

Order 68-15/16

Passage: 8-0 (Mavodones absent) on 10/5/2015

Effective 10/15/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING PURCHASE AND SALE AGREEMENTS,
DEVELOPMENT CONSULTING AGREEMENT,
REMEDATION GRANT AGREEMENT AND HOUSING TRUST FUND GRANT
RE: 65 MUNJOY STREET**

ORDERED, that Purchase and Sale Agreement between the City of Portland and Portland Development Corporation (PDC) for 65 Munjoy Street is hereby approved in substantially the form attached hereto as Exhibit A; and

BE IT FURTHER ORDERED, that Development Consulting Agreement between the PDC and Adam's Apple, LLC is hereby approved in substantially the form attached hereto as Exhibit B; and

BE IT FURTHER ORDERED, that the PDC is authorized to accept \$200,000.00 from Greater Portland Council of Governments (GPCOG) from its Brownfields Cleanup Revolving Loan Funds, and the related Brownfields Program Subgrant Agreement between the PDC and GPCOG is hereby approved in substantially the form attached hereto as Exhibit C; and

BE IT FURTHER ORDERED, that \$175,000 in funds from the Housing Trust Fund are hereby allocated and appropriated in order to fund the development of affordable housing units at 65 Munjoy Street; and

BE IT FURTHER ORDERED, that the Housing Trust Fund Agreement between the City of Portland and Adam's Apple, LLC is hereby approved in substantially the form attached hereto as Exhibit D; and

BE IT FURTHER ORDERED, that the Purchase and Sale Agreement between Portland Development Corporation and Adam's Apple, LLC for 65 Munjoy Street is hereby approved in substantially the form attached hereto as Exhibit E; and

BE IT FURTHER ORDERED, that the First-Time Homebuyer Set-Aside and Marketing Plan 65 Munjoy Street Memorandum of Understanding between the City of Portland and Adam's Apple, LLC (MOU) is hereby approved in substantially the form attached hereto as Exhibit F; and

BE IT FURTHER ORDERED, that the Declaration of Covenants, Conditions, and Restrictions

between the City of Portland and Adam's Apple, LLC for 65 Munjoy Street is hereby approved in substantially the form attached hereto as Exhibit G;

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the Purchase and Sale Agreement between the City of Portland and PDC, the MOU, the Housing Trust Fund Agreement, the Declaration of Covenants, Conditions, and Restrictions, and whatever other documents are necessary to effect the intent and purpose of those agreements upon review by the Office of Corporation Counsel; and

BE IT FURTHER ORDERED, that the Chair or Assistant Secretary of the PDC are authorized to execute the Purchase and Sales Agreement between the City of Portland and the PDC, the Purchase and Sales Agreement between PDC and Adam's Apple, LLC, the Brownfields Grant Agreement between Greater Portland Council of Governments and PDC, and the Development Services Agreement between PDC and Adam's Apple, LLC and whatever other documents are necessary to effect the intent and purpose of those agreements upon review by the Office of Corporation Counsel; and

BE IT FURTHER ORDERED, that the Office of Corporation Counsel is hereby authorized to represent the City of Portland and the Portland Development Corporation in the transactions approved by this order.

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this _____ day of _____, 2015 by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "SELLER"), and the PORTLAND DEVELOPMENT CORPORATION, a Maine nonprofit corporation ("BUYER" or "PDC"), both with a mailing address of 389 Congress Street, Portland, Maine.

W I T N E S S E T H:

WHEREAS, the SELLER is the owner of certain land known as the Adams School Parking Lot located at 65 Munjoy Street in Portland, Maine, as more specifically described in Exhibit A, attached hereto and incorporated herein (the "Premises"), and as generally depicted in the plan attached as Exhibit B and incorporated herein; and

WHEREAS, the SELLER desires to sell the Premises and published a November 19, 2014 "Request for Proposals For the Sale and Reuse of Property Located at 65 Munjoy Street, RFP #4115," as amended by Addendum #1, dated December 18, 2014, copies of which are attached hereto and collectively marked Exhibit C and incorporated herein (the Request for Proposals and Addendum #1 are collectively referred to herein as the "RFP"); and

WHEREAS, Adam's Apple, LLC, a Maine limited liability company ("Adam's Apple") submitted a proposal in response to the RFP (the "Proposal"), a copy of which is attached hereto as Exhibit D and incorporated herein; and

WHEREAS, after reviewing all proposals submitted in response to the RFP, the SELLER selected Adam's Apple as the successful bidder; and

WHEREAS, Adam's Apple desires to purchase the Premises and construct affordable housing on it in accordance with the terms of the Proposal and the RFP (the "Proposed Development"), and the SELLER desires that Adam's Apple do so; and

WHEREAS, the Premises is impacted by certain environmental contaminants as described in a July 1, 2014 Phase I Environmental Site Assessment and an August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, copies of which are attached hereto and collectively marked Exhibit E and incorporated herein by reference (collectively, the "ESAs"); and

WHEREAS, prior to constructing the Proposed Development, certain environmental remediation work must be completed as described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the “VRAP Work Plan”), copies of which are attached hereto and collectively marked Exhibit F and incorporated herein by reference; and

WHEREAS, in order to finance the VRAP Work Plan, Adams Apple consulted with the Greater Portland Council of Governments (“GPCOG”) regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, GPCOG advised Adams Apple and SELLER that they would not qualify for GPCOG’s Brownfields Remediation grants because SELLER may be a potentially responsible party for the environmental contaminants and Adams Apple is not a public or nonprofit entity, but that BUYER, as a nonprofit corporation, would qualify for a grant if it were the owner of the Premises; and

WHEREAS, BUYER, with the assistance of Adams Apple, applied for and has been awarded a brownfields cleanup grant from the Greater Portland Council of Governments (“GPCOG”) in order to finance the VRAP Work Plan as set forth in the June __, 2015 _____, a copy of which is attached hereto and marked Exhibit G and incorporated herein by reference; and

WHEREAS, BUYER and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the “Grant Agreement”), a copy of which is attached hereto and marked Exhibit H and incorporated herein by reference; and

WHEREAS, SELLER, BUYER, and Adams Apple have agreed that in order to complete the VRAP Work Plan prior to the conveyance of the Property to Adams Apple, SELLER would first convey the Premises to BUYER, provided that BUYER shall then convey the Premises to Adams Apple after completion of the VRAP Work Plan; and

WHEREAS, Adam’s Apple and BUYER have entered into a Development Consulting Agreement of near or even date herewith (the “Development Consulting Agreement”) pursuant

to which Adam's Apple shall act as BUYER's agent to oversee the VRAP Work Plan during BUYER's ownership of the Premises and be **responsible for the administration of the Grant Agreement and all costs associated with the Grant Agreement** at no cost to BUYER; and

WHEREAS, SELLER desires to convey the Premises to BUYER provided that BUYER conveys the Premises to Adams Apple in accordance with the terms and conditions of this Agreement and those of a separate Purchase and Sale Agreement between BUYER and Adams Apple of near or even date herewith.

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. **RECITALS INCORPORATED BY REFERENCE**. The recitals set forth above are hereby incorporated herein by reference and made a part of this Agreement. The restatement in this document of any term of any of its attachments shall not be deemed to waive any term not so restated. If any disagreement is found between the RFP or the Proposal and this document, then this document shall govern; and the RFP shall govern over the Proposal, to the extent they disagree; provided, however, that this document and all of its attachments shall be construed to be supplemental to one another to the extent possible.
2. **SALE**. SELLER agrees to sell the Premises to BUYER, and BUYER agrees to buy the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
3. **CONSIDERATION**. The consideration for the Premises shall be One Dollar (\$1.00) (the "Purchase Price").
4. **TITLE**. SELLER shall convey the Premises to BUYER at the closing in fee simple with good and marketable or insurable title by quitclaim deed without covenant acceptable to BUYER. If SELLER is unable to convey title to the Premises in accordance with the provisions of this paragraph, then SELLER shall have a reasonable time period, not to exceed 30 days from the time SELLER receives written notice of the defect, unless otherwise agreed to by both parties, during which it shall make a good faith effort to remedy the title, after which time, if such defect is not corrected so that there is marketable and insurable title, BUYER may within 2 days thereafter, at BUYER's option, terminate this Agreement, and neither party shall have any further obligation hereunder.
5. **POSSESSION**. Full possession of the Property will be delivered to Buyer at the transfer of title, free and clear of all tenancies or occupancies by any person or entity.

6. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire or otherwise, until transfer of title hereunder, is assumed by the SELLER. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated.
7. **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.” SELLER, 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 SELLER of every agreement and obligation contained herein.
8. **INDEMNIFICATION.** Subject to and limited by the defenses, immunities and limitations of liability available to the SELLER under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq., SELLER hereby agrees to defend, indemnify and hold harmless the BUYER, its officers, agents, and employees from and against any and all claims, demands, liability, loss, cost or expense (including but not limited to attorneys’ fees and other costs of litigation) that may be incurred by the BUYER arising out of or in any way related to its ownership, use, or maintenance of the Premises, or the ownership, use, or maintenance of the Premises by the BUYER’S predecessors in title or any other third party.
9. **CLOSING.** Time is of the essence in the performance of this Agreement. The closing shall be held at City Hall, within sixty (60) days after the date first set forth above.
10. **OBLIGATION OF SELLER TO REPURCHASE PROPERTY.** In the event that the Maine DEP does not issue a Certificate of Completion of Remedial Actions (“COC”) for the Premises on or before that date that is 12 months after the date of execution of the Purchase and Sale Agreement for the Premises between BUYER and Adam’s Apple of near or even date herewith, the SELLER shall repurchase the Premises from the BUYER at the Purchase Price, unless Adam’s Apple exercises its right to require the PDC to convey the Premises pursuant to paragraph 9 of the Purchase and Sale Agreement between BUYER and Adam’s Apple and paragraph 8 of the Development Consulting Agreement. The provisions of this paragraph shall be included in SELLER’s deed to BUYER.
11. **COVENANTS, RESTRICTIONS, AND OPTION TO REPURCHASE IN BUYER’S DEED TO ADAMS APPLE.** Within 30 days after the Maine DEP issues a COC, BUYER shall convey the Premises to Adam’s Apple in accordance with the terms of the Purchase and Sale Agreement between BUYER and Adams Apple of near or even date herewith. This paragraph shall survive the closing of this

Agreement. BUYER's deed to Adams Apple shall contain a declaration of covenants and restrictions that shall include, without limitation, the following provisions, which shall survive closing of that Agreement and run with the land:

- a. Grantee shall construct eight (8) new affordable ownership housing units on the Premises in substantially the form and for the affordable housing uses set forth in the Proposal and in the RFP, with Grantee's compliance with this provision to be satisfied by: (1) Grantee recording a subdivision plan for the Premises approved by the Planning Board of the City of Portland showing 8 housing units, and (2) with regard to a unit proposed to be conveyed, the City of Portland having issued a certificate of occupancy for that particular unit. At the request of Grantee, the City of Portland shall duly execute, from time to time, a verification of subdivision approval and issuance of certificates of occupancy in recordable form.
- b. The parties agree that the units shall be subject to an "Affordability Declaration" which shall be established by the due execution and recording of the following documents in substantially the same form as those attached hereto and incorporated herein by reference: (i) Declaration of Covenants, Conditions and Restrictions, Exhibit J, (ii) Affordability Agreement, Exhibit K, and (iii) Declaration of Condominium, Affordability of Units provision, Exhibit L.
- c. If Grantee has not started and diligently pursued construction of eight (8) new affordable ownership housing units as provided above by July 31, 2017, Grantor or the City of Portland shall have the right, but not the obligation, to repurchase the Premises at the Purchase Price, provided, however, that Grantor or the City of Portland must notify Grantee of its intent to repurchase the Premises in writing by August 15, 2017, and if the Grantor or the City of Portland fails to so notify Grantee, this provision, and the rights thereunder are waived. At the request of Grantee, Grantor and the City of Portland shall promptly duly execute, from time to time, verification of the exercise or non-exercise of this right in recordable form.
- d. Environmental Indemnification. Grantee covenants and agrees to indemnify, defend, and hold Grantor and the City of Portland 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 Grantor 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,

including without limitation the environmental matters identified in the RFP, the ESAs, and the VRAP Work Plan. This duty to indemnify, defend, and hold harmless shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees until such date as Grantee, its successors, assigns or transferees obtain a Certificate of Completion of Remedial Actions ("COC") from the Maine DEP for the Project as described in a Development Consulting Agreement between Seller and Buyer of even or near even date herewith; upon that date, the Environmental Indemnification described in this paragraph (d) shall no longer run with the land to subsequent successors, assigns or transferees of Grantee.

