



ECONOMIC DEVELOPMENT COMMITTEE

DATE: June 5, 2018 (Tuesday)
TIME: 6:30 – 7:30 p.m.
LOCATION: Room 209
Portland City Hall

1. **Review and accept Minutes of previous meeting held on May 15, 2018.**
2. **Portland Impact Fee Study – update for Committee discussion. Presentation by TischlerBise – Impact Fee Consultant**
 - a. See enclosed memo from Nelle Donaldson.
3. **Public Hearing and vote to recommend to City Council Authorizing Discontinuance of Vehicular Easement and Retention of Pedestrian and Utility Easement along Lancaster Street between Parris Street and Hanover Street on the 82 Hanover Street Property and Accept a New Pedestrian Easement on 44 Hanover Street**
 - a. See enclosed Memorandum from Greg Mitchell and back up material.
4. **Public Hearing and vote to recommend to the City Council Third Amendment to 178 Kennebec Street Purchase and Sale Agreement**
 - a. See enclosed Memorandum from Greg Mitchell and back up material.
NOTE: Pursuant to 1 M.R.S.A. 405(6)(C), the Committee may go into executive session to discuss real estate negotiations and provide guidance to staff.

Councilor Justin Costa/Chair

NOTE: No public comment will be taken on non-action items.

Next Meeting: June 19, 2018.

Minutes
Economic Development Committee
May 15, 2018

NOTE: These meetings are now live-streamed, which can be viewed at this link:

<http://www.portlandmaine.gov/1695/Economic-Development-Committee> These

Minutes provide a record of those in attendance, general discussion taking place, and motions made.

A meeting of the Economic Development Committee (EDC) of the Portland City Council was held on Tuesday, May 15, 2018 at 5:30 p.m. in Room 209 of Portland City Hall. Present from the Committee was its Chair Councilor Justin Costa and members Councilors Nicholas Mavodones and Spencer Thibodeau. Also present from the City Council was Mayor Ethan Strimling. Present from the City staff were Associate Corporation Counsel Michael Goldman, Assessor Chris Huff, Economic Development Director Greg Mitchell, and Senior Executive Assistant Lori Paulette.

Chair Costa opened the meeting noting that the single item on the Agenda was postponed from the May 1 EDC Agenda.

Item #1: Review and accept Minutes of previous meeting held on May 1, 2018.

A motion was made by Councilor Thibodeau, seconded Councilor Mavodones to accept the Minutes as presented. Mr. Mitchell noted a revision to be made on p. 2, to replace “Denine Leeman” with “Trish McLellan”. Councilor Thibodeau made a motion to amend the main motion to accept the Minutes with this correction. Councilor Mavodones seconded the motion, and it passed unanimously. Chair Costs then asked for a vote on the main motion and it passed unanimously.

Item #2: Public Hearing and vote to recommend to the City Council proposed

Portland Downtown Expansion.

Ms. Gilbert said that since May 1, more outreach has been done to those affected by the proposed expansion and explained that outreach. She then explained that this proposed expansion started with the creation of PD's 5-year strategic plan, now in its 4th year and another 5-year plan will be created, noting PD's mission of a clean, safe, and vibrant Downtown. That mission is funded by the annual special assessment and other revenue and has benefited both property owners and the City as a whole, since 1992.

Ms. Casey described the PD Growth Ad Hoc Committee and the outreach done as noted in the attached which she handed out at the meeting, as well as the Minutes from the April 10, 2017 Proposed Expansion informational meeting – also attached.

Ms. Casey thanked City staff who have been so helpful in getting to this point between mapping out the expansion and the properties associated with that proposed expansion clarified. She then explained the expansion areas.

Chair Costa noted that this Committee is making a recommendation on the expansion only, but said that there are pieces which go to the Council each year. Ms. Gilbert agreed, adding that the Master Agreement and Supplemental Services Agreement go to the Council each year, as well as the setting the level of the special assessment, which has been at \$.92 over several years. At \$.92, if a property is valued at \$200,000, the special assessment would be \$184 per year.

Councilor Mavodones was pleased about the outreach that has occurred, but until someone is affected they may not pay attention and asked about any appeals process. Mr. Mitchell said that given this is his first expansion, he would need to confirm whether there is an appeal process.

Councilor Thibodeau thanked PD for their outreach for this proposed expansion. Constituents may ask what additional services they would get that they were not already receiving with tax dollars. Ms. Gilbert said that the City provides baseline services as outlined in the documents provided to the Council each year. The Supplemental Services Agreement provides for above and beyond that baseline, e.g., hauling out snow instead of it piling up. Exempt property owners, if in the district, do benefit as well.

Councilor Thibodeau asked about future expansions and graffiti removal. Ms. Gilbert said that they may propose future expansions, but wanted to get this one underway and operational first. Graffiti removal cannot be done in the Winter, and it can be done on both commercial and residential properties.

Councilor Costa asked if there were different assessments on residential and commercial properties, and it was indicated that the assessment rate had to be the same on all properties.

Mayor Strimling asked if property owners in the expanded district were told what their assessment bill would be and how many owners were in that expansion area. Ms. Casey indicated that the notice advised that the proposed assessment rate for the expansion area is \$1.06. Ms. Geren noted approximately 200+ owners in the expansion area.

Mayor Strimling said that for the Council packet, it would be good to know how much each property owner would pay, and staff indicated this would be provided.

There was then discussion about whether this should go to the Finance Committee and/or a Council Workshop. Historically, the annual documents are a City Manager sponsored item, going directly from PD to the Council. It was also noted during preparation of the annual documents that the City's administrative costs under the Supplemental Services Agreement may not be fully reimbursed, with this to be discussed during FY2019. Whether this should go to the

Finance Committee and/or Council Workshop, this would be a discussion to have with the City Manager, Mayor, and Finance Committee Chair Mavodones.

Chair Costa then opened the meeting for public comment.

George Rheault of Bayside was disappointed with the expansion in that it did not include more area in West Bayside. He also questioned why the mill rate was not increased for the past several years.

Frank Riley, President of Friends of Lincoln Park, supports the expansion and is pleased Lincoln Park is part of it. Lincoln Park has a lot of usage and history and has been fully restored to its origin in 1866.

Amy Cullen of the Szanton Company, which owns 53 Danforth Street, and which 70% of the apartments are low income, did not think there was value for that property to be included in this assessment.

Glen Ryan of CHOM supported the expansion, and noted PD's involvement in many aspects of the downtown.

Penny St. Louis, on the PD Board and who lives and works in the District, noted that PD has accomplished much in the past four years that she has been on the Board, bringing vitality to the area with a low budget.

Kim Volk, PD Board Chair and Portland resident, said that she has worked in the downtown for over 30 years and is grateful for what PD does for the area.

Seeing no further public comment, Chair Costa closed the public comment session.

Councilor Thibodeau made a motion to recommend to the City Council approval of the proposed expansion; Councilor Mavodones seconded the motion.

Councilor Thibodeau said that he would support the expansion, and looked forward to future expansions.

Councilor Mavodones said that he is pleased to support the expansion and it is a sensible approach, noting to be sure residents know what is occurring.

Chair Costa also appreciated the work done to get to this point. Regarding the boundaries and some residential owners on the borders, he asked about why they were included. David Packard, member of the PD Board, explained the rationale and noted there were a few residential properties in the District that will see its benefits.

Councilor Costa said that with any expansion, there will be some concerns and further outreach is always good. PD does a great job, as well as partners with the City and other organizations on community issues.

Chair Costa asked for a vote on the motion and it passed unanimously.

Councilor Thibodeau noted that the State is looking at non-contiguous consumption of alcohol and food services, and also noted that the Sustainable and Transportation Committee will be looking at Fore Street closures for a few hours for outdoor dining.

Regarding the employment disparity study, Mayor Strimling said that the Muskie School may have a proposal and this would be brought to the EDC at the appropriate time.

There being no further business, the meeting adjourned at approximately 7:00 p.m.

Respectfully, Lori Paulette

PD Growth Ad-Hoc Committee

Research, process and outreach

- Weekly meetings
- Research & data collection
- Outreach and conversations
- Public meetings (two hosted by PD)
- Correspondence with property owners and residents
- Meetings with key city staff
- Committee and Board approval
- Press Release from City of Portland
- Economic Development Committee



Proposed Expansion Informational meeting minutes
Thursday April 10, 2017 at 5:30pm
Maine Historical Society Library, 489 Congress St.

Board members present: Kim Volk, David Packard, Penny St. Louis, Trish McLellan, Sue-Ellen McClain, Megan Doane, Erik Urbanek

Others present: Tracy St. Pierre, Margaret Broucek, Elise Loschiavo, Karen Foster, Richard & Stephanie Freund, Sarah Schindler

Staff present: Casey Gilbert, Taffy Eaton

Minute 1. Opening remarks were made by Kim Volk, David Packard and Casey Gilbert, welcoming all present and asking for introductions. Kim thanked Maine Historical Society for hosting the meeting and thanked all present for attending.

Minute 2. Casey gave a Power Point presentation, outlining how Portland Downtown (PD) was formed, what PD does and the Board structure. The presentation included a map of the current footprint, the proposed expansion map and reviewed specific dollar amounts property owners could expect to be assessed.

Minute 3. Casey reviewed Portland Downtown expenditures and activities:

- Clean & Safe: Public Works crew, Graffiti Busters through Learning Works, seasonal Cadet program
- Marketing & Events: Print map and directory, Pandora's Winter Lights, street banners (beautification), Downtown Worker Appreciation Day, Summer Kickoff Weekend, Light Up Your Holidays, Police Awards Breakfast
- Advocacy: Panhandling, Parking & Transportation and Sound Ordinance – PD sent letters to the City with ideas on how to partner with each other to effect change.
- Partnerships: Partnering organizations, sponsorships

Minute 4. Property Owner Q & A:

- Is Residential graffiti removal included in PD services?
 - Removal on residential properties is included and property owners can submit through See Click Fix or call PD office and submit a request to Amy.
- Who drives the mil rate fluctuation? The PD Board submits its annual budget to the City Council, which determines the mil rate.
- Could organizations be merged for efficiency sake? Casey explained that there is thoughtful collaboration around economic development work between the City, Creative Portland, Visit Portland, Portland Community Chamber of Commerce, and Portland Downtown. It is a good conversation for the future.
- Will property owners vote on inclusion? The City Council will vote on expansion – it's a separate council item. Please come and speak at the meeting, talk to your Councilor, write or speak to a PD Board member if you would like to offer your support – or opposition.
- What percentage of properties in the expansion area are residential vs commercial? 36% in current footprint are condos – there are fewer single family homes. Expansion could address the number of residential reps on the Board if needed. Could there be some allocation per unit? A tiered system is not currently permitted per Maine law.
 - Stakeholder Board positions were added a few years ago to be sure all industries are represented
- Casey and Amy conduct regular inspection walks, which are documented through See Click Fix. The tracking and transparency of data is available to property owners if requested.

- What happens with dead trees, missing bricks or trash along sidewalks? PD will take care of smaller issues in a timely manner or recommend for Capital Improvement Projects if the Public Works crew cannot take care of the issue.
- What level of involvement would PD have in parks? As with all of our programs and services, we collaborate closely with City departments. The collective voice is strong and is a useful tool for advocating for improvements.
- How much assessment revenue would be added to the budget with the expansion? Based on the taxable parcel list provided by the City Assessor: \$67,000. There has been conversation between PD and the Public Works Department about the possibility of adding a staff person to the downtown team.
- Casey suggested going to www.portlandmaine.com to sign up for our email lists for committees, which include agendas and minutes.
- Glad to see we're trying to work on noise. Casey further recommended talking to Councilor Belinda Ray.

Minute 5. Casey thanked everyone for taking the time to attend. We will send notice of the City Council meeting and other opportunities for public comment.

Casey adjourned the meeting at 6:30.

Respectfully submitted,
Taffy Eaton, recorder



MEMORANDUM

PLANNING AND URBAN DEVELOPMENT DEPARTMENT

PLANNING DIVISION

To: Economic Development Committee
From: Nell Donaldson, Senior Planner, Planning & Urban Development Department
Date: June 1, 2018
Re: Impact Fee Study Update
Meeting Date: June 5, 2018

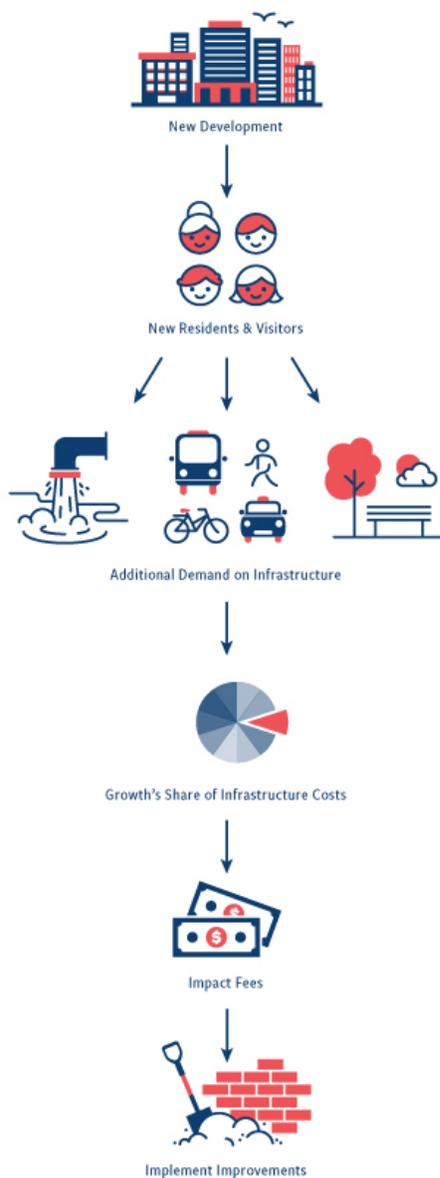


Figure 1: Impact fee process

I. INTRODUCTION

In late 2017, on the recommendation of the city's recently-adopted comprehensive plan, at the request of the City Manager, and with the support of the Council's Economic Development Committee, the city's Planning Division began an investigation into the "potential of a more robust framework for assessing development-related impacts" in the city (Portland's Plan, 67). The purpose of this exploration, as stated in Portland's Plan, is to "generate additional funding [for facilities and services], while also adding clarity and predictability to existing [review] procedures." This investigation began in earnest with staff research and engagement of a consultant with national experience in impact fee design. This Economic Development Committee meeting will provide an introduction to this consultant and to the scope of work for the Impact Fee Study.

2. WHAT ARE IMPACT FEES?

Impact fees are charges paid by new development to fund the cost of providing municipal facilities to serve that development. This idea is premised on the concept that when development occurs, it can bring many benefits, but it also affects the existing infrastructure around it by adding more cars, bikes, and pedestrians to the streets, increasing sewer and stormwater flows into these city systems, and infusing additional visitors into the city's parks and open spaces, which, in turn, require additional capital investment. As a result of this thinking, impact fees are widely used throughout the United States to assess the cost of new development's share of growth-related infrastructure needs. Impact fees have been used in some communities in the United States for the past 50+ years.

3. WHERE ARE IMPACT FEES?

Although impact fees are particularly common in states that have experienced rapid population growth in the west and south, they are found in the majority of states nationwide. Concord and Manchester, NH have impact fees, as does Burlington, VT. In Maine,

Table 1: Sample of Maine Communities with Impact Fees

	Transportation	Sewer/Water	Open Space/Recreation	Fire/EMS	Schools
Brewer	●	●			
Brunswick		●	●		
Freeport	●				
Gorham		●	●		
Lewiston	●	●			
Pownal			●	●	
Saco		●	●	●	
Scarborough	●				●
Windham	●		●		
York		●			●

the legislature laid the foundation for impact fees with the Comprehensive Planning and Land Use Regulation Act of 1987. In the time since, communities across the state have developed and implemented impact fee ordinances (*Table 1*).

4. HOW ARE IMPACT FEES USED?

The uses of impact fees vary widely, depending on state enabling legislation, but in all cases impact fees may only be used to construct, expand, or replace infrastructure required to serve new development. Many communities use impact fees to address growth-related capital costs associated with roads, parks, water, and sewer infrastructure. Fire and police-related impact fees are also fairly common, as are school impact fees. In Maine, impact fees may be used for transportation projects, public safety facilities, sewer and water systems, parks and open space, and school improvements. Impact fees may not be used to pay for operations or maintenance, and may not be used to address existing deficiencies in these systems.

5. HOW MUCH ARE IMPACT FEES?

Regardless of where impact fees are used, courts have established that there must be a rational nexus and rough proportionality between the type and scale of development and the fee imposed. Per guidance from the former Maine State Planning Office, “the expansion of the facility and/or service must be necessary and must be caused by the development; the fees charged must be based on the costs of the new facility/service apportioned to the new development; and the fees must benefit those who pay” (*Maine State Planning Office, 4*). Given these standards, in order for impact fees to be charged, a community must conduct an analysis that identifies growth-related infrastructure costs and apportions those costs to projected development, often by development type, on a square foot, unit, or per trip basis. The resulting fees must be established through a council-adopted ordinance that meets a series of state requirements around the provision of language to address the relationship between fees and growth’s share of infrastructure costs, the treatment of revenues generated from impact fees, timely use of impact fees, and refunds (*Title 30-A MRSA §4354*).

