

Department of Planning & Urban Development

Marge Schmuckal
Zoning Administrator

Jeff Levine
Director, Planning Department



RECEIVED

MAR 18 2013

CITY OF PORTLAND
ZONING BOARD OF APPEALS
Conditional Use Appeal Application

Dept. of Building Inspections
City of Portland Maine

Applicant Information:

FORD REICHE
NAME

-
BUSINESS NAME

100 MIDDLE ROAD
ADDRESS
CUMBERLAND, MAINE

207-740-6099
TELEPHONE # FORD@FORDREICHE.COM

PURCHASE AGREEMENT
APPLICANT'S RIGHT, TITLE OR INTEREST
(eg; owner, purchaser, etc)

R4
CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

- LEGAL TWO DWELLING UNIT.
- VACANT / UNHEARED 5 1/2 YEARS
- FOR ECLOSURE

Subject Property Information

223 WESTERN PROMENADE
PROPERTY ADDRESS

63 - E - 5
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER (if different)
WCP MAINE LOAN HOLDINGS LLC
NAME
40 DANBURY ROAD
ADDRESS

WILTON, CT

CONDITIONAL USE AUTHORIZED BY
SECTION 14 - 103(2)

TYPE OF CONDITIONAL USE
PROPOSED:
ALTERATION OF EXISTING
TWO UNIT DWELLING TO
BECOME FOUR UNITS.

STANDARDS: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the Board determines that:

1. There are unique or distinctive characteristics or effects associated with the proposed conditional use;
2. There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and
3. Such impact differs substantially from the impact which would normally occur from such a use in that zone.

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for a conditional use permit as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.

Ford Reiche
SIGNATURE OF APPLICANT

3.15.13
DATE

Ford Reiche
100 Middle Road
Cumberland, Maine 04021
Ford@FordReiche.com
207-740-6099

Portland Zoning Board of Appeals
Portland City Hall
Room 315
389 Congress Street
Portland, Maine 04101

March 18, 2013

RE: 223 Western Promenade, Portland Maine
Conditional Use Permit Request

Members of the Zoning Board of Appeals:

Accompanying this cover letter, please find the following in 11 complete separate packets:

1. Copy of Appeal Application;
2. Plot plan showing existing conditions and proposed changes;
3. Floor plans showing existing conditions and proposed changes;
4. Copy of tax map, with subject property highlighted;
5. Photos of the subject property;
6. Copy of Sales Agreement;
7. Authorization for architect John Turk to represent the applicant in any matters.
8. One payment for Application fee: \$100

Requested Conditional Use Permit (14-103 (2))

This is a request for Conditional Use permit for alteration of existing legal two unit structure in the R4 Residential Zone to four dwelling units (14-103 (2)). As outlined below, we believe that this project will conform to all applicable Conditional Use requirements in a manner consistent with the unique character of the Western Promenade.

Description Of Subject Property

Built in 1907 for Charles B. Clarke, the structure has over 10,000 square feet of finished living space. The historic property suffers from deferred maintenance over the past many years, and has been vacant, unheated and

neglected for 5 +/- years. A foreclosure action was completed in late 2012, and the property is now being sold by the CT finance company which sued for foreclosure.

Description of Project

Approvals are being sought to alter from the current approved two units to a total of four large town house units, each with a private formal exterior entrance directly to each respective unit. Great effort is being taken to develop this property in a manner which minimizes structural disruption and respects the original design by architect Ernest M.A. Machado, as well as its significant place within the Western Promenade neighborhood.

Approval Requirements for Conditional Use

This project will conform to all applicable requirements of this applicable code section 14-103 (2):

- (a) Each unit will be substantially larger than the minimum code requirement of 600 square feet;
- (b) There will be no outside stairways or fire escapes above the ground floor;
- (c) The alteration will not result in a total cubic volume increase of more than 10% within the immediate preceding ten years. In fact, the cubic volume will likely be modestly reduced by this alteration;
- (d) Any lower level dwelling unit will have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
- (e) No existing dwelling unit shall be decreased to less than 1,000 square feet of floor area;
- (f) There shall be more than 3,000 square feet of land area per dwelling. Lot size: 14,500 square feet. Minimum area required to meet this code provision: 12,000 square feet;
- (g) Parking shall be provided as required in Division 20 or the City Land Use code.

- (h) Each unit shall be provided with appropriate numbers of trees meeting the City's aboriginal specifications, and the requirements of 14-102 (a)

Suitability for Conditional Use (14-474 (c) 2.

- a. There are no unique or distinctive characteristics or effects associated with the proposed conditional use.

The outward appearance will not be compromised, and will, in fact, be improved significantly by restoration to original design elements, and in cooperation with historic preservation stakeholders.

The proposed conditional use will be well within requirements and guidelines for approval per the Code.

- b. There will be no adverse impact upon the health, safety, or welfare of the public or the surrounding area.

As of the March 18, 2013 filing date of this Conditional Use appeal, Applicant and Applicant's agents have met with several city officials to be involved in the zoning and code oversight for this project, and we have heard no concerns regarding adverse impact to health, safety or welfare of the public. We will continue to have such meetings, and any raised concerns will be called to the attention of the Zoning Board of Appeals.

Similarly, we have conducted several informational meetings and/or communications with non-governmental stakeholders, including some abutters, representative of Western Promenade Neighborhood Association, City of Portland Historic Preservation Review Committee, Greater Portland Landmarks, Maine Historic Preservation Commission. To date we have heard no concerns regarding adverse impact to the health, safety or welfare on the surrounding area. We will continue to have such meetings, and any raised concerns will be called to the attention of the Zoning Board of Appeals.

