

CBL:

152-B-1

FOLDER NAME:

1 PB memo

file name: 5-11-04 Contract Zone

PROJECT:

Monrill's Crossing

ADDRESS:

33 Allen Avenue

Memorandum  
Department of Planning and Development  
Planning Division

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**To:** Chair Delogu and Members of the Portland Planning Board  
**From:** Sarah Hopkins, Development Review Services Manager  
**Date:** May 11, 2004  
**Re:** Packard Proposed Contract Zone

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### **Introduction**

Packard Development is returning to the Planning Board to introduce its revised concept plan for the proposed Morrill's Corner Shopping Center. The applicant has introduced a mixed-use approach to the project with the addition of upper-story apartments and offices, town house condominiums and an apartment building. The layout of buildings and architectural renderings appear to be more "pedestrian friendly" with a cohesive design approach.

Packard hopes to use this workshop to give an overview of the project with revised schematics and a computer-assisted "virtual tour" of the project. Technical background data, including traffic reports, parking plans and stormwater calculations have not yet been submitted.

As the Board may recall, the development parcel is currently zoned B-2 Business, I-L Industrial, and R-5 Residential. In order to proceed with the development proposal, the applicant has requested a contract zone, and has also made a proposal to the City's Community Development Committee for the purchase of two City-owned parcels of land.

### **Development Proposal**

Packard proposes to develop 128,000 sq ft of retail, 2,500 sq ft of upper story office space, a 14,000sq ft boxing club, and the preservation of the Bruno's restaurant building. The applicant has also introduced a mixed housing element to the proposal with eight upper story apartments (over retail), 18-24 townhouse condominiums, and 20-26 multi-family units, for a net gain of 46-58 residential units. 625 parking spaces are proposed for the site, as well as a walking trail and open space.





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May 4, 2004

Vanasse Hangen Brustlin, Inc.

Ref: 07334.00

Sarah Hopkins  
Development Review Manager  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: Packard Development  
Morrill's Corner Contract Zone

Dear Sarah:

Packard Development is scheduled for a workshop with the Planning Board on May 11<sup>th</sup>. Enclosed are materials that we are submitting in advance of the workshop for distribution to the Planning Board, and to be made available to the public. Included in the material are a new mixed-use development plan and a comparison between this plan and the retail development plan that was last presented to the Board in December.

Over the past several months, we have worked diligently preparing a new development proposal for the project. This new proposal incorporates the input provided by the Board, staff, and the public during our extensive workshop and neighborhood meeting process over the past year. This new proposal also reflects input provided by several urban planning consultants and local architect, Andy Hyland from Port City Architecture.

The new plan, "Morrill's Crossing", is a true mixed-use urban redevelopment that will create a sense of place in the Morrill's Corner community. It integrates a significantly smaller retail development with new housing, professional office, and other community services.

On May 11<sup>th</sup>, we anticipate limiting our presentation to an overview of the new development proposal. This overview will include presentation of the new plan with a discussion of the proposed uses. Andy Hyland will present his thoughts on how the architecture will create an environment that encourages pedestrian activity and brings the project into scale with its neighbors. Lastly, no mixed-use project such as "Morrill's Crossing" has been undertaken in the City of Portland. To help the Board and the public visualize this new initiative, we will be presenting a virtual tour of this exciting project.

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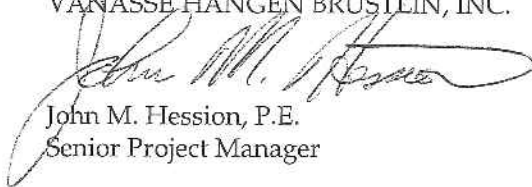
Sarah Hopkins  
Project No.: 07334.00  
May 4, 2004  
Page 2

Packard Development is also scheduled for a second workshop with the Planning Board on May 25<sup>th</sup>. At that time, we will be prepared to present the traffic, Comprehensive Plan analysis and Contract language and will submit the appropriate materials to you prior to the workshop.

We look forward to presenting this new and bold plan to the Planning Board on May 11<sup>th</sup>.

Very truly yours,

VANASSE HANGEN BRUSTLIN, INC.

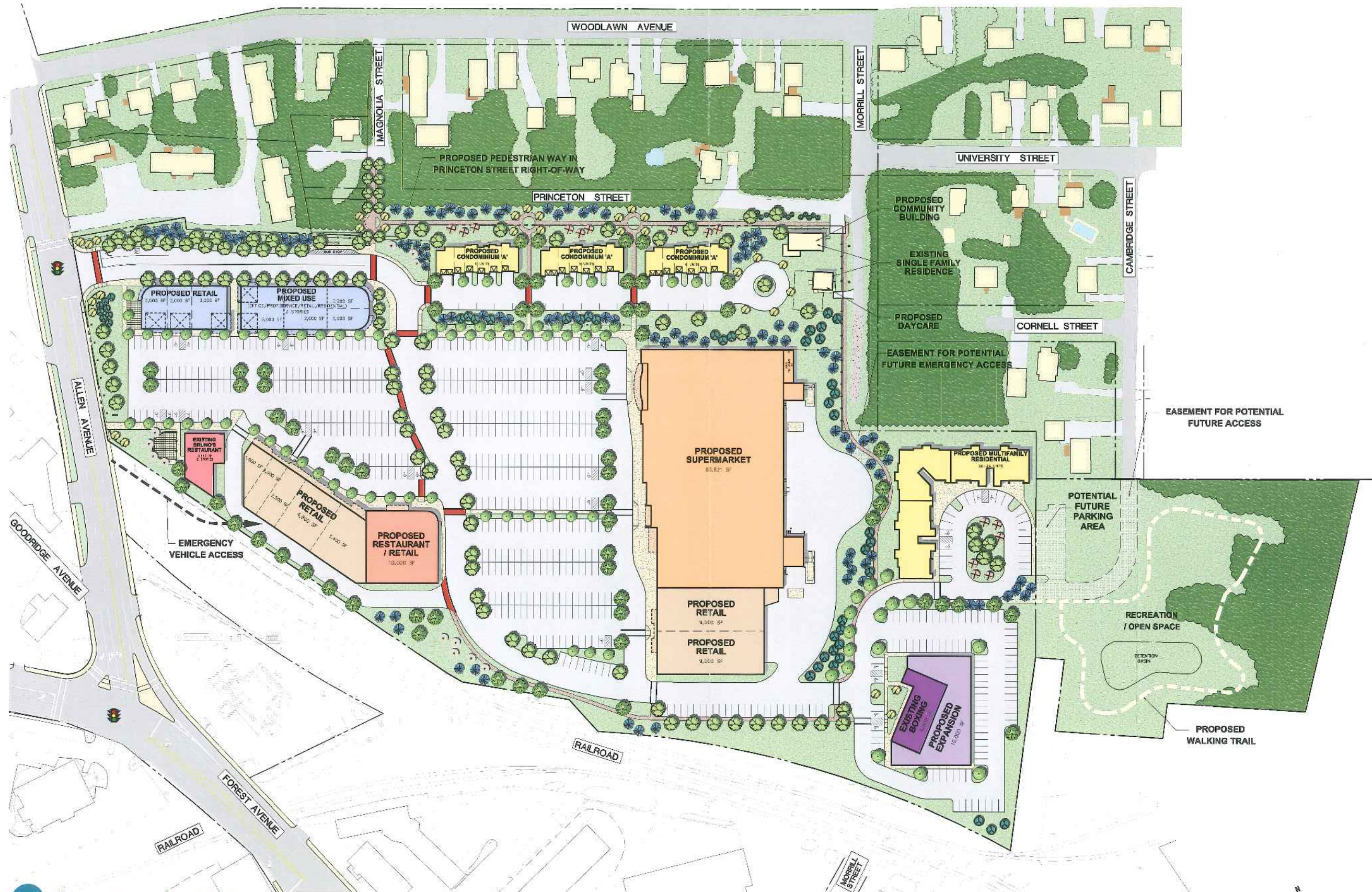


John M. Hession, P.E.  
Senior Project Manager

Enclosures











Over the past several months, a new plan has been created for Packard Development's Morrill's Corner project. It is a mixed-use proposal that differs significantly from the previous retail proposal. The new plan results in an increase in open space, a reduction of retail space, and the addition of new housing. The table below summarizes the differences between the two proposals.

	<u>12/03 PLAN</u>	<u>4/04 PLAN</u>	<u>COMMENTS</u>
<b><u>OVERALL SITE ELEMENTS</u></b>			
Open Space	30%	40%	Increase of 79,300 SF open space
Parking Count	803	625	Excludes condo garages/driveways
Pedestrian Walkway	Distance (LF) 5,835 (1.1 miles)	Distance (LF) 8,855 (1.7 miles)	
<b><u>COMMERCIAL</u></b>			
	Area (SF)	Area (SF)	
Existing Bruno's	3,650	3,650	
Existing Office (above Bruno's)	3,650	3,650	Not included in Total Ground Floor Area
Retail/Restaurant	71,830	62,300	
Proposed Office (above Retail)	---	2,500	Not included in Total Ground Floor Area
Supermarket	75,502	65,821	Mezzanine Reduces (5,970 SF to 5,624 SF)
<b>Total Ground Floor Area of Commercial</b>	<b>150,982</b>	<b>131,771</b>	13% Reduction
Boxing/Bingo	51,000	14,000	Boxing only in 4/04 plan
<b><u>RESIDENTIAL</u></b>			
	Units (EA)	Units (EA)	
Apartments (above Retail)	---	8	
Condos	---	18-24	
Multi-Family	---	20-26	
<b>Total</b>	<b>---</b>	<b>46-58</b>	Losing 7 existing = net increase 39-51

Attachment 2

Jensen Baird  
Gardner & Henry

KENNETH M. COLE III  
NICHOLAS S. NADZO  
FRANK H. FRYE  
DAVID J. JONES  
MICHAEL A. NELSON  
RICHARD H. SPENCER, JR.  
ALAN R. ATKINS  
RONALD A. EPSTEIN  
WILLIAM H. DALE  
JOSEPH H. GROFF III  
F. BRUCE SLEEPER

DEBORAH M. MANN  
LESLIE E. LOWRY III  
PATRICIA MCDONOUGH DUNN  
MICHAEL J. QUINLAN  
R. LEE IVY  
FRANK K. N. CHOWDRY  
NATALIE L. BURNS  
SALLY J. DAGGETT  
BRENDAN P. RIELLY  
SUZANNE R. SCOTT  
MARCIA G. CORRADINI

ATTORNEYS AT LAW  
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WALTER E. WEBBER  
JAMES E. KAPLAN  
OF COUNSEL

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(1908-2002)

KENNETH BAIRD  
(1914-1987)

M. DONALD GARDNER  
(1918-2003)

YORK COUNTY  
OFFICE

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KENNEBUNK, MAINE 04043  
(207) 985-4676  
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April 8, 2004

Sarah Hopkins  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Re: Packard Development, LLC/Morrills Corner Project

Dear Sarah:

Attached are the various purchase and sale agreements for the Morrills Corner project, other than the two parcels currently owned by the City of Portland. Packard relies upon the recently enacted amendments to Chapter 14 that allow it to proceed with the rezoning application as to those parcels. As we discussed, the agreements have been redacted solely for the purpose of removing the financial terms of the Agreements, as well as some financing terms; all other terms have been included.

Please call me if you have any questions or if you need additional information. Thank you.

Sincerely,



Natalie L. Burns

Enclosure

cc: Paul Cincotta (w/out encl)



REAL ESTATE PURCHASE AND SALE AGREEMENT

AGREEMENT is made this 10th day of May, 2002 by and between Jonathan M. White and Paul G. White (jointly and severally, the "Seller"), and Packard Development LLC, a Massachusetts limited liability company (referred to herein as "Buyer"), as follows:

1. **Purchase and Sale.** Seller agrees to sell and Buyer agrees to buy, on the terms and conditions set forth herein, the real and personal property described below together with all easements, rights and appurtenances benefiting such parcels:

Those certain lots or parcels of land described as follows: (a) Lot G21 on Map 435 of the City of Portland Tax Assessor's Office record title to which is held by Jonathan M. White (the "JW Lot"); and (b) Lot G22 on Map 435 of the City of Portland Tax Assessor's Office record title to which is held by Paul G. White (the "PW Lot"), together with the building(s), improvement(s), and structure(s) located thereon and the fixtures, equipment and personal property belonging to Seller and used in connection therewith, commonly known as and numbered 47 and 41 Allen Avenue in the City of Portland County of Cumberland and State of Maine, and as more fully described on Exhibit A attached hereto and made a part hereof and in a deed to Seller recorded in the Cumberland County Registry of Deeds in Book 13330, Page 29 and Book 15796, Page 123 (the JW Lot and PW Lot sometimes are each referred to as a "Property" and are referred to herein collectively as the "Properties").

2. **Purchase Price.** Subject to any adjustments and prorations hereinafter described, Buyer agrees to purchase the Properties and the personal property for the sum of \_\_\_\_\_, payable as follows:

a. **Earnest Money Deposit.** The sum of \_\_\_\_\_ (the "Earnest Money Deposit") has been paid to the escrow agent to be credited against the Purchase Price and shall be allocated among the Properties as set forth on Exhibit B attached hereto and made a part hereof. Pending closing, the Earnest Money Deposit shall be held in escrow by a title insurance company mutually acceptable to Buyer and Seller in an interest-bearing escrow account with all interest to be paid to Buyer.

b. **Remainder of Purchase Price.** The remainder of the Purchase Price shall be paid by wire transfer, certified check or bank cashier's check at closing. The Purchase Price shall be allocated between the Properties as directed in writing by the Seller (and all Deposits and Payments shall be allocated on a proportionate basis based on the foregoing allocations). Seller shall provide such allocation to the Buyer and escrow agent as soon as the appropriate allocation has been determined by Seller.

2A. **Execution Payment.** Buyer shall pay to Seller the sum of \_\_\_\_\_ upon execution of this Agreement by both Seller and Buyer. Such Execution Payment shall be non-refundable to Buyer (except in the event of Seller's breach of this Agreement) and not applied to or credited against the Purchase Price.

3. Title.

a. **Conveyance.** At the closing, Seller shall convey the Properties to Buyer, or to the nominee designated by Buyer by written notice to Seller prior to the Closing Date, by good and sufficient warranty deed for each Property (each being a "Deed") each of which Deeds shall convey a good and clear record and marketable fee simple title, free from encumbrances, except:

(i) Such taxes for the then current year as are not due and payable on the date of delivery of the Deed;

(ii) Any liens for municipal betterments assessed after the date of the closing; and

(iii) Easements, restrictions and reservations of record, if any, as of the date of Buyer's title insurance commitment, provided that Buyer does not object thereto within the Review Period (defined below).

Notwithstanding the foregoing Section 3(a) to the contrary, Seller shall not be required to give a warranty deed at the closing if there is any encumbrance of record which was not created by the Seller during the term of Seller's ownership of the applicable Property, which Seller cannot, in Seller's sole discretion, reasonably remove prior to the Closing Date (hereinafter defined), or any extension thereof for the purposes of removing any such encumbrance as provided for in Section 3(b)(iii) of this Agreement, in which event Seller shall be obligated to deliver to Buyer at the closing a quitclaim deed with covenant for the applicable Property.

b. **Conformity of Title.** Without limitation of any other provisions in this Agreement, it is understood and agreed by the parties that the Properties shall not be in conformity with the provisions of this Section 3 unless:

(i) No building, structure or improvement of any kind belonging to any other person or entity shall encroach upon or under either Property;

(ii) Each Property shall abut a public way, duly laid out or accepted as such by the City of Portland; and

(iii) Title to each Property is insurable for the benefit of the Buyer by a nationally-recognized title insurance company (such as Lawyers Title Insurance Company or Commonwealth Land Title Insurance Company), and upon delivery from Seller to Buyer of the Deed and upon recordation of the Deed, there is issued, at normal title insurance premium rates, an owner's title insurance policy (on the current ALTA form) insuring fee simple title in the Buyer free from all exceptions other than those exceptions specifically set forth in this Agreement or otherwise approved by Buyer in writing during the Review Period (hereinafter defined). In order to enable Buyer to obtain such title insurance policy, Seller will provide Buyer, at the time of delivery of the Deed, with executed affidavits and indemnifications regarding mechanics' and materialmen's liens, parties in possession, corporate excise tax release and any other affidavits and documents which are required by title insurance companies for transactions of this nature, including, without limitation, such affidavits and certificates



necessary to inform Buyer of its obligation, if any, to deduct and withhold a portion of the Purchase Price pursuant to 36 M.R.S.A Section 5250-A. In the event that Seller is unable to convey title as aforesaid, or to otherwise deliver the Properties in accordance with the terms of this Agreement, Seller shall be given thirty (30) days or such longer period or periods of time as Buyer may elect to grant from time to time, in which to remedy any title defects, and during such period, Seller shall use best efforts to cure and to otherwise perform. In the event that said defects cannot be corrected or remedied and the applicable conditions cured within said time period, then (a) Buyer may terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Buyer and this Agreement will terminate and/or (b) Buyer may, at Buyer's option, elect to close on both Properties notwithstanding such defects as may exist, with no deduction in the Purchase Price.

4. **Closing.** The closing of this transaction shall take place on a date (the "Closing Date") established by Buyer by written notice to Seller, which date shall be no later than sixty (60) days following the end of the Approval Period (hereinafter defined, as same may have been extended hereunder). The closing shall take place at the offices of the Buyer's title insurance company, or at such other place as may be mutually agreed upon by Buyer and Seller. At the closing, Seller shall execute and deliver to Buyer the Deed against payment as set forth in this Agreement.

5. **Adjustments, Prorations, and Closing Costs.**

a. Real estate taxes and assessments and water and sewer use charges shall be prorated as of the Closing Date on the basis of the current municipal year and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price.

b. Buyer and Seller shall each pay their own share of the Maine real estate transfer tax and execute a Real Estate Transfer Tax Declaration in the form required to be recorded with the Deed.

6. **Possession.** Seller shall deliver full and exclusive possession of each Property on the Closing Date in the same condition as they now are, reasonable use and wear thereof excepted, broom clean and free of all Seller's personal property, personal effects and debris, free of all occupants and the rights of any other parties and otherwise in compliance with this Agreement. Buyer shall be entitled to an inspection of the Properties prior to the delivery of the Deed in order to determine whether the condition thereof complies with the terms of this clause.

7. **Risk of Loss.** All risks of loss to the Properties prior to the closing shall be on Seller.

8. **Review Period.**

a. Buyer shall have sixty (60) days from the date of this Agreement (the "Review Period") to conduct Buyer's due diligence which may include, without limitation, examination of title to the Properties and other inspections to determine the acceptability of each of the Properties for the Project (hereinafter defined).



b. If Buyer is not satisfied with the results of such due diligence, in Buyer's sole discretion, then Buyer may elect to terminate this Agreement by giving Seller written notice of such election upon the expiration of the Review Period, in which event this Agreement shall become void and the Earnest Money Deposit shall be refunded to Buyer.

9. **Default; Remedies.** If Buyer shall default under this Agreement and the default shall continue beyond applicable notice and cure periods (which shall not be less than thirty (30) days), (a) any Additional Payment(s) and Extension Payment(s) made prior to the date of the default only shall be retained by Seller as liquidated damages, and this shall be Seller's sole and exclusive remedy at law or in equity for any such default by Buyer and (b) the Earnest Money Deposit, together with all interest earned thereon shall be refunded to Buyer. If Buyer terminates this Agreement for any reason for which Buyer's termination is permitted, the Earnest Money Deposit, together with all interest earned thereon shall be refunded to Buyer. Notwithstanding the foregoing, if Buyer terminates this Agreement as a result of Seller's breach of this Agreement, then the Earnest Money Deposit, together with all interest earned thereon, and any Additional Payment(s) and Extension Payment(s), shall be refunded to Buyer, but this shall not limit Buyer's right to seek other remedies by reason of such failure, including specific performance.