As a product of the great variation in communities that have adopted impact fees, and the great variation in uses of impact fees, the amount of impact fees varies widely from state to state and community to community. A 2015 study of impact fees across the country by Duncan Associates, a national firm specializing in impact fee work, found that state-wide average non-utility (i.e. excluding water and wastewater) impact fees for single-family residential projects ranged from less than \$1,000 in Arkansas to almost \$25,000 in California (*Duncan Associates*). In New Hampshire, the study found total residential fees ranging from approximately \$3,000 for a 3-br single-family home in Manchester to \$5,000 in Concord. In Burlington, the study estimated a \$5,000 fee for a 3-br single-family home. The same study found that fees across the country averaged approximately \$6,000 per KSF for retail uses, approximately \$4,000 per KSF for office uses, and approximately \$3,000 per KSF for industrial uses.

6. HOW DOES THIS RELATE TO PORTLAND'S CURRENT ORDINANCE?

The City of Portland's existing site plan ordinance allows the city to require mitigation "so as to be consistent with City Council approved master plans and facilities plans and with off-premises infrastructure, including but not limited to sewer and stormwater, streets, trails, pedestrian and bicycle network, environmental management or other public facilities" (*City of Portland Land Use Code 14-526(c)1.a*). Further, the city's *Technical Manual* requires that developments that generate more than 100 passenger car equivalents obtain a Traffic Movement Permit (TMP) under the city's delegated review authority. The issuance of a TMP includes a "summary of findings and recommendations for improvements and other impact mitigation measures" (*City of Portland Technical Manual, 2*). Under these regulations, the city negotiates mitigation on a case-by-case basis predicated on an analysis of impacts identified through the site plan or subdivision review process.

As a product of this process, in some cases, developers make in-kind physical improvements, upgrading a traffic light or installing pedestrian signalheads and ramps at a nearby intersection. In other cases, developers are required to make financial infrastructure contributions proportionate to their impacts. These contributions are held in separate "infrastructure accounts" until they can be drawn down to pay for the improvement identified through the review process.

Because this process is conducted on a case-by-case basis, it is neither as systematic or predictable as many would prefer. Further, the system often penalizes the "last one in," whose development causes an intersection level of service to fail, rather than addressing the incremental impact of all prior developments. *An impact fee framework for the City of Portland would establish a more predictable, transparent, and equitable way of assessing the impact of incremental growth on public facilities and services. An impact fee system would also provide the city with some measure of efficiency.*

7. IMPACT FEE STUDY SCOPE & SCHEDULE

In mid-2017, the City Council adopted *Portland's Plan 2030*, a new comprehensive plan designed to guide the city's growth and change over the next ten years. Among the plan's recommendations is a strong commitment to exploring new ways of funding our critical facilities and services, particularly as they are used by a growing number of residents, workers, and visitors. The plan anticipates future population and employment growth in the city and suggests an exploration of impact fees as a means of assessing capital costs associated with that growth.

In August 2017, the Economic Development Committee met to review the impact fee concept (*Attachment 1*). With the support of the committee, and working with the Departments of Public Works and the Parks, Recreation, and Facilities, Department of Planning & Urban Development staff released an RFP for an Impact Fee Study in October of 2017. The purpose of the study, as written in the RFP, is to develop impact fee systems for multi-modal transportation infrastructure, parks and open space, and wastewater infrastructure. In January 2018, the Planning & Urban Development Department, with the assistance of DPW and the Department of Parks, Recreation, and Facilities, hired TischlerBise, a consulting firm with national experience in impact fee design, to complete the Impact Fee Study.

The study's first step is to compile the data, including population and employment growth projections, that will serve as the foundation for the impact fee analysis. In late April, Tischler developed a final draft memo summarizing demographic and development assumptions for the study (*Attachment 2*). This memo was based on data provided by the Department of Planning & Urban Development, the Department of Public Works, and the Department of Parks, Recreation, and Facilities, and includes discussion of population, development, employment, traffic, and wastewater usage trends in the city.



Figure 2: Impact Fee Study timeline

The next phase of the study will determine capital facility needs and desired service levels for each of the three fee types under consideration. The study will explore various standard methodologies for deriving fees on a per unit, per trip, or per square foot basis and identify the most appropriate methodology for each fee type. The last step of the study will analyze projected funding and cash flow to understand the likely revenue stream and capital expenditures associated with the fees. Draft and final impact fee reports, including potential impact fee schedules, will be prepared. Ultimately, a draft impact fee ordinance, including fee structures based on these reports, will be presented to the Planning Board and City Council.

8. PUBLIC INVOLVEMENT

Throughout the process, the Impact Fee Study will include a public involvement component designed to engage key stakeholders at major points in the process:

- A. *Stakeholder Group* – In mid-May, staff gathered an informal group of stakeholders for an introduction to the Impact Fee Study. This informal stakeholder group is meant to include a range of community members with a stake in the outcome of the study – from developers to neighborhood association representatives to those with a broad interest in economic development in the city. The purpose of the group is to provide feedback on major work products over the course of the study. At the May meeting, Tischler gave an overview of the study and the demographic and land use assumptions that will underpin the analysis in future phases. Subsequent workshops will address capital needs, fee calculation methodologies, and potential fees.
- B. *Planning Board* – Also in mid-May, the Planning Board met for the first of several workshops on the Impact Fee Study. This workshop, like the first stakeholder group meeting, focused on providing an overview of the study and presenting early demographic and land use assumptions. Subsequent workshops will address capital needs, fee calculation methodologies, and potential fees. Ultimately, the Planning Board will be responsible for reviewing not only the technical elements of the Impact Fee Study, but also reviewing ordinance language for potential adoption by the City Council.
- C. *Economic Development Committee* – Updates will be provided to the EDC at important study milestones.
- D. *City Council* – For impact fees to be implemented, the Council would need to adopt ordinance language, including a set of fees as generated by the Impact Fee Study.
- E. *Other* – A project website has also been developed (<https://www.recodeportland.me/impact-fee-study/>). This website will be updated over the course of the Impact Fee Study.

Early engagement with both the stakeholder group and with the Planning Board has yielded important feedback, focused primarily on large questions around the city's existing capital funding mechanisms and the economic implications of impact fees. Questions arising from these early meetings included:

- A. *How would impact fees fit within the city's existing framework for funding capital projects?*
 - How do we fund capital improvements for each of the three impact fee categories now?
 - What is our financial exposure with a plan-based approach to impact fees (i.e. the way we're thinking about transportation and wastewater projects), and do we have a funding strategy for filling any gaps?
 - What is our broader strategy for filling capital funding gaps in the city?
 - What happens if growth slows or we enter a recession?

- Can we quantify how development is/isn't 'paying for itself' with tax revenue right now? (and related, if developers are paying taxes, isn't this double-dipping?) What about the revaluation?

B. How would impact fees compare to our current system of collecting mitigation?

- Will it *really* replace the existing system?
- Will it cost developers more out-of-pocket?
- How much time and money will it cost the city to administer? Do we have the capacity for this?
- How will revenues compare to what we're generating in mitigation right now?

C. How will this affect the economy, housing choice, etc. down the line?

- Who actually bears the cost of impact fees?
- Will an impact fee have a negative impact on housing affordability?
- Will an impact fee have a negative effect on the pace of growth and the city's economy more broadly?

Continued discussion on these topics is expected at the next round of meetings on the study.

9. NEXT STEPS

1. Staff and the consultant to continue work on the needs analysis phase of the study;
2. Staff to schedule a second round of meetings with the Planning Board and stakeholder group to review work products and, ultimately, a draft impact fee ordinance.

10. ATTACHMENTS

1. Memo to the Economic Development Committee, Jeff Levine, Director, Planning & Urban Development, 8/31/17
2. Draft Demographic Data and Development Projections for Impact Fee Study, Tischler Bise, 4/23/18

Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP
Director, Planning & Urban Development Department

Memorandum

To: Economic Development Committee
From: Jeff Levine, Director, Planning & Urban Development
Date: August 31, 2017
Re: Impact Fees

One of the recommendations of the Comprehensive Plan is to look at a system of Impact Fees for the City as a way of both funding city infrastructure, and providing predictability for developers. This memo outlines what Impact Fees are, how they have been applied elsewhere, and a general approach to an Impact Fee system for Portland.

What Are Impact Fees?

Impact Fees are a systematic way of having new development pay for the infrastructure demands it creates. Cities that use Impact Fees choose certain types of infrastructure they feel needs to be improved and develop a baseline and needs assessment for each of them. Costs are developed for future needs and then assigned to new development as it comes in. When sufficient funds have been collected, the improvements are made. Often there is a feedback system in place – as improvements are made, a new needs assessment is conducted and the Impact Fee system is revised accordingly.

Impact fees can be a logical and fair way to address public impacts of new development. Developers are able to plug a mitigation cost into their pro forma and plan for it, rather than having to negotiate mitigation and deal with the uncertainty of that process. The City is able to devote energy into implementing these improvements, rather than into extensive negotiations with each developer based on their documented impacts. Neighbors and community groups will know what projects in their neighborhood are being funded and more confidence that they will be completed.

Commonly, impact fees are collected to mitigate impacts on transportation systems; parks & open space; schools; and stormwater/sewer systems. Costs are charged on either a square foot basis or on a per unit basis. For example, Concord, NH, has an impact fee for transportation improvements that charges \$2,110 per new single family home, \$1,449 per multifamily unit, and \$1.70 per square foot of office space. Concord also charges a per unit fee for recreational facilities and for schools.

Impact fees are most common in Florida, Colorado, the southwest, and the far west. However, communities in Maine, New Hampshire and Vermont use Impact Fees. Municipalities in Massachusetts are not permitted to charge impact fees for development, except in very limited cases.

Only 10 states (including Maine) have specific state legislation authorizing the use of impact fees generally. In many other states, local governments have pursued impact fees, either through home rule authority or other mechanisms.

Some communities similar to Portland have well established impact fee systems, including Concord, NH; Manchester, NH; and Burlington, VT. Generally larger cities have not implemented impact fee systems, although Chicago has an impact fee system for parks and open spaces.

In Oakland, California, there is a proposed impact fee system that is a useful example for Portland, in that it is comprehensive in approach and does not tie the fees to specific improvements. Their zone approach is an interesting methodology for a densely-developed city.

What About in Maine?

Maine's legislature authorized the use of impact fees in 1987 as part of an overall update to the state's planning and land use laws. Title 30-A M.R.S. §4354 allows cities to pass an ordinance to require collection of impact fees for a variety of uses, including wastewater collection and treatment; solid waste facilities; fire protection; transportation; and parks and open space. While public education is not listed as an explicitly authorized purpose, it has been accepted as another authorized use for impact fees in Maine.

Several communities in Maine have adopted impact fees for a variety of uses. These include:

- York, where they collect impact fees for schools, water, and sewer infrastructure;
- Scarborough, where they collect impact fees for specific transportation improvements and for schools;
- Gorham, where they collect impact fees for water improvements; open space and recreation; and schools; and
- Saco, where they collect impact fees for wastewater improvements.

What Types of Impact Fees are Used?

As mentioned above, impact fees are used for a variety of public infrastructure needs. The most common fees are for:

- Schools
- Wastewater and Stormwater

- Water Supply
- Transportation Infrastructure
- Parks, Recreation and Open Space
- Libraries
- Public Safety

Fees were traditionally charged at a uniform level for each use. More recently there has been some stratification of fees. For example, some communities charge school impact fees for homes with three or more bedrooms only, or charge a lower fee for smaller units. Similarly, some impact fee systems charge less or nothing for developments utilizing existing infrastructure, such as in a traditional town center.

Table 1. Average Fees by Land Use and Facility Type, 2015

Facility Type	Single-Family (Unit)	Multi-Family (Unit)	Retail (1,000 sf)	Office (1,000 sf)	Industrial (1,000 sf)
Roads	\$3,256	\$2,201	\$5,605	\$3,403	\$2,063
Water	\$4,038	\$1,387	\$647	\$606	\$627
Wastewater	\$3,694	\$1,777	\$663	\$640	\$642
Drainage	\$1,397	\$784	\$1,056	\$891	\$1,097
Parks	\$2,812	\$2,099	**	**	**
Library	\$403	\$314	**	**	**
Fire	\$472	\$347	\$388	\$339	\$211
Police	\$365	\$283	\$403	\$259	\$171
General Government	\$1,689	\$1,200	\$745	\$751	\$436
Schools	\$4,769	\$2,562	**	**	**
Total Non-Utility*	\$8,298	\$5,484	\$6,165	\$4,214	\$2,751
Total*	\$11,868	\$6,870	\$6,346	\$4,536	\$3,150

* Average of total fees charged by jurisdictions, not sum of average fees by facility type (non-utility excludes water and wastewater)

** rarely charged to nonresidential land uses, with the exception of school fees in California

Source: National Impact Fee Survey 2015, Clancy Mullen, Duncan Associates, Austin, TX

What Current City Policies and Ordinances are Similar to Impact Fees?

As part of the City’s site plan review process, and as delegated by the state to issue Traffic Movement Permits (TMP) for the Maine Department of Transportation, mitigation is currently negotiated on a case-by-case basis. Applicants submit a transportation study, stormwater analysis, and other documentation outlining their estimates of the impact of the development on City infrastructure. Sometimes these studies suggest mitigation proposals, and sometimes they find that no mitigation is required. City staff and consultants review these studies and offer a response. As part of the process, a mitigation package is approved as part of the site plan approval and TMP process.

Sometimes the mitigation involves a physical improvement, such as a new traffic light. Sometimes they involve an in-kind contribution to a future improvement. These contributions are held in discrete accounts in the City system until sufficient funds have been found to complete these improvements. These contributions have some similarity to impact fees but are not as comprehensive. As a result, the City may have half of the cost of a particular improvement in an account for some time, but does not have the funds needed to complete that improvement.

The current system, particularly for TMP's, is based on a "first past the threshold" trigger. In other words, until an intersection fails, developers are not asked to fund any improvements. Once the intersection fails, the cost of addressing that failure falls to the developer whose project created that last increment of impact. While that can both help and hurt the same development, it creates conflict and is not as fair as an impact fee system that would have been collecting funds from developers all along.

There is a limited form of impact fees in effect in Portland for projects that wish to reduce their parking requirement. This voluntary fee-in-lieu-of parking system in effect on the Peninsula in certain zones. That system, created in 2010, allows developers to pay a fee rather than provide some of their parking on-site. That fee goes into the Sustainable Transportation Fund and is used to fund transportation alternatives, such as transit improvements, bike parking, and sidewalks. While this ordinance has had some successes, it is very limited in scope. Similarly, the inclusionary zoning ordinance is based on a study that connects new housing development and affordable housing needs.

At present City mitigation efforts are limited to transportation, sewer and stormwater, and, very occasionally, school impacts. There is no systematic process for funding mitigation for the other categories listed above. As part of the 58 Fore Street TMP, staff negotiated a pilot impact fee system for transportation improvements. That methodology worked well, though it was isolated in that case to improvements specific to that geographic area.

What is the Process to Create an Impact Fee System?

While it is tempting to simply create an impact fee system and implement it, there are several important steps that must be taken to establish the public policy and legal framework for an effective program.

1. A city should first complete a Comprehensive Plan or comparable document that establishes the planning goal of an impact fee system and, as much as possible, sets city goals for infrastructure baselines. The recently approved Comprehensive Plan does much of this work, as do other studies completed in the past few years, such as the Trust for Public Land parks and open space study.
2. The City needs to determine in what areas impact fees will be pursued. Currently Portland only seeks mitigation for transportation and stormwater impacts in most cases. The more areas in which impact fees will be implemented, the more

- upfront work will be needed. The cost to developers will also be higher, but greater public benefit will be provided.
3. Those infrastructure baselines need to be refined and turned into a set of public improvements that will be needed based on expected development. The City's Capital Improvement Plan does a good job at outlining these improvements, but it is fiscally constrained based on the City's existing financial resources and bonding capacity. A more extensive list of needs, with estimated costs attached, will need to be developed. This can be very simple, as in the case of Scarborough where they simply sought to fund a few specific roadway projects, or more complicated. Alternatively, they can be comprehensive and address a number of impacts at once, as Oakland is doing. That would be our current recommendation.
 4. An impact fee study needs to be completed to link these costs and project new development. While it is tempting to skip the study phase, this study is especially important given U.S. Supreme Court rulings in *Nolan* and *Dolan* regarding establishing a rational nexus and rough proportionality for impact fee systems.
 5. The City needs to approve an impact fee ordinance with a fee schedule, and amend any other ordinances that may need changing to create such a system in accordance with 30-A M.R.S. §4354.
 6. Staff needs to be educated on the new system, and educate the development and neighborhood groups on it as well, to ensure that everyone is familiar with the new process.
 7. Staff needs to track the various accounts and complete the funded improvements when collections are sufficient.
 8. The list of projects and fee structure will need regular revisiting and updating. At a minimum, this should be completed every few years. Ideally this work would be ongoing as part of the CIP process.

