



Housing & Community Development Committee Minutes of February 11, 2015 Meeting

A meeting of the Portland City Council's Housing and Community Development Committee (HCDC) was held on Wednesday, February 11, 2015 at 5:30 p.m. in Room 209 on the second floor of Portland City Hall. Present from the HCDC was its Chair Councilor Kevin Donoghue, and members Councilors David Marshall and Nick Mavodones. Committee member Councilor David Brenerman arrived later in the meeting as noted herein. City staff present included Housing & Community Development Division Director Mary Davis, Associate Corporation Counsel Michael Goldman, Planning Division Director Alex Jaegerman, Planning and Urban Development Director Jeff Levine, Economic Development Director Greg Mitchell, and Senior Executive Assistant Lori Paulette.

Chair Donoghue opened the meeting introducing the Committee members, noting that Councilor Brenerman would be joining the meeting later as he is on his way from a meeting in Augusta.

Item 1: Review and accept Minutes from previous meeting held on January 28, 2015.

On motion made and seconded, the Committee voted unanimously to accept the minutes as published.

Item 2: Review and vote to recommend to City Council Purchase and Sale Agreement for sale of City Property at 71 Hanover Street.

Mr. Mitchell said that he is bringing this to the HCDC for a vote to recommend to the City Council approval of a Purchase and Sale Agreement (PSA) with BoPo, LLC for City

property at 71 Hanover Street, currently home of the Public Services' sand/salt operations.

Under direction of this Committee, staff issued an RFP for its sale which resulted in one proposal being received, that from BoPo, LLC (a/k/a Bayside Bowl). The proposal is for an expansion of Bayside Bowl, as well as the new home to Portland Community Squash. This will make the property a destination place for the Bayside neighborhood. The proposal meets the conditions of the RFP. The RFP set a minimum purchase price of \$340,000 and sold in an "as is where is" condition. After the HCDC packet went out, Mr. Mitchell noted that a couple of edits were added to the PSA in the packet.

Mr. Goldman highlighted the edits to the PSA, which included amending the \$5,000 limit on damages that the City would be liable for if it breached its agreement. This has been increased to \$15,000. In addition, the environmental indemnity language has been amended to apply to laws governing hazardous wastes and materials, including, without limitation, the matters identified in the Tewhey Report on the property.

Chair Donoghue opened the meeting for public comment.

Steven Scharf, High Street, said that this is a good proposal and purchase price. He asked for clarification as to when Public Services would need to vacate the property – June 30 or June 15.

Robert Hains/Holm Avenue said that he was concerned with selling Public Services' property piece meal. He did agree, though, that this is a very good project for the subject property. Regarding Portland Community Squash and it being a 501(C)(3), he thought the PSA should include a condition that if the property were to be sold to a non-profit, that non-profit would pay taxes.

Justin Alfond, owner of Bayside Bowl, said that he looks forward to this project; it is a good first project as Public Services begins its move out of Bayside. As the owner of Bayside Bowl, he assured the Committee that he had no intention of selling to Portland Community Squash. Regarding timing, he would plan to get all approvals done in time for this year's construction season, with the goal for the expansion to be completed November 2015. The date of June 15 for Public Services to vacate the property is doable, but preference would be for it to be out mid-April.

Chair Donoghue, noting no further public comment, closed the public comment session.

Regarding the date for Public Services to vacate the premises, Mr. Goldman indicated that this is June 15, 2015; however, the PSA also notes that the City will endeavor to be out prior to that deadline. Regarding the 501(C)(3), Mr. Goldman said that there could be verbiage added to the PSA to reflect that if the property were to be sold to a 501(C)(3), that 501(C)(3) would make a payment in lieu of taxes to the City.

A motion was then made and seconded to recommend to the City Council approval of the PSA in substantially the form as presented.