10. **Seller's Representations.** Seller represents and warrants to Buyer:

a. Seller has received no notice of (i) any eminent domain proceedings affecting either Property, or (ii) violation of any federal, state or local law, statute, ordinance, rules or regulations applicable to either Property;

b. Seller is the owner in fee simple of the Properties (subject only to matters of record), and has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with any agreement to which Seller is a party or by which it is bound;

c. To the best of Seller's knowledge, there is no underground fuel/oil storage facility located on either Property ; and

d. Seller is not a "foreign person," as defined by the federal Foreign Investment in Real Property Tax Act (the "Act"). At the closing, Seller shall execute and deliver to Buyer a "non-foreign certificate," in such form as is customary. Seller acknowledges that in the event Seller fails to deliver the non-foreign certificate, then Buyer shall be authorized to withhold from the closing proceeds an amount equal to ten percent (10%) of the gross amount of the purchase price and to remit that amount to the Internal Revenue Service, as required by the Act. Seller does hereby forever release and discharge Buyer from all liability resulting from, or arising out of, Buyer's good faith compliance with the requirements of the Act.

It shall be a condition of Buyer's obligation to close under this Agreement that all representations and warranties made by Seller hereunder are true, both as of the date hereof and as of the Closing



Date. Without limiting the foregoing, in the event of any such breach of warranty, covenant or representation, Buyer may, in addition to any other remedy therefor, terminate this Agreement by written notice to Seller, in which event the Earnest Money Deposit, together with all interest earned thereon, (or the portion thereof applicable to the applicable Property) and any Additional Payments and Extension Payments (or the portion thereof applicable to the applicable Property) shall be returned promptly to Buyer, and all obligations hereunder thereupon shall cease, and this Agreement thereupon shall be void without recourse to any party as to the applicable Property.

11. **Approval Period.** On the first day of the month next commencing after the Review Period, and each month during the Approval Period until the beginning of the first Extension Period or termination of this Agreement, Buyer will pay to Seller (the "Additional Payment") which amount shall be non-refundable (except in the event of Seller's breach of this Agreement) and shall be applied to or credited against the Purchase Price. If for any reason, Buyer does not obtain the permits and approvals for Buyer's intended development of the Properties and related property as a retail and/or restaurant facility, including necessary parking and other related improvements, as determined by Buyer, in Buyer's sole discretion (the "Project") on terms and conditions satisfactory to Buyer, in Buyer's sole discretion (the "Approvals"), within 365 days after the expiration of the Review Period (the "Approval Period"), Buyer shall have the right to extend the Approval Period for additional periods of 90 days each (each such period an "Extension Period") upon the payment to Seller of (the "Extension Payment") for each Extension Period which amount shall be non-refundable (except in the event of Seller's breach of this Agreement) and shall be applied to or credited against the Purchase Price and allocated among the Properties as set forth on Exhibit B attached hereto. Buyer agrees to diligently pursue obtaining the Approvals. Buyer shall be deemed to have obtained the Approvals only when the Approvals have been issued with all appeal periods having run therefrom without appeals having been taken or with any appeals having been resolved to the sole satisfaction of Buyer. Buyer shall have the right to terminate this Agreement at any time that Buyer determines that the Approvals cannot be obtained within an acceptable time period or on terms and conditions acceptable to Buyer, but no such termination shall relieve Buyer of the obligation to pay any Additional Payment or Extension Payment for any month or Extension Period, as applicable, that has commenced prior to termination, provided however, that any such Additional Payment and Extension Payment shall be prorated on a per diem basis for any termination during any month and Extension Period. If Buyer fails to make any Additional Payment or Extension Payment as provided herein, then Seller's sole and exclusive right shall be to terminate this Agreement by written notice to Buyer provided that if Buyer makes the required Additional Payment(s) or Extension Payment(s) within five (5) business days after Buyer's receipt of Seller's termination notice, then this Agreement shall remain in full force and effect. If Seller so terminates and Buyer does not negate the termination as provided in the foregoing sentence, then Buyer shall be entitled to a refund of the Deposit made prior thereto and interest thereon, and Seller shall be entitled to retain any Additional Payment(s) or Extension Payment(s) which have been received by Seller prior to the date of Seller's notice of termination.

Seller shall cooperate with Buyer in the pursuit of the Approvals and shall join in the application for any of the Approvals, whenever such action is necessary, provided, however, that Seller shall incur no liability or expense in connection therewith.



12. Addenda: Yes \_\_\_\_\_ No X \_\_\_\_\_.

13. Miscellaneous.

a. Entire Agreement. This Agreement constitutes the entire agreement between the Seller and Buyer, and there are no agreements, understandings, warranties, or representations between them except as set forth herein and in the listing sheets and income and expense statements for the Properties furnished by Seller or Seller's broker and which are made a part of this Agreement by reference. This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach.

b. Binding Effect. This Agreement will inure to the benefit and bind the respective successors and assigns of Seller and Buyer.

c. Identical Counterparts. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original but all of which together shall constitute one and the same instrument.

d. Construction. As used in this Agreement, the singular number shall include the plural, and the use of one gender shall be deemed applicable to all genders. This Agreement shall be governed and construed in accordance with the laws of the State of Maine. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

e. Broker. Buyer represents and warrants to Seller that Buyer has dealt with no broker in connection with the transaction contemplated by this Agreement other than Nicholas Connolly of Tenacorp ("**Buyer's Broker**") and agrees to indemnify Seller against any claim, expense, or liability that may arise from a breach of this representation and warranty. Seller represents and warrants to Buyer that Seller has dealt with no broker in connection with the transaction contemplated by this Agreement other than Buyer's Broker and agrees to indemnify Buyer against any claim, expense, or liability that may arise from a breach of this representation and warranty. Buyer agrees to pay any fees that may be due to Buyer's Broker, who exclusively represents the Buyer, by reason of this transaction.

f. Notice. Whenever, by the terms of this Agreement, notice shall or may be given either to Buyer or to Seller, such notice shall be deemed to have been given only if in writing and either delivered by hand or facsimile or sent by registered or certified mail, or overnight express, postage prepaid, if intended for the Seller, to:

Jonathan M. White and Paul G. White  
c/o Paul C. White  
Paul G. White Title Co., Inc.  
50 Allen Avenue  
Portland, ME 04103



Facsimile #: 207-797-0222  
with a copy to:

George Hefferan, Esq.  
19 Letitia Lane  
South Casco, ME 04077

and, if intended for the Buyer to:

Packard Development LLC  
One Wells Avenue  
Newton, MA 02459  
Attention: Armen Aftantilidan  
Facsimile #: (617) 965-2519  
with a copy to:

Ronald M. Fellman, Esq.  
Jeffrey A. Huebschmann, Esq.  
Goldstein, Kaitz & Fellman, LLP  
800 South Street, Suite 395  
Waltham, MA 02453  
Facsimile #: 781-894-2129

or to such other address or addresses as may be specified by either party to the other by like notice. All notices shall be effective when delivered by the sender in accordance with this Agreement.

g. Cooperation and Access. Seller agrees to provide Buyer with any and all copies in Seller's possession or in the possession of its agents and/or consultants of information such as surveys, title reports or insurance policies and environmental reports. In addition, Buyer and its agents and employees shall have the right, at the Buyer's sole risk, to enter upon the Properties for the purpose of making tests and inspections of the same, and conducting due diligence, provided that Buyer shall do so in a fashion that does not unreasonably interfere with Seller's use of the Properties and following such inspections, testing and due diligence, Buyer shall leave the Properties in substantially the same condition as it was in prior to the initiation of such work. Buyer shall provide Seller evidence of Buyer's or Buyer's representatives' liability insurance coverage with respect to any injuries that may occur on the Properties in connection with such testing before any agents or employees of Buyer enter the Properties.

h. Section 1031 Exchange. Seller and Buyer each reserves the right to include this transaction as part of an IRC Section 1031 tax deferred exchange, at no cost, expense or liability to the other party. Each party further agrees to execute any and all documents (subject to the reasonable approval of the other party's counsel) as are reasonably necessary in connection therewith, provided that the closing for the conveyance of the Property shall not be contingent upon or subject to the completion of such exchange. Buyer and Seller each agrees to

indemnify and hold the other free and harmless from any cost, expense or liability, including reasonable attorney's fees, resulting from such other party's participation in such exchange.

**[Remainder of page intentionally left blank]**

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the dates shown beside their signatures below.

WITNESSES:

Charles E. B. J.  
Charles E. B. J.

Linda Krause

SELLER:

Jonathan M. White  
Jonathan M. White  
Paul G. White  
Paul G. White

BUYER:

PACKARD DEVELOPMENT LLC, a  
Massachusetts limited liability company

Armen Aftandilian  
By: Armen Aftandilian  
Name: Armen Aftandilian



## EXHIBIT A

### Legal Description

#### JW Lot

A certain lot or parcel of land with the buildings thereon, situated on the southeasterly side of Allen Avenue, in the City of Portland, County of Cumberland and State of Maine, and more particularly bounded and described as follows:

Beginning at an iron on said southeasterly side of Allen Avenue at the westerly corner of the lot conveyed to Benjamin H. Riggs by Felicia M. H. Riggs by deed dated February 16, 1939, and recorded in Cumberland County Registry of Deeds in Book 1568, Page 390, said iron being in line of the fence mentioned in the aforementioned deed, said point being also at the northerly corner of the tract of land called Addition to Hawthorne Heights as shown on a plan of same recorded in said Registry of Deeds in Plan book 15, Page 19;

thence by the southeasterly side of said Allen Avenue on a course of North 29° 34' East fifty-three (53) feet to an iron stake;

thence by other land now or formerly of said Benjamin H. Riggs on a course of South 54° 30' East three hundred thirty-four and eight tenths (334.8) feet to a fence and land of said Hawthorne Heights;

thence by a fence and land of said Hawthorne Heights on a course of South 29° West seventy-two and seven tenths (72.7) feet to a stake;

thence by a fence and land of said Hawthorne Heights on a course of North 51° 12' West three hundred thirty-eight and one tenth (338.1) feet to said Allen Avenue at the point of beginning.

Said above mentioned courses being magnetic and of the date of 1942.

#### PW Lot

A certain lot or parcel of land with the buildings thereon, situated on the southeasterly side of Allen Avenue, in the City of Portland, County of Cumberland and State of Maine and bounded and described as follows:

Beginning on the southeasterly side of Allen Avenue at an iron stake at the northerly corner of land conveyed by Benjamin H. Riggs to Fanny A. Greenwood by deed dated July 27, 1942 and recorded in the Cumberland County Registry of Deeds in Book 1683, Page 404; thence by said sideline of Allen Avenue on a course of N 29° 34' E, 79.7 feet to land conveyed to George C. Cilley by Mary T. Frost, et al, by deed dated October 27, 1915, recorded in the Cumberland County Registry of Deeds in Book 959, Page 258; thence by land now or formerly of said Cilley on a course of S 60° 22' E a distance of 125 feet to an iron stake driven in the ground; thence S 29° W, 80 feet more or less, to an iron pin driven in the ground and to land conveyed to the said Fanny A. Greenwood by said Benjamin H. Riggs; thence N 54° 30' W, 125 feet, more or less, to the southeasterly sideline of Allen Avenue and the point of beginning.

**Kaitz & Fellman, LLP**  
**ATTORNEYS**

84 Jaconnet Street  
Suite 300  
Newton, MA 02481  
(781) 894-4400  
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Of Counsel  
Jeffrey A. Huebschmann, Esq.  
jah@gkflp.com  
Writer's Direct Number (617) 658-1250

November 17, 2003

By Facsimile

Derek Gamble, Esq.  
Lambert, Coffin, Rudman & Hochman  
477 Congress Street  
Portland, ME 04101

~~Re: Packard Development/Jack and Madeline Adams - 2 Princeton Street, Portland, ME~~

Dear Derek:

I am writing to confirm the agreement between Packard Development, LLC and Jack and Madeline Adams regarding the extension of the Approval Period under that certain Purchase and Sale Agreement between the parties dated May 9, 2002, for the above-referenced property (the "Agreement"). Capitalized terms not defined in this letter shall have the same meanings given them in the Agreement.

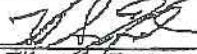
As agreed, the Approval Period under Section 11 of the Agreement is hereby extended to May 31, 2004. On behalf of Packard Development, I confirm that Packard Development will continue to make the monthly Extension Payments under said Section 11 during such extended Approval Period, which Extension Payments shall continue to be non-refundable (except in the event of Seller's breach of the Agreement) and shall not be applied to or credited against the Purchase Price.

Please have Mr. and Mrs. Adams confirm their agreement with the foregoing by having each of them countersign a copy of this letter where indicated below and return a fully countersigned copy to me as soon as possible. A signed facsimile copy of this letter agreement shall be binding upon the undersigned as fully, and to the same extent as an original signed copy of this letter agreement. As amended hereby the Agreement remains in full force and effect and is hereby ratified by the parties thereto.

Upon receipt of a fully countersigned copy of this letter, Packard Development will forward to your attention a check in the amount of \$\_\_\_\_\_ made payable to Lambert, Coffin, Rudman & Hochman as payment of your fees related to the Approval Period extension.

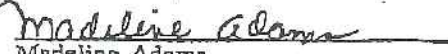
Please call me if you have any questions. Thank you for your cooperation.

Sincerely,  
Packard Development, LLC  
By its attorneys  
Kaitz & Fellman, LLP

By:   
Jeffrey A. Huebschmann

Approval Period extension, as aforesaid, agreed to by:

  
Jack Adams

  
Madeline Adams



## REAL ESTATE PURCHASE AND SALE AGREEMENT

AGREEMENT is made this 9th day of May, 2002 by and between Madeline F. Adams and Jack B. Adams (collectively referred to herein as "Seller"), and Packard Development LLC, a Massachusetts limited liability company (referred to herein as "Buyer"), as follows:

1. Purchase and Sale. Seller agrees to sell and Buyer agrees to buy, on the terms and conditions set forth herein, the real and personal property described below together with all easements, rights and appurtenances benefiting such parcel:

The certain lots or parcels of land, together with the building(s), improvement(s), and structure(s) located thereon at 2 Princeton Street in the City of Portland County of Cumberland and State of Maine, and as more fully described on Exhibit A attached hereto and made a part hereof and in a deed to Seller recorded in the Cumberland County Registry of Deeds in Book 8940, Page 88 (collectively, the "Premises").

2. Purchase Price. Subject to any adjustments and prorations hereinafter described, Buyer agrees to purchase the Premises and the personal property for the sum of \_\_\_\_\_, payable as follows:

a. Earnest Money Deposit. The sum of \_\_\_\_\_ the "Earnest Money Deposit") has been paid to Seller to be credited against the Purchase Price. Pending closing, the Earnest Money Deposit shall be held in escrow by a title insurance company mutually acceptable to Buyer and Seller in an interest-bearing escrow account with all interest to be paid to Buyer. Any fees of such title insurance company shall be paid by Buyer. Buyer shall provide the title insurance company with an IRS form W-9 setting forth Buyer's employer identification number.

b. Remainder of Purchase Price. The remainder of the Purchase Price shall be paid by wire transfer, certified check or bank cashier's check at closing.

c. Execution Payment. Buyer shall pay to Seller the sum of \_\_\_\_\_ upon execution of this Agreement by both Seller and Buyer. Such execution payment shall be non-refundable to Buyer (except in the event of Seller's breach of this Agreement) and not applied to or credited against the Purchase Price.

3. Title.

a. At the Closing, Seller shall convey the Premises to Buyer, or to the nominee designated by Buyer by written notice to Seller prior to the Closing Date, by good and sufficient warranty deed (the "Deed") which Deed shall convey a good and clear record and marketable fee simple title, free from encumbrances, except:

(i) Such taxes for the then current year as are not due and payable on the date of delivery of the Deed;

(ii) Any liens for municipal betterments assessed after the date of the closing; and

(iii) Easements, restrictions and reservations of record, if any, as of the date of Buyer's title insurance commitment, provided that Buyer does not object thereto within the Review Period (defined below).

b. Without limitation of any other provisions in this Agreement, it is understood and agreed by the parties that the Premises shall not be in conformity with the provisions of this Section 3 unless:

(i) No building, structure or improvement of any kind belonging to any other person or entity shall encroach upon or under the Premises;

(ii) The Premises shall abut a public way, duly laid out or accepted as such by the City of Portland; and

(iii) Title to the Premises is insurable for the benefit of the Buyer by a nationally-recognized title insurance company (such as Lawyers Title Insurance Company or Commonwealth Land Title Insurance Company), and upon delivery from Seller to Buyer of the Deed and upon recordation of the Deed, there is issued, at normal title insurance premium rates, an owner's title insurance policy (on the current ALTA form) insuring fee simple title in the Buyer free from all exceptions other than those exceptions specifically set forth in this Agreement or otherwise approved by Buyer in writing during the Review Period (hereinafter defined). In order to enable Buyer to obtain such title insurance policy, Seller will provide Buyer, at the time of delivery of the Deed, with executed affidavits and indemnifications regarding mechanics' and materialmen's liens, parties in possession, and any other affidavits and documents which are required by title insurance companies for transactions of this nature, including, without limitation, such affidavits and certificates necessary to inform Buyer of its obligation, if any, to deduct and withhold a portion of the Purchase Price pursuant to 36 M.R.S.A. Section 5250-A. In the event that Seller is unable to convey title as aforesaid, or to otherwise deliver the Premises in accordance with the terms of this Agreement, Seller shall be given thirty (30) days or such longer period or periods of time as Buyer may elect to grant from time to time, in which to remedy any title defects, and during such period, Seller shall use best efforts to cure and to otherwise perform. In the event that said defects cannot be corrected or remedied and the applicable conditions cured within said time period, then the Earnest Money Deposit shall be returned to Buyer and this Agreement will terminate, or Buyer may, at Buyer's option, elect to close notwithstanding such defects as may exist with an equitable deduction in the Purchase Price.

4. Closing. The closing of this transaction shall take place on a date (the "Closing Date") established by Buyer by written notice to Seller, which date shall be no later than one hundred twenty (120) days following the end of the Approval Period (hereinafter defined, as same may have been extended hereunder) or earlier upon a thirty (30) day written notice from Buyer to Seller. If the Closing Date is less than one hundred twenty (120) days after Seller receives notice of the Closing Date from Buyer, then Seller shall have the right and option to



lease back the Premises from Buyer through the date that is one hundred twenty (120) days after the date of Seller's receipt of Buyer's notice of the Closing Date. Seller's option to lease back the Premises shall be made by giving written notice to Buyer within the sixty (60)-day-period between Seller's receipt of Buyer's notice of a Closing Date and the Closing Date set forth in such notice. The notice shall specify the duration of the leaseback period elected by Seller (not to exceed the period set forth above). In the event that Seller leases back the Premises, during the term of such lease, Seller shall keep the Premises insured, shall pay all utility charges and shall pay Buyer rent in the amount of \$ \_\_\_\_\_ per month, which amount shall be prorated for any partial month of occupancy. Buyer shall pay the real estate tax during the leaseback period. At Buyer's request, Seller and Buyer shall execute a short form lease agreement at the closing. The closing shall take place at the offices of the Buyer's title insurance company, or at such other place as may be mutually agreed upon by Buyer and Seller. At the closing, Seller shall execute and deliver to Buyer the Deed against payment as set forth in this Agreement. At the closing, Seller shall execute and deliver to Buyer the Deed against payment as set forth in this Agreement.

5. Adjustments, Prorations, and Closing Costs.

a. Real estate taxes and assessments and water and sewer use charges shall be prorated as of the Closing Date on the basis of the current municipal year and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price.

b. The Buyer and Seller shall each pay their own share of the Maine real estate transfer tax and execute a Real Estate Transfer Tax Declaration in the form required to be recorded with the Deed.

6. Possession. Seller shall deliver full and exclusive possession of the Premises on the Closing Date or at the end of Seller's tenancy period, if Seller leases back the Premises as set forth in Paragraph 4 above, in the same condition as they now are, reasonable use and wear thereof excepted, broom clean and free of all Seller's personal property, personal effects and debris, free of all occupants and the rights of any other parties and otherwise in compliance with this Agreement. Buyer shall be entitled to an inspection of the Premises upon reasonable notice prior to the delivery of the Deed, in order to determine whether the condition thereof complies with the terms of this clause.