- c. Any impact from this requested use will not differ substantially from the impact which would normally occur from such a use in the R4 zone.

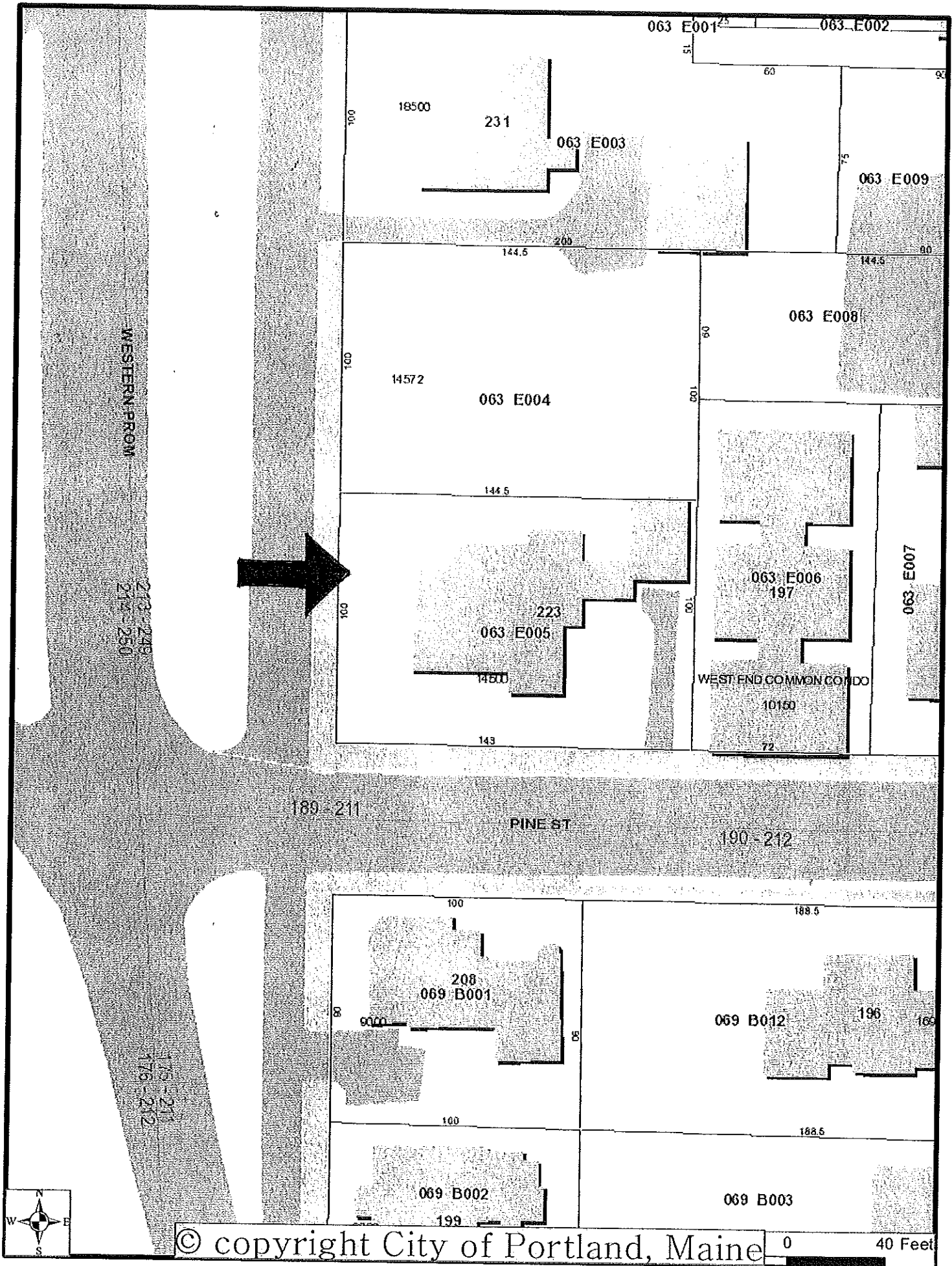
There are several uses similar to our requested use in this R4 zone, and in the immediate area of this property. In fact, there are residential uses adjacent the subject property on three sides, all three of which have larger numbers of approved dwelling units than is requested in this appeal. The fourth side of the subject property faces the Western Promenade directly.

Summary

We request being placed on the Board agenda for the April 4, 2013 meeting. If further information is required to complete this Application or to assist in the City's review of this matter please notify me or architect John Turk, TTL Architects, 28 Danforth Street, Suite 213, Portland, Maine 04101. 207-332-8621, jturk@ttl-architects.com .

