

**CITY OF PORTLAND, MAINE**  
**PLANNING BOARD**

*Original mercy approval  
letter - (There have also been  
\$ amendment approvals)*

Kevin Beal, Chair  
Michael Patterson, Vice Chair  
John Anton  
Lee Lowry III  
Shalom Odokara  
David Silk  
Janice E. Tevanian

August 22, 2006

Mr. Stephen R. Bushey, PE  
DeLuca Hoffman Associates Inc.  
778 Main Street- Suite 8  
South Portland, ME. 04106

Mr. Tim Prince  
Vice President Planning & Ancillary Affairs  
Mercy Hospital  
144 State Street  
Portland, ME 04101

**RE: Mercy Hospital Master Plan  
Mercy Hospital Development Project – Phase 1  
Vicinity of Fore River  
Application ID Number: 2005-0192; Chart 073, Block A, Lot 1001**

Dear Mr. Bushey and Mr. Prince,

On August 8, 2006, the Portland Planning Board considered Mercy Hospital's revised Master Plan (July, 2006) and its Phase 1 proposals for a 137,832 square foot short stay Hospital Building, an 80,054 square foot Medical Office Building, 783 parking spaces and associated access, servicing, landscaping and other site features. Approval was granted for the project by the following motions:

On the basis of the Revised Master Plan, site plans and materials submitted by the applicant and on the basis of information contained in Planning Report #43-06 relevant to standards for site plan regulations set forth in or authorized by the City of Portland Code of Ordinances and the requirements of the Contract Zone Agreement, and other findings as follows:

1. The Planning Board voted 5-0 (Odokara and Anton absent) that the Revised Master Plan dated July 2006 is in conformance with the Contract Zone Agreement of 2001, subject to the following conditions of approval:
  - i. That the applicant prepare and submit a Private Development Restriction document, as required by Clause 10i of the Contract Zone Agreement, which document shall be reviewed and approved by the Planning Authority; and
  - ii. That the applicant shall submit to the Planning Board a Traffic Study for each phase of development (beyond the initial phase) that comports with the requirements of a Traffic Movement Permit; and

- iii. That the Planning Board's approval of the Revised Master Plan does not limit the City's right to require additional site features and amenities (so far not identified or shown in the Revised Master Plan) in connection with any future Site Plan or Subdivision application for this site.
2. The Planning Board voted 5-0 (Odokara and Anton absent) to waive the City's Technical Standard (Section III 3 A which requires parking spaces to measure 19 feet by 9 feet) to allow a total of 303 parking spaces within the first phase of the Mercy Hospital development to be 18 feet in length.
3. The Planning Board voted 5-0 (Odakara and Anton absent) to waive the City's Technical Standard (Section XV 4 C relative to light pole fixture height) to allow the light pole heights to be 25 feet in the parking areas and 30 feet at the drive aisles, as shown in the plan.
4. The Planning Board voted 5-0 (Odakara and Anton absent) that the plan is in conformance with the Site Plan standards of the Land Use Code, subject to the following conditions of approval:
  - i. The applicant shall amend the survey, for review and approval by the City Engineer, so that it is tied to the vertical datum of NGVD 1929 and into the Maine State Plane Coordinate System (2-zone projection), West Zone using the NAD1983(HARN) Datum and the U.S. Survey Foot as the unit of measure; and
  - ii. That the applicant shall conduct a post-occupancy Parking Demand Study that documents actual field conditions for review and approval by the City. The scope of the Study shall be coordinated and approved by the City. If the Study identifies deficiencies, the applicant shall be responsible for developing a plan that addresses the problem, as approved by the City; and
  - iii. That the applicant shall implement the submitted Transportation /Travel Demand Management Plan (TDM Plan) within one month from the issuance of the Certificate of Occupancy for the Phase 1 Hospital (short stay); and
  - iv. The applicant shall submit an annual TDM report that outlines the program for review and approval by the Planning Authority, with an initial report submitted within 12 months following the issuance of the Certificate of Occupancy for the Phase 1 Hospital (short stay). The report shall summarize the current program elements and participation in the program. The TDM monitoring program shall be conducted in parallel with the Parking Monitoring Study, with the scope of the Study agreed with the Planning Authority prior to conducting the Study; and
  - v. That the applicant shall continue to meet with METRO and use its best endeavors to ensure a reasonable public transit service is in operation to service the site prior to the issuance of the Certificate of Occupancy for the Phase 1 Hospital (short stay); and
  - vi. That the applicant shall submit for review and approval by the Planning Authority, revisions related to traffic signs and road markings, the detail of several crosswalks, and annotations related to future signal installation to address the items 11-15 and 17-21 of Tom Errico's comments of August 3, 2006; and

- vii. The applicant shall revise the site plan to show the location of bike racks and staff shower facilities on the site; and
- viii. That no more than 783 parking spaces may be built and/or provided within Phase 1 of the Mercy Development; and
- ix. That the applicant shall install on the site all of the planting and landscaping shown in Plans LP101, LP102, LP103, LP201 and LP202 within one year of the issuance of the Certificate of Occupancy for the first completed building; and
- x. That the applicant shall submit revised plans for review and approval by the Planning Authority which clearly show the details and extent of tree preservation, protection methods, and other requirements. The submission should include a Tree Protection and Vegetation Management Plan that clearly identifies these elements; and
- xi. That the applicant shall submit, for review and approval by the Planning Authority, further planting information and details to address the comments in the Memorandum from Pat Carroll dated August 2, 2006 and the e-mailed Recommendation from Jeff Tarling dated August 3, 2006; and
- xii. That the applicant shall submit further information regarding lighting levels and submit revisions as necessary for review and approval by the Planning Authority; and
- xiii. That the applicant shall submit, for review and approval by the Planning Authority, the elevations, materials and other information in respect of the maintenance building shown on the site plan; and
- xiv. That the applicant shall submit revised plans, for the review and approval by the Planning Authority, to achieve improved screening and integration of the service area, and associated tanks, structures and apparatus, through baffles and relocation of planting; and
- xv. That the applicant shall submit, for the review and approval by the Planning Authority, the complete information of processes, materials, or methods of storage to be used by the development and specify how hazardous impacts to neighboring properties will be prevented (as required in para 13 of the Contract Zone Agreement); and
- xvi. The storage of compressed gases shall comply with NFPA 55, and the applicant shall provide a compliance letter from a design professional to the Fire Department; and
- xvii. The applicant shall provide a public access easement, in compliance with Para 6 of the Contract Zone Agreement, for the pedestrian trail and bike path network within the Mercy site (Fore River waterside trails; the loop trail around the wetland area; and the "front" trail that connects the two access drives but excluding the staff-only "spur" path to the Phase 1 Hospital Building), to be approved by the Corporation Counsel; and
- xviii. That the applicant shall submit, for review and approval by the Planning Authority, all outstanding capacity to serve letters; and
- xix. That the applicant shall submit, for review and approval by the Planning Authority, revised plans that show 12 inches of special backfill material over all pipes to meet City standards; correct references to BMPs; and 7 inch reveals for granite curbing where it is located with the City's Right of Way (see DRC memorandum of August 3, 2006); and

- xx. That the applicant shall discuss and agree with Portland Trails, the City of Portland Public Works Department and the City of Portland Department of Parks and Recreation, a co-ordinated signing, management and maintenance regime that ensures that all areas within and adjacent to the site are maintained to a high standard of amenity and safety; and
- xxi. That the applicant shall provide the Portland Trail signage, subject to agreement with Portland Trails and to all necessary approvals and permits, as it relates to or is located on the Mercy site; and
- xxii. That the applicant shall submit a construction program, including measures being taken to avoid any impacts to surrounding streets and properties, for review and approval by the Planning Authority prior to the start of construction; and
- xxiii. That the applicant shall submit further information on the noise levels of any generator likely to be used on the site and confirm what measures will be taken to meet the noise standards of the City's Ordinance; and
- xxiv. The Fire Department Connections on building #1 (Phase 1 Hospital) at the loading dock must be kept unobstructed at all times and should be striped "Fire Lane" on the plans; and
- xxv. The Fire Alarm system shall require the use of Master boxes.

The approval is based on the submitted site plan and the findings related to conditional use and site plan review standards as contained in Planning Report #43-06, which is attached.

Please note the following provisions and requirements for all site plan approvals:

1. Where submission drawings are available in electronic form, the applicant shall submit any available electronic Autocad files (\*.dwg), release 14 or greater, with seven (7) sets of the final plans.
2. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and 7 final sets of plans must be submitted to and approved by the Planning Division and Public Works prior to the release of the building permit. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.
3. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.
4. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
5. Prior to construction, a pre-construction meeting shall be held at the project site with the contractor, development review coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

6. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
7. The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Jean Fraser at 874-8728.

Sincerely,

Kevin Beal, Chair  
Portland Planning Board

Attachments: Planning Board Report #43-06 (excluding attachments);  
Comments from Tom Errico, Traffic Engineering Reviewer, dated August 3, 2006;  
Memorandum from Pat Carroll dated August 2, 2006;  
E-mail from Jeff Tarling dated August 3, 2006;  
Memorandum from DRC (Woodard & Curran) dated August 3, 2006)

cc: Lee D. Urban, Planning and Development Department Director  
Alexander Jaegerman, Planning Division Director  
Sarah Hopkins, Development Review Services Manager  
Jean Fraser, Planner  
Jay Reynolds, Development Review Coordinator  
Marge Schmuckal, Zoning Administrator  
Inspections Division  
Michael Bobinsky, Public Works Director  
Traffic Division  
Eric Labelle, City Engineer  
Jeff Tarling, City Arborist  
Penny Littell, Associate Corporation Counsel  
Greg Cass, Fire Prevention  
John Peverada, Parking control  
Assessor's Office  
Approval Letter File

**Attachment 1: re condition 4. vi**

**From:** "Thomas Errico" <terrigo@wilbursmith.com>  
**To:** "Jean Fraser" <JF@portlandmaine.gov>  
**Date:** Thu, Aug 3, 2006 1:49 PM  
**Subject:** Mercy Hospital

Jean-

I have provided the following update to my previous comments.

1. The applicant should provide a response as it relates to the current Build-out program and how it complies with details contained in the Maine Department of Transportation Traffic Movement Permit. The following presents a comparison of both:

MaineDOT Permit

- \* 60,000 square foot Ambulatory Care Unit
- \* 75,000 square foot Medical Office Building
- \* 300,000 square foot Hospital with 250 beds
- \* Total = 435,000 square feet of building space

Master Plan Application

Initial Phase

- \* 138,000-139,000 square foot Hospital
- \* 75,000-80,000 square foot Medical Office Building
- \* Total = 213,000-219,000 square feet of building space

Future Phases

- \* 150,000 to 200,000 square foot Hospital Expansion
  - \* 75,000 square foot Medical Office Building
  - \* 40,000 square foot Building Space
  - \* Total = 265,000-315,000 square feet of building space
- \* Combined Total = 478,000-534,000 square feet of building space.

It is my opinion that the current MaineDOT Traffic Permit will allow for the applicant to proceed with the Initial Phase of the project. Modification of the Traffic Movement Permit may be required before proceeding with future phases. A condition should be included that requires the applicant to submit traffic studies for each construction phase (beyond the initial phase) that documents traffic generation and whether the project complies with the Traffic Movement Permit.

2. The build-out plan illustrates a Future Emergency Access near the Cumberland County Correction Facility. The applicant should discuss the issues that prevent this connection from being implemented during Phase 1.

The applicant will be providing a gated emergency access during Phase 1 that complies with City Fire Department standards. I have no further comment.

3. The configuration of the internal intersection on the North Driveway concerns me. An expanded view illustration should be provided that depicts lane and traffic control details and provides information on traffic volumes expected to be traveling through this intersection.

I met with the Applicant and the plans have been revised and improved. I have no further comment.

4. The configuration of the internal intersection on the South Driveway concerns me. An expanded view illustration should be provided that depicts lane and traffic control details and provides information on traffic volumes expected to be traveling through this intersection.

I met with the Applicant and the plans have been revised and improved. I have no further comment.

5. I would suspect that a significant number of visitors either Drop-off or pick-up patients at the main Hospital Entrance. To minimize traffic volumes on the main North Driveway Entry/Exit Roadway, there may be some benefit to providing a direct connection from the Hospital frontage area to Parking Lots 'A' and 'B' (similar to the future build-out plan). This will increase pedestrian/vehicle conflicts, but I believe appropriate design features can be implemented to address this issue.

The applicant has responded to this issue and I find the plans to be acceptable.

6. The applicant should provide an explanation of the operations of The Shuttle Bus Service and the need for such service.

The applicant has responded to this issue and I find the plans to be acceptable.

7. There was some previous discussion that the applicant may be considering the use of the proposed Phase 1 parking supply for use by State Street employees. What is the status of this program?

The applicant has responded to this issue and this comment is no longer valid.

8. It appears that delivery trucks will need to access the loading docks of the Hospital via the South Driveway circulatory intersection. It appears that a gate will be provided, preventing delivery vehicles from accessing the loading area. How will the gate be managed? Also, how will deliveries take place at the MOB Building?

The applicant has responded to this issue and I find the plans to be acceptable.

9. The crosswalk on the South Driveway is illustrated differently from other crosswalks. The applicant should provide an explanation on the proposal for crosswalks on-site.

The applicant is proposing raised crosswalks at some locations. A construction detail has been provided and I have no further comment.

10. The applicant has provided a detailed Parking Study. The Applicant should provide supporting documentation used in the development of parking generation rates for all each specific users. Upon receipt of that information, I will provide an opinion of parking adequacy for the site.

I have reviewed the applicant's parking information and it appears that adequate parking will be provided during Phase 1 with 781 spaces. It is my recommendation that the applicant conduct a post-occupancy parking demand study that documents actual field conditions for review and comment by the City. The scope of the study will be coordinated and approved by the City. If the Study identifies deficiencies, the applicant will be responsible for developing a plan that addresses the problem, as approved by the City. I would note that related to this effort is the monitoring and refinement of the Travel Demand Management program discussed below.

11. The warning signs for the crosswalks on site should be revised to comply with the Manual on Uniform Traffic Control Devices, Federal Highway Administration.

12. The site plan notes that a stop sign will be installed at the southerly driveway at the Connector. This location will be signalized and the stop sign note should be deleted. I would also note that the applicant will be responsible for all costs/efforts necessary for the activation of the traffic signal at this location.

13. A pedestrian crosswalk sign on the egress approach of the southerly driveway is not required. This sign should be deleted.

14. The applicant is proposing a "street print" paving crosswalk at the southerly driveway within the City right-of-way. The City Engineer should review and approve the construction details.

15. The crosswalk at the main entrance is noted to be constructed with "brick pavers". Signage is provided that notes that it will be a "raised" crosswalk although it is unclear whether the crosswalk is intended to be raised. The applicant shall provide details of the crosswalk if it is to be raised.



16. The applicant has requested a waiver for the parking stall size. I support the waiver for 9 feet by 18 feet parking stalls.
17. The wayfinding plan indicates a crosswalk warning sign is to be installed on the Connector in the southbound direction in advance of the southerly driveway. This sign should be deleted. Appropriate warning signs have been provided for as part of the Connector project.
18. The wayfinding plan uses "diamond" shaped warning signs for directing motorists to either Commercial Street or Congress Street. I would suggest using another sign type.
19. A set of I-295 directional signs should be installed at the egress from the main Hospital Drive.
20. Sheet C-28 notes that the future signal (by others). The applicant is responsible for installing all necessary equipment for the activation of the traffic signal.
21. The plan illustrated the designation of 32 ridesharing parking spaces. The plan should include signs and/or pavement markings that clearly define the use of these spaces by carpool/vanpools. The applicant will need to manage these spaces as part of the TDM Plan.
22. I have reviewed the proposed management plan and offer the following comments:
  - o The applicant should submit an annual TDM report that outlines the program for review and comment by the City. I would suggest that an initial report be provided within 12 months following occupancy of Phase 1. The report should summarize the current program elements and participation in the program. I would suggest that the TDM monitoring program be conducted in parallel with the Parking Monitoring Study. This will allow a full review of transportation on site. Prior to conducting the study, the Applicant shall meet with the City to discuss the scope of work for this effort.
  - o The TDM plan notes the availability of bike racks and shower facilities on site. The site plan should include these elements.