7. Risk of Loss. All risks of loss to the Premises prior to the closing shall be on Seller.

8. Review Period.

a. Buyer shall have sixty (60) days from the date of this Agreement (the "Review Period") to conduct Buyer's due diligence which may include, without limitation, examination of title to the Premises and other inspections to determine the acceptability of the Premises for Buyer's intended development program.

b. If Buyer is not satisfied with the results of such due diligence, in Buyer's sole



discretion, then Buyer may elect to terminate this Agreement by giving Seller written notice of such election upon the expiration of the Review Period, in which event this Agreement shall become void and the Earnest Money Deposit shall be refunded to Buyer.

c. Following the expiration of the review period, if Buyer has not elected to terminate this Agreement, Buyer shall have no further right to terminate this Agreement except for Buyer's failure to receive satisfactory Approvals as set forth in Paragraph 11(a) hereof, Seller's failure to convey title to the Premises as set forth in Section 3(b)(iii) of this Agreement or Seller's breach of this Agreement.

9. Default: Remedies. If Buyer shall default in the performance of any of Buyer's obligations under this Agreement (except for default in the payment of any Additional Payment or Extension Payment as provided herein, for which a five (5) day cure period shall apply as set forth in Paragraph 11 (a) below) and the default shall continue for a period of twenty (20) days following written notice of default, the Earnest Money Deposit and any Additional Payment(s) and Extension Payment(s) made or due and payable prior to the date of the default shall be retained by Seller as liquidated damages and this shall be Seller's sole and exclusive remedy at law or in equity for any such default by Buyer, provided, however, that if after giving Seller the Closing Date notice described in Section 4 of this Agreement, Buyer, as a result of Buyer's willful misconduct only, fails to purchase the Premises on the Closing Date, Seller may bring an action for specific performance against Buyer. In any such case, Seller shall be entitled to recover any Additional Payments or Extension Payments due prior to the date of such default and shall be entitled to recover reasonable attorney's fees incurred to collect any such payments. If Buyer terminates this Agreement for any reason for which Buyer's termination is permitted, the Earnest Money Deposit, together with all interest earned thereon, shall be refunded to Buyer; but Seller shall be entitled to retain the Additional Payments and the Extension Payments which have been made or were due and payable prior to such date. No Additional Payment or Extension Payment shall be prorated for any partial month. Notwithstanding the foregoing, if Buyer terminates this Agreement as a result of Seller's breach of this Agreement, then the Earnest Money Deposit, together with all interest earned thereon, and any Additional Payments and Extension Payments, shall be refunded to Buyer, but this shall not limit Buyer's right to seek other remedies by reason of such failure, including specific performance.

10. Seller's Representations. Seller represents and warrants to Buyer:

a. To the best of Seller's knowledge all applicable zoning or other state or municipal ordinances or regulations have been complied with. Seller agrees to hold Buyer harmless from any such violations which occurred or existed prior to closing. Seller warrants that no portion of the Premises is classified as tree growth for municipal tax purposes.

b. To the best of Seller's knowledge, Seller is the owner in fee simple of the Premises (subject only to matters of record), has the legal right, power and authority to enter into this Agreement and to perform all of his obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of his obligations hereunder will not conflict with any agreement to which Seller is a party or by which it is bound;



c. Seller has received no notice of any eminent domain proceedings affecting the Premises during his period of ownership;

e. To the best of Seller's knowledge, there is no underground fuel/oil storage facility located on the Premises; and

e. Seller is not a "foreign person," as defined by the federal Foreign Investment in Real Property Tax Act (the "Act"). At the closing, Seller shall execute and deliver to Buyer a "non-foreign certificate," in such form as is customary. Seller acknowledges that in the event Seller fails to deliver the non-foreign certificate, then Buyer shall be authorized to withhold from the closing proceeds an amount equal to ten percent (10%) of the gross amount of the purchase price and to remit that amount to the Internal Revenue Service, as required by the Act. Seller does hereby forever release and discharge Buyer from all liability resulting from, or arising out of, Buyer's good faith compliance with the requirements of the Act.

It shall be a condition of Buyer's obligation to close under this Agreement that all representations and warranties made by Seller hereunder are true to the best of Seller's knowledge, both as of the date hereof and as of the Closing Date. Without limiting the foregoing, in the event of any such breach of warranty, covenant or representation, Buyer may, in addition to any other remedy therefor, terminate this Agreement by written notice to Seller, in which event the Earnest Money Deposit, together with all interest earned thereon, and any Additional Payments and Extension Payments shall be returned promptly to Buyer, and all obligations hereunder thereupon shall cease, and this Agreement thereupon shall be void without recourse to any party.

11. Other Conditions:

a. Approval Period. On the first day of the month next commencing after the Review Period, and each month during the Approval Period until the beginning of the Extension Period or termination of this Agreement, Buyer will pay to Seller the "Additional Payment") which amount shall be non-refundable (except in the event of Seller's breach of this Agreement) and shall not be applied to or credited against the Purchase Price. If for any reason, other than Buyer's failure to proceed in good faith, Buyer does not obtain the permits and approvals for Buyer's intended development program ("Approvals") on terms and conditions satisfactory to Buyer, in Buyer's sole discretion, within twelve (12) months after the end of the Review Period (the "Approval Period"), Buyer shall have the right to extend the Approval Period for a period or periods of up to 6 months in the aggregate (the "Extension Period") upon the payment to Seller of : "Extension Payment") for each month of the Extension Period which amount shall be non-refundable (except in the event of Seller's breach of this Agreement) and shall not be applied to or credited against the Purchase Price. Buyer shall be deemed to have obtained the Approvals only when the Approvals have been issued with all appeal periods having run therefrom without appeals having been taken or with any appeals having been resolved to the sole satisfaction of Buyer. Provided Buyer has paid all Additional Payments and Extension Payments then due, Buyer shall have the right to terminate this Agreement at any time that Buyer determines that the Approvals cannot be obtained within an



acceptable time period or on terms and conditions acceptable to Buyer, but no such termination shall relieve Buyer of the obligation to pay any Additional Payment or Extension Payment for any month that has commenced prior to termination and no Additional Payment or Extension Payment shall be prorated for any termination during any month. If Buyer fails to make any Additional Payment or Extension Payment as provided herein, then Seller's sole and exclusive right shall be to terminate this Agreement by written notice to Buyer provided that if Buyer makes the required Additional Payment(s) or Extension Payment(s) within five (5) business days after Buyer's receipt of Seller's termination notice, then this Agreement shall remain in full force and effect. If Seller so terminates and Buyer does not negate the termination as provided in the foregoing sentence, then Buyer shall be entitled to a refund of the Deposit made prior thereto and interest thereon, and Seller shall be entitled to retain any Additional Payment(s) or Extension Payment(s) which have been received by Seller prior to the date of Seller's notice of termination.

Seller shall cooperate with Buyer in the pursuit of the Approvals and shall join in the application for any of the Approvals, whenever such action is necessary, provided, however, that Seller shall incur no liability or expense in connection therewith.

12. Addenda: Yes  No  X

13. Miscellaneous.

a. Entire Agreement. This Agreement constitutes the entire agreement between the Seller and Buyer, and there are no agreements, understandings, warranties, or representations between them except as set forth herein. This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach.

b. Binding Effect. This Agreement will inure to the benefit and bind the respective successors and assigns of Seller and Buyer.

c. Identical Counterparts. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original but all of which together shall constitute one and the same instrument.

d. Construction. As used in this Agreement, the singular number shall include the plural, and the use of one gender shall be deemed applicable to all genders. This Agreement shall be governed and construed in accordance with the laws of the State of Maine. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

e. Broker. Buyer represents and warrants to Seller that Buyer has dealt with no broker in connection with the transaction contemplated by this Agreement other than Nick Connolly of Tenacorp ("Buyer's Broker"). Seller represents and warrants to Buyer that Seller has dealt with no broker in connection with the transaction contemplated by this Agreement.



Buyer agrees to pay any fees that may be due to Buyer's Broker, who exclusively represents the Buyer, by reason of this transaction.

f. Notice. Whenever, by the terms of this Agreement, notice shall or may be given either to Buyer or to Seller, such notice shall be deemed to have been given only if in writing and either delivered by hand or facsimile or sent by registered or certified mail, or overnight express, postage prepaid, if intended for the Seller, to:

Madeline F. Adams and Jack B. Adams  
2 Princeton Street  
Portland, Maine 04103  
Facsimile #:  
with a copy to:

Gary D. Vogel, Esq.  
Lambert Coffin  
477 Congress Street  
Post Office Box 15215  
Portland, ME 04112-5215  
Facsimile #: 207-874-4040

and, if intended for the Buyer to:

Packard Development LLC  
One Wells Avenue  
Newton, MA 02459  
Attention: Armen Aftantilidan  
Facsimile #: (617) 965-2519  
with a copy to:

Ronald M. Fellman, Esq. and Jeffrey A. Huebschmann, Esq.  
Goldstein, Kaitz & Fellman, LLP  
800 South Street, Suite 395  
Waltham, MA 02453  
Facsimile #: 781-894-2129

or to such other address or addresses as may be specified by either party to the other by like notice. All notices shall be effective when delivered by the sender in accordance with this Agreement.

g. Cooperation and Access. Seller agrees to provide Buyer with any and all copies in Seller's possession or in the possession of its agents and/or consultants of information such as surveys, title reports or insurance policies and environmental reports. In addition, Buyer and its agents and employees shall have the right, at the Buyer's sole risk, to enter upon the Premises for the purpose of making tests and inspections of the same, and conducting due diligence, provided that Buyer shall do so in a fashion that does not unreasonably interfere with Seller's use of the Premises and following such inspections, testing and due diligence, Buyer shall leave the Premises in substantially the same condition as it was in prior to the initiation of such work. Buyer shall provide Seller evidence of Buyer's or Buyer's representatives' liability insurance coverage with respect to any injuries that may occur on the Premises in connection with such testing before any agents or employees of Buyer enter the Premises.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the dates shown beside their signatures below.

WITNESSES:

Devel R G

Devel R G

SELLER:

Madeline F. Adams  
Madeline F. Adams

Jack B. Adams  
Jack B. Adams

BUYER:

Linda Krause

PACKARD DEVELOPMENT LLC, a  
Massachusetts limited liability company

By: [Signature]  
Name: Armen Aftandilian

## EXHIBIT A

### Legal Description

A certain lot or parcel of land with the buildings thereon located at Hawthorne Heights in the City of Portland, County of Cumberland and State of Maine, being bounded and described as follows:

Beginning at the point of intersection of the Northwesterly side of Morrill Street with the Southwesterly side of Princeton Street; thence Northwesterly along the Southwesterly side of Princeton Street and at right angles to Morrill Street eighty-seven (87) feet, more or less, to the most Easterly corner of lot numbered two hundred fifty-three (253) as delineated on Plan of Subdivision of Addition to Hawthorne Heights recorded in Cumberland County Registry of Deeds in Plan Book 15, Page 19, made for the George T. Edwards Real Estate Co., December 1921, from Surveys of Boundaries by Percy H. Richardson, C.E.; thence Southwesterly and parallel with Morrill Street, forty-five (45) feet, more or less, to a point; thence Southeasterly at right angles to Morrill Street, eighty-seven (87) feet, more or less, to said Morrill Street; thence Northeasterly and along the northwesterly side of Morrill Street, forty-five (45) feet, more or less, to the point of beginning.

Said lot containing three thousand nine hundred fifteen (3,915) square feet, more or less, and being lot numbered two hundred fifty-one (251) as delineated on said plan.

Also, a certain lot or parcel of land located on the Southwesterly side of Princeton Street, in the City of Portland, County of Cumberland and State of Maine, being Lot #253 as delineated on a plan of subdivision of addition to Hawthorne Heights, recorded in the Cumberland County Registry of Deeds in Plan Book 15, Page 19, reference to which may be had for a more particular description.

Said lot contains 3,600 square feet, more or less.



**Kaitz & Fellman, LLP**  
**ATTORNEYS**

54 Jacomet Street  
Suite 300  
Newton, MA 02459  
(781) 894-4400  
FAX (781) 894-2129

Of Counsel  
Jeffrey A. Huebschmann, Esq.  
jah@gkflp.com  
Writer's Direct Number: (617) 858-1250

November 26, 2003

By Facsimile

Derek Gamble, Esq.  
Lambert, Coffin, Rudman & Hochman  
477 Congress Street  
Portland, ME 04101

Re: Packard Development/ James E. Darling - 84 Morrill Street, Portland, ME

Dear Derek:

I am writing to confirm the agreement between Packard Development, LLC and James E. Darling regarding the extension of the Approval Period under that certain Purchase and Sale Agreement between the parties dated May 13, 2002, for the above-referenced property (the "Agreement"). Capitalized terms not defined in this letter shall have the same meanings given them in the Agreement.

As agreed, the Approval Period under Section 11 of the Agreement is hereby extended to May 31, 2004. On behalf of Packard Development, I confirm that: (i) Packard Development will continue to make the monthly Extension Payments under said Section 11 during such extended Approval Period, which Extension Payments shall continue to be non-refundable (except in the event of Seller's breach of the Agreement) and shall not be applied to or credited against the Purchase Price; and (ii) as additional consideration for such extension the Purchase Price under Section 2 of the Agreement shall be increased from \$

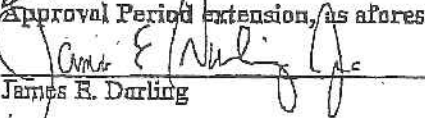
Please have Mr. Darling confirm his agreement with the foregoing by having him countersign a copy of this letter where indicated below and return a fully countersigned copy to me as soon as possible. A signed facsimile copy of this letter agreement shall be binding upon the undersigned as fully and to the same extent as an original signed copy of this letter agreement. As amended hereby the Agreement remains in full force and effect and is hereby ratified by the parties thereto.

Upon receipt of a fully countersigned copy of this letter, Packard Development will forward to your attention a check in the amount of \$ 0 made payable to Lambert, Coffin, Rudman & Hochman as payment of your fees related to the Approval Period extension.

Please call me if you have any questions. Thank you for your cooperation.

Sincerely,  
Packard Development, LLC  
By its attorneys  
Kaitz & Fellman, LLP

By:   
Jeffrey A. Huebschmann

Approval Period extension, as aforesaid, agreed to by:  
  
James E. Darling

## REAL ESTATE PURCHASE AND SALE AGREEMENT

AGREEMENT is made this 9th day of May, 2002 by and between James E. Darling, Jr. (referred to herein as "Seller"), and Packard Development LLC, a Massachusetts limited liability company (referred to herein as "Buyer"), as follows:

1. Purchase and Sale. Seller agrees to sell and Buyer agrees to buy, on the terms and conditions set forth herein, the real and personal property described below together with all easements, rights and appurtenances benefiting such parcel:

The certain lots or parcels of land, together with the building(s), improvement(s), and structure(s) located thereon, situated at 84 Morrill Street in the City of Portland County of Cumberland and State of Maine, and as more fully described on Exhibit A attached hereto and made a part hereof and in a deed to Seller recorded in the Cumberland County Registry of Deeds in Book 16955, Page 202 (collectively, the "Premises").

2. Purchase Price. Subject to any adjustments and prorations hereinafter described, Buyer agrees to purchase the Premises and the personal property for the sum of \_\_\_\_\_, payable as follows:

a. Earnest Money Deposit. The sum of \_\_\_\_\_ (the "Earnest Money Deposit") has been paid to Seller to be credited against the Purchase Price. Pending closing, the Earnest Money Deposit shall be held by Seller's Broker (hereinafter defined) in an interest-bearing escrow account with all interest to be paid to Buyer. Buyer shall provide Seller's broker with an IRS form W-9 setting forth Buyer's employer identification number.

b. Remainder of Purchase Price. The remainder of the Purchase Price shall be paid by wire transfer, certified check or bank cashier's check at closing.

c. Execution Payment. Buyer shall pay to Seller the sum of \_\_\_\_\_ upon execution of this Agreement by both Seller and Buyer. Such execution payment shall be non-refundable to Buyer (except in the event of Seller's breach of this Agreement) and not applied to or credited against the Purchase Price.

3. Title.

a. At the Closing, Seller shall convey the Premises to Buyer, or to the nominee designated by Buyer by written notice to Seller prior to the Closing Date, by good and sufficient warranty deed (the "Deed") which Deed shall convey a good and clear record and marketable fee simple title, free from encumbrances, except:

(i) Such taxes for the then current year as are not due and payable on the date of delivery of the Deed;



(ii) Any liens for municipal betterments assessed after the date of the closing; and

(iii) Easements, restrictions and reservations of record, if any, as of the date of Buyer's title insurance commitment so long as the same do not adversely affect the Buyer's intended development program, all in Buyer's sole discretion.

b. Without limitation of any other provisions in this Agreement, it is understood and agreed by the parties that the Premises shall not be in conformity with the provisions of this Section 3 unless:

(i) No building, structure or improvement of any kind belonging to any other person or entity shall encroach upon or under the Premises;

(ii) The Premises shall abut a public way, duly laid out or accepted as such by the City of Portland; and

(iii) Title to the Premises is insurable for the benefit of the Buyer by a nationally-recognized title insurance company (such as Lawyers Title Insurance Company or Commonwealth Land Title Insurance Company), and upon delivery from Seller to Buyer of the Deed and upon recordation of the Deed, there is issued, at normal title insurance premium rates, an owner's title insurance policy (on the current ALTA form) insuring fee simple title in the Buyer free from all exceptions other than those exceptions specifically set forth in this Agreement or otherwise approved by Buyer in writing during the Review Period (hereinafter defined). In order to enable Buyer to obtain such title insurance policy, Seller will provide Buyer, at the time of delivery of the Deed, with executed affidavits and indemnifications regarding mechanics' and materialmen's liens, parties in possession, and any other affidavits and documents which are required by title insurance companies for transactions of this nature, including, without limitation, such affidavits and certificates necessary to inform Buyer of its obligation, if any, to deduct and withhold a portion of the Purchase Price pursuant to 36 M.R.S.A. Section 5250-A. In the event that Seller is unable to convey title as aforesaid, or to otherwise deliver the Premises in accordance with the terms of this Agreement, Seller shall be given thirty (30) days or such longer period or periods of time as Buyer may elect to grant from time to time, in which to remedy any title defects, and during such period, Seller shall use best efforts to cure and to otherwise perform. In the event that said defects cannot be corrected or remedied and the applicable conditions cured within said time period, then the Earnest Money Deposit shall be returned to Buyer and this Agreement will terminate, or Buyer may, at Buyer's option, elect to close notwithstanding such defects as may exist with an equitable deduction in the Purchase Price.

4. Closing. The closing of this transaction shall take place on a date (the "Closing Date") established by Buyer by written notice to Seller, which date shall be sixty (60) days following the end of the Approval Period (hereinafter defined, as same may have been extended hereunder) or earlier upon a sixty (60) day written notice from Buyer to Seller. If the Closing Date is prior to November 10, 2003, then Buyer may elect to: (i) extend the Closing Date until November 10, 2003; or (ii) close prior to November 10, 2003, provided that Buyer either (x) pay to Seller at the closing, in addition to the Purchase Price, an amount equal to the difference



between the federal and state income tax obligations of the Seller arising as a result of such pre-November 10, 2003 Closing Date and the federal and state income tax obligations Seller would have incurred if the Closing Date had not been prior to November 10, 2003 including substantially all federal and state income tax obligations of Seller arising from such additional payment; or (y) make arrangements reasonably satisfactory to Seller pursuant to which the transaction contemplated under this Agreement would close in escrow without Seller incurring any federal and state income tax obligations as a result of such closing and the closing documents would be released from escrow and the deed recorded on November 10, 2003. The amount of any such difference described in clause (x) of this Section 4 shall be established pursuant to documentation mutually satisfactory to Buyer and Seller and any such documentation shall be delivered by Seller to Buyer at least thirty (30) days prior to the Closing Date. The closing shall take place at the offices of the Buyer's title insurance company, or at such other place as may be mutually agreed upon by Buyer and Seller. At the closing, Seller shall execute and deliver to Buyer the Deed against payment as set forth in this Agreement.

