

Order 159-14/15

Passage: 9-0 on 2/23/2015

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**

Effective 3/5/2015

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

**ORDER APPROVING PURCHASE AND SALE AGREEMENT
WITH SUSTAINABLE CLIFF ISLAND
FOR CLIFF ISLAND PROPERTY AT 16 FISHERMAN'S COVE**

ORDERED, that the Acting City Manager is hereby authorized to execute the Purchase and Sale Agreement with Sustainable Cliff Island for 16 Fisherman's Cove on Cliff Island, in substantially the form attached hereto; and

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

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made as of this _____ day of _____, _____ by and between the **CITY OF PORTLAND**, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "**CITY**"), and **SUSTAINABLE CLIFF ISLAND**, a Maine non-profit corporation, with a mailing address of P. O. Box 84, Cliff Island, Maine 04019 (hereinafter referred to as "**BUYER**").

W I T N E S S E T H:

WHEREAS, **CITY** is the owner of certain real property located at 16 Fisherman's Cove, on Cliff Island, in Portland, Maine, as more fully described in the quitclaim deed attached hereto as Exhibit A, and incorporated herein (the "Premises"); and

WHEREAS, the **BUYER** desires to purchase the Premises;

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

1. SALE

CITY agrees to sell to **BUYER** the Premises, and **BUYER** agrees to buy the Premises and accept the deed to the same, for the consideration set forth here.

2. CONSIDERATION

The consideration for the Premises shall be Fifty-Three Thousand Five Hundred Forty-Five Dollars (\$53,545.00). The City acknowledges receipt of \$1,000 paid to it as of the date of this Agreement. At closing, **BUYER** shall execute and deliver to **CITY** a promissory note in the amount of Forty-Three Thousand Five Hundred Forty-Five Dollars (\$43,545.00), which amount represents the real estate taxes owed on the Premises that the City will write off following closing, such note to be in substantially the form attached hereto as Exhibit B (to be secured by a mortgage and security agreement in substantially the form attached hereto as Exhibit C) and pay to the **CITY** in immediately available funds the remaining Nine Thousand Dollars (\$9,000.00).

3. TITLE

Title to the Premises shall be conveyed by Quitclaim Deed, subject to certain residential and commercial covenants and restrictions, in substantially the form attached hereto as Exhibit A.

4. 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. Furthermore, City 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 and Bill of Sale 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.

5. INDEMNIFICATION TO CITY

BUYER hereby agrees to release, defend, indemnify and hold harmless the CITY, 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 CITY arising out of or in any way related to the CITY'S ownership, use, or maintenance of the Premises, or the ownership, use, or maintenance of the Premises by the CITY'S predecessors in title or any other third party. BUYER'S obligations in this paragraph shall survive the BUYER'S ownership of the Premises and shall be binding upon BUYER's successors and assigns. At closing, BUYER agrees to execute a separate Agreement incorporating the terms of this paragraph and agrees that such Agreement shall be recorded with the Deed in the Registry of Deeds.

6. CONTINGENCIES

This Purchase and Sale Agreement is further subject to only the following contingency:

Approval of this Purchase and Sale Agreement by the Portland City Council.

While not contingent on financing, CITY understands BUYER may apply to CITY for financing in connection with BUYER's redevelopment of the Premises.

7. CLOSING

The closing shall be held at City Hall, within thirty (30) days after approval of this Purchase and Sale Agreement by the Portland City Council, at a time agreeable to the parties.

8. 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.

