comments should be submitted to planningboard@portlandmaine.gov

The PUBLIC HEARING will be held:

Tuesday, 2/27/2018

7:00 p.m. (meeting start time - this item is the 1st item on the agenda)

City Hall, Council Chambers, 2nd Floor

Plans are available for viewing in the Planning Division, 4th Floor, City Hall by referencing Application ID# 2017-117 or CBL # 448 A004001. Memos and reports are posted on <http://www.portlandmaine.gov/211/Planning-Board> by the end of business day on the Friday before Planning Board meeting. If you have any questions regarding the proposal, please contact Shukria Wiar, Planner, Planning Division, City Hall, 4th Floor, 389 Congress Street, Portland, ME 04101; contact by phone at (207) 756-8083 or e-mail at shukriaw@portlandmaine.gov

February 21, 2018

Portland Maine Planning Board
389 Congress St
4th Floor
Portland, ME 04101

RE: Conditional Use; 255 Diamond Avenue – Great Diamond Island; The General Store at Diamond Cove

Dear Planning Board Members:

We are writing with enthusiastic support that the conditional use be granted for the Diamond Cove General Store. We have been homeowners within Diamond Cove for five years and my husband has been coming to Great Diamond Island since he was an infant (even before Diamond Cove was restored). We have witnessed the transformation of this beautiful community and feel that the new restaurant concept will be a huge asset to both homeowners and visitors, and not too dissimilar to how the “general store” was being operated, which was really more of a restaurant anyway.

We have reviewed the proposed restaurant and researched the new owners extensively and feel that they have a track-record of developing high quality establishments that will not only fit with the island vernacular but will add a breath of fresh air to the Island and our community.

Thank you for your time and we hope you will take this letter under consideration while making your decision.

Karina and Ben Kelley

88 Ingalls Road, Diamond Cove, Maine

Google Groups

Re: Building number 32 in Diamond Cove, Great Diamond Island

me <jmy@portlandmaine.gov>

Feb 21, 2018 10:49 AM

Posted in group: **Planning Board**

Hello,

Thank you for your e-mail. Your public comment will be included in the review and will become part of the public record.

If you have any further questions, please contact me.

Jennifer Munson, Office Manager
Planning and Urban Development Department
4th Floor, 389 Congress Street
Portland, ME 04101
Phone: (207)874-8719
Email: planningboard@portlandmaine.gov

On Wednesday, February 21, 2018 at 9:28:48 AM UTC-5, Lex Mathews wrote:

I regret that I cannot attend the planning board meeting in which the topic of the general store, building number 32, will be addressed.

I have owned a home on the island for five years. I love the island and the city of Portland in general. What a nice place!

I am completely opposed to the proposal to add a restaurant to the general store.

There are already two other restaurants on the island, neither of which has customers on a consistent basis.

More importantly, the ownership and management of the general store has been extremely problematic since the very beginning.

The general store, which used to be a welcoming focal point for island residents, became a relatively hostile and unhelpful place in an incredibly short amount of time starting in the spring of 2017 with the new ownership in place.

In addition to being aloof and somewhat rude each day, the management also would routinely close the store prior to the end of the stated hours. As you probably know, it is important, especially on an island, to be consistent and keep your word because there are a few other options to get the item that you were seeking.

Most incredible what is the complete disrespect that the ownership and management showed for the young people on the island. They promised numerous teenagers jobs for the summer. When the teenagers arrived, management simply told him there were no opportunities for employment. They told some other teenagers that they would give them two or three hours a day. This occurred with at least three teenagers that I know. For people earning money for college or simply trying to be productive each day, this misrepresentation was particularly damaging to them. In addition, if the management and ownership misrepresented summer jobs, I am quite confident that they will also misrepresent their proposal to your city Council.

As you can see, I've experienced a number of examples that I have seen as a resident in which the ownership has not acted truthfully. Even if their negative demeanor were not a problem, this is not a group to home we should be giving expanded property rights or the ability to grow their business.

Feel free to contact me with any questions or concerns. Thank you very much for your time.

From Alexander Mathews

2/21/2018

Re: Building number 32 in Diamond Cove, Great Diamond Island - Google Groups

Sent from my iPh



Google Groups

Re: Diamond Cove general store change of use support letter

me <jmy@portlandmaine.gov>

Feb 21, 2018 10:49 AM

Posted in group: **Planning Board**

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Thank you for your e-mail. Your public comment will be included in the review and will become part of the public record.

If you have any further questions, please contact me.

Jennifer Munson, Office Manager
Planning and Urban Development Department
4th Floor, 389 Congress Street
Portland, ME 04101
Phone: (207)874-8719
Email: planningboard@portlandmaine.gov

On Wednesday, February 21, 2018 at 6:07:36 AM UTC-5, Oliver@beoboston.com wrote:

Hello

Regarding hearing scheduled on the 27th of feb for change of use of general store.

As a homeowner on island at 233 woodside we would like to express our support to the change of use of the space to a restaurant/general store. The owners have shown great experience and expertise in creating unique dining experiences for which we very much look forward to and support.

While unclear to me the route cause as to why some appose I can't help but feel that there is a business competition agenda that could be creating bias. Further as a small business owner myself I feel that any person willing to invest and work within guidelines of law be allowed to work within their vision. Any undue constraints limitations or delays without merit can easily create a environment where that real cost imposed on a small business will cause it not to move forward at all which for the island is a much much more grim proposition by far!!

Kind Regards

Oliver

Oliver Pennington

Bang & Olufsen
141 Newbury St
Boston MA 02116
617-262-4949

www.Bang-Olufsen.com

Google Groups

Re: Diamond Cove General Store property

me <jmy@portlandmaine.gov>

Feb 21, 2018 10:49 AM

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Hello,

Thank you for your e-mail. Your public comment will be included in the review and will become part of the public record.

If you have any further questions, please contact me.

Jennifer Munson, Office Manager
Planning and Urban Development Department
4th Floor, 389 Congress Street
Portland, ME 04101
Phone: (207)874-8719
Email: planningboard@portlandmaine.gov

On Wednesday, February 21, 2018 at 3:36:26 AM UTC-5, Beth Mackey wrote:

To Whom It May Concern

My husband and I recently purchased a house in Diamond Cove, just around the corner from the General Store site. While we were very disappointed in the store this year, we read with dismay that another restaurant is being proposed for the site. The size of the space and the fact of two current restaurants on the island make this proposal a losing proposition.

What the island really needs is a viable general store. The market would support that if done well. Last year's effort fell short in many ways. Please reject this proposal.

Beth Mackey
10 Quartermaster
DC
--
Beth Mackey



TOWN OF NORTH YARMOUTH

The Town Where Others Began.

Board of Selectmen

Jean Chadbourne
Steve Morrison
Jen Speirs
Peter Lacy
Anne Graham

Town of North Yarmouth
10 Village Square Road
North Yarmouth Maine
04096

Town Manager
Rosemary Roy

The Barn at Walnut Hill

September 27, 2017

To whom it may concern,

I am writing in regards to a property Located at, 655 Walnut Hill Road in North Yarmouth. The property was approved in June of 2010 as an event center through the North Yarmouth Planning Board to which the property has been operating as ever since. During the approval process Gail was up against immediate opposition from abutters. Throughout the process she was able to compromise and provide enough reassurance to the neighbors to gain their trust and proceed with her venue plans. She has held true to her word and has been operating successfully since getting approval without losing sight of the agreed upon terms with the neighbors or the Town. The business has brought nothing but good feedback from the Town and Clients from away. If there has been any disturbance at all I as the Code Enforcement Officer have not been aware of it and have great confidence that she can and will be an asset to any community in her next venture. I am pleased to be writing this letter of recommendation to whoever might find it useful, thank you for your time. Any further questions feel free to contact the Town of North Yarmouth at (207)829-3705

Sincerely,

Ryan Keith

Code Enforcement Officer



Town of Buxton

Office of Code Enforcement

September 26, 2017

To: Great Diamond Island Planning Board

REF: Flanagan Farm, Buxton Maine

Dear Members of the Board,

I have been Code Officer in Buxton for two years. In that time I have not received a complaint from Buxton residents in regards to the operations at this business.

Before coming to Buxton my predecessor had told me the same and also conveyed the owners did a very nice job developing the property.

I have not had a single noise complaint and the property is immaculate, even so on Mondays after large weekend wedding venues. The business seems to be a source of pride for many in town who have expressed positive comments to me.

Feel free to contact me if you have any questions.

Sincerely,

Peter Gordon
Code Enforcement Officer



Jennifer Munson <jmy@portlandmaine.gov>

Re: notice below

Barbara Barhydt <bab@portlandmaine.gov>
To: Donna Schwartz <dlshrs@maine.rr.com>
Cc: Jennifer Munson <jmy@portlandmaine.gov>

Thu, Feb 22, 2018 at 12:10 PM

Hello Donna:

I have confirmed with our legal office that the noticing provisions for a Planning Board meeting require mailed notices to be sent to property owners within 500 feet. It does not require noticing of every property owner within a subdivision. I cannot explain why the noticing was sent more broadly during the review of the Inn at Diamond Cove.

We will include your e-mails and concerns in the packet for the Planning Board review.

Thank you.

Barbara

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256
bab@portlandmaine.gov

On Thu, Feb 22, 2018 at 9:23 AM, Donna Schwartz <dlshrs@maine.rr.com> wrote:

Dear Jennifer & Barbara,

Again, please know that Diamond cove is considered a SUD-DIVISION and that ALL homeowners shld have been notified.

If not, then wld you please inform me as to why was it that when The Inn @Diamond Cove was being proposed ALL homeowners had to be informed?

Thank you.

Donna

On Feb 21, 2018, at 2:52 PM, Jennifer Munson <jmy@portlandmaine.gov> wrote:

Donna,

Attached is the list of recipients of notices for the Planning Board public hearing. The noticing requirement for Planning Board meetings is to send to property owners within 500 feet of the site. We use the City of Portland geographic information system based on the City's assessor tax records in preparing this list. In looking at the map, it appears that your property is just outside of the 500 foot range.

I hope this answers your questions.

Jennifer Munson, Office Manager
Planning and Urban Development
City of Portland
[389 Congress St., 4th Floor](#)

Portland ME 04101
jmy@portlandmaine.gov
(207) 874-8719
(207) 756-8258 (fax)

On Wed, Feb 21, 2018 at 10:59 AM, Donna Schwartz <dlshrs@maine.rr.com> wrote:

Dear Jennifer,

Please know that i own "The Schoolhouse@DC" @ 7 McKinley Ct across for the administration / office bldg up on the parade ground which is part of the historic district

Please also know that I had an email exchange w/Barbara - a part of which i have included below:

"Dear Barbara,

Thank you for your response only

please know that both a property and a quartermaster resident who are both neighbors to the property in question did not receive any notice but is well within the 500 feet.

So am not sure who the 54 homeowners are within the 500 feet area that supposedly received notification?

Please also know that it has come to my attention that DCHA is a subdivision and as a result believe that ALL homeowners should have received notification of the application.

Thank you.