Please call me if you have any questions, or comments.

Thomas A. Errico, P.E.  
Senior Transportation Engineer  
Wilbur Smith Associates  
59 Middle Street  
Portland, Maine 04101  
(207) 871-1785 Phone  
(207) 871-5825 Fax

CC: [jpc@portlandmaine.gov](mailto:jpc@portlandmaine.gov)

**Attachment 2: re condition 4. xi (1<sup>st</sup> of 2 docs)**

**CARROLL ASSOCIATES**

75 MARKET STREET      PORTLAND, ME 04101  
PHONE 207.772.1552      FAX 207.772.0712

**LANDSCAPE ARCHITECTS**

**PROJECT MEMO:      Mercy Hospital**

**TO:                      Jean Fraser**  
**FROM: Pat Carroll**  
**DATE:                  August 2, 2006**

**RE:                      Landscape Review**

Our office has recently received the submission plans and support documents dated July 25, 2006 from Deluca Hoffman Associates and SMRT, and have the following comments:

1. The proposed revisions to the Master Plan and Planting Plan relating to building massing, circulation, parking, and open space/ landscaping are consistent with addressing the issues and comments voiced in previous memorandums and meetings with the Applicant's Designers. In general, we find no serious concerns with the Master Plan Document and the Site Plan Submittal as currently proposed. The proposed use of landform and extensive plantings should effectively buffer and screen the bulk of parking from view from the 295 Connector, provide adequate screening of adjacent industrial uses, and provide an attractive setting for the new Hospital.
2. Specific Planting Plan (Sheets LP-101,102, 103, 201, 202, and 501) comments include:
  - Ground plane treatment should be identified on the plan. It is unclear where manicured lawn, sod, meadow, conservation, or non-mowed grass areas are proposed, as well as extent of mulched landscape beds. We assume that all disturbed areas (including the Phase 2 parking lot and South End Open Space) will be revegetated and stabilized as part of the project.
  - Protection and preservation of existing vegetation on the site is critical, especially around the pond and at the northeast corner of the site as indicated. Other related site plans (Demolition, Erosion Control, Layout and Grading Plans) do not indicate these areas of protection and need to be revised to clearly indicate the extent of tree preservation, protection methods, and other requirements. Details indicating approach to tree protection and notes on the drawings relating to activities adjacent to these areas need to be submitted. A Tree Protection and Vegetation Management Plan that clearly identifies these elements would be very beneficial in establishing these requirements.
  - The treegrate and tree planting detail within the treegrate needs to be revised to clearly indicate the scope of work proposed here. It is my understanding in discussions with the Applicant that the structural soil and subsurface drainage indicated is being revised.
  - The applicant proposes to locate plantings on the upper portion of the slope along the east side of the connector to provide a better screening, which we agree with. A planting detail or written requirements for planting trees and shrubs on the connector slope as well as other places where the grade is 2:1 slope or greater should be developed to insure that excessive cut/fill slopes or exposed root balls do not occur when planted in these locations.
  - Some minor conflicts between pole lighting and tree placement are noted. We believe this can be adjusted in the field during tree installation after light pole bases have been installed.
  - It is not noted but assumed that all landscaping indicated on the submitted drawings will be installed as part of this phase, and subsequent future phases of the Hospital, MOB, parking lot expansion and Open Space South Development will be reviewed at the time these projects are brought forward.

Please contact me if you have any questions or concerns. I believe the evolution of the project has been positive and the project when built will result in a positive "Gateway" for the City.

**Attachment 2: re condition 4. xi (2<sup>nd</sup> of 2 docs)**

**From:** Jeff Tarling  
**To:** Jean Fraser  
**Date:** Thu, Aug 3, 2006 9:00 AM  
**Subject:** Re: Mercy Hosp- Landscape Plan

Jean-

The latest Landscape Plan for the Mercy Hospital site shows much improvement and addresses the concerns raised at our last review.

I support the Memo sent by Carroll Associates in regards to the Mercy Hospital landscape review and offer the following comments:

This latest plan show major landscape improvements in the following areas:

- 1) Parking lot tree planting and pedestrian circulation. The added trees and sidewalks along the parking rows will improve pedestrian safety while providing landscape planting space to help define and buffer the parking layout.
- 2) The addition of trees / landscaping near the Maintenance building is an improvement over the last plan.

Recommendations - The Plant List does not show an overall total of plant quantities. Without seeing the total quantities the native / non-native species ratio is unclear. Consideration of additional tree species should be considered to add diversity due to the large plant quantities needed. I would be available to work with the applicant to review additional plant choices.

FORE RIVER SITE  
CONTRACT ZONE REQUEST  
IH TO IH-CONTRACT  
MERCY HOSPITAL AND MERCY HEALTH SYSTEMS OF MAINE, APPLICANTS

AND

THE ADOPTION OF  
THE PUBLIC POLICY STATEMENT ON HOSPITALS AND THE POSSIBLE RELOCATION  
OF MERCY HOSPITAL TO THE FORE RIVER SITE  
AS AN ELEMENT OF THE COMPREHENSIVE PLAN OF THE CITY OF PORTLAND

AND

TEXT AMENDMENT TO THE PURPOSE SECTION OF THE IH ZONE  
CITY OF PORTLAND, APPLICANT

There were 2 Hearing Reports  
after this:

Nov 13, 2001

Dec 3, 2001

Submitted to:

Portland Planning Board  
Portland, Maine

October 23, 2001

All docs re contract zone are in  
Planning file Room under " Congress Street/  
Fore River  
Contract Zone  
Mercy Hospital "

**WITNESS:**

**MERCY HEALTH SYSTEM OF  
MAINE**

\_\_\_\_\_

By \_\_\_\_\_

Howard Buckley  
President and CEO

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Joseph E. Gray, in his capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2001

Personally appeared before me the above-named Howard Buckley, in his capacity as President and CEO, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of Mercy Hospital and Mercy Health System of Maine, Inc.

Before me,

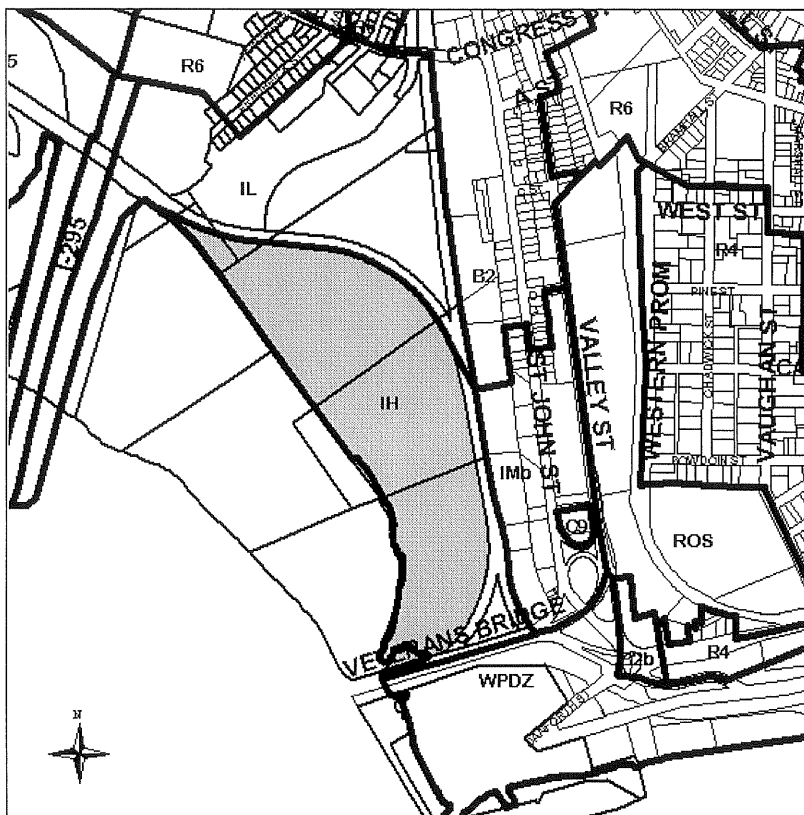
\_\_\_\_\_  
Notary Public/Attorney at Law

LEGAL NOTICE

LEGAL NOTICE

PORTLAND PLANNING BOARD  
PUBLIC NOTICE

Notice is hereby given that the Portland Planning Board will hold a public hearing on Tuesday evening, October 23, 2001 at 6:00 p.m. in Room 209, City Hall, Portland, Maine to consider a proposal by Mercy Hospital for a contract zone for a 40± acre property, located in the vicinity of County Way and the Fore River. The contract zone will allow the development of an integrated Hospital Campus comprised of a mix of uses. The property is currently zoned IH and is delineated on the fragmented map below. The conditions of the proposed contract zone are available in the Clerks Office, City Hall.



Further information on this development can be obtained at the Planning Department Office, City Hall, 4th Floor, or by calling 874-8722.

Jaimey Caron, Chair  
Portland Planning Board

APPLICATION FOR ZONING AMENDMENT  
City of Portland, Maine  
Department of Planning and Urban Development  
Portland Planning Board

- 1. Applicant Information:  
**Mercy Hospital**  
**144 State Street**  
**Portland, ME 04101**  
**879-3000**  
**Fax: 879-3945 (Dr. Steve Hess)**
- 2. Subject Property:  
**On Ogdensburg Street (a paper street)**

Assessor's References

<i>Owner</i>	<i>Tax Map-Block-Lot Number</i>
Merrill Industries, Inc.	73-A-1
Merrill Industries, Inc.	73-B-2
Portland Terminal Co.	74-A-1
Portland Terminal Co.	75-A-3
Portland Terminal Co.	75-A-33

- 3. Property Owners: \_\_\_\_\_ Applicant    XX Other  
**Portland Terminal Company**  
**c/o Guilford Transportation Industries, Inc.**  
**Iron Horse Park**  
**North Billerica, MA 01862**  
**Attn: Roland Theriault, Vice President, Real Estate**  
**978-663-6939; Fax 978-663-6959**

**Merrill Industries, Inc.**  
**601A Danforth St.**  
**Portland, ME 04104**  
**207-772-3254; Fax 207-761-3782**

- 4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

**Mercy holds options to purchase the two properties; copies of the options are attached as Exhibits A and B.**

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

5. Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

**DeLuca-Hoffman Associates, Inc., has prepared the following figures, attached hereto in Exhibit C, that outline the project site and its relationship to the surrounding vicinity:**

- a. **Figure 1, USGS Topographic Map, Portland West Quadrangle**
- b. **Figure 2, USDA Soils Map, Soil Survey of Cumberland County, Sheets 82 & 86**
- c. **Figure 3, Excerpt of City of Portland Zoning Map**
- d. **Figure 4, Existing Conditions Plan containing existing topography, property boundaries, and abutting lot information**
- e. **Figure 5, Aerial photograph of the project including connector roadway alignment**

6. Existing Use. Describe the existing use of the subject property:

*In General*

The site is prominently located along the Fore River waterfront. The site generally extends from just east of the recently constructed I-295 Exit 5 Interchange ramps easterly along the Fore River to the Veterans Memorial Bridge. The site is bounded to the north and east by an active railroad line operated by Guilford Industries. Farther to the northeast, St. John Street is primarily commercial development. Existing uses along St. John Street include Barber Foods, Century Tire, Redlon and Johnson, and the Union Station Plaza. Merrill Industries operates a marine terminal to the southeast of the Veterans Bridge and the development area. The Cumberland County Correctional Facility was constructed a few years ago on land that is between the development site and Congress Street to the north. The Fore River extends across the site's southwestern portion.

Approximately one-half of the site consists of mud flats off the Fore River. This land area will remain undeveloped.

*Historical Uses*

Various railroad companies have owned the property for at least the past 50 years. Up until the 1980s the site contained a railroad yard that included multiple tracks and other ancillary rail features. In the late 1980s and 1990s the railroad activity ceased and all but one set of abandoned tracks were removed from the site.

*Existing Structures and Conditions*

Merrill Industries, Inc., has used the southeast side of the site for material storage associated with marine terminal activities. Piles of glass and other raw materials have been stockpiled in the area. In years past the southeast area was used for various construction-related stockyard activities. The site's northwest side is generally undeveloped and mostly wooded except for the remains of a former gravel pit in the middle of the site.



There is one single-story wood-framed building and one metal-framed warehouse-type structure in the southeast area of the site. The larger of these two structures is less than 8,000 SF. These structures will be removed as part of the hospital development program.

The site also contains an abandoned gravel pit. Representatives of Guilford Industries have stated that the gravel pit was operated by the railroad as a source of gravel materials for railroad operations since the 1950s and also during the construction of the Veterans Memorial Bridge. The railroad continued to actively mine gravel from the site through the 1970s. Lesser amounts of gravel continued to be excavated from the existing pit area into the mid 1980s. The railroad has ceased any excavation of materials from the site, since around the mid-1980s.

7. Current Zoning Designation(s): **I-H**

The site is currently zoned I-H. Surrounding zones include IL in the vicinity of the Correctional Center. The north end of St. John Street around Union Station is zoned B-2, and the south end of St. John Street is zoned I-Mb.

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

**The proposed use is as a hospital and related uses, including: medical office building; ambulatory care center; fitness center; day care centers for children and adults; psychiatric services; medical research; nursing home; assisted living facilities; residences for student doctor residents, relatives of patients, etc.; teaching center; retail and restaurant uses to service the hospital uses; and a helicopter pad.**

These uses will be within multiple buildings to be constructed in phases over perhaps the next ten years. The new structures will be a mix of single and multi-level buildings developed in a campus-like setting. The buildings may be freestanding or linked, depending upon the phasing and ultimate development program proposed. Other ancillary development features include parking facilities, utility services, stormwater management systems, and site amenities. Parking for the campus is likely to be primarily surface lots, although a parking garage may be considered in the future. Approximately 22 to 28 acres of land will be developed for the hospital campus.

A portion of the site will be used for the construction of the proposed Commercial Street Connector roadway. This connector roadway is currently in the MDOT design phase. Construction of the connector is a critical aspect of the development feasibility and Mercy Hospital is coordinating closely with the MDOT and involved parties with regard to the funding and timing of the construction.

The preliminary connector roadway layout includes the extension of the Exit 5 connector between Congress Street and the northbound ramps. The connector will extend easterly across land of Ralph Romano III and Guilford Industries, Inc. The connector will cross the railroad tracks above grade and proceed across the proposed Mercy Hospital property generally along the Fore River frontage. The connector roadway will include significant

reconstruction of the Veterans Memorial Bridge intersection and rotary with Commercial Street, Danforth Street, and St. John Street. The connector plan calls for a separate pedestrian walking/bikeway along the Fore River frontage. It is anticipated that at least two separate access drives to the hospital campus will be provided off the connector. Additional service access likely will be provided off Countyway, the access road for the Correctional Center.