What are our Next Steps?

With the approval of the Comprehensive Plan, the policy basis is in place for next steps. The planned rewrite of Chapter 14 into an updated Unified Development Code is compatible with replacing the current process with a more systematic impact fee system.

Our next step is to complete the nexus study that will document the rationale for the amount of the Impact Fees. Staff has completed a Request for Proposals for a consultant to complete that study with the \$25,000 appropriated in the FY18 budget for this purpose. Planning has been working with Public Works; Economic Development; Parks, Recreation & Facilities, and other departments to prepare for this work. We hope to have a consultant selected in September and the nexus study completed this calendar year. We will then submit a proposed ordinance for Planning Board and City Council review.

MEMORANDUM

TO: Helen Donaldson, City of Portland, Planning and Urban Development

FROM: Carson Bise, AICP, TischlerBise
Colin McAweeney, TischlerBise

DATE: April 23, 2018

RE: **DRAFT** Demographic Data and Development Projections for Impact Fee Study

As part of our Work Scope, TischlerBise has prepared documentation on demographic data and development projections that will be used in the Impact Fee Study for Transportation, Parks and Open Space, and Wastewater. The data estimates and projections are used in the study's calculations and to illustrate the possible future pace of service demands on the City's infrastructure. Furthermore, the memo demonstrates the history of development and base year development levels in Portland. The base year assumptions are used in the impact fee calculations to determine current levels of service.

The factors provide assumptions for the final impact fee model and, once finalized, this memo will become part of the final report and/or model documentation.

This memo includes discussion and findings on:

- Household/ Housing Unit Population
- Current population and housing unit estimates
- Residential projections
- Current employment and nonresidential floor area estimates
- Nonresidential projections
- Current and projected daily vehicle trips
- Current and projected wastewater flows

Note: calculations throughout this technical memo are based on an analysis conducted using Excel software. Results are discussed in the memo using one-and two-digit places (in most cases), which represent rounded figures. However, the analysis itself uses figures carried to their ultimate decimal places; therefore, the sums and products generated in the analysis may not equal the sum or product if the reader replicates the calculation with the factors shown in the report (due to the rounding of figures shown, not in the analysis).

POPULATION AND HOUSING CHARACTERISTICS

Impact fees often use per capita standards and persons per housing unit or persons per household to derive proportionate share fee amounts. Housing types have varying household sizes and, consequently, a varying demand on City infrastructure and services. Thus, it is important to differentiate between housing types and size.

When persons per housing unit (PPHU) is used in the fee calculations, infrastructure standards are derived using year-round population. In contrast, when persons per household (PPHH) is used in the fee calculations, the fee methodology assumes all housing units will be occupied, thus requiring seasonal or peak population to be used when deriving infrastructure standards. From the Maine Office of Tourism, the Greater Portland and Casco Bay region saw 5.4 million visitors in 2016. As a result, it is not just permanent residents occupying housing units in Portland. In response, City infrastructure and operating service levels are sized to accommodate not just permanent residents, but seasonal residents, seasonal workers, and visitors as well. Thus, TischlerBise recommends that fees for residential development in the City of Portland be imposed according to the persons per household (PPHH).

Persons per household (PPHH) will be held constant over the projection period since the study represents a “snapshot approach” of current levels of service and costs. Based on household characteristics, TischlerBise recommends using two housing unit categories for the impact fee study: (1) Single Family and (2) Multifamily. Single family units include single family detached, single family attached, duplexes, and mobile homes. Multifamily units include structures with more than 2 units. Figure 1 shows the US Census, American Community Survey 2016 5-Year Estimates data for the City of Portland. Single family units have a household size of 2.38 persons per unit and multifamily units have a household size of 1.59 persons per unit.

Additionally, single family units have a vacancy rate of 9.8 percent and are 70 percent of the housing stock in Portland. Multifamily units have a vacancy rate of 9.4 percent and are 30 percent of the housing stock in Portland.

Figure 1. Persons per Household

Type of Structure	Persons	Households	Persons per Household	Housing Units	Persons per Housing Unit	Housing Mix	Vacancy Rate
Single Family Unit ¹	50,010	21,052	2.38	23,338	2.14	69.8%	9.8%
Multifamily Unit ²	14,542	9,149	1.59	10,098	1.44	30.2%	9.4%
Total	64,552	30,201	2.14	33,436	1.93		9.7%

Source: TischlerBise analysis; U.S. Census Bureau, 2012-2016 American Community Survey, 5-Year Estimates

[1] Includes detached, attached, duplexes, and mobile home units.

[2] Includes structures with more than 2 units.

BASE YEAR POPULATION AND HOUSING UNITS

Permanent Residents

Along with the population estimate for residents in single family and multifamily units, the American Community Survey provides population estimates for those residing in Group Quarters (i.e. student housing and military residents). Found in Figure 2, the household population and group quarters are considered the City’s permanent population and in 2016 it is estimated that the permanent population was 66,627.

Figure 2. Permanent Population, 2016

Type of Structure	Persons	%
Single Family Unit	50,010	75.1%
Multifamily Unit	14,542	21.8%
Group Quarters	2,075	3.1%
Total	66,627	100.0%

Source: U.S. Census Bureau, 2012-2016 American Community Survey, 5-Year Estimates

Furthermore, in the recently published *Portland’s Plan 2030* several population growth scenarios are played out. The comprehensive plan indicates that a medium-level growth scenario would result in a 2030 population of 71,374. As a result, for the impact fee study, by 2030 the City of Portland is forecasted to have a permanent population of 71,374. To estimate the City’s population in the interim years a straight-line approach is used. Figure 3 illustrates the growth in permanent population. In the base year, 2018, there is estimated to be 67,305 permanent residents in Portland.

Figure 3. Base Year Permanent Population

	5-Year Increments							Total Increase
	2016	2017	Base Year 2018	2019	2020	2025	2030	
Permanent Population	66,627	66,966	67,305	67,644	67,983	69,679	71,374	4,747
Percent Increase		0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	7.1%

Source: U.S. Census Bureau, 2012-2016 American Community Survey, 5-Year Estimates; City of Portland Planning Department; TischlerBise analysis

Seasonal Residents & Visitors

As mentioned, the impact fee study will be using a peak population of Portland because of the large tourism industry. It is assumed that City infrastructure and services are sized to serve a peak population not just the permanent population. In this case, two additional populations need to be calculated: seasonal and visitor. The seasonal population includes residents who have second homes in Portland and the seasonal labor influx during peak tourism months. The visitor population includes overnight and day visitors.

To calculate the seasonal population, the study assumes full occupancy of the housing units in the city. From the US Census data, in 2016, there were 2,286 vacant single family homes and 949 vacant multifamily homes. The seasonal population is calculated by multiplying the units by the corresponding the persons per household factor (PPHH). In 2016, there was a seasonal population of 6,950.

Figure 4. Seasonal Population, 2016

Type of Structure	Vacant Units	Persons per Household	Seasonal Population
Single Family Unit ¹	2,286	2.38	5,441
Multifamily Unit ²	949	1.59	1,509
Total	3,235	2.15	6,950

Source: TischlerBise analysis; U.S. Census Bureau, 2012-2016 American Community Survey, 5-Year Estimates

[1] Includes detached, attached, duplexes, and mobile home units.

[2] Includes structures with more than 2 units.

The visitor population for Portland is found by first analyzing the state and regional totals. In 2016, there were 41.2 million visitors to Maine. The majority of the visitors came in the summer, resulting in the average daily number of visitors in the summer being 185 percent of the annual average.

Figure 5. State of Maine Visitor Totals, 2016

Season	Total Visitors	Average Daily Visitors	Percent of Annual Ave.
Winter	5,615,670	46,156	41%
Summer	25,328,066	208,176	185%
Fall	10,230,660	84,088	75%
Total	41,174,396	112,807	100%

Source: Maine Office of Tourism, 2016 Calendar Year Annual Report

According to the Maine Office of Tourism (MOT), there were 5,360,000 visitors (overnight and day visitors) to the Greater Portland and Casco Bay Region in 2016. Results of the MOT’s visitor survey indicate that the Portland’s Waterfront was the top attraction for 33 percent of overnight visitors and for 30 percent of day visitors. The study will use a conservative method and use these percentages to allocate the regional visitor total to the City of Portland.

In Figure 6, the City of Portland’s daily peak visitor population is calculated. The estimated total of overnight visitors to Portland is 745,800. The estimated total of day visitors to Portland is 930,000. As a result, the total annual visitors to the City of Portland is 1,675,800, or an average of 4,591 per day. Found above, during the summer statewide, the visitor population spike to 185 percent of the annual average. This is applied to the City’s average to calculate the daily peak season visitor total. As a result, in 2016, it is estimated that the City of Portland’s daily peak season visitor population was 8,473.

Figure 6. City of Portland Peak Season Visitor Population, 2016

Overnight Visitors to Region	2,260,000
City's Proportion of Region	33%
Overnight Visitors to Portland	745,800
Day Visitors to Region	3,100,000
City's Proportion of Region	30%
Day Visitors to Portland	930,000
Total Annual Visitors to Portland	1,675,800
Average Daily Visitors	4,591
Peak Season Multiplier	185%
Daily Peak Season Visitor Total	8,473

Source: Maine Office of Tourism, 2016;
TischlerBise Analysis

The study assumes that the visitor population will have a positive relationship and follow the permanent population's growth. From 2016 to 2018 there is a 1.02 percent increase in permanent population in Portland, this is applied to the visitor population to calculate the base year total. It is assumed that during the peak seasonal period the City's seasonal population (seasonal residents and workers) occupies the vacant housing units. As a result, the seasonal population is calculated based on housing growth, described in the next section of the report. In 2018, it is estimated that the peak population for the City of Portland is 83,250.

Figure 7. Base Year Peak Population

	2016	2017	Base Year 2018
Peak Population			
Permanent	66,627	66,966	67,305
Seasonal	6,950	7,168	7,386
Visitor	8,473	8,516	8,559
Total	82,049	82,650	83,250

Source: TischleBise analysis

Base Year Housing Stock

To understand the housing growth in the City of Portland, the building permit data from the last five years is collected, Figure 8. Over the past 5 years there has been an increase of 1,435 housing units in Portland and, on average, there has been 33 single family and 254 multifamily housing units constructed annually. It is assumed this trend will continue and the averages are used to project housing development in the City of Portland.

Figure 8. Permitted Housing Units

	2013	2014	2015	2016	2017	Total	Average
Single Family	26	53	23	38	26	166	33
Multifamily	168	97	187	611	206	1,269	254
Total	194	150	210	649	232	1,435	287

Source: City of Portland Planning Department

By examining parcel data provided by the City with a GIS (Geographic Information System) software, the base year housing stock is estimated in Figure 9. In total, 56 percent of the housing in the City of Portland is single family and 44 percent multifamily. Consistent with the City’s Land Use Code, single family units include single family detached, single family attached, duplexes, and mobile homes. Multifamily units include structures with 3 or more units.

Figure 9. Base Year Housing Stock (Housing Units)

Housing Type	Base Year 2018	%
Single Family	21,047	56%
Multifamily	16,575	44%
Total	37,622	100%

Source: City of Portland GIS Data

POPULATION AND HOUSING UNIT PROJECTIONS

Illustrated in Figure 10, by using the projections from *Portland’s Plan 2030* for permanent population, a growth of 3,391 residents is projected by 2028. The seasonal population is assumed to grow with housing development. The vacancy rates found in Figure 1 are assumed to hold through the projection period and the seasonal population is found by combining the estimated vacant units with the corresponding PPHH factor. Lastly, to project the daily peak visitor population growth, the annual percent increase in permanent population is applied. Overall, there is a peak population increase of 4,279. Of the total population in 2028, 81 percent is permanent, 9 percent is seasonal, and 10 percent is visitor population.

To project the housing unit growth in Portland, the five-year annual average of building permits is used (see Figure 8). Over the ten-year projection period, the housing stock in the city is estimated to increase by 2,870 units (88 percent multifamily units).

Figure 10. City of Portland Annual Residential Development Projections

	Base Year 2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total Increase
Peak Population														
Permanent	67,305	67,644	67,983	68,322	68,661	69,001	69,340	69,679	70,018	70,357	70,696	71,035	71,374	3,391
Seasonal	7,386	7,432	7,478	7,523	7,569	7,615	7,660	7,706	7,752	7,797	7,843	7,889	7,934	457
Visitor	8,559	8,602	8,645	8,688	8,731	8,775	8,818	8,861	8,904	8,947	8,990	9,033	9,076	431
Total	83,250	83,678	84,106	84,534	84,962	85,390	85,818	86,246	86,673	87,101	87,529	87,957	88,385	4,279
Housing Unit														
Single Family	21,047	21,080	21,113	21,147	21,180	21,213	21,246	21,279	21,313	21,346	21,379	21,412	21,445	332
Multifamily	16,575	16,829	17,083	17,336	17,590	17,844	18,098	18,352	18,605	18,859	19,113	19,367	19,621	2,538
Total	37,622	37,909	38,196	38,483	38,770	39,057	39,344	39,631	39,918	40,205	40,492	40,779	41,066	2,870

Source: Portland’s Plan 2030; TischlerBise analysis

CURRENT EMPLOYMENT AND NONRESIDENTIAL FLOOR AREA

The impact fee study will include nonresidential development as well. According to the U.S. Census Bureau’s web application, OnTheMap, there were 65,203 jobs in Portland in 2015. The education, health care, and social assistance services accounted for the largest percentage of the total (26.2 percent).

Figure 11. Employment by Industry Sector, 2015

Industry Sector	Employment	%
Agriculture, forestry, fishing and hunting, and mining	18	0.0%
Utilities	395	0.6%
Construction	2,015	3.1%
Manufacturing	2,714	4.2%
Wholesale trade	2,478	3.8%
Retail trade	5,302	8.1%
Transportation and warehousing, and utilities	2,065	3.2%
Information	1,529	2.3%
Finance and insurance, and real estate and rental and leasing	8,114	12.4%
Professional, scientific, mgmt. , admin., and waste mgmt. services	11,893	18.2%
Educational services, and health care and social assistance	17,057	26.2%
Arts, entertainment, recreation, accommodation, and food services	7,354	11.3%
Other services, except public administration	2,475	3.8%
Public administration	1,794	2.8%
Total	65,203	100.0%

Source: U.S. Census Bureau, OnTheMap 2015

The fourteen industry sectors in Figure 11 have been compiled into four industries: Retail, Office, Industrial, and Institutional. The City of Portland’s employment is pretty well dispersed between the industries, with Institutional and Office accounting for the highest percentages, Figure 12.

Figure 12. Employment by Industry, 2015

Industry	Jobs	%
Retail	12,656	19%
Office	24,011	37%
Industrial	9,685	15%
Institutional	18,851	29%
Total	65,203	100%

Source: U.S. Census Bureau, OnTheMap 2015

Since the breakdown is for 2015, a projection is necessary to estimate the job totals for the base year. To estimate the current employment in the City of Portland, employment projections from Portland Area Comprehensive Transportation System (PACTS) are used. Based on employment projections at the Traffic Analysis Zone (TAZ) level, PACTS forecast an employment increase of 27.5 percent from 2014 to 2040. The annual percent increase of the PACTS projection is used to calculate the employment growth in Figure 13. The breakdown by industry in Figure 12 is then applied to total increase to calculate the growth in each industry. In the base year, it is estimated that there are 67,270 jobs in Portland.

Figure 13. Base Year Employment

	2015	2016	2017	Base Year 2018
Employment				
Retail	12,656	12,790	12,923	13,057
Office	24,011	24,265	24,518	24,772
Industrial	9,685	9,787	9,890	9,992
Institution	18,851	19,050	19,249	19,449
Total	65,203	65,892	66,581	67,270

Source: Portland Area Comprehensive Transportation System (PACTS); TischlerBise analysis

Base year nonresidential floor area for the Retail, Office, Industrial, and Institutional industry sectors are calculated with GIS parcel data provided by City staff. In Figure 14, there is a total of 35.3 million square feet of nonresidential floor area in Portland with all sectors accounting for at least 20 percent. Additionally, the figure lists the City’s land use categories used to determine the floor area of each industry.

Figure 14. Base Year Nonresidential Floor Area

Industry	Nonresidential Sq. Ft.	%	Land Use Categories
Retail	9,816,540	28%	Multiuse Commercial, Retail & Personal Services
Office	9,317,766	26%	Office & Business Services, Communications, Commercial Condos
Industrial	7,224,665	20%	Manufacturing & Constr., Multiuse Ind., Transport., Warehouse, Wholesale
Institutional	8,909,498	25%	Charitable, Government, Scientific Inst., Religious, Other Exempt by Law
Total	35,268,468	100%	

Source: City of Portland GIS data

Furthermore, an analysis of inflow/outflow of employment is available through OnTheMap. Shown in Figure 15, 72.5 percent of the jobs in the City of Portland are filled by those living outside of the city.