Donna"

On Feb 21, 2018, at 10:41 AM, jmy <jmy@portlandmaine.gov> wrote:

Donna,

I am looking into the noticing inquiry that you had. Can you tell me your address on the island?

Jennifer Munson, Office Manager

Department of Planning and Urban Development

City Hall, 4th Floor, 389 Congress Street, Portland ME 04101

(207) 874-8719

planning@portlandmaine.gov

www.portlandmaine.gov

Office Hours are Monday - Friday 8:00 a.m. - 4:30 p.m.

On Friday, February 16, 2018 at 12:38:49 PM UTC-5, Donna Schwartz wrote:

Dear Shukria & Planning Board Members,

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-

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Google Groups

Diamond Cove General Store

Ken Wood <Ken@attarengineering.com>

Feb 21, 2018 10:47 AM

Posted in group: **Planning Board**

Dear Board Members – Unfortunately I will not be able to attend the Public Hearing on the General Store conversion to a restaurant; hopefully you will consider the following in your deliberations;

- 1) Diamond Cove has an approved wastewater discharge license (MDEP W006931-41-A-N, originally issued on December 10, 1986). Wastewater disposal is achieved through the association's sewage collection system and treated in sand filter beds prior to being discharged overboard. The system is key to the Diamond Cove Community; the effects of the additional waste generated by the new restaurant should be analyzed in relation to the existing system. Even though overall flows may be equal to or less than the approved flows the change in use (and change in the type of wastewater) should be addressed. This should include the design and installation of adequately sized grease traps and also an analysis of the "Hydraulic Loading Factor" of 1.8 required by Table 4C, Note 2 of the *State of Maine, Chapter 241, Subsurface Wastewater Disposal Rules*. This factor is used in sizing the disposal fields; it requires that "Eating Place" flows use the multiplication factor in sizing the receiving disposal field. In this case even though the proposed restaurant flows are equal or less than the approved flows, the proposed flows may require more wastewater disposal field area than is available.
- 2) Has adequate provision been made for the disposal of all "paper service" items.
- 3) Does the design comply with all MUBEC, NFPA 101 and DHS requirements for transition to a restaurant.
- 4) Will the restaurant provide adequate supervision and security for their patrons; currently the public has an approved access along Diamond Avenue from the Diamond Cove Pier to the Diamond Avenue gate. The restaurant will most likely draw an increased number of visitors to the Island and it's in close proximity to the Ice Pond, Tent Site and Diamond Cove Beach – these areas are not available for public use and the restaurant should provide a measure of security (as does Diamond's Edge and the Inn at Diamond Cove) to ensure that their patrons only access the restaurant and Diamond Avenue.
- 5) Of course, the restaurant will change our current island community. I have been a resident of Diamond Cove since 1994 and was involved in the original Great Diamond Island General Store. In 2003 the building was under Contract and was under the threat of being converted into a single-family residence. The community formed a General Store Committee, which I chaired, and ultimately through an agreement with a resident of Diamond Cove and the prospective buyer, the store remained, was improved and served the Diamond Cove Community as "The Hub of The Island" until its recent purchase and interior demolition. The results of several community surveys over the years has consistently shown that the Diamond Cove and Great Diamond residents have continually supported the General Store. It's a loss to the entire Island to be losing this amenity.

Thank you for the consideration on this important item

Respectfully;

Ken Wood – Diamond Cove 17H

Kenneth A. Wood, P.E.

President

ATTAR

ENGINEERING, INC.

CIVIL ♦ STRUCTURAL ♦ MARINE

1284 State Road

Eliot, ME 03903

Phone: (207) 439-6023

Fax: (207) 439-2128

www.attarengineering.com

Google Groups

Planning Board / Great Diamond Island

Bruce Robinson <barbandbruce@verizon.net>

Feb 22, 2018 10:34 AM

Posted in group: **Planning Board**

My wife and I have spent four months as members of the Diamond Cove community for 17 summers. During that time, three grandchildren have grown up there very happily and healthily, so we have a right to claim an accurate understanding of the needs of the community. Let me state unambiguously that those needs do not include another restaurant, but they do include the survival of a vibrant general store. Relegating the general store to an enclosed space at the back of the property for the sake of a 35-seat restaurant space does not give me confidence that the needs of the community will be served. It seems clear that the new owner's ambition is to recreate her former enterprise called Flanagan's Table with 5-course dinners. That ambition does not serve the needs of the Diamond Cove community in my opinion.

F. Bruce Robinson, Diamond Cove, 13-C

Google Groups

CHANGE OF USE--GENERAL STORE (BUILDING 32) ON DIAMOND COVE

Paul Woody <PW Woody@woodycpas.com>

Feb 22, 2018 1:32 PM

Posted in group: **Planning Board**

I am writing to you about the proposed change of use for Building 32 on Diamond Cove, Great Diamond Island and also known as the Diamond Cove General Store.

My wife Linda and I bought a small home on Diamond Cove in 2012 and loved the island so much because of its uniqueness, friendliness as well as being a private island. I bought a larger home one year later in 2013. At the time I first bought the initial home, there was the General Store and the Diamond Edge Restaurant.

Later, the Inn of Diamond Cove was opened which added yet another full service restaurant so we have two restaurants plus the General Store.

The island needs a General Store. Yes, I understand the plan would be to have a small section of this 35 person restaurant be devoted to a "smaller general store" but essentially what we know today as the General Store would be ending. So, here are my comments in no particular order of importance:

1. We bought this place initially to have a summer place and for me to start a partial retirement. It is a great place to live and is a full service island complete with a restaurant, Inn and General Store.
2. The General Store is close to my heart because it's a spot I go to everyday to either pick up a newspaper, a soft drink or perhaps something I forgot to get while over in Portland.
3. One of the incredible attributes of Diamond Cove is privacy. I love that we don't allow people to come on our island to "wander around". This is not always the case as some will ignore the signs. Some come over and have dinner at the Diamond Edge and then walk around the island. And, although there are certain spots that you can walk on the island, sometimes these people will navigate into where the private owners live.
4. Now, fast forward to what happens if your Board allows this change. We already have the Inn at Diamond Cove and Diamond Edge. You accelerate the number of people on the island who now are at three different venues and are curious about the island. The policing of these people will take more security personnel which will drive up our monthly costs of living on Diamond Cove. Further, it will take away some of the ambience that brought many of us to Diamond Cove and in my opinion drive down the value of our property. The City of Portland does not provide security on our island but clearly if your Board approves this 35 seat restaurant, your Board will need to allocate funds for increased security at Diamond Cove by the City of Portland.

This island DOES NOT need another full service restaurant. We have two now and that is plenty for our size island. I'm sure the owners of the General Store want to promote this restaurant to the City of Portland in the hopes that more and more people will come to our island. As a resident for the past 6 years and a person who has served on the Diamond Cove Board for three years, I feel I have become accustomed to the dynamics of Diamond Cove and what we need on this island is an operating General Store. Last year I served as President of the Board and was able to talk with many of our island residents about matters on Diamond Cove. The one thing that resonated with me is that everyone seemed to really appreciate the privacy on Diamond Cove. That privacy will end if you approve this 35 person restaurant.

Accordingly, please deny the change from a General Store to a restaurant accommodating 35 people. I thank you for reviewing this request. I wish I could be there to share as this is a big issue. I know it had been requested to move the hearing which I understand your Board has denied. Please keep in mind that 75%-85% of the island residents are not there in the winter and will not be able to attend your hearing. Plus, many may not be able to reply by your Friday deadline. But, I feel confident that many of our islanders agree with me that we do not need another restaurant that certainly will violate our privacy. Thank you.

Paul

W. Paul Woody, CPA, CVA, EA, MSA

Woody & Associates, CPAs, PLLC

3205 N.W. 63rd

Oklahoma City, OK 73116

405-840-8000

Google Groups

REF: Change of Use for the General Store (Building 32) diamond Cove /Great Diamond Island

Kim Diffendal <keepahappythought@hotmail.com>

Feb 22, 2018 9:30 PM

Posted in group: **Planning Board**

Planning Board,

We are, Father & Daughter homeowners on Diamond Cove (78 Ingalles Rd). We have owned this home for 23 years and have concerns about the "Change of Use" for the General Store Bldg 32.

First,

We are very concerned that this change of use will financially harm the other **established, sit-down restaurants on Diamond Cove**. These existing restaurants are valued by our community.

Please add our voices of concern to this "Change of Use" request.

Second,

Please allow for a postponement of the hearing so that we can better understand the pros and cons of this request for "Change of Use". We are most concerned about the negative impact to the existing and well established, sit-down restaurants, that we love, on Diamond Cove.

Dion Johnson

Kim Diffendal

Google Groups

Diamond Cove Building 32

Kevin Cooper <kevinlanecooper@gmail.com>

Feb 22, 2018 10:50 PM

Posted in group: **Planning Board**

Dear Board,

Please use this letter as support for the General Store to proceed with the proposed changes. It is my belief that as long as DCHA by laws, DEP and Portland laws are not violated that the general store should be granted permission to make the slated changes.

Our family has owned on Diamond Cove for the past six years. The general store has been a critical component for the Island and our family. Our kids frequent the establishment and cherish it's atmosphere. I encourage the change as our three children are from 7 to 15. The general store is a business that needs to prosper in order to exist. Let the slated changes occur and let Great Diamond Island and visitors determine if the changes are acceptable through a free market opportunity. If the changes are successful then the store shall exist for our children to experience for years to come. We have grown in our community through a wonderful Inn, restaurant Diamonds Edge and first class marina. This change will be a welcomed growth compliment to the community.

Thank you for your consideration.

Kevin and Tricia Cooper
44 McKinley Court 13d
Diamond Cove

Google Groups

Change of Use for the General Store (Building 32), Diamond Cove

Elizabeth Sanders <sandersbeth9@gmail.com>

Feb 23, 2018 7:50 AM

Posted in group: **Planning Board**

We are residents of the Quartermaster neighborhood of Diamond Cove, immediate neighbors of the General Store. Access to our unit is the public (DCHA shared) brick pathway in front of the store. We are pleased to see the restoration being carried out on the exterior of the General Store. The General Store has been a major resource for the community, a gathering point, a spot for a quick meal or an ice cream, employment for our youth and even friendly culinary competition with our guest chefs. We are concerned, though, about the change of use for the following reasons:

- 1) we would like assurance that the 250% increase in seating capacity does not negatively impact the wastewater overboard discharge for our area. The Diamond's Edge and seven other units are included in the area as well as the Museum and Art Gallery function space. In the height of the summer of 2017 (4th of July), there was a backup of wastewater in the sewer system running through the cellars of the Quartermaster buildings.
- 2) one proposed solution seems questionable: the use of paper plates and plastic utensils in an upscale restaurant. We wonder if diners seeking a refined dining experience would be satisfied, especially drinking fine wine from plastic cups. This proposal to mitigate the water use impacts the environment negatively as well.
- 3) we would also like assurance that the area surrounding the General Store remains a non-smoking area.
- 4) we are concerned that the proposed, significantly smaller, General Store portion will not adequately serve the needs of our community.