Mr. Goldman described the amendments as noted in the attached updated/redlined PSA, specifically:

1. Section #5: "Possession"; motion made, seconded, passed unanimously to accept amendment;
2. Section #8: "Default and Remedies"; motion made, seconded, passed unanimously to accept amendment;
3. Section #11: "Environmental Indemnification"; motion made, seconded, passed unanimously to accept amendment;

4. Add verbiage regarding the possibility of a sale to a non-profit, which non-profit would then make payment in lieu of taxes; motion made, seconded, passed unanimously to accept amendment.

Chair Donoghue then asked for a vote on the main motion, and it passed unanimously.

The Chair noted that he looked forward to this project being the momentum for more development opportunities in Bayside.

Item #3: Review of Response to 65 Munjoy Street RFP

Ms. Davis that under the direction of this Committee, City staff issued an RFP for the sale of 65 Munjoy Street (former Adam's School parking lot). The City received one response from Adam's Apple LLC to create an 8-unit residential condominium development to be offered for sale to 100% to 120% AMI residents – in the range of \$225,000 to \$298,000 sales price depending on number of bedrooms. There will be 6 parking spaces under the building. The proposal is in line with the results of the feasibility study of the lot. There is no purchase price for the land due to environmental remediation work that will need to be done by the purchaser. The Proposer is also requesting a subsidy of \$300,000 from the City's Housing Trust Fund (HTF) to cover the financing gap for the project. Ms. Davis closed saying that staff is looking for guidance as to whether to move forward with negotiations and bring back a PSA for HCDC review and recommendation to the City Council.

Mr. Levine said that the \$300,000 subsidy request is due to higher construction costs than anticipated, particularly for a small piece of property. There is approximately \$640,000 in the HTF.

Chair Donoghue asked if the R-6 zone didn't change, would this project be possible. Mr. Levine said that it comes close to meeting one space per unit required now, and there might be some density issues.

Chair Donoghue asked about the cost for environmental cleanup, and Ms. Davis said that environmental clean-up costs are fairly accurate in the range of \$98,000 to \$150,000.

Chair Donoghue opened the meeting for public comments.

Adam's Apple representative Peter Bass introduced himself and his partner Ethan Boxer Macomber highlighting their development experience. Mr. Bass then described the current proposed project, the local team for the project, the high quality design of the project, and how it integrates with the neighborhood. Parking will be off-street under the housing units as noted earlier by staff. It will be energy efficient, durable, and low maintenance, with modern construction which costs more upfront.

Adam's Apple project architect Evan Carroll of Bild Architecture then described the project and orientation of the construction site, egress, units, shared stairwell, conservative design similar to the surrounding area, energy efficiency, and the project's sustainability.

Sean Keay, Estimator from Wright Ryan Construction, then described higher than normal construction costs for contamination, urban conditions, and excavation needed on the street.

Mr. Macomber said the project team was diligent in providing construction cost estimates. The condominium units will be affordable to those at 100%-120% AMI, with 90 year deed restrictions. Public benefits include converting this property into privately owned and associated property taxes; jobs during construction; and, 8 new housing units whose occupants will support businesses in the area. Mr. Macomber said that they will be selling units at a price

below market. With purchasing the land for \$1.00, this will assist with environmental cleanup costs. Regarding the subsidy requested, the team tried to make this request as low as it could, but that is the project gap, which equals \$37,500 per unit subsidy. This, compared with the previous housing unit development on the Adams School property at \$118,000 per unit, is relatively small and reasonable. The timeline would be to get all approvals in time for this construction season. They would work with staff to get a PSA in a form to be presented as soon as possible to this Committee.

Carol McCracken of Munjoy Hill asked about closet space for the units, and Mr. Bass indicated that there was ample closet space in each unit.

Robert Hains said that affordable housing is subsidized housing to make it happen, and that \$1 for the land is fine considering the environmental cleanup needed.

(Councilor Brenerman joined the meeting at this time.)

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

Councilor Mavodones asked about shoring up street and adjacent properties, particularly if they had contacted those abutters. Mr. Bass indicated that they have not contacted the abutters yet, but this will occur in order to assess those foundations.