Figure 15. Inflow/Outflow of Employment

	Jobs (2015)	%
Residents Working in Portland	17,958	27.5%
Non-Residents Working in Portland	47,245	72.5%
Total Employment in Portland	65,203	100.0%

Source: U.S. Census Bureau, OnTheMap, 2015

NONRESIDENTIAL FLOOR AREA AND EMPLOYMENT PROJECTIONS

To project nonresidential floor area, square feet per employee factors from the Institute for Transportation Engineer’s Trip Generation (2017) are used. To estimate the factor for Retail the Shopping Center factor is used, for Office the General Office factor is used, for Industrial the Manufacturing factor is used, and for Institutional the Hospital factor is used (Figure 16).

Figure 16. Institute of Transportation Engineers Nonresidential Land Use Factors

ITE Code	Land Use	Demand Unit	Wkdy Trip Ends Per Dmd Unit	Wkdy Trip Ends Per Employee	Emp Per Dmd Unit	Sq Ft Per Emp
110	Light Industrial	1,000 Sq Ft	4.96	3.05	1.63	615
130	Industrial Park	1,000 Sq Ft	3.37	2.91	1.16	864
140	Manufacturing	1,000 Sq Ft	3.93	2.47	1.59	628
150	Warehousing	1,000 Sq Ft	1.74	5.05	0.34	2,902
254	Assisted Living	bed	2.60	4.24	0.61	na
320	Motel	room	3.35	25.17	0.13	na
520	Elementary School	1,000 Sq Ft	19.52	21.00	0.93	1,076
530	High School	1,000 Sq Ft	14.07	22.25	0.63	1,581
540	Community College	student	1.15	14.61	0.08	na
550	University/College	student	1.56	8.89	0.18	na
565	Day Care	student	4.09	21.38	0.19	na
610	Hospital	1,000 Sq Ft	10.72	3.79	2.83	354
620	Nursing Home	1,000 Sq Ft	6.64	2.91	2.28	438
710	General Office (avg size)	1,000 Sq Ft	9.74	3.28	2.97	337
760	Research & Dev Center	1,000 Sq Ft	11.26	3.29	3.42	292
770	Business Park	1,000 Sq Ft	12.44	4.04	3.08	325
820	Shopping Center (avg size)	1,000 Sq Ft	37.75	16.11	2.34	427

Source: Trip Generation, Institute of Transportation Engineers, 10th Edition (2017)

Found in Figure 17, job growth over the next ten years is projected to follow the PACTS’ annual percentage increase forecast. In total, 6,890 new jobs are projected. Each industry sector is projected to have an increase over 1,000 jobs with Office topping the four with an increase of 2,537 jobs. To project floor area, the square foot per job factors are applied to the corresponding job totals. Over the next ten years, it is projected that there will be a growth of 2.8 million nonresidential square feet in the City of Portland. The Office and Institutional industries are projected to have the largest increases in floor area, both over 700,000 square feet.

Figure 17. Employment and Nonresidential Floor Area Projections

Industry	Base Year												Total Increase
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028		
Employment													
Retail	13,057	13,191	13,325	13,458	13,592	13,726	13,860	13,993	14,127	14,261	14,395		1,337
Office	24,772	25,026	25,280	25,533	25,787	26,041	26,295	26,548	26,802	27,056	27,309		2,537
Industrial	9,992	10,094	10,197	10,299	10,401	10,504	10,606	10,708	10,811	10,913	11,015		1,023
Institution	19,449	19,648	19,847	20,046	20,245	20,445	20,644	20,843	21,042	21,241	21,441		1,992
Total	67,270	67,959	68,648	69,337	70,026	70,715	71,404	72,093	72,782	73,471	74,160		6,890
Nonresidential Floor Area (1,000 sq. ft.)													
Retail	5,572	5,629	5,686	5,743	5,801	5,858	5,915	5,972	6,029	6,086	6,143		571
Office	8,342	8,428	8,513	8,599	8,684	8,769	8,855	8,940	9,026	9,111	9,197		854
Industrial	6,280	6,344	6,409	6,473	6,537	6,602	6,666	6,730	6,795	6,859	6,923		643
Institution	6,876	6,946	7,017	7,087	7,158	7,228	7,299	7,369	7,439	7,510	7,580		704
Total	27,070	27,348	27,625	27,902	28,179	28,457	28,734	29,011	29,288	29,566	29,843		2,773

Source: Portland Area Comprehensive Transportation System (PACTS); City of Portland; TischlerBise analysis

VEHICLE TRIP GENERATION

Residential Trips

A customized trip rate is calculated for the single family and multifamily units in the City of Portland. In Figure 18, the most recent data from the American Community Survey is inputted into equations provided by the Institute of Transportation Engineers (ITE) to calculate the trip ends per housing unit factor. A single family unit is estimated to take 7.6 trip ends on an average weekday and a multifamily unit is estimated to take 3.6 trip ends on an average weekday.

Figure 18. Customized Residential Trip End Rates

	Vehicles Available (1)	Households (2)			Vehicles per Household by Tenure
		Single Family	Multifamily Units	Total HHs	
Owner-occupied	23,000	12,312	680	12,992	1.77
Renter-occupied	17,976	8,740	8,469	17,209	1.04
TOTAL	40,976	21,052	9,149	30,201	1.36
Housing Units (6) =>		23,338	10,098	33,436	
Persons per Housing Unit =>		2.14	1.44	1.93	

	Persons (3)	Trip Ends (4)	Vehicles by Type of Housing	Trip Ends (5)	Average Trip Ends	Trip Ends per Housing Unit
Single Family	50,010	154,055	30,926	202,330	178,192	7.60
Multifamily	14,542	33,220	10,050	39,892	36,556	3.60
TOTAL	64,552	187,275	40,976	242,222	214,748	6.40

- (1) Vehicles available by tenure from Table B25046, 2012-2016 American Community Survey 5-Year Estimates.
- (2) Households by tenure and units in structure from Table B25032, American Community Survey, 2012-2016.
- (3) Persons by units in structure from Table B25033, American Community Survey, 2012-2016.
- (4) Vehicle trips ends based on persons using formulas from [Trip Generation](#) (ITE 2017). For single family housing (ITE 210), the fitted curve equation is $EXP(0.89 * LN(\text{persons}) + 1.72)$. To approximate the average population of the ITE studies, persons were divided by 286 and the equation result multiplied by 286. For multifamily housing (ITE 221), the fitted curve equation is $(2.29 * \text{persons}) - 81.02$.
- (5) Vehicle trip ends based on vehicles available using formulas from [Trip Generation](#) (ITE 2017). For single family housing (ITE 210), the fitted curve equation is $EXP(0.99 * LN(\text{vehicles}) + 1.93)$. To approximate the average number of vehicles in the ITE studies, vehicles available were divided by 485 and the equation result multiplied by 485. For multifamily housing (ITE 220), the fitted curve equation is $(3.94 * \text{vehicles}) + 293.58$ (ITE 2012).
- (6) Housing units from Table B25024, American Community Survey, 2012-2016.

Residential Vehicle Trips Adjustment Factors

A vehicle trip end is the out-bound or in-bound leg of a vehicle trip. As a result, a standard 50 percent adjustment is applied to trip ends to calculate a vehicle trip. However, other adjustments are necessary as well.

Figure 19 calculates the adjustment for Portland residents that commute outside of the city to work. According to the National Household Travel Survey (2009), home-based work trips are typically 31 percent of “production” trips, out-bound trips (which are 50 percent of all trip ends). Also, utilizing the most recent

data from the Census Bureau's web application "OnTheMap", 49 percent of the City of Portland's workers travel outside the City for work. In combination, these factors account for 8 percent of additional production trips ($0.31 \times 0.50 \times 0.49 = 0.08$). The total adjustment factor for residential housing units includes attraction trips (50 percent of trip ends) plus the journey-to-work commuting adjustment (8 percent of production trips) for a total of 58 percent.

Figure 19. Trip Adjustment Factor for Commuters out of the City

Employed Portland Residents (2015)	35,405
Portland Residents Working in the City (2015)	17,958
Portland Residents Commuting Outside of the City for Work	17,447
Percent Commuting out of the City	49%
Additional Production Trips	8%
Residential Trip Adjustment Factor	58%

Source: U.S. Census, OnTheMap Application, 2015

Additionally, Portland has viable alternatives to a vehicle for commuting, so a factor needs to be included for residents that choose not to drive to work. According to Fort Hill Infrastructure's *City of Portland Parking Study for Downtown, The Old Port, and The Eastern Waterfront*, 16.9 percent of commuters throughout the city chose either to use transit, bicycle, or walk to work (Figure 20). The study found an even higher percentage of alternative commuting within the downtown. When calculating vehicle trips, the factor of 16.9 percent is applied to the trip end factors for housing units.

Figure 20. Alternative Mode of Commuting

	Transit	Bicycling	Walking	Total
Alternative Commuting	3.1%	1.6%	12.2%	16.9%

Source: *City of Portland Parking Study*, Fort Hill Infrastructure, 2017

Nonresidential Trips

Vehicle trip generation for nonresidential land uses are calculated by using ITE's average daily trip end rates and adjustment factors found in their recently published 10th edition of *Trip Generation*. To estimate the trip generation in Portland, the weekday trip end per 1,000 square feet factors highlighted in Figure 21 are used. To estimate the trip generation for Retail the Shopping Center factor is used, for Office the General Office factor is used, for Industrial the Manufacturing factor is used, and for Institutional the Hospital factor is used.

Figure 21. Institute of Transportation Engineers Nonresidential Land Use Factors

ITE Code	Land Use	Demand Unit	Wkdy Trip Ends Per Dmd Unit	Wkdy Trip Ends Per Employee	Emp Per Dmd Unit	Sq Ft Per Emp
110	Light Industrial	1,000 Sq Ft	4.96	3.05	1.63	615
130	Industrial Park	1,000 Sq Ft	3.37	2.91	1.16	864
140	Manufacturing	1,000 Sq Ft	3.93	2.47	1.59	628
150	Warehousing	1,000 Sq Ft	1.74	5.05	0.34	2,902
254	Assisted Living	bed	2.60	4.24	0.61	na
320	Motel	room	3.35	25.17	0.13	na
520	Elementary School	1,000 Sq Ft	19.52	21.00	0.93	1,076
530	High School	1,000 Sq Ft	14.07	22.25	0.63	1,581
540	Community College	student	1.15	14.61	0.08	na
550	University/College	student	1.56	8.89	0.18	na
565	Day Care	student	4.09	21.38	0.19	na
610	Hospital	1,000 Sq Ft	10.72	3.79	2.83	354
620	Nursing Home	1,000 Sq Ft	6.64	2.91	2.28	438
710	General Office (avg size)	1,000 Sq Ft	9.74	3.28	2.97	337
760	Research & Dev Center	1,000 Sq Ft	11.26	3.29	3.42	292
770	Business Park	1,000 Sq Ft	12.44	4.04	3.08	325
820	Shopping Center (avg size)	1,000 Sq Ft	37.75	16.11	2.34	427

Source: Trip Generation, Institute of Transportation Engineers, 10th Edition (2017)

To calculate vehicle trips, the standard 50 percent adjustment is applied to Office, Industrial, and Institutional. A lower vehicle trip adjustment factor is used for Retail because this type of development attracts vehicles as they pass-by on arterial and collector roads. For example, when someone stops at a convenience store on their way home from work, the convenience store is not their primary destination. In Figure 22, the Institute for Transportation Engineers’ land use code, daily vehicle trip ends, trip adjustment factor, and alternative commuting factor is listed for each land use.

Figure 22. Daily Vehicle Trip Factors

Land Use	ITE Codes	Vehicle Trip Ends	Adjustment Factor	Alternative Commuting
Residential (per housing unit)				
Single Family	210	7.60	58%	16.9%
Multifamily	220	3.60	58%	16.9%
Nonresidential (per 1,000 square feet)				
Retail	820	37.75	38%	-
Office	710	9.74	50%	-
Industrial	140	3.93	50%	-
Institutional	610	10.72	50%	-

Source: Trip Generation, Institute of Transportation Engineers, 10th Edition (2017); City of Portland Parking Study, Fort Hill Infrastructure

VEHICLE TRIP PROJECTION

The base year vehicle trip totals and vehicle trip projections are calculated by combining the vehicle trip end factors, the trip adjustment factor, and the residential and nonresidential assumptions for housing stock and floor area. Found in Figure 23, in the base year, residential land uses generate 105,856 vehicle trips (38 percent) and nonresidential land uses generate 169,755 vehicle trips (62 percent) in the City of Portland. Through 2028, there will be an increase of 23,007 daily vehicle trips in Portland with Retail, Multifamily, and Office development being the three largest contributors to the increase.

Figure 23. Total Daily Vehicle Trip Projections

	Base Year 2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Total Increase
Residential Trips												
Single Family	77,096	77,218	77,339	77,461	77,583	77,704	77,826	77,947	78,069	78,191	78,312	1,216
Multifamily	28,760	29,200	29,640	30,081	30,521	30,962	31,402	31,842	32,283	32,723	33,164	4,404
Subtotal	105,856	106,418	106,980	107,542	108,104	108,666	109,228	109,790	110,352	110,914	111,476	5,620
Nonresidential Trips												
Retail	79,934	80,752	81,571	82,390	83,209	84,027	84,846	85,665	86,483	87,302	88,121	8,187
Office	40,626	41,043	41,459	41,875	42,291	42,707	43,123	43,539	43,955	44,371	44,788	4,161
Industrial	12,340	12,467	12,593	12,719	12,846	12,972	13,099	13,225	13,351	13,478	13,604	1,264
Institutional	36,855	37,233	37,610	37,988	38,365	38,743	39,120	39,498	39,875	40,252	40,630	3,775
Subtotal	169,755	171,494	173,233	174,971	176,710	178,449	180,188	181,926	183,665	185,404	187,142	17,387
Grand Total Trips	275,611	277,912	280,213	282,513	284,814	287,115	289,415	291,716	294,017	296,318	298,618	23,007

Source: Trip Generation, Institute of Transportation Engineers, 10th Edition (2017); TischlerBise analysis

BASE YEAR WASTEWATER USAGE

Water and sewer account data has been provided by the Portland Water District and the City’s Public Works Department. With the database, residential, commercial, industrial, and institutional wastewater usage is calculated. Additionally, with account data, the wastewater usage of an Equivalent Residential Unit (ERU) is calculated as well. The ERU is the estimate of the daily average wastewater usage from a household with a water meter that is 5/8 inches. In the impact fee calculate, a capacity ratio factor is applied when calculating the wastewater usage and resulting impact fee for developments with larger meters.

Base Year Estimates

Shown in Figure 24, on average there is a total of 5.7 million gallons per day of wastewater flowing through the City’s sewer system from these four development types. The majority of the wastewater flows from residential development, but commercial development creates a significant demand as well.

Figure 24. City of Portland Daily Wastewater Usage, 2018

Development Type	Base Year (gals/day)	%
Residential	2,933,364	52%
Commercial	1,998,656	35%
Industrial	542,244	10%
Institutional	187,205	3%
Total	5,661,470	100%

Source: City of Portland Public Works Department

Equivalent Residential Unit

The wastewater component of the impact fee study will use the wastewater flow calculated for residential units that have a water meter of 5/8 inches to represent the Equivalent Residential Unit (ERU). To calculate the ERU, the wastewater account database is filtered by active residential accounts that use the City’s sewer system. Additionally, the database is further limited by only year-round accounts. These accounts are occupied households that reside in Portland permanently. Year-round accounts are approximated by accounts that have activity every month. Illustrated in Figure 25, there is an average of 61 hundred cubic feet (HCF) of wastewater per year from a year-round active residential account flowing into the City’s sewer system. That equates to an average of 126 gallons per day, rounded.

Figure 25. Equivalent Residential Unit

Meter Size (inches)	Total Water (HCF)	Active Accounts	Annual Average per Account (HCF)	Annual Average (gallons)	Daily Average (gallons)
5/8	866,230	14,134	61	45,846	126

Source: City of Portland Public Works Department; TischlerBise analysis

Note: Provided data measured wastewater totals in hundred cubic feet (HCF), equal to 748.05 gallons

WASTEWATER PROJECTIONS

To project wastewater flows, it is assumed that the average consumptions will stay consistent. As a result, the wastewater from residential accounts will increase at the same rate as the projected housing units and wastewater from nonresidential accounts will increase at the same rate as the projected floor area for the respective industry. Over the next ten years, a total increase of 500,000 gallons per day is projected. Residential and Commercial land uses accounting for the majority of the increase.

