

## DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 24<sup>th</sup> day of April, 2014, by and between the TOWN OF HAMPDEN, a municipal corporation organized and existing under and by virtue of the laws of the State of Maine, located in Penobscot County Maine ((hereinafter "Hampden") and SARGENT CORPORATION; SSR II, LLC; and SSR, LLC a business corporation organized and existing under the laws of the State of Maine with an office in Stillwater, Maine and related real estate holding companies (hereinafter collectively referred to as "Sargent").

### Recitals

1. Hampden is the original owner and developer of certain real property located in the Town of Hampden, Penobscot County Maine as depicted on a Final Subdivision Plan entitled *Hampden Business and Commerce Park* and recorded in the Penobscot County Registry of Deeds in Map File Nos. 2001-70 and 2001-71, as amended by the Final Subdivision Plan – Amendment No. 1 recorded at said Registry in Map File Nos. 2002-89 and 2002-90 and Final Subdivision Plan – Amendment No. 2 recorded at said Registry in Map File no. 2007-112 (collectively hereinafter referred to as the "Subdivision Plan").

2. As of the date of this Agreement, Hampden is the owner of all roads and common areas depicted on the Subdivision Plan, together with the following unsold lots:

Lot 2	Lot 21	Lot 30
Lot 4	Lot 22	Lot 31
Lot 6	Lot 23	Lot 32
Lot 8	Lot 24	Lot 33
Lot 9	Lot 25	Lot 34
Lot 10	Lot 26	Lot 35
Lot 17	Lot 27	Lot 36
Lot 19	Lot 28	Lot 37
Lot 20	Lot 29	

3. As of the date of this Agreement, infrastructure development for interior portions of the subdivision remains incomplete. The estimated cost to complete roads, bridges, water, sewer and other utility services to the subdivision, after certain changes to the Subdivision Plan as contemplated by this Agreement, is \$3.475 million. Pending completion of the remaining infrastructure improvements, many of the unsold lots may not be legally sold or developed.

4. On May 22, 2013, Sargent submitted its proposal to Hampden, titled "Hampden Business Park – Proposal for Final Development" to complete infrastructure development in the subdivision, in exchange for conveyance of the remaining unsold lots by Hampden to Sargent. Hampden and Sargent, in consideration of the mutual promises hereinafter expressed, enter into this Agreement for the purpose of implementing Sargent's proposal, as modified herein.

## **Agreement**

### **I. Sargent's Obligations**

(1) Sargent, at its own cost and expense, shall apply for and obtain all amendments to the existing Subdivision Plan and Site Location of Development Act permits for the Hampden Business and Commercial Park that may be necessary to eliminate one planned bridge and reduce fill as depicted in Sketch SK-1, attached hereto as Exhibit A and incorporated herein by reference. In addition, Sargent shall be solely responsible for obtaining all local building permits and any additional approvals necessary to complete the infrastructure improvements. Sargent shall identify, and provide notice thereof to Hampden, all desired amendments to existing approvals and permits within 60 days of the effective date of this Agreement. Sargent shall apply for all such amendments within 120 days of the effective date of this Agreement.

In the event that any such amendments, permits or other approvals are not finally approved within six months after Sargent's application, or if Sargent in its sole discretion determines that the application process has become unreasonably delayed or expensive, Sargent may withdraw from this Agreement with no further liability to Hampden hereunder, by giving Hampden seven (7) days prior written notice to that effect, such notice to be given by Sargent prior to the commencement of any construction activity. In the event of such a termination, Hampden shall have no obligations to Sargent under this Agreement.

(2) In the event that Sargent does not fulfill its obligations under Paragraph (1) above, Hampden may terminate this Agreement upon seven (7) days prior written notice to Sargent. In the event of such termination, neither party shall have any obligations to the other party under this Agreement. Hampden agrees to consider any reasonable extensions of the deadlines in Paragraph (1) above in the event any permits or approvals are delayed through no fault of Sargent, or they are subject to local or state appeals.