Thank you,


Ford Reiche



WESTERN PROM

213-249
214-250

175-211
176-212

189-211

PINE ST

190-212

063 E001²⁵

063 E002

18500

231

063 E003

063 E009

14572

063 E004

063 E008

144.5

063 E005

063 E006
197

063 E007

1450

WEST END COMMON CONDO

10160

143

72

208

069 B001

069 B012

196

069 B002

199

069 B003

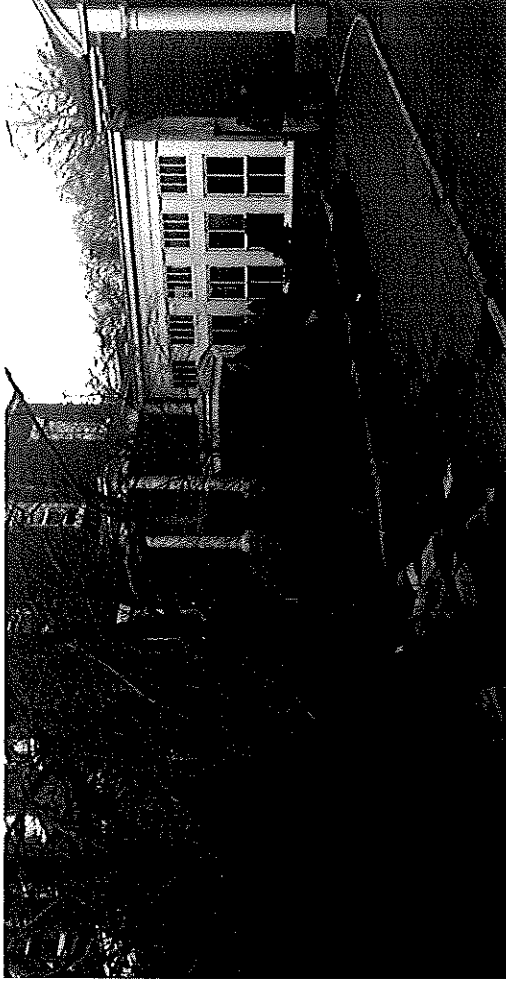


© copyright City of Portland, Maine

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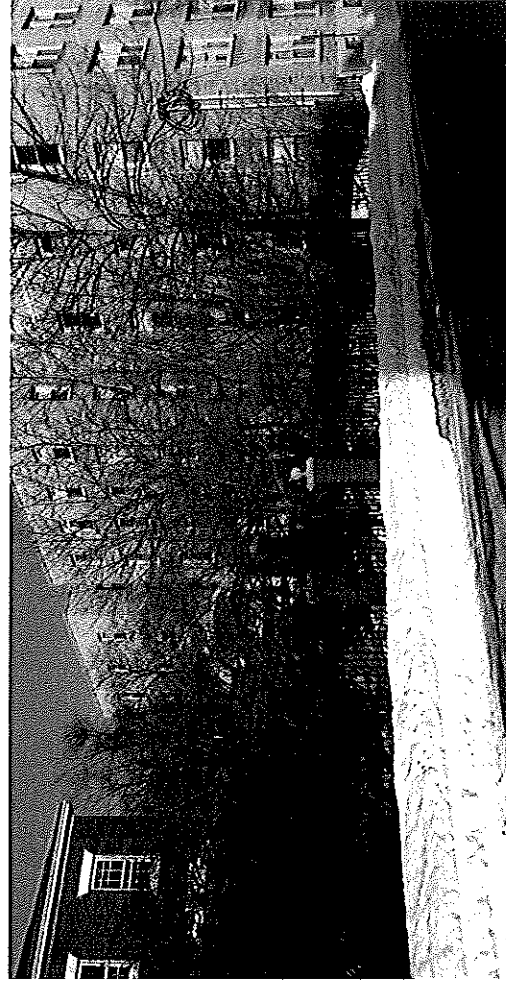
View From Western Prom - West Elevation



