Order 248-17/18
~~Tab 32 6-4-18~~
~~Tab 22 6-18-18~~
Tab 13 7-16-18

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE CHAPTER 14
RE: STREET ACCESS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

That Chapter 14, Section 14-403 is hereby amended to read as follows:

Sec. 14403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) ~~*In general.* No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than thirtyfive (35) feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section. For purposes of this section, street shall be as defined in section 1447, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any lot abutting such street shall, without compensation or claim for damages, and at his own cost and expense, first submit to the building authority (a) a deed from the owner of such lot conveying to the city all his right, title and interest in and to such street or any portion thereof; and (b) an agreement by such owner forever releasing the city from any and all claims for damages for the laying out and taking of such street and indemnifying the city against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the corporation counsel and to encumber and run with the land.~~ *Permanently paved and accepted streets or island streets.* The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) an existing street on an

island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear built width shall be as follows:

1. For one- or two-family dwellings - 25';

2. For all other buildings - 28'.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) *Streets to be upgraded in connection with development.* The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;

2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and

3. Obtain site plan approval for the work required under this subsection.

~~I *Exceptions.* The requirements of this section shall not apply to the following city streets upon their construction by the public works authority to such standards as are determined by the authority to be the most feasible:~~

~~1. Dingley Court;~~

~~2. Morgan Court.~~

(c) *Other exceptions.* The building or structure is one of the following:

1. An accessory building; or

2. Part of a Planned Residential Unit Development.

MEMORANDUM

City Council Agenda Item

DISTRIBUTE TO:	City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan
FROM:	Stuart O'Brien, Director, Planning Division
DATE:	May 21, 2018
SUBJECT:	Text Amendments to Section 14-403. Street Access
SPONSOR:	Sean Dundon, Chair, Portland Planning Board

Public Hearing, May 17, 2018. Board unanimously recommended (6-0, Whited absent) to City Council the adoption of the revised Section 14-403. Street Access.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading June 4, 2018 Final Action June 18, 2018

Can action be taken at a later date: X Yes ____ No (If no why not?)

PRESENTATION: (List the presenter(s), type and length of presentation)
Sean Dundon, Chair, Planning Board and Stuart O'Brien, Director, Planning Division- 5 to 10 minutes total

I. ONE SENTENCE SUMMARY

Proposed amendments to Section 14-403. Street Access applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits and the overriding goals of the text amendments are to increase the predictability and clarity while managing the competing needs of new housing construction, sustainability of infrastructure and public safety.

II. AGENDA DESCRIPTION

Section 14-403 Street Access is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. It applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. The goals of the text amendments are to increase the predictability and clarity of Section 14-403 while managing the competing needs of new housing construction, sustainability of infrastructure, and public safety. Maintenance of public roadways and related infrastructure is a significant expense for the City and one where our priority must be on addressing deferred maintenance and existing needs. As required by the Portland's Plan 2030, the city must try to find a balance between the sometimes competing needs of a sustainable, equitable, secure and connected community. The proposed amendments, unanimously recommended by the Planning Board, seek to achieve that balance by allowing development on undersized built streets that meet minimum standards for emergency services and to continue to require undeveloped streets to be improved to meet current city street standards. The substance of proposed amendments remains consistent with current policy, while seeking to simplify and clarify the regulations.

III. BACKGROUND

Section 14-403 was enacted over 30 years ago (A. Torregrossa memo, Attachment 1 of Planning Board Report). The section prohibited construction of residential building on streets of less than 35 feet and then

in 1984, the section was amended to require the street to be brought up to city standards. As stated in Anne Torregrossa's memo, "The City Manager and staff recognized the requirements in Sec 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process." Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and Planning collaborated on the proposed rewrite of Section 14-403 "...in an attempt to streamline and clarify the requirements of the section...."

The basic elements of the proposal are as follows:

1- Simplifies and clarifies the language in Section 14-403;
2- Reduces the minimum width required for the construction of new dwelling units on permanently paved and accepted streets from 35' to 25' for one and two-unit structures and 28' for other buildings;
3- Establishes a mechanism for a waiver from the developed street standards with the written approval of the Fire Chief and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired;
4- Continues to require unimproved streets subject to new development to build the street to city standards from where existing pavement ends and along the full extent of lot frontage;
5- Provides waivers for unimproved streets to be reviewed under the same criteria used for modifications contained in the subdivision ordinance; and
6- Exceptions have been modified to list only an accessory building or part of a planned residential unit development.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Portland 2030- Comprehensive Plan: The vision statement conveys the message of the City's need to balance many competing needs to assure the advance of the vision as a unified concept. In this instance, that the City's goals for housing production be balanced with needs for connectivity of the street grid, sustainability of infrastructure and the ability to maintain that infrastructure, and security in the sense of public safety.

V. FINANCIAL IMPACT

VI. PLANNING BOARD ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION

The proposed text amendments are intended to simplify and clarify the language of Section 14-403 Street Access. It applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. There are built streets in Portland, particularly on the peninsula, that are narrow and do not meet city standards. There are also undeveloped streets, particularly off the peninsula, where property owners seek to develop. Current standards call for 28 feet of minimum pavement width, but many of the existing built streets were constructed well before such standards were in place. The proposed amendments allow development on undersized built streets that meet minimum standards for public safety access. where appropriate. The amendments also continue to require undeveloped streets be improved to meet current city street standards.

Street extensions under 14-403 are reviewed administratively under the site plan ordinance and must meet the City's engineering specifications for streets, sidewalks, public utility installations, and stormwater management. Over the past five years five (5) street extensions were approved and currently, there are two (2) pending applications. In that same time frame, four (4) single family subdivisions (with Stroudwater Preserve to be built in 3 phases) were approved that created new streets.

The Planning Board found that the comprehensive plan calls for the City to operate facilities and services in an efficient, transparent, and effective manner that is responsive to all residents. The policies and strategies support a fix-it first approach to the extensive infrastructure within Portland. One action states, " Develop long-range asset management plans for public facilities in order to ensure that our limited public funds are maintained and investing in strategically." In addition, the plan for fiscal stability includes the actions:

- Keep tax rate increases manageable and provide predictability and stability in tax rate increases while supporting City services and a stable labor force.
- Make fiscal stability a factor in land use planning by considering both public investments and potential gains in the City's tax base when planning for a sustainable future for the city, while recognizing that not all land use decisions will be driven by the fiscal impacts of the development produced.

Thus, creating new infrastructure within the city is intended to be carefully evaluated, so that investments are strategic, sustainable, and manageable for the long-term responsibility of the City. The proposed amendments to Section 14-403 are proposed to provide clear regulations for street access for private development that can be maintained effectively by the City without overburdening the Departments of Public Works and Fire.

The need for housing and affordable housing is clear in Portland. Again, the City is seeking to encourage housing where there are concentrations of services, transit and community facilities. Generally, the 14-403 road extensions support single family development in lower density neighborhoods. While this addresses the preferences for some Portland residents, the City is emphasizing more strategic investments that support higher levels of housing construction. Thus, the proposed amendments allow for private investments to occur for low density housing development that again can be served efficiently by the City without overburdening the tax base.

VII. PLANNING BOARD RECOMMENDATION

At the public hearing on May 17, 2018, the Planning Board unanimously (6-0, Whited absent) found that the proposed text amendments to Division 24, Use Regulations and Exceptions of the Land Use Code., Section 14-403, Street Access, are consistent with the Comprehensive Plan and recommend adoption of the proposed amendments to the City Council.

VIII. LIST ATTACHMENTS

Attachment A- Planning Board Report

Attachments to Report:

1. Memorandum from Anne Torregrossa, Associate Corporation Counsel, March 5, Attachments to the memo include:
    1. Joe Gray memo, 1984
    2. Gary Wood memo, 2012
2. Proposed Text Amendments to Section 14-403

Public Comment

PC 1 Matt Power, 3-3-18
PC2 Victoria Morales with Attachment, 3-9-18
PC3 Liv Chase 3-11-18
PC4 Brent Adler 3-11-18
PC5 John McGovern 3-19-18
PC6 John McGovern 3-27-18
PC 7 Liv Chase 5-3-18
PC8 Brent Adler 5-3-18
PC9 Matt Power 5-8-18

Prepared by: Barbara Barhydt, Development Review Services Manager
Date: May 21, 2018

Sec. 14-403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) *Permanently paved and accepted streets or island streets.* The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings – 25';

2. For all other buildings – 28'.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) *Streets to be upgraded in connection with development.* The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;

2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and

3. Obtain site plan approval for the work required under this subsection.

(c) *Other exceptions.* The building or structure is one of the following:

1. An accessory building; or

2. Part of a Planned Residential Unit Development.

PLANNING BOARD REPORT

TO CITY COUNCIL
PORTLAND, MAINE

LAND USE CODE TEXT AMENDMENTS – SECTION 14-403. STREET ACCESS

City of Portland, Applicant

Submitted to: Mayor Strimling and City Council From: Chair Dundon and Portland Planning Board Public Hearing – June 18, 2018	Prepared by: Barbara Barhydt, Development Review Services Manager Date: May 21, 2018

I. INTRODUCTION:

Section 14-403 Street Access is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. It applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. The goals of the text amendments are to increase the predictability and clarity of Section 14-403 while managing the competing needs of new housing construction, sustainability of infrastructure and public safety. Maintenance of public roadways and related infrastructure is a significant expense for the City and one where our priority must be on addressing deferred maintenance and existing needs. As required by the Portland's Plan 2030, the city must try to find a balance between the sometimes competing needs of a sustainable, equitable, secure and connected community. The proposed amendments, unanimously recommended by the Planning Board, seek to achieve that balance by allowing development on undersized built streets that meet minimum standards for emergency services and to continue to require undeveloped streets to be improved to meet current city street standards. The substance of proposed amendments remains consistent with current policy, while seeking to simplify and clarify the regulations.

The legislative history and public purposes of the section are outlined in a memorandum prepared by Anne Torregrossa, Associate Corporation Counsel (Attachment 1). As stated in Anne Torregrossa's memo, "The City Manager and staff recognized the requirements in Sec 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process." Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and Planning collaborated on the proposed rewrite of Section 14-403 "...in an attempt to streamline and clarify the requirements of the section...."

The basic elements of the proposal are as follows:

1- Simplifies and clarifies the language in Section 14-403

2- Reduces the minimum width required for the construction of new dwelling units on permanently paved and accepted streets from 35' to 25' for one and two-unit structures and 28' for other buildings
3- Establishes a mechanism for a waiver from the developed street standards with the written approval of the Fire Chief and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.
4- Continues to require unimproved streets subject to new development to build the street to city standards from where existing pavement ends and along the full extent of lot frontage.
5- Waivers for unimproved streets are proposed to be reviewed under the same criteria used for modifications contained in the subdivision ordinance.
6- Exceptions have been modified to list only an accessory building or part of a planned residential unit development.

A workshop on the proposed text amendments was held with the Planning Board on March 22, 2018 and the material was presented at the Council's Housing Committee on March 28, 2018. The Planning Board held a public hearing on May 17, 2018 and found the proposed amendments consistent with the Comprehensive Plan and unanimously recommends (6-0, Whited absent) to City Council the adoption of the proposed amendments.

II. NOTICE AND PUBLIC COMMENT

This item will be noticed for the Council public hearing. It was noticed in the Legal Ad that appeared in the Portland Press Herald on April 30 and May 1, 2018, posted on the City's web page on April 26th and sent to interested citizens through Notify Me on that same date. The public comments received to date are included in the packet under public comment, PC1 – PC9.

III. PROPOSED TEXT AMENDMENTS

The proposal is to replace the existing Section 14-403, Street Access, with a rewritten section. Please refer to Attachment 1 (Torregrossa memo) for a summary of the amendments and Attachment 2 for the proposed ordinance text. A comparison of the existing and proposed language is below.

Current Section 14-403 Language	Proposed Section 14-403 Language
a) *In general.* No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than thirty-five (35) feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section. For purposes of this section, street shall be as defined in section 14-47[1], except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any lot abutting such street shall, without compensation or claim for damages, and at his own cost and expense, first submit to the building authority (a) a deed from the owner of such lot conveying to the city all his right, title and interest in and to	A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met. (a) *Permanently paved and accepted streets or island streets.* The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows: 1. For one- or two-family dwellings – 25';

[1] Street: A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

such street or any portion thereof; and (b) an agreement by such owner forever releasing the city from any and all claims for damages for the laying out and taking of such street and indemnifying the city against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the corporation counsel and to encumber and run with the land.	2. For all other buildings – 28'. These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.
(b) *Minimum requirements for street improvements on unimproved and improved but unpaved streets.* For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this chapter. Where the nearest permanently paved street does not have granite curbing, the public works authority may waive the requirement of curbing under this section, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur: (1) A plan of the street improvements required by this section shall be submitted to the public works authority; and (2) upon determination by the public works authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the city as set forth in section 14-501. Also as set forth in section 14-501, a one-year defect bond shall be tendered to the city prior to release of the performance guarantee required hereby. The provisions of this subsection (b) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her intention under oath to make the structure his or her personal residence.	(b) *Streets to be upgraded in connection with development.* The owner or developer of the lot will do all of the following in connection with the development of that lot: 1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code; 2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and 3. Obtain site plan approval for the work required under this subsection.
I *Exceptions.* The requirements of this section shall not apply to the following city streets upon their construction by the public works authority to such standards as are determined by the authority to be the most feasible: Dingley Court; Morgan Court.	(c) *Other exceptions.* The building or structure is one of the following: 1. An accessory building; or 2. Part of a Planned Residential Unit Development.

IV. HOUSING COMMITTEE COMMENTS

The Housing Committee met on March 28th to discuss the proposed amendments. The Committee is composed of Councilors Duson, Ali and Cook. Councilor Ray also attended the meeting. The Committee is seeking the Board's recommendation to be submitted to the City Council and the Committee is not forwarding a separate recommendation. The Housing Committee did request additional information from the staff, which includes:

a) Map of unaccepted streets and adjoining developable land
b) Cost estimates if the City were to accept and improve those streets;
c) Any projects in recent history that have not moved forward because of the requirements in 14-403; and
d) Clarification of the projects in the chart of street extensions that are improved streets under 14-403 and those that are new subdivision streets.

Items a and b are considered to be part of a larger policy discussion about housing and infrastructure needs that will be studied as part of the Recode efforts in the future. A full evaluation of vacant land, infrastructure needs, and costs of development will be needed to update the city's land use code and will be undertaken as part of the ReCode project. The requests of c and d are addressed below under the staff analysis.

The Housing Committee also made specific requests for the Planning Board's consideration:

a) With respect to unaccepted streets, specifically consider the fairness of requiring one lot owner to pave the entire street, benefiting the remaining lot owners; and
b) With respect to accepted streets, consider the impact of the minimum width requirements.

As stated above, these important questions will be analyzed and addressed as part of the larger effort to revise the City's Land Use Code to address the City's goals in the Comprehensive Plan and to incorporate current best practices for development standards.

V. PLANNING BOARD ANALYSIS

A. Purpose of Section 14-403

The proposed text amendments are intended to simplify and clarify the language of Section 14-403 Street Access, which is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. The section applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. There are built streets in Portland, particularly on the peninsula, that are narrow and do not meet city standards. There are also undeveloped streets, particularly off the peninsula, where property owners seek to develop. Ideally, all city streets would be built to the current standards of 28 feet of minimum pavement width, but many of the existing built streets were constructed well before such standards were in place. The proposed amendments address both developed and undeveloped streets by allowing development on undersized built streets that meet minimum standards for public safety access where appropriate. The amendments also continue to require undeveloped streets be improved to meet current city street standards. Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and Planning collaborated on updating Section 14-

403 to improve the clarity of the ordinance and retain the underlying public purposes of encouraging development were adequate public safety access is available without imposing significant new City expenses for street construction and maintenance. Again, the proposed text amendments seek to simplify and clarify Section 14-403, while retaining the substance of the current public policy.

B. Built Streets That Do Not Meet Standards

In terms of the specific amendments, subsection (a) address development on existing streets that are built, but do not meet today's standards. The current standards for a local street require a right-of-way width of 50 feet with a pavement width of 28 feet. There are streets, particularly on the peninsula and islands, that do not meet current dimensional standards and in some cases are inaccessible for emergency and public works vehicles. Recent development has occurred on some of these undersized streets, such as Tate and Oak Streets. During those reviews, staff members sought to ensure public safety with careful consideration of public safety access, parking regulations, and street improvements on a case by case basis.

The proposed text amendments are proposed to provide clearer and more transparent regulations for the built streets. The proposed revisions establish a minimum clear street width between curbs as follows:

> (d) The minimum clear width shall be as follows:
>
> 1. For one- or two-family dwellings – 25';
> 2. For all other buildings – 28'.
>
> These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

The Planning Board concurred with the intent of the amendments to be transparent about the minimum clear widths required for development to occur on such streets. Acting Fire Chief Keith Gautreau noted that safe and adequate public safety access is vital to serve each new unit on a substandard street. The proposed waiver is intended to allow for flexibility or fairness within the city's built infrastructure, where both the Fire Chief and Public Works Director find that public services and public safety access are not unreasonably impaired. The Board supported the transparency of setting minimum standards for developed streets, so that there is clarity on the expectations for all future development. The Board also recognized the need for flexibility in the ordinance due to the broad range of circumstances within the built environment. Thus, they supported the provision requiring both the Fire Chief and DPW Director's concurrence on waiver requests. As proposed, new development may occur on existing undersized developed streets that meet minimum requirements or where services and access can be achieved without being unreasonably impaired. However, the burden of meeting these criteria will be on the developer. This approach should help to clarify the standards and avoid issues that had previously not always become apparent until site plan review began on a project and substantial funds were expended by the applicant; while at the same time, allowing for certain flexibility from the city.

C. Unimproved Streets for New Development

Subsection (b) addresses streets that are unimproved for new development. It requires the street to be improved to current street standards by the applicant, which is consistent with the City's current policy. The intent is to provide adequate access for city services, while not burdening the tax base with street construction costs. This includes building streets within right-of-ways where no improvements have been made or only dirt and gravel surfaces exist. Since the adoption of Sec 14-403 over 30 years ago, new

development along undeveloped streets requires an applicant to bring the road up to standards from where the existing street pavement ends and along the full extent of lot frontage.

Many, but not all, paper streets are located off-peninsula with numerous abutting lots (both vacant and developed lots). As noted earlier, an evaluation of the amount of vacant land and the total costs for building out these streets will need to be part of the more expansive analysis to as part of the ReCode project. Section 14-403 addresses unimproved streets or dedicated and undeveloped right-of-ways by requiring streets to be upgraded to city standards in order to construct a new home or add a dwelling unit.

In response to the Housing Committee's question as to the equity of the 14-403 as applied to unaccepted and improved streets, the staff would like to clarify that the only time an owner is required to build out the roadway is when they propose constructing a new dwelling or structure. There is also no prohibition on their collaborating with abutting owners who will benefit from the road. The requirement is only that the road be brought up to the legal standards before any additional housing units are brought online. The PB considered the impact of this on housing and did agree that this needed to be part of future conversations moving forward, but that the amendment, as proposed, is an appropriate step in the right direction - recognizing the ability to open up additional lots for development while still being conservative with City resources and safety needs. While the costs for a property owner are significant, without these standards the City could face potentially unsafe conditions and expensive infrastructure work that is not meeting targeted goals. There is no question there is substantial inconsistency with how service provision and residential constructions on unaccepted streets has been managed in Portland over the last century; however, the goals here is minimize the perpetuation of these practices not incentivize them.

D. Review Process

Street extensions under 14-403 are reviewed administratively under the site plan ordinance as either a Level I or Level II application. The level of review is based upon the amount of impervious surface area that is being added. The standards of review are the same for both applications. Briefly, the review process requires a survey stamped by a licensed surveyor and engineered plans for the street meeting the City's technical standards. Portland's Technical Manual contains the engineering specifications for streets, sidewalks, public utility installations, and stormwater management (http://www.portlandmaine.gov/756/City-Codes-Ordinances-Regulations-Maps). Over the past five years there have been five approved street extensions that are summarized in Table 1 below. Two applications are currently undergoing review and are also listed on the table 1. To address the Housing Committee's question of how many streets were vacant versus some level of improvement, this chart has been updated with this information.

Table 2 on the following page lists single family subdivisions approved over the past 5 years. Skylark is a subdivision that had paper streets, but the lots and streets were reconfigured to meet current standards. The other subdivisions created new street right-of-ways and lots. Under Portland's Subdivision Ordinance, recording plats cannot be recorded without posting a performance guarantee for the street infrastructure work to be completed.

Table 1: Approved & Pending Street Extensions within Dedicated Right of Ways under 14-403

All approved applications had a 50 foot wide ROW and a 28 foot wide pavement width

Street Name	Street Length	Turn Around	Granite Curbs	Side-walks	Development	Initial Condition	Status
Hingham	357	yes	seeking waiver	seeking waiver	5 lots with frontage and 2 side yards	gravel and vacant	Pending Review
Florida Ave	165	no-gravel road beyond	seeking waiver	seeking waiver	2 property ownes for 2 sf lots	gravel	Pending Review
Pomeroy	200	yes	yes		Single Family	vacant	Built
Gertrude	93	no-gravel road beyond	yes	waived	Single Family	gravel	Built
Hillcrest	200	no-gravel road beyond	no- open drainage	waived	Single Family	gravel	Built
Pamela	585	no- linked existing Pamela & Alice St	yes	yes	10 Single Family House Lots	vacant	Built
Motley	94	no- gravel road beyond	no-open drainage	waived	2 Single Family House Lots	gravel	Built
Van Vechten	584	no - gravel road beyond	no-open drainage	waived	4 House Lots	gravel	Approved

Table 2	Approved Subdivisions with New Streets or Street Extensions						
	All approved applications had a 50 foot wide ROW and a 28 foot wide pavement width						
Sudivision Name	Street Name	Street Length	Turn Around	Granite Curbs	Side-walks	Development	Status
Skylark Subdivision-Phase I	Skylark Drive	530	yes	yes	one	Phase I: 7 sf lots & 1 existing vacant lot, plus existing home	Phase I complete
Knight Farm	Abner Lane	445	yes	yes	one side	8 sf lots & 1 existing house lot w/ house	Under Construction
Brandy Lane Subdivision	Brandy Lane	970	yes	yes	one side	16 sf lots	Approved
Stroudwater Preserve-Phase 1	(not named yet)	2,074	yes	yes	one-side	47 lots	Under Construction
Stroudwater Preserve-Phase 2	(not named yet)	2,325	No/connects to streets	yes	one side	48 lots	Approved
Stroudwater Preserve-Phase 3	private road- PRUD	800	cul-de-sac	no	one	25 townhouses	Approved

E. Waivers

Under the present version of Section 14-403, an applicant may seek to have the sidewalk waived, if the street is not a school walking route and the curbing may be waived by the Public Works Director. The proposed draft eliminates the waiver language within Section 14-403, and instead allows waivers to be considered using provisions already established under the City Code. In regard to sidewalks and curbs, Section 14-506 Modifications in the Subdivision Ordinance establishes waiver criteria applied during subdivision and site plan reviews. The waiver criteria for curbs and sidewalks are excerpted below.

Sidewalks-

1. There is no reasonable expectation for pedestrian usage coming from, going to and traversing the site.
2. There is no sidewalk in existence or expected within 1000 feet and the construction of sidewalks does not contribute to the development of a pedestrian oriented infrastructure.
3. A safe alternative-walking route is reasonably and safely available, for example, by way of a sidewalk on the other side of the street that is lightly traveled.
4. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.
5. The street has been constructed or reconstructed without sidewalks within the last 24 months.
6. Strict adherence to the sidewalk requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.

Curbing-

1. The cost to construct the curbing, including any applicable street opening fees, is in excess of 5% of the overall project cost.
2. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.
3. The street has been rehabilitated without curbing in the last 60 months.
4. Strict adherence to the curb requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.
5. Runoff from the development site or within the street does not require curbing for stormwater management.

In no event shall the waiver have the effect of creating potentially hazardous vehicle and pedestrian conflict or nullifying the intent and purpose and policies of the land development plan relating to transportation and pedestrian infrastructure and the regulations of this article.

Lastly, the exceptions listed in subsection (c) of Section 14-403 for Morgan and Dingley Court. Both of these streets are improved and narrower than today's standards with development on the adjoining lots. The proposal is to remove these streets from the exception list and instead apply the new provisions for any further development on these streets. The proposed draft does exempt accessory buildings, such as garages and sheds, and Planned Residential Unit Developments (PRUD) from 14-403. PRUDs have separate requirements for the construction and maintenance of the private street network serving the development.

VI. COMPREHENSIVE PLAN

The central vision of Portland's Plan 2030 is represented by the venn diagram demonstrating the integral interrelation of the community's core belief that Portland is equitable, sustainable, connected, dynamic,

authentic and secure. The vision conveys the message of the City's need to balance many competing needs to assure the advance of the vision as a unified concept. In this instance, that the City's goals for housing production be balanced with needs for connectivity of the street grid, sustainability of infrastructure and the ability to maintain that infrastructure, and security in the sense of public safety.

Portland's Plan 2030 has three goals under the Facilities and Services section that are relevant to this policy initiative. The goals are:

- Use planning and fiscal management to sustainably maintain a high level of service for existing infrastructure and programs.
- Coordinate infrastructure planning and investments with areas of greatest anticipated growth.
- Provide public safety, emergency response, and emergency management facilities and services that can effectively meet the needs of all residents.

As support for these goals there are three strategies and accompany actions that address the proposed amendments:

- Provide services to all residents
  - Ensure transparency and access to City services and facilities for all residents.
  - Operate City facilities and services in an efficient and effective manner that is responsive to all segments of the community.
- Develop asset management plans
  - Develop long-range asset management plans for public facilities in order to ensure that our limited public funds are maintained and investing in strategically.
- Plan for Fiscal Stability
  - Keep tax rate increases manageable and provide predictability and stability in tax rate increases while supporting City services and a stable labor force.
  - Make fiscal stability a factor in land use planning by considering both public investments and potential gains in the City's tax base when planning for a sustainable future for the city, while recognizing that not all land use decisions will be driven by the fiscal impacts of the development produced.

The policies and strategies of the Comprehensive Plan support a fix-it first approach to the extensive infrastructure within Portland. Portland seeks to provide quality public services and public safety for all residents. Thus, creating new infrastructure within the city is intended to be carefully evaluated, so that investments are strategic, sustainable, and manageable for the long-term responsibility of the City. The proposed amendments to Section 14-403 are proposed to provide clear regulations for street access for

private development that can be maintained effectively by the City without overburdening the Departments of Public Works and Fire.

The comprehensive plan also contains goals to increase housing. Two of the goals state the following:

- Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.
- Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit notes and corridors as a means of supporting complete neighborhoods.

The need for housing and affordable housing is clear in Portland. Again, the City is seeking to encourage housing where there are concentrations of services, transit and community facilities. Generally, the 14-403 road extensions support single family development in lower density neighborhoods. While this addresses the preferences for some Portland residents, the City is emphasizing more strategic investments that support higher levels of housing construction. Thus, the proposed amendments allow for private investments to occur for low density housing development that again can be served efficiently by the City without overburdening the tax base.

VII. PLANNING BOARD RECOMMENDATION

At the public hearing on May 17, 2018, the Planning Board unanimously (6-0, Whited absent) found that the proposed text amendments to Division 24, Use Regulations and Exceptions of the Land Use Code., Section 14-403, Street Access, are consistent with the Comprehensive Plan and recommend adoption of the proposed amendments to the City Council.

ATTACHMENTS:

1. Memorandum from Anne Torregrossa, Associate Corporation Counsel, March 5, Attachments to the memo include:
    1. Joe Gray memo, 1984
    2. Gary Wood memo, 2012
2. Proposed Text Amendments to Section 14-403

Public Comment

PC 1 Matt Power, 3-3-18
PC2 Victoria Morales with Attachment, 3-9-18
PC3 Liv Chase 3-11-18
PC4 Brent Adler 3-11-18
PC5 John McGovern 3-19-18
PC6 John McGovern 3-27-18
PC 7 Liv Chase 5-3-18
PC8 Brent Adler 5-3-18
PC9 Matt Power 5-8-18

MEMORANDUM

TO: City of Portland Planning Board
FROM: Anne M. Torregrossa, Associate Corporation Counsel
DATE: March 5, 2018
RE: Proposed changes to § 14-403

Section 14-403 has been in place for more than thirty years. Initially, it prohibited the construction of residential buildings on streets less than 35' in width. In 1984, however, the City Council added to § 14-403 to require that streets be brought up to standard before any building could be constructed. This included paving, curbing, sidewalks, and sewers. The 1984 changes were spurred by concerns about the significant costs to the City to upgrade these streets at taxpayer expense, and the danger that undersized or substandard streets posed to the provision of City services and the response of emergency vehicles. As described by the City's then-Director of Planning & Urban Development, development on unimproved streets "tends to create incessant demand for costly City-funded street improvements and also makes servicing of these areas by emergency and public safety vehicles extremely hazardous and uncertain." A copy of that memorandum is attached.

Even as recently as 2012, the City Council reaffirmed its commitment to ensuring that streets are safe before they can be built upon, and that developers bear the cost of their development. In 2012, the Zoning Board of Appeals ("ZBA") granted a hardship variance to a developer, exempting his project from the requirements of § 14-403. In response, the City Council amended § 14-473, which governs the ZBA's authority over variances, to eliminate that possibility. In a memo to the Planning Board addressing the reasons for eliminating this loophole, then-Corporation Counsel wrote that, "the decision sets the stage for variances that could defeat the purpose of Section 14-403 by leading to long paper streets with a number of homes or buildings being served by substandard streets and put the City in a difficult situation." That memo is also attached.

The City Manager and staff recognized that the requirements in § 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process. In an attempt to streamline and clarify the requirements of that section, staff from the Planning Department, Fire Department, Department of Public Works, Permitting and Inspections Department, and Corporation Counsel collaborated on the attached proposed revision. The revision accomplishes the following:

1. Reduces the minimum width for permanently paved and accepted City streets from 35' to 25' for one- and two-family dwellings, and to 28' for other buildings. These widths may be further reduced with the determination of DPW and the Fire Department that ability of the City to provide services will not be impaired. This change makes the minimum required widths consistent with those provided for elsewhere in the Code and also provides flexibility where

2. Requires that all streets that are not accepted and paved, be upgraded and dedicated to the City. This is consistent with the previous version of § 14-403 but does remove many of the details from the ordinance, as they are all captured elsewhere, including the site plan review requirements and the technical standards. DPW has the ability under the technical standards to waive certain requirements, as appropriate.

3. Removes certain exceptions, including for Dingley Court, Morgan Court, and single-family dwellings that have been owned since November 19, 1984. These exceptions have been removed because they defeat the intent of the section to protect individuals who might want to build under those circumstances. Additionally, Dingley Court and Morgan Court appear to have been fully built, and there are few undeveloped lots remaining that have been in one ownership since 1984. Additionally, that provision had been abused by certain developers who simply "flipped" the house, rather than living there, as contemplated by the ordinance.

4. Retains the exceptions for island streets.

CITY OF PORTLAND, MAINE
MEMORANDUM

DATE: 9/17/84

TO: Stephen T. Honey, City Manager

FROM: Joseph E. Gray, Jr., Director of Planning & Urban Development

SUBJECT: Development on Unaccepted/Unimproved Streets

Please place the following item on the September 24th City Council Agenda:

Amendment to Portland City Code Chapter 14 (Land ~~Use~~ USE), Article III (Zoning) Section 14-403 (Street Access) Re: Required Street Improvements.

Statement of Fact

Planning and Public Works officials have been concerned for some time about the accelerating pace of development on unimproved streets and in legally grandfathered subdivisions. Such developments tends to create incessent demand for costly City-funded street improvements and also makes servicing of these areas by emergency and public safety vehicles extremely hazardous and uncertain.

In a related development, the Corporation Counsel recently determined that accepted streets which were abandoned between 1946 and 1976, and unaccepted streets which were dedicated before 1946, do not meet the Zoning Ordinance's requirements that buildable lots have frontage on an accepted or dedicated street. A copy of Mr. Lourie's opinion is attached for your reference.

Against this backdrop, a task force consisting of Planning, Public Works and Corporation Counsel staff has recommended enactment of the attached amendment dealing with development on unimproved streets. A summary of the amendment follows:

Legal Status of Streets

The first part of the amendment deals with the issue of "lapsed" and "abandoned" streets. The amendments would expressly reincorporate "lapsed" and "abandoned" streets into the category of buildable streets, provided that the property owner first gives to the City (1) a release and indemnification from and against all claims for damages in the event the City should decide to take the street by eminent domain, and (2) a release deed to any property rights he may have in the street.

Required Street Improvements

The remainder of the amendment deals with the issue of unimproved streets. The amendment would require that certain improvements be made in the following two instances as a condition precedent to development:

Improved but unpaved streets: For lots abutting an improved (i.e., in common and ordinary use) but unpaved portion of street, that portion which abuts the lot must be improved to public work's minimum roadway specifications (sidewalks and curbs not included).

Unimproved streets: For lots abutting an unimproved (i.e., not in common and ordinary use) portion of street, that portion which abuts the lot, and any portion between that portion and the nearest improved portion which is the principal access to the lot, must be improved to public work's minimum roadway specifications (sidewalks and curbs not included).

These Amendments were approved by the City Council Housing Committee at their meeting on September 12, 1984 by a vote of 3-0. The items are being sponsored by Councilor Abromson, Chairman of the Housing Committee.

Attachment 2

CITY OF PORTLAND

MEMORANDUM

TO: Mayor and Council

FROM: Gary Wood

DATE: August 21, 2012

RE: **Amendment to Portland City Code Chapter 14, Section 14-473 (Variances)**

This amendment contains two components. The first component amends Section 14-473 so that the limitation on the Board of Appeals authority to grant variances references the specific limitations already articulated in subparagraph (c)(4), as well as referencing subparagraph (c)(3). The omission of a reference to (c)(4) may have been an oversight. The reference to Paragraph (c)(3) in the current ordinance should be retained because there are some subsections contained within (c)(3) that make it clear that practical difficulty variances cannot be used in certain circumstances in the City's Shoreland Zone.

The second component of the amendment prohibits the Board of Appeals from granting variances from the standards set forth Section 14-403 by adding that section to subparagraph (c)(4).

"Paper" streets are rights of way designated on approved subdivision plans but never built to city standards or accepted by the City as city streets. The City has over 407 paper streets at this time that are shown on subdivisions recorded prior to September 29, 1987. Under state law the City has until September 29, 2017 to decide whether to continue the City's right to accept one or more of these streets or vacate the potential public rights in them. Current law also allows the Council to extend the deadline another 20 years.

Section 14-403 was created many years ago (see attached memo) to prevent individuals who own lots on paper streets from developing substandard access ways or driveway along the right-of-way beneath the paper street such that the City would end up with a number of residential units accessible only by driveways or private roads down which public safety vehicles might not safely pass and that the City might ultimately be asked to eventually take over and improve to City standards.

The section avoids that result by imposing a requirement on property owners who wish to build residential units along a paper street to build the road to city standards for the entire length of the individual's property abutting the paper street.

The requirement that the road be built along the entire length of the abutting property prevents a property owner from stopping the construction of a road built to city standards at that

point along his property where he has established enough road frontage to meet city road frontage requirements thus leaving a potential gap for the next abutting property owner should that person subsequently wish to also build a residential unit on their lot.

Although the City's Board of Appeals has for the most part refused to grant variances from Section 14-403 nothing in the current ordinance prevents them from doing that and on June 21, 2012 the Board did grant a variance from Section 14-403 requirements.

In granting that variance, the Board acted within its current authority in the ordinance and also in a situation in which a large number of residential units could not be built along the roadway because of its short length. However, this decision sets the stage for variances that could defeat the purpose of Section 14-403 by leading to long paper streets with a number of homes or buildings being served by substandard streets and put the City in a difficult situation.

In order to prevent developers or other property owners from taking advantage of the current authority in the ordinance to grant variances from Section 14-403 the proposed amendment has a retroactive date to the date upon which the Board of Appeals issued its decision. No additional applications have been filed since that decision seeking a variance from the Section 14-403 requirements although, there is one pending application that may be amended to do so.

Because the proposed amendment is to Chapter 14, it should be referred to the Planning Board for a recommendation back to the Council before the Council can act on it.

Sec. 14-403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) *Permanently paved and accepted streets or island streets.* The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings – 25';

2. For all other buildings – 28'.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) *Streets to be upgraded in connection with development.* The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;

2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and

3. Obtain site plan approval for the work required under this subsection.

(c) *Other exceptions.* The building or structure is one of the following:

1. An accessory building; or

2. Part of a Planned Residential Unit Development.

Planning Board Meeting Public Comment May 8th 2018

Text Amendment 14-403

Comments regarding **Section A** of this text amendment

Hello my name is Brent Adler, 47/49 Chapel Street. I attended the workshop meeting on March 22nd 2018.

I would like to thank staff for taking the time to improve this section of the land use code. I hope my comments and questions will help in determining that there is no need for Section A of this text amendment.

For your information Boston MA has a population of 687,584 people. Portland has a population of 67,067. I spoke with Michael Rooney of the Boston City Planning department and according to him there is no Code in the City of Boston that restricts the addition or development of any unit on a street that is narrow. Instead, the issue of safety is addressed by zoning ordinances that would allow for a deeper set back of a new building for better access of emergency vehicles. Boston has narrow streets like Portland and is a City in the United States.

Boston Fire department has the same fire truck as engine 31 of the Munjoy Hill Station, a Pierce Enforcer 1250/750. Training for the fire department to work on small accepted paved streets should be the solution to service urban infill and development on small accepted City streets, this would be a worthwhile investment for the future.

According to the discussion at the workshop on March 22 the amendment language clarifies our 35' ROW and adds individualized review on a case by case basis by experts in DPW and Fire for any submission of a unit or development on a street less than 25'. Adding units, whether its one 400 square foot or a 30 unit apartment building adds risk and stress onto emergency vehicles and Staff. It was also determined that City accepted streets are the responsibility of the City to maintain.

Up until now we favored the interpretation of 14-403 that the 35' rule did not apply to accepted City streets. I have given many examples, here are a couple more.

9 Romasco Lane- Planning board approved 4 unit in 2015 with a recent permit extension
Joy Place on the west end- condominium project approved in April 2018

It would be important to know how many permits have been denied based on 14-403 for City accepted Streets, this information would help to determine the current interpretation. Moving forward under the amendment we have clearly defined the paved width creating a moratorium

on streets less than 25' and slowing urban infill and housing stock in the City. Blacklisting these streets as we develop the 2030 plan.

During the workshop, Chris Branch stated that accepted City streets are the responsibility of the City unlike unimproved non accepted City Street. How will DPW review an exception for a permit on a street less than 25'? Will he be basing his decision on the condition of the street, and if so wouldn't this be the responsibility of the CIty and not a condition of issuing an exception?

During the workshop Chief Gautreau stated that a fire trucks width is roughly 10' wide but would need 16' for the outriggers on a ladder truck. Does the fire department use a ladder truck on every call, and if not, what is the working room around a smaller pump truck used for single level access?

If we are going to leave these decision to the experts as Ms Torregrossa stated, why are we not giving them tools to make the decisions with. We have tools for staff during site plan and zoning review. Can we not make this more transparent and in the amendment start to clearly define what an exception would be? Let me give you an example of how my denial letter will read based on the current language of the amendment. My permit for Chapel street is ready for the expert review of the fire department and DPW. It has passed site plan review, design review, code review and zoning. This is what im expecting back from the DPW and the Fire chief when the amendment before you passes

Dear Mr Adler,

Thank you for your request for an exception of 14-403 section A. Unfortunately at this time we do not have the equipment, training, or resources to tend to emergencies at your proposed single family dwelling. This lot is serving the City just fine as a vacant non buildable lot.

Sincerely
DPW and Fire Chief

Ms Torregrossa stated that for each 2 bedroom unit there is up to 4 occupants that are added. And each one of these occupants add risk to the equation for emergency vehicles. Under this logic, in the India Street neighborhood where in a 2 block radius over the past 5 years over 200 2-3 bedroom units have been added, increasing the City occupants load at least 1000 people we should carefully consider if our current emergency response is satisfactory for all these new individuals. At what point will a new fire station be needed under the current logic of risk assessment? I do not see the risk on small City approved streets if the occupancy is managed, we know the stock and paved width of all our adopted streets here on the peninsula, this can be gathered through GIS. Why not take the smallest street, drive a fire truck down it and run a drill? I do not see the need to individualize review on small scale development. Can we not work

from the problem and see if it's possible to service the small streets first rather than declaring 25' as the minimum. I am more optimistic about the abilities of our public services than declaring that it's impossible to drive down and put out a fire on a narrow street. There are rural roads in northern Maine that pose more of a problem than an urban City that is littered with Sprinkler Systems, building codes, Fire Hydrants and many fire stations. Can we not get some facts about our current equipment, how long are hoses, how many firefighters does it take to respond and extinguish a 400 square foot residential house that is sprinkled?

Finally, if it is the opinion of staff that its too risky to add occupants and services to city approved streets than there should be no reason why we cant add an exception for structures that do not require these level of services. I'm thinking structures such as garages, storage areas, green houses and beehives. Neither of which would need DPW. Thank you for your time.

Brent Adler

Portland Maine Yes: Google's good here.

Jennifer Munson <jmy@portlandmaine.gov>

Fwd: Public Comments for March 13th Planning Meeting

Barbara Barhydt <bab@portlandmaine.gov> Sun, Mar 4, 2018 at 8:11 AM
To: "Munson, Jennifer" <jmy@portlandmaine.gov>

Public comment for 14-403.

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

---------- Forwarded message ----------
From: **Matt Power** <power.matt@yahoo.com>
Date: Sat, Mar 3, 2018 at 9:40 AM
Subject: Public Comments for March 13th Planning Meeting
To: "bab@portlandmaine.gov" <bab@portlandmaine.gov>, Kim Cook <kcook@portlandmaine.gov>

3-2-2018

Hello Barbara,

I've been corresponding with Kim Cook over the last week about the Portland ordinance that the planning board is taking up for comment on March 13th, section 14-403. I'm submitting my comments in writing below, because I am away on business on the 13th, and can't be there in person. Kim has been very kind to assist me and follow up on this matter.

Here are my public comments.

An Argument for Preventing "Ghost Lots" with 14-403

My partner and I own a parcell on Tarball Ave in the Riverton neighborhood, one of many so called paper streets in Portland. It's .6 acre lot on an unpaved road. Tarbell Ave has several homes on it, including one that is past us, on the end of the street, and another, at 119 Tarbell, that was built after the restrictive language in 14-403 was adopted in 1987 ***(see attached document)***. Many outbuildings have also been added after the ordinance. The street is plowed by the city, trash and recycling are picked up, street lights are serviced, electric, sewer and water are already at the street. To my understanding, on a paper street, none of these are supposed to be provided by the city (per the notes sent to the 119 Tarbell property). This rule is apparently not followed, and I'm glad—as are the many residents of Tarbell Ave.

We would like to be able to build a small home and garden-related outbuildings on our property, but we have been blocked by 14-403, because as it's written, we would have to widen, pave and add curbs to the entire dirt street, a huge expense we could not afford. This restrictive ordinance as its written makes no sense for streets like ours. A new home on the street would add little or no infrastructure burden, and bring in new taxes.

Under 14-403, public works can waive the curb requirement, but not the other street upgrades. This means the only recourse for property owners on paper roads wanting to build a home or even an outbuilding is to appeal the interpretation of the ordinance, with slim chance of success.

As you know, last year, Maine ordered municipalities to declare paper streets as city streets or revert them to abutting owners, but left a loophole that Portland took, buying them 20 more years of procrastination on paper streets. I understand why the city did it...paving all those streets would cost a fortune. But at the same time, the combination of this choice, and strict interpretation of 14-403, have effectively "locked out" properties like ours, which are ideally situated for small scale new construction.

As written, 14-403 is outdated. I assume the initial intent was to push the cost of street upgrades onto large scale developers, but unfortunately it has caught small landowners in its net, at a time when Portland needs new ways of adding housing. The ordinance needs to be relaxed to allow for common sense development. A street that is already serviced and occupied should not have "ghost lots" created by a heavy-handed ordinance.

Possible Solutions

1. **Make street exceptions easier.** There is currently one mechanism for building on a paper street. The street can be *declared an exception*. A few streets are on this short list, but my understanding is that adding a street requires a full council vote. Why not add some codified, basic criteria that supports an exception? If the street is occupied and serviced by the city already, for example, the exception process should be easier. Perhaps a simple appeal can redefine the street as a "De Facto City Street.: In other words, it's a city street in all but name, not subject to the same high level of upgrades, but much more flexible for landowners looking to build homes or outbuildings.

> I *Exceptions.* The requirements of this section shall not apply to the following city streets upon their construction by the public works authority to such standards as are determined by the authority to be the most feasible:
>
> 1. Dingley Court;
>
> 2. Morgan Court.
>
> (Code 1968, § 602.18.B; Ord. No. 193-84, § 1, 11-19-84; Ord. No. 178-87, 11-2-87; Ord. No. 372-89, 3-20-89; Ord. No. 273-90, 3-19-90)

2. **Allow for individual parcel appeals.** Add language that allows for smaller residential projects to appeal the restrictive road requirements for paper streets. An appeal would not challenge the interpretation of this ordinance. It would challenge the application of the ordinance to specific lots on a street, based on the level of additional infrastructure costs.

3. **Give public works more waivership options.** At present, they can only waive the curb requirement. Give them the ability to waive road widening, storm drains, sidewalks, paving and other requirements if they don't see them as essential to current maintenance of a paper street. –excerpt from 14-403 below:

> (b) *Minimum requirements for street improvements on unimproved and improved but unpaved streets.* For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this chapter. Where the nearest permanently paved street does not have granite curbing, the public works authority may waive the

4. **Add off-grid and tiny house options.** Landowners who are willing to build a home that is low impact, supplies its own water, electricity and so on should be held to a less stringent infrastructure standard. Tiny homes are included in the Maine state building code now. They are also talked about on the now outdated City faq page about tiny homes:

"The city is actively looking at the issue of tiny houses and what role they might play in helping address our housing needs. The biggest challenge appears to be the state building code, which the city is required to utilize."

That challenge is **no longer an issue**. It's a good time to add some language opening the door to eco-friendly housing options that would allow Portland to live up to its goals of being a "green" place to live

Please consider these suggestions as you modify 14-403. Building in the city limits is the most sustainable kind of new development. Without changes to 14-403, the options for adding new housing stock over the next 20 years will be extremely limited, and the residents will be poorly served.

Thank you,

Matt Power

Portland

207-619-2713

Records for 119 Tarbell Ave-websized.pdf
4838K

Portland Maine Yes. Google's good here.