We are unable to attend the hearing and would like this letter to be presented instead.

Best regards,
Stephen and Beth Sanders
4 Quartermaster Court
Diamond Cove

Google Groups

RE: Change of Use Application for 255 Diamond Avenue (Building 32), Diamond Cove

Kathy Willing <KWillig@divcom.com>

Feb 23, 2018 8:49 AM

Posted in group: **Planning Board**

Please find attached comments (and supporting documentation) in response to the application for change of use of 255 Diamond Avenue (building 32), Diamond Cove for the February 27, 2018 planning board meeting.

Thank you,

Kathy Willing

Kathy Willing
2 Misty Way
Falmouth, ME 04105

February 23, 2018

Sean Dundon, Chair
Planning Board, City of Portland
389 Congress Street
Portland, ME 04101

RE: Change of Use Application for 255 Diamond Avenue (Building 32), Diamond Cove

Dear City of Portland Planning Board:

As a homeowner on Diamond Cove and the Treasurer of the Diamond Cove Homeowners Association, I have a number of financial concerns about the change of use application for 255 Diamond Avenue otherwise known as Building 32. It is my personal opinion (I am not speaking for the Board) that the change of use of the General Store to a 35 seat restaurant has far reaching financial impacts on the Association's fixed assets and resources that need to be addressed before the application can be approved.

Use of Association Assets and Resources

The financial health of the Diamond Cove Homeowners Association is heavily reliant upon the success of the commercial entities operating on Diamond Cove. The three commercial enterprises (Diamond's Edge Restaurant including Lot 44, also known as the Tent Site, Diamond Cove Inn, and the General Store) represent nearly 20% of the annual operating budget for the Association. Yet the actual contributions of these businesses to the Association are skewed heavily toward the Diamond Cove Inn and Diamond's Edge Restaurant. The General Store currently contributes less than 1% of the annual operating budget and is treated the same as a residential homeowner. The reason for this imbalance is because the inherent service features of the Diamond's Edge Restaurant and Diamond Cove Inn are geared toward non Association members whereas the focus of the General Store has been to service the needs of Association members along with occasional island visitors.

In addition to homeowner dues, Diamond's Edge Restaurant/Tent Site have an agreement [Restaurant Facilities Use and Services Agreement *attached*] with the Association that outlines fees to the Association for use of items such as the dock, transfer station, extra water usage, etc... It also clearly defines the areas of the private island that the Restaurant/Tent Site visitors can traverse and when and by whom additional security services will be employed. There is a similar agreement with the Diamond Cove Inn [IDC Facilities Agreement *attached*].

If the General Store wishes to move forward with a change of use to a 35 seat restaurant it needs to negotiate and have in place similar agreements with the Association before it can open its doors. The change of use to a 35 seat restaurant will significantly increase off island visitor traffic, put greater wear and tear on fixed assets such as the dock, generate additional security staffing requirements, use greater amounts of city water, and likely impact many other resources yet to be contemplated.

Additionally, the General Store's property ownership stops at its exterior porch. I would like to request that prior to approval of a change of use to a 35 seat restaurant the store be required to negotiate and execute a mutual agreement with the Homeowners Association that clearly outlines the process and fees related to possible future requests to use Association property such as (but not limited to) the brick patio in front of the General Store and the art gallery.

Legal Liability

With the General Store's change of use to a 35 seat restaurant the Association increases its exposure to legal risk. For instance, over the past 24 months the Association has incurred significant legal fees related to one particular homeowner's displeasure with sound levels at the Tent Site despite an existing DEP permit regulating the hours and decibels allowed. Replacing a General Store with a 35 seat restaurant in a building that is within several feet of residential homes is fraught with possible legal risks unless all possible areas of risk are discussed and contractually regulated prior to the change.

The increase of non island visitor traffic on the island also increases the odds of property casualty risks as it increases the likelihood of individuals exploring private areas of the island and causing personal injury or property damage.

Existing Waste Water Discharge License

The change of use of the General Store to a 35 seat eating establishment using paper products poses a concern to the Association about its ability stay within its allotted waste water discharge. The Association is the holder of the DEP permit for waste water discharge, not the individual homeowners or commercial entities. If for any reason the 35 seat eating establishment exceeds its allocated flow the Association is the body at risk. If for any reason the DEP were to revoke the permit held by the Association, it would be at tremendous financial cost to the Association. The cost of monitoring and ensuring the 35 seat eating establishment stays within its allocated flow needs to be clearly designated as the commercial entity's responsibility with a well-defined reporting structure into the Association.

Can the Island Support 3 Restaurants?

Underlying all of the above I strongly question whether Diamond Cove can support three restaurants. As stated earlier, Diamond's Edge Restaurant/Tent Site and the Diamond Cove Inn are material contributors to the income and operating budget of Diamond Cove. If either of these entities suffer financially as a result of increased competition from a third restaurant the financial health of the whole island suffers.

Thank you for your consideration,
Kathy Willing

RESTAURANT FACILITIES USE AND SERVICES AGREEMENT

RESTAURANT FACILITIES USE AND SERVICES AGREEMENT, dated as of November 21, 2016 and effective as of the Effective Date (as defined in Section 1.2) (this "Agreement"), by and between the DIAMOND COVE HOMEOWNERS ASSOCIATION, a Maine nonprofit corporation with an address c/o Foreside Real Estate Management, Inc., 202 U.S. 1 #206, Falmouth, ME 04105 ("DCHA"), and Diamond's Edge LLC, a Maine limited liability company (formerly known as DCL, LLC) with an address c/o Bateman Partners, LLC, 470 Fore Street, Portland, Maine 04101 ("DCL"). DCHA and DCL are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. DCHA and its members (including DCL) are bound and governed by certain covenants and other provisions contained in that certain Amended and Restated General Declaration of Covenants and Restrictions dated December 23, 1993, as amended (the "DCHA Declaration").

B. DCL is entering into this Agreement in its capacity as owner of Diamond's Edge Restaurant (Lot 29) at Diamond Cove ("Diamond's Edge Restaurant") and owner of the so-called Tent Site (Lot 44) at Diamond Cove (the "Tent Site") and all references herein to "DCL" shall mean DCL solely in such capacity.

C. DCHA and DCL are entering into this Agreement for their mutual benefit and subject to the DCHA Declaration, the DCHA By-Laws and any and all rules and regulations promulgated by the DCHA Board of Directors (the "DCHA Board") pursuant thereto (the DCHA Declaration and such By-Laws and rules and regulations, collectively the "DCHA Governing Documents").

In consideration of the foregoing and other good and valid consideration (including the consideration specifically referenced herein), DCHA and DCL hereby agree as follows:

SECTION 1. DCHA FISCAL YEAR AND EFFECTIVE DATE AND TERM OF THIS AGREEMENT.

1.1 Fiscal Year. The fiscal year of DCHA runs from July 1 of a year (e.g., July 1, 2016) through June 30 of the following year (e.g., June 30, 2017).

1.2 Effective Date. The effective date of this Agreement shall be July 1, 2016.

1.3 Term. The term of this Agreement shall begin on July 1, 2016 and end on June 30, 2017, and shall be automatically renewed for one-year terms thereafter unless either

party gives written notice of termination at least thirty (30) days prior to the expiration of the then-existing term (the “Term”).

SECTION 2. USE OF DCHA FACILITIES.

2.1 DCHA Restroom Facilities. DCL owns the Tent Site and, as such, is permitted to use it for such events and uses such as weddings, private parties, theater and otherwise as prescribed by the DCHA Declaration, subject to the strict compliance by (a) DCL, (b) the personnel of DCL, whether employees or independent contractors (collectively, “DCL Personnel”), and (c) the persons and entities that hold events at the Tent Site (collectively, the “DCL Tent Site Parties”) and the guests and contractors of the DCL Tent Site Parties (collectively with the DCL Tent Site Parties, the “DCL Tent Site Persons”) with the restrictions described in Section 2.6 and elsewhere in this Agreement. In connection with such permitted uses of the Tent Site, DCL shall have the non-exclusive use of the restroom facilities owned by DCHA and located near the pond at Diamond Cove on a road to the Tent Site (the “DCHA Tent Site RR”). DCL shall keep the DCHA Tent Site RR clean at all times during the current so-called Events Season (i.e., Memorial Day through October 15), which Season may be extended or modified upon written notice by DCL to DCHA (the “Events Season”).

2.2 DCHA Art Gallery. DCL will be entitled to non-exclusive use of the DCHA Art Gallery for up to fifteen (15) wedding receptions, dinners and other events customarily held at the DCHA Art Gallery during the Term without any fee, in addition to those specified in Section 4, payable by DCL therefor. DCL may have additional use of the DCHA Art Gallery for such events with the payment of an additional fee of Three Hundred Fifty Dollars (\$350) per day of such events. The foregoing usage rights will be subject to (a) any prior reservation of the DCHA Art Gallery by another member of DCHA or any other person or entity authorized by the DCHA Board to use the DCHA Art Gallery and (b) DCL providing to, and the receipt by, a member of the DCHA Board who does not have a conflict of interest of fifteen (15) days prior written notice describing the event and the approval of such member or another designee of the DCHA Board and (c) the strict compliance by the persons and entities that hold events at the Art Gallery (the “DCL Art Gallery Parties”) and the guests and contractors of the DCL Art Gallery Parties (collectively with the DCL Art Gallery Parties, the “DCL Art Gallery Persons”) with the restrictions described in Section 2.6 and elsewhere in this Agreement. DCL shall keep the DCHA Art Gallery clean, when in use for and promptly after the use by any DCL Art Gallery Persons, during the Events Season.

2.3 DCHA Pier and Dock House. DCL shall have, without allocation of additional cost or assessment due to increased “use and benefit” pursuant to DCHA Declaration Section 8.1.3, the non-exclusive use of (a) the DCHA Pier for (i) the transport of personnel and customers to and from Diamond Cove, and (ii) the transport to Diamond Cove of alcoholic beverages, food, and other items and the transport from Diamond Cove of other items regularly used in the operation of a restaurant such as Diamond’s Edge Restaurant and (b) the DCHA Dock House incidental to the foregoing and for management of the Diamond Cove Marina. DCL shall perform all necessary exterior maintenance on the Electric Service Shed on the DCHA Pier and, during the customary annual boating season, shall maintain and keep clean the DCHA Dock

House. DCHA shall have non-exclusive use of the DCHA Dock House to enable its members to wait for ferries in a sheltered environment and otherwise on an as-needed basis during such boating season.

2.4 DCHA Transfer Station. DCL shall be entitled to have transported (pursuant to a separate agreement with DCHA) the waste generated in the customary operation of Diamond's Edge Restaurant and the Tent Site to the Transfer Station (the "Transfer Station") operated at Diamond Cove by the City of Portland (the "City"). DCL's use of the Transfer Station will be subject to the strict compliance by DCL with any and all applicable governmental laws and rules and regulations (including those promulgated by the City) and the DCHA Governing Documents, including the provisions therein regarding the operations at the Transfer Station, including the obligation of DCL to keep its waste covered and keep the applicable area clean vis-à-vis its waste at all times.