The Hospital project will require permitting review by the following regulatory bodies:

- a. The City of Portland Planning Board and City Council
- b. The Maine Department of Environmental Protection
- c. The U.S. Army Corps of Engineers
- d. The Maine Department of Transportation
- e. The Federal Aviation Administration

9. Sketch Plan: On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1"=10' to 1"-100'.) See Figure 4, attached.

10. Proposed Zoning: Please check all that apply:

- A.  ~~XX~~ Zoning Map Amendment, from ~~I-H to I-Hb and Helistop Overlay Zone~~
- B.  ~~XX~~ Zoning Text Amendment to Sections ~~14-261, 14-262, 14-263, 14-265~~

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example). See Exhibit D attached.

- C.  Conditional or Contract Zone

A conditional or contract rezoning may be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62).

11. Application Fee: A fee for this application for a zoning amendment must be submitted, by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Public Hearing Notice as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

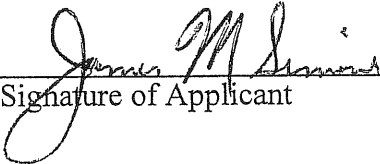
	<u>1-25 Units</u>	<u>26-50 Units</u>	<u>51-75 Units</u>	<u>75 &amp; Over</u>
Residential Zones	\$350.00	\$400.00	\$450.00	\$500.00
Nonresidential Zones	\$350.00	\$400.00	\$450.00	\$500.00
	0-15,000 sq. ft. or 0-5 acres (which- ever is less)	15,000-30,000 sq. ft. or 6-10 acres (which- ever is less)	30,000-45,000 sq. ft. or 10-15 acres (which- ever is less)	45,000-60,000 sq. ft. or 15-20 acres (which- ever is less)

- Legal Advertisements (one for workshop and one for public hearing) percent of total bill
- Notices (one for workshop and one for public hearing) 40 cents each
- Text Amendments \$300.00

\$500 + \$300 = \$800 Amount of Fee

12. Signature: The above information is true and accurate to the best of my knowledge.

7/9/01  
Date of Filing

  
Signature of Applicant

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

**Mercy Hospital has determined that it can no longer meet the long term needs of the community from its 144 State Street location. The current building is cramped for space, has little expansion capabilities and is short on parking. The hospital is located in a neighborhood not well-suited to a hospital. Therefore the Board of Trustees directed that a search be undertaken for a new site for Mercy that can meet the Portland area's long term needs for a state-of-the-art community hospital.**

**The results of the site search found there is only one site (called the Fore River Site) that has all the desired attributes of being on a parcel of land large enough to meet Mercy's long term needs, while being easily accessible and convenient to doctors, public transportation, and the Maine Medical Center. Mercy has been able to secure control of the Fore River Site, and is now seeking the right to build on it. The**

**first step in this process is changing the zoning of the site to allow a hospital and related uses.**

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board  
Portland, Maine

Effective: July 6, 1998

**PURCHASE AND SALE AGREEMENT**

**PURCHASE AND SALE AGREEMENT** made as of this 10<sup>th</sup> day of April, 2001 by and between the **PORTLAND TERMINAL COMPANY**, a Delaware corporation with a place of business at Iron Horse Park, North Billerica, Massachusetts (the "Seller") and the party hereinafter identified in Paragraph 1(b) (the "Buyer").

**WITNESSETH:**

1. The following terms shall have the meanings specified whenever used in this Agreement:

(a) **SELLER:**

Portland Terminal Company  
c/o Guilford Transportation Industries, Inc.  
Iron Horse Park  
North Billerica, Massachusetts 01862  
Attention: Roland L. Theriault, Vice President - Real Estate

Send a copy of any notice to:

Portland Terminal Company  
c/o Guilford Transportation Industries, Inc.  
Iron Horse Park  
North Billerica, Massachusetts 01862  
Attention: Roland L. Theriault, Vice President - Real Estate

(b) **BUYER:**

Mercy Hospital, or its Assignee  
c/o Larry Plotkin  
~~Real Estate Advisory Services~~  
~~32 Buttonwood Lane~~  
~~Portland, ME 04102~~

144 State St.  
Portland, ME 04101-3795  
ATTN: JAMES M. SIMONE

Send a copy of any notice to:

Larry Plotkin  
The Plotkin Company, LLC  
32 Buttonwood Lane  
Portland, Maine 04102

and

Dan Snow, Esquire  
Pierce Atwood  
One Monument Square  
Portland, Maine 04101

(c) **PREMISES:**

Approximately 26.23 acres, located in Portland, County of Cumberland, State of Maine, as more particularly shown on the sketch attached to this Agreement and marked "Exhibit A", together with mud flat area containing approximately 40.76 acres as shown on sketch attached to this agreement and marked Exhibit A-1.

(d) **PURCHASE PRICE:**

The agreed purchase price is \$1,000,000.00.

(e) **DEPOSIT:**

A total of \$100,000.00 due and payable as follows:

\$50,000.00 by certified and/or bank or treasurer's check or wire transfer due and payable to Seller upon execution of this Agreement. The Buyer specifically acknowledges and agrees that \$50,000.00 of such deposit shall be non-refundable and shall be considered the property of the Seller, refundable to Buyer only if Seller defaults pursuant to Section 9 of this Agreement.

\$50,000.00 by certified and/or bank or treasurer's check or wire transfer due and payable upon expiration of the Zoning and Planning Board Approval Period as hereinafter provided in Paragraph 29.

(f) **CLOSING DATE:**

March 29, 2002 or pursuant to paragraph 1 E, June 27, 2002 as provided in paragraph 29.

APR 10 01 03:20P

(g) **EXHIBITS:** The following exhibits are hereby incorporated by this reference into this Agreement:

- (i) Exhibit "A": A plan of the Premises entitled: Maine Central Railroad Company, Office of the Vice President-Engineering, Portland, Maine, Land Sale Plan, Line::, V.S. VID-Map 1, Mile Post; Scale: 1" = 200', Date:12/29/00".
- (ii) Exhibit "B": Deed.
- (iii) Exhibit "C": Plan Specifications.
- (iv) Exhibit "D": Additional Provisions
- (v) Exhibit "E" Entry Permit

2. **PURCHASE AND SALE.** In consideration of the mutual covenants and promises contained in this Agreement, and other good and valuable consideration received by each party, the Seller hereby agrees to sell and the Buyer agrees to purchase the Premises, upon the terms and conditions hereinafter set forth.

3. **TITLE.** The Premises shall be conveyed by a release deed running to the Buyer in a form substantially identical to that annexed hereto and marked Exhibit "B" (the "Deed"). The Deed shall contain no warranties or covenants of title whatsoever and shall convey all of the Seller's right, title and interest in the Premises, subject to the following:

- (a) Provisions of existing building, land use, subdivision control and zoning laws;
- (b) Such real property taxes for the then current tax year as are not yet due and payable on the Closing Date;
- (c) Any liens for municipal betterments assessed after the date of this Agreement;
- (d) Such agreements, leases, licenses, easements, restrictions and encumbrances, if any, as may appear of record, or otherwise; and
- (e) The provisions, conditions and covenants set forth in the Deed and hereby expressly incorporated by reference. The Buyer agrees to signify acceptance of such provisions, conditions and covenants contained in the Deed by executing the Deed at closing.

4. **DEED PLAN.** The Seller's obligations under this Agreement are conditioned upon the Buyer furnishing the following items to the Seller no later than ten (10) days prior to the Closing Date:

- (a) A satisfactory linen or mylar deed plan of the Premises (the "Plan") which:
  - (i) is prepared by a registered land surveyor, (ii) is suitable in all respects for recording at the local registry of deeds, (iii) contains a certification by said registered land surveyor as to the actual land area comprising the Premises, (iv) conforms to the requirements set forth in Exhibit "C", and (v) contains such other information as the Seller may reasonably require; and
- (b) A description of the Premises by metes and bounds, consistent with and referring to the Plan, which description shall be attached to and become the Exhibit "A" referred to in the Deed.

The Seller agrees to reasonably cooperate with the Buyer or the Buyer's agents to furnish the information necessary for the Buyer to complete the Plan. The Buyer agrees to indemnify the Seller for all loss, cost, damage and expense (including reasonable attorneys' fees and expenses) arising in any way out of the presence or activities upon the Premises by the Buyer, said registered land surveyor or the agents, servants, employees or contractors or any of them, whether such loss, cost, damage or expense is incurred by the Seller, the Buyer, said registered land surveyor, or the agents, servants, employees or contractors of the same, or by others.

5. **ADJUSTMENTS TO PURCHASE PRICE.** Water rates, rents, real estate and other property taxes and sewer charges (collectively, the "Taxes") shall be apportioned as of the Closing Date and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by the Buyer. If the amount of Taxes is not known at the Closing Date, they shall be apportioned on the basis of the Taxes for the applicable preceding period and reapportioned as soon as verified current information can be obtained. The latter provision shall survive the delivery of the Deed.

6. **FEES, COSTS, AND TRANSFER TAXES.** The Buyer agrees to pay all recording fees and real estate transfer taxes of any description imposed on either the Buyer or Seller on account of this transaction by any government or governmental authority.

7. **CLOSING.** The Deed shall be delivered and the Purchase Price less the Deposit shall be paid by certified or bank cashier's check (and not otherwise) at Iron Horse Park, North Billerica, Massachusetts at 10 o'clock a.m. on the Closing Date, unless the parties otherwise agree beforehand in writing. It is agreed that time is of the essence in all respects to this transaction.



8. **POSSESSION.** The Seller shall deliver possession of the Premises to the Buyer on the Closing Date, subject only to the provisions of paragraph 3 hereof, the Premises then being in the same condition as they now are, reasonable wear and tear excepted.

9. **SELLER'S DEFAULT.** In the event that the Seller is unable to give title or make conveyance of the Premises to the Buyer in accordance with the terms of this Agreement for any reason, then Seller shall use reasonable efforts to cure such default. In the event Seller is unable to cure such default or in the event of a taking or condemnation of all or a portion of the Premises at its option, Buyer may proceed with the transaction or terminate this Agreement by written notice to Seller, thereupon, then any payments made by the Buyer shall be refunded, the obligations of the parties shall cease, this Agreement shall be void and neither party shall have further recourse against the other.

10. **REMOVAL OF ENCUMBRANCES.** The Seller may use the Purchase Price paid by the Buyer at the time of the delivery of the Deed, or any portion thereof, to clear the title of any mortgage or other title encumbrance not in accordance with the terms hereof, provided that any instrument so procured is recorded as soon as reasonably practical after the delivery of the Deed.

11. **ACCEPTANCE OF DEED.** The Buyer's acceptance of the Deed shall be deemed to be a full performance and discharge of every agreement or obligation of the Seller herein contained, except for such as are, by the terms hereof, to be performed after the delivery of the Deed.

12. **BROKER.** The parties represent and warrant to each other that neither has dealt with any broker in respect to this transaction or the Premises except for the commission due and payable by the Buyer to The Plotkin Company, LLC and to Ram Harnden, Inc. The Buyer and Seller each agree to indemnify and hold harmless the other party from and against all other claims for brokerage or commission on account of this transaction.

13. **DEPOSIT.** The Deposit shall be held by the Seller subject to the terms of this Agreement and shall be duly accounted for at the time of delivery of the Deed. The parties agree that the Deposit shall not bear interest.

14. **WARRANTIES.** The Buyer acknowledges that the Buyer has not been induced to enter into this Agreement, and the transaction contemplated herein, in reliance upon any warranties or representations of any party not set forth herein. The Buyer hereby expressly waives any claims against the Seller for any matters of public record or matters which a physical inspection of the Premises would reveal. This paragraph shall survive the delivery of the Deed.

15. **BUYER'S DEFAULT.** In the event the Buyer fails to fulfill any one or more of the Buyer's performances under this Agreement, the Seller shall retain the Deposit as liquidated damages. The parties expressly acknowledge that the Seller's damages owing to the Buyer's default hereunder are difficult to ascertain and agree that the Deposit represents a reasonable estimate of the Seller's damages.

16. **APPROVALS, RELEASES.** The Seller's obligations under this Agreement are conditioned upon the Seller obtaining any necessary releases, approvals or permits relating to the sale of the Premises by the Seller from any state or federal government or governmental authority having jurisdiction over the Premises. The Seller agrees to proceed with reasonable diligence to obtain any such approvals. In no event, however, shall the Seller be required to obtain subdivision approval from any governmental authority. If subdivision approval is required by applicable law, the Buyer shall obtain it or shall indemnify the Seller from all loss, cost, damage, and expense arising in any way out of the conveyance of the Premises without first having obtained the same.

17. **HAZARDOUS WASTE.** The Buyer hereby acknowledges that the Buyer is purchasing the Premises "as is", "with all faults" and subject to the possible existence of hazardous materials, petroleum products and/or other pollutants regulated by law. Notwithstanding the foregoing, the Buyer, for itself, its successors, assigns and grantees hereby irrevocably waives, gives up and renounces any and all claims or causes of action against the Seller in respect of any claims, suits, and/or enforcement actions, including any administrative or judicial proceedings and any remedial, removal, or response actions ever asserted, threatened, instituted, or requested by any person (including any government agency) on account of: (a) any release of oil or hazardous materials (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601, et seq.) or any applicable state law) on, upon, or into the Premises; and (b) any and all damage to real or personal property, natural resources, and/or harm to persons alleged to have resulted from such release of such oil hazardous materials upon the Premises. This provision shall survive the delivery of the deed.

18. **NOTICES.** Any notice or other communication in connection with this Agreement shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and delivered by hand or sent either (a) by registered or certified mail (return receipt requested) with the United States Postal Service; or (b) by Federal Express or other similar overnight mail carrier furnishing evidence of receipt to the sender, at the address set forth in paragraph 1 of this Agreement. Either party may change the address at which notices are to be received by notice given as set forth above.

19. **CONFIDENTIALITY.** The Buyer agrees and acknowledges that Information (hereinafter defined) concerning the Premises obtained by the Buyer in connection with the transaction contemplated in this Agreement (the "Transaction") is unique and confidential to the Seller. If the Transaction does not take place, for any reason whatsoever (including, but not limited to, breach of this Agreement by either party), the Buyer agrees, in addition to the

provisions of paragraph 15 hereof, to turn over to the Seller all (i) plans, (ii) surveys, (iii) reports, (iv) site assessment and environmental reports of any description, (v) soil, vegetation, water, air and other samplings collected at the Premises and the fruits of any research, testing, experimentation or study conducted with the same, and (vi) all plans or other information or documents furnished by the Seller to the Buyer (collectively, the "Information"). Furthermore, in the event the Transaction does not take place, the Buyer warrants to the Seller that all Information has been paid for and is free of any and all liens, and that the Buyer, its officers, agents, employees, directors, shareholders and affiliates shall not disclose the Information to any person, entity or government unless required to so disclose such information under applicable law or as necessary as to permitting. The Buyer acknowledges and agrees that the Seller may, in addition to all other remedies available to it, obtain injunctive relief against the Buyer for any breach or threatened breach of the provisions of this paragraph.

20. **RECORDING.** The parties agree that neither this Agreement nor any memorandum thereof shall be recorded at the registry of deeds and that any such recording by the Buyer shall constitute a default by Buyer.

21. **AUTHORITY OF SIGNATORY.** If the Buyer executes this Agreement by agent or representative, such agent or representative hereby warrants and represents to the Seller that he is authorized to execute, acknowledge and deliver this Agreement on behalf of the Buyer and to thereby bind the Buyer to the same. This warranty shall survive the delivery of the Deed.

22. **ASSIGNMENT.** The Buyer may assign this Agreement, or any interest herein, without the prior written consent of the Seller.

23. **SEVERABILITY.** If any term of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent be deemed invalid or unenforceable, the remainder of this Agreement and the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected.