Barbara Barhydt <bab@portlandmaine.gov>

March 13th PB workshop RE: proposed changes to 14-403

1 message

Victoria Morales <victoria@moraleslaw.me> Fri, Mar 9, 2018 at 2:29 PM
To: Barbara Barhydt <bab@portlandmaine.gov>, "sgo@portlandmaine.gov" <sgo@portlandmaine.gov>

Dear Planning Board Members and Planning Staff,

Please accept this email and attachment with additional suggestions to the proposed amendments to section 14-403 of the land use code.

I represent MTR, LLC, a small residential construction company interested in building homes that are between 1,400 and 1,600 square feet and are affordable for working middle class families. To further that goal, my client is looking at lots in Portland near schools and green space, and with frontage on streets acceptable to the City. Many undeveloped lots in the City are on gravel roads that have been dedicated for public travel many years ago through the recording of a subdivision plan (paper streets). The barrier to creating housing on many of these lots is the cost of building the road, including the subsurface infrastructure, drainage, and lighting that is currently required. Larger scale developers can often absorb these costs and role them into the return on the higher end product. That is not the same for smaller developers.

My goal in submitting these suggestions is to request that the Planning Board take a good look at the street and infrastructure standards in Chapter 25 and the Technical Manual, which present significant barriers to building residential housing in the City, particularly for building one single family home on a gravel road that already has other residential homes on it. Admittedly, the amendments I offer do not go far enough to unlock the potential for creating more housing on the many undeveloped lots in the City. However, my hope is that the Planning Board, staff, and DPW can gather and examine the data regarding the existing list of unaccepted roads, unpaved roads, and available lots to remove the barriers that exist today to meeting the goals of the Comprehensive Plan to create more much needed housing in the City.

Very truly yours,

Victoria

Victoria Morales, Esq.
Morales Law
Land Use and Government Relations Counsel
188 State Street, Suite 3, Portland Maine 04101
207.216.0643
https://www.linkedin.com/in/victoria-morales-a69b7550

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prohibited. If you have received this correspondence in error, please immediately notify me by replying to this message and permanently delete the original, all copies, and all printouts of this message. Thank you.

Edits to proposed changes 14-403 v.11(1).docx
20K

Further suggested changes to the proposed amendments to 14-403 in red.

Sec. 14-403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) *Permanently paved and accepted streets or island streets.* The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings – 25';

2. For all other buildings – 28'.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) *Streets to be upgraded in connection with development.* The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street between the lot and the nearest permanently paved and accepted City street by paving the existing travel way or the minimum clear width measurement as described above, as determined by the Public Works Authority, and meeting the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;

    i. The widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

2. Take all necessary steps under Chapter 25, Article III, Section 47 of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and

3. Obtain site plan approval for the work required under this subsection.

(c) *Other exceptions.* The building or structure is one of the following:

1. An accessory building; or

2. Part of a Planned Residential Unit Development.

Street Acceptance – Portland Code, Chapter 25

Victoria's suggested changes in red

Sec. 25-47.

Acceptance of streets and ways dedicated for public travel prior to July 7, 1948. A street or way dedicated for public travel prior to July 7, 1948, including paper streets, shall be laid out and accepted as a public street or way by the city only upon the following conditions:

(a) Minimum width. Such street or way shall have a minimum width of fifty (50) feet unless the owners of property adjoining the street or way shall convey to the city sufficient land to lay out a fifty (50) foot street; provided, however, that the Public Works and Planning Authority may allow the minimum clear width or less, as described in 14-403 when a fifty (50) foot street is impracticable.

Provided further that any such street or way located on any of the islands in Casco Bay, which is not considered to be a collector street in the opinion of the public works authority and the planning board, may have a minimum width of thirty-two (32) (change to: the minimum clear width standard in 14-403) feet.

(b) Recorded plan. A plan of the street or way shall have been recorded in the county registry of deeds prior to July 7, 1948.

(c) Petition by abutters. A majority of the abutters upon the street or way shall in writing, on a form to be prescribed by the public works authority, petition the city council to improve the street by grading, curbing, gravelling, macadamizing, paving, or in any other way making a permanent street of the same, or any part thereof; and in said petition shall waive any damages resulting from the laying out and acceptance of said street or way, or any necessary changes in the grade thereof; and shall agree to pay their just proportion of one-third of the cost thereof. For purposes of this article, a majority of the abutters shall mean those abutters who own more than fifty (50) percent of the frontage, both in front-feet and in assessed value.

(d) Assessment of costs. When the street or way shall have been laid out and accepted as a public street or way, and such improvements have been made, one-third of the cost thereof shall be assessed on the property adjacent to and bounded on the street or way in the manner, and with the same right of appeal, provided in 23 M.R.S.A §§ 3601--3605.[1] (Code 1968, § 707.2) Cross reference(s)--Uniform procedure for collecting assessments,

---

[1] 23 M.R.S. §3601. Apportionment of damages or benefits

Whenever the city government lays out any new street or public way, or widens or otherwise alters or discontinues any street or way in a city, and decides that any persons or corporations are entitled to damage therefor, and estimates the amount thereof to each in the manner provided by law, it may apportion the damages so estimated and allowed, or such part thereof as to it seems just, upon the lots adjacent to and bounded on such street or way,

other than those for which damages are allowed, in such proportions as in its opinion such lots are benefited or made more valuable by such laying out or widening, alteration or discontinuance, not exceeding in case of any lot the amount of such benefit, but the whole assessment shall not exceed the damages so allowed. Before such assessment is made, notice shall be given to all persons interested of a hearing before said city government, at a time and place specified, which notice shall be published in some newspaper in said city at least one week before said hearing.

Google Groups

Planning Board Workshop- 3/13- Text amendment 14-403

Liv Chase <livchase@yahoo.com> Mar 11, 2018 3:39 PM

Posted in group: **Planning Board**

Dear Planning Board Members and Planning Staff,
Thank you for your time and attention in addressing section 14-403 of the City's land use code. This amendment directly effects me because I own 2 properties on accepted city streets that have a width less than 25'. Based on the history of 14-403 and the enforcement of this ordinance, the intention of this code is to address unaccepted city streets, i.e. paper streets. It is my understanding, no permit application or plan for development on an accepted city street was ever denied on the basis of street width, until recently.
The attached comments, attachments, and suggested amendment to 14-403 are to address 14-403 (a) for accepted city streets. Regardless of the prior interpretation, I hope you will agree that accepted city streets which already have city services and established widths, should not be part of this ordinance.
Regards,
Liv Chase
livchase@yahoo.com
207-522-4345

Section 14-403 was written and adopted in 1968. The interpretation of this code has always been that it applies to non-accepted city streets i.e. paper streets. This section of the land use code has had no bearing on accepted city streets in the past. The City of Portland zoning department has approved many projects on the Portland peninsula on streets which are less than 35' in width (Attachment D). Only recently has section 14-403 been read literally and enforced to deny permit applications on accepted city streets that are less than 35' in width. One of these permit applications is an application submitted in May 2017 to build a small 499sf single family house located at 47 Chapel Street. If the true intention of clarifying this code is related to the impact it will have on city services, please consider the following:

Why are we defining street access?
We are defining street access because it is relevant to fire and life safety.

Why would street width need to be defined for accepted city streets that are already built?
City Services
Accepted city streets already have city services, i.e. water/ sewer, plowing, general upkeep, ect. As property owned by the city, the city already holds the responsibility/cost for maintaining these streets.
Adding additional buildings to a street with city services does not unreasonably impair these services because these services are already in place.
Fire and Life Safety
Accepted city streets are wide enough to allow for the access of fire trucks and ambulances in the event of an emergency. Currently, all accepted city streets are wide enough for a fire truck to drive down (a fire truck is just under 10' in width). A brief conversation with the fire department revealed that the narrowest street for the fire truck is Oak Street. Even though the street width is 24.5 feet wide, cars are allowed to park on both sides of the street. This equals a clear width of 10.5 for the fire truck. Clear width for a fire truck to pass should take into account parked cars on the street (Attachment C)

City staff has expressed the need to simplify and clarify section 14-403. The clarification is that 14-403 is not intended for accepted city streets.

Other Points to Consider:

Accepted city streets on the peninsula have been streets since the 1800's. The peninsula is home to the highest density of building infrastructure in Portland. If there truly was a problem in regards to city services and life safety on accepted city streets, this would have been addressed 30 years ago when the code was revised.

This proposed text amendment will take away property owners rights. There are 53 streets on the peninsula that would be affected by this amendment (Attachment A and B)

It is understood that there is a need to regulate the creation of new city streets (Section 14-403 (b)) and adopt standards for these streets. NFPA 1 fire code determines a minimum clear width of 20 feet for a emergency access in the creation of new streets.

The proposed text amendment establishes an arbitrary street width that is not based on anything pertaining to fire and life safety. Additionally, it allows for this width to be reduced by approval of the fire chief and public works director. This makes the proposed text discretionary and vague. This opinion based flexibility would prove to be beneficial in connection with the development of new streets, but it adds no value to streets which are already defined as to width. Accepted city streets are already developed and most times, they can not be widened because existing infrastructure is built to the right of way.

The proposed text amendment adds more restrictions to 14-403

Current	**Proposed**
Streets with ROW less than 35'*	Streets less than 25' not including sidewalk*
Only for residential dwellings	All building regardless of use
Exception for frontage on another street	No exception
Only for new construction	Not specified (adding a unit could be within existing infrastructure)

*See Attachment E

14-403 is in direct conflict with the City's comprehensive plan. Vacant lots, that meet the minimum required lot size, have the potential to add more dwelling units and create higher densities. Further restriction of these vacant lots is not in line with the comprehensive plan.

Sec. 14-403. Street access.

A building or structure, intended for use as habitation, may only be constructed or moved on a lot, ~~or a dwelling unit added to a lot,~~ where one of the following is met.

(a) ~~*Permanently paved and accepted streets or island streets.* The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:~~

~~1. For one- or two-family dwellings – 25';~~

~~2. For all other buildings – 28'.~~

~~These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.~~

(a) Accepted city streets appearing on the official map of the city are exempt from this section of the land use code.

(b) Unaccepted city *streets to be upgraded in connection with development.* The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street between the lot and the nearest permanently paved and accepted City street by paving the existing travel way or the minimum clear width measurement as described above, as determined by the Public Works Authority, and meeting the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;

   i. The widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and

3. Obtain site plan approval for the work required under this subsection.
   Exception: The above guidelines may be

(c) *Other exceptions.* The building or structure is one of the following:

1. An accessory building; or

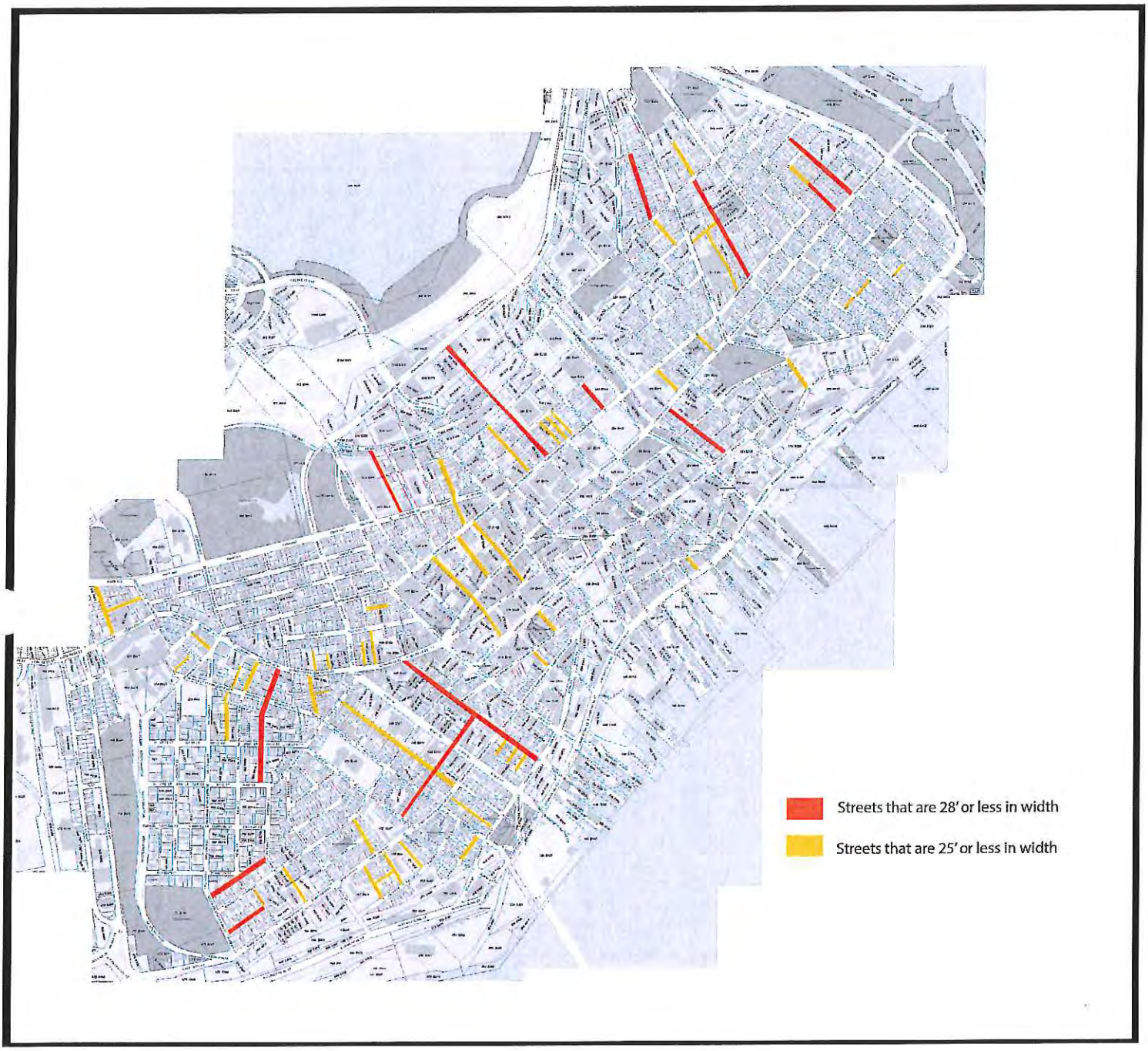
2. Part of a Planned Residential Unit Development.

street widths as measured from curb to curb

street name	street width (feet)		street name	street width (feet)
guilford court	10.3		bramhall place	21
horton place	11.7		myrtle street	21
chapel street	12.4		market street	21.1
russel street	12.5		summer street	21.4
joy place	13		alder street	22
tate street	13.8		forest street	22.3
throwbridge place	13.8		south street	23.1
fletcher street	14.7		winthrop street	23.1
maple street	15.3		may street	22.4
montgomery street	15.5		stetson court	22.5
marshall street	16		dow street	22.7
orange street	16		mountfort street	23.4
nye street	16.1		winter street	23.8
stone street	16.2		oak street	24.5
bond street	16.4		neal street	24.9
storer street	16.6		orchard street	25.5
stratton place	18.8		hampshire street	25.9
marion street	19.1		sheridan street	26.1
briggs street	19.4		howard street	26.2
romasco street	19.4		wilmot street	26.6
school street	19.6		clifford street	26.6
brown street	20.2		park street	26.8
locust street	20.8		emerson street	27.2
casco street	20.8		chestnut street	27.3
cedar street	20.9		carlton street	27.7
boynton street	20.9		gray street	27.9
			hammond street	27.9

There are 41 streets that are less than 25' in width

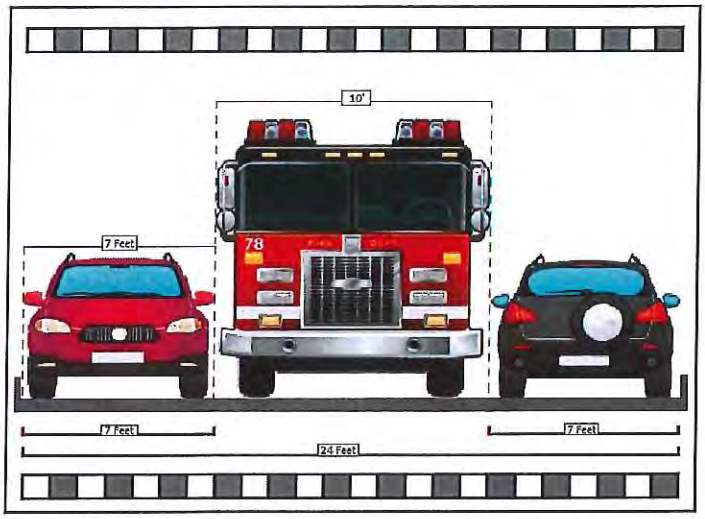
ATTACHMENT B



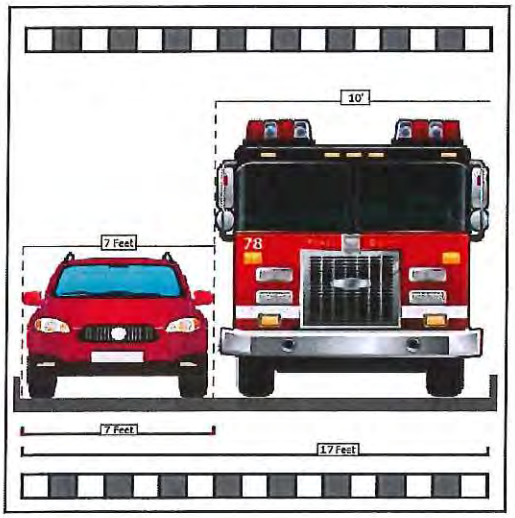
MAP OF THE PORTLAND PENNISULA

ATTACHMENT C

Fire and Life Safety-



Parking on both sides of the street



Parking on one side of the street

No parking on either side of the street

7 feet is the minimum width necessary for parallel parking space. The measurement was based on average vehicle widths and design standards for on-street (parallel) parking space in other municipalities, including the City of Chicago

ATTACHMEN D

72 Oak Street

Year Built: 2011
Use: 37 Units
Street Width: 24.5 feet

Parking on 2 sides =
clear width for fire truck 10.5 feet

50 Myrtle Street

Year Built: 2014
Use: Single Family
Street Width: 21 feet

Parking on 1 side =
clear width for fire truck 14 feet

5 Briggs Street

Year Built: 2016
Use: 3 units
Street Width: 19.4 feet

Parking on 1 side =
clear width for fire truck 12.4 feet

22 Tate Street

Year Built: 2016
Use: 8 Condominiums
Street Width: 13.8 feet

No on street parking =
clear width for fire truck 13.8 feet

1 Joy Place

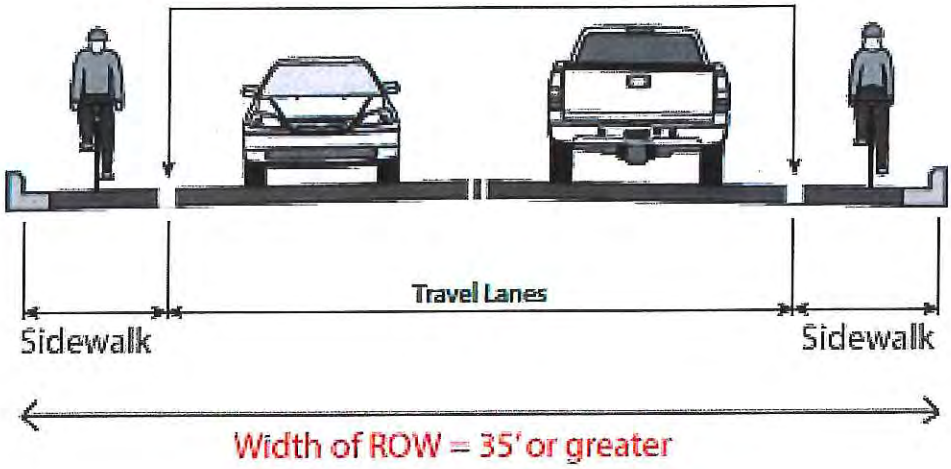
Year Built: Currently being reviewed for permit application
Proposed Use: 12 Condominiums
Street Width: 13 feet
Street Condition: Dirt Path

Fire truck access = ?

ATTACHMENT E

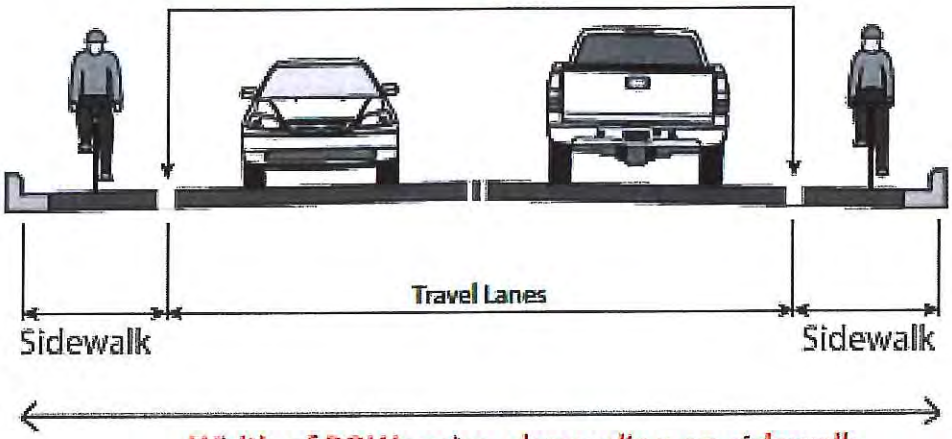
Current 14-403: "a street width less than 35'"

Street width varies- depending on sidewalk width
For a 7' wide sidewalk, the street width = 21'



Proposed 14-403: "minimum clear width as measured from the edge of the pavement, excluding sidewalks"

Street width = 25' or greater for 1 or 2 family
Street width = 28' for all other buildings



Width of ROW varies- depending on sidewalk
For a 7' wide sidewalk, the ROW must be 39' for a 1-2 family and 42' for all other buildings

To: Planning Board
3/11/2018
From: Brent Adler
47/49 Chapel Street

RE: Planning Board workshop comments text amendment 14-403

I would like to thank the hard work of Corporation Council and Planning Staff for bringing this text amendment before the planning board. I am happy to see that the proposed text amendment seeks to simplify and clarify issues with the code. Unfortunately, the language in the proposed section will prevent development on small city adopted streets and will allow for discretionary decisions by the Fire Chief and Public Works Director.

Subsection (a) will remove small scale development opportunities on functioning legally non conforming streets that currently have existing public services. 72 Oak Street and 22 Tate Street have working street widths of less than 13'. These two projects were large scale and prove to be a success (72 Oak is a 37 unit apartment building and 22 Tate is a 8 Unit condominium building), approved by the planning board with the support of Public Works and the Fire Department. I would like to provide these as examples of how peninsula streets that are narrow can still be functioning contributing streets to our city that deserve special attention, not to be treated as non buildable streets unable to provide new housing stock as the city grows and we adopt a new comprehensive plan. Public Works has the ability to service narrow streets today the same way they have been servicing their residents over the past 100 years. We have tools available in zoning to allow safe housing on narrow streets that will not negatively contribute to maintenance already provided under Public Works. As a City that has grown around these smalls streets why are we considering abandoning the potential they present for development? We can ask the following questions to help ease the challenges a narrow street presents to emergency and public works vehicles.

Square footage restrictions on the proposed development limited to 1000 sq feet
A larger set back from neighboring buildings
Limiting the height of the building to single level
The proximity of a fire hydrant to the proposed dwelling
Can a narrower street allow for higher density if the building is sprinkled according to NFPA
Parking on both sides or none
One way or two way
The smallest fire engine currently used by the City and its working width, Engine 31?
Do current structures exist on the street and have City Services

I would propose the following as an exception to subsection (a)

No Street width minimum on City approved adopted streets on the peninsula

I am in support of having 14-403 amended but I am not in support of the proposed changes. I am the owner of 47/49 Chapel Street, a lot with 3,450 square footage. A buildable lot with water, sewer, gas, and electric. On a street that is plowed during the winter and maintained by the city. This street is less than a block from the City Hall and services 6 existing houses. My application for a small 500 square foot single family is currently on hold for review with the City. My permit is awaiting denial based on the current interpretation of 14-403. If the proposed changes go through, my paved width being 12.4' excluding sidewalks, will kick my application for review and approval to the Fire Chief and Public Works Director. If I do not have approval by these two departments my lot will become non-buildable. Meaning, for me, a regulatory taking. I am unable to pursue an appeal because of 14-473 in the land use code Section (c)4h. Please consider this text amendment an opportunity to allow small development on small streets and not an exclusionary effort for property owners and developers in my position.

For your information Joseph Gray Jr. Director of Planning and urban development on 10/31/84 has already defined unimproved streets. These streets identified on the peninsula should be the only streets considered under the proposed subsection (a) for non development. Please see attached

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CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Stephen T. Honey, City Manager

DATE: 10/31/84

FROM: Joseph E. Gray, Jr., Dir., Planning & Urban Development

SUBJECT: Council Request for Material on Unaccepted Streets

At the recent Council workshop on unaccepted streets, Council members asked that we prepare certain additional information for distribution to the Full Council. The material includes:

1) Building Permits

Sam Hoffses, Chief of Inspection Services, has reviewed our files and has determined that since January, 1981, 47 permits have been issued for housing on unaccepted streets. The Council should note that during 1984, 22 permits or almost half those issued, were during this year. This is an indication of the acceleration of development on these streets.

2) List of Unaccepted Streets/Neighborhood Breakdown

The Parks and Public Works Department has prepared a breakdown of unaccepted streets by neighborhoods. This list is enclosed.

3) Charts Used in Staff Presentation

At the request of the Council we have reduced to typing the charts used in staff presentation on unaccepted streets. There are four charts.

A) Issues Chart
B) Streets Glossary
C) Lapsed/Abondoned Streets
D) Unimproved Streets

"STREETS" GLOSSARY

DEDICATED:	Offered to City as public street
ACCEPTED:	Accepted by City as public street
LAPSED:	Dedicated but not accepted within reasonable time (40+ years)
ABANDONED:	Accepted but not maintained for 30 years (1946 - 1976)
IMPROVED:	In actual existence (paved or unpaved)
UNIMPROVED:	Not in actual existence ("paper")

DOWNTOWN

Garden Lane	U
Park Street Court	U
Stratton Street	U
Tolman Place	U
Guilford Court	U
Hall Court	U
High Street Court	U
Nye Street	U

WEST END

Gilman Place	
Houlton Street	U
Spring Street Place	U
Trowbridge Place	U
West Street Court	U
	U

EAST END

Gilbert Lane	A
East Cove Street	B
Foster Street	C
Sumner Court	D

Portland Maine Yes Google's good here.

Jennifer Munson <jmy@portlandmaine.gov>

Fwd: Section 14-403

Barbara Barhydt <bab@portlandmaine.gov> Mon, Mar 19, 2018 at 8:03 AM
To: "Munson, Jennifer" <jmy@portlandmaine.gov>

Public comment

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

---------- Forwarded message ----------
From: **john mcgovern** <jtmcgovern1@gmail.com>
Date: Sat, Mar 17, 2018 at 9:30 PM
Subject: Section 14-403
To: bab@portlandmaine.gov

Hello Barbara.

My wife just brought to my attention that the city had a planned meeting on the thirteenth of March regarding changes to the city code section 14-403 on paper streets in the city of Portland. I am pleased to know that the meeting had been postponed do to inclement weather , as I would have missed it. As you know I have been working with the city on making the improvements to Hingham street , I am hoping the timing of this meeting will only have a positive effect on what I have been trying to accomplish on Hingham street. As you know we had a meeting at city hall with your self John Jennings David Brenerman myself and others. I had requested the meeting because of a paragraph in the city code that allows a resident of the city of Portland with a lot of record and being part of a subdivision recorded in the registry deeds , the allows them to petition the city to bare part of the cost of bringing the road up to the standards of the city of Portland. Although the meeting did not resolve the issue of who should bare the expense of these roads I moved forward on my own to make the improvements at my expense. At this point I have invested over nine thousand dollars of my own money in engineering cost and application fees and I am still waiting for the review process to be complete. In closing I would like to say that the city has a enormous untapped revenue of property tax resources by not working with city residents to improve these streets. If the city of Portland wants to be know as progressive pioneer in moving into the twenty first century it is time to be more aggressive in allowing the development of this untapped revenue stream. I do not think it is unreasonable for the city to take on some of the cost burden of these projects. I am strongly against any changes to 14-403 that would have a negative impact on future development of these valuable pieces of property.

Respectfully ,

John McGovern

Sent from my iPad

Portland Maine | Yes. Google's good here.

Jennifer Munson <jmy@portlandmaine.gov>

Fwd: Section 14-403

Barbara Barhydt <bab@portlandmaine.gov> Tue, Mar 27, 2018 at 7:57 PM
To: "Munson, Jennifer" <jmy@portlandmaine.gov>

public comment for 14-403.
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

---------- Forwarded message ----------
From: **john mcgovern** <jtmcgovern1@gmail.com>
Date: Tue, Mar 27, 2018 at 7:47 PM
Subject: Re: Section 14-403
To: Barbara Barhydt <bab@portlandmaine.gov>

Hello Barbara.

After careful thought for the amendment allowing street minimum width to be narrowed to 25' for certain streets I have to oppose . It is my understanding from the public works department that the minimum finished street width is twenty eight feet no exceptions.
Allowing for some streets to be twenty five feet wide and yet forcing others to be twenty eight feet wide would put undo hardship on those that bear the extra expense.
Any change to the code in 14-403 should apply to all streets within the city regardless of there status. We need to set a minimum guideline and enforce the code as set forth.

Respectfully .

John McGovern

Thank you.

Sent from my iPad

On Mar 19, 2018, at 11:20 AM, john mcgovern <jtmcgovern1@gmail.com> wrote:

> Thank you, Barbara.
>
> John
>
> Sent from my iPhone
>
> On Mar 19, 2018, at 8:07 AM, Barbara Barhydt <bab@portlandmaine.gov> wrote:
>
> > Hello Mr. McGovern:
> >
> > I am including you e-mail as public comment for the Board. Here is the link to the City's website where the memo for the Board is located. http://www.portlandmaine.gov/AgendaCenter/ViewFile/Agenda/_03222018-2356?html=true

This is a workshop agenda item and that meeting starts at 4:30. This is the second agenda item, but we may need to move this forward to be the first item.

Thank you for your comments.

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 Sat, Mar 17, 2018 at 9:30 PM, john mcgovern <jtmcgovern1@gmail.com> wrote:

Hello Barbara.

My wife just brought to my attention that the city had a planned meeting on the thirteenth of March regarding changes to the city code section 14-403 on paper streets in the city of Portland. I am pleased to know that the meeting had been postponed do to inclement weather , as I would have missed it. As you know I have been working with the city on making the improvements to Hingham street , I am hoping the timing of this meeting will only have a positive effect on what I have been trying to accomplish on Hingham street. As you know we had a meeting at city hall with your self John Jennings David Brenerman myself and others. I had requested the meeting because of a paragraph in the city code that allows a resident of the city of Portland with a lot of record and being part of a subdivision recorded in the registry deeds , the allows them to petition the city to bare part of the cost of bringing the road up to the standards of the city of Portland. Although the meeting did not resolve the issue of who should bare the expense of these roads I moved forward on my own to make the improvements at my expense. At this point I have invested over nine thousand dollars of my own money in engineering cost and application fees and I am still waiting for the review process to be complete. In closing I would like to say that the city has a enormous untapped revenue of property tax resources by not working with city residents to improve these streets. If the city of Portland wants to be know as progressive pioneer in moving into the twenty first century it is time to be more aggressive in allowing the development of this untapped revenue stream. I do not think it is unreasonable for the city to take on some of the cost burden of these projects. I am strongly against any changes to 14-403 that would have a negative impact on future development of these valuable pieces of property.

Respectfully ,

John McGovern

Sent from my iPad

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

Google Groups

Planning Board Meeting- 5/8- Text amendment 14-403

Liv Chase <livchase@yahoo.com>
May 3, 2018 5:32 PM
Posted in group: **Planning Board**

Dear Planning Board Members and Planning Staff,
Please see the attached comments for the Planning Board Meeting for May 8th, 2018 in regards to the text amendment for 14-403.
Regards,
Liv Chase
livchase@yahoo.com
207-522-4345

Dear Planning Staff,

I attended the Planning Board Workshop on March 22, 2018. At the workshop there was much discussion over the street width. The current re-write of 14-403 determines a street width as measured from curb to curb. This street width is not clearly defined to reflect a clear width. The clear width is the only factor when determining if a fire truck or ambulance can pass.

Interim Fire Chief Keith Gautreau spoke at the Planning Board Workshop and in his professional opinion, he determined that a width of 25' from curb to curb was wide enough regardless of parked cars on either side.

Parked cars can range in width, with the largest parked car 8.5 feet wide. Most vehicles are approximately 7 feet in width and this is the number that is most commonly used. A standard fire truck is just under 10' wide.

1) If fire and life safety are the reasons behind the clarification of 14-403, doesn't it make sense to clearly define the clear width in relationship to parked cars on the street? (the proposed added text does this- see attachment A and B)
2) Can planning staff and/or Mr. Gautreau explain how a street with width of 25' curb to curb that has parking on both sides, is more safe than a street that has a width of 11' with no parking on either side?

Thank you for your time.
Regards,
Liv Chase

ATTACHMENT A

Sec. 14-403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) Permanently paved and accepted streets or island streets. The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings – 25' for streets with parking on both sides;
   18' for streets with parking on one side
   11' for streets with no parking on either side

2. For all other buildings – 28' for streets with parking on both sides
   21' for streets with parking on one side
   14' for streets with no parking on either side

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) Streets to be upgraded in connection with development. The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;

2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and

3. Obtain site plan approval for the work required under this subsection.

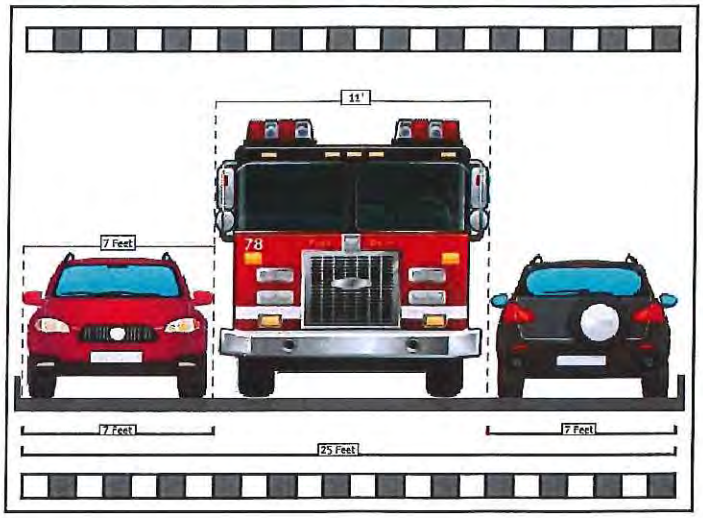
(c) Other exceptions. The building or structure is one of the following:

1. An accessory building; or

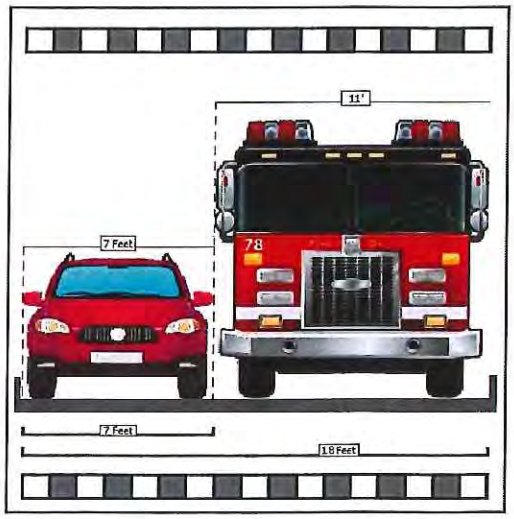
2. Part of a Planned Residential Unit Development.

ATTACHMENT B

Fire and Life Safety-



Parking on both sides of the street



Parking on one side of the street

No parking on either side of the street

7 feet is the minimum width necessary for parallel parking space. The measurement was based on average vehicle widths and design standards for on-street (parallel) parking space in other municipalities, including the City of Chicago
9.9 feet is the width of most standard fire trucks

Planning Board Meeting Public Comment May 8th 2018

Text Amendment 14-403

Comments regarding **Section A** of this text amendment

Hello my name is Brent Adler, 47/49 Chapel Street. I attended the workshop meeting on March 22nd 2018.

I would like to thank staff for taking the time to improve this section of the land use code. I hope my comments and questions will help in determining that there is no need for Section A of this text amendment.

For your information Boston MA has a population of 687,584 people. Portland has a population of 67,067. I spoke with Michael Rooney of the Boston City Planning department and according to him there is no Code in the City of Boston that restricts the addition or development of any unit on a street that is narrow. Instead, the issue of safety is addressed by zoning ordinances that would allow for a deeper set back of a new building for better access of emergency vehicles. Boston has narrow streets like Portland and is a City in the United States.

Boston Fire department has the same fire truck as engine 31 of the Munjoy Hill Station, a Pierce Enforcer 1250/750. Training for the fire department to work on small accepted paved streets should be the solution to service urban infill and development on small accepted City streets, this would be a worthwhile investment for the future.

According to the discussion at the workshop on March 22 the amendment language clarifies our 35' ROW and adds individualized review on a case by case basis by experts in DPW and Fire for any submission of a unit or development on a street less than 25'. Adding units, whether its one 400 square foot or a 30 unit apartment building adds risk and stress onto emergency vehicles and Staff. It was also determined that City accepted streets are the responsibility of the City to maintain.

Up until now we favored the interpretation of 14-403 that the 35' rule did not apply to accepted City streets. I have given many examples, here are a couple more.

9 Romasco Lane- Planning board approved 4 unit in 2015 with a recent permit extension
Joy Place on the west end- condominium project approved in April 2018

It would be important to know how many permits have been denied based on 14-403 for City accepted Streets, this information would help to determine the current interpretation. Moving forward under the amendment we have clearly defined the paved width creating a moratorium

on streets less than 25' and slowing urban infill and housing stock in the City. Blacklisting these streets as we develop the 2030 plan.

During the workshop, Chris Branch stated that accepted City streets are the responsibility of the City unlike unimproved non accepted City Street. How will DPW review an exception for a permit on a street less than 25'? Will he be basing his decision on the condition of the street, and if so wouldn't this be the responsibility of the CIty and not a condition of issuing an exception?

During the workshop Chief Gautreau stated that a fire trucks width is roughly 10' wide but would need 16' for the outriggers on a ladder truck. Does the fire department use a ladder truck on every call, and if not, what is the working room around a smaller pump truck used for single level access?

If we are going to leave these decision to the experts as Ms Torregrossa stated, why are we not giving them tools to make the decisions with. We have tools for staff during site plan and zoning review. Can we not make this more transparent and in the amendment start to clearly define what an exception would be? Let me give you an example of how my denial letter will read based on the current language of the amendment. My permit for Chapel street is ready for the expert review of the fire department and DPW. It has passed site plan review, design review, code review and zoning. This is what im expecting back from the DPW and the Fire chief when the amendment before you passes

Dear Mr Adler,

Thank you for your request for an exception of 14-403 section A. Unfortunately at this time we do not have the equipment, training, or resources to tend to emergencies at your proposed single family dwelling. This lot is serving the City just fine as a vacant non buildable lot.

Sincerely
DPW and Fire Chief

Ms Torregrossa stated that for each 2 bedroom unit there is up to 4 occupants that are added. And each one of these occupants add risk to the equation for emergency vehicles. Under this logic, in the India Street neighborhood where in a 2 block radius over the past 5 years over 200 2-3 bedroom units have been added, increasing the City occupants load at least 1000 people we should carefully consider if our current emergency response is satisfactory for all these new individuals. At what point will a new fire station be needed under the current logic of risk assessment? I do not see the risk on small City approved streets if the occupancy is managed, we know the stock and paved width of all our adopted streets here on the peninsula, this can be gathered through GIS. Why not take the smallest street, drive a fire truck down it and run a drill? I do not see the need to individualize review on small scale development. Can we not work

from the problem and see if it's possible to service the small streets first rather than declaring 25' as the minimum. I am more optimistic about the abilities of our public services than declaring that it's impossible to drive down and put out a fire on a narrow street. There are rural roads in northern Maine that pose more of a problem than an urban City that is littered with Sprinkler Systems, building codes, Fire Hydrants and many fire stations. Can we not get some facts about our current equipment, how long are hoses, how many firefighters does it take to respond and extinguish a 400 square foot residential house that is sprinkled?

Finally, if it is the opinion of staff that its too risky to add occupants and services to city approved streets than there should be no reason why we cant add an exception for structures that do not require these level of services. I'm thinking structures such as garages, storage areas, green houses and beehives. Neither of which would need DPW. Thank you for your time.

Brent Adler

Portland Maine Yes, Google's good here.

Jennifer Munson <jmy@portlandmaine.gov>

Fwd: Public Comments for Tonight's Planning Comment Session on 14-403

Barbara Barhydt <bab@portlandmaine.gov> Thu, May 10, 2018 at 8:49 AM
To: "Munson, Jennifer" <jmy@portlandmaine.gov>

public comment for Section 14-403
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

---------- Forwarded message ----------
From: **Matt Power** <power.matt@yahoo.com>
Date: Tue, May 8, 2018 at 5:57 PM
Subject: Public Comments for Tonight's Planning Comment Session on 14-403
To: Barbara Barhydt <bab@portlandmaine.gov>, Kim Cook <kcook@portlandmaine.gov>

Good Afternoon,

I'm planning to attend the Planning Board public comment session tonight and present my notes below, but I thought it might be very helpful to include them online, so that people can use the live links to review documents and facts associated with it.

Thank you

Matt Power
Portland
207-619-2713
power.matt@yahoo.com

[Comment Follows]

Esteemed Councilors, Good Evening,

Over the past week, I've been doing my homework, researching some of the questions raised about the proposed text amendment to Section 14-403. I hope the information below is helpful in looking at this amendment from a more nuanced perspective that might encourage more, rather than less, housing development, based on sound economic analysis--if the conditions are right.

As a template to look more closely at the issue of Unaccepted Streets, I selected District 5. It's the section of Portland that seems to have the greatest concentration of unaccepted streets. By combining Google Maps data with Information from the **2017 Transportation and Sustainability Committee** (https://www.portlandmaine.gov/586/Sustainability-Transportation-Committee) and GIS data, I was able to generate a visual representation of all of the unaccepted streets in that district. Here's what the color-coded map reveals.

300 Empty Lots. There are about 300 empty parcels on these streets (icons may represent multiple parcels). Certainly not all of these parcels are buildable, but many are.

Existing Homes. All of these parcels are located on streets that already include other, existing homes.

Streets with no homes on them are not included on the map. Nor are narrow or short streets unlikely to be built upon.

Infrastructure—Already in Place. Most of these properties appear to benefit from multiple levels of City maintenance and infrastructure. Public Works will need to confirm for each street.

Fire Truck Access—Weight Litmus Test. If trash service is provided to an unaccepted road, we know the road--whether paved or packed gravel---can support a 25-ton loaded garbage truck. A loaded Fire Truck typically weighs a similar amount-- 30 tons, fully loaded with water. http://www.dot.state.pa.us/public/pdf/InfoBridge/Approximate%20vehicle%20weights.pdf

The Economic Arguments For and Against Allowing More Housing Development on Unaccepted Streets in Portland

1. **PRO: Ready Made Infrastructure**. Building on open and empty parcels would have minimal costs with regard to city infrastructure, beyond the initial hookup of sewers and water, which could be borne by the owner. Most of the streets, we believe, are already maintained and serviced.

2. **CAVEAT: School Enrollment Must Be Below Capacity**. According to a Massachusetts Study from UMASS Dartmouth 2 years ago (https://www.mhp.net/writable/resources/documents/Cost_Benefit_new_housing_3-15-16.pdf), the one factor that makes the difference in a district's ability to generate enough more revenue from new housing than the additional cost of educating new pupils was the ***existing enrollment capacity of the local school.***

Mass. spends $14,000 per student, about the same as Portland. They looked at the net economic costs and benefits of new residential development. Schools were inevitably the biggest concern at the local level. Research looked at 6 school districts. In half of the districts, new mixed use housing had a **net positive** on the City's bottom line. The other three districts fell into the red economically.

So what happened? The latter three schools were at or past enrollment capacity. That's the deal breaker. However....

3. **PRO: Empty Classroom Seats Put New Housing in the Black**. Researchers found that "The effect of school enrollment on district expenditures had a *statistically significant dependence* on whether or not the school district was operating at or above its enrollment capacity (pvalue= 0.02). In schools with available pupil capacity (i.e. no need to build a new school), new students only cost 61 percent as much per year. That's enough to tip the scales so that new housing contributes more to local fees, taxes, impact fees, and so on than it withdraws.

Suggested Case Study: Riverton Elementary School and District 5

Before making 14-403 more restrictive toward new housing, as the current text amendment suggests, I urge the Board to look closely at just one District. In the light of the research I have linked to above, why not consider the positive implication of bringing hundreds of new families into the area, especially if schools are projected to continue losing students?

