

Order 15-18/19

Passage as an Emergency: 7-1 (Duson absent, Strimling opposed) on 7/16/2018

Effective 7/16/2018

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER APPROVING THE FOURTH AMENDMENT TO THE 82 HANOVER STREET
PURCHASE AND SALE AGREEMENT**

ORDERED, that the attached Fourth Amendment to the Purchase and Sale Agreement for 82 Hanover Street is hereby approved, substantially in the form attached hereto; and

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

**FOURTH AMENDMENT
TO
PURCHASE AND SALE AGREEMENT
FOR 82 HANOVER STREET**

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT is made as of the ____ day of July, 2018, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (“Seller”) and TOM WATSON & CO., LLC, a Maine limited liability company with offices in Portland, Maine, and/or its assigns (the “Buyer”).

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated on or about October 24, 2017, as amended by that certain First Amendment dated December 22, 2017, that certain Second Amendment dated February 28, 2018, and that certain Third Amendment dated May 14, 2018 (hereinafter collectively the “Agreement”) with respect to certain real property located at or about 82 Hanover Street, Portland, Maine as more fully described in the Agreement;

WHEREAS, Seller and Buyer wish to amend the description of the Premises in the P&S in order to clarify that Seller will reserve in the conveyance a public pedestrian access easement over a portion of the Premises and to include a restrictive covenant governing parking in a portion of the Premises as set forth in greater detail below.

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

1. Paragraph 3(f) of the Agreement is hereby deleted and replaced with the following:

Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer specifically acknowledges and agrees that in the deed, Seller will reserve for the benefit of the public a 5-foot-wide pedestrian access easement approved by the City of Portland Planning Board on May 23, 2018 (the “Public Pedestrian Easement”) along the entire length of the common boundary between the Premises and 44 Hanover Street, which is also the southeasterly boundary line of the Premises, which easement shall run between Hanover and Parris Streets (the “Public Pedestrian Easement Area”). The Public Pedestrian Easement Area is generally depicted as the cross-hatched area on the diagram attached hereto as Exhibit A, which is incorporated herein by reference. The purpose of the Public Pedestrian Easement is to grant public pedestrian access on and over the Public Pedestrian Easement Area, which shall be an ADA compliant area for pedestrian, bicycle and similar non-motorized pedestrian uses. The Public Pedestrian Easement shall be

subject to such rules or ordinances that the Seller may adopt from time to time in the interests of public safety, which are generally applicable to similar pedestrian easements, provided that Buyer does not waive any rights, and expressly reserves the right, to argue that any such future rules or ordinances do not apply to it on the basis that the existing conditions of the Public Pedestrian Easement Area are grandfathered and/or that such rules or ordinances cannot be retroactively applied. Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Maintenance and repair responsibilities within the Public Pedestrian Easement Area shall belong solely to the Buyer, its successors and assigns. Buyer shall be responsible for removal of snow and ice from the Public Pedestrian Easement Area and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Seller shall have the right, but not the obligation, to repair or maintain the Public Pedestrian Easement Area, including, as reasonably necessary, any subsurface repairs or maintenance, or remove snow or ice therefrom, when Seller, in its sole discretion, deems such repairs, maintenance, or snow or removal necessary to ensure public safety and protect the public use and enjoyment of the Public Pedestrian Easement Area. No buildings or any kind of permanent structure will be erected in the Public Pedestrian Easement Area, and Buyer shall not use or authorize any use, condition or state of disrepair that would be contrary to or otherwise inhibit the public pedestrian uses of the Public Pedestrian Easement Area.

Buyer further acknowledges and agrees that the deed will include a restrictive covenant governing parking in the northerly 25 foot wide portion of the area on Exhibit A marked "Lancaster Street (Discontinued)," which area extends from Parris Street to Hanover Street (the "Restricted Parking Area"). Use of the Restricted Parking Area shall be open space, free from permanent structures, sheds, dumpsters, and the like, and shall be for the commercial use of Buyer, its tenants, and their business invitees and customers, subject to commercially reasonable rules and regulations imposed by the Buyer. Buyer, its successors and assigns shall prohibit short or long-term parking in the Restricted Parking Area at all times, provided, however, that Buyer may allow brief stopping and standing in the Restricted Parking Area for vehicles loading or unloading people or goods for commercial purposes at the Premises. Such covenants and restrictions are intended to be and shall be considered covenants that run with the Premises and shall bind all subsequent owners of the Premises. Such covenants and restrictions shall survive a sale, transfer, foreclosure or transfer of title in lieu of foreclosure, or other disposition of the Premises and shall be enforceable by Seller as a contract and shall inure to the benefit of and be enforceable by Seller, its successors, transferees and assigns. The covenants restrictions may be amended or modified in whole or in part only by written agreement of Seller and Buyer.

Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall become exempt from real and personal property taxes, by transfer, conversion, or otherwise, during the City's fiscal year that begins following the Closing or in the fiscal years thereafter, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in

the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a City PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine.