2.5 Diamond Cove Fireboat Dock. DCL shall permit DCHA and its members (and their families and overnight guests and day visitors of such members and their families) and renters (and their families and overnight guests and day visitors of renters and their families) to use the Diamond Cove Fireboat Dock to drop off and pick up such persons. DCL shall not permit any boats to be docked at the Diamond Cove Fireboat Dock beyond a reasonable drop off and pick up period without the boat captain remaining on board so that the boat can be moved. If a boat is so tied up, DCL will make another dock location available to the foregoing persons. DCHA and DCL shall be jointly responsible to pay for the maintenance of the Diamond Cove Fireboat Dock.

2.6 Certain Restrictions. The use by DCL of the Tent Site, the DCHA Art Gallery, and the other facilities at Diamond Cove that DCL is permitted to use in connection with this Agreement, including the use by the DCL Personnel, DCL Tent Site Persons and DCL Art Gallery Persons and persons and entities that hold events at, or otherwise frequent, Diamond's Edge Restaurant ("DCL Diamond's Edge Restaurant Parties") and the guests and contractors of DCL Diamond's Edge Restaurant Parties (DCL Diamond's Edge Restaurant Parties and such guests and contractors, collectively, "DCL Diamond's Edge Restaurant Persons"), is subject to the strict compliance by DCL, the DCL Personnel and the DCL Tent Site Persons, the DCL Art Gallery Persons and the DCL Diamond's Edge Restaurant Persons (collectively, "DCL Event Persons") with the DCHA Governing Documents, including the provisions therein containing noise restrictions and limitations.

SECTION 3. DCHA-PROVIDED SERVICES.

3.1 Painting of Diamond's Edge Restaurant, the Mule Barn and Tent Site Restroom Facilities. DCHA will paint the exterior of Diamond's Edge Restaurant, the so-called Mule Barn and the DCHA Tent Site RR with the same periodicity as it paints the other historic buildings on the Parade Ground at Diamond Cove.

3.2 Maintenance and Mowing by DCHA. DCHA shall maintain (exclusive of any non-ordinary maintenance items caused by DCL Personnel and/or DCL Event Persons) the

grounds at the Tent Site, and mow the lawn areas adjacent to the Tent Site and Diamond's Edge Restaurant as necessary to keep them looking attractive, subject to the provisions of Section 6 of the September 1, 2002 Ground Lease for Lot #29 between DCHA and DCL.

3.3 Extra Water and Sewer. DCL acknowledges and agrees that the operation of Diamond's Edge Restaurant and the restroom facilities at the Tent Site require the use of extra water and sewer services and cause DCHA to incur additional costs therefor. The Parties acknowledge and agree that the fees payable by DCL hereunder are, in part, to pay for such additional costs.

3.4 Diamond's Edge Restaurant Grease Traps. DCHA will have the grease traps used by Diamond's Edge Restaurant pumped out at the end of July and September during the Term. DCHA will bill DCL for this service at cost, as evidenced by the invoice received by DCHA from its contractor. This will be payable within thirty (30) days of receipt.

SECTION 4. FEES AND PAYMENT OF FEES.

4.1 Fees and Payment of Fees. The (a) fees payable by DCL to DCHA for (i) the rights granted by DCHA to DCL to use facilities and (ii) the provision by DCHA to DCL of services, in each case as described herein, and (b) the schedule of payments shall be as follows:

July 1, 2016:	\$3,000.00
August 1, 2016:	\$3,000.00
September 1, 2016:	\$3,000.00

In the event the Term is extended beyond June 30, 2017 pursuant to Section 1.3 above, DCL shall continue to make payments on July 1, August 1, and September 1 during the Term, in amounts equal to 102% of those payable during the immediately preceding year. By way of example, if this Agreement is extended through June 30, 2019, then payments of \$3,121.20 shall be payable by DCL on July 1, August 1, and September 1, 2018.

DCHA and DCL acknowledge and agree that from time-to-time DCL subsidizes certain additional ferry operations, pays monthly assessments and provides certain other benefits to DCHA and that the foregoing fees have been determined taking all of the foregoing into account.

4.2 Timely Payment. The rules that govern the failure to pay or timely pay any such fees and other amounts payable hereunder shall be identical to the rules applicable to the failure of any member of DCHA with respect to the payment of assessments, as set forth in the DCHA Declaration and By-Laws and the policies, rules and regulations adopted from time-to-time by the DCHA Board and provided to members of DCHA, including the provision requiring the payment of interest at the rate of eighteen percent (18%) per annum when a payment is not made within thirty (30) days after its due date.

SECTION 5. CERTAIN OBLIGATIONS OF, AND RESTRICTIONS ON, DCL.

5.1 Access to Areas of DCHA (Other Than Lots 29, 31, 32, 34 and 44). The DCL Event Persons shall not be permitted to have access to any areas at Diamond Cove other than Lot 29 (Diamond's Edge Restaurant), Lot 31 (Art Gallery), Lot 32 (General Store), Lot 34 (Mule Barn) and Lot 44 (Tent Site) and other areas at Diamond Cove that may be made available to the general public at the time(s) so made available. Without limiting the foregoing, no DCL Event Person shall be permitted access to the courtyard near the DCHA Art Gallery and the so-called Quartermasters Buildings.

5.2 Transportation of Persons and Materials Outside of Diamond Cove. None of the DCL Event Persons, or any of the respective freight or other materials of such Persons, shall be transported beyond the boundaries of DCHA.

SECTION 6. COMPLIANCE BY DCL AND OTHER DCL EVENT PERSONS; AND RESPONSIBILITY AND LIABILITY OF DCL FOR SUCH PERSONS.

6.1 Provision of DCHA Governing Documents. DCL covenants and agrees to provide to all of the DCL Event Persons with a written summary of (i) the usage and other restrictions, and (ii) any other important obligations, rules and regulations, contained in the DCHA Governing Documents and this Agreement that pertain to DCL Event Persons while at Diamond Cove, such summary to be in form and substance reasonably satisfactory to DCHA. In addition, DCL shall inform the DCL Event Persons that they should provide such summary to the other DCL Event Persons. Without limiting the foregoing, DCL shall comply, and shall cause all other DCL Event Persons to comply, strictly with the noise limitations contained in the DCHA Governing Documents, DCL shall keep the vicinity of Diamond's Edge Restaurant clean and free of debris, and DCL shall cause all DCL Personnel and other DCL Event Persons to comply strictly with all non-smoking limitations prescribed by the DCHA Board, including in and around the DCHA Art Gallery and the courtyard near the DCHA Art Gallery and the Quartermasters Buildings.

6.2 Responsibility and Liability of DCL for DCL Event Persons. DCL shall be responsible and liable for any and all violations of the DCHA Governing Documents, and any and all other acts and/or omissions of any and all DCL Event Persons at Diamond Cove, and DCHA shall be entitled to seek recourse against DCL simultaneously with, or in lieu of, seeking recourse against any such other Persons.

SECTION 7. INSURANCE AND INDEMNIFICATION.

7.1 Insurance. DCL shall maintain at all times during the Term commercial general liability insurance, workers' compensation insurance and employer liability insurance), with such policy(s) to be written on an occurrence basis and to contain the written agreement of the insurer to give DCHA thirty (30) days prior written notice of cancellation, nonrenewal, modification or expiration, and to name DCHA as an additional insured. Each policy shall be endorsed to provide that such coverage shall be primary, and that any coverage maintained by DCHA shall

be excess insurance only. DCL shall provide DCHA with proof of such insurance prior to the Effective Date.

7.2 Indemnity. DCL shall indemnify and hold harmless DCHA from and against any and all demands, claims, actions, suits, and other proceedings, and damages, costs, expenses, penalties, debts, liabilities, obligations or judgments arising out of, occasioned by, or related to: any and all (a) violations of (i) applicable governmental laws, rules and regulations and (ii) the DCHA Governing Documents and (b) other acts and/or omissions, in each case by any and all DCL Event Persons and (c) physical injury to any and all DCL Event Persons (except to the extent caused by the willful misconduct or negligence of DCHA). If a demand or claim against DCHA is made and/or DCHA shall be made a party to any action, suit or other proceeding, arising out of or in connection with any circumstance under which DCHA is entitled to be indemnified against hereunder, DCL shall pay all costs, expenses and reasonable attorneys' fees incurred and/or sustained by DCHA in connection with such demand, claim, action, suit or other proceeding, as well as all sums which DCHA may be called upon to pay by reason of the entry of any judgment against DCHA in such action, suit or proceeding, except to the extent of any of the foregoing that is attributable to the willful misconduct or negligence of DCHA. The obligations contained in this Section 7.2 shall survive the expiration or earlier termination of this Agreement.

SECTION 8. DEFAULT.

(a) In the event (i) of DCL's failure to pay any fee or other amount due hereunder within ten (10) days after receipt by DCL in writing of DCHA's notice of default; (ii) DCL's failure to secure insurance or to provide evidence of insurance as set forth in Section 7.1, where such failure shall continue for a period of ten (10) days after receipt by DCL in writing of DCHA's notice of default; or (iii) DCL shall assign this Agreement without complying with all the provisions of Section 11.8; or (iv) of DCL's failure to perform any of the other covenants, conditions and agreements herein contained to be kept or performed by DCL and the continuance of such failure without the curing of same for a period of thirty (30) calendar days after receipt by DCL of a notice in writing from DCHA specifying the nature of such failure, and provided DCL shall not cure said failure as provided in this Section; then in any such event, DCHA may, at its option, give to DCL a notice of election to terminate this Agreement upon a date specified in such notice, which date shall be not less than five (5) business days (Saturdays, Sundays, and legal holidays excluded) after the date of receipt by DCL of such notice from DCHA. Upon the date specified in such notice, this Agreement shall be terminated and rendered null and void, but any such termination shall be without prejudice to any rights or remedies of the DCHA, whether pursuant to this Agreement and/or at law and/or in equity, in respect of arrears of fees and other amounts payable by DCL to DCHA hereunder and/or any and all previous breaches of this Agreement by DCL, and any and all of the provisions of this Agreement that provide rights and/or remedies with respect to such fees and other amounts and breaches shall survive such termination.

(b) If DCL fails to pay any fee and/or other amount when due under this Agreement and DCHA has sent DCL written notice of default as set forth in Subsection 8(a)(i) above, then upon demand, in addition to the interest charge provided in Section 4.2, DCL shall pay DCHA,

as an additional charge, all costs and expenses (including reasonable attorneys' fees) reasonably incurred by DCHA in collecting any overdue fee and/or other amount or in enforcing any of the other provisions of this Agreement of which DCL shall be in default beyond any period provided to DCL for curing the default.

(c) In the event that DCHA gives notice of a non-monetary default described in Subsection 8(a)(iv) above of such a nature that it cannot be cured within such thirty (30) day period then such default shall not be deemed to continue so long as DCL, after receiving such notice, proceeds and continues in good faith to cure the default as soon as reasonably possible and continues to take all steps reasonably necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable, but in no event shall such period of time exceed ninety (90) days.