View From Pine Street-South Elevation



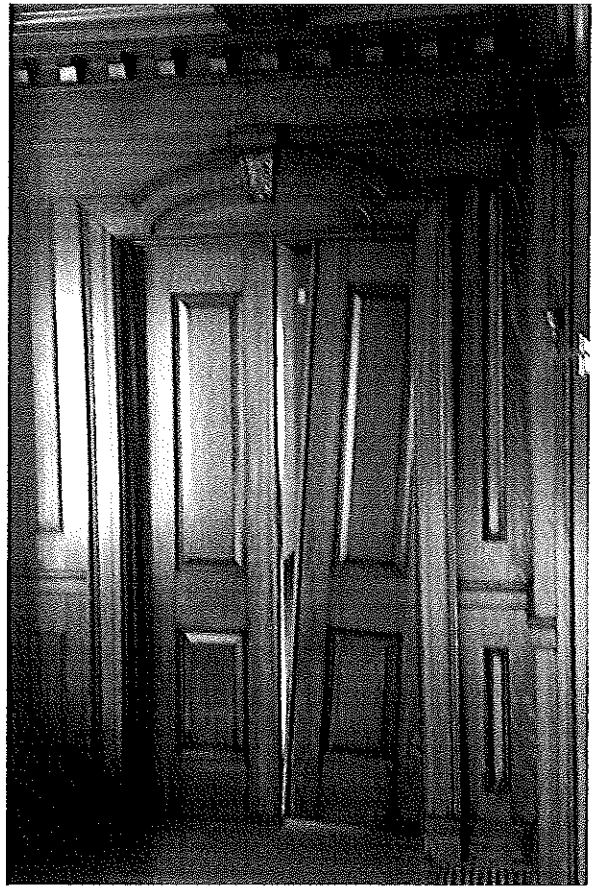
View From Pine Street - South Elevation



View From Pine Street



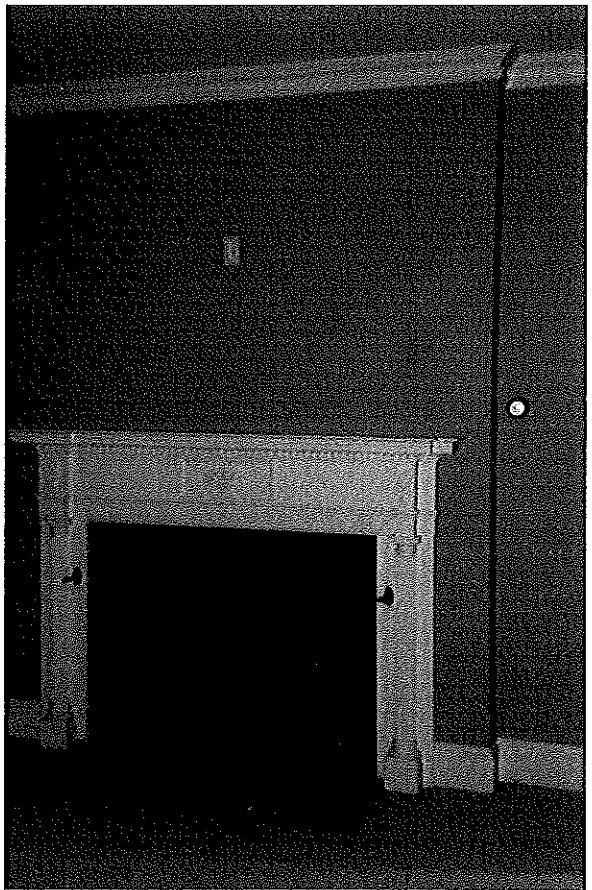
Unit One - Entry



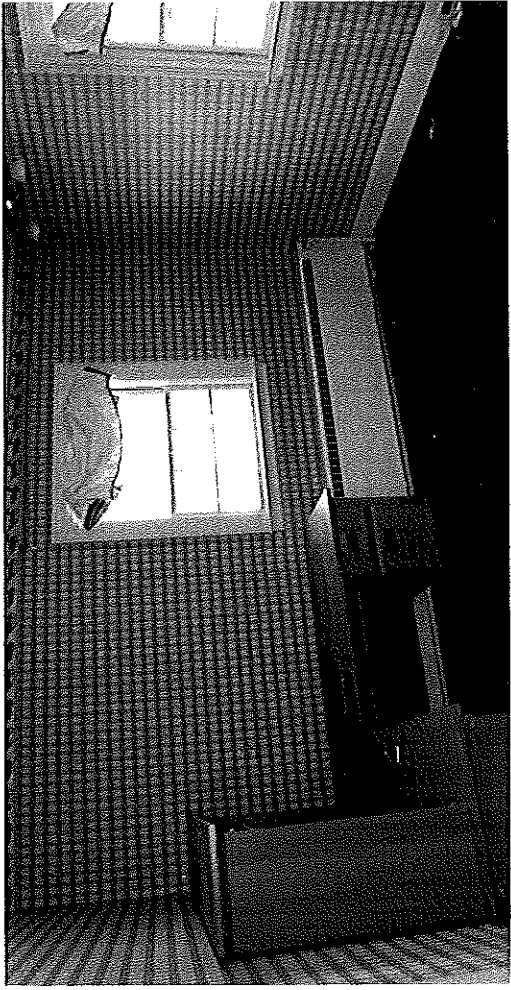
Unit One - First Floor



Unit One - Foyer



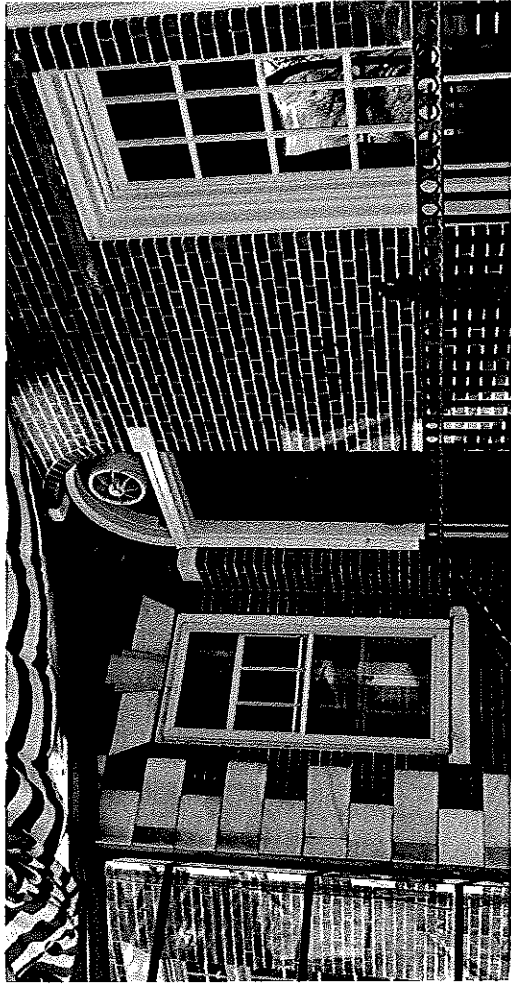
Unit One - Second Floor



Unit Two



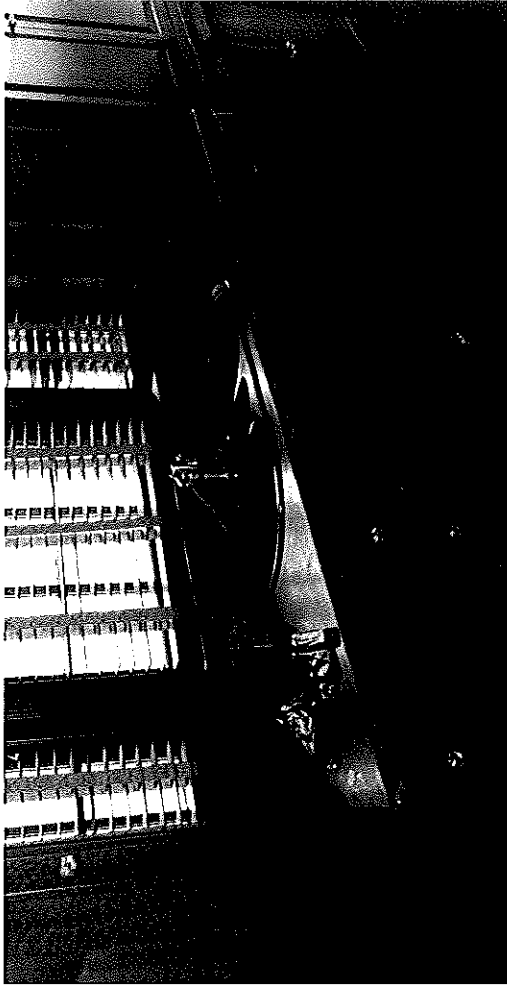
Unit Two



Unit Two - Entry



Unit Two



Unit Three



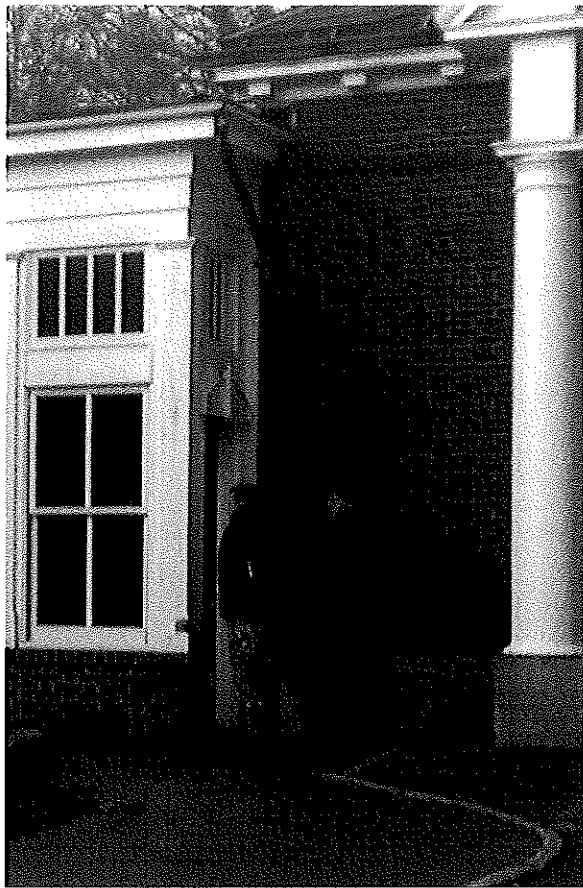
Unit Three



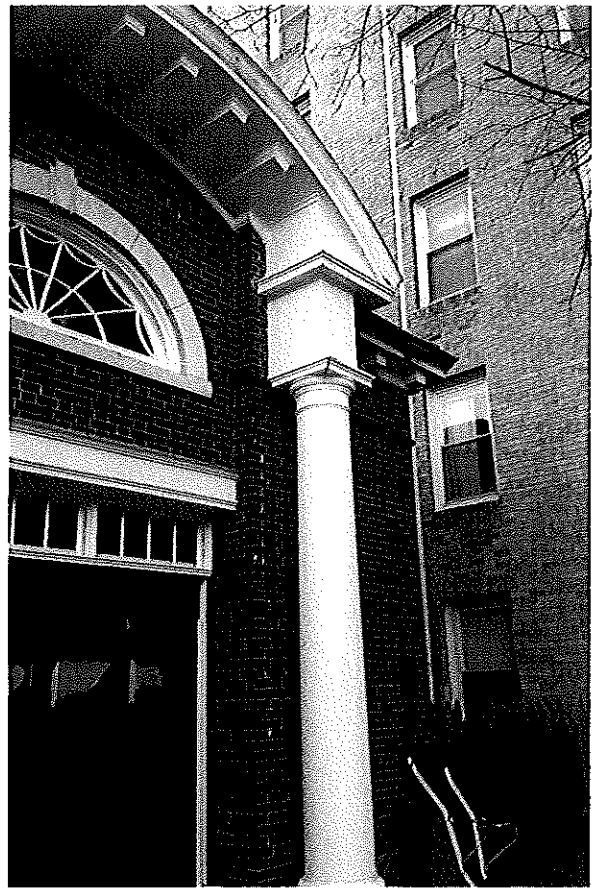
Unit Three - Entry



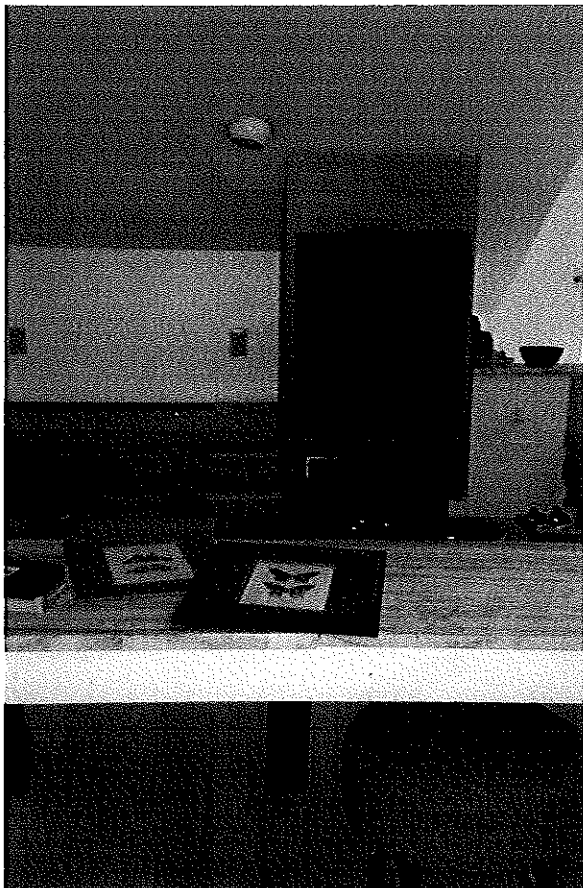
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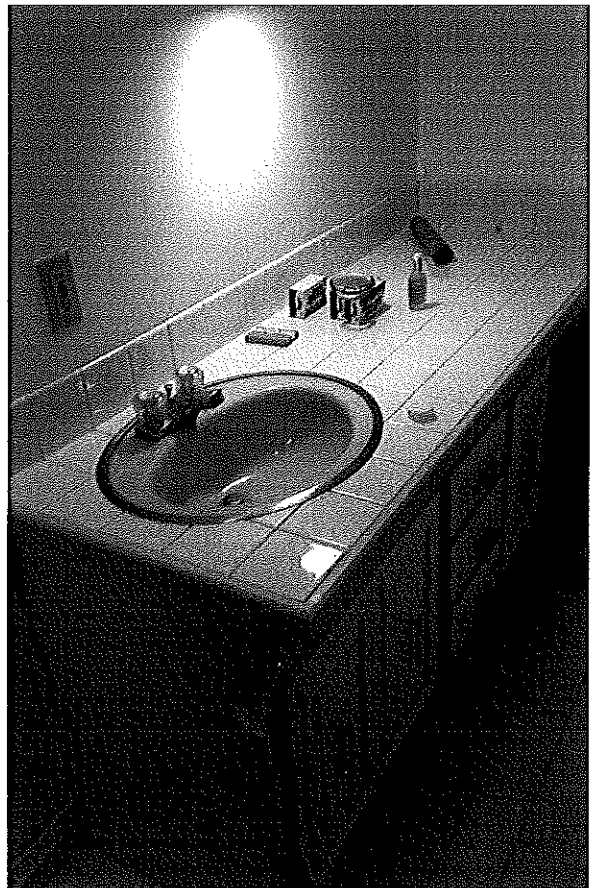
Unit Four - Entry



Unit Four



Unit Four



Unit Four



Existing



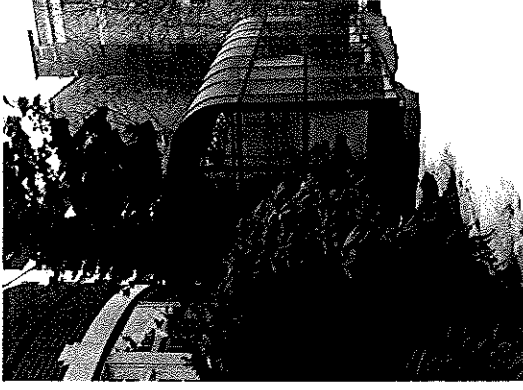
Existing



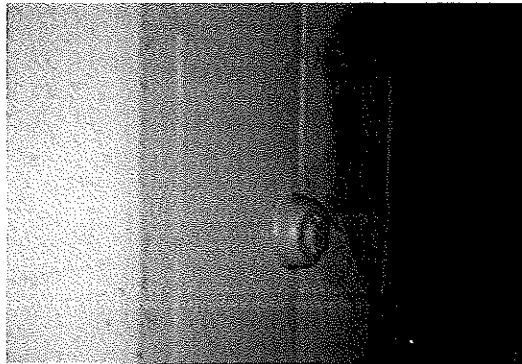
Existing



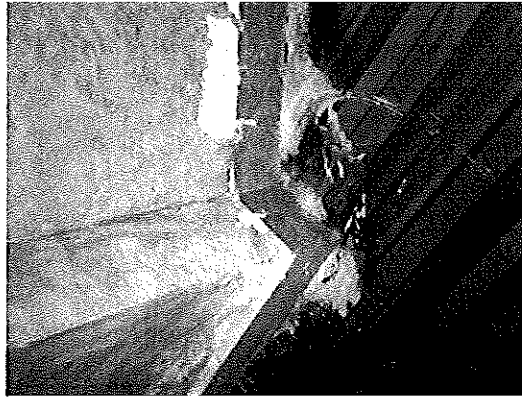