24. **NO WAIVER.** No delay or omission on the part of the Seller in exercising its rights under this Agreement shall constitute a waiver of such right or any other right under this Agreement. Also, no waiver of any such right on one occasion shall be construed as a waiver of it on any other occasion.

25. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the state wherein the Premises lie.

26. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, supersedes all prior oral or written offers, negotiations, agreements, understandings and courses of dealing between the parties relating to the subject matter hereof and is subject to no understandings, conditions, or representations other than those expressly stated herein. This Agreement may only be modified or amended by a

writing which states that it modifies or amends this Agreement and which is signed by all parties.

27. **SECTION HEADINGS.** The section headings contained in the Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

28. **MISCELLANEOUS.** This Agreement shall take effect as a sealed instrument and be binding upon and inure to the benefit of the parties and their respective successors, heirs, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in two counterparts, effective as of the day and year first above written.

**SELLER:  
PORTLAND TERMINAL COMPANY**

Robert Stewart  
Witness

By: David A. Fink  
David A. Fink, Chief Executive Officer

Approved for execution  
by the Portland Terminal Company.

\_\_\_\_\_

**BUYER:  
MERCY HOSPITAL**

Jay G. [Signature]  
Witness

By: James M. [Signature]  
Its: Vice President Finance & Treasurer

Exhibit "B"

RELEASE DEED

PORTLAND TERMINAL COMPANY, a corporation duly organized and existing under the laws of the State of Maine, with offices at Iron Horse Park, North Billerica, Middlesex County, Massachusetts (the "Grantor") in consideration of

( \$ ) Dollars paid to it by

(the "Grantee") hereby grants to the Grantee all the Grantor's right, title and interest, without any warranties or covenants of title whatsoever, in a certain parcel of land, and the buildings, bridges, structures, crossings, fixtures and improvements thereon, if any, situated in

"Premises") described as follows:

(the

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

1. This conveyance is made without granting any right of way, either by necessity or otherwise, over any remaining land or location of the Grantor.
2. ~~The Grantor hereby reserves an exclusive, permanent right of way and easement in, on, over, under, across and through the Premises for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing a telecommunications system or other system for transmission of intelligence or information by any means, whether now existing or hereafter devised, including such poles, pipes, wires, fibers, fiberoptic cables, repeater stations, attachments, appurtenances, structures or other equipment and property of any description necessary or useful for the same (the "Telecommunications Easement"). The Grantor further reserves the right to freely lease, license, mortgage, assign, pledge and otherwise alienate the Telecommunications Easement. The Grantee hereby covenants with the Grantor to recognize the Telecommunications Easement and, without the payment of any further consideration, to execute, acknowledge and deliver such instruments suitable for recording with the registry of deeds as the Grantor may reasonably require to acknowledge title to the Telecommunications Easement in the Grantor. The Grantor covenants to reasonably repair and restore the surface of the easement area after any work.~~

3. ~~The Grantor excepts from this conveyance any and all railroad tracks, railroad track materials (including, but not limited to, ties, connections, switches and ballast) and/or related equipment of any description located in whole or in part within the Premises (the "Trackage") and this conveyance is subject to the right of the Grantor to enter the Premises from time to time and at any and all times within the ninety (90) day period commencing with and subsequent to the date of delivery of this deed, with such men, equipment and materials as, in the reasonable opinion of the Principal Engineering Officer of the Grantor, are necessary for the removal of the Trackage. Days during the months of December, January, February and March shall not be included in the aforesaid ninety (90) day period. If the Trackage is not removed from the Premises by the expiration of said ninety (90) day period, the Trackage shall be deemed abandoned by the Grantor and shall then become the property of the Grantee.~~
4. ~~The Grantor excepts from this conveyance any and all advertising signs and/or billboards located upon the Premises which are not owned by the Grantor. Furthermore, this conveyance is subject to the right of the owners of said signs and/or billboards to go upon the Premises and remove them within ninety (90) days from the date of delivery of this deed.~~
5. By the acceptance of this deed and as part consideration therefor, the Grantee hereby assumes any and all agreements, covenants, obligations and liabilities of the Grantor in respect to any underground facilities, drainage culverts, walls, crossings and/or other structures of any nature and description located in whole or in part within the Premises.
6. By the acceptance of this deed and as part consideration therefor, the Grantee agrees to irrevocably waive, give up and renounce any and all claims or causes of action against the Grantor in respect of claims, suits and/or enforcement actions (including any administrative or judicial proceedings and any remedial, removal or response actions) ever asserted, threatened, instituted or requested by any person and/or governmental agency on account of: (a) any release of oil or hazardous materials or substances of any description on, upon or into the Premises in contravention of any ordinance, law or statute (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq., as amended); and (b) any and all damage to real or personal property, natural resources and/or harm or injury to persons alleged to have resulted from such release of oil or hazardous materials or substances.

7. By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to build and forever maintain fences (together with any necessary gates), suitable to the Principal Engineering Officer of the Grantor, along the boundaries of the Premises which are common to remaining land or location of the Grantor (the "Fences"), if Fences are ever required in the sole and reasonable opinion of said Principal Engineering Officer.
8. This conveyance is subject to the following restriction for the benefit of other land or location of the Grantor, to wit: that from the date of delivery of this deed, the Grantor shall not be liable to the Grantee or any lessee or user of the Premises (or any part thereof) for any damage to any buildings or property upon them caused by fire, whether communicated directly or indirectly by or from locomotive engines of any description upon the railroad operated by the Grantor, or otherwise. The aforementioned restriction shall not apply to wanton, willful or intentional acts of the Grantor.
9. By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to make no use of the Premises which, in the sole and reasonable opinion of the Principal Engineering Officer of the Grantor, materially adversely affects, materially increases or decreases drainage to, from, upon or in any remaining land or location of the Grantor. The Grantee agrees to indemnify and save the Grantor harmless from and against any and all loss, cost, damage or expense including, but not limited to, the cost of defending all claims and/or suits for property damage, personal injury or death arising out of or in any way attributable to any breach of the foregoing covenant.
10. The Grantor excepts from this conveyance any and all overhead, surface or underground signal and communication line facilities of the Grantor located within the limits of the Premises and this conveyance is subject to the Grantor's use of any such facilities in their present locations and entry upon the Premises from time to time to maintain, repair, replace, renew, relay or remove such facilities.
11. Whenever used in this deed, the term "Grantor" shall not only refer to the **PORTLAND TERMINAL COMPANY**, but also its successors, assigns and affiliates and the term "Grantee" shall not only refer to the above-named Grantee, but also the Grantee's successors, assigns and grantees, as the case may be.
12. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land and be binding upon the Grantee forever. In addition to the acceptance and recording of this deed, the Grantee hereby signifies assent to the said several exceptions, reservations, conditions, covenants and agreements, by joining in its execution.



IN WITNESS WHEREOF, the said PORTLAND TERMINAL COMPANY has caused this release deed to be executed in its name and its corporate seal to be hereto affixed by David A. Fink, its Chief Executive Officer, therunto duly authorized this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

**GRANTOR:  
PORTLAND TERMINAL COMPANY**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
David A. Fink, Chief Executive Officer

**GRANTEE:**

\_\_\_\_\_  
Witness

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

**EXHIBIT "C"****Two Pages****Engineering Department  
Minimum Requirements for Deed Plans**

1. Title Block shall be similar to the attached sample and located in the bottom right corner of plan.
2. Plan is to include metes and bounds, physical features, Railroad baseline and engineering stations for the extremities of the parcel to be conveyed, culverts and street locations.
3. Railroad file numbers (to be assigned) are to appear in the top right and bottom left corners of plan.
4. Registered Land Surveyor's seal and signature must appear on plan.
5. Plan is to meet all requirements of and be acceptable for recording by the appropriate Registry of Deeds.
6. Parcel distance from centerline of location of track must be indicated.
7. No reference to "Railroad" shall appear on plan. The term Portland Terminal Company shall be used.
8. Two (2) copies of proposed plans shall be submitted for review prior to sending original.
9. Recordable original tracing and linen or mylar duplicate thereof are to be furnished this office. The original tracing will be forwarded to the Real Estate Department (attention ) at the time of the Closing. The duplicate will be retained in the Railroad's permanent files.

All correspondence regarding the particulars of the plan should be addressed:

Vernon C. MacPhee, Jr.  
Land and Clearance Engineer  
Maine Central Railroad Company  
Iron Horse Park  
North Billerica, MA 01862  
(978) 663-1144  
FAX (978) 663-1199

**SAMPLE TITLE BLOCK**

**LAND IN  
WHEREVER, ME.  
PORTLAND TERMINAL COMPANY  
TO  
WHATEVER CORPORATION CO. INC.**

**SCALE : 1"=40'      DATE : JULY 7, 1988**

**EXHIBIT "D"****Additional Provisions**

29. **TITLE EXAMINATION/DUE DILIGENCE** Buyer shall have until March 29, 2002, to obtain applicable approvals and satisfy itself with respect to other matters (such as road, hazardous waste, zoning, planning, title, engineering, and all other matters that it agrees to accept the Premises in "As Is" condition. If Buyer is unable to satisfy itself by March 29, 2002, then it may extend the time for closing for ninety (90) days upon the payment of \$100,000.00. If Buyer does not obtain such approval on or before March 29, 2002, Buyer shall have the right to terminate this Agreement, and all the parties shall thereafter be released from any further obligations hereunder. Buyer's failure to terminate this Agreement in writing prior to the expiration of the Zoning & Planning Board Approval Period shall be conclusively deemed to be an acceptance of the real and personal property in "AS IS" condition. In the event, prior to closing, Buyer gives Seller notice of the existence of a title objection, Seller shall proceed with reasonable diligence to cure such title objection in which event, the Closing Date will be extended for such additional period necessary to cure such title objection. In the event, despite due diligence, Seller is unable to cure such title objection, the Buyer shall have the option of accepting title with such title objection or terminating this Agreement at which time Buyer's deposit will be returned and all parties shall thereafter be released from any further obligation hereunder, notwithstanding any other provision in this Agreement. The Seller shall be obligated to remove any title objection voluntarily created or suffered by the Seller after the date of this Agreement. Buyer agrees not to disclose the results of any of the foregoing examinations, studies, tests, surveys or assessments to any third party with the exception of its direct or indirect owners or advisors to its owners, title examiner, surveyor, structural, geotechnical or environmental engineers or their agents, its lender or other entity providing equity or debt financing to the Buyer, unless required by law or court order. In no event shall Buyer directly or indirectly disclose any of such information to any competitor of Seller.

30. **ENTRY PERMIT** Prior to any entry upon the Premises and prior to performing any work at or upon the Premises, by Buyer or any of its agents, the Seller and Buyer agree to execute the Railroad's Entry Permit attached hereto and marked as Exhibit "E". Buyer agrees to advise Seller forty-eight hours in advance of any entry to or work upon the Premises.

31. If the Seller executes this Agreement by agent or representative, such agent or representative hereby warrants and represents to the Buyer that he is authorized to execute, acknowledge and deliver this Agreement on behalf of the Seller and to thereby bind the Seller to the same. This warranty shall survive the delivery of the Deed.

32. The Buyer and Seller agree and acknowledge that the Seller shall grant an above grade crossing ("Crossing") over property retained by the Seller for the Buyer's use to access the Premise to be conveyed. The specific location of the Crossing will be determined and agreed upon by the parties during the due diligence preparation of the Buyer's bounded survey, as outlined in Paragraph 4 and Exhibit "C" of this Agreement. The Buyer agrees to comply with the following requirements in conjunction with this Crossing grant:

- a. The Buyer shall execute the Seller's standard private Crossing Agreement, which final contents have not yet been fully agreed upon by the parties, but will confer a permanent crossing right and will include a fee waiver provision.
- b. The Buyer shall be responsible for any and all cost, fees and assessments associated with the construction, installation, maintenance or repair of the Crossing. In addition to the expenses just outlined, the Buyer shall pay for any of the Seller's costs associated with any work or referable in any way to the Crossing, including, without limitation, those for materials and equipment, engineering review costs, flagging protection and inspection costs.
- c. The Buyer shall submit full plans and specifications in writing for the proposed Crossing to the Seller for the approval of the Seller's Principal Engineering Officer ("PEO") prior to the proposed commencement of the Crossing construction. No construction shall be undertaken by or on behalf of the Buyer until the Buyer has received written approval from said PEO. The PEO's judgment as to the nature, quality, manner and other particulars of any construction shall be final.
- d. The Buyer shall purchase and maintain a policy of railroad protective insurance covering the Seller's liability resulting from the establishment of the Crossing with limits of the not less than \$5,000,000.00/\$10,000,000.00 for personal injury and \$5,000,000.00/\$10,000,000.00 for property damage. The Buyer shall take all necessary precautions for its own protection, for the protection of its invitees, agents, employees, members, patrons, or guests, and the protection of trains while using the Crossing.

33. In conjunction with the terms and covenants of this Agreement the Seller hereby grants and releases to the Buyer, without covenant or warranty of any kind, express or implied, an exclusive, temporary easement for the purpose of accessing the Premises to be conveyed, in, on, upon or through the real property owned by the Seller, located in the State of Maine, City of Portland and situated adjacent to the Premises and as more particularly described on Exhibit "\_\_\_\_\_" attached hereto and made a part hereof (hereinafter referred to as the "Easement Area"). The grant of this Easement Area is terminable by the Seller upon the completion of the State of Maine's Eminent Domain Taking for highway purposes, (i.e., actual roadway completion), which condemnation will ultimately allow for the Buyer's permanent access to the Premises. Buyer and Seller hereby agree that the exact designation of the Easement Area will be decided in conjunction with the requirements set forth in Paragraph Four (4) herein. Buyer and Seller also acknowledge and agree that an Easement instrument, memorializing this provision, will be delivered by the Seller to the Buyer on the Closing Date.

## OPTION AGREEMENT

THIS AGREEMENT, dated as of February 22, 2001, by and between MERRILL INDUSTRIES, INC., a Maine corporation ("Seller"), and MERCY HEALTH SYSTEM OF MAINE, INC., a Maine non-profit corporation ("Purchaser"),

### WITNESSETH:

In consideration of the premises and the mutual covenants herein set forth and in consideration of the sum of ten dollars by each in hand paid to the other, receipt of which is hereby acknowledged, Purchaser and Seller agree as follows:

#### 1 Option

1.1 *Grant of Option.* On the terms and conditions contained in this agreement, Seller grants to Purchaser the right and option (the "Option") to purchase that certain parcel of land located off of Ogdensburg Street in the City of Portland, Maine, and more particularly described in Exhibit A annexed hereto and incorporated herein by reference, with the buildings and improvements thereon, and all easements and rights appurtenant thereto (said land and buildings and appurtenances, together with the personal property used in conjunction therewith hereinafter sometimes collectively referred to as the "Premises".)

1.2 *Option term.* The term of this Option ("Option Term") shall commence on the date of this agreement and shall expire on April 1, 2001, if not sooner exercised or terminated.

1.3 *Extension of Option Term.* Provided that the Option has not been previously exercised or terminated, and further provided that the Purchaser has exercised its right to all preceding extensions of the Option Term, the Purchaser shall have the right to extend the Option Term as follows:

- (a) the Option Term shall be extended from April 1, 2001 until September 1, 2001 upon written notice of extension and payment of \$ \_\_\_\_\_ ("First Option Payment") received by Seller on or before March 31, 2001; Purchaser shall not be entitled to exercise this extension of the Option Term unless Purchaser shall have previously entered into an option agreement to purchase the adjacent property now owned by Guilford Transportation Corp.; and
- (b) the Option Term shall be extended from September 1, 2001 until March 1, 2002 upon written notice of extension and payment of \$ \_\_\_\_\_ received by Seller on or before August 31, 2001; and
- (c) the Option Term shall be extended for up to twelve periods of one month each upon written notice of extension and payment of \$ \_\_\_\_\_ ("Monthly Option Payment") received by Seller on or before the last day of the preceding month (for example, to extend the term of the option through August 1, 2003, the Purchaser must have satisfied all other extension conditions and paid to the Seller \$ \_\_\_\_\_ on or before June 30, 2003 as an extension payment for the month of July).