9. GOVERNING LAW

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

10. NOTICE

Any notice required or permitted under this Agreement shall be deemed sufficient if mailed with first class postage affixed or delivered in person to:

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

FOR BUYER: Sustainable Cliff Island
P. O. Box 84
Cliff Island, Maine 04019

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

CITY OF PORTLAND

WITNESS

Sheila Hill-Christian
Its Acting City Manager

SUSTAINABLE CLIFF ISLAND

WITNESS

Roger Berle
Its Treasurer

Approved as to Form:

Approved as to Funds :

Corporation Counsel's Office

Director of Finance

**MUNICIPAL
QUITCLAIM DEED**

KNOW ALL PERSONS BY THESE PRESENTS, that the **CITY OF PORTLAND**, a body corporate and politic with a mailing address of 389 Congress Street, Portland, Cumberland County, Maine (the "City") for consideration paid, releases, and quitclaims without covenant, to **SUSTAINABLE CLIFF ISLAND**, a Maine non-profit corporation, with a mailing address of P. O. Box 84, Cliff Island, Maine 04019 (the "Grantee"), the real property in the City of Portland, County of Cumberland, State of Maine, particularly described in EXHIBIT A attached hereto and hereby made a part hereof.

The property herein conveyed is subject to the terms, restrictions and conditions in Exhibits A, B, C and D attached hereto and hereby made a part hereof.

IN WITNESS WHEREOF, Suzanne Knight, Acting Finance Director of the City of Portland, has hereunto executed this instrument on this ___ day of _____, ____.

WITNESS

CITY OF PORTLAND

By: _____
Suzanne Knight, Acting Finance Director

STATE OF MAINE
CUMBERLAND, ss.

_____, 20__

Personally appeared the above-named Suzanne Knight, Acting Finance Director of the City of Portland, Maine, and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney-at-Law, Bar # _____

Print Name

Approved as to form:

Corporation Counsel's Office

EXHIBIT A
To Quitclaim Deed

109-F-39
16 Fisherman's Cove, Cliff Island
Liened by the City of Portland in
2008 and every year since then

A certain lot or parcel of land, with buildings thereon situated on the southeasterly side of Cliff Island in Casco Bay, in Portland, Cumberland County, Maine, bound and described as follows:

Beginning at a point in the westerly sideline of land formerly of Hannah C. Small, sixty (60) feet southeasterly from the "City Street", so-called; thence southwesterly parallel with said street, sixty-three (63) feet to land conveyed by Luch A. Small to George E. Nickerson; thence southeasterly along said Nickerson land to the seashore; thence northeasterly along said shore to land formerly of Hannah C. Small; thence northwesterly along the westerly line of land formerly of Hannah C. Small to the point of beginning; together with a right of way from the northwesterly corner of the land hereby conveyed to the "City Street" so-called, over a strip of land now or formerly of Lucy A. Small lying between lands conveyed to George E. Nickerson and Mary E. Hammond.

Also adjacent lot or parcel of land situated on the southeasterly side of Cliff Island, in Casco Bay, in Portland, Cumberland County, Maine, bounded and described as follows:

Beginning at the most northerly corner of the before described lot of land, and at a point sixty (60) feet southeasterly from the "City Street" so-called; thence northeasterly along the line of land conveyed by Hannah C. Small to Mary G. Hammond, fifty-three (53) feet to a point; thence southeasterly parallel with the northeasterly line of the before described lot of land to the seashore; thence southwesterly and southerly along the shore to the before described lot of land; thence northwesterly along the northeasterly sideline of the before described lot of land, to the point of beginning.

Subject to any encroachment that may exist now or may have existed before, caused by a wooden workshop building on the boundary of the property herein conveyed, but only to the extent that such encroachment is valid and enforceable.

Together with the buildings and improvements, including the wharf now situated on said premises, and the shore and flats abutting or appurtenant to the property herein conveyed, including all riparian rights, littoral rights and rights of fishery.

Also subject to the easement conveyed by Suzanne H. Rieth to Muriel S. Anderson by deed dated January 19, 1990 and recorded in the Cumberland County Registry of Deeds in Book 9065, Page 262.

Meaning and intending to convey, and hereby conveying, the same property as described in the tax lien certificate recorded on June 17, 2008, in the Cumberland County Registry of Deeds in

Book 26133, Page 234. Title reference is made to the Affidavit of Linda McLeod dated April 11, 2014, recorded in said Registry in Book 31598, Page 140.