(3) Sargent agrees to complete all remaining infrastructure development for the Hampden Business and Commerce Park in accordance with the approved Subdivision Plan, as may be amended, at Sargent's sole cost and expense, no later than 38 months from the effective date of this Agreement for Phase 1 and 86 months from the effective date of this Agreement for the completion of Phase 2. A Scope of Work for the remaining infrastructure development is attached as Exhibit B and is incorporated herein by reference. In its sole discretion, Sargent may elect to reverse the order of completion of Phase 1 and Phase 2 of the infrastructure development, such that Phase 2 is completed within 38 months from the effective date of this Agreement, and Phase 1 within 86 months from the effective date of this Agreement. Sargent shall give written notice of its intention to reverse the order of completion to the Town within 24 months after the effective date of this Agreement. By way of illustration and not limitation, Sargent may elect to reverse the order of completion to accommodate the needs of potential lot buyers; to achieve efficiencies in construction of the infrastructure improvements; or to better address issues arising in the permit amendment process.

In completing the remaining infrastructure development, Sargent shall have sole discretion concerning use of its own forces and/or selection of a contractor or subcontractors; pricing of any contracts; employee wage rates; means and methods of construction; and oversight and supervision of the work. The Town shall be entitled to conduct inspections to ensure that all construction, including workmanship and materials, is completed in compliance with Hampden's ordinances and its infrastructure design and construction requirements, or other provisions of law. Prior to the commencement of construction, Sargent shall deposit with Hampden such funds as Hampden's Public Works Director determines is sufficient to conduct the inspections. Any unused funds shall be returned to Sargent upon completion of the work in a manner satisfactory to the Public Works Director.

(4) Upon completion of the infrastructure development, Sargent shall execute any

releases, bills of sale or similar documents that may be necessary to convey title to the completed infrastructure development to Hampden, and shall assign and deliver to Hampden all final "as-built" plans for the infrastructure development together with all manufacturers' warranties and information concerning any equipment or other items of personal property incorporated into the infrastructure development.

(5) Prior to the commencement of any construction on any phase of the infrastructure development, Sargent shall provide Hampden with a list of all subcontractors and suppliers. Sargent shall promptly obtain releases or discharges of any and all mechanics or materialmen's liens, or any other lien claims, arising from the construction of the infrastructure development. Hampden shall not be obligated to convey any lots to Sargent until Hampden is satisfied that its property is not subject to any lien claim arising from the design or construction of the infrastructure development.

## II. Hampden's Obligations

Subject to any required Town Council approvals that may be necessary under Hampden's Town Charter or Maine law with respect to option or conveyance of the Town-owned lots, or with respect to approval or amendment of a tax increment financing district, district development program or credit enhancement agreement under Title 30-A, chapter 206 of the Maine Revised Statutes, the Town of Hampden, by its Town Council, shall:

(1) Upon request, reasonably assist Sargent, at its sole expense, in preparing and presenting applications for any necessary amendments, permits and other approvals, but Hampden shall not be obligated to be an advocate before any permitting authority.

(2) Grant to Sargent a right of entry onto the town-owned portions of the Hampden Business and Commercial Park for the purpose of completing the infrastructure development. This right of entry shall include the right to enter on the individual lots in order to fill, grade or make other lot improvement for prospective purchasers. Sargent shall obtain any necessary local, state, or federal permits or approvals before undertaking the work, and shall complete the work in compliance with such approvals.