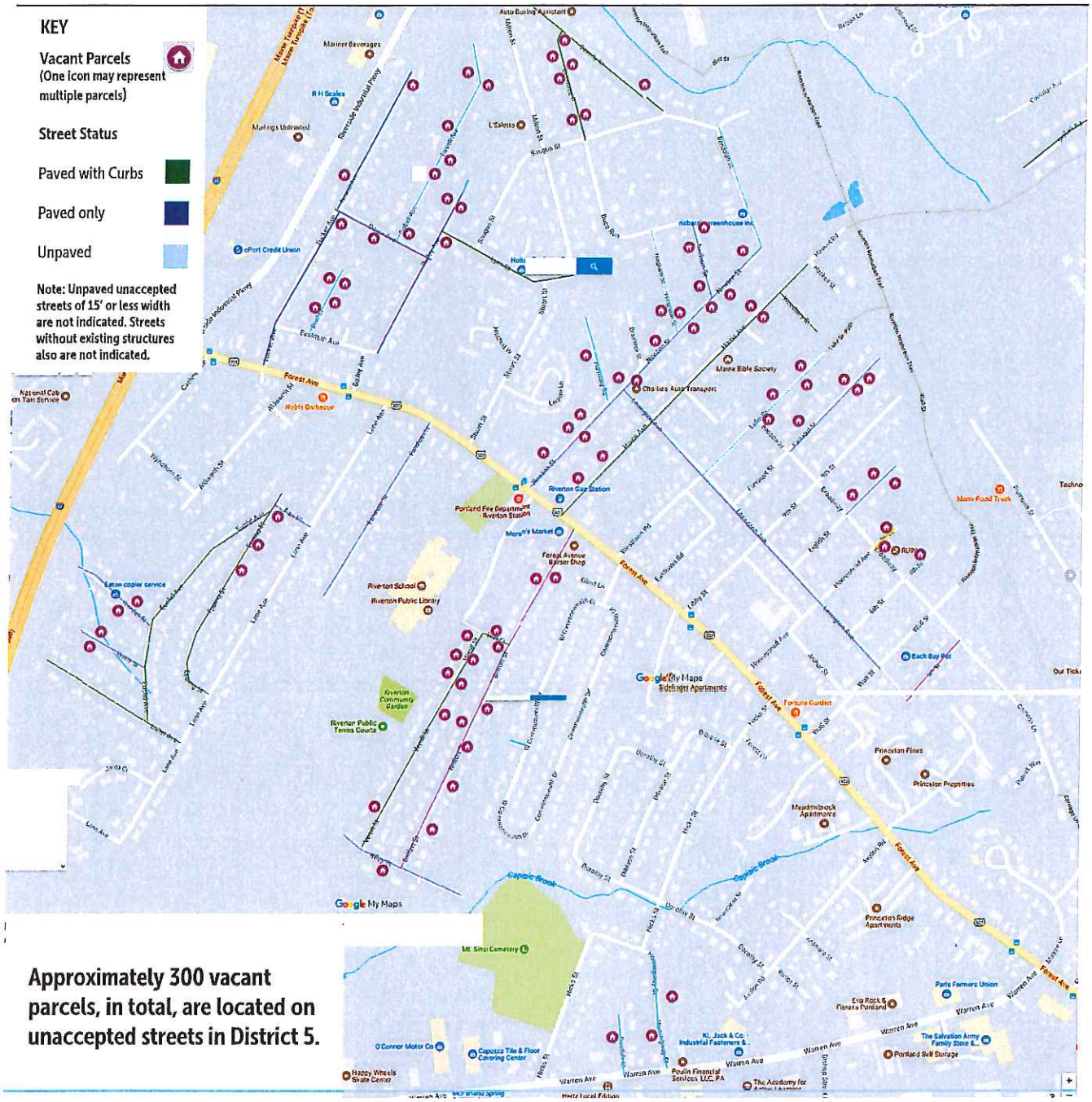
I have requested the enrollment history and forecast for Riverton Elementary School in Portland. I will forward it as an addendum to this comment when I get the response. I frankly don't know if the enrollment numbers support my case at this time. From what I can gather from recent news reports, most Portland elementary schools are losing enrollment--other than Reiche. Charter schools are draining away students (http://www.wmtw.com/article/maine-public-school-enrollment-on-the-decline/9641783), It seems likely that the City will see an increasing number of empty seats in schools such as Riverton, without new housing options. This means no new facilities will need to be built, and new students can be added at much lower annual cost.

A Future Pathways To Housing Growth. Finally, If schools are at capacity, there's one other way to make local new housing work, with changes to state policy. **The State Needs to Pay Its Fair Share**. The same Massachusetts new housing study notes that the State receives a huge economic boost from new housing, but often doesn't share that bounty with towns in a way that helps schools. Simply by giving back 8 percent of what they make, they could tip the balance into the black for development and away from local property taxes.

District Five Empty Parcels.pdf
6086K

Vacant Parcels on Unaccepted Streets in District 5, Portland

Data From May 7, 2018--From Google Maps and 2017 Transportation and Sustainability Commitee Results



Approximately 300 vacant parcels, in total, are located on unaccepted streets in District 5.

This map is available as an interactive Google Map that can easily be amended and updated. Data that is not yet embedded, but could be, is whether or not each street is maintained by Portland Public Works--in the way of trash and recycling service, sewer and water. All of these streets appear to have electrical service and snowplowing service.

Order 265 -17/18
~~Tab 28~~ ~~6-18-18~~
Tab 14 7-16-18

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROPRIATING $1,850,000 FOR IMPROVEMENTS TO THE PORTLAND INTERNATIONAL JETPORT PASSENGER TERMINAL

ORDERED, that $1,850,000 from the Portland International Jetport (Jetport) unrestricted fund balance is hereby appropriated for improvements at the Jetport passenger facility, as follows:

• Terminal Building Improvements	$ 1,260,000
• Parking Facility Improvements	$ 265,000
• Site Improvements:	
○ Roadway, Sidewalk, and Directional Sign Renovations	$ 50,000
○ Phase 1 funding for trail along Yellow Bird Road	$ 50,000
• Ground Service Equipment Storage Structure	$ 130,000
• Passenger Boarding Ramp	$ 75,000
Total	$ 1,850,000

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Paul Bradbury, Airport Director

DATE: June 4, 2018

DISTRIBUTION: Jon Jennings, City Manager; Mayor Strimling; Danielle West-Chuhta, Corporation Counsel; Sonia Bean; Nancy English

SUBJECT: Request for appropriation from the Portland International Jetport's unrestricted fund balance for improvements to Jetport infrastructure totaling $1.850 million.

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: June 18, 2018 **Final Action:** July 16, 2018

Can action be taken at a later date: X **Yes** _____ **No (If no why not?)**
Action can be taken at a later date, but staff recommends action as requested to meet the seasonal construction of some elements and a desire to have certain improvements in place and benefitting passengers in the 3rd quarter of 2018.

I. SUMMARY OF ISSUE (Agenda Description)

The Portland International Jetport is requesting an appropriation from its unrestricted fund balance to make further improvements as we respond to significant passenger growth this year. Outbound capacity is up 109,000 seats or 17% in the 2nd and 3rd quarters. The Jetport completed a significant expansion in 2012 which greatly improved the passenger experience; this was followed by a $3.975 million appropriation by the Council for passenger terminal improvements last year which are now currently underway. In 2017 the Jetport was awarded the best airport under 2 million passengers in North America for service under the Airport Council International's Airport Service Quality program. In order to maintain this level of service with rising passenger counts it is critical that we continue our infrastructure investment at the Jetport. I am proposing this appropriation to fund the following infrastructure improvements.

• Terminal Building Improvements	$ 1,260,000
• Parking Facility Improvements	$ 265,000
• Site Improvements:	
○ Roadway, Sidewalk, and Directional Sign Renovations	$ 50,000
○ Phase 1 funding for trail along Yellow Bird Road	$ 50,000
• Ground Service Equipment Storage Structure	$ 130,000
• Passenger Boarding Ramp	$ 75,000
Total	$ 1,850,000

II. REASON FOR SUBMISSION (Summary of Issue/Background)

The Jetport has experienced record passenger volumes in 2016 and 2017 handling 1.787 and 1.862 million total passengers respectively. We are on track for another record year in 2018 with passengers up 3.5% in the 1st quarter and available outbound seat capacity up 17% in the 2nd and 3rd quarters. The investment being proposed under this appropriation will provide needed short term infrastructure improvements to meet the demands of these additional passengers. A summary of each of the improvements is outlined below.

1. Terminal Improvements: This is the largest portion of this appropriation request and continues the renovations commenced under the 2017 appropriation. This item includes the installation of terrazzo tile on the upper level from gates 1-6 to more closely match the 2012 terminal expansion. This same terrazzo will also be installed on the lower level to baggage claim, providing a high traffic finish appropriate for these areas. Additionally, the existing 15 year old seating at gates 1-6 will be replaced with new seating containing integrated power connections for personal electronics. The seating will match the seating in the terminal expansion gates 7-11 and will have a more efficient layout to accommodate more passengers in the same amount of space. Lastly, this item includes upgrades to the Jetport public address system to provide integrated visual paging of messages and certain boarding announcements.

2. Parking Facility Improvements: The additional passenger traffic has resulted in capacity constraints for parking from March – May of this year. This funding will rehabilitate the discount lot off District Road which has been in continual operation since March. This item also includes improvements to the car rental facility, which is in the sublevel of the Jetport parking garage. The car rental facility restrooms will be renovated. Additionally this item includes funding for design of an elevator tower to move rental car return passengers up to level 3 of the garage allowing a convenient entrance to the terminal via the over road bridge with direct access to the security screening checkpoint. This will provide design funding only. The funding to construct the elevator tower would come under a future appropriation.

3. Site Improvements: Sections of the terminal loop roadway and all sidewalks are reaching 20 years of service and are in need of overlays. This funding will provide overlays to those areas most in need. It will also provide refinishing of directional signs along the roadway. Lastly, this item provides the first phase of funding for a proposed trail along Yellowbird Road. This trail was incorporated into the Jetport's Sustainable Airport Master Plan and is supported by the Stroudwater Village Association and Portland Trails.

4. Ground Service Equipment Storage Structure: The increasing passenger volumes and larger aircraft require additional ground service equipment including larger push back tugs, more baggage carts, and lavatory carts. It is operationally beneficial to protect this equipment during the winter so it is immediately available for service. The airlines have requested additional space for this equipment so under this item we are proposing a 4,500 square foot tensioned membrane structure located on the terminal apron near the deicing processing facility.

5. Passenger Boarding Ramp: The busy summer passenger volumes require the flexibility to enplane and deplane passengers using manual boarding ramps when all standard passenger boarding bridges are in use. This item allows the purchase of one mobile passenger boarding ramp to match the two currently owned by the Jetport.

III. INTENDED RESULT

The approval of this appropriation will allow the Portland International Jetport to invest in the infrastructure and equipment needed to meet passenger growth and maintain its best in class airport service quality.

IV. COUNCIL GOAL ADDRESSED

The Portland International Jetport provides a robust connection for the region to the national air transportation system and in doing so plays an important role in supporting the City Council's economic development goals. Approval of this project allows the Portland Jetport to make needed investment in Jetport infrastructure to better serve the nearly 1.9 million passengers using it annually.

V. FINANCIAL IMPACT

The Jetport's unrestricted cash fund balance was $22,611,875 as of March 31, 2018 if $6.2 million of Airport Improvement Program funds currently ready for reimbursement are included. If approved, the Jetport will use $1.850 million of its unrestricted cash fund balance to complete these improvements. Airports, like many industries, have substantially increased their liquidity since 2008 in response to the recession. This has resulted in unrestricted cash holdings in excess of 500 days of operating expenses, a level that is high historically. The Jetport has followed this trend, as of March 31st the unrestricted cash fund balance amounts to 498 days of operating expenses on hand. At the last rating review with S&P and Moody's I outlined the Jetport's capital improvement program and noted it was our plan to maintain a more appropriate floor of 365 days of operating cash on hand. If this appropriation is approved the Jetport will remain well above this floor at 457 days of cash on hand.

The Jetport is an enterprise fund of the City that is fiscally self-sustaining. FAA grant assurances and the covenants for the Jetport's General Airport Revenue Bonds (GARBs) require all revenues generated at the Jetport be pledged to cover only Jetport expenses. The approval of this appropriation has no impact to the City of Portland's general fund or tax rate.

VI. STAFF ANALYSIS

Approval of this appropriation will provide infrastructure improvements and equipment to meet growing passenger volumes. Staff recognizes our passengers have a choice on which airport to use. The Jetport's ability to compete for passengers is directly tied to the convenience and

service it provides. The Jetport must provide a modern, efficient, convenient, and safe connection from ground to air transportation.

VII. RECOMMENDATION

Jetport staff recommends the City Council approve this request to appropriate $1.85 million from Jetport unrestricted cash fund balance to proceed with these infrastructure investments.

VIII. LIST ATTACHMENTS

None

Signature

June 4, 2018
Date

Order 271-17/18
~~Tab 34-6-18~~
Tab 15 7-16-18

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

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PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6
Re: Disorderly Houses

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That Chapter 6, Article IX., Section 6-202 of the Portland City Code is hereby amended as follows:

ARTICLE IX. DISORDERLY HOUSES.

Sec. 6-202. Enforcement.

(a) Authority to Enforce. If the owner (~~a~~1) refuses to agree to take effective measures to address the disorderly house, (~~b~~2) takes ineffective measures to address the disorderly house as determined by the city, (~~c~~3) fails to implement the agreement reached with the city to address the disorderly house or (~~d~~4) if, in the discretion of the city, the disorderly house requires immediate posting, the city may condemn and post the building against occupancy, and/or may file a legal action against the owner seeking any and all damages and remedies to which it is entitled pursuant to state and local laws.

(b) Notice of Suit. If the City pursues legal action against an owner or landlord for a disorderly house violation, notice shall be provided to the tenants by the City. Notice shall be made within a reasonable time following the service of the complaint upon the property owner. If a tenant list has been previously provided by a landlord, notice shall be made by regular mail to all known tenants in the building. If no tenant list has been provided, notice shall be made by regular mail to all occupants in each unit of the building.

(c) Condemnation. In the event that condemnation is required to address one or more disorderly house violation(s), the City shall provide notice to tenants of the building. Notice shall be made within a reasonable time following the City's election to condemn the building. Notice shall be made by: (1) regular mail to all known tenants or to all occupants in each unit in the building; and (2) by posting a copy of said notice at the premises.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager Jon Jennings, Mayor Ethan Strimling, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Richard Bianculli, Neighborhood Prosecutor (Police)

DATE: May 10, 2018

SUBJECT: Disorderly House Ordinance Amendment Request

SPONSOR: Housing Committee (3-0 vote, April 25, 2018, minutes attached)

COUNCIL MEETING DATE ACTION IS REQUESTED: NEXT AVAILABLE (6/4/18)
1st reading X **Final Action** _____

Can action be taken at a later date: X **Yes** ____ **No (If no why not?)**

PRESENTATION: Brief presentation by Richard Bianculli, Neighborhood Prosecutor, regarding the proposed amendment.

I. ONE SENTENCE SUMMARY

The proposed amendment requires the City to provide notice to tenants when enforcement of the disorderly house ordinance against the landlord may impact the interests of the tenants.

II. AGENDA DESCRIPTION

The Police Department requests the amendment of the disorderly house ordinance (City Code of Ordinances, Section 6-202) to provide notice to tenants when the enforcement of the disorderly house ordinance against the landlord may impact the interests of the tenants. Providing notice will ensure transparency and accountability while affording due process protections to all parties involved.

The first amendment to the disorderly house ordinance requires the City to provide notice to tenants once a formal complaint (e.g. typically a Rule 80(k) action) is filed in court against the landlord/owner for enforcement of the ordinance. The tenants would receive notice of the complaint by posting at the premises or regular mail. Following receipt of said notice, tenants would be allowed to join in the matter as interested parties. This provision is important to protect the rights of all tenants, especially those tenants that may not have contributed to the incidents that gave rise to the designation of the property as a disorderly house but may be impacted by the relief granted by the Court.

The second amendment requires the City to provide all tenants of the building with "reasonable written notice of said condemnation or posting against occupancy." With

regard to enforcement against disorderly houses involving an immediate threat to the health and safety of the tenants, the City may be required to move forward with condemnation of the property. The proposed amendment will allow tenants adequate time to seek alternate housing or retain counsel if additional relief is required.

III. BACKGROUND

The recent enforcement of the disorderly house ordinance against a landlord required the City to prohibit occupancy in a 3-family apartment building until the building can be transferred to a third party. The unprecedented relief raised due process concerns for the tenants that were impacted.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The proposed amendment will afford due process protections to tenants that may be impacted by the enforcement of the disorderly house ordinance. Providing such due process protections will provide transparency and accountability while protecting the City against liability in the form of due process claims.

V. FINANCIAL IMPACT

No negative financial impact.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION

N/A

VII. RECOMMENDATION

Staff recommends approval.

VIII. LIST ATTACHMENTS

(a) Proposed amendment language.

Prepared by: Richard Bianculli, Neighborhood Prosecutor
Date: May 10, 2018.

Housing Committee
Minutes of April 25, 2018 Meeting

A meeting of the Portland City Council's Housing Committee (HC) was held on Wednesday, April 25, 2018 at 5:30 P.M. in Council Chambers at Portland's City Hall. Councilors present at the meeting included Committee members Councilor Kimberly Cook, Councilor Pious Ali, Councilor Jill Duson, Chair of the Committee. City staff present included Jeff Levine, Planning and Urban Development Department Director, Mary Davis, Housing and Community Development Division Director, Victoria Volent, Housing Program Manager, and Richard Bianculli, Jr., Esq., Neighborhood Prosecutor.

Item 1: Review and accept Minutes of previous meetings held on March 28, 2018

Councilor Cook motioned to amend the minutes by removing the additional public comment appended at the end of the minutes and requesting that they be placed separately in the public record. Motion was seconded by Councilor Ali and the amended minutes unanimously approved 3-0.

Item 2: Rental Markey Survey Presentation

Councilor Cook asked if the committee specifically asked staff to contract for this report. Mary Davis responded that the Committee raised several questions and concerns with the rental data contained in the Housing Report from last October and asked staff to find a better resource for this information. Staff solicited a consultant to conduct a rental housing survey. Michael LeVert, the consultant selected, presented the report. He explained that the task he was given was a straightforward task to sample the rents; a brief survey was conducted which received a high response rate. In addition he worked directly with several large landlords to collect rental data. Mr. LeVert clarified that this was a landlord survey not a tenant survey, a survey of actual rents without consideration of whether it is subsidized unit or an income controlled unit.

Councilor Ali asked if landlords that participated included Avesta and Portland Housing. Mr. LeVert indicated that Avesta did respond.

Councilor Cook stated that it appears the increase in rents from the end of 2016 to end of 2017 shows a 2% increase; Mr. LeVert stated that the median change of $25 is a better analysis than looking at the average percentage; a better metric is the median. Councilor Cook indicated that trend data would be more helpful than point in time data. Mr. LeVert pointed out that the survey did ask for rent information from last year which does show short term trend detail and concludes that median rent has stabilized. Mr. LeVert also pointed out that the City now has a high quality data set that can be used as a base moving forward. He expressed his thanks to the landlords that provided private data and information for the report.

Councilor Duson asked if staff had any clarifying questions or comments; Mr. Levine indicated that this is the type of data set that the city may want to update every two or three years as it is the best data set

that the city has had in a while.

Councilor Duson indicates that this is an excellent report that provides a tool for tracking trends and a base line that is Portland specific. Councilor Duson expressed her appreciation for the report.

Mark Adelson of the Portland Housing Authority (PHA) stated that he was unaware information was requested from the PHA and that they did not respond. He indicates that public housing rent data would not have been helpful to this survey. PHA did a rental study in February.

Councilor Duson would like us to work with PHA when we do update this data to include the PHA comments.

Item 3: Review and Vote to Recommend to the City Council Amendments to Chapter 6 re: Disorderly House Ordinance.

Richard Bianculli, Jr Esq introduced the item. He explained that part of his role is to enforce the disorderly house ordinance and indicated that 95% of the time landlords are compliant. He indicated that the proposed changes are being recommended to avoid any due process issues in the future and explained that the changes would require notice to tenants in cases of disorderly house complaints and condemnation.

Councilor Duson acknowledged the collaborative work done with Pine Tree Legal in drafting the proposed changes.

No public comment was given.

Councilor Duson indicates that these changes confirms the approach the city has taken in ensuring housing safety.

On a motion made by Councilor Cook and seconded by Council Ali, the Committee vote unanimously 3-0 in favor recommending the changes to the City Council.

Item 4: Housing Trust Fund Annual

Jeff Levine and Mary Davis provided an overview of the annual plan. Councilor Duson asked for clarification regarding how much would be allocated this year – if the city maintains a $500,000 balance would the plan allocate only $413,000 this year? Mr. Levine explained that this is the premise but it flexibility is built in. Councilor Duson asked about the priority for the PHA implementation strategy if we are doing a competitive application process. Mr. Levine indicated that this priority does not rule out other developers but these are projects that are moving forward and we want to ensure that city meets its commitments to the neighborhoods.

Councilor Cook indicated that she could not find a copy of the 2017 plan online to use to make contextual comparisons.

Councilor Cook asked several clarifying questions and concerns:

(1) Can the Committee vote on this tonight as it does appear that the Committee has a recommended

plan to act on; Councilor Cook suggested that the vote be delayed until the next meeting which would allow the Committee to discuss and suggest changes that can be brought back for action as a recommended plan.

(2) The $500,000 minimum balance seems like a large contingency and she would be more comfortable with a lower amount.

(3) Would like clarity as to the PHA priority, what does being a priority mean and why did staff make that recommendation? Would like more explanation of these things in the public document. Mr. Levine explained that staff wanted to focus on projects that are ready to move forward, are already in the implementation phase and have identified financing gaps; next year staff might recommend a different focus area. Councilor Cook would prefer to see report amended to provide some of that clarity

(4) Note in plan that selection criteria and allocation of points are detailed in the application.

(5) Add a definition for adaptive reuse.

(6) Provided in the plan an explanation of how and when the city would provide to retain deed restrictions and how the right to cure defects would be documented. Define right of first refusal, when it applies and how it is secured.

(7) Explain the term "resource of last resort" in the plan.

(8) Include an explanation of how the maximum award per unit amount was determined; include background information as an addendum to the plan.

(9) Explain the reasons behind the income targeting.

Public Comment:

Mark Adelson – PHA is pleased to be recognized as a priority; the Front Street project is unique and not one that a normal developer would take on. He asked for clarification on how they might incorporate the 80-120% income targets; he also explained that Front Street will pursue the 4% tax credits and not the competitive 9% tax credits so they do have the constraints of the deadlines associated with the 9% application.

Tyler Norod of Avesta Housing; indicated that the focus of the plan should be on permanent uses which would be the best use of limited resources; it is difficult for Portland to score well in the tax credit allocation process and these types of resources make Portland developers more competitive. The city may want to defer restrictions or ongoing oversight to other funding sources that may be more restrictive.

Tom Watson states that if the fund has $900,000 the City should use as much as you can to get units on the market;

Brit Vitalius of the Southern Maine Landlord Association is confused about the priority for PHA projects and is happy that it is being clarified; he believes full disclosure will benefit everyone, particularly other applicants.

Steve Perazone of 47 Bolton Street asked that the reason for the $15,000 maximum award per unit be clarified.

Christine Grabowy of Falmouth, a Portland rental property owner asked that the equitable balance be explained, assuming that means single family homes.

Mr. Levine explained that equitable balance is explained in the implementing regulations for homeownership units. Mr. Levine also indicated that $280,000 of the current balance in the Housing Trust Fund has come from Inclusionary Zoning fee-in-lieu payments. He also explained that the maintaining a minimum balance is a national best practice and staff is proposing it as a policy not a requirement.

Councilor Duson indicated that she liked the idea of a minimum balance in theory but sees it as specific to this year only; suggested that a statement be added to the plan that the minimum balance is for 2018

Councilor Cook asked how implementing regulations are created and do they come back to the Committee or Council for approval. Mr. Levine explained that generally regulations are approved by board implementing the policy (for example the Planning Board approved the Inclusionary Zoning (IZ) implementing regulations). He indicated that staff would use the IZ regulations as a starting point and would bring the proposed regulations back to the Committee for approval.

Councilor Cook indicated that she would need to better understand the gap facing the PHA projects in order to be okay with the PHA priority. Mark Adelson stated that they will know if there is gap at the Boyd Street project very soon. The current design for Front Street is over budget but they do not have an exact dollar amount yet.

Councilor Duson indicated that the Committee would like to see a revised draft next month; the Committee will take additional public comment and then make a recommendation to the City Council.

Councilor Cook indicated that it was worth noting in the plan that there is unknown timing with Front Street project so that other applications could be considered and the plan should clarify that mix incomed projects are eligible.

Item 5: Tax Acquired and City-Owned Property Analysis

Mr. Levine outlined the memo and gives brief background on this site; Victoria Volent gave more insight into the background analysis done that resulted in the staff recommendation not to pursue this site.

Councilor Cook asked if the current zoning (R1) was the determining factor. Mr. Levine stated that the current zoning is not the most significant challenge to the site.

Councilor Cook asked if a map of city owned land would be part of the item on the work plan for the end of June? Mr. Levine indicated that it would be included.

Item 6: Committee Discussion re: 2018 Work Plan

Councilor Duson asked staff to provide a copy of the 2018 Council Goals at the next meeting so that the Committee can review the goals and work plan together.

On a motion made and seconded (approved 3-0) the meeting was adjourned at 7:50 pm.

Respectfully submitted, Mary Davis

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ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF PORTLAND, MAINE AND THE PORTLAND PARKS CONSERVANCY

ORDERED, that the attached Memorandum of Understanding with the Portland Parks Conservancy is hereby approved in the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to execute the Memorandum of Understanding and whatever other documents are necessary to effect the intent and purpose of this order.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Mona Bector

FROM: Ethan Hipple, Deputy Director, Parks, Recreation and Facilities Department

DATE: 6/19/18

SUBJECT: Approval of Portland Parks Conservancy Memorandum of Understanding

SPONSOR: Parks, Recreation and Facilities Department
(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading_____7/16/18_____ Final Action___7/16/18_____

Can action be taken at a later date: ___X_ Yes ____ No (If no why not?)

PRESENTATION: (List the presenter(s), type and length of presentation)

I. ONE SENTENCE SUMMARY: City Staff and Portland Parks Conservancy Board Members have drafted an operating MOU for Council approval.

II. AGENDA DESCRIPTION : This order approves the Memorandum of Understanding between the Portland Parks Conservancy and the City of Portland. Upon approval and execution of the Memorandum of Understanding, the Portland Parks Conservancy will commence with fundraising efforts to support parks projects and programs that are priorities of the city.

III. BACKGROUND: The Portland Parks Conservancy was formed with the mission of raising funds to support the parks and park programs of Portland. The Portland Parks Conservancy (PPC) will serve as an independent entity with 501c(3) status. The PPC has formed a board of directors, a board executive leadership team, has approved by-laws, and is in the process of hiring an Executive Director to lead the organization and fundraising effort.

In order to operate successfully and efficiently, a Memorandum of Understanding has been drafted to outline the relationship between the PPC and the City of Portland. Portland Parks, Recreation and Facilities staff and Corporation Counsel have reviewed and edited the MOU in its current form, and the Board President of the PPC has signed the MOU. It now awaits council approval for full execution.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED The city enters into an MOU with the PPC so that the PPC can commence fundraising to support city priority parks capital projects and park programs.

V. FINANCIAL IMPACT The mission of the PPC is to raise funds to donate to the city for park projects and programs that are priorities of the city. The city has offered to provide in-kind office space for the Executive Director of the PPC at 212 Canco Rd. The PPC will be providing all office equipment, furnishings, etc…

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION

VII. RECOMMENDATION Staff recommends council approval of the Portland Parks Conservancy MOU.

VIII. LIST ATTACHMENTS

1. City-ConservancyMOU 06.15.2018 - PPC signed

Prepared by: Ethan Hipple
Date: 6/19/18

Bean/agendarequestmemo/rev 11/2015

Memorandum of Understanding between The City of Portland, Maine and The Portland Parks Conservancy

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") is entered into by and between the City of Portland, Maine (hereinafter the "City") and the Portland Parks Conservancy (hereinafter the "Conservancy") (the City and Conservancy may be referred to individually as a Party or collectively as the "Parties").

I. RECITALS

WHEREAS, the City is a municipality in the State of Maine; and

WHEREAS, the City maintains and operates numerous parks, trails, open spaces, programs, and recreational facilities (hereinafter "Portland's Parks and Programs"); and

WHEREAS, the Conservancy is a private non-profit corporation organized under Maine's non-profit corporation statute for the express purpose of raising philanthropic support and encouraging civic engagement to enhance and sustain Portland's Parks and Programs; and

WHEREAS, the Portland City Council adopted a certain Resolution, effective as of October 26, 2017, in which the Council expressed its support and enthusiasm for ongoing work to determine the structure of a partnership between the City and the Conservancy and the creation of the Conservancy to support the City's local parks, trails and open spaces; and

WHEREAS, this MOU is in furtherance of the partnership contemplated by the Council's Resolution;

WHEREAS, the Conservancy is presently seeking to attain tax exempt status from the Internal Revenue Service under Section 501(c)(3) of the United States Internal Revenue Code; and

WHEREAS, the Conservancy will operate as a fiscally-sponsored program of a non-profit with existing tax exemption until it achieves such status itself; and

WHEREAS, the Parties want to formalize their relationship by setting forth a series of mutual expectations;

NOW THEREFORE, in consideration of the mutual covenants, promises and commitments herein, the parties agree as follows:

II. PURPOSE

The purpose of this MOU is to establish a general framework for cooperation and collaboration between the City and the Conservancy. This MOU acknowledges the City's authorization of the Conservancy acting in support of Portland's Parks and Programs consistent with the terms set forth herein. This MOU is not intended to, and does not, create binding contractual obligations on either Party. It will assist in defining the relationship between the Parties in order to ensure that the goals of each are accomplished in a mutually supportive way.

III. GUIDING PRINCIPLES

The guiding principles and assumptions for this MOU are as follows:

A. The Conservancy exists to support and enhance Portland's Parks and Programs by raising and expending philanthropic capital and encouraging civic engagement in support thereof.

B. The Parties are committed to promoting equitable access to Portland's Parks and Programs, cognizant of geographic, socioeconomic, demographic, cultural, physical ability and population density realities.

C. The Conservancy agrees in the exercise of all its functions and activities that it will not discriminate in any manner on the basis of race, religion, color, national origin, gender, disability, age, sexual orientation, gender identity, or marital, parental, or veteran's status in its programs and activities, and will comply with all non-discriminatory laws and policies that the City promulgates and to which the City is subject.

D. The City and the Conservancy will work collaboratively to develop mutual priorities for which the Conservancy will support the City, which priorities will be reviewed and updated at least annually.

E. The Parties acknowledge that the Conservancy will serve as an additive funder rather than supplanting appropriate City funding for Portland's Parks and Programs.

F. To create a private donor base for Portland's Parks and Programs, the Conservancy will seek to create connections among foundations, the City, private funders, businesses, and community members and organizations.

G. When the Parties collaborate on seeking additional funding for Portland's Parks and Programs, they will attempt to avoid duplication of effort and competition for the same dollars, focusing instead on maximizing funding opportunities for shared priorities.

H. The Parties will strive for mutual transparency in their financial condition and issues, in order to inform the positions or priorities that each adopts.

I. The Parties will adopt procedures and enter into additional operating agreements with regard to specific projects, which shall assign clear responsibilities for each Party.

IV. RELATIONSHIP BETWEEN THE CITY AND THE CONSERVANCY

A. The Conservancy, although affiliated with the City of Portland by its purpose, is an independent corporate entity.

B. The Conservancy's Board will include two ex-officio voting positions to be filled by the City: one by the City's Director of Parks, Recreation & Facilities or their designee, and one by the Chair of the Portland Parks Commission or their designee. The City hereby authorizes these representatives to serve in that ex-officio capacity.

C. The Conservancy agrees to work with the City and its staff in support of mutual priorities and any operating agreement(s) between the Parties.

D. The Conservancy may also act as an independent advocate on behalf of Portland's Parks and Programs, provided that the Conservancy shall not be an agent for the City and that any such actions shall not be binding upon the City.

E. The City agrees to seek and obtain any necessary permits or approvals for physical improvement projects that involve Conservancy funding, including but not limited to approvals under the City's Historic Preservation Program.

F. The Parties agree that, as separate corporate entities, each is responsible for any liabilities and costs arising from its own action(s) and/or inaction(s), and for procuring its own policies of insurance(s) or self-insurance for such liabilities and costs in policy amounts as each deems prudent.

V. COLLABORATIVE FUNDRAISING EXPECTATIONS

A. The Conservancy's fundraising and expenditures begin with a commitment it shares with the City of Portland: to sustain and enhance Portland's Parks and Programs in order to enhance our quality of life, protect our environment, and promote the economic well-being of our city.

B. The Conservancy agrees to coordinate with City staff regarding funding goals, programs or campaigns and to

seek gifts that can benefit Portland's Parks and Programs.

C. The Parties expect that the City will generally pursue and accept grants from state or federal agencies, scholarship funds, the City's gift catalog, gifts of real estate or other property, and gifts in-kind of equipment and supplies intended for City use.

D. The Parties expect that the Conservancy will generally pursue and accept foundation grants and individual philanthropic financial donations including restricted and unrestricted gifts.

E. The Parties will work to streamline internal processes to ensure prompt and relevant support for each other's fundraising efforts to further mutual effectiveness.

G. The Conservancy will honor the City's vision, mission, strategic priorities, goals, policies and procedures when soliciting or accepting any funds.

H. The Parties will advise donors of the necessary approvals of either the Conservancy or the City.

I. The Conservancy agrees, before it begins to accept gifts for a particular collaborative fundraising effort, to confer with the Director of Parks, Recreation & Facilities or their designee.

J. Funds or gifts to the Conservancy will be owned by the Conservancy and maintained and/or distributed for the support of Portland's Parks and Programs by agreement of the parties.

K. Funds received by the Conservancy will be maintained in accounts that are separate from City accounts, and although the Conservancy may transfer funds to the City, Conservancy and City funds will in no event be intermingled while those funds remain in the Conservancy's control.

L. The Conservancy will provide the Director of Parks, Recreation & Facilities or their designee and City Council with a summary report of gifts received upon request.

VI. DIRECT FUNDING SUPPORT BY THE CONSERVANCY

A. The Parties acknowledge the general understanding that the Conservancy plans to fund discrete projects or programs that are priorities of the City, rather than funding general maintenance or operations expenses.

B. While there is an understanding that the Conservancy exists to partner with the City in support of Portland's Parks and Programs, the City does not exercise the authority to obligate the Conservancy to fund any particular City priority nor is the City obligated to accept any funds offered by the Conservancy.

C. The Parties acknowledge the general understanding that the Conservancy will be an additive funder rather than supplanting appropriate City funding of Portland's Parks and Programs, and that, if there is a time in the future when it appears that the City does not ensure that the Conservancy's funding is additive, this would be grounds for the Conservancy to reconsider this agreement with the City.

D. The Parties acknowledge the general understanding that the Conservancy exists for the purpose of benefiting Portland's Parks and programs and if there is a time when it appears that the Conservancy is not fulfilling that mission or contributing funds to Portland's Parks programs with some regularity, that would be grounds for the City to reconsider this agreement and terminate any relationship or affiliation with the Conservancy.

E. The Parties understand that the Conservancy may transfer funds that are under its control to the City when there is agreement about the intention of how these funds are to be used. The City will use these funds in accordance with that understanding and provide the Conservancy timely reporting on the expenditure of these funds. If the City is unable to use all of the funds for the stated purposes, those agreements will provide that the City return the remaining funds to the Conservancy.

F. The Conservancy agrees to obtain consent from the City Department of Parks, Recreation and Facilities prior to applying for or accepting funds intended to be used toward physical improvements of City-owned

property. There is no obligation that the City accept funds offered by the Conservancy.

G. The Conservancy agrees to obtain consent from the City Department of Public Assembly prior to applying for or accepting funds intended to be used toward public gatherings on City property that are likely to involve 25 people or more. The Conservancy will obtain all necessary permits and approvals required under the Portland City Code for events held on City property.

H. Any project undertaken by the Conservancy on City property shall be subject to review and approval by the City and shall be designed and completed to the City's satisfaction.

I. The Conservancy agrees not to make any payments to a City employee except with prior written approval from City.

J. Nothing outlined herein shall be construed to restrict in any way the City's ability to undertake maintenance of or improvements to City property on its own initiative and in its sole discretion when Conservancy funds are not being used.

K. Nothing outlined herein shall be construed to obligate the City to undertake physical improvements of City-owned property.

L. The parties agree that notwithstanding anything to the contrary herein, nothing in this MOU requires the City to make, or to allow the Conservancy to make, any improvements or alterations to any City-owned property.

VII. FUNDING SUPPORT BY THE CITY

A. The Parties share the goal that the City will strive to appropriately fund Portland's Parks and Programs, but this paragraph does not obligate the City to include any particular amount of funds in its budget for such purposes.

B. There is no obligation that the City provide financial or in- kind support to the Conservancy.

C. The City may provide limited and reasonable support to the Conservancy, at the discretion of the City.

VIII. GIFTS FUND MANAGEMENT

A. During the term of this MOU the Conservancy shall be responsible for overseeing the management of funds that originate with its activities or are entrusted to it by its donors. Conservancy fund management shall include the following:

1. The Conservancy is entitled to apply a certain portion of the gifts as an offset to its annual operating expenses.
2. The Conservancy is authorized to accept restricted gifts that are designed to benefit Portland Parks and Programs. Distribution of restricted funds will be made in accordance with donor intent and any operating agreements between the Parties.
3. The Conservancy shall follow Generally Accepted Accounting Principles for nonprofit corporations and shall enact prudent governance policies with regard to any invested funds.

IX. CONSERVANCY FILING, AUDITS AND REPORTING

A. The Conservancy will file all reports and other documents required by law in a timely and comprehensive manner, including but not limited to those required by the Maine Non-Profit Corporations Act, Maine Charitable Solicitations Act and the United States Internal Revenue Code and shall provide the City with copies of such reports upon request.

B. Upon request, the Conservancy will supply the City with an annual set of relevant summary financial

statements for the most recently ended fiscal year with a target date of the last business day in August.

C. Upon request, the Conservancy agrees to provide the City, annually:

1. An annual report; and
2. A list of Conservancy governing board, officers, and advisors.

X. CONFIDENTIALITY

The Parties agree that information about the Conservancy's donors and employees shall be kept confidential. To the extent permitted by law, neither the Conservancy nor the City shall disclose or use any private or confidential donor or employee information provided from one to the other except as required in and by the terms of this MOU. Notwithstanding the foregoing, the Conservancy acknowledges and agrees that the City is subject to Maine's Freedom of Access Act (FOAA) and that the City will disclose any information that it is required by law to disclose without liability to the Conservancy or any third party.

XI. NOTICES

A. Any notice to either party hereunder must be in writing signed by the party giving it, and, if mailed, shall be deemed given when mailed postage prepaid by the U.S. Postal Service first class, certified or express mail or other overnight mail service, or hand delivered, when addressed as follows:

To City: Director of Parks, Recreation & Facilities, 212 Canco Rd., Portland, ME 04103

With a copy to the City Manager at 389 Congress Street, Portland, ME 04101

To Conservancy: Attn: Portland Parks Conservancy, 769 Congress St., Portland, ME 04102

B. Other addressee(s) may also be hereafter designated by written notice. For any notice other than a Notice of Termination under Section XII, written notice may be given by other means acceptable to the receiving party, including by electronic mail. All such notices shall be effective only when received by the addressee.

XII. AMENDMENT AND TERMINATION

A. Unless earlier terminated as set forth below, this MOU will remain in effect until two years from the date set forth below, and is renewable for additional two year terms by mutual written agreement of the Parties.

B. This MOU may be amended only in writing signed by an authorized representative of both Parties.

C. This MOU may be terminated at the discretion of either Party, with or without cause, effective upon written notice to the other Party.

SIGNATURES

IN WITNESS WHEREOF, the City of Portland and the authorized representative(s) of the Portland Parks Conservancy have executed this MOU on this 15th day of June, 2018, the effective date of this MOU. This MOU will expire two years from the date of signing.

CITY OF PORTLAND

By__

(Signature)

_____

Jon P. Jennings

Its: City Manager

PORTLAND PARKS CONSERVANCY

By_____
(Signature)

ANDREW H. MAGOUN
(Printed Name)

Its: President

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ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING THE THIRD AMENDMENT TO THE 178 KENNEBEC STREET PURCHASE AND SALE AGREEMENT

ORDERED, that the attached Third Amendment to the Purchase and Sale Agreement for 178 Kennebec Street is hereby approved, substantially in the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

DISTRIBUTE TO: **City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English**

FROM: **Greg Mitchell, Economic Development Director**

DATE: **June 28, 2018**

SUBJECT: **178 Kennebec Street Purchase and Sale Agreement – Possible Amendments**

SPONSOR: **Economic Development Committee, Councilor Justin Costa/Chair – Meeting held on 6/5/2018 and the Vote was Unanimous (3-0)**

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading and Final Action: July 16, 2018

Can action be taken at a later date: No, time-is-of-the-essence to move forward on the sale of this property.

PRESENTATION: Greg Mitchell/5 Minutes

I. One Sentence Summary

Ross Furman, the buyer for 178 Kennebec Street, and Nathan Szanton, his development partner, are requesting a change to the agreed upon residential portion of the Proposed Development Project from a mixed income affordable housing project to an elderly affordable housing project due to State of Maine Housing Authority Program funding selection criteria changes, and this change of Project scope requires an Amendment to the Purchase and Sale Agreement Section 12.

II. Background

Original Project Scope

On October 2, 2017, the City Council authorized a Purchase and Sale Agreement with Ross Furman. Mr. Furman's proposal, with Nathan Szanton as a partner, included ground-level retail and/or artist studio space, and approximately 50 units of housing on the upper floors. The housing would be rental – a mix of studio, 1-, 2-, and 3-bedroom apartments, with an expected income mix targeted at 35% market rate, and 65% affordable (aimed at those at or below 60% of the area median income).

The subject property has been used for Public Works for parking purposes.

Revised Project Scope

The revised scope includes, as with the original scope, ground-level retail and/or artist studio space. The housing has been revised from 50 units of housing on the upper floor to 46 units of housing; from 1-, 2-, and 3-bedroom apartments to all 1-bedroom units set aside for households who head of household is aged 55+, with an income mix targeted for this development at 22% market rate and 78% affordable (aimed at those at or below 60% of the area median income).

III. Intended Resnlt or Council Goal Addressed

The intended result would be the City Council voting to amend the Project scope in the Purchase and Sale Agreement to 46 units of housing, all 1-bedroom units set aside for households who head of household is aged 55+ with an income mix targeted at 22% market rate, and 78% affordable (aimed at those at or below 60% of the area median income).

IV. Financial Impact

Amending the Purchase and Sale Agreement does not have a financial impact, as the purchase price for the property remains the same at $250,000, in addition to future new taxes from the proposed development. Provisions are also included to ensure future payment of property taxes in the event of non-profit ownership. Buyer will provide the City with environmental indemnification and be responsible for any site environmental remediation costs.

V. Staff Analysis

Staff supports the revised Project scope and proposed Third Amendment to the Purchase and Sale Agreement, Section 12. It is noted that the First and Second Amendments to the Purchase and Sale Agreement were time extensions, with the Second Amendment extending the deadline to close as March 31, 2019, to coincide with the Buyer's seeking Low Income Housing Tax Credits.

VI. Recommendation

The EDC, at its June 5, 2019 meeting, voted to forward to the City Council the proposed Third Amendment to Purchase and Sale Agreement with a recommendation of approval in substantial conformance as attached.

Attachments

Attached are the following documents for your information:

- Proposed Third Amendment to Purchase and Sale Agreement;
- Project Summary from Maine Workforce Housing, LLC;
- Purchase and Sale Agreement for 178 Kennebec Street dated October 10, 2017;
- First Amendment to the Purchase and Sale Agreement, dated March 13, 2018, extending the property closing deadline to April 13, 2018; and,
- Second Amendment to the Purchase and Sale Agreement, dated April 12, 2018, extending the property closing deadline to March 31, 2019.

THIRD AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT is made as of the ___day of _____, 2018, by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine ("Seller") and ROSS Y. FURMAN, an individual having a mailing address of Box Two, Portland, Maine 04112 (the "Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated October 10, 2017 as amended by a First Amendment to Purchase and Sale Agreement dated March 13, 2018, and a Second Amendment to Purchase and Sale Agreement dated April 12, 2018 (collectively, the "Agreement") with respect to certain real property located at 178 Kennebec Street, Portland, Maine; and

WHEREAS, Seller and Buyer wish to amend the Agreement as provided herein:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting from section 3(a) of the Agreement the words "the day that is forty-five (45) days after the date of this Agreement" and replacing therefore the words "January 31, 2019," meaning and intended hereby to fix the Due Diligence deadline under the Agreement to on or before January 31, 2019.

2. The first sentence of section 12 of the Agreement is hereby deleted and replaced with the following:

   Within twelve months after closing, Buyer shall commence development of the project generally depicted and described in Exhibit B[1] (which is attached hereto and incorporated herein by reference) as presented to the City's Economic Development Committee on June 5, 2018, and specifically including ground floor retail and/or artist studio space, and, on the upper levels, at least forty-six (46) one bedroom rental units for households whose head of household is at least 55 years of age, no less than 75% of which shall affordable to households at or below 60% of the area median income (the "Project").

3. Except as specifically amended hereby, the Agreement shall remain in full force and effect, and the parties hereto ratify the terms and conditions of the Agreement.

[1] Exhibit B attached hereto replaces the Exhibit B attached to the original Agreement.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

CITY OF PORTLAND

_____

By: _____
Jon P. Jennings
Its City Manager

WITNESS:

_____

By: _____
Ross Y. Furman

_____
Approved as to Form:
City Corporation Counsel's Office

Maine Workforce Housing, LLC
482 Congress Street, Suite 203
Portland, ME 04101

Project Summary

Maine Workforce Housing is applying for $400,000 in City of Portland HOME funding in this application, to fill a gap for a project at 178 Kennebec Street.

Project Team

The principals and staff of Maine Workforce Housing have successfully developed nine (9) mixed-income housing projects in Maine and New Hampshire over the last fourteen (14) years. These properties, the oldest of which has been open since 2004, have never had a single year of operating deficits. All of them are 100% leased with long waiting lists.

We are working with Ross Furman's team to incorporate housing into their multi-phase development of the block. The first phase includes the area closest to Kennebec Street. It includes ground-level retail and/or artist studio space with 46-51 units of housing on the upper floors. The housing will be rental; all 1-bedroom units, set aside for households whose head of household is aged 55+. We've included a concept floor-plan of Phase 1.

The site has some unique advantages for residential development:

- The City has identified the Bayside neighborhood as a priority for redevelopment. Kennebec Street is a prominent street in Bayside, and street-level retail will dovetail well with surrounding buildings.
- A mixed-use residential/retail building will bring new residents to live, work, and shop in Bayside, reinforcing the urban fabric and adding new vitality to the core of the City.
- The site is within walking distance of a variety of services and destinations for daily living (e.g., banks, library, schools, etc.) as well as employers and public transportation.
- The site is within steps of a major park (Deering Oaks Park). Yet, it is also just a minute from an entrance to and exit from I-295, a highway that takes residents throughout Maine.

We expect the income mix targeted for this development will be 22% market rate, and 78% affordable (aimed at those at or below 60% of the area median income), creating economic diversity both in the building and in the neighborhood. Our attached proforma shows a mix of 22% market rate and 78% affordable. If construction costs come down from the conceptual estimate included in our application, this mix may shift slightly. As a business model, we find a more even mix of low-income and market-rate renters is more acceptable to renters and neighbors.

The residents will be a mix of people, incomes, and occupations in Portland. We expect the tenants in income-restricted units will include retired people on social security and also those with jobs at the lower end of the wage scale. The market-rate units are likely to also include retired people, and also professionals who are downsizing from larger homes.

This project, like all of our projects to date, will be completely non-smoking. Smoking will be prohibited both inside units and in the interior and exterior common areas of the project. This will be outlined both

as an addendum to each lease, and also stated in the House Rules. Our Resident Services Coordinator will have materials on tobacco cessation programs available to residents.