- e. Payment In Lieu Of Property Taxes. Grantee agrees 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 of Portland 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. Grantee 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. This covenant shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees.

12. **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 Seller and Buyer.

13. **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.

14. **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.

15. **TIME.** The SELLER and BUYER each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

16. **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.

17. **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 SELLER: 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: Portland Development Corporation
Attention: Greg Mitchell
389 Congress Street
Portland, Maine 04101

With a copy to: The Office of the Corporation Counsel at the same address

18. **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. A signature in a faxed, pdf or other reproduced or electronic document shall be considered the equivalent of an original signature.
19. **BROKERS**. Seller and Buyer each represents and warrants that neither has dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless Seller 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, Seller agrees to indemnify and hold harmless Buyer from any claims made by any broker should Seller'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.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

WITNESS

PORTLAND DEVELOPMENT CORPORATION

By: _____
Printed Name:
Its:

Approved as to Form:

Corporation Counsel's Office

DEVELOPMENT CONSULTING AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 2015, by and between Portland Development Corporation, a Maine nonprofit corporation with a place of business and mailing address of 389 Congress Street, Portland, Maine 04101 (“PDC”), and Adam’s Apple, LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of 17 Chestnut Street, 3rd Floor, Portland, Maine 04101 (the “Developer”), (collectively, the “Parties).

WITNESSETH:

WHEREAS, PDC, provides a continuum of financial assistance to business and industry throughout the city of Portland and works to institute economic development programs in Portland to ensure compliance with the city’s goals, objectives, and requirements; and

WHEREAS, PDC wishes to acquire an approximately .15 acre property in the vicinity of 65 Munjoy Street in Portland (the “Property”) and contract for the remediation of onsite soils known to contain environmental contaminants and thus classified as “special waste” under the Maine DEP’s Maine Solid Waste Management Rules: Chapter 400 (the “Project”); and

WHEREAS, the Project is described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the “VRAP Work Plan”), copies of which are attached hereto and collectively marked Exhibit A and incorporated herein by reference; and

WHEREAS, the Maine Department of Environmental Protection (“DEP”) has issued to the City of Portland a December 8, 2014 No Action Assurance Letter (the “NAAL”) in response to the VRAP Work Plan; and

WHEREAS, in order to finance the VRAP Work Plan, PDC consulted with the Greater Portland Council of Governments (“GPCOG”) regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, PDC, with the assistance of Developer, applied for and has been awarded a Brownfields Remediation Program grant from GPCOG in order to finance the VRAP Work Plan as set forth in GPCOG’s June 15, 2015 letter to PDC, a copy of which is attached hereto and marked Exhibit B and incorporated herein by reference; and

WHEREAS, PDC and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the “Grant Agreement”), a copy of which is attached hereto and marked Exhibit C and incorporated herein by reference; and

WHEREAS, PDC wishes to contract with Developer to act as its agent to oversee aspects of the Project on behalf of PDC as further described herein; and

WHEREAS, PDC wishes to complete the Project for the purpose of preparing the Property for eventual transfer to Developer for the purpose of developing a three-story residential development

consisting of at least (eight) 8 units of affordable ownership housing as further described in the Developer's January 13, 2015 development proposal to the City of Portland (the "Development"); and

WHEREAS, the Project, upon completion of construction, is expected to achieve multiple housing and economic development goals of the City of Portland;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Appointment. PDC hereby appoints the Developer as its agent to render specific services in overseeing the Project as described herein, with Developer's duties to be subject to and limited by the terms of this Agreement.

2. Services. The Developer shall perform certain services relating to the acquisition, permitting, and remediation of the Property as set forth in this Agreement and Developer shall consult with PDC as necessary to see the Project through to final completion. Developer shall use commercially reasonable efforts in the performance of its duties under this Agreement. Developer has performed or shall perform, on behalf of and at no cost to PDC, the following duties:

a. Perform Environmental Due Diligence

Update previous environmental assessments prior to PDC's acquisition of the Property; and

b. Develop Projects Plans, Budgets and Timelines

Develop a complete Project budget including balanced sources and uses, subject to approval of PDC as specified in 1. below. Develop an overall Project plan in accordance with the NAAL to be performed by others, and prepare a comprehensive Project timeline; and

c. Secure Project Funding

Secure grants, loans, and/or private equity for PDC in an amount sufficient to fully capitalize the expenses of the Project; and

d. Procure and Oversee Professional Services

Negotiate and secure professional services at competitive market cost as required by the Project including but not limited to such professional services as: (1) environmental study, planning, monitoring, and reporting, (2) insurance services, (3) site assessment services, and (4) site design and engineering services.

e. Secure Required Regulatory Approvals

Secure for PDC approval any additional environmental plans (ABCA, CRP, SSQAPP) and permits as required by all applicable state, local and Federal standards from such entities as the Environmental Protection Agency, Maine Department of Environmental Protection and the City of Portland.

f. Procure and Oversee Remediation Services

Secure through a competitive process, a remediation contractor to perform the remediation of the site in conformance with the VRAP Work Plan and the NAAL. Negotiate a contract on

behalf of PDC in a form satisfactory to the City of Portland's Corporation Counsel, and once executed, administer and oversee said remediation services on behalf of PDC; and

g. Community Outreach

Facilitate open and effective communications with neighborhood groups, local organizations, abutters and other parties affected by or interested in the remediation of the Property on behalf of PDC and in its capacity as Developer; and

h. Changes

Submit suggestions or requests for reasonable changes which might improve the feasibility, efficiency, or efficacy of the Project, with any changes to executed contracts to be made only by written change order signed by Developer, PDC and any other party to the contract being modified; and

i. Insurance And Indemnification

- i. Prior to the execution of this Agreement, the Developer shall, at its own expense, carry Professional Liability Insurance for errors, omissions and negligence, in the amount of One Million Dollars (\$1,000,000.00) per claim. The Developer will also procure and maintain Automobile Insurance, General Liability Insurance, and Pollution liability coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage, naming the PDC and City of Portland as an additional insured thereon, and also Workers' Compensation Insurance coverage. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the PDC and City of Portland, its officers or employees. For all coverages, the Developer shall furnish the PDC and thereafter maintain certificates evidencing all such coverages in a form satisfactory to the PDC, which certificates shall guarantee thirty (30) days' notice to the PDC of termination of insurance from insurance company or agent. Developer shall also be responsible for the cost of any insurance coverage that PDC is required to obtain pursuant to the GPCOG Grant Agreement.
- ii. To the fullest extent permitted by law, Developer shall defend, indemnify and hold harmless the PDC and the City of Portland, their officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from the performance of this Agreement, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Developer, anyone directly or indirectly employed by it, or anyone for whose act it may be liable. This provision shall survive termination of this Agreement.
- iii. Environmental Indemnification. To the fullest extent permitted by law, Developer shall defend, indemnify, and hold PDC and the City of Portland 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 PDC 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 Property, including without limitation the environmental matters identified in the July 1, 2014 Phase I Environmental Site Assessment and August 8, 2014 Phase II Environmental Site Assessment, both by Crede Associates, LLC, and the VRAP Work Plan. This provision shall survive termination of this Agreement.

j. Submit Applications for Financing

Prepare and submit on behalf of PDC financing applications including but not limited to the Greater Portland Council of Government's (GPCOG) Brownfield Cleanup Revolving Loan Fund (RLF) program; and

k. Record Keeping

Assemble and retain all contracts, agreements, approvals, accounting ledgers, reports and other records and data as may be necessary to carry out the Developer's functions hereunder and provide the same to PDC; and

l. Budgeting

Prepare and revise from time to time the development budget showing all sources and uses of funds implementing the Project (the "Development Budget"). PDC shall have the right to approve the Development Budget. The Development Budget shall include a reasonable project "Development Fee" payable to the Developer in connection with the Project as further described in Section 7 below. The Development Budget shall not include any direct expense to PDC and all Project expenses, including any Development Fee, will be fully capitalized by sources from entities other than PDC.

m. Accounting

Management of project accounting including intake of project sources and payment of project expenses, budgeting as described in Section 2(l) above, the preparation and submission of monthly requisitions, and preparation and presentation of final project accounting.

n. GPCOG Grant Administration

Without limiting any of the Developer's services described above, Developer shall be responsible for the administration of the Grant Agreement and all costs associated with the Grant Agreement.

3. Term. The term of this Agreement shall begin on the date hereof and shall terminate on the date that the Maine DEP issues a certificate of completion for the Project. Provided, however, that

if the DEP does not issue a certificate of completion on or before that date which is twelve (12) months after the date of execution of the Purchase and Sale Agreement between PDC and Developer, this Agreement shall automatically terminate unless extended by mutual agreement of the parties.

4. Duties of PDC. PDC shall cooperate with Developer, to the extent necessary, to enable Developer to perform the services described in section 2, and hereby authorizes its staff to take such action as is necessary to carry out these duties.

PDC acknowledges that failure to fulfill its obligations set forth above could adversely affect the viability of the Project and the Development. PDC agrees to use reasonable commercial efforts to fulfill all its said obligations. Developer acknowledges and agrees, however, that Developer is responsible for performing all of its obligations under this Agreement with minimal involvement by PDC or its staff.

Provided the other party is not in default of the terms and conditions of this Agreement, both PDC and Developer agree that neither of them shall hire any consultants who are to be paid from the Development Fee or otherwise commit to or cause any expenditure of Development Fee unless the other party consents thereto.

5. Limitations on Authority. In performing its duties under Section 2 above, Developer shall have the discretion and authority to determine the means and methods of undertaking the Project activities and expenditures necessary to bring the Project to final and successful completion of the VRAP Work Plan. Notwithstanding anything to the contrary in this Agreement, Developer covenants and agrees that all of its services provided hereunder shall be consistent with the terms and conditions of GPCOG's Brownfields Cleanup grant program, and all federal, state, and local laws, regulations, rules, and ordinances.

6. Books and Records. Developer, with the cooperation of PDC staff, shall keep reasonably detailed and accurate financial records substantiating all costs expended by PDC and Developer in connection with the Project. To the extent Developer incurs Project-related expenditures for which it expects to be reimbursed, Developer shall keep reasonably detailed and accurate records of such expenditures and shall furnish the same to PDC upon request and in any event contemporaneously with any reimbursement request for such expenses.

7. Development Fee. For the development services to be performed by the Developer under this Agreement, PDC shall pay the Developer Fee presented in the Project budget which shall not exceed 10% of project costs and shall be due and payable only to the extent that there are GPCOG Brownfield Cleanup grant funds available to pay such Developer Fee after all other Project expenses are paid and that the Developer Fee is allowable under the grant.

Provided the other party is not in default of the terms and conditions of this Agreement, both PDC and the Developer agree not to voluntarily or knowingly take actions that may result in a reduction of the Development Fee. Notwithstanding anything to the contrary in this Agreement, both parties also recognize such reductions may be unavoidable due to circumstances beyond their control. The parties agree to consult in connection with events or circumstances that may result in a reduction

of the Development Fee, but PDC shall not be obligated to accept reductions in other budget items that will otherwise have an adverse effect on PDC or the viability of the Project.

8. Default; Remedies.

- a. Default by Developer. If the Developer shall be in significant and material default in the performance of any of its covenants or obligations under this Agreement and such default shall continue unremedied for a period of thirty (30) days after its receipt of written notice thereof from PDC to the Developer, then PDC may terminate this Agreement for cause by written notice to the Developer.

Notwithstanding any termination of this Agreement by PDC for cause, Developer shall nonetheless be entitled to be paid an equitable amount of Developer's Fee as described in Section 7 which is commensurate with the reasonable value of the Developer's services through the date of Developer's receipt of PDC's notice of default, provided that such amount is available and allowable under the GPCOG Brownfields Cleanup grant, less any actual money damages incurred by PDC that directly arise from Developer's default, excluding consequential damages. Developer shall also be entitled to be reimbursed for any legitimate Project expenses, as evidenced by written invoices, actually paid by Developer prior to the date of Developer's receipt of PDC's notice of default, provided that funds for such expenses are available and allowable under the GPCOG Brownfields Cleanup grant.