Councilor Mavodones said that they have an impressive team and design, and recommended reaching to out to neighbors soon.

Ms. Davis noted that she noticed the neighbors within a 500-foot radius of the subject property, as well as interested parties, regarding this meeting.

Chair Donoghue asked about range of 100% to 120% AMI and sales price, and Mr. Macomber indicated that 120% is close to the market, but that 100% to 120% AMI is not really served in this area. He added that Avesta Housing will certify buyers, taking into consideration their assets. He then described the analysis to be undertaken for this certification. Any resale would be under the same guidelines as the original buyer.

Councilor Mavodones asked about the \$37,500 subsidy per unit, compared with the \$100,000+ subsidy for the previous Adams School development. Mr. Levine said that that subsidy was all Federal and State fund subsidies. Should the HCDC support the proposal, staff would work on using as little HTF funds as possible. He also noted that he has worked on other projects that have asset restrictions for affordable home ownership.

Councilor Marshall said that he supports the proposal.

Chair Donoghue, noting consensus for staff to come back to this Committee with a PSA, thanked the Proposer and staff for their work to get this to this point.

Item #4: Review and recommendation to issue revised RFP for 65 Hanover/52

Alder Street

Ms. Davis said that, based on guidance received at the last HCDC meeting, the draft RFP has been revised. It is more generic to include options for home ownership, rental units, and commercial uses. The scoring has also been revised, with preference to home ownership for those earning up to 100% AMI, with 90-year deed restrictions in that regard. City subsidy noted in the RFP is the value of the land only. A proposer could use HOME Funds if the proposal was 80% AMI or under.

Chair Donoghue asked for clarification on scoring, and Ms. Davis referred the Committee to page 8 of the draft RFP and described the point system.

Chair Donoghue opened the meeting for public comment.

Sean Kerwin of 18 Parris Street said that it was good for the RFP to be more general in nature, allowing for uses in the B2b zone. The RFP now has points for each home ownership unit available to households earning up to 100% AMI. The prior RFP had 120%, which he preferred and questioned the reduced AMI.

Robert Hains of Holm Avenue noted that as long as Public Services is located in Bayside, he questioned who would be attracted to homeownership there. It would make more sense to him to hold the property until all of Public Services becomes available. He also questioned the Land Bank votes and how it fits, or does not fit, into future development there.

Steven Scharf, High Street, noted that this property seems to be more for commercial use than for housing. Also, with an assessed value of approximately \$800,000, Mr. Scharf indicated that it should be sold and not given away. Regarding affordable condominium units for those earning up to 100% AMI, he questioned those buying it at a certain price and then having to sell it at a certain price, noting he was not sure if it would work. In addition, he suggested that the RFP contain verbiage of the timetable for the Public Services uses to be relocated by a certain timeframe, as well as to have a diagram of the property as an exhibit to the RFP.

A woman spoke saying that this area has a lot of potential, and there is a need for home ownership. With home ownership needing a financial return upon sale, she questioned whether deed restrictions discussed would be a disincentive to potential purchasers.

Steve Hirshon, Bayside resident, said that he is pleased with the proposal from Bayside Bowl for 71 Hanover Street. For the subject property, he would like to see home ownership guidelines be for those earning between 80%-120% AMI. He would also like to see, as a next step, the City doing an asset plan for the remainder of the Public Services property. As an aside, he noted a New York friend who visited this area and thought Bayside was the best location.

Carol McCracken of Munjoy Hill inquired if the City has identified a place to move the Public Services uses currently in the property.

Chair Donoghue, noting no further public comment, closed the public comment session.

Mr. Mitchell indicated that the Public Services uses in the subject property are planned to be moved to 212 Canco Road some time in 2015.

Ms. Hill-Christian also noted that the Finance Committee would be taking up purchase options for the 212 Canco Road property at its meeting tomorrow.

There was discussion about the subsidy of land versus sale, and whether housing uses would have more points in the scoring versus a commercial use.

