

Order 68-17/18

Passage: 7-0 (Strimling, Thibodeau absent) on 10/2/2017

Effective 10/12/2017

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER APPROVING PURCHASE AND SALE AGREEMENT WITH
ROSS FURMAN FOR SALE OF
CITY PROPERTY AT 178 KENNEBEC STREET**

ORDERED, that the Purchase and Sale Agreement with Ross Furman for 0.22 acres of city-owned land at 178 Kennebec Street, is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the Purchase and Sale Agreement and whatever other documents are necessary to effect the intent and purpose of the Purchase & Sale Agreement.

PURCHASE AND SALE AGREEMENT

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

RECITALS

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

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

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

1. **SALE.** City agrees to sell the Premises to Buyer, and Buyer agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
2. **CONSIDERATION.** The purchase price for the Premises shall be the lesser (the “Purchase Price”) of: Two Hundred and Fifty Thousand Dollars (\$250,000.00) and the product of Twenty-Five Dollars (\$25.00) times the number of square feet comprising the Premises as shown a pending and soon to be completed boundary survey of the Premises being done by or for the City (at its expense), subject to the following cost adjustments and conditions:
 - a. Buyer shall deposit in the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the “Deposit”) within 3 business days after the full execution of this Agreement that the parties agree will be held in escrow as of the date of this Agreement, in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be refundable only in accordance with the terms of this Agreement, including without limitation, the provisions of sections 4(f), 6, 7 and 10; and
 - b. The Buyer shall pay the remainder of the Purchase Price to the City by wire transfer (or as otherwise reasonably requested by the City) at closing.

3. TITLE AND DUE DILIGENCE.

- a. Due Diligence Period. Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is forty-five (45) days after the date of this Agreement (the “Due Diligence Period”) to complete any survey, environmental review and title examinations.
- b. Property Description. The property description contained in the deed will be a survey description based upon a survey plan (the “Premises”) that will more specifically describe the property shown on Exhibit A hereto. The survey will be distributed to the parties hereto prior to expiration of the Due Diligence Period and the parties will agree on the property description prior to closing.
- c. Financing Contingency. Buyer shall have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is forty-five (45) days after the date of this Agreement (the “Financing Period”) to obtain commercially reasonable financing, and shall take timely and commercially reasonable steps to secure such financing.
- d. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect marketability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.
- e. Option to Cure. In the event of a title or survey objection, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer’s reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).

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

4. INSPECTIONS.

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.
- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and

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

- e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.
- f. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, and if Buyer exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within thirty (30) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.

- 5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Property is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax attributable to Buyer's one half shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.
- 6. **DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance, but at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.
- 7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver

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

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

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

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

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

- a. City shall execute, acknowledge and deliver to Buyer a municipal quitclaim deed conveying to Buyer good and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.
- b. Buyer shall deliver the balance of the Purchase Price to the City by wire transfer; and
- c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.
- d. Buyer shall deliver evidence, reasonably satisfactory to City's Corporation Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting to Closing and executing documents on behalf of Buyer are authorized to do so.

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

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

14. **NON-WAIVER.** No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.
15. **HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.
16. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
17. **TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
18. **GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.
19. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE City: City of Portland
 ATTN: City MANAGER
 389 Congress Street
 Portland, ME 04101

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

FOR Buyer: Ross Y. Furman
 Box Two
 Portland, ME 04112

With a copy to: Timothy H. Norton, Esq.
 Kelly, Rimmel & Zimmerman
 53 Exchange Street

P.O. Box 597
Portland, ME 04112

- 20. SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.
- 21. BROKERS.** City shall pay CBRE | The Boulos Company at closing a brokerage commission equal to five percent (5%) of the Purchase Price at closing. The CITY and Buyer each represent and warrant that they have not dealt with a real estate broker in connection with this transaction other than CBRE | The Boulos Company. Buyer agrees to indemnify and hold harmless City from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, City agrees to indemnify and hold harmless Buyer from any claims made by any broker should City's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.
- 22. RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
- 23. ASSIGNMENT.** Buyer may assign his rights and obligations under this Agreement to a limited liability company or other entity prior to Closing and the City shall acknowledge and consent to such assignment.