Title reference is also made to the Personal Representative's Deed of Distribution from Bruce McAfee, Personal Representative of the Estate of Suzanne H. Rieth, (see Cumberland County Probate Docket No. 2003-141 to Holy Kessinger and Bruce Rieth, dated April 20, 2004) and recorded in said Registry in Book 21688, Page 1483.

EXHIBIT B
To Quitclaim Deed
Residential Restrictions

1. The covenants and restrictions on the Grantee 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 bind all subsequent owners of the real estate described in Exhibit A attached hereto, except to the extent provided herein, but only during the Restriction Period.

2. The covenants of the Grantee set forth herein are enforceable by City as a contract except to the extent provided herein.

3. The covenants of the Grantee set forth herein shall survive a sale, transfer, or other disposition of the Premises by the Grantee, foreclosure or transfer of title in lieu of foreclosure, or the repayment of the loan, except to the extent provided herein.

4. (a) If the Premises is sold or transferred, as an owner-occupied Premises, the Premises shall remain affordable, year round island housing – i.e., affordable to a household earning 120% or less of the then U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland County, Maine.

(b) If the Premises is sold or transferred, as non-owner-occupied Premises, the Premises shall be rented, leased or otherwise in accordance with Section 7(b) below.

5. The term “Restriction Period” as used herein shall mean the period beginning on the earlier of the date of the Certificate of Occupancy granted from the City of Portland for the residential portion of the Premises or three (3) years from the date of the deed to which this Exhibit is attached, and terminating on a date twenty (20) calendar years thereafter.

6. The Grantee agrees to comply with these restrictions throughout the Restriction Period.

7. The Grantee hereby covenants and represents to City as follows:

a. The Premises shall consist of the land described in Exhibit A together with a residential building and structures and facilities functionally related and subordinated thereto; and a commercial building and structures and facilities functionally related and subordinated thereto.

b. Septic system. Grantee shall either:

(1) on or before February 15, 2015, upgrade the septic system on the Premises in accordance with all local, state, and federal laws, rules and regulations and obtain the necessary upgraded Overboard Discharge permit from

the Maine Department of Environmental Protection and any other required approvals for the septic system; or

(2) within 2 years of the date of the deed to which this exhibit is attached, install a septic system on the Premises or obtain in a form satisfactory to Grantor an easement in perpetuity to tie into and use a septic system on the property located at 155-171 Church Street, Cliff Island, Maine, such septic system and easement to comply with all local, state, and federal laws, rules, and regulations.

c. If the residential building on the Premises is rented, leased or otherwise used by a non-owner:

- i. The total housing costs including rent and utilities of tenants occupying the rent restricted unit in Premises as of the date of these restrictions may not increase for twelve months beginning on the date of these restrictions.
- ii. The Grantee shall maintain all of the units included in the Premises rented or available for rental on a continuous basis to members of the general public throughout the Restriction Period; unless they are used by the Grantee. Rentals shall not generally be for less than six months, but with customary rights of termination.
- iii. Throughout the Restriction Period, the residential unit on the Premises must be occupied by individuals or families with households at or below 120% of area median income, but subject to the terms conditions stated herein, including (b)(vi) below.
- iv. Rent may not exceed 30% of the tenant's adjusted monthly gross income (also refer to Section (b)(iii) above).
- v. Income and area median income shall be as determined by the United States Department of Housing and Urban Premises and income limits shall be adjusted for family size.
- vi. At least annually, City shall determine whether the income, based on the current income, of the tenants residing in the Premises exceeds the applicable income limits as described in this Section 6 (the "Determination"). The Grantee shall furnish to City such information as City shall require, including certification of occupancy and tenant income, in order to assure that the covenants set forth herein are being fully satisfied.