- b. Default by PDC. If PDC shall be in significant and material default in the performance of any of its covenants or obligations under this Agreement and such default shall continue unremedied for a period of thirty (30) days after its receipt of written notice thereof from Developer to PDC, then Developer may terminate this Agreement for cause by written notice to PDC, but such termination shall not terminate PDC's obligation to pay any earned Developer's Fee to Developer, provided that such amount is available and allowable under the GPCOG Brownfields Cleanup grant.

In the event Developer terminates this Agreement pursuant to Section 8 b. due to default by PDC or in the event PDC terminates this Agreement for a reason other than that specified in Section 8 a. above, Developer shall be entitled to collect all of its legitimate Project expenses, as evidenced by written invoices, actually paid by Developer prior to the date of termination, plus an equitable amount of Developer's Fee as described in Section 7 which is commensurate with the reasonable value of the Developer's services through the date of termination, provided that such amounts are available and allowable under the GPCOG Brownfields Cleanup grant and shall, at Developer's option, also have the right to require PDC to convey the Property to Developer, in accordance with the terms of the Purchase and Sale Agreement between the parties, in the same condition it is in as of the date of termination or a better condition if Developer opts to proceed with the Development, provided, however, that PDC/SELLER shall have no obligation to improve or otherwise alter the condition of the Property prior to such conveyance.

9. Notwithstanding anything to the contrary in this Agreement, in the event that GPCOG does not disburse the GPCOG Brownfields Cleanup grant funds, this Agreement shall be null and void and neither party shall have any obligation or liability to the other hereunder

10. Burden and Benefit; Entire Agreement. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. Neither party may assign this Agreement without the consent of the other party. This Agreement contains the entire agreement between the parties hereto with respect to the matters set forth herein and is intended to be an integration of all prior agreements, conditions or undertakings between the parties hereto with respect to such matters. Except as expressly set forth in this Agreement, there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties hereto with respect to the matters set forth herein.

11. Third-Party Beneficiary. Nothing in this Agreement shall be construed to make any of the parties hereto liable for any of the debts or other obligations of any other party hereto, and the parties hereto specifically acknowledge, agree and declare that no person is intended to be a third-party beneficiary of this Agreement.

12. General. This Agreement shall be construed and enforced in accordance with the laws of Maine, without regard to principles of conflicts of laws. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No purported or alleged waiver of any of the provisions of this Agreement shall be binding and effective unless in writing and signed by the party against whom it is sought to be enforced. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which together shall constitute one and the same Agreement. All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section. All personal pronouns used in this Agreement, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

WITNESS:

Portland Development Corporation

By: _____
Barry Sheff, its President

Adams Apple, LLC

By: _____
Ethan Boxer-Macomber, its Member

**GPCOG BROWNFIELDS PROGRAM
SUBGRANT AGREEMENT**

THIS AGREEMENT is made and entered into on this ____ day of _____, 2015 by and between the Portland Development Corporation (hereinafter referred to as "Subgrantee"), and the Greater Portland Council of Governments (GPCOG) a recipient of a Brownfields Cleanup Revolving Loan Fund (BCRLF) capitalization grant from the U.S. Environmental Protection Agency (hereinafter referred to as the "Grantor") under Agreement Number BF96175401.

WITNESSETH:

WHEREAS, GPCOG is authorized under Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 104(k)(3)(B)(ii) and the terms and conditions of (EPA Grant Number BF96175401) to make subgrants to eligible entities and non-profit organizations from these funds ("Grant Funds"); and

WHEREAS, the Subgrantee is (an eligible entity under CERCLA 104(k)(1) or a non-profit organization as defined in 31 USC 6101, Note) owns by way of fee simple title certain real property located 65 Munjoy Street in Portland, Maine, (the "Property"), which property is more particularly described in Exhibit 1, attached hereto; and

WHEREAS, the Grantor has agreed to grant to Subgrantee certain of the Grant Funds which will be used by the Subgrantee for a portion of the remediation of the Property (the "Remediation Work"); which is more particularly described in Exhibit 2, and attached hereto; and

WHEREAS, the Property is not listed, or proposed for listing on the National Priorities List of the U. S. Environmental Protection Agency ("EPA"); and

WHEREAS, the Subgrantee is not a generator or transporter of any contamination located at the Property; and

WHEREAS, the Subgrantee is not and has never been subject to any penalties resulting from environmental non-compliance at or on the Property nor is the Subgrantee, or, to the best of its knowledge, its Project contractors or subcontractors currently suspended, debarred, or otherwise declared ineligible for participation in this federal program or from the receipt of these funds; and

WHEREAS, a claim has not been asserted against the Subgrantee for liability under CERCLA §107 at the Property.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, it is mutually agreed by and between the parties as follows:

1. Grantor agrees to grant to Subgrantee the sum of not more than \$200,000 to be used by the Subgrantee for the Remediation Work (the "Project Grant Funds") subject to the terms and conditions herein. The Subgrantee is accountable to the Grantor for using EPA funds only for eligible and allowable costs under CERCLA 104(k) and the terms and conditions of Agreement

Number BF96175401.

2. Subgrantee agrees to provide a cost share of \$40,000 consisting of eligible and allowable costs under CERCLA 104(k) and the terms and conditions of Agreement Number BF96175401. Subgrantee may meet this requirement by contributing cash, materials or labor to the cleanup project.
3. Subgrantee shall carry out the Remediation Work in accordance with CERCLA 104 (k) and applicable terms and conditions of Grant Number BF96175401. These requirements include those prohibitions on the use of Project Grant Funds found at CERCLA 104(k)(4)(B) for administrative costs, and response costs for which the Subgrantee is potentially liable at the Property under CERCLA 107.
4. The Subgrantee will comply with (Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations 40 CFR Part 30 or Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, 40 CFR Part 31) and all other applicable provisions of federal, state or local law.
5. The Subgrantee will provide the Grantor with all reports and other documents required for subgrantees or subawardees by 40 CFR Part 30 or 40 CFR Part 31, as applicable.
6. The Subgrantee will adhere to OMB Cost Principles found at (2 CFR Part 230 for Non-profits or 2 CFR Part 225 for State, Local or Tribal Governments or 2 CFR Part 220 for Educational Institutions).
7. Subgrantee shall carry out the Remediation Work in accordance with the Davis-Bacon Act of 1931 (CERCLA 104(g)(1), 40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). CERCLA compliance with Davis Bacon requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with Grant Funds. The Subgrantee must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the remediation construction contract. In addition, the Subgrantee must maintain records verifying compliance with the Davis Bacon Act. Subgrantee will work with Grantor to ensure Grantor's Davis-Bacon requirements are met.
8. The Subgrantee shall provide the Grantor with a copy of the Phase I and Phase II Environmental Assessment of the Property performed according to the American Society for Testing and Materials (ASTM) standards (collectively, the "Assessment"). The Subgrantee shall be responsible for the payment of all costs and expenses related to the Assessment. The Subgrantee agrees that the Project Grant Funds shall not be used for the payment of any cost or expense related to the Assessment. The Assessment shall include, but is not limited to site background, the threat posed to by the contaminant to public health, welfare and the environment and all past enforcement activities conducted by any governmental agency, and the site testing results.
9. The Grantor shall designate an environmental project manager who shall review and approve of the proposed cleanup and coordinate the work to be performed using Project Grant Funds. The

Grantor's environmental project manager will review the Subgrantee's remedial planning, design, and engineering documents and review the cleanup activities as they are on-going to ensure that the cleanup is being completed in accordance with all local, State, and Federal requirements and is protective of human health and the environment.

10. The Subgrantee shall prepare a Community Relations Plan ("CRP") with the assistance and cooperation of the Grantor. The CRP shall include, where applicable, the following:
 - a. Copies of interviews or meetings conducted with residents and community leaders, local officials, and public interest groups.
 - b. Copies of news releases and other information that explains the proposed project, such releases and information to be disseminated throughout the area surrounding the affected area.
 - c. Procedures for the establishment of a local information repository at or near the Property that includes public information supplied by both the Subgrantee and the Grantor related to the proposed Remediation Work. The Subgrantee shall supply the Grantor with any additional information that would assist the Grantor in documenting the Remediation Work.

11. After the Subgrantee has prepared the CRP, the Subgrantee shall draft an analysis of brownfields cleanup alternatives that will include information about the Property and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the cleanup proposed. The Subgrantee shall submit copies of the draft analysis of brownfields cleanup alternatives to the Grantor for approval. The Subgrantee agrees to accept advice and suggestions from the Grantor and to incorporate those suggestions or requests for revisions as appropriate.

12. After the Grantor has approved the draft analysis of brownfields cleanup alternatives, the Subgrantee shall make the document available for review and public comment for a period of not less than thirty (30) days from the date of publication of the public notice.

13. After the public comment period, the Subgrantee shall incorporate all appropriate comments, in the reasonable discretion of Subgrantee, into a final analysis of brownfields cleanup alternatives document and prepare a written response to the public comments, if appropriate.

14. After the analysis of brownfields cleanup alternative has been finalized, the Subgrantee shall prepare a scope of work containing detailed design and construction plans and specifications for the Remediation Work including a budget and work schedule; a health and safety plan (OSHA 1910-120 - 126) and a quality assurance project plan which sets forth the manner and method of collecting samples to assure the complete removal of all hazardous substances that are located at the Property and are to be removed as a part of the Remediation Work (collectively, such documents are referred to as the "Project Documents") and submit same to Grantor for approval.

15. Prior to the initiation of the Remediation Work, including any cleanup activities, the Subgrantee

must provide to the Grantor copies of all of the state required remedial planning documents and the state's approval of those documents, if required, as well as evidence of enrollment in the Maine's Voluntary Remediation Action Program.

16. The Subgrantee understands and agrees that all of the Project Grant Funds provided by Grantor to Subgrantee shall be used by the Subgrantee towards the cleanup and remediation of the Property identified in Exhibit 1. Subgrantee shall supply the Grantor with design and construction plan and specifications for the redevelopment of the Property and evidence of project feasibility in the form of a detailed project budget reflecting all project sources. All sources of project financing shall be supported by letters of interest and term sheets from an accredited lending institution.

Subgrantee shall complete a competitive bidding process for the Project Grant Funds in accordance with Federal procurement requirements under Brownfield regulations.

17. The Subgrantee further understands and agrees that any and all work performed on the Property for which the Project Grant Funds are used and the receipt of any Project Grant Funds under this Agreement is conditioned upon the Subgrantee's full compliance with the terms and provisions of the Project Documents and this Agreement.
18. The Project Grant Funds shall be payable to the Subgrantee as reimbursement for eligible and allowable expenses incurred by the Subgrantee based upon (for Part 31 subgrantees actual disbursements for costs incurred for Remediation Work for Part 30 subgrantees based on progress in accordance with the approved cleanup project budget (the "Budget"), attached hereto and made a part hereof as Exhibit 2 or actual disbursements for costs incurred or Remediation Work at the discretion of the Grantor). No reimbursement shall be made to the Subgrantee without the written approval of the Grantor. The Grantor shall not advance nor be obligated to advance any Project Grant Funds to the Subgrantee prior to the receipt of properly executed lien waivers. Reimbursement of Project Grant funds to the Subgrantee will take place after the receipt of invoices for costs incurred for Remediation work, and review of all information, documents and back up information to support the reimbursement request.
19. Subgrantee agrees must keep all expenditures from the Project Grant Funds within the approved Budget. Subgrantee shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the Grantor.
20. The Grantor may withhold up to five (5%) percent of each payment requested as a retainage until the Subgrantee has completed the Remediation Work.
21. The awarding of this Grant shall be subject to:
 - a. Opinion of the Subgrantee's Counsel that the Subgrantee, if a corporation, is in good standing and that all documents executed by the Subgrantee are valid and enforceable in accordance with their respective terms.
 - b. Written authorization in the form of a resolution, or order of the City Council, as corporator of Subgrantee, authorizing the Subgrantee to accept the Project Grant Funds and authorizing Subgrantee's representative to execute this Grant Agreement on behalf

- of the Subgrantee.
- c. Evidence by the Subgrantee that no outstanding taxes, fees, charges, mortgages, liens, encumbrances or other assessments have been filed or are recorded against the Property.
- d. Evidence of general liability insurance coverage with limits of liability of \$1,000,000. All insurance coverage required by this section shall remain in full force and effect during the term of this Agreement.
- e. Identification of the contractor and subcontractor selected by the Subgrantee for the Remediation Work, when determined.
- f. The Grantor's receipt of cleanup project cost breakdown based upon estimates and prices supplied by the Subgrantee.