(3) Grant to Sargent, prior to commencement of any construction activity, an option to acquire the Town-owned lots in the Hampden Business and Commercial Park, for consideration of One Dollar (\$1.00) for each such lot acquired by Sargent pursuant to the option, said option

being the primary consideration upon which Sargent has agreed to complete the infrastructure development. Further terms of the option shall include the right to exercise the option with respect to any or all of the Town-owned lots at any time or times within a period ending ten (10) years after the earlier of (a) the date of completion of the phase of the infrastructure development in which the lot is located, or (b) 86 months from the effective date of this Agreement. No option may be exercised unless the phase of the infrastructure development in which the subject lot is located has been completed. It is the intention of this provision that the Town shall retain title to the undeveloped lots now owned by the Town until such time as Sargent has identified a user, purchaser or developer of the lot(s) concerned within the applicable ten (10) year period set forth above. The provisions hereof do not prevent Sargent from exercising its phasing rights under I (3).

(4) Town shall have the right to continue to market Lots 2, 4, 6, 8, 9 and 10 during the term of Sargent's option, and to sell any of said lots for not less than 80% of the prices listed in the listing agreement with Epstein Real Estate attached hereto as Exhibit C. Any proposed price less than 80% of the listing price must be approved by Sargent. The net proceeds (meaning the sales price minus commission, legal fees, and other customary seller costs) from any such sales shall be held in escrow by Hampden, and shall be paid to Sargent upon completion of Phase 1 or Phase 2, whichever occurs first.

(5) Within 120 days following execution of this Agreement, designate a development district and adopt a development program, including a tax increment financing (TIF) district, which shall include the following elements:

- a. The term shall be for a period of 30 tax years beginning with the July 1, 2015 to June 30, 2016 tax year.
- b. A credit enhancement agreement with Sargent for the Town-owned lots (except Lots 2, 4, 6, 8, 9, & 10), providing that Sargent shall receive, for a term of twenty (20) tax years commencing with the tax year subsequent to the completion of the Phase 1 or Phase 2 infrastructure development as of April 1 of the prior tax year or commencing on July 1, 2018, whichever is earlier, an annual reimbursement equal to fifty percent (50%) of the property taxes paid on account of new taxable development occurring on the Town-owned lots (except Lots 2, 4, 6, 8, 9, & 10), subject to the following:

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- i. The CEA payments shall only apply to the required new taxable development on a lot that occurs within ten (10) years from the conveyance of the lot to Sargent, or by April 1, 2028, whichever is earlier.
  - ii. The sale price of the lot shall not be included in the calculation of captured assessed value, as only the value of the improvements constructed on a lot shall be included in the calculation of captured assessed value.
  - iii. There shall be a maximum of ten (10) annual CEA payments per lot. No CEA payments shall extend beyond the July 1, 2037 to June 30, 2038 tax year.
  - iv. In order to qualify for CEA payments, a lot must have a minimum new taxable development of \$500,000.
  - v. The CEA payments for any particular lot shall commence in the first fiscal year of Hampden in which the required improvements have been completed and the new captured value therefore has been assessed.
  - vi. All other taxes collected on the captured assessed value for the lots shall be retained by the Town, and the Town Council shall have the annual option to determine the portion thereof to be utilized in the general budget and the portion thereof to be dedicated to the purposes allowed under 30-A M.R.S., Chapter 206, Subchapter 1.

c. Sargent shall be responsible, at its sole cost and expense, for preparing all documentation necessary for the establishment of the tax increment financing district and development plan, and the credit enhancement agreement, for consideration by the Town Council.

(6) Hampden will maintain all roadways after the infrastructure development has been satisfactorily completed and the Town Council votes to accept the same as town ways. To avoid damage to the final paved surface of roadways caused by construction vehicles employed in developing individual lots, Sargent shall have the right to defer final paving of roadways until lot development along the section of road concerned is complete. Such roadways shall be completed to a base coat of asphalt pavement only. The Town Council shall at all times have the option to accept such base coat only roads as town ways, and in that event may require Sargent to provide reasonable security, by letter of credit or performance bond, to assure

completion of final paving within a stated period, not to exceed 24 months from the date of acceptance. The Town shall also have the right to condition its issuance of any final certificate of occupancy for individual lots upon completion of final paving of the road sections serving that lot. Sargent shall notify any purchaser in writing prior to closing of the foregoing condition on the issuance of a certificate of occupancy.