5. Adjustments, Prorations, and Closing Costs.

a. Real estate taxes and assessments and water and sewer use charges shall be prorated as of the Closing Date on the basis of the current municipal year and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price.

b. The Buyer and Seller shall each pay their own share of the Maine real estate transfer tax and execute a Real Estate Transfer Tax Declaration in the form required to be recorded with the Deed.

6. Possession. Seller shall deliver full and exclusive possession of the Premises on the Closing Date in the same condition as they now are, reasonable use and wear thereof excepted, broom clean and free of all Seller's personal property, personal effects and debris, free of all occupants and the rights of any other parties and otherwise in compliance with this Agreement. Buyer shall be entitled to an inspection of the Premises upon reasonable notice prior to the delivery of the Deed, in order to determine whether the condition thereof complies with the terms of this clause.

7. Risk of Loss. All risks of loss to the Premises prior to the closing shall be on Seller.

8. Review Period.

a. Buyer shall have thirty (30) days from the date of this Agreement (the "Review Period") to conduct Buyer's due diligence which may include, without limitation, examination of title to the Premises and other inspections to determine the acceptability of the Premises for Buyer's intended development program.

b. If Buyer is not satisfied with the results of such due diligence, in Buyer's sole discretion, then Buyer may elect to terminate this Agreement by giving Seller written notice of such election upon the expiration of the Review Period, in which event this Agreement shall



become void and the Earnest Money Deposit shall be refunded to Buyer.

c. Following the expiration of the review period, if Buyer has not elected to terminate this Agreement, Buyer shall have no further right to terminate this Agreement except for Buyer's failure to receive satisfactory Approvals as set forth in Paragraph 11(a) hereof, Seller's failure to convey title to the Premises as set forth in Section 3(b)(iii) of this Agreement or Seller's breach of this Agreement.

9. Default; Remedies. If Buyer shall default in the performance of any of Buyer's obligations under this Agreement (except for default in the payment of any Additional Payment or Extension Payment as provided herein, for which a five (5) day cure period shall apply as set forth in Paragraph 11(a) below) and the default shall continue for a period of twenty (20) days following written notice of default, the Earnest Money Deposit and any Additional Payment(s) and Extension Payment(s) made or due and payable prior to the date of the default shall be retained by Seller as liquidated damages and this shall be Seller's sole and exclusive remedy at law or in equity for any such default by Buyer. In any such case, Seller shall be entitled to recover any Additional Payments or Extension Payments due prior to the date of such default and shall be entitled to recover reasonable attorney's fees incurred to collect any such payments. If Buyer terminates this Agreement for any reason for which Buyer's termination is permitted, the Earnest Money Deposit, together with all interest earned thereon, shall be refunded to Buyer; but Seller shall be entitled to retain the Additional Payments and the Extension Payments which have been made prior to such date. No Additional Payment or Extension Payment shall be prorated for any partial month. Notwithstanding the foregoing, if Buyer terminates this Agreement as a result of Seller's breach of this Agreement, then the Earnest Money Deposit, together with all interest earned thereon, and any Additional Payments and Extension Payments, shall be refunded to Buyer, but this shall not limit Buyer's right to seek other remedies by reason of such failure, including specific performance.

10. Seller's Representations. Seller represents and warrants to Buyer:

a. To the best of Seller's knowledge all applicable zoning or other state or municipal ordinances or regulations have been complied with. Seller agrees to hold Buyer harmless from any such violations which occurred or existed prior to closing. Seller further warrants that no portion of the Premises is classified as tree growth for municipal tax purposes.

b. To the best of Seller's knowledge, Seller is the owner in fee simple of the Premises (subject only to matters of record), has the legal right, power and authority to enter into this Agreement and to perform all of his obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of his obligations hereunder will not conflict with any agreement to which Seller is a party or by which it is bound;

c. Seller has received no notice of any eminent domain proceedings affecting the Premises during his period of ownership;

d. To the best of Seller's knowledge, there is no underground fuel/oil

storage facility located on the Premises; and

e. Seller is not a "foreign person," as defined by the federal Foreign Investment in Real Property Tax Act (the "Act"). At the closing, Seller shall execute and deliver to Buyer a "non-foreign certificate," in such form as is customary. Seller acknowledges that in the event Seller fails to deliver the non-foreign certificate, then Buyer shall be authorized to withhold from the closing proceeds an amount equal to ten percent (10%) of the gross amount of the purchase price and to remit that amount to the Internal Revenue Service, as required by the Act. Seller does hereby forever release and discharge Buyer from all liability resulting from, or arising out of, Buyer's good faith compliance with the requirements of the Act.

It shall be a condition of Buyer's obligation to close under this Agreement that all representations and warranties made by Seller hereunder are true to the best of Seller's knowledge, both as of the date hereof and as of the Closing Date. Without limiting the foregoing, in the event of any such breach of warranty, covenant or representation, Buyer may, in addition to any other remedy therefor, terminate this Agreement by written notice to Seller, in which event the Earnest Money Deposit, together with all interest earned thereon, and any Additional Payments and Extension Payments shall be returned promptly to Buyer, and all obligations hereunder thereupon shall cease, and this Agreement thereupon shall be void without recourse to any party.

11. Other Conditions:

a. Approval Period. On the first day of the month next commencing after the Review Period, and each month during the Approval Period until the beginning of the Extension Period or termination of this Agreement, Buyer will pay to Seller "Additional Payment") which amount shall be non-refundable (except in the event of Seller's breach of this Agreement) and shall not be applied to or credited against the Purchase Price. If for any reason, other than Buyer's failure to proceed in good faith, Buyer does not obtain the permits and approvals for Buyer's intended development program ("Approvals") on terms and conditions satisfactory to Buyer, in Buyer's sole discretion, within twelve (12) months after the end of the Review Period (the "Approval Period"), Buyer shall have the right to extend the Approval Period for a period or periods of up to 6 months in the aggregate (the "Extension Period") upon the payment to Seller of "Extension Payment") for each month of the Extension Period which amount shall be non-refundable (except in the event of Seller's breach of this Agreement) and shall not be applied to or credited against the Purchase Price. Buyer shall be deemed to have obtained the Approvals only when the Approvals have been issued with all appeal periods having run therefrom without appeals having been taken or with any appeals having been resolved to the sole satisfaction of Buyer. Provided Buyer has paid all Additional Payments and Extension Payments then due, Buyer shall have the right to terminate this Agreement at any time that Buyer determines that the Approvals cannot be obtained within an acceptable time period or on terms and conditions acceptable to Buyer, but no such termination shall relieve Buyer of the obligation to pay any Additional Payment or Extension Payment for any month that has commenced prior to termination and no Additional Payment or Extension Payment shall be prorated for any termination during any month. If Buyer fails to make any Additional Payment or Extension Payment as provided herein, then Seller's sole and exclusive right shall be to terminate this Agreement by written notice to Buyer provided that if Buyer



makes the required Additional Payment(s) or Extension Payment(s) within five (5) business days after Buyer's receipt of Seller's termination notice, then this Agreement shall remain in full force and effect. If Seller so terminates and Buyer does not negate the termination as provided in the foregoing sentence, then Buyer shall be entitled to a refund of the Deposit made prior thereto and interest thereon, and Seller shall be entitled to retain any Additional Payment(s) or Extension Payment(s) which have been received by Seller prior to the date of Seller's notice of termination.

Seller shall cooperate with Buyer in the pursuit of the Approvals and shall join in the application for any of the Approvals, whenever such action is necessary, provided, however, that Seller shall incur no liability or expense in connection therewith.

12. Addenda: Yes \_\_\_\_\_ No X\_\_\_\_\_.

13. Miscellaneous.

a. Entire Agreement. This Agreement constitutes the entire agreement between the Seller and Buyer, and there are no agreements, understandings, warranties, or representations between them except as set forth herein. This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach.

b. Binding Effect. This Agreement will inure to the benefit and bind the respective successors and assigns of Seller and Buyer.

c. Identical Counterparts. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original but all of which together shall constitute one and the same instrument.

d. Construction. As used in this Agreement, the singular number shall include the plural, and the use of one gender shall be deemed applicable to all genders. This Agreement shall be governed and construed in accordance with the laws of the State of Maine. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

e. Broker. Buyer represents and warrants to Seller that Buyer has dealt with no broker in connection with the transaction contemplated by this Agreement other than Nick Connolly of Tenacorp ("Buyer's Broker"). Seller represents and warrants to Buyer that Seller has dealt with no broker in connection with the transaction contemplated by this Agreement other than Tina Lucas of Lucas Real Estate ("Seller's Broker"). Seller agrees to pay at the Closing any commission fee that may be due to Seller's Broker, who exclusively represents the Seller, by reason of this transaction. Buyer agrees to pay any fees that may be due to Buyer's Broker, who exclusively represents the Buyer, by reason of this transaction.

f. Notice. Whenever, by the terms of this Agreement, notice shall or may be given either to Buyer or to Seller, such notice shall be deemed to have been given only if in writing and either delivered by hand or facsimile or sent by registered or certified mail, or overnight express, postage prepaid, if intended for the Seller, to:

James E. Darling  
84 Morrill Street  
Portland, Maine 04103

Facsimile #:  
with a copy to:

Gary D. Vogel, Esq.  
Lambert Coffin  
477 Congress Street  
Post Office Box 15215  
Portland, ME 04112-5215  
Facsimile #: 207-874-4040

and, if intended for the Buyer to:

Packard Development LLC  
One Wells Avenue  
Newton, MA 02459  
Attention: Armen Aftantilidan  
Facsimile #: (617) 965-2519  
with a copy to:

Ronald M. Fellman, Esq. and Jeffrey A. Huebschmann, Esq.  
Goldstein, Kaitz & Fellman, LLP  
800 South Street, Suite 395  
Waltham, MA 02453  
Facsimile #: 781-894-2129

or to such other address or addresses as may be specified by either party to the other by like notice. All notices shall be effective when delivered by the sender in accordance with this Agreement.

g. Cooperation and Access. Seller agrees to provide Buyer with any and all copies in Seller's possession or in the possession of its agents and/or consultants of information such as surveys, title reports or insurance policies and environmental reports. In addition, Buyer and its agents and employees shall have the right, at the Buyer's sole risk, to enter upon the Premises for the purpose of making tests and inspections of the same, and conducting due diligence, provided that Buyer shall do so in a fashion that does not unreasonably interfere with Seller's use of the Premises and following such inspections, testing and due diligence, Buyer shall leave the Premises in substantially the same condition as it was in prior to the initiation of

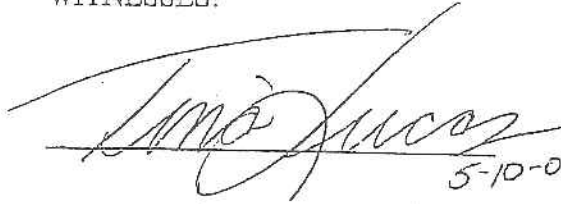


such work. Buyer shall provide Seller evidence of Buyer's or Buyer's representatives' liability insurance coverage with respect to any injuries that may occur on the Premises in connection with such testing before any agents or employees of Buyer enter the Premises.

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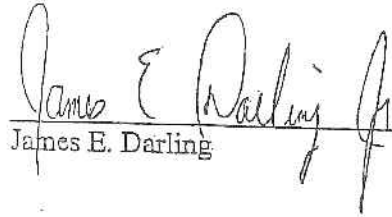
IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the dates shown beside their signatures below.

WITNESSES:

  
5-10-02

\_\_\_\_\_  
Linda Krause

SELLER:

  
5-10-02  
James E. Darling

BUYER:

PACKARD DEVELOPMENT LLC, a  
Massachusetts limited liability company

By:   
Name: Armen Aftandilian



EXHIBIT A

Legal Description

A certain lot or parcel of land, with the building thereon, recorded in the City of Portland, County of Cumberland and State of Maine and being lot No. 252 on the westerly side of Morrill Street as shown on plan of addition in Hawthorne Heights as recorded in the Cumberland County Registry of Deeds in Plan Book 15, Page 19.

Also, another certain lot or parcel of land, situated in the City of Portland, County of Cumberland and State of Maine and being lot No. 279 on said plan and being shown on City Assessor's Plan 152, Block D, Lot 15, recording in deed to Edgar B. Allen from Cecelia A. Terreno, recorded in the said Registry of Deeds in Book 1882, Page 355.

**PURCHASE AND SALE AGREEMENT**  
**Property at Morrills Corner, Portland, Maine**

**THIS AGREEMENT** is made as of the Agreement Date by and between Seller and Buyer.

**Seller:** White Dove Properties, LLC ("Seller" which term shall be deemed to include its successors and assigns)

**Seller's Address:** 33 Allen Avenue, Portland, Maine

**Buyer:** Morrills Corner, LLC, a Massachusetts limited liability company, ("Buyer" which term shall be deemed to include its successors and assigns)

**Buyer's Address:** One Wells Avenue, Newton, MA 02459

**REFERENCE** is made hereby to the following definitions:

**A. Agreement Date:** June 20, 2001

**B. "Land"** shall mean the parcel of land containing approximately 7.65 acres designated as "Parcel B" on the Exhibit A attached hereto, which Land is located at or near Morrills Corner, Portland, Maine and is more particularly described in a deed to Seller recorded at the Cumberland County Registry of Deeds in Book [REDACTED], Page [REDACTED]

**C. "Retained Land"** shall mean the parcel of land containing 2.63 acres designated as "Parcel A2" on the Exhibit A attached hereto, which Retained Land is not being conveyed to Buyer under this Agreement and is being retained by Seller.

**D. Purchase Price.** The agreed purchase price for the Land and Property (hereinafter the "Purchase Price") shall be

**E. "Project"** shall mean the project to be constructed by Buyer on the Land and Adjacent Property, the exact size and design of which shall be determined by Buyer (and Seller with respect to the Retained Land only) in accordance with (a) that certain Ground Lease of near or even date herewith pertaining to the Adjacent Property, and (b) the terms of this Agreement (including those relating to the Retained Property). For purposes of this Agreement, the "Expanded Project" shall mean Buyer's Project plus the development of the Retained Land by Seller.

**F. "Adjacent Property"** shall mean the property located at or near Morrills Corner, Portland, Maine owned by Allen Avenue Plaza LLC or the current record owner ("Adjacent Property Owner") and designated as "Parcel A1" on Exhibit A attached hereto.

Seller and Buyer covenant and agree as follows:

**1. Property.** Seller agrees to sell and Buyer agrees that Buyer shall buy, subject to the terms and conditions of this Agreement, the following described property, agreements, rights and interests: (a) the Land with all buildings, structures and improvements thereon, if any; (b) all right, title and interest of Seller in and to all plans, tests, reports, analyses, bids, surveys and other documentary information relating in any way to the Land; and (c) all right, title and interest of Seller in and to all permits, certificates, variances, consents and approvals pertaining to the Land



and any improvements thereon. The Land and the other rights, title and interest of Seller specified in subparagraphs (a) through (c) of this Section 1 are sometimes collectively referred to herein as the "Property".

**2. Title; Deed.** The Land is to be conveyed by a good and sufficient Warranty Deed ("Deed") running to Buyer or Buyer's nominee, conveying good and clear record and marketable title to the Land, free from matters of any nature or description whatsoever, except as follows ("Permitted Encumbrances"): (a) provisions of existing building and zoning laws; (b) such real estate taxes for the then current tax year as are not due and payable on the day of the delivery of the Deed; (c) any liens for municipal betterments assessed after the day of the delivery of the Deed; (d) easements, conditions, restrictions and other matters of record as of the date of Buyer's title examination (except to the extent that Seller is obligated or has agreed to remove same in accordance with Section 9(d) below or the following sentence). Buyer acknowledges receipt of Seller's title insurance policy insuring Seller's title to the Land, subject to the encumbrances noted therein, and agrees that such encumbrances are Permitted Encumbrances (other than any right of a third party to purchase, lease or otherwise occupy any part of the Land such as, without limitation, rights of MC Investment LLC pursuant to an option to Purchase Agreement with White Dove Properties, LLC a Memorandum of which is dated March 5, 1999 and recorded in Book 14593, Page 100 of the Cumberland County land Records) and provided that Seller agrees to cooperate with Buyer and to use reasonable efforts to arrange for Adjacent Property Owner (which is a related entity) to cooperate with Buyer in removing any Permitted Encumbrances that Buyer desires to attempt to remove.

**2A. Deposits.** During the term of this Agreement, Buyer shall make the following Deposits (each being a "Deposit" and together being "Deposits").

Buyer shall make a Deposit in the amount of \_\_\_\_\_ on the date of the execution of this Purchase and Sale Agreement. Buyer shall have the right to elect to extend the Closing Date, as hereinafter defined, for up to three (3) periods of ninety (90) days each by the payment of an additional Deposit for each such extension in the amount of \_\_\_\_\_

(for total extension Deposits of \_\_\_\_\_ and a total Deposit of \_\_\_\_\_). The Deposit for the first ninety (90) day extension period shall be fully creditable against the Purchase Price should Buyer acquire title to the Property in accordance with this Agreement and, except in case of Seller's default under this Agreement, shall be non-refundable. The Deposits for the second and third ninety (90) day extension periods shall be only one-half creditable each against the Purchase Price should Buyer acquire title to the Property in accordance with this Agreement and, except in case of Seller's default under this Agreement, shall be non-refundable. Despite anything to the contrary contained herein, the initial \_\_\_\_\_ Deposit shall be fully creditable against the Purchase Price should Buyer acquire title to the Property and shall be refundable if Seller fails to secure the binding and irrevocable written commitment of Portland Olympic Club, Inc. (with respect to its lease of space for a boxing operation) to terminate its lease and to relocate from the Land to the Retained Land within sixty (60) days as contemplated by Paragraph 18 hereof.

If Buyer fails to make any Deposit as provided herein and such failure continues for five (5) business days after Buyer's receipt of a written reminder notice from Seller, then Seller shall have the right to terminate this Agreement in which event Seller shall be entitled to retain all Deposits made prior thereto as full and complete liquidated damages.

**3. Purchase Price.** The Purchase Price less all Deposits made by Buyer hereunder shall be paid on the Closing Date (as defined below) in cash, by wire transfer or by certified or bank cashier's or treasurer's check or checks or other immediately available funds.



4. **Closing.** The time for the delivery of the Deed and the other documents to be delivered pursuant to this Agreement (sometimes referred to herein as the "**Closing**" or the "**Closing Date**") shall be at 10:00 a.m. on the ninetieth (90<sup>th</sup>) business day after the date hereof (subject to Buyer's right to extend as set forth in Section 2 above), at the offices of Buyer's local title agent or local counsel, or at such other time and place as the parties may agree in writing.

At any time while this Agreement is in full force and effect, Buyer shall have the right to accelerate the Closing Date by providing at least ten (10) days prior written notice to Seller in accordance with this Agreement ("**Acquisition Notice**"), which Acquisition Notice shall set forth the date of such accelerated Closing Date.

The terms "**Closing**" and "**Closing Date**" as used herein shall be deemed to refer to the original Closing, or any accelerated or extended Closing, as the case may be. The parties agree that time is of the essence with respect to this Agreement including the Closing Date.

4.A. **Like Kind Exchange:** At Seller's request, Buyer will cooperate with Seller in making this transaction part of a "like-kind" exchange within the meaning of Section 1031 of the Internal Revenue Code provided (a) Seller notifies Buyer in writing at least ten (10) days prior to the Closing, (b) the Closing is not delayed as a result thereof, and (c) Buyer shall not incur any costs or liability as a result thereof. At Buyer's request, Seller will cooperate with Buyer in making this transaction part of a "like-kind" exchange within the meaning of Section 1031 of the Internal Revenue Code provided (a) Buyer notifies Seller in writing at least ten (10) days prior to the Closing, (b) the Closing is not delayed as a result thereof, and (c) Seller shall not incur any costs or liability as a result thereof.