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Existing



Existing



Existing

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CONTRACT FOR THE SALE OF REAL ESTATE

Ford Relcho, whose mailing address is 100 Middle Road, Cumberland, Maine (hereinafter called the "Purchaser"), and WCP Maine Loan Holdings, LLC, a limited liability company organized and existing under the laws of the State of Delaware, with an address of 40 Danbury Rd., Wilton, CT 06897-4406 (hereinafter called the "Seller"), hereby agree as of this 11 day of February, 2013 as follows:

1. **PROPERTY:** On and subject to the terms and conditions of this Contract, Purchaser agrees to buy from Seller, and Seller agrees to sell to Purchaser the real estate located at 223 Western Promenade, Portland, Maine, and being more fully described in the deed to Seller recorded in the Cumberland County Registry of Deeds, Book 29912, Page 189. The following items of personal property and fixtures are included in this sale: all personal property currently located on the property, including, without limitation, all furniture, appliances, storm and screen windows, shades, blinds, shutters, curtain rods, heating sources and systems, wood stoves, sump pump, electrical fixtures and other fixtures currently located at the Property.

2. **PURCHASE PRICE:** The total Purchase Price is ~~225,000.00~~ ^{215,000.00}, with payment to be made as follows:

Earnest money deposit received on this date: ~~25,000.00~~
Balance due at closing, in cash or certified funds: ~~200,000.00~~

3. **EARNEST MONEY/ACCEPTANCE:** ~~WCP Maine Loan Holdings, LLC~~ (~~Escrow Agent~~) shall hold said earnest money in a non-interest bearing account and act as escrow agent until closing; this offer shall be valid until Friday, February 8, 2013 at 5:00 pm. In the event of the Seller's non-acceptance of this offer by such date, the earnest money shall be returned promptly to the Purchaser.