The Grantor reserves the right to waive any or all requirements of this section.

- 22. Subgrantee shall commence work on the Remediation Work within 180 days from the date of execution of this Agreement and shall complete and perform all of the Remediation Work within 220 days in accordance with the approved Schedule of Work attached hereto and made a part hereof as Exhibit 3.

In the event the Subgrantee experiences project delays which are beyond the control of the Subgrantee that result in the project timeline exceeding either the 180 or 220 day limits above, Grantor shall provide reasonable extensions to the deadlines in this section, to the extent that such extensions comport with Grantor's obligations under the BCRLF.

- 23. All Remediation Work performed pursuant to this Agreement and with Project Grant Funds shall be performed in a good and workmanlike manner.
- 24. All material changes or modification to the Remediation Work or the Project Documents shall be approved in writing by the Grantor prior to such change or modification becoming effective. All additional costs incurred, as the result of any change orders shall be the responsibility of the Subgrantee. In the event that unforeseen conditions are discovered during the implementation of the Remediation Work, the Subgrantee reserves the right to revise the cleanup action and the Project Documents.
- 25. Subgrantee, at its sole cost and expense, and from sources other than Grant Funds, shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement.
- 26. The Subgrantee shall:
 - a. Notify the Grantor when the Remediation Work is complete. The notice shall contain certification or documentation that the Remediation Work is complete and has been performed in accordance with the terms of this Agreement. This notice shall summarize the actions taken, the resources committed and the problems encountered in completion of the project, if any, and shall be submitted to the Grantor for review and approval before it is finalized.

- b. Perform all of its obligations and agreements under this Agreement, and any other agreements or instruments to which the Subgrantee is a party and which relate to the Project Grant Funds and the Remediation Work.
27. Subject to and limited by the protections, immunities and defenses of the Maine Tort Claims Act, 14 M.R.S. § 8101 et seq., the Subgrantee agrees to protect, indemnify, defend and hold harmless, the Grantor, its officers, administrators, agents, servants, employees and all other persons or legal entities to whom the Grantor may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all reasonable fees, expenses and charges of attorneys and other professionals, court costs, and other reasonable fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the Subgrantee as provided herein and caused in whole or in part by any act, error, or omission of the Subgrantee, its agents, servants, employees or assigns.
28. The Subgrantee shall erect a sign on the Property stating that the Remediation Work is being financed in part by BCRLF Grant Funds and the Grantor and providing the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the Property site shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising.
29. If the Subgrantee sells or transfers the Property to another non-related or affiliated business, entity or corporation prior to completion of the Remediation Work, then, in that event, the Subgrantee shall immediately repay the entire amount of Project Grant Funds advanced to Subgrantee to the Grantor. Any change in use of the property from the original agreement needs to be approved by the Grantor.
30. Any forbearance by the Grantor with respect to any of the terms and conditions of this Agreement shall in no way constitute a waiver of any of Grantor's rights or privileges granted hereunder.
31. In the event of a default of any of the terms or conditions of this Agreement then, in that event, the entire amount of Project Grant Funds disbursed to Subgrantee shall become immediately due and payable without the necessity of demand from Grantor. The Subgrantee shall be deemed to be in default under this Agreement upon the occurrence of any or more of the following events (each and "Event of Default"):
- a. The Subgrantee assigns this Agreement or any Project Grant Funds advanced hereunder or any interest herein to a third party or if the Property or any interest is conveyed, assigned or otherwise transferred without the prior written consent of the Grantor.
 - b. Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false in any material respect.
 - c. The Subgrantee defaults in the performance of any term, covenant or condition to be performed hereunder and such default is not remedied within sixty (60) days, unless a

longer period of time is reasonably required to cure the default, from and after receipt of written notice by certified mail, return receipt requested, from the Grantor to the Subgrantee, specifying said default, of, if such default cannot be remedied within that period and remedial effort is not commenced within that period and diligently and continuously pursued, the Grantor shall have the right to proceed by appropriate judicial proceedings to enforce performance or observation of the applicable provisions of this Agreement and/or terminate this Agreement and recover damages from the Subgrantee to the extent allowed by law.

- d. Any proceeding involving the Subgrantee or the Property, commenced under any bankruptcy or reorganization arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, but if such proceedings are instituted, no Event of Default shall be deemed to have occurred hereunder unless the Grantor either approves, consents to, or acquiesces in such proceedings, or such proceedings are not dismissed within ninety (90) days.
- e. An order, judgment or decree is entered, without the application, approval or consent of the Grantor, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the Subgrantee of all or a substantial part of its assets, and such order, judgment or decree shall continue in effect for a period of ninety (90) days.

Upon the occurrence of any one or more of the Events of Default enumerated above, all amounts of Project Grant Funds disbursed to Subgrantee by Grantor pursuant to this Agreement shall become due and payable, without presentment, demand, protest or notice of any kind to the Grantor, all of which are hereby expressly waived by the Subgrantee.

- 32. The Subgrantee agrees to maintain financial and programmatic records pertaining to all matters relative to this Agreement in accordance with 40 CFR Part 30 or Part 31, as applicable and generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of 3 years following the completion and close out of Agreement Number BF96175401 except as follows:
 - a. Records that are subject to audit findings shall be retained three (3) years after such findings have been resolved.
 - b. All available records and supporting documents shall be made available, upon request, for inspection or audit by the Grantor or its representatives or representatives of EPA, EPA's Office of Inspector General, the Comptroller General, or other authorized representatives of the Federal Government.
- 33. The Subgrantee agrees to permit the Grantor or its designated representative to inspect and/or audit its records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances, upon reasonable notice and to copy therefrom any information that the Grantor desires relevant to this Agreement. The Grantor shall provide written notice to the Subgrantee prior to the execution of this provision. The Subgrantee agrees to deliver the records or have the records delivered to the Grantor or its designated representative at an address designated by such party. If the Grantor or its representative finds that the records delivered by the Subgrantee are incomplete, the Subgrantee agrees to pay the Grantor or its representative's costs to travel to the Subgrantee's office or other location where

the books or records are located to audit or retrieve the complete records.

34. The Subgrantee will comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the Subgrantee will undertake good faith efforts in compliance with 40 CFR Part 33 to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE)
35. The Subgrantee shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the Grantor. The Subgrantee shall not assign all or any portion of the Property made the subject of this Agreement without the prior written consent of the Grantor. Notwithstanding anything to the contrary herein, Grantor acknowledges that pursuant to a certain Development Consulting Agreement between Adam's Apple, LLC and Subgrantee, Adam's Apple, LLC will be administering this Agreement and shall be responsible for all of PDC's obligations, duties, and expenses under this Agreement, and Grantor hereby consents to the same.
36. This Agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries.
37. All amendments to this Agreement shall be in writing and signed by both parties hereto.
38. It is expressly understood that a failure or delay on the part of the Subgrantee in the performance, in whole or in part, or any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or Event of Default under this Agreement; however, the Subgrantee shall use its best effort to insure that the Project is completed in a reasonable time without unnecessary delay.
39. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
40. No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, and so custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.
41. All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

TO THE GRANTOR:

Neal Allen, Executive Director
Greater Portland Council of Governments
970 Baxter Boulevard, Suite 201
Portland, Maine 04103

TO THE SUBGRANTEE:
Greg Mitchell, Director of Economic Development
Portland Development Corporation
Portland City Hall
389 Congress Street, Room 308
Portland, ME 01401

or to such other address as a party may subsequently specify in writing to the other party.

- 42. If any provision or item of this Agreement is held invalid, such invalidity shall not affect other provisions or items of this Agreement that can be given effect without the invalid provisions or items, and to this end, the provisions of this Agreement are hereby declared severable.
- 43. Except for any exhibits, attachments, plats or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this Agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed in the name and on behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, hereunto duly authorized) as of the day and year first written above.

WITNESS:

SUBGRANTEE:

PORTLAND DEVELOPMENT CORPORATION

Printed Name: _____

Its: _____

WITNESS:

GRANTOR:

GREATER PORTLAND COUNCIL OF
GOVERNMENTS

Printed Name: _____

Its: _____

Exhibit 1

Evidence that the Portland Development Corporation owns by way of **fee simple title** certain real property located at 65 Munjoy Street, Portland, Maine (Map 3, Block M, Lot 5).

Exhibit 2

Draft scope of remediation work

Exhibit 3

Draft schedule for remediation work

Other documents to be provided at closing

- \$500 application fee
- A **zoning determination** by the City of Portland that the project, as designed, appears to meet all of the standards of the R6 Residential zone, subject to Planning Board approval.
- Demonstration of project feasibility as described in Section 12 above.

**CITY OF PORTLAND
HOUSING TRUST FUND
AGREEMENT WITH
ADAM'S APPLE, LLC**

This Agreement is made as of the ____ day of August, 2015, by and between the **CITY OF PORTLAND**, a body politic and corporate, with a place of business at 389 Congress Street, Portland, Maine (hereinafter "**CITY**") and **ADAMS APPLE LLC**, a Maine limited liability corporation with a place of business at 17 Chestnut Street, 3rd Floor, Portland, Maine, (hereinafter "**DEVELOPER**").

RECITALS

WHEREAS, the CITY published a November 19, 2014 "Request for Proposals For the Sale and Reuse of Property Located at 65 Munjoy Street (the "Premises"), RFP #4115," as amended by Addendum #1, dated December 18, 2014, copies of which are attached hereto and collectively marked Exhibit A and incorporated herein (the Request for Proposals and Addendum #1 are collectively referred to herein as the "RFP"); and

WHEREAS, DEVELOPER submitted a proposal in response to the RFP (the "Proposal"), a copy of which is attached hereto as Exhibit B and incorporated herein; and

WHEREAS, after reviewing all proposals submitted in response to the RFP, the CITY selected DEVELOPER as the successful bidder; and

WHEREAS, DEVELOPER desires to purchase the Premises and construct affordable housing on it in accordance with the terms of the Proposal and the RFP (the "Proposed Development"), and the City desires that DEVELOPER do so; and

WHEREAS, pursuant to the terms of Purchase and Sale Agreements between the CITY and the Portland Development Corporation (hereinafter "PDC") and between the PDC and DEVELOPER of near or even date herewith, copies of which are attached hereto as Exhibits C and D, respectively, and incorporated herein, the CITY is causing the Premises to be conveyed to Developer for the construction of the Proposed Development; and

WHEREAS, the Premises is impacted by certain environmental contaminants as described

in a July 1, 2014 Phase I Environmental Site Assessment and an August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, copies of which are attached hereto and collectively marked Exhibit E and incorporated herein by reference (collectively, the “ESAs”); and

WHEREAS, prior to constructing the Proposed Development, certain environmental remediation work must be completed as described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the “VRAP Work Plan”), copies of which are attached hereto and collectively marked Exhibit F and incorporated herein by reference; and

WHEREAS, in order to finance the VRAP Work Plan, PDC consulted with the Greater Portland Council of Governments (“GPCOG”) regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, GPCOG advised DEVELOPER and the City that they would not qualify for GPCOG’s Brownfields Remediation grants because the City may be a potentially responsible party for the environmental contaminants and Adam’s Apple is not a public or nonprofit entity, but that PDC, as a nonprofit corporation, would qualify for a grant if it were the owner of the Premises; and

WHEREAS, PDC, with the assistance of DEVELOPER, applied for and has been awarded a Brownfields Remediation Program grant from GPCOG in order to finance the VRAP Work Plan as set forth in GPCOG’s June 15, 2015 letter to PDC, a copy of which is attached hereto and marked Exhibit G and incorporated herein by reference; and

WHEREAS, PDC and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the “Brownfields Grant Agreement”), a copy of which is attached hereto and marked Exhibit H and incorporated herein by reference; and

WHEREAS, PDC, DEVELOPER, and the CITY have agreed that in order to complete the VRAP Work Plan prior to the conveyance of the Property to DEVELOPER, the CITY would first convey the Premises to PDC, provided that PDC would then convey the Premises to

DEVELOPER after completion of the VRAP Work Plan; and

WHEREAS, PDC and DEVELOPER have entered into a Development Consulting Agreement of near or even date herewith, a copy of which is attached hereto as Exhibit I and incorporated herein, pursuant to which DEVELOPER shall act as PDC's agent to oversee the VRAP Work Plan during PDC's ownership of the Premises and be responsible for the administration of the Brownfields Grant Agreement and all costs associated with that agreement at no cost to PDC; and

WHEREAS, in order to help finance the VRAP Work Plan and construct the Proposed Development, the DEVELOPER has requested \$175,000.00 in funds from the City's Housing Trust Fund - \$40,000.00 of which will assist in financing the environmental remediation costs for the Premises, and \$135,000.00 of which will assist in financing the costs of construction of the Proposed Development; and

WHEREAS, in order to assist in promoting the availability of affordable housing in Portland, the CITY agrees to provide DEVELOPER with \$175,000.00 in funds from the City's Housing Trust Fund in accordance with the terms of this Agreement.