(d) In addition to the foregoing remedies, in the event DCL fails to keep (i) the DCHA Tent Site RR, (ii) the DCHA Art Gallery, and (iii) the Electric Service Shed on the DCHA Pier and the DCHA Dock House (collectively, the "DCHA Specified Locations") clean at all times during the Events Season in accordance with Section 2.1, Section 2.2 and Section 2.3 above, as reasonably determined by DCHA, and such failure shall continue for a period of two (2) days after receipt by DCL in writing (including by use of electronic messaging or "e-mail") of DCHA's notice of such default, DCHA may, at its option, without waiving any other remedy hereunder, at any time thereafter cure such default for the account of DCL, and DCL shall reimburse DCHA for any reasonable amount so paid to clean the applicable DCHA Specified Locations to a reasonable standard, and any amounts due from DCL shall be deemed an additional charge due and payable hereunder.

SECTION 9. INDEPENDENT CONTRACTOR. DCL is obtaining the rights, and is undertaking the obligations, set forth herein as an independent contractor. Neither DCHA nor DCL is an agent, employee or other representative of the other and will not hold itself out to third parties as any of such. This Agreement shall in no way be deemed to create a partnership, joint venture, or principal/agent or any fiduciary relationship between DCHA and DCL, and neither DCHA nor DCL will hold itself out to third parties as any of such.

SECTION 10. DCHA GOVERNING DOCUMENTS CONTROL. Notwithstanding any provision of this Agreement or any other agreement between the Parties, in the event of the conflict of any provision of this Agreement with any provision of the DCHA Governing Documents, the provisions of the DCHA Governing Documents shall control.

SECTION 11. MISCELLANEOUS.

11.1. No Representations. Each Party acknowledges that neither the other Party, nor any agent or attorney of the other Party, has made any promise, representation or warranty whatsoever, expressed or implied, not expressly contained in this Agreement concerning the subject matter of this Agreement, to induce such Party to execute and deliver this Agreement and acknowledges that such Party has not executed or delivered this Agreement in reliance upon any promise, representation or warranty not contained herein, including by DCHA with respect to

any aspect (including the physical condition or operability) of its infrastructure or other portion of its properties.

11.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. This Agreement supersedes all prior agreements between DCHA and DCL with respect to its subject matter. For the purposes of clarity, the Parties acknowledge and agree that the two (2) preceding sentences are not applicable to the DCHA Declaration and the other DCHA Governing Documents, all of which will continue to be applicable to the relationship between the Parties.

11.3 Amendment or Modification. This Agreement may be varied or amended or otherwise modified or only by the written agreement of the Parties, as evidenced by the signature of (a) the President of DCHA (or any other member of the DCHA Board designated in writing by the DCHA Board) and (b) the President of DCL (or any other duly designated executive officer of DCL).

11.4 No Third Party Beneficiaries. Notwithstanding the reference in this Agreement to various third parties, including other DCL Event Persons, this Agreement is solely between and for the benefit of the Parties, and nothing herein shall be construed to provide to any third parties any rights under this Agreement, including any right to claim the benefit of, or to enforce, any provision herein.

11.5 Validity, Legality and Enforceability. If any provision of this Agreement (or any portion thereof) or the application of any such provision (or portion) to any person or entity or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion thereof) or the application of such provision to any other persons or circumstances.

11.6 Headings. The headings of the Sections in this Agreement form no part of this Agreement and may not be used to construe the provisions of this Agreement.

11.7 Meaning of Certain Terms. As used in this Agreement, unless otherwise required: (a) words of any gender include all genders; (b) words using the singular or plural number also include the plural or singular number, respectively; and (c) the word “including” shall mean “including, but not limited to.”

11.8 Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or otherwise transferred by DCHA or DCL without the prior written consent of the other (which consent, in the case of a requested assignment to a successor to owner of Diamond’s Edge Restaurant, may not be unreasonably withheld by DCHA), provided that DCL may collaterally assign its rights in this Agreement in customary commercial formats to its financing sources as collateral for loans made in the ordinary course relating to the premises described in this Agreement. Any act which is inconsistent with the terms of this Section shall be null and void *ab initio*.

11.9 Binding Effect. This Agreement shall (a) inure to the benefit of each of the Parties and (b) be binding on each of the Parties.

11.10 Disputes. In the event of any controversy, or claim, action, suit or other proceeding (whether based on contract, law or any other basis) (“Dispute”) between the Parties arising out of, in connection with, or relating to this Agreement (including with respect to the interpretation, validity, performance or breach of any provision(s) herein), the following provisions shall govern:

(a) Each Party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any Dispute directly or indirectly arising out of, under, or in connection with, this Agreement or any other matter contemplated hereby. Each Party (a) certifies that no representative, agent or attorney of the other Party has represented, expressly or otherwise, that such other Party would not, in the event of a Dispute, seek to enforce the foregoing waiver and (b) acknowledges that it and the other Party hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Subsection.

(b) In the event of any Dispute between the Parties, the prevailing Party shall be entitled to recover costs and reasonable attorneys’ fees incurred in connection with the conduct of such Dispute. Any costs and reasonable attorneys’ fees payable by a Party under this Subsection shall be as determined by the applicable court.

11.11 Notices. All notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid to the addresses set forth below, or to such other addresses as DCHA and DCL may specify from time to time in writing.

If to DCHA, to:

Diamond Cove Homeowners Association
c/o Foreside Real Estate Management, Inc.
202 U.S. 1 #206
Falmouth, ME 04105
Attn: Jeff Martin, President

and

Verrill Dana LLP
One Portland Square
Portland, ME 04112-0586
Attn: Anthony M. Calcagni, Partner

If to DCL, to:

Diamond's Edge LLC
c/o Bateman Partners, LLC
470 Fore Street
Portland, ME 04101

11.12 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Maine applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State.

11.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same agreement, and signatures may be delivered by facsimile.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

WITNESS:

Kathy Gifford

DIAMOND COVE HOMEOWNERS
ASSOCIATION

By: W. Paul Woody
Its: President

WITNESS:

Debra Harmon

DIAMOND'S EDGE LLC

By: [Signature]
Its: Manager

FACILITIES AGREEMENT

THIS AGREEMENT is made this 20th day of June, 2013 by and between the **DIAMOND COVE HOMEOWNERS ASSOCIATION**, a Maine nonprofit corporation with an address c/o Phoenix Management Co., 40 Water Street, Saco, Maine 04072 (“DCHA”), and **THE INN AT DIAMOND COVE, LLC**, a Maine limited liability company with an address c/o Bateman Partners, LLC, 470 Fore Street, Portland, Maine 04101 (the “Inn”). DCHA and the Inn are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, the Inn has entered into a Purchase and Sale Agreement with the City of Portland (the “City”) to acquire certain property on Great Diamond Island in the City, County of Cumberland and State of Maine, being the building at Diamond Cove designated as Building 46 (“Building 46”), including all of the individual lots comprising Building 46 (collectively, the “Double Barracks Lots”), as shown on Third Amended Sheet 3 of a plan set entitled “Diamond Cove, Great Diamond Island, Portland, Maine, Plan of Diamond Cove” dated September 27, 1989 and recorded at the Cumberland County Registry of Deeds (the “Registry”) in Plan Book 181, Page 36, as amended by plan dated February 21, 1994 and recorded at the Registry in Plan Book 194, Page 58, and as further amended by plan dated March 8, 1994 and recorded at the Registry in Plan Book 194, Page 67, and as further amended by plan dated June 10, 1998 and recorded at the Registry in Plan Book 198, Page 188, and as further amended by plan dated July 1, 1999 and recorded at the Registry in Plan Book 199, Page 340, and as further amended by plan dated February 5, 2001 and recorded at the Registry in Plan Book 201, Page 36, and as further amended by plans recorded at the Registry on August 22, 2002 in Plan Book 202, Pages 526-28;

WHEREAS, Building 46 and the surrounding common properties of Diamond Cove are subject to the covenants, conditions, restrictions, rights, easements, charges, liens and other matters set forth or referred to in a certain Amended and Restated General Declaration of Covenants and Restrictions dated December 17, 1993 and recorded at the Registry in Book 11277, Page 322; as modified by First Supplement dated February 25, 1994 and recorded at the Registry in Book 11307, Page 200, Amended and Corrected Second Supplement dated August 27, 1999 and recorded at the Registry in Book 15011, Page 87, Third Supplement dated February 5, 2001 and recorded at the Registry in Book 16009, Page 317, Fourth Supplement dated July 26, 2002 and recorded at the Registry in Book 17985, Page 251, and Fifth Supplement of near or even date herewith, to be recorded at said Registry; and as amended by Amendment recorded at the Registry on July 30, 2002 in Book 17897, Page 347, and Restated Second Amendment (the “Second Amendment”) recorded at the Registry on August 1, 2011 in Book 28857, Page 122 (collectively, the “DCHA Declaration”);

WHEREAS, DCHA has approved the Inn as an “Approved Developer” (as defined in the Second Amendment);

WHEREAS, the Inn contemplates developing Building 46, including the Double Barracks Lots, into a hotel condominium (the “Project”) in accordance with the DCHA Declaration and all Rules and Regulations adopted in accordance with the DCHA Declaration (collectively, the “DCHA Governing Documents”), and all of the agreements, permits, approvals and other instruments and documents that govern the development and operation of Building 46, including but not limited to the Portland City Council Amendment to Conditional Zone dated Sept. 15, 2008, as amended Feb. 22, 2012, the City of Portland Planning Board Site Plan and Subdivision Approval of March 2012, as modified and revised, the Maine Department of Environmental Protection MPDES Permit and Waste Discharge License Transfer and Renewal dated Sept. 15, 2009, as revised Oct. 21, 2011 and Sept. 14, 2012, and the Maine Department of Environmental Protection Site Location Minor Amendment dated Sept. 23, 2009, as revised Oct. 12, 2011, Mar. 8, 2012, and Sept. 26, 2012 (collectively, the “Inn Governing Documents”), and this Agreement;

WHEREAS, pursuant to the Second Amendment, the Inn is increasing the number of Double Barracks Lots to twenty-two (22), and the Inn initially will be the owner of all of the Double Barracks Lots;

WHEREAS, the Inn has formed a Maine nonprofit corporation, named The Inn at Diamond Cove Condominium Association, to act as a condominium association for the Double Barracks Lots (the “Inn Association”);

WHEREAS, the Inn contemplates engaging a management company to manage and conduct the day-to-day business and affairs of the Project (the “Inn Management Company”);

WHEREAS, DCHA and the Inn desire to document certain agreements related to (a) the conduct of the business and affairs of the Inn, and (b) certain rights and obligations related thereto of DCHA and the Inn, Inn Association, and the Inn Management Company, respectively;

NOW, THEREFORE, DCHA and the Inn hereby agree as follows:

SECTION 1. USE OF DCHA ADMINISTRATION BUILDING. The Inn acknowledges and agrees that DCHA uses the so-called Administration Building at Diamond Cove to provide office space for certain personnel of the management company engaged by DCHA to provide operational and other services to DCHA and its members (the “DCHA Management Company”), to provide recreational facilities for the members of DCHA, to hold meetings of DCHA and groups of members of DCHA and for other events, functions and activities of DCHA or one or more members of DCHA. DCHA will, however, permit the Inn to use the two rooms on the second floor (on the right) of the Administration Building (the “DCHA AB Space”) to conduct events or functions for registered guests at the Double Barracks Lots; provided that (i) the Inn provides DCHA with at least fourteen (14) days’ prior written notice of its desire to use the DCHA AB Space (which notice shall contain the name of such guest(s) for or by which such Space will be used and a description of the event or other function to be held, including the scheduled starting and ending times), and (ii) neither DCHA nor any member or group of members has reserved such Space prior to the receipt by DCHA of such notice. In

consideration of the right of the Inn to use the DCHA AB Space, the Inn shall pay to DCHA an amount equal to Three Hundred Fifty Dollars (\$350.00) for each day (or partial day) of such use, subject to adjustment as set forth in Section 5.