The project incorporates smart growth, affordable housing, green building design, brownfield redevelopment, downtown revitalization, urban outdoor recreation, and alternative transportation.

Amenities

We propose to provide our residents with the following amenities:

- Heat and hot water included in rent
- Community room with kitchen
- Coin-operated laundry facility
- Wireless internet throughout the building at no extra charge;
- Resident Services Coordinator on staff;
- Telemedicine room

Resident Services Coordination

Our RSC's mission is to foster an environment in which elderly persons and people with disabilities can live independently and remain in their communities. As this project is proposed to be elderly, and with the Portland Shelter set-aside requirement, we are proposing to increase the number of hours an RSC is on the property. The Low Income Housing Tax Credit Program, as administered by MaineHousing, requires one (1) hour per week for every five (5) low-income units, or six (6) hours in this case. We would schedule an RSC for twelve (12) hours – double what is required. Our experience in other properties with a Homeless Preference has given us an appreciation for the staff levels needed onsite. This is reflected in our operating budget which is part of this application.

Transportation

The site is wonderfully located for service by public transportation. The METRO bus system, with scheduled service all over downtown Portland and connections to the neighboring cities, stops 2/10 of a mile from our site.

Photos and Renderings

We urge you to look at the set of photos of the site and "before" and "after" renderings, found immediately after this Executive Summary. They convey information about the project which simply cannot be expressed in narrative form. Thank you.

Parcel 6

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 10th day of OCT, 2017 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and Ross Y. Furman, an individual having a mailing address of Box Two, Portland, ME 04112 (hereinafter referred to as "Buyer"").

RECITALS

WHEREAS, the CITY is the owner of approximately .22 acres of land at 178 Kennebec Street, Portland, Maine as generally depicted on the plan attached hereto as Exhibit A (the "Premises") and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer, subject to all easements of record and any other existing easements burdening the Premises;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.

2. **CONSIDERATION**. The purchase price for the Premises shall be the lesser (the Purchase Price") of: Two Hundred and Fifty Thousand Dollars ($250,000.00) and the product of Twenty-Five Dollars ($25.00) times the number of square feet comprising the Premises as shown a pending and soon to be completed boundary survey of the Premises being done by or for the City (at its expense), subject to the following cost adjustments and conditions:

    a. Buyer shall deposit in the sum of Twenty-Five Thousand Dollars ($25,000.00) (the "Deposit") within 3 business days after the full execution of this Agreement that the parties agree will be held in escrow as of the date of this Agreement, in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be refundable only in accordance with the terms of this Agreement, including without limitation, the provisions of sections 4(f), 6, 7 and 10; and

    b. The Buyer shall pay the remainder of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City) at closing.

3. TITLE AND DUE DILIGENCE.

a. Due Diligence Period. Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is forty-five (45) days after the date of this Agreement (the "Due Diligence Period") to complete any survey, environmental review and title examinations.

b. Property Description. The property description contained in the deed will be a survey description based upon a survey plan (the "Premises") that will more specifically describe the property shown on Exhibit A hereto. The survey will be distributed to the parties hereto prior to expiration of the Due Diligence Period and the parties will agree on the property description prior to closing.

c. Financing Contingency. Buyer shall have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is forty-five (45) days after the date of this Agreement (the "Financing Period") to obtain commercially reasonable financing, and shall take timely and commercially reasonable steps to secure such financing.

d. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect marketability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.

e. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title, free and clear of all encumbrances except (i) easements described herein; (ii) easements for utilities servicing the property, (ii) City ordinances, and (iii) real estate taxes not yet due and payable. Further, Buyer acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

4. INSPECTIONS.

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and

property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within thirty (30) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax attributable to Buyer's one half shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.

6. **DEFAULT AND REMEDIES**. In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance, but at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.

7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver

the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

8. **PROPERTY SOLD "AS IS, WHERE IS."** Buyer acknowledges that Buyer has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein.

9. **ENVIRONMENTAL INDEMNIFICATION**. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. **CONDITIONS PRECEDENT TO CLOSING.** The City shall pursue removal of the restrictions limiting development of and burdening the Premises stated or described in the deed to the City from the State of Maine dated September 26, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23202, Page 38. In the event the City is unable to obtain such removal prior to the Closing Date, as defined below, the, unless Buyer elects to waive such restrictions in writing, the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The acceptance or recording of a deed to the Buyer of the Premises will be conclusive and final evidence of the consent by Buyer to the waiver or completion of all these conditions.

11. **CLOSING**. Time is of the essence in the performance of this agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is five months after the date of this Agreement (the "Closing Date"). At the Closing:

    a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.

    b. Buyer shall deliver the balance of the Purchase Price to the City by wire transfer; and

    c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.

    d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting to Closing and executing documents on behalf of Buyer are authorized to do so.

12. **BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.** Buyer agrees to commence development of the project depicted on the attached Plan (Exhibit B), as presented to the City's Economic Development Committee on July 19, 2017, and specifically including at least fifty dwelling units depicted therein, 35% of which will be market rate, and 65% of which shall affordable to households at or below 60% of the area median income (the "Project") within twelve (12) months after closing. If Buyer, its successors, assigns, or transferees fails to submit a complete site plan review application for the Project on the Property within 12 months after the closing, and construct the buildings which are part of the Project within thirty (30) months after closing, the City shall have the right, but not the obligation, to repurchase the Premises at the lesser of (1) the Purchase Price plus all construction and approval expenses incurred by Buyer, or successors, to that juncture, or (2) the fair market value of the Premises determined by an appraiser agreed upon by the parties. The provisions of this paragraph will survive closing, and the City's deed to Buyer shall include a reference to the City's option to repurchase the Premises, and/or a Declaration of Covenants, Conditions and Restrictions, and Option to Repurchase with the provisions of this paragraph with greater detail, executed before or at the time of Closing, shall be recorded in the Cumberland County Registry of Deeds. This right to repurchase shall be assignable by the City

13. **ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. **NON-WAIVER.** No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. **HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. **BINDING EFFECT**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. **GOVERNING LAW**. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. **NOTICE**. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:	City of Portland ATTN: City MANAGER 389 Congress Street Portland, ME 04101
With a copy to:	The Office of the Corporation Counsel at the same address.
FOR Buyer:	Ross Y. Furman Box Two Portland, ME 04112
With a copy to:	Timothy H. Norton, Esq. Kelly, Remmel & Zimmerman 53 Exchange Street

P.O. Box 597
Portland, ME 04112

20. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. **BROKERS.** City shall pay CBRE | The Boulos Company at closing a brokerage commission equal to five percent (5%) of the Purchase Price at closing. The CITY and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction other than CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. **RECITALS INCORPORATED BY REFERENCE**. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

23. **ASSIGNMENT.** Buyer may assign his rights and obligations under this Agreement to a limited liability company or other entity prior to Closing and the City shall acknowledge and consent to such assignment.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers or representatives, as of the day and year first written above.

City OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

WITNESS

ROSS Y. FURMAN

Approved as to Form:

Corporation Counsel's Office

Parcel Map

1	55 Portland Street
2	44 Hanover Street
3	56 Parris Street
4	82 Hanover Street
5	65 Hanover Street
6	178 Kennebec Street

EXHIBIT A

EXHIBIT B

furman place on kennebec
PROPOSED BRATTLE, KENNEBEC
& PARRIS STREET DEVELOPMENT
PORTLAND, MAINE
ONE WAY
Kennebec

THE SZANTON COMPANY
An affiliate of the Mondel Companies

The Szanton Company

The mission of The Szanton Company (TSC) is to create comfortable, attractive, and affordable rental housing. We do this by:

- Creating beautiful apartments of high quality in locations in or near downtowns, adding vitality to our cities and towns;
- Serving people with diverse incomes;
- Incorporating the highest standards of environmental responsibility in our properties, thereby minimizing their impact on the earth's environment;
- Creating amenities for our residents which enhance their quality of life;
- Building properties which provide a consistent financial return to their owners, thus ensuring their stability for residents, lenders, investors, and neighborhoods.

We have extensive experience developing multifamily rental properties in Maine and New Hampshire, including seven existing properties totaling 334 units. Three of these are in Portland: Casco Terrace at 41 State Street; Walker Terrace at 1 Walker Street and 53 Danforth Street. We have two additional properties in the development pipeline, a 59-unit project under construction in Bath, Maine, and a 63-unit project in pre-development in Lewiston, Maine.

We have partnered with Ross Furman to provide housing on land he owns on the block bordered by Kennebec, Parris, Brattle and Lancaster Streets.

We understand that the last piece of the block (approximately 10,000 square feet closest to and abutting Kennebec St.) is subject to the City's RFP process.

Project Details

We are working with Ross Furman's team to incorporate housing into their multi-phase development of the block. Included in these materials is a site plan showing the block and the three phases of development. Conceptually, the first phase would include the area closest to Kennebec Street. It would include ground-level retail and/or artist studio space with approximately 50 units of housing on the upper floors. The housing would be rental, a mix of studio, 1-, 2-, and 3-bedroom apartments. We've included a concept floor-plan of Phase One.

The site has some unique advantages for residential development:

- The City has identified the Bay Side neighborhood as a priority for redevelopment. Kennebec Street is a prominent street in Bayside, and street-level retail will dovetail well with surrounding buildings.
- A mixed-use residential/retail building will bring new residents to live, work, and shop in Bayside, reinforcing the urban fabric and adding new vitality to the core of the City.
- The site is within walking distance of a variety of services and destinations for daily living (e.g., banks, library, schools, Deering Oaks, etc.) as well as employers and public transportation.

We expect the income mix targeted for this development will be 35% market rate, and 65% affordable (aimed at those at or below 60% of the area median income.)

The residents are intended to mirror the mix of people, incomes, and occupations in Portland. We have seven other properties with similar unit mixes and we know that tenants in income-restricted units will include people with jobs at the lower end of the wage scale, such as nurse's aides, entry-level workers in local businesses, clerks, artists, etc. The market-rate units are likely to have attorneys, doctors, or other urban professionals as tenants.

Management

SACO FALLS MANAGEMENT

We have an in-house property management company called Saco Falls Management (SFM). Our staff is dedicated to making our residents the central focus of our organization and creating a rental experience which far exceeds our residents' expectations, both in level of upkeep of properties and responsiveness to their needs.

For more information on our management company, please visit www.sacofallsmanagement.com.

Gorham
SAVINGS BANK

April 26, 2017

Mr. Nate Stevens
CBRE/The Boulos Company
One Canal Plaza
Portland, ME 04101

RE: Ross Furman: Portland Public Works property

Dear Nate:

I am writing to inform you that Gorham Savings Bank has been doing business with Ross Furman since September of 2006. He has handled his banking relationship in a fully satisfactory manner. Based on Ross' history with the Bank, he has exhibited the financial capacity to complete the proposed purchase of the Portland Public Works property.

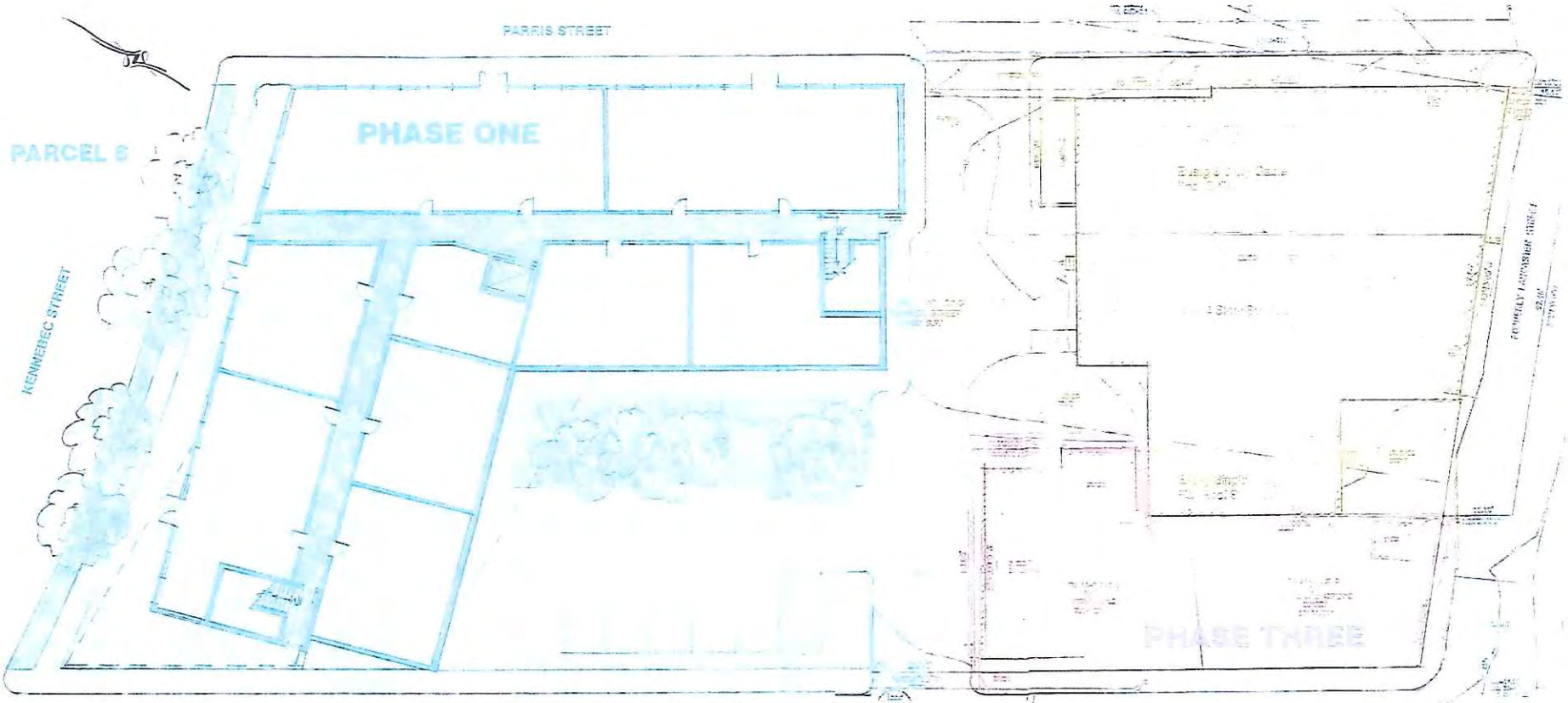
If you should need further information, please call me at 222-1498.

Sincerely,

Frederick G. Proctor
Vice President

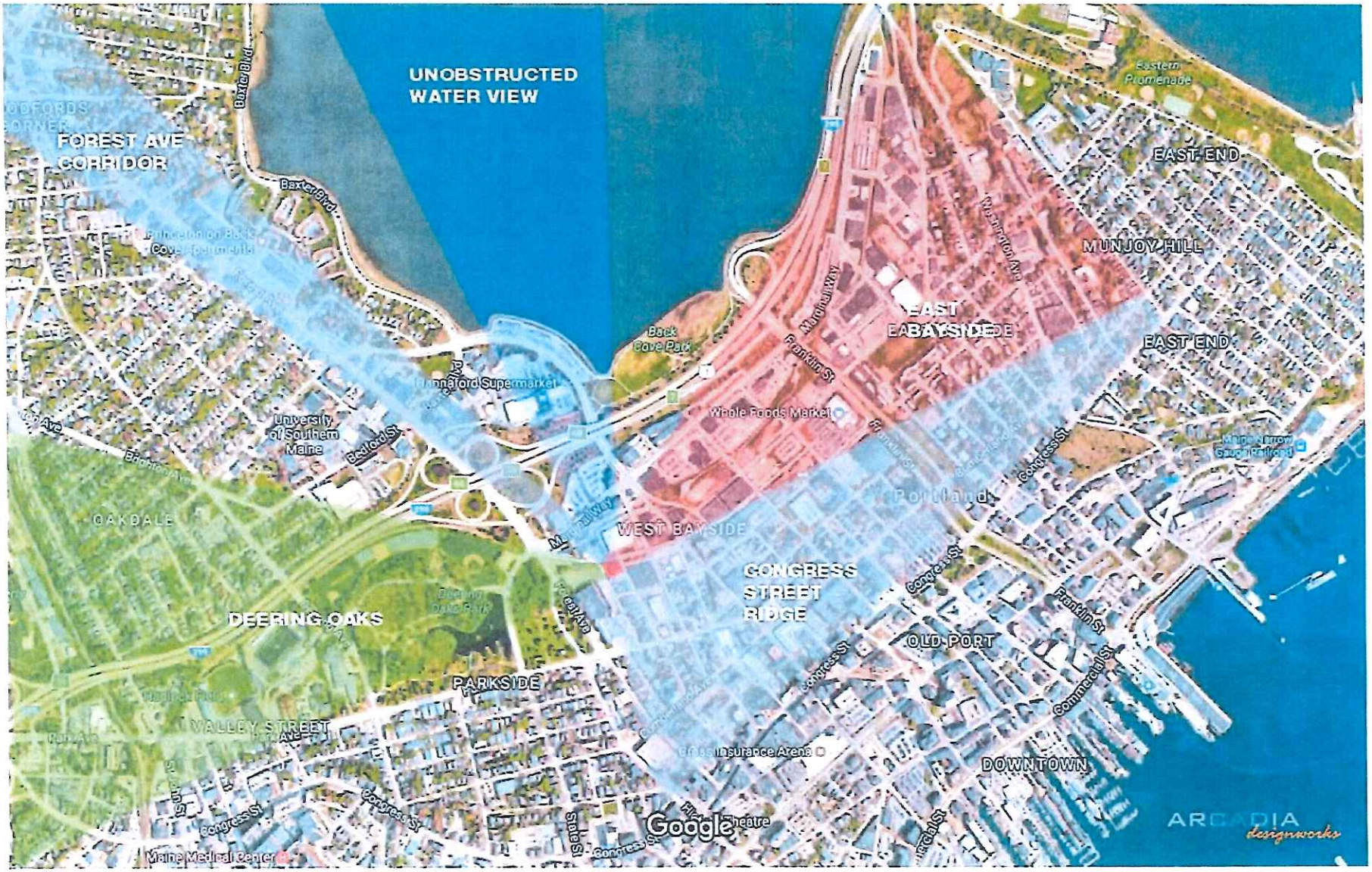
Cc: Ross Furman

10 Wentworth Drive, Gorham, ME 04038 • Tel. (207) 839-3342
Customer Service Center (207) 839-4796 • www.gorhamsavingsbank.com

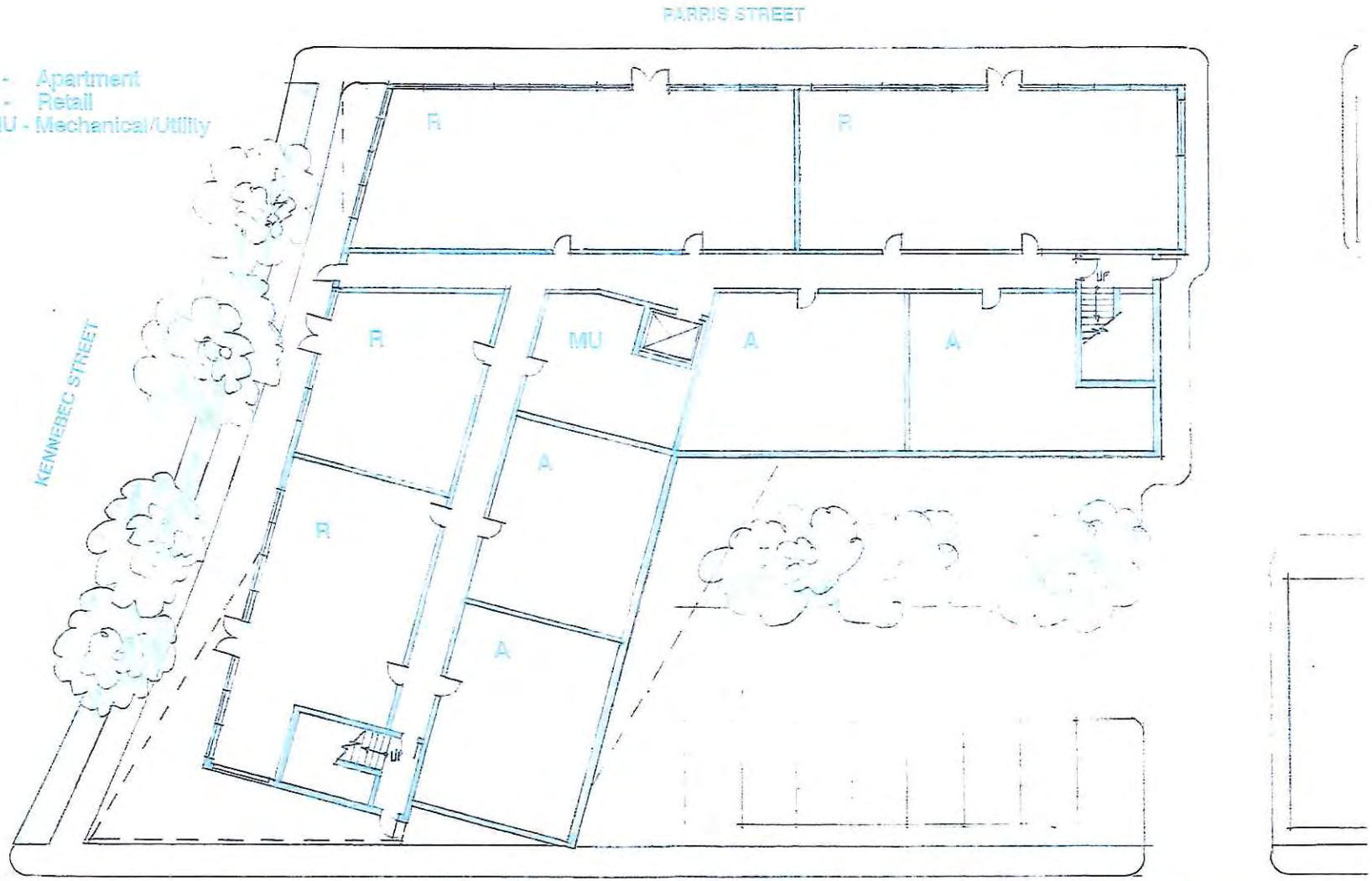


BRATTLE/KENNEBEC/PARRIS STREET DEVELOPMENT

PHASED DEVELOPMENT SITE PLAN - APPROX: 42,120 GSF ARCADIA


UNOBSTRUCTED
WATER VIEW
FOREST AVE
CORRIDOR
Baxter Blvd
Back Cove Park
Hannaford Supermarket
University of Southern Maine
Bedford St
Whole Foods Market
Franklin St
Marginal Way
EAST BAYSIDE
EAST END
MUNJOY HILL
Eastern Promenade
Portland
Congress St
OAKDALE
WEST BAYSIDE
CONGRESS
STREET
RIDGE
DEERING OAKS
OLD PORT
PARKSIDE
VALLEY STREET
Commercial St
Cross Insurance Arena
DOWNTOWN
Google
Maine Medical Center
ARCADIA
designworks

A - Apartment
R - Retail
MU - Mechanical/Utility



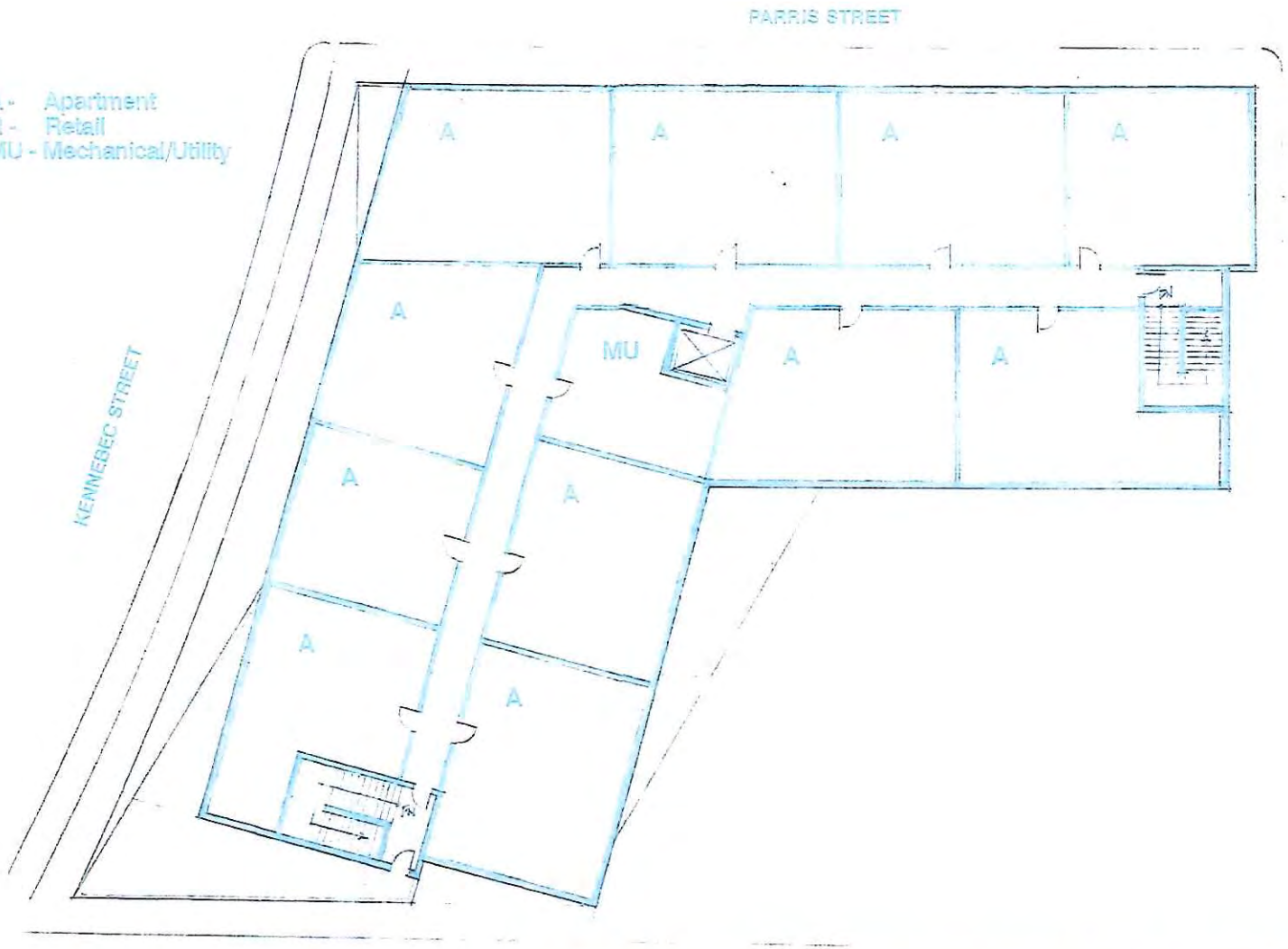
furman place on kennebec

BRATTLE/KENNEBEC/PARRIS STREET DEVELOPMENT

BUILDING CONCEPT - GROUND LEVEL PLAN 13,088 GSF

ARCADIA
08-2017

A - Apartment
R - Retail
MU - Mechanical/Utility



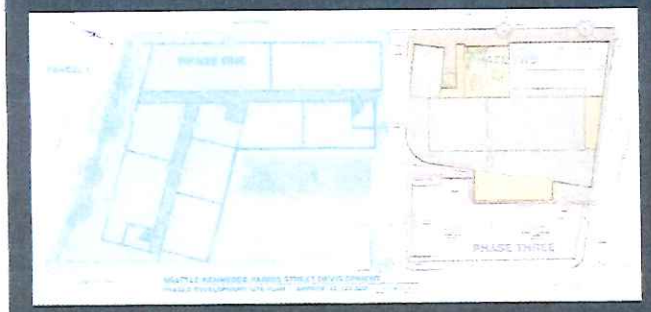
furman place on kennebec

BRATTLE/KENNEBEC/PARRIS STREET DEVELOPMENT

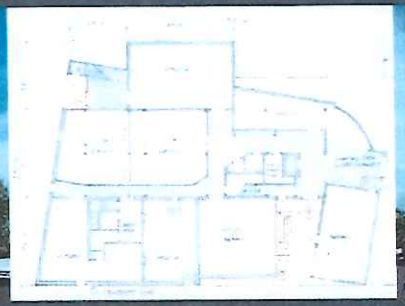
BUILDING CONCEPT - UPPER LEVEL PLAN 13,098 GSF

ARCADIA 09-2017

THE SZANTON COMPANY
An affiliate of the Monks Compan
KENNEBECBLO
furman place on kennebec
ARCADIA



NEW SYSTEMS - SOUTHEAST VIEW



NEW SYSTEMS - NORTHWEST VIEW

FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT is made as of the 13th day of March, 2018, by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine ("Seller") and ROSS Y. FURMAN, an individual having a mailing address of Box Two, Portland, Maine 04112 (the "Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated October 10, 2017 (the "Agreement") with respect to certain real property located at 178 Kennebec Street, Portland, Maine; and

WHEREAS, Seller and Buyer wish to amend the Agreement as provided herein:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting from section 11 of the Agreement the words "the day that is five months after the date of this Agreement" and replacing therefore the words "April 13, 2018," meaning and intended hereby to fix the Closing Date under the Agreement to on or before April 13, 2018.

2. Except as specifically amended hereby, the Agreement shall remain in full force and effect, and the parties hereto ratify the terms and conditions of the Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

CITY OF PORTLAND

Sonia Bean

By:

Jon P. Jennings

Its City Manager

WITNESS:

Ryan McClyr

By: Rosy Furman
ROSSY FURMAN

Approved as to Form:
City Corporation Counsel's Office

2 = 2

SECOND AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

THIS SECOND AMENDMENT is made as of the 12th day of April, 2018, by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine ("Seller") and ROSS Y. FURMAN, an individual having a mailing address of Box Two, Portland, Maine 04112 (the "Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated October 10, 2017 as amended by a First Amendment to Purchase and Sale Agreement dated March 13, 2018 (collectively, the "Agreement"), with respect to certain real property located at 178 Kennebec Street, Portland, Maine; and

WHEREAS, Seller and Buyer wish to amend the Agreement as provided herein:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting from section 11 of the Agreement the words "the day that is five months after the date of this Agreement" and replacing therefore the words "March 31, 2019," meaning and intended hereby to fix the Closing Date under the Agreement to on or before March 31, 2019.

2. Except as specifically amended hereby, the Agreement shall remain in full force and effect, and the parties hereto ratify the terms and conditions of the Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their duly authorized representatives or officers, as of the date first written above.

WITNESS:

CITY OF PORTLAND

By: _____

Jon P. Jennings
Its City Manager

WITNESS:

By: _____

Ross Y. Furman

_____

Approved as to Form:
City Corporation Counsel's Office

Order 13-18/19
Tab 18 7-16-18

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER OF DISCONTINUANCE OF A PUBLIC EASEMENT ON LANCASTER STREET

ORDERED, that the discontinuance of a public access easement located on a parcel of land formerly comprising a portion of Lancaster Street, which portion was discontinued as a public street by order of the City Council on June 15, 1981 is hereby approved. Said public easement is discontinued for a distance of approximately two hundred and one (201) feet beginning at Hanover Street and ending at Parris Street. The public easement begins at the point of intersection of the centerline of a strip of land formerly comprising a portion of Lancaster Street with the westerly sideline of Hanover Street at a point on said westerly sideline of Hanover Street 461.67 feet northerly along said sideline from the northerly sideline of Portland Street; thence a distance of 201.30 feet to a point on the easterly sideline of Parris Street 458.81 feet northerly along said sideline from the northerly sideline of Portland Street; Said public easement being thirty (30) feet in width and lying fifteen (15) feet on either side of the above described centerline as shown more particularly on a plan titled "Lancaster Street Extension" on file at the City Engineer's Archives as Plan 182/8; and

BE IT FURTHER ORDERED, that the right to enter into this portion of Lancaster Street for the purposes of maintenance, repair or replacement of the existing sewer known as the North Side Interceptor Sewer is hereby reserved unto the City of Portland until such time said sewer is abandoned or discontinued; and

BE IT FURTHER ORDERED, that the sole abutting owner is the City of Portland, Maine which is the petitioner for such discontinuance and no damages shall be paid to any such abutter.

AMENDMENT TO ORDER 264-17/18
PREPARED BY CORPORATION COUNSEL
FOR MAYOR STRIMLING
RE: MAINTAINING PEDESTRIAN EASEMENT

ORDER OF DISCONTINUANCE OF A PUBLIC EASEMENT ON LANCASTER STREET

ORDERED, that the discontinuance of vehicular access rights along a -public easement located on a parcel of land formerly comprising a portion of Lancaster Street, which portion was discontinued as a public street by order of the City Council on June 15, 1981 is hereby approved. Said public ~~vehicle~~ easement with respect only to vehicular access is discontinued for a distance of approximately two hundred and one (201) feet beginning at Hanover Street and ending at Parris Street. The public easement begins at the point of intersection of the centerline of a strip of land formerly comprising a portion of Lancaster Street with the westerly sideline of Hanover Street at a point on said westerly sideline of Hanover Street 461.67 feet northerly along said sideline from the northerly sideline of Portland Street; thence a distance of 201.30 feet to a point on the easterly sideline of Parris Street 458.81 feet northerly along said sideline from the northerly sideline of Portland Street; Said public easement being thirty (30) feet in width and lying fifteen (15) feet on either side of the above described centerline as shown more particularly on a plan titled "Lancaster Street Extension" on file at the City Engineer's Archives as Plan 182/8; and

BE IT FURTHER ORDERED, the City expressly reserves public pedestrian rights along the public easement as described above.

BE IT FURTHER ORDERED, that the right to enter into this portion of Lancaster Street for the purposes of maintenance, repair or replacement of the existing sewer known as the North Side Interceptor Sewer is hereby reserved unto the City of Portland until such time said sewer is abandoned or discontinued; and

BE IT FURTHER ORDERED, that the sole abutting owner is the City of Portland, Maine which is the petitioner for such discontinuance and no damages shall be paid to any such abutter.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: **Mayor and Portland City Council**

FROM: **Greg Mitchell, Economic Development Director**

DATE: **June 6, 2018**

SUBJECT: **Authorizing Discontinuance of Public Easement and Retention of Utility Easement along Lancaster Street between Parris Street and Hanover Street on the 82 Hanover Street Property**

SPONSOR: **Economic Development Committee, Councilor Justin Costa/Chair; Meeting held June 5, 2018, and the vote was unanimous (3-0).**

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: June 18, 2018 Final Action: July 16, 2018

Can action be taken at a later date: ____ Yes __X__ No (If no why not?) Time-is-of-the-essence for the Purchaser of 82 Hanover Street to close on the property sale.

PRESENTATION: Greg Mitchell, Economic Development Director/5 Minutes

I. SUMMARY

The Planning Board approved the 82 Hanover Street Site Plan on May 17, 2018. The Site Plan proposed certain improvements to be located in the Lancaster Street right of way (located between Parris and Hanover Streets), which was discontinued as a public street in the 1980s, but still includes a public easement for vehicular and pedestrian access as well as a utility easement. The Planning Board approved the site plan (copy attached), conditioning the proposed improvements in the Lancaster street right-of-way on the discontinuance of the easement and the provision of a 10-foot wide public pedestrian easement to provide midblock pedestrian permeability. The 10-foot wide pedestrian easement will be located on the 82 and 44 Hanover Street property line – 5 feet on 82 Hanover Street and 5 feet on 44 Hanover Street. It is proposed that the City will reserve these easements when it sells the parcels. See attached drawing. The 30-foot wide utility easement will be retained and will restrict development activity within the utility corridor.

II. AGENDA DESCRIPTION

The Economic Development Committee met on June 5, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

On October 2, 2017, the City Council approved the Purchase and Sale Agreement with Tom Watson of Watson & Co., LLC ("Purchaser") for its purchase of approximately 1.25 acres of land located at 82 Hanover Street for the purchase price of $2,350,000. The Purchase and Sale Agreement is included in the agenda backup.

The Purchaser then submitted a Site Plan application to the Portland Planning Board, which was approved on May 17, 2018. All site plan improvements proposed for the Lancaster Street right-of-way were conditioned upon the discontinuance of the public easement and the provision of a 10-foot wide public pedestrian easement to provide midblock permeability. The 10-foot wide pedestrian easement will be located on the 82 and 44 Hanover Street property line – 5 feet on 82 Hanover Street and 5 feet on 44 Hanover Street. The 30-foot wide utility easement will be retained and will restrict development activity within the utility corridor.

The approved Site Plan and project includes adaptive reuse of the 1940 Department of Public Works building with retail, restaurant, bar/eatery, brewery, fitness center, office space, and the following improvements: 39 newly paved parking spaces with landscaping, new concrete sidewalks, street trees, and lights along Parris and Hanover Streets. The site plan also includes outdoor seating areas within the Lancaster Street right-of-way and a 10' wide public pedestrian easement to provide midblock permeability.

On June 18, the City Council voted to approve the Order Proposing the Discontinuance of a Public Easement on Lancaster Street, which is found in the back up material. That order was posted in the Clerk's Office. The purpose of that order was simply to propose the discontinuance. At the vote on to propose the discontinuance and to post the notice in the Clerk's office, the Council took public comment on the proposal. At tonight's meeting, the City Council will vote on the Order of Discontinuance of a Public Easement on Lancaster Street. That vote, if in the affirmative, will finally approve the discontinuance of the public easement. Public comment is not required but is, of course, permitted at the Council's discretion. Five affirmative votes are required for passage.

III. BACKGROUND

It has been the long-term goal to sell this and other Public Works Bayside properties per the Year 2000 Bayside Vision. To support these property sales, the City Council approved the acquisition of

property along Canco Road which has been and continues to be redeveloped to support the relocation of Public Works operations from Bayside and other City Departments.

The subject property has been used for Public Works plowing operations.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result would be the discontinuance of vehicular and pedestrian access along this portion of the former Lancaster Street in order to allow for the development of the property as proposed by the developer. In order to effectuate the conditions placed on the site plan approval, a 10' pedestrian easement is also required. Because the City currently owns the property and can simply reserve those easements when it sells each parcel, it is proposed that the P&S Agreements be amended by agreement of the parties to authorize that reservation. The discontinuance and new pedestrian easement will help facilitate the sale of this property to support mixed use development in Bayside, while continuing to provide a pedestrian easement in this area. It also supports the Council's long-term goal to sell Public Works Bayside properties to support Public Works relocation out of Bayside.

V. FINANCIAL IMPACT

There is no financial impact on amending the right-of-way easement.

VI. STAFF ANALYSIS AND BACKGROUND

Staff supports discontinuing the public easement and retaining the existing utility easement. Recommended future action includes amending the Purchase and Sale Agreements to retain two 5' pedestrian easements over 82 and 44 Hanover Street in order to ensure ongoing pedestrian permeability.

VII. RECOMMENDATION

The EDC voted 3-0, pursuant to 23 M.R.S.A. 3026-A, to recommend approval to the City Council to discontinue the public easement using the following process:

City Council Process

Discuss the proposed public easement at its public meeting on June 18, 2018 and vote to order the discontinuance of a public easement as outlined above. Because the discontinuance is only of the public easement, there are no current abutters other than the City, and this is being done at the request of the purchaser, no damages are needed.

If the Council so decides, an Order of Discontinuance must be voted on and then posted in the City Clerk's office for no fewer than 10 business days. Proposed Motions accomplishing this will be included in the back up materials.

Thereafter, on July 16, 2018 (which is more than the required 10 business days from the vote on the 18th), the Council would hold a public hearing, with opportunity for public comment, on the Order of

Discontinuance. Staff further recommends that, at its July 16 public hearing, the Council authorize the amendment of the purchase and sale agreements for 82 and 44 Hanover Streets to reserve 5' wide pedestrian easements along Lancaster Street as depicted on the attached plan. If the Council approves the Order of Discontinuance, the Clerk will record a certificate in the Cumberland County Registry of Deeds. The discontinuance will become effective on the day the certificate is recorded

VIII. LIST ATTACHMENTS

82 Hanover Street Planning Board approved site plan.

Drawing No. EX-01 showing the portion of the Lancaster Street Easement (between Parris and Hanover Street) and the proposed location for the new pedestrian easement.

82 Hanover Street Purchase and Sale Agreement.

SPACE AND BULK STANDARDS

B-7	REQUIRED	EXISTING	PROPOSED
M LOT SIZE	NONE	57,958 SF	57,958 SF
M STREET FRONTAGE	NONE	788 FT.	788 FT.
M FRONT YARD SETBACK	NONE	82 FT	82 FT
M FRONT STREET SETBACK	10 FT. *	82 FT	82 FT
M REAR YARD SETBACK	NONE	36.9 FT.	36.9 FT.
M SIDE YARD SETBACK	NONE	0.34 FT	0.34 FT
M LENGTH OF BUILDING WALL STREET FRONTAGE	1. MIN. 75% OF LOT STREET FRONTAGE WITHIN 10' OF STREET = 570', OR 2. MIN. 60% OF BUILDING PERIMETER WITHIN 10 OF STREET = 199'	KENNEBEC =211 FT PARRIS = 200.0 FT HANOVER = 184 FT	KENNEBEC = 211 FT PARRIS = 200.0 FT HANOVER = 184 FT
MAX LOT COVERAGE	100%	87%	87%
MIN RESIDENTIAL DENSITY	NONE	N/A	N/A
M BUILDING HEIGHT	103 FT.	27 FT.	27 FT.
E PARKING	82 SPACES **	48	39
E PARKING	2 PER 10 REQUIRED VEHICLES SPACES = 16 SPACES	0	16

T SETBACK CAN BE DECREASED IF ALL CONDITIONS LISTED IN SECTION 14-298, C. 2. a. ARE MET
PARKING REQUIREMENTS SUMMARY TABLE

PARKING REQUIREMENTS

IT	SQUARE-FEET	USER TYPE	BULK STORAGE OR FOOD PREP AREA	PARKING REQUIREMENT (EXCLUDING BULK STORAGE AND FOOD PREP AREAS)	REQUIRED SPACES
1	2,382	BAR/EATERY	952.8 SF	1 SPACE/150 SF	9.52
2	3,108	RESTAURANT	1,243.8 SF	1 SPACE/150 SF	12.44
3	5,857	INDUSTRIAL (PRODUCTION)	0 SF	1 SPACE/1,000 SF IN EXCESS OF 3,000 SF	2.86
4	2,194	RETAIL	1,074.8 SF	1 SPACE/200 SF IN EXCESS OF 2,000 SF	0
5	1,358	COFFEE SHOP	543.4 SF	1 SPACE/150 SF	3.62
6	1,425	RETAIL	1,282.5 SF	1 SPACE/200 SF IN EXCESS OF 200 SF	0
7	1,987	ART GALLERY	1,428.3 SF	1 SPACE/200 SF IN EXCESS OF 2,000 SF	0
8	1,883	RETAIL	1,784.7 SF	1 SPACE/200 SF IN EXCESS OF 2,000 SF	0
9	2,062	RETAIL	1,855.8 SF	1 SPACE/200 SF IN EXCESS OF 2,000 SF	0
10	1,795	BAR/EATERY	718.4 SF	1 SPACE/150 SF	7.18
11	2,813	FITNESS CENTER *	0 SF	1 SPACE/400 SF	7.03
12	8,531	BREWERY	8,531 SF	1 SPACE/150 SF	56.87
ICE 1	1,860	PORT PROPERTIES	0 SF	1 SPACE/400 SF	4.65
ICE 2	1,869	OFFICE USER	0 SF	1 SPACE/400 SF	4.67
					TOTAL = 81 SPACES

BE CONFIRMED BY CITY PLANNING

PLANT SCHEDULE

B	BOTANICAL NAME	COMMON NAME	QTY (TBD)	SIZE
	TREES			
CC	CARPINUS CAROLINIANA	AMERICAN HORNBEAM	4	2" CAL. BB
AR	ACER RUBRUM	ARMSTRONG RED MAPLE	4	2" CAL. BB
	SHRUBS			
CA	CLETHRA ALNIFOLIA	SUMMERSWEET	6	3 GAL
MG	MYRICA GALE	SWEET GALE	7	3 GAL
	PERENNIALS/GROUNDCOVER			
EC	ECHINACEA*	CONEFLOWER	45	1 GAL.
CA	CALAMAGROSTIS ACUTIFLORA 'KARL FORESTER'	KARL FORESTER	5	1 GAL
	*PROVIDE THREE DIFFERENT VARITIES/COLORS OF ECHINACEA			

TIONAL NOTES:

INTERIOR STRIPING AS INDICATED ON SITE PLAN SHALL BE 4" WIDE STRIPING SHALL BE WHITE UNLESS OTHERWISE NOTED.

EXISTING ASPHALT TO BE REMOVED SHALL BE STRIPPED AND PROPERLY DISPOSED OF OFFSITE.

CURB TO BE REMOVED, STOCKPILED AND RESET IN ACCORDANCE WITH DETAIL. BROKEN CURB SHALL BE PROPERLY DISPOSED OF AND SHALL BE REPLACED AT THE CONTRACTOR'S EXPENSE.

CONTRACTOR SHALL PLACE NEW CURBING IN LOCATIONS AS NOTED WITHOUT EXISTING CURBING, IN ACCORDANCE WITH DETAIL FOR PURPOSES OF BIDDING. CONTRACTOR SHALL NOTE THAT ALL TIPDOWNS AND SIDEWALKS ALONG PARRIS AND HANOVER SHALL BE RECONSTRUCTED IN ACCORDANCE WITH DETAIL, AND THAT EXISTING TIPDOWNS MAY NOT CURRENTLY MEET CITY OF PORTLAND STANDARDS.