### III. Additional Withdrawal Rights

It is understood and agreed that the provisions of this Agreement concerning grant of an option to purchase Town-owned lots and approval of a TIF credit enhancement agreement do not contractually bind the Town to approve those local legislative acts. Accordingly, in the event the Town Council fails to approve an option to purchase or a TIF credit enhancement agreement substantially in accordance with the terms of this Agreement within 120 days after the date of execution of this Agreement, then this Agreement shall be void and of no further force or effect. In that event, Sargent shall have no obligation to Hampden to complete the infrastructure development or to take any other action for Hampden's benefit hereunder.

### IV. General Provisions

(1) *Rights Reserved by Hampden.* Hampden reserves the right to grant a temporary construction easement to Maine Ground Developers, Inc., its successors and assigns, to construct a water line, sewer line and road improvements (including drainage facilities) within the "100' Access & utility easement retained by Hampden" on Lot 30 as shown on Map File No. 2002-90 and within the portion of Carey Circle running southeasterly therefrom, as shown on Map File Nos. 2002-90 and 2002-89, to the temporary cul-de-sac on the portion of Carey Circle that has been accepted as a town way. Said easement to include the right to connect said water line and sewer line to the existing water line and sewer line located in Carey Circle. Hampden agrees to consult with Sargent on the design and construction details of said improvements, as well as the provisions of the temporary construction easement.

(2) *Indemnification.* Sargent shall defend, indemnify and hold Hampden, and its officials, employees, or agents, harmless from any and all claims arising from the work contemplated by this Agreement, including but not limited to any and all claims arising from the

work of any subcontractors, or their officials, employees or agent.

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(3) *Insurance.* Sargent shall procure and maintain, throughout the term of this Agreement, the following insurance:

- a. Workers Compensation
- b. Commercial General Liability
  - i. Each Occurrence: \$1,000,000
  - ii. General Aggregate: \$2,000,000
  - iii. Products-Comp/OP Aggregate: \$2,000,000
  - iv. Personal and Adv. Injury: \$1,000,000
- c. Automobile Liability
  - i. Combined Single Limit: \$1,000,000  
(each accident)
- d. Umbrella
  - i. Each Occurrence: \$5,000,000
  - ii. Aggregate: \$5,000,000

The insurance shall be from companies authorized to do business in Maine, and shall cover operations of Sargent or of a subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Hampden shall be named as an additional insured. Certificates of insurance shall be filed with Hampden prior to commencement of the work contemplated by this Agreement, and thereafter upon the renewal or replacement of each required policy of insurance.

(4) *Choice of Law.* This Agreement is made under and shall be construed in accordance with the laws of the State of Maine.

(5) *Venue for Suits.* Any suit to construe or enforce the terms of this Agreement must be brought in the district or superior courts of Penobscot County, Maine, and otherwise shall be barred.

(6) *No Joint Venture.* Nothing in this Agreement shall be deemed to create a joint venture, partnership or other similar legal relationship between the parties hereto.

(7) *No Third-Party Benefit.* Nothing in this Agreement shall be deemed to create any right, benefit, claim, or cause of action in favor of any third party, it being the intention of the parties that this Agreement shall be for the sole benefit, and solely enforceable by, Sargent and

Hampden as parties hereto.

(8) *Assignments.* No assignment of this Agreement may be made by Sargent to any third party for any purpose, except with the prior express written consent of Hampden's Town Council, which shall not be unreasonably withheld. Assignment of this Agreement to a wholly-owned affiliate, parent or corporate successor to Sargent shall not be deemed be a breach of this paragraph. Use of other contractors or subcontractors to perform the infrastructure development in whole or part shall not be deemed a breach of this provision.

(9) *Immunities Retained.* Nothing in this Agreement shall be deemed to waive, impair, expand, reduce or modify any immunity from suit or judgment, including limitations on damages, now enjoyed by Hampden or Hampden's residents, employees or elected officials under the Maine Tort Claims Act, Title 14 MRSA sec. 8101 *et seq.*, or other provisions of law.