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

City OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

WITNESS

ROSS Y. FURMAN

Approved as to Form:

Corporation Counsel's Office

Parcel Map



- 1
- 2
- 3
- 4
- 5
- 6

55 Portland Street

44 Hanover Street

56 Parris Street

82 Hanover Street

65 Hanover Street

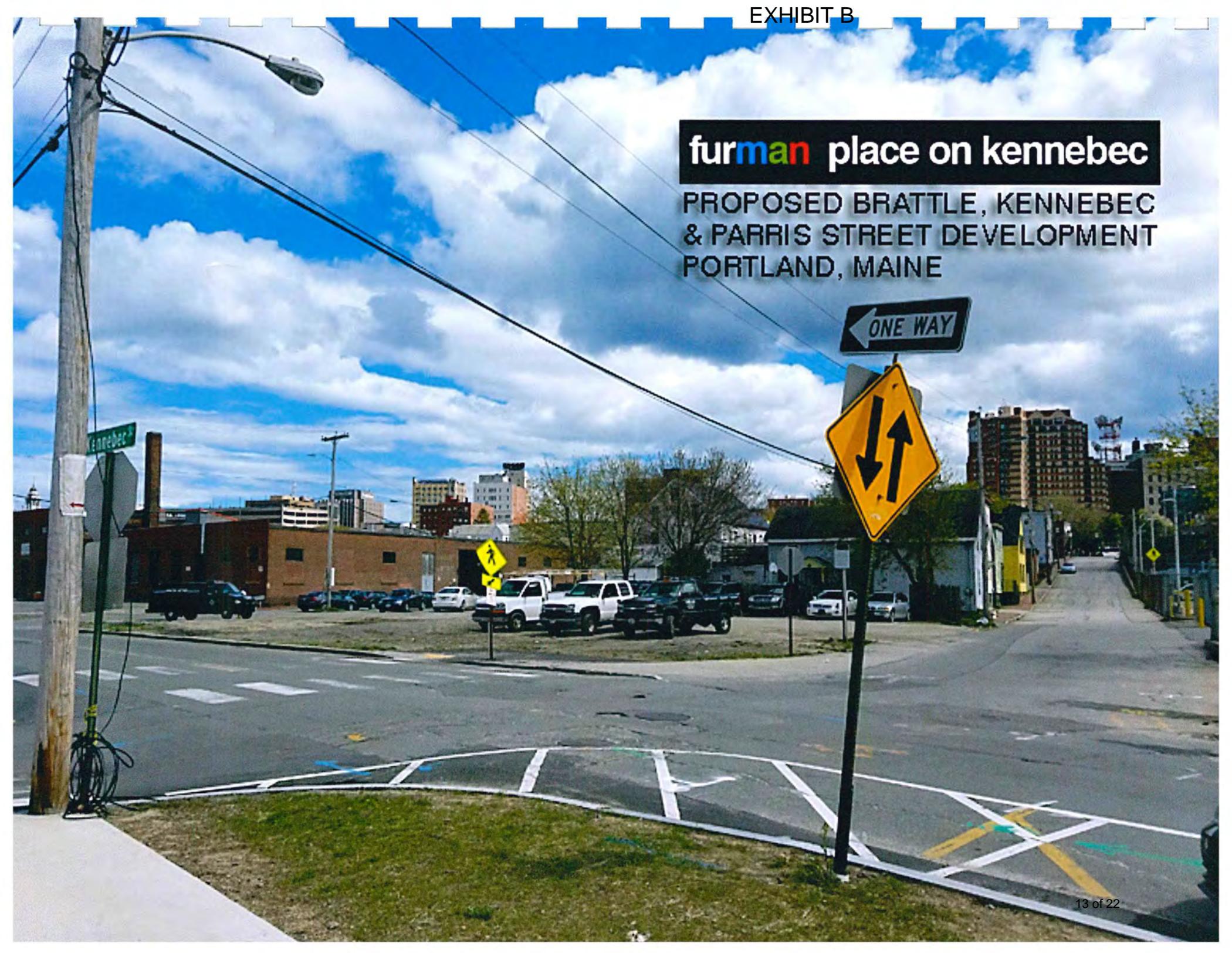
178 Kennebec Street



EXHIBIT A

furman place on kennebec

PROPOSED BRATTLE, KENNEBEC
& PARRIS STREET DEVELOPMENT
PORTLAND, MAINE



The Szanton Company

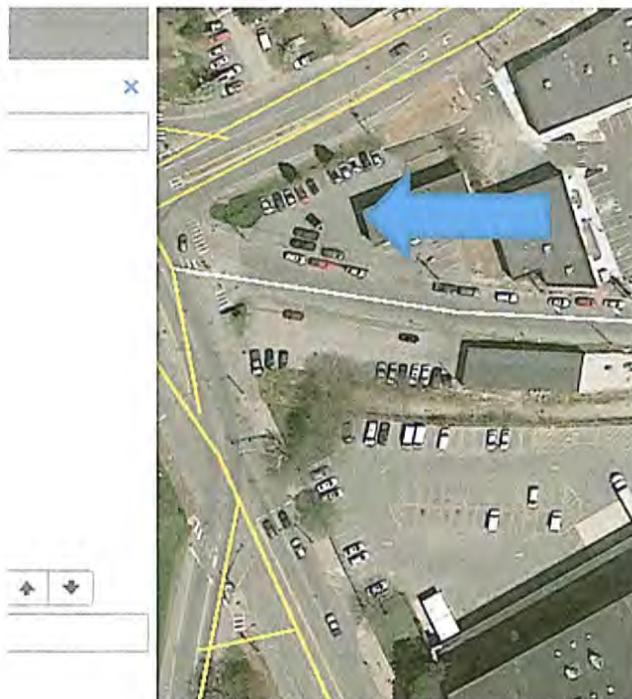
The mission of The Szanton Company (TSC) is to create comfortable, attractive, and affordable rental housing. We do this by:

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

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

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

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



Project Details

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

The site has some unique advantages for residential development:

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

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

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

Management



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

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



April 26, 2017

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