- vii. A unit occupied by a tenant who, at the commencement of occupancy, met the applicable income limitations shall continue to be treated as occupied by a qualified tenant until the tenant's income exceeds one hundred fifty percent (150%) of the area median income, adjusted for family size, at the time of the most recent Determination. After such Determination, once the tenant departs the Premises, Landlord will rent to an income eligible tenant.
- viii. Grantee agrees to furnish to City such information as City may require in form acceptable to City, including without limitation certifications and/or verification of occupancy and tenant income certifications to determine Grantee's compliance with the covenants set forth herein.
- ix. Grantee shall maintain and keep current all records concerning the Premises, including, but not limited to, records related to compliance with the covenants contained in these restrictions, until the expiration of the Restriction Period. Upon reasonable notice, City may audit and examine these records, and may inspect the buildings and grounds at the Premises.
- x. Grantee shall use tenant lease forms acceptable to City, or, if there are no written leases, written and signed certifications by tenants to determine whether tenants meet the applicable income limits. Such leases or certifications shall contain clauses wherein each tenant certifies as to the accuracy of statements made relating to income and agrees that family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, that the tenant will comply with all requests for information with respect thereto from the Grantee or City, and that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of the tenancy.

8. Grantee agrees that it will cause the residential portion of the Premises to be kept in reasonable repair, and shall see that all reasonably necessary repairs are made.

9. Grantee agrees that it shall pay real estate taxes, as assessed by City, on Premises. In the event that ownership of the Premises or a portion thereof becomes tax exempt, either by transfer, conversion or otherwise, an amount shall be paid annually to City, equal to the amount that would have been assessed as real estate taxes had the Premises or a portion thereof remained taxable. Grantee shall notify any party to whom it transfers any of its interest in the Premises of this requirement. Nothing contained herein shall be deemed to limit or waive the right of Grantee to seek abatement of real estate taxes in accordance with law.

10. Grantee 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 Grantee to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. In the event the Grantee fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, City shall be able to maintain an action in law or in equity against the Grantee to require the Grantee (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 the Grantee.

11. Grantee 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 attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to the Grantee's breach of any of its obligations under these restrictions as a result of such breach. The obligations survive the termination or expiration of these restrictions as necessary to effect its provisions.

12. Grantee covenants that if a lien for the performance of work or the furnishing of labor or materials is filed against the Premises, Grantee shall cause it to be satisfied, discharged or bonded within a period of sixty (60) days after the date of filing of such lien.

13. These restrictions may be amended or modified in whole or in part only by written agreement of Grantee and City clearly expressing the intent to modify these restrictions.

14. The validity of any clause, part or provision of these restrictions shall not effect the validity of the remaining portions of thereof.

15. These restrictions shall be binding upon Grantee's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

EXHIBIT C
To Quitclaim Deed
Commercial Restrictions

1. The purpose of these restrictions is to ensure the continued availability of vehicular and marine petroleum-based fuel products, which have been sold from a portion of the Premises for many years, and by doing so, to make life on Cliff Island more easily viable.

2. The covenants and restrictions on the Grantee 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 bind all subsequent owners of the real estate described in Exhibit A attached hereto, except to the extent provided herein, but only during the Restriction Period.

3. The covenants of the Grantee set forth herein are enforceable by City as a contract except to the extent provided herein.

4. The covenants of the Grantee set forth herein shall survive a sale, transfer, or other disposition of the Premises by the Grantee, foreclosure or transfer of title in lieu of foreclosure, or the repayment of the loan, except to the extent provided herein.

5. The term "Restriction Period" as used herein shall mean the period beginning on the earlier of the date of the Certificate of Occupancy granted from the City of Portland for the commercial portion of the Premises or two (2) years from the date of the deed from the City of Portland to which this Exhibit is attached, and terminating on a date twenty (20) calendar years thereafter. The City reserves the right to shorten or extend this Restriction Period. Nothing herein shall prevent Grantee from applying to the City for a shortened or extended Restriction Period, and the City shall in good faith consider and act upon Grantee's application.