SECTION 2. USE OF CERTAIN OTHER DCHA FACILITIES. The Inn acknowledges and agrees that DCHA has certain facilities that members of DCHA and renters at Diamond Cove, and guests of such members, are permitted to use, including the Gymnasium, the Bowling Alley, the Art Gallery and the Fitness Facility. The Inn further acknowledges and agrees that DCHA has an agreement with Diamond's Edge LLC ("DE") that grants DE the right to use the Art Gallery and that DCHA reserves the right to lease or license any and all of its facilities to other parties for their use in connection with such events, functions or other activities as may be determined by DCHA.

2.1 Use of the Gymnasium, the Bowling Alley, and the Art Galley. DCHA will license the Gymnasium, the Bowling Alley and the Art Gallery to the Inn on an exclusive basis during the term of such license to enable the Inn to conduct events or functions for registered guests at the Double Barracks Lots; provided that (i) the Inn provides to DCHA at least fourteen (14) days prior written notice of its desire to use the applicable facility(ies) (which notice shall contain the name(s) of such guests for or by which the applicable facility(ies) will be used and a description of the event or other function to be held, including the scheduled starting and ending times) and (ii) neither DCHA nor any member or group of members of DCHA has, or, in the case of the Art Gallery, DE has not, reserved the applicable facility(ies) prior to the receipt by DCHA of such notice. The exclusive use fees for each of these facilities is set forth below:

(a) Gymnasium: Four Hundred Fifty Dollars(\$450.00) per day (or part thereof).

(b) Bowling Alley: Four Hundred Fifty Dollars(\$450.00) per day (or part thereof).

(c) Art Gallery: Three Hundred Fifty Dollars (\$350.00) per one-half day (or part thereof).

2.2 Use of the Fitness Facility. During the part of year that the Project is open for business, the Inn will pay to DCHA a base fee of One Thousand Dollars (\$1,000.00) per month for the non-exclusive use of the Fitness Facility by registered guests at the Double Barracks Lots, which monthly fee amount shall be subject to adjustment as set forth in Section 5. Prior to any use by any such guests, the Inn shall, at its own cost and expense, install an electronic card reader system to track usage by such guests. The Inn shall provide to DCHA a description and other details of such card reader, as well as the installation plan, for approval by the DCHA Board of Directors at least thirty (30) days prior to the scheduled start date for its installation. The Inn also shall provide to DCHA, on a monthly basis, an electronic or hard copy of all usage information that the Inn collects via the use of such system and otherwise.

2.3 Use of Other Common Recreation Areas. DCHA acknowledges and agrees that registered guests at the Double Barracks Lots may use all facilities and common recreation areas at Diamond Cove that renters at Diamond Cove are permitted to use free of charge, except for (a)

the Fitness Facility (as to which (i) use by such guests will be subject to the compliance by the Inn with Subsection 2.2 and (ii) such guests will be charged a fee directly by the Inn), and (b) the swimming pool and related facilities located on the so-called Parade Ground.

SECTION 3. SOLID WASTE REMOVAL. The Inn acknowledges and agrees that it has the obligation, at its own cost and expense, to store all solid waste generated at Building 46 in a lower level of Building 46. DCHA agrees to have personnel of the DCHA Management Company pick up such waste once per week, on the same date that such personnel perform such services for other members of DCHA, and will dispose of it at a private or public disposal facility on the mainland. In the event that any of the Inn Governing Documents shall include a condition or requirement pertaining to solid waste removal that results in additional costs being incurred by the DCHA in connection with its disposal of such solid waste (e.g., a requirement that such solid waste be disposed of at EcoMaine, as opposed to any other waste disposal facility used by the DCHA), such additional costs incurred by the DCHA shall be reimbursed by the Inn on the next date that monthly assessments are to be paid by members of DCHA.

DCHA acknowledges and agrees that it intends to continue to hold discussions with the City with respect to a project that it hopes would reduce the cost of removing solid waste from Diamond Cove and will otherwise attempt to develop a plan that would reduce the cost of such removal. The Inn acknowledges and agrees that DCHA is not in complete control of the foregoing efforts and that there can be no assurance of reducing the costs of solid waste removal from Diamond Cove. The Inn further acknowledges that such efforts do not, and will not, involve efforts specific to the Inn, as opposed to all members of DCHA generally.

SECTION 4. WAIVER OF RENTAL PROGRAM FEE. The Inn acknowledges and agrees that DCHA permits its members to rent their homes to the general public and charges any and all of its members that do so a rental fee (the “Rental Fee”). DCHA acknowledges and agrees that the Inn, in the ordinary course of its business, will be renting the Double Barracks Lots to the general public and, therefore, DCHA agrees that the Inn will not be obligated to pay the Rental Fee with respect any Double Barracks Lots that it leases or licenses in the ordinary course of its business. The foregoing waiver of the Rental Fee shall apply to a Double Barracks Lot only so long such Double Barracks Lot is used as part of an “inn” under common management with all other Double Barracks Lots and such inn is open to the general public.

SECTION 5. PAYMENT OF FEES; REVIEW AND POSSIBLE ADJUSTMENT OF CERTAIN FEES PAYABLE BY THE INN.

5.1 Payment of Fees. Except as otherwise expressly provided herein, all fees and other amounts payable by the Inn to DCHA hereunder shall be payable on the date that monthly assessments are to be paid by members of DCHA following the date on which the relevant facilities were provided by DCHA for use for or by the registered guests at the Double Barracks Lots. The rules that govern the failure to pay or timely pay any such fees and other amounts shall be identical to the rules applicable to the failure of any member of DCHA with respect to the payment of assessments, as set forth in the DCHA Declaration and By-Laws and the policies, rules and regulations adopted from time-to-time by the DCHA Board of Directors and provided

to members of DCHA, including the provision requiring the payment of interest at the rate of eighteen percent (18%) per annum when a payment is not made within thirty (30) days after its due date.

5.2 Review and Possible Adjustment of Certain Fees Payable by the Inn.

(a) Fees for the Exclusive Use of the DCHA AB Space, Gymnasium, the Bowling Alley and the Art Gallery.

(i) The Parties shall meet, at least thirty (30) days before the end of each fiscal year of DCHA, beginning with the end of the third fiscal year in which the Project has been in operation, to discuss changes in the rates being charged pursuant to Subsection 2.1. In considering such changes the Parties shall take into account changes in operating expenses (including, without limitation, with respect to insurance and maintenance) and, in addition, in the case of the Art Gallery, the fee being paid by DE.

(b) Fee for the Use of the Fitness Facility. The Parties acknowledge and agree that the One Thousand Dollar (\$1,000.00) base fee set forth in Subsection 2.2 was premised on the number of registered guests estimated by the Inn to use the Fitness Facility during each fiscal year of operation of the Project determined at the notional rate of Three Dollars (\$3.00)/guest per day of use. Within thirty (30) days after the end of first fiscal year of DCHA that includes the operation of the Project, the Parties will use the data collected pursuant to Subsection 2.2 to determine what the actual usage fee would have been using such notional Three Dollar (\$3.00) rate and, if the actual aggregate usage fee is different by ten percent (10%) or more than the base fee, the Parties shall make a true-up calculation and either DCHA shall pay to the Inn the shortfall in achieving the One Thousand (\$1,000.00) base fee or the Inn shall pay to DCHA the amount by which the actual aggregate usage fee exceeds such base fee, with any such payment to be made within thirty (30) days after such true-up. In addition, at least thirty (30) days before the end of each fiscal year of DCHA beginning with the end of third fiscal year in which the Project has been in operation, the Parties shall meet to discuss changes in such notional rate.

SECTION 6. COMPLIANCE BY THE INN, INN ASSOCIATION, INN MANAGEMENT COMPANY, AND INN GUESTS.

6.1 The Inn, Inn Association, and Inn Management Company. The Inn acknowledges it has received complete copies of the DCHA Governing Documents, including the Declaration (as modified and amended) and the Rules and Regulations (including Design Review Process and Design Guidelines, Contractor Guidelines and Barge Landing Rules, Pets, Rentals, and Lien and Collection Policy). The Inn covenants and agrees to provide (a) the Inn Association (upon its formation), (b) the Inn Management Company (upon its engagement by the Inn) and (c) any other parties that perform any services for the Inn (collectively, the "Inn Parties"), copies of the DCHA Governing Documents and the Inn Governing Documents and any provisions of this Agreement that are relevant to the work or services to be provided by them. The Inn further covenants and agrees to cause each of the Inn Parties to execute and deliver to DCHA a letter agreement for its benefit and in form and substance reasonable satisfactory to it that

acknowledges the receipt of such Documents and states, among other things, their commitment and obligation to comply with all of the provisions therein (collectively, the “Inn Parties Letter Agreement”).

6.2 Inn Guests. The Inn covenants and agrees to provide to all registered guests at the Double Barracks Lots a written description of the usage rights and restrictions applicable to such guests with respect to their stay at Diamond Cove and (b) a written summary of the any important rules governing such stay, including any relevant conditions and restrictions in the DCHA Governing Documents, such description and summary to be in form and substance reasonably satisfactory to DCHA.

SECTION 7. INSURANCE AND INDEMNIFICATION.

7.1 Insurance. The Inn shall maintain at all times with respect to the Project, commercial general liability insurance as required by Section 3(g) of the Second Amendment, property insurance for the Double Barracks Lots as required by Section 9.7 of the DCHA Declaration, and such other insurance as may be reasonably required by DCHA (including, without limitation, comprehensive automobile liability insurance, workers’ compensation insurance and employer liability insurance). Certificates of such insurance shall be delivered to DCHA at or prior to the commencement of construction of the development of Building 46, and thereafter upon request and within twenty (20) days prior to the expiration of such policies. The policies providing such insurance shall include a provision that such insurance shall not be terminated or substantially changed by the insurer without twenty (20) days’ prior written notice to DCHA. Each liability policy shall be endorsed to provide that such coverage shall be primary, and that any coverage maintained by DCHA shall be excess insurance only.