5. **Possession.** Full possession of the Land free of all tenants and occupants except as set forth below, is to be delivered at the time of the Closing, the Land to be then in the same condition as it now is, reasonable use and wear thereof excepted.

6. **Seller's Inability to Deliver/Adjacent Property.** If (A) either Seller shall be unable to give title, make conveyance or deliver possession of the Land, all as herein stipulated, or at the time of the Closing the Land does not conform with the provisions hereof, or (B) the Adjacent Property Owner is unable to deliver the Adjacent Property in compliance with the terms of the Adjacent Property Lease, then the Closing Date under this Agreement shall be extended for a period of sixty (60) days or such longer period(s) as Buyer may grant from time to time, during which period the extension period Deposits set forth in Section 2A shall not be due and (i) with respect to the matters described in Clause (A), Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Land conform to the provisions hereof, as the case may be, and (ii) with respect to the matters described in Clause (B), Seller and Buyer shall use reasonable efforts to require Adjacent Property Owner to perform in accordance with the Adjacent Property Lease (and Seller and Seller's principals shall fully cooperate in connection therewith). If at the end of such extension period Seller shall have in bad faith failed so to remove any defects in title, deliver possession, or in bad faith failed to make the Land conform, as the case may be, all as herein agreed, or Adjacent Property Owner has in bad faith failed to perform in accordance with the terms of the Adjacent Property Lease, then, at Buyer's option, any Deposits made under this Agreement shall be forthwith refunded and Buyer shall have the right to exercise all rights and remedies at law or in equity available to it under Maine law for such bad faith failures to perform. In the event of any other non-bad faith default or non-bad faith failure of Seller and/or the Adjacent Property Owner to perform as required herein or under the Adjacent Property Lease, then, at Buyer's option, any Deposits made under this Agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void without any recourse to the parties hereto. Notwithstanding anything to the contrary contained in this Agreement, in the event Buyer elects to close on the transactions contemplated hereby despite the presence of any adverse matter



noted above and/or despite Seller's failure to perform fully in accordance with the terms and provisions of this Agreement, Buyer shall pay the full Purchase Price for the Property and shall perform all obligations due to be performed under the Adjacent Property Lease without offset or deduction for any thing or matter not conforming hereto and all such adverse matters shall thereby be waived by Buyer in perpetuity.

**7. Buyer's Election to Accept Title.** Buyer shall have the election, at either the original or any accelerated or extended Closing Date, to accept such title as Seller can deliver to the Land in its then condition and to pay therefor the Purchase Price.

**8. Application of Purchase Money to Liens.** To enable Seller to make conveyance as herein provided, Seller may, and if necessary shall, at Closing, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests which are to be removed or eliminated by the terms hereof, other than for Permitted Encumbrances, provided that all instruments so procured are recorded at Seller's expense, prior to or simultaneously with the delivery of the Deed.

**9. Actions Pending the Closing.** During the period from the date hereof until the Closing, the following provisions shall govern Seller's activities with relation to the Land:

(a) Seller will give Buyer and its counsel, inspectors, engineers, accountants, and other representatives full access, during normal business hours, to the Land and will furnish Buyer and such representatives during such period with all such information and data concerning the Land as Buyer or such representatives reasonably may request. Buyer, at its expense, may take measurements, show the Land to contractors, architects, insurers, banks and other lenders or investors, and prospective tenants, and conduct soil tests, borings, percolation tests, surveys, site analysis, structural tests, and such other tests, inspections or investigations with respect to the Land as Buyer may desire. Seller agrees to cooperate with and assist Buyer as Buyer may desire, provided that all inspections shall be conducted during normal business hours (or such other time as is reasonably necessary to conduct such inspections or tests) and that such inspections and investigations do not materially adversely interfere with Seller's use of the Land or the use by Seller's tenants of the Land. Seller agrees that Buyer may discuss the Land with and make inquiries of any state or local officials or authorities and may seek such variances, permits, certificates, consents and approvals as Buyer deems appropriate for the construction of the Project. Buyer agrees to use all reasonable efforts to avoid any damage or interference to the Land as a result of any inspections and tests performed thereon and agrees to restore the Land to substantially the same condition as existed prior to such inspections and investigations. Buyer agrees to indemnify and hold Seller harmless from and against any loss, cost or expense which arising as a result of (i) Buyer's or Buyer's agents gross negligent exercise of its rights under this subparagraph (a), and (ii) any liens against the Land which arise as a result of the exercise of Buyer's rights under this subparagraph (a).

(b) So long as this Agreement is in effect and except as set forth below, Buyer shall have the right to take any and all actions which Buyer, in its sole discretion, deems necessary or appropriate to enable Buyer to obtain Approval for the Project and the Expanded Project, and to develop the Land for the Project and the Adjacent Land and Retained Land for the Expanded Project including, without limitation, the right to file, in Buyer's name (or, if required by any governmental agency, in Seller's name as Seller's agent) and for Buyer's sole benefit, zoning code approvals, variances, changes or other appropriate relief, environmental or other related approvals. Despite the provisions of the immediately preceding sentence, Seller shall have the right to review and approve Buyer's plans for the development and permitting of the Retained Land, which approval shall not be unreasonably withheld, delayed or conditioned so long as adequate provision is made, in Seller's commercially reasonable judgment, for the development of the Retained Land. Seller agrees to execute and deliver to Buyer, in a timely manner, any and



all instruments as Buyer may reasonably request and otherwise to cooperate (at no cost to Seller other than such costs as Seller may incur with respect to the Retained Land including as set forth in the following sentence) with Buyer in connection with the exercise of its rights pursuant to this Section 9. Without limiting the generality of the foregoing, Seller agrees, at Seller's expense, to provide Buyer, in a timely manner, with all plans and specifications for the development of the buildings on the Retained Land only; and all plans and specifications for the site development of the Retained Land shall be provided by Buyer at its sole cost and expense (provided that Seller shall contribute to the cost of any such plans and specifications to the extent same results from extraordinary requirements such as, without limitation, requirements relating to environmental matters). Buyer agrees that Buyer shall notify Seller in writing of the filing of any applications for the Approvals and any public hearings with respect thereto.

(c) Seller shall not so long as this Agreement is in effect, without the prior written consent of Buyer in each case (i) enter into or agree to enter into any Option Agreement, Purchase Agreement, or Lease or other agreement concerning the sale, occupancy or use of any of the Land; or (ii) submit or withdraw any application for any permits, licenses or approvals from federal, state or local government agencies in connection with development or use of the Land or Retained Land except as specifically requested or approved by Buyer in writing or otherwise take or omit to take any action which would adversely effect the ability to develop the Land for the Project or the Retained Land as part of the Expanded Project.

**10. Documents To Be Delivered at the Closing.** (a) At the Closing, Seller shall, as a condition of Buyer's obligations to close under this Agreement, deliver to Buyer all documents required by this Agreement, including, but not limited to, the following documents, duly executed and acknowledged by Seller whenever applicable with evidence of authority therefore: (1) the Deed evidencing conveyance of the Land to Buyer, or a nominee designated by Buyer (where such a nominee is so designated, the term "Buyer" throughout this Agreement shall mean only such nominee); (2) a blanket assignment to Buyer of all Property described in Section 1 (b-c) hereof and copies of the same in Buyer's control; (3) copies of all plans relating to the Land and all reports with respect to the Land, all as described in Section 1(b-c) hereof; (4) a mechanic's lien and parties in possession affidavit and such other normal and customary affidavits as title insurance company's require for transactions of this nature; (5) a transferor's certification of non-foreign status as required by Section 1445(b)(2) of the Internal Revenue Code; (6) where an institutional or other lender holds a mortgage or other security agreement with respect to the Land a discharge from the holder of any mortgage or other security agreement with respect to the Land; (7) a Designation Agreement executed by Seller relieving Buyer and Buyer's counsel of any responsibility for the reporting of the transaction to the Internal Revenue Service and designating Seller or Seller's counsel as the closing agent for such reporting purposes; and (8) such other documents as are customary in the area in which the Land is located for transactions of a similar nature.

(b) Seller and Buyer shall pay for the applicable transfer taxes at Closing and other costs in accordance with local conveyancing practice. In addition, Seller shall also pay for the cost of recording any instruments required to clear title of the Land. Buyer shall pay for the recording of the Deed, any mortgages and any other financing instruments to be recorded.

**11. Representations.** (a) Seller represents, covenants and warrants to and agrees with Buyer as follows: (1) Seller is the owner in fee simple of the Land and has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with any agreement to which Seller is a party or by which it is bound; (2) To the best of Seller's actual knowledge and belief, there are no violations of any restrictive covenants affecting the Land; (3) To the best of Seller's actual knowledge and belief, there are no uncured violations of any laws or other requirements of any governmental authority having



jurisdiction over the Land; (4) To the best of Seller's actual knowledge and belief, there are no suits, actions or proceedings pending or, to the best of Seller's knowledge, threatened against or affecting the Land; (5) To the best of Seller's actual knowledge and belief, there are no agreements or contracts of any kind affecting any of the Land or any use of the Land that would not be terminable at will by Buyer without penalty from and after the Closing other than the lease provided to Buyer by Seller prior to the date hereof; (6) To the best of Seller's actual knowledge and belief, there are no leases, tenancies, occupancies or licenses in or to the Land other than the lease with Portland Olympic Club, Inc. (for a boxing facility) provided to Buyer by Seller prior to the date hereof which lease shall be terminated in accordance with the Lease Termination Agreement, a draft of which has been provided to Buyer by Seller prior to the date hereof; (7) Seller has not commenced nor has Seller received notice of the commencement of any proceeding which would affect the present zoning classification of the Land; Seller will not initiate any such proceedings and will promptly notify Buyer if Seller receives notice of any such proceeding commenced by third parties; (8) Seller has not at any time during its ownership of the Land (and shall not at any time from the date of this Agreement have) caused or permitted the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Substances on, under, in, about, near, or to or from, the Land. For the purposes of this Agreement, "Hazardous Substances" shall mean and include, but shall not be limited to, materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure; and (9) Seller is not a party to any agreement which is in force and effect by which Seller may be obligated to convey the Land to a third party (other than Buyer hereunder) and that any prior agreements, if any, have been terminated and are of no further force and effect.

It shall be a condition of Buyer's obligation to close under this Agreement that all warranties and representations made by Seller hereunder are true, both as of the date hereof and as of the Closing. Without limiting the foregoing, in the event of any such breach of material warranty, covenant or representation, Buyer may, in addition to any other remedy therefor, terminate this Agreement prior to Closing by written notice to Seller, in which event the Deposits and Payments shall be returned promptly to Buyer, and all obligations hereunder thereupon shall cease, and this Agreement thereupon shall be void without recourse to any party. The warranties and representations above shall survive for a period of one (1) year from the Closing hereunder. Seller agrees to indemnify the Buyer and save and hold the Buyer harmless from and against, any damage, loss or expense (including, without limitation, reasonable attorneys' fees and other costs and expenses incident to any suit, action, complaint, investigation or proceeding) arising out of or resulting from any material breach of any warranty or representation made by the Seller. The indemnity set forth above shall not be deemed to limit or otherwise affect any of Buyer's remedies at law or in equity.

(b) Buyer represents, covenants and warrants to Seller that Buyer has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Buyer of its obligations hereunder: (i) have been duly authorized by all requisite action; and (ii) will not conflict with, or result in a breach of, any of the terms, covenants and provisions of any agreement or instrument to which Buyer is a party or by which it is bound.

**12. Apportionments.** (a) Real estate taxes, and water and sewer charges, if any, and rent (if applicable) shall be apportioned as of the end of the day on the Closing Date and the net amount thereof if due to Seller shall be added to the Purchase Price payable hereunder, and if due to Buyer shall be subtracted from the Purchase Price payable hereunder.

(b) If the amount of said real estate taxes is not known on the Closing Date, then the taxes shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; provided that if the parties can



estimate an amount which they agree is likely to be more accurate than the preceding year's taxes, then such estimated amount shall be used as the basis for the tentative apportionment (subject to reapportionment as aforesaid). If the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

**13. Brokerage.** Buyer and Seller each warrants and represents that it has dealt with no broker with respect to this transaction other than WRE Realty (the "Broker"), and that there are no brokerage or similar fees or commissions due with respect to the sale of the Land other than to the Broker which shall be paid by Seller pursuant to a separate agreement between Seller and Broker. Buyer and Seller each agrees to indemnify and hold harmless the other from and against all claims for brokerage commissions other than referred to above on account of this sale by any person who establishes by a court action a right to such brokerage commission arising out of dealings with the party from whom indemnification is sought, and for all costs and expenses, including reasonable attorneys' fees incurred in connection with any such claims. Both parties shall have the right to participate in the defense of any such action.

**14. Limitation on Liability.** In the event Buyer shall default under this Agreement, the parties hereto agree that the damages that Seller shall sustain as a result thereof shall be difficult to ascertain. Accordingly, the parties hereto agree that in the event that Buyer fails to perform all of the terms, covenants, conditions and agreements to be performed by it hereunder, whether at or prior to the Closing, and such failure continues for thirty (30) days after Buyer's receipt of a written notice thereof from Seller, then Seller shall retain all Deposits previously made by Buyer to the date of the default, as liquidated and exclusive damages, and such right shall be Seller's sole remedy at law and in equity.

**15. Delivery of Documents.** Prior to Closing, Seller shall provide Buyer with such documents and information as Buyer may reasonably request pertaining to the Property. Seller shall be deemed conclusively to have complied with its obligations hereunder if it shall have provided to Buyer, in response to any such request, such documents and information that are then within Seller's care, custody or control, or to which it has access as a matter of right or request. In no case, however, shall Seller be required to generate or compile new documentation or information to comply with any such request.

In the event that Buyer terminates this Agreement, Buyer shall, at its cost and expense, deliver to Seller, without warranty or representation, any and all plans, studies, hazardous waste assessments, copies of all approvals and any other documentary information available with respect to the Land in Buyer's possession or reasonable control.

**16. Further Assurances.** The parties agree that up to and after the date of Closing, they shall do such things and execute, acknowledge and deliver any and all additional instruments, documents and materials as either party may reasonably request to fully effectuate the purposes of this Agreement. Seller agrees that if requested by Buyer, Seller shall execute a Notice of Purchase and Sale Agreement, and that such Notice may be recorded.

**17. Mortgage Foreclosure.** In the event that any mortgage affecting the Land is foreclosed while this Agreement is in effect and the foreclosure sale takes place prior to the recording of the deed to be delivered hereunder, then this Agreement shall terminate, in which event the Deposits made hereunder shall be returned to Buyer forthwith, and all obligations hereunder thereupon shall cease, and this Agreement thereupon shall be without recourse to any party. It is understood and agreed that Buyer will be free to purchase the Land at any such foreclosure sale,



and if Buyer does so purchase the Land, Buyer shall be deemed to have elected to terminate this Agreement as aforesaid.

18.

and.

**19. Utilities and Paving for the Retained Land.** In connection with its development of the Project, Buyer shall bring all utilities to within twenty (20) feet of the buildings to be constructed by Seller on the Retained Land. In addition, Buyer shall provide paving for the parking facilities on the Retained Land. Also, Buyer shall provide paving for the parking facilities on that portion the Land on which parking (if any) maybe placed for the benefit of the Retained Land (which, if agreed upon by Buyer, in Buyer's sole discretion, shall be more fully set forth in the Declaration and Buyer's agreement (if any) with Portland Olympic Club, Inc.).

**20. Declaration of Easements for the Land, Adjacent Land and the Retained Land.** At Closing, Seller, Buyer and the Adjacent Property Owner shall execute and deliver, in form suitable for recording, substantially in the form of Declaration of Easements, Covenants, Conditions and Restrictions annexed hereto as Exhibit B.

**21. Notices.** All notices required or permitted to be given hereunder (except notices indicating the time for access to the Land) shall be in writing and sent by certified or registered mail, or by overnight courier, postage prepaid, or hand delivered or by facsimile transmission, addressed to the parties set forth on the first page of this Agreement or to such other address or addresses as the parties may designate from time to time by notice provided in accordance with this provision. Any such notices shall be effective upon receipt of the same by the party to whom the notice is directed.

In addition, copies of any notice hereunder shall be provided as follows:

**If to Buyer:**

Morrills Corner, LLC  
c/o Packard Development Corporation

One Wells Avenue  
Newton, MA 02459  
Fax: 617-965-2519

**with a copy to:**

Ronald M. Fellman, Esquire  
Goldstein, Kaitz & Fellman, LLP  
800 South Street, Suite 395  
Waltham, MA 02453  
Fax: 781-894-2129

**If to Seller:**

White Dove Properties, LLC  
33 Allen Avenue  
Portland, ME 04103  
Attn: Carl A. Shaw, Member

**with a copy to:**

Paul F. Driscoll, Esq.  
Norman, Hanson & DeTroy, LLC  
415 Congress Street  
P.O. Box 4600  
Portland, ME 04112-4600

**22. Waivers.** No delay or omission by any party hereto to exercise any right or power occurring upon any noncompliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any party hereto of any of the terms, covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any succeeding breach thereof or of any other term, covenant, condition or agreement herein contained.

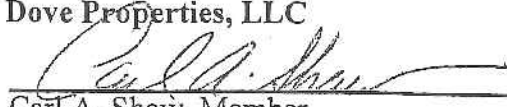
**23. General.** This instrument executed in duplicate or in duplicate counterpart originals (each of which shall be deemed an original, and all of which shall constitute one and the same instrument), is to be construed as a Maine contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both Seller and Buyer, except as otherwise provided herein. If two or more persons are named herein as Buyer or Seller, their obligations hereunder shall be joint and several. Whenever the context so requires, references herein to the neuter gender shall include the masculine and feminine gender, and the singular number shall include the plural. This Purchase and Sale Agreement shall be assignable by Seller.

**IN WITNESS WHEREOF,** the parties have duly executed this Agreement under seal on the day and year first above written.

**SELLER:**

White Dove Properties, LLC

By:

  
Carl A. Shaw, Member

**BUYER:**



Morrills Corner, LLC

By:



Armen Aftandilian, Manager

**THIRD AMENDMENT TO LEASE  
and  
THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT**

This **THIRD AMENDMENT TO LEASE** and **THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT** ("Amendment") is made as of October 1, 2003 ("Effective Date").

**REFERENCE** is made to a certain lease, dated June 20, 2001, as modified by a certain Letter Agreement, dated July 6, 2001, a certain Amendment to Lease and Amendment to Purchase and Sale Agreement, dated as of June 19, 2002 and a certain Second Amendment to Lease and Amendment to Purchase and Sale Agreement, dated as of June 30, 2003 (collectively, the "**Lease**") for premises located at Morrills Corner, Maine ("**Premises**") which Lease is by and between **Allen Avenue Plaza, LLC**, a Maine limited liability company ("**Landlord**") and **Morrills Corner, LLC**, a Massachusetts limited liability company ("**Tenant**"),

**REFERENCE** also is made to a certain purchase and sale agreement, dated June 20, 2001, as modified by a certain Letter Agreement, dated July 6, 2001, a certain Amendment to Lease and Amendment to Purchase and Sale Agreement, dated as of June 19, 2002 and a certain Second Amendment to Lease and Amendment to Purchase and Sale Agreement, dated as of June 30, 2003 (collectively, the "**Purchase and Sale Agreement**") for property located at Morrills Corner, Maine ("**Land**") which Purchase and Sale Agreement is by and between **Whitechapel Corporation** (successor-in-interest to **White Dove Properties, LLC**) ("**Seller**") and **Morrills Corner, LLC**, a Massachusetts limited liability company ("**Buyer**"), and

For other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the mutual promises hereinafter set forth, Landlord and Tenant each agrees that the Purchase and Sale Agreement and the remain in full force and effect, and each agree to amend the Lease further, and Seller and Buyer agree to amend the Purchase and Sale Agreement further, in each case as of the Effective Date, and as follows:

1. Beginning on October 1, 2003 and on the first day of each calendar month thereafter until the earlier of (i) the Closing Date/Lease Commencement Date, (ii) the date on which the Closing and Lease Commencement Date would have occurred but for a Seller or Landlord caused delay, or (iii) termination of the Purchase and Sale Agreement and Lease, Tenant shall make monthly payments in the amount of \_\_\_\_\_ which payments shall be pro rated on a per diem basis for any partial calendar month during such period and shall be in lieu of any other pre Closing/Lease Commencement Date payments heretofore required under the Purchase and Sale Agreement and Lease. In addition, Tenant shall make a payment \_\_\_\_\_ (A) upon the full execution of this Amendment; and (B) on January 3, 2004. All such payments are in consideration of Seller and Landlord agreeing to extend the Closing Date and Lease Commencement Date, and shall not be credited against the Purchase Price or Rent due under the Lease.