All payments for extension of the Option Term shall be non-refundable except as expressly set forth in this agreement.

1.4 *Exercise of Option.* The Option may be exercised by Purchaser by written notice ("Notice of Exercise") to Seller on or before expiration of the Option Term. The Notice of Exercise shall specify a date for delivery of the Deed and payment of the purchase price ("Closing Date"), which date shall not be less than 95 days nor more than 102 days from the Notice of Exercise, and which date shall be a Business Day. If Purchaser agrees in the Notice of Exercise to accept the Premises subject to any tenants or

occupants permitted as set forth in section 11.4 of this agreement, Purchaser may specify a Closing Date not less than 30 days from the Notice of Exercise. For purposes of this agreement, the term "Business Day" means any day except a Saturday, Sunday, or state or federal holiday which banks in Portland, Maine are not generally open for the transaction of business. Upon giving of the Notice of Exercise, this agreement shall be a binding purchase and sale agreement between Seller and Purchaser with respect to the Premises on the terms set forth herein, without the necessity of any further act of the parties.

1.5 *Guilford Option Agreement.* This option shall automatically terminate on April 1, 2001, unless on or before that date Purchaser has entered into an option agreement with Guilford Transportation, Inc. for the purchase of approximately 40 acres of land adjacent to the Premises.

1.6 *"As is" transaction; due diligence.* The parties acknowledge that the Premises have been used for industrial purposes for a very long period and, accordingly, there may be facts and circumstances, including but not limited to easements, railroad rights, encumbrances, encroachments, wetlands, hazardous substances, poor soil conditions, flood plains and other conditions, which may limit Purchaser's ability to use the premises or which may require remediation or corrective action. Seller has agreed to enter into this agreement and to permit Purchaser to purchase the Premises only upon the condition that in any sale pursuant to the Option, Purchaser will accept the Premises as is, without representations or warranties, subject to all liability for compliance with laws and without diminution of the Purchase Price. Purchaser shall proceed to examine the title to the Premises and to inspect the Premises in accordance with the provisions of this agreement. Purchaser shall notify Seller on or before July 1, 2001 that it is satisfied with the state of title, or that it has title objections as set forth in section 5.4. Purchaser shall notify Seller on or before September 1, 2001 that it has completed its inspection of the Premises, including survey and environmental testing, and has satisfied itself with respect to the condition of the Premises.

## 2 *Purchase Price*

2.1 *Purchase Price.* If Purchaser exercises this Option, the purchase price of the Premises (the "Purchase Price") shall be \_\_\_\_\_ if the Deed is delivered and the purchase price paid in full on or before December 31, 2001, or \_\_\_\_\_ if the Deed is delivered and the purchase price paid in full thereafter, regardless of the reason that the Closing Date occurs after that date. The Purchase Price shall be paid as follows:

- (a) The First Option Payment and all of the Monthly Option Payments paid by Purchaser shall be credited to the Purchase Price; and
- (b) the balance of the Purchase Price, subject to adjustments as expressly set forth in this agreement, shall be paid by "federal funds" bank wire, or bank or certified check, payable to the order of and at the direction of Seller, on the Closing Date.

## 3 *Adjustments and Apportionments.*

3.1 The following are to be apportioned or adjusted as of midnight of the day immediately prior to the Closing Date, (the "Adjustment Date") the net of which, on the Closing Date, shall be paid to the party in whose favor such net apportionment arises:

- (a) Taxes, including special or betterment assessments payable in installments, on the basis of the tax year for which assessed and within which the Closing Date occurs; and
- (b) Transfer taxes shall be paid equally by Seller and Purchaser.

Purchaser shall pay the cost of recording the Deed. Each party shall pay any costs and expenses incurred by such party in connection with the transactions contemplated by this agreement, including, without limitation, each parties own attorneys fees.

3.2 If the Closing shall occur before a tax rate and assessment for the Premises is established for the tax year in which the Closing occurs, the apportionment of taxes shall be made upon the basis of the then known assessment and/or rate, with the unknown factor to be adjusted for that item from the immediately preceding tax year, except that at such time as the tax rate and applicable assessed valuation are determined, the parties shall make a further apportionment, if and to the extent so required.

3.3 If, on the Closing Date, the Premises, or any part thereof, shall be or shall have been affected by a betterment or special assessment or assessments, which are or may become payable in installments, then for the purpose of this agreement all the unpaid installments of any such assessment, which are to become due and payable after the Closing Date, shall be assumed by Purchaser without abatement of the purchase price, but shall be subject to adjustment in the same manner as real estate taxes for the tax period in which the Closing occurs. If any assessments for public improvements shall arise subsequent to the execution hereof, and prior to delivery of the Deed, Seller will elect to cause the same to be paid over the longest period allowed by law, and such assessments shall be prorated in the same manner as real estate taxes for the tax year in which the Closing occurs.

3.4 The terms and provisions of this Section 3 shall survive the Closing Date.

#### 4. *The Deed, Bill of Sale and Miscellaneous Documentation.*

4.1 On the Closing Date Seller shall deliver to Purchaser a deed with limited warranty covenants only against acts of the grantor (herein referred to as the "Deed") to the Premises in the form usual to the State of Maine for conveyance of a fee simple title, and subject to the Permitted Encumbrances set forth in this agreement, which Deed shall name Purchaser as grantee therein.

4.2 Seller shall deliver to Purchaser together with the Deed, a bill of sale ("Bill of Sale") for the fixtures and personal property, if any, included in this sale, which Bill of Sale shall without representation or warranty of any kind or nature and shall conspicuously state the absence of warranties.

4.3 At the Closing, Seller shall deliver to Purchaser a currently dated affidavit certifying that Seller (a) is not a foreign person within the meaning of the Internal Revenue Code and its regulations, failing which Purchaser shall withhold from the Purchase Price the sums required by the Internal Revenue Code and pay the same to the Escrow Agent with instructions for the Escrow Agent to pay the same over to the Internal Revenue Service in accordance with applicable law; (b) is a Maine corporation having a principal place of business in the state of Maine; failing which Purchaser shall withhold from the Purchase Price the sums required by the Maine Department of Revenue in accordance with applicable law. Seller hereby indemnifies and holds Purchaser harmless from and against all costs, losses and expenses arising from the falsity of such certification. Such indemnity shall survive the Closing Date.

4.4 On the Closing Date, Seller shall deliver such other instruments as shall be reasonably required by Purchaser's title insurance company ("Title Company") for the purpose of issuing an owner's title insurance policy at standard rates insuring title to the Premises as set forth in Section 5, including such affidavits and unsecured indemnity agreements as may be customary for deleting exceptions for (i) mechanics and materialmens liens, (ii) persons in possession, (iii) unrecorded easements, and (iv) so-called "gap" or New York style insurance coverage.

#### 5. *State of Title.*

5.1 On the Closing Date the Premises shall be subject only to (i) all liens and encumbrances now of record, but excluding any Encumbrance To Be Discharged, as defined below, created during Seller's ownership of the Premises which Seller agrees to discharge pursuant to Section 5.3, (ii) all liens and encumbrances hereafter recorded as to which Purchaser has given its consent, (iii) all liens and encumbrances for Violations described in section 12.1, (iv) any condition which would be disclosed by a physical inspection or testing of the Premises, (v) rights of tenants and occupants in possession referred to



occupants permitted as set forth in section 11.4 of this agreement, Purchaser may specify a Closing Date not less than 30 days from the Notice of Exercise. For purposes of this agreement, the term "Business Day" means any day except a Saturday, Sunday, or state or federal holiday which banks in Portland, Maine are not generally open for the transaction of business. Upon giving of the Notice of Exercise, this agreement shall be a binding purchase and sale agreement between Seller and Purchaser with respect to the Premises on the terms set forth herein, without the necessity of any further act of the parties.

1.5 *Guilford Option Agreement.* This option shall automatically terminate on April 1, 2001, unless on or before that date Purchaser has entered into an option agreement with Guilford Transportation, Inc. for the purchase of approximately 40 acres of land adjacent to the Premises.

1.6 *"As is" transaction; due diligence.* The parties acknowledge that the Premises have been used for industrial purposes for a very long period and, accordingly, there may be facts and circumstances, including but not limited to easements, railroad rights, encumbrances, encroachments, wetlands, hazardous substances, poor soil conditions, flood plains and other conditions, which may limit Purchaser's ability to use the premises or which may require remediation or corrective action. Seller has agreed to enter into this agreement and to permit Purchaser to purchase the Premises only upon the condition that in any sale pursuant to the Option, Purchaser will accept the Premises as is, without representations or warranties, subject to all liability for compliance with laws and without diminution of the Purchase Price. Purchaser shall proceed to examine the title to the Premises and to inspect the Premises in accordance with the provisions of this agreement. Purchaser shall notify Seller on or before July 1, 2001 that it is satisfied with the state of title, or that it has title objections as set forth in section 5.4. Purchaser shall notify Seller on or before September 1, 2001 that it has completed its inspection of the Premises, including survey and environmental testing, and has satisfied itself with respect to the condition of the Premises.

## 2 *Purchase Price*

2.1 *Purchase Price.* If Purchaser exercises this Option, the purchase price of the Premises (the "Purchase Price") shall be \_\_\_\_\_ if the Deed is delivered and the purchase price paid in full on or before December 31, 2001, or \_\_\_\_\_ if the Deed is delivered and the purchase price paid in full thereafter, regardless of the reason that the Closing Date occurs after that date. The Purchase Price shall be paid as follows:

- (a) The First Option Payment and all of the Monthly Option Payments paid by Purchaser shall be credited to the Purchase Price; and
- (b) the balance of the Purchase Price, subject to adjustments as expressly set forth in this agreement, shall be paid by "federal funds" bank wire, or bank or certified check, payable to the order of and at the direction of Seller, on the Closing Date.

## 3 *Adjustments and Apportionments.*

3.1 The following are to be apportioned or adjusted as of midnight of the day immediately prior to the Closing Date, (the "Adjustment Date") the net of which, on the Closing Date, shall be paid to the party in whose favor such net apportionment arises:

- (a) Taxes, including special or betterment assessments payable in installments, on the basis of the tax year for which assessed and within which the Closing Date occurs; and
- (b) Transfer taxes shall be paid equally by Seller and Purchaser.

Purchaser shall pay the cost of recording the Deed. Each party shall pay any costs and expenses incurred by such party in connection with the transactions contemplated by this agreement, including, without limitation, each parties own attorneys fees.

3.2 If the Closing shall occur before a tax rate and assessment for the Premises is established for the tax year in which the Closing occurs, the apportionment of taxes shall be made upon the basis of the then known assessment and/or rate, with the unknown factor to be adjusted for that item from the immediately preceding tax year, except that at such time as the tax rate and applicable assessed valuation are determined, the parties shall make a further apportionment, if and to the extent so required.

3.3 If, on the Closing Date, the Premises, or any part thereof, shall be or shall have been affected by a betterment or special assessment or assessments, which are or may become payable in installments, then for the purpose of this agreement all the unpaid installments of any such assessment, which are to become due and payable after the Closing Date, shall be assumed by Purchaser without abatement of the purchase price, but shall be subject to adjustment in the same manner as real estate taxes for the tax period in which the Closing occurs. If any assessments for public improvements shall arise subsequent to the execution hereof, and prior to delivery of the Deed, Seller will elect to cause the same to be paid over the longest period allowed by law, and such assessments shall be prorated in the same manner as real estate taxes for the tax year in which the Closing occurs.

3.4 The terms and provisions of this Section 3 shall survive the Closing Date.

#### 4. *The Deed, Bill of Sale and Miscellaneous Documentation.*

4.1 On the Closing Date Seller shall deliver to Purchaser a deed with limited warranty covenants only against acts of the grantor (herein referred to as the "Deed") to the Premises in the form usual to the State of Maine for conveyance of a fee simple title, and subject to the Permitted Encumbrances set forth in this agreement, which Deed shall name Purchaser as grantee therein.

4.2 Seller shall deliver to Purchaser together with the Deed, a bill of sale ("Bill of Sale") for the fixtures and personal property, if any, included in this sale, which Bill of Sale shall without representation or warranty of any kind or nature and shall conspicuously state the absence of warranties.

4.3 At the Closing, Seller shall deliver to Purchaser a currently dated affidavit certifying that Seller (a) is not a foreign person within the meaning of the Internal Revenue Code and its regulations, failing which Purchaser shall withhold from the Purchase Price the sums required by the Internal Revenue Code and pay the same to the Escrow Agent with instructions for the Escrow Agent to pay the same over to the Internal Revenue Service in accordance with applicable law; (b) is a Maine corporation having a principal place of business in the state of Maine; failing which Purchaser shall withhold from the Purchase Price the sums required by the Maine Department of Revenue in accordance with applicable law. Seller hereby indemnifies and holds Purchaser harmless from and against all costs, losses and expenses arising from the falsity of such certification. Such indemnity shall survive the Closing Date.

4.4 On the Closing Date, Seller shall deliver such other instruments as shall be reasonably required by Purchaser's title insurance company ("Title Company") for the purpose of issuing an owner's title insurance policy at standard rates insuring title to the Premises as set forth in Section 5, including such affidavits and unsecured indemnity agreements as may be customary for deleting exceptions for (i) mechanics and materialmens liens, (ii) persons in possession, (iii) unrecorded easements, and (iv) so-called "gap" or New York style insurance coverage.

#### 5. *State of Title.*

5.1 On the Closing Date the Premises shall be subject only to (i) all liens and encumbrances now of record, but excluding any Encumbrance To Be Discharged, as defined below, created during Seller's ownership of the Premises which Seller agrees to discharge pursuant to Section 5.3, (ii) all liens and encumbrances hereafter recorded as to which Purchaser has given its consent, (iii) all liens and encumbrances for Violations described in section 12.1, (iv) any condition which would be disclosed by a physical inspection or testing of the Premises, (v) rights of tenants and occupants in possession referred to

in section 14.1 if Purchaser has elected an early Closing Date pursuant to section 1.4, and (vi) real estate and ad valorem taxes not due and payable by the Closing Date (the "Permitted Encumbrances"), all subject to the provisions of section 5.4 below. For purposes of this agreement, "Encumbrance To Be Discharged" shall mean a mortgage or other voluntary monetary lien granted by Seller and any mechanics lien, but shall not include any lien or encumbrance arising out of a Violation.

5.2 If, on the Closing Date, there are any liens or encumbrances which Seller is obligated to cause to be paid or discharged in order to convey the title to the Premises as is herein provided to be conveyed, Seller may use any portion of the purchase price to satisfy the same.

5.3 Purchaser shall proceed promptly to have the title to the Premises examined by the Title Company and shall on or before July 1, 2001 deliver a full copy of the title report to Seller's counsel with a copy of any encumbrance that Purchaser believes to be an Encumbrance To Be Discharged.