(10) *Amendments.* No amendment to this Agreement shall be valid unless executed in writing by representatives of Sargent and Hampden, duly authorized; and in the case of Hampden unless approved by vote of Hampden's town council at a duly called meeting thereof.

(11) *Entire Agreement.* This Agreement and the Exhibits referred to herein, when executed, shall constitute the entire agreement of the parties upon the subject matter hereof. No prior discussions, proposals, understandings, agreements or memoranda concerning the subject matter of this Agreement shall be deemed to have any force or effect.

**In Witness Whereof**, Hampden and Sargent have caused this Agreement to be signed by their respective representatives named below, duly authorized, on the date first written above, which date shall constitute the effective date of this Agreement.

Denise Hodsdon  
Witness

TOWN OF HAMPDEN

By: Susan M. Lessard  
Susan M. Lessard  
Its Town Manager

Denise Hodsdon  
Witness

SARGENT CORPORATION

By: Herbert R. Sargent  
Name: HERBERT R. SARGENT  
Title: PRESIDENT

SSR II, LLC

Denise Godsdon  
Witness

By: Herbert R. Sargent  
Name: HERBERT R. SARGENT  
Title: PRESIDENT

SSR, LLC

Denise Godsdon  
Witness

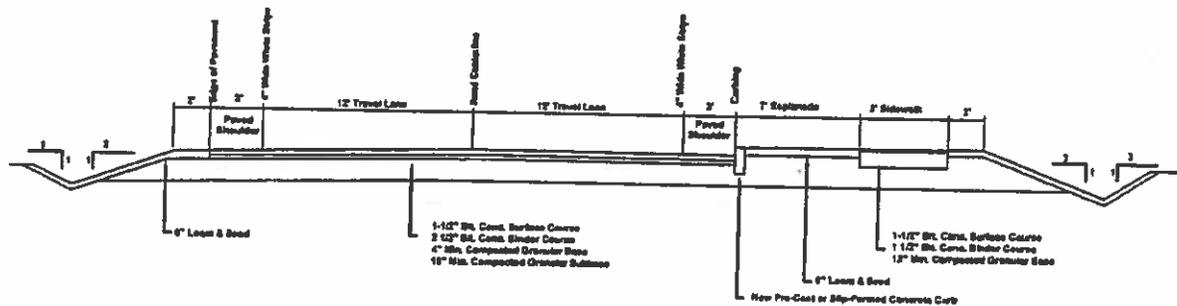
By: Herbert R. Sargent  
Name: HERBERT R. SARGENT  
Title: PRESIDENT



## Exhibit B

### Scope of Work for Remaining Infrastructure Development Hampden Business & Commerce Park

1. Prepare Documents & Plans for a Town of Hampden Site Plan Review Modification.
2. Prepare Documents & Plans for a Maine Department of Environmental Protection Modification of the Site Location of Development Natural Resource Protection Act Permit L-20555-39-A-N / L-20555-31-B-N.
3. Site Preparation Install Erosion & Sedimentation Control as per plans.
4. Construct Roadways as per Town of Hampden's Subdivision Ordinance, Design & Construction Standards for Streets.



### Typical Road Section

5. Install Storm Drainage as per Town of Hampden's Post-Construction Stormwater Management Ordinance.
6. Install Sanitary Sewer infrastructure as per Town of Hampden Sewer Ordinance.
7. Install Water Main Infrastructure as per Hampden Water District specifications.
8. Landscaping – Loam & Seed



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[www.epsteincommercial.com](http://www.epsteincommercial.com)

### EXCLUSIVE AUTHORIZATION TO SELL

This Agreement is entered into this 25th day of September 2013, by and between Epstein Commercial Real Estate of 6 State Street, P.O. Box 2444, Bangor, Maine 04402-2444, hereinafter called Broker; and Town of Hampden, 106 Western Ave, Hampden, Maine hereinafter called Owner.