6. The Grantee agrees to comply with these restrictions throughout the Restriction Period, as it may be reduced or enlarged as provided herein.

7. The Grantee hereby covenants and represents to City as follows:

a. The Premises shall consist of the land described in Exhibit A together with a residential building and structures and facilities functionally related and subordinated thereto; and a commercial building and structures and facilities functionally related and subordinated thereto.

b. Septic system. Grantee shall either:

(1) on or before February 15, 2015, upgrade the septic system on the Premises in accordance with all local, state, and federal laws, rules and regulations and obtain the necessary upgraded Overboard Discharge permit from

the Maine Department of Environmental Protection and any other required approvals for the septic system; or

(2) within 2 years of the date of the deed to which this exhibit is attached, install a septic system on the Premises or obtain in a form satisfactory to Grantor an easement in perpetuity to tie into and use a septic system on the property located at 155-171 Church Street, Cliff Island, Maine, such septic system and easement to comply with all local, state, and federal laws, rules, and regulations.

c. The existing commercial portion of the Premises, including the commercial building and structures and facilities functionally related and subordinated thereto, shall continue to be used only for commercial purposes, including but not limited to the sale of petroleum based fuel for vehicles and boats. Subject to the restrictions set forth herein, Grantee retains sole discretion concerning the operation of the commercial portion of the Premises, the pricing of goods and services, and the hours of operation of the commercial portion of the Premises.

8. Grantee shall maintain and keep current all records concerning the Premises, including, but not limited to, records related to compliance with the covenants contained in these restrictions, until the expiration of the Restriction Period. Upon reasonable notice, City may audit and examine these records, and may inspect the buildings and grounds at the Premises.

9. Grantee agrees that it will cause the commercial portion of the Premises to be kept in reasonable repair, and shall see that all reasonably necessary repairs are made; and that the Premises are brought into compliance with applicable laws and ordinances.

10. Grantee agrees that it shall pay real estate taxes, as assessed by City, on Premises. In the event that ownership of the Premises or a portion thereof becomes tax exempt, either by transfer, conversion or otherwise, an amount shall be paid annually to City, equal to the amount that would have been assessed as real estate taxes had the Premises or a portion thereof remained taxable. Grantee shall notify any party to whom it transfers any of its interest in the Premises of this requirement. Nothing contained herein shall be deemed to limit or waive the right of Grantee to seek abatement of real estate taxes in accordance with law.

11. Grantee 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 attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to the Grantee's breach of any of its obligations under these restrictions as a result of such breach. The obligations survive the termination or expiration of these restrictions as necessary to effect its provisions.

12. Grantee covenants that if a lien for the performance of work or the furnishing of labor or materials is filed against the Premises, Grantee shall cause it to be satisfied, discharged or bonded within a period of sixty (60) days after the date of filing of such lien.

13. The City shall have the right and option to purchase either (at its election) the Premises, or the portion of the Premises used for commercial purposes, during the later of the last full year of the Restriction Period, or the calendar year 2034. The purchase price shall be the value of the real property, buildings, improvements and commercial fixtures related thereto, as determined by the assessor for the City of Portland. Additional terms of this option are set out in Exhibit D, attached hereto. The parties hereto hereby agree that this right and option to purchase, and the City's rights in the Premises thereby created, are immediately fully vested and are hereby deemed to be fully vested in any event, not contingent, and shall, by agreement, not be subject to the Rule Against Perpetuities, or any statutory enactment thereof, or similar law. If the City elects to separate the commercial portion of the Premises from the residential portion, it shall obtain and bear all costs of obtaining all necessary federal, state, and local permits and approvals for such separation, and shall also bear all costs associated with creating reciprocal easement agreements as to the two portions of the Premises created by the City.

14. These restrictions may be amended or modified in whole or in part only by written agreement of Grantee and City clearly expressing the intent to modify these restrictions.

15. The validity of any clause, part or provision of these restrictions shall not affect the validity of the remaining portions of thereof.