5.4 If, on the Closing Date, title to the Premises shall be subject to mortgages, liens, encumbrances or objections, other than Permitted encumbrances, or if Purchaser shall have any other grounds, as set forth in this agreement, for refusing to close this transaction, and if Purchaser shall be unwilling to waive the same and to close this transaction without abatement of the purchase price or allowance of any kind, except as may otherwise be provided in this agreement, then, at Purchaser's election, Seller shall use reasonable efforts for up to thirty (30) days to remove, remedy or comply with such mortgages, liens, encumbrances, objections or other grounds. In such event, Seller shall be entitled to an adjournment of the Closing Date for a period not to exceed thirty days, and the Closing Date shall be adjourned to such date specified by Seller which is not beyond such thirty (30) day period. If Seller shall not have succeeded in removing, remedying or complying with such mortgages, liens, encumbrances, objections or other grounds, Seller shall give the Purchaser written notice thereof and Purchaser shall have ten (10) days from the mailing of such notice to elect by written notice to Seller to purchase the Premises, subject to such mortgages, liens, encumbrances, objections or other grounds, and to set the new Closing Date, which shall be not later than fifteen (15) days thereafter. If Purchaser shall then be unwilling to waive the same and to close this transaction without abatement of the purchase price or allowance of any kind, or if Purchaser elects not to have Seller use reasonable efforts to cure the deficiencies, this agreement shall be terminated and Purchaser shall be entitled to a return of its option payments as its sole and exclusive remedy.

5.5 At Seller's request, Purchaser shall enter into an agreement with Seller, if such facts shall be true, acknowledging that this agreement has terminated and is no longer enforceable by either party, provided that Purchaser has received back any deposits, together with any earnings thereon, to which Purchaser is entitled under the provisions of this agreement.

Notwithstanding anything to the contrary, if Purchaser shall default in Purchaser's performance hereunder, pursuant to which Seller terminates this agreement as provided in Section 17.1, then Seller shall be entitled to such agreement without return of such deposits.

## 6. *Time and Place of Closing.*

6.1 The Deed, the Bill of Sale and any other documents required in connection herewith, shall be delivered upon the receipt of the aforesaid payments and purchase money documents required by this agreement, at the office of Purchaser's attorneys, Pierce Atwood, One Monument Square, Portland, Maine, at 10:00 A.M. on the Closing Date specified in the Notice of Exercise, (the "Closing"), or at such other date, time or place as the parties shall mutually agree. Time is of the essence herein.

## 7. *Inspections; additional rights and obligations of Purchaser*

7.1 *Inspection and testing.* Purchaser and its representatives shall have the right, at all reasonable times, and from time to time, (and without unreasonably interfering with the tenants or

operation of the Premises), to inspect the Premises and to take measurements thereof for any purpose. Seller will cooperate with Purchaser to assist Purchaser in gaining such access. Purchaser's right of inspection shall include entry upon the Premises with its agents and their equipment for the purpose of making such environmental tests as Purchaser deems appropriate, provided that Purchaser shall be responsible for restoration of the Premises to its condition prior to making such tests, such obligation to restore to exist and continue if Purchaser shall not acquire the Premises for any reason other than Seller's default hereunder. Purchaser shall indemnify Seller for all loss, costs and damages resulting from Purchaser's inspection and testing; the foregoing indemnification shall survive the Closing or termination of this agreement. If such testing reveals a violation of law or regulation, Seller shall have no obligation to correct or remediate such violation or to make any adjustment to the purchase price; and Purchaser's sole right shall be to choose whether or not to exercise the Option.

7.2 *Purchaser's assumption of obligations.* If Purchaser exercises the Option or accepts the Deed, Purchaser shall thereafter defend and hold Seller and Seller's officers, employees, stockholders, agents and affiliates harmless from every claim, loss, cost, damage and expense (including attorneys fees) arising in connection with hazardous materials or Violations, regardless of the of the time or cause of the event giving rise to such claim; excepting only that Purchaser shall have no obligation to indemnify Seller from matters where a court of competent jurisdiction orders (after all appeals) that the Violation was caused by the willful action of Seller or that a hazardous substance was first discharged into the soil or groundwater of the Premises during the period that Seller or party in common ownership with Seller held title to the Premises. The foregoing exception does not include claims based on Seller's failure to remove or remediate substances already in the soil or groundwater, whenever discovered, or Seller's failure to carry out remedial actions ordered during its period of ownership.

7.3 *Approvals.* Purchaser shall have the right, at any time during the term of this Option, to seek zoning changes and any and all such other permits or approvals as Purchaser shall deem necessary or desirable in order to facilitate the development of the Premises; provided, however, that (a) all such actions shall be at the sole cost and expense of Purchaser; and (b) no such zoning change, contract zoning, or other approvals shall be effective if Purchaser does not acquire title to the Premises. Seller agrees to cooperate with Purchaser, at no cost or expense to Seller, in obtaining all such zoning changes, contract zone or other permits, approvals or consents, provided Seller shall have no obligation to cooperate or acquiesce in any proceeding which may adversely affect Seller's actual or permitted use of the Premises ("Adverse Impact"). Prior to delivering the Notice of Exercise, Purchaser shall not apply for a zoning change or permit or approval which would have an Adverse Impact, and Purchaser shall correct any proceeding (including, but not limited to withdrawal of its application) where the applicable government agency grants or proposes to grant an approval that would have an Adverse Impact. Purchaser shall keep Seller timely apprised of all such proceedings and shall provide copies of all such applications to Seller and such further documentation as Seller may reasonably request.

7.4 *Protection of access license.* Seller's present access to the Premises is across the premises of the Cumberland County jail, pursuant to a license granted by Cumberland County. Purchaser and its officers, employees and agents shall comply with the terms of said license and shall indemnify the Seller against any loss, cost or damage resulting from the revocation or limitation of said license arising out of Purchaser's violation of the license. Purchaser's obligations under this section shall survive the Closing or termination of the agreement.

7.5 *Seller's rights with respect to Purchaser's consultants.* Purchaser shall notify Seller of the identity of any engineer or consultant that Purchaser intends to engage for inspection of the premises and Seller shall have the right to state any objection that Seller may have to the use of such consultant. Seller shall have the right to review and comment on any draft report prepared by Purchaser's consultant before

such report is issued. Purchaser shall promptly furnish copies of all draft and final reports and surveys to Seller.

8 *Brokerage.*

8.1 Purchaser affiliates, represents and warrants that the only persons with whom it has dealt in connection with this sale have been the principals, agents and employees of (a) Seller, (b) The Dunham Group, Inc. ("Seller's Broker") and (c) The Plotkin Company, LLC and Ram Harnden (jointly, the "Purchaser's Broker").

8.2 Seller represents and warrants that except for persons identified in Paragraph 8.1, (i) no broker informed Seller of Purchaser's interest in the Premises, and (ii) Seller has not employed any broker in connection with the sale of the Premises.

8.3 Seller shall pay Seller's Broker any commissions owed it or its affiliates in accordance with their separate agreement. Purchaser shall pay Purchaser's Broker any commissions owed to them in accordance with their separate agreement.

8.4 Each party agrees to indemnify and hold the other party harmless from any claim, loss or damage, including reasonable attorneys' fees, resulting from the falsity of the representations and warranties each has made to the other in the foregoing Paragraphs 8.1, 8.2 and 8.3.

8.5 The provisions of this Section 8 shall survive the Closing Date.

9 *Notices.*

9.1 All notices required to be given under this agreement shall be deemed given upon the earlier of actual receipt or three Business Days after (i) being mailed by registered or certified mail, return receipt requested, (ii) delivery to a national overnight delivery service, or (iii) electronic facsimile transfer addressed to: (a) if to Purchaser, at:

Mercy Health System of Maine, Inc.  
144 State Street  
Portland, Maine 04104  
Attention: Howard R. Buckley  
Fax: 207-879-3429

with copies by either first class mail or any of the foregoing delivery methods to:

Daniel M. Snow, Esq.  
Pierce Atwood  
One Monument Square  
Portland, Maine 04101  
Fax: 207-791-1350

and

Larry Plotkin  
The Plotkin Company, LLC  
32 Buttonwood Lane  
Portland, Maine 04102  
Fax: 207-775-0098

(b) if to Seller at:

P.D. Merrill, President  
Merrill Industries, Inc.  
601A Danforth Street  
Portland, Maine 04104  
Fax: 207-761-3782

with a copy by either first class mail or any of the foregoing delivery methods to:

John Achatz, Esq.  
61 Mount Vernon Street  
Boston, Massachusetts 02108  
Fax: 617-720-5482

9.2 All notices pursuant to the agreement from Seller to Purchaser, or from Purchaser to Seller, will be effective if executed by and sent by their respective attorneys. Purchaser and Seller, and their respective counsel, all hereby agree that if notice is given hereunder by counsel, such counsel may communicate directly in writing with all principals, as required to comply with the foregoing notice provisions.

10 *Seller's Representations, Warranties and Agreements.*

10.1 Seller represents and warrants that it has full power and authority to enter into this agreement and to carry out the transactions contemplated hereby, and the persons executing this agreement on behalf of Seller are duly authorized to execute, on behalf of Seller, this agreement, the Deed, Bill of Sale, assignments and other instruments or documents reasonably necessary to effect the transactions contemplated by this agreement. Seller makes no further representations or warranties.

10.2 During the Option Term, Seller shall not convey the Premises or any interest therein without the consent of Purchaser, provided that Seller may:

- (a) convey the Premises to an affiliate; such affiliate shall assume in writing all of Seller's obligations hereunder;
- (b) grant mortgages or other monetary liens, provided that the Seller shall discharge the same at the time of or prior to the Closing;
- (c) consent to the taking of a portion of the premises for the so-called I-295 connector highway; and
- (d) enter into leases and occupancy arrangements as expressly permitted in section 11.4 of this agreement.

10.3 *Right of First Refusal.* If the Option terminates because Purchaser does not pay the First Option Payment, and if thereafter and on or before August 1, 2001, Seller receives an offer to purchase the Premises on terms that Seller in its sole discretion is willing to accept and such offer is for a purchase price less than 95% of the Purchase Price stated herein, then Seller shall notify Purchaser of the material terms of such offer ("First Refusal Notice") and shall submit to Purchaser a form of binding purchase agreement containing such terms ("First Refusal Purchase Agreement"). Purchaser shall have then have the right to enter into a binding purchase agreement by executing and delivering the First Refusal Purchase Agreement to Seller within twenty days of the First Refusal Notice. This right of first refusal shall not apply if the third-party offer also includes an offer to purchase any material operating assets or any portion of Merrill's Marine Terminal.

11. *Alterations, Casualty and Condemnation, Tenants.*

11.1 *Alterations.* The parties acknowledge that the structures and improvements now situated on the Premises are not material to this transaction. Seller shall have the right to modify or remove any structure or improvement on the Premises in Seller's sole discretion, subject to the limitation that no such modification results in a structure that substantially increases the aggregate cost of demolition of the structures on the Premises.

11.2 *Casualty.* If prior to the Closing Date, all or any portion of the Premises is damaged by fire or other casualty, Seller shall have no obligation to restore the Premises, adjust the purchase price or assign any proceeds of insurance.

11.3 *Condemnation.* If Purchaser exercises the Option following the taking of all or any part of the Premises by a governmental body, including the anticipated taking of a portion of the Premises for the so-called I-295 connector highway, Seller shall assign to Purchaser the net proceeds of the taking. For purposes of this provision, net proceeds shall mean the total proceeds of the taking minus any costs incurred by Seller in negotiating the terms or compensation for the taking or of restoring the Premises. This section 11.3 shall survive the Closing.

11.4 *Tenants.* Between the date hereof and the Closing Date, Seller may enter into, extend, modify or terminate any lease or occupancy arrangement for the Premises on such terms as the Seller deems appropriate without the prior approval of Purchaser, except that without Purchaser's prior consent, (a) Seller shall not enter into any lease or occupancy arrangement that cannot be terminated on ninety-days notice or less and (b) Seller shall not enter into or extend any lease or occupancy arrangement after the Notice of Exercise.

## 12. *Violations.*

12.1 Seller shall have no obligation to cure or comply with any violations of law, including municipal ordinances and regulations, and orders or requirements noted or issued by any federal, state, county or municipal agency having jurisdiction over or affecting the Premises or any encroachment or any violation of an easement or encumbrance affecting the Premises, (all of the foregoing violations, orders and requirements hereinafter being referred to as "Violations").

## 13 *Default of Either Party.*

13.1 If, prior to Closing, Purchaser shall for any reason whatsoever default in the performance of Purchaser's obligations under this agreement, Seller may terminate the Option and retain any payments made hereunder.

13.2 If, prior to Closing, Seller shall for any reason whatsoever default in the performance of Seller's obligations under this agreement to deliver the documents required to be executed by Seller, Purchaser may elect by written notice to Seller within 30 days of such default, one of the following as its sole remedies at law or in equity:

(a) to terminate this agreement for such default, and receive back Purchaser's option payments; or

(b) to purchase the Premises, subject to such liens, encumbrances, objections or other grounds (but not subject to any Encumbrances To Be Discharged, which Seller shall remain obligated to discharge) and without abatement of the Purchase Price or allowance of any kind, and to set the new Closing Date, which shall be not later than fifteen (15) days thereafter. If Purchaser elects to purchase pursuant to this clause (b), then Purchaser shall have the right to seek specific performance of the provisions of this clause (b).

## 14. *Survival and Waiver.*

14.1 The acceptance by the Purchaser of the Deed on the Closing Date shall be deemed full performance and discharge of each and every agreement and obligation on the part of Seller hereunder to be performed, and any and all agreements, representations and warranties of Seller contained in this agreement or in any other manner prior to the Closing Date shall not survive the Closing Date, unless otherwise expressly provided in this agreement, or by the terms hereof are to be thereafter completed or performed. If a provision is either specified as surviving the Closing Date, or is to be thereafter completed or performed, such survival shall expire only as therein specified, or by operation of law, if no other expiration date is given.

14.2 The acceptance by the Purchaser of the Deed on the Closing Date shall constitute, and be conclusive evidence of, Purchaser representation and warranty to Seller that Purchaser (a) has examined the Premises, and is familiar with the physical condition thereof; (b) has taken title to the Premises subject to any and all applicable laws, ordinances, rules, regulations, Violations, defects or the like, now or hereafter in effect, with respect to the Premises; (c) has not relied on any representation or warranty by Seller as to the physical condition, income, expenses, operations or legality of occupancy of the Premises or any other matter or thing affecting or relating to the Premises, except as in this agreement specifically set forth; (d) acknowledges and represents that no such other representations or warranties have been made by Seller or implied.

14.3 PURCHASER FURTHER AGREES, EXCEPT AS IN THIS AGREEMENT SET FORTH, TO TAKE THE PREMISES "AS IS" AND "WITH ALL FAULTS" IN ITS PRESENT PHYSICAL CONDITION AND SUBJECT TO REASONABLE USE, WEAR, TEAR AND NORMAL DEPRECIATION BETWEEN THE DATE HEREOF AND THE CLOSING DATE. Seller shall not be liable or bound in any way by any verbal or written statements, representations, or information pertaining to the Premises furnished by any agent or employee of Seller, or any other person, and Purchaser acknowledges and agrees that such agents or employees have no authority to make any such statement or representation. It is understood and agreed that (i) all contemporaneous or prior representations, statements, understandings and agreements, oral or written, between the parties are merged in this agreement, which alone fully and completely expresses the agreement of the parties, and (ii) that this agreement is entered into after full investigation, neither party relying on any statement or representation made by the other which is not embodied in this agreement.

14.4 The provisions of this Section 14 shall survive the Closing Date.

15. *Miscellaneous Provisions.*

15.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall be of the same binding effect as an original.

15.2 If any one or more of the provisions of this agreement shall be held invalid, illegal or unenforceable in any respect, such provision shall not affect any other provision hereof, and this agreement shall be construed as if such provision had never been contained herein.

15.3 It shall be a condition of Closing that Seller's representations and warranties contained in this agreement are true and correct in each material respect as of the Closing Date, and that Seller shall have performed its covenants and agreements contained herein. If such be not so, Purchaser's sole remedy, if Purchaser does not waive the same, shall be to as set forth in section 5.4 and section 13.2.