Figure 26. Wastewater Projections, Million Gallons Per Day (MGD)

Development Type	Base Year											Total
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Increase
Residential	2.93	2.96	2.98	3.00	3.02	3.05	3.07	3.09	3.11	3.13	3.16	0.22
Commercial	2.00	2.02	2.04	2.06	2.08	2.10	2.12	2.14	2.16	2.18	2.20	0.20
Industrial	0.54	0.55	0.55	0.56	0.56	0.57	0.58	0.58	0.59	0.59	0.60	0.06
Institutional	0.19	0.19	0.19	0.19	0.19	0.20	0.20	0.20	0.20	0.20	0.21	0.02
Total	5.66	5.71	5.76	5.81	5.86	5.91	5.96	6.01	6.06	6.11	6.16	0.50

Source: City of Portland Public Works Department; TischlerBise analysis



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell

DATE: May 30, 2018

SUBJECT: **Authorizing Discontinuance of Vehicular Easement and Retention of Pedestrian and Utility Easement along Lancaster Street between Parris Street and Hanover Street on the 82 Hanover Street Property and Accept a New Pedestrian Easement on 44 Hanover Street**

I. SUMMARY

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

II. AGENDA DESCRIPTION

On October 2, 2017, the City Council approved the Purchase and Sale Agreement with Tom Watson Watson & Co., LLC (“Purchaser”) for its purchase of approximately 1.25 acres of land located at 82 Hanover Street for the purchase price of \$2,350,000. See attached Purchase and Sale Agreement.

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

Hanover Street and 5 feet on 44 Hanover Street. See attached drawing. The 30-foot wide utility easement will be retained and will restrict development activity within the utility corridor.

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

III. BACKGROUND

It has been the long-term goal to sell this and other Public Works Bayside properties per the Year 2000 Bayside Vision. To support these property sales, the City Council approved the acquisition of property along Canco Road which has been and continues to be redeveloped to support the relocation of Public Works operations from Bayside and other City Departments.

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

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result would be the discontinuance of vehicular access along this portion of the former Lancaster Street in order to allow for the development of the property as proposed by the developer and acceptance by the City of an easement that will retain pedestrian rights of access. The discontinuance and new pedestrian easement will help facilitate the sale of this property to support mixed use development in Bayside, while continuing to provide a pedestrian easement in this area. It also supports the Council's long-term goal to sell Public Works Bayside properties to support Public Works relocation out of Bayside.

V. FINANCIAL IMPACT

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

VI. STAFF ANALYSIS AND BACKGROUND

Staff supports amending the right-of-way as the amendment would continue to provide pedestrian access and utility access.

VII. RECOMMENDATION

Staff recommends that, pursuant to 23 M.R.S.A. 3026-A, the City Council discontinue the public easement and accept the new pedestrian easement using the following process:

EDC Process

The EDC hold a public hearing on this matter at their June 5, 2018 meeting and vote to provide a recommendation to the City Council.

City Council Process

Discuss the proposed easement discontinuance (associated with 82 Hanover Street) and new pedestrian easement (associated with 44 Hanover Street) at their public meeting on June 18, 2018 and vote to order the discontinuance and acceptance of a public easement as outlined above. Because the discontinuance is only of the public easement, there are no current abutters other than the City, and this is being done at the request of the purchaser, no damages are needed.

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

Thereafter, on July 16, 2018 (which is more than the required 10 business days from the vote on the 18th), the Council would hold a public hearing, with opportunity for public comment, on the Order of Discontinuance. If, on June 18th, the purchaser has provided an easement to be in held in escrow pending the sale of the property as recommended by the Planning Board, staff recommends that the Council approve the Order of discontinuance after the July 16, 2018 hearing. If the Council approves the Order, the Clerk will record a certificate in the Cumberland County Registry of Deeds. The discontinuance will become effective on the day the certificate is recorded

VIII. LIST ATTACHMENTS

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

PURCHASE AND SALE AGREEMENT

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

RECITALS

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

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

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

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

2. **CONSIDERATION.** The purchase price for the Premises shall be Two Million Three Hundred Fifty Thousand (\$2,350,000) (the “Purchase Price”), subject to the following cost adjustments and conditions:
 - a. Buyer shall deposit the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the “Deposit”) within 3 business days after the Effective Date of this Agreement that the parties agree will be held in escrow in a non-interest bearing account with CBRE | The Boulos Company; the Deposit shall be fully refundable until the later of the expiration of the Due Diligence Period or the Financing Period, as both are described herein; after the expiration of both such Periods, the Deposit shall be non-refundable except as expressly set forth herein, including, without limitation in paragraphs 3 and 10; and

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

3. TITLE AND DUE DILIGENCE.

- a. Due Diligence Period. Subject to extension as set forth in Paragraph 3(b) and (d), Buyer will have from the Effective Date of this Agreement until 4:00 PM Eastern Standard Time on the day that is sixty (60) days after the Effective Date of this Agreement (the “Due Diligence Period”) to complete any survey, environmental review and title examinations, and to undertake such other investigations, testing or inspections as Buyer shall deem appropriate.
- b. Property Description. The property description contained in the deed will be a survey description based upon a Boundary Survey performed by a Maine Licensed Surveyor to be obtained by the City (the “Survey”) which will more specifically describe the property shown on Exhibit A hereto (the “Premises Description”) in form reasonably acceptable to the City and Buyer. The Premises Description will be distributed to the parties hereto at least thirty (30) days prior to expiration of the Due Diligence Period. If the Premises Description is not received by City and Buyer at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period shall be extended to a date thirty (30) days after it is received. The parties will agree on the final Premises Description prior to closing. If the parties cannot agree upon the final Premises Description prior to closing, then Buyer shall have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement) or (2) waive the approval provision and close.
- c. Financing Contingency. Buyer shall have from the Effective Date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is sixty (60) days after the Effective Date of this Agreement (the “Financing Period”) to obtain a commitment for commercially reasonable financing acceptable to Buyer, provided, however, if the Due Diligence Period shall be extended, then the Financing Period shall be extended to expire on the same date as the expiration of the Due Diligence Period. Buyer shall take timely and commercially reasonable steps to secure such financing. If Buyer does not obtain a financing commitment acceptable to Buyer within the Financing Period, Buyer may terminate this Agreement by notice in writing to City, or may elect to close under the Agreement despite the lack of such commitment. If Buyer so exercises its right to terminate this Agreement, then the City shall refund to Buyer the Deposit, if previously paid, without interest, within ten (10) days after receipt of Buyer's termination notice, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement. Any termination notice sent by Buyer with respect to this Agreement may merely state that Buyer elects to terminate this Agreement, shall have no formal requirements, and shall be immediately effective.

- d. Title, Survey and Environmental Objections. In addition to the Survey described above, the City agrees it has caused a Phase II Environmental study of the Premises to be performed. Buyer will have until the end of the Due Diligence Period to deliver to City any written objections to title, environmental, or survey matters that Buyer determines materially affect insurability of title at standard rates, or the use of the Premises, the value of the Premises, the cost of development of or cost or feasibility of construction on the Premises. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing. If the Survey and any environmental study (including, without limitation any Phase II Environmental study) are not completed and distributed to the parties at least thirty (30) days prior to the expiration of the Due Diligence Period, the Due Diligence Period will be extended to a date thirty (30) days after the date upon which the later of the Survey or any environmental study to be completed and received are completed and are received by Buyer and City.
- e. Option to Cure. In the event of a title, Survey or environmental objection by Buyer, City will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the City elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the City does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement and obtain a refund of the Deposit (after which neither party will have any further obligation or liability to the other under this Agreement), (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).
- f. Deed. City shall convey the Premises to Buyer at the closing in fee simple by a municipal quitclaim deed without covenant. Title shall be good and insurable title at standard rates, free and clear of all encroachments, liens and encumbrances except (i) easements consented to by Buyer; (ii) easements for utilities servicing the property, (iii) City ordinances, and (iv) real estate taxes not yet due and payable. Buyer further acknowledges that the deed shall contain a restriction stating that in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City in lieu of taxes in the amount of the lesser of (a) the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable, or (b) such other target percentage as may be approved as part of a city-wide PILOT policy that may be in effect at the time taxes are due on such property. Such restriction shall also confirm that Buyer and its successors and assigns shall possess and be vested with all rights and privileges as to abatement

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

4. INSPECTIONS.

- a. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The City acknowledges that such Inspections may include the digging of test pits, which the City hereby approves.
- b. Buyer agrees to defend, indemnify and hold harmless the City against any mechanics liens that may arise from the activities of Buyer and its employees, consultants, contractors and agents on the Premises, except those arising from labor or materials furnished at the City's request.
- c. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense, and Buyer hereby releases the City from, and agrees to indemnify, defend, and hold the City harmless against, any and all losses, costs, claims, expenses and liabilities (including without limitation reasonable attorney fees and costs) (collectively, "Damages") suffered by the City on account of any injury to person or damage to property arising out of the exercise by Buyer of its rights hereunder, except to the extent that such Damages result from the act or omission of the City.
- d. Buyer shall cause any contractors, consultants or any other party conducting the Inspections to procure automobile insurance, if applicable, and general public liability insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000.00) per occurrence for bodily injury, death and property damage, listing the City as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law; the forms of all such insurance to be subject to City's Corporation Counsel's reasonable satisfaction.
- e. In the event that Buyer does not purchase the Premises, Buyer agrees to either return the Premises as nearly as reasonably possible to its original condition after conducting the Inspections, or, at the City's option, reimburse the City for any material physical damage caused to the Premises in connection with the Inspections; provided, however, the City hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, nor any studies, tests (including test borings or pits), exams, and assessments, and that Buyer shall have no obligation to clean-up, remove or

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

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

5. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Buyer shall be liable for all real estate taxes beginning as of the start of fiscal year following the closing and continuing thereafter. Because the Premises is currently owned by the City of Portland, which is exempt from real estate taxes, no taxes were assessed or will be due for any portion of the current fiscal year, and no taxes will be prorated at the closing. Any utilities for the Property shall be prorated as of the closing. The Buyer's one half share of Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. City is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to Buyer's financing or closing shall be paid for by Buyer.
6. **DEFAULT AND REMEDIES.** In the event that Buyer defaults hereunder for a reason other than the default of the City, City shall retain the deposit as its sole remedy. In the event City defaults under this Agreement, and if Buyer is not then in default hereunder, Buyer shall have the right to pursue specific performance and the City agrees it shall not invoke any sovereign immunity defense nor any defense based upon its status as a City, municipality, body politic or the like, but Buyer at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.
7. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire, eminent domain, condemnation, or otherwise, until transfer of title hereunder, is assumed by the City. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event City is not able to deliver the Premises as stated, Buyer may terminate this Agreement and receive a refund of the Deposit without interest, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement, or Buyer may elect to close hereunder and receive an assignment of any applicable insurance proceeds payable to the City relating to such loss or damage.
8. **PROPERTY SOLD "AS IS, WHERE IS."** Buyer acknowledges that Buyer will have an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." City, and its agents, make

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

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

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

- a. The City shall obtain in form reasonably acceptable to Buyer the removal of the restrictions limiting development of or use of the Premises or otherwise burdening the Premises (hereinafter the "Deed Restrictions") stated or described in the deed to the City from the State of Maine dated September 26, 2005 and recorded in the Cumberland County Registry of Deeds in Book 23202, Page 38.
- b. The City shall obtain Subdivision approval by the City of Portland Planning Board, in order to obtain approval for the creation of the parcel which constitutes the Premises, unless the City as Seller and Buyer agree, such Subdivision approval is not required (hereinafter the "Subdivision Approval").

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

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

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

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

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

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

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

- b. Buyer agrees to commence development of the residential project generally depicted on the plans that are attached hereto as Exhibit B and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on July 19, 2017, and which shall specifically include at least twenty-three (23) new dwelling units at Buyer's property at 104 Grant Street (The "Residential Project"), within twelve (12) months after closing; provided, however, that Buyer shall be entitled to modify the Residential Project by increasing the number of residential units, modifying the size and layout of such units, or minor, non-substantive changes. Buyer shall also be entitled to modify the Residential Project in a manner deemed reasonably necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval; provided, however, that such modifications shall not reduce the number of new dwelling units below 23 unless the City's land use ordinance only permits a smaller number without material modifications to the Residential Project as proposed, in which case the Residential Project shall include the maximum number of dwelling units allowed at 104 Grant Street without material modifications to the Residential Project as proposed.
- c. Buyer's commencement of the Residential Project development shall be effected by Buyer or its successors, assigns, or transferees submitting a site plan review application (an "Application") for the Residential Project within 12 months after the Closing under this Agreement.
- d. Buyer agrees to commence development of a commercial project at the Premises in substantially the form depicted on the plans that are attached hereto as Exhibit C and incorporated herein by reference, and which project was presented to the City's Economic Development Committee on July 19, 2017 (the "Commercial Project"), within twelve (12) months after closing. the Commercial Project shall be deemed to be "substantially in the form depicted on the plan attached as Exhibit C" if it proposes to include (or is constructed to include) a) multiple commercial tenant(s) which may be of varied types including retailers and others, b) rooftop decks, and c) if reasonably feasible within the existing space available, open spaces/common areas available for public use. The Commercial Project may also be modified in a manner deemed necessary by Buyer to obtain City Planning board, City Council or any other municipal or other necessary approval and the Commercial Project, if otherwise "substantially in the form depicted on the plan attached as Exhibit C" shall, notwithstanding any such modifications, continue to be so considered.
- e. Buyer's commencement of the Commercial Project shall be effected by Buyer or its successors, assigns, or transferees submitting an Application for the Commercial Project within 12 months after the Closing under this Agreement.
- f. If Buyer does not submit Applications for the Commercial Project and the Residential Project (including any modifications as described above) within one (1) year of Closing under this Agreement, then \$10,000.00 shall be released

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

- g. Additionally, Buyer shall commence construction of the Residential Project and the Commercial Project by the later of the date that is thirty-six (36) months after Closing under this Agreement or one hundred eighty (180) days after final approval of the Projects (including, without limitation, final decisions in all applicable municipal or judicial proceedings) and the expiration of all applicable appeal periods (the "Construction Start Date"). Buyer agrees to diligently pursue all approvals for both Projects. If Buyer fails to commence construction of the Residential Project and the Commercial Project by the later of the Construction Start Date, then \$10,000.00 shall be released from escrow and to the City's Housing Trust Fund, and until construction on both Projects is commenced, an additional \$10,000.00 shall be released from escrow to the City's Housing Trust Fund each ninety (90) days thereafter. Within thirty (30) days after the commencement of construction of both Projects, the remaining balance of the Escrow Account shall be released to Buyer. If no Closing takes place under this Agreement, the Buyer shall not be required to fund the Escrow Account nor make any payment. Notwithstanding anything to the contrary above, in the event that Buyer fails to commence construction of both Projects within 5 years from the Closing Date, the entire remaining balance of the Escrow Account shall be released to the City's Housing Trust Fund.
- h. City hereby agrees that despite the references in this Agreement to Buyer as the developer with respect to the Residential Project and the Commercial Project, that the two projects will be undertaken by two different Limited Liability Companies ("LLCs") to be formed or corporations to be formed which will be assignees of Buyer, and the City hereby consents to the same and to Buyer's assignment of its rights and obligations under this Agreement to any such LLC's or corporations, provided that Thomas Watson will be a manager or co-manager of any such LLCs and President or Vice President of any such corporations.
- i. The provisions of this section shall survive closing.