Mr. Levine said that affordable housing proposals generally need some kind of subsidy, with this RFP noting the land would be the only subsidy. Regarding verbiage for proposals offering cash for the land, this could be added to the RFP. Mr. Levine also agreed that the scoring as it is now on p. 8 does provide that housing proposals would score higher than commercial proposals.

There was discussion about parking in lieu of fees, and Ms. Davis indicated that this is not specific in the RFP, but that this could also be added to highlight that option.

There was discussion about housing units offered to those earning anywhere between 80% to 120% AMI, with consensus being that up to 100% AMI would be best, with those units offered for sale needing deed restrictions for resale.

Councilor Brenerman asked about the 212 Canco Road property, and Ms. Hill-Christian said that the City currently has a lease/purchase option for that property. The uses at the subject property would be relocated to 212 Canco Road.

Councilor Mavodones commented that in the narrative of the RFP, verbiage should be added regarding the overall plan for Public Services. In the meantime, he suggested that the creation of a mini master plan for the remaining Public Services property would be helpful.

Councilor Marshall said that he liked more options in the RFP as it is now. If commercial use is proposed, the City could perhaps see more funds for the purchase of the property. It is a valuable piece of property, but, again, appreciated the options in the RFP.

There was discussion regarding housing proposals versus commercial proposals, and that the scoring criteria appears to have housing proposals able to score more points, as home ownership has been identified as a need in the area, but mixed use would also be good. The Committee suggested edits to the scoring, on p. 8 of the draft RFP, particularly, increasing I(2) from 20 to 25 points and add a cash purchase to the verbiage, while taking out the five points in I(1)(3), as this is stated earlier in I(1).

There was discussion about mixed uses for the site, and Mr. Jaegerman offered adding mixed uses in I(4), pursuant to the *Bayside Vision*.

Councilor Brenerman said that the timeline as to when the City intends to move out should be added to the narrative, and Chair Donoghue suggested the parking in lieu fee be added to the narrative or other appropriate section staff feels best.

On motion made then made and seconded, the Committee voted unanimously to authorize staff to issue the RFP, with the updates discussed today.

Item #5: Executive session: Pursuant to 1 M.R.S.A. 405(6)(C) and (F) and 5 M.R.S.A. 13119-A, the Committee will go into executive session to discuss amendments to the Ready Company Lease at the Portland Ocean Terminal.

Chair Donoghue asked if there was any public comment regarding going into executive session.

Robert Hains noted that the reason seemed broad, and Mr. Mitchell noted that is for amendments to Ready Brothers existing lease at the Portland Ocean Terminal. For terms to be amended, City staff needs guidance from the Committee.

On motion then made and seconded, the Committee voted unanimously at approximately 7:30 p.m. to go into executive session pursuant to 1 M.R.S.A. 405(6)(C) and (F) and 5 M.R.S.A. 13119-A, to discuss possible amendments to the Ready Company Lease at the Portland Ocean Terminal.

At approximately 8:00 p.m., the Committee came out of executive session and the meeting the adjourned.

Respectfully,

Lori Paulette

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this _____ day of February, 2015 by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "SELLER"), and BOPO, LLC, a Maine limited liability company with a mailing address of 58 Alder Street, Portland, Maine, (hereinafter referred to as "BUYER").

RECITALS

WHEREAS, the SELLER is the owner of certain land located 71 Hanover Street in Portland, Maine, as more specifically described in Exhibit A, attached hereto and incorporated herein (the "Premises"), and as generally depicted in the plan attached as Exhibit B and incorporated herein; and

WHEREAS, the SELLER desires to sell the Premises and has published a certain "Request for Proposals For the Sale and Reuse of Property Located at 71 Hanover Street, RFP #5215" (the "RFP"), a copy of which is attached hereto as Exhibit C and incorporated herein, and the provisions of which shall survive closing; and

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

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

WHEREAS, BUYER desires to purchase and develop the Premises in accordance with the terms of the Proposal, and the SELLER desires to sell the Premises to the BUYER so that the BUYER may do so.

