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VIA EMAIL

May 4, 2016

Nathan A. Poore, Town Manager
Town of Falmouth
271 Falmouth Road
Falmouth, Maine 04105

Re: Squidere Lane

Dear Nathan:

I am writing on behalf of Avesta Blackstone LP (Avesta) to outline the various issues related to Squidere Lane. As you know, the Town has maintained Squidere Lane for many years. Two properties, including the property to be acquired by Avesta, are accessed by the street. However, in reviewing various matters related to Avesta's proposed development on its property, the Town discovered that while Squidere Lane was laid out by the municipal officers in the mid-1970's, no further action was taken. The statute required a recording in the Registry of Deeds, which did not occur; thus fee title in Squidere Lane remains vested in the current owner of the existing housing project. While there is an argument that the Town has acquired at least a prescriptive public easement in Squidere Lane through its continued maintenance of the street for almost 40 years, the Town and Avesta wish to resolve this matter as part of Avesta's proposed development of its property. In addition, Avesta seeks a partial discontinuance of the portion of Squidere Lane located within the boundaries of Avesta's property (i.e., the area of the existing cul-de-sac) and proposes to (a) grant a turnaround easement to the Town and (b) enter into a Road Maintenance Covenant for Squidere Lane to provide for Avesta's winter maintenance of the length of the street from Depot Road into its property. I will discuss each of these items in greater detail below.

1. Grant of Title to Squidere Lane to the Town. In order to resolve the status of Squidere Lane, Avesta proposes to deed to the Town the street, from Depot Road to the Avesta property line. The Town may accept the deed under the provisions of 23 M.R.S.A. § 3025. In accordance with the statute, Avesta would offer this deed without claim for damages. This grant would confirm the status of Squidere Lane as a Town street. It ensures continued access and frontage for 19 Squidere Lane, the single-family home that has its only access from the street. Avesta has confirmed through its title work that it will be the fee owner of the street once it

closes on the property and so upon taking title to the property as a whole, Avesta will have the sole right to grant this deed to the Town.

2. Road Maintenance Covenant. Avesta will create a Road Maintenance Covenant, which will run with its property. Under the terms of the covenant, Avesta will be responsible for the winter maintenance of the street, including plowing, salting and sanding, in order to keep the street passable for motor vehicles. This obligation will run to subsequent owners of the property. The Town will remain responsible for repairs, repaving and other capital costs associated with the street.

3. Discontinuance of the portion of Squidere Lane located on Avesta's property. There currently exists a cul-de-sac located entirely on the property to be owned by Avesta. While the exact status of this portion of the street is uncertain for the reasons discussed in #1 above, Avesta will request that the Town discontinue this portion of the street, pursuant to 23 M.R.S.A. § 3026. Avesta is the only abutter to this portion of the street, and it will waive any claim for damages resulting from the discontinuance.

4. Grant of turnaround easement to Town. In order to ensure that Town vehicles, especially public safety vehicles, will have access to the full length of Squidere Lane, including to Avesta's property, Avesta will grant to the Town a turnaround easement in a mutually acceptable location in or near the discontinued cul-de-sac area. Again, this grant will be made without claim for damages.

5. Timing of discontinuance; grants. Because Avesta will not close on the property until after it receives required Planning Board approvals, it will seek the discontinuance, grant the street deed and turnaround easement to the Town and create the Road Maintenance Covenant after it acquires the property. Avesta agrees to include these items as conditions of approval on its site plan and subdivision approvals. The discontinuance could be required prior to the grant of any building permit and the deeds to the Town and the Covenant could be tied to either the grant of any building permit or to the grant of the certificate of occupancy.

6. Request for Council Resolution. Due to the timing issues, Avesta asks that the Town Council approve a Resolution allowing Avesta to go forward with its Planning Board applications at this time. The Resolution is needed due to the uncertainty about the status of the existing cul-de-sac on the development parcel. While Avesta owns the underlying fee, the Town may have existing prescriptive rights over it due to its maintenance of the street. This could present some uncertainty about whether Avesta has sufficient right, title or interest in that area, some of which will be needed for the proposed development, to pursue its application. In order to address this issue, Avesta requests that the Town Council approve a Resolution allowing it to proceed with its application for approval of the project. As discussed above, the deeds to the Town, the Road Maintenance Covenant and the discontinuance can be made conditions of the Planning Board approval.

Jensen Baird
Gardner Henry

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On behalf of Avesta, I would like to thank you, Amanda, Jay and the Town Attorney for your review of these complicated issues and your help in seeking a resolution to them. Please let me know if you have any questions or if you need more information on anything discussed in this letter.

Sincerely,

A handwritten signature in cursive script that reads "Natalie".

Natalie L. Burns

cc: Amanda Stearns, Community Development Director (via email)
Amy Tchao, Esq. (via email)
Drew Wing (via email)
Maurice A. Selinger, III, Esq. (via email)