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

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

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

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

- 16. BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
- 17. TIME.** The City and Buyer each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
- 18. GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.
- 19. NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Hand delivery to the City Manager's office shall be effective as personal delivery to the City Manager on the date of delivery. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

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

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

FOR Buyer: Mr. Thomas Watson
Tom Watson & Co., LLC
104 Grant Street
Portland, ME 04101

With a copy to: William H. Leete, Jr., Esq.
Leete & Lemieux, P.A.
511 Congress Street, Suite 502
Portland, ME 04101

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

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

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

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

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

CITY OF PORTLAND


WITNESS


Jon P. Jennings
Its City Manager

TOM WATSON & CO., LLC


WITNESS


Printed Name: Thomas E. Watson
Its Manager

Approved as to Form:


Corporation Counsel's Office

Parcel Map



1 2 3 4 5 6

55 Portland Street

44 Hanover Street

56 Parris Street

82 Hanover Street

65 Hanover Street

178 Kennebec Street

PARCEL 5

PARCEL 2

PARCEL 3

PARCEL 4

PARCEL 1

PARCEL 6

EXHIBIT A

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

104 Grant St- Current Use
PORTLAND, MAINE



BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

JUNE 01, 2017



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

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

JUNE 01, 2017



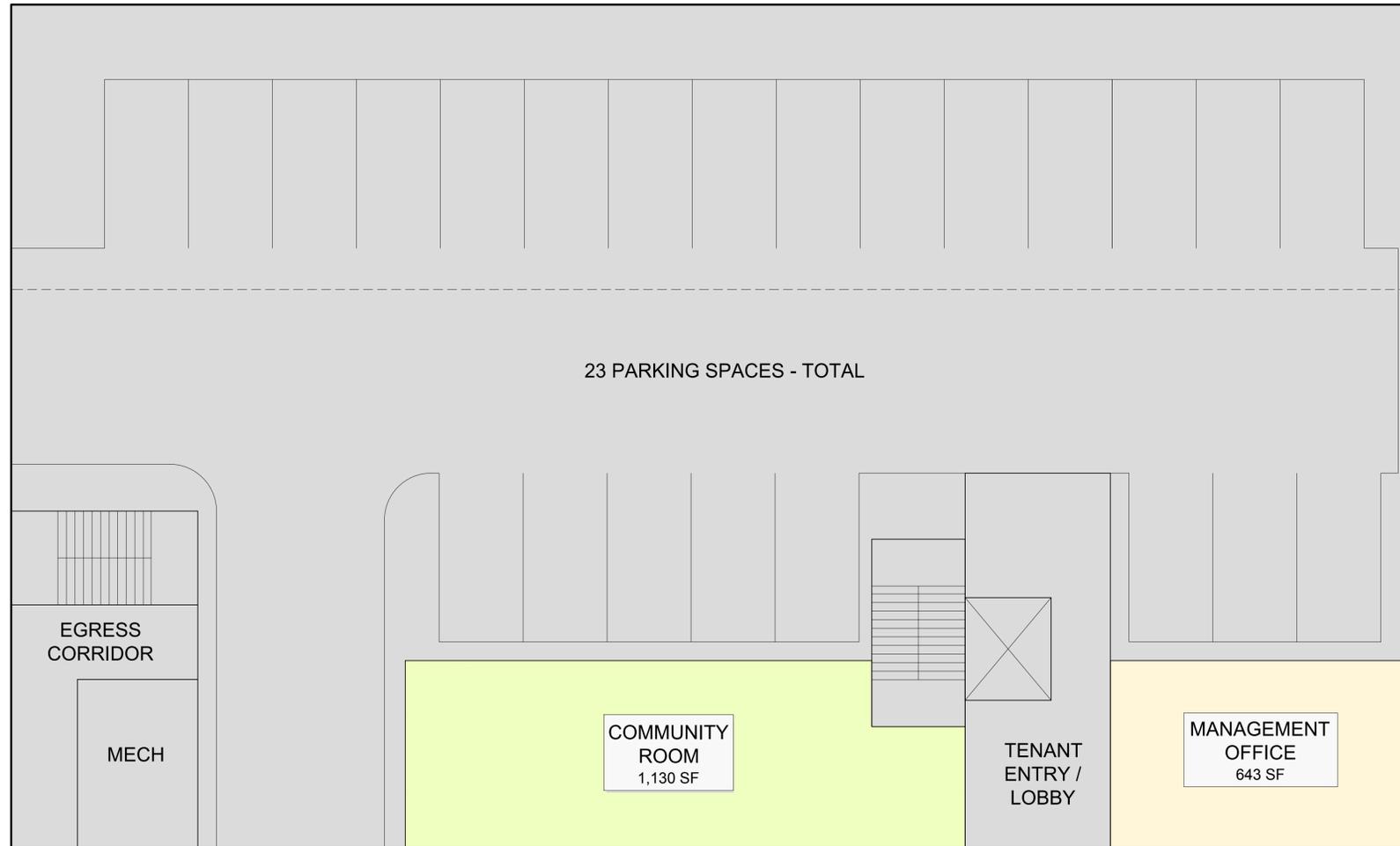
1 104 GRANT STREET - SOUTH ELEVATION
N.T.S.

BAYSIDE RFP - 104 GRANT STREET

PORTLAND, MAINE

1st Floor

JUNE 01, 2017



23 PARKING SPACES - TOTAL

EGRESS
CORRIDOR

MECH

COMMUNITY
ROOM
1,130 SF

TENANT
ENTRY /
LOBBY

MANAGEMENT
OFFICE
643 SF

GRANT STREET



0 4' 8' 16' 32'

104 GRANT STREET BUILDING AREA	
FIRST FLOOR AREA (13,500 SF)	
COMMUNITY ROOM	1,130 SF
MANAGEMENT OFFICE	643 SF
SECOND FLOOR AREA (8,775 SF)	
UNIT - 1	1,228 SF
UNIT - 2	1,030 SF
UNIT - 3	815 SF
UNIT - 4	711 SF
UNIT - 5	958 SF
UNIT - 6	934 SF
UNIT - 7	990 SF
UNIT - 8	1,024 SF
SECOND FLOOR AREA (8,775 SF)	
UNIT - 9	1,228 SF
UNIT - 10	1,030 SF
UNIT - 11	815 SF
UNIT - 12	711 SF
UNIT - 13	958 SF
UNIT - 14	934 SF
UNIT - 15	990 SF
UNIT - 16	1,024 SF
FOURTH FLOOR AREA (8,775 SF)	
UNIT - 17	1,228 SF
UNIT - 18	1,030 SF
UNIT - 19	815 SF
UNIT - 20	1,645 SF
UNIT - 21	958 SF
UNIT - 22	1,024 SF
UNIT - 23	990 SF
BUILDING TOTAL =	40,320 SF
NOTE: ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS	

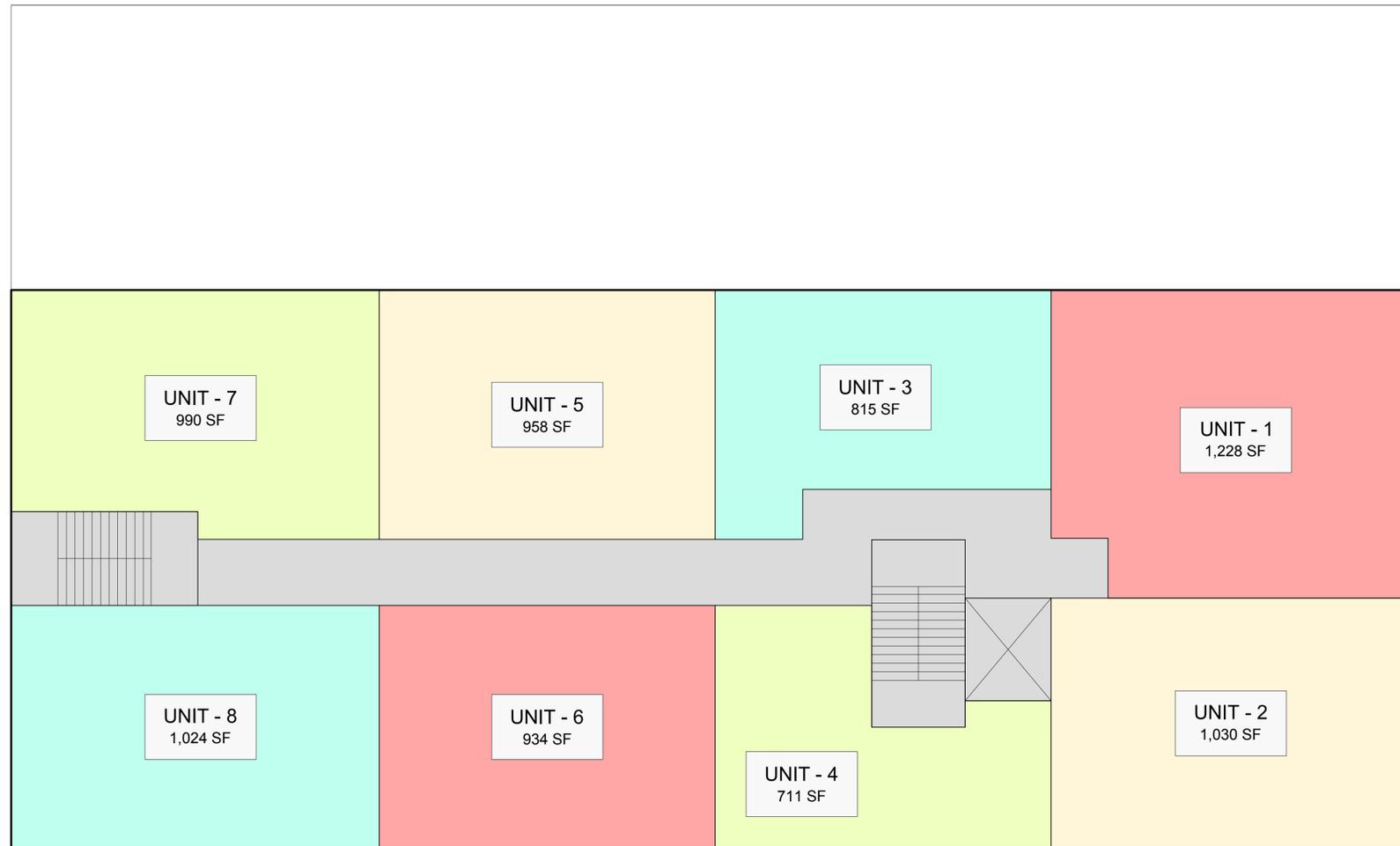
1 104 GRANT STREET - FIRST FLOOR PLAN
1/8" = 1'-0"

BAYSIDE RFP - 104 GRANT STREET

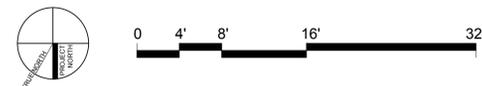
PORTLAND, MAINE

2nd Floor

JUNE 01, 2017



104 GRANT STREET	
BUILDING AREA	
FIRST FLOOR AREA	(13,500 SF)
COMMUNITY ROOM	1,130 SF
MANAGEMENT OFFICE	643 SF
SECOND FLOOR AREA	(8,775 SF)
UNIT - 1	1,228 SF
UNIT - 2	1,030 SF
UNIT - 3	815 SF
UNIT - 4	711 SF
UNIT - 5	958 SF
UNIT - 6	934 SF
UNIT - 7	990 SF
UNIT - 8	1,024 SF
SECOND FLOOR AREA	(8,775 SF)
UNIT - 9	1,228 SF
UNIT - 10	1,030 SF
UNIT - 11	815 SF
UNIT - 12	711 SF
UNIT - 13	958 SF
UNIT - 14	934 SF
UNIT - 15	990 SF
UNIT - 16	1,024 SF
FOURTH FLOOR AREA	(8,775 SF)
UNIT - 17	1,228 SF
UNIT - 18	1,030 SF
UNIT - 19	815 SF
UNIT - 20	1,645 SF
UNIT - 21	958 SF
UNIT - 22	1,024 SF
UNIT - 23	990 SF
BUILDING TOTAL =	40,320 SF
NOTE: ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS	



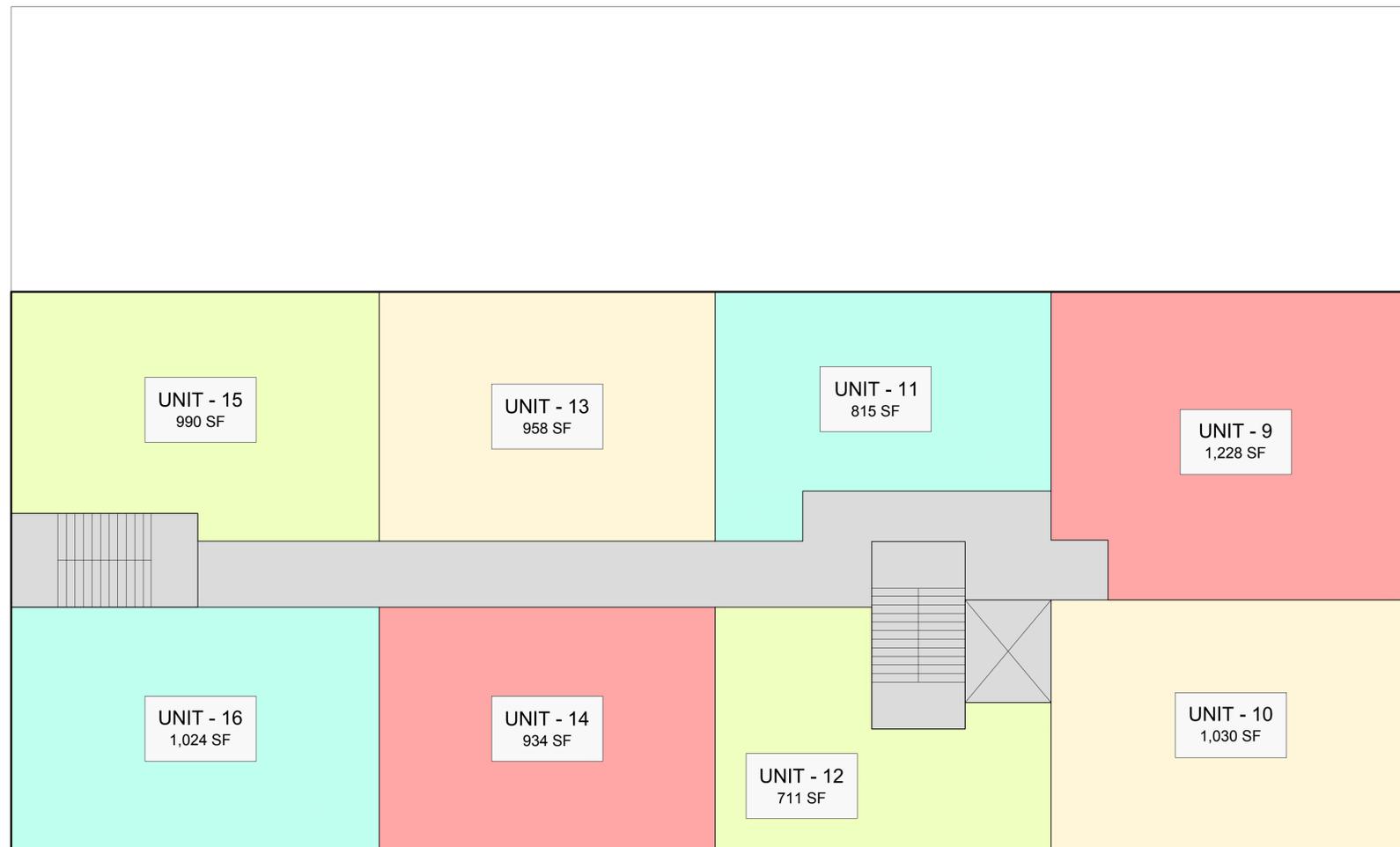
1 104 GRANT STREET - SECOND FLOOR PLAN
1/8" = 1'-0"

BAYSIDE RFP - 104 GRANT STREET

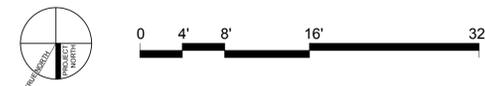
PORTLAND, MAINE

3rd Floor

JUNE 01, 2017



104 GRANT STREET	
BUILDING AREA	
FIRST FLOOR AREA	(13,500 SF)
COMMUNITY ROOM	1,130 SF
MANAGEMENT OFFICE	643 SF
SECOND FLOOR AREA	(8,775 SF)
UNIT - 1	1,228 SF
UNIT - 2	1,030 SF
UNIT - 3	815 SF
UNIT - 4	711 SF
UNIT - 5	958 SF
UNIT - 6	934 SF
UNIT - 7	990 SF
UNIT - 8	1,024 SF
SECOND FLOOR AREA	(8,775 SF)
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UNIT - 15	990 SF
UNIT - 16	1,024 SF
FOURTH FLOOR AREA	(8,775 SF)
UNIT - 17	1,228 SF
UNIT - 18	1,030 SF
UNIT - 19	815 SF
UNIT - 20	1,645 SF
UNIT - 21	958 SF
UNIT - 22	1,024 SF
UNIT - 23	990 SF
BUILDING TOTAL =	40,320 SF
NOTE: ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS	