In consideration of Broker's efforts to procure a sale for Owner's real estate as follows:

Lot #2, further described as a 1.46 acre lot as shown on Map 10B, Lot 2 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot # 4, further described as a 4.75 acre lot as shown on Map 10B, Lot 4 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot #6, further described as a 1.74 acre lot as shown on Map 10B, Lot 6 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot #8, further described as a 1.88 acre lot as shown on Map 10B Lot 8 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot # 9, further described as a 1.55 acre lot as shown on Map 10B, Lot 9 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285;

Lot #10, further described as a 2.80 acre lot as shown on Map 10B, Lot 10 in the Town of Hampden's tax assessor's office and recorded in the Penobscot County Registry of Deeds, Book 7832, Page 274-285.

Owner hereby grants to Epstein Commercial Real Estate the exclusive authorization to sell the above-mentioned real estate at the following price:

- Lot #2           \$ 80,000
- Lot #4           \$200,000

*Exhibit C*

- Lot #6           \$ 95,000
- Lot #8           \$110,000
- Lot #9           \$100,000
- Lot #10          \$155,000

or at any sale price which is acceptable to Owner. This exclusive authorization shall begin on September 26, 2013 and expire on September 25, 2014.

Broker shall have the exclusive right to sell said property within the time period above and shall be entitled to a commission fee of eight percent (8%) of the sale price. This commission fee shall be paid at the time of each closing. This commission fee shall be due Broker in the event of a sale produced by Broker, Owner, or any other person or entity; all inquiries shall be referred to Broker. The parties acknowledge that the Owner may enter into an agreement with Sargent Corporation in which it is to receive an option to purchase the Property (lots 2, 4, 6, 8, 9, 10) for a nominal amount as partial consideration for Sargent Corporation's construction of the infrastructure improvements for phase two of the Park. In the event that said lots are ultimately sold to Sargent Corporation, or a related entity, in accordance with such an agreement, no commission shall be due to Broker.

Should the Owner sell, transfer, convey, lease, exchange or dispose of any portion of said property within six months after the termination of this Agreement to any person, corporation, or entity which the Broker has introduced to the property, and whose name has been furnished to Owner in writing by the Broker during the time period of this Agreement, then in such a case the above commission shall become due and payable to the Broker.

By this Agreement it is understood that Broker is employed and is representing only Owner unless otherwise agreed to in writing. It is further understood that Broker's entitlement to the above commission fee occurs when Broker, Owner, or any other entity finds a purchaser who is ready, willing and able to purchase, and actually purchases, the said above described real estate on the terms herein setout, or on any other terms acceptable to the Owner.

Any dispute or claim arising out of or relating to this Agreement shall be submitted to mediation in accordance with the Maine Residential Real Estate Mediation Rules of the American Arbitration Association. This clause shall survive the expiration of this Agreement.

Agency and Owner each agree that this property is to be offered to any person without regard to race, color, religion, national origin, sex, age or handicap.

**SPECIAL CONDITIONS:**

1. A "For Sale" sign may be placed on the property.    Yes X    No \_\_\_
2. Broker may advertise the property.                    Yes X    No \_\_\_

**BUYER'S AGENCY:**

This Agency's policy is to cooperate with other agencies acting as Buyer's agents, unless such other brokerage agencies have a general policy which effectively inhibits or precludes the cooperation and sharing of compensation with other brokerage agencies. This Agency's policy is to share compensation with Buyer's agents.

The undersigned jointly and severally agree to accept telefacsimile copies of the documents which have been sent by either party to the other, or to any other party or agent to this transaction, as original documents.

11/19/2013  
DATE:

*Diana A. Epstein*  
OWNER:

9.25.13  
DATE:

*[Signature]*  
BROKER:  
EPSTEIN COMMERCIAL REAL ESTATE