4. **TITLE:** A deed, conveying the premises in fee simple with good and marketable title in accordance with Standards of Title adopted by the Maine Bar Association shall be delivered to the Purchaser and this transaction shall be closed and Purchaser shall pay the Purchase Price as provided herein and execute all necessary papers for the completion of the purchase on or before March 31, 2013. * If Seller is unable to convey title to the premises in accordance with the provisions of this paragraph, then the Seller shall have a reasonable time period, not to exceed 30 days from the time the Seller receives written notice of the defect, unless otherwise agreed to by both parties, to remedy the title, after which time, if such defect is not corrected so that there is marketable title, the Purchaser may within 10 days thereafter, at Purchaser's option, withdraw said earnest money and neither party shall have any further obligation hereunder, or Purchaser may close. Seller hereby agrees to make a good-faith effort to cure any title defect during such period.

5. **EXTENSION:** *Purchaser, at his option may extend this contract by written notice to Seller at any time on or before March 31, 2013, for a period of 31) days beyond the time set forth in Section 4 hereof provided Purchaser (i) pays Seller ~~25,000.00~~, which amount shall be non-refundable and shall not be applied to the Purchase Price hereunder at Closing, and (ii) delivers to Escrow Agent an additional earnest money deposit in an amount equal to ~~25,000.00~~, which amount shall be treated hereunder the same as the initial earnest money increasing the total earnest money deposit to ~~50,000.00~~. Purchaser and Seller agree in the event of unforeseen circumstances an extension beyond 30 days may be granted with written mutual consent, provided Purchaser pays ~~5,000.00~~ per day for each day beyond April 30, 2013. Notwithstanding anything to the contrary contained herein, if Purchaser elects to extend and closes before April 30, 2013, then Purchaser shall receive a credit at Closing for an amount equal to ~~5,000.00~~ per day for the number of days between April 30, 2013 and the day Closing occurs.

6. **DEED:** The premises shall be conveyed by a quitclaim deed, and shall be free and clear of all encumbrances.

7. **POSSESSION/OCCUPANCY:** Full possession and occupancy of premises shall be given to Purchaser immediately at closing unless otherwise agreed by both parties in writing.

8. **RISK OF LOSS:** Until transfer of title, the risk of loss or damage to said premises by fire or otherwise is assumed by the Seller unless otherwise agreed in writing. Said premises shall at closing be in substantially the same condition as at present, reasonable use and wear excepted. Seller shall keep the premises insured against fire and other extended casualty risks prior to closing. If the premises are damaged or destroyed prior to closing, Purchaser may either terminate this Agreement and be refunded the escrow money, or close this transaction and accept the premises "as-is" together with an assignment of the insurance proceeds relating thereto.

9. **PRORATIONS:** The following items shall be prorated as of the date of closing:

- a. Real Estate Taxes based on the municipality's tax year. Seller is responsible for any unpaid taxes for prior years.
- b. Fuel.
- c. Metered utilities, such as water and sewer, shall be paid by the Seller through the date of closing.
- d. Purchaser and Seller shall each pay one-half of the transfer tax as required by the laws of the State of Maine.

10. **INSPECTIONS:** This Contract is subject to the following inspections, with the results being satisfactory to the Purchaser:

TYPE OF INSPECTION	RESULTS REPORTED	TYPE OF INSPECTION	RESULTS REPORTED
a. General Building	3/31/13	h. Mold	3/31/13
b. Sewage Disposal	3/31/13	i. Pests	3/31/13
c. Water Quality	3/31/13	j. ADA	3/31/13
d. Radon Air Quality	3/31/13	k. Wetlands	3/31/13
e. Radon Water Quality	3/31/13	l. Environmental Scan	3/31/13
f. Asbestos Air Quality	3/31/13	m. Zoning/land use	3/31/13
g. Lead Paint	3/31/13	n. Other See & 10	3/31/13

All inspections will be done by inspectors chosen and paid for by Purchaser. If the result of any inspection or other condition specified herein is unsatisfactory to the Purchaser, Purchaser may declare the Contract null and void by notifying Seller in writing within the specified number of days set forth above, and said earnest money shall be returned to Purchaser. If Purchaser does not notify Seller that an inspection is unsatisfactory within the time period set forth above, this contingency is waived by Purchaser. In the absence of inspection(s) mentioned above, Purchaser is relying completely upon Purchaser's own opinion as to the condition of the premises.

* WHICH EXTENSION CONSENT FOR THE 30 DAYS BEYOND APRIL 30 2013 SHALL NOT BE UNREASONABLY WITHHELD BY SELLER

Jen

11. **DUE DILIGENCE.** Within 5 days after the Effective Date, the Seller shall provide to Purchaser copies of the following documents relating to the Property in the Seller's possession or under its control: (a) all surveys and plans for the Property; (b) building inspection studies, reports and evaluations relating to the Property; (c) all leases and historic income and expense information for the past 5 years; and (d) any environmental studies, reports or evaluations relating to the Property. For a period of 30 days from the later of the Effective Date or the date of delivery of such documents (hereinafter the "Due Diligence Period"), Purchaser and their agents, advisers, architects and engineers shall have the right, and are hereby authorized, to enter the Property to conduct inspections, surveys, evaluations, tests (including soils tests) and investigations relating to the Property and for all other reasonable purposes, and Purchaser shall have the right to contact various governmental officials to inquire into the zoning of the property and the feasibility of obtaining certain land use, site plan and conditional use approvals relating to Purchaser's plans with respect to the Property (collectively, "Purchaser's Evaluations"). All costs and expenses of Purchaser's Evaluations shall be paid by Purchaser. If Purchaser, in its sole and absolute discretion, is not satisfied with the results of Purchaser's Evaluations and Purchaser's due diligence or if Purchaser is not satisfied with the condition of the Property, then on or before the expiration of the Due Diligence Period, Purchaser may serve written notice on the Seller of its election to terminate the Purchase and Sale Agreement. If Purchaser gives such notice to the Seller, terminating this Agreement, this Agreement shall be deemed terminated, the earnest money deposit shall be returned to Purchaser and neither party shall have any further rights, claims or obligations, except that Purchaser agrees to indemnify, defend and hold the Seller harmless from and against any lien, damage, injury, claim or expense, including, without limitation, reasonable attorneys' fees, resulting from the Purchaser's Evaluations or the entry by Purchaser or its officers, employees, agents, consultants, advisers, attorneys, accountants, architects or engineers upon the Property in the performance of the inspections and investigations hereunder or in connection with Purchaser's Evaluations. In the event this Contract does not close for any reason, Purchaser shall provide to Seller copies of any and all reports, drawings and other materials prepared by any inspector or otherwise obtained by Purchaser in connection with Due Diligence.