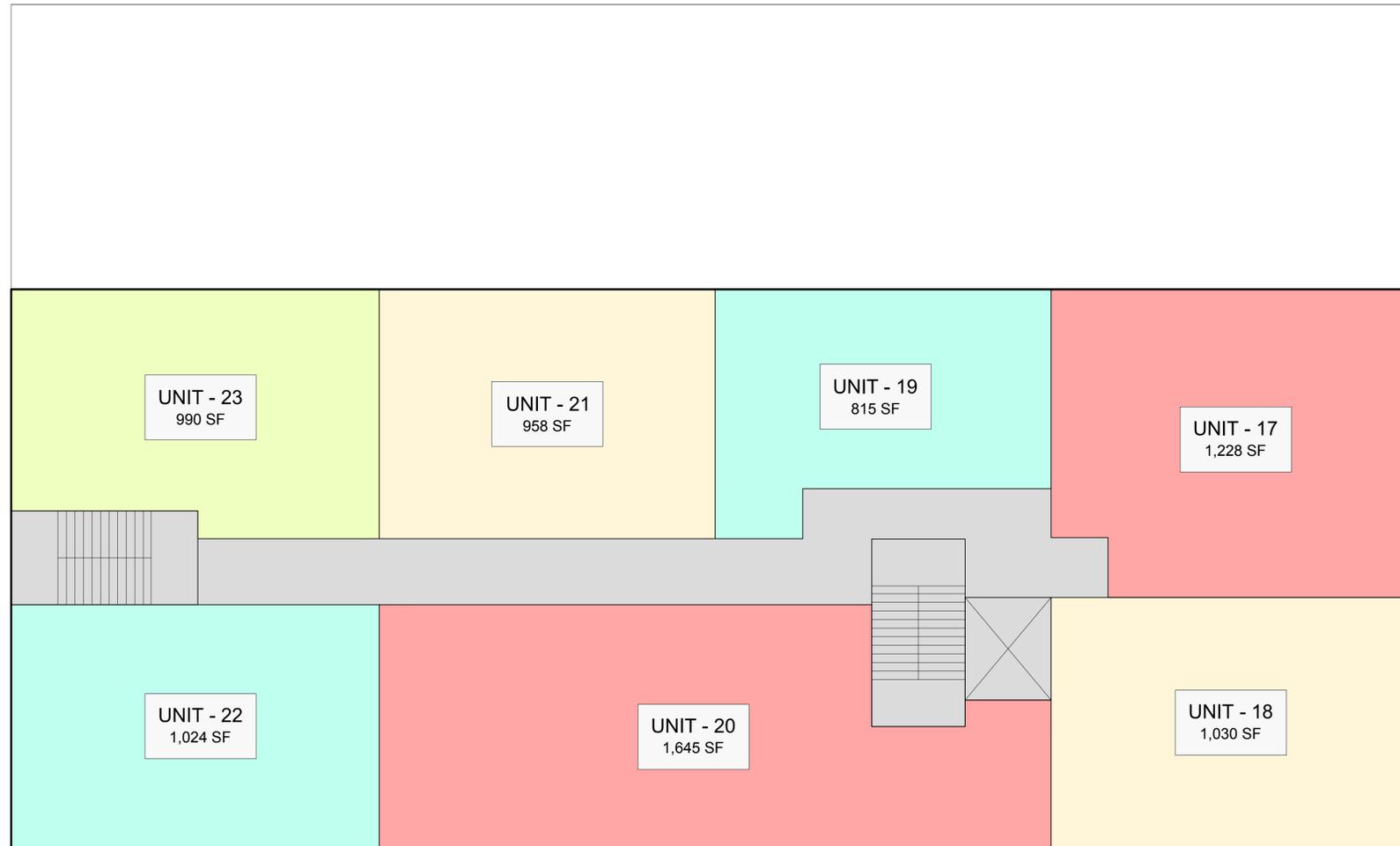
1 104 GRANT STREET - THIRD FLOOR PLAN
1/8" = 1'-0"

BAYSIDE RFP - 104 GRANT STREET

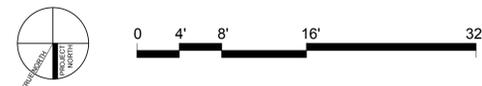
PORTLAND, MAINE

4th Floor

JUNE 01, 2017



104 GRANT STREET	
BUILDING AREA	
FIRST FLOOR AREA	(13,500 SF)
COMMUNITY ROOM	1,130 SF
MANAGEMENT OFFICE	643 SF
SECOND FLOOR AREA	(8,775 SF)
UNIT - 1	1,228 SF
UNIT - 2	1,030 SF
UNIT - 3	815 SF
UNIT - 4	711 SF
UNIT - 5	958 SF
UNIT - 6	934 SF
UNIT - 7	990 SF
UNIT - 8	1,024 SF
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UNIT - 14	934 SF
UNIT - 15	990 SF
UNIT - 16	1,024 SF
FOURTH FLOOR AREA	(8,775 SF)
UNIT - 17	1,228 SF
UNIT - 18	1,030 SF
UNIT - 19	815 SF
UNIT - 20	1,645 SF
UNIT - 21	958 SF
UNIT - 22	1,024 SF
UNIT - 23	990 SF
BUILDING TOTAL =	40,320 SF
NOTE: ALL SQUARE FOOTAGES CALCULATED USING OUTSIDE FACE OF EXTERIOR WALLS AND CENTERLINE OF SHARED WALLS	



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

EXHIBIT C

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

TABLE OF CONTENTS

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

2. DESCRIPTION OF INTENDED USES

3. TOM WATSON BIO

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

5. LANCASTER COURT- ARCHITECT RENDERING

6. 44 HANOVER
 - a. ARCHITECT RENDERING
 - b. INTENDED FLOOR PLAN LAYOUT

7. 56 PARRIS STREET
 - a. ARCHITECT RENDERING OF PROPOSED 23 UNIT APARTMENT BUILDING
 - b. INTENDED FLOOR PLAN LAYOUT (1 THRU 4)

8. 104 GRANT STREET
 - a. PICTURE OF CURRENT USE
 - b. ARCHITECT RENDERING OF 23 UNIT APARTMENT BUILDING
 - c. FLOOR LAYOUTS (FLOORS 1 THRU 4)

9. 117 LOFTS: THE SCHLOTTERBECK & FOSS BUILDING (NOW A 56 UNIT APARTMENT BLDG)
 - a. EXTERIOR PICTURES
 - b. PICTURES OF APARTMENTS AS THEY ARE TODAY

DESCRIPTION OF INTENDED USE

82 Hanover

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

44 Hanover

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

Lancaster Court (between 82 Hanover & 44 Hanover)

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

56 Parris Street

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

Tom Watson & Company

Thomas Watson
(207) 252-0358

June 22, 2017

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

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

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

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

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

82 Hanover Street- Streetscape, #1
PORTLAND, MAINE



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

PORTLAND, MAINE

JUNE 16, 2017



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

BAYSIDE RFP - 82 HANOVER STREET-Rendering

PORTLAND, MAINE

MAY 11, 2017

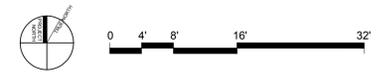
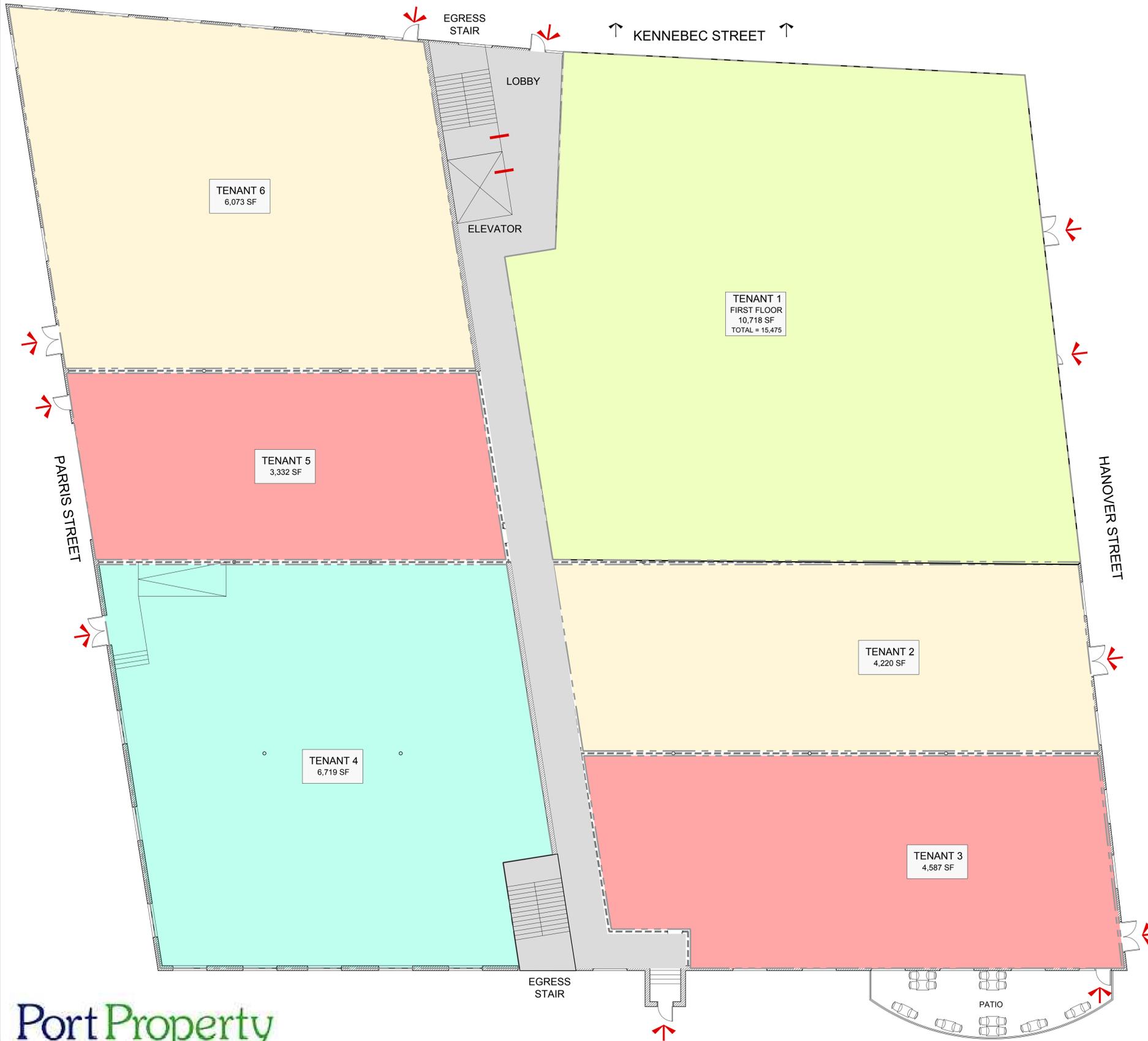


1 VIEW LOOKING SOUTH ON HANOVER STREET
N.T.S.

BAYSIDE RFP - 82 HANOVER STREET-First Floor

PORTLAND, MAINE

JUNE 12, 2017

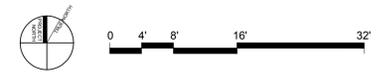


PROGRESS PRINT ONLY
Not for Construction

BAYSIDE RFP - 82 HANOVER STREET- Second Floor

PORTLAND, MAINE

JUNE 12, 2017



PROGRESS PRINT ONLY
Not for Construction

BAYSIDE RFP - LANCASTER COURT PORTLAND, MAINE

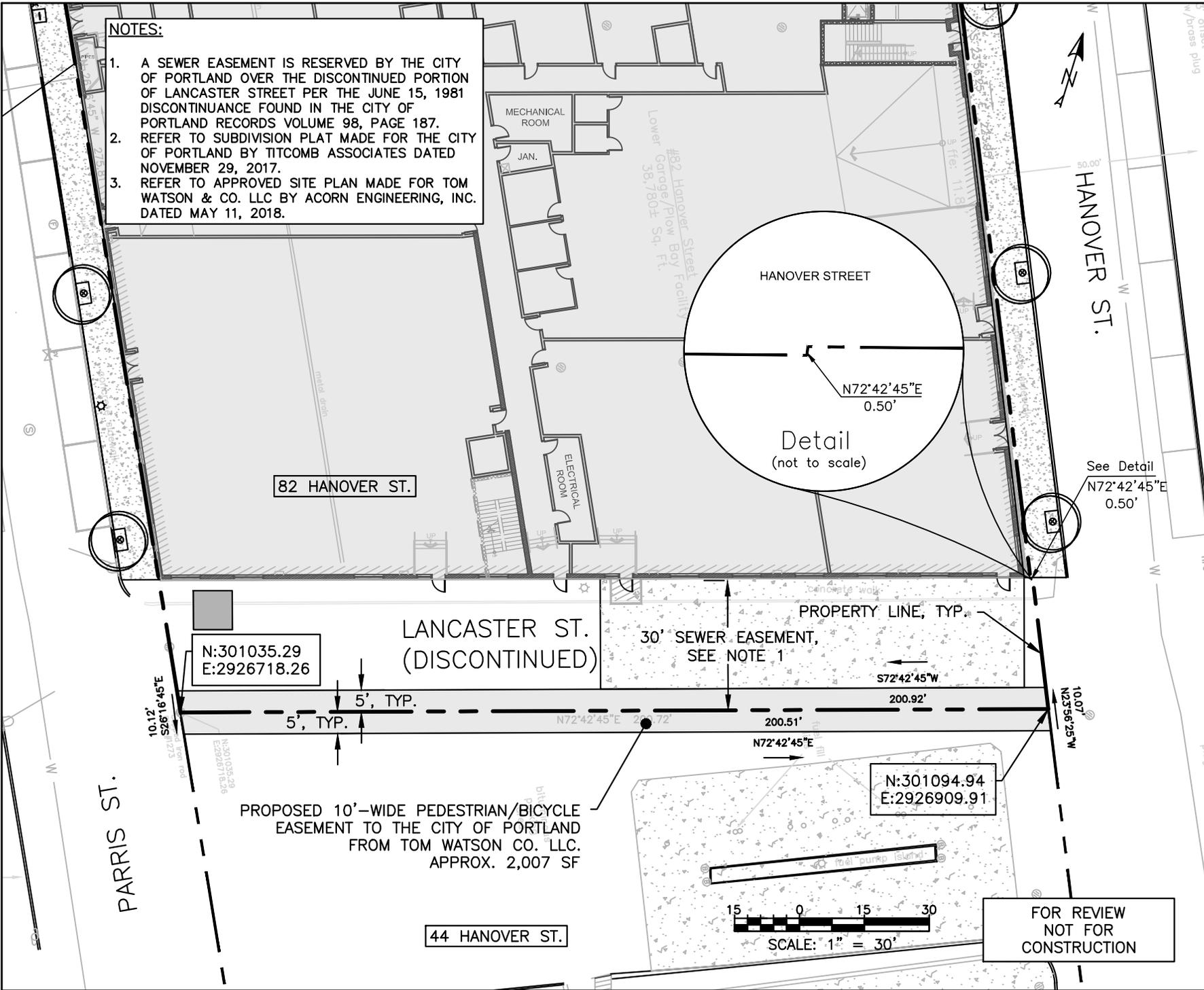
JUNE 21, 2017



1 VIEW LOOKING NORTH ON PARRIS STREET
N.T.S.

NOTES:

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

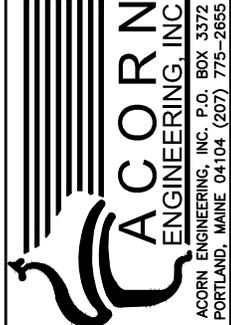


ISSUED FOR	BY DATE
CITY REVIEW	WHS 5/29/18
	REV DATE

DRAWING NAME:
LANCASTER PEDESTRIAN EASEMENT

PROJECT NAME:
82 HANOVER REDEVELOPMENT

CLIENT:
TOM WATSON & CO. LLC



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

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

DRAWING NO.
EX-01

FOR REVIEW
NOT FOR
CONSTRUCTION



Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: May 31, 2018

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

I. One Sentence Summary

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

II. Background

Original Project Scope

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

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

Revised Project Scope

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

III. Intended Result of Council Goal Addressed

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

IV. Financial Impact

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

V. Staff Analysis

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

VI. Recommendation

Staff recommends that the EDC vote to forward the proposed Third Amendment to Purchase and Sale Agreement to the City Council with a recommendation of approval.

Attachments

Attached are the following documents for your information:

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

THIRD AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

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

WITNESSETH:

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

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

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

1. The Agreement is hereby amended by deleting from section 3(a) of the Agreement the words “the day that is forty-five (45) days after the date of this Agreement” and replacing therefore the words “January 31, 2019,” meaning and intended hereby to fix the Due Diligence deadline under the Agreement to on or before January 31, 2019.
2. The first sentence of section 12 of the Agreement is hereby deleted and replaced with the following:

Within twelve months after closing, Buyer shall commence development of the project generally depicted and described in Exhibit B¹ (which is attached hereto and incorporated herein by reference) as presented to the City’s Economic Development Committee on June 5, 2018, and specifically including ground floor retail and/or artist studio space, and, on the upper levels, at least forty-six (46) one bedroom rental units for households whose head of household is at least 55 years of age, no less than 75% of which shall affordable to households at or below 60% of the area median income (the “Project”).

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

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

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

WITNESS:

CITY OF PORTLAND

By: _____

Jon P. Jennings
Its City Manager

WITNESS:

By: _____

Ross Y. Furman

Approved as to Form:
City Corporation Counsel's Office

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

Project Summary

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

Project Team

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

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

The site has some unique advantages for residential development:

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

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

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

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

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

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

Amenities

We propose to provide our residents with the following amenities:

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

Resident Services Coordination

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

Transportation

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

Photos and Renderings

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

PURCHASE AND SALE AGREEMENT

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

RECITALS

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

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

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

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

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

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

3. TITLE AND DUE DILIGENCE.

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

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

4. INSPECTIONS.

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

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

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

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

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

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

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

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

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

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

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

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

12. BUYER'S POST CLOSING OBLIGATIONS; RIGHTS OF CITY TO REPURCHASE PROPERTY.

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

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

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

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

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

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

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

P.O. Box 597
Portland, ME 04112

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

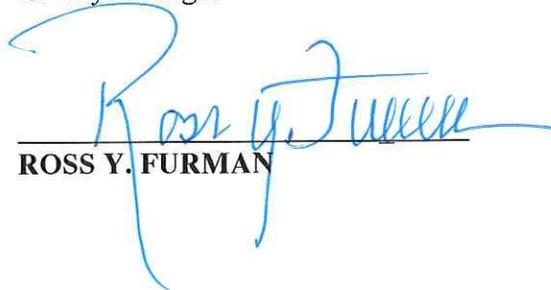
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers or representatives, as of the day and year first written above.