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. Recitals Incorporated by reference. The recitals set forth above are hereby incorporated herein by reference and made a part of this Agreement. The restatement in this document of any term of any of its attachments shall not be deemed to waive any term not so restated. If any disagreement is found between this agreement and its attachments, then this document shall govern; provided, however, that this document and all of its attachments shall be construed to be supplemental to one another to the extent possible.
2. Grant. The CITY agrees, on the terms and conditions contained in this Agreement, to make a Grant to the DEVELOPER in the principal amount of One Hundred Seventy-Five Thousand Dollars (\$175,000.00) in City of Portland Housing Trust Funds (the "HTF Grant").

3. Use of Proceeds; Disbursements. The DEVELOPER shall use the proceeds of the HTF Grant for the costs associated with the VRAP Work Plan and the construction of the Proposed Development and the CITY shall disburse the proceeds as follows.
 - a. The CITY shall disburse \$40,000.00 to DEVELOPER during the course of the DEVELOPER's performance under the Development Consulting Agreement. Such costs must be eligible and allowable costs under the Brownfields Grant Agreement.
 - b. The CITY shall also disburse \$135,000.00 of the HTF Grant proceeds to the DEVELOPER after the PDC conveys the Premises to the DEVELOPER and the DEVELOPER commences construction of the Proposed Development. Such disbursement shall only be for hard costs associated with the construction of the Proposed Development.
 - c. The City shall reimburse DEVELOPER for the above costs within 30 days after receipt of an itemized invoice from Developer in form and substance satisfactory to the CITY.
4. Conditions Precedent; Mortgage. The CITY's commitment to make the HTF Grant and the obligation of the CITY to make any disbursements pursuant thereto, are subject to performance by the DEVELOPER of all of its obligations under this Agreement required though the date of disbursement, and to the CITY having received on or before the Closing Date all of the items set forth in the above Recitals and all of the exhibits and amendments thereto (collectively, the "HTF Grant Documents"), each in form and substance satisfactory to the CITY. The obligation of the CITY to make any disbursement hereunder is subject to the performance by the DEVELOPER of all of its obligations under the HTF Grant Documents. The performance of DEVELOPER after disbursement of the HTF Grant shall be guaranteed by a Note for full repayment of funds disbursed, secured by a Mortgage on the Premises, at 0% interest, with one-eighth (1/8) of the Note to be deemed satisfied upon the sale of each of the 8 housing units in accordance with the terms of said Note, this Agreement, and a Declaration of Covenants, Conditions, and Restrictions between the parties of near or even date herewith. CITY shall execute a partial release of mortgage immediately prior to the sale of each unit. The Note and Mortgage shall be in the form attached hereto as Exhibits J and K.
5. Representations and Warranties of the DEVELOPER. The DEVELOPER represents and warrants to the CITY (which representations and warranties shall survive the closing of this Agreement) as follows:
 - a. The DEVELOPER has all requisite power and authority to conduct its businesses, to own its properties and to execute and deliver, and to perform all of its obligations under this Agreement and the HTF Grant Documents.
 - b. The execution, delivery and performance by the DEVELOPER of this Agreement, and the HTF Grant Documents do not and will not (i) require any consent or approval of any other person which DEVELOPER has not obtained, (ii) violate any provision of any law, rule, regulation (including, without limitation, Regulation of the Board of Governors of the Federal Reserve System), order, writ, judgment,

injunction, decree, determination or award presently in effect having applicability to the DEVELOPER, (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the DEVELOPER is a party or by which its properties may be bound or affected, or (iv) except as may be provided by this Agreement and/or the HTF Grant Documents, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Premises.

- c. The DEVELOPER is not to its knowledge in material default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease or instrument by which it is bound.
 - d. Except as disclosed to the CITY in writing, there are no actions, suits or proceedings pending or, to the knowledge of the DEVELOPER, threatened against or affecting the DEVELOPER or any properties or assets of the DEVELOPER before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the DEVELOPER would have a material adverse effect on the financial condition, properties, or operations of the DEVELOPER.
 - e. The DEVELOPER has filed all tax returns (Federal, state and local) required to be filed and paid all taxes shown thereon to be due, including interest and penalties, or provided adequate reserves for payment thereof.
6. Affirmative Covenants of the DEVELOPER Other than Reporting Requirements. From the date hereof and thereafter for so long as the DEVELOPER is indebted to the CITY, whether under the HTF Grant Documents or otherwise, the DEVELOPER will, unless the CITY shall otherwise consent in writing:
- a. Payment of Taxes, etc. Pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any Assets or properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon any of its properties or Assets provided that the DEVELOPER shall not be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings and as to which DEVELOPER shall have set aside on its books adequate reserves in accordance with generally accepted accounting principles. Provided, however, that if Developer is still indebted to the CITY at the time that the Declarant Control Period ends after six of the eight units have been sold, Developer shall only be responsible for payment of real estate taxes on the remaining unsold units.
 - b. Maintenance of Insurance. Maintain insurance in favor of the DEVELOPER and the CITY, as their interests may appear, with responsible and reputable insurance companies reasonably acceptable to the CITY, to the extent of CITY's interest. All such insurance policies shall name the CITY as loss payee or additional insured and shall provide for at least thirty (30) days' prior notice to the CITY before cancellation or amendment of any such policy. The DEVELOPER shall provide the CITY with such evidence as the CITY may reasonably request from time to time as to the maintenance of all such insurance.

- c. Existence and Assets. Do or cause to be done all things necessary to preserve, renew and keep in full force and effect the existence of DEVELOPER and comply with all laws and regulations applicable to said limited liability company; preserve all of its Assets and property used or useful in the conduct of the company's business and keep the same in good repair, working order and condition, and from time to time, make, or cause to be made, all needful and proper repairs, renewals, replacements, betterments and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.
 - d. Visitation Rights. At any reasonable time and from time to time, and on reasonable advance notice, permit the CITY or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the DEVELOPER and to discuss the affairs, finances and accounts of the DEVELOPER.
 - e. Keeping of Records and Books of Account. Keep adequate records and books of account, in which complete entries will be made in accordance with generally accepted accounting principles consistently applied, reflecting all financial transactions of the DEVELOPER.
 - f. Unit Owner Income Requirements (Affordability). DEVELOPER shall comply with all provisions of the Declaration of Covenants, Conditions, and Restrictions, between the parties of near or even date herewith and all other HTF Grant Documents, and at any reasonable time and from time to time, and on reasonable advance notice, City or any agents or representatives thereof, may examine and make copies of records verifying compliance with the Affordability Requirements thereof.
 - g. DEVELOPER shall use the moneys granted pursuant to this Agreement only for the purposes set forth above.
 - h. Developer shall obtain certificates of occupancy for all units in the Proposed Development on or before July 31, 2018.
7. Negative Covenants of the DEVELOPER. It is understood by City that Developer will be obtaining construction financing from a commercial lender, and that the commercial lender will require the individual Members of Developer to contribute private equity to the funds to be used for construction. This commercial construction loan and contribution of private equity will constitute loans to Developer. In addition, the HTF Grant will be used for environmental remediation and hard costs of construction as outlined in Paragraph 3, above. CITY and DEVELOPER understand and hereby agree that the loan securing repayment of the HTF Grant in the event of default will be subordinate to the construction financing from the commercial lender and that the private equity loans from the individual members of Developer will be subordinate to the HTF Grant funds, and the parties agree to promptly execute such documents as are necessary to effectuate that subordination. Except for the construction financing from a commercial lender, the private equity loans provided by members of Developer, and the loan associated with the HFT Grant described herein, from the date hereof and thereafter for so long as the DEVELOPER is indebted to the CITY, the DEVELOPER will not, without the prior written consent of the CITY, which shall not be unreasonably withheld:

- a. Liens, Etc. Create, incur, assume or suffer to exist any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance (including the lien or retained security title of a conditional vendor) of any nature, upon or with respect to the Premises, or assign or otherwise convey any right to receive income, except that the foregoing restrictions shall not apply to pledges, liens or other charges or encumbrances:
- i. for taxes, assessments or governmental charges or levies on property or Assets of the DEVELOPER if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings, and as to which it shall have set aside on its books adequate reserves;
 - ii. Liens, charges, and encumbrances described in any Intercreditor Agreement;
 - iii. imposed by law, such as carriers', warehousemen's and mechanics' liens and other similar liens incurred by it in good faith and in the ordinary course of business;
 - iv. arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation;
 - v. deposits to secure the performance of bids, tenders, contracts (other than for the repayment of Indebtedness) or leases, or to secure statutory obligations or surety or appeal bonds, or to secure indemnity, performance or other similar bonds all in the ordinary course of business;
 - vi. purchase money security interests limited to those items of personal property obtained pursuant to purchase money financing;
 - vii. encumbrances pertaining to utilities and other services to be provided to the Premises.
- b. Assumptions, Guaranties, Etc. of Indebtedness of Other Persons. Assume, guarantee, endorse or otherwise become directly or contingently liable (including, without limitation, liable by way of agreement, contingent or otherwise, to purchase or provide funds for payment, to supply funds to or otherwise invest in the debtor or otherwise to assure the creditor against loss) in connection with any obligation or indebtedness of any other Person, except as permitted by this Agreement and except for guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.
- c. Mergers, Etc. Dissolve, liquidate, merge, consolidate with or otherwise acquire all or substantially all of the assets of any other Person or more than ten percent (10%) of the capital stock or ownership interest of any other Person, or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Assets (whether now owned or hereafter acquired) to any Person.
- d. Sales, Etc. of Assets. Sell, assign, lease or otherwise dispose of any of its Assets (other than in the ordinary course of business), unless any such Asset is replaced with a like Asset of equal or greater value.