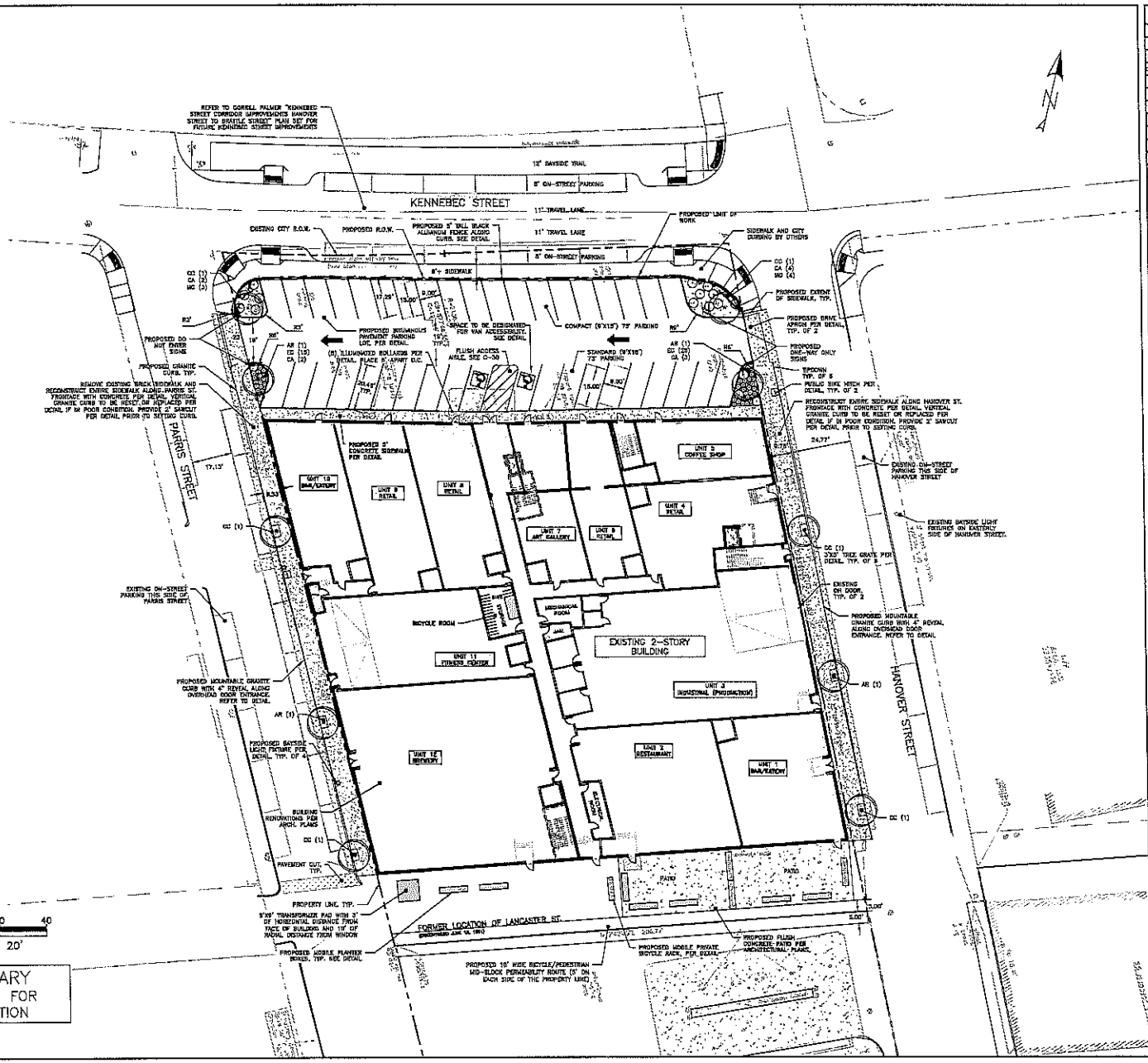
ALL PAVEMENT JOINTS SHALL BE SAWCUT AND TACK COATED PRIOR TO PAVING TO PROVIDE A DURABLE AND UNIFORM JOINT.

PARKING SUMMARY

PARKING DIMENSION	# PARKING SPACES
STANDARD (9'X18')	16
COMPACT (8'X15')	19
ADA (8'X18')	2
TOTAL SPACES	39

LEGEND

HATCH STYLE	ASSOCIATED AREAS
	BRICK
	GREEN SPACE
	CONCRETE



PRELIMINARY
NOT ISSUED FOR CONSTRUCTION

ISSUED FOR	BY	DATE
CITY APP.	WHS	3/20/01
SITE UPDATES	WHS	4/10/01
COMMENT RESPONSE	WHS	4/20/01
COMMENT RESPONSE 2	WHS	5/21/01
STAFF COMMENTS	WHS	6/11/01

DRAWING TITLE: SITE & LANDSCAPE PLAN

PROJECT NAME: 82 HANOVER STREET REDEVELOPMENT

CLIENT: TOM WATSON & CO., LLC
PORTLAND, ME

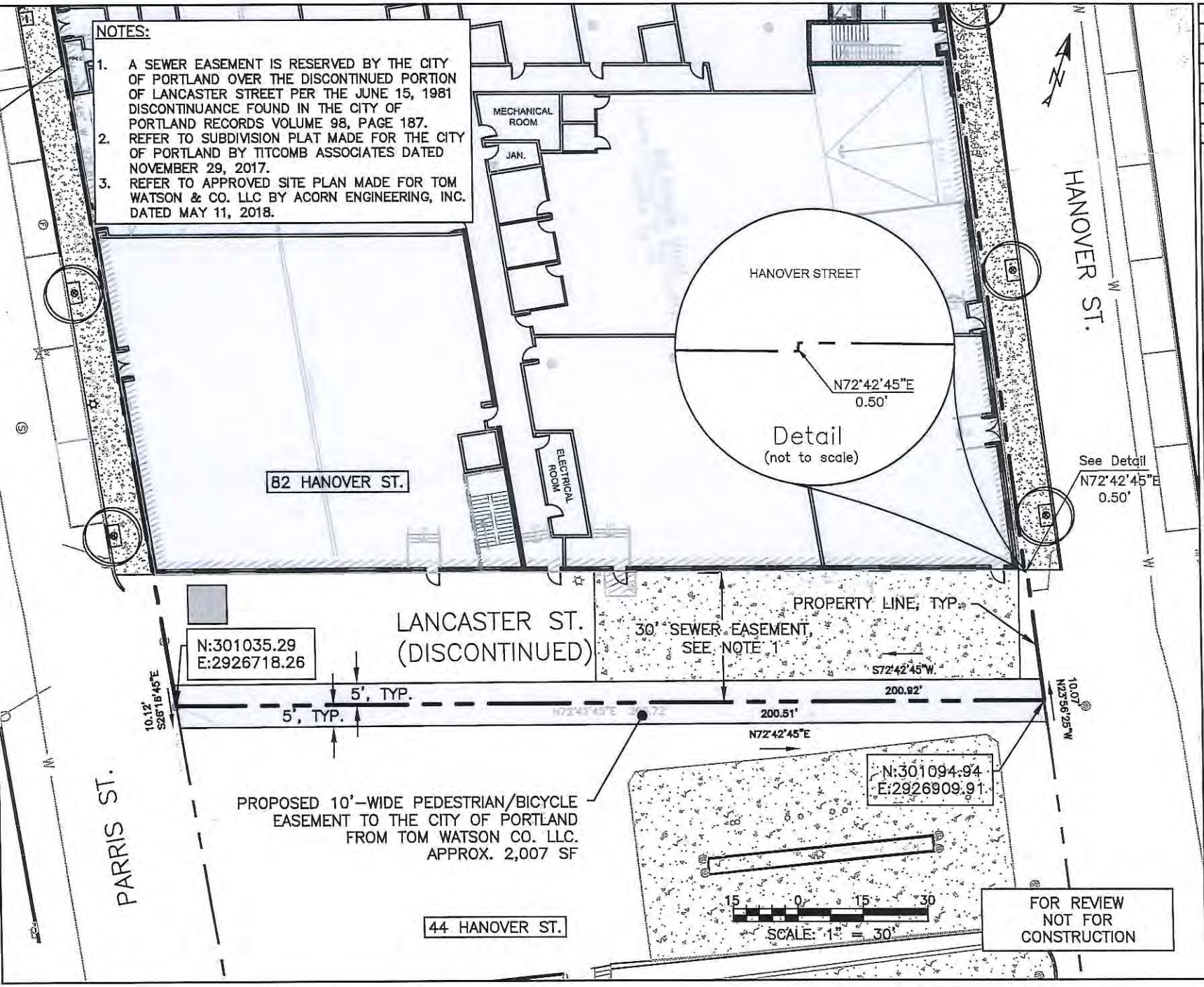
ACORN ENGINEERING, INC.
134 DUNSTER ST. PORTLAND, MAINE 04101
(207) 772-2891

FILE:	1083_CIVIL
JN:	1083
SCALE:	1"=20'
DESIGNED BY:	WHS
DRAWN BY:	SJL
CHECKED BY:	WHS

DRAWING NO.
C-10

NOTES:

1. A SEWER EASEMENT IS RESERVED BY THE CITY OF PORTLAND OVER THE DISCONTINUED PORTION OF LANCASTER STREET PER THE JUNE 15, 1981 DISCONTINUANCE FOUND IN THE CITY OF PORTLAND RECORDS VOLUME 98, PAGE 187.
2. REFER TO SUBDIVISION PLAT MADE FOR THE CITY OF PORTLAND BY TITCOMB ASSOCIATES DATED NOVEMBER 29, 2017.
3. REFER TO APPROVED SITE PLAN MADE FOR TOM WATSON & CO. LLC BY ACORN ENGINEERING, INC. DATED MAY 11, 2018.



ISSUED FOR	BY	DATE
CITY REVIEW	WHS	5/29/18

REV.	DATE

DRAWING NAME: LANCASTER PEDESTRIAN EASEMENT

PROJECT NAME: 82 HANOVER REDEVELOPMENT

CLIENT: TOM WATSON & CO. LLC

ACORN ENGINEERING, INC.

ACORN ENGINEERING, INC. P.O. BOX 3372 PORTLAND, MAINE 04104 (207) 775-2655

FILE:	1093_CIVIL
DATE:	5/29/2018
JN:	1093
SCALE:	1":30'
DESIGN BY:	SJL
DRAWN BY:	SJL
CHECKED BY:	WHS

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM ACORN ENGINEERING, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO ACORN ENGINEERING, INC.

DRAWING NO.

EX-01

Parcel 4

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 24th day of October, 2017 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and Tom Watson & Co., LLC, or assigns, a Maine limited liability company having a mailing address of 104 Grant Street, Portland, ME 04101 (hereinafter referred to as "Buyer").

RECITALS

WHEREAS, the CITY is the owner of approximately 1.25 acres of land at or near 82 Hanover Street, Portland, Maine as generally depicted as Parcel 4 on the plan attached hereto as Exhibit A together with all buildings and other improvements located thereon (the "Premises") and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE AND EFFECTIVE DATE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land and buildings located at or about 82 Hanover Street. This Agreement shall become effective following the occurrence of both of the following: approval of this Agreement by the City Council of the City in substantially this form, and the City Manager's execution of this Agreement. The first calendar day after which both such events have occurred is hereinafter referred to as the "Effective Date". All deadlines and time periods set forth in this Agreement, including, without limitation, the Due Diligence Period, Financing Period and Closing Date shall be computed from the Effective Date.

2. **CONSIDERATION**. The purchase price for the Premises shall be Two Million Three Hundred Fifty Thousand ($2,350,000) (the "Purchase Price"), subject to the following cost adjustments and conditions:

    a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars ($25,000.00) (the "Deposit") within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and

b. The Buyer shall pay the remainder of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City) at closing.

3. TITLE AND DUE DILIGENCE.

a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Eastern Standard Time on the day that is sixty (60) days after the Effective Date of this Agreement (the "Due Diligence Period") to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.

b. Property Description. The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the "Survey") which will more specifically describe the property shown on Exhibit A hereto (the "Premises Description") in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close.

c. Financing Contingency. Buyer shall have from the Effective Date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is sixty (60) days after the Effective Date of this Agreement (the "Financing Period") to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the same date as the expiration of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

d. Title, Survey and Environmental Objections. In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period will be extended to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.

e. Option to Cure. In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a city-wide PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement

and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

4. **INSPECTIONS**.

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City's request.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or

take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion Buyer may terminate this Agreement. If Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Buyer's one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.

6. **DEFAULT AND REMEDIES**. In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like, but Buyer at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.

7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.

8. **PROPERTY SOLD "AS IS, WHERE IS**." Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make

no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues (other than City's agreement to obtain subdivision approval as set forth in Paragraph 10 of this Agreement) or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein except as expressly set forth herein.

9. **ENVIRONMENTAL INDEMNIFICATION**. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. **CONDITIONS PRECEDENT TO CLOSING.** It is a condition precedent to Closing that:

    a. The City shall obtain in form reasonably acceptable to Buyer the removal of the restrictions limiting development of or use of the Premises or otherwise burdening the Premises (hereinafter the "Deed Restrictions") stated or described in the deed to the City from the State of Maine dated September 26, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23202, Page 38.

    b. The City shall obtain Subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree, such Subdivision approval is not required (hereinafter the "Subdivision Approval").

In the event the City is unable to obtain Subdivision Approval and the removal of all the above Deed Restrictions prior to the Closing Date, as defined below, then the Buyer may either (1) extend the Closing Date set forth in Paragraph 11 by a time period not to exceed one hundred eighty (180) days to permit the removal of the Deed Restrictions and the approvals to be obtained or (2) elect to terminate this Agreement either prior to the scheduled Closing Date or prior to the expiration of any extension period based on an

extension as provided above. In the event Buyer shall elect to so extend the Closing Date, the City agrees to pursue the removal of the Deed Restrictions and Subdivision Approval.

If Buyer shall elect to terminate this Agreement then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement, unless the parties mutually agree to extend this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The delivery to Buyer, and acceptance and recording by the Buyer of a deed to the Buyer of the Premises, will evidence conclusive and final consent by the Buyer to the waiver or completion of all these conditions.

11. CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is the later of five months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the City to resolve any title, Survey or environmental objections; or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the "Closing Date"). At the Closing:

a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good, and insurable title (at standard rates) to the Premises, free and clear of all liens and encumbrances except as otherwise set forth herein.

b. Buyer shall deliver the balance of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City); and

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners and lenders title insurance in form reasonably acceptable to Buyer and to Buyer's lender.

d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Buyer are authorized to do so.

12. BUYER'S POST CLOSING OBLIGATIONS; ESCROW AGREEMENT. Buyer agrees as follows:

a. Buyer agrees at Closing to deposit $115,000.00 to be held in escrow (the "Escrow Account") pursuant to an escrow agreement in form mutually acceptable to Buyer and City with a mutually acceptable escrow agent.

b. Buyer agrees to commence development of the residential project generally depicted on the plans that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on July 19, 2017, and which shall specifically include at least twenty-three (23) new dwelling units at Buyer's property at 104 Grant Street (The "Residential Project"), within twelve (12) months after closing; provided, however, that Buyer shall be entitled to modify the Residential Project by increasing the number of residential units, modifying the size and layout of such units, or minor, non-substantive changes. Buyer shall also be entitled to modify the Residential Project in a manner deemed reasonably necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval; provided, however, that such modifications shall not reduce the number of new dwelling units below 23 unless the City's land use ordinance only permits a smaller number without material modifications to the Residential Project as proposed, in which case the Residential Project shall include the maximum number of dwelling units allowed at 104 Grant Street without material modifications to the Residential Project as proposed.

c. Buyer's commencement of the Residential Project development shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an "Application") for the Residential Project within 12 months after the Closing under this Agreement.

d. Buyer agrees to commence development of a commercial project at the Premises in substantially the form depicted on the plans that are attached hereto as Exhibit C and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on July 19, 2017 (the "Commercial Project"), within twelve (12) months after closing. the Commercial Project shall be deemed to be "substantially in the form depicted on the plan attached as Exhibit C" if it proposes to include (or is constructed to include) a) multiple commercial tenant(s) which may be of varied types including retailers and others, b) rooftop decks, and c) if reasonably feasible within the existing space available, open spaces/common areas available for public use. The Commercial Project may also be modified in a manner deemed necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval and the Commercial Project, if otherwise "substantially in the form depicted on the plan attached as Exhibit C" shall, notwithstanding any such modifications, continue to be so considered.

e. Buyer's commencement of the Commercial Project shall be effected by Buyer or its successors, assigns, or transferees submitting an Application for the Commercial Project within 12 months after the Closing under this Agreement.

f. If Buyer does not submit Applications for the Commercial Project and the Residential Project (including any modifications as described above) within one (1) year of Closing under this Agreement, then $10,000.00 shall be released

from escrow to the City's Housing Trust Fund, and until both Applications have been filed, an additional $10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter.

g. Additionally, Buyer shall commence construction of the Residential Project and the Commercial Project by the later of the date that is thirty-six (36) months after Closing under this Agreement or one hundred eighty (180) days after final approval of the Projects (including, without limitation, final decisions in all applicable municipal or judicial proceedings) and the expiration of all applicable appeal periods (the "Construction Start Date"). Buyer agrees to diligently pursue all approvals for both Projects. If Buyer fails to commence construction of the Residential Project and the Commercial Project by the later of the Construction Start Date, then $10,000.00 shall be released from escrow and to the City's Housing Trust Fund, and until construction on both Projects is commenced, an additional $10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter. Within thirty (30) days after the commencement of construction of both Projects, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that Buyer fails to commence construction of both Projects within 5 years from the Closing Date, the entire remaining balance of the Escrow Account shall be released to the City's Housing Trust Fund.

h. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Residential Project and the Commercial Project, that the two projects will be undertaken by two different Limited Liability Companies ("LLCs") to be formed or corporations to be formed which will be assignees of Buyer, and the City hereby consents to the same and to Buyer's assignment of its rights and obligations under this Agreement to any such LLC's or corporations, provided that Thomas Watson will be a manager or co-manager of any such LLCs and President or Vice President of any such corporations.

i. The provisions of this section shall survive closing.

13. **ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. **NON-WAIVER.** No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. **HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for

the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. **BINDING EFFECT**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. **TIME**. The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. **GOVERNING LAW**. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. **NOTICE**. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:	City of Portland ATTN: City Manager 389 Congress Street Portland, ME 04101
With a copy to:	The Office of the Corporation Counsel at the same address.
FOR Buyer:	Mr. Thomas Watson Tom Watson & Co., LLC 104 Grant Street Portland, ME 04101
With a copy to:	William H. Leete, Jr., Esq. Leete & Lemieux, P.A. 511 Congress Street, Suite 502 Portland, ME 04101

20. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and

all of which together shall constitute one and the same agreement.

21. **BROKERS.** The City shall be responsible for paying all its brokers, including CBRE | The Boulos Company, at closing. Buyer has no broker other than Joseph Porta of Porta & Co., who Buyer understands is to be compensated by CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. **RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

CITY OF PORTLAND

Sonia Bean
WITNESS

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

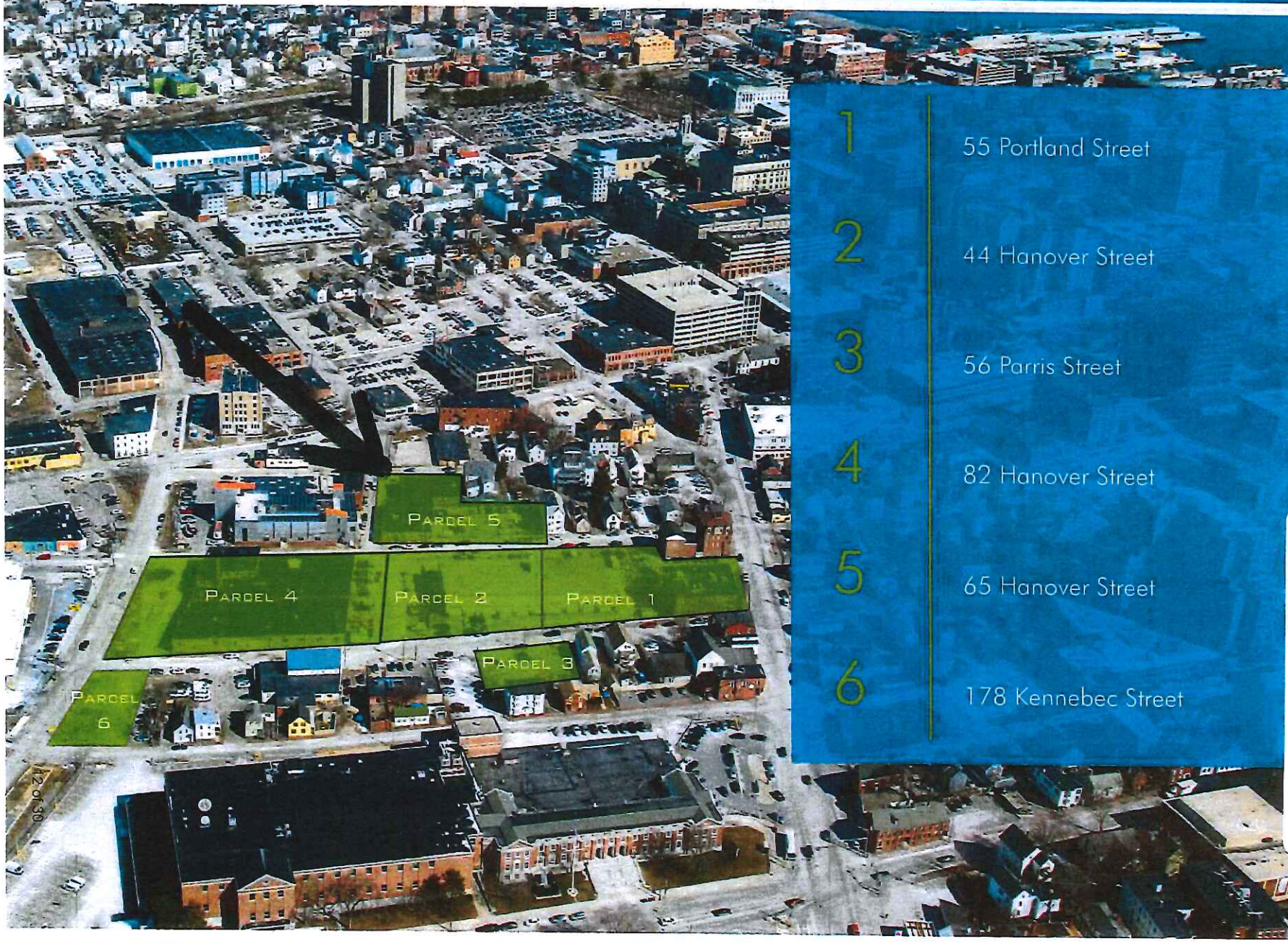
WITNESS

Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

Corporation Counsel's Office

Parcel Map



1	55 Portland Street
2	44 Hanover Street
3	56 Parris Street
4	82 Hanover Street
5	65 Hanover Street
6	178 Kennebec Street

EXHIBIT A

EXHIBIT B

BAYSIDE RFP
TOM WATSON & COMPANY
PROPOSAL FOR THE DEVELOPMENT OF A 23 UNIT APARTMENT BUILDING AT 104 GRANT STREET, PORTLAND MAINE

104 Grant St- Current Use

PORTLAND, MAINE

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

JUNE 01, 2017

1 VIEW LOOKING WEST ON GRANT STREET
N.T.S.

PROGRESS PRINT ONLY
Not for Construction

Port Property
MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

JUNE 01, 2017

BAYSIDE RFP - 104 GRANT STREET
PORTLAND, MAINE

1 104 GRANT STREET - SOUTH ELEVATION
N.T.S.

PROGRESS PRINT ONLY
Not for Construction

Port Property
MANAGEMENT

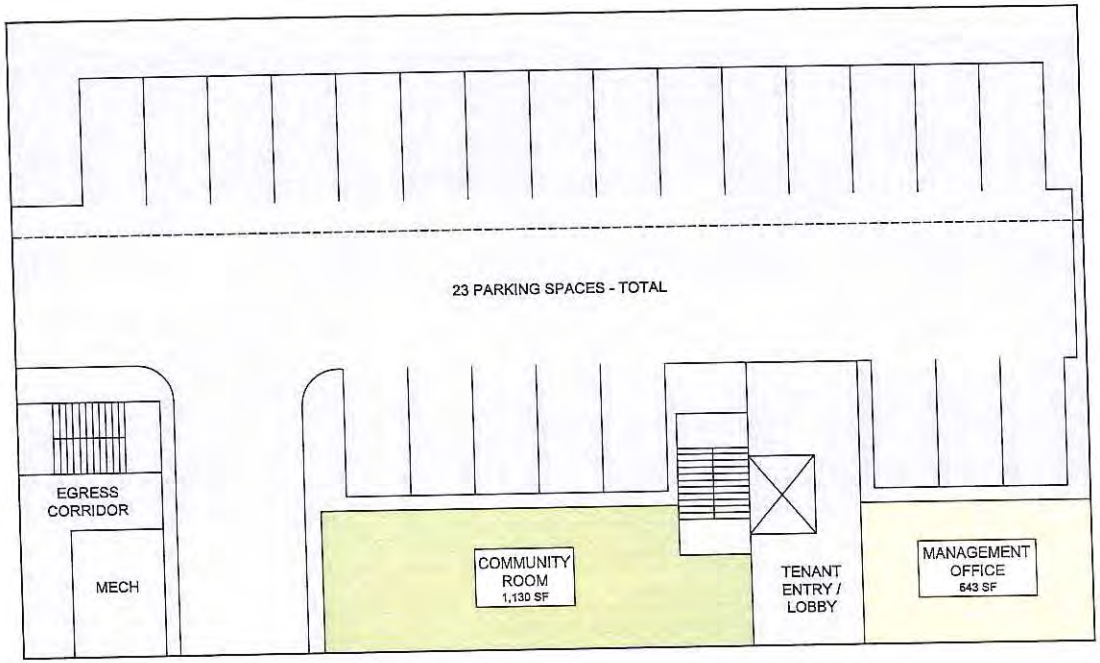
RYAN SENATORE **ARCHITECTURE**

JUNE 01, 2017

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

1st Floor



104 GRANT STREET BUILDING AREA		
FIRST FLOOR AREA	(13,500 SF)	
COMMUNITY ROOM		1,130 SF
MANAGEMENT OFFICE		643 SF
SECOND FLOOR AREA	(8,775 SF)	
UNIT - 1		1,228 SF
UNIT - 2		1,030 SF
UNIT - 3		815 SF
UNIT - 4		711 SF
UNIT - 5		958 SF
UNIT - 6		934 SF
UNIT - 7		950 SF
UNIT - 8		1,024 SF
SECOND FLOOR AREA	(8,775 SF)	
UNIT - 9		1,228 SF
UNIT - 10		1,030 SF
UNIT - 11		815 SF
UNIT - 12		711 SF
UNIT - 13		958 SF
UNIT - 14		934 SF
UNIT - 15		950 SF
UNIT - 16		1,024 SF
FOURTH FLOOR AREA	(8,775 SF)	
UNIT - 17		1,228 SF
UNIT - 18		1,030 SF
UNIT - 19		815 SF
UNIT - 20		1,645 SF
UNIT - 21		958 SF
UNIT - 22		1,024 SF
UNIT - 23		950 SF
	BUILDING TOTAL =	40,320 SF

NOTE:
ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS

0 4' 8' 16' 32'

1 104 GRANT STREET - FIRST FLOOR PLAN
1/8" = 1'-0"

PROGRESS PRINT ONLY
Not for Construction

Port Property MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

2nd Floor

JUNE 01, 2017

104 GRANT STREET BUILDING AREA		
FIRST FLOOR AREA	(13,500 SF)	
COMMUNITY ROOM		1,130 SF
MANAGEMENT OFFICE		543 SF
SECOND FLOOR AREA	(8,775 SF)	
UNIT - 1		1,228 SF
UNIT - 2		1,030 SF
UNIT - 3		815 SF
UNIT - 4		711 SF
UNIT - 5		958 SF
UNIT - 6		934 SF
UNIT - 7		990 SF
UNIT - 8		1,024 SF
SECOND FLOOR AREA	(8,775 SF)	
UNIT - 9		1,228 SF
UNIT - 10		1,030 SF
UNIT - 11		815 SF
UNIT - 12		711 SF
UNIT - 13		958 SF
UNIT - 14		934 SF
UNIT - 15		990 SF
UNIT - 16		1,024 SF
FOURTH FLOOR AREA	(8,775 SF)	
UNIT - 17		1,228 SF
UNIT - 18		1,030 SF
UNIT - 19		815 SF
UNIT - 20		1,845 SF
UNIT - 21		958 SF
UNIT - 22		1,024 SF
UNIT - 23		990 SF
	BUILDING TOTAL =	40,326 SF

NOTE:
ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS

0 4' 8' 16' 32'

1 104 GRANT STREET - SECOND FLOOR PLAN
1/8" = 1'-0"

PROGRESS PRINT ONLY
Not for Construction

Port Property
MANAGEMENT

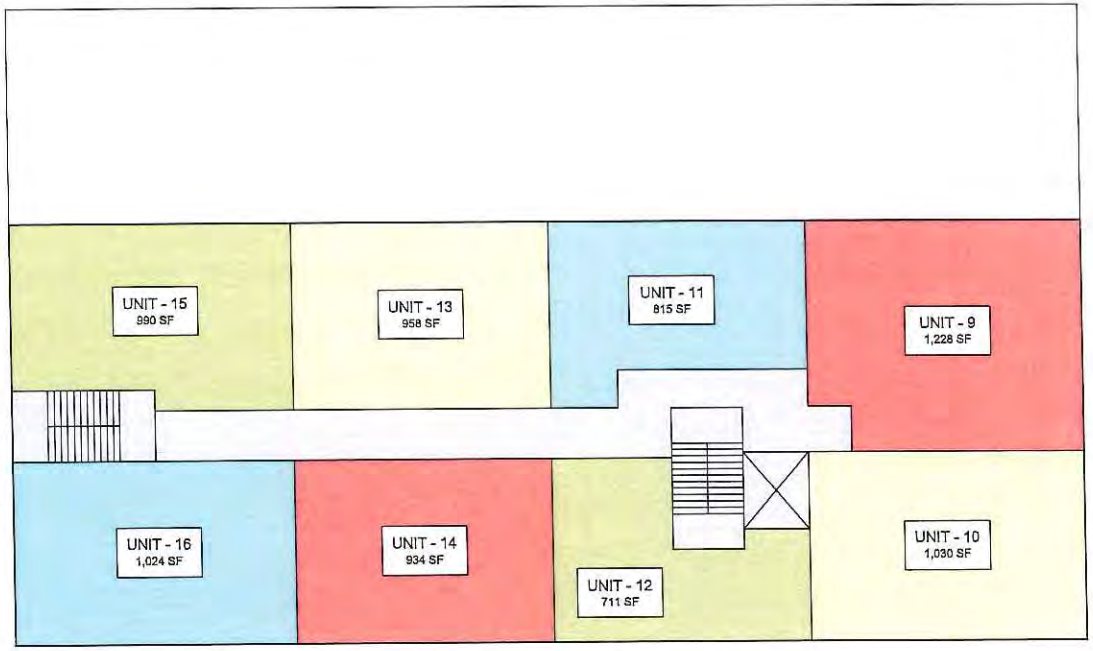
RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

3rd Floor

JUNE 01, 2017



104 GRANT STREET		
BUILDING AREA		
FIRST FLOOR AREA	(13,500 SF)	
COMMUNITY ROOM		1,130 SF
MANAGEMENT OFFICE		643 SF
SECOND FLOOR AREA	(8,775 SF)	
UNIT - 1		1,228 SF
UNIT - 2		1,030 SF
UNIT - 3		815 SF
UNIT - 4		711 SF
UNIT - 5		958 SF
UNIT - 6		934 SF
UNIT - 7		990 SF
UNIT - 8		1,024 SF
SECOND FLOOR AREA	(8,775 SF)	
UNIT - 9		1,228 SF
UNIT - 10		1,030 SF
UNIT - 11		815 SF
UNIT - 12		711 SF
UNIT - 13		958 SF
UNIT - 14		934 SF
UNIT - 15		990 SF
UNIT - 16		1,024 SF
FOURTH FLOOR AREA	(8,775 SF)	
UNIT - 17		1,228 SF
UNIT - 18		1,030 SF
UNIT - 19		815 SF
UNIT - 20		1,645 SF
UNIT - 21		958 SF
UNIT - 22		1,024 SF
UNIT - 23		990 SF
	BUILDING TOTAL =	40,328 SF

NOTE:
ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS

0 4' 8' 16' 32'

1 104 GRANT STREET - THIRD FLOOR PLAN
1/8" = 1'-0"

PROGRESS PRINT ONLY
Not for Construction

Port Property
MANAGEMENT

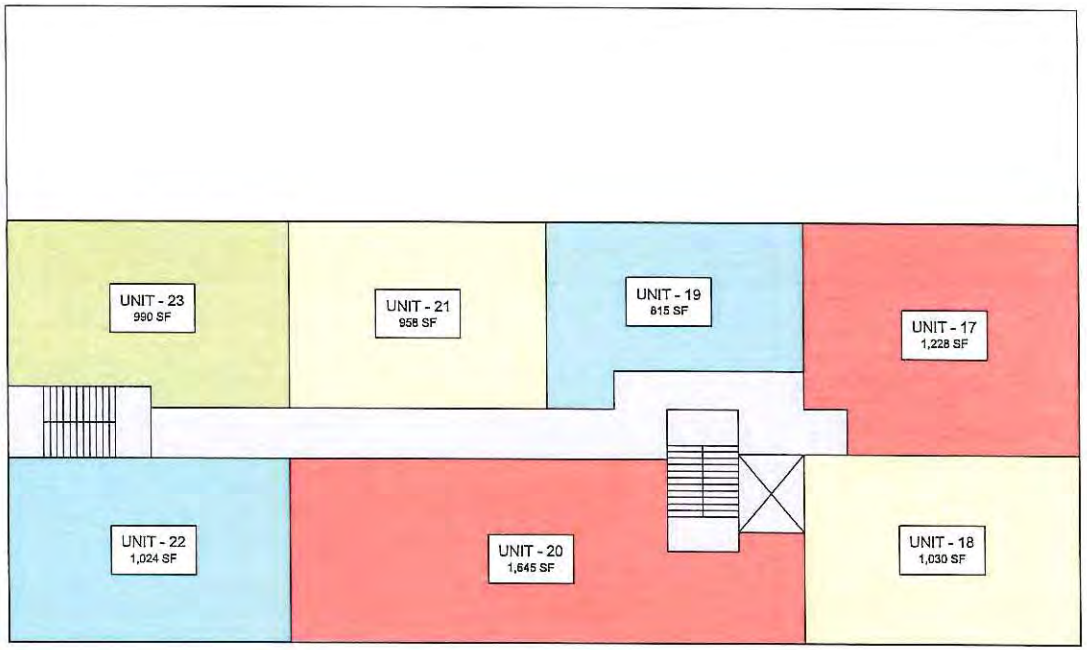
RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

4th Floor

JUNE 01, 2017



104 GRANT STREET BUILDING AREA		
FIRST FLOOR AREA	(13,588 SF)	
COMMUNITY ROOM		1,130 SF
MANAGEMENT OFFICE		643 SF
SECOND FLOOR AREA	(8,775 SF)	
UNIT - 1		1,228 SF
UNIT - 2		1,030 SF
UNIT - 3		815 SF
UNIT - 4		711 SF
UNIT - 5		958 SF
UNIT - 6		934 SF
UNIT - 7		999 SF
UNIT - 8		1,024 SF
SECOND FLOOR AREA	(8,775 SF)	
UNIT - 9		1,228 SF
UNIT - 10		1,030 SF
UNIT - 11		815 SF
UNIT - 12		711 SF
UNIT - 13		958 SF
UNIT - 14		934 SF
UNIT - 15		999 SF
UNIT - 16		1,024 SF
FOURTH FLOOR AREA	(8,775 SF)	
UNIT - 17		1,228 SF
UNIT - 18		1,030 SF
UNIT - 19		815 SF
UNIT - 20		1,645 SF
UNIT - 21		958 SF
UNIT - 22		1,024 SF
UNIT - 23		990 SF
	BUILDING TOTAL =	40,326 SF

NOTE:
ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS

0 4' 8' 16' 32'

1 104 GRANT STREET - FOURTH FLOOR PLAN
1/8" = 1'-0"

Port Property MANAGEMENT

PROGRESS PRINT ONLY
Not for Construction

RYAN SENATORE **ARCHITECTURE**

EXHIBIT C

CITY OF PORTLAND BAYSIDE PROPERTIES
TOM WATSON LETTER OF INTENT TO PURCHASE

TABLE OF CONTENTS

1. LETTERS OF INTENT TO PURCHASE (IN SEPERATE PACKET):
    a. 82 HANOVER STREET
    b. 44 HANOVER STREET
    c. 56 PARRIS STREET

2. DESCRIPTION OF INTENDED USES

3. TOM WATSON BIO

4. 82 HANOVER
    a. STREET SCAPE-1
    b. STREET SCAPE-2
    c. ARCHITECT RENDERING
    d. INTENDED FLOOR PLAN LAYOUT- FIRST FLOOR
    e. INTENDED FLOOR PLAN LAYOUT (WITH ROOF TOP DECKS)- SECOND FLOOR

5. LANCASTER COURT- ARCHITECT RENDERING

6. 44 HANOVER
    a. ARCHITECT RENDERING
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7. 56 PARRIS STREET
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8. 104 GRANT STREET
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9. 117 LOFTS: THE SCHLOTTERBECK & FOSS BUILDING (NOW A 56 UNIT APARTMENT BLDG)
    a. EXTERIOR PICTURES
    b. PICTURES OF APARTMENTS AS THEY ARE TODAY

DESCRIPTION OF INTENDED USE

82 Hanover

- Relocate Port Property Management headquarters to 82 Hanover from 104 Grant Street in Parkside
- Bring in retailers/partners who will contribute to the community as well as the economy
- Open spaces/commons available for public use
- Leverage large rooftop for decks and greenspace to add comfortable density to neighborhood
- Creates opportunity for construction of 23 units on Grant Street and eliminates an office/warehouse that sits in the middle of the Parkside residential neighborhood

44 Hanover

- 16 separate spaces all with autonomous access to the street.
- One Central Space of over 3,500SF for a public/communal user like pub, café, eatery
- Glass OHD to promote openness, and allow for artists and artisans to combine retail display space to their work space. Promote marketplace environment
- Affordable/accessible to the creative community at under $1,000/month.

Lancaster Court (between 82 Hanover & 44 Hanover)

- Commons/courtyard space open to public for public use
- Available for outdoor recreation including farmers market and small music venue for tenants and managers to promote work/events.
- Display and value public art and communal aesthetic enhancements
- Cobble stone street
- Trees/landscaping
- Fountain/water wall

56 Parris Street

- 23 2 BR 2 Bath units
- Unique product to Portland
- Create product for families (2 bathrooms) or multiple roommates (making it affordable)
- At 23 units, 4 stories high it is scaled to the other buildings in the neighborhood

Tom Watson & Company

Thomas Watson
(207) 252-0358

June 22, 2017

Thomas Watson founded Port Property Management in 1993 with his father Jack who later sold his half of the business to Russell Pierce (Tom's brother-in-law). Tom and Russ have had a successful partnership for the last 17 years and currently employ 41 full time employees, most of whom call Portland their home.

Port Property manages over 1,300 apartments and commercial spaces in Portland and South Portland, the bulk of which are on the Portland peninsula. All of the properties are owned by Port Property related companies.

Tom graduated with a B.A. from Stanford University in 1985 and received an MBA from Boston University in 1992.

He lives in Portland with his wife Judy and their 3 children, all of whom attend Portland Public Schools.

104 Grant St. Portland, Maine 04101
Phone: 207-761-0832 Fax: 207-761-8048

BAYSIDE RFP
TOM WATSON & COMPANY
PROPOSAL FOR THE DEVELOPMENT OF
82 HANOVER STREET, PORTLAND MAINE

82 Hanover Street- Streetscape, #1

PORTLAND, MAINE

BAYSIDE RPF-82 Hanover Street- Street Scape, #2

PORTLAND, MAINE

JUNE 16, 2017

1 VIEW LOOKING SOUTH EAST ON PARRIS STREET
N.T.S.

PROGRESS PRINT ONLY
Not for Construction

Port Property
MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 82 HANOVER STREET-Rendering

PORTLAND, MAINE

MAY 11, 2017

1 VIEW LOOKING SOUTH ON HANOVER STREET
N.T.S.

Port Property
MANAGEMENT

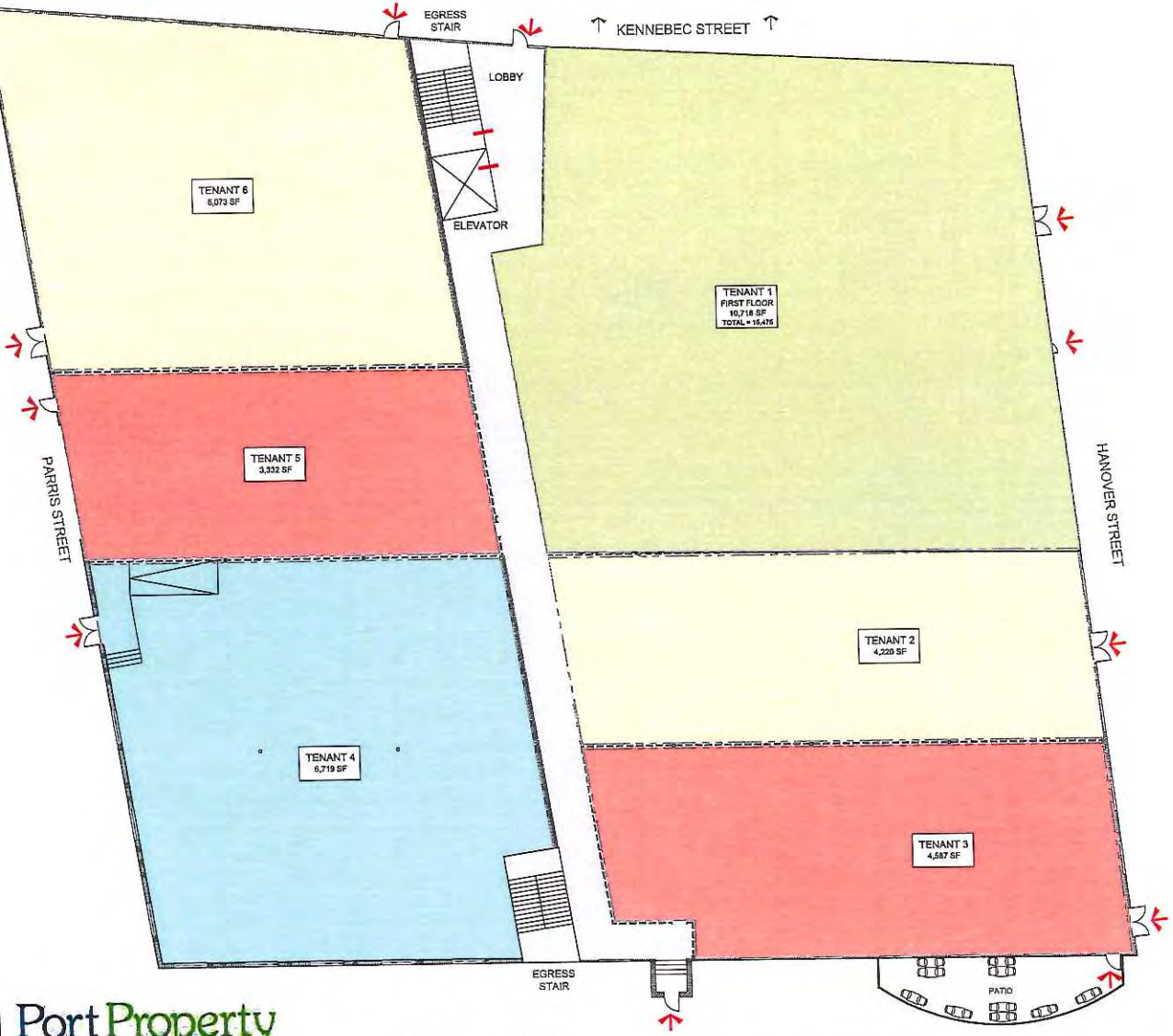
PROGRESS PRINT ONLY
Not for Construction

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 82 HANOVER STREET-First Floor

PORTLAND, MAINE

JUNE 12, 2017



1 FIRST FLOOR CONCEPT PLAN

PROGRESS PRINT ONLY
Not for Construction

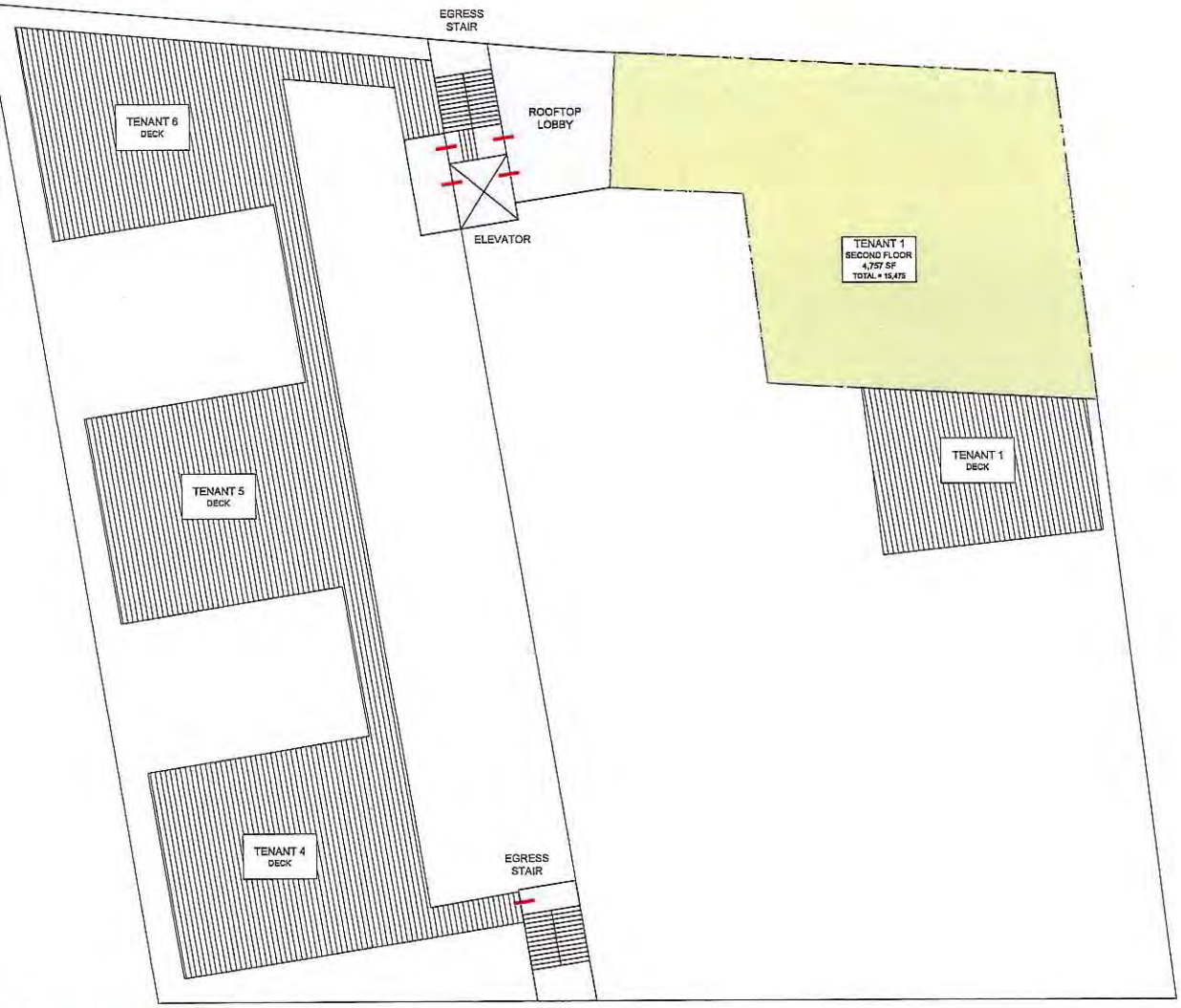
Port Property
MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 82 HANOVER STREET- Second Floor

PORTLAND, MAINE

JUNE 12, 2017



1 SECOND FLOOR CONCEPT PLAN

Port Property MANAGEMENT

PROGRESS PRINT ONLY Not for Construction

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - LANCASTER COURT
PORTLAND, MAINE

JUNE 21, 2017

1 VIEW LOOKING NORTH ON PARRIS STREET
NTS

PROGRESS PRINT ONLY
Not for Construction

Port Property
MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

Order 14-18/19
Tab 19 7-16-18

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING THE FIRST AMENDMENT TO THE 44 HANOVER STREET PURCHASE AND SALE AGREEMENT

ORDERED, that the attached First Amendment to the Purchase and Sale Agreement for 44 Hanover Street is hereby approved, substantially in the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

DISTRIBUTE TO: **City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English**

FROM: **Greg Mitchell, Economic Development Director**

DATE: **June 28, 2018**

SUBJECT: **Proposed First Amendment to 44 Hanover Street Purchase and Sale Agreement**

SPONSOR: **Economic Development Committee, Councilor Justin Costa/Chair – Meeting held on 6/19/2018 and the Vote was Unanimous (3-0)**

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading and Final Action: July 16, 2018.

