

## AGREEMENT

This Agreement is made and entered into this 2<sup>nd</sup> day of February 2005 by and between East End Holding LLC (“EastEnd”) and the City of Portland (the “City”).

**WHEREAS**, the City has adopted a Housing Replacement Ordinance more specifically set forth in Portland **City** Code, Division 29, §14-483 et seq; and

**WHEREAS**, ~~property~~ commonly referred to as The Sportsman’s Grill, 909 Congress Street, CBL 65-E-3, (**hereinafter the “property”**) was subject to a fire in 2002 which severely damaged the building thereon, rendered it uninhabitable, and unable to be rehabilitated; and

**WHEREAS**, East End purchased the property in 2002, after the fire, and has attempted to keep the building boarded against intrusion; and

**WHEREAS**, East End desires to demolish the building; and is in the process of developing a site plan for the **property** which likely will contain plans for the development of an office building; and

**WHEREAS**, the Portland Fire Department has determined, based on the public health and safety, that the building **is** in need of demolishing; and

**WHEREAS**, it is disputed ~~whether~~ the Housing Replacement Ordinance **is** applicable to the factual situation presented herein; and

**WHEREAS**, rather than litigate this issue, the parties to this Agreement have reached a satisfactory resolution, the terms and conditions of which are set forth below

**NOW, THEREFORE**, in consideration **of** the foregoing recitals and in consideration of the mutual promises, covenants, agreements, representations, and

warranties contained herein. the receipt and sufficiency of which are hereby acknowledged. it is agreed by and between East End and the City as follows:

1. Upon receipt from East End of the City of Portland Inspection Services Division Demolition Call List and Requirements and Application for Demolition, the City of Portland shall order the building at 909 Congress Street, demolished. East End shall obtain any and all other necessary permits for demolition prior to undertaking the same. The City agrees that it shall process and approve such permits on an expedited basis and shall not rely upon the Housing Replacement Ordinance as grounds to deny any such permit

2 East End agrees to pay to the City a sum of \$40,000.00 no later than the date of site plan approval for 909 Congress Street or two years from the date of this Agreement, whichever is earlier

3. The City agrees to use the moneys donated by East End for purposes of providing low income housing in the City of Portland

4. East End and the City agree to forego any and all litigation over this matter and this Agreement shall operate as a settlement, waiver and release of any and all claims and enforcement rights each may have against the other over the applicability or constitutionality of the Housing Replacement Ordinance to 909 Congress Street. The City further agrees that it will not deny a demolition permit, site plan or subdivision application, or any other permit or application which may apply to the development of 909 Congress Street on the basis of the Housing Replacement Ordinance. East End and the City agree that they do not intend to release or settle, and are not hereby releasing or settling, any claims, enforcement rights or permitting decisions each may have against the

other over the applicability or constitutionality of the Housing Replacement Ordinance to any building or property other than 909 Congress Street.

5. It is understood and agreed by the parties to this Agreement that by entering into this Agreement, neither of the parties hereto admits or concedes the applicability or constitutionality of the Housing Replacement Ordinance as applied to this property or any other property.

6. East End and the **City** agree as follows:

(a) A material breach or threatened material breach of this Agreement may give rise to irreparable injury inadequately compensable in damages, and each party shall therefore be entitled to injunctive relief to prevent a material breach of and to enforce specifically the terms and provisions of the Agreement in any court of competent jurisdiction, in addition to any other remedy to which such aggrieved party may be entitled at law or in equity.

(b) If any non-material term, provision, promise, covenant, agreement, representation, or warranty of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, promises, covenants, agreements, representations, and warranties shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

(c) This Agreement shall be binding upon and inure to the benefit of and be enforceable by each of the parties to the Agreement, and their respective legal representatives, heirs, successors, and assigns, including any grantee of the property.

(d) This Agreement contains and constitutes the entire agreement and understanding among the parties to the Agreement with respect to the subject matter

hereof, and supersedes all other prior or contemporaneous written or oral agreements, actions, statements, and understandings relating in any way whatever to the subject matter of this Agreement. The terms of this Agreement are contractual and not a mere recital and the Agreement may only be modified in writing executed by the parties hereto.

(e) This Agreement shall be governed by and enforceable under the laws of the State of Maine, and the parties to the Agreement hereby consent to the exclusive jurisdiction and venue of the federal and state courts in the State of Maine sitting in Portland with respect to any action or proceeding to enforce or implement this Agreement.

(f) This Agreement may be executed in any number of counterparts and exchanged by facsimile transmission, each of which counterpart and facsimile transmission shall be deemed an original and all of which together shall be deemed one and the same document.

6. Any and all notices relating to this Agreement shall be mailed by first class and certified mail as follows:

for East End Holdings LLC. to:

Stephen Whittier  
East End Holdings LLC  
P.O. Box 1029  
Portland, ME 04104

and,

Daniel Rosenthal, Esq.  
Verrill Dana, LLP  
One Portland Square  
P.O. Box 586  
Portland, ME 04112-OS86

For The City to:  
Corporation Counsel  
City of Portland  
389 Congress Street  
Portland, ME 04101, and

City Manager  
City of Portland  
389 Congress Street  
Portland, ME 04101

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be  
duly executed as of \_\_\_\_\_, \_\_\_\_\_, 2005.

\_\_\_\_\_  
East End Holdings LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

City of Portland

By: \_\_\_\_\_

Joseph E. Gray, Jr.  
Its City Manager