- e. Sale and Leaseback. Enter into any sale and leaseback arrangement with any lender or investor.
8. Reporting Requirements. From the date hereof and thereafter until the DEVELOPER has sold all units in the Proposed Development, the DEVELOPER will, unless the CITY shall otherwise consent in writing, furnish to the CITY:
- a. as soon as possible and in any event within ten (10) days after the DEVELOPER has received notice from the CITY that it believes there has been an occurrence which will be an Event of Default unless it is cured within the applicable cure period, a statement of the DEVELOPER setting forth details of such possible Event of Default and the action which the DEVELOPER proposes to take to cure with respect thereto;
 - b. as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of the DEVELOPER until the Proposed Development is completed, a true copy of the financial statements for such year for the DEVELOPER, including therein balance sheets of the DEVELOPER as of the end of such fiscal year and statements of income and retained earnings and a statement of cash flows of the DEVELOPER for such fiscal year, in each case prepared on a reviewed basis by independent certified public accountants of recognized standing acceptable to the CITY.
9. Events of Default. The DEVELOPER shall be in default under this Agreement upon the occurrence of any of the following events ("Events of Default"):
- a. Any representation, covenant or warranty made by the DEVELOPER in this Agreement and/or in any of the Grant Documents or in any written certificate, agreement, instrument or statement contemplated by or made or delivered pursuant to or in connection with this Agreement and/or any of the Grant Documents, shall prove to have been incorrect in any material respect when made; or
 - b. The DEVELOPER shall fail to perform or observe any term, covenant or agreement contained in this Agreement and/or any of the HTF Grant Documents on its part to be performed or observed within ninety (90) days after receiving written notice from CITY; or
 - c. The DEVELOPER shall fail to pay any Indebtedness owing by the DEVELOPER, any interest, commitment fee or premium thereon, when due or, if permitted by the terms of the relevant document, within any applicable grace period as referenced in this section, whether such Indebtedness shall become due by scheduled maturity, by required prepayment, by acceleration, by demand or otherwise; or the DEVELOPER shall fail to perform any term, covenant or agreement on its part to be performed under any agreement or instrument (other than this Agreement or the HTF Grant Documents) evidencing or securing or relating to any Indebtedness owing by the DEVELOPER, when required to be performed, or, if permitted by the terms of the relevant document, within any applicable grace period, if the effect of such failure is to accelerate, or to permit the holder or holders of such Indebtedness to accelerate the maturity of such Indebtedness; or
 - d. This Agreement, or any of the HTF Grant Documents, shall, at any time after their respective execution and delivery and for any reason, cease to be in full force and

effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the DEVELOPER, or the DEVELOPER shall deny that it has any further liability or obligation under this Agreement and/or any of the HTF Grant Documents; or

- e. The DEVELOPER shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay or fail generally to pay its debts as they become due or shall file a voluntary petition in bankruptcy, or if an order for relief shall be entered in any proceeding of the DEVELOPER under the federal bankruptcy code or if DEVELOPER shall file any petition or answer seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or other applicable federal, state or other statute, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the DEVELOPER or of all or any substantial part of its properties, or if action shall be taken for the purpose of effecting any of the foregoing; or
- f. The DEVELOPER shall be adjudicated a bankrupt, or if any proceeding against the DEVELOPER seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or other applicable federal, state or other statute, law or regulation shall be commenced and not stayed or dismissed within ninety (90) days, or if any trustee, custodian, receiver or liquidator of the DEVELOPER or of all or any substantial part of the properties of the DEVELOPER shall be appointed without the consent or acquiescence of the DEVELOPER; or
- g. DEVELOPER fails to comply with the Affordable Housing Covenants as defined in the HTF Grant Documents and such failure is not cured within sixty (60) days' written notice thereof, provided, however, that if such failure cannot be cured within such sixty (60) day period, DEVELOPER shall have an additional reasonable period of time in which to cure the same, provided DEVELOPER commences to cure and diligently prosecutes the cure during the initial sixty (60) day period to the CITY's satisfaction; or
- h. The cancellation, lapse, or termination of any insurance coverage required to be maintained by the DEVELOPER under any of the HTF Grant Documents, and the same is not reinstated within five (5) days of notice from CITY; or
- i. The Premises is conveyed, voluntarily encumbered or otherwise transferred in any way (except as expressly contemplated herein) without the prior written consent of the CITY, which consent shall not be unreasonably withheld; or
- j. The Premises or any material portion thereof is materially injured or destroyed by fire or otherwise or any material portion thereof is taken by eminent domain and the insurance proceeds or condemnation award do not, in CITY's judgment, fully compensate the DEVELOPER therefor; or
- k. A default in any loan documents executed by DEVELOPER for financing the Proposed Development not cured within a period of sixty (60) days after notice of such default.

10. Remedies of CITY. Upon the occurrence of any one or more Events of Default not cured within any applicable grace period and at any time thereafter:

- a. The CITY may, by written notice to the DEVELOPER, declare its obligation to make the HTF Grant and any further disbursements to be terminated, whereupon the same shall forthwith terminate, and the DEVELOPER shall immediately reimburse the CITY for all disbursements already made hereunder.
- b. The City shall be able to exercise any of its rights under this Agreement or the HTF Grant Documents, maintain an action, and pursue all remedies, in law or in equity against the Developer, including, without limitation, to recover damages incurred by City from such failure, and to require Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and in the HTF Agreement and to immediately cure any failure by the Developer to comply with the covenants set forth herein or in the HTF Grant Documents. In the event of any dispute between the CITY and DEVELOPER under this Agreement or the HTF Grant Documents, in the event the CITY prevails, the CITY shall be entitled to recover from CONTRACTOR its reasonable attorneys fees and costs of litigation.

11. Definitions. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Assets" means any and all of the DEVELOPER's presently owned or hereafter acquired tangible and intangible property, rights, interests, franchises, licenses, permits, claims and benefits including without limitation all accounts, contract rights, Receivables, chattel paper, general intangibles, patents, trademarks, trade names, copyrights, equipment, machinery, goods, inventory, fixtures, vehicles, leasehold interests, real property, cash and the proceeds, products, accessions, replacements and substitutions therefor, wheresoever located and howsoever evidenced, and any right, title or interest of the DEVELOPER in any of the foregoing types of property owned by any other Person.

"Closing Date" means the date on which this Agreement becomes effective, which date is first written above.

"Disbursements" means each advance of funds by the CITY to the DEVELOPER in accordance with this Agreement as part of the HTF Grant.

"Events of Default" has the meaning assigned to that term in Section 9.

"Indebtedness" (i) all indebtedness or other obligations of any other person for borrowed money or for the deferred purchase price of property or services the payment or collection of which such person has guaranteed (except by reason of endorsement for collection in the ordinary course of business) or in respect of which such person is liable, contingently or otherwise, including, without limitation, liable by way of agreement to purchase, to provide funds for payment, to supply funds to or otherwise to invest in such other person, or otherwise to assure a creditor against loss, (ii) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or

services secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance upon or in the Assets and/or property (including, without limitation, accounts and contract rights) owned by such person, whether or not such person has assumed or become liable for the payment of such indebtedness or obligations, and (iii) capitalized lease obligations of such person and (iv) all other liabilities or obligations of such person which would, in accordance with generally accepted accounting principles, be classified as liabilities of a person conducting a business the same as or similar to that of such person.

"Person" means in individual, corporation, partnership, joint venture, trust or unincorporated organization, or a government or any agency or political subdivision thereof.

"HTF Grant Documents" means all of the documents and agreements referenced in this Agreement, all exhibits and amendments thereto, and all other documents that the CITY may require in connection therewith up to the Closing Date.

12. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistent with those applied in the preparation of the financial statements and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles.
13. No Waiver; Cumulative Remedies. No failure or delay on the part of the CITY, or any other holder of the Note in exercising any right, power or remedy under this Agreement and/or any of the HTF Grant Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
14. Amendments, Etc. No amendment, modification, termination, or waiver of any provision of this Agreement or any of the HTF Grant Documents nor consent to any departure by the DEVELOPER therefrom, shall in any event be effective unless the same shall be in writing and signed by the CITY and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the DEVELOPER in any case shall entitle the DEVELOPER to any other or further notice or demand in similar or other circumstances, except as otherwise provided herein.
15. Addresses for Notices, Etc. All notices, requests, demands and other communications provided for hereunder shall be in writing (including telegraphic communication) and delivered by hand, mailed or telegraphed or delivered to the applicable party at the addresses indicated below:

If to the DEVELOPER: ADAM'S APPLE, LLC
 17 Chestnut Street, 3rd Floor

Portland ME 04101

with a copy to: Barbara Vestal, Esq.
Chester & Vestal, P.A.
107 Congress Street

Portland, ME 04101

If to the CITY: City of Portland
389 Congress Street
Portland, ME 04101
Attn: City Manager

with a copy to: Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04101

or, as to each party, at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall be effective when actually delivered by hand or shall, when mailed or telegraphed, be effective three (3) days after deposit in the mails or delivery to the telegraph company, respectively, addressed as aforesaid, except that notices or requests to the CITY pursuant to any of the provisions of Article I, shall not be effective until received by the CITY.

16. DEVELOPER shall indemnify and hold CITY and its agents harmless from and against any and all claims, demands, liability, loss cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by CITY arising out of or in any way related to DEVELOPER's breach of any of its obligations under this Agreement or the HTF Grant Documents or any action taken by CITY to enforce or exercise its rights under this Agreement or the HTF Grant Documents as a result of such breach. The obligations under this section shall survive the termination or expiration of this Agreement as necessary to effect its provisions.
17. Protection of Assets. In addition to the disbursements, the CITY may at any time at its option discharge or bond any liens or other encumbrances upon, purchase and maintain required insurance in respect of, and otherwise preserve and protect the value of the Assets, and pay any other sums DEVELOPER is obligated to pay under this Agreement, the Note and/or the Grant Documents. Any amounts expended by the CITY for any such purpose shall be treated in all respects as disbursements and shall be secured by the Grant Documents.
18. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the DEVELOPER and the CITY and their respective successors and assigns,

except that the DEVELOPER shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the CITY. The CITY may assign, negotiate or pledge all or any portion of its rights under this Agreement or any of its rights or security with respect to the HTF Grant Documents and in case of such assignment, negotiation or pledge the DEVELOPER shall accord full recognition thereto.

19. Grantee understands that the grant funds to be supplied by the City represents the City's sole commitment to the cost of the Proposed Development. Any and all additional costs associated with the Proposed Development over and above the City's grant funding shall be borne by the Grantee. This Agreement does not form a partnership or joint venture between the parties hereto.
20. Governing Law. This Agreement and the Note shall be governed by, and construed in accordance with, the laws of the State of Maine.
21. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
22. Survival. This Agreement and all covenants, agreements, representations and warranties made herein and the certificates delivered pursuant hereto shall survive the making by the CITY of this HTF Grant and the execution and delivery to the CITY of the HTF Grant Documents.
23. Headings. Article and Section headings in this Agreement are included herein for convenience or reference only and shall not constitute a part of this Agreement for any other purpose.
24. Inconsistent Provisions. To the extent of any inconsistency between the provisions of this Agreement, the Note and/or the HTF Grant Documents, the provisions of this Agreement shall control; provided, however, that nothing herein or in any other part of this Agreement shall be construed to limit the right of DEVELOPER to require PDC, as SELLER, to convey the Premises to DEVELOPER pursuant to Paragraph 8 of the Development Consulting Agreement between PDC and Developer and/or pursuant to Paragraph 9 of the Purchase and Sale Agreement between PDC and Developer in the event of the conditions outlined therein.

Signature page follows

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the parties as of the date first above written.

WITNESS:

CITY OF PORTLAND

By: _____

Jon Jennings
Its City Manager

ADAM'S APPLE, LLC

Witness

By: _____

Printed Name: _____

Its _____

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this _____ day of _____, 2015 by and between the PORTLAND DEVELOPMENT CORPORATION, a Maine nonprofit corporation (“SELLER” or “PDC”), and ADAM’S APPLE, LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of 17 Chestnut Street, 3rd Floor, Portland, Maine 04101 (“BUYER”).