15.4 This agreement constitutes the entire agreement of the parties with respect to the Premises, any prior agreements or understandings having been rescinded or merged into the terms hereof. This agreement, and all the covenants, terms and provisions contained herein, shall be binding upon and inure to the benefit of the parties hereto and to their respective successors and assigns.



15.5 Purchaser will hold Seller harmless and indemnified against any loss, cost or expense arising in connection with Purchaser's inspection of the Premises.

15.6 If Purchaser shall record or file this agreement, or a copy thereof, in or with the public records in which Deeds are recorded or filed, then, at Seller's option, such shall be deemed a default, and this agreement shall terminate.

15.7 If any provision of this agreement requires a consent which is not to be unreasonably delayed, failure to send notice of disapproval within ten (10) business days (unless a longer time is specified in this agreement) after receipt of all the information necessary to determine whether to consent, shall be deemed approval.

15.8 *Confidentiality.* Purchaser agrees to maintain in strictest confidence the terms of this agreement and any information and data furnished or made available by Seller to Purchaser and its officers, employees and representatives in connection with Purchaser's investigation of the Premises and the transactions contemplated by this agreement; provided, however, that Purchaser may disclose such information and data to prospective lenders, Purchaser's consultants and Purchaser's other advisors in connection with the sale and purchase contemplated by this agreement. In addition, Purchaser may disclose such information to government agencies as required by law or as may be required to obtain approval for Purchaser's acquisition and use of the Premises, provided that Purchaser shall use its best efforts to limit such disclosure to the minimum required to obtain such approvals. The foregoing obligation of confidence shall terminate on the earlier to occur of (a) the Closing, or (b) such time as the information and data in question becomes generally available to the business community other than through the breach by Purchaser or its officers, employees, or representatives of the obligation of confidence owed to Seller hereunder. Purchaser agrees that if this agreement is terminated for any reason whatsoever, Purchaser shall, upon Seller's request, promptly return to Seller all information and data furnished or made available by Seller to Purchaser and its officers, employees, and representatives in connection with Purchaser's investigation of the Premises and the transactions contemplated by this agreement (and Purchaser agrees not to retain any copies of any such information or data in such event).

15.9 *Applicable Law.* This agreement is and shall constitute a contract under and is to be construed in accordance with the internal laws of the State of Maine wherein the Premises are located.

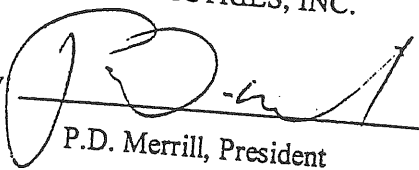
15.10 *Modifications.* This agreement may not be changed or terminated orally. The provisions of this agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

15.10 *Captions.* The captions to sections hereof are not part of this agreement and shall not be deemed to affect the meaning or construction of any of its provisions.

[Continued on next page]

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto as of the day and year first above written.

MERRILL INDUSTRIES, INC.

By:   
P.D. Merrill, President

MERCY HEALTH SYSTEM OF MAINE, INC.

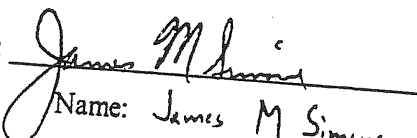
By:   
Name: James M Simone  
Title: Vice President Finance & Treasurer

EXHIBIT A  
DESCRIPTION OF PREMISES

BK 14022 PG 306

EXHIBIT "A"

A certain lot or parcel of land with buildings thereon situated on the northerly side of the Blue Star Memorial Highway (Route #1) at the Veteran's Memorial Bridge on the Fore River in the City of Portland, County of Cumberland and State of Maine being bounded and described as follows:

Beginning at a rod marking a point 50.00' westerly of and at right angles to the center line of the main track marking a P.C. Station of 23 + 11.35 as shown on right of way and track map Portland Terminal Company dated June 30, 1916 revised March 1938 filed in the Portland Terminal Company in V1-D over 1-A; Said rod being approximately 675' northerly of the northerly right of way line of said Route #1;

Thence through land of the Grantor and being 50.00' westerly of the centerline of said main track N 10° 46' 19" W a distance of 482.85' to a rod opposite station 18 + 28.50;

Thence continuing through land of the Grantor and being 50.00' westerly of the centerline of said main track N 10° 57' 07" W a distance of 290.08' to a rod opposite station 15 + 38.42;

Thence continuing through land of the Grantor N 9° 29' 00" W a distance of 197.09' to a rod marking the westerly right of way line for the existing spur track and being 33.00' westerly and opposite P.C. Station 2 + 00.64' as shown on said railroad plan;

Thence continuing through land of the Grantor and being along said right of way line of said spur track along a curve to the left whose radius is 922.37', an arc distance of 185.63' to a rod on the westerly edge of a paved drive, said rod being found on a chord of N 22° 33' 26" W a distance of 185.32';

Thence continuing through land of the Grantor and following the westerly edge of said paved drive S 9° 2' 42" W a distance 110.67' to a rod';

Thence continuing through land of the Grantor on the following courses:

N 78° 59' 25" W a distance of 42.80' to a rod;

S 10° 55' 38" E a distance of 580.68' to a rod, said rod being 160.00' westerly of and at right angles to the centerline of the main track opposite said Station 18 + 28.50';

S 78° 59' 25" W a distance of 580' ± to the easterly bank of the Fore River and continuing to the approximate low water line a total distance of 1165' ±;

Thence along a southerly, easterly-southerly, easterly and westerly line following the approximate low water line a distance of 1800' ± to the northerly right of way line of said Route #1;

Thence by the northerly right of way line of said Route #1 N 71° 56' 20" E a distance of 455' ± to the easterly bank of said Fore River;

BK 14022 PG 307

Thence continuing by said northerly right of way line of Route #1 on same course of N 71° 56' 20" E a distance of 370' ± to a point being 50.00' northerly of the centerline of said main track and opposite Station 32 + 86.66, at the intersection of a non-tangent curve;

Thence continuing through land of the Grantor along a curve to the left whose radius is 831.95' an arc of 920' ± to the point of beginning.

Above courses are grid north.

Being a portion of the premises conveyed to the Grantor herein by deeds recorded in the Cumberland County Registry of Deeds in Book 881 Page 299 and Book 881 Page 318.

Said parcel being also sold subject to various utility easements of record.

The Grantor hereby reserves to itself, its successors, assigns and affiliates, a permanent non-exclusive fifty (50') foot easement and right-of-way (the "Reserved Right-of-Way"), or so much land as required to establish a public way in accordance with all governmental specifications and requirements, over, upon, across, under and through the portion of the Premises to the boundary of the Premises, more particularly identified as the "APPROXIMATE LOCATION OF 50' WIDE 'RESERVED RIGHT OF WAY' AND UTILITY EASEMENT" on a survey plan of the Premises entitled "Standard Boundary Survey, Route 1 Blue Star Memorial Highway: Portland Terminal Company to Merrill Industries, Inc." prepared for Merrill Industries, Inc. by Owen Haskell, Inc. and dated May 19, 1998, Job. No. 97109P, a copy of said plan being attached hereto and marked as Exhibit "B" and the original of said plan to be recorded with the Cumberland County Registry of Deeds (hereinafter referred to as the "Merrill Plan"), for all purposes of access of any description necessary and convenient, including but not limited to, pass and repass on foot and with vehicles, machinery, utilities and drainage of every nature and description.

The Grantor further hereby reserves to itself, its successors, assigns and affiliates, a permanent non-exclusive easement over, under, across, upon, and through the Reserved Right of Way, as shown on the aforementioned Merrill Plan, for utility purposes, including for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing pipes, conduits and other utility facilities and equipment. Said easement shall be located in a manner as not to interfere unreasonably with the Grantee's use of the Premises. The Grantee further hereby grants to the Grantor, its successors, assigns, and affiliates the right to access and/or tap into any existing or future utilities located within the Reserved Right of Way as shown on the Merrill Plan.

The Premises are conveyed together with a permanent non-exclusive fifty (50') foot easement and right of way (the "Granted Right of Way"), or so much land as required to establish a public way in accordance with all governmental specifications and requirements, over, upon, across, under

BK 14022PG308

and through land of the Grantor, more particularly identified as the "50' WIDE 'GRANTED RIGHT OF WAY' AND UTILITY EASEMENT" as shown on the Merrill Plan, for all purposes of access of any description necessary and convenient, including but not limited to, pass and repass on foot and with vehicles, machinery, utilities and drainage of every nature and description.

The Premises are further conveyed together with a permanent non-exclusive easement over, under, across, upon, and through the Granted Right of Way, as shown on the Merrill Plan, for utility purposes, including for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing pipes, conduits and other utility facilities and equipment. Said easement shall be located in a manner as not to interfere unreasonably with the Grantor's use of its remaining land. The Grantor further hereby grants to the Grantee, its successors, assigns, and affiliates the right to access and/or tap into any existing or future utilities located with the Granted Right of Way as shown on the Merrill Plan.

The Grantor may relocate the Granted Right of Way, and the Grantee may relocate the Reserved Right of Way, provided in each instance that the party relocating such right of way (1) gives reasonable notice of the intended relocation to the other party (2) pays all costs of relocating any improvements or facilities located within the right of way, (3) carries out such relocation in a manner that does not materially interfere with the uninterrupted passage on foot and with vehicles and machinery or with the uninterrupted provision of utility services through such right of way and (4) records plan showing the relocated boundaries of such right of way.

AH. #5

PIERCE  
ATWOOD

September 19, 2001

MATTHEW D.  
MANAHAN  
  
DIRECT  
207.791.1189  
  
E-MAIL  
MManahan@  
PierceAtwood.com

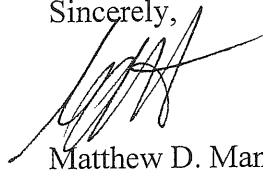
Jonathan Spence, Planner  
City of Portland  
Portland City Hall  
389 Congress St.  
Portland, ME 04101

RE: Mercy Hospital Neighborhood Meeting

Dear Jonathan:

As we recently discussed, I enclose a copy of the minutes of the neighborhood meeting Mercy conducted on September 6 in connection with the rezoning application. Please call me if you have any questions about these materials.

Sincerely,



Matthew D. Manahan

MDM/dcu  
Enclosure

cc: Sarah Hopkins  
Larry Plotkin  
Stephen R. Bushey  
Dr. Steve Hess

One Monument  
Square  
Portland, Maine  
04101-1110

VOICE  
207.791.1100

FAX  
207.791.1350

E-MAIL  
info@PierceAtwood.com

WEB SITE  
www.PierceAtwood.com

**Mercy Hospital  
Public Informational/Neighborhood Meeting  
September 6, 2001  
Minutes**

The meeting began at 7:05 p.m. in the Board Room of the Portland Metro at 114 Valley Street in Portland. Larry Plotkin began the meeting by introducing the representatives of Mercy Hospital. Mr. Plotkin then summarized the reasons Mercy has proposed relocating to the Fore River site.

Mr. Plotkin noted that Mercy had six basic criteria in choosing a new site: (1) sufficient land to accommodate a variety of uses, (2) proximity to Maine Medical Center, (3) good highway access, (4) proximity to doctors, (5) access to public transportation, and (6) a location accepted by the community. Mr. Plotkin noted that the Fore River site is currently owned part by Guilford Industries and part by Merrill Industries.

Mr. Plotkin then showed an aerial photograph of the site. Mr. Plotkin noted that the Maine Department of Transportation (MDOT) has developed a plan to provide access to the site by building a connector road from Congress Street to Commercial Street. MDOT will take land for the connector road by eminent domain and will build a pedestrian and bike path.

Mr. Plotkin then showed the conceptual site plan, emphasizing that the plan is conceptual at this stage. Mr. Plotkin said that the first stage of construction will involve a medical office building of about 50,000 square feet, and an ambulatory care center. Mr. Plotkin said that the hospital will be built in the second stage of construction, which could be anywhere from six months to five years after Phase I. The hospital will be about 300,000 square feet, and likely will be four stories high, so that the footprint will be about



100,000 square feet. The hospital will cost approximately \$80 million. There will be parking on both sides of the hospital building.

Mr. Plotkin said that later buildings may include a parking structure, a day care facility, medical office buildings, and housing for families, among other uses.

Mr. Plotkin noted that there are wet areas on the site that Mercy is trying to avoid impacting. Mercy hopes to make the pond into a site amenity.

Mr. Plotkin summarized the major permits that will be required. First, rezoning will be required. The property currently is zoned industrial. Mercy is negotiating a contract zone agreement with the City. Second, City site plan approval will be required. Third, Site Location of Development approval will be needed from the Maine Department of Environmental Protection (MDEP). Fourth, MDEP approval will be required for wetland impacts. Fifth, wetland impacts also will require a permit from the U.S. Army Corps of Engineers. Sixth, a permit will be required from the Federal Aviation Administration because of the proximity to the Portland Jetport.

Matt Manahan, counsel for Mercy, noted that the Planning Board likely will hold a public hearing on the contract rezoning application on October 9 at 7:00 p.m., at City Hall, and that the public is invited to attend and comment on the proposal.

After explaining the pending proposal, Mr. Plotkin provided an opportunity for public questions and comment.

Question: Does shoreland zoning present an issue?

Mr. Plotkin: It must be considered because a portion of the property is within 250 feet of the water.

Question: Where will Amtrack trains run?

Mr. Plotkin: They will run on the tracks adjacent to the site.

Question: What is the schedule for construction of the MDOT connector?

Mr. Plotkin: It's not definite yet, but projected final completion is 2004-2005.

Question: Is Mercy paying for the connector?  
 Mr. Plotkin: The money for the road is coming from federal, state, and local funds. The road was planned before Mercy identified this site for the new hospital campus. Mercy will contribute land for the connector.

Question: Isn't this facility going to be too small to accommodate all Mercy's satellite facilities?  
 Mr. Plotkin: It will be big enough for the uses Mercy intends to put there, and for future growth.

Question: Why do you need to use a contract zone agreement?  
 Mr. Plotkin: There was no readily available alternative zone to use for this hospital campus proposal.

Question: How far will the rezoning extend?  
 Mr. Plotkin: Only to the Mercy property itself.

Question: Why were all adjacent property owners notified of this meeting by certified mail?  
 Mr. Plotkin: Because the MDEP's rules require it.

Question: Is Mercy going to expand beyond this property?  
 Mr. Plotkin: The site is boxed in on all sides, so further expansion is not possible.

Question: When will Mercy begin construction?  
 Mr. Plotkin: We're not certain, though Mercy needs to be sure the connector road will be completed before it fully commits.

Question: Will the elderly in downtown Portland be able to access the hospital easily?  
 Mr. Plotkin: That's why Metro access was important to Mercy.  
 Dr. Hess: Mercy may keep some physician presence at the State Street site.

Question: What will you do with the current hospital building?  
 Dr. Hess: We don't know yet.

Question: Will people walk their dogs in the new green space on the property?  
 Mr. Plotkin: It's too early to tell.

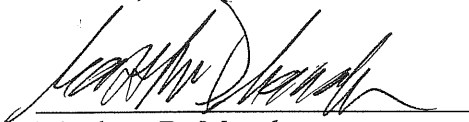
Several members of the public commented that it is a very good proposal, and commended Mercy for its plans. David Littell, President of Portland Trails, commended

Mercy on its willingness to cooperate with the City in the creation of a pedestrian trail and bike path.

Because there were no further questions, the meeting concluded at about 7:50 p.m. Mr. Plotkin thanked everyone for coming.