7.2 Indemnity. The Inn shall indemnify and save harmless DCHA from and against any and all suits, claims, demands, damages, costs, expenses, penalties, debts, liabilities, obligations or judgments arising out of, occasioned by, or related to (a) damage to any property at Diamond Cove and (b) death or injury to any registered guest or other person sustained at (i) the Project and (ii) facilities and common recreation areas at Diamond Cove, except, in the case of the immediately preceding clause (a) and clause (b)(ii), to the extent caused by the negligence or willful misconduct of DCHA. If DCHA shall be made the subject of any claim or demand, or a party to any action, arising out of or in connection with any circumstance for which DCHA is entitled to be indemnified against hereunder, the Inn shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by DCHA in connection with such claim, demand or action as well as all sums which DCHA may be called upon to pay by reason of the entry of any judgment against DCHA in such action, except to the extent of any of the foregoing that is attributable to the negligence or willful misconduct of DCHA. The obligations contained in this Section shall survive the expiration or earlier termination of this Agreement.

SECTION 8. EFFECTIVE DATE; TERM AND EXTENSION OF AGREEMENT; TERMINATION AND SURVIVAL.

8.1 Effective Date. This Agreement shall become effective on the date on which the last of the following shall have occurred (the "Effective Date"): (a) the City of Portland has conveyed all Double Barracks Lots to the Inn; and (b) a certificate of occupancy for each of the twenty-two (22) Double Barracks Lots is issued by the City of Portland. In the event that Effective Date shall not occur by December 31, 2014, then this Agreement shall be terminated and rendered null and void.

8.2 Term and Extension.

(a) This Agreement shall have an initial term five (5) years from the Effective Date, unless sooner terminated by a Party pursuant to Section 9 below or by mutual written agreement of the Inn and DCHA.

(b) This Agreement is entered into for the mutual benefit of the Inn and DCHA and serves as a material inducement to the Inn to proceed with the construction of the Project. In the event this Agreement is not sooner terminated pursuant to Section 9 or by mutual written agreement of the Inn and DCHA, this Agreement shall be considered automatically extended for five (5) year terms, without notice, through the expiration or earlier termination of the Ground Lease Agreement between the Inn and DCHA.

SECTION 9. DEFAULTS:

9.1 In the event (i) of the Inn's failure to pay any fee or other amount due hereunder within ten (10) days after receipt by the Inn in writing of DCHA's notice of default; (ii) of the Inn's failure to secure insurance or to provide evidence of insurance as set forth in Section 7.1, where such failure shall continue for a period of ten (10) days after receipt by the Inn in writing of DCHA's notice of default; or (iii) the Inn shall assign this Agreement without complying with all the provisions of Section 11.8; or (iv) of the Inn's failure to keep or perform any of the other covenants and agreements, or meet any of the conditions, herein contained on the Inn's part to be kept or performed or met, respectively, and the continuance of such failure without the curing of same for a period of thirty (30) calendar days after receipt by the Inn of a notice in writing from DCHA specifying the nature of such failure, and provided the Inn shall not cure said failure as provided in this Section; then in any such event, DCHA may, at its option, give to the Inn a notice of election to terminate the term of this Agreement upon a date specified in such notice, which date shall be not less than five (5) business days (Saturdays, Sundays, and legal holidays excluded) after the date of receipt by the Inn of such notice from DCHA. Upon the date specified in such notice, this Agreement shall be terminated and rendered null and void, but any such termination shall be without prejudice to any rights or remedies of the DCHA, whether pursuant to this Agreement and/or at law and/or in equity, in respect of arrearages of fees and other amounts payable by the Inn to DCHA hereunder and/or any and all previous breaches of this Agreement by the Inn, and any and all of the provisions of this Agreement that provide

rights and/or remedies with respect to such fees and other amounts and breaches shall survive such termination.

9.2 If the Inn fails to pay any fee and/or other amount when due under this Agreement and DCHA has sent the Inn written notice of default as set forth in Subsection 9.1(i) above, then upon demand, in addition to the interest charge provided in Section 5.1, the Inn shall pay DCHA, as an additional charge, all costs and expenses (including reasonable attorneys' fees) reasonably incurred by DCHA in collecting any overdue fee and/or other amount or in enforcing any of the other provisions of this Agreement of which the Inn shall be in default beyond any period provided to the Inn for curing the default.

9.3 In the event that DCHA gives notice of a non-monetary default described in Subsection 9.1(iv) above of such a nature that it cannot be cured within the thirty (30) day period specified in such Subsection, then such default shall not be deemed to continue so long as the Inn, after receiving such notice, proceeds and continues in good faith to cure the default as soon as reasonably possible and continues to take all steps reasonably necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable, but in no event shall such period of time exceed ninety (90) days after the notice provided in such Subsection.

SECTION 10. INDEPENDENT CONTRACTOR. The Inn is undertaking the obligations set forth herein as an independent contractor. The Inn is not an agent, employee or other representative of DCHA and will not hold itself out to third parties as any of such. This Agreement shall in no way be deemed to create a partnership, joint venture, or principal/agent or any fiduciary relationship between DCHA and the Inn, and the Inn will not hold itself out to third parties as any of such.

SECTION 11. MISCELLANEOUS.

11.1. No Representations. Each Party acknowledges that neither the other Party, nor any agent or attorney of the other Party, has made any promise, representation or warranty whatsoever, expressed or implied, not expressly contained in this Agreement concerning the subject matter of this Agreement, to induce such Party to execute and deliver this Agreement and acknowledges that such Party has not executed or delivered this Agreement in reliance upon any promise, representation or warranty not contained herein, including by DCHA with respect to any aspect (including the physical condition or operability) of its infrastructure or other portion of its properties.

11.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. This Agreement supersedes all prior agreements between DCHA and the Inn with respect to its subject matter. For the purposes of clarity, the Parties acknowledge and agree that the two (2) preceding sentences are not applicable to the DCHA Declaration and the other DCHA Governing Documents, all of which will continue to be applicable to the relationship between the Parties.

11.3 Amendment or Modification. This Agreement may be varied or amended or otherwise modified or only by the written agreement of the Parties, as evidenced by the signature of (a) the President (or any other director of DCHA designated in writing by the DCHA Board of Directors) of DCHA and (b) the President (or any other duly designated executive officer) of the Inn.

11.4 No Third Party Beneficiaries. Notwithstanding the reference in this Agreement to various third parties, including the City, the Inn Management Company, and the Inn Association, this Agreement is solely between and for the benefit of the Parties, and nothing herein shall be construed to provide to any third parties any rights under this Agreement, including any right to claim the benefit of, or to enforce, any provision herein.

11.5 Validity, Legality and Enforceability. If any provision of this Agreement (or any portion thereof) or the application of any such provision (or portion) to any person or entity or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion thereof) or the application of such provision to any other persons or circumstances.

11.6 Headings. The headings of the Sections and Subsections in this Agreement form no part of this Agreement and may not be used to construe the provisions of this Agreement.

11.7 Meaning of Certain Terms. As used in this Agreement, unless otherwise required: (a) words of any gender include all genders; (b) words using the singular or plural number also include the plural or singular number, respectively; and (c) the word “**including**” shall mean “including, but not limited to.”

11.8 Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or otherwise transferred by the Inn without the DCHA’s prior written consent, which consent may be withheld by DCHA in its sole and absolute discretion, provided this Agreement may be assigned by the Inn as collateral for any financings which the Inn may desire to undertake with respect to the Project.

11.9 Binding Effect. This Agreement shall (a) inure to the benefit of each of the Parties and (b) be binding on each of the Parties.

11.10 Disputes. In the event of any controversy, or claim, action, suit or other proceeding (whether based on contract, law or any other basis) (“Dispute”) between the Parties arising out of, in connection with, or relating to this Agreement (including with respect to the interpretation, validity, performance or breach of any provision(s) herein), the following provisions shall govern:

(a) Each Party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any Dispute directly or indirectly arising out of, under, or in connection with, this Agreement or any other matter contemplated hereby. Each Party (a) certifies that no representative, agent or attorney of the other Party has represented, expressly or

otherwise, that such other Party would not, in the event of a Dispute, seek to enforce the foregoing waiver and (b) acknowledges that it and the other Party hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Subsection.

(b) In the event of any Dispute between the Parties, the prevailing Party shall be entitled to recover costs and reasonable attorneys' fees incurred in connection with the conduct of such Dispute. Any costs and reasonable attorneys' fees payable by a Party under this Subsection shall be as determined by the applicable court.

11.11 Notices. All notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid to the addresses set forth below, or to such other addresses as DCHA and the Inn may specify from time to time in writing.

If to DCHA, to:

Diamond Cove Homeowners Association
c/o Phoenix Management Company
P.O. Box 759
Saco, ME 04072
Attn: President

and

Verrill Dana LLP
One Portland Square
Portland, ME 04112-0586
Attn: Anthony M. Calcagni, Partner

If to the Inn, to:

The Inn at Diamond Cove, LLC
c/o Bateman Partner, LLC
470 Fore Street
Portland, ME 04101

11.12 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Maine applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State.

11.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same agreement, and signatures may be delivered by facsimile.

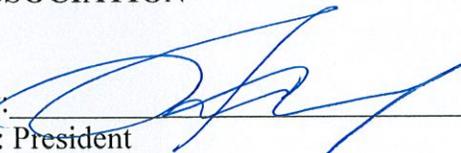
[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

WITNESS:



**DIAMOND COVE HOMEOWNERS
ASSOCIATION**

By: 
Its: President

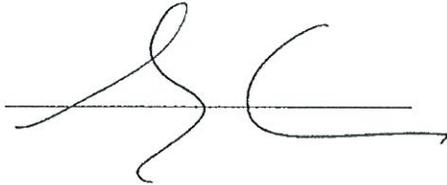
WITNESS:

THE INN AT DIAMOND COVE, LLC

By: _____
David P. Hart
Its: Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

WITNESS:



**DIAMOND COVE HOMEOWNERS
ASSOCIATION**

By: 
Its: President

WITNESS:



THE INN AT DIAMOND COVE, LLC

By: 
David P. Hart
Its: Manager

DrummondWoodsum

ATTORNEYS AT LAW

Ronald N. Ward
Admitted in ME

207.253.0503
mward@dwmlaw.com

84 Marginal Way, Suite 600
Portland, Maine 04101-2480
207.772.1941 Main
207.772.3627 Fax

February 23, 2018

Via Hand Delivery

Barbara Barhydt
Development Manager
Portland Planning Board
389 Congress Street
Portland, Maine

RE: Site Plan Application- The General Store At Diamond Cove

Dear Ms. Barhydt and Board Members:

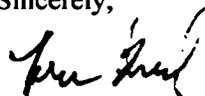
This office generally represents The Inn At Diamond Cove (“IDC”). It has recently become aware of this public hearing and is now pulling together with other Members of the Association to be heard at the Planning Board hearing on Tuesday. This letter has been preceded by the email from Ken Wood, Engineer, who is also a long- standing Member of the Homeowner’s Association. Our apologies for the lateness of the hour, but the general awareness of this hearing has been unusually slow to develop, preceded by very little, if any, discussions with the Developer concerning her intentions.