W I T N E S S E T H:

WHEREAS, pursuant to the terms of a Purchase and Sale Agreement between SELLER and the City of Portland (the “City”) of near or even date herewith, the City intends to convey to SELLER certain land known as the Adams School Parking Lot located at 65 Munjoy Street in Portland, Maine, as more specifically described in Exhibit A, attached hereto and incorporated herein (the “Premises”), and as generally depicted in the plan attached as Exhibit B and incorporated herein; and

WHEREAS, the City published a November 19, 2014 “Request for Proposals For the Sale and Reuse of Property Located at 65 Munjoy Street, RFP #4115,” as amended by Addendum #1, dated December 18, 2014, copies of which are attached hereto and collectively marked Exhibit C and incorporated herein (the Request for Proposals and Addendum #1 are collectively referred to herein as the “RFP”); and

WHEREAS, BUYER submitted a proposal in response to the RFP (the “Proposal”), a copy of which is attached hereto as Exhibit D and incorporated herein; and

WHEREAS, after reviewing all proposals submitted in response to the RFP, the City selected BUYER as the successful bidder; and

WHEREAS, BUYER desires to purchase the Premises and construct affordable housing on it in accordance with the terms of the Proposal and the RFP (the “Proposed Development”), and the City desires that BUYER do so; and

WHEREAS, the Premises is impacted by certain environmental contaminants as described in a July 1, 2014 Phase I Environmental Site Assessment and an August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, copies of which are

attached hereto and collectively marked Exhibit E and incorporated herein by reference (collectively, the “ESAs”); and

WHEREAS, prior to constructing the Proposed Development, certain environmental remediation work must be completed as described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the “VRAP Work Plan”), copies of which are attached hereto and collectively marked Exhibit F and incorporated herein by reference; and

WHEREAS, in order to finance the VRAP Work Plan, BUYER consulted with the Greater Portland Council of Governments (“GPCOG”) regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, GPCOG advised BUYER and the City that they would not qualify for GPCOG’s Brownfields Remediation grants because the City may be a potentially responsible party for the environmental contaminants and Adam’s Apple is not a public or nonprofit entity, but that SELLER, as a nonprofit corporation, would qualify for a grant if it were the owner of the Premises; and

WHEREAS, SELLER, with the assistance of BUYER, applied for and has been awarded a Brownfields Remediation Program grant from GPCOG in order to finance the VRAP Work Plan as set forth in GPCOG’s June 15, 2015 letter to SELLER, a copy of which is attached hereto and marked Exhibit G and incorporated herein by reference; and

WHEREAS, BUYER and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the “Grant Agreement”), a copy of which is attached hereto and marked Exhibit H and incorporated herein by reference; and

WHEREAS, SELLER, BUYER, and the City have agreed that in order to complete the VRAP Work Plan prior to the conveyance of the Property to BUYER, the City would first convey the Premises to SELLER, provided that SELLER would then convey the Premises to BUYER after completion of the VRAP Work Plan; and

WHEREAS, SELLER and BUYER have entered into a Development Consulting Agreement of near or even date herewith pursuant to which BUYER shall act as SELLER's agent to oversee the VRAP Work Plan during SELLER's ownership of the Premises and be responsible for the administration of the Grant Agreement and all costs associated with the Grant Agreement at no cost to SELLER; and

WHEREAS, the SELLER desires to convey the Premises to BUYER in accordance with the terms and conditions of this Agreement, provided that the CITY conveys the Premises to SELLER pursuant to a Purchase And Sale Agreement between the City and SELLER of near or even date herewith (the "City-PDC Agreement"), a copy of which is attached hereto as Exhibit I and incorporated herein by reference).

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. **RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are hereby incorporated herein by reference and made a part of this Agreement. The restatement in this document of any term of any of its attachments shall not be deemed to waive any term not so restated. If any disagreement is found between the RFP or the Proposal and this document, then this document shall govern; and the RFP shall govern over the Proposal, to the extent they disagree; provided, however, that this document and all of its attachments shall be construed to be supplemental to one another to the extent possible.
2. **SALE.** SELLER agrees to sell the Premises to BUYER, and BUYER agrees to buy the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
3. **CONSIDERATION.** The consideration for the Premises shall be One Dollar (\$1.00) (the "Purchase Price").
4. **TITLE.** SELLER shall convey the Premises to BUYER at the closing in fee simple with good and marketable or insurable title by quitclaim deed without covenant acceptable to BUYER. If SELLER is unable to convey title to the Premises in accordance with the provisions of this paragraph, then SELLER shall have a reasonable time period, not to exceed 30 days from the time SELLER receives written notice of the defect, unless otherwise agreed to by both parties, during which it shall make a good faith effort to remedy the title, after which time, if such defect is not corrected so that there is marketable and insurable title, BUYER may within 2 days

thereafter, at BUYER's option, terminate this Agreement, and neither party shall have any further obligation hereunder.

5. **POSSESSION.** Full possession of the Property will be delivered to Buyer at the transfer of title, free and clear of all tenancies or occupancies by any person or entity.
6. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire or otherwise, until transfer of title hereunder, is assumed by the SELLER. Except to the extent that the Premises may be altered by the work performed under the VRAP Work Plan, the Premises is to be delivered in substantially the same condition as of the date of this Agreement.
7. BUYER acknowledges that BUYER has had an opportunity to inspect the Premises, and to hire professionals to do so, and that the Premises will be sold "as is, where is" and "with all faults." SELLER, 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. Furthermore, SELLER and its agents make no representations or warranties regarding the number, quantity, quality, or count of any items of personal property. 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 SELLER of every agreement and obligation contained herein.
8. **COVENANTS, RESTRICTIONS, AND OPTION TO REPURCHASE IN SELLER'S DEED TO BUYER.** SELLER's deed to BUYER shall contain a declaration of covenants and restrictions that shall include, without limitation, provisions in substantially the form set forth below, which shall survive the closing of this Agreement and run with the land:
 - a. Grantee shall construct eight (8) new affordable ownership housing units on the Premises in substantially the form and for the affordable housing uses set forth in the Proposal and in the RFP, with Grantee's compliance with this provision to be satisfied by: (1) Grantee recording a subdivision plan for the Premises approved by the Planning Board of the City of Portland showing 8 housing units, and (2) with regard to a unit proposed to be conveyed, the City of Portland having issued a certificate of occupancy for that particular unit. At the request of Grantee, the City of Portland shall duly execute, from time to time, a verification of subdivision approval and issuance of certificates of occupancy in recordable form.
 - b. The parties agree that the units shall be subject to an "Affordability Declaration" which shall be established by the due execution and recording of the following documents in substantially the same form as those attached hereto and incorporated herein by reference: (i) Declaration

of Covenants, Conditions and Restrictions, Exhibit J, (ii) Affordability Agreement, Exhibit K, and (iii) Declaration of Condominium, Affordability of Units provision, Exhibit L.

- c. If Grantee has not started and diligently pursued construction of eight (8) new affordable ownership housing units as provided above by July 31, 2017, Grantor or the City of Portland shall have the right, but not the obligation, to repurchase the Premises at the Purchase Price, provided, however, that Grantor or the City of Portland must notify Grantee of its intent to repurchase the Premises in writing by August 15, 2017, and if the Grantor or the City of Portland fails to so notify Grantee, this provision, and the rights thereunder are waived. At the request of Grantee, Grantor and the City of Portland shall promptly duly execute, from time to time, verification of the exercise or non-exercise of this right in recordable form.
- d. Environmental Indemnification. Grantee covenants and agrees to indemnify, defend, and hold Grantor and the City of Portland 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 Grantor 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, including without limitation the environmental matters identified in the RFP, the ESAs, and the VRAP Work Plan. This duty to indemnify, defend, and hold harmless shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees until such date as Grantee, its successors, assigns or transferees obtain a Certificate of Completion of Remedial Actions ("COC") from the Maine DEP for the Project as described in a Development Consulting Agreement between Seller and Buyer of even or near even date herewith; upon that date, the Environmental Indemnification described in this paragraph (d) shall no longer run with the land to subsequent successors, assigns or transferees of Grantee.
- e. Payment In Lieu Of Property Taxes. Grantee agrees 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 of Portland 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. Grantee 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. This covenant shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees.

9. **CLOSING.** Time is of the essence in the performance of this agreement. The closing shall be held at the office of BUYER's counsel, within thirty (30) days after the Maine DEP issues a Certificate of Completion of Remedial Actions ("COC") for the Premises. Buyer acknowledges that pursuant to the City-PDC Agreement, the City has an obligation to repurchase the Premises from SELLER in the event that the COC is not issued on or before that date which is twelve (12) months after the date of execution of this Purchase and Sale Agreement unless Adam's Apple exercises its right to require the PDC to convey the Premises to Adam's Apple pursuant to this paragraph 9 of the Purchase and Sale Agreement between PDC and Adam's Apple and paragraph 8 of the Development Consulting Agreement. In the event that the City does so, this Agreement shall terminate and neither party shall have any liability to the other or any further obligation under this Agreement. Similarly, Seller acknowledges that pursuant to Paragraph 8 of the Development Consulting Agreement between Seller and Buyer of even or near even date herewith, in the event of a termination of that Agreement for reasons as specified therein, Developer/BUYER, at its option, has a right to require PDC/SELLER to convey the Property to BUYER, in accordance with the terms of this Agreement, in the same condition it is in as of the date of termination or a better condition if BUYER opts to proceed with the Development, provided, however, that PDC/SELLER shall have no obligation to improve or otherwise alter the condition of the Property prior to such conveyance.

10. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Any real estate taxes and utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. SELLER 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.

11. **TIME.** The SELLER and BUYER each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

12. **DEFAULT AND REMEDIES.** In the event that BUYER defaults hereunder for a reason other than the default of the SELLER, SELLER may pursue all legal or equitable remedies available to it. In the event SELLER defaults under this Agreement, and if BUYER is not then in default hereunder, BUYER shall have the right to pursue specific performance as its sole remedy.

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 Seller and Buyer.

14. Notwithstanding anything to the contrary in this Agreement or any of its attachments, it is the intent of both parties that the BUYER shall develop the Premises in substantially the form and for the affordable housing uses set forth in the RFP and the Proposal. Accordingly, the parties covenant and agree that, prior to closing, they will execute such additional documents as are not inconsistent herewith, including but not limited to Exhibits H, I and J, and as may be reasonably necessary to effectuate such intent.
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. **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.
18. **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 SELLER: Portland Development Corporation
Attention: Greg Mitchell
389 Congress Street
Portland, Maine 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR BUYER: Adam's Apple, LLC
17 Chestnut Street, 3rd Floor
Portland, Maine 04101

With a copy to: Barbara Vestal, Esq.
Chester & Vestal, P.A.
107 Congress Street
Portland, Maine 04101

19. 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. A signature in a faxed, pdf or other reproduced or electronic document shall be considered the equivalent of an original signature.

20. BROKERS. Seller and Buyer each represents and warrants that neither has dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless Seller 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, Seller agrees to indemnify and hold harmless Buyer from any claims made by any broker should Seller'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.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

WITNESS

PORTLAND DEVELOPMENT CORPORATION

By: _____
Printed Name:
Its:

ADAM'S APPLE, LLC

WITNESS

By: _____
Printed Name:
Its:

Approved as to Form:

Corporation Counsel's Office

MEMORANDUM OF UNDERSTANDING

Marketing Plan - 65 Munjoy Street: To Address First-Time Homebuyer Set-Aside and Household Size Restrictions for 3 Bedroom Units

This Memorandum of understanding is made the _____ day of _____, 2015 by and between Adam's Apple, LLC, a Maine limited liability corporation ("AALLC") and the City of Portland, a Maine body corporate and politic with a place of business in Portland, Maine (the "City"), collectively, (the "Parties").

WITNESSETH:

WHEREAS, the City has agreed to sell and AALLC has agreed to purchase an approximately 6,771 square foot parcel of land located in the vicinity of 65 Munjoy Street in Portland, Maine; and

WHEREAS, AALLC was selected by the City through a competitive RFP (request for proposals) process and based on the development proposal submitted by AALLC on January 13, 2015 calling for an 8-unit residential condominium with all units to be sold at price points affordable to households of moderate incomes in the range of 100-120% of Area Median income (the "Project"); and

WHEREAS, the City, in order to advance its affordability goals for the Project, intends to grant the project a \$175,000 subsidy from the City's Housing Trust Fund (the "HTF"); and

WHEREAS, on June 17, 2015, AALLC was successful in securing a commitment from the Greater Portland Council of Governments in the amount of \$200,000 to partially fund the environmental remediation of contaminated soils known to exist at the subject property; and

WHEREAS, on July 8, 2015 the City's Housing and Community Development Committee voted unanimously to recommend that the City Council approve the project as presented but with an additional requirement that four (4) of units be set aside for first-time homebuyers at initial point of sale only; and

WHEREAS, AALLC supports the spirit and intent of a first-time homebuyer set-aside and has pledged to actively pursue the goal of identifying and placing qualifying first-time homebuyers in at least 4 of the units at the Project to the extent that this can be achieved without adding risk or delay to, or otherwise affecting the financial feasibility of the Project; and

WHEREAS, AALLC supports the spirit and intent of selling 3 bedroom units to households of 3 or greater and has pledged to actively pursue the goal of identifying and placing qualifying 3 plus member households in the two (2) 3-bedroom units at the

Project to the extent that this can be achieved without adding risk or delay to, or otherwise affecting the financial feasibility of the Project; and

WHEREAS, AALLC, finds that a first-time homebuyer set-aside as well as certain restrictions on household size, if legally or contractually binding on the Project, through such mechanism as a condition of purchase and sale, condition of HTF grant agreement, deed restriction, or the like, would extend scheduled Project marketing time and Project carrying costs and therefore impair AALLC's ability to secure construction financing at terms needed to make the Project feasible; and

WHEREAS, the parties wish to memorialize the terms by which the first-time homebuyer set-aside goal and certain household size restrictions will be pursued by AALLC in the course of its execution of the Project without unduly affecting AALLC's ability to secure construction loan financing at terms that preserve the feasibility of the Project;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. AALLC pledges to work closely with the City to implement the following internal project marketing plan in order to provide would-be first-time homebuyers with ample time and support to learn about the project, demonstrate their eligibility and financial capacity to purchase a unit, and benefit from a preferred position in the reservation process in the form of a first-time homebuyer set-aside.
2. AALLC pledges to work closely with the City to implement the following internal project marketing plan in order to provide 3 plus member household homebuyers with ample time and support to learn about the project, demonstrate their eligibility and financial capacity to purchase a unit, and benefit from a preferred position in the reservation process.