Attached to these minutes are copies of: (1) the form of notices of the meeting that were sent by certified mail to all property owners within 500 feet of the subject property (including abutters), to the municipal office of the City of Portland, and to others suggested by the City's planning staff; (2) the list of property owners and others who received the certified mail notices; and (3) a copy of the notice of the meeting that was published in the Portland Press Herald.

I hereby certify that the public informational/neighborhood meeting was noticed and held in accordance with DEP Regulation Chapter 2, Section 8, and City of Portland Code Section 14-32(c). There were 12 attendees at the meeting, as shown on the attached sign-in sheet, which was circulated at the meeting.



Matthew D. Manahan  
Attorney for Mercy Hospital

Date: Sept. 11, 2001

## NOTICE OF PUBLIC INFORMATIONAL/NEIGHBORHOOD MEETING

Please take notice that Mercy Hospital (through its affiliate Mercy Health System of Maine, Inc., 144 State Street, Portland, ME 04101, Tel.: 879-3000) intends to file an application with the Maine Department of Environmental Protection for Site Location of Development Act (38 M.R.S.A. §§ 481-490; DEP Regulations Chapters 371-377) and Natural Resources Protection Act (38 M.R.S.A. §§ 480-A to 480-Z; DEP Regulations Chapters 305-359) permits for a proposed project in Portland, Maine.

**Description:** The proposed project will be constructed on approximately 42 acres of land located along the Fore River, west of St. John Street. The Fore River Site is bounded by the river and railroad tracks. The Cumberland County Jail is located northeast of the site. The Merrill Marine Terminal is located south of the site, and a number of St. John Street businesses are located to the east of the site.

The Hospital intends to initially construct a medical office building and an ambulatory care center on the site, to be followed by construction of an adjoining hospital facility. Later phases may include additional supporting amenities such as a day care center, physical fitness facilities, a teaching center, and additional medical office buildings, all in a campus setting. The project will result in the construction of parking facilities, access drives, utilities, and other site amenities. Access to the site will be primarily from a new connector roadway to be constructed by the Maine Department of Transportation between the I-295 Exit 5 interchange and the Veterans Memorial Bridge.

In addition to the DEP applications, Mercy has filed an Application for Zoning Amendment with the City of Portland, with the intention of entering into a contract zone agreement with the City.

Mercy will conduct a **PUBLIC INFORMATIONAL MEETING** at 7 p.m. on September 6, 2001 at the Board Room of the Portland Metro at 114 Valley Street in Portland. Representatives for the Hospital will explain the project and will provide an opportunity for public questions and comments. You are invited to attend the meeting.

Written comments or inquiries concerning this project are encouraged and can be directed to:

Larry Plotkin  
The Plotkin Company LLC  
32 Buttonwood Lane  
Portland, ME 04102  
(207) 775-3656

**LEGAL ADVERTISEMENT  
NOTICE OF PUBLIC  
INFORMATIONAL/  
NEIGHBORHOOD MEETING**

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32 Buttonwood Lane  
Portland, ME 04102  
(207) 775-3656

713072



September 6, 2001

To: Portland Planning Board Members  
From: Larry Plotkin, representing Mercy Hospital

Re: Tax value of Fore River Site development

At previous Planning Board workshops regarding the Mercy Fore River Site, there has been some discussion of the taxable value to the City of the Mercy project. The most recent draft of the proposed contract zoning document contains a requirement that the first phase of the Mercy project will have a taxable value of at least \$7.5 million. The figure may go higher, based on early indications of market demand for office space. Further, ancillary development on the site over time may result in a longer term taxable value of several times that of the first phase.

To put this into context, with the help of DeLuca Hoffman, we have estimated that if the site were fully developed industrially as provided in the current I-H zone, taxable value would be \$8 - \$10 million. However, this may overstate the real taxable value to the City because an industrial development may well be in conjunction with tax increment financing.

The Mercy project will bring many benefits to Portland, including a better health care offering to its citizens, employment opportunities, the enhancement of Portland as the medical hub of northern New England, and the development of an attractive campus at a gateway location to the City. All of this can be done while at the same time generating substantial tax revenues comparable to or better than what might otherwise occur on the Fore River Site.

Thank you for your continued consideration.

Att. # 7

**From:** "Larry Plotkin" <lplotkin@maine.rr.com>  
**To:** Portland.CityHall(JSpence)  
**Date:** Thu, Sep 6, 2001 9:26 AM  
**Subject:** Public Policy Statement

Jonathan,

As you requested, I have taken a stab at rewriting articles 2 and 4 of the draft Public Policy Statement in regard to the Mercy project. Please feel free to further amend these statements.

I think we have made a lot of progress and am looking forward to our September 11 meeting with the Planning Board. I will also prepare a statement on the tax issue and bring it to the September 11 meeting for distribution to the Board. I will e-mail a copy of it to you, probably tomorrow.

Rewritten paragraphs:

## 2. Summary of Benefits

The benefits enjoyed by the City as a result of the location of two major hospitals are numerous and extensive. Portland's stature as a hub for medical care north of Boston will be enhanced. The facilities will likely attract a larger medical community to the area, greatly enhancing the health, welfare and safety to Portland's residents. Further, the hospitals together provide varied, diverse employment opportunities and untold economic benefits. The hospital may also spur the revitalization of the Valley Street/St. John street corridor. The Mercy Hospital campus will provide an attractive gateway into Portland's West End.

## 4. Mercy Hospital's Desired Location Attributes

Mercy's growth and development has been limited by the fact that its current facility sits on only 3 1/2 acres. Parking is very tight, and the facility is cramped and overcrowded. Efforts to expand the hospital, even in a limited way, have been met by resistance from the neighborhood, the historical society and City officials. Mercy's management came to realize that a new long term home was needed. The ideal site would be large enough to accommodate a relocated hospital in a campus setting, while also being easily accessible to doctors, public transportation and near the Maine Medical Center. The result of an extensive search determined only one such parcel existed, called the Fore River Site. Mercy Hospital has been able to secure control of the Fore River Site and is now looking for help from the City in creating a zoning solution that recognizes the uniqueness of the parcel and the applicant.

Larry

**CC:** "Matt Manahan" <mmanahan@pierceatwood.com>, "Steve..."



PIERCE  
ATWOOD

Att. # 8

July 27, 2001

MATTHEW D.  
MANAHAN

DIRECT  
207.791.1189

E-MAIL  
MManahan@  
PierceAtwood.com

Jaimey Caron, Chair  
Planning Board  
City of Portland  
Portland City Hall  
389 Congress Street  
Portland, ME 04101

RE: Mercy Hospital; Fore River Site

Dear Mr. Caron:

We read in the July 27 Press Herald the article by Mark Shanahan discussing the Planning Board's concerns about Mercy's tax exempt status. I write this letter to address those concerns.

First, the Portland Land Use Ordinance and State law expressly prohibit inclusion in a contract zone agreement of conditions and restrictions that relate to anything other than the physical development or operation of the property. Portland Code § 14-62; 30-A M.R.S.A. § 4352(8)(C). Thus, the contract zone agreement may not include a requirement of payments in lieu of taxes.

Second, and in any case, Mercy believes that development of the Fore River Site will increase the City's overall tax base, notwithstanding Mercy's tax exempt status. This increase will be brought about by development of many taxable (non-Mercy-owned) uses on the Fore River Site hospital campus, such as professional offices, restaurants, and medical retail establishments. In addition, by moving to the Fore River Site, Mercy will open up the possibility that its existing tax-exempt State Street site may be converted to a taxable use.

Third, equity -- in terms of a level playing field -- dictates that all hospitals in Portland be subject to the same tax burdens. It would be unfair to require Mercy to make payments in lieu of taxes simply because it is relocating within the City, while other existing hospital uses are not required to make such payments.

Thank you for the opportunity to provide these comments to the Board. Mercy appreciates the Planning Board's consideration of its application, and we

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Square  
Portland, Maine  
04101-1110

VOICE  
207.791.1100

FAX  
207.791.1350

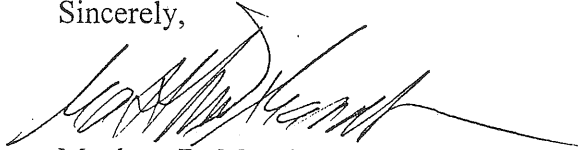
E-MAIL  
info@PierceAtwood.com

WEB SITE  
www.PierceAtwood.com

Jaimey Caron, Chair  
July 27, 2001  
Page 2

look forward to working with the Board to ensure that all your concerns are adequately addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew D. Manahan", with a long horizontal flourish extending to the right.

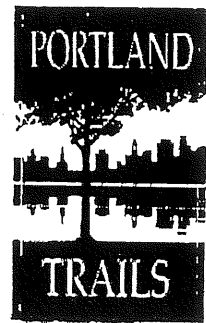
Matthew D. Manahan

cc: Larry Plotkin  
Steve Bushey  
Alex Jaegerman  
Sarah Hopkins  
Jonathan Spence  
Penny Littell, Esq.

September 7, 2001

**VIA FAX**

Jonathan Spence  
City Planner  
City of Portland  
389 Congress Street  
Portland, ME 04101



RE: Mercy Hospital Contract Zone Request

Dear Jonathan:

We write relating to the Mercy Hospital project on the Fore River. I attended the public hearing last night with Mercy and spoke separately the night before with the Mercy Project Manager, Larry Plotkin. I spoke to Mr. Plotkin regarding the concern that the current version of the plan shows parking lot areas over the configuration for part of the trail plan, and by Portland Trails, MDOT, and the City in this area.

Mr. Plotkin told me that apparent trail/parking lot conflict was unintentional and thanked me for bringing it to his attention and assured me that Mercy is willing to revise the plans to incorporate this very important section of the Fore Trail along the new connector roadway.

We understand from Mr. Plotkin that Mercy has agreed to incorporate a provision into the contract zone for this project that will commit it to make whatever design changes are necessary, including moving of the easement lines, or right-of-way lines for MDOT, to incorporate the future trail. Based on these representations and the understanding that these provisions will be in the contract zone, Portland Trails writes to convey its strong support for this project.

We look forward to working with Mercy Hospital, the City, and MDOT to see that a trail and waterside park is built along the new connector roadway which will be a significant asset for not only the Mercy facility, but the entire neighborhood and the City of Portland.

Very truly yours,

David Littell

DPL:pmp

cc: Larry Plotkin

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## CITY OF PORTLAND

August 3, 2001

Matthew D. Manahan  
Pierce Atwood  
One Monument Square  
Portland, ME 04101-1110

Dear Mr. Mahanan:

Thank you for your recent correspondence including the draft contact zone and letter discussing concerns arising from Mercy's tax-exempt status. The City of Portland is very excited about working with Mercy Hospital in the creation of a dynamic hospital campus along the Fore River. This campus will be a tremendous asset to the citizens of Portland and will serve as a model not only for this type of development but also in the cooperative relationship which forms between an applicant and the City. We look forward to the development of this relationship as Mercy moves towards the realization of the Fore River development.

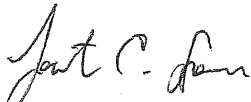
In order to assist in the drafting of the language of the contract zone, it is necessary for the City to understand the vision Mercy Hospital has for the eventual build out of the site. We would like the opportunity to discuss this vision with members of your development team and suggest a meeting on Tuesday, August 7<sup>th</sup> at 11:00 A.M. in conference room on the 4<sup>th</sup> floor of City Hall. If this time is not convenient please call and we will reschedule to a time that works. What follows is a list of questions that will enable the City to better understand the proposed development.

- How many acres of the site will be available for buildable parcels net of the wetlands and the connector road R.O.W.?
- How many square feet does Mercy believe that their new hospital building will consist of?
- What is the estimated order of magnitude at buildout of the combined proposed uses envisioned for the campus?
- How much pavement or parking will be required for this mix of uses?
- What is the maximum building height envisioned in the campus?
- What percentage of the building parcels is expected to be impervious?
- Will the development result in the creation of City accepted streets or will the projects traffic circulation system consist of private drives and ways?
- What type of unified architectural theme does Mercy Hospital anticipate its campus demonstrating?
- What is the possible timing and phasing of the development?
- What possible type of outdoor amenities such as walking trails, open spaces and natural features will the project contain?

- What type of parking management program is anticipated?

Attached please find a copy of the O-P Office Park Zone text from the City's Zoning Ordinance. Although the permitted uses do not correspond to this project, the development standards may be helpful in drafting language for the contract zone. We are eager to meet with you next week to further discuss this exciting project. We recognize that many of these issues are not able to be resolved at this time. Any ranges or estimates of the development program will assist us in working with you to create an appropriate zoning solution.

Sincerely,

  
Jonathan C. Spence  
Planner

cc. Larry Plotkin  
Steve Bushey  
Joseph Gray, City Manager  
Penny Littell, Associate Corporation Counsel  
Alexander Jaegerman, Chief Planner  
Sarah Hopkins, Development Review Services Manager

- (g) *Minimum lot area:* Twenty thousand (20,000) square feet.
- (h) *Minimum width of lot:* One hundred (100) feet.
- (i) *Minimum lot frontage on street or shoreline:* One hundred (100) feet.
- (j) *Minimum shoreline setback:* All principal structures other than permitted piers, docks, wharves, breakwaters, causeways, bridges, boathouses and storehouses for fishermen's gear: Seventy-five (75) feet.  
(Code 1968, § 602.13A.B; Ord. No. 499-74, § 6, 8-19-74)

**Sec. 14-323. Off-street parking.**

Any off-street parking in a R-P resource protection zone is required as provided in division 20 of this article.  
(Code 1968, § 602.13A.B; Ord. No. 499-74, § 6, 8-19-74)

**Sec. 14-324. Shoreland and flood plain management regulations.**

Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.  
(Ord. No. 15-92, § 25, 6-15-92)

**DIVISION 19.5. HELISTOP OVERLAY ZONE**

**Sec. 14-325. Purpose.**

The intent of this zone is to create an overlay zone in which helicopter landing areas are permitted on individual sites in addition to those uses permitted in the underlying zone. The purpose of this zone is to protect the public health and safety by allowing helicopters serving medical needs to land in certain areas, while protecting surrounding areas from any negative effects associated with such a use.  
(Ord. No. 48-93, 7-19-93)

**Sec. 14-326. Helistop defined.**

A helistop, for purposes of this division, shall be defined as

an area used for the landing of helicopters at any location other than an airport. Such area shall include a landing area or pad, and may include parking required for access to the landing area or pad, a loading and unloading area for emergency vehicles, and other related facilities other than maintenance and repair facilities. (Ord. No. 48-93, 7-19-93)

**Sec. 14-327. Regulations for helistops.**

(a) *Helistops which have more than five landings per month:*

- (1) All such helistops must comply with all applicable Federal Aviation Association regulations, including those for marking of landing areas.
- (2) All take-off, landing and parking areas at such a helistop site shall be surfaced with grass or with a dust-proof material.
- (3) Each landing pad shall be set back at least two hundred (200) feet from any residence, school or church. Each landing pad shall be set back at least fifty (50) feet from any commercial or industrial structure. All setbacks shall be measured from the edge of the landing pad.
- (4) The area in which a landing pad is located shall be enclosed by a fence or other barrier of not less than three (3) feet in height or shall be secured by a locked gate, as approved by the fire department.
- (5) All such helistops shall be subject to review under article V of this chapter.

(b) *Helistops which have five or fewer landings per month:*

- (1) All such helistops must comply with all applicable Federal Aviation Association regulations.
  - (2) All such helistops shall be subject to approval by the zoning administrator and the fire department.
  - (3) Such helistops shall not be subject to review under article V of this chapter.
- (Ord. No. 48-93, 7-19-93)