The concern of IDC lies with impacts upon the common overboard discharge system which is federally- licensed facility, monitored and enforced by the Maine Department of Environmental Protection. That system is very close to its licensed capacity and any excess discharge would have serious consequences for all Members of the Association, and particularly so for IDC. Millions of dollars have been invested in restoring the Inn and any suspension of access to the system for violations of capacity would be an economic blow of dramatic consequence. IDC needs all future impacts to be carefully reviewed and conditioned to protect its investment.

We’ve seen the Developer’s Application to the City. Both the design of the facility and the “calculations” of flow resulting from “paper- based” operations leave us unconvinced that the current Application does enough to assure all Association members that the apparent design has accurately addressed the potential flows and grease trap design. IDC has retained Gorrill- Palmer, consulting engineers, to review these issues for us. Gorrill- Palmer will share its conclusions with the Board on Tuesday, and be prepared to answer any questions the Board may have. In order to be even- handed on this issue, the Board referring these issues out for an independent peer review would be something IDC would support.

We look forward to detailing our concerns for the Board on Tuesday.

Sincerely,



Ronald N. Ward

Cc: Manager, The Inn At Diamond Cove

Google Groups

Change of Use Application for 255 Diamond Avenue (Building 32), Diamond Cove

Brian Willing <brian.d.willing@gmail.com>

Feb 23, 2018 9:32 AM

Posted in group: **Planning Board**

Please find attached letter in opposition to the application for change of use of 255 Diamond Avenue (building 32), Diamond Cove for the February 27, 2018 planning board meeting.

Brian Willing

BRIAN WILLING

2 Misty Way
Falmouth, ME 04105

February 22, 2018

Sean Dundon, Chair
Planning Board, City of Portland
389 Congress Street
Portland, ME 04101

RE: Change of Use Application for 255 Diamond Avenue (Building 32), Diamond Cove

Dear Mr. Dundon:

I own property located at 170 Diamond Avenue, Diamond Cove, just up the road from the General Store property at 255 Diamond Avenue (Building 32), and I write to express my strong opposition to the change of use application submitted by Alex Wright and Gail Landry (the "Applicants") relating to the General Store property at 255 Diamond Avenue, Diamond Cove.

Diamond Cove needs a general store as the hub of the island community. It does not need another restaurant. The applicants purchased the property at 255 Diamond Avenue as a general store, not a restaurant. Although they "operated" it as a store for one summer (2017), they did not make any effort to operate it successfully – at least by all outward appearances. It was consistently under stocked, frequently closed for hours at a time (even on holiday weekends) and the applicants themselves were never on site. (I am a regular customer at the general store and have never even laid eyes on either of the applicants.)

The applicants and the store managers that they employed to run the general store last summer made no effort to ingratiate themselves with the island community. They initially promised store jobs to several teenagers with families who reside at Diamond Cove and then informed the teens after summer had already started that there were no jobs after all (after the families and teens had already made their summer plans with the expected jobs in mind). In late July of 2017, after many in the island community had become concerned that the applicants planned to change the general store into a restaurant, the applicants sent a representative to the annual Association meeting and reassured the Association that the

rumors were wrong and they did not plan to change the store into a restaurant. They then began moving ahead with their planned change in use just a few weeks later. (I'm not sure that any of the above was the best way for the applicants to win over the island customer base unless they do not see the island community as their customer base at all.)

The applicants have clearly intended to change the general store into a restaurant from the beginning and to market the restaurant primarily to off islanders, whereas the general store has always been operated primarily for the benefit of island residents. Of course, an increase in off islanders to the island to go to this new restaurant will likely mean increased island foot traffic, property maintenance cost increases, added security concerns, increased water and sewer usage, added garbage disposal costs, noise increases, etc....

How do the applicants plan to reimburse the Association and the City of Portland for the increased costs associated with their proposed change in use. They currently pay the same Association dues as regular homeowners do, but their increased usage of the island's amenities, and the costs associated therewith, will be 10x, 20x or more than that of an average Diamond Cove homeowner paying the same Association dues. Do Diamond Cove homeowners, and the City, have to bear this increased financial and liability burden, or do the applicants plan to reimburse the Association and the City? If so, how much?

The applicants have not reached any agreement with the Association about any of these issues. Shouldn't the Association's prior approval be a necessary precursor to any application for a change in use, especially considering the increased costs and liability that the Association would necessarily incur as a result of the proposed change in use.

The applicants have apparently told the DEP that they will use paper plates, etc... at their restaurant in hopes of addressing any issues with increased waste water disposal. Who is going to check to make sure they are keeping this promise next summer? Five years from now? 10 years from now? What happens if they fail to use paper plates, etc...? How will enforcement work if they do not comply? Regardless, paper plates, etc... do not even address any of the other potential cost and liability increases.

I understand and respect that the applicants have their own dreams for the property. On the other hand, they need to understand and respect that they purchased property that is part of an Association and island community. To date, the applicants have not shown any

inclination in working with the Association or their neighbors in the island community concerning their proposed change in use.

I would suggest – in good faith – that the applicants withdraw their pending change of use application and instead start fresh this coming summer. Operate the general store property as a store for one more summer and spend significant time on the island, make an attempt to meet and get to know their island neighbors so that they can better assess what makes the most sense for the general store property in the future. Maybe the applicants will decide to continue operating a new and improved general store, maybe they will decide that they still want to change it to a restaurant and resubmit their change in use application, or maybe they will come up with an even better idea that the Association and island community will support. If they will not withdraw the application, however, I would request that it be denied.

Thank you for attention to this matter.

Sincerely,

Brian Willing

Cc: DCHA Board

Google Groups

Change of Use of the General Store

Richard A. Molyneux <ramolyneux@gmail.com>

Feb 23, 2018 9:57 AM

Posted in group: **Planning Board**

Portland Planning Board,

Ladies and gentlemen. I understand that the Portland Planning Board is scheduled to review the Change of Use of the General Store at Diamond Cove, Great Diamond Island. I have been a Diamond Cove homeowner for 14 years, and served on the Board of Directors for 8 years.

I have recently been hearing voices, both in favor and opposition to the "change" of the store, a refrain many of us recall all too well from the 3 year legal battle over the renovation of the former military Double Barracks building into the Inn that exists today. While a number of people at that time were opposed to it being developed on the belief that it would ruin the character and tranquility of the island, the Inn has, in fact, turned out to be a great addition to the Diamond Cove community, something no objective person today could deny. Having spent 45 years in business, this also reinforced my belief that no material improvement takes place in our communities unless people are willing to risk the investment of time and money, as was the case with the Inn, and will be with the store today.

The fact is that the "change" in the general store, from a store to a store/restaurant, really is not a change at all. Much of the store's revenue has always come from prepared food service, not groceries. One could conclude that this application simply formalizes past practices going forward.

The general store has always been a very significant part of the Diamond Cove culture, often referred to as the "hub of the island". It would be devastating to lose it as an operating entity.

In summary, while everyone has the right to express their personal opinions, as I have, as long as the proposed operation does not violate DEP regulations, Portland codes, and Diamond Cove by-laws, it is ultimately a business proposition and a principal our country was built upon, called free enterprise.

Sincerely,

Richard Molyneux

Google Groups

Hearing - Change of Use for General Store Diamond Cove

Rowley Ready Mix, Inc <rrm2544@gmail.com>

Feb 23, 2018 9:50 AM

Posted in group: **Planning Board**

Attached please find a letter I would like as part of the packet for the Diamond Cove General Store Hearing on February 27th.

Downey Shea

Downey Shea

48 Ingalls Road Building 15c

Diamond Cove, ME

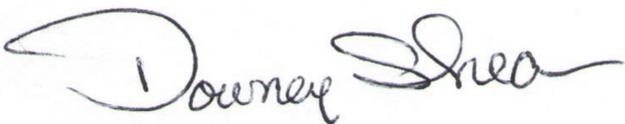
February 23, 2018

Submitted to: City of Portland

Planning Board

RE: Change of Use for General Store Building 32 at Diamond Cove Hearing

In the above reference, I, as a resident of Diamond Cove, am requesting that there should not be a change in the use of the General Store. Building 32 was restored as a General Store and should remain as its original intent.

A handwritten signature in cursive script that reads "Downey Shea". The signature is written in black ink and is positioned above the printed name.

Downey Shea

Google Groups

General Store (Building 32) at Diamond Cove/Change of Use Hearing Feb 27 PLEASE VERIFY RECEIPT

Bobby Spark <bspark@me.com>

Feb 23, 2018 11:56 AM

Posted in group: **Planning Board**

Dear City of Portland Planning Board Members,

We have been property owners at Diamond Cove (17 Hussey Lane, aka Lot 66) for 20 years. The **change of use** application for the General Store, building 32, to a 35 seat restaurant concerns us deeply.

This building and its use exists in a **private homeowners association**. We pay not only taxes to the City of Portland, but HOA fees to ensure a certain quality of environment and privacy. With that every property owner in this association should have been notified of this application AND be a part of this decision.

The City of Portland may be able to "absorb" another restaurant without much impact, but Diamond Cove is not the same

The General Store as the HOA has always known it, is **low impact** and used and/or useful to every homeowner already here at DC

A 35 seat restaurant is an **expansion of use** that does not really benefit the community at large. At the top of our concerns, is that it brings more transient people to the area while taxing our **security system**, that being **already severely over taxed** during the summer.

The use of paper and plastic products (solely) in order to skirt the issue of our limited waste water system is perplexing, especially in our increasingly "Green" society

Though this change of use application is only now happening, it was apparent to us that demolition on the interior of this building had already begun back in 2017 and certainly the published construction schedule matches that.

On top of that, there seems to be a question of whether a permit even exists for this work? **The integrity of this application and project is certainly compromised.**

In closing, we are opposed to the Change of Use for Building 32, the General Store at Diamond Cove as it is currently presented.

Thank you for your time and consideration

John and Bobby Spark
Lot 66
Diamond Cove

Google Groups

Fwd: Restaurant at Diamond Cove

Shukria Wiar <shukriaw@portlandmaine.gov>

Feb 23, 2018 1:09 PM

Posted in group: **Planning Board**

----- Forwarded message -----

From: "Edward Maas" <etmaas@myfairpoint.net>

Date: Feb 23, 2018 1:06 PM

Subject: Restaurant at Diamond Cove

To: <shukriaw@portlandmaine.gov>

Cc:

As a year round resident of Diamond Cove and a registered voter in Portland, Maine, I offer some concerns regarding the proposed restaurant in what was the "general store" building at Diamond Cove. These concerns are: 1) ALL of Diamond Cove is private property with only some of the roads being open to the public for specifically for access to the Inn, Diamond's Edge Restaurant and the original general store. Assuming the proposed restaurant hopes to attract off-island customers, what provision will the proprietors of this proposed business take to keep off-islanders from trespassing and wandering about private property?

2) As a sit down restaurant, and a pricey one at that considering the prices at the "General Store" at Diamond Cove that the same proprietors operated in 2017, what clientele would be willing to pay to eat off of paper plates using plastic disposable utensils? 3)The waste water production is a problem which must be thoroughly considered and rigidly enforced.

Thank you for considering these points.

Edward T. Maas
59 Moon Garden Way
Diamond Cove, Maine