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

1. **RECITALS INCORPORATED BY REFERENCE**. The recitals set forth above are hereby incorporated herein by reference and made a part of this agreement. The restatement in this document of any term of the RFP or Proposal shall not be deemed to waive any term not so restated. If any disagreement is found between the RFP or the Proposal and this document, then this document shall govern; and the RFP shall govern over the Proposal, to the extent they disagree; provided, however, that this

document and its attachments shall be construed to be supplemental to one another to the extent possible.

2. **SALE.** SELLER agrees to sell the Premises to BUYER, and BUYER agrees to buy the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only and does not include the structures, concrete block walls, or any other personal property on the Premises (the “Retained Property”), to which the SELLER shall retain title, and which Seller shall fully remove at SELLER’S sole cost, risk and expense as set forth in Section 5 below.
3. **CONSIDERATION.** The consideration for the Premises shall be Three Hundred Forty Thousand Eighteen Dollars (\$340,018.00) (the “Purchase Price”) payable as follows:
 - a. The SELLER acknowledges receipt of BUYER’s deposit in the amount of Thirty-Four Thousand One Dollars and Eighty Cents (\$34,001.80) (the “Deposit”) paid to it as of the date of this Agreement; and
 - b. The BUYER shall pay to the SELLER at closing the remaining Three Hundred Six Thousand Sixteen Dollars and Twenty Cents (\$306,016.20) in immediately available funds.
4. **TITLE.** SELLER shall convey the Premises to BUYER at the closing in fee simple with good and marketable and insurable title by a quitclaim deed without covenant acceptable to BUYER. If SELLER is unable to convey title to the Premises in accordance with the provisions of this paragraph, then SELLER shall have a reasonable time period, not to exceed 60 days from the time SELLER receives written notice of a defect, unless otherwise agreed to by both parties, during which it shall make a good faith effort to remedy the defect, after which time, if such defect is not corrected so that there is marketable and insurable title, BUYER may within 2 days thereafter, at BUYER’s option, withdraw the Deposit, and neither party shall have any further obligation hereunder. BUYER may, at BUYER's option elect to close notwithstanding any such defects that may exist.
5. **POSSESSION.** Full possession of the Premises will be delivered to Buyer at the transfer of title, free and clear of all tenancies or occupancies by any person or entity. Notwithstanding the previous sentence, in the event that the SELLER is unable to fully remove the Retained Property before the closing date, BUYER and SELLER shall in good faith negotiate and execute a license agreement pursuant to which SELLER shall be allowed to store the Retained Property on the Premises and continue to operate its sand and salt operations from the Premises until no later than June 15, 2015, provided, however, that SELLER shall endeavor to remove the Retained Property at the earliest date feasible prior to June 15, 2015. Such license agreement shall provide that SELLER shall ~~vacate the Premises and fully remove the Retained Property on or before~~ be entitled to store the Retained Property and continue to operate its sand and salt operations from the Premises until the earlier of June 15, 2015, or the date that it removes the Retained Property from the Premises. Such agreement shall also include the following indemnification provision: “SELLER

subject to and limited by the defenses, immunities and limitations of liability available to SELLER under the Maine Tort Claims Act, 14 M.R.S. § 8101 et seq., shall indemnify and hold Buyer harmless from any claims, damages, demands or liabilities resulting from SELLER's exercise of its rights under this license agreement, including without limitation, claims for personal injury, property damage and for the cost of removal including mechanic's lien claims, provided that such claims, damages, demands, or liabilities are caused by any negligent act or omission of the SELLER or its agents, employees or contractors.²² The license agreement shall also provide that SELLER shall cause its contractors or employees removing the Retained Property to deliver to Buyer, no later than 10 days after the completion of the removal of the Retained Property, a waiver of any and all mechanic's liens associated with the cost of the removal of the Retained Property.