2. Landlord, Seller and Buyer agree to extend the Closing Date and Lease Commencement Date to \_\_\_\_\_ and \_\_\_\_\_

3. Landlord, Seller and Buyer acknowledge that after the Closing \_\_\_\_\_, residential



units will be demolished as a result of the proposed project and that, under current laws, such demolished residential units must be replaced. To satisfy the foregoing requirement, Buyer shall at the election of Landlord or Seller (a) pay to Landlord or Seller (as the case maybe) the sum of \_\_\_\_\_, and Landlord or Seller (or either party's nominee) shall satisfy the foregoing requirement by constructing and making available for lease or sale a minimum of \_\_\_\_\_ replacement residential units (all as may be required to satisfy the legal requirement), and hold Tenant and Buyer harmless of and from all liabilities associated with such legal requirement or (b) Buyer shall satisfy such requirement on its own to the satisfaction of the City of Portland and hold Landlord and Seller harmless of and from all liabilities associated with such legal requirement. As of the date hereof, Landlord and Seller contemplate that building the required residential units within the building that Landlord (or its nominee) will be constructing on Parcel A-2 (being the location of the proposed boxing facility) but will be under no obligation to do so unless they so elect as set forth in subparagraph (a) above. At the Closing, the parties shall execute an agreement reflecting the foregoing rights and obligations.

4. Notwithstanding any provision in the Purchase and Sale Agreement to the contrary, the Closing Date is hereby extended to a date to be set by Buyer upon thirty (30) days prior written notice provided such date shall be on or before June 1, 2004.
5. Seller and Landlord agree not to lease other space on the Land, the Premises, Parcels A-1 or A-2, or on any land which at any time is subject to the Declaration or otherwise uses any portion of the common areas of the project or the foregoing Parcels for the operation of a bingo facility for a period of ten (10) years after the Commencement Date/Closing Date, and at the Closing (A) the Declaration shall be revised to reflect such use restriction, and (B) the parties shall execute an agreement, in recordable form, reflecting such use restriction.
6. The definition of "BASE RENT" as set forth in Article I (Basic Data) of the Lease is modified to provide as follows:

"Base Rent shall be payable to Landlord as follows. From the Commencement Date/Closing Date through the date one hundred eighty (180) days thereafter (the "Preliminary Term") at the rate of \_\_\_\_\_ per year, such Base Rent to be paid in equal monthly installments commencing as of the Commencement Date/Closing Date and continuing on the first day of each and every month thereafter during the Preliminary Term. For the period from the end of the Preliminary Term and through the end of the 10<sup>th</sup> Lease Year, Tenant shall continue to pay Base Rent in equal monthly installments at the rate of \$225,500.00 Lease Year; thereafter, in each period of five (5) Lease Years, the Base Rent shall be 105% of the Base Rent in the immediately preceding five (5) Lease Year period. By way of illustration, the Base Rent for Lease Years 11 - 15 shall be at the rate of \_\_\_\_\_ per Lease Year, and for Lease Years 16 - 20 shall be at the rate of \_\_\_\_\_ per Lease Year. All Base Rent due under this Lease shall be paid in equal monthly installments as of the first day of each and every month during the Term. Until the Commencement Date/Closing Date, Landlord shall be entitled to retain the entire proceeds of all rents paid to it by the Existing Tenants as defined below."

7. The definition of "Lease Years" as set forth in Section 3.2 is modified to provide as follows:

"The first Lease Year shall be the period of approximately 12 months from the end of the Preliminary Term through the last day of the twelfth (12<sup>th</sup>) full calendar month thereafter. Subsequent Lease Years shall be periods of 12 calendar months each."



8. Subject to the occurrence of the Closing and Lease Commencement Date, the following shall apply. Buyer shall purchase from the City of Portland that certain three to four acre parcel of land adjacent to the land of Seller for the purpose of providing that number of parking spaces required by Portland Boxing Club (with the Portland Boxing Club building being approximately 45,000 square feet) for its operations (which number of parking spaces the parties agree shall be 350 spaces unless the owner of the Portland Boxing Club agrees to a lower number). The property in question shall be free and clear of all liens and encumbrances which would interfere with the proposed use thereof as parking spaces. Buyer shall grade, landscape, pave and stripe this parking area in accordance with the plans which are approved by the applicable governmental authorities as part of the process of obtaining permits for the project, which work will be at the sole cost and expense of Buyer or Tenant, as the case may be. Upon the completion of the foregoing, Buyer shall convey this three to four acre parcel to Seller for \$
9. Commencing promptly after the Closing Date/Commencement Date, Buyer shall demolish and remove the existing boxing facilities at Buyer's sole cost and expense and complete the ground work, including grading, necessary for the construction of the new recreation facility.
10. In consideration of the accommodations of Landlord and Seller to Buyer in this Third Amendment, Buyer shall maintain at its sole cost and expense the jogging path on the property of Seller and Landlord depicted in the approvals for the Project and shall defend and indemnify Seller and Landlord, and their respective representatives, of and from any and all liabilities for personal injury, bodily harm, property or death that may arise from the use by the public of the said jogging path to the extent due to Buyer's negligent failure to maintain the path as required pursuant to the applicable permits.
11. To the extent that, during the process of obtaining permits for Buyer's or Tenant's portion of the proposed development and solely as a condition to Buyer's or Tenant's receipt of permits for the development of their respective parcels, Seller or Landlord is required to incur any expense of any name or nature on with respect to their respective properties (which would not have been required but for Buyer's or Seller's permits for the development of their respective parcels), Buyer shall defend and indemnify Landlord and Seller of and from any and all such expenses.
12. The parties agree that prior to the Closing Date/Commencement Date, they will cooperate to modify the boundary between Parcel B (the parcel being purchased by Buyer) and Parcel A-2 (the parcel at the rear of Parcel B on which Seller plans construct a Recreation/Office Building) such that occupants of Parcel B will not be required to utilize portions of Parcel A-2 (for a truck turnaround or otherwise, except as specifically permitted in the Declaration). The intent of the parties is that such modification will result in Parcel B and Parcel A-2 have substantially the same area as each is intended to have based on the current plans.
13. In consideration of the accommodations of Landlord and Seller to Buyer/Tenant in this Third Amendment, Buyer agrees that if modifications to Bruno's Restaurant are required solely as a result of either (a) Tenant's redevelopment of Parcel A-1 or (b) Buyer's removal of a portion of the building which is connected to or is a part of the building in which Bruno's Restaurant is located, then Buyer/Tenant shall perform such modifications to Bruno's Restaurant and its building (including design and construction) at Buyer's/Tenant's expense. All of the foregoing modification work by Buyer/Tenant to Bruno's Restaurant building which is required to comply with Tenant's obligations herein shall be subject to Landlord's approval which shall not be unreasonably withheld. Without limiting the foregoing, Buyer/Tenant acknowledges



that their work on the Bruno's Restaurant building shall include refinishing the portion of the exterior of the Bruno's Restaurant building from which the adjacent attached building is being removed (including, without limitation, the straightening of the building line on that side).

14. Seller and Buyer shall (a) terminate the Purchase and Sale Agreement, and (b) enter into a ground lease ("New Ground Lease") on the following terms and conditions. The New Ground Lease shall (i) be for a term of 99 years (or such lesser period as is required to avoid the characterization of the New Ground Lease as a purchase of property), (ii) shall provide for a rent at the rate of \_\_\_\_\_ per annum, subject to percentage increases on the same terms and provisions as are set forth in Paragraph 6 above, (iii) shall grant to Buyer (as Tenant) all of the rights and obligations of ownership during the term thereof to the same degree as Buyer would have had if Buyer had purchased the property (rather than ground leasing same), (iv) shall be so-called triple net, (v) shall provide that all land adjacent to the Project required to be inserted into the Project as part of the approval process for the same, whether or not presently owned by Morrills Corner, LLC, will be conveyed to the Landlord under the New Ground Lease for \_\_\_\_\_ at the end of the final New Ground Lease term (or prior thereto at Buyer's/Tenant's discretion) free and clear of all liens, encumbrances (other than those which do not interfere with the use of the property for the Project) and mortgages, and (v) otherwise shall be on substantially the same terms and conditions as the Lease between Buyer (as Tenant) and Allen Avenue Plaza (as Landlord). In addition, the Declaration and all other relevant documents shall be revised to reflect the conversion of the Purchase and Sale Agreement to a lease.

15. In consideration of Landlord/Seller's accommodations in this Third Amendment, Buyer agrees that Landlord/Seller shall have the right to repay to Buyer all sums previously paid by Buyer to Seller/Landlord under the former Purchase and Sale Agreement between the parties on the following terms: Seller/Landlord shall execute and deliver at Closing a promissory note to Buyer for its repayment obligation. The principal amount of such promissory note shall be amortized over a term of twenty (20) years at seven percent (7%) percent per annum payable in equal monthly installments of principal and interest with a final balloon payment being due as of the fifth annual anniversary date of such promissory note. In no event shall the rents due under either of the Lease or the New Ground Lease be offset or reduced for or on account of any indebtedness due from Seller/Landlord under said promissory note, unless Seller/Landlord shall default on its obligations under said promissory note.

16. \_\_\_\_\_ in this Third Amendment.

...terms which are defined in the Lease and the Purchase and Sale Agreement shall have the same meanings when used in this Amendment (unless a contrary intent is clearly indicated from the context herein).

The Lease and the Purchase and Sale Agreement each is hereby ratified and confirmed and, as modified by this Amendment, shall remain in full force and effect.

All references appearing in the Lease, in the Purchase and Sale Agreement, and in any related instruments shall be amended and read hereafter to be references to the Lease as amended by this Amendment, and the Purchase and Sale Agreement as amended by this Amendment.



This Amendment shall have the effect of an agreement under seal and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**EXECUTED** under seal as of the date first set forth above.

**LANDLORD:**

Allen Avenue Plaza, LLC

By: 

Carl A. Shaw, its Member  
hereunto duly authorized

**SELLER:**

Whitechapel Corporation

By: 

Keith H. Allen, its Treasurer  
hereunto duly authorized

**TENANT and BUYER:**

Morrills Corner, LLC

a Massachusetts limited liability company

By: 

Armen Aftandilian, its Manager  
hereunto duly authorized

*Attachment 3*

**From:** "Lemieux" <llemieux@maine.rr.com>  
**To:** <sh@portlandmaine.gov>  
**Date:** Tue, May 4, 2004 7:24 PM  
**Subject:** Proposed Packard Development for Morrills Corner

Dear Ms. Hopkins,

We received a notification of the Planning Board Meeting on May 11th concerning the Packard Development Company's plan for Morrills Corner area ( 33 Allen Avenue).

We have been actively supporting the project from the beginning as it will bring much needed improvement to the area in many ways. Packard is proposing to improve Forest Avenue by widening and adding 2 lanes. They will also provide a 25 ft "green" area around the shopping center. We have several "Retirement" communities in the area that will now be able to walk to stores. With the addition of residential townhouses and apartments it serves every need of the community, not to mention the revenue and jobs that it will bring to Portland. It seems to be right on line with the City's Comprehensive Plan which was distributed at a previous meeting last Fall.

We hope that the Planning Board approves this project and it goes forward.

Sincerely,

Louis and Therese Lemieux  
735 Stevens Avenue  
Portland, Maine 04103  
Tel: 207-878-6527  
llemieux@maine.rr.com



**From:** "Cail, Lori" <Lori.Cail@peerless-ins.com>  
**To:** <sh@portlandmaine.gov>  
**Date:** Wed, May 5, 2004 10:52 AM  
**Subject:** Morrill's corner development

I received your invitation to the planning board meeting Tuesday May 11th, but I'm working and unable to attend at 3:30 in the afternoon. Do you ever schedule these so the actual "public" can attend a "public meeting"?

We do however have some comments to share with you on the proposal from Packard Development.

Last week my husband Herb & I met with Connie and Paul and a couple of our closest neighbors to get our first look at the "new" revised proposal. I believe this group has worked very hard to please everybody with this plan. The neighbors who live near us have shared their thoughts also. We actually live at the end of Cambridge street adjacent to the project site on two sides. (Both sides feel very close at this point) The revised proposal includes a number of changes that I'm sure the Board will be thrilled with.

Do you know the saying "not in my back yard"? This proposal is literally going in my back yard. The original plan we support. Part of the revised plan we can still support. We are appalled with the prospect of the apartment buildings going up outside our back door. We recently watched a 2 1/2 story duplex crowd out daylight beside us. With the additional apartments we will be drowning in darkness. Would you want to live where we are? If you allow those apartments to go there, lots of our neighbors, including us will be looking to move away. Away from this city. Away from the regulations that strangle good projects. Away from the tax increases. Away from the constant noise.

The plan for the shopping center will bring development and commerce to this derelict part of town. The traffic and noise will be contained to the normal working day perhaps 9am to 9pm. The addition of the apartments will bring traffic noise, people noise, pet noise, domestic violence noise all night long. Teenagers with loud cars. Low income families sharing rooms with several families. College students blaring music out the windows. The version with the boxing club adjoining our lot was fine because we have learned to live with the "fight nights". Now the proposal includes future parking less than 10 feet from our bedroom window.

Are you people nuts? Do you want this project to move to Westbrook where they would probably get approval first try? We could use the tax dollars and the jobs. This area desperately needs to be reworked. I know the city can't and won't clean it up on their own. They can't afford to run the city now and it is crying for clean up everywhere.

Please, we support the project, but the "requirement" of additional apartments is over the top. No way.

**CC:** <connie@bartongingold.com>, <cl@ci.portland.me>



Dear Planning Board Members,

Last time we met, you gave Packard, at their request, very specific guidelines for revising their plan to meet the CompPlan. I thank you for that. Despite some changes, I don't believe they have met that.. It's still the wrong use and the wrong size and the wrong impact for the wrong location. By now many of us are intimately knowledgeable with the plan and the issues to date. I don't imagine any of us wanted to revisit it. I certainly don't. But revisit it we must. With new members on Board it places both them and us in a potentially unfair position. They don't know what's gone on before and I don't want to loose my audience by repeating myself too much. Regardless some summary of the past is warranted, as is addressing new information.

I'll start with the new information, the sale and land agreements, the Boxing Club and the new plan, which as of the writing of this is STILL NOT available to the public., . Since you made your decision in December, I learned in a Portland Press Herald article of the intended expansion of the Boxing Club. We all knew from the plans it would be 50,000 sf. What we didn't know was the intended expansion meant a facility with a seating capacity for 2,000. which is the seating capacity of the Expo or Merrill Auditorium., and neither of them abuts a residential neighborhood. It's like this nightmare just keeps getting worse.( as if the largest grocery store in Portland and probably Maine were not enough.)

The Boxing component's been bothering me for awhile.. What's been bothering me has been that it's been presented by the developer as an aside, a footnote--. as if it weren't really a part of the whole project. It's 1/4 of the total developed space. It's more than merely a footnote And now we learn why they wanted to keep it as a footnote, an aside...It has a seating capacity of 2,000!!! The size of the Expo, Merrill. The parking for the Boxing/Bingo facility alone, WITHOUT ALL the other components, would be a nightmare! They were hoping to slide this thing in under the radar with no attention or scrutiny.. And what the purchase and sales and options agreement reveal is that Boxing club land will be "retained" and that the City land at the rear of the lot will be paved over to provide 350 parking spaces and then turned over to (owned by) the Boxing Club.. Now I made a point of counting the parking slots in the prior plan There were 800 + if 350 are exclusive to the Boxing Club, as stated in the options, that leaves 450 for the other uses. The traffic or parking impact of the expanded Boxing/Bingo has never been included in any of their traffic figures.

Since I started writing this, the much smaller existing Boxing/Bingo Club facility had a well publicized boxing event, April 24th . WITHOUT the proposed grocery store, other retail, and housing, the parking lot was full, from the Boxing Club at the rear of the lot to Bruno's in the front, with over flow parking at Meinke and the Insurance company, at the corner of Stevens and Forest. The doors opened at 6 pm, the event started at 8( on a Saturday). According to the press coverage which I have attached, 500 attended. The whole lot was FULL! This without the lot being developed with an expanded Boxing/ Bingo and all the rest.!! It critical that if this plan is to more forward that the traffic and parking impact from the Boxing Bingo be included in any future traffic impact numbers. They've tried to minimize the roll of the Boxing /Bingo. They say things like "well, it will be open different hours" or "it will only be 6 times a year". Well we don't KNOW the hours of operation of the retail or the grocery component. We still don't yet know WHAT the retail will be. At least one component could be a 24hour the day operation. Most groceries are open til at least 11 pm now. According to the press they have reduced the size of the Boxing/Bingo component, but it will still be more than twice the existing size.. The important piece of information is what will the seating capacity be ? The Boxing currently has a 600 seat



capacity, again according to a PPH. article. I have no idea on the Bingo. The hours of operation will likely overlap with the new uses..

According to the land option agreements They do NOT have right title and interest on all the land that they hope to develop( I'm not talking about the now waived requirement on the City land portion) The current owner will retain the land that the new and expanded Bingo/Boxing Club will be on, as well as their designated parking lot. The City land at the back of the lot, if acquired, would be turned over to the current Boxing/Bingo Club landowner to be paved over for 350 parking spaces. Now I understand that they have revised their plan, and their revised plan has this City land mostly retained as "open space" So then, where is the Boxing /Bingo parking going to be?

If this will be their final plan, the land options agreements need to be rewritten to reflect that change. I'm not sure that they can legally go forward to Planning without right title and interest in all the land .As I read it, it doesn't look like they have that. But I'm no lawyer and we have plenty with expertise . Corp counsel was on vacation last week. Hopefully it's been reviewed for an opinion on that. It looks like we have two separate landowners and two separate development plans ( The Boxing/Bingo and the rest) , although linked. It looks like a slippery slope to me. I have other concerns about the option agreement but it's hard to talk intelligently about them with the original contract and amendment 1, and 2 for part of the land ,missing .But the retention of some of the land by the current owner and what appears to be an attempt by the developer to acquire the City land not for his own use but for the current owner's use to be paved over for parking, is troubling. Lastly it looks like the options reveal that this is a 99 year lease as opposed to a sale agreement. That too is troubling. These types of national chain/ Big Box type of operations have a well documented habit of picking up and leaving, if the market is turns out not to their liking or moving up the street to make a larger facility. They keep the lease to prevent anyone from moving in to compete with them, leaving a vacant white elephant behind..

It's important to compare the difference in the total of the new developed space. My math says( if the number are as reported in the press) that the total size of the project has been only reduced slightly12%. The traffic impact , one of the most important, will only be reduced slightly , IF AT ALL, ( the Boxing/Bingo traffic impact numbers were left out of the equation to begin with). That facility is now underutilized, that is likely to change with a new facility and larger seating capacity. And even at the current smaller size, they fill the parking lot! I have been noting that as I pass Bruno's the parking lot is full at least halfway to the back of the site. I have no idea what the current "draw" is either Bruno's or Bingo, or Boxing. But I have No idea where they plan to put the grocery and retail parking. The lot's been full, in the evening's and Saturday nights that I have noticed.. Take a drive by, check it out. If they can't accommodate the current parking on site, How are they going to do it while adding 190,000 sf of new developed space?!?If the 20 acres lot cannot accommodate the parking then the developed space is TOO large!! Even with the 800+ parking spaces they would be needing to ask you to waive the required 1,000 parking spaces required according to the site standards for the 200,000 sf of new developed space!