16. These restrictions shall be binding upon Grantee's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

EXHIBIT D - to Quitclaim Deed

1. City, its successors or assigns, may exercise this Option only by giving written notice (hereinafter referred to as the Notice) within the Option Period, in any of the following manners: (a) by letter of City addressed and posted in the U.S. Mail by certified or registered mail, return receipt requested, addressed to the then owner of the Premises (as indicated in the records of the Assessor for the City of Portland, 16 Fisherman's Cove, Cliff Island 04019, (b) by letter of any attorney-at-law purporting to act for City or for any such assignee addressed to Grantee or its successors or assigns, in the manner aforesaid. Notice shall be effective when posted in accordance with the foregoing sentence. Notice is to be accompanied by a payment to Grantee or its successors or assigns of the Earnest Money in the amount of One Thousand Dollars (\$1,000.00). City shall indicate in said Notice the date, time and place for closing, which shall be held not less than thirty (30) nor more than sixty (60) days after the giving of such Notice.

2. If City, its attorney, successors or assigns, exercises this Option to purchase the Premises, then in consideration of the terms, covenants and conditions contained herein, the parties mutually agree as follows:

a. Upon the giving of the above-mentioned Notice of election to purchase by City, its successors or assigns, together with the Earnest Money, Grantee shall thereby be bound to sell and City shall thereby be bound to purchase the Premises upon the terms and conditions set forth herein. Grantee or its successors or assigns shall convey the Premises by a good and sufficient warranty deed granting marketable title thereto, free and clear of all encumbrances and defects in title except for utility easements of record servicing the Premises. The closing shall be held at the date, time and place set forth in said Notice, or at such reasonable date thereafter as may be required to clear any encumbrance and defects in title, and Grantee or its successors or assigns shall then and there deliver the deed to City, its successors or assigns, upon tender of the balance of the purchase price by certified check, cashier's check, or cash. The balance to be tendered to Grantee or its successors or assigns shall be the Purchase Price, less the Earnest Money and any other option consideration actually received by Grantee.

b. If counsel for City, or its successors or assigns, shall be of the opinion, given in good faith, that the title to said Premises is defective or is otherwise not free and clear of all encumbrances or that the title is not marketable, then City, its successors or assigns, shall have the right, provided it or they shall have exercised this Option, to extend the time for conveyance of the Premises, during which time Grantee or its successors or assigns shall make a reasonable effort to remove such defects at its own expense, to the satisfaction of counsel of City, its successors or assigns. If record title proves defective and Grantee or its successors or assigns shall fail to remove such defect within a reasonable time after notice from City of the nature of the defect, City may, at its election, (a) cure any such defect and deduct the cost thereof from the Purchase Price at closing, or (b) elect to close notwithstanding any such defect, or (c) terminate this Option by written notice to Grantee or its successors or assigns, whereupon all Earnest Money

and Option Consideration paid by City to Grantee or its successors or assigns shall immediately be returned to City and thereafter the parties shall be relieved of all obligations and this Option shall terminate.

c. If all obligations of this agreement have been performed, excepting that City does not complete the purchase, Grantee or its successors or assigns shall retain the Earnest Money as full liquidated damages, and without recourse to any other remedies, whereupon this Option shall terminate.

d. Grantee or its successors or assigns hereby agrees that the description in the warranty deed to be delivered at closing shall, at the option of City, utilize a description determined by City's survey of the Premises.

e. Full possession of the Premises, subject to the rights of tenants then present, and otherwise free of all encumbrances except as aforesaid, is to be delivered to City at closing, with the Premises to be in the reasonably functional condition, reasonable wear and tear excepted.

f. Real estate taxes shall be prorated as of the time of the passing of title. Real estate transfer taxes, if any, arising in connection with the conveyance of the Premises shall be paid by City and/or Grantee or its successors or assigns in accordance with the custom of the locality where the Premises are situated.