6. **INSPECTIONS.** At reasonable times upon reasonable prior notice prior to Closing, and with SELLER's consent, BUYER, its agents, contractors and any prospective lender or investor of BUYER shall have the right to enter the Premises and perform, at BUYER's expense, any and all inspections, tests, surveys or other due diligence inquiries with respect to the Premises as BUYER deems necessary or appropriate. BUYER agrees to return the Premises as nearly as possible to its original condition after all of such tests and inspections. SELLER shall cooperate with BUYER in such inspections. BUYER shall complete any such inspections within 60 days of the date first set forth above (the "Inspection Period"). In the event that an inspection reveals defects or conditions which are unacceptable to BUYER, BUYER may, prior to the end of the Inspection Period, terminate this Agreement and receive back the Deposit.
7. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** BUYER shall be liable for all real estate taxes beginning as of the start of fiscal year 2016 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 fiscal year 2015 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 shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. SELLER is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to BUYER's financing or closing shall be paid for by BUYER.
8. **DEFAULT AND REMEDIES.** In the event that BUYER defaults hereunder for a reason other than the default of the SELLER, SELLER shall retain the deposit, it being understood, however, the SELLER's acceptance thereof shall not constitute a waiver of any other legal or equitable remedy available to SELLER. In the event SELLER defaults under this Agreement, and if BUYER is not then in default hereunder, BUYER shall have the right to pursue specific performance, but at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit, together with reimbursement, in an amount not to exceed Fifteen Five Thousand Dollars (\$15,000.00) of reasonable, documented, out-of-pocket costs or expenses incurred by BUYER in connection with its purchase of the Premises, including fees of inspectors, attorneys, or other professionals engaged by BUYER in connection with its purchase of the Premises.

9. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire or otherwise, until transfer of title hereunder, is assumed by the SELLER. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated. In the event SELLER is not able to deliver the Premises as stated, BUYER may terminate this Agreement and receive a refund of the Deposit.
10. **PROPERTY SOLD “AS IS, WHERE IS.”** BUYER acknowledges that BUYER has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold “as is, where is” and “with all faults.” SELLER, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by BUYER of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the SELLER of every agreement and obligation contained herein.
11. **ENVIRONMENTAL INDEMNIFICATION.** BUYER covenants and agrees, at BUYER’s sole cost and expense, to indemnify, defend, and hold SELLER 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 SELLER and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, including without limitation the environmental matters identified in the Tewhey Report identified in and attached to the RFP. -
12. **RIGHTS OF SELLER TO REPURCHASE PROPERTY.** If development of the Premises in substantially the form set forth in the Proposal, including the securing of a certificate of occupancy, is not complete within 18 months after the closing, the Seller shall have the right, but not the obligation, to repurchase the Premises at the Purchase Price.
13. **CLOSING.** Time is of the essence in the performance of this agreement. The closing shall be held at City Hall at a time agreeable to the parties on or before seventy-five (75) days after the date first set forth above.
14. **ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the

acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by SELLER and BUYER.

- 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 SELLER and BUYER each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
- 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 SELLER: City of Portland
ATTN: CITY MANAGER
389 Congress Street
Portland, ME 04101

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

FOR BUYER: BOPO LLC
Attention: Justin Alford
58 Alder Street
Portland, Maine 04101

With a copy to: Gary D. Vogel, Esq.
Drummond Woodsum
84 Marginal Way, Suite 600

- 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. A signature in a faxed, pdf or other reproduced or electronic document shall be considered the equivalent of an original signature.
- 21. BROKERS.** Seller and Buyer each represents and warrants that neither has dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless Seller from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, Seller agrees to indemnify and hold harmless Buyer from any claims made by any broker should Seller's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

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

CITY OF PORTLAND

WITNESS

Sheila Hill-Christian
Its Acting City Manager

BOPO, LLC

WITNESS

Justin Alford
Its Manager

Approved as to Form:

Corporation Counsel's Office