Can action be taken at a later date: No, time-is-of-the-essence to move forward on the sale of this property. Requesting emergency action to allow immediate execution of the Amendment prior to the due diligence deadline of July 23, 2018.

PRESENTATION: Greg Mitchell/5 Minutes

I. ONE SENTENCE SUMMARY

The proposed First Amendment to the Purchase and Sale Agreement for 44 Hanover Street will enable a new 10-foot wide pedestrian easement to be established, between Parris and Hanover Street along the proposed 44 and 82 Hanover Street property line.

II. BACKGROUND

The EDC previously voted to recommend to the City Council the discontinuance of vehicular and pedestrian rights (while retaining a utility easement) in the section of the former discontinued Lancaster Street right-of-way located between Parris and Hanover Street. The City Council voted on June 18, 2018 to propose the Discontinuance of a Public Easement on Lancaster Street, after public comment was received. This item is on the July 16, 2018 Council Agenda for a vote on the Order of Discontinuance of a Public Easement on Lancaster Street.

In order to be consistent with City Planning Board Site Plan approval for the 82 Hanover Street Redevelopment Project, staff propose amending the 44 and 82 Hanover Street Purchase and Sale

Agreements to reserve in the deeds public pedestrian easements establishing a ten (10) foot wide new pedestrian area composed of 5 foot wide easements on either side of the property line.

It is noted that Tom Watson is the buyer for both the 44 and 82 Hanover Street properties.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is City Council approval of the attached First Amendment to the Purchase & Sale Agreement for 44 Hanover Street.

This supports the private redevelopment of the 44 and 82 Hanover Street properties formerly occupied by the City Public Works Department.

IV. FINANCIAL IMPACT

There is no financial impact related to this transaction.

V. STAFF ANALYSIS

In order to account for the loss of public access in the former Lancaster Street right of way and comply with Planning Board requirements, City staff negotiated the attached amendment with Tom Watson (buyer for both the 44 and 82 Hanover Street properties) to preserve public easements on both properties related to the new ten (10) foot wide pedestrian easement area between Parris and Hanover Streets along the boundary between 44 and 82 Hanover Street.

VI. RECOMMENDATION

The EDC, at its June 19, 2018 meeting, voted to recommend, to the City Council, approval of the Draft First Amendment to the Purchase and Sale Agreement for 44 Hanover Street in substantially the form as attached.

VII. LIST ATTACHMENTS

- Proposed First Amendment to Purchase and Sale Agreement for 44 Hanover Street
- 44 Hanover Street Purchase and Sale Agreement

FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 44 HANOVER STREET

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the ____ day of July, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated May 14, 2018 (the "Agreement") with respect to certain real property located at or about 44 Hanover Street, Portland, Maine as more fully described in the Agreement; and

WHEREAS, Seller and Buyer wish to amend the description of the Premises in the P&S in order to clarify that Seller will reserve in the conveyance a public pedestrian access easement over a portion of the Premises

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Paragraph 3(f) of the Agreement is hereby deleted and replaced with the following:

> Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer specifically acknowledges and agrees that in the deed, Seller will reserve for the benefit of the public a 5-foot-wide pedestrian access easement as approved by the City of Portland Planning Board on May 23, 2018 (the "Public Pedestrian Easement") along the entire length of the common boundary between the Premises and 82 Hanover Street, which is also the northwesterly boundary line of the Premises, which easement shall run between Hanover and Parris Streets (the "Public Pedestrian Easement Area"). The Public Pedestrian Easement Area is generally depicted as the cross-hatched area on the diagram attached hereto as Exhibit A, which is incorporated herein by reference. The purpose of the Public Pedestrian Easement is to grant public pedestrian access on and over the Public Pedestrian Easement Area, which shall be an ADA compliant area for pedestrian, bicycle and similar non-motorized pedestrian uses. The Public Pedestrian Easement shall be subject to such rules or ordinances that the Seller may adopt from time to time in the interests of public safety, which are generally applicable to similar pedestrian easements, provided that Buyer does not waive any rights, and expressly reserves the right, to argue that any such future rules or ordinances do not apply to it on the basis that the existing

conditions of the Public Pedestrian Easement Area are grandfathered and/or that such rules or ordinances cannot be retroactively applied. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Maintenance and repair responsibilities within the Public Pedestrian Easement Area shall belong solely to the Buyer, its successors and assigns. Buyer shall be responsible for removal of snow and ice from the Public Pedestrian Easement Area and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Seller shall have the right, but not the obligation, to repair or maintain the Public Pedestrian Easement Area, including, as reasonably necessary, any subsurface repairs or maintenance, or remove snow or ice therefrom, when Seller, in its sole discretion, deems such repairs, maintenance, or snow or ice removal necessary to ensure public safety and protect the public use and enjoyment of the Public Pedestrian Easement Area. No buildings or any kind of permanent structure will be erected in the Public Pedestrian Easement Area, and Buyer shall not use or authorize any use, condition or state of disrepair that would be contrary to or otherwise inhibit the public pedestrian uses of the Public Pedestrian Easement Area. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

2. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

_____

WITNESS

_____

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

_____
WITNESS

_____
Printed Name: Thomas E. Watson
Its Manager

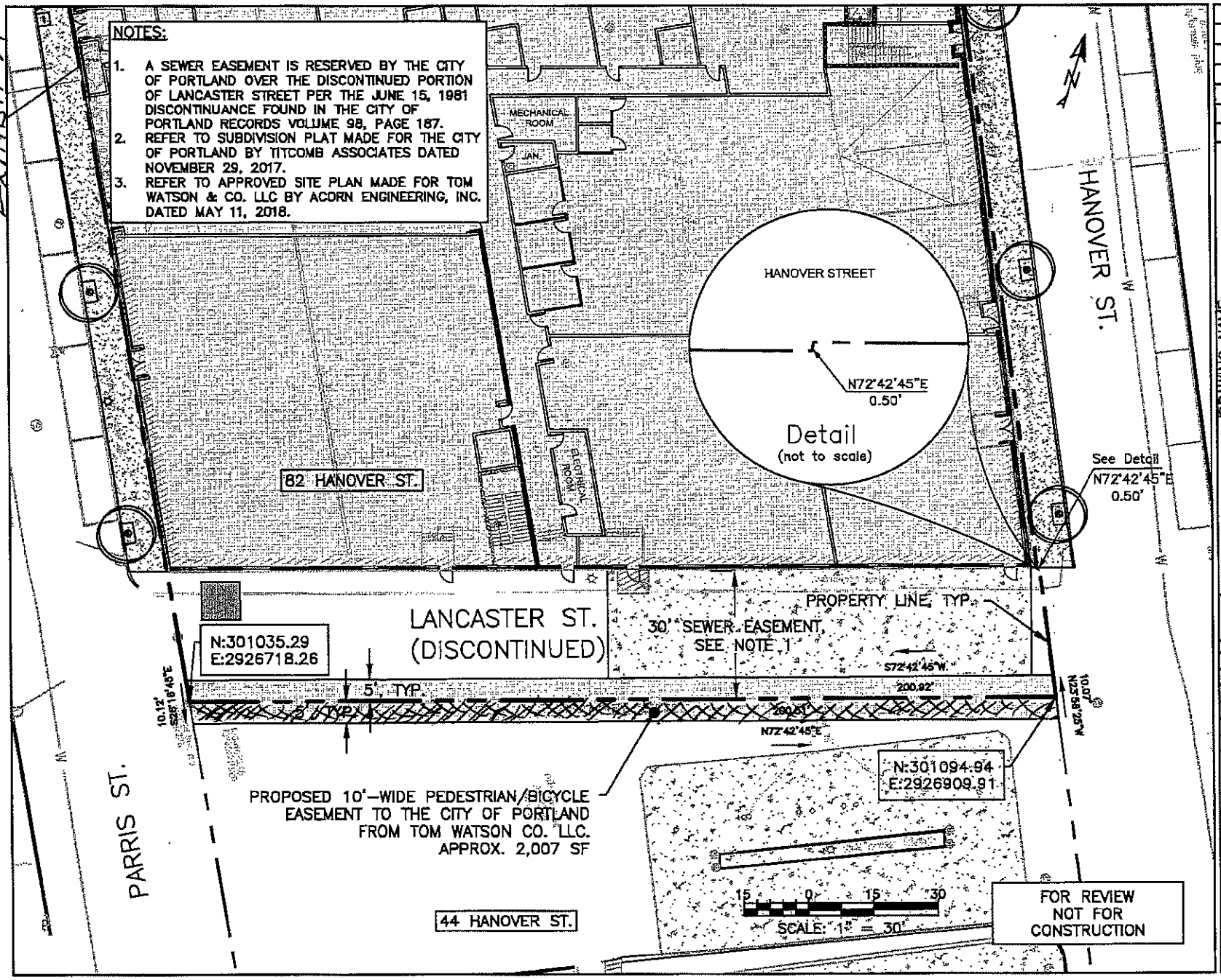
Approved as to Form:

_____
Corporation Counsel's Office

EXHIBIT A

NOTES:

1. A SEWER EASEMENT IS RESERVED BY THE CITY OF PORTLAND OVER THE DISCONTINUED PORTION OF LANCASTER STREET PER THE JUNE 15, 1981 DISCONTINUANCE FOUND IN THE CITY OF PORTLAND RECORDS VOLUME 98, PAGE 187.
2. REFER TO SUBDIVISION PLAT MADE FOR THE CITY OF PORTLAND BY TITCOMB ASSOCIATES DATED NOVEMBER 29, 2017.
3. REFER TO APPROVED SITE PLAN MADE FOR TOM WATSON & CO. LLC BY ACORN ENGINEERING, INC. DATED MAY 11, 2018.



ISSUED FOR	BY	DATE
CITY REVIEW	WHS	5/29/18

REV	DATE

DRAWING NAME: LANCASTER PEDESTRIAN EASEMENT

PROJECT NAME: 82 HANOVER REDEVELOPMENT

CLIENT: TOM WATSON & CO. LLC

ACORN ENGINEERING, INC.
ACORN ENGINEERING, INC. P.O. BOX 3372
PORTLAND, MAINE 04104 (207) 775-2653

FILE:	1093_CIVIL
DATE:	5/29/2018
JN:	1093
SCALE:	1":30'
DESIGN BY:	SJL
DRAWN BY:	SJL
CHECKED BY:	WHS

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM ACORN ENGINEERING, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO ACORN ENGINEERING, INC.

DRAWING NO.

EX-01

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 14th day of May, 2018 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and Tom Watson & Co., LLC, or assigns, a Maine limited liability company having a mailing address of 104 Grant Street, Portland, ME 04101 (hereinafter, collectively, referred to as "Buyer").

RECITALS

WHEREAS, the CITY is the owner of certain land and buildings located at or near 44 Hanover Street, Portland, Maine as generally depicted on the plan attached hereto as Exhibit A together with all buildings and other improvements located thereon (the "Premises") and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE AND EFFECTIVE DATE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land and buildings located at or about 44 Hanover Street, Portland, Maine. This Agreement shall become effective after the City Council of the City approves it and after both Buyer and Seller have signed this Agreement. The date that the last of Buyer or City sign this Agreement shall be the effective date (the "Effective Date"), and the last signor shall insert that date in the first paragraph of this Agreement as the Effective Date. All deadlines and time periods set forth in this Agreement, including, without limitation, the Due Diligence Period, Financing Period and Closing Date (all as defined hereafter) shall be computed from the Effective Date.

2. **CONSIDERATION**. The purchase price for the Premises shall be One Million Two Hundred Seventy-Five Thousand Dollars ($1,275,00.00) (the "Purchase Price"), subject to the following cost adjustments and conditions:

    a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars ($25,000.00) (the "Deposit") within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and

b. The parties agree that the City will continue to occupy and lease the Premises from Buyer after Closing (as defined herein) until at least March 31, 2019 by entering into a lease agreement with Buyer or Buyer's successor or assigns, as Buyer shall elect, in substantially the form attached hereto as Exhibit C (the "Lease"); provided, however, that the City shall have the right to continue to occupy the Premises until September 30, 2019. The City hereby agrees to notify Buyer in writing on or before the date that is sixty (60) days after the Effective Date if it intends to occupy the Premises beyond March 31, 2019 or the City shall be limited to a lease ending on March 31, 2019 unless Buyer and City shall otherwise agree.

   At Closing, Buyer shall receive a credit against (that is, a reduction of) the Purchase Price in the amount of Twelve Thousand Five Hundred Dollars ($12,500.00) per month for the number of months remaining between the Closing Date and the end of the term of the Lease, which shall be no earlier than March 31, 2019 (the "Rent Credit"). If the first month which the City will occupy the Premises after Closing is less than a full month, the Rent Credit for that month shall be prorated. The Rent Credit shall serve as City's nonrefundable advance payment of rent for the Lease of the Premises to the City by the Buyer or the Buyer's successor or assigns, as Buyer shall elect. At Closing, the parties shall execute a Lease in substantially the form attached hereto as Exhibit C. Regardless of the length of the term of the Lease or the date that the City vacates the Premises, in no event shall the Rent Credit be less than $75,000.00.

c. The Buyer shall pay the remainder of the Purchase Price to the City after the Purchase Price is reduced by the full amount of the Rent Credit. Such payment shall be made by wire transfer (or as otherwise reasonably requested by the City) at Closing.

3. TITLE AND DUE DILIGENCE.

a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Portland, Maine time on the later of July 23, 2018 or the day that is sixty (60) days after the Effective Date of this Agreement (the "Due Diligence Period") to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.

b. Property Description. The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the "Survey") which will more specifically describe the property shown on Exhibit A hereto (the "Premises Description") in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at

least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close using a description to which the City will agree.

c. Financing Contingency. Buyer shall have from the Effective Date of this Agreement until 4:00 PM Portland, Maine time on the day that is fifteen (15) days after the expiration of the Due Diligence Period (the "Financing Period") to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the date which is thirty (30) days after the expiration date of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

d. Title, Survey and Environmental Objections. In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or the cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing, or utility easements discovered by Buyer, after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period,

the Due Diligence Period will be extended (without the need for further action by the parties hereto) to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.

e. Option to Cure.

(1) In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's satisfaction, Buyer will have the option to:

(A) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement);

(B) waive the objection and close; or

(C) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so and the Closing Date shall be extended to a date ten (10) days after the expiration of such 60 day period); if Buyer determines it is not satisfied with the results of its own cure efforts, Buyer shall be entitled at any time prior to the expiration of the ten (10) day period following Buyer's sixty (60) day cure period set forth in this subsection (C) to terminate this Agreement as set forth in subsection (A) set forth above, or to waive its objection and close under this Agreement.

(2) In the event City shall elect not to cure any objection by Buyer, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days after receipt by Buyer of the City's notice of election not to cure such Buyer's objection in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. If the City does not timely respond to the Buyer's objection or if the City responds to Buyer's objection but does not state whether or not it elects to cure all of Buyer's objections, then Buyer shall have until the later of the expiration date of the Due Diligence Period or thirty (30) days after the date of Buyer's objection(s) in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. In the event City shall elect to cure all of Buyer's objections, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days following the end of the City's 60-day cure period to make its choice and to notify City whether it accepts

the City's cure with respect to all objections or whether it elects option A, B or C set forth in the previous subparagraph.

(3) Nothing contained in this subsection (e) is intended to, nor shall in any way limit, Buyer's right to terminate this Agreement prior to the expiration of the Due Diligence Period and obtain a refund of the Deposit.

f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

3.1 TITLE DOCUMENTATION:

The City agrees to reasonably cooperate with Buyer's requests for documentation related to the title of the Premises or any tax taking of the Premises.

4. INSPECTIONS.

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments as Buyer shall deem appropriate or desirable, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City's request.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections and other due diligence be acceptable to Buyer in its sole discretion. If the results of such Inspections or other due diligence are not acceptable to Buyer in its sole discretion Buyer may terminate this Agreement. If Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects

to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter except as provided in this Agreement and in the Lease. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. In the event that the Parties agree to not execute the Lease and the City does not continue to occupy the Property after the Closing Date, any utilities for the Property shall be prorated as of the Closing Date. The Buyer's one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.

6. **DEFAULT AND REMEDIES**. In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as liquidated damages as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like. Buyer at all times may elect in substitution for any other remedies available under this Agreement, as its sole remedy, the right to a return of its deposit.

7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.

8. **PROPERTY SOLD "AS IS, WHERE IS**." Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues (other than City's agreement to obtain subdivision approval as set forth in Paragraph 10 of this Agreement) or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and

obligation contained herein except as set forth in the Lease, if executed by the parties, and except as otherwise expressly set forth herein.

9. **ENVIRONMENTAL INDEMNIFICATION**. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

   Notwithstanding the foregoing, during the longer of the Lease term or the period in which the City occupies the Premises, the City shall be responsible for complying with all applicable state, federal and municipal environmental obligations, laws and regulations.

10. **CONDITIONS PRECEDENT TO CLOSING.** It is a condition precedent to Closing that:

    a. The City shall obtain subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree in writing, such subdivision approval is not required (hereinafter the "Subdivision Approval").

    b. In the event the City is unable to obtain the Subdivision Approval prior to the Closing Date, as defined below, then the Buyer may either (1) extend the Closing Date set forth in Paragraph 11 by a time period not to exceed one hundred eighty (180) days to permit the approvals to be obtained or (2) elect to terminate this Agreement prior to the later of the scheduled Closing Date or the expiration date of any extension period based on an extension as provided above. In the event Buyer shall elect to so extend the Closing Date, the City agrees to make reasonable efforts to pursue the Subdivision Approval.

    c. If Buyer shall elect to terminate this Agreement then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement, unless the parties mutually agree to

extend this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The delivery to Buyer, and acceptance and recording by the Buyer of a deed to the Buyer of the Premises, will evidence conclusive and final consent by the Buyer to the waiver or completion of all these conditions.

11. CLOSING. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel or Buyer's Lender's counsel at a time agreeable to the parties on or before the day that is the later of five months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the City to resolve any title, Survey or environmental objections; or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the "Closing Date"). Notwithstanding the foregoing, City agrees to close on a date earlier than that specified above upon Buyer's request at least 10 days prior to Closing. At the Closing:

a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good, insurable title to the Premises at standard rates, free and clear of all liens and encumbrances except as otherwise set forth herein.

b. Buyer shall deliver the balance of the Purchase Price, subject to any adjustments set forth in section 2 of this Agreement, including, without limitation, reduction by the Rent Credit, to the City by wire transfer (or as otherwise reasonably requested by the City); and

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners and lenders title insurance at standard rates in form reasonably acceptable to Buyer and to Buyer's lender.

d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Buyer are authorized to do so.

e. City shall deliver to Buyer a copy of all City Council Orders approving this Agreement and authorizing the City Manager or other City officials to execute this Agreement, the deed, the Lease, and any other documents necessary to effectuate the intent and purpose of this Agreement.

f. Except as otherwise provided in section 2(b), the parties shall execute the Lease.

12. BUYER'S POST CLOSING OBLIGATIONS; ESCROW AGREEMENT. Buyer agrees as follows:

a. Buyer agrees at Closing (and only upon Closing) to deposit $50,000.00 to be held in escrow (the "Escrow Account") pursuant to an escrow agreement in form mutually acceptable to Buyer and City with a mutually acceptable escrow agent.

b. Buyer agrees to commence development of a project at the Premises in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on or about July 19, 2017 (the "Project"), within one (1) year after the later of the end of the term of the Lease or the last date of the City's occupancy of the Premises (the later of the two such dates hereinafter is referred to as the "City's End Date"). The Project shall be deemed to be "in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B" if it proposes to include (or is constructed to include): (i) multiple separate spaces, which may have separate or shared access to the street; (ii) one large central space of a size and for a use to be determined; and (iii) an emphasis on rental affordability. The Project may also be modified in a manner that is reasonably necessary for Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval, and the Project, if otherwise "in substantially the form described in the portion of the plans depicting the Premises that are attached hereto as Exhibit B" shall, notwithstanding any such modifications, continue to be so considered. In addition, if Buyer determines that interest rates or community demand for the use of the Premises change such that Buyer wishes to make changes to the Project, or if Buyer wishes to make other changes to the Project, Buyer shall request the City's approval of such changes.

c. Buyer's commencement of development of the Project shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an "Application") for the Project within one (1) year after the City's End Date.

d. If Buyer does not submit an Application for the Project (which Application may include modifications as described above) within one (1) year of the City's End Date, then $10,000.00 shall be released from escrow to the City's Housing Trust Fund, and until an Application has been filed, an additional $10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter.

e. Within thirty (30) days after the submission of an Application for the Project, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall

not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that a Closing on the sale of the Premises to Buyer under this Agreement takes place and Buyer fails to submit any Application for the Project within the later of 5 years from the Closing Date or 4 years after the City's End Date, the entire remaining balance of the Escrow Account shall be released to the City's Housing Trust Fund.

f. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Project, that the Project will be undertaken by a different Limited Liability Company ("LLC") to be formed, or corporation to be formed, which will be an assignee of Buyer, and the City hereby consents to the same and consents to Buyer's assignment of its rights and obligations under this Agreement to any such LLC or corporation, provided that Thomas Watson will be a manager or co-manager of any such LLC and President or Vice President of any such corporation.

g. The provisions of this section shall survive closing.

13. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. NON-WAIVER. No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns, provided, however that this Agreement shall not be assigned by the City.

17. TIME. The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. GOVERNING LAW. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be

invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. NOTICE. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:	City of Portland ATTN: City Manager 389 Congress Street Portland, ME 04101
With a copy to:	The Office of the Corporation Counsel at the same address.
FOR Buyer:	Mr. Thomas Watson Tom Watson & Co., LLC 104 Grant Street Portland, ME 04101
With a copy to:	William H. Leete, Jr., Esq. Leete & Lemieux, P.A. 511 Congress Street, Suite 502 Portland, ME 04101

20. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

21. BROKERS. The City shall be responsible for paying all its brokers, including CBRE | The Boulos Company, at closing. Buyer has no broker other than Joseph Porta of Porta & Co., who Buyer understands is to be compensated by CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, if applicable, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. RECITALS INCORPORATED BY REFERENCE. The recitals set forth above

are incorporated herein by reference and made a part of this Agreement.

23. **EXTENSIONS**: Wherever this Agreement provides that a deadline will be extended, including without limitation any extension(s) which may be elected by Buyer or City as well as any extensions based upon the occurrence or non-occurrence of any event (such as, for example, the delivery of a survey or Phase II environmental report), then any such extension will be deemed to have automatically occurred, without the need for any additional action by Buyer or City.

IN WITNESS WHEREOF, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

CITY OF PORTLAND

Sonia Bean
WITNESS

Jon P. Jennings
Its City Manager
Dated: May 14, 2018

Approved as to Form:

Corporation Counsel's Office

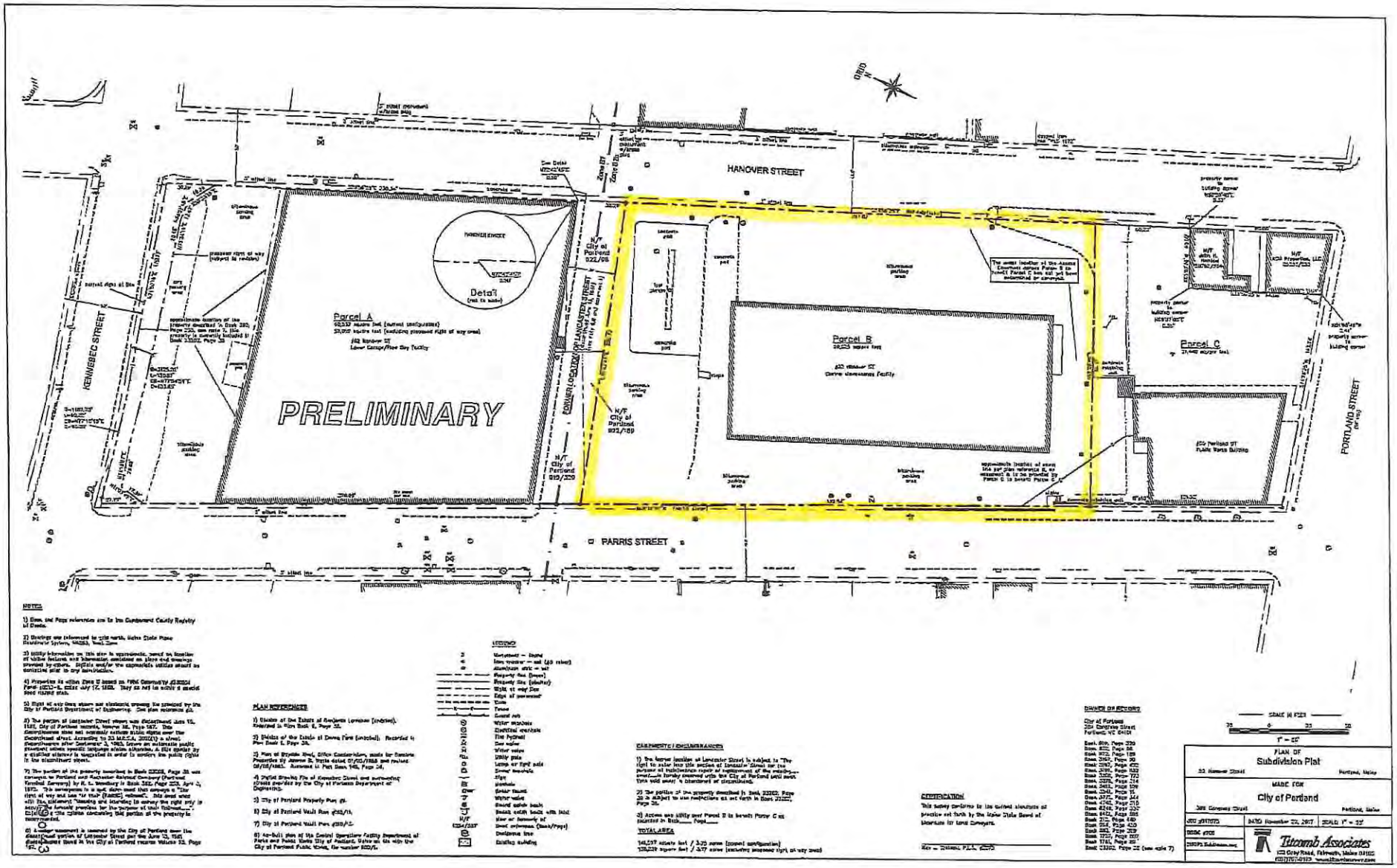
Signature page for Tom Watson & Co., LLC follows.

TOM WATSON & CO., LLC

WITNESS

Thomas E. Watson
Its Manager
Dated: 5.14.2018

EXHIBIT A TO PSA



DESCRIPTION OF INTENDED USE

82 Hanover

- Relocate Port Property Management headquarters to 82 Hanover from 104 Grant Street in Parkside
- Bring in retailers/partners who will contribute to the community as well as the economy
- Open spaces/commons available for public use
- Leverage large rooftop for decks and greenspace to add comfortable density to neighborhood
- Creates opportunity for construction of 23 units on Grant Street and eliminates an office/warehouse that sits in the middle of the Parkside residential neighborhood

44 Hanover

- 16 separate spaces all with autonomous access to the street.
- One Central Space of over 3,500SF for a public/communal user like pub, café, eatery
- Glass OHD to promote openness, and allow for artists and artisans to combine retail display space to their work space. Promote marketplace environment
- Affordable/accessible to the creative community at under $1,000/month.

Lancaster Court (between 82 Hanover & 44 Hanover)

- Commons/courtyard space open to public for public use
- Available for outdoor recreation including farmers market and small music venue for tenants and managers to promote work/events.
- Display and value public art and communal aesthetic enhancements
- Cobble stone street
- Trees/landscaping
- Fountain/water wall

56 Parris Street

- 23 2 BR 2 Bath units
- Unique product to Portland
- Create product for families (2 bathrooms) or multiple roommates (making it affordable)
- At 23 units, 4 stories high it is scaled to the other buildings in the neighborhood

BAYSIDE RFP - 44 HANOVER ST. -Rendering

PORTLAND, MAINE

MAY 15, 2017

1 VIEW LOOKING SOUTH-EAST ON PARRIS STREET
NTS

PROGRESS PRINT ONLY
Not for Construction

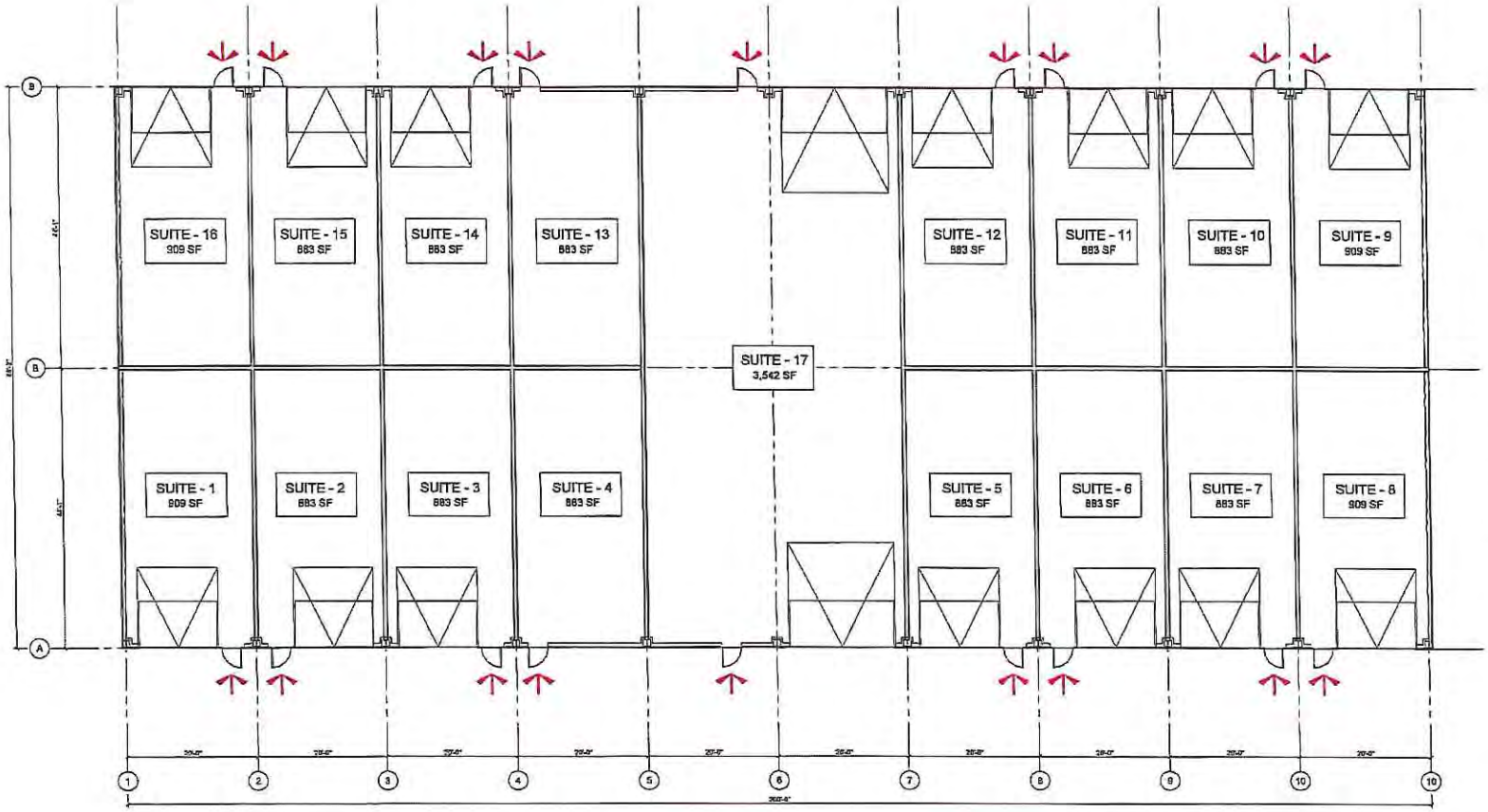
Port Property
MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 44 HANOVER ST. - Floor Plan

PORTLAND, MAINE

MAY 15, 2017



1 FIRST FLOOR CONCEPT PLAN

BUILDING AREA	
FIRST FLOOR AREA	
SUITE - 1	909 SF
SUITE - 2	883 SF
SUITE - 3	883 SF
SUITE - 4	883 SF
SUITE - 5	883 SF
SUITE - 6	883 SF
SUITE - 7	883 SF
SUITE - 8	909 SF
SUITE - 9	909 SF
SUITE - 10	883 SF
SUITE - 11	883 SF
SUITE - 12	883 SF
SUITE - 13	883 SF
SUITE - 14	883 SF
SUITE - 15	883 SF
SUITE - 16	909 SF
SUITE - 17	3,542 SF
BUILDING TOTAL =	17,774 SF

NOTE:
ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS

0 4' 8' 16' 32'

PROGRESS PRINT ONLY
Not for Construction

Port Property
MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

EXHIBIT C
LEASE AGREEMENT

This Lease Agreement, is made as of the _____ day of _____, 2018, by and between _____ with a mailing address of 104 Grant Street, Portland, Maine 04101 (hereinafter referred to as "Landlord") and the **CITY OF PORTLAND**, a Maine municipal corporation having its principal place of business at 389 Congress Street, Portland, Maine (hereinafter referred to as "Tenant").

WHEREAS, Tenant has recently conveyed to Landlord certain property located at or about 44 Hanover Portland Street in Portland, Maine and wishes to continue to occupy and use such property; and

WHEREAS, Landlord has sufficient right, title and interest in and to the real property and has full power and authority to enter into this Agreement in respect thereto, and is willing to have Tenant occupy and use the 44 Hanover Street property on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Landlord and Tenant hereby mutually agree as follows:

1. Premises.

Tenant, as of the date of this Lease, exclusively occupies certain land and a building or buildings located at or about 44 Hanover Street, Portland, Maine (hereinafter the "Building") (the land and Building are referred to herein as the "Premises") as generally depicted on the plan attached hereto as Exhibit A. Landlord does hereby agree to lease, demise, and let the Premises unto Tenant, subject to the access and parking easement benefitting the owner of the property located at 55 Portland Street (the "Access Easement"), which easement is depicted on Exhibit A. Tenant shall have no authority to modify or make any substantial changes (whether cosmetic, structural or otherwise) to the Premises without the prior written consent of Landlord.

2. Term.

The initial term of this Lease shall commence _____, 2018 (the "Effective Date") and terminate _____, 2019 (the "Initial Term"), unless earlier terminated as provided herein, or extended as provided herein. The Initial Term together with any Renewal Term (as defined herein) are referred to collectively hereinafter as the "Term."

In the event Tenant shall continue in occupancy of the Premises after the expiration of the Initial Term or any Renewal Term (as defined herein), such occupancy shall not be deemed to extend or renew the terms of this Lease, but occupancy shall, at the option of the Landlord, continue as a tenancy at will from month to month upon covenants, provisions, and conditions herein contained, and at the rent in effect prior to the expiration of the Initial Term or Renewal Term (as

defined herein) whichever last occurred, increased by twenty five (25%) percent, prorated and payable month to month on the first day of each month for the period of such hold-over occupancy. This paragraph shall not be deemed or construed as giving the Tenant any right to hold over after the expiration of the Initial Term or any Renewal Term thereof.

2.1. Renewal.

Upon expiration of the Initial Term, at the request of the Tenant, the Term of this Lease may be renewed for one (1) three (3) month extension (which such extension hereinafter will be referred to as the "Renewal Term") subject to and conditioned upon Landlord's written consent, and provided that the Tenant is not in default of the terms of this Lease prior to the expiration of the Initial Term and provided that Tenant gives Landlord at least three (3) months' notice in writing of its request for a Renewal Term. Landlord's consent shall not be unreasonably withheld, delayed, or conditioned.

The Renewal Term shall commence the day following the expiration of the Initial Term of the Lease. If the Tenant exercises its option to renew Tenant agrees to pay to Landlord, or its designee, rent on the terms described in Paragraph 4 below at the new rental rate for the Renewal Term as set forth in Paragraph 4.

Tenant shall be responsible for all costs and expenses relating to the Premises during the entire period in which the Tenant occupies any part of the Premises (hereinafter the "Occupancy Period") including, without limitation, for the entire Term of this Lease (and any Renewal Term if applicable), all costs and expenses with respect to utilities as set forth in this Lease Agreement.

3. Permitted Uses.

The Premises may be used by Tenant for the current use of the Premises and for any other similar, lawful purposes. Tenant shall not use or occupy or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in a manner which will in any way violate any applicable laws, ordinances or regulations of any municipal, State or other governmental authority.

4. Rent.

a. Rent Paid in Advance at Closing. The rent for the lease to the Tenant for the Initial Term shall be in the amount of _____ Dollars ($_____.00). As stated in the related Purchase and Sale Agreement dated on or about _____, 2018 between the City of Portland, Maine and Landlord (the "Purchase and Sale Agreement") with respect to the Premises, the full Rent Credit (as that term is defined in the Purchase and Sale Agreement) for the Initial Term is to be paid at the closing by the City of Portland, Maine as seller upon Landlord's purchase of the Premises (the "Closing"), granting a credit to Buyer in the full amount of said Rent Credit against and reducing the purchase price for the Premises by that amount. Landlord, by its initials here: _____ acknowledges receipt of the Rent Credit in the amount of $_____. Tenant agrees that the agreement to pay rent in advance is a substantial inducement for Landlord to purchase the Premises at the purchase price set forth in the Purchase and Sale Agreement, and

accordingly, all of the rent paid and credited at Closing, including, without limitation, the Rent Credit, shall be non-refundable.

b. Rent During Renewal Term. If there is a Renewal Term of this Lease, the rent during the Renewal Term of this Lease shall be in the amount of the greater of Twelve Thousand Five Hundred and 00/100 Dollars ($12,500.00) per month or the then market rate of rent for the Premises, as determined by an independent commercial real estate agent or appraiser chosen by the Landlord, from three qualified agents or appraisers with at least ten (10) years' experience in the profession proposed by the Tenant, at least two months prior to the date when this Lease would terminate if not renewed. If none of the agents or appraisers proposed by Tenant are acceptable to Landlord, Landlord may request an appraisal from Landlord's agent which shall be averaged with one from an agent or appraiser selected by Tenant from the three proposed by Tenant to determine the then market rental rate.

c. Renewal Term Rent Payments; When Due. Rent during the Renewal Term (and rent for any time period for which rent is not fully paid in advance at the Closing on the sale of the Premises) shall be payable in advance the first day of each and every calendar month during such Renewal Term (and any other applicable period during which rent is due) and rent payments shall be made to the Landlord's manager, Port Property Management, 104 Grant Street, Portland, ME 04101 or such other address as Landlord shall in writing direct. Any rent payment received by the Landlord after the 7th of the applicable month shall be subject to a 5% late fee.

d. Additional Rent. Tenant shall also pay as additional rent all expenses and costs relating to the Premises, including, without limitation, all taxes, utilities and insurance, and including, without limitation, those set forth in Paragraphs 5, 6, 7, 8, 10 and 10.1 of this Lease.

5. Taxes and Utilities.

a. Taxes. The Tenant shall be responsible for timely payment of all taxes of any kind due to the City of Portland, Maine as well as any other fees due to the City of Portland, Maine, including, without limitation, all municipal real property taxes on or assessed against the Premises during the Term of the Lease. Tenant shall also be responsible for timely payment of all personal property taxes with respect to all personal property on or about the Premises. In the event the Premises are determined to be tax exempt, either wholly or partially, Tenant shall be required to pay any and all amounts due to the City of Portland, Maine in lieu of or as a replacement for real and personal property tax payments, including, without limitation, all amounts specified in Paragraph 3(f) of the Purchase and Sale Agreement. Upon receipt of a tax bill from the City of Portland, Landlord shall notify Tenant of the amount due and Tenant shall pay said amount within 30 days of receipt of such notice. In the event that the Term of the Lease is due to expire prior to the end of the six month tax period that is the subject of such a tax bill, the amount Tenant is required to pay shall be prorated accordingly.

b. Utilities. Tenant shall also be responsible for paying all the costs of all utilities servicing the Premises during the Initial Term of this Lease and any Renewal Term, including but not limited to electrical, gas, water, sewer, heat and air conditioning (together with all other HVAC expenses), internet, cable and telephone. Tenant shall also be responsible for payment of all

stormwater fees and stormwater service charges due to the Portland Water District or City of Portland, as well as any other assessments or fees against the Premises by the City of Portland, Maine or the Portland Water District. Landlord is not responsible for payment of any such assessments or fees, nor for providing heat nor any other utilities to the Premises, nor for paying the costs of any such utilities, all of which are Tenant's sole responsibility.

6. Tenant to Plow and Remove Snow.

Tenant, at Tenant's expense, shall be responsible for plowing and removing snow and ice from the Premises in accordance with applicable City ordinances. Landlord shall have no obligation to remove snow or ice from the Premises.

7. Tenant to Remove Trash and Debris; Maintenance.

Tenant, at Tenant's expense, shall maintain the entire portion of the Premises in the same condition and repair as it is in as of the Effective Date, except only for reasonable wear and tear, and shall remove from the Premises all trash and debris which it shall create, which is located upon the Premises or which is otherwise attributable to Tenant. Tenant shall not do anything to cause nor permit the Premises nor the activities therein or thereon to violate any municipal, county, state or federal law, ordinance or requirement, and shall promptly act upon direction of any officer of competent authority.

8. Responsibility for Repairs and Maintenance; Tenant's Acceptance Of Premises In "As Is" Condition.

a. Maintenance and Repair. Tenant is currently in possession of the Premises and does hereby accept the Premises and Common Areas in their present "AS IS" condition as of the Effective Date. During the Term of the Lease, Tenant shall, at its sole expense, maintain and make any reasonably necessary repairs to the Premises at its sole expense.

b. Capital Repairs. Tenant hereby warrants and represents that it has inspected the Premises and that it knows of no capital repairs that are presently necessary. The term "Capital Repair" is agreed to mean the repair or replacement of a major component or structural part of the Premises and shall also include the rebuilding of a major component or structural part of the Premises after the end of its useful life. Based on the information acquired in its inspection, together with its historic use of the Premises, Tenant represents that it has no actual knowledge that any Capital Repairs will be required during the Initial Term or if the Lease is renewed, during any Renewal Term. In the event any Capital Repairs to the Premises are reasonably necessary during the Term and Tenant does not wish to make such Capital Repair at Tenant's sole expense, Tenant shall so advise Landlord in writing and Landlord may, in its sole discretion, elect to make, or not to make, such Capital Repair. Notwithstanding the foregoing, Tenant agrees that whenever it determines that it is reasonably possible to make a temporary repair or patch and defer the need for a Capital Repair, it shall make such temporary patch or replacement. In the event Landlord elects not to make any Capital Repairs, Tenant shall have the right, but not the obligation to make such repairs at its own expense. Tenant acknowledges and agrees that even if Tenant determines it is unable to occupy the Premises due to the condition of the Building or the

Premises, all of its rent payments shall continue to be non-refundable even if Tenant determines that it could occupy the Building or the Premises if a Capital Repair was made.

Notwithstanding the foregoing, Landlord and Tenant agree that in the event of a casualty loss or event (hereinafter "Casualty") causing material physical damage to the Premises or Building for which there is insurance coverage as determined by the insurer issuing the applicable policy of insurance, that subject to and conditioned upon any requirements or conditions imposed by Landlord's lender (including, without limitation, any restrictions or conditions on disbursement of insurance payments or proceeds), funds paid by an insurer with respect to such Casualty shall be released to fund the cost of a Capital Repair resulting from such Casualty, upon such terms as shall be reasonably acceptable to Landlord and provided that Landlord shall not be required to make any payment of any kind toward such Capital Repair.

8.1 Improvements/Alterations. No improvements or alterations to the Premises which materially change or alter the Premises shall be made without Landlord's written approval, which shall not be unreasonably withheld, delayed, or conditioned. Any request by Tenant for such approval shall be submitted with written specifications and drawings reasonably satisfactory to Landlord. All improvements made to the Premises by Tenant must be done in accordance with all local Building codes and ordinances and all applicable State and Federal statutes and regulations, and Tenant must obtain all necessary permits prior to commencing improvements. Tenant shall promptly pay for any and all trades furnishing services and/or alterations to the Leased Premises. With the exception of any of Tenant's removable property, including without limitation, all of its personal property and trade fixtures, any and all property left by Tenant in the Leased Premises shall become property of the Landlord at the expiration or termination of Tenant's tenancy. A list of trade fixtures which are owned and controlled exclusively by Tenant and which Tenant shall remove at the end of the Term or when Tenant vacates the Premises, whichever shall be earlier, is attached as Exhibit B.

9. Compliance with Laws.

Tenant shall, at its own cost and expense, promptly observe and comply with all applicable laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, and county and city government.