40 units of housing could be built on the already existing amount of R-zoned land on the site without any need for a rezoning.. Housing IS a permitted use under the existing zoning and would be compatible with the neighborhood next door. It's the only component of the plan that is compatible and permitted.. It's the only component that will NOT violate the CompPlan and the zoning

For the newer members of the Board, I'd like to review and summarize some of the Comp



Plan issues. First, this is a Huge Rezoning. 17/20 acres is inappropriately zoned for this use and for a reason. This Big Box use does not belong in anyone's backyard and is a non conforming use near anyone's back yard. It's not neighborhood friendly. It's supposed to be located NEAR the highway with all the other B zones! A much smaller 70,000 sf retail ( total developed space) use might be neighborhood friendly and actually serve the neighborhood needs. Those who developed ICPAC ( industrial and commercial Policy advisory Committee) and who reviewed ALL the Industrial and commercial zones in Portland. were so concerned about exactly this type of future intrusion into the I zoned land, that they specifically prohibited this type of retail use . At least 70% of the land is zoned I-L . It was a zone established at that time to be specifically neighborhood friendly and a transition zone from the needs of residential neighborhood for peace and quiet and on to the noisier more intensive I-H zone. It has greater requirements for buffering and setbacks , as well as greater restraints upon noise, lighting, parking, traffic, truck use, than the intended use. It provides protections to the abutting neighborhood that this intended use does not.. The I-L zone was established to be neighborhood friendly The intended use is not., which is why they need the rezoning. The intended use will eliminate and erode the existing buffer ( woodlands) to the neighborhood to make way for their driveway ( and parking). The buffer will be significantly REDUCED. The green space will be significantly REDUCED from current levels.

This Plan still violates the transportation component of the CompPlan and the ICPAC component of the ComPlan which prohibits this use. While ON SITE the plan may have been made more pedestrian friendly. Those of us who live in the area and will be impacted by the 10,000-16,000 MORE trips, are more concerned with our safety OFF of the site, traveling near the area.. The addition of extra travel lanes will NOT make it more pedestrian or vehicle friendly OFF SITE. It's hard enough to cross 2-4 lanes of traffic let alone 5-6 lanes! It's still an auto dependent site, intended to draw traffic TO the area. While it may LOOK more attractive, the size and scale have not be reduced significantly to make it a "Neighborhood Center" It's still what I consider a "Power Center". It still bigger than BIG BOXED in Size and BIG BOXED in impact.. It's still bigger than Northgate and Westgate main buildings combined! Chunking up the buildings, while not significantly reducing the size doesn't make it not super sized! AND WE STILL DON'T NEED yet another grocery store, we already have 5 within a stones throw THERE IS NO need for another grocery store.. It's still not neighborhood scaled , friendly. or compatible( a CompPlan requirement) by anyone's stretch of their imagination. 70,000 of total developed space like at the stores at Falmouth Village and like we initially expected, is! They are Not interested in meeting the needs of the Neighborhood or the CompPlan. They ARE interested in Maximizing profit.. It's their job to look out for their client's needs and best interests. It's their job to keep trying to "push the envelope". It's your job to look out for Portland. It's still more than double the size it should be AND WE STILL don't know the names of the stores and restaurants that will be there, What's the BIG SECRET? Restaurants are the biggest traffic draw and turnover . How many restaurants are intended? Which ones?

The total developed space( using their figures and only the footprint figures, which does not include 2nd and 3rd story usage) has been reduced from 197,000 to 188,000( including an estimated 46,000 sf of housing).....11,000 sf. If we were to add the 2nd and 3rd story developed space another 22,000 sf. It's has in fact ONCE AGAIN grown NOT shrink--- to a total developed space of 210,000 sf! 12,000 MORE than BEFORE.

The only good thing about their new plan is the added housing .It's the only CompPlan requirement that you asked them to meet that they actually DID! They can read politics the well.



They ARE however still playing a game of smoke and mirrors with us all.

In essence , they added the housing by shrinking the Boxing's, with essentially not touching the retail.. It looks better. It 's more aesthetically pleasing.. The front at least does have a "village feel" The front some may consider more pedestrian friendly but they still "miss the point" If that's all this plan included , it would be perfect! It would be just about exactly what we were led to believe it would look like to begin with . BUT ,the total new developed space with the housing is 9,000 sf larger! It's still not neighborhood friendly, small scaled, or pedestrian friendly( off site). It will still require added lanes and still has only one point of entrance and egress. It still overwhelms the neighborhood in it's size and impact. It still doesn't serve or meet neighborhood needs. It's still auto dependent. Open space/ green space/existing buffer will be REDUCED! Any one component alone( housing, retail, grocery or Boxing /Bingo) might be ok But put them all together and I spell DISASTER! The City should HOLD onto the land and build their OWN housing. It's the only community need and component of the Comp Plan that this proposal meets.It's their job to maximize profit for their clients, It's yours to look out for Portland.

The only way that this plan has 40% green space is if you're counting the area at the tops of mature trees plunked now, not even in the median between parking rows, but directly into the pavement..And Only if the parking lot itself is considered open space Apparently they have gotten us mixed up with Greenland , NH , where they have another project in the works ,and where parking lots DO count as open space. Here we mean GREEN space when we say open space. And there won't be a mature tree on that site if they are planted like THAT! Look at nearly any shopping center and see how poorly they grow. They are mostly scrawny or dead! And please note that green space in the back, according to the options ( and the Plan), is where the Boxing Club parking is supposed to go!! And also please NOTE that most of the dark green area denoting current woodlands is NOT on their land!! And is also Not the reality of the land there.. And the woodlands (mature trees) that exist there now are GONE! Smoke and mirrors and profits rule with this outfit. Watch them carefully on The Pine Tree site!!!

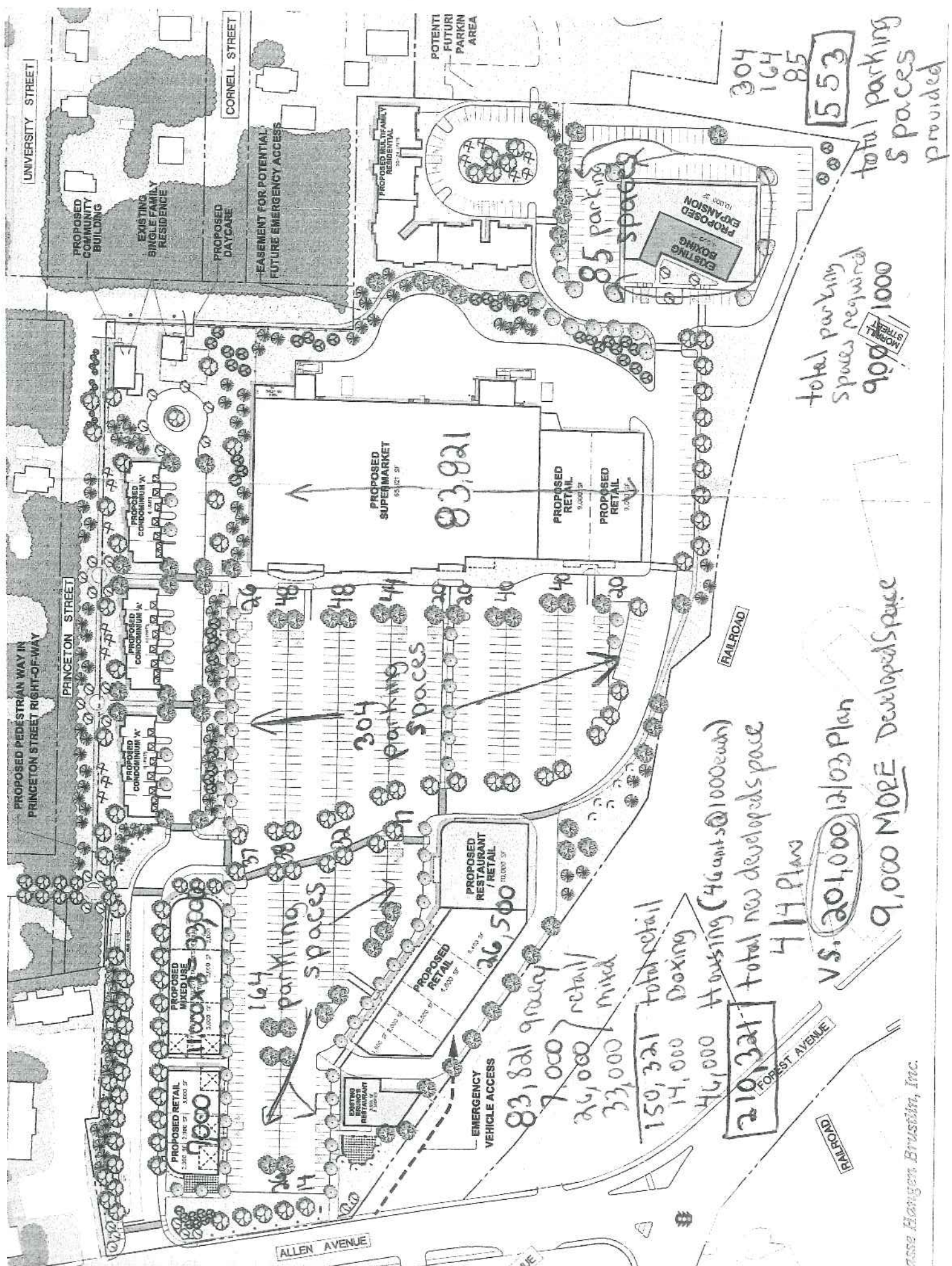
Lastly according to their summary of their new plan they have provided 625 parking spaces. I count 533, nearly 100 less than stated. The retail alone using site standards require they provide 750 spaces. Add in the rest and the required parking should be 900-1000 spaces And the recent Boxing event ( without the new developed space) indicated a parking problem already exists. The parking provided will be inadequate and result in overflow parking in the neighborhood. If they can't provide the parking on site for their development. perhaps it's just too big for the site! Their total developed space does not include the developed space on the 2nd and 3rd story or the housing.

Thank you once again for taking the time to review the material and this note. I wish we weren't back to square one .It wasn't my choice or decision. I tried to focus on issues not discussed thus far. And I apologize once again for it's length . It's a Big project with lots of issues. And you know, this plan looks very much like the same plan that Planning staff suggested to them EXACTLY a year ago, at the beginning of this process back in May. Too bad they didn't listen then! It could have been a good starting point for revision. They have wasted a lot of people's time. This project shouldn't be located in anyone's back yard and the Zoning prohibits it. And so does state law governing contract zones.

Deb Keenan

May 7,.04





304  
164  
85

553

total parking spaces provided

total parking spaces required 900

VEHICLE TOWER

Developed Space

4/4 Plan

VS. 201,000 12/03 Plan

9,000 MORE

150,321 total retail

83,881 gross

7,000 retail

14,000 boxing

46,000 housing (46 units @ 1000 each)

210,321

total new developed space







# Bowling, boxing, softball – once

● Harness racing also drew big crowds, but TV has since captured many of the Maine fans who made lesser sports thrive.

By GLENN JORDAN  
Staff Writer

**H**arness racing isn't the only once-prosperous sport that has struggled to survive.

Professional baseball, bowling, boxing and, at least in Maine, softball all enjoyed their moments in the sun, only to fade from public view.

Some enjoyed a resurgence of popularity. Others, such as softball, aren't likely to draw the kinds of crowds Leroy Rand remembers on Munjoy Hill to watch a touring team play local stars.

"On a good night, they'd have 500 up on the (Eastern) Promenade," said Rand, a longtime baseball coach, umpire and high school teacher. "We'd go up there anytime, because it was good stuff."

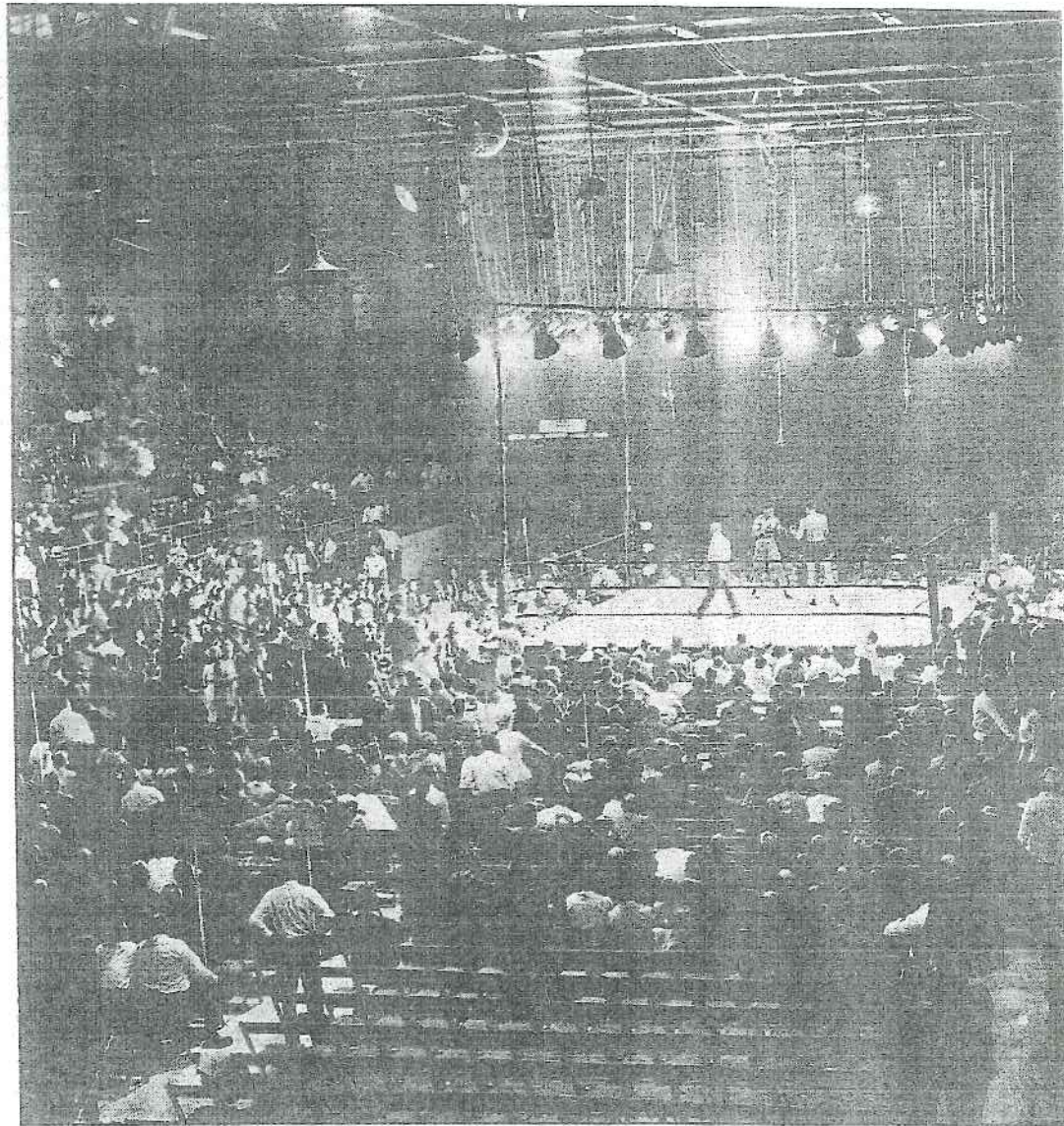
These days, good stuff – or at least what passes for entertaining stuff – can be found on television. No longer does nearly every town in Maine field a baseball team for pride and diversion.

"There were a lot of teams, right after (World War II)," said Dick Redmond, 74, a member of the Maine Baseball Hall of Fame. "I remember guys from Portland who used to get paid \$40 to \$50 a week to play in these small towns."

Redmond, who played semipro ball in New Brunswick after starting at Portland High and later in the Twilight League – where he can remember crowds of 2,500 passing a hat to pay players – was also a boxer. He competed in the 1948 Golden Gloves tournament and remained interested enough in the sport to publish a book on Maine boxing records more than half a century later.

"We had a period of time in Maine when we had two or three hundred fight cards a year," he said from his winter home in Florida. "Nowadays, I don't know if they have any professional fighting in Maine."

Only two pro cards in eight years, although Bobby Russo, head coach and manager of the Portland Boxing Club, plans to increase that number. Russo trains 16 amateur boxers whose fights draw capacity



In the past, Maine attracted many professional boxing matches, including a heavyweight champion (known today as Muhammad Ali) and Sonny Liston in Lewiston on May 25, 1965. Clay knocked out

crowds of 600 spectators half a dozen times a year. Pending city approval, Russo will build a gym that seats 2,000.

At one time, Portland, Maine, was the busiest fight town in the world," said Russo, referring to a period in the late '60s featuring local favorites Pete Riccitelli and Gene Herrick. "Portland is still a good fight town and I feel we're going to be able to bring it back. I've done 56 amateur shows and

virtually every one of them sold out."

Russo, 49, supports the boxing club with money from his adjacent bingo hall. He said his nonprofit organization also contributes to 65 charities.

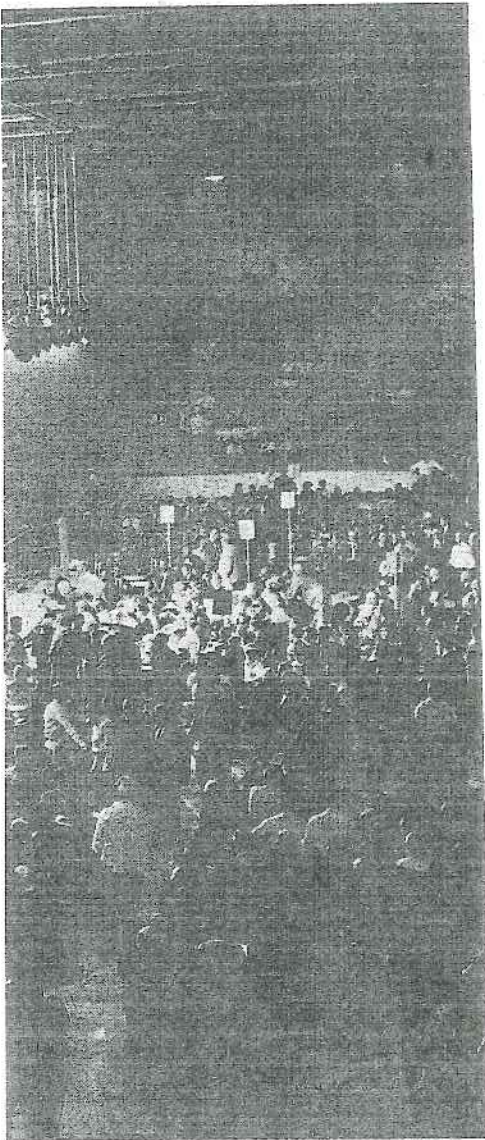
"I think it's a little bit different with what we do and what harness racing wants to do," he said. "They're a for-profit business. If they're struggling, it means they don't have much support. I mean, the fishing

industry is machines?

It seems ularity of t land and tjacks prep Winkin Co minor leag Maine for t "They ha



# nce they were kings



Staff file photo

ght championship between Cassius Clay  
y knocked out Liston in the first round.

industry is struggling. Should they have slot machines?"

It seems inconceivable now, with the popularity of the Double-A Sea Dogs in Portland and the independent Bangor Lumberjacks preparing to play in the new John Winkin Complex at Husson College, but minor league baseball was absent from Maine for three decades.

"They had record attendances in the late

'40s and '50s," said Charlie Eshbach, president and general manager of the Sea Dogs, about minor league baseball in general. "But in the late '50s and '60s and '70s it was struggling."

Eshbach listed two reasons for baseball's demise: television and air conditioning, particularly in the South.

The ease of watching Major League baseball in a comfortable living room lured away many a fan until the big league strike of 1981, when the minors enjoyed a resurgence of interest. With its focus on affordable family entertainment, the sport blossomed under new owners - many of them successful in other businesses and willing and able to pay for improvements and clever marketing.