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

IN WITNESS WHEREOF, this First Amendment has been executed and delivered as of the day and year first above written.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC

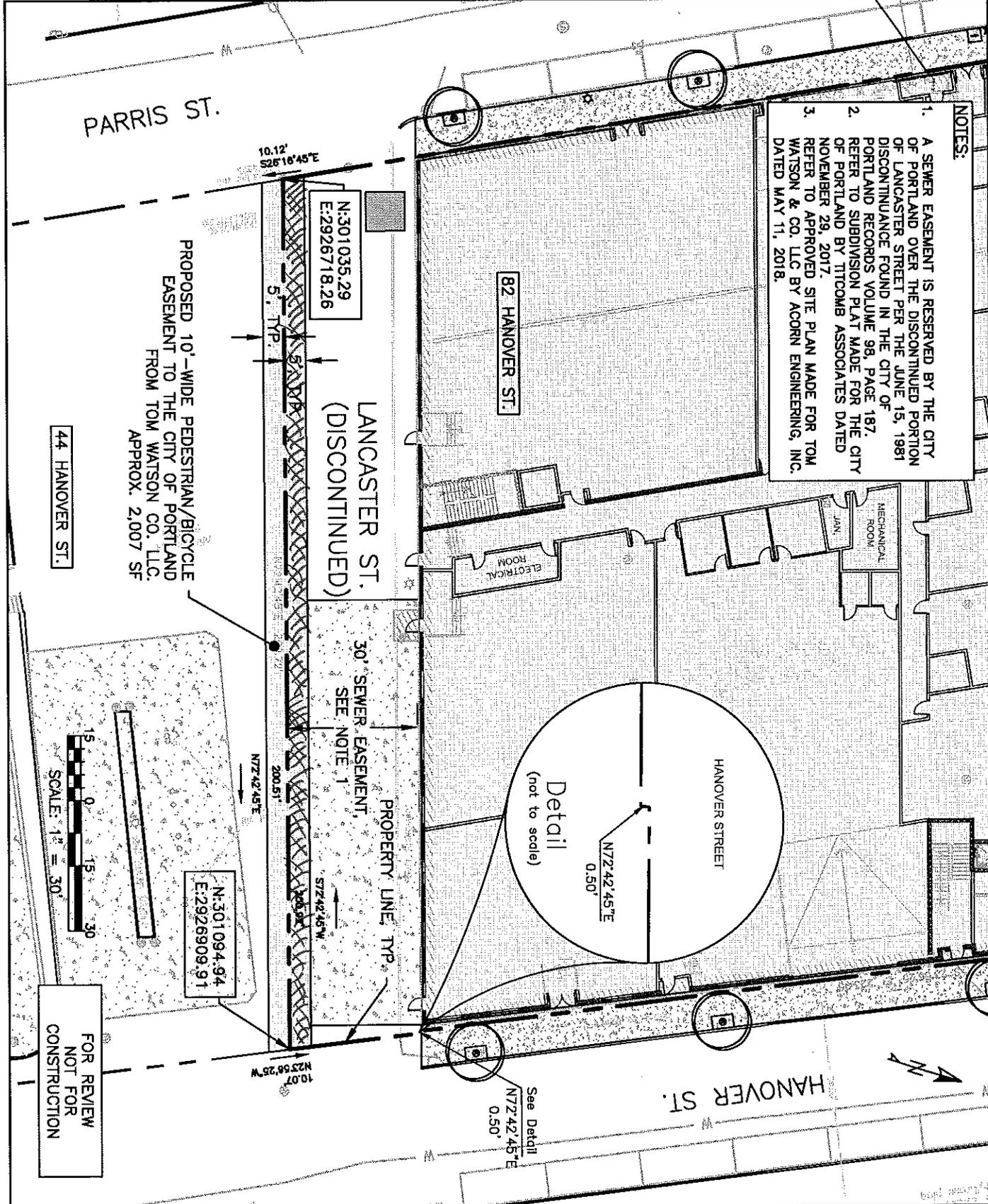
WITNESS

Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:

Corporation Counsel's Office

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



PARRIS ST.

PROPOSED 10'-WIDE PEDESTRIAN/BICYCLE EASEMENT TO THE CITY OF PORTLAND FROM TOM WATSON CO. LLC. APPROX. 2,007 SF

LANCASTER ST. (DISCONTINUED)

82 HANOVER ST.

HANOVER ST.

44 HANOVER ST.



FOR REVIEW NOT FOR CONSTRUCTION

N:301094.94
E:2926909.91

30' SEWER EASEMENT, SEE NOTE 1

PROPERTY LINE, TYP.

See Detail
N72°42'45"E
0.50'

<p>ACORN ENGINEERING, INC. ACORN ENGINEERING, INC. P.O. BOX 3372 PORTLAND, MAINE 04104 (207) 775-2855</p>	<p>DRAWING NAME: LANCASTER PEDESTRIAN EASEMENT</p>	<p>ISSUED FOR: DATE: 5/29/2018 BY: WHS</p>
	<p>PROJECT NAME: 82 HANOVER REDEVELOPMENT</p>	<p>CITY REVIEW: DATE: 5/29/18 BY: WHS</p>
<p>CLIENT: TOM WATSON & CO. LLC</p>	<p>FILE: 1093 CIVIL DATE: 5/29/2018 JN: 1093</p>	<p>REV. DATE:</p>
<p>SCALE: 1"=30'</p>	<p>DESIGN BY: SLL DRAWN BY: SLL CHECKED BY: WHS</p>	<p>THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM ACORN ENGINEERING, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO ACORN ENGINEERING, INC.</p>
<p>DRAWING NO.: EX-01</p>	<p>FOR REVIEW NOT FOR CONSTRUCTION</p>	