10. Insurance.

Prior to the execution of this Lease and continuing during the Term of the Lease or for such longer period during which Tenant shall occupy the Premises, Tenant shall obtain, maintain and pay for all the costs of the insurance listed in the following subsections:

a. Tenant shall maintain occurrence based General Liability Insurance, which shall include liability insurance with respect to automobiles, trucks and other motor vehicles, in the amount of $400,000 per occurrence for causes of action pursuant to the Maine Tort Claims Act, and the policy for such insurance shall name Landlord as an additional insured. Tenant shall provide Landlord with a certificate evidencing such General Liability Insurance coverage prior to execution of this Lease. Tenant

shall be responsible for covering its personal property with such property and casualty insurance as it deems reasonably necessary and shall provide Landlord with documentation of such policies of insurance or self-insurance prior to execution of this Lease. Landlord shall not be responsible for any damage to Tenant's personal property except for damage caused by Landlord. Claims brought by Landlord against Tenant for damage to the Premises, that are not covered by an insurance policy, and are the result of Tenant's use and/or negligence, and not resulting from the Landlord, its employees, subcontractors, or others using the Access Easement to access the property at 55 Portland Street, shall be Tenant's responsibility to repair or reimburse Landlord in an amount equal to that reasonably necessary to return the Premises, to substantially the same condition in which they were at the start of this Lease. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages, available to the Tenant under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Tenant. For the purposes of this Lease, an insurance claim will be deemed to be "not covered by an insurance policy insuring Tenant" if such claim is denied by the insurer issuing the policy against which the claim is made.

b. Glass. Tenant shall be solely responsible for the cleaning, maintenance and replacement of plate glass and other windows located within the Leased Premises and is advised to obtain insurance coverage with respect to damage thereto. Tenant agrees to repair promptly any damage to such glass and windows at its sole expense. Tenant shall not be responsible for damage to glass or windows caused by Landlord, its employees or subcontractors, or others using the Access Easement to access 55 Portland Street. Any such cleaning, maintenance and/or repairs shall be to return all glass and windows to substantially the same condition in which they were at the start of this Lease.

c. Workers Compensation. Tenant self-insures for workers compensation coverage and shall provide Landlord with evidence of its self-insured status.

d. Property and Casualty Insurance. Landlord shall procure and maintain such Property and Casualty insurance as it deems reasonably necessary in regard to the Premises, and Tenant shall pay Landlord upon execution of this Lease for annual premiums in an amount up to and including ten thousand dollars ($10,000). Such coverage shall be in form and amount to coverage as commonly written for comparable buildings. In the event that the Term of this Lease exceeds the term of Landlord's Property and Casualty insurance policy, Tenant shall pay landlord for applicable premiums within 10 days of Landlord's request for such payment. Any deductibles and/or retentions in an amount higher than ten thousand dollars ($10,000) shall be subject to approval by Tenant. Tenant shall be named an additional insured on such policy for coverage only in those areas where government immunity has been expressly waived by 14

M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the Tenant under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Tenant.

e. Pollution Liability Insurance. Tenant shall procure and maintain premises pollution liability insurance in form and content reasonably acceptable to Landlord considering Tenant's use of the Premises as a vehicle maintenance garage and fueling station in an amount not less than one million dollars ($1,000,000) per occurrence, for the Term of this Lease, or if the Occupancy Period ends later than the end of the Term, then, for the entire Occupancy Period, naming Landlord as an additional insured thereon. The pollution liability insurance policy (hereinafter in this sub-paragraph referred to as the "Policy") shall provide at least such coverage as is commonly written for buildings comparable to the building(s) located on the Premises and uses comparable to Tenant's use of the Premises. The Policy shall provide liability coverage on a claims-made and reported basis which covers elaims first made against or by an insured and reported to the Insurer, during the policy period. The Policy shall also provide coverage for remediation costs which covers pollution conditions first discovered and reported to the insurer during the policy period. Tenant shall include in the pollution coverage of the Policy, conditions emanating from storage tanks (including gas and oil tanks) on the Premises. Tenant additionally agrees to purchase a so-called "tail" or extended reporting period coverage (hereinafter "Tail Coverage") for at least a one-year term in form reasonably acceptable to Landlord that provides coverage for claims pursuant to said Policy. The Tail Coverage shall, at minimum, extend the period for reporting claims under the Policy for at least a year after the expiration of the Occupancy Period.

Tenant agrees to procure and submit for Landlord's review a certificate of insurance and binder for the Policy and Tail Coverage at least ten (10) days prior to the commencement of this Lease Agreement as well as such other documents detailing the proposed terms of coverage as Landlord shall reasonably request. Tenant further agrees that the Policy shall be in full force and effect upon commencement of the Term.

f. Self-Insurance, Large Deductibles and/or Retentions. Tenant is solely responsible for all deductibles and or retentions on any insurance policies required by this Lease, and agrees to pay all deductibles and retentions with respect to any such policies. Any coverage required by this Lease for which Tenant chooses to self-insure shall be the responsibility of the Tenant, and Tenant agrees to pay any covered claims for which it chooses to self insure.

g. Waiver of Subrogation. Tenant shall procure waiver of subrogation on any insurance policies required under this Lease in which it is able to do so. Tenant agrees that it shall waive subrogation with respect to any matters for which it self-insures,

including, without limitation, worker's compensation insurance. Landlord acknowledges and agrees that Tenant's general liability insurance coverage shall not include a waiver of subrogation. Landlord may choose to either waive subrogation or list the Tenant as a named insured in lieu of waiving subrogation under its property and casualty insurance policy.

h. Notice. All of the insurance policies in which the Tenant or Landlord are an additional or named insured under the terms of this Lease shall, contain a clause that the insurer shall not cancel or reduce the coverage of the insurance without first giving Tenant, Landlord and any mortgagees of Landlord thirty (30) days' prior written notice.

10.1 Tenant's Responsibilities.

a. To the fullest extent permitted by law, Tenant hereby agrees to assume all risk of injury, harm or damage to any person or property (any such injury, harm or damage hereinafter is referred to as a "Liability Event"), including but not limited to all risk of injury, harm or damage to Tenant's officers, agents, employees, contractors, customers and invitees (all of whom hereinafter are referred to as "Tenant's Affiliates" in the plural or as a "Tenant Affiliate" in the singular) or to any of their property, arising out of, during, or in connection with Tenant's lease of the Premises from Landlord, Tenant's occupancy of the Premises or any other use by Tenant of the Premises (all such risks are hereinafter collectively referred to as the "Assumed Risks"), but only to the extent (i) any such Liability Event is a result of actions or omissions by Tenant, one of Tenant's Affiliates or any other person or entity for whom Tenant may be liable and (ii) is a negligent act or omission, an intentional act which is not a discretionary function, or an act or omission for which Tenant is liable under the Maine Tort Claims Act. Such Assumed Risks do not include injury, harm, or damage caused by (1) any act or omission of Landlord, its officers, agents, employees, contractors or anyone else for whom Landlord may be liable except Tenant or a Tenant Affiliate, or (2) any act or omission of any third party who is not a Tenant Affiliate utilizing the Access Easement. Tenant's obligations hereunder are subject to and limited by the defenses, immunities and limitations of liability available to the Tenant under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq, and other applicable law.

b. Tenant and Landlord agree that, subject to Landlord's right to enforce the terms of this Lease and to terminate this Lease as provided herein, and except to the extent that the Access Easement is used by others, Tenant shall have during the Term until the later of the expiration of the Lease, the earlier termination of the Lease, or when Tenant vacates the Premises, full control over the Premises (including, without limitation, all buildings or structures located on the Premises, including, without limitation, the Building and any parking lot, or walkways or other grounds located on the Premises) and shall be solely responsible for all maintenance and repairs to the Building and Premises except as expressly set forth in this Lease.

c. Covenant against liens: Tenant shall not cause nor permit any lien against the Landlord's property or the Premises or any improvements thereto to arise out of or accrue from any action, omission or use thereof by Tenant; provided, however, that Tenant may in good faith contest the validity of any alleged lien. In the event Tenant contests such lien, upon the request of the Landlord, Tenant shall post a bond approved by the court in which such lien claim is pending or if not yet pending, a court with jurisdiction over such lien, warranting payment of any such lien. If Tenant does not contest a lien, it shall pay off and cause the discharge of any such lien within twenty (20) days of its recording. If a court or other proceeding is commenced, Tenant shall cause such lien to be "bonded off" to Landlord's satisfaction within forty-five (45) days of commencement of such proceeding. Should Landlord be subjected to any claim(s), suit(s) or lien(s), including, without limitation, any claim(s), suit(s) or lien(s) relating to any mechanic's lien claim for any services or materials associated with Tenant's improvements or alterations to the Leased Premises, Tenant shall indemnify and hold harmless Landlord from all damages and costs (including any attorneys' fees incurred by Landlord) arising out of or relating to any such claim(s), suit(s) or lien(s), and shall pay any and all costs (including attorneys' fees) incurred by Landlord in defense or prosecution of such actions within ten (10) days of demand by Landlord. Tenant's failure to comply with the foregoing requirements regarding liens shall constitute a default under the terms of this Lease.

10.2 Environmental Compliance.

During the longer of the Term or the Occupancy Period, the Tenant shall be responsible for complying with all applicable state, federal and municipal environmental obligations, laws and regulations (hereinafter collectively "Environmental Laws") and taking all necessary steps to prevent any violation of any such Environmental Laws. In addition, Tenant shall be responsible for payment of the costs and expenses relating to any violation of Environmental Law regarding any Hazardous Material (as defined below), substance or waste which comes on, which comes from or affects, the Premises during the longer of the Term or the Occupancy Period, or which is hereafter placed upon or under the Premises at any time during the longer of the Term or the Occupancy Period (including, without limitation payment of all fines, penalties or the like, as well as the costs of removal and remediation) including, any and all losses, damages, suits, penalties, costs, liability and expenses (including but not limited to reasonable investigation, laboratory fees, environmental audit and legal expenses) arising out of any claim for loss or damage to any real or personal property or to person(s) including the Premises, injuries to or death of person(s), contamination of or adverse effects on the environment or any violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, caused by or resulting from any Hazardous Material (as defined below), substance or waste which comes on, which comes from or affects, the Premises during the longer of the Term or the Occupancy Period, or which is hereafter placed upon or under the Premises at any time during the longer of the Term or the Occupancy Period. Tenant's obligations under this paragraph do not apply to any violation of Environmental Laws or claims resulting from the actions or omission of Landlord, its employees, subcontractors, or others using the Access Easement to access the

property at 55 Portland Street. This paragraph is only intended to govern Tenant's actions during the longer of the Term or the Occupancy Period of the Lease and does not apply to Tenant's ownership of the Premises.

The term "Hazardous Materials" or "Hazardous Material" as used in this Lease Agreement includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future State, Federal or municipal environmental law, regulation or ordinance including but not limited to any such law, regulation or ordinance relating to petroleum or petroleum products, asbestos or asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables or explosives.

Landlord acknowledges and agrees that nothing in section 10 of this Lease is intended to alter or does alter the rights and obligations of the parties under sections 8 and 9 of the Purchase and Sale Agreement.

11. Assignment/Subletting.

Tenant shall not sublet all or any portion of the Premises, nor sublease, transfer or assign this Agreement or the rights granted hereunder at any time during the Term of this Agreement without the prior written approval of Landlord, which may be granted or withheld in Landlord's sole discretion. No such assignment or subletting shall relieve Tenant of any obligations hereunder, all of which shall remain in full force and effect, including, without limitation, with respect to payment and any person accepting such assignment shall take the Agreement subject to all prior breaches and shall be liable therefore in the same manner as Tenant.

12. Casualty Damage.

a. If the Premises or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use, then, and in such case: (i) if such fire or unavoidable casualty occurs during the Initial Term, then Tenant shall have the right to terminate this Lease; or (ii) if such fire or unavoidable casualty shall occur following the expiration of the Initial Term and during the Renewal Term or any other term, either Landlord or Tenant shall have the right to terminate this Lease. Such right of termination, if available, shall be exercised by giving the other party written notice of such termination within thirty (30) days after such damage or destruction, and upon the giving of such notice, the Term of this Agreement shall cease and come to an end as of the earlier of the date Tenant fully moves out of the Premises or the expiration or earlier termination of the then application term of the Lease. Upon the date Tenant fully moves out of the Premises, Tenant's obligation to pay utilities shall end, except for such charges for utilities as shall have accrued prior to the date of move-out. Notwithstanding anything else contained in this Lease Agreement, Tenant shall not receive any rent refund or credit for such early termination of the Lease or for any early move out, but Tenant shall not be obligated to continue to pay rent due if the Lease is so terminated during any Renewal Term. For avoidance of doubt, Landlord and Tenant hereby agree no rent shall be

refunded to Tenant upon such termination (or under any other circumstance) and that the Rent Credit shall be permanently retained by Landlord.

b. Tenant shall be responsible for covering its equipment and supplies with such property and casualty insurance as it deems necessary and Landlord shall have no responsibility therefor. Tenant assumes all risk of damage, loss or casualty to its property, equipment and/or supplies while located at the Premises, whether it is owned or leased by Tenant.

12.1 Condemnation. If the Premises or any part thereof are taken or condemned by a duly constituted public authority, this Lease shall, as to the part taken, terminate and all proceeds and awards shall be paid to the Landlord. Tenant shall have no claim against Landlord with respect to any such taking or condemnation. In the event that a substantial portion of the Premises itself is taken or condemned, both Landlord and Tenant shall have the right to terminate this Lease upon giving notice in writing ten (10) days in advance of proposed termination date. Notwithstanding any such condemnation, taking or termination, no rent shall be refunded to Tenant, and all rent shall be permanently retained by Landlord.

13. Default; Termination.

a. This Lease is made on the condition that if the Tenant shall fail to pay any rent or any other monetary obligation to Landlord within five (5) days of its due date, or fail to perform any other obligation to Landlord within thirty (30) days after written notice thereof, or in case of an obligation that cannot with due diligence be cured within said thirty (30) day period, fail to proceed within said thirty (30) day period to commence to cure the same and thereafter to prosecute the performance of such obligation with due diligence and within a period of time that under all prevailing circumstances shall be reasonable or if Tenant shall violate or fail to comply with any of the terms or provisions of this Lease and such failure to comply or violation of this Lease shall reoccur or continue after written notice of such violation from Landlord, or if the estate hereby created shall be taken on execution or other process of law, or if Tenant shall be declared bankrupt or insolvent according to law, or if Tenant shall file bankruptcy, or if an involuntary bankruptcy shall be filed against Tenant which shall not be dismissed within thirty (30) days, or if the Tenant shall hold over at the termination of the Lease as herein provided, then and in any of said cases, notwithstanding any license or any former breach of covenants or waiver or consent in former instances, the Landlord lawfully may, in addition to and not in derogation of any remedies for breach of covenant, immediately or at any time thereafter, without prior demand or prior notice whatsoever, (a) terminate this Lease by notice in writing which termination shall be effective immediately or at Landlord's election on a date stated in said notice; (b) with or without process of law, enter into and upon the leased Premises or any part thereof and repossess the same; and (c) expel the Tenant and those claiming through or under the Tenant and remove its effects (together with any third parties' property) without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or preventing a breach of covenant, and upon entry as aforesaid, all rights of Tenant hereunder shall terminate; and Tenant covenants that in case of such termination, Tenant will during the remainder of the then-current term or any Renewal Term pay to Landlord on the last day of each calendar month the difference, if any, between the rental, and other monetary obligations of Tenant, which would have been due for such month had there been no such termination and the sum of the amounts being received by the Landlord from occupants of the leased Premises, if

any. In addition, Tenant agrees to pay the Landlord, as damages for any above-described breach, all costs of reletting the Leased Premises including, without limitation, real estate commissions, costs of advertising, costs of damage repair, cleaning, costs of renovation of the Premises to suit a new tenant, and costs of moving and storing Tenant's personal and trade fixtures.

b. Legal Fees and Expenses.

(i) Tenant further agrees to pay and indemnify the Landlord against all reasonable legal costs and charges, including, without limitation, all reasonable attorney's fees and expenses (hereinafter collectively referred to as "Legal Expenses") incurred by Landlord if Landlord prevails in a civil action to obtain possession of the leased Premises (including, without limitation, in any forcible entry and detainer or eviction action).

(ii) Tenant shall pay to Landlord all such Legal Expenses within ten (10) days following the entry of a final judgment and the passing of any applicable appeals period in such civil action.

c. Surrender. Upon any termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in accordance with the provisions of this Lease. If this Lease is terminated, Tenant shall remain liable to Landlord for all Rent due under this Lease Agreement which has not yet been paid to Landlord. The Rent Credit shall remain nonrefundable and shall be permanently retained by Landlord. In no event shall either party be liable to the other for incidental, special, or consequential damages of any nature claimed as a result of the breach of any term of this Agreement or termination of this Agreement.

d. Termination for Convenience. Tenant may terminate this Lease for its convenience upon no less than thirty (30) calendar days' prior written notice to Landlord. If Tenant so terminates this Lease for its convenience, no rent shall be refunded to Tenant, and the Rent Credit shall be permanently retained by Landlord.

14. Access.

Landlord shall provide at least 24 hours advance notice of its intention to enter the Premises, except in the case of an emergency. Upon such notice, the Landlord and its representatives, agents, or employees, may enter the Premises.

15. Signs.

Tenant shall not erect, install or place any signage upon the interior or exterior of the Premises except with the written approval of Landlord, which approval Landlord agrees not to withhold unreasonably. Tenant shall pay any and all costs associated with any such signage approved by Landlord.

16. Zoning.

It is the responsibility of Tenant to determine all zoning information and secure all necessary or required permits and approvals of its proposed use of the subject Premises. Landlord makes no representations or warranties as to the suitability of, or the ability to obtain regulatory approval for, the subject Premises for Tenant's intended use.

17. Self-Help.

In the event of a dispute between Tenant and Landlord, Tenant shall not be permitted to withhold all or any part of the rental payment then due unless and until a forum of appropriate jurisdiction has so ruled. The acceptance of a check by the Landlord for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, to the effect that such lesser amount constitutes payment in full shall be given no effect and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

18. Miscellaneous Provisions.

Subject to the foregoing, the covenants and agreements of the Landlord and Tenant shall run with the land and be binding upon and inure to the benefit of them and their respective successors and assigns, but no covenant or agreement of Landlord, expressed or implied, shall be binding individually upon any LLC manager or member nor any fiduciary nor any trustee or beneficiary under any trust.

19. Subordination.

Tenant shall, from time to time, upon request of the Landlord, subordinate this Lease to any mortgage deed, and/or other security indenture hereafter placed upon the leased Premises, and to any renewal, modification, replacement or extension of such mortgage or security indenture, if, and only if, any mortgagee of Landlord and Landlord (if required by lender) execute (either before or after) such subordination agreement or subordination, non-disturbance and attormnent agreement ("SNDA"). Landlord agrees to make reasonable efforts to negotiate with its lender with respect to the terms of any such SNDA, and shall advise such lender of any Tenant objections to such SNDA. Tenant hereby agrees it shall execute and deliver to Landlord within five (5) days of Landlord's request such subordination agreement or SNDA submitted to Tenant by Landlord or Landlord's lender.

20. Estoppel Certificates.

Tenant shall, within five (5) days after each and every request by Landlord execute, acknowledge and deliver to Landlord a statement in writing including any or all of the following as determined by Landlord: (a) certifying that the Lease is unmodified and in full force or effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), (b) specifying dates to which the annual rent has been paid, (c) stating whether or not Landlord is in default in performance or observance of its obligations under the Lease, and, if so, specifying each such default, (d) stating whether or not to the best of the knowledge of the Tenant, any event has occurred which, with giving of notice or passage of time, or both, would constitute a default by Landlord under Lease, and, if so, specifying each such event, and (e)

certifying that Tenant, as of the date of the statement, has no charge, lien or claim of offset under the Lease, or otherwise, against rents or other charges due or to become due thereunder. Any such statement delivered pursuant to this Article may be relied upon by any prospective assignee, transferee or mortgagee of the Leased Premises or any interest therein.

21. Return of Premises; Trade Fixtures.

Tenant at the expiration or termination of this Lease Agreement shall peaceably yield up to Landlord the Premises in broom clean condition, in good repair in all respects, reasonable use and wear and damage by fire and all other unavoidable casualties not caused by the acts or omissions of Tenant, its officers, employees, agents, invitees or contractors excepted. At such time, Tenant shall also remove all trade fixtures, equipment and other personal property installed or placed by it at its expense in, on or about the Premises, including, without limitation, those listed on Exhibit B. Should Tenant fail to remove its trade fixtures, equipment or other personal property within Thirty (30) days of a notice to do so from Landlord, ownership of such fixtures, equipment and property shall automatically be vested in Landlord and Landlord have the right to dispose of such fixtures, equipment and property in any manner it sees fit, and retain all proceeds therefrom.

22. Covenants.

Landlord covenants that it is the owner in fee of the Premises and can and will provide quiet enjoyment of the Premises during the Initial Term of this Agreement, or if applicable, any Renewal Term. Each party covenants that the Agreement is signed by a duly authorized individual.

23. Notices.

Any notice required to be given under this Lease shall be in writing and shall be hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the parties as stated below or such other address as either party may designate in writing to which its future notices shall be sent. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery at the addresses below shall be effective as personal delivery to the party specified on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

To Tenant:	City of Portland ATTN: City MANAGER 389 Congress Street Portland, ME 04101
With a copy to:	The Office of the Corporation Counsel at the same address

To Landlord: Mr. Thomas Watson

104 Grant Street
Portland, ME 04101

With a copy to: William H. Leete, Jr., Esq.
Leete & Lemieux, P.A.
511 Congress Street, Suite 502
Portland, ME 04101

24. Amendment.

Both parties hereto acknowledge and agree that they have not relied upon any statements, representations, agreements or warrantees except such as are expressed herein. The terms of this Lease may be modified or amended by the mutual assent of the parties hereto; provided, however, that no such modification or amendment to this Lease shall be binding until in writing and signed by both parties.

25. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maine.

26. Force Majeure.

Neither Tenant nor Landlord shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, war, acts of superior governmental authority or other reason over which it has no control; provided, however, that the suspension of performance shall be no longer than that required by the force majeure and a suspension of performance shall only be permitted if the party prevented from performance has given written notice thereof to the other party.

27. Non-Waiver.

No waiver of any breach of any one or more of the conditions of this Lease by the Landlord or Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

28. Limitations of Liability. Tenant agrees to look solely to the Landlord's interest in 44 Hanover Street, for recovery of any judgment from Landlord, it being agreed that Landlord is not personally liable for any such judgment beyond its interest in 44 Hanover Street (except to the extent that insurance proceeds may be available to satisfy any such judgment).

29. Brokers.

Landlord and Tenant each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with this Agreement, other than the related purchase transaction for the Premises between Landlord and Tenant, and Tenant hereby warrants and represents that its broker [CBRE | The Boulos Company] has been paid in full for its services rendered in connection with that transaction and is not entitled to any compensation with respect to this Lease. Each party agrees to hold and indemnify the other harmless from and against any losses, damages, costs or expenses (including attorneys' fees) that either party may suffer as a result of claims made or suits brought by any broker in connection with this transaction, the obligated party hereunder to be the party whose conduct gives rise to such claim or whose statement contained in this Paragraph 29 shall be untrue.

30. Tenant agrees that its obligations to Landlord under this Lease Agreement are contractual and are not subject to any defenses available under the Maine Tort Claims Act and Tenant further agrees not to seek to invoke any such defenses.

31. Memorandum of Lease.

Landlord and Tenant agree that this Lease shall not be recorded but each party hereto agrees, on request of the other, to execute a Memorandum of Lease in recordable form and mutually satisfactory to the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed the day and year first above written.

WITNESS: **LANDLORD**

_____ By: _____
Thomas E. Watson
Its Manager

WITNESS **CITY OF PORTLAND**

_____ By: _____
Jon P. Jennings
Its City Manager

Approved as to Form:

_____
Corporation Counsel's Office

EXHIBIT A
(Plan of Premises to be inserted closing)

EXHIBIT B
Tenant's Property To Be Removed At End Of Term

Lifts –

- 2 Post Forward model DP15SN000M, 15,000 lb, 230 volt – Pickup Bay
- 2 Post Forward model DP10A2, 10,000 lb, 230 volt – Police Bay 2
- 2 Post Forward model 110N000M, 10,000 lb, 230 volt – Police Bay 1
- 4 post Rotary model SM18N000, 18,000 lb, 230 volt – Medcu Bay
- (4) sets of 4 Stertil Koni mobile column lifts, 18,000 lb each post, 230 volt, 3 phase

Tire Machines –

- Atlas tire changer – 110 volt
- Accuturn tire balancer – 110 volt
- Brunick tire spreader – 110 volt
- Old tire changer

Crane

- Demag 10 ton.

Air Compressor – Replace with new

- Champion 3 phase, 230 volt compressor, circa 1992, with air drier 110 volt

Misc Shop Equipment 110 volt

- 2 ac machines, 110 volt
- 1 transmission service machine – 110 volt
- 110 welders for mechanics (2)
- Diesel transfer tank 110 volt
- Multiple waste oil transfer tanks 110 volt

Machine Shop

- Shop press, 110 volt
- Fume extraction – 110 – 220 volt depending on size.
- Millermatic 252 mig welder, 220 volt (work bay)
- Older mig welder, 220 volt (work bay)
- Tig welder – 220 volt (work bay)
- Plasma cutter, 220 volt (work bay)
- Jet bandsaw – 110 volt (in machine shop)
- Vertical bandsaw, 220 volt, 3 phase (machine shop)
- Ironworker, Scotchman, 110 volt (machine shop)
- Lathe, 220 volt, 3 phase (machine shop)
- Milling machine, 220 volt, 3 phase (machine shop)
- Large drill press, 220 volt, 3 phase (machine shop)
- Small drill press, 110 volt (machine shop)

Other/Misc Equipment

- (2) Generators (Admin and Fleet)
- Misc hose / cord / wiring reels
- Tire bay water tank
- Spring compressor – wall mounted in Fire bay
- Bulk fluid tanks
- Paint mix room
- Newer floor body shop lights
- 2 new Fleet building dumpsters
- Misc shelving

Order 15-18/19
Tab 20 7-16-18

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING THE FOURTH AMENDMENT TO THE 82 HANOVER STREET PURCHASE AND SALE AGREEMENT

ORDERED, that the attached Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover Street is hereby approved, substantially in the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document.

Portland, Maine Yes. Life's good here.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

DISTRIBUTE TO: **City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English**

FROM: **Greg Mitchell, Economic Development Director**

DATE: **June 28, 2018**

SUBJECT: **Proposed Fourth Amendment to 82 Hanover Street Purchase and Sale Agreement**

SPONSOR: **Economic Development Committee, Councilor Justin Costa/Chair – Meeting held on 6/19/2018 and the Vote was Unanimous (3-0)**

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading and Final Action: July 16, 2018

Can action be taken at a later date: No, time-is-of-the-essence to move forward on the sale of this property. Requesting emergency action to allow immediate execution of the Amendment prior to the due diligence deadline of July 23, 2018.

PRESENTATION: Greg Mitchell/5 Minutes

I. ONE SENTENCE SUMMARY

The proposed Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover Street will enable a new 10-foot wide pedestrian easement to be established, between Parris and Hanover Street along the proposed 44 and 82 Hanover Street property line and restrict parking in the 30-foot wide Lancaster Street right of way area.

II. BACKGROUND

The EDC previously voted to recommend to the City Council the discontinuance of vehicular and pedestrian rights (while retaining a utility easement) in the section of the former discontinued Lancaster Street right-of-way located between Parris and Hanover Street. The City Council voted on June 18, 2018 to propose the Discontinuance of a Public Easement on Lancaster Street, after public comment was received. This item is on the July 16, 2018 Council Agenda for a vote on the Order of Discontinuance of a Public Easement on Lancaster Street.

CITY OF PORTLAND/ECONOMIC DEVELOPMENT DEPT./389 CONGRESS ST./PORTLAND, ME 04101/(207) 874-8683

In order to be consistent with City Planning Board Site Plan approval for the 82 Hanover Street Redevelopment Project, staff propose amending the 44 and 82 Hanover Street Purchase and Sale Agreements to reserve in the deeds public pedestrian easements establishing a ten (10) foot wide new pedestrian area composed of 5 foot wide easements on either side of the property line. Following guidance from the EDC at its June 19, 2018, the amendments to the Purchase and Sale Agreement for 82 Hanover also require a covenant in the deed restricting parking in the 30-foot wide portion of the property currently encumbered by the public easement in the former Lancaster Street right of way.

It is noted that Tom Watson is the buyer for both the 44 and 82 Hanover Street properties.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is City Council approval of the attached Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover.

This supports the private redevelopment of the 44 and 82 Hanover Street properties formerly occupied by the City Public Works Department.

IV. FINANCIAL IMPACT

There is no financial impact related to this transaction.

V. STAFF ANALYSIS

In order to account for the loss of public access in the former Lancaster Street right of way and comply with Planning Board requirements and EDC recommendations, City staff negotiated the attached Fourth Amendment with Tom Watson (buyer for both the 44 and 82 Hanover Street properties) to preserve public easements on both properties related to the new ten (10) foot wide pedestrian easement area between Parris and Hanover Streets along the boundary between 44 and 82 Hanover Street and to restrict parking in the former Lancaster Street right of way.

VI. RECOMMENDATION

The EDC, at its June 19, 2018 meeting, voted to recommend approval, to the City Council, of the Draft Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover Street in substantial conformance as attached.

VII. LIST ATTACHMENTS

- Proposed Fourth Amendment to Purchase and Sale Agreement for 82 Hanover Street
- 3rd Amendment to Purchase and Sale Agreement
- 2nd Amendment to Purchase and Sale Agreement
- 1st Amendment to Purchase and Sale Agreement
- 82 Hanover Street Purchase and Sale Agreement

FOURTH AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the ____ day of July, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about October 24, 2017, as amended by that certain First Amendment dated December 22, 2017, that certain Second Amendment dated February 28, 2018, and that certain Third Amendment dated May 14, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement;

WHEREAS, Seller and Buyer wish to amend the description of the Premises in the P&S in order to clarify that Seller will reserve in the conveyance a public pedestrian access easement over a portion of the Premises and to include a restrictive covenant governing parking in a portion of the Premises as set forth in greater detail below.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Paragraph 3(f) of the Agreement is hereby deleted and replaced with the following:

> Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer specifically acknowledges and agrees that in the deed, Seller will reserve for the benefit of the public a 5-foot-wide pedestrian access easement approved by the City of Portland Planning Board on May 23, 2018 (the "Public Pedestrian Easement") along the entire length of the common boundary between the Premises and 44 Hanover Street, which is also the southeasterly boundary line of the Premises, which easement shall run between Hanover and Parris Streets (the "Public Pedestrian Easement Area"). The Public Pedestrian Easement Area is generally depicted as the cross-hatched area on the diagram attached hereto as Exhibit A, which is incorporated herein by reference. The purpose of the Public Pedestrian Easement is to grant public pedestrian access on and over the Public Pedestrian Easement Area, which shall be an ADA compliant area for pedestrian, bicycle and similar non-motorized pedestrian uses. The Public Pedestrian Easement shall be

subject to such rules or ordinances that the Seller may adopt from time to time in the interests of public safety, which are generally applicable to similar pedestrian easements, provided that Buyer does not waive any rights, and expressly reserves the right, to argue that any such future rules or ordinances do not apply to it on the basis that the existing conditions of the Public Pedestrian Easement Area are grandfathered and/or that such rules or ordinances cannot be retroactively applied. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Maintenance and repair responsibilities within the Public Pedestrian Easement Area shall belong solely to the Buyer, its successors and assigns. Buyer shall be responsible for removal of snow and ice from the Public Pedestrian Easement Area and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Seller shall have the right, but not the obligation, to repair or maintain the Public Pedestrian Easement Area, including, as reasonably necessary, any subsurface repairs or maintenance, or remove snow or ice therefrom, when Seller, in its sole discretion, deems such repairs, maintenance, or snow or removal necessary to ensure public safety and protect the public use and enjoyment of the Public Pedestrian Easement Area. No buildings or any kind of permanent structure will be erected in the Public Pedestrian Easement Area, and Buyer shall not use or authorize any use, condition or state of disrepair that would be contrary to or otherwise inhibit the public pedestrian uses of the Public Pedestrian Easement Area.

Buyer further acknowledges and agrees that the deed will include a restrictive covenant governing parking in the northerly 25 foot wide portion of the area on Exhibit A marked "Lancaster Street (Discontinued)," which area extends from Parris Street to Hanover Street (the "Restricted Parking Area"). Use of the Restricted Parking Area shall be open space, free from permanent structures, sheds, dumpsters, and the like, and shall be for the commercial use of Buyer, its tenants, and their business invitees and customers, subject to commercially reasonable rules and regulations imposed by the Buyer. Buyer, its successors and assigns shall prohibit short or long-term parking in the Restricted Parking Area at all times, provided, however, that Buyer may allow brief stopping and standing in the Restricted Parking Area for vehicles loading or unloading people or goods for commercial purposes at the Premises. Such covenants and restrictions are intended to be and shall be considered covenants that run with the Premises and shall bind all subsequent owners of the Premises. Such covenants and restrictions shall survive a sale, transfer, foreclosure or transfer of title in lieu of foreclosure, or other disposition of the Premises and shall be enforceable by Seller as a contract and shall inure to the benefit of and be enforceable by Seller, its successors, transferees and assigns. The covenants restrictions may be amended or modified in whole or in part only by written agreement of Seller and Buyer.

Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in

the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

2. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

_____
WITNESS

_____
Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

_____
WITNESS

_____
Printed Name: Thomas E. Watson
Its Manager

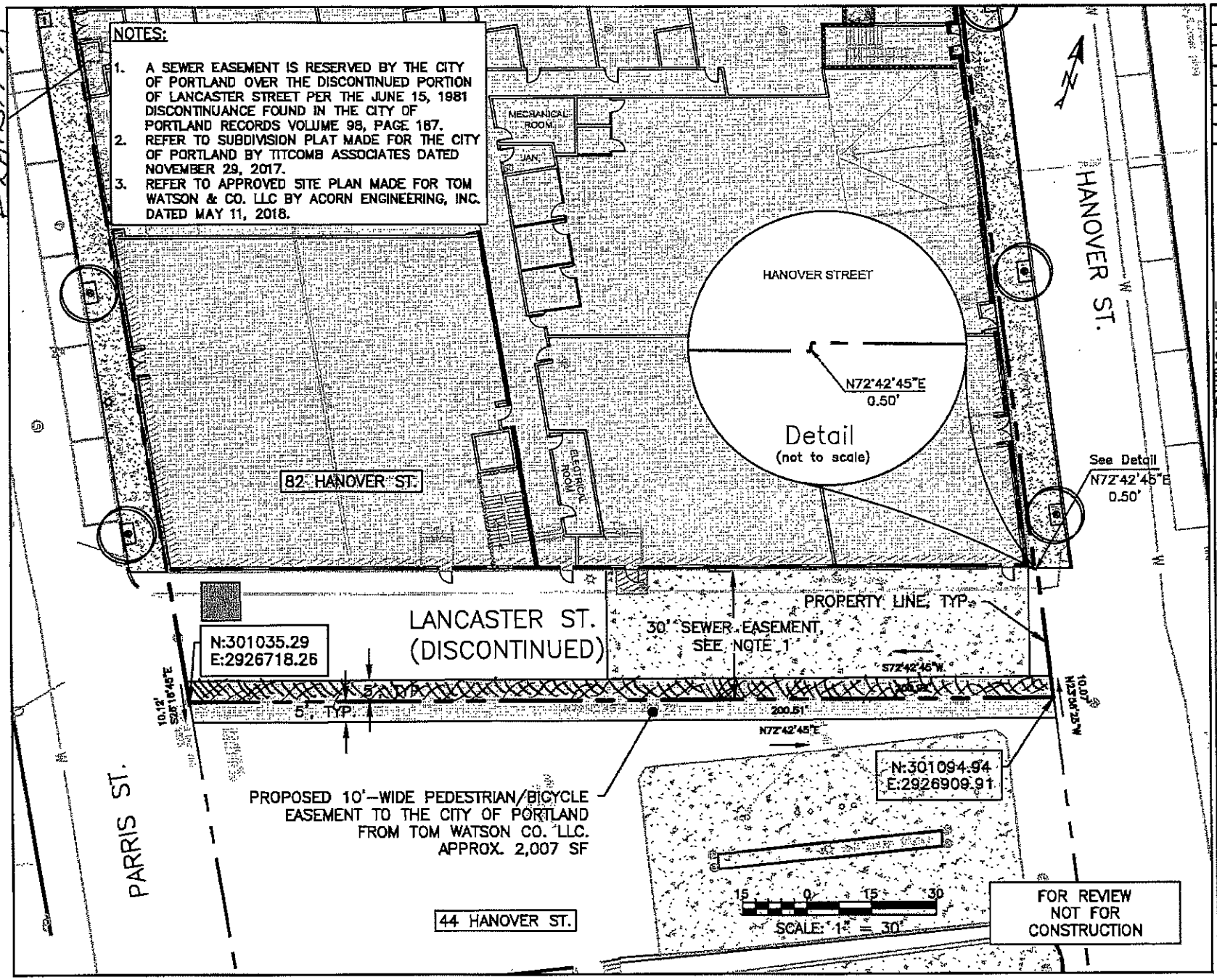
Approved as to Form:

_____
Corporation Counsel's Office

EXHIBIT A

NOTES:

1. A SEWER EASEMENT IS RESERVED BY THE CITY OF PORTLAND OVER THE DISCONTINUED PORTION OF LANCASTER STREET PER THE JUNE 15, 1981 DISCONTINUANCE FOUND IN THE CITY OF PORTLAND RECORDS VOLUME 98, PAGE 187.
2. REFER TO SUBDIVISION PLAT MADE FOR THE CITY OF PORTLAND BY TITCOMB ASSOCIATES DATED NOVEMBER 29, 2017.
3. REFER TO APPROVED SITE PLAN MADE FOR TOM WATSON & CO. LLC BY ACORN ENGINEERING, INC. DATED MAY 11, 2018.



ISSUED FOR	BY	DATE
CITY REVIEW	WHS	5/29/18

REV. DATE

DRAWING NAME: LANCASTER PEDESTRIAN EASEMENT

PROJECT NAME: 82 HANOVER REDEVELOPMENT

CLIENT: TOM WATSON & CO. LLC

ACORN ENGINEERING, INC

ACORN ENGINEERING, INC. P.O. BOX 3372 PORTLAND, MAINE 04104 (207) 775-2855

FILE:	1093_CIVIL
DATE:	5/29/2018
JN:	1093
SCALE:	1":30'
DESIGN BY:	SJL
DRAWN BY:	SJL
CHECKED BY:	WHS

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM ACORN ENGINEERING, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO ACORN ENGINEERING, INC.

DRAWING NO.

EX-01

THIRD AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 14th day of May, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about October 24, 2017, as amended by that certain First Amendment dated December 22, 2017 and that certain Second Amendment dated February 28, 2018 (hereinafter collectively the "Agreement") with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement;

WHEREAS, the prior amendments to the Agreement provided, among other things, that the Due Diligence Period and the Financing Period, as those terms are defined in the Agreement were extended, the most recent amendment extending those expiration dates to May 15, 2018 or such later date as may be set forth in the Agreement (the "Due Diligence and Financing Period Expiration Date"); and

WHEREAS, Seller and Buyer wish to further amend the Agreement to further extend the Due Diligence Period and Financing Period Expiration Date and to amend the "Option to Cure" and other provisions of Section 3(e) of the Agreement, all as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to May 15, 2018 as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement (the First Amendment replaced "sixty (60) days after the Effective Date of this Agreement" with "March 1, 2018," and the Second Amendment replaced it with "May 15, 2018"), and replacing it with a reference to "July 23, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on July 23, 2018.

2. The Agreement is hereby further amended by deleting the reference to May 15, 2018 as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement (The First Amendment replaced "sixty (60) days after the Effective Date of this Agreement" with "March 1, 2018" and the Second Amendment replaced it with "May 15, 2018"), and replacing it with a reference to "July 23, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on July 23, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due Diligence Period they also intend, and hereby agree to (and hereby do) extend to July 23, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and the Financing Period may be automatically extended to a date later than July 23, 2018 and it is the parties' intent that both such periods be extended to the later of July 23, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

6. The Agreement is hereby further amended by deleting Paragraph 3(e) of the Agreement in its entirety and replacing it with the following:

e. Option to Cure.

(1) In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's satisfaction, Buyer will have the option to:

(A) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement);

(B) waive the objection and close; or

(C) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so and the Closing Date shall be extended to a date ten (10) days after the expiration of such 60 day period); if Buyer determines it is not satisfied with the results of its own cure efforts, Buyer shall be entitled at any time prior to the expiration of the ten (10) day period following Buyer's sixty (60) day cure period set forth in this subsection (C) to

terminate this Agreement as set forth in subsection (A) set forth above, or to waive its objection and close under this Agreement.

(2) In the event City shall elect not to cure any objection by Buyer, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days after receipt by Buyer of the City's notice of election not to cure such Buyer's objection in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. If the City does not timely respond to the Buyer's objection or if the City responds to Buyer's objection but does not state whether or not it elects to cure all of Buyer's objections, then Buyer shall have until the later of the expiration date of the Due Diligence Period or thirty (30) days after the date of Buyer's objection(s) in which to make its choice and to notify City whether it elects option A, B or C set forth in the previous subparagraph. In the event City shall elect to cure all of Buyer's objections, Buyer shall have until the later of the expiration date of the Due Diligence Period or fourteen (14) days following the end of the City's 60-day cure period to make its choice and to notify City whether it accepts the City's cure with respect to all objections or whether it elects option A, B or C set forth in the previous subparagraph.

(3) Nothing contained in this subsection (e) is intended to, nor shall in any way limit, Buyer's right to terminate this Agreement prior to the expiration of the Due Diligence Period and obtain a refund of the Deposit.

7. The Agreement is hereby further amended by deleting Paragraph 3(f) of the Agreement in its entirety and replacing it with the following:

Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

8. Except as specifically amended hereby and by the First and Second Amendments, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Third Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

Sonia Bear
WITNESS

Jon P. Jennings
Its City Manager

Approved as to Form:

Corporation Counsel's Office

Signature page for Tom Watson & Co., LLC follows.

TOM WATSON & CO., LLC

WITNESS

Printed Name: Thomas E. Watson
Its Manager

SECOND AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 28th day of February, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about October 24, 2017 (the "Agreement") with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement; and

WHEREAS, on December 22, 2017, Seller and Buyer entered into a First Amendment to Purchase and Sale Agreement for 82 Hanover Street ("First Amendment"), which amended the Agreement and provided, among other things, that the Due Diligence period and the Financing Period, as those terms are defined in the Agreement, were extended to March 1, 2018 or such later date as may be set forth in the Agreement, (the "Due Diligence and Financing Period Expiration Date");

WHEREAS, Seller and Buyer wish to amend the Agreement to further extend the Due Diligence Period and Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to March 1, 2018 as the expiration date of the Due Diligence Period in the first sentence of Section 3(a) of the Agreement (the First Amendment replaced "sixty (60) days after the Effective Date of this Agreement" with "March 1, 2018"), and replacing it with a reference to "May 15, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Due Diligence Period to 4pm Portland, Maine time on May 15, 2018.

2. The Agreement is hereby further amended by deleting the reference to March 1, 2018 as the expiration date of the Financing Period in the first sentence of Section 3(c) of the Agreement (The First Amendment replaced "sixty (60) days after the Effective Date of this Agreement" with "March 1, 2018"), and replacing it with a reference to "May 15, 2018," meaning and intending hereby to extend, and hereby extending, the deadline of the expiration date of the Financing Period to 4pm Portland, Maine time on May 15, 2018.

3. Without limiting the general nature of the extensions described above, Seller and Buyer further agree that by virtue of extending the deadline of the expiration date of the Due

Diligence Period they also intend, and hereby agree to (and hereby do) extend to May 15, 2018, the deadline for any objections to title, environmental or survey matters and including, without limitation, any objections to any other matters listed in Paragraph 3(d) of the Agreement.

4. Seller and Buyer further agree that due to certain automatic extension provisions in the Agreement, that both the Due Diligence Period and Financing Period may be automatically extended to a date later than May 15, 2018 and it is the parties' intent that such periods be extended to the later of May 15, 2018 or such later date as is provided in the Agreement.

5. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

6. Except as specifically amended hereby and by the First Amendment, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement, as amended.

IN WITNESS WHEREOF, this Second Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

Sonia Bean
WITNESS

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

WITNESS

Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

Corporation Counsel's Office

FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the 22ND day of December, 2017, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 ("Seller") and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the "Buyer").

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated October 24, 2017 (the "Agreement") with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement; and

WHEREAS, the Due Diligence period and the Financing Period, as those terms are defined in the Agreement, were to expire sixty (60) days after the date of the Agreement, (the "Due Diligence and Financing Period Expiration Date") but under the terms of the Agreement have been automatically extended by at least thirty (30) days because certain due diligence items, such as a Phase II Environmental study, have not yet been provided to Buyer;

WHEREAS, Seller and Buyer wish to amend the Agreement to extend the Due Diligence Period and Financing Period Expiration Date as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

1. The Agreement is hereby amended by deleting the reference to "sixty (60) days after the Effective Date of this Agreement" in the first sentence of Section 3(a) of the Agreement, and replacing it with a reference to "March 1, 2018," meaning and intending hereby to extend the deadline of the Due Diligence Period to 4pm Portland, Maine time on March 1, 2018.

2. The Agreement is hereby further amended by deleting the reference to "sixty (60) days after the Effective Date of this Agreement" in the first sentence of Section 3(c) of the Agreement, and replacing it with a reference to "March 1, 2018," meaning and intending hereby to extend the deadline of the Financing Period to 4pm Portland, Maine time on March 1, 2018.

3. Seller and Buyer further agree that due to certain automatic extensions provisions in the Agreement, that both the Due Diligence Period and Financing Period may be automatically extended to a date later than March 1, 2018 and it is the parties' intent that such periods be extended to the later of March 1, 2018 or such later date as is provided in the Agreement.

4. Buyer and Seller further agree that any deadlines in the Agreement that are set to occur at the expiration of, or a specified number of days after, the Due Diligence Period shall continue to occur at the expiration of, or after the Due Diligence Period, as applicable and shall be calculated based upon the expiration date of the Due Diligence Period as amended hereby.

5. Except as specifically amended hereby, the Agreement shall remain in full force and effect and the parties hereto ratify the terms and conditions of the Agreement.

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

WITNESS

Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

Corporation Counsel's Office

Parcel 4

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this 24th day of October, 2017 by and between the City OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "Seller" or "City"), and Tom Watson & Co., LLC, or assigns, a Maine limited liability company having a mailing address of 104 Grant Street, Portland, ME 04101 (hereinafter referred to as "Buyer").