Bowling seems to be another sport on the rebound. Peter Lerette, whose parents owned Market Square Lanes in Augusta when he was growing up, remembers smoke-filled alleys and lots of adults. Now 63 and bowling at 1-7-10 Sportscenter in Augusta, he sees kids and birthday parties and "more and more spectators now than we ever did in the old days," he said.

Jackie Woodward, who owns 1-7-10 Sportscenter with her husband, said this is the seventh year of a popular candlepin television show taped at their facility. Folks from all over the state send postcards - 10 to 20 per day, she said - to enter a Lucky Roll contest in which the largest prize is no more than \$150.

"The interest is there for the candlepin bowlers," she said. "We have 16 leagues. We have 100 men bowling right now (on Thursday night). On Wednesday mornings I have 18 teams of seniors here, which leaves only two lanes open to the public."

Dick Robbins, a promoter from Scarborough who owned a racehorse named Cloudy Night about 30 years ago, said most of the people he sees at the track are, like himself, on the far side of 70.

"The ranks are definitely thinning out," he said. "It's not that (harness racing is) not as attractive or competitive or exciting, it's just that there's so much (else) going on."

What it all boils down to, according to Russo, the boxing manager, is this: "If there is real grass-roots support for something, ultimately it will survive."

Staff Writer Glenn Jordan can be contacted at 791-6425 or at:

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May 04

# Morrill's Corner Developer To Submit Revised Plan

## The new proposal calls for a smaller retail block to house a Stop & Shop supermarket, second story, low intensity professional offices and a larger housing component.

by Susan K. Christian

Progress. One person's vision of advancement is someone else's apparition of decline. It is the way of cities in expansion to inspire controversy among citizens about patterns of growth. Nowhere in Portland has that debate been more intense than in Morrill's Corner, where Packard Development proposes to construct a neighborhood center, named Morrill's Crossing, for mixed commercial and residential use.

Since last year's Community Development Committee vote that withheld project approval, the Massachusetts-based company has revised its development plan to meet every requirement of Portland's Comprehensive Plan. As a result of feedback from the Planning Board and one-on-one meetings with area residents, Packard's project manager, Paul Cincotta, believes that the plan for Morrill's Crossing is superior to any mixed-use development to date in Maine and all of New England.

...and was called to several city officials on

development plan for Morrill's Crossing addressed the issues of size, traffic and housing. In response, Packard modified the plan, bringing \$1 million in traffic improvements and enhancing pedestrian access. The new proposal, which will be submitted to the Portland Planning Board during the first week in May, calls for a smaller retail block (down from 150,000 square-feet to 130,000) to house a Stop & Shop supermarket, second story, low intensity professional offices and a larger housing component.

Cincotta also indicated that original plans for a 50,000 square-foot boxing club have been revised to a 15,000 square-foot facility.

Instead of replacing a half-dozen housing units or contributing \$50,000 for each one to Portland's Housing Fund,

**Cincotta also indicated that original plans for a 50,000 square-foot boxing club have been revised to a 15,000 square-foot facility.**

## A Word About Mom(s)

Memories of Mom ....

She never missed a game of mine from Little League to the Twilight League.

When I was sick with pneumonia for a whole month in high school, she attended to me along with my terminally ill brother, Steven, and the rest of our family.

At 50 years old she became a widow and vowed she would not remarry. She always said that my father's love and character could never be replaced.

Among some of her favorite things to do as she grew older were: going to Ken's for clamis and Harmon's for burgers, stopping for an ice cream, keeping up with the Red Sox, watching the news, doing the crossword puzzle, watching Regis, celebrating St. Paddy's Day at the old Ramada Inn, rolling pennies, and snacking on Kit Kats (or



**Editor's note: This photo, taken almost 18 years ago, shows me with my mom when she was 61.**

whatever the bargain candy at Shaw's was), a simple life after decades of hard work raising a family.

She passed away three years ago in August at 76 years old.

With my father, she raised seven children who blessed her with 16 grandchildren. She was my mom and God gave me the best - I hope all of you feel that way about yours.

Happy Mother's Day, Mom(s)!

"and we have to be practical about how to support them."

Present status of Packard's development plan calls for more meetings, including on

one-on-one with property abutters and new workshops set for May 11, May 25, and possibly

a third on June 8. Packard also will host required neighborhood meeting for about

before the Planning Board's public meeting. With architect, Andy Hyland, of Portland

...



We've talked to several city officials on the planning staff and a few city connectors, and we are very pleased with their reaction to our modified plan," Cincotta says. "Packard is committed to the best interests of Portland for the long haul, and we're encouraged by increased recognition of our level of commitment."

### Original Proposal Scaled Down

Public criticism of Packard's original de-

housing fund,

Packard's revised plan also includes new, market-value rental and sale (condominium) units.

"With the development's easy pedestrian entry and pleasing spatial design, neighbors, including residents of nearby senior housing, will gain a sense of space and destination not allowed by present traffic patterns," Cincotta says. "Although it's been tedious, we're convinced that the plan has gotten better and will hugely benefit the neighborhood."

# Neighbors

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Packard's modified plan for Morrill's Corner will eliminate neighborhood blight and improve traffic flow through the area.

The benefits of Morrill's Crossing will affect not only the neighborhood, but also all of Portland, according to Paul G. White, president of Paul G. White Title Company, whose property abuts the proposed development. "Packard Development and Stop & Shop are good businesses," White says. "They provide the kind of competition that raises profits, the standard of living and brings new benefits to workers." White is already contemplating raises he will give his employees because of Stop & Shop's presence, and he thinks that's a good thing. "Not to mention the annual \$250,000 tax revenues Portland will receive even before reassessment," White adds. He believes that a realistic view of Portland's growth must include more than "arts and parks."

"Those are wonderful things," White says,

"With architect, Andy Hyland, of Port City Architecture, we're developing new presentation materials for these meetings that will help people visualize Morrill's Crossing with greater accuracy," Paul Cincotta says.

Cincotta hopes that a contract zone recommendation from the Planning Board by July will enable the Community Development Committee to review the plan and send it to the City Council for a vote by end of summer.

Residents who wish to speak on Packard's revised Morrill's Crossing plan may attend the North Deering Neighborhood Association's annual membership meeting on May 27 at the North Deering Congregational Church, 1364 Washington Ave., next to Dunkin' Donuts at 6:30pm. According to President Alan Parks, this usually is a very well attended meeting and should provide an interesting forum.

For more information, call the NDNA at 797-6326.

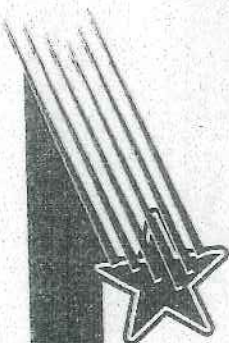
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# Rising Star

## This week: Phil Chason

By Shawn French

Eighteen-year-old Phil Chason started boxing as a freshman at Windham High as a way to stay out of trouble. Four years later, he graduated, focused on his boxing and is headed to the Golden Glove national championship in Kansas City, Mo., next month.

He had tried Tae Kwon Do, but dropped it because there wasn't enough contact to hold his interest. He gave boxing a try because his cousin had done fairly well in the sport.

"I figured I'd give it a year or so and see what happens. I didn't know I'd do as well as I have," the Knox Road teen said.

Chason's parents, mainly his mother, were nervous at first, but he said they've come around to the idea of his boxing and now they really get into it.

He's 26-5 as an amateur with roughly 10 knockouts and recently took his third shot at qualifying for the Golden Gloves. He won the regionals (Maine, New Hampshire, Vermont) his first year, but was eliminated at the



Phil Chason is headed to the Golden Glove finals. Courtesy photo

into his next fight, he was knocked down for only the second time in his career. But this time he wasn't about to stay down.

"I got (mad)," Chason said. "I just went after him. My coach was yelling, 'Move around,' because he wanted to see if I had my feet or not. When the ref stepped back, I just went flying (my opponent) and really look it to him. Coach said it was a good show of character, but not very smart."

Chason went on to win that fight and has been building off the experience ever since. This year, he entered the Golden Glove qualifying rounds a more serious and disciplined fighter. In the regional round,

only opponent who ever knocked Chason got his revenge. In the New England round avenged another loss and later KC opponent who had never been knocked before.

He has one last fight before Golden Gloves, a main event by April 24 against Miguel Valencia Portland Boxing Club. He's prev fought Valencia and describes him "tough kid. He's got a skull that (holding his fingers three inches) I hit him so hard and he just kept going. I always leave with a good swing. To win the Golden Glove final follow in the footsteps of Oscar Hoyva. Chason will have to win six fights over the course of five The championship fights will be on ABC on May 10.

"I'm not so much worried about happens when I get there. I just get there and do my thing," he said

For more information about the 24 fights, headlined by Chason, call 761-0975.



(Maine, New Hampshire, Vermont) Phil Chason is headed to the Golden Glove finals. Courtesy  
 his first year, but was eliminated at the photo  
 New England tournament. His second

year, he was bumped out in the region-als. This year, he won both the region-als and the New England level and has earned a place in the nationals of amateur boxing's biggest event.

Chason models himself after five-time world champion Oscar De La Hoya. "I'm a technician. I look at (my opponent) and kind of break him apart, see what's open. I really think a lot in the ring, more than I do any other time," he said, laughing.

At 5 feet 11 inches, he's taller than most boxers fighting in the 141-pound range and that often gives him a significant reach advantage.

With a wingspan so long, he puts his jab to good use against shorter opponents.

"I build everything off the jab, but the punch I like the most is the left hook to the body. When you hit someone to the body, you get that 'WAPI' and they say,

'I'm OK,' but you know they're not. Nobody likes a body punch," he said. Chason runs four miles five or six days a week. He also trains under Bobby Russo and Skip Nicules at the Portland Boxing Club four days a week; two

days of sparring and two working with coaches. His affection for his coaches is obvious. "We're like their kids, you know. If you're not at the gym working out, they'll be calling to find out why," said Chason.

He said his biggest improvement has been his punching speed. "When I first started, it was kind of lax. Now it's more bang! bang! Real fast, real hard, making people look bad," Chason said, laughing with a mock swagger.

His most memorable fight was from last year's Golden Gloves regional round, when he was dominating his opponent, but started tiring and got sloppy trying to finish him off.

One haymaker later and Chason found himself on the ground and the fight over. He said, "Mentally, you're like, 'All right, I'm fine,' then you try to take a step.

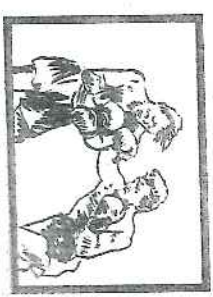
"I don't like to think about it. It's behind me. I use it as motivation for my next fight. I was getting complacent and he caught me sleeping. I've never been hurt by a shot I saw coming." He spent two months away from the ring after the knockout. Thirty seconds

was swept out of the ring, cia, call 761-0975.  
 he faced off against the

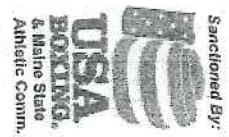
# PORTLAND BOXING CLUB

**MAINE VS.**

**MASSACHUSETTS**



Promoted by:  
 Bobby Russo



**FEATURING**

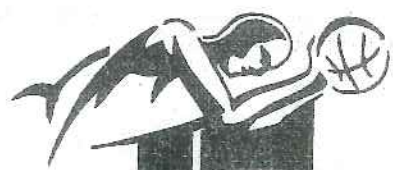
- New England Open Class Super lightweight Champion **PHIL CHASON**
- New England Novice Heavyweight Champion **TODD BACON**
- Regional Golden Glove Novice Middleweight Champion **RUSSELL LAMOC**
- New England Heavyweight Champion **JESSIE PORTER**

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 M.J. Richie's - Stevens Avenue, Bruno's - Allen Avenue,  
 ALL SEATS RINGSIDE.....\$10.00  
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# Local Athletics

## The main event: Phil Chason

By Shawn French

**W**indham's Phil Chason, the New England super light-weight champion, was the main event at last Saturday's Maine versus Massachusetts clash at the Portland Boxing Club. It was a tune-up bout for Chason, who is headed to the Golden Gloves national finals next Sunday.

Bobby Russo, Chason's trainer and the owner of the non-profit Portland Boxing Club, said the 18-year-old's position is in large part responsible for his rapid improvement. "He didn't come in with this tough guy attitude. It's not kill or be killed. It's be hit or not be hit. He was more open and more willing to learn the techniques," Russo said.

In his four years of training, Chason has evolved from what Russo described as a "skinny kid who wasn't real strong" into a Golden Glove contender. Last Saturday, he had to get past Miguel Velencia, an aggressive brawler from Massachusetts.

"He's very tough, very strong and he comes right at you," Russo

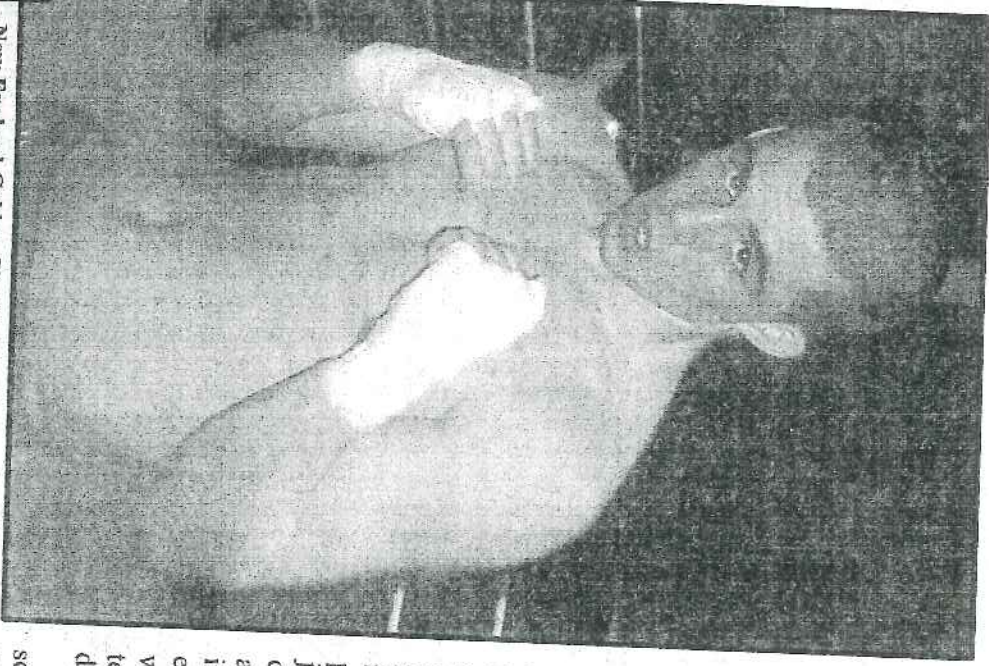
Russo's club its third straight win over the opponents from Massachusetts, scoring a split decision victory.

Portland's Russell Lamour took the ring next and smacked his foe all over the ring on his way to a convincing win by decision.

Next was one of the more interesting fights of the evening, with Amer Alfatlawi from Portland taking on Chris Royo from Burlington, Vt. Alfatlawi is a tall, lanky middleweight with good boxing skills, but Royo used thugish tactics to dominate the first round, looking more linebacker than boxer. He shoved, he shoulder-blocked, he led with his forehead and occasionally he even punched.

Alfatlawi looked a little rattled at being trapped in a street fight, but the ref got fed up with Royo's methods and threatened to take points.

Alfatlawi used the break between



New England Golden Gloves super lightweight champion, Phil Chason. Photo/Shawn French

It was a quickness Early on, came at but the dif speed was Chason ci foe early ing out of , peppering jabs. Whe cia advanc aggressive into a wall ces from who showe terest in down.

Velencia some hits, l son control angles will



agun. I will reacts well to a guy who keeps coming at you. When you're throwing a lot of punches, it creates a lot of opportunities."



Trainers Bobby Russo and Skip Neales work with Chason between rounds. Photo/Shawn French

The Portland Boxing Club, located near Morrill's Corner, was packed nearly an hour before the fights started. The club has a warehouse feel; a big open space with walls covered by promotional posters and photos from some of boxing's most famous fights. As a boxing fan, it was great to just wander around the edges of the room and soak up the memories of fights gone by. Norton, Tyson, Leonard, Marciano. And if that classic shot of Ali towering over a prone Sonny Liston and yelling for him to get back up doesn't get you pumped for a night of fights, you've come to the wrong place.

By the time the announcer stepped into the ring, the crowd of roughly 500 was fired up and ready to cheer for the hometown fighters.

First up was 12-year-old Jessie Porter from Gorham, who scored a convincing win by decision.

Then lightweight Nicky Stevens, of Oakland, Maine, dispatched his opponent in the first round. Featherweight Freddy Najara gave

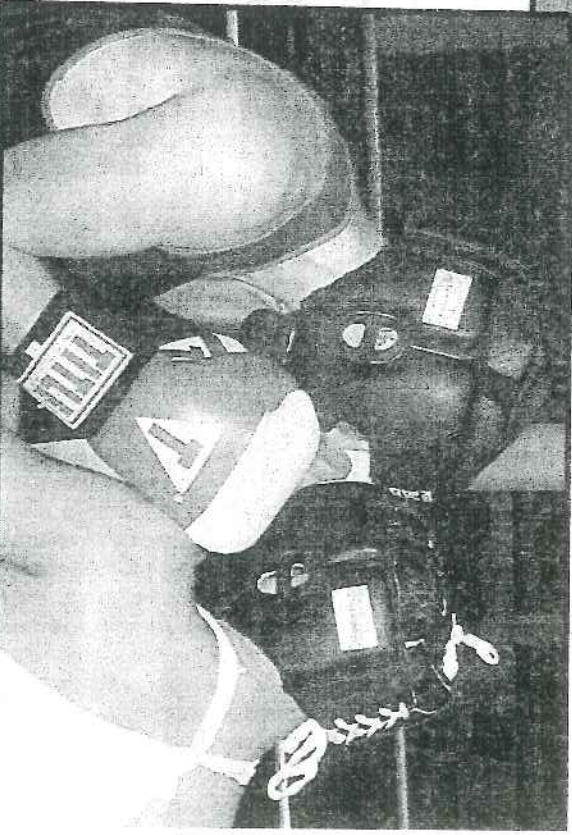
rounds to regroup and came out less tentatively in the second, punishing the tiring Royo, catching him mid-charge again and again. With Royo's punches being wide and out of control, he was open to straight punches up the middle and Alfatlawi unloaded on him, forcing the ref to step in with a standing eight count to end the round.

In the third, Royo had punched himself out and was staggering exhaustedly around the ring, practically begging to be hit. Alfatlawi seemed happy to oblige. When the final bell rang, Royo was slumped over the ropes, his back to his opponent and looking for a place to fall. If the round had been 10 seconds longer, there would have been a knockout, but Alfatlawi had to settle for a convincing win by decision.

After a brief intermission, heavyweight Todd Bacon took the ring in a rematch of a fight that Russo described as "a war" the first time around. Bacon looked chiseled next to Connecticut's Robert Renald, who appeared a little soft

risks while he sized up his opponent. In the second round, Renald fought back and tried to start another brawl, but Bacon ended the round with a solid double-jab and the strength difference between the fighters started coming into play. A minute into

bounced off Chason, he too shot to the face in return. In the second round, it was the same, with Chason circling and picking his moments to stand in and unload on the advancing Typically boxers with a build son evade and counter, wearing their opponents. Chason has



Chason and Miguel Velencia mix it up in the second round. Photo/Shawn French

the third round, Renald got caught with a series of punches and the ref stepped in to stop the fight. Then it was time for the main event. Phil Chason versus Miguel Velencia from Gardner, Mass. This is the fight the crowd had come to see, and the ovation when Chason stepped into the ring was deafening. He appeared loose and ready to go.

ability to move and evade until the opening he's looking for, stops running, wins the exchange moves again. Velencia kept on but he never seemed sure of what son would do next.

Chason had earlier described style as reminiscent of De La H

please see "Chason" on