AALLC's internal marketing plan to restrict 3 bedroom units to households of 3 or more and the first-time homebuyer set-aside plan shall be structured as follows:

Phase I – Open Marketing Campaign

Within 21 days of execution of Purchase and Sale, and HTF Agreements between the Parties, AALLC shall craft and implement, with and through its contracted sales agent, a comprehensive marketing campaign to actively market the units at the Project by various means including but not limited to:

- i. List one of each type of unit on the Multiple Listing Service (MLS), referencing assistance available for first-time homebuyers, and directing interested parties to contact AALLC's sales agent, Bay Realty; and

- ii. Run an advertisement for the Project in the Sunday Real Estate section of the Portland Press Herald / Maine Sunday Telegram, referencing assistance available for first-time homebuyers, and encouraging interested parties to contact AALLC's sales agent; and
- iii. Distribute a press release to local media outlets announcing the Project, referencing assistance available for first-time homebuyers, and encouraging interested parties to contact AALLC's sales agent; and
- iv. Pursue first-time homebuyer leads received prior to the execution of contractual agreements between the Parties and add such leads to the Interested Parties List; and
- v. Solicit first-time homebuyer leads from Avesta Housing's Homeownership Center (AHC), local FHA lenders, and the City of Portland's Community Development Division (CDD).

Phase II – First-Time Homebuyer Set-Aside Period and 3 Bedroom Unit Family Size Restrictions.

For a period of **70 days** following the full commencement of the marketing campaign described above, AALLC shall set aside no fewer than **6 of the units** at the Project for buyers that qualify as first-time homebuyer's as defined by MaineHousing (the "First-Time Homebuyer Set-Aside Period"). During the First-Time Homebuyer Set-Aside Period, AALLC shall either directly or through its agents:

- i. Collect and compile a general "Interested Parties List" of all parties that express interest in purchasing a unit at the Project as a result of the marketing efforts outlined above; and
- ii. Communicate with all interested parties to assess whether such parties may potentially qualify as "First-Time Homebuyers" as defined by MaineHousing and/or as "3 or more member households".
- iii. Openly share and regularly review the Interested Parties List with the City of Portland's Community Development Division and Avesta Housing's Homeownership Center each of which will provide support in the effort to prequalify first-time homebuyers and 3 or more member households.
- iv. Surround all potential First-Time Homebuyers with outreach and support from AALLC's sales agent, Avesta Housing's Homeownership Center (AHC), local FHA lenders, and the City of Portland's Community Development Division (CDD). Such support shall include but not be limited to:

- a. Free enrollment in AHC classes for first-time homebuyer and financial literacy training, and
 - b. Mortgage prequalification assistance, and
 - c. Review of all forms of sub-market assistance available to first-time homebuyers such as FHA financing, down-payment assistance programs, and the like.
- v. Prepare as many first-time buyers and 3 or more member households as possible from the Interested Parties List to be financially pre-qualified to move forward and enter into a reservation agreement for a unit within the Project.
 - vi. Enter into reservation agreements (if prior to recording of subdivision plat and declaration of condominium) or purchase & sale agreements (if post recording of plat and declaration) with qualifying first-time homebuyers and with 3 or more member households who have demonstrated the financial capacity and desire to purchase a unit in the Project at the full list price.
 - vii. Reservation agreements¹ will be converted to purchase and sale agreements upon recording of the subdivision plat and declaration of condominium provided that there will have been no change in their qualifications in terms of First-Time Homebuyer status, household size status or financial capacity to close at the full list price.
 - viii. Phase II shall end with respect to first time homebuyers after **6 units** have been reserved or contracted for sale to qualifying first-time homebuyers or 70 calendar days from the start of the phase; whichever comes first. Phase II shall end with respect to 3 or more member households 70 calendar days after the start of the phase, or sooner if both 3-bedroom units are under contract to first time homebuyers who are also 3 or more member households.
 - ix. During Phase II, at least **2 units** shall be exempt from the first time homebuyer set-aside and may be reserved or placed under contract with non-first-time homebuyers (the “Exempt Units”). One of the two Exempt Units shall be a one-bedroom unit and the other may be a two- or three-bedroom unit, at the discretion of AALLC. Aside from these bedroom parameters, the Exempt Units may be any two units within the Project.

Phase III– Open Reservation Period

Following the end of Phase II, as defined above, AALLC will continue to work with its community partners as outlined for Phase II in an ongoing effort to attract, support, and qualify first-time homebuyers and 3 or more member households to the project. However, AALLC will be under no further obligation under this or any other agreement to provide first-time homebuyers or 3 or more member households with any special set-asides, and

¹ See Sample Reservation Agreement Attached

following the end of Phase II, all remaining units in the Project, if any, may be marketed and sold to any qualifying buyer regardless of household size and regardless of whether a first time homebuyer. This internal marketing plan applies only to initial unit sales, and has no bearing on resale of any unit by the initial purchaser.

IN WITNESS WHEREOF, the parties have caused the Memorandum to be executed as of the day and year first written above.

ADAM'S APPLE, LLC

Witness

By: _____
Ethan Boxer-Macomber,
Managing Member

Witness

By: _____
Peter Bass,
Managing Member

CITY OF PORTLAND

Witness

By: _____
Jon P. Jennings, City Manager

EXHIBIT J

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is entered into by and between the CITY OF PORTLAND, a public body corporate and politic with a mailing address of City Hall, 389 Congress Street, Portland, ME 04101 (City”) and Adam’s Apple, LLC, a Maine limited liability company with a place of business and mailing address of 17 Chestnut Street, Portland, Maine 04101 (“Developer”).

W I T N E S S E T H

WHEREAS, the City is providing a grant to Developer in the amount of \$175,000.00 from its Housing Trust Fund (the “Grant”) to assist with the construction of an 8 unit residential condominium project for low to moderate income families on land known as 65 Munjoy Street, Portland, Maine (the “Development”), and the City is causing that land to be conveyed to Developer by the Portland Development Corporation for the sum of one dollar; and

WHEREAS, the Developer acknowledges City’s resulting beneficial interest in the Development, and Developer acknowledges that its development and sales of units in the Development are in furtherance of the discharge of a public trust; and

WHEREAS, City has provided the Grant to Developer and has caused the land to be conveyed to Developer in consideration of the Developer’s agreement to abide by the provisions of this Declaration,

NOW THEREFORE, the City and Developer agree as follows:

1. During the term of this Declaration, all of the units in the Development, being at least 8 units, shall be available for sale to and ownership by only those households earning no more than 120% of area median income (“Eligible Households”) as defined by the U.S. Department of Housing and Urban Development (“HUD”) or any successor agency.

2. The covenants and restrictions of the Developer and City set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall during the term of this Declaration bind all subsequent owners of the real estate described in Exhibit A attached hereto, and all owners of units in the Development, except to the extent provided herein.

3. The covenants of the Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by the Developer, foreclosure or transfer of title in lieu of foreclosure, except to the extent provided herein, but shall cease to apply to the Development in the event of involuntary noncompliance caused by fire or other substantial destruction, seizure, requisition or other event that prevents City from enforcing the Developer’s covenants contained herein.

4. The term of this Declaration shall commence at the date of the execution of the Declaration and continue for a period of up to ninety (90) years after the first conveyance of any Unit to a Unit Owner unless sooner terminated by City as provided herein. For a period of ninety (90) years after completion of the Condominium (the "Restricted Period"), the Condominium Owners' Association shall not have any power to amend the Affordability Declaration without the consent of the City of Portland. After the passage of twenty (20) years after completion of the Condominium, and once every ten (10) years thereafter or at such other times as may be allowed by the City of Portland, upon the vote of a majority of the Unit owners, the Condominium Owners' Association may petition the City of Portland, as Qualified Holder under 33 M.R.S.A. Section 121(3), to terminate this Declaration of Covenants, Conditions and Restrictions. Upon (a) the approval of such termination by the City of Portland, as evidenced by the recording of a document terminating the Affordability Declaration, or (b) the passage of ninety (90) years after the first conveyance of any Unit to a Unit Owner, the Units shall no longer be subject to any affordability restrictions.

5. Developer and City agree and intend that the covenants contained herein are to be interpreted as "Affordable Housing Covenants" as defined by 33 M.R.S.A. Section 121. Both Developer and the City shall be deemed to be "Qualified Holders" under 33 M.R.S.A. Section 121(3) from the date of execution hereof until the date of the completion of the first sale of each of the units in the Development (hereinafter "Initial Sales Period"); during that Initial Sales Period, Developer shall have primary responsibility for the enforcement and administration of this Agreement and the City shall take no action either to enforce or administer this Agreement unless Developer fails to do so after written notice by the City.

Notwithstanding anything to the contrary above, during the initial sales period, Developer shall obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for purchase of a unit. Such certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the ownership, (c) agrees to comply all requests for information with respect thereto from Developer or City, and (d) agrees that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of a substantial obligation of the ownership. Developer covenants and agrees to take such action as City reasonably deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein.

After the Initial Sales Period, provided Developer has not defaulted in its obligations under this Agreement, Developer shall cease to be a Qualified Holder and the City shall be the sole Qualified Holder with sole right, but not the obligation, to enforce and administer these covenants.

6. Developer hereby covenants and represents to City as follows:

(a) The Development shall consist of one or more buildings and be located on the real estate described in Exhibit A attached hereto.

(b) All of the units in the Development shall be sold to Eligible Households during the Initial Sales Period. After the Initial Sales Period, it shall be City's responsibility to ensure that on subsequent sales, all of the units in the Development are sold to Eligible Households.

7. During the Initial Sales Period, Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for a minimum of six (6) years after the expiration of the Initial Sales Period.

8. During the Initial Sales Period, Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein. In the event Developer fails to comply with the covenants set forth herein and fails to cure such non-compliance within any applicable cure period, City may maintain an action to require Developer, through injunctive relief or specific performance, to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by Developer.

9. In the event the Developer fails to comply with the covenants set forth herein, or fails to comply with the terms of a certain Housing Trust Fund Grant Agreement between the Developer and the City of near or even date herewith (the "HTF Agreement"), a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and fails to cure such non-compliance within any applicable cure period, City shall be able to exercise any of its rights under the HTF Agreement, maintain an action in law or in equity against the Developer to recover damages incurred by City from such failure, and to require Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and in the HTF Agreement and to immediately cure any failure to comply with the covenants set forth herein by the Developer. In the event of any litigation between the City and Developer under this Declaration or the HTF Agreement, should the City be the prevailing party, the City shall be entitled to recover from Developer its reasonable attorneys fees and costs of litigation.

10. Developer shall defend, indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

11. This Declaration may be amended or modified in whole or in part only by written agreement of Developer and City clearly expressing the intent to modify this Declaration.

12. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of remaining portions thereof.

13. This Declaration shall be binding upon the Developer and its successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

14. Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided.

15. This Declaration is created pursuant to and shall be construed in accordance with and governed by the laws of the State of Maine, including 33 M.R.S.A. Section 121, et. seq.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City this ____ day of _____, 2015.

WITNESS

CITY OF PORTLAND

By: _____
Jon Jennings, City Manager

STATE OF MAINE
CUMBERLAND, ss.

_____, 2015

Personally appeared the above named Jon Jennings, City Manager of the City of Portland as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney at Law

Printed name: _____

My Commission Expires: _____

WITNESS

ADAM’S APPLE, LLC, Developer

By: _____
Peter L. Bass, its Member

STATE OF MAINE
CUMBERLAND, ss.

_____, 2015

Personally appeared the above named Peter L. Bass, Member of Adam’s Apple, LLC as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said company.

Before me,

Notary Public/Attorney at Law

Printed name: _____

My Commission Expires: _____