WITNESS

City OF PORTLAND

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

PARCEL 5

PARCEL 2 PARCEL 1

PARCEL 3

PARCEL 4

PARCEL 6

PARCEL 1

PARCEL 2

PARCEL 3

PARCEL 4

PARCEL 5

PARCEL 6

PARCEL 7

PARCEL 8

PARCEL 9

PARCEL 10

PARCEL 11

PARCEL 12

PARCEL 13

PARCEL 14

PARCEL 15

PARCEL 16

PARCEL 17

PARCEL 18

PARCEL 19

PARCEL 20

PARCEL 21

PARCEL 22

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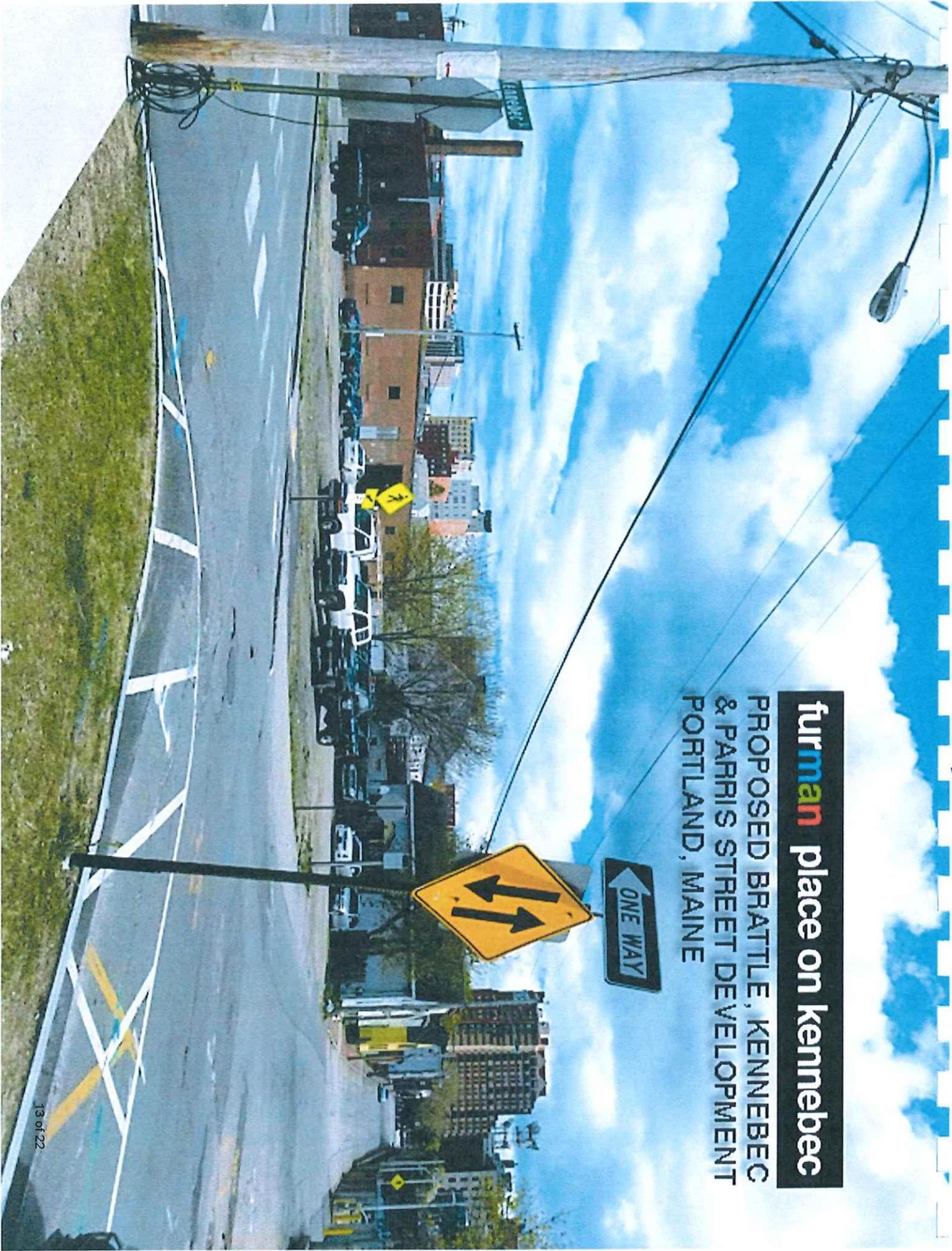
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furman place on kennebec
PROPOSED BRATTLE, KENNEBEC
& PARRIS STREET DEVELOPMENT
PORTLAND, MAINE



The Szanton Company

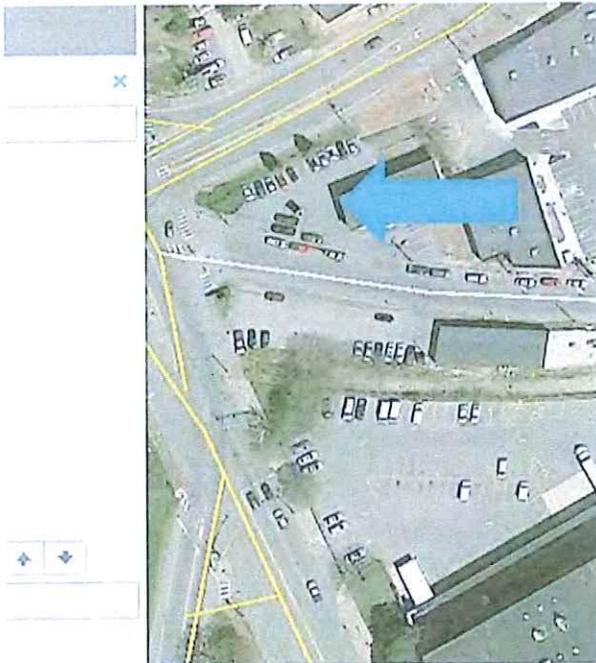
The mission of The Szanton Company (TSC) is to create comfortable, attractive, and affordable rental housing. We do this by:

- 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.

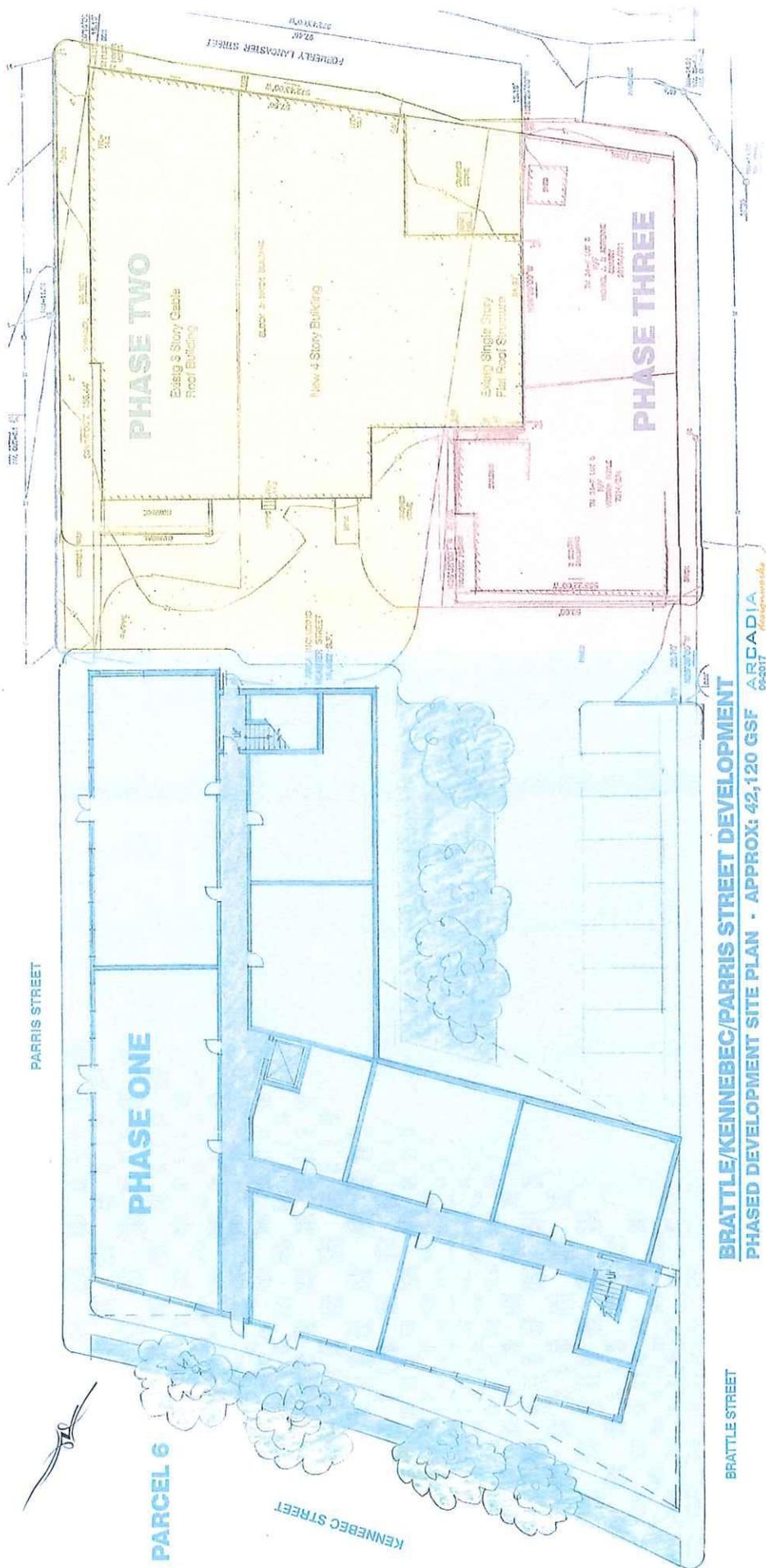
If you should need further information, please call me at 222-1498.

Sincerely,

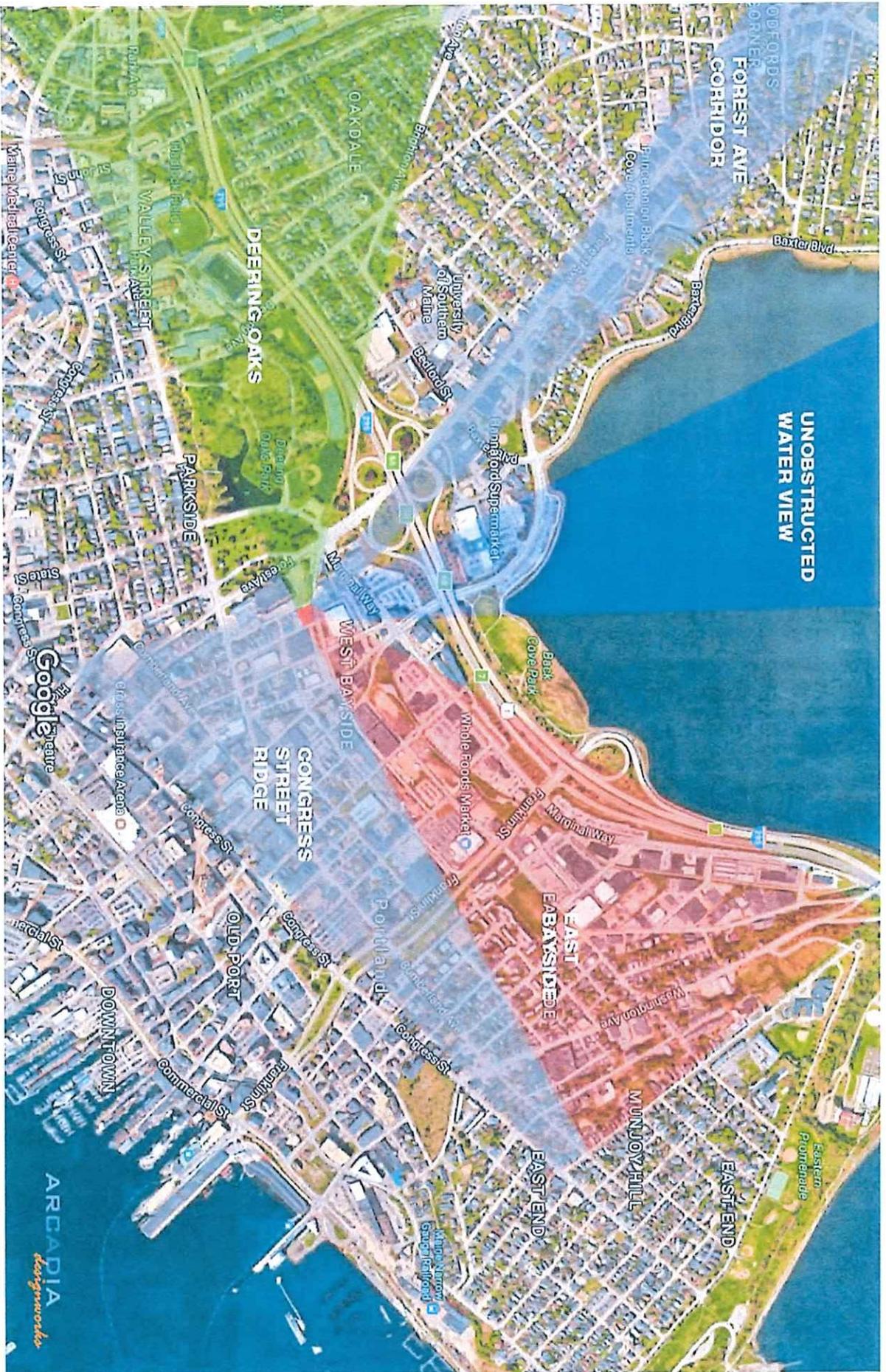
A handwritten signature in blue ink, appearing to read "F. G. Proctor", is written over a faint, larger version of the same signature.

Frederick G. Proctor
Vice President

Cc: Ross Furman



BRATTLE/KENNEBEC/PARRIS STREET DEVELOPMENT
PHASED DEVELOPMENT SITE PLAN - APPROX: 42,120 GSF
 A RCADIA
 00-3017



UNOBSTRUCTED
WATER VIEW

PARRIS STREET



A - Apartment
 R - Retail
 MU - Mechanical/Utility

KENNEBEC STREET

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

ARCADIA
 06-2017
designworks

furman place on kennebec

PARRIS STREET



A - Apartment
R - Retail
MU - Mechanical/Utility

KENNEBEC STREET

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

furman place on kennebec

ARCADIA
06-2017 *designworks*

THE
SZANTON
COMPANY
An affiliate of the Moons Company



furman place on Kennebec

ARCADIA



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 - NORTH WEST VIEW

FIRST AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

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

WITNESSETH:

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

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

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

1. The Agreement is hereby amended by deleting from section 11 of the Agreement the words “the day that is five months after the date of this Agreement” and replacing therefore the words “April 13, 2018,” meaning and intended hereby to fix the Closing Date under the Agreement to on or before April 13, 2018.
2. Except as specifically amended hereby, the Agreement shall remain in full force and effect, and the parties hereto ratify the terms and conditions of the Agreement.

(Signature Page Follows)

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

WITNESS:

CITY OF PORTLAND



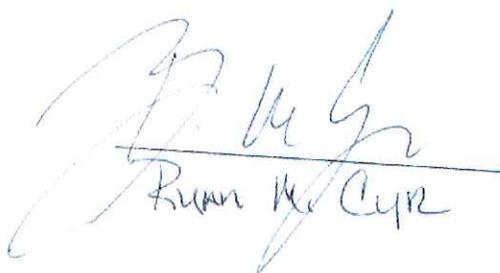
Jon P. Jennings



By:

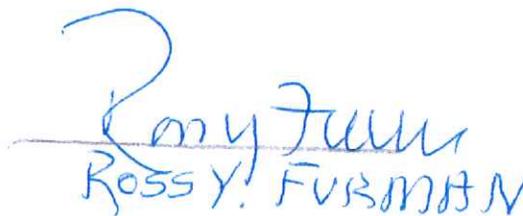
Its City Manager

WITNESS:



Ryan Mc Cypre

By:



ROSS Y. FURMAN



Approved as to Form:
City Corporation Counsel's Office

SECOND AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

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

WITNESSETH:

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

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

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

1. The Agreement is hereby amended by deleting from section 11 of the Agreement the words "the day that is five months after the date of this Agreement" and replacing therefore the words "March 31, 2019," meaning and intended hereby to fix the Closing Date under the Agreement to on or before March 31, 2019.
2. Except as specifically amended hereby, the Agreement shall remain in full force and effect, and the parties hereto ratify the terms and conditions of the Agreement.

(Signature Page Follows)

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

WITNESS:

CITY OF PORTLAND

Sonia Bean

By: *J.P. Jennings*
Jon P. Jennings
Its City Manager

WITNESS:

[Signature]

By: *Ross Y. Furman*
Ross Y. Furman

[Signature]
Approved as to Form:
City Corporation Counsel's Office