RE: Ross Furman: Portland Public Works property

Dear Nate:

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read "F. G. Proctor", is written over a faint, larger version of the same signature.

Frederick G. Proctor
Vice President

Cc: Ross Furman



PARRIS STREET

A - Apartment
R - Retail
MU - Mechanical/Utility

KENNEBEC STREET



furman place on kennebec

BRATTLE/KENNEBEC/PARRIS STREET DEVELOPMENT
BUILDING CONCEPT - GROUND LEVEL PLAN 13,088 GSF

ARCADIA
06-2017 designworks

PARRIS STREET

A - Apartment
R - Retail
MU - Mechanical/Utility

KENNEBEC STREET





K
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C
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**PHASE TWO:
NEW SYSTEMS - ARTIST STUDIOS AND
NEW MEDIA & DESIGN OFFICE BUILDING
PORTLAND, MAINE**



**PHASE ONE:
FURMAN PLACE - AFFORDABLE
HOUSING AND COMMERCIAL
RETAIL BUILDING**

A
BUILDING FACADE FORMS
STREET FRONT, LAND AND HARDSCAPING
PROVIDED FOR PUBLIC USE AND COMPLIMENTARY
TO PORTLAND TRAILS RIGHT OF WAY.

B
5-STORY BUILDING CONSTRUCTED USING GREEN, AFFORDABLE
MATERIALS AND ENERGY EFFICIENT MECHANICAL SYSTEMS, ENABLING
65% AFFORDABLE HOUSING AND 35% MARKET RATE APARTMENTS.

C
BUILDING PROVIDES AFFORDABLE SPACE FOR ARTIST STUDIOS ON THE 1ST AND 2ND
LEVELS AND NEW MEDIA AND DESIGNER STUDIOS ON THE 3RD AND 4TH LEVELS.

D
OFF STREET PARKING AND BUILDING COMMONS GARDEN AREA.



NEW SYSTEMS - SOUTHEAST VIEW



NEW SYSTEMS - NORTHWEST VIEW