12. **AGENCY DISCLOSURE:** Purchaser and Seller acknowledge that they have been informed that LandVest, Inc. (William Davison) is acting as a transaction broker in this transaction and is not representing either Seller or Purchaser. Purchaser discloses that Purchaser is related to Karen Reicho, who is a broker at LandVest, Inc. Purchaser agrees to pay all fees and commissions of LandVest, Inc. relating to this transaction.

13. **DEFAULT:** If the Purchaser fails to perform any of the terms of this Contract, Seller as its sole remedy may retain the earnest money as full and complete liquidated damages. If Seller fails to perform any of the terms of this Contract, Purchaser may exercise any and all legal rights and remedies, including specific performance. In the event of default by either party, the Escrow Agent shall not return the earnest money to Purchaser or Seller without written releases from both parties. If a dispute arises between Purchaser and Seller as to the existence of a default hereunder and said dispute is not resolved by the parties within thirty (30) days, Escrow Agent shall file an action in interpleader and deposit the earnest money in the court to resolve said dispute. Purchaser and Seller, jointly and severally, shall indemnify Escrow Agent for all costs, losses, expenses, and damages, including reasonable attorneys' fees, incurred by Escrow Agent in connection with said dispute.

14. **MEDIATION:** Any dispute or claim arising out of or relating to this Contract or the promises addressed in this Contract shall be submitted to mediation in accordance with the Maine Residential Real Estate Mediation Rules of the American Arbitration Association. This clause shall survive the closing of this transaction.

15. **PRIOR STATEMENTS:** This Contract sets forth the entire agreement between the parties, and there are no other representations, agreements or understandings with respect to the subject matter of this Contract. This Contract shall be construed according to the laws of the State of Maine.

16. **HIRS/ASSIGNS:** This Contract shall extend to and be obligatory upon heirs, personal representatives, successors, and assigns of the respective parties; provided, however, that Purchaser may not assign this Contract without Seller's written consent.

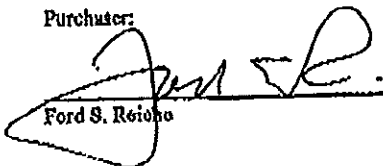
17. **COUNTERPARTS:** This Contract may be signed on any number of identical counterparts, including telefax copies, with the same binding effect as if all of the signatures were on one instrument.

18. **GENERAL PROVISIONS:** This Contract is a binding contract when signed by both Seller and Purchaser and when that fact has been communicated to all parties or to their agents. Time is of the essence of this Contract. This contract shall be construed in accordance with the laws of the State of Maine. Seller acknowledges that the laws of the State of Maine provide that every buyer of real property located in Maine must withhold a withholding tax equal to 2 1/2% of the consideration unless the Seller furnishes to the Purchaser a certificate by the Seller stating, under penalty of perjury, that Seller is a resident of Maine or the transfer is otherwise exempt from withholding.

19. Purchaser may have access to the property for the purpose of conducting Due Diligence during normal business hours upon reasonable notice to Seller, and shall indemnify and hold harmless Seller for claims and damages of any person accessing the property pursuant to this section.

A COPY OF THIS CONTRACT IS TO BE RECEIVED BY ALL PARTIES AND, BY SIGNATURE, RECEIPT OF A COPY IS HEREBY ACKNOWLEDGED. IF NOT FULLY UNDERSTOOD CONSULT AN ATTORNEY.

Purchaser:



 Ford S. Reicho

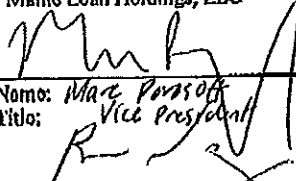
001 54 3131

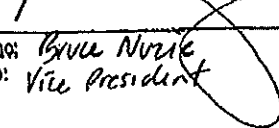
 Soc. Sec. I

Seller accepts Purchaser's offer and agrees to deliver the premises at the price and upon the terms and conditions set forth above, this ____ day of February, 2013 (the "Effective Date").

WCP Maine Loan Holdings, LLC

45-2651464
Tax ID. #

By: 
Name: Marc Porosoff
Title: Vice President

By: 
Name: Bruce Norris
Title: Vice President

JCA

Ford S. Reiche
100 Middle Road
Cumberland, Maine 04021

December 15, 2013

TO WHOM IT MAY CONCERN:

John Turk of TTL Architects, Inc., 28 Danforth Street, Portland, Maine has my authority to represent me in all matters dealing with all government and public regulatory reviews and approvals associated with 223 Western Promenade, Portland, Maine.


Ford S. Reiche

207-740-6099
Ford@FordReiche.com