RECITALS

WHEREAS, the CITY is the owner of approximately 1.25 acres of land at or near 82 Hanover Street, Portland, Maine as generally depicted as Parcel 4 on the plan attached hereto as Exhibit A together with all buildings and other improvements located thereon (the "Premises") and incorporated herein; and

WHEREAS, Buyer desires to purchase the Premises, and the City desires to convey the Premises to Buyer;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **SALE AND EFFECTIVE DATE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land and buildings located at or about 82 Hanover Street. This Agreement shall become effective following the occurrence of both of the following: approval of this Agreement by the City Council of the City in substantially this form, and the City Manager's execution of this Agreement. The first calendar day after which both such events have occurred is hereinafter referred to as the "Effective Date". All deadlines and time periods set forth in this Agreement, including, without limitation, the Due Diligence Period, Financing Period and Closing Date shall be computed from the Effective Date.

2. **CONSIDERATION**. The purchase price for the Premises shall be Two Million Three Hundred Fifty Thousand ($2,350,000) (the "Purchase Price"), subject to the following cost adjustments and conditions:

    a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars ($25,000.00) (the "Deposit") within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and

b. The Buyer shall pay the remainder of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City) at closing.

3. TITLE AND DUE DILIGENCE.

a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Eastern Standard Time on the day that is sixty (60) days after the Effective Date of this Agreement (the "Due Diligence Period") to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.

b. Property Description. The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the "Survey") which will more specifically describe the property shown on Exhibit A hereto (the "Premises Description") in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close.

c. Financing Contingency. Buyer shall have from the Effective Date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is sixty (60) days after the Effective Date of this Agreement (the "Financing Period") to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the same date as the expiration of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

d. Title, Survey and Environmental Objections. In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period will be extended to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.

e. Option to Cure. In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a city-wide PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement

and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

4. INSPECTIONS.

a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.

b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City's request.

c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.

d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.

e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or

take any other action with respect to any pre-existing environmental contamination disturbed thereby.

f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion Buyer may terminate this Agreement. If Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Buyer's one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.

6. **DEFAULT AND REMEDIES**. In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like, but Buyer at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.

7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.

8. **PROPERTY SOLD "AS IS, WHERE IS**." Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make

no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues (other than City's agreement to obtain subdivision approval as set forth in Paragraph 10 of this Agreement) or the environmental, mechanical, or structural condition of the Premises. Acceptance by Buyer of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the City of every agreement and obligation contained herein except as expressly set forth herein.

9. **ENVIRONMENTAL INDEMNIFICATION**. Buyer covenants and agrees to indemnify, defend, and hold the City harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Buyer or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, except to the extent that such a claim results directly from the City's release, handling or storage of hazardous wastes or hazardous materials on the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon Buyer's successors, assigns, and transferees.

10. **CONDITIONS PRECEDENT TO CLOSING.** It is a condition precedent to Closing that:

    a. The City shall obtain in form reasonably acceptable to Buyer the removal of the restrictions limiting development of or use of the Premises or otherwise burdening the Premises (hereinafter the "Deed Restrictions") stated or described in the deed to the City from the State of Maine dated September 26, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23202, Page 38.

    b. The City shall obtain Subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree, such Subdivision approval is not required (hereinafter the "Subdivision Approval").

In the event the City is unable to obtain Subdivision Approval and the removal of all the above Deed Restrictions prior to the Closing Date, as defined below, then the Buyer may either (1) extend the Closing Date set forth in Paragraph 11 by a time period not to exceed one hundred eighty (180) days to permit the removal of the Deed Restrictions and the approvals to be obtained or (2) elect to terminate this Agreement either prior to the scheduled Closing Date or prior to the expiration of any extension period based on an

extension as provided above. In the event Buyer shall elect to so extend the Closing Date, the City agrees to pursue the removal of the Deed Restrictions and Subdivision Approval.

If Buyer shall elect to terminate this Agreement then the City shall refund the Deposit, if previously paid, without interest, and this Agreement shall be terminated and neither party shall have any further obligations or liabilities under this Agreement, unless the parties mutually agree to extend this Agreement. Buyer acknowledges and agrees that the City is acting as Seller, and not in its regulatory capacity, in connection with this Agreement. The delivery to Buyer, and acceptance and recording by the Buyer of a deed to the Buyer of the Premises, will evidence conclusive and final consent by the Buyer to the waiver or completion of all these conditions.

11. <u>CLOSING</u>. Time is of the essence in the performance of this Agreement. The closing shall be held at the offices of Buyer's counsel at a time agreeable to the parties on or before the day that is the later of five months after the Effective Date of this Agreement or thirty (30) days after the later of (i) the expiration of the Due Diligence Period; (ii) the deadline for the City to resolve any title, Survey or environmental objections; or (iii) the date to which Buyer elects to extend the Closing Date under Paragraph 10 (the "Closing Date"). At the Closing:

a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good, and insurable title (at standard rates) to the Premises, free and clear of all liens and encumbrances except as otherwise set forth herein.

b. Buyer shall deliver the balance of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City); and

c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement, and for the Buyer to obtain owners and lenders title insurance in form reasonably acceptable to Buyer and to Buyer's lender.

d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting with respect to the Closing and executing documents on behalf of Buyer are authorized to do so.

12. <u>BUYER'S POST CLOSING OBLIGATIONS; ESCROW AGREEMENT</u>. Buyer agrees as follows:

a. Buyer agrees at Closing to deposit $115,000.00 to be held in escrow (the "Escrow Account") pursuant to an escrow agreement in form mutually acceptable to Buyer and City with a mutually acceptable escrow agent.

b. Buyer agrees to commence development of the residential project generally depicted on the plans that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on July 19, 2017, and which shall specifically include at least twenty-three (23) new dwelling units at Buyer's property at 104 Grant Street (The "Residential Project"), within twelve (12) months after closing; provided, however, that Buyer shall be entitled to modify the Residential Project by increasing the number of residential units, modifying the size and layout of such units, or minor, non-substantive changes. Buyer shall also be entitled to modify the Residential Project in a manner deemed reasonably necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval; provided, however, that such modifications shall not reduce the number of new dwelling units below 23 unless the City's land use ordinance only permits a smaller number without material modifications to the Residential Project as proposed, in which case the Residential Project shall include the maximum number of dwelling units allowed at 104 Grant Street without material modifications to the Residential Project as proposed.

c. Buyer's commencement of the Residential Project development shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an "Application") for the Residential Project within 12 months after the Closing under this Agreement.

d. Buyer agrees to commence development of a commercial project at the Premises in substantially the form depicted on the plans that are attached hereto as Exhibit C and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on July 19, 2017 (the "Commercial Project"), within twelve (12) months after closing. the Commercial Project shall be deemed to be "substantially in the form depicted on the plan attached as Exhibit C" if it proposes to include (or is constructed to include) a) multiple commercial tenant(s) which may be of varied types including retailers and others, b) rooftop decks, and c) if reasonably feasible within the existing space available, open spaces/common areas available for public use. The Commercial Project may also be modified in a manner deemed necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval and the Commercial Project, if otherwise "substantially in the form depicted on the plan attached as Exhibit C" shall, notwithstanding any such modifications, continue to be so considered.

e. Buyer's commencement of the Commercial Project shall be effected by Buyer or its successors, assigns, or transferees submitting an Application for the Commercial Project within 12 months after the Closing under this Agreement.

f. If Buyer does not submit Applications for the Commercial Project and the Residential Project (including any modifications as described above) within one (1) year of Closing under this Agreement, then $10,000.00 shall be released

from escrow to the City's Housing Trust Fund, and until both Applications have been filed, an additional $10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter.

g. Additionally, Buyer shall commence construction of the Residential Project and the Commercial Project by the later of the date that is thirty-six (36) months after Closing under this Agreement or one hundred eighty (180) days after final approval of the Projects (including, without limitation, final decisions in all applicable municipal or judicial proceedings) and the expiration of all applicable appeal periods (the "Construction Start Date"). Buyer agrees to diligently pursue all approvals for both Projects. If Buyer fails to commence construction of the Residential Project and the Commercial Project by the later of the Construction Start Date, then $10,000.00 shall be released from escrow and to the City's Housing Trust Fund, and until construction on both Projects is commenced, an additional $10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter. Within thirty (30) days after the commencement of construction of both Projects, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that Buyer fails to commence construction of both Projects within 5 years from the Closing Date, the entire remaining balance of the Escrow Account shall be released to the City's Housing Trust Fund.

h. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Residential Project and the Commercial Project, that the two projects will be undertaken by two different Limited Liability Companies ("LLCs") to be formed or corporations to be formed which will be assignees of Buyer, and the City hereby consents to the same and to Buyer's assignment of its rights and obligations under this Agreement to any such LLC's or corporations, provided that Thomas Watson will be a manager or co-manager of any such LLCs and President or Vice President of any such corporations.

i. The provisions of this section shall survive closing.

13. <u>ENTIRE AGREEMENT.</u> This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by City and Buyer.

14. <u>NON-WAIVER.</u> No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

15. <u>HEADINGS AND CAPTIONS.</u> The headings and captions appearing herein are for

the convenience of reference only and shall not in any way affect the substantive provisions hereof.

16. **BINDING EFFECT**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

17. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

18. **GOVERNING LAW**. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

19. **NOTICE**. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City:	City of Portland ATTN: City Manager 389 Congress Street Portland, ME 04101
With a copy to:	The Office of the Corporation Counsel at the same address.
FOR Buyer:	Mr. Thomas Watson Tom Watson & Co., LLC 104 Grant Street Portland, ME 04101
With a copy to:	William H. Leete, Jr., Esq. Leete & Lemieux, P.A. 511 Congress Street, Suite 502 Portland, ME 04101

20. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and

all of which together shall constitute one and the same agreement.

21. **BROKERS.** The City shall be responsible for paying all its brokers, including CBRE | The Boulos Company, at closing. Buyer has no broker other than Joseph Porta of Porta & Co., who Buyer understands is to be compensated by CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

22. **RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto have caused this instrument to be executed on their behalf by their duly authorized officers or representatives, as of the day and year first written above.

CITY OF PORTLAND

Sonia Bean
WITNESS

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

WITNESS

Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

Corporation Counsel's Office

Parcel Map

1	55 Portland Street
2	44 Hanover Street
3	56 Parris Street
4	82 Hanover Street
5	65 Hanover Street
6	178 Kennebec Street

EXHIBIT A

EXHIBIT B

BAYSIDE RFP
TOM WATSON & COMPANY
PROPOSAL FOR THE DEVELOPMENT OF A 23 UNIT APARTMENT BUILDING AT 104 GRANT STREET, PORTLAND MAINE

104 Grant St- Current Use

PORTLAND, MAINE

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

JUNE 01, 2017

1 VIEW LOOKING WEST ON GRANT STREET
N.T.S.

Port Property
MANAGEMENT

PROGRESS PRINT ONLY
Not for Construction

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 104 GRANT STREET
PORTLAND, MAINE

JUNE 01, 2017

1 104 GRANT STREET - SOUTH ELEVATION
N.T.S.

Port Property
MANAGEMENT

PROGRESS PRINT ONLY
Not for Construction

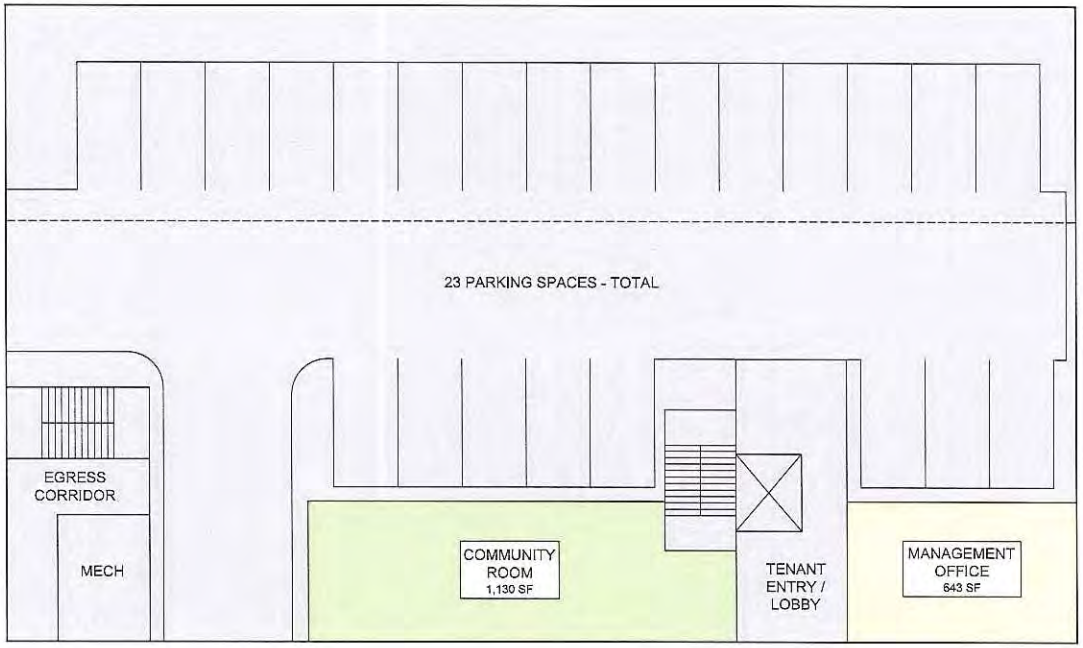
RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

JUNE 01, 2017

1st Floor



104 GRANT STREET		
BUILDING AREA		
FIRST FLOOR AREA	(13,500 SF)	
COMMUNITY ROOM		1,130 SF
MANAGEMENT OFFICE		643 SF
SECOND FLOOR AREA	(8,775 SF)	
UNIT - 1		1,228 SF
UNIT - 2		1,030 SF
UNIT - 3		815 SF
UNIT - 4		711 SF
UNIT - 5		958 SF
UNIT - 6		934 SF
UNIT - 7		990 SF
UNIT - 8		1,024 SF
SECOND FLOOR AREA	(8,775 SF)	
UNIT - 9		1,228 SF
UNIT - 10		1,030 SF
UNIT - 11		815 SF
UNIT - 12		711 SF
UNIT - 13		958 SF
UNIT - 14		934 SF
UNIT - 15		990 SF
UNIT - 16		1,024 SF
FOURTH FLOOR AREA	(8,775 SF)	
UNIT - 17		1,228 SF
UNIT - 18		1,030 SF
UNIT - 19		815 SF
UNIT - 20		1,845 SF
UNIT - 21		958 SF
UNIT - 22		1,024 SF
UNIT - 23		990 SF
	BUILDING TOTAL =	40,326 SF

NOTE:
ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS

0 4' 8' 16' 32'

1 104 GRANT STREET - FIRST FLOOR PLAN
1/8" = 1'-0"

PROGRESS PRINT ONLY
Not for Construction

Port Property MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

2nd Floor

JUNE 01, 2017

104 GRANT STREET		
BUILDING AREA		
FIRST FLOOR AREA	(13,500 SF)	
	COMMUNITY ROOM	1,136 SF
	MANAGEMENT OFFICE	643 SF
SECOND FLOOR AREA	(8,775 SF)	
	UNIT - 1	1,228 SF
	UNIT - 2	1,030 SF
	UNIT - 3	815 SF
	UNIT - 4	711 SF
	UNIT - 5	958 SF
	UNIT - 6	934 SF
	UNIT - 7	990 SF
	UNIT - 8	1,024 SF
SECOND FLOOR AREA	(8,775 SF)	
	UNIT - 9	1,228 SF
	UNIT - 10	1,030 SF
	UNIT - 11	815 SF
	UNIT - 12	711 SF
	UNIT - 13	958 SF
	UNIT - 14	934 SF
	UNIT - 15	990 SF
	UNIT - 16	1,024 SF
FOURTH FLOOR AREA	(8,775 SF)	
	UNIT - 17	1,228 SF
	UNIT - 18	1,030 SF
	UNIT - 19	815 SF
	UNIT - 20	1,645 SF
	UNIT - 21	958 SF
	UNIT - 22	1,024 SF
	UNIT - 23	990 SF
	BUILDING TOTAL =	40,320 SF

NOTE:
ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS

0 4' 8' 16' 32'

1 104 GRANT STREET - SECOND FLOOR PLAN
1/8" = 1'-0"

PROGRESS PRINT ONLY
Not for Construction

Port Property
MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

3rd Floor

JUNE 01, 2017

104 GRANT STREET	
BUILDING AREA	
FIRST FLOOR AREA (13,500 SF)	
COMMUNITY ROOM	1,130 SF
MANAGEMENT OFFICE	643 SF
SECOND FLOOR AREA (8,775 SF)	
UNIT - 1	1,228 SF
UNIT - 2	1,030 SF
UNIT - 3	815 SF
UNIT - 4	711 SF
UNIT - 5	958 SF
UNIT - 6	934 SF
UNIT - 7	990 SF
UNIT - 8	1,024 SF
SECOND FLOOR AREA (8,775 SF)	
UNIT - 9	1,228 SF
UNIT - 10	1,030 SF
UNIT - 11	815 SF
UNIT - 12	711 SF
UNIT - 13	958 SF
UNIT - 14	934 SF
UNIT - 15	990 SF
UNIT - 16	1,024 SF
FOURTH FLOOR AREA (8,775 SF)	
UNIT - 17	1,228 SF
UNIT - 18	1,030 SF
UNIT - 19	815 SF
UNIT - 20	1,045 SF
UNIT - 21	958 SF
UNIT - 22	1,024 SF
UNIT - 23	990 SF
BUILDING TOTAL =	40,320 SF

NOTE:
ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS.

0 4' 8' 16' 32'

1 104 GRANT STREET - THIRD FLOOR PLAN
1/8" = 1'-0"

PROGRESS PRINT ONLY
Not for Construction

Port Property
MANAGEMENT

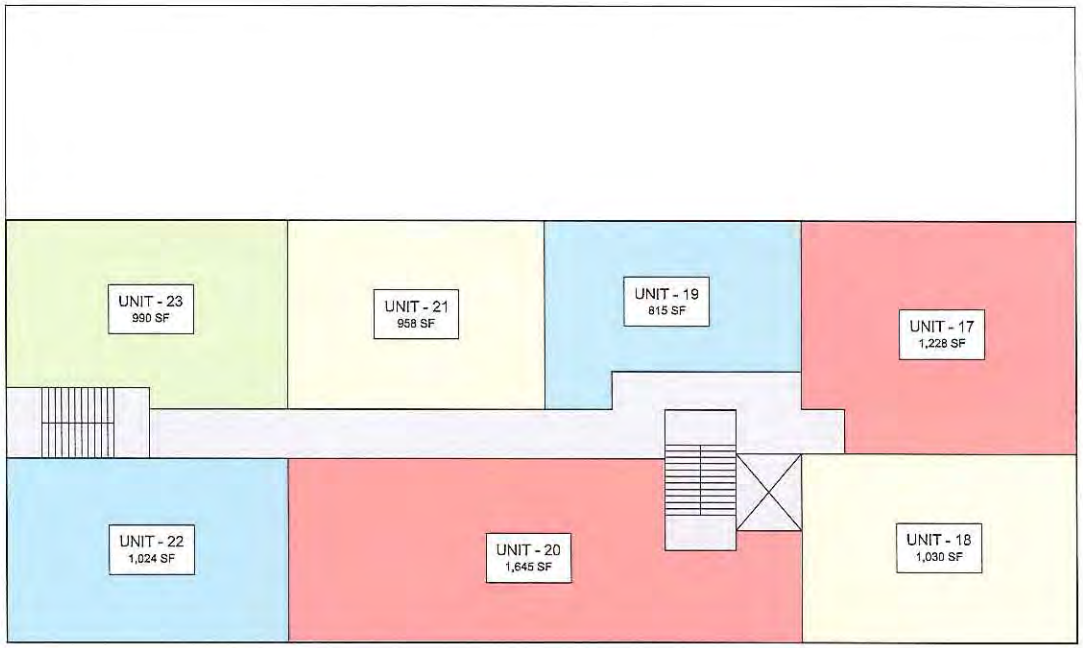
RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

4th Floor

JUNE 01, 2017



104 GRANT STREET		
BUILDING AREA		
FIRST FLOOR AREA	(13,300 SF)	
	COMMUNITY ROOM	1,130 SF
	MANAGEMENT OFFICE	642 SF
SECOND FLOOR AREA	(8,775 SF)	
	UNIT - 1	1,228 SF
	UNIT - 2	1,030 SF
	UNIT - 3	815 SF
	UNIT - 4	711 SF
	UNIT - 5	958 SF
	UNIT - 6	934 SF
	UNIT - 7	990 SF
	UNIT - 8	1,024 SF
SECOND FLOOR AREA	(8,775 SF)	
	UNIT - 9	1,228 SF
	UNIT - 10	1,030 SF
	UNIT - 11	815 SF
	UNIT - 12	711 SF
	UNIT - 13	958 SF
	UNIT - 14	934 SF
	UNIT - 15	990 SF
	UNIT - 16	1,024 SF
FOURTH FLOOR AREA	(8,775 SF)	
	UNIT - 17	1,228 SF
	UNIT - 18	1,030 SF
	UNIT - 19	815 SF
	UNIT - 20	1,645 SF
	UNIT - 21	958 SF
	UNIT - 22	1,024 SF
	UNIT - 23	990 SF
	BUILDING TOTAL =	40,326 SF

NOTE:
ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS

0 4' 8' 16' 32'

1 104 GRANT STREET - FOURTH FLOOR PLAN
1/8" = 1'-0"

Port Property MANAGEMENT

PROGRESS PRINT ONLY
Not for Construction

RYAN SENATORE **ARCHITECTURE**

EXHIBIT C

CITY OF PORTLAND BAYSIDE PROPERTIES
TOM WATSON LETTER OF INTENT TO PURCHASE

TABLE OF CONTENTS

1. LETTERS OF INTENT TO PURCHASE (IN SEPERATE PACKET):
    a. 82 HANOVER STREET
    b. 44 HANOVER STREET
    c. 56 PARRIS STREET

2. DESCRIPTION OF INTENDED USES

3. TOM WATSON BIO

4. 82 HANOVER
    a. STREET SCAPE-1
    b. STREET SCAPE-2
    c. ARCHITECT RENDERING
    d. INTENDED FLOOR PLAN LAYOUT- FIRST FLOOR
    e. INTENDED FLOOR PLAN LAYOUT (WITH ROOF TOP DECKS)- SECOND FLOOR

5. LANCASTER COURT- ARCHITECT RENDERING

6. 44 HANOVER
    a. ARCHITECT RENDERING
    b. INTENDED FLOOR PLAN LAYOUT

7. 56 PARRIS STREET
    a. ARCHITECT RENDERING OF PROPOSED 23 UNIT APARTMENT BUILDING
    b. INTENDED FLOOR PLAN LAYOUT (1 THRU 4)

8. 104 GRANT STREET
    a. PICTURE OF CURRENT USE
    b. ARCHITECT RENDERING OF 23 UNIT APARTMENT BUILDING
    c. FLOOR LAYOUTS (FLOORS 1 THRU 4)

9. 117 LOFTS: THE SCHLOTTERBECK & FOSS BUILDING (NOW A 56 UNIT APARTMENT BLDG)
    a. EXTERIOR PICTURES
    b. PICTURES OF APARTMENTS AS THEY ARE TODAY

DESCRIPTION OF INTENDED USE

82 Hanover

- Relocate Port Property Management headquarters to 82 Hanover from 104 Grant Street in Parkside
- Bring in retailers/partners who will contribute to the community as well as the economy
- Open spaces/commons available for public use
- Leverage large rooftop for decks and greenspace to add comfortable density to neighborhood
- Creates opportunity for construction of 23 units on Grant Street and eliminates an office/warehouse that sits in the middle of the Parkside residential neighborhood

44 Hanover

- 16 separate spaces all with autonomous access to the street.
- One Central Space of over 3,500SF for a public/communal user like pub, café, eatery
- Glass OHD to promote openness, and allow for artists and artisans to combine retail display space to their work space. Promote marketplace environment
- Affordable/accessible to the creative community at under $1,000/month.

Lancaster Court (between 82 Hanover & 44 Hanover)

- Commons/courtyard space open to public for public use
- Available for outdoor recreation including farmers market and small music venue for tenants and managers to promote work/events.
- Display and value public art and communal aesthetic enhancements
- Cobble stone street
- Trees/landscaping
- Fountain/water wall

56 Parris Street

- 23 2 BR 2 Bath units
- Unique product to Portland
- Create product for families (2 bathrooms) or multiple roommates (making it affordable)
- At 23 units, 4 stories high it is scaled to the other buildings in the neighborhood

Tom Watson & Company

Thomas Watson
(207) 252-0358

June 22, 2017

Thomas Watson founded Port Property Management in 1993 with his father Jack who later sold his half of the business to Russell Pierce (Tom's brother-in-law). Tom and Russ have had a successful partnership for the last 17 years and currently employ 41 full time employees, most of whom call Portland their home.

Port Property manages over 1,300 apartments and commercial spaces in Portland and South Portland, the bulk of which are on the Portland peninsula. All of the properties are owned by Port Property related companies.

Tom graduated with a B.A. from Stanford University in 1985 and received an MBA from Boston University in 1992.

He lives in Portland with his wife Judy and their 3 children, all of whom attend Portland Public Schools.

104 Grant St. Portland, Maine 04101
Phone: 207-761-0832 Fax: 207-761-8048

BAYSIDE RFP
TOM WATSON & COMPANY
PROPOSAL FOR THE DEVELOPMENT OF
82 HANOVER STREET, PORTLAND MAINE

82 Hanover Street- Streetscape, #1

PORTLAND, MAINE

BAYSIDE RPF-82 Hanover Street- Street Scape, #2

PORTLAND, MAINE

JUNE 16, 2017

1 VIEW LOOKING SOUTH EAST ON PARRIS STREET
N.T.S.

Port Property
MANAGEMENT

PROGRESS PRINT ONLY
Not for Construction

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 82 HANOVER STREET-Rendering

PORTLAND, MAINE

MAY 11, 2017

1 VIEW LOOKING SOUTH ON HANOVER STREET
N.T.S.

Port Property
MANAGEMENT

PROGRESS PRINT ONLY
Not for Construction

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 82 HANOVER STREET-First Floor

PORTLAND, MAINE

JUNE 12, 2017

1 FIRST FLOOR CONCEPT PLAN

Port Property
MANAGEMENT

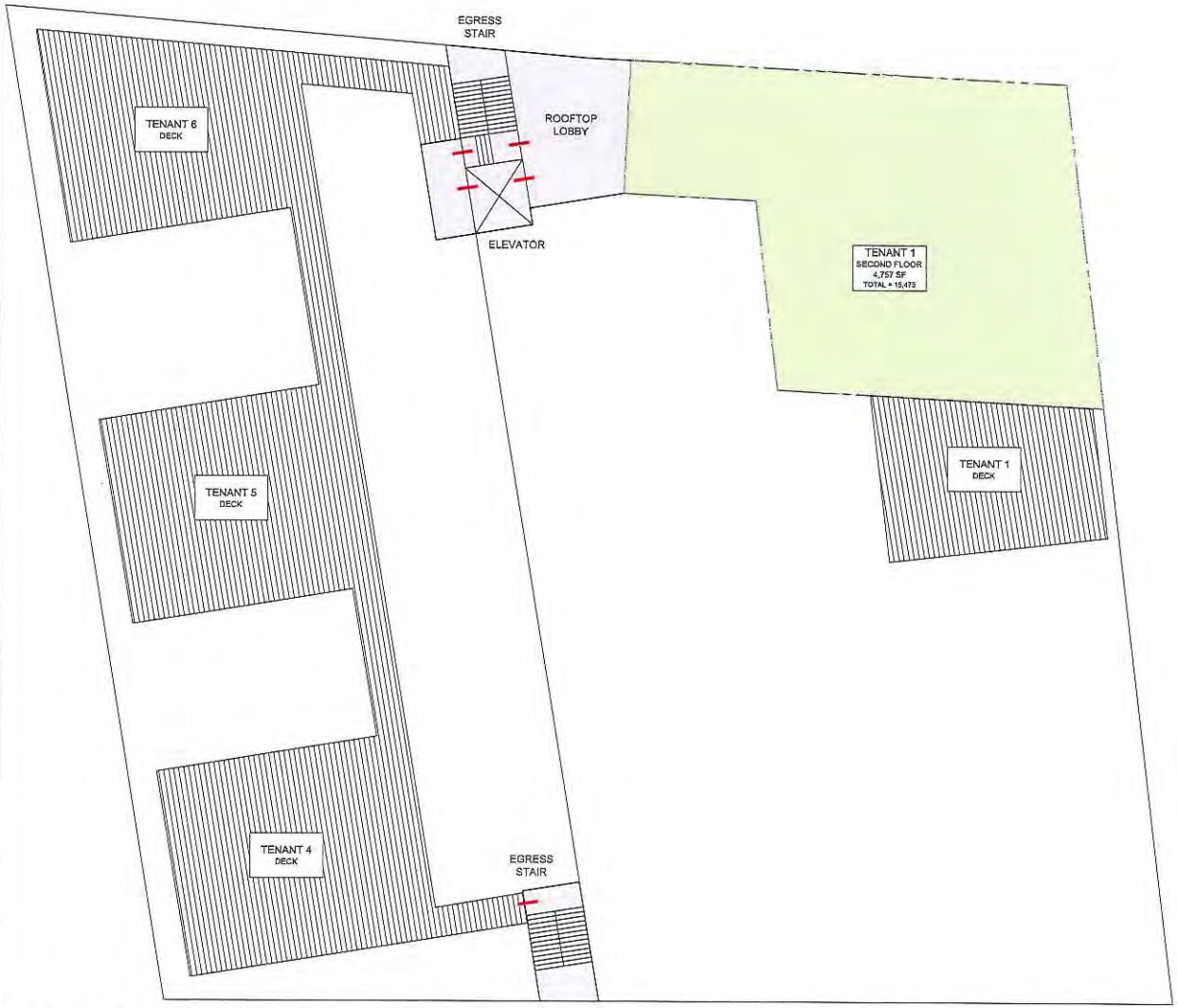
PROGRESS PRINT ONLY
Not for Construction

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - 82 HANOVER STREET- Second Floor

PORTLAND, MAINE

JUNE 12, 2017



1 SECOND FLOOR CONCEPT PLAN
3/32" = 1'-0"

PROGRESS PRINT ONLY
Not for Construction

Port Property
MANAGEMENT

RYAN SENATORE **ARCHITECTURE**

BAYSIDE RFP - LANCASTER COURT
PORTLAND, MAINE

JUNE 21, 2017

1 VIEW LOOKING NORTH ON PARRIS STREET
N.T.S.

Port Property
MANAGEMENT

PROGRESS PRINT ONLY
Not for Construction

RYAN SENATORE **ARCHITECTURE**

Order 16-18/19
Tab 21 7-16-18

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER PROPOSING THE DISCONTINUANCE OF A PUBLIC WAY ALONG A PORTION OF PORTLAND PIER

ORDERED, that the City Council for the City of Portland hereby proposes the discontinuance of all of that portion of the street that lies southeasterly of the following described line:

Beginning at a point on the northeasterly street line of Portland Pier as laid out by the Commissioners of Cumberland County on June 6, 1887 and recorded in the County Commissioners' Records in Volume 16 Page 86. Said point of beginning being the intersection of said northeasterly street line of Portland Pier with the boundary line between land now or formerly of Fifty Portland Pier, Inc. (Book 8144 Page 140) and land now or formerly of 60 Portland Pier, LLC (Book 31814 Page 209). Said point of beginning also being located five-hundred-forty-three and fifty-one hundredths feet (543.51'), more or less, from the intersection of said northeasterly street line of Portland Pier with the southeasterly street line of Commercial Street. Thence southwesterly across said Portland Pier and at right angles to said street line a distance of twenty-nine feet and two inches (29' 2") to the southwesterly street line of said Portland Pier; and

BE IT FURTHER ORDERED AND ADJUDGED, that the City will retain a public easement over the land herein described;

BE IT FURTHER ORDERED AND ADJUDGED, that the sole abutting owner is _____, which is supportive of such discontinuance. _____ has waived any entitlement to damages. Accordingly, no damages shall be paid to such abutter.

Date of Order: July 16, 2018

Mayor Ethan K. Strimling	Councilor Justin Costa
Councilor Belinda S. Ray	Councilor Kimberly M. Cook
Councilor Spencer R. Thibodeau	Councilor Jill C. Duson
Councilor Brian E. Batson	Councilor Pious Ali

Councilor Nicholas M. Mavodones, Jr.

Portland, Maine Yes. Life's good here.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

City Council Agenda Item

DISTRIBUTE TO:	City Manager, Mayor, Sonia Bean, Danielle West-Chuhta, Nancy English, Mona Bector
FROM:	**Greg Mitchell, Economic Development Director**
DATE:	**June 28, 2018**
SUBJECT:	**Portland Pier, Partial Right of Way Discontinuance**
SPONSOR:	**Justin Costa, Chair of the Economic Development Committee, as recommended on June 19, 2018 by unanimous vote of the Committee**

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: July, 16, 2018 Final Action: First Available Meeting

Can action be taken at a later date: __X_ Yes ____ No (If no why not?)

PRESENTATION: (List the presenter(s), type and length of presentation)

Economic Development staff with support from Ports and Public Buildings will provide introductory comments and be available for clarifying questions.

I. ONE SENTENCE SUMMARY

The City Council is asked to consider discontinuing a portion of public right of way on Portland Pier while retaining access for the public and commercial marine businesses, including fishing vessels.

II. AGENDA DESCRIPTION

The Economic Development Committee met on June 19, 2018 and voted unanimously (3-0) to forward this item to the City Council with a recommendation for passage.

The Department of Economic Development, the Facilities Division, and the Department of Public Works recommend that the City Council hold a public hearing to consider discontinuance of a portion

of public right of way at the southerly end of Portland Pier. The portion of right of way considered for discontinuance serves only a single property, 60 Portland Pier, Portland Pier Holdings, LLC. All private properties on Portland Pier, including 60 Portland Pier, will continue to have access from a public right of way and public access rights are to remain in effect for both commercial fishing and pedestrian use of the pier.

City staff and the Economic Development Committee recommend the discontinuance to promote private investment and maintenance of currently degraded pier infrastructure. Only with immediate and continued investment will public and fishing access be retained on the subject portion of right of way.

The subject portion of right of way is occupied by a pile-supported pier structure over submerged lands owned by the State of Maine. Following the proposed discontinuance, the City-owned portion of pier described will transfer to the surrounding property owner, Portland Pier Holdings, LLC. subject to the limits and requirements of the State Submerged Lands program.

Portland Pier Holdings, LLC. At 60 Portland Pier is amenable to the discontinuance and has agreed to waive damages and has further agreed to conduct immediate necessary repairs to the pier to promote continued public and fishing access.

Discontinuance of a street is a statutory process outlined in 23 M.R.S. § 3026-A. According to the statute, it is typically a 3-meeting process. In this case, that process should be as follows:

- At its July 16, 2018 meeting, the Council is asked simply to vote to propose the discontinuance. No public hearing or comment is required.

- If it so votes, notice of that proposal and of the public hearing at which the proposal will be considered must then be mailed to the abutter and posted in the City Clerk's office.

- The Council must then hold the public hearing on the proposal. Public comment should be taken but no vote by the Council will be taken at this hearing.

- Finally, ten or more business days after the public hearing, the Council must take a vote on the order of discontinuance. If it votes to discontinue the street, the Clerk will file a certification of that fact in the Registry of Deeds.

III. BACKGROUND

Located between Custom House Wharf and Long Wharf (DiMillo's,) Portland Pier, is unique along Portland's Central Waterfront in that there is a public right of way down the center of the pier flanked by private parcels. Most piers on Portland's waterfront are private. Formerly the home of the Casco Bay Lines car ferry terminal, the southerly end of the Pier has been occupied by lobstering interests since the 1980's.

In addition to the subject property (the former New Meadow's Lobster pound,) the pier is home to J's Oyster, commercial offices, 40 and 50 Portland Pier Condominiums. Lobster boats berth on the easterly and southerly pier perimeter with DiMillo's yacht brokerage leasing berthing along much of the westerly edge.

By previous action of the City Council in 2014, the southerly most portion of the public right of way was sold to a previous owner (McAlleny's New Meadow's Lobster.) Public rights of access were retained in the 2014 transfer.

The portion of right of way considered for discontinuance serves only one property (60 Portland Pier, Portland Pier Holdings, LLC) and is in need of significant rehabilitation. The current owners are currently engaged in repairing adjacent private portions of the pier and are willing to take on the current rehabilitation needs and ongoing maintenance of the subject portion of the pier. Without repair, access to the pier will need to be restricted for safety. There is currently no City budget identified for repair.

Portland Pier Holdings, LLC plans to rehabilitate and restart the lobster pound operation, retain the current commercial berthing, and to establish a seafood restaurant specializing in lobster and seafood landed and processed on the pier. All of the current and proposed uses are planned to be consistent with the Waterfront Central Zone requirements. Public access and continued lobster operations are central to the redevelopment program.

The subject portion of right of way and the entirety of the 60 Portland Pier buildings and pier deck are supported by pilings over submerged lands. The property owners are currently conducting significant repair on the private portions of the pier. The City Manager has provided a license to Portland Pier Holdings, LLC to conduct work on the public portions of the pier to ensure that commercial fishing and access to berthed vessels can continue in the short term.

The sketch graphic attached to this memo shows approximate private parcel boundaries, the 2014 sale parcel, and areas of right of way to be retained and for potential discontinuance.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Functionally, users of the pier will see no change within the right of way post discontinuance. The proposed discontinuance will allow for the private maintenance of pile supported pier while continuing commercial and public access to the southerly end of the pier.

V. FINANCIAL IMPACT

Portland Pier, LLC, as part of their on-going repairs of the private portions of the pier, estimate that the immediate repairs needed on the subject public portion of Portland Pier would cost +/-$78,000. If the subject portion of ROW is to remain in public hands, these immediate costs and future maintenance and repairs will remain the responsibility of the City.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION

Since the 1980's, Portland Pier has provided access to berthing, commercial lobstering, and public views to the inner harbor for pedestrians. Maintenance of the pier is key to preserving these functions. The public right of way appears to reflect the historic use of the pier as a (private) car ferry terminal. In the transition from ferry terminal to lobster pound, the southerly end of the pier retained the public's right to use the pier, but functionally access to the water for active use was privatized. Promoting private commercial fishing access within the Central Waterfront was consistent with City policy in 2014 and remains so today. Private ownership of the remaining portion of right of way that is surrounded by 60 Portland Pier would promote continued maintenance of the

infrastructure while preserving access for current and future commercial fishing and public pedestrian use.

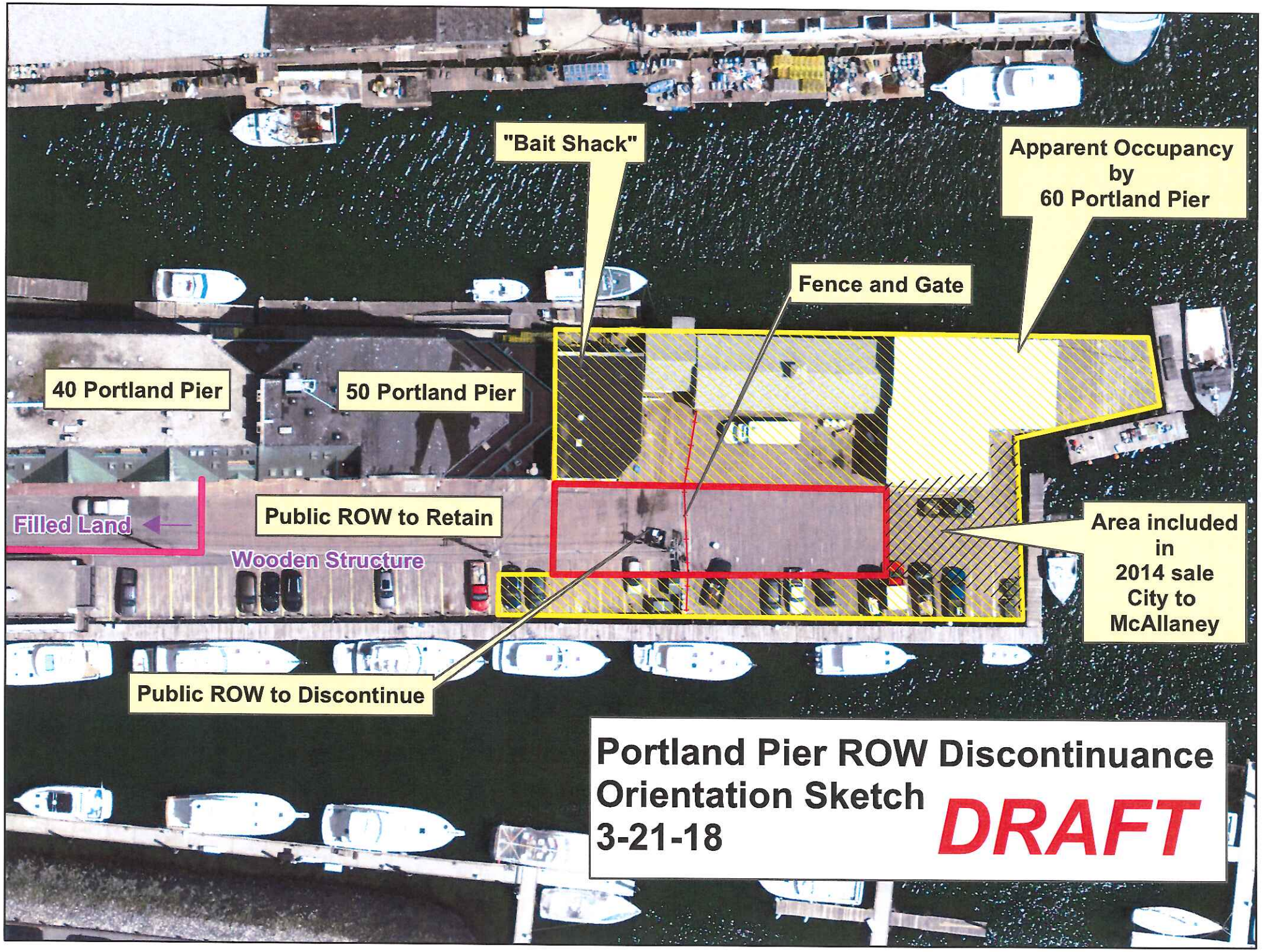
VII. RECOMMENDATION

The Department of Economic Development, the Facilities Division, and the Department of Public Works join the Economic Development Committee in recommending the discontinuance while retaining public and commercial fishing access to the pier.

VIII. LIST ATTACHMENTS

a. Orientation sketch map
b. Discontinuance documents currently being drafted by Corporation Counsel and DPW

Prepared by: Bill Needelman, Waterfront Coordinator
Date: June 28, 2018


"Bait Shack"
Apparent Occupancy by 60 Portland Pier
Fence and Gate
40 Portland Pier
50 Portland Pier
Filled Land
Public ROW to Retain
Wooden Structure
Area included in 2014 sale City to McAllaney
Public ROW to Discontinue
Portland Pier ROW Discontinuance
Orientation Sketch
3-21-18
DRAFT

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER OF DISCONTINUANCE OF A PUBLIC WAY ALONG A PORTION OF PORTLAND PIER

ORDERED, that the discontinuance of all of that portion of the street that lies southeasterly of the following described line is hereby approved:

Beginning at a point on the northeasterly street line of Portland Pier as laid out by the Commissioners of Cumberland County on June 6, 1887 and recorded in the County Commissioners' Records in Volume 16 Page 86. Said point of beginning being the intersection of said northeasterly street line of Portland Pier with the boundary line between land now or formerly of Fifty Portland Pier, Inc. (Book 8144 Page 140) and land now or formerly of 60 Portland Pier, LLC (Book 31814 Page 209). Said point of beginning also being located five-hundred-forty-three and fifty-one hundredths feet (543.51'), more or less, from the intersection of said northeasterly street line of Portland Pier with the southeasterly street line of Commercial Street. Thence southwesterly across said Portland Pier and at right angles to said street line a distance of twenty-nine feet and two inches (29' 2") to the southwesterly street line of said Portland Pier; and

BE IT FURTHER ORDERED AND ADJUDGED, that the City will retain a public easement over the land herein described;

BE IT FURTHER ORDERED AND ADJUDGED, that the sole abutting owner is _____ which is supportive of such discontinuance. _____ has waived any entitlement to damages. Accordingly, no damages shall be paid to such abutter.

Order 17-18119
Tab 22 7-16-18

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER SETTING A PUBLIC HEARING ON PROPOSED AMENDMENT TO PORTLAND CITY CHARTER, ARTICLE IV ELECTIONS RE: 42-DAY FINANCE REPORTS REQUIRED FOR MUNICIPAL CANDIDATES

ORDERED, that the Portland City Council will hold a public hearing on the attached proposed amendments to Article IV (Elections) of the Portland City Charter on August 13, 2018 at 6:00 p.m. in the Council Chambers at Portland City Hall, said amendment to be placed upon the November 6, 2018, Regular Municipal Election ballot if submission to the voters is approved by the Council.

[Language to be added is underlined.]

Question # 1. Shall the Municipality approve the Charter Amendment reprinted below:

Section 11. State election laws applicable.

The laws of the state in Title 21-A of the Revised Statutes relating to the qualifications of electors, registration, the manner of voting, the duties of election officials, and all other particulars in respect to preparation for conducting and managing elections, so far as they may be applicable, shall govern all municipal elections in the City of Portland, except as provided below regarding 42-day pre-election reports and as otherwise provided herein.

In addition to the reports required for municipal candidates by Title 21-A of the Maine Revised Statutes, 42-day pre-election reports must be filed by municipal candidates no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date.

Nothing in this charter shall prohibit the use of electronic or revised voting methods and procedures to the extent authorized by state and/or federal law.

Order 18-18/19
Tab 23 7-16-18

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER SETTING A PUBLIC HEARING ON PROPOSED AMENDMENT TO PORTLAND CITY CHARTER, ARTICLE IV ELECTIONS RE: IMMIGRANT VOTING

ORDERED, that the Portland City Council will hold a public hearing on the attached proposed amendments to Article IV (Elections) of the Portland City Charter on August 13, 2018 at 6:00 p.m. in the Council Chambers at Portland City Hall, said amendment to be placed upon the November 6, 2018, Regular Municipal Election ballot if submission to the voters is approved by the Council.

[Language to be added is underlined.]

Shall the City approve the Charter Amendment to Article IV, by adding Section 12, printed below:

Section 12. Qualification to vote

Any other provision in this charter notwithstanding, legal immigrants who are residents of Portland and 18 years old or older on the date of any municipal election shall be allowed to register to vote and vote in municipal elections. In order to register, a legal immigrant shall provide proof of identity, age and residency, pursuant to title 21-A and legal status according to standards established by the city clerk. Such persons shall not have the right to run